

Faith and Politics in America

From Jamestown
to the Civil War

EDITED BY
JOSEPH PRUD'HOMME



MAJOR CONCEPTS IN POLITICS
AND POLITICAL THEORY 29

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Faith and Politics in America explores the period from 1607 to the American Civil War. This book addresses the role of religion in the political process in early America, the extent to which religion influenced eighteenth century politicians and decision-makers, and how the founding fathers used religion in laying the foundations for a fair and just constitution. It also explores the meaning of the separation of church and state in the mind of many of the great political actors and thinkers in America in the early and late federal period and their views on traditional Christianity. The book traces how religion contributed to the success of subsequent political leaders, such as the founders of the Whig and Democratic parties, who claimed to be religious or to be adherents of a certain faith and who used religion as a guide to execute policies; and the role of religious faith in arguments over the institution of slavery before and during the Civil War. While exploring these topics from the time of the seventeenth through the nineteenth centuries, the essays included in *Faith and Politics in America* afford unique assessments of the American Revolution; the thought of Thomas Jefferson; the religious philosophy of James Madison; the life and thought of John Quincy Adams; and religious debates over the acceptability of slavery conducted by Southern ministers during and before the Civil War. The authors also explore the contemporary relevance of American religious history.

Joseph Prud'homme is a professor of Political Science and the Director of the Institute for the Study of Religion, Politics, and Culture at Washington College in Chesterton, Maryland.

Faith and Politics in America

Major Concepts in Politics and Political Theory

Garrett Ward Sheldon
General Editor

Vol. 29



PETER LANG

New York • Washington, D.C./Baltimore • Bern
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Introduction

This collection of original essays brings together a range of approaches to the important question of the role of religion in American political and cultural life from the days of the founding of the Virginia colony to the American Civil War. A distinctive feature of this collection is not only its breadth and depth of analysis but also the manner in which lessons culled from the historical record are applied to contemporary debates.

The founding of Virginia as an Anglican colony is explored by Dr. John Turner, former head of historical interpretation at Colonial Williamsburg. Turner highlights the radical nature of the post-colonial disestablishment of the Virginia Commonwealth. Joseph Prud'homme, professor at Washington College and the director of its Institute for the Study of Religion, Politics, and Culture, provides a somewhat different perspective on colonial history by addressing the often forgotten figure of Rev. Thomas Bray and by outlining the intention that Bray and many others held for the establishment of Anglicanism in Maryland. In doing so Prud'homme suggests that common accounts of the history of religious establishments in the colonial period, which often inform contemporary public policy debates and constitutional analysis, are inadequate, and he points to insights this recognition might entail.

Garrett Ward Sheldon, the John Morton Beatty professor of Political Science at the University of Virginia's College at Wise, provides an illuminating account of the position of religion in the thought of James Madison. Against a number of contemporary scholars who claim to see Madison as a forerunner of a secularist worldview, Sheldon demonstrates the centrality of religious faith to the life and work of Madison.

Addressing Madison's frequent political ally Thomas Jefferson, Professor Stephen Strehle develops a penetrating account of Jefferson's understanding of and approach to the Judeo-Christian religious tradition. Frequently the object of hagiographic historical analysis—especially by defenders of a strict separation of church and state—Jefferson is shown in Strehle's account as less an Olympian figure calmly reflecting on the public weal and more a passionate advocate of a post-Christian social and political order. By highlighting Jefferson's frequently impassioned opposition both to Judaism and to orthodox Christianity, Strehle provides a fascinating reassessment of this important founding figure.

Of less renown than Jefferson but of an importance much in excess of the extent of commentary afforded him in contemporary scholarship, is John

Quincy Adams, himself arguably something of a founding father given his perspicacious role as a foreign envoy during the founding period. Professor Gary Smith goes a very considerable way in rectifying this imbalance in contemporary scholarship by supplying a rich portrait of a brilliant mind, one brimming with important insights on the position of religion in public life.

Professor Dawn Hutchinson explores in turn the role of religion in the development of slavery in North America, providing a detailed examination of the issue, accompanied by a lucid exploration of the meaning of the Christian faith in the lives of many slaves.

Lastly, Joseph Prud'homme continues the exploration of slavery and its relationship to Christianity by assessing the worldview of evangelical ministers in the antebellum South. He endeavors to demonstrate that the most common evangelical approach to slavery in the pre-war period was deeply mired in a serious internal inconsistency resulting in what he calls an 'evangelical double-bind.' On the basis of this conclusion, he argues against a growing chorus of writers that Christianity's relationship to slavery is much more complicated than many scholars and political and cultural commentators acknowledge.

The editor wishes to thank his wonderful colleagues at Washington College for their help, guidance, and friendship. They are a truly fantastic crew of first-rate scholars and exemplary teachers. He also wishes to acknowledge the excellent work of Michel Bonadies, a Junior Research Associate of the Institute for the Study of Religion, Politics, and Culture at Washington College. He records also his special thanks to Cindy Licata for her fantastic and gracious assistance. Lastly, deep thanks are extended both to his wife and his father for their invaluable and steadfast support, inspiration and encouragement.

Chapter One

Colonial Religion and the True Revolution in Virginia

John Turner

When communicants of the Church of England first arrived in 1607 on the shores of what they would call Virginia, England's protestant state church was less than seventy-five years old. Virginia became an extension of the Bishop of London's see. As it was the largest and eventually the wealthiest of England's North American colonies, the establishment of the Church of England in Virginia was a foregone assumption.

Over the ensuing one hundred eighty years religion played a key role in the development of the Virginia society that spawned Washington, Jefferson, Madison, Henry and evolved in ways that allowed those sons of Virginia to be leaders in both the American Revolution and the new nation that followed. Uprisings against regimes perceived to be oppressive are commonplace throughout history. The true revolution formulated in the fourth quarter of the 18th century in Virginia was the formal separation of the civil and religious authorities, something that had not been done in Western cultures since the Constantine era. This theme and supporting parallels will be developed in this chapter.

In 1584 the Rev. Richard Hakluyt presented his *Discourse On Western Planting* to Her Majesty Elizabeth I of England. One of Hakluyt's concerns was for the propagation of the Church of England in new territories across the ocean as it seemed that France and Spain were spreading the Catholic Church across the globe. The work had been commissioned by Sir Walter Raleigh, who was intent on winning the Queen's support for exploration/colonization efforts across the Atlantic.

From the beginning of the work, Hakluyt cites religion as a principal motive though as it goes on trade and economy seem to take the upper hand.

A brief collection of certain reasons to induce her Majesty and the state to take in hand the western voyage and the planting there: that this western discovery will be greatly for the enlargement of the gospel of Christ whereunto the Princes of the reformed religion are chiefly bound amongst whom her Majesty is principal. That all other English Trades are grown beggarly or dangerous, especially in all the king of Spain's Dominions, where our men are driven to fling their Bibles and prayer books into the sea, and to forswear and renounce their religion and conscience and consequently their obedience to her Majesty.¹

Hakluyt's efforts accomplished their purpose well and were at least partially responsible for Raleigh's success in gaining royal approval for his initial colonization efforts. There was genuine concern on the part of the Church of England that the world was being colonized by Catholic states, leaving the Church of England and its sister Protestant churches behind. Any lands claimed by England would a priori also be claimed by England's church, just as Spain and France were propagating the Catholic Church anywhere they planted their respective flags. England needed more income and more income would provide for a prosperous church with well-appointed structures and well educated and well compensated clergy. Several attempts at colonization failed during the last quarter of the 16th century while Hakluyt continued to publish works advocating English colonization for the propagation of England's church and for the glory of England on the global stage.²

James I had been England's king for four years by the time his country's first successful attempt to plant a colony in North America began in 1607. When the small band of explorers set foot on what became known as Jamestown Island the church they assumed would nurture them spiritually, support their attempts to convert the indigenous people they found and provide for their souls in life and death was the Church of England. The Rev. Robert Hunt spread a piece of sail over a makeshift altar and led worship according to the Book of Common Prayer. At least a portion of Richard Hakluyt's vision had been realized.

Survival was difficult however, both for individuals and for the colony. Little if any profit was being made for the financial supporters of the endeavor in the early years of the colony and control changed hands more than once until in 1624 Virginia was declared a royal colony, no longer controlled by shareholders. Within a short number of years the Church of England was established by law as the state supported official religion of the colony. What developed as the Church of England in Virginia evolved over the next fifty years as something significantly different from its counterpart in the mother country. England's church is Episcopal, having a hierarchical system based on bishops. No bishop was ever appointed to be resident in Virginia during the colonial period. Instead, the souls residing there fell under the care umbrella of the Bishop of London. Care and administration of people's lives and souls is difficult when you're among them but exponentially more so when they are an ocean and more than three thousand miles away. In the absence of a bishop what developed was a new, much more independent church still led by educated clergy but guided and governed by the laity more than ever before.

The void created by having no resident bishop was filled in several ways. A number of Episcopal functions were entrusted to the royal governor such as issuing marriage licenses, probating wills, receiving minister's orders, recommending ministers to parishes, and formally inducting them as ministers in said parishes. Parishes became governmental units as well as ecclesiastical ones. Vestries, usually consisting of twelve leading men of the parish, exercised considerable control over the affairs both temporal and religious of that geographical area, especially when no qualified clergyman was available. Virginia experienced clergy shortages for much of the colonial period as qualified English clergy often preferred serving within the bounds of their homeland to undertaking the risks and uncertainties of both trans-Atlantic travel and life on a newly 'civilized' frontier. Colonists born in Virginia were reluctant to make the required journey to England for ordination due to the perils of trans-Atlantic travel as well as the possibilities of contracting disease while there. From four clergymen in 1616 serving some 350 colonists, to a dozen or less in the 1660's when the colonial population had grown to 25,000, to twenty-two ministers for a population of more than 50,000 at the end of the 17th century the ratio of ordained clergy to parishioners went from workable to completely unreasonable in less than a hundred years.³ This tended to contribute to the power of the parish vestry that was for all intents and purposes the basic unit of government for the colony.

All of Virginia's counties were divided into parishes with parish leaders being responsible for recording property lines in the parish, maintaining roads and bridges (so citizens would have a reasonable chance of getting to church on a regular basis), maintaining the moral order, taking care of the poor, widows and orphans, and seeing that all free adult residents of the parish attended the parish church or a chapel of ease within the parish at least once a month. Such duties were dealt with by the vestries of each parish and/or the senior/junior wardens of same on their behalf. For most of the colonial period, vestry duty was passed through prominent families from father to son or uncle to nephew. Membership in this body often served as training for service in the local court system as well as the colonial legislature, with many continuing to serve on the vestries of their parish churches as well as representing their counties in the House of Burgesses. Patrick Henry and Thomas Jefferson were both products of and participants in this process.

By the second quarter of the 18th century the mostly homogeneous religious landscape in Virginia had begun to change. Lt. Governor Gooch, among others, encouraged the migration and immigration of Scots and Ulster Scots into the

western regions of the colony to serve as buffers between the more heavily populated “civilized” areas and the frontier, still largely under Indian control. Most of the people in these two aforementioned groups were Presbyterians, a denomination generally respected by the Church of England, and recognized by the English government as the established church of Scotland. As more Presbyterians began to populate the colony, there were even times when prominent leaders among them were called to serve on local parish vestries, there not being enough Church of England adherents locally to constitute the traditional number of vestrymen, which by custom was twelve.

Presbyterian itinerant preachers began to take missional trips in and out of areas settled in the western parts of the colony eventually leading to a desire on the part of some to have resident Presbyterian ministers. While the Rev. Dr. Francis Mackemie had a brief presence on the eastern shore of Virginia towards the end of the 17th century, the first to establish permanent residence in what was then still on the western side of the settled areas was the Rev. Samuel Davies. Davies made it his business upon receiving the call to serve as a full-time minister in Virginia to secure the appropriate licenses for himself and meetinghouses in Hanover, Caroline, Goochland and Louisa counties. Licenses for both preachers and meetinghouses were required by the law of the colony, it being the assumption of the government/religious establishment that worship and preaching were activities that only rightly took place when in spaces duly designated and led by a trained/educated and government-approved clergyman. As demand for alternatives to the local established church grew, Davies attempted to respond by continuing to apply for more licenses for meetinghouses covering an increasingly broader geographical area. Davies’s popularity as a preacher began to trouble his Anglican counterparts who appealed to the government to effect a curtailment of his activities. When Davies applied for and was granted a license for a meetinghouse in New Kent County in 1750 by that county’s court the general court in Williamsburg stepped in and revoked it.⁴

It wasn’t just competition with Presbyterian preachers that had begun to upset the status quo by mid–18th century but changes, personalities and currents within the Church of England itself. At Oxford University three friends concerned about what they saw as a lack of personal piety among the Anglican clergy formed a group called the Holy Club and eventually launched careers that took each of them in directions not usually followed by Anglican clergy at that time. The Reverends John and Charles Wesley began taking the Gospel message to wherever the people were, coal mines, cow pastures, taverns, rather than

assume the people would come to them. The crowds coming to hear them quickly outgrew most existing interiors anyway, further disturbing the convention that preaching was something that should only take place in spaces designed for the purpose. The third friend was the Rev. George Whitefield.

“The Comet,” the “Grand Itinerant”—both names given to Whitefield in recognition of his popularity and the effect of his traveling ministry on the world around him. After following the Wesleys’ lead and preaching outdoors to the masses in Scotland, Wales and England, Whitefield journeyed westward for the first of a number of trans-Atlantic crossings, and changed the Great Awakening in America from a relatively small phenomenon in New England into an experience witnessed and shared by all thirteen colonies. Ordained as a minister in the Church of England, Whitefield observed his 25th birthday as a guest of the Rev. Dr. James Blair at the President’s House at the College of William and Mary. That Sunday, 16th December 1739, he preached at Dr. Blair’s invitation at Bruton Parish Church to a capacity congregation. Several weeks later a letter arrived from the Bishop of London instructing Blair not to allow Whitefield to preach in his parish church—too little, too late.

Whitefield’s preaching was heart-warming and heart-wrenching—an emotional appeal that hearers take advantage of God’s personal interest in each soul. This was very different from the hierarchical view of God’s relationship to human beings that had been taught by the Catholic Church for more than one and a half millennia, and similarly by the Church of England for nearly two centuries. In towns that had hardly as many citizens, Whitefield was drawing crowds in excess of twenty thousand. Even Benjamin Franklin, who wasn’t easily taken in, warmed to Whitefield the man as one who genuinely believed in what he espoused, and became Whitefield’s friend and supporter. The message was heard not only by Anglicans but by Americans of every stripe. During his lifetime and his seven American tours it was estimated that an overwhelming majority of colonists heard Whitefield preach at least once and his worldwide lifetime audience was estimated by some to have reached twelve million strong. Whitefield remained with the Church of England his entire life as did the Wesley brothers, though the Wesleys’ followers became the Methodist Church after the American Revolution. John Wesley and Whitefield went in different theological directions before the end of Whitefield’s life, though the Methodist Church still claims him as one of its founders.

By the second half of the 18th century Virginia was becoming much more diverse in terms of religion. In addition to Presbyterians and Anglicans with Methodist sympathies there were now Baptists, Lutherans, German Reformed,

Mennonites, Dunkers, and small numbers of Quakers, Catholics and Jews. As these groups became more numerous the legislature began to hear more and more frequently requests that their number be given the same rights as those belonging to the Church of England in Virginia, to be excused from mandatory attendance at the parish church, tithing to support its buildings and ministers, etc. In 1769 the House of Burgesses established a Committee for Religion at least in part to deal with the many petitions that were coming from counties with considerable numbers of dissenters. The stated responsibility of the committee was “to meet and adjourn from day to day, and to take under their consideration all matters relating to Religion and Morality.” Right away, the committee was asked to draw up a bill for “exempting his Majesty’s Protestant dissenters from the penalties of certain laws.” The bill was drawn up but never passed.⁵

The 1760’s and 1770’s brought considerable change to Virginia, Britain’s largest and wealthiest colony in North America. Some of the change was economic, some social, some religious and as usual the three were not unrelated. Giving the Great Awakening partial credit for creating an environment that made the American Revolution possible at its particular time and place is an idea that has cycled in and out of favor several times over the last hundred years. There is no doubt that evangelical revivals over the course of the 18th century brought people from different social classes together in ways that had not happened previously in Colonial American society. Enlightenment ideals and Freemasonry each contributed in their own ways to a degree of class leveling based on the brotherhood of man and the brotherhood of the craft. On the eve of the American Revolution in the mid-1770’s change was just as important a political buzzword as it became in America’s 2008 presidential election.

Disestablishment of England’s church in Virginia was a de facto result of the majority of Virginia’s leaders supporting a declaration of independence from the mother country. Actual disestablishment began in Williamsburg in 1776 with the adoption of Article 16 of the Virginia Declaration of Rights. As amended by a young James Madison from George Mason’s original draft, the article states that “all men are equally entitled to the full and free exercise of religion, according to the dictates of conscience.” Dealing with the structure of a state church that had developed over more than 150 years would take considerable legal wrangling and revision, a reality the new legislature recognized by appointing Jefferson and several others to the task in October 1776. Jefferson began by drafting in 1777 what was to later become Bill No. 82,

his proposal for religious freedom. The bill was first debated in 1779 but tabled in the middle of a difficult war the outcome of which was anything but certain at that point. The process that ensued took nearly a decade to develop before Jefferson's bill could be maneuvered into law.

An Act for Establishing Religious Freedom

Well aware that the opinions and belief of men depend not on their own will but follow involuntarily the evidence proposed to their minds; that Almighty God has 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 burdens, 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 of both 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 thinking as the only true and infallible, and as such endeavoring to impose them on others, has established and maintained false religions over the greatest part of the world and through all time; that to compel a man to furnish contributions of money for the propagating 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 contribution to the particular pastor whose morals he would make his pattern and whose powers he feels most persuasive to righteousness, and is with-drawing from the ministry those temporal rewards which, proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labors for the instruction of mankind; that our civil rights have no dependence on our religious opinions any more than our opinions in physics or geometry; that therefore the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and emolument unless he profess or renounce this or that religious opinion is depriving him injuriously of those privileges and advantages to which, in common with his fellow citizens, he has a natural right; that it tends also to corrupt the principles of that very religion it is meant to encourage, by bribing with a monopoly of worldly honors and emoluments those who will externally profess and conform to it; that though indeed these are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that the opinions of men are not the object of civil government, nor under its jurisdiction; that to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous fallacy which at once destroys all

religious liberty, because he, being of course judge of that tendency, will make his opinions the rule of judgment and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough, for the rightful purpose of civil government, for its officers to interfere when principles break out into overt acts against peace and good order; and, finally, that truth is great and will prevail if left to herself; that she is the proper and sufficient antagonist to error and has nothing to fear from the conflict unless by human interposition disarmed of her natural weapons, free argument and debate; errors ceasing to be dangerous when it is permitted freely to contradict them.

We, the General Assembly of Virginia, do enact that no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested or burdened 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.

And though we well know that this Assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding Assemblies constituted with powers equal to their own, and that therefore to declare this act irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that, if any act shall be hereafter passed to repeal the present resolution or to narrow its operation, such act will be an infringement of natural right.⁶

This was truly revolutionary. There had always been wars and rumors of wars, but not religious freedom stated by a government body as a natural right. The standard statement of the way things were comes from Winfred E. Garrison—“For more than 1400 years it was a universal assumption that the stability of the social order and the safety of the state demanded the religious solidarity of all the people in one church. Every responsible thinker, every ecclesiastic, every ruler and statesman who gave the matter any attention, held it as an axiom. There was no political or social philosophy which did not build upon this assumption. All, with no exceptions other than certain disreputable and ‘subversive’ heretics, believed firmly that religious solidarity in the one recognized church was essential to social and political stability.”⁷

A number of prominent leaders in Virginia and other former colonies shared a similar view. However both South Carolina and Massachusetts kept a formal religious establishment well into the second quarter of the 19th century. The person who emerged as the self-appointed champion of the movement to

keep a pluralistic Christian establishment in Virginia after the American Revolution was the first governor of the new commonwealth of Virginia, Patrick Henry.

As an attorney, Henry frequently represented dissenters who had run afoul of the law for preaching in unconsecrated or unlicensed places or preaching without a license. A life-long Anglican himself, he credited his style of oratory to what he learned from listening to the Rev. Samuel Davies preach in Hanover County on numerous occasions while in the company of his mother and/or maternal grandfather. Henry believed strongly, however, that the new republican states needed to maintain a formal connection between religion and government in order to maintain a free, independent, moral society. The question was debated, tabled, ignored and avoided for nearly a decade. The Hanover Presbytery and numerous independent Baptist congregations as well as other dissenting groups continued during and after the war to send in petitions requesting that most if not all of the same privileges given to the Church of England, which by 1784 had become the Episcopal Church in Virginia, be granted to their religious bodies and assemblies. In 1784 Henry put forth a bill for "Establishing a Provision for Teachers of the Christian Religion." Under Henry's plan, citizens would be allowed to attend and support any Christian church and/or minister of the same of their choosing. The government would still have a hand in collecting taxes for this purpose, which the taxpayer could earmark for the church and church leader of their choice. People who chose not to support any Christian group would still pay the tax but their contribution would go towards funding some sort of public school. Though he was certainly aware of the small number of Jews in Virginia at the time, Henry did not believe the numbers of non-Christians to be great enough to warrant any other options than his provision for supporting public schools, nor did he anticipate the numbers becoming significant in the future.

Jefferson was in France at this time so was not present to promote his own bill for establishing religious freedom. That task fell to James Madison, who had involved himself from the very beginning with the question of religion at the state convention of 1776. Madison believed that George Mason's draft of the Virginia Declaration of Rights did not go far enough in protecting the rights of dissenters.

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 should enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience, unpunished and unrestrained by the magistrate

unless, under color of religion, any man disturb the peace, the happiness, or safety of society. And that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.⁸

The problem was the word “toleration” which implied it would be up to a public official to decide what religious behaviors could be tolerated and what could not in an orderly society. Madison amended the statement that “all men should enjoy the fullest toleration” to read “all men are entitled to the full and free exercise of religion, according to the dictates of conscience.” As stated by Banning, “...Article XVI erected an ideal that no society had ever written into law and spurred the commonwealth at once towards its achievement.”⁹ Dissenting churches in Virginia were still clamoring for this to be interpreted literally in 1784. Through a long tedious process of political maneuvering, Madison managed to delay the passage of Henry’s assessment bill. Along the way he gave two speeches in the House of Representatives against Henry’s bill for general assessment that were effective in identifying Madison as a friend of religious freedom. George and Wilson Cary Nicholas asked Madison to prepare a petition that could be circulated to influence public opinion. Madison produced a document that was put forth anonymously under the title, “Memorial and Remonstrance Against Religious Assessments.” Part of its effectiveness was the inclusive appeal to Presbyterian, Baptist and Methodist petitioners on the one hand and to the enlightened members of parish vestries on the other.

...what is here a right towards man is a duty towards the Creator. It is the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to Him. This duty is precedent, both in order of time and in degree of obligation, to the claims of civil society. 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: And...every man who becomes a member of any particular civil society [does] it with a saving of his allegiance to the Universal Sovereign.¹⁰

Madison’s “Memorial” received considerable attention over the summer of 1785. In an August meeting of the Hanover Presbytery the Presbyterians agreed to a long petition opposed to the general assessment bill and supporting the approval of the Bill for Establishing Religious Freedom. Over the course of the 1785 legislative session, the General Assembly received more than one hundred religious petitions an overwhelming majority of which were in favor of the bill for religious freedom.

The proceedings dragged on until nearly the end of the 1785 legislative session, with the prospect looming large that Bill 82 would still not become law. Madison skillfully managed to bring it to a vote on 17th December resulting in 74 Ayes, 20 Nays, and 62 abstentions (there were 160 delegates, leaving 4 unaccounted for in this vote). The bill was signed into law on 19 January, 1786.

It was one of the crowning achievements of Madison's career and one of the most influential in shaping his contributions to the framing of the federal government. Jefferson valued it highly as well naming the Virginia Statute for Religious Freedom as one of the three achievements to be listed on his tombstone along with the Declaration of Independence and the founding of the University of Virginia. He enthusiastically wrote to Madison from France: "It has been translated into French and Italian, has been sent to most of the courts of Europe. It is inserted in the new *Encyclopedie*, and it is appearing in most of the publications respecting America. In fact it is comfortable to see the standard of reason at length erected, after so many ages during which the human mind has been held in vassalage by kings, priests and nobles; and it is honorable for us to have produced the first legislature which has the courage to declare that the reason of man may be trusted with the formation of his own opinions."

The Virginia Statute for Religious Freedom is the cornerstone of the American tradition of religious freedom and the separation of church and state. Madison took the lessons learned in the Virginia struggle directly to the national level, putting religious freedom into the First Amendment of the Bill of Rights stating that "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof." In correspondence with John Adams in the 1820's Jefferson wrote that the statute for religious freedom was the most significant contribution of his generation to the world.

Dissenting groups of many different names came to America in the 17th and 18th centuries determined to be in a place that would allow them to practice their own religion freely as they chose. But quite often the operative word was "their" religious freedom—they often had little to no interest in anyone else's religious freedom. What made this legislation revolutionary was its impact on all freedoms in a democratic society. Douglas Laycock stated it well in his acceptance speech on receiving the National First Freedom Award from the Council for America's First Freedom, on January 15th 2009:

Religious liberty is for everyone – for believers and nonbelievers of every stripe. The value of religious liberty is not religion, and the value of religious liberty is not secularism. The value of religious liberty is liberty—liberty with respect to choices and commitments that are of profound importance to many humans, and usually of much less importance to the state.¹¹

Jefferson, Madison and thousands of Virginians effectively worked together over nearly a decade during which thirteen loosely connected colonies broke away from the world's most powerful country at the time, and established a new nation. What was truly revolutionary about what they did was their attention to religious freedom, America's first freedom. In *Notes on Virginia* Jefferson wrote, "Only error needs the support of government...truth can stand by itself."¹² In one hundred and seventy-nine years Virginia was transformed from a crude British outpost on the then new to the European world American frontier, to the birthplace of an idea that has had considerable influence on the world ever since. The official codification of religious freedom—that was the true revolution in Virginia.

Notes

- 1 Richard Hakluyt, *Discourse on Western Planting, Presented to Her Majesty the Queen* (London), preface.
- 2 Richard Hakluyt, *The Principall Navigations, Voyages and Discoveries of the English Nation* (London, 1589).
- 3 For clergy and population numbers see Edward L. Bond, *Spreading the Gospel* (Lanham, MD: Lexington Books, 2004), p. 13.
- 4 George William Pilcher, *Samuel Davies: Apostle of Dissent in Colonial Virginia*. (Knoxville: The University of Tennessee Press, 1971), p.120; See also William Henry Foote, *Sketches of Virginia, Historical and Biographical* (Richmond, VA: John Knox Press, 1850) (reprint 1966), pp. 169–170.
- 5 The Committee's Virginia toleration bill was published in full in William Rind, *Virginia Gazette*, 26th March 1772, p. 1. See also, Paul K. Longmore, "'All Matters and Things Relating to Religion and Morality': The Virginia Burgesses' Committee for Religion, 1769 to 1775," *The Journal of Church and State*, 38 (1996): 775–797.
- 6 William Waller Hening, *The Statutes at Large; Being a Collection of All the Laws of Virginia, from the First Session of the Legislature, in the Year 1619*, 13 vols. Richmond, VA, New York, Philadelphia, 1809–1823; reprint edition, Charlottesville, VA: University Press of Virginia for the Jamestown Foundation of the Commonwealth of Virginia, 1969. Vol. 12, pp. 84–86.
- 7 Winfred E. Garrison, "Characteristics of American Organized Religion," *Annals of the American Academy of Political and Social Science* 256 (March 1948): 17.
- 8 First Draft, 20–26 May 1776, Gunston Hal, Mason Neck, VA.
- 9 Lance Banning, "James Madison, The Statute for Religious Freedom, and the Crisis of Republican Convictions," in *The Virginia Statute for Religious Freedom*, eds. Peterson and Vaughan (Cambridge University Press, 1988), p. 112.
- 10 James Madison, "Memorial and Remonstrance against Religious Assessments," in *The Papers of James Madison*, ed. William T. Hutchinson, William M.E. Rachal, and Robert A. Rutland (Chicago: University of Chicago Press, 1962), 8:293–306.
- 11 Richmond, VA; notes with author.
- 12 Thomas Jefferson, *Notes on the State of Virginia*, ed. William Peden (Chapel Hill: University of North Carolina Press, 1955), p. 160.

Chapter Two

Rev. Thomas Bray, Colonial Maryland, and the Role of Religion in Public Life
Joseph Prud'homme

In this essay I attempt to demonstrate the relevance for contemporary thought of the work of Rev. Thomas Bray, an indefatigable Anglican churchman and the architect of the establishment of Anglicanism in colonial Maryland. I seek to highlight the progressive character of the establishment sought by Bray and to situate his vision for religion and public life in the context of contemporary disputes over the separation of church and state. I argue that Bray's vision of establishment helps to render problematic not disestablishment per se, but the reasoning often advanced to buttress a highly restrictive interpretation of the separation of church and state as developed since the 1940's.

Defining the Debate over Church and State

The separation of church and state is a concept vital to the history and constitutional law of the United States. It is however also a concept fraught with ambiguity. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Originally the prohibitory aspect of this amendment was understood to apply simply to Congress and not the various states, and the amendment precluded only establishments of religion in what, from the perspective of the great majority of the founders, was its most obvious meaning: taxation at the federal level to support one denomination, a denomination therefore to be cloaked in the status of an official religion and to share the prominence, dignity, and awe-inspiring character of state power.¹ Since the 1940's however there has emerged in the United States a concerted campaign of social advocacy, led by well funded and organized networks of powerful interest groups, promoting what Christian Smith calls "the secular revolution."² This persistent advocacy has sought successfully to expand the prohibitory nature of the First Amendment. On its face this might appear odd, as the First Amendment has not only a prohibitory but also a permissive clause: it was certainly conceptually possible that any alterations of the First Amendment could have been about freedom of exercise, and that what happened at roughly the same time as the secularizing of the state in the context of economic freedoms could have transpired in terms of religious freedom as

well—that is, its meaning could have been construed in terms of “positive” freedom to worship, a freedom requiring added *material* and *institutional* support to religion to make this freedom meaningful, an interpretation of freedom that occurred in the expansion of state support to farmers, industrial workers, and other classes throughout the 20th century. However as Christian Smith documents, through the long and determined efforts of social activist groups, one and only one aspect of the First Amendment was subjected to demands for reform—the “secular revolution” called for a broader interpretation of just what the establishment of religion entails.

The original intent of the prohibition on laws respecting an establishment of religion is difficult to define with precision; however, the lineaments of that original perspective are capable of being traced. As James Hitchcock has summarized, the extreme views on separation of church and state espoused at times both by Jefferson and Madison—views that defined the prohibited laws respecting an establishment of religion to include any laws promotive of Christianity or even of religion itself, and which applied this principle to the state as well as federal governments—“did not command a consensus in their own day.”³ Indeed, Donald Drakeman asserts that they were widely met with “derision and disbelief.”⁴ Both Jefferson and Madison sought an extreme form of separationism, though they appear to have done so for conflicting reasons. As Professor Garrett Sheldon documents, Madison’s objective was in large part to liberate religion, and especially evangelical Christianity, from any connection with the state or federal government as a precondition for its maximal flourishing⁵; and Jefferson’s objective, it appears, was at least in significant measure precisely to dissipate the strength of traditional Christianity, a point established recently by Professor Stephen Strehle and others.⁶ Neither view, however, was even remotely predominant at the time of the constitutional drafting. Hence to unearth the original intent of the First Amendment we must survey “the full range of opinions extant in their day.”⁷ When this is done it becomes clear indeed that the strict separationism we tend to associate with Jefferson and Madison was highly controversial and thinly subscribed to at the time of ratification. This can be seen first in the worldview of the vast majority of the ratifiers of the Constitution. “Of the members of the state conventions which ratified the Constitution, two thirds were church members”—a quite high percentage—and many more were regular church attendees, all at a time when church membership entailed substantial personal commitments and when many devout laymen remained pious but unaffiliated.⁸ Such a religiously committed set of ratifiers would have been highly unlikely to espouse strict separationism. Moreover, the actions of the federal government in the years

immediately following ratification seem to belie a strict separationist understanding, as seen perhaps most clearly in the congressional enactment of the Northwest Ordinances, which demanded that tracts of federally owned land in the Northwest region be set aside expressly for the purpose of religious instruction, as well as by the long-standing actions of the national congress, undertaken from its earliest days, to promote Christianity among Native Americans.⁹ Lastly, many states at this time retained extensive systems for promoting religion, including Sabbath laws, days of Thanksgiving, requirements for attesting to belief in a triune God, laws against blasphemy, and requirements for moments set aside for prayer in public places, including, of course, prayer in schools. Indeed it would seem wise to recall that George Washington himself supported taxation assessments in Virginia with the proceeds to benefit all Christian denominations in the Commonwealth.¹⁰ What was intended by a prohibition on laws respecting an establishment of religion then was only the prohibition at the federal level of an establishment in the sense of the privileging of one denomination by affording it unique status and power with subsidies from the federal government, a goal, it would seem, sought in considerable measure precisely to allow state support for religion to continue unmolested by the actions of a distant central administration in the capitol city. Hence, Chief Justice William Rehnquist's dissent in *Wallace v. Jaffree* seems best to encapsulate the First Amendment's original purpose: "it forbade establishment of a national religion and preferences among... denominations... [it] did not require government neutrality between religion and irreligion nor did it prohibit the federal government from providing non-discriminatory aid to religion."¹¹ Recently Donald Drakeman has made the same point even more directly: "the establishment clause meant that there would be no American equivalent of the Church of England" as that church existed at the time of ratification.¹²

However, throughout the latter half of the 20th century the concept of an established religion has undergone a metamorphosis—becoming something vastly more capacious. Recently one federal judge has ruled that to have an optional recitation by students in public schools of the pledge of allegiance—given its phrase "one nation under God"—is an act of religious establishment.¹³ Moments of silence wherein students might, if they choose, pray in a brief part of the day sanctioned by the state as a moment for serious reflection, has also been deemed by the Supreme Court to be an act of religious establishment.¹⁴ Moreover tremendous debate continues to roil over the presence of religious symbols on public property—with Christian crosses often literally encased in funereal pine boxes lest sensitivities of secularists be offended—and over state

financial support for religious organizations that provide social services to all members in a community. Each has been condemned by activists as a law respecting an establishment of religion. Not surprisingly, such sweeping reinterpretations of the original meaning of establishment have engendered a heated backlash.

The debates over the expansion of the concept of a law respecting the establishment of religion have become so complex and contested that some legal scholars have come to ask that we revisit the issue in a more properly philosophical manner. Professors Christopher Eisgruber and Lawrence Sager among others ask us to engage in philosophical argumentation over the nature of these extensions of the concept of a religious establishment. They ask the question, do we wish to live in a state that has voluntary prayers in Congress, or vague references to God on its currency, or anything even pointing toward religion in our public schools? Freeing themselves from the serpentine logic of much of the current legal apparatus surrounding the First Amendment, they espouse doctrines to govern such topics as school regulations and public prayers that are unmoored to the original intent of the First Amendment. They develop in turn constructs flowing from an assessment of the principles purportedly undergirding any constitutional order, terms such as “Equal Liberty,” which, they maintain, “directs the Court to examine whether curricular [or related] decisions, when considered in light of their full context, [are] impermissible...and to [do so by] ask[ing] whether curricular [and related] decisions...cast...a pall of orthodoxy—unacceptable on grounds [that they violate such rights as] educational autonomy.” Hence, they insist that the adjudication of the First Amendment must operate within a contextual space defined by a prior commitment to “a robust regime of rights”¹⁵ the nature of which is to be discerned through philosophical analysis of the proper exercise of a government’s power and the best system of value to govern a free people.¹⁶

A few philosophers in the United States have begun to ask such philosophical questions—questions about the kind of society we should wish to live in—not only of the more remote extensions of the original concept of establishment that now dominate the contemporary debate, such as moments of silence and state mottos and coinage, but of the very idea of establishment understood in its original sense: that is, state support of one denomination through taxation, the investment of that denomination with special power, and the designation of that faith as the preferred confession of the sovereign. Philosopher Brendan Sweetman, for example, has recently asked scholars to address the question, what reasons in principle support disestablishment when understood in its original sense? Why exactly, he asks, does the United States

have no established, denominational church?¹⁷ This is a fascinating question, yet it is one that has not been addressed as squarely or as thoroughly in the literature as the much more ‘hot bottom’ issues concerning the modern extensions of the concept of religious establishment: questions of dollar bills, moments of silence, the Ten Commandments in courtrooms, and non-denominational prayers in city council meetings, etc. In debating these more marginal questions (marginal from the perspective of the original intent of the First Amendment) we have tended to neglect the issue of why in the first place the United States Constitution says what it originally was thought literally to say; we have tended to neglect the detailed study of the reasons for a prohibition of an established religion understood as interpreted at the time of the ratification. Instead, quite superficial statements and assertions are bandied as sufficient support for the philosophical proposition that a specific church should not be established. Yet addressing this important issue of denominational establishment, in addition to being of academic interest, is also highly relevant, as clarity on this fundamental point may help to guide the discussion of how to deal with the complex and often tortuous extensions of the concept of an established religion that have come to the fore over the last six decades.

Addressing from a philosophical perspective the question of whether to be a country that has no state–favored official church is one that can be explored in a variety of ways. In one sense, the question of whether to have references to God at all in public spaces, and so the seemingly unending debates about prayer at school sporting events and prayer at little league tournaments, etc., can be called, in lawyer’s parlance, ‘lesser and included questions’ of the problem of an established church. If one does not favor the pledge of allegiance including reference to God—so tenuous an expression of establishment as this is—*a fortiori* one would not favor an established religion in its original sense of a state supported denominational church. However the reasons why one might oppose religious establishments in the way establishment of religion has been expanded in the last sixty years may be quite different from the reasons one might oppose an established religion in its original sense. And this latter question, once again, has not been as squarely or as thoroughly assessed in the six decades since debate has been extended to cover peripheral meanings of religious establishment.

In attempting to explore from a philosophical perspective the question of whether to have an established religion in the original sense of one established denominational church, we can take our cue either from the arguments advanced around the time of the ratification of the Constitution or we can

address the matter in light of more contemporary concerns that have come to be advanced over the last few decades.

Arguments voiced in the decades before, during, and after ratification against an established religion were many,¹⁸ and at least some combination of these ideas with respect to a nationally established denomination proved compelling to the drafters and ratifiers of the Constitution. The arguments broached at this time tend to be reducible to six primary considerations. First, some argued that an established religion along the lines of the Church of England would weaken the political power of disbelievers in the state's confession by, if not directly imposing Test Acts, which are proscribed at the national level under Article VI, Section III of the Constitution, at least potentially lodging voting powers in the legislature in entrenched religious leaders thereby attenuating the full voting power of disbelievers, weakening in turn individuals' natural rights to participate in the formation and disciplining of governmental power.¹⁹ Second, some argued that establishment might instantiate direct physical coercion of those who exercise their conscience and preach the faith they see as true.²⁰ Third, others, recognizing that establishment might not be associated (initially) with direct *de jure* coercion of alternative religious practices, took a longer term view, fearing that merely setting one denomination above all others, even if not backed by coercive sanctions, would, given the weakness of human nature, the temptation to abuse power,²¹ and the resulting fact of what Madison calls "the encroaching nature of political power," become over time oppressive of the non-established faiths in the straightforward sense of leading eventually to requirements for adherents of minority faiths to exercise religious practices they do not believe or suppress their own forms of religious worship, on pain of physical coercion.²² The concerns underlying these second and third fears are born of a deep reverence for liberty of conscience and the rights of man and view establishment as offending both human nature and the glory of God, as, on these views, free religious worship is an intrinsically important aspect of a dignified human life and cannot with favor be coerced in the eyes of the maker of mankind. Fourth, some advanced a fear that religious truth could best flourish in an atmosphere of freedom and so state establishment would erode individuals' capacities to recognize and uphold the truths of religion.²³ Fifth, others maintained that any denomination elevated to the status of the state's confession would expose that denomination to untoward influence from the sovereign and would facilitate over time corruption of the purity of the denomination's witness, as well as producing an indolence in the established church as its resources or status might be ensured without the need for ministers to earn the support of their

congregations.²⁴ Lastly, some took the view that establishment per se is either desirable or at least non-objectionable, but added that the political articulation that one faith is officially connected with the government should only be done at the level of local political associations²⁵ and not at the level of a federal government drawn from a diverse array of remote and disparate states.²⁶

Added to this traditional set of concerns should be included a set of more contemporary worries about religion in public life which argue against not only religious establishment in the traditional sense but also against *any* endorsement by the state of religion per se. These arguments, which tend to be reducible to four related claims, assert that any support of religion by the state is noxious and so therefore any state support of a denomination, inconceivable. These arguments include, first, the idea that the state should not materially impact non-believers through taxation—however small in amount—to support a church, for to do so is tantamount to a state-sanctioned punishment for non-belief, which although perhaps in no plausible sense significantly injurious to any individual in particular given the exiguous toll tax support for a church would likely exact when prorated over the population as a whole, remains nonetheless an expression of what some see as a deeply offensive unfairness. They also include, second, the belief that a state should not symbolically adhere to a religion, since to do so is to treat in some abstract manner those who deviate from the preferred confession as not fully citizens, which is perceived as intrinsically wrong. Moreover, the contemporary views are based, third, on the idea that religion is especially sinister and conflict-engendering and thus, out of sheer political prudence, the state must not touch religion at all, a bold assertion which Cavanaugh, Hitchcock, and Drakeman, among several others, have shown is an undergirding core, or fundamental “pillar” of the Supreme Court’s view on church and state in its post-World War II jurisprudence as found in the landmark cases of *Everson v. Board of Education* (1947) and *McCullom v. Board of Education* (1948). In these cases the Supreme Court for the first time asserted the interpretation that religion historically has “repeatedly threatened to disrupt the peace,” and has throughout history fomented mostly “turmoil, civil strife, and persecutions.”²⁷ As part of this new line of case law and the legal and philosophical literature endorsing it, the contention has been developed, and it has coalesced into a cardinal aspect of much contemporary thought on church and state, that religious establishments in the colonial and early independence period in America were deeply injurious to the public welfare—and, in the Court’s words, “so shocked the freedom-loving colonials into feelings of abhorrence”—that they evidence how *religion itself*, if favored at all by state power, proves uniquely prone to engendering conflict, discord, and tension.²⁸

Lastly and fourth, in case law emerging in the decades following the *Everson* and *McCullom* decisions, an argument combining all of these considerations has surfaced, one maintaining that state endorsement of religion is not only symbolically pernicious but must, however seemingly innocuous its instances might appear, always be rejected, as a constant monitoring vigilance is needed in light of the special toxicity of religion in public life.²⁹

Rev. Bray and the Philosophical Question of an Establishment Faith

In the remainder of this essay I shall explore the arguments advanced against a denominational establishment with a focus both on the arguments that were in the air around the time of ratification, such as the fear of the erosion of the vigor of inquiry and of faith and the corruption of a church's witness. I shall also explore the more modern argument for second class citizenship being accorded non-believing citizens by any promotion of religion. Lastly I shall explore the modern refrain that religious establishments in American history serve to evidence the special toxicity of religion when rendered anything more than a purely private affair, by providing a re-hearing of the claim that establishments in America especially bred oppression, discord, and intolerant extremism.³⁰

I shall approach these contentions philosophically, that is, on the basis of reasons independent of *stare decisis*. I shall do so in part by considering theoretically the fairness and practicability of the modern approaches informing the Supreme Court's interpretation of the relationship between church and state. In this respect I shall explore the idea that state non-neutrality respecting religion engenders a derogation of the full citizenship rights of non-believers, and I shall also give attention to the question of the workability of consistent state neutrality. In doing so I shall argue against contemporary justifications of rigid separationism.

However, an additional way to assess many of these contentions surrounding the proper relationship between religion and state power—many of which as we have seen were voiced during the period of the founding, others of which are of a modern provenance yet rely often on assessments of legal and political history—is precisely through a rigorous study of history itself, drawing from, if not strictly deferring to, lessons culled from the historical record.

In this regard American legal history certainly does show that establishment has done doleful things: Virginia had an established religion—and it imprisoned non-conformists; Puritan New England was a frigid clime for dissenting voices,