The Founders and the Freedom of Religion: An Introduction

Religion has always been important in America. During the colonial and Revolutionary eras, religion permeated the lives of Americans. Blue laws kept the Sabbath holy and consumption laws limited the actions of everyone. Christianity was one of the few links that bound American society together from Maine to Georgia. The Bible, in addition to being the divine word of God that would guide people through life's journey to the next world, served as a textbook for history, a source book for morals, a primer for mothers to teach their children how to read, and a window through which to view and understand human nature. Because religion and morality were seen as necessary components of stable society, colonial and Revolutionary governments supported religion. Clergymen were among the most influential members of the community and many of them actively participated in government.

The liberal religious traditions embodied in the charters and fundamental laws of Rhode Island, Pennsylvania, New Jersey, Maryland, and the Carolinas read very much like the declarations of indulgences promulgated by Charles II and James II that were so bitterly denounced by the Anglican clergy and members of Parliament. Like a magnet, however, these liberal policies attracted Dissenters to these religiously benevolent colonies.

Although colonists often emigrated to the New World to escape religious persecution, many new Americans readily discriminated against others on the basis of religion. Nine of the thirteen American colonies authorized established churches--the Congregational Church in New England and the Anglican Church in the Middle and Southern colonies. Established churches attracted settlers who wanted the cohesiveness of a common religion. In these colonies tax revenues usually supported ministers of the established church, and the right to hold office and to vote were sometimes restricted to members of that church.

Much of the fear and hatred of Catholics in England during this time found its way across the Atlantic. The four imperial wars between Protestant Great Britain and Catholic France and Spain intensified American animosity toward Catholics. Only in Maryland did Catholics find a welcome haven in Britain's New World.

Jews, although discriminated against in every colony, were generally tolerated and prospered especially in Newport, Philadelphia, and Charleston. After the Revolution, even the most tolerant states continued to deny citizenship and voting rights to Jews, although they were allowed to practice their religion, but usually not publicly. In addressing President George Washington when he visited Rhode Island in 1790, the Hebrew congregation of Newport hoped that the government under the new Constitution might provide them with "the invaluable rights of free Citizens" which they had been heretofore denied. Not, however, until the nineteenth century did states extend full citizenship to Jews.

Quakers--banished, whipped, fined, imprisoned, and occasionally executed in early New England--found a refuge in William Penn's experiment. Discrimination against Quakers, even in Pennsylvania, intensified during and after the Revolution, especially against those who steadfastly practiced pacifism. The combatants--both British and Americans--felt that if Quakers were not on their side, they must be enemies. During the war, Quakers were disenfranchised, and Americans rounded up wealthy Quakers thought to be dangerous and transported them to safe areas away from the fighting and their homes. Only slowly after the war were Quaker voting rights restored.

Religion played a significant role in the coming of the American Revolution. In New York the demand by some for an American Anglican bishopric raised fears of heightened ecclesiastical controls similar to the civil controls being mandated by Parliament. American animosity and fear of

Catholics increased, especially when Parliament enacted the Quebec Act in 1774 which extended southward the borders of the captured Catholic French territory to the Ohio River and guaranteed "the free Exercise of the Religion of the Church of Rome." The Declaration of Independence listed the Quebec Act as one of the charges against the king and Parliament. Ironically, because of America's desperate need for support in its struggle for independence, Congress allied with Catholic France, and His Christian Majesty Louis XVI was regularly toasted in America as a true friend of the new republic.

The American Revolution led to a significant separation between church and state. Increasingly religion was thought to be a matter of personal opinion which should not be dictated by government. Of the nine states that had established religions during the colonial period, three separated church and state in their new constitutions-New Yok, North Carolina, and Virginia. In the remaining six states, concessions were made allowing public support of more than one church. Often, in New England, this concession was nominal because public funds would be given to only one church in a town, and that always happened to be the Congregational church because of its dominance in every New England town. However, as the eighteenth century ended, most states in which tax revenues supported churches passed legislation increasing the flexibility individuals had of earmarking their taxes for the support of their own minister. A continuing relationship between church and state was still considered important. This was made explicit in Massachusetts, where their Declaration of Rights of 1780 provided that because "the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion and morality," the legislature was required to provide public revenues to support ministers. Furthermore, the legislature had the authority "to enjoin upon all the subjects an attendance upon the public instructions of the public teachers." Virginia disestablished the Anglican church merely by not specifically retaining the church-state relationship. The last provision of the Virginia Declaration of Rights (adopted in June 1776 and among the first political acts of James Madison) provided:

> "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 all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity, towards each other."

But when in the 1780s Patrick Henry, Edmund Pendleton, and Richard Henry Lee joined with Anglican ministers in an effort to provide public financial support for all Christian denominations (in essence creating a multiple establishment) James Madison .revived Thomas Jefferson's bill for religious freedom which provided for the true separation of church and state. A convention of Presbyterian ministers advocated the bill "as the best safeguard short of a constitutional one, for their religious rights."[1] The advocates of the general assessment measure all supported liberty of conscience and toleration, but because they strongly believed that Christianity was needed to support public morality and because ministers were woefully underpaid by their congregations, they felt that Christian clergy needed the financial support of the state.

Jefferson's bill, adopted in January 1786, stated "that the opinions of men are not the object of civil government, nor under its jurisdiction." The act provided:

> "that no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer, on account of his

> religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge or affect their civil capacities." Madison happily reported to Jefferson that the act extinguished for ever the ambitious hope of making laws for the human mind."[2]

In other state constitutions, like New York's, explicit provision was made that "the free exercise and enjoyment of religious profession and worship, without discrimination or preference." Religious liberty was not unlimited, however. According to the New York constitution, "the liberty of conscience hereby granted, shall not be so construed, as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State." This was a religious liberty rare in the world. Such a libertarian position alienated Congregationalists in Vermont who felt unsafe under New York's rule because their "religious rights and privileges would be in danger from a Union with a Government" whose constitution tolerated all religions and excluded the establishment of any."[3]

Five state constitutions prohibited ministers from holding civil or military positions. The clergy, it was argued, should attend to the important job of tending to their flocks. Eleven states retained a religious test for officeholding, usually requiring belief in God, the Protestant religion, the divine inspiration of the Bible, the trinity, and in life in the hereafter. Only the constitutions of New York and Virginia omitted a religious test for officeholding. In New York, John Jay argued unsuccessfully in the provincial convention for a prohibition against Catholic officeholding. In February 1788, however, the New York legislature approved an act requiring officeholders to renounce all foreign authorities, "in all matters ecclesiastical as well as civil," an obvious exclusion of Catholics from holding office.

Throughout the Revolutionary era, Congress, the state governors, and the first presidents all issued proclamations for fasting and thanksgiving. James Madison later regretted that such connection between state and religion had occurred. The Articles of Confederation made only indirect reference to religion. In Article III the states bound themselves together "in a league of friendship" to secure themselves from attacks on "any of them, on account of religion, sovereignty, trade or any other pretence whatever." In the last article, "the Great Governor of the World" was acknowledged for being pleased with the states' ratification of the Articles. As with all of America's fundamental documents, the Articles were dated "in the year of our Lord. . . ."

On July 13, 1787--when the Constitutional Convention was meeting in Philadelphia--Congress, meeting in New York City, adopted the Northwest Ordinance which provided for the territorial government of the national domain north and west of the Ohio River and for its transition to statehood on an equal basis with the original states. The Ordinance included an abbreviated bill of rights guaranteeing religious freedom in the first article. "No person demeaning himself in a peaceable and orderly manner shall ever be molested on account of his mode of worship or religious sentiments in the said territory." The third article acknowledged the necessity of "Religion, morality and knowledge" in promoting "good government and the happiness of mankind" and provided that "schools and the means of education shall forever be encouraged." Two years later the first federal Congress reenacted the Ordinance.

Increasingly the Founding Fathers abandoned traditional Christian religion and became what could be called deists. Many of these converts publicly maintained their original religious affiliations, choosing to avoid the censures that prominent deists like Jefferson, Franklin and Paine regularly received. Deists abandoned the belief in the divinity of Jesus, the trinity, any notion of predestination, the Bible as the divinely inspired word of God, and state-sponsored religion.

Rather, desists believed in one God, a benevolent initiator of all events. The word of God was not to be found in the Bible, but in nature and the Creation Deists believed that Jesus had lived and that his morality and teachings were estimable. They believed that Christian clergy and priests of other religions had perverted the true religion. The way to God was open to all men, and a direct relationship could exist between man and God without the assistance of clergy, Jesus, or the state. Deists believed in the importance of living a moral life and following the dictates of conscience. Although uncertain about the nature of the hereafter, deists believed in a life after death.

When the delegates to the Federal Convention of 1787 drafted a new Constitution for the United States, they omitted any specific references to God or religion. However, during the debate over ratifying the Constitution, Federalists sometimes asserted that the Constitution was divinely inspired. James Madison asserted in *The Federalist* No. 37 that:

> "It is impossible for the man of pious reflection not to perceive in it [the drafting of the Constitution], a finger of that Almighty hand which has been so frequently and signally extended to our relief in the critical stages of the revolution."

Dr. Benjamin Rush in the Pennsylvania ratifying Convention in December 1787 suggested that "the hand of God" was as assuredly employed in drafting the Constitution as it was in dividing the Red Sea or in fulminating the Ten Commandments from Mount Sinai. Rush urged Antifederalists to differentiate between the inclinations of their constituents and the dictates of their consciences. Listen, Rush admonished, to the latter. "It is the voice of God speaking" to their hearts. Antifederalists condemned "this new species of DIVINE RIGHT." They "regretted that so imperfect a work should have been ascribed to God." [4]

The Constitution prohibits a religious test for officeholding and, in fact, prohibits one from ever being required. Federalists argued that religious tests were "useless, tyrannical, and peculiarly unfit for the people of this country." [5] Religious oaths were supposed to guarantee honorable public service for fear of incurring the wrath of God. Public officials who violated their oaths might escape punishment here on earth but could not avoid punishment in the hereafter. However, Federalists argued that the unscrupulous and hypocritical would readily subscribe to oaths and would not hesitate to violate them. Only the conscientious--those who would be the best public officials--would refuse to take a religious oath if they did not believe in its provisions. Thus test laws were totally ineffectual and in fact counterproductive. Antifederalists raised the specter of Jews, Turks, and infidels being elected to key federal positions, while Federalists argued that voters would be knowledgeable enough to select the best people to serve.

Some Antifederalists wanted the Constitution explicitly to acknowledge the existence of God and a dependence on Him. William Williams of Connecticut suggested an addition to the Preamble which should read:

> "We the people of the United States, in a firm belief of the being and perfections of the one living and true God, the creator and supreme Governor of the world, in His universal providence and the authority of His laws: that He will require of all moral agents an account of their conduct, that all rightful powers among men are ordained of, and mediately derived from God, therefore in a dependence on His blessing and acknowledgment of His efficient protection in establishing our Independence, whereby it is become necessary to agree upon and settle a Constitution of federal government for ourselves, and in order to form a more perfect union, etc." [6]

A week later the pseudonymous writer "Elihu" answered Williams saying:

> "A low mind may imagine that God, like a foolish old man, will think himself slighted and dishonored if he is not complimented with a seat or a prologue of recognition in the Constitution, but those great philosophers who formed the Constitution had a higher idea of the perfection of that INFINITE MIND which governs all worlds than to suppose they could add to his honor or glory, or that He would be pleased with such low familiarity or vulgar flattery." The framers avoided such demagoguery. "They come to us in the plain language of common sense and propose to our understanding a system of government as the invention of mere human wisdom; no deity comes down to dictate it, not even a God appears in a dream to propose any part of it."[7]

Many Americans agreed with the freemen of Paxton, Massachusetts that the Constitution, by its failure explicitly to guarantee the freedom of religion, was "Subversive of Liberty and Extreamly dangerous to the Civil and Religious rights of the People." [8] Speaking for Antifederalists, Patrick Henry argued in the Virginia ratifying Convention that the "sacred and lovely thing Religion, ought not to rest on the ingenuity of logical deduction." Without an explicit protection, religion "will be prostituted to the lowest purposes of human policy." [9] Federalists, however, argued that the Constitution would create a federal' government of strictly enumerated powers that would never be capable of violating religious liberty. According to James Madison, there was "not a shadow of right in the General Government to intermeddle with religion-Its least interference with it would be a most flagrant usurpation." Furthermore, with the "multiplicity of sects" throughout America, Madison asserted that no one sect "could oppress and persecute the rest." [10]

Throughout the ratification debate Antifederalists demanded that freedom of religion be protected. A majority of ratifying conventions recommended that an amendment guaranteeing religious freedom be added to the Constitution. In recommending a bill of rights in the first federal Congress on June 8, 1789, Madison proposed that "the civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner or on any pretext infringed." He also proposed the "no state shall violate the equal rights of conscience." [11]

The prohibition on states was removed by the Senate, while the restrictions on the federal government were combined and recast into what came to be the First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The exact meaning of this prohibition has not been easy to ascertain. Perhaps President Thomas Jefferson interpreted it best in his response to the Baptist Association of Danbury, Connecticut, on January 1, 1802.

> "Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof, thus building a wall of separation between church and state." [12]

Endnotes

[1] Madison to Jefferson, Richmond, 22 January 1786, Robert A. Rutland et al., eds., *The Papers of James Madison.* (Chicago, 1973), VIII, 473.

[2] Ibid., 474.

[3] Egbert Benson to John Jay, Poughkeepsie, July 6, 1779, Henry P. Johnston, ed., *The Correspondence and Public Papers of John Jay (4* vols., New York, 1890-1893), I, 21 1-12.

[4] Merrill Jensen, John P. Kaminski and Gaspare J. Saladino, eds., *The Documentary History of the Ratification of the Constitution* (20 vols. to date, Madison, Wis., 1976-), II, 593, 595. Hereafter cited as DHRC.

[5] "A Landholder" VII (Oliver Ellsworth), .*Connecticut Courant,* December 17, 1787, DHRC, III, 498.

[6] Hartford *American Mercury,* February 1 1, 1788, DHRC, Ill, 589.

[7] "Elihu," Hartford *American Mercury,* February 18, 1788, DHRC, III, 592.

[8] DHRC, V, 1003.

[9] DHRC, X, 1213.

[10] DHRC, X, 1223-24.

[11] Helen E. Veit, Kenneth R. Bowling, and Charlene Bangs Bickford, eds., *Creating the Bill of Rights: The Documentary Record from the First Federal Congress* (Baltimore, 1991), 12-13.

[12] Merrill D. Peterson, ed., *Thomas Jefferson: Writings* (New York, 1984), 510.

Primary Sources Used in Script on Religious Establishment

Thomas Jefferson: Notes on the State of Virginia, Query 17, 1784
Thomas Jefferson: A Bill for Establishing Religious Freedom, 19 January 1786
Thomas Jefferson to James Madison, 20 December 1787
Thomas Jefferson to the Danbury Baptist Association, 1 January 1802
Thomas Jefferson: Second Inaugural Address, 4 March 1805
Thomas Jefferson to Reverend Samuel Miller, 23 January 1808
Thomas Jefferson to Miles King, 26 September 1814
Thomas Jefferson: Essay on New England Religious Intolerance, 10 January 1816

James Madison: Memorial and Remonstrance, 20 June 1785
James Madison Speech in Virginia Convention, 12 June 1788
James Madison Speech in Congress, 8 June 1789
James Madison: Presidential Proclamation, 9 July 1812
James Madison: Presidential Proclamation, 16 November 1814
James Madison to Robert Walsh, Jr., 2 March 1819
James Madison: Detached Memoranda, c. 1820
James Madison to Edward Livingston, 10 July 1822
James Madison to Reverend Jasper Adams, 1832

Roles in Script-3 Roles

Moderator
James Madison
Thomas Jefferson

Script

Moderator: Greetings and welcome. Today we are pleased to have James Madison and Thomas Jefferson joining us. Their thoughts were and currently are critical to our understanding of religious liberty. Let's delve right in and look at, what many consider to be, the most important freedom individuals have. Gentlemen, welcome.

James Madison: It's good to be here.

Thomas Jefferson: Thank you for inviting me.

Moderator: As many of you know, the Constitution originally did not have a bill of rights. In fact, many critics saw this as a critical weakness of the Constitution and advocated a set of amendments that would include a list of rights. As it turned out, the Constitution was in fact ratified without amendments. But, at the urging of many Antifederalists and Federalist alike, the first Congress took up the matter. Mr. Madison, you were in the House of Representatives and lead the way for these amendments. Correct?

Madison: [Yes. There were] objections of various kinds made against the constitution.

Moderator: But, as I understand it, there were two general types of objections to the Constitution.

Madison: [Yes. Some criticisms] were leveled against its structure.

Moderator: In general, what were some of these objections?

Madison: [Some examples were] the president was without a council, . . . the senate, which is a legislative body, had judicial powers in trials on impeachments, . . . because it grant[ed] more power than is supposed to be necessary . . . and it control[ed] the ordinary powers of the state governments.

Moderator: I am sure there were many other critiques. The ones you have mentioned seem to have more to do with the design of the government.

Madison: [Yes and yes.]

Moderator: Is it true the lack of a set of rights was most troubling to critics of the Constitution?

Madison: [Yes.] I believe that the great mass of the people who opposed it, disliked it because it did not contain effectual provision against encroachments on particular rights.

Moderator: And why do you think that was the case?

Madison: [Well, it may have to do with] safeguards which they have been long accustomed to have interposed between them and the magistrate who exercised the sovereign power.

Moderator: Mr. Jefferson, were you in favor of adding a list of rights to the Constitution? I understand you were, in fact, generally supportive of the Constitution.

Jefferson: I like[d] . . . the general idea of framing a government which [c]ould go on of itself peaceably, without needing continual recurrence to the state legislatures. [But,] what I [did] not like was the omission of a bill of rights

Moderator: And your reasoning . . . ?

Jefferson: A bill of rights is what the people are entitled to against every government on earth, general or particular, [and] what no just government should refuse.

Moderator: Mr. Madison, when you were in the first Congress, you proposed a set of rights be included in the Constitution among which were several proposals related to religious liberty.

Madison: [Yes.]

Moderator: If I am not mistaken, this was not the first time you were involved in a struggle over issue of religious freedom.

Madison: [Yes.]

Moderator: As I recall, there was a controversy regarding a proposal by Patrick Henry that would use tax money for the purpose of promoting religious instruction.

Madison: [Yes.]

Moderator: Can we look at some of the background to that controversy?

Jefferson: [Certainly.] The first settlers in [Virginia] were emigrants from England, of the English church, just at a point of time when it was flushed with complete victory over the religious of all other persuasions. Possessed . . . of the powers of making, administering, and executing the laws, they showed equal intolerance.

Moderator: I have heard throughout colonial period, Quakers were perhaps were the most harshly treated?

Jefferson: The poor Quakers . . . cast their eyes on these new countries as asylums of civil and religious freedom; but they found them free only for the reigning sect.

Moderator: Like the Anglican Church in Virginia?

Jefferson: [Yes.]

Moderator: And how were they treated in Virginia?

Jefferson: [Virginia had] several acts of . . . 1659, 1662, and 1693. [These] made it <illegal>[1] for

[Quaker] parents to refuse to have their children baptized . . . prohibited the unlawful assembling of Quakers . . . made it <illegal>[2] for any master of a vessel to bring a Quaker into the state . . . <prohibited>[3] all persons from <attending>[4] their meetings . . . entertaining them individually, or disposing of books which supported their tenets.

Moderator: So, is it you opinion that when a majority espousing a particular religion has control of government, there will always be tyranny because they will automatically establish an official religion?

Jefferson: [Not exactly.] Our sister states of Pennsylvania and New York, however, have long subsisted without any establishment at all. The experiment was new and doubtful when they made it. It has answered beyond conception. They flourish infinitely.

Moderator: But, some would say that without an established religion the colonies would have been a chaotic mess.

Jefferson: [Pennsylvania and New York] are not . . . disturbed with religious dissensions. On the contrary, their harmony is unparalleled, and can be ascribed to nothing but their unbounded tolerance. . . . They have made the happy discovery, that the way to silence religious disputes, is to take no notice of them.

Moderator: Perhaps this is a good point to jump to events in Virginia in the 1780s. At the urging of Patrick Henry wanted a tax to support religious instruction in the state. Mr. Madison, you and Mr. Jefferson opposed it?

Madison: [Yes. It was] a dangerous abuse of power.

Moderator: I am assuming you had several reasons supporting this view?

Jefferson: In [our] declaration of rights, [created by the Virginia Assembly in 1776] declared it to be a truth, and a natural right, that the exercise of religion should be free.

Moderator: Mr. Madison, with your expertise, you could probably quote from the 1776 Virginia Constitution in this matter?

Madison: "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."

Moderator: How does this relate to forcing individuals to pay a tax to support religious instruction?

Madison: Because, if Religion is exempt from the authority of the Society at large, still less can it be subject to that of the Legislative Body.

Moderator: And being forced to pay a tax would be an establishment of a religion; a tyranny of the majority in a sense?

Madison: [Exactly.] The same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects?

Moderator: Let's reverse this. What if we don't exclude **certain** religions, we just simply encourage **all** religions?

Madison: The same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?

Moderator: Three pence? This seems pretty insignificant. Are you suggesting there is slippery slope in having a small and seemingly insignificant support of religion by the government?

Jefferson: [Exactly.] To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical.

Moderator: And what are some possible consequences of this practice if the governments head down this slippery slope?

Madison: More or less in all places, pride and indolence in the Clergy, ignorance and servility in the laity, in both, superstition, bigotry and persecution.

Jefferson: Galileo was sent to the inquisition for affirming that the earth was a sphere: the government had declared it to be as flat as a trencher. Millions of innocent men, women, and children, since the introduction of Christianity, have been burnt, tortured, fined, and imprisoned.

Moderator: Would either of you suggest that even a small support of religion would discourage people from coming to America who might be seeking freedom? I suppose we could call this a chilling effect of sorts?

Madison: [Yes. This] establishment is a departure from that generous policy, which, offer[s] an Asylum to the persecuted and oppressed of every Nation and Religion.

Moderator: In other words, this could cause people who seek religious freedom to avoid coming to a place that had this type of liberty?

Madison: [Yes.] To . . . revoke [this] liberty . . . would be the same species of folly which has dishonored and depopulated flourishing kingdoms.

Moderator: Could this policy drive people away?

Jefferson: [New England's] great emigrations to the Western country in [1816 were] real flights from persecution, religious [and] political. [This is an] abandonment of <New England>[5] by those who wish to enjoy freedom of opinion.

Moderator: What other problems do you see with an establishment of religion?

Madison: Attempts to enforce by legal sanctions, acts obnoxious to so great a proportion of Citizens, tend to enervate the laws in general, and to slacken the bands of Society.

Jefferson: Free enquiry must be indulged; and how can we wish others to indulge it while we refuse it ourselves.

Moderator: I suppose you could say this is a "live and let live" approach.

Madison: [Additionally, religious establishments] will destroy that moderation and harmony which the forbearance of our laws to intermeddle with Religion has produced among its several sects.

Jefferson: [I] have heard it said that there is not a Quaker or a Baptist, a Presbyterian or an Episcopalian, a Catholic or a Protestant in heaven: that, on entering that gate, we leave those badges of schism behind, and find ourselves united in those principles only in which god has united us all.

Moderator: So, there is great benefit to having a diversity of belief in society.

Madison: [Correct.] Freedom arises from that multiplicity of sects, which pervades America, and which is the best and only security for religious liberty in any society. For where there is such a variety of sects, there cannot be a majority of any one sect to oppress and persecute the rest.

Jefferson: It does me no injury for my neighbor to say there are twenty gods, or no god. It neither picks my pocket nor breaks my leg.

Madison: It is known that . . . Religion both existed and flourished, not only without the support of human laws, but in spite of every opposition from them.

Moderator: I am guessing you would cite the early Christian church in this regard.

Jefferson: [When] reason and experiment have been indulged . . . error has fled before them. It is error alone which needs the support of government. Truth can stand by itself.

Madison: [Also, governments that] wished to subvert the public liberty, may have found an established Clergy convenient auxiliaries.

Moderator: Meaning government officials who have relied on religious leaders to support their policies are misguided?

Madison: [Yes.]

Moderator: But, it has been said that governments need to promote morality and virtue and supporting religion is a way to achieve those goals. I think it was Patrick Henry who said it was important to encourage religion since it could "correct the morals of men, restrain their vices, and preserve the peace of society."

Madison: A just Government needs them not. Such a Government will be best supported by protecting every Citizen in the enjoyment of his Religion.

Moderator: Would you suggest that when religious leaders accept the official sanction of a government they or their message become corrupted in some way?

Madison: The Civil Magistrate [that uses] Religion as an engine of Civil policy [practices] an unhallowed perversion of the means of salvation.

Moderator: In other words, the purity of religion is lost when it uses the power of the state.

Madison: While we assert for ourselves a freedom . . . to profess and to observe the Religion which we believe to be of divine origin, we cannot deny . . . freedom to those whose minds have not yet yielded to the evidence which has convinced us. If this freedom be abused, it is an offence against God.

Moderator: And, is it fair to assume you maintain when religion uses the power of the state, the sincerity of belief is weakened in some way? In other words, it might look suspicious if a religion needs the support of the government.

Madison: To weaken in those who profess this Religion a confidence in its innate excellence and the patronage of its Author; and to foster in those who still reject it, a suspicion that its friends are too conscious of its fallacies to trust it to its own merits.

Jefferson: Almighty God hath created the mind free, and manifested his supreme will that free it shall remain by making it altogether insusceptible of restraint.

Moderator: And what are the consequences when governments force a religion upon its citizens?

Jefferson: [There is a tendency] to beget habits of hypocrisy and meanness, and are a departure from the plan of the holy author of our religion, who . . . 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.

Moderator: Up to this point, we have been talking about issues of religious freedom prior to the creation of the First Amendment, which as you know, was not a part of the Constitution until 1791. If it's OK with you, I would like to move our discussion to concerns after 1791.

Madison: [Certainly.]

Jefferson: [The] American people . . . declared that their [national] legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

Moderator: Yes, the First Amendment does indeed say this. However, it does seem that most of the discussion surrounding the First Amendment in the early republic centered on what has been called the establishment clause.

Jefferson: [Yes.]

Moderator: Is it true that after the American Revolution some states began a disestablishment process?

Madison: [Yes.] The example of the . . . States, which rejected religious establishments . . . proved that all <religions>[6] might be safely & advantageously put on a footing of equal & entire freedom.

Moderator: Would suggest that the disestablishment process begun at the state level was beneficial?

Madison: I cannot speak <specifically>[7] of any of the cases except . . . Virginia where it [was] impossible to deny that Religion prevail[ed] with more zeal . . . than it ever did when established and <supported>[8] by Public authority.

Moderator: Would you suggest the prohibition in the First Amendment against the national government establishing a religion allows for a broad diversity of belief?

Jefferson: [It allows for] different roads we may pursue . . . following the guidance of a good conscience.

Moderator: Mr. Jefferson, many of us are aware that your response to the Baptists of Danbury Connecticut in 1803 is often cited in discussions about the meaning of these religion clauses.

Jefferson: [Essentially, I said] religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions.

Moderator: But at a practical level, what does this mean?

Jefferson: [There is] a wall of separation between Church and State.

Moderator: So, these two clauses when combined, function together keep the government and religion out of each other's business?

Madison: The corrupting alliance between them, [is] best guarded . . . by an entire abstinence of the Government from interference in any way whatever, beyond the necessity of preserving public order, & protecting each <religion>[9] against trespasses on its legal rights by other[s].

Moderator: Let's backtrack a bit though. Mr. Madison, it is a well-known fact that you as President issued proclamations in 1812 and 1814 that could be viewed as the national government advocating or establishing a religion.

Madison: [Yes, I did. In 1812 I said] a day may be recommended, to be observed by the People of the United States, with religious solemnity, as a day of public Humiliation and Prayer.

Moderator: This was in the context of the run up to the War of 1812?

Madison: [Yes.]

Moderator: Later, in 1814, after Congress passed a joint resolution, you issued another proclamation in the midst of the war.

Madison: [I recommended a day] be set apart as a day on which all [would have the] opportunity of voluntarily offering at the same time in their respective religious assemblies their humble adoration to the Great Sovereign of the Universe, of confessing their sins and transgressions, and of strengthening their vows of repentance and amendment.

Moderator: And, if I am not mistaken, there were precedents for this practice. Many governors had frequently issued religious proclamations.

Jefferson: [Yes.] I . . . believe that the example of state executives led to the assumption of that authority by the general government.

Moderator: But, Mr. Madison, how did you as president justify issuing a religious proclamation if you support the separation of church and state?

Madison: I was honored with the Executive Trust I found it necessary . . . to follow the example of predecessors. But I was always careful to make the Proclamations absolutely indiscriminate, and merely recommendatory; or rather mere *designations* of a day, on which all who thought proper might *unite* in consecrating it to religious purposes, according to their own faith & forms.

Moderator: Isn't this an example of government approving of religion?

Madison: [Not necessarily. There was no] penal sanction *enforcing* the worship.

Moderator: Mr. Jefferson, I understand you took a slightly different approach to this during your time in office prior to Mr. Madison's time in office. Many individuals wanted you to follow the lead of Washington and Adams in issuing proclamations relating to days of national prayer and thanksgiving.

Jefferson: [Yes. I believe that even a simple] recommendation [would] carry some authority.

Moderator: What sort of authority?

Jefferson: [An authority] to be sanctioned by some penalty on those who disregard it . . . indeed of fine and imprisonment.

Moderator: Mr. Madison, as I understand it, your views were slightly different on this later in 1820?

Madison: [Yes. These types of proclamations do] seem to imply and certainly nourish the erroneous idea of a *national* religion.

Moderator: How so? Aren't recommendations merely suggestions?

Madison: An *advisory* government is a contradiction in terms. The members of a government as such can in no sense, be regarded as possessing an advisory trust from their Constituents. . . . They cannot . . . issue decrees or injunctions addressed to the faith or the Consciences of the people.

Moderator: Another complicated issue in the early republic related to the establishment clause was public funding for military chaplains.

Madison: That the deviation from it took place in Congress, when they appointed Chaplains, to be paid from the National Treasury.

Moderator: I beg your pardon? This seems more than a simple "deviation."

Madison: As [this] precedent is not likely to be <reversed>[10], the best that can . . . apply to the Constitution [is] the maxim of the law, de minimis non curat.

Moderator: OK. At this point my high school Latin should kick in. I believe "de minimis non curat" means the "law does not concern itself with small things."

Madison: [Yes.]

Moderator: But, Mr. Madison, isn't this similar to the religious assessment proposal in Virginia you fought against back in the 1780s?

Madison: Look through the armies and navies of the world, and say whether in the appointment of their ministers of religion, the interest[s] . . . of religion is . . . nominal more than real. . . .

Moderator: You seem to suggest we should not worry constitutionally about publically funding chaplains because their influence is so small. This seems to be missing or avoiding the point.

Madison: [I suppose] in strictness . . . the Constitution of the U. S. forbids everything like an establishment of a national religion.

Moderator: In your own notes in 1820, you wondered if "this involved the principle of a national establishment . . . conducted by Ministers of religion paid by the entire nation?"

Madison: [I noted] the establishment of the chaplainship to Congress is a palpable violation of equal rights, as well as of Constitutional principles.

Moderator: If Congress should have not funded these chaplains, what should have been done?

Madison: If Religion consist[s] in voluntary acts of individuals . . . let them . . . do so at their own expense. . . . It would have been a much better proof of their pious feeling if the members [of Congress] had contributed for the purpose, a pittance from their own pockets.

Moderator: Mr. Jefferson, you have been silent for some time. Do you have anything that might shed some light on this?

Jefferson: [As I said back in 1786,] forcing [people] to support this or that teacher his own religious persuasion, is depriving [individuals] of the liberty of giving his contributions to the . . . powers he feels most persuasive to righteousness.

Moderator: And if it was applicable for Virginia in 1786, it should be applicable for the nation?

Jefferson: [Yes.] The Virginia Law in 1786 stated, "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."

Madison: It was the universal opinion of the Century preceding the last, that Civil Government could not stand without the prop of a Religious establishment, & that the [Christia]n religion itself, would perish if not supported by a legal provision. . . . The experience of Virginia conspicuously corroborates the disproof of both opinions.

Moderator: I think we have just enough time for a few concluding remarks. Mr. Jefferson?

Jefferson: What has been the effect of [religious] coercion? To make one half the world fools, and the other half hypocrites. To support roguery and error all over the earth. . . . Let us . . . give this experiment fair play, and get rid . . . of tyrannical laws.

Moderator: Mr. Madison, your final thoughts?

Madison: In most of the Governments of the old world, the legal establishment of a particular religion and without . . . toleration of others . . . few of the most enlightened judges will maintain that the system has been favorable either to Religion or to Government. . . . It remain[s] for North America to bring the great & interesting subject to a fair, and finally to a decisive test.

Moderator: Mr. Madison, Mr. Jefferson, thank you for joining us. I trust our discussion has been insightful for our audience. Perhaps we can meet again to talk about other issues related to the First Amendment. Until then, good night and good luck.

Endnotes

1 penal

2 penal

3 inhibited

4 suffering

5 the country

6 sects

7 particularly

8 patronized

9 sect

10 rescinded

Pedagogical Materials–Three Lesson Suggestions

Evaluating the Arguments of Madison and Jefferson against Religious Establishment

The script should be read/presented in class before using these lesson suggestions. After reading/presenting the script you can proceed in three ways. Options 1 and 2 feature group work and discussions. Option 3 is a creative writing assignment.

Option 1
This option uses the graphic organizer and suggestions below.

The Arguments against Establishment	**Ranking**
1. It Discourages Immigration	
2. It Corrupts Religion	
3. It Violates the Rights of Others	
4. It Makes Religion Less Vital or "Lazy"	
5. It Creates Disunity in Society	
6. Truth Doesn't Need Government Support	

a) Each student should individually rank each arguments from 1-6; the strongest being 1 and the weakest being 6.
b) After each student has individually ranked the arguments, divide the class into six "argument groups." These "argument groups" should consist of like-minded students. In other words, students who thought the argument that establishment discourages immigration was the most effective, should be in a group together. Those that thought the argument that establishment corrupts religion was the strongest should be together, and so on.
c) Each "argument group" should discuss and reach a consensus as to the reasons they think their choice is the most persuasive. After they discuss, they should select a spokesperson to present their case to the other "argument groups."
d) Have each spokesperson make a brief statement explaining their position to the entire class.
e) After each spokesperson has presented, students should have the opportunity to respond.
f) You can conclude the lesson with a discussion using the following questions.

* Do you think these arguments made by Madison and Jefferson are still valid today?
* Do you think any of these arguments are no longer valid today?
* What is your opinion Thomas Jefferson concluding comment at the end of the script?

> "What has been the effect of [religious] coercion? To make one half the world fools, and the other half hypocrites. To support roguery and error all over the earth. . . . Let us . . . give this experiment fair play, and get rid . . . of tyrannical laws."

* To what extent you think religious establishment is coercion? Why or why not?

Option 2
This option uses the graphic organizer and suggestions below.

The Arguments against Establishment	Convincing	Unconvincing
1. It Discourages Immigration		
2. It Corrupts Religion		
3. It Violates the Rights of Others		
4. It Makes Religion Less Vital or "Lazy"		
5. It Creates Disunity in Society		
6. Truth Doesn't Need Government Support		

a) After presenting the script, you may want to devote some time to addressing and answering questions students might have about the arguments as presented in the script.
b) Using the chart above, students should consider whether they find these arguments persuasive or not. (For example if they are not persuaded that immigration is discouraged if there is an established religion, they should make a check mark in the "Unconvincing" column. If they are persuaded, they would mark the "Convincing" column. Students should do this for all six of the arguments listed in the chart.)
c) Have students select one of the arguments for further deliberation. The class should be divided into six "issue groups." Each "issue group" corresponds to the arguments in the chart. Be sure that each "issue group" has students in it that find the argument convincing as well as students who do not find the argument convincing.
d) Within each "issue group" both sides should explain their positions as well as listen to those taking the opposite view.
e) Both sides in the "issue group" should select a spokesperson to explain to the entire class the arguments from the opposing side. In other words, the "convinced students" should select a person to explain the views of the "unconvinced students" within the "issue group."
f) Give each side time to clarify their summary statements. (Note: As you might expect, having a person summarize the viewpoint of another with whom they disagree can lead to some misrepresentations.
g) You can conclude the lesson by leading a discussion using the following questions.
    * What problems might arise if the government encourages or favors all religions equally?
    * What problems might arise if the government does not encourage or favor any religion?
    * Are any of these arguments presented by Madison and Jefferson valid today? If so, which ones and why do you think this is the case?

Option 3
Converting James Madison's Arguments into Poetry

a) Have students look at pages 14-16. This is the section of the script where James Madison attempted to explain his actions as president. The moderator suggested that his proclamations as well as his support for congressional funding for chaplains in the military might violate the Establishment Clause of the First Amendment.
b) Have each student individually summarize by creating a simple list of Madison's rationales as to why he issued proclamations and signed into law the financial support of chaplains.
c) After students have had an opportunity to record their thoughts, you should lead a class discussion to check for understanding.
d) Assign a writing project that converts Madison's thinking into a poem. Students should be encouraged to use any form of poetry, (i.e. haiku, iambic pentameter, limerick, free verse, rap, etc.) An example of a limerick might be:

Jimmy took a glance at the "stution"
and proclaimed that he had a solution
funds were transported
the chaplains supported
but now he seeks absolution

e) Have students share their work with the class.