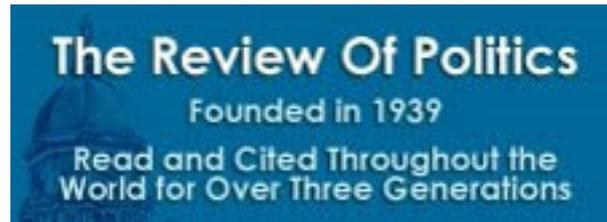


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George Washington on Religious Liberty

Vincent Phillip Muñoz

Despite the Supreme Court's repeated invocations of America's Founding Fathers for First Amendment religion jurisprudence, George Washington's political thought regarding religious freedom has received almost no scholarly attention. This is unfortunate, for Washington's words and actions speak to contemporary Establishment Clause and Free Exercise issues. Washington, moreover, offers an alternative to Jefferson's and Madison's approach to church-state matters. The scholarly exclusion of Washington thus has led to a narrow view of the Founders' thought on religious liberty. This article sets forth Washington's understanding of the right to religious liberty. It pays particular attention to Washington's disagreement with Madison on the propriety of government support of religion. It also draws attention to the limits Washington placed on an individual's right to religious free exercise by focusing on how Washington dealt with Quaker claims for religious exemptions from military service.

Individuals entering into society, must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered, and those which may be reserved.

—G. Washington, Letter submitting the proposed constitution to the President of Congress 17 September 1787¹

Introduction

George Washington's political thought regarding church and state never has been thoroughly articulated. While scholars have addressed Washington's personal religious

The author would like to thank Mark Blitz, Paul Carrese, Charles Kesler, Sandy Kessler, Paul Rahe, Ralph Rossum, and the anonymous reviewers of *The Review of Politics* for their comments and criticisms of drafts of this article. The author would also like to acknowledge The Pew *Civitas* Program in Faith and Public Affairs for its support.

1. *The Records of the Federal Convention of 1787*, ed. Max Farrand (New Haven: Yale University Press, 1966), 2: 666.

opinions,² most assume that on matters of religious liberty Thomas Jefferson and James Madison speak for the founding generation. This near-exclusive concern with Jefferson and Madison can be traced to the landmark 1947 Establishment Clause case *Everson v. Board of Education*. In *Everson*, the Supreme Court presumed, first, that the founding fathers shared a uniform understanding of religious freedom and, secondly, that Jefferson and Madison most authentically represented the Founders' views.³ Most historically-minded religious liberty constitutional scholars have accepted uncritically *Everson's* presumptions.⁴ George Washington, however, was no less dedicated to securing religious freedom than his second and third presidential successors. In a 1783 letter, he testified that "the establishment of Civil and Religious Liberty was the Motive which induced me to the field [of battle]."⁵ Washington, moreover, offers a different understanding of the right to religious freedom than Jefferson and Madison, at least as they are usually interpreted. Like many, if not most leaders of the founding generation, Washington believed a pious citizenry was indispensable to republican government, and, therefore, that civil government could and should endorse religion. On questions of free exercise, he believed the right to religious liberty is limited by the legitimate

2. Paul F. Boller offers the most comprehensive account of George Washington's personal religious beliefs in *George Washington and Religion* (Dallas: Southern Methodist University Press, 1963), especially chapter 5. For a more recent discussion, see John G. West, Jr., "George Washington and the Religious Impulse," in *Patriot Sage: George Washington and the American Political Tradition*, ed. Gary L. Gregg and Matthew Spaulding (Wilmington, Delaware: ISI Books, 1999), pp. 267-86. Boller claims Washington was a Deist, yet maintained an "eminently serene and untroubled faith" in a providential God (p. 107). West agrees that Washington possessed a firm belief in a providential God and therefore concludes that he cannot be considered a Deist (p. 269). Glen Phelps, *George Washington and American Constitutionalism* (Lawrence, KS: Kansas University Press, 1993) addresses Washington's political thought more generally, but does not address Washington's understanding of religious liberty.

3. *Everson v. Board of Education*, 330 U.S. 1 (1947), 13.

4. For further discussion of this point see, Daniel L. Dreisbach, "A Lively and Fair Experiment: Religion and the American Constitutional Tradition," *Emory Law Journal* 49 (Winter 2000): 228-38.

5. George Washington to the Reformed German Congregation in the City of New York, 27 November 1783, in *The Writings of George Washington*, ed. John C. Fitzpatrick (Washington, D.C.: United States Government Printing Office, 1938), 27:249.

duties of republican citizenship. If we make the attempt to understand Washington's thought, we shall see that he offers a theory of the right of religious freedom that reveals the diversity of thought within the founding generation and that speaks to the First Amendment religion controversies now before the nation's courts.

Washington's Political Differences with Madison

Since Washington does not offer a singular document on religious liberty, we must extrapolate his political theory from his political practice, including the letters and writings that belong to it. When one turns to Washington's practical politics regarding religion, one cannot help but be struck by how different they are from Madison's. Whereas Madison attempted to separate religion from politics,⁶ Washington consistently sought to use governmental authority to encourage religion and to foster the religious character of the American people.

Washington, for example, initially was not opposed to Patrick Henry's general assessment bill, the proposed statute that sparked Madison to write his "Memorial and Remonstrance." Writing to George Mason, a leading assessment foe, Washington explained,

6. Madison's "strict-separationism" has been documented most exhaustively by Irving Brant, "Madison: On the Separation of Church and State," *William and Mary Quarterly*, 3rd series, 8 (January 1951): 3-24. Other scholars labeling Madison a "strict-separationist" include Leo Pfeffer, *Church, State, and Freedom* (Boston: Beacon Press, 1953), pp. 111-13, 129, 137; and Leonard W. Levy, *The Establishment Clause: Religion and the First Amendment* (New York: Macmillan Publishing Company, 1986). The Supreme Court adopted the "strict-separationist" interpretation of Madison, and hence the Establishment Clause, in *Everson v. Board of Education*, 330 U.S. 1 (1947). On the contemporary Supreme Court, Justice Souter has defended this position most forcefully in a pair of non-majority opinions: *Lee v. Weisman*, 505 U.S. 577 (1992) (Souter concurring); *Rosenberger v. Virginia*, 515 U.S. 819 (1995) (Souter dissenting). For competing accounts of Madison see: Robert Cord, *Separation of Church and State: Historical Fact and Current Fiction* (New York: Lambeth Press, 1982), 20-36; Paul Weber, "James Madison and Religious Equality: The Perfect Separation," *Review of Politics* 44 (1982): 163-86; Justice Rehnquist's dissent in *Wallace v. Jaffree*, 472 U.S. 38 (1985) (Rehnquist dissenting); and Justice Thomas' concurring opinion in *Rosenberger v. Virginia*, 515 U.S. 819 (1995) (Thomas concurring). For a redconsideration of Madison's position, see Vincent Phillip Muñoz, "James Madison's Principle of Religious Liberty," *American Political Science Review* 97 (2003): 1-16.

Altho [sic], no man's sentiments are more opposed to *any kind* of restraint upon religious principles than mine are; yet I must confess, that I am not amongst the number of those who are so much alarmed at the thoughts of making people pay towards the support of that which they profess, if of the denominations of Christians; or declare themselves Jews, Mahomitans or otherwise, and thereby obtain proper relief.⁷

In the same letter, Washington further explains,

As the matter now stands, I wish an assessment had never been agitated and as it has gone so far, that the Bill could die an easy death; because I think it will be productive of more quiet to the State, than by enacting it into a Law.⁸

Washington opposed Henry's measure not because it violated the principle of religious liberty, Madison's principal argument, but because the bill caused unnecessary political turmoil.

Washington's opinion of the propriety of military chaplains reflects a second difference from Madison. Madison thought taxpayer-funded chaplains violated constitutional principles.⁹ Such a thought probably never crossed Washington's mind. As commander-in-chief of the Continental Army, Washington sought not only to procure chaplains for his soldiers but also to ensure that the Continental Congress offered a salary generous enough to attract "men of abilities."¹⁰ Chaplains, he believed, helped to improve dis-

7. Washington's emphasis. George Washington to George Mason, 3 October 1785, *Writings of George Washington*, 28:285. Washington wrote to Mason on account of Mason's sending to Washington a copy of a memorial and remonstrance against Henry's bill. It is fair to assume that Mason sent Washington Madison's "Memorial and Remonstrance," although it is unclear from Washington's letter, which refers only to "a memorial and remonstrance." Madison published his "Memorial and Remonstrance" anonymously and several other petitions against the bill were also circulating at that time.

8. *Ibid.*

9. Elizabeth Fleet, "Madison's 'Detached Memoranda,'" *William and Mary Quarterly*, 3rd series, 3 (October 1946): 559-60.

10. George Washington to the President of Congress, 31 December 1775, *Writings of George Washington*, 4:197-98, requesting an increase in the salary of military chaplains to \$33 a month. On 29 July 1775, the Continental Congress, in its first official act regarding army chaplains, passed a resolution providing for a salary of \$20 a month, the same as captains. For a discussion of Washington's military requests and orders pertaining to religion see, Boller, *George Washington and Religion*, 49-60.

cipline, raise morale, check vice, and to fortify courage and bravery while at the same time securing respectful obedience and subordination to those in command.¹¹ Washington, moreover, did not make chaplains available only to those who wanted them. He repeatedly commanded his soldiers to attend Sunday services if the war effort permitted it. "The General," he declared in one such typical order,

requires and expects, of all Officers and Soldiers, not engaged in actual duty, a punctual attendance on divine Service to implore the blessings of heaven upon the means used of our safety and defence [sic].¹²

The "regularity and decorum" with which the Sabbath was observed, Washington explained following another such order,

will reflect great credit on the army in general, tend to improve the morals, and at the same time, to increase the happiness of the soldiery, and must afford the most pure and rational entertainment for every serious and well disposed mind.¹³

It would also reduce "profane cursing, swearing and drunkenness," he said on another occasion.¹⁴

General Washington also commanded his soldiers to observe special days of "Fasting, Humiliation and Prayer." Sometimes he issued orders to comply with resolutions passed by the Continental Congress, but on other occasions, in particular after key victories or successful strategic operations, Washington relied upon his own authority. After receiving news of the conclusion of an alliance with France in 1778, he issued the following:

It having pleased the Almighty ruler of the Universe propitiously to defend the Cause of the United American-States and finally by raising us up a powerful Friend among the Princes of the Earth to establish our liberty and Independence up[on] lasting foundations, it becomes us to set apart a day for gratefully acknowledging the divine Goodness and celebrating the important Event which we own to his benign Interposition.¹⁵

11. George Washington to Governor Jonathan Trumbull, 15 December 1775, *Writings of George Washington*, 4:162.

12. General Orders, 4 July 1775, *Writings of George Washington*, 3:309.

13. General Orders, 22 March 1783, *Writings of George Washington*, 26:250.

14. General Orders, 4 July 1775, *Writings of George Washington*, 3:309.

15. General Orders, 5 May 1778, *Writings of George Washington*, 11:354.

Washington brought to the presidency the practice of declaring special days of prayer and thanksgiving, which brings forth another sharp divergence from Madison. Madison issued four official religious proclamations during the War of 1812, but he later acknowledged that such measures violated the spirit of the Constitution.¹⁶ Washington took no such view. He issued two official presidential days of prayer and thanksgiving proclamations, the first on 3 October 1789 in response to a request by Congress and the second on 1 January 1795, apparently under his own initiative.¹⁷ Nothing indicates that Washington hesitated in any way when issuing them.

The proclamations themselves, moreover, speak in defense of their own propriety. Both start with a statement of duty. Washington begins the first decree:

Whereas it is the duty of all nations to acknowledge the providence of Almighty God, to obey His will, to be grateful for His benefits, and humbly to implore His protection and favor.¹⁸

The first paragraph of his 1795 statement similarly maintains:

In such a state of things [exemption from foreign war and the existence of domestic tranquility] it is in an especial manner our duty as a people, with devout reverences and affectionate gratitude, to acknowledge our many and great obligations to Almighty God and to implore Him to continue and confirm the blessings we experience.¹⁹

Madison's proclamations, by comparison, all begin with the bland assertion that the Congress has called for a national proclamation. He does not emphasize the propriety or duty of giving thanks to the Almighty. If Washington thought that the American people had a duty to recognize and acknowledge God, surely he did not think it improper for the president to facilitate its performance.

16. Fleet, "Madison's 'Detached Memoranda,'" pp. 560-62.

17. Both proclamations marked significant events, the former the ratification of the Constitution and the latter when the prospect of another foreign war had decreased.

18. George Washington, "Proclamation. A National Thanksgiving," 3 October 1787, in James D. Richardson, *A Compilation of the Messages and Papers of the Presidents: 1789-1897* (Washington, D.C.: Government Printing Office, 1896), 1:64.

19. Washington, "A Proclamation," 1 January 1795, *ibid.*, 1:180.

Washington's official religious presidential proclamations reflect his deliberate intention to sanctify solemn public statements and occasions. All of Washington's most important public addresses include religious language. His 1783 "Circular to the States," the closest thing to a national or presidential speech in American history prior to 1789, ends with an earnest prayer for God's "holy protection." His First Inaugural address, similarly, begins and ends in prayer. Toward the beginning of the speech, Washington states:

[I]t would be peculiarly improper to omit, in this first official act, my fervent supplications to that Almighty Being who rules over the universe; who presides in the councils of nations; and whose providential aid can supply every human defect; that his benediction may consecrate to the liberties and happiness of the People of the United States, a Government instituted by themselves for these essential purposes. ... In tending this homage to the Great Author of every public and private good, I assure myself that it expresses your sentiments not less than my own; nor those of my fellow citizens at large less than either. No people can be bound to acknowledge and adore the invisible hand which conducts the affairs of men, more than the people of the United States.²⁰

At the first inaugural Washington also added the phrase "So help me God" to the end of the Presidential Oath of Office and he began the tradition of swearing the oath on the Bible.²¹

The use of taxes to support religion, the appointment of military chaplains, the propriety of issuing religious presidential proclamations, and the deliberate inclusion of sacred language in public ceremonies reflect the distance between Washington and Madison on the proper disposition of government toward religion. Washington did not think that the state must be "strictly separated" from religion. He agreed that religious worship was a natural right and that the purpose of government was to secure the rights of man, but he did not translate those general principles into Madison's specific limitations on the powers of government.

20. George Washington, "First Inaugural Address," 30 April 1789, *Papers of George Washington*, Presidential Series, ed. Dorothy Twohig (Charlottesville: University Press of Virginia, 1987-), 2:174.

21. Steven B. Epstein, "Rethinking the Constitutionality of Ceremonial Deism," *Columbia Law Review* 96 (December 1996): 2110.

Washington's Defense of Government Support for Religion: The Farewell Address

Washington's most definitive political statement regarding religion, in fact, pertains not to the limits of government power but rather to the propriety of governmental support. In his Farewell Address, Washington's valedictory statement to the American people,²² he explains why republican government must endorse religion:

Of all the disposition and habits which lead to political prosperity, Religion and morality are indispensable supports. In vain would that man claim the tribute of Patriotism, who should labor to subvert these great pillars of human happiness, these firmest props of the duties of Man and citizens. The mere Politician, equally with the pious man ought to respect and to cherish them. A volume could not trace all their connections with private and public felicity.²³

Religion and morality are indispensable because, Washington explains a few lines later, "'Tis substantially true, that virtue or morality is a necessary spring of popular government."²⁴

Washington's reference to virtue as the "spring" of popular government is Montesquieuan. In *The Spirit of the Laws*, Montesquieu teaches that each form of government relies upon a "principle" or "spring," by which he means the ruling passion that sets the regime in motion and perpetuates its existence.²⁵ The principle or spring of republican government, Montesquieu claims, is virtue. By virtue Montesquieu does not mean the classical moral

22. Washington's Farewell Address was not a speech but a long letter addressed "To the PEOPLE of the United States," first published in *American Daily Advisor*, Philadelphia's largest newspaper, on 19 September 1796. For a discussion of the drafting and publication of the Farewell Address, see Matthew Spalding and Patrick J. Garrity, *A Sacred Union of Citizens: George Washington's Farewell Address and the American Character*, intro. Daniel J. Boorstin (Lanham, MD: Rowman and Littlefield Publishers, Inc., 1996), pp. 45-61; Felix Gilbert, *To The Farewell Address: Ideas of Early American Foreign Policy* (Princeton: Princeton University Press, 1961), chapter 5.

23. George Washington, "Farewell Address," 19 September 1796, *Writings of George Washington*, 35: 229.

24. *Ibid.*

25. Montesquieu, *The Spirit of the Laws*, book 3, chaps. 1-2.

virtues or even human excellence more generally, but rather what he called political virtue, self-sacrifice for the common good.²⁶ In the Farewell Address, Washington uses virtue and morality in both their classical and their modern, Montesquieuan sense. Washington follows the classical teaching insofar as he explicitly connects individual virtue to human happiness. Yet his analysis is also distinctly modern and Montesquieuan insofar as he makes virtue and morality instrumental to political life, not the aim of politics. Virtue and morality are needed for public felicity because without them,

Let it simply be asked where is the security for property, for reputation, for life, if the sense of religious obligation *desert* the oaths, which are the instruments of investigation in Courts of Justice?²⁷

Washington venerates virtue and morality because they prompt citizens to act in a decent, truthful, and law-abiding manner. Virtuous citizens govern themselves voluntarily and respect the rights of others, thereby reducing the need for government to secure rights through the coercive force of law. Virtue and morality are indispensable because they make self-government possible.

Washington recognizes that for most men most of the time, virtue and morality are not choice-worthy in and of themselves. Republican government needs religion because virtue and morality depend on religious faith:

And let us with caution indulge the supposition, that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that National morality can prevail in exclusion of religious principle.²⁸

Washington concedes that a few may be good on account of their "refined education," but the less refined many require the fear of eternal damnation and the prospect of eternal salvation to fortify their character. Washington's view of human nature is soberly low; he reaffirms Madison's portrait of human nature in *Federalist*, No. 51, that men are not angels. Yet Washington's accommodation to

26. *Ibid.* For Montesquieu's clarification of what he means by virtue see book 3, chapter 5, note 9, and book 5, chapter 2.

27. Washington's emphasis. "Farewell Address," p. 229.

28. *Ibid.* cf. Montesquieu, *Spirit of the Laws*, book 24, chaps. 1 and 6.

human nature's lack of virtue goes beyond Madison's prescription. Whereas *The Federalist* accepts human nature as it is—and therefore emphasizes the separation of powers and checks and balances—Washington focuses explicitly on shaping the moral character of the American people. He endorses the use of religion for political purposes, something that Madison labeled “an unhallowed perversion of the means of salvation.”²⁹ Washington thought the Madisonian position failed to respect reason and the lessons of experience, both of which taught that patriotic republicans ought to recognize and endorse religion because only a religious citizenry could sustain republican self-government.

Government Support of Religion and the Common Good

Washington's critique of Madison's position brings forth an obvious question, especially to modern sensibilities that have been colored by the last 55 years of Supreme Court jurisprudence: Did Washington think that government support of religion was compatible with religious freedom? Does support not favor religion over irreligion, thus violating the neutrality that religious freedom guarantees? Washington's answer is relatively simple: religious liberty does not require governmental neutrality toward religion. He believed that republican government ought to favor religion and discourage irreligion, because religion favors republican government.

The more difficult question, which Washington was obviously aware of but never addressed theoretically, is how can government support religion without inviting discord among competing religious sects? Government support of religion invites irreconcilable theological differences to enter into the political arena. While one can speak of supporting religion in the abstract, it is difficult to do in practice. All religions are particular, and thus support of religion in general inevitably results in the support of some particular sects and not others. Positive government action easily can trigger partisan politics along religious lines, pitting sects against one another for scarce political resources, thus inviting political strife among groups least able to reconcile their differences. Madi-

29. James Madison, “A Memorial and Remonstrance Against Religious Assessments,” article 5, in *The Writings of James Madison*, ed. Gaillard Hunt (New York: G. P. Putnam's Sons, 1900-10), 2:187.

son sought to avoid this dilemma by denying religion as such direct government support, thereby limiting sectarian politics. From Washington's perspective, Madison's approach ignores the reality that republican government requires religion. Separating religious morality from state support unnecessarily destabilizes the very foundation upon which republican government rests.

Yet how Washington chose to support religion reflects his awareness of the problem that such support entails. In his public speeches and writings Washington used only non-sectarian language. His First Inaugural includes fervent supplications to "that Almighty Being who rules over the universe," homage to "the Great Author of every public and private good," and humble supplications to "the benign Parent of the human race."³⁰ His presidential proclamations of days of prayer and thanksgiving recognize "that great and glorious Being who is the beneficent author of all the good that was, that is, or that will be,"³¹ and render hearty thanks to "the Great Ruler of Nations."³² Washington's support of military chaplains also reflects the delicate balance that he sought to maintain. He not only wanted chaplains, but chaplains of every denomination so that each soldier could attend his own religious services. When the Continental Congress sought to appoint chaplains by brigade rather than at the regiment level, Washington protested. Since brigades were larger than regiments, the likelihood of unanimity of religious sentiment was reduced. Washington feared that the reduced number of chaplains could have "a tendency to introduce religious disputes into the Army," disputes over the denomination of the chaplain to be secured. Brigade chaplains, moreover, "in many instances would compel men to a mode of Worship which they do not profess." If employed incorrectly, military chaplains, whom Washington thought were absolutely necessary to the war effort, could have a deleterious effect by introducing "uneasiness and jealousy among the Troops."³³ Washington recommended to Congress that chaplains remain assigned at the level where most soldiers would have a chaplain of their own religious persuasion, thereby minimizing religious discord.

30. Washington, "First Inaugural Address," pp. 173-77.

31. Washington, "Proclamation. A National Thanksgiving," p. 64.

32. Washington, "A Proclamation," 1 January 1795, p. 180.

33. George Washington to the President of Congress, 8 June 1777, *Writings of George Washington*, 8:203.

Washington's efforts to maintain military chaplains at the regiment level exemplifies how he thought government could and should support religion yet maintain respect for the individual's rights of conscience. He included within the right of conscience the right not to be compelled to practice a mode of worship that one does not profess. He did not extend this to a more general right to abstain from worship, however, for he did command his soldiers to attend religious services. But if military superiors expected their soldiers to attend religious services, they ought to provide chaplains of the soldiers' denominations.

Washington also excluded from the rights of conscience a right not to be taxed for the support of religion. Military chaplains were legitimate because they supported the war effort, which itself was directed at the common good. Insofar as religion contributes to the common good, it is a legitimate object of taxpayer dollars. Washington thus explicitly disagreed with Madison's claim in the "Memorial" that compelling even three pence for the direct support of religion violated the principle of religious liberty.³⁴ Washington was always very careful, however, to link public support of religion to a public good. In the case at hand, Washington explicitly connected military chaplains to the discipline and morale of the armed forces. Washington's definition of the public good was expansive—it included the formation of individual's characters—but, nonetheless, he did not promote support of religion as an end in and of itself.

Washington's position is thus most similar to those who have suggested the "secular purpose" rule for Establishment Clause jurisprudence—government may support religion so long as it puts forth a legitimate secular reason for doing so. He probably would have disliked the term "secular purpose," as that term itself is unnecessarily hostile toward religion, and instead favored "civic policy" or just "the common good"—government may support religion insofar as it does so in a manner that supports the common good. Washington would have disagreed with today's "strict-separationists," who claim that government may not favor religion over irreligion. He also would have disagreed, though less emphatically, with "non-preferentialists," who claim government may support religion if it supports all religions equally. Washington's position is more discriminating. Government should

34. Madison, "A Memorial and Remonstrance," article 3, 2:185-86.

support religion because religion supports republican government. By implication, government ought not support those religions that maintain principles hostile toward republicanism or advocate behavior contrary to good citizenship.³⁵

The Limits of the Right to the Free Exercise of Religion

Just as concern for the common good sanctions governmental support of religion, it also defines the legitimate limits of the right to the free exercise of religion. When Madison recognized the right of religious liberty in the "Memorial and Remonstrance," he specified limits on the realm of legitimate governmental action. Washington agreed with this formulation, as did all social contract theorists and practitioners at the time. He disagreed with Madison, however, on where the lines demarcating the right of free exercise should be drawn. Whereas Madison sought to establish the precise rule that government may not be cognizant of religion,³⁶ and therefore may not act in a manner that penalizes religion as such, Washington found the natural boundaries of the right to free exercise established by the reasonable demands of maintaining the social contract. To put the matter in more Washingtonian language, Washington held that the right to religious liberty must recognize the legitimate demands of good citizenship.

Washington addressed this theme most directly in a series of letters written soon after his assumption of the presidency. Upon

35. Thomas G. West claims that the American Founders in general maintained this position. I think it is more properly assigned to Washington and not to Madison or Jefferson. See Thomas G. West, "Religious Liberty: The View from the Founding," in *On Faith and Free Government*, ed. Daniel C. Palm (Lanham, MD: Rowman and Littlefield Publishers, Inc., 1997), pp. 3-27.

36. Madison, "Memorial and Remonstrance," article 1. Michael McConnell, the leading recognized scholar of the original intentions of the Free Exercise Clause, claims article 1 of Madison's "Memorial" sets forth an argument consistent with the interpretation that finds in the Free Exercise Clause a constitutional right for religious citizens to exemptions from all laws that, in their effect, burden religious exercise. Michael W. McConnell, "The Origins and Historical Understanding of Free Exercise of Religion," *Harvard Law Review* 103 (1990): 1453. For a competing interpretation of the original intentions of the Free Exercise Clause see Philip A. Hamburger, "A Constitutional Right of Religious Exemptions: An Historical Perspective," *George Washington Law Review* 60 (1992): 915-48. Hamburger, it should be noted, fails to address McConnell's interpretation of Madison. For a criticism of McConnell's interpretation of Madison, see Muñoz, "James Madison's Principle of Religious Liberty."

his election, Washington received numerous congratulatory letters, including letters from churches of several religious denominations. Washington's response to these groups captures the truly revolutionary character of the American regime. As Harry Jaffa has written and as Washington sought to make clear, for the first time in human history political citizenship would no longer be based upon religious affiliation.³⁷ In an act of the highest statesmanship, Washington staked his considerable personal prestige on the new nation's commitment to religious freedom. In doing so, he not only demonstrated his personal commitment to this right but pledged the nation to it as well.

These letters also make clear, however, that religious freedom does not supplant the duties of republican citizenship. Washington's epistle to the Baptists of Virginia captures the theme of his postelection letters. In their letter to Washington, the Baptists expressed concern that the Constitution did not sufficiently secure the liberty of conscience. In his response, Washington assured them that "I would have never placed my signature to it [the Constitution]" if the general government might render the liberty of conscience insecure. He continued, then, to explain and define what the liberty of conscience secures:

For you, doubtless, remember that I have often expressed my sentiment, that every man, conducting himself as a good citizen, and being accountable to God alone for his religious opinions, ought to be protected in worshipping the Deity according to the dictates of his own conscience.³⁸

The right to liberty of conscience secures for the individual the freedom to worship the Deity according to the dictates of one's conscience. This means that government ought not impose a mode of worship upon an individual that he or she finds objectionable.

But what about individual modes of worship that the government finds objectionable? To take an extreme but historical example, what about the Aztec religion, which ordained the sacrifice of human beings in supposed obedience to a divine

37. Harry V. Jaffa, *The American Founding as the Best Regime: The Bonding of Civil and Religious Liberty* (Claremont, CA: The Claremont Institute for the Study of Statesmanship and Political Philosophy, 1990), p. 25.

38. George Washington to the United Baptist Churches of Virginia, May 1789, *Papers of George Washington*, Presidential Series, 2:424.

command? If government prevents this, does it fail to protect the individual's rights of conscience? And what if government commands the performance of acts that an individual believes violates his religion? May government legitimately prescribe such actions?

Washington's answer to these questions is clear: a condition of civil society, and thus of a government capable of protecting the rights of conscience, is that individuals must conduct themselves as good citizens. In his letter to the Baptists, the modifying clause, "conducting himself as a good citizen," defines the limits of the right to liberty of conscience. The right to religious freedom does not include the right to perform actions contrary to the duties of citizenship. The state possesses no affirmative obligation to tolerate actions opposed to good citizenship, including religiously motivated actions. And the state may legitimately expect all citizens to perform the reasonable duties of citizenship, even those that religious citizens find objectionable. Washington does not define here what the obligations of good citizenship include, but whatever they are, they stand as a precondition to having one's rights secured.

Washington faced this difficult issue concretely in his dealings with the Quaker religion. Most Quakers at the time interpreted their religious precepts to forbid any kind of participation in the armed forces. Washington encountered Quaker pacifism as early as 1756 during the French and Indian War, when six Quakers were drafted into the Virginia militia and sent to serve under his command. In Washington's own words, they would "neither bear arms, work, receive pay, or do anything that tends, in any respect, to self-defence [sic]."³⁹ He faced similar resistance throughout the Revolutionary War, which we shall discuss below. In 1789, the Quakers wrote to Washington to explain their principle of pacifism and "to assure thee [Washington], that we feel our Hearts affectionately drawn towards thee, and those in Authority over us."⁴⁰ Washington's response to the Quakers is a model of mag-

39. George Washington to Robert Dinwiddie, 25 June 1756, *Writings of George Washington*, 1:394. Washington refused to discharge the six Quakers on account of their religious beliefs.

40. The Religious Society called Quakers, from their Yearly Meeting for Pennsylvania, New-Jersey, and the western Parts of Virginia and Maryland, 28 September-3 October 1789 to George Washington, *Papers of George Washington*, Presidential Series, 4:267.

nanimity and charity, especially considering that it comes from a life-long military commander. Nonetheless, it is less than an absolute endorsement of the Quakers, and it delivers a stinging criticism. Washington writes:

The liberty enjoyed by the People of these States, of worshipping Almighty God agreeably to their Consciences, is not only among the choicest of their *Blessings*, but also of their *Rights*—While men perform their social duties faithfully, they do all that society or the state can with propriety demand or expect; and remain responsible only to their Maker for the Religion, or modes of faith, which they may prefer or profess.

Your principles & conduct are well known to me—and it is doing the People called Quakers no more than Justice to say, that (except their declining to share with others the burthen of the common defense) there is no Denomination among us who are more exemplary and useful Citizens.⁴¹

Washington recognizes the rights of conscience as a liberty enjoyed by all Americans, and thus by the Quakers. At the same time, however, he refuses to recognize the political legitimacy of their refusal to take up arms. Society and the state can properly expect all citizens, even religious pacifists, to share in the burden of the common defense. To the extent that the Quakers refuse to fight in defense of their country and of their rights, even if for religious reasons, they are not exemplary or useful citizens.

Perhaps in anticipation of the Quakers' disappointment with his polite but stern rebuke, Washington concludes his letter charitably:

I assure you very explicitly that in my opinion the Conscientious scruples of all men should be treated with great delicacy & tenderness; and it is my wish and desire, that the Laws may always be as extensively accommodated to them, as due regard to the Protection and essential Interests of the Nation may Justify and permit.⁴²

When perceived religious obligations conflict with fulfilling the duties of citizenship, Washington's "wish and desire" is that the laws may be accommodating. To "wish and desire" that such may be the case is to express a hopeful opinion of a particular outcome, but it by no means promises that outcome or in any way

41. *George Washington to the Society of Quakers, October 1789, Papers of George Washington, Presidential Series, 4:266.*

42. *Ibid.*

indicates that the state has an affirmative obligation to reach it. Washington, moreover, explicitly calls attention to limitations on making legal accommodations to religion. The protection and the essential interests of the nation—that is, the common good—must first be recognized and secured. Washington establishes a clear hierarchy when religious practices clash with legitimate obligations of citizenship: the political is higher than the religious. Religious individuals must accommodate their conscientious scruples to the essential interests of the nation in matters of reasonable social duties.⁴³

We see this same formula in Washington's letters to the Roman Catholics of America⁴⁴ and to the Hebrew Congregation in Newport. In the latter, perhaps his most famous address to any religious society, Washington writes:

It is now no more that toleration is spoken of, as if it was by the indulgence of one class of people, that another enjoyed the exercise of their natural rights. For happily the Government of the United States, which gives to bigotry no sanction, to persecution no assistance requires only that they who live under its protection should demean themselves as good citizens, in giving it on all occasions their effectual support.⁴⁵

In two beautiful sentences, Washington recognizes the revolutionary character of the American regime. The rights and privileges of United States citizenship do not depend on religious affiliation. These rights, however, are conditioned by corresponding duties, the first of which is that every individual must "demean" himself a good citizen.

Washington's letters contain a twofold approach to the protection of religious liberty. On those matters that do not involve the essential interests of the state or the duties of good citizenship, the state should remain quiet. The state, for example, cannot properly dictate the tenets of any religion or prescribe any particular mode of worship. The state, moreover, cannot condition the rights and privileges of citizenship on the basis of religious affiliation. The most sacred rights of republican

43. Cf. John West, "George Washington and the Religious Impulse," p. 285.

44. George Washington to the Roman Catholics in America, 15 March 1790, *Papers of George Washington*, Presidential Series, 5: 299-300.

45. George Washington to the Hebrew Congregation in Newport, Rhode Island, 18 August 1790, *Papers of George Washington*, Presidential Series, 6:285.

citizens, the rights to property and to participate in rule through voting and holding office, for example, cannot depend on one's theological beliefs or lack thereof. On matters involving the essential interests of the state or the duties of citizenship, however, the state has no obligation to recognize religious dissent. If it so chooses, the state may accommodate conscientious religious scruples—Washington expressed his wish and desire that it would—but it has no obligation to do so. On matters pertaining to the essential interests of the nation and the duties of good citizenship, religious individuals only can expect to be tolerated.

The manner in which Washington dealt with Quaker pacifism during the Revolutionary War offers a revealing case study of the degree to which he understood religious liberty to include an element of toleration only, with toleration defined as a conditional willingness to bear with that which one disagrees. At times, General Washington sought to accommodate the Quakers' refusal to bear arms. When the war shifted to Pennsylvania in early 1777, for example, he wrote to the Pennsylvania Council of Safety that

it is absolutely necessary, that every Person able to bear arm (except such as are Conscientiously scrupulous against it in every Case), should give their personal Service, and whenever a part of the Militia is required only, either to join the Army or find a Man in their place.⁴⁶

Washington did not mention the Quakers by name, but it is fair to assume that he anticipated their religious objection to military service. Later in that same year, he sent home several Virginia Quakers who had been drafted into the militia.⁴⁷

At other times, however, Washington was much more harsh toward the Quakers, especially those in Pennsylvania whose neutrality was interpreted by many to be, in effect, pro-British Toryism. In May 1777, he wrote to Pennsylvania Governor William Livingston:

I have been informed by Colo. Forman, that the Quakers and disaffected are doing all in their power to counteract your late Militia Law; but I

46. George Washington to the Pennsylvania Council of Safety, 19 January 1777, *Writings of George Washington*, 7:35. Also see Washington's letter to the same dated, 29 January 1777.

47. Boller, "George Washington and the Quakers," p. 73.

hope, if your Officers are active and Spirited, that they will defeat their evil intentions and bring their Men into the Field.⁴⁸

During the British occupation of Philadelphia, Washington's ire peaked. When giving orders to impress supplies from the countryside, Washington twice commanded his officers to "take care, that, the unfriendly Quakers and others notoriously disaffected to the cause of American liberty do not escape your Vigilance."⁴⁹ In March 1778, Washington went so far as to order his officers to prevent Quakers from entering Philadelphia so they could not attend their religious services, "an intercourse," Washington explained, "that we should by all means endeavour [sic] to interrupt, as the plans settled at these meeting are of the most pernicious tendency."⁵⁰

The Quaker situation Washington faced anticipates the contemporary Free Exercise jurisprudential question of whether religious citizens possess a right to exemptions from generally applicable state actions that burden religious exercise. The Quakers of Washington's time made the same claim that Seventh Day Adventists,⁵¹ the Amish,⁵² and members of the Native American Church⁵³ have made before the Supreme Court: equal respect for religious freedom requires exemptions from neutral but burdensome laws. Although one should hesitate to apply actions from one historical context to another, a Washingtonian interpretation to the Free Exercise Clause would not admit a constitutional right to religious exemptions. Washington did not treat the Quakers' religious pacifism as a right. He was inclined to accommodate the Quakers' sincere religious exercises and at times he was willing to permit the Quakers not to fight. But he never acted under the presumption that the right to religious freedom entitled the Quakers to different treatment because of

48. George Washington to Governor William Livingston, 11 May 1777, *Writings of George Washington*, 8:44-45.

49. George Washington, Power to Officers to Collect Clothing, Etc., November 1777, *Writings of George Washington*, 10:124. See also Washington's commands to Colonel John Siegfried, 6 October 1777, *Writings of George Washington*, 9:318.

50. George Washington to Brigadier General John Lacy, Junior, 20 March 1778, *Writings of George Washington*, 11:114.

51. *Sherbert v. Verner*, 374 U.S. 398 (1963).

52. *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

53. *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990).

their religious beliefs. His orders to his officers to be vigilant in impressing Quaker property, moreover, reflects his belief that they failed to contribute their fair share to the war effort and that their refusal to fight, whatever the reason, was in some sense unjust to other more dutiful citizens. His command to prevent Quakers from attending religious services, furthermore, clearly evinces his belief that religiously motivated actions could be prevented if they were antithetical to the interests of the nation. Washington permitted or constrained Quaker religious exercises as the common good dictated. His actions during the war perfectly match the theory expressed in his presidential letters to the various religious denominations. And thus though Washington writes against mere "toleration" in his letter to the Hebrew Congregation, his understanding of religious liberty, both as espoused in his letters and reflected in his actions, contains an important element of this principle.

For the most part, Washington did not force Quakers into combat. He attempted to minimize the tension between the Quakers and the war effort just as he sought to minimize religious disagreements within the army by maintaining chaplains at the regiment level. Washington's consistent attempt to reduce conflict between government and religious sentiment indicate that he would support discretionary legislative or executive religious accommodations. But though religious exercises are of the rights of mankind, they are legitimately and necessarily limited within civil society. Just as religion should be encouraged and accommodated as much as possible because it is profoundly connected to moral foundations necessary for good government, religious exercises legitimately can be limited when required for the common good.

This brings forth a final question: If Washington respected individuals' sincerely held religious beliefs, why then, when these beliefs came into conflict with the interests of the nation, did he favor the government over the individual? Why not favor the individual's perception of his religious duties over the government's interests?

As one might expect, Washington does not offer a theoretical discussion or a carefully articulated explanation of his position. In a letter to the General Assembly of the Presbyterian Church, however, he gives a brief indication of how he thought

the tension between an individual's religion and governmental interests could be resolved. The Presbyterians were the first religious group to write to Washington after his election to the presidency. Their letter was full of high praise. In particular, the Presbyterians testified,

[we] esteem it a peculiar happiness to behold in our chief Magistrate, a steady, uniform, avowed friend of the Christian religion, who has commenced his administration in rational and exalted sentiments of Piety, and who in his private conduct adorns the doctrines of the Gospel of Christ, and on the most public and solemn occasions devoutly acknowledges the government of divine Providence.⁵⁴

Washington's response to the Presbyterians, like all of his responses to various congregations that wrote him at this time, mirrors their letter to him. The Presbyterians' letter began by announcing their adoration of God for giving to the United States a man of such talents and public virtue. Washington's response, in turn, begins by thanking the Presbyterians and reiterating his dependence on the "assistance of Heaven" for his arduous undertakings.⁵⁵ The Presbyterian letter then praises Washington for his Christian character. Washington's response at this point takes an interesting turn. Rather than reiterating his Christian beliefs, he offers a statement on the new nation's dedication to the principle of religious liberty, even though the Presbyterians' letter did not broach the subject. At the very point that the Presbyterians become sectarian, Washington becomes ecumenical. He indirectly instructs the Presbyterians on the nonsectarian character of the new American regime. While he will affirm his reliance on providence and heaven, he will not explicitly invoke the name of Jesus Christ.

Here we see a subtle yet instructive example of Washington's strategy for minimizing the conflict between the duties of citizenship and the sentiments of religion. The United States can avoid unnecessarily highlighting tensions between civic duties and religious sentiments if it avoids sectarian rhetoric and policy. Washington's letter then goes one step further.

54. General Assembly of the Presbyterian Church to George Washington, 30 May 1789, *The Papers of George Washington*, Presidential Series, 2:422.

55. George Washington to the General Assembly of the Presbyterian Church, May 1789, *The Papers of George Washington*, Presidential Series, 2:420-21.

He writes,

While all men within our territories are protected in worshipping the Deity according to the dictates of their consciences; it is rationally to be expected from them in return, that they will be emulous of evincing the sanctity of their professions by the innocence of their lives and the beneficence of their actions; for no man, who is profligate in his morals, or a bad member of the civil community, can possibly be a true Christian, or a credit to his own religious society.⁵⁶

Government can rationally expect that all religious citizens will be good citizens because no true religion would encourage its followers to be bad members of the American civil community. I highlight Washington's use of the term "rationally," because in it lies the ultimate justification for the government's encroachment upon an individual's religious sentiments. The American polity, founded upon the self-evident truth that "all men are created equal," is in its founding principles and constitutional government a rational regime. It accords with the transcendent principles of "nature and nature's God" as apprehended by man using his natural reason. And thus that which is essential to the common good of the nation is itself reasonable, defensible, and just.

The religious sentiments of "bad members of the civil community," including those who fail to fulfill their civic duties for religious reasons, can legitimately be limited because these sentiments cannot possibly be true to Christianity or, Washington suggests, to true religion simply. The precepts of true religion and good citizenship are not in tension in a regime grounded upon the principles of "nature and nature's God." In demanding good citizenship and only sometimes tolerating religious actions that contravene good citizenship, the state offends neither true religion nor a rational understanding of justice.

Conclusion

Washington's twofold approach to the right of the free exercise of religion—government noninterference grounded on right regarding matters not affecting the common good, discretionary toleration for matters involving the duties of citizenship and the essential interests of the nation—is perfectly compatible with his

56. *Ibid.*

Establishment Clause position of government support of religion. Both positions, in fact, emerge from the principle that the state may permissibly take action to foster the common good of the community. Washington thought religion not only a moral duty for the individual, but also a public good for the polity. He thought it proper, accordingly, to support and endorse religious sentiments that support the common good. The state, similarly, may legitimately limit religious exercises so long as those limitations are connected to the common good. On matters that do not concern the common good—and most religious exercises would fall into this category—the state ought not impose unnecessary limits.

George Washington did not participate in the drafting of the First Amendment (of course, neither did Thomas Jefferson). One cannot and ought not claim that a Washingtonian understanding clearly represents the original intentions of the drafters or the ratifiers of the First Amendment. An investigation of Washington's thought, however, reveals that significant differences existed among the leading Founding Fathers on the meaning and limitations of the right to religious liberty. Washington would not "strictly separate" religion from politics or recognize a right to religious exemptions from neutral but burdensome laws. Judicial scholars and judges, accordingly, cannot claim that these interpretations represent the Founding Fathers' understanding of such matters. Washington, moreover, offers a theory of religious liberty capable of unifying the two religion clauses of the First Amendment. He teaches that both the ends and the means of government support and limitations of religious exercise must be defended in terms of public goods. His writings and actions offer a model of how a religiously diverse people can think and act in ways that safeguard both the individual's religious freedom and the community's legitimate concern for the common good. Although not the "Father of the Constitution," the father of our country stands ready to inform our deliberations on the meaning of religious freedom should we choose to enlist him.