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Under God
by Wills, Garry

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◇ T H I R T Y - T H R E E ◇

Madison and the Honor of God

JEFFERSON IS MORE VIVID IN OUR MINDS THAN MADISON. HE HAS AN ALMOST melodramatic gift for getting our attention. Henry Adams thought him cursed with an eloquence that outran its own intent.¹ His statements go to the extreme: Jesus is first a dupe and then the teacher of a "system" that is "perfect"; if trinitarian Christianity is the corrupter of mankind, unitarian Christianity becomes its deliverer. He moves with a swirling of his cloak.

Madison's rhetoric seems pedestrian after Jefferson's; but in the matter of disestablishing religion he was always more absolute, consistent, and effective. He was at the key legislating sessions that Jefferson missed. His efforts were more concentrated on this topic, the one that engaged him most passionately. He maneuvered Jefferson's statute into law after Jefferson had failed. He strengthened the religious freedom clause in the Virginia Bill of Rights (though not as much as he had hoped to). He advanced religious freedom (though not as far as he had hoped) in the federal Bill of Rights. Though he is called the father of the Constitution, he has an even better claim as the father of disestablishment. His own religious views were either more conventional or less disclosed than Jefferson's. He was not widely accused of atheism by his enemies. He has

not regularly been called a "deist" by those who equate that adjective with "irreligious." But anyone who dislikes the separation of church and state in America should by all rights be railing at Madison, not at Jefferson.

Madison's long and efficient campaigning on this matter is best suggested by a chronology:

1774: Madison, denouncing the jailing of Baptist preachers in Virginia, concludes that "ecclesiastical establishments tend to great ignorance and corruption."²

1776: At Virginia's revolutionary convention, Madison tries to amend George Mason's preamble to the new Virginia constitution, in order to remove all "emoluments or privileges" from religion. He fails at that, but does substitute "free exercise of religion" for "fullest toleration in the exercise of religion."³ His first important legislative act, undertaken when he is only twenty-five, strikes a blow for religious freedom.

1785: Against Patrick Henry's plan to support religion in general with a tax assessment, Madison publishes his major statement on religious freedom, "Memorial and Remonstrance against Religious Assessments."⁴

1785: Relying on the reaction built up against Patrick Henry's assessment measure, Madison steers Jefferson's statute on religious freedom into law.⁵

1787: As architect of the constitutional drafting convention, Madison promotes a document that goes beyond the Articles of Confederation, which did not require a religious oath for holding office, by *forbidding* such oaths (article VI).

1789: Drafting what will become the First Amendment, Madison proposes not only disestablishment at the national level but that "no state shall violate the equal rights of conscience."⁶ Passed in the House, this measure is defeated in the Senate. Though disestablishment at the federal level is all he can accomplish in his lifetime, he regularly refers to the First Amendment as opposing "establishments," reflecting *his* original intent.⁷

c. 1817: After retiring from the presidency, Madison writes a long "Detached Memorandum" on "the danger of silent accumulations and encroachments by ecclesiastical bodies," deploring the growth of (untaxed) church wealth, tax-paid chaplains, and religious proclamations like that of Thanksgiving.⁸

1822: In a long letter on religious freedom, he returns to the attack on chaplaincies and proclamations.⁹

This is Madison's record of striving to keep the state innocent of religious involvement. He believed that the national census should not list religious ministry as an occupation, since "the general government is proscribed from the interfering, in any manner whatever, in matters

respecting religion; and it may be thought to do this in ascertaining who and who are not ministers of the gospel."¹⁰

But mere punctilio about the details of separation is less important than the reasons Madison advanced for his purist view. These do not show any hostility to religion. Even more than Jefferson—and, to some people, more persuasively—he says he wants to keep religion free of the state out of concern for its own good. This is emphasized in his most comprehensive statement on the subject, his 1785 "Memorial." In that document, Madison puts a variety of arguments under fifteen headings, moving from his strongest points of principle to weaker ones of prudence or mere convenience. His basic argument is in the complex heading numbered 1. The rest simply apply, amplify, or supplement it.

- 1) Since faith depends on evidence, not on coercion, man cannot alienate the right to follow conscience, nor can God abrogate his demands on the individual conscience; so that civil society has no cognizance [jurisdiction] over religious faith.¹¹
- 2) If civil society in general has no such cognizance, no organ of it can have any.
- 3) Partial establishment can lead to absolute establishment.
- 4) Free exercise of conscience is an equal right for all.
- 5) Civil magistrates are incompetent to judge of religious matters, even if they had a right to.
- 6) Religion is not helped by establishment,
- 7) but is hurt by it,
- 8) as is civil society.
- 9) Establishment would hinder immigration,
- 10) foster emigration,
- 11) disturb good social relations,
- 12) and retard Christian evangelizing.
- 13) Attempts at enforcement would weaken government,
- 14) since there is no clear public consensus on the matter.
- 15) To deny religious freedom would weaken other rights.¹²

Since the form of Madison's document is a public petition looking for signatories, he argues like a lawyer, trying whatever will sway the jury. He appeals, therefore, to the convictions of the moment—for example, that immigration is good for Virginia, and emigration bad. There is no implication that the permanent arguments, especially that in point 1, would change with the state's demographics, or in case a consensus were formed against religious freedom. Should we put point 12, where Madison assumes the desirability of Christian evangelizing, on a level with

mere preferences, like that for brisk rates of immigration? There are many places on the list, not just this one, where protecting religion is called an aim of disestablishment. Like Jefferson, Madison appeals to the memory of an uncorrupted pre-Constantinian church as the true one. He even offers the goal of confounding "false religions" in point 12, where "the diffusion of the light of Christianity" is offered as a motive for disestablishment.

Like Jefferson, Madison commends those religions—he mentions "Quakers and Menonists" in point 4—that rely on no "compulsive support" to spread their teaching. They avoid what are called, in point 7, the fruits of establishment—"pride and indolence in the clergy, ignorance and servility in the laity, in both superstition, bigotry and persecution." When civil authority tries to use religious tools, this is, according to point 5, "an unhallowed perversion of the means of salvation." On this Madison agrees with Roger Williams. Madison denounces the use of "religion as an engine of civil policy" (point 5). Williams condemned the effort "to pull God and Christ and Spirit out of heaven and subject them unto natural, sinful inconstant man."¹³ Religion, with Madison and Williams, is too sublime a matter to be entrusted to sinful magistrates. Madison makes this almost a part of God's honor, since religion (in point 1)

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 if a member of civil society, who enters into any subordinate association, must always do it with a reservation of his duty to the general authority, much more must every man, who becomes a member of any particular civil society, do it with a saving of his allegiance to the Universal Sovereign. We [the petitioners] maintain, therefore, that in matters of religion no man's right is abridged by the institution of civil society, and that religion is wholly exempt from its cognizance.

Madison does not argue, here, against this or that form of religious establishment, but against *any* jurisdiction in the matter by "civil society" in general—a thing he hammers home in point 2, saying that no particular social unit can have any cognizance if civil society in general does not. In his very first written criticism of establishment (in 1773) he contemplated eliminating it in all the American colonies *and* in the English mother country.¹⁴ He would never, from that point, consider disestablishment a valid goal for one part of civil society (e.g., the federal gov-

ernment) but less important for others (e.g., the states). In his later correspondence he complains that some states have not gone as far as Virginia in the recognition of God's exclusive jurisdiction over matters of conscience. Men cannot tread where God alone holds sway. As he puts it in point 4 of the "Memorial," "If this freedom be abused, it is an offense against God, not against man. To God, therefore, not to man, must an account of it be rendered." *That* is why (in point 5) he says that any political use of religion is "an unhallowed perversion of the means of salvation." It trenches on the domain of God, and derogates from His honor.

Some have used the fact that Madison hesitated about the desirability of the Bill of Rights to claim that disestablishment was not essential to his view of the state.¹⁵ But Madison's fears were that the nation was not yet ready to go far enough (as it proved by rejecting his proposal for state disestablishment). He saw even Virginia failing to live up to the standard Jefferson had set for it. As he wrote to Jefferson in October of 1788:

There is great reason to fear that a positive declaration of some of the most essential rights could not be obtained in the requisite latitude. I am sure that the rights of conscience, in particular, if submitted to public definition, would be narrowed much more than they are likely ever to be, by an assumed power [of the federal government over religion]. . . . In Virginia I have seen the bill of rights violated in every instance where it was opposed to a popular current. Notwithstanding the explicit provision contained in that instrument for the rights of conscience, it is well known that a religious establishment would have taken place in that state if the legislative majority had found, as they expected, a majority of the people in favor of the measure; and I am persuaded that if a majority of the people were now of one sect, the measure would still take place and on narrower ground than was then proposed, notwithstanding the additional obstacle which the law has since created.¹⁶

Jefferson sought to reassure Madison on this point. Later, when fighting with the federal courts, he would have been horrified at what he wrote at this juncture. But history has proved him right in his first position:

In the arguments in favor of a declaration of rights, you omit one which has great weight with me, the legal check which, if rendered independent and kept strictly to their own department, merits great confidence for their learning and integrity.¹⁷

Jefferson goes on to argue that a Bill of Rights is one more brace added to the structural supports of the Constitution, and that later ages will live

up to its standard because "our young people are educated in republicanism."¹⁸ Accordingly, Madison argued for the amendments in Congress on the grounds that "they have a tendency to impress some degree of respect for them, to establish the public opinion in their favor, and rouse the attention of the whole community."¹⁹

So Madison advanced his disestablishment clause not as a final and optimal piece of legislation, but as a move in the right direction, a base from which to vindicate the argument against *any* political infringing of God's sphere. The later history of the doctrine of separation, which makes conservatives lament progressive moves to separate church and state, is just what he and Jefferson were hoping for. And, in fact, the states with established churches did approximate the federal norm in time, even going beyond it in explicit denial of funds for some religious purposes:

Each of the fifty states has at least one section in its constitution affecting church-state relations. Those sections are as diverse as they are frequent. By far the most usual are clauses that state more fully than the U.S. Constitution a concept of no support for religious groups. For example:

No money shall ever be taken from the public Treasury, directly or indirectly, in aid of any church, sect, or denomination of religionist, or of any sectarian institution.

—Article I, sec. 1, ch. 2-114 of the Georgia constitution

In other instances the prohibition against establishment is put in terms of the rights of the individual:

no man ought to, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister, contrary to the dictates of his conscience.

—Chapter I, art. 3 of the Vermont constitution

In many of the state documents one also finds more specific clauses prohibiting aid to religious schools, either through a specific sanction or through a protected public school fund. . . . At least six states prohibit such transportation [of private school students] under the terms of their state constitutions, and several ban the purchase of texts.²⁰

So far have the states come in realizing Madison's vision. And this is not a matter of federal court decisions but of the states' own constitutions. The ideal of disestablishment had its seeds in the kind of separation John Winthrop administered, to protect the separate congregations of Massachusetts. The federal Constitution spelled out a more thorough doctrine of separation, and the states have adopted that model.

It is true that the courts have, in recent years, made new applications of the doctrine of separation—going farther, on matters like school prayer, than custom once allowed (though not farther than Madison wished). Some of these cases were brought by atheists like the colorful Madalyn Murray O'Hair, a favorite bogey of the right wing, who almost single-handedly removed the Lord's Prayer from schools.²¹ The ACLU, more active, and more effective in the long run, has argued from a secularist viewpoint for strict separation. That is what makes the religious Right see separation as hostile to religion. But when Madalyn Murray O'Hair argues for the same thing that James Madison did, why should we believe that her reasons are more important than his? Roger Williams would conclude that she is doing God's work, without realizing it, when she frees His church from contamination by politics.

And, in fact, various religious groups have joined the litigation that led to recent separation decisions—the National Council of Churches, the Americans United (formerly Protestants and Other Americans United) for Separation of Church and State, the American Jewish Congress, and the Baptist Joint Committee on Public Affairs.²² Some have considered these groups somehow less legitimate than the "neutralists" of the ACLU, since their agenda aimed at preventing privileges for specific groups.²³ The AJC, for instance, has opposed the institutionalizing of Christianity in schools and public ceremonies. The Americans United and Southern Baptist groups have opposed aid to Catholic schools. But that is in a great American tradition. The churches that want to protect their own orthodoxy help disestablishment by keeping state support from "heretics." This is what completed disestablishment in Massachusetts: By the 1830s, state money would have gone to Unitarians as well as Congregationalists unless all churches lost their state support—which was the preferable solution.²⁴ After all, both Jefferson and Madison had argued their case by pointing out the danger of the Catholic religion's winning state support. Nothing could demonstrate better the difference between a religious *motive* for supporting a law and the nonreligious *intent* of the law. Protection of orthodoxy was Roger Williams's motive for disestablishment.

The success of the Madisonian ideal has vindicated Madison's maxim that "religion flourishes in greater purity without [rather] than with the aid of government."²⁵ America has remained deeply religious while taking ever more seriously the ideal of separation. It is false to think that recent court decisions have made religion less important or effective in America, or even in our politics. The civil rights and antiwar movements of the sixties and seventies show how effective religious leadership remains—

continuing a tradition of "conscience politics" that made the churches strong in the abolition, women's rights, and temperance movements. By contrast, religious complicity with government in the slave states was a blot on the churches, as Forrest G. Wood argues with bitter eloquence.²⁶

The same thing might be said of religious complicity in war symbolized by the military chaplain system, in which the clergy take government pay and wear the government's uniform. Madison did not oppose military chaplaincies, as he did the congressional chaplain. He just suggested that the chaplains be voluntary and voluntarily supported. If there is no fervor for such religious tasks, he held, then the state should not create an artificial concern, which serves its own purposes more than the good of religion: "Look through the armies and navies of the world, and say whether, in the appointment of their ministers of religion, the spiritual interests of the flocks or the temporal interests of the shepherds be most in view."²⁷ The argument for military chaplains often alleges the need for control by military superiors, revealing the actual priority in this matter. When, rarely, a chaplain objects to military actions, he is treated as an ingrate or traitor who has taken the state's money, put on its uniform, and then refused to accept military discipline. Does anyone doubt there would have been more religious freedom to scrutinize the morality of military action if the chaplaincies had been voluntary? Those who insist on government control do not show any such doubt.

If Madison is any guide, our churches are not, even now, too separated from political support. They should be freer still, which would make them more powerful *and*, paradoxically, more political. That is one of the American paradoxes we can be most proud of—that our churches have influence because they are independent of the government. If any people doubt that, let them look to Dr. King.

Conclusion

SINCE THIS BOOK IS ABOUT RELIGION IN AMERICAN POLITICS, IT HAS DEALT primarily with Protestant, and especially evangelical, Christianity. The influence of that form of religion has been so preponderant that only recently has the notion of America as "a Christian nation" become rightly suspect. Justice Sandra Day O'Connor caused a flurry of criticism when she endorsed that notion in 1989.¹ Yet the Supreme Court referred to "this Christian nation" in nineteenth-century cases.² Abraham Lincoln regularly used the term.³

To understand why the term is now offensive we must recognize exactly what it meant through most of our history. It did *not* mean that "Judeo-Christian heritage" people invoke when they want to defend civil religion of Tocqueville's sort or try to shoehorn prayer back into the schools. The dominant Christianity of America tolerated when it did not encourage anti-Semitism and anti-Catholicism. The "Judeo" part of the mythical Judeo-Christian heritage was a Protestant reading of its "Old Testament," as if that were the Jewish Scripture. There is more genuine religious vision, much of it derived from the Jewish tradition, in recent criticism of religious symbols than in condescending praise of the Jews as preparers of the Christian testament. The ancient prohibition on idolatry is a