

Amendment I (Religion)

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James Madison, Detached Memoranda

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The danger of silent accumulations & encroachments by Ecclesiastical Bodies have not sufficiently engaged attention in the U. S. They have the noble merit of first unshackling the conscience from persecuting laws, and of establishing among religious Sects a legal equality. If some of the States have not embraced this just and this truly Xn principle in its proper latitude, all of them present examples by which the most enlightened States of the old world may be instructed; and there is one State at least, Virginia, where religious liberty is placed on its true foundation and is defined in its full latitude. The general principle is contained in her declaration of rights, prefixed to her Constitution: but it is unfolded and defined, in its precise extent, in the act of the Legislature, usually named the Religious Bill, which passed into a law in the year 1786. Here the separation between the authority of human laws, and the natural rights of Man excepted from the grant on which all political authority is founded, is traced as distinctly as words can admit, and the limits to this authority established with as much solemnity as the forms of legislation can express. The law has the further advantage of having been the result of a formal appeal to the sense of the Community and a deliberate sanction of a vast majority, comprizing every sect of Christians in the State. This act is a true standard of Religious liberty: its principle the great barrier agst usurpations on the rights of conscience. As long as it is respected & no longer, these will be safe. Every provision for them short of this principle, will be found to leave crevices at least thro' which bigotry may introduce persecution; a monster, that feeding & thriving on its own venom, gradually swells to a size and strength overwhelming all laws divine & human.

Ye States of America, which retain in your Constitutions or Codes, any aberration from the sacred principle of religious liberty, by giving to Caesar what belongs to God, or joining together what God has put asunder, hasten to revise & purify your systems, and make the example of your Country as pure & compleat, in what relates to the freedom of the mind and its allegiance to its maker, as in what belongs to the legitimate objects of political & civil institutions.

Strongly guarded as is the separation between Religion & Govt in the Constitution of the United States the danger of encroachment by Ecclesiastical Bodies, may be illustrated by precedents already furnished in their short history. (See the cases in which negatives were put by J. M. on two bills passd by Congs and his signature withheld from another. See also attempt in Kentucky for example, where it was proposed to exempt Houses of Worship from taxes.

The most notable attempt was that in Virga to establish a Genl assessment for the support of all Xn sects. This was proposed in the year by P. H. and supported by all his eloquence, aided by the remaining prejudices of the Sect which before the Revolution had been established by law. The progress of the measure was arrested by urging that the respect due to the people required in so extraordinary a case an appeal to their deliberate will. The bill was accordingly printed & published with that view. At the instance of Col: George Nicholas, Col: George Mason & others, the memorial & remonstrance agst it was drawn up, (which see) and printed Copies of it circulated thro' the State, to be signed by the people at large. It met with the approbation of the Baptists, the Presbyterians, the Quakers, and the few Roman Catholics, universally; of the Methodists in part; and even of not a few of the Sect formerly established by law. When the Legislature assembled, the number of Copies & signatures prescribed displayed such an overwhelming opposition of the people, that the proposed plan of a genl assessmt was crushed under it; and advantage taken of the crisis to carry thro' the Legisl: the Bill above referred to, establishing religious liberty. In the course of the opposition to the bill in the House of Delegates, which was warm & strenuous from some of the minority, an experiment was made on the reverence entertained for the name & sactity of the Saviour, by proposing to insert the words "Jesus Christ" after the words "our lord" in the preamble, the object of which, would have been, to imply a restriction of the liberty defined in the Bill, to those professing his religion only. The amendment was discussed, and rejected by a vote of agst (See letter of J. M. to Mr Jefferson dated) The opponents of the amendment having turned the feeling as well as judgment of the House agst it, by successfully contending that the better proof of reverence for that holy name wd be not to profane it by making it a topic of legisl. discussion, & particularly by making his religion the means of abridging the natural and equal rights of all men, in defiance of his own declaration that his Kingdom was not of this world. This view of the subject was much enforced by the circumstance that it was espoused by some members who were particularly distinguished by their reputed piety and Christian zeal.

But besides the danger of a direct mixture of Religion & civil Government, there is an evil which ought to be guarded agst in the indefinite accumulation of property from the capacity of holding it in perpetuity by ecclesiastical corporations. The power of all corporations, ought to be limited in this respect. The growing wealth acquired by them never fails to be a source of abuses. A warning on this subject is emphatically given in the example of the various Charitable establishments in G. B. the management of which has been lately scrutinized. The excessive wealth of ecclesiastical Corporations and the misuse of it in many Countries of Europe has long been a topic of complaint. In some of them the Church has amassed half perhaps the property of the nation. When the reformation took place, an event promoted if not caused, by that disordered state of things, how enormous were the treasures of religious societies, and how gross the corruptions engendered by them; so enormous & so gross as to produce in the Cabinets & Councils of the Protestant states a disregard, of all the pleas of the interested party drawn from the sanctions of the law, and the sacredness of property held in religious trust. The history of England during the period of the reformation offers a sufficient illustration for the present purpose.

Are the U. S. duly awake to the tendency of the precedents they are establishing, in the multiplied incorporations of Religious Congregations with the faculty of acquiring & holding property real as well as personal? Do not many of these acts give this faculty, without limit either as to time or as to amount? And must not bodies, perpetual in their existence, and which may be always gaining without ever losing, speedily gain more than is useful, and in time more than is safe? Are there not already examples in the U. S. of ecclesiastical wealth equally beyond its object and the foresight of those who laid the foundation of it? In the U. S. there is a double motive for fixing limits in this case, because wealth may increase not only from additional gifts, but from exorbitant advances in the value of the primitive one. In grants of vacant lands, and of lands in the vicinity of growing towns & Cities the increase of value is often such as if foreseen, would essentially controul the liberality confirming them. The people of the U. S. owe their Independence & their liberty, to the wisdom of descrying in the minute tax of 3 pence on tea, the magnitude of the evil comprized in the precedent. Let them exert the same wisdom, in watching agst every evil lurking under plausible disguises, and growing up from small beginnings. *Obsta principiis.*

see the Treatise of Father Paul on beneficiary matters.

Is the appointment of Chaplains to the two Houses of Congress consistent with the Constitution, and with the pure principle of religious freedom?

In strictness the answer on both points must be in the negative. The Constitution of the U. S. forbids everything like an establishment of a national religion. The law appointing Chaplains establishes a religious worship for the national representatives, to be performed by Ministers of religion, elected by a majority of them; and these are to be paid out of the national taxes. Does not this involve the principle of a national establishment, applicable to a provision for a religious worship for the Constituent as well as of the representative Body, approved by the majority, and conducted by Ministers of religion paid by the entire nation.

The establishment of the chaplainship to Congs is a palpable violation of equal rights, as well as of Constitutional principles: The tenets of the chaplains elected [by the majority] shut the door of worship agst the members whose creeds & consciences forbid a participation in that of the majority. To say nothing of other sects, this is the case with that of Roman Catholics & Quakers who have always had members in one or both of the Legislative branches. Could a Catholic clergyman ever hope to be appointed a Chaplain? To say that his religious principles are obnoxious or that his sect is small, is to lift the evil at once and exhibit in its naked deformity the doctrine that religious truth is to be tested by numbers. or that the major sects have a right to govern the minor.

If Religion consist in voluntary acts of individuals, singly, or voluntarily associated, and it be proper that public functionaries, as well as their Constituents shd discharge their religious duties, let them like their Constituents, do so at their own expence. How small a contribution from each member of Congs wd suffice for the purpose? How just wd it be in its principle? How noble in its exemplary sacrifice to the genius of the Constitution; and the divine right of conscience? Why should the expence of a religious worship be allowed for the Legislature, be paid by the public, more than that for the Ex. or Judiciary branch of the Govt

Were the establishment to be tried by its fruits, are not the daily devotions conducted by these legal Ecclesiastics, already degenerating into a scanty attendance, and a tiresome formality?

Rather than let this step beyond the landmarks of power have the effect of a legitimate precedent, it will be better to apply to it the legal aphorism *de minimis non curat lex:* or to class it cum "*maculis quas aut incuria fudit, aut humana parum cavit natura.*"

Better also to disarm in the same way, the precedent of Chaplainships for the army and navy, than erect them into a political authority in matters of religion. The object of this establishment is seducing; the motive to it is laudable. But is it not safer to adhere to a right pinciple, and trust to its consequences, than confide in the reasoning however specious in favor of a wrong one. Look thro' the armies & navies of the world, and say whether in the appointment of their ministers of religion, the spiritual interest of the flocks or the temporal interest of the Shepherds, be most in view: whether here, as elsewhere the political care of religion is not a nominal more than a real aid. If the spirit of armies be devout, the spirit out of the armies will never be less so; and a failure of religious instruction & exhortation from a voluntary source within or without, will rarely happen: and if such be not the spirit of armies, the official services of their Teachers are not likely to produce it. It is more likely to flow from the labours of a spontaneous zeal. The armies of the Puritans had their appointed Chaplains; but without these there would have been no lack of public devotion in that devout age.

The case of navies with insulated crews may be less within the scope of these reflections. But it is not entirely so. The chance of a devout officer, might be of as much worth to religion, as the service of an ordinary chaplain. [were it admitted that religion has a real interest in the latter.] But we are always to keep in mind that it is safer to trust the consequences of a right principle, than reasonings in support of a bad one.

Religious proclamations by the Executive recommending thanksgivings & fasts are shoots from the same root with the legislative acts reviewed.

Altho' recommendations only, they imply a religious agency, making no part of the trust delegated to political rulers.

The objections to them are 1. that Govts ought not to interpose in relation to those subject to their authority but in cases where they can do it with effect. An *advisory* Govt is a contradiction in terms. 2. The members of a Govt as such can in no sense, be regarded as possessing an advisory trust from their Constituents in their religious capacities. They cannot form an ecclesiastical Assembly, Convocation, Council, or Synod, and as such issue decrees or injunctions addressed to the faith or the Consciences of the people. In their individual capacities, as distinct from their official station, they might unite in recommendations of any sort whatever, in the same manner as any other individuals might do. But then their recommendations ought to express the true character from which they emanate. 3. They seem to imply and certainly nourish the erroneous idea of a *national* religion. The idea just as it related to the Jewish nation under a theocracy, having been improperly adopted by so many nations which have embraced Xnity, is too apt to lurk in the bosoms even of Americans, who in general are aware of the distinction between religious & political societies. The idea also of a union of all to form one nation under one Govt in acts of devotion to the God of all is an imposing idea.

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