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Under God
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◊ T H I R T Y - T W O ◊

Jefferson: The Protection of Religion

NOT LONG AGO, IT WAS WIDELY HELD THAT JEFFERSON PROPOSED FREEDOM of religion in order to help mankind escape religion—that he considered it a retardative force in history, a darkness to be dispelled, and wanted to free the state from its power.¹ But even if he felt that, he could hardly say it in a country that was still very religious. He had to pretend, if nothing else, that he was freeing religion in order to help religion, not hurt it; to protect it from compromising association with secular power. And he did this so well that his arguments for freedom of religion were later quoted by his friends when they had to oppose the charge of Jefferson's atheism.

Jefferson wanted his 1779 statute for religious freedom to be included in the select list of his finest achievements—along with his drafting of the Declaration and his founding of Virginia's university.² Yet the arguments he made for it were insincere, according to those who believe he wanted to hinder religion. His professions, at least, were of respect and concern for retaining or regaining religious purity. His rhetoric was as favorable to religion as was that of Roger Williams—and the passages cited in my last chapter suggest this was no mere pose on his part. Still, even if it were a pose, the arguments he advanced for his statute remain

the legislative rationale for it. Legislative intent is voiced in such public ways. Legislative motive may be secret and perverse—one may propose a law in order to embarrass government with its absurdity, but one cannot make that the professed aim of the law. Assume, if you will, that Jefferson's own dark motive was to hamper religion; nonetheless, his open and declared *intent* was to free it. To see this, all we need do is look at the terms he used in proposing the statute:

Well aware

- 1) that the opinions and belief of men depend not on their own will, but follow involuntarily the evidence proposed to their minds;
- 2) that Almighty God hath created the mind free, and manifested his supreme will that free it shall remain by making it altogether insusceptible of restraint;
- 3) that all attempts to influence it by temporal punishments, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness;
- 4) and are a departure from the plan of the holy author of our religion, who being lord both of body and mind, yet chose not to propagate it by coercion on either, as was in his Almighty power to do, but to extend it by its influence on reason alone;
- 5) 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, hath established and maintained false religions over the greatest part of the world and through all time;
- 6) that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical;
- 7) that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness;
- 8) and is withdrawing from the ministry those temporary rewards which, proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labours for the instruction of mankind;
- 9) that our civil rights have no dependence on our religious opinions, any more than our opinions in physics or geometry; [point 1 above, repeated in order to introduce the further point] 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;

10) that it tends also to corrupt the principles of that very religion it is meant to encourage, by bribing, with a monopoly of worldly honours and emoluments, those who will externally profess and conform to it;

11) that, though indeed these are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way;

12) that the opinions of men are not the object of civil government, nor under its jurisdiction;

13) 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;

14) that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order; and finally,

15) 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.³

It is clear that Jefferson gave the arguments in this preamble careful thought. He took care to distribute his text widely, as he did his own draft of the Declaration of Independence. He wanted the views expressed in it to prevail, and he wanted credit for advancing them. So the bill appears in his *Notes on the State of Virginia* (addressed primarily to a French audience), in correspondence with men he respected, and in the composition of his own epitaph.⁴ We should expect, then, a thoughtful arrangement of the arguments here, as in the list of grievances in the Declaration of Independence (a list that moved logically from executive acts of the British government to joint legislative-executive acts, and from those to recent war atrocities, before reaching a summary final count against king and Parliament).⁵

Yet the order of arguments prefaced to the Bill for Religious Freedom is not perspicuous—not, at any rate, to a superficial glance. Some points

seem repetitive (e.g., numbers 1 and 9), and others look as if they could as appropriately appear somewhere else in the list. To see what reason Jefferson had for his arrangement, it is best to look at the core concerns of each clause. Jefferson maintains that politically enforced religion would

- A. 1) ignore the structure of the mind, and so
- 2) offend the God who structured that mind;
- 3) promote hypocrisy, and so
- 4) offend the God who requires sincerity;
- B. 5) impose mainly false religions;
- 6) be sinful (making people act against conscience) and tyrannical (a form of taxation without consent);
- 7) discourage the search for convincing moral guides;
- 8) make for a lax clergy;
- 9) unjustly bar dissenters from public office;
- 10) corrupt the enforced church with bribes to belief;
- C. 11) make the enforcers complicitous in the bribing process;
- 12) make conscience the object of civil government;
- 13) make temporal rulers the judges of religion's truth;
- 14) anticipate civil disorders before they arise; and, last,
- D. 15) weaken truth, which fares best in contest with error.

The first four points in this list (A) concern the individual's nature and that nature's relation to God. The next six points (B, points 5 through 10 inclusive) deal mainly with the health of religion and the good of the churches. Jefferson begins this section with an argument, taken from Locke, that is tailored to a Protestant audience: If establishment is the proper course, it has mainly enforced the *Catholic* (i.e., false) religion in Europe's history—or, in the sweep of world history, non-Christian religions.

Only in the third section of his list (C, points 11 through 14, four items) does Jefferson turn to the proper aims and healthy performance of the state. Nor can anyone argue that this is the climactic part of the catalogue, saving the most important matter for last. The summary concluding point looks back, rather, to the structure of the individual's intellect, and to the claims of truth upon the mind, which had opened the list.

The conscious way Jefferson organizes his approach in the bill can be assessed if we look at an earlier structuring of his arguments for religious freedom. We have the notes for his address to the legislature in support of the forerunner to this bill, his 1776 disestablishment proposal. These notes afford us a rare glimpse of the way Jefferson spoke in deliberative

assembly. He rarely made formal addresses, and his lack of success in this debate of 1776 became a further reason for his diffidence as an orator.⁶ But the carefully prepared notes for his presentation tell us how he approached the task when he felt that his own intervention was imperative.

The situation should be kept in mind. Jefferson comes before his fellow Virginia legislators as a member of the commission they have appointed to revise the laws after their separation from the English system. The religious bill is just one of the revised statutes Jefferson is submitting at the time (though the one he cared about most deeply). He begins by stressing the enormities that will stay in effect if the old laws are not changed. I expand the abbreviations in his notes: "Before entering on proper redress, [we should] see what is [the] injury—the state of religious liberty [under the laws on the books]."⁷ This gives Jefferson an opportunity to list the gruesome persecutions Virginia would inflict if it observed all the English statutes against apostasy, heresy, recusancy (failure to swear the oath of allegiance to the Church of England's Thirty-Nine Articles), papacy, profaneness, and failure to support the church financially. It is a dark picture Jefferson draws of an English heritage of suppression: "Gentlemen will be surprised at [the] detail [of] these persecuting statutes. Most men imagine [that] persecution [is] unknown to our lands. [The] legal status [of] religion [is] little understood."

Such laws have not been recently enforced, not because they were removed from the books, but because "happily the spirit of [the] times [is] in favor of [the] rights of conscience." But those expressly charged with revising the law should not rely on "the spirit of the time" to keep ferocious laws from being retained. Here Jefferson anticipates an objection from his listeners: The old rigors of law are allowed to stand only in *terrorem*—to intimidate possible offenders. Jefferson answers this objection at length:

Acts in *terrorem* [are] not justifiable. Men presume they will be executed. [They] leave everyone at [the] mercy of [a] bigot. Everyone should know under what law [he] lives. [He] should not be obliged [to have] recourse to [the] spirit of [the] time for protection. This is not [the way to] secure government, but [it leaves things to the] mercy of events. [The] spirit of [the] time may alter. [A] single zealot may undertake [a] reform [by enforcing the laws]. [It is] a bad compliment [i.e., compliance] to law that people discern iniquity and not exterminate it.⁸

This was as impassioned as Jefferson was likely to get in legislative debate. His last words about exterminating the inequity of persecution call to

mind Voltaire's cry, "Ecrasez l'infâme." But even here Jefferson has made a special plea to the Protestants in the assembly room. England's older laws would, if successfully enforced, have "prevented [the] Reformation." They would, in fact, resemble laws used to enforce Islam in other lands.

After this introduction on the state of the present law, to which Jefferson appends a list of English and Virginian enactments,⁹ he proceeds to his four main arguments, in this order:

- 1) The state has no right to force religious opinions on the free conscience, which can only submit to evidence.
- 2) A state religion is not expedient, since it is neither desirable nor attainable.
- 3) If a state religion were desirable and attainable, there would be no way to ascertain which religion should be imposed.
- 4) It is advantageous to religion not to impose one set of beliefs.

Under the second heading, Jefferson proves that establishment is not desirable by recurring to the argument that "the Glorious Reformation" had to shake off the established Catholic religion, that "Mohammedism [is] supported by stifling free inquiry," and that "in Rom[a]n Cath[olic] countr[ies is] most infidel[ity]."

These passages show that "our religion," referred to in point 4 of the final bill, was clearly *Christian Protestantism* when Jefferson argued before his peers in the legislature. Religious establishment is presented as a remnant, not sufficiently adverted to, of *popish* days. In Jefferson's last argument before the assembly, which is climactic for persuasion purposes, he appeals to the Protestant view of history to show that state support weakens the Christian religion: "Christianity flourished three hundred years without establishment. [As] soon as [it was] established [under the Emperor Constantine, it] declined from [its] purity."

Jefferson even quotes, twice, the Christian Bible to make his case for religion's independence from the state. He uses the same scriptural verse in both cases—Matthew 16:18, which says that the "gates of hell" will not overcome the church Christ founded. Jefferson uses the passage to answer a foreseeable argument: "Objection: Religion will decline if not supported [by the state]. Answer: [The] gates of hell shall not prevail . . ." Then, in a final argument for the advantages given religion by disestablishment, Jefferson made this appeal: "[It] betrays [a] want [of] confidence in [the] doctrines of [the] church to suspect that reason or intrinsic excellence [is] insufficient [to support it] without [a] secular prop. 'The gates of hell shall never prevail.'"

Jefferson is obviously using an argument he had found in Locke, one that is not (in Locke's text) an argument for the state's *neutrality* toward all forms of religion. Locke believed that toleration would actually *favor* true religion, since that is the only kind that neither takes nor wants support from secular coercion. The first sentence of Locke's *Epistola de Tolerantia* (which Jefferson studied and took extensive notes from in 1776) says that tolerance is "the principal distinguishing feature of the true church [*praecipuum verae ecclesiae criterium*]." ¹⁰

This attitude lies behind point 5 in Jefferson's bill, which makes the interesting assertion that "impious presumption" in past legislatures "hath established and maintained false religions over the greatest part of the world and through all time." This is not the language of later secularists, who would not themselves presume to distinguish true from false religions, or let the state entertain such hypothetical categories. Jefferson's bill is not neutral in its list of the reasons for denouncing links between church and state. He unequivocally says that his move is preferential toward one form of religion—the true religion.

Jefferson's own religion was quite different from Locke's. Locke believed in a number of things Jefferson rejected—miracles and inspired scripture, to name just two.¹¹ And it is obvious that the Virginian was even farther from the evangelical piety of Roger Williams. But all three men agreed that the true religion (whatever that might be) would never, because of its own purity, use secular power to coerce belief. Williams thought one cannot command the grace of God, which alone leads people to a saving belief. Locke and Jefferson believed one cannot honor God by defying "the laws of Nature and of Nature's God," violating the nature of the mind's response to evidence.

Jefferson considered himself a theist (which is simply the Greek form of the Latin *deist*) and a "true Christian" (one who believed Jesus the supreme moral teacher within human history). He obviously thought other religions true insofar as they approximated this religion; and one criterion (to use Locke's word) of *any* religion aspiring to truth is its refusal to violate the structure of conscience. Thus Jefferson, however secular, was not a relativist. He was convinced that he knew the truth, and could distinguish true religion from false, and could even legislate on the basis of that distinction, putting an attack on "false religion" into the statute book of the state of Virginia.

Jefferson's bill claims to favor true religion not only in this all-important point of honoring the law of God about the workings of conscience, but in many *practical* ways. At the time when he was reading Locke's religious

writings, he also read "A Letter Concerning Enthusiasm," in Lord Shaftesbury's *Characteristics*—which argued that freedom of speech on the subject of religion is a healthy thing, exposing religion to the purifying influence of satire, which castigates excess and purges corruption. In his notes from Shaftesbury, Jefferson wrote again that the Protestant Reformation depended on the freedom of attack that could identify "Romish follies." Thus religion is served by "free argument, raillery, and even ridicule [that] will preserve the purity of religion."¹²

Jefferson used another Shaftesbury argument when he said that *competition* between religious teachers makes for an improved religious product. In his notes for speaking to the legislature in 1776, he said that freedom of religion will "strengthen [the] church," since it will "oblige its ministers to be industrious [and] exemplary." He asked "whether dependence [on the state] or independence [is] most likely to make [them] industrious," and cited the parallel case of lawyers and physicians.¹³

This argument for a "free market" of religious teachers is put negatively in the text of the bill itself. In point 7, we are told that establishment deprives the citizen "of the comfortable [invigorating] liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness."

The same principle of free competition lies behind points 10 and 11 in the bill, according to which a "monopoly" on religious teaching leads to an impure product (to people profiting from religion while they "externally profess and conform to it") as well as to corruption of the state (to officers who "lay the bait" for feigning ministers and believers).

Jefferson went farther in his tolerance than Locke had—noting that "where he stopped short, we may go on."¹⁴ But it is significant that Jefferson did *not* go farther than Roger Williams had. Locke, while denying the state any instruments of coercion, would allow it the tools of exhortation to religious duty.¹⁵ Roger Williams, who could not find real "apostles" even among *religious* teachers, denied that the *state* had any religious light at all to share with others. Locke's state would not tolerate atheists, but Williams included every kind of chaff and "tares" in the world, since the worldly can only govern others by worldly devices. In practical terms, Jefferson was closer to Williams than to Locke; and even in terms of principle he was closer to the New England preacher than has been generally suspected. Thus, in his arguments for disestablishment, Jefferson told Virginia's legislators that New England ministers, who *competed* for their posts, were better than the bishop-appointed curates of their native state.¹⁶

Naturally, Jefferson did not know or admire the work of Williams. But the success of his own bill depended on its congruence, in the eyes of those accepting it, with religious values Williams had championed. Williams believed, as surely as Locke and Jefferson, that the civil competence of the state did not reach to any person's private acts of belief. For Williams, such acts were matters of commerce between the individual and the converting Spirit. Yet the Spirit uses the divinely created machinery of human intellect to effect the "soul's persuasion from the Scripture."¹⁷ The only true belief grows out of that inner conviction which no other human can effect for the individual. Even the natives of America cannot be coerced into European beliefs. Rather, "they must judge according to their Indian or American consciences, for other consciences it cannot be supposed they should have."¹⁸ Since each person's belief is private, all the establishment of religion does is impose the conscience of one person, or of one set of persons—the ruler or his magistrates—on everybody else. In that case, officials "judge and punish as *they* are persuaded in their *own* belief and conscience (be their conscience paganish, Turkish, or Antichristian)."¹⁹

This part of Williams's argument coincided perfectly with Locke's and Jefferson's views. Locke said an established religion is simply one that "appeals to the prince [*quae principi placet*]."²⁰ Since "every man is his own rule of faith [*sibi quisque orthodoxus est*]," a *public* religion is simply one form of *private* religion imposed where it has no place.²¹ This is the argument Jefferson's bill makes in point 5 ("setting up their own opinions and modes of thinking") and point 13 ("make his opinions the rule of judgment"). In his argument to the Virginia legislature, Jefferson noted that the individual, whether ruler or ruled, can answer only for his own belief, "founded on the evidence offered to his mind," since "his own understanding, whether more or less judicious, [is the] only faculty [given by] God."²²

Williams, considering the problem of tolerance against a theological background very different from Locke's and Jefferson's, agrees with them on the pragmatic reasons for protecting religion from secular corruption—that establishment promotes hypocrisy, for instance, and corrupts both the benefactors and the beneficiaries of secular favor.²³

Jefferson certainly did not have the zeal of Williams, or even the piety that made Locke join with Newton in a search for God's plan of the world hidden in Scripture. But Enlightenment was not simply a theologically negative matter, for Jefferson, of escaping the superstitions of the past. He saw the need to replace the gloomy and confining doctrines

about God with his own highly optimistic view of Nature's Lord. That view would of itself promote freedom, restoring the dignity of self-government to those who must *choose* their form of worship, not have it imposed on them.

Jefferson resorted to religion as a political weapon in the Revolution precisely because the freedom that favors religion did not exist under the British establishment. Jefferson, who opposed the formation of political parties, resorted to partisan tactics in the 1790s, arguing that Federalist oppression called for emergency measures. In the same way, British favors done to priestly hierarchies could be attacked on the way to disestablishing religion. Once freedom of conscience was guaranteed, the truth could be trusted to make its own way. This was not as radical a position as Roger Williams would have taken, but it aimed in its own way at the same protection of religion from corruption.

James Madison, more radical than Jefferson on the separation of church and state, was for that reason even closer to the position of Roger Williams. Madison has a less dramatic impact on people's minds today, but he had a deeper impact on our history, in the matter of religious freedom. And he, too, came to protect religion, not dishonor it, by disestablishment.