

THE ORIGIN AND DEVELOPMENT IN VIRGINIA
OF THE CONCEPT OF SEPARATION
OF CHURCH AND STATE

THE ORIGIN AND DEVELOPMENT IN VIRGINIA
OF THE CONCEPT OF SEPARATION
OF CHURCH AND STATE

A Dissertation
Presented to
the Faculty of the Graduate School
Southern Baptist Theological Seminary

In Partial Fulfillment
of the Requirements for the Degree
Doctor of Theology

by
Victor Edsel Mantiply
May 1959

**SOUTHERN BAPTIST
THEOLOGICAL SEMINARY LIBRARY
2825 LEXINGTON ROAD LOUISVILLE 6, KY.**

TO MARY ANN
AND MARK

143264

THESES
Th.D.
M3190
ORIGINAL

ACKNOWLEDGMENTS

ACKNOWLEDGMENTS

The subject of this dissertation was first suggested to me by Dr. William L. Lumpkin, formerly professor of church history at Southern Seminary, when I indicated an interest in studying church-state relations in Virginia. I am indebted to him, also, for the wise guidance and counsel during the period of research and the early stages of the writing. To Professor William A. Mueller I am indebted for his able assistance and encouragement during the past year when the final copy was prepared.

My sincere appreciation is expressed to Dr. Leo T. Crismon and the library staff for their assistance, especially for help in locating and securing books and periodicals not available in libraries of this area. My appreciation is also expressed for the use of materials in the following libraries: Presbyterian Theological Seminary Library, Louisville, Kentucky; University of Louisville Library, Louisville, Kentucky; Virginia State Library, Richmond, Virginia; Virginia Baptist Historical Society Library, Richmond, Virginia; and University of Richmond Library, Richmond, Virginia.

I am also grateful to Miss Joyce Whitenack who typed the rough draft, to Mr. Hargus Taylor for proofreading and offering helpful suggestions, and to Mr. L. O. Mills for proofreading the final copy. Mrs. Robert

Rosenbaum, who typed the thesis, has also given helpful suggestions.

My deepest debts of gratitude are to my wife, who has endured with patience the long struggle of graduate study; to my parents who made it possible for me to receive an education; and to the people of the Ghent Baptist Church and the Southside Baptist Church who graciously permitted their pastor to spend a portion of his time in writing a thesis.

Victor Edsel Mantiply

Louisville, Kentucky

March, 1959

TABLE OF CONTENTS

TABLE OF CONTENTS

	PAGE
ACKNOWLEDGMENTS.	iv
TABLE OF CONTENTS.	vii
INTRODUCTION	xiv
Statement of the Problem	xv
Definition of Terms.	xviii
Scope of the Study	xxi
CHAPTER	
I. NATURAL RIGHTS AND SEPARATION.	1
The Origin and Meaning of the Concept.	2
Ancient Roots of Natural Rights.	2
John Locke, a Modern Advocate.	5
Natural Rights A Part of the Enlighten- ment Thinking.	10
Natural Rights in Political Leaders.	14
Thomas Jefferson	15
Religion to Jefferson a private affair	16
Evidence in <u>Notes on Virginia</u>	17
Natural rights in Statute of Religious Liberty.	19
The role of reason in religion	21
James Madison.	24
Early schooling at Princeton	25
Madison's work on the Virginia Bill of Rights.	26

CHAPTER

PAGE

Natural rights in his opposition to assessment.	30
Natural rights in the "Memorial and Remonstrance".	31
George Mason	35
Natural rights in the Virginia Bill of Rights.	36
Other contributions of Mason for natural rights	39
Patrick Henry.	41
General relation to the religious struggle	41
His support of natural rights.	44
The Presbyterians and Natural Rights	44
Early Work of Samuel Davies.	45
Evidence of Natural Rights in Presby- terian Petitions	48
Contributions of Presbyterian Leaders to Natural Rights.	52
The Baptists and Natural Rights.	57
Evidence of Natural Rights in Baptist Petitions.	58
The Contribution of John Leland.	62

CHAPTER	PAGE
II. POLITICAL LIBERTY AS A FACTOR IN SEPARATION.	68
Growing Resistance to Great Britain.	69
Colonial Virginia and Self-government.	70
Taxation and the Status of the Colonies.	71
Growing Resistance in Religion	73
Individualism and Social Contract.	76
In Patrick Henry	77
In George Mason.	77
In Thomas Jefferson.	78
In James Madison	78
In John Leland	79
The Revolution a Time of Opportunity for Dissenters	82
Presbyterian Agitation During the Revolution	83
Baptist Contention that Religious Liberty Must Accompany Civil Liberty	87
Religious Struggle a Part of the Larger Revolution	91
Some Views of the Relation of the Reli- gious and Political Struggle	92
Reasons why Religious Struggle a Part of Larger Revolution	94
The same causes.	94

CHAPTER	PAGE
The same logic	95
The same people.	96
III. DOCTRINE OF THE CHURCH AND SEPARATION.	100
Doctrine of the Church in Virginia Churches	102
Church of England.	102
Presbyterians.	102
Baptists	104
The Church of England Views and Separation .	106
A State-church from Its Beginning in	
Virginia	106
Importance of the Vestries	107
Evidence of Episcopal Dislike of	
Separation	108
The work of the Conservatives.	111
Petitions against disestablishment . . .	112
Petitions for assessment and	
incorporation.	113
The Free Church View and Separation.	124
Presbyterians.	125
Davies and toleration of dissenters. . .	126
The church a voluntary association. . .	129
Freedom of the individual conscience . .	132
Voluntary support of the churches. . . .	133
Religion as something separate from	
the state.	139

	xii
CHAPTER	PAGE
Baptists	141
Growth and influence of Baptists	141
The church a free voluntary association	144
Liberty of the individual conscience	150
Free voluntary support of churches	156
Freedom from state domination or control	160
IV. SOCIAL AND ECONOMIC SOURCES OF SEPARATION.	167
Social Factors	168
Social Differences between Eastern and	
Western Virginia	169
Social Revolution between 1750 and 1800.	170
Dissenter's Achievement of Status.	171
Economic Factors	174
"Parsons Cause" Case	174
Resistance against State Taxes for the	
Establishment.	176
Resistance against Assessment.	181
"Bill Concerning Religion" of 1779	182
Revival of assessment in 1784.	183
Madison's opposition to assessment	184
The "Memorial and Remonstrance".	186
Support of Madison by dissenters	190
Final Disposal of the Church's Property.	193

	xiii
CHAPTER	PAGE
Baptist Opposition to the Episcopal Church's Possession of the Property. . .	195
Baptist Position the Logical Application of a Principle	200
CRITICAL SUMMARY	204
BIBLIOGRAPHY	212
APPENDIX	223

INTRODUCTION

INTRODUCTION

I. STATEMENT OF THE PROBLEM

The problem under consideration in this dissertation is "The Origin and Development in Virginia of the Concept of Separation of Church and State." The purpose will be to probe into the historical facts of the situation in order to ascertain why the church and state were separated. That is to say, what were the ideas at work in Virginia which in their full development were responsible for the events of separation there; what was the motivating force, or combination of forces which brought about the disestablishment of the Established Church there; what were the factors that made Virginia one of the first places where separation was achieved in the United States; and finally what were the reasons why separation came at the time it did.

The problem of church-state relations is a crucial one for modern Christianity. This is evidenced both in current theological discussions and in the attention given in recent years to the subject by various authors. As a practical matter it receives almost daily notice in the newspapers and in the thinking of American church leaders. The separation of the church and state in the United States has been perhaps the distinctive American contribution to Christianity up to this time. For the first time on a

large scale two powers, which have had varying degrees of connection throughout the history of Christianity, have become separated from each other in principle. This story has been the subject of a great and ever-growing literature. The most significant writing beyond doubt is the definitive work of Anson Phelps Stokes, Church and State in the United States.¹ Stokes gives a comprehensive sweep of the subject from its earliest beginning in America to the present. He rightly recognized that the struggle for separation in Virginia was crucial for all of America, for "it influenced the American theories of Church-State separation and religious freedom more than any other historical factor."² There the battle was more severe than in other states, and consequently the victory was more decisive. The leaders in the fight in Virginia were destined to play a large role in the victory of the principle of separation in the foundation of the national government. For these reasons Virginia has a special significance.

The history of religious liberty and separation of church and state in Virginia has received a rather full treatment. The best single work and one that has been most helpful in this study is that of H. J. Eckenrode,

¹Anson Phelps Stokes, Church and State in the United States, 3 vols. (New York: Harper and Brothers, 1950).

²Stokes, op. cit., I, 366.

Separation of Church and State in Virginia.³ He was concerned particularly with the history of the legal enactments. A recent (1951) doctoral thesis at Duke University, "The Struggle for Religious Liberty in Virginia 1740-1802," by Daniel Durham Rhodes, also gives an interpretative history with primary emphasis on religious liberty. William Taylor Thom has treated the history of religious freedom but with particular emphasis on the Baptists in his Struggle for Religious Freedom in Virginia--The Baptists.⁴ Another work worthy of mention along with these is Charles F. James' Documentary History of the Struggle for Religious Liberty in Virginia,⁵ a collection of most of the important documents in the struggle and interpreted with a Baptist slant. All of the above mentioned works were of great help in the present investigation, but none of these does what we have set out to do here.

There are several reasons why this subject is of keen interest to me. First, it is a very live issue in current theological thinking, and one which demands an

³H. J. Eckenrode, Separation of Church and State in Virginia (Richmond: Special Report of the Department of Archives and History, 1910).

⁴William Taylor Thom, Struggle for Religious Liberty in Virginia--The Baptists (Baltimore: Johns Hopkins Press, 1900).

⁵Charles F. James, Documentary History of the Struggle for Religious Liberty in Virginia (Lynchburg, Virginia: J. P. Bell Co., 1900).

informed opinion if we are to solve the church-state problems which face us in this day. Second, it is a subject of interest to all Baptists who hold the separation of church and state as one of their fundamental beliefs. I would like to set in proper focus the Baptist contribution to the origin of separation in Virginia. Third, being a native of Virginia I have more than just a passing interest in Virginia history, and desired to study what is perhaps one of the most significant contributions of Virginia to the national life. Fourth, the subject itself is of tremendous significance as a part of the history of American Christianity, and, as far as I can tell, never has received a systematic treatment. Fifth, the separation in Virginia was more dramatic and intense than in the other states, and therefore a study of its origin is most interesting.

II. DEFINITION OF TERMS

There are certain terms that demand definition at the outset to clarify their use in this study. The first of these is "church." There is no single definition that will suit all uses since it is used in several ways. The church is used sometimes for the collective body of believers, the forces of organized religion, whose primary interest is spiritual and ethical as opposed to the state

whose interest is social and governmental. When used in the phrase "church and state" this generic meaning is more often intended. Sometimes the word "church" refers to a specific denomination of Christians organized according to their own governmental pattern such as the Presbyterian Church. Again, it may mean a local group of believers organized for worship in a specific meeting house such as the Baptist Church at Occaquon. The church is used with all three meanings in this dissertation.

The "state" is used in at least two senses: to refer to the political body, or any body of people occupying a definite territory and politically organized under one government; and to refer to a division of the United States of a sovereign political group such as the State of Virginia. Virginia actually became a state in the latter sense only under the United States Constitution. However, even while yet a colony under British control it can be spoken of as a state in the former sense. The meaning of the state as a people in a definite territory organized politically under one government is the use intended in the phrase "church and state."

The terms "religious liberty" and "religious freedom" are used interchangeably to mean the right of individuals to the exercise of religious pursuits and worship without interference or molestation by the state; it means the

state will not forbid what the religion requires, nor require one to do what religion forbids, as long as fundamental human rights are not violated. To some extent this is the same meaning given to "freedom of conscience" in Virginia in the period under study, except that freedom of conscience usually stresses the individualistic emphasis, while religious liberty may also refer to the general condition in a state.

"Separation of church and state" is not synonymous with religious liberty, though often thought to be so. Separation of church and state has to do with the implementation of the religious liberty principle in the legal affairs and in social and religious thought. It is the legal and constitutional provision which forbids any action involving the interlocking of the official function of the state with the official or institutional function of any church. From this definition it can be seen that full religious liberty is not achieved until complete separation of church and state is accomplished.

The word "Establishment" refers specifically to the unique relation of the Church of England to the government of the colony in terms of which it was the only church recognized by law, an institution standing in a distinctive relation to the state by virtue of state support through taxes. "Disestablishment" refers to the

termination of this unique relation by legal action. Disestablishment is the negative aspect of separation. For complete separation there is required positive legal action guaranteeing the future impossibility of establishment.

A word not commonly used today is "glebe" which in Colonial Virginia referred to a tract of land purchased for the Established Church to be used by the minister of the parish. Usually there was a house of residence on it, and farm land that could be used by the minister for his own living. These came to be fairly extensive holdings by the time of the Revolution.

III. SCOPE OF THE STUDY

This is not a history of the struggle for separation. That has already been done. A knowledge of the history is presupposed in this inquiry. A very brief history, however, is included in this section to give the reader the central events of the struggle. What is attempted here is an inquiry into the causative forces in Virginia which were responsible for the removal of the Established Church from a position of privilege by a special state connection; an inquiry into forces responsible for the guarantee to every citizen of full religious liberty by complete separation of the church from the state. I fully recognize

that any attempt to deal with causative forces in history imposes limitations, for it is humanly impossible to marshal all of the facts. Even if all the facts were known and available the task of interpretation involves of necessity a degree of subjectivity on the part of the writer. Moreover, much valuable information about the life of the period under study has not been preserved. The task is therefore limited to this extent. Nevertheless, using what materials are available, valuable insights may be derived from such a study which can instruct the serious student concerning the origin of what has come to be the accepted pattern of church-state relations in this country.

This treatment is limited to Virginia for it would be a task far too great to trace streams of influence in many states throughout history. By the same token the subject itself carries with it date limitations which confine it roughly to the period from 1750 to 1802. Within this period separation originated and was consummated in Virginia. Between 1770 and 1787 the struggle was the greatest, and this period therefore demands the greatest attention. It is necessary, however, to treat of events and trends already beginning by the middle of the century, for this marks the beginning of the growth of the dissenter movement as well as growing political tension which led to the Revolution. The year 1802 is suggested as the other

terminus since at this time the property settlement became final. Certainly the property question belongs to any consideration of separation in Virginia.

Concerning source material a number of primary and secondary sources have been consulted. Primary sources have been numerous: petitions to the legislature on the subject sent in by individual churches, denominations, and counties, which are available in the libraries in Richmond, Virginia; newspapers and extant sermons of the period; the writings of men important in the struggle such as John Leland, Thomas Jefferson, and James Madison; legal enactments of the state found in William Walter Hening, Statutes At Large: A Collection of All the Laws of Virginia;⁶ and Charles F. James, Documentary History of the Struggle for Religious Liberty in Virginia.⁷ Many secondary sources also have been used including biographies of significant men of the controversy, numerous histories giving attention to the period, and a great number of monographs and magazine articles dealing with one or more aspects of the subject.

⁶William Walter Hening, Statutes At Large: A Collection of All the Laws of Virginia, 13 vols. (Richmond: Printed for the author, 1819-1823).

⁷James, op. cit.

As a result of the investigation certain central ideas which were at work in the development of the concept of separation seem to stand out above all else. These are here examined in terms of their origin, their development in the thinking of persons significant in the Virginia struggle, and their influence on separation of church and state in Virginia. Accordingly, Chapter I will consider natural rights, or the philosophical ground for justification of separation. Natural rights was the expression most used to indicate the individualistic claim to religious liberty over against the claims of society and the state, and used most by Virginia's noted political leaders as well as certain religious groups. Chapter II discusses the idea of political liberty during the Revolution in terms of its bearing upon religious liberty and the achievement of separation of church and state. Chapter III recognizes the tremendous influence of the idea of the free church held by the Baptists and Presbyterians, as contrasted with the idea of the church held by members of the Established Church, and later the Protestant Episcopal Church. This religious factor of the influence of the free church was perhaps the most significant one in the ultimate triumph of separation over the state-church. Chapter IV

treats of social and economic reasons for separation. These have to do primarily with social changes in Virginian life, the questions of state taxes and assessment for religious purposes, and the property question. These matters also bring to light a significant contribution of dissenters, particularly the Baptists. Finally is given a critical summary.

A brief history of separation is in order. The Church of England was the Established Church of the Colony of Virginia from the beginning, and other religious groups were few and weak until around 1750. Presbyterians became stronger after 1750 due to the work in the Hanover Presbytery of Samuel Davies who won a measure of toleration for Presbyterians. Baptists were strong enough to receive notice by persecution by 1768, and after 1770 grew rapidly. Due to the rising strength of these dissenters and a growing democratic spirit demanding liberty both political and religious, a series of events gradually led to separation. The first of these was the adoption of the Virginia Bill of Rights on June 12, 1776, which guaranteed to the citizens the right of free exercise of religion according to the dictates of conscience. This was followed by the action

of the first legislature under the new independent government in December, 1776, which abolished the state levy for religion for dissenters, and suspended for a year the levy for Church of England members. This suspension was renewed annually until made final in 1779. In 1779, Thomas Jefferson's bill for religious freedom was introduced to the legislature, but failed to pass as did a counter-proposal, a "bill for religion," providing for assessment for religious purposes. In 1784, all ministers were placed on an equal basis in performing marriages. In 1785, the Assessment Bill was defeated which would have provided a state assessment for "teachers of the Christian religion." Jefferson's Statute of Religious Liberty was signed into law January 19, 1786, and has since become a milestone in the history of religious freedom by guaranteeing that all men are free to profess and maintain their own opinions in matters of religion without affecting their civil status. In 1787, the Incorporation Act of 1784 was repealed as being contrary to Jefferson's statute, and all churches were left on the same legal basis. It remained for the January 20, 1802, action of the legislature authorizing the sale of the vacant glebe lands to remove the last vestige of State connection with the church and to assure the triumph of the principle of separation.

These are the significant events. The attention is now turned to the origin of what brought them to pass.

CHAPTER I

NATURAL RIGHTS AND SEPARATION

CHAPTER I

NATURAL RIGHTS AND SEPARATION

The purpose of this chapter will be to explore the idea of natural rights in terms of its origin and meaning, its influence upon certain political leaders of Virginia in the latter part of the eighteenth century, its influence upon the Presbyterian and Baptist thinking of the same period, and consequently, its bearing upon the concept of separation of church and state in Virginia.

I. THE ORIGIN AND MEANING OF THE CONCEPT

The theory of natural law did not originate in the eighteenth century. It is as ancient as the Stoics. Its influence is seen throughout the history of Christian and classical thought.¹ Natural law may be defined as the regular and constant order by which God rules the universal order, which is discoverable by man's reason, and which serves men as a rule and guide of conduct, without distinction of race or sect.² In much the same language Maritain defines natural law:

¹Jacques Maritain, The Rights of Man and Natural Law (New York: Charles Scribner Sons, 1943), p. 59.

²Anson Phelps Stokes, Church and State in the United States (New York: Harper Brothers, 1950), I, 136.

This means that there is, by virtue of human nature, an order or a disposition which human nature can discover and according to which the human will must act in order to attune itself to the necessary ends of the human being. The unwritten law, or natural law, is nothing more than that /italics in original/.³

Natural right, however, is the implementation of the natural law in the positive law, or the law of the state. It is the influence of natural law in public law.⁴ Natural right is the claim of the individual to certain privileges which are his by virtue of his being a person. These privileges all law should recognize and honor, because they are based upon a fundamental natural law that no assembly of men can overthrow or abrogate.

David Richie in his excellent treatment of Natural Rights gives several meanings of the word "natural":⁵

- (1) the totality of what exists for the whole universe;
- (2) that which exists, or is thought to exist, independently of and apart from, what man does, as contrasted with what man does which is called "human," "social," or "artificial";
- (3) that which is "original," as opposed to what is "acquired" afterwards; (4) and that which represents the ideal of what ought to be whether it exists in fact or not,

³Maritain, op. cit., p. 61.

⁴Stokes, op. cit., p. 137.

⁵David Y. Richie, Natural Rights (London: George Allen Unwin Ltd., 1953), pp. 70ff.

the equivalent of "normal." It is in the fourth sense, Richie avers, that "nature" is properly used when one speaks of the law of nature and natural rights, but it is very often used with a mixture of the other meanings.⁶ From this it is seen that "natural" has a moral quality by the appeal to what ought to be.

The claim to natural rights represented a revolution in the area of authority to a generation not afraid of revolution. Viewed in this light the theory of natural rights fitted well the Protestant revolt against the authority of tradition. It followed logically the Protestant appeal to private judgment, to reason and the conscience of the individual. The revolution in authority had already begun in the seventeenth century, as Richie has pointed out:

Already in the Puritan Revolution of the seventeenth century the appeal to historical right was replaced by an appeal to natural right. The struggle for parliamentary liberties led some men to go behind parliaments and charters, just as the independent study of the Bible led some men to go behind the authority of the Bible and to rely on the authority of "the inner light" alone.⁷

Thus, when men could no longer appeal to an established authority, in this case parliament with its recognized acts and laws, appeal was made to some other source as recognized authority, in this case natural rights. As one writer put

⁶Ibid., p. 75.

⁷Ibid., p. 10.

it: "The emergence of the idea of natural right presupposes, therefore, the doubt of authority."⁸ In shifting the ground of authority the appeal was made to natural rights as the embodiment of divine reason.

The natural rights doctrine was originally a highly conservative doctrine as advanced by the Stoics and medieval Scholastics. A static nature fitted beautifully into a static government and a static church.⁹ But there were revolutionary implications to be found in the theory whereby if a particular government could be shown to be out of harmony with the constituted order of things, that government was demonstrated "unnatural," a temporary departure from the universal order, and a government whose laws were null and void.¹⁰ Such a fertile ground already plowed by the philosophical thinking of the seventeenth and the earlier part of the eighteenth century was highly fit for the cultivation of the seeds of liberty, both religious and political, in America.

The most famous and perhaps the most influential of all modern advocates of natural rights was the English

⁸Leo Strauss, Natural Right and History (Chicago: University of Chicago Press, 1953), p. 84.

⁹Ernest Sutherland Bates, American Faith: Its Religious, Political and Economic Foundations (New York: W. W. Norton and Co., Inc., 1940), p. 235.

¹⁰Ibid.

philosopher John Locke (1632-1704). His writings were generally known in the American colonies prior to the Revolution. His Letter Concerning Toleration was printed in Boston in 1743, and his essay on Civil Government in 1773.¹¹ His influence on the founding of American government through influence on such men as Thomas Jefferson and James Madison is well-known to every student of American history.

Locke was by no means the originator of the doctrine of natural rights. Two men who seemed to have influenced his thinking were Richard Hooker (1554-1600) and Thomas Hobbes (1588-1679). It is Strauss's judgment that Hooker's view of natural right was essentially the Thomistic conception, while Hobbes's view was an important modification in the direction of individualism.¹² This was due to the emergence of a non-theological natural science which destroyed the traditional basis of natural rights. Hobbes was interested in the self-preservation of the individual, for which the government exists rather than for itself. The fundamental moral fact became a "right" instead of a "duty." He squarely made an unconditional natural right the basis of all natural duties, the duties themselves

¹¹Stokes, op. cit., p. 141.

¹²Strauss, op. cit., pp. 165ff.

being only conditional.¹³

Locke spoke of natural right mostly in terms of toleration. His Letter Concerning Toleration,¹⁴ written in 1689, was by far the most important in stating his views. Since it was known and read in the colonies some attention to it is warranted here. Even if it be recognized that Locke's view of toleration did not approach the idea of religious liberty and separation of Jefferson, Madison, and of the Baptists, it was a great step away from the medieval idea of the Church controlling all of society including the state. Locke posits a dualism of church and state with limits set for each, and man subject to both. The commonwealth is a society of men constituted only for the procuring, preserving, and advancing of their own civil interests. To Locke the magistrate has nothing to do with the salvation of souls. He adduces the following reasons:¹⁵ (1) It is not committed unto him by God, for God has never given authority to one man over another to compel him to religion; (2) the magistrate's power consists in outward force alone, while true religion consists in the inner persuasion of the mind; (3) even

¹³Ibid., p. 182.

¹⁴John Locke, A Letter Concerning Toleration, English translation by William Popple (New York: Liberal Arts Press, 1950).

¹⁵Ibid., pp. 18-19.

though the rigor of laws and the force of penalties might possibly convince and change men's minds, yet that would not effect the salvation of their souls.

Though the phrase "natural right" was not used here by Locke, the meaning is clearly that of religion as an individual's natural right by virtue of creation. He is interested in taking religion out of the realm of regulation by the magistrate to avoid persecution by the state.

In this same work Locke gives what has come to be a classic definition of the church:

A church, then, I take to be a voluntary society of men, joining themselves together of their own accord in order to the public worshipping of God in such manner as they judge acceptable to Him, and effectual to the salvation of their souls.¹⁶

Because it is a voluntary association and diversity of opinion unavoidable, it should be characterized by toleration. "I esteem toleration to be the chief characteristic mark of the true church."¹⁷ However, the church has the right to excommunicate.¹⁸ No person has the right to prejudice another in his civil enjoyments because he is of another church and religion.¹⁹

¹⁶Ibid., p. 20.

¹⁷Ibid., p. 13.

¹⁸Ibid., p. 23.

¹⁹Ibid., p. 24.

After drawing the sharp distinction between the church and state as to their nature and function, Locke brings his argument to rest on the freedom of the individual's conscience:

These things being thus explained, it is easy to understand to what end the legislative power ought to be directed, and by what measures regulated; and that is the sole reason for men's entering into society, and the only thing they seek and aim at in it. And it is also evident what liberty remains to men in reference to their eternal salvation, and that is, that everyone should do what he in his conscience is persuaded to be acceptable to the almighty on whose good pleasure and acceptance depends their eternal happiness. For obedience is due, in the first place, to God, and afterwards to the laws.²⁰

Not only is the conscience the court of appeal in matters of decision, but it also gives one the right of civil disobedience, when conscience is violated:

But if the law indeed be concerning things that lie not within the verge of the magistrate's authority (as for example, that the people, or any party amongst them, should be compelled to embrace a strange religion and join in the worship and ceremonies of another church), men are not in these cases obliged by that law against their consciences . . .²¹

Freedom of conscience, then, is above the scope of human legislation and is viewed as a natural right in the thinking of Locke. It is the ground of toleration of one religious group for another, and of the state for different religious beliefs in so far as they are not subversive of the laws of

²⁰Ibid., p. 48.

²¹Ibid.

the state itself.

It ought to be said at this point that though his toleration when fully conceived bore fruit in religious liberty, Locke himself did not pursue his ideas to their logical conclusion. He did not find room to tolerate Catholics and atheists. Implicit in his thinking also, was the contradiction that though no church should be established, yet the establishment of Protestant Christianity was quite proper.²²

The doctrine of natural right was a part of that pattern of thinking of the late seventeenth and eighteenth century known as the Enlightenment, or the age of reason, in Europe and America. Enamoured of the new findings of science, men turned to Newtonian physics which prepared the way for a mechanistic rather than a theological interpretation of the universe. Reason was enthroned as the arbiter before which all matters were summoned for judgment. Natural law was its philosophical expression, and Deism represented its attempt at theological formulation. In both the Old and New Worlds the age of religion gave way to the age of reason. On both sides of the Atlantic an increasing number of individuals altered their religious views to

²² Leo Pfeffer, Church, State and Freedom (Boston: Beacon Press, 1953), p. 91.

avoid clash with the rationalistic theories of the Enlightenment.²³ Enlightenment thinkers sought to base their view of life on pure and undiluted reason, free from the prejudices of the emotions. Anything supernatural was deplored.

In his work on Deism In Eighteenth Century America, Herbert M. Morais has noted that early in the eighteenth century deistic works were imported to America. Jeremiah D. Drummer, agent of the Connecticut colony, sent over seven hundred books donated by Elihu Yale, Isaac Newton, and others which formed the basis of the Yale library, among which were the writings of Shaftesbury, a deist, and Tillotson, a believer in rationalistic natural religion and revelation.²⁴ Thomas Hollis, a liberal Baptist in England, gave a large collection of works to Harvard. English theological works, especially of Tillotson, were transported to Virginia for the use of the Anglican clergy:

The literary contributions of such defenders of the faith as Tillotson, Locke, Clarke, and Cheyne, as well as those of English deists, Herbert, Blount, Wollaston, Shaftesbury, Collins, and Bolingbroke were frequently referred to in colonial periodicals, books, sermons, and library catalogues.²⁵

²³Henry J. Carman and Harold C. Syrett, A History of the American People (New York: Alfred H. Knoff, 1952), I, 83.

²⁴Herbert M. Morais, Deism in Eighteenth Century America (New York: Columbia University Press, 1934), p. 29.

²⁵Ibid.

There is evidence of the influence of the Enlightenment on Jefferson and Madison, but especially Jefferson. One biographer has stated that he held all of its major tenets:²⁶ the belief that the mind of man had emerged from the shackles and darkness, and had launched itself upon a limitless career of intellectual conquest; certain confident hypotheses about natural law and natural rights; the attitude of hostility to arbitrary power of any sort; a belief in the vast improvability if not the perfectability of man; and an impulse towards humanitarianism. He had ample opportunity to imbibe such ideas while a student, beginning in 1760, at the College of William and Mary in Williamsburg. Here Professor William Small, mathematician and natural philosopher, who knew the work of Sir Isaac Newton, opened up to him vistas of an ordered universe, and explored the areas of reason and human nature. Here George Wythe, a classicist with whom he studied law, introduced him to the Greek and Latin masters which served to enrich and liberalize his mind. Here along with Small and Wythe, he discussed philosophical matters at the table of the genial host, Governor Francis Fauquier, who represented the Enlightenment in its humanitarian as well as scientific aspects.²⁷

²⁶Duman Malone, Jefferson the Virginian (Boston: Little Brown and Co., 1948), p. 102.

²⁷Ibid.

Speaking of Wythe, Malone commented:

It may be assumed that he and both the other men /Small and Fauquier/ were familiar with John Locke, whose general ideas were so well known at this time and in this place that they might almost be taken for granted, along with those of Newton.²⁸

Dr. W. W. Sweet in searching for the ideas that functioned to help separate church and state in America gave prominent place to the influence of Locke and Priestly:

John Locke, and, to a lesser degree, Joseph Priestly and others of the same school, furnished the American Revolutionary fathers not only the political philosophy which underlay their attitude toward the mother-country but also the religious philosophy which determined their attitude toward the church and its relation to the state.²⁹

The tendency towards Deism and reason was not the same in all American thinkers of the Enlightenment, for Sweet distinguished between the full-fledged deism of Thomas Paine and Ethan Allen, and that of Jefferson, John Adams, and Benjamin Franklin.³⁰ The former relied solely on nature for knowledge of God, viewed natural laws as moral laws, and rejected revelation entirely, along with the church. The latter group bolstered revelation with arguments from nature, and gave prominent place to reason and common sense. Instead of completely rejecting the

²⁸Ibid.

²⁹W. W. Sweet, "Natural Religion and Religious Liberty in America," Journal of Religion, XXV (January, 1945), 51.

³⁰Ibid.

church they were critical of it at points, and were openly hostile only to the Established Church.

It can be seen, then, that the philosophical ideas which were at work in the crisis for liberty, both religious and political, in Virginia in the latter part of the eighteenth century were ideas attendant to the movement called the Enlightenment. These ideas were expressed in terms such as Deism with its rejection of all things supernatural, rationalism with its use of reason in the arbitration of all of man's problems, natural law as the fundamental law of the creator, and natural right as the individual's legal claim in the positive expression of natural law. Natural rights were even above laws passed by parliaments and assemblies, if they be found in opposition. These ideas belonged to a long cultural heritage that included both Greek and Christian thinkers, and found their most forceful expression in the enlightened philosopher John Locke. Through him they had immediate influence on the American scene and especially Revolutionary Virginia.

II. NATURAL RIGHTS IN POLITICAL LEADERS

No recognition of factors which produced separation of church and state in Virginia could overlook the contribution of the list of extraordinary statesmen which Virginia proudly claims as her gift to late Eighteenth Century America.

Some of the men who were singularly significant were Thomas Jefferson, James Madison, George Mason, and Patrick Henry, and to a lesser degree several others such as George Washington, George Wythe, and Edmund Pendleton. These men saw that if religious freedom were to prevail the emerging state and federal governments should have no connection with the church. To this end they directed their efforts both in Virginia and in the framing of the national government. The idea of natural rights played a great part in their formulation of separation, to which attention is now turned.

The revival of interest in the study of Thomas Jefferson in this century, especially in the 1930's and 1940's, has served to re-emphasize the claim that he was the architect of our democracy. Certainly he was one of its most gifted philosophers. Dr. Stokes said that in the field of church-state separation the only person in our history who can dispute his claim to primacy was Roger Williams who lived a century earlier.³¹ Knowledge of his work as the author of the Declaration of Independence and of the Bill for Establishing Religious Freedom in Virginia is elementary to one only faintly acquainted with American

³¹Stokes, op. cit., p. 333. It is interesting that Dr. Stokes says that a book might be written about the sources of his views on religious liberty.

history. For these two things, along with the founding of the University of Virginia, Jefferson desired to be remembered on his tombstone at Monticello. Jefferson, primarily interested in government, approached separation from the political rather than the religious viewpoint. Though he served as a vestryman of the Episcopal church, he did so because it was customary for a gentleman of public affairs, rather than from a keen interest in organized Christianity as such. Jefferson felt that religion, like marriage and domestic life, was strictly a private affair.³² He was convinced that complete religious freedom should be recognized by human law because of the very nature of religion. As with Locke, the care of each man's soul belonged to himself. Any form of spiritual compulsion was doomed to inevitable failure since God himself does not save man against his will. "State religion, therefore, was to him a contradiction in terms. The state should neither support nor oppose any particular form of church, but should leave all men strictly alone."³³

Religion being a private affair, the right to exercise its responsibilities in freedom should be protected by the state. The first step toward guaranteeing this to citizens

³²Malone, op. cit., p. 275.

³³Ibid.

was made in the convention which adopted the Virginia Bill of Rights in June of 1776. Jefferson was a member of this convention, and it was here that the life-long friendship with Madison began. The Virginia Bill of Rights rested upon the claim that men were by nature equally free and independent and had certain inherent rights, of which they could neither be deprived, nor divest themselves or their posterity. This must have been fresh in his mind when he wrote in his Notes on the State of Virginia in 1781:

The present state of our laws on the subject of religion is this. The convention in May, 1776, in their declaration of rights, declared it to be a truth, and a natural right [*italics not in original*], that the exercise of religion should be free; but when they proceeded to form on that declaration the ordinance of government, instead of taking up every principle declared in the bill of rights and guarding it by legislative sanction, they passed over that which asserted our religious rights, leaving them as they found them.³⁴

Commenting further on the denial of freedom of religion as a natural right, he said that although the General Assembly in October, 1776, repealed all "acts of parliament" which had rendered criminal the "maintaining any opinions in matters of religion" and the exercise of any mode of worship, certain oppressions under common law and "our own acts of assembly" remain.³⁵

³⁴Thomas Jefferson, Notes on the State of Virginia (Philadelphia: Mathew Carey, 1794), p. 229.

³⁵Ibid., p. 230.

In another passage from his Notes, important for religious freedom and separation, Jefferson said:

This is the summary view of that religious slavery, under which a people have been willing to remain, who have banished their lives and fortunes for the establishment of their civil freedom. The error seems not sufficiently eradicated, that the operations of the mind, as well as the acts of the body, are subject to the coercion of the laws. But our rulers can have no authority over such natural rights only as we have submitted them. The rights of conscience, we never submitted, we could not submit. We are answerable for them to our God. The legitimate powers of government extend to such acts only as are injurious to others. But 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.³⁶

In this statement written four years before his Statute of Religious Freedom was passed, it can be seen that the claim to freedom from coercion by the state in matters of religion and conscience rested upon its being a natural right, which cannot be surrendered to the state if desired.

In the Declaration of Independence Jefferson gave expression to the idea of natural equality of all men by creation.³⁷ He was ever concerned that this natural right

³⁶Ibid., p. 231.

³⁷Stokes, op. cit., p. 462. Stokes said that Thomas Paine has given us a contemporary description of the meaning of human equality when he writes in the Rights of Man:

" . . . by which I mean that man is all of one degree, and consequently that all men are born equal, and with equal natural rights, in the same manner as if posterity had been continued by creation instead of generation, the latter being only the mode by which the former is carried forward; and consequently, every child born into the world must be considered as deriving its existence from God."

be given legal sanction in a time when men were actually interested in basic rights and liberties. This was expressed in his Notes:

It can never be too often repeated, that the time for fixing every essential right on a legal basis is while our rulers are honest, and ourselves united. From the conclusion of this war we shall be going down hill. It will not then be necessary to resort every moment to the people for support. They will be forgotten, therefore, and their rights disregarded.³⁸

Toward this end he prepared his Bill for Religious Freedom in 1777. It was introduced to the Assembly in 1779, and passed finally in January, 1786. This was a landmark in church-state separation and a vivid example of the thinking of Jefferson.³⁹

There are several things distinctive in the preamble of this Statute which were characteristic of Jefferson. First, the freedom demanded rested upon the fact of creation, for God has created the mind free. Second, any attempt to coerce opinion in matters religious was a violation of this freedom and negated true religion, since it was based on the opinions of fallible men. Third, to compel a man to contribute to that which he disbelieves was sinful and tyrannical. Fourth, discrimination in elections to public office on the basis of religion was a violation of natural

³⁸Jefferson, op. cit., p. 235.

³⁹For the complete statute, see appendix, pp. 216-17.

right. These were ideas that were very close to those in Locke's Letter Concerning Toleration and Civil Government, with the exception that Jefferson spoke of religious freedom instead of toleration, and Locke found no objection to contributions for religious purposes.

In the Virginia statute itself Jefferson spelled out exactly what religious liberty meant. It meant freedom from compulsion, force, restraint, molestation, or burden in the body or goods, and from otherwise suffering on account of religious opinions or belief. Men should be free to profess and maintain their opinions in matters of religion. All of this rested squarely on natural rights. At this point Jefferson, who was a firm believer in the social contract idea of government, and of the will of the people expressed by their duly elected representatives, made an appeal to an authority higher than the representative assembly. Though he saw that the assembly which passed this act had no restraining power over future assemblies that might desire to set it aside, yet to assure that it would not be set aside he invoked the authority of natural rights by saying,

. . . the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement

of natural right.⁴⁰

This appendage to the statute is most important in giving us insight into the philosophical presuppositions on which such legislation can be said to rest. The mind of its author had reached the point of recognition of the glaring inconsistency of religious discrimination with the natural rights doctrine of freedom and equality. Anything less than the practice of complete religious freedom failed to do justice to an undoubted belief in the worth and dignity of human beings.

To Jefferson religion as a natural right was arrived at on the basis of reason, and he certainly looked upon the Statute of Religious Freedom as a triumph of reason in Virginia affairs. When he wrote to Madison from France on December 16, 1786, concerning the reception of the Virginia Statute in Europe, he remarked that it had been received with "infinite approbation" by individuals in government, and had been translated into French and Italian and sent to most of the courts of Europe.

It is comfortable to see the standard of reason at length erected, after so many ages, during which the human mind has been held in vassalage by kings, priests, and nobles; and it is honorable for us, to have produced the first legislature who had the

⁴⁰William Walter Hening, Statutes At Large: A Collection of All the Laws of Virginia, XII (Richmond: Printed for the author, 1823), 86.

courage to declare, that the reason of man may be trusted with the formulation of his own opinion.⁴¹

It was also from Paris that he wrote to his nephew, Peter Carr, August 10, 1787, asking him to give prominent place to reason in religion:

Your reason is now mature enough to examine this object. . . . Fix reason firmly in her seat, and call to her tribunal every fact, every opinion. Question with boldness even the existence of a God; because if there be one, he must more approve the homage of reason, than that of blind-folded fear. . . . Your own reason is the only oracle given you by heaven, and you are answerable, not for the rightness, but uprightness of the decision.
 . . .⁴²

This appeal to reason was characteristic of the Jeffersonian approach to problems of religion and the church.

When it is stated that Jefferson approached the problem of separation from the political rather than religious viewpoint that is not to say he was uninterested in religion, for he was. He compiled the so-called Jeffersonian Bible, or The Life and Morals of Jesus of Nazareth, using Marcion's methodology, and thought the moral system of Jesus to be the most benevolent and sublime ever taught. Also, in founding the University of Virginia he wrote to Madison asking him to furnish a catalogue of works on

⁴¹Albert Ellery Bergh (ed.), The Writings of Thomas Jefferson (Washington, D. C.: Thomas Jefferson Memorial Association, 1907), VI, 10.

⁴²Ibid., pp. 258-59.

religion for the library there.⁴³ What is recognized, however, is that his orientation "was typical of the American climate of deistic opinion, which desired the reformation and not the destruction of Christianity."⁴⁴ To him the real enemies of Jesus were the clergy, and he proposed to strip them of civic power. He distinguished between the religion of the priests and that of the Gospels. "The first he desired to overthrow; the second, which he considered to be natural religion, he wished to restore."⁴⁵ In the task of reforming the Christian religion reason was assigned the primary role.

The true religion of Jesus was a natural religion. By reason man could understand the law of nature, the "natural" and the "right." It was in this fundamental orientation that one can see the influence upon him of Locke and the Enlightenment. This was recognized by Dr. W. W. Sweet who quoted from the notes of the speech Jefferson prepared for the debate on his Bill for Establishing Religious Freedom in 1779, to show the marked influence of Locke and Priestly.⁴⁶ Many of the phrases

⁴³William C. Rives, Life and Times of James Madison (Boston: Little, Brown and Co., 1859), I, 641.

⁴⁴Morais, op. cit., p. 119.

⁴⁵Ibid., p. 116.

⁴⁶Sweet, op. cit., p. 51.

were almost identical with Locke. Likewise, Sweet showed Jefferson's definition of the church to be almost word for word that of John Locke.⁴⁷

Jefferson was opposed to the Establishment because it interfered with the voluntary association demanded by the definition of the church. Its clergymen through the state had extended their control to inalienable rights of individuals over which no government had the right of jurisdiction. As Sweet said,

He considered an established church clergy "purveyors of religious intolerance" who, "by getting themselves established by law, and ingrafted into the machine of government, have been a very formidable engine against the civil and religious rights of man."⁴⁸

To guard against this evil the church and the state must be separate. The state must protect by law the natural rights of the individual.

In addition to Jefferson the political leader who played the greatest part in achieving separation in Virginia was the fourth president of the United States, James Madison. His work in framing the national government was so noteworthy that to some minds it overshadowed his contribution in Virginia. But it was he who maneuvered Jefferson's Bill for Establishing Religious Freedom through the Virginia

⁴⁷Ibid., p. 52.

⁴⁸Ibid.

legislature while Jefferson was in Europe. It was he, with the strong support of the Baptists, who succeeded in defeating the Assessment Bill in 1785. It was he who was responsible for the significant changes in Article XVI in the adoption of the Virginia Bill of Rights at the Virginia Convention of 1776.

Madison had the advantage of a good family background. He studied under private tutors before entering Princeton in 1769, one of whom was Rev. Thomas Martin, a Princeton graduate.⁴⁹ Irving Brant, his most recent and authoritative biographer, indicated that Madison's choice of Princeton over William and Mary for his college training reflected his early attitude of opposition to the Established Church.

. . . There is every reason to believe that Madison's opinion of the established church was formed earlier in Virginia, based on the struggle for religious liberty within that colony, and that it was one of the causes, rather than the result, of his choice of a college. His knowledge of the relationship of the New Jersey school to the conflict then raging came from his tutor, but the knowledge of the conflict came from his own eyes and ears.⁵⁰

This decision was made at the time when Baptists were being persecuted, and their preachers jailed for exercising the right to preach. It could be that his lifelong championship of the religious rights of the Baptists had its origin in

⁴⁹Irving Brant, The Virginian Revolutionist, 1751-1780 (Vol. I of James Madison. 5 vols.; Indianapolis: Bobbs-Merrill Co., 1941), p. 65.

⁵⁰Ibid., p. 68.

what he witnessed of their troubles, making it a logical factor in the decision to attend a college devoted to religious freedom.⁵¹ Whatever the reasons for entering, it is certain that at Princeton under John Witherspoon, who had just come from Scotland to be its president, he received training and instruction, formed habits and associations, which "exerted a very large influence in molding the character of his mind and shaping his future destiny."⁵² Madison remained one year after graduation to read under the guidance of Witherspoon.⁵³ His knowledge of the fields of divinity and history would indicate some acquaintance with these areas while at Princeton. President Witherspoon introduced the study of history at Princeton.⁵⁴

Madison was only twenty-five when he was elected to attend the Convention of 1776 that adopted the Virginia Bill of Rights. The convention met from May 7 to June 29, 1776. This was three weeks before the American Declaration of Independence asserted that all men are created equal and endowed by their creator with certain inalienable rights. It is generally conceded that George Mason is the author of

⁵¹Ibid., p. 70.

⁵²Rives, op. cit., p. 20.

⁵³Varnum Lansing Collins, President Witherspoon (Princeton: Princeton University Press, 1925), II, 205.

⁵⁴Collins, op. cit., I, 112.

the original draft. Article XVI on religion as originally proposed by Mason read:

That as religion or the duty we owe our divine and omnipotent Creator, and the manner of discharging it, can be governed only by reason and conviction, not by force or violence; and therefore that all men should enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience, unpunished and unrestrained by the magistrate, unless, under color of religion, any man disturb the peace, the happiness, or safety of society, or of individuals. And that it is the mutual duty of all, to practice Christian forbearance, love and charity towards each other.⁵⁵

Mason approached the problem as an Episcopalian liberal with a strong tinge of Locke's idea of toleration. Brant said that the original draft as proposed was founded throughout on Locke, and quoted parallel passages from Locke to substantiate it.⁵⁶ Yet he conceded, and rightly, that it fell short of Locke's conception of toleration when it gave the magistrate unlimited power to restrain religious worship that disturbed the peace of both society and individuals.

Mason's original draft was somewhat modified before it was adopted, and this is generally credited to Madison's efforts. Madison offered two substitutes to Mason's article. The first failed to pass. It would have changed "force and

⁵⁵Brant, op. cit., p. 244, quoting George Mason, original draft of Article XVI in George Mason Papers.

⁵⁶Brant, op. cit., p. 244.

violence" to "violence or compulsion," in terms of which "he would reduce the ecclesiastical law to the level desired by Locke, who wanted it made 'destitute of all compulsive power.'"⁵⁷ It would have deleted the word "toleration" also. By this religious freedom would become a natural right growing out of liberty of conscience, instead of a concession granted by a dominant group. Finally, he would have written in that no man or class of men, evidently clergymen or a religious sect, should have special privileges or suffer special liabilities. These substitutes if adopted, not only would have disestablished the Anglican Church, but would have thwarted later efforts to support the clergy by a state assessment before it was considered.⁵⁸ When the first substitute failed to pass a second substitute was offered by Madison which read:

That religion or the duty we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction; not by force and violence; and therefore, that all men are equally entitled to the free exercise of religion according to the dictates of conscience unpunished and unrestrained by the magistrate, unless the preservation of equal liberty and the existence of the State are manifestly endangered. And that it is the mutual duty of all to practice Christian forbearance, love and charity towards each other.⁵⁹

⁵⁷Ibid., p. 245.

⁵⁸Ibid., p. 246.

⁵⁹Brant, op. cit., p. 246, quoting James Madison, Revision of Article XVI in Madison's Papers.

The significant change was in the use of the words "the free exercise of religion" in the place of "toleration" found in the Mason draft. Free exercise instead of toleration marked a shift in the direction of religious freedom. Toleration carries with it the implication that a vested group can grant to another the right to exist, or can deny religious rights if it sees fit. Toleration can take place only where there is a civil establishment of religion, where a predominant sect enjoys exclusive advantage, and decides to allow or to forbid other modes of worship. The "free exercise" went much beyond this by placing all religious groups on an equal basis as a matter of right. Commenting on the significance of this change Rives says:

In discarding a term hitherto consecrated, in some degree, as a symbol of liberty, but intrinsically fallacious, and fraught with dangerous implications, it erected a new and loftier platform for the fabric of religious freedom.⁶⁰

Madison's revision also affected the meaning of the phrase, "the dictates of conscience." It meant no longer a mere definition of the extent to which freedom should be tolerated, but became the basis of man's inherent right to the free exercise of religion.⁶¹ In his own reflection on this matter, Madison wrote in 1826 concerning his proposal

⁶⁰Rives, op. cit., p. 146.

⁶¹Brant, op. cit., p. 247.

for revision of Article XVI:

This variation is in the handwriting of J. M. and is recollected to have been brought forward by him with a view, more particularly to substitute for the idea expressed by the term "toleration," an absolute and equal right in all to the exercise of religion according to the dictates of conscience. The proposal was molded into the last article of the Declaration as finally established, from which the term "toleration" is excluded.⁶²

Madison's revision was adopted essentially as it was with the deletion of one explanatory section for brevity's sake. It is evident that natural rights played an important part in his defense of the individual's claim to religion, and controlled his fight to free that claim from any state control. In this he and Jefferson were in one accord throughout this period.

Madison did not cease to labor for separation in the years between 1776 and 1784. He was on the committee with Jefferson, Mason, and Henry to prepare the bill which was passed December 5, 1776, stripping the Episcopal Church of its right to tax dissenters, and suspending for a year its right to collect a tax from its own members. He was also active on behalf of Jefferson's Bill for Religious Freedom when first introduced in 1779.⁶³ However, it was

⁶²Brant, *op. cit.*, p. 248, quoting James Madison, a note written in 1826 when recopying his early records.

⁶³David Durham Rhodes, "The Struggle for Religious Liberty in Virginia, 1740-1802" (unpublished doctoral thesis, Duke University, Durham, North Carolina, 1951), p. 121.

in the great struggle in the state legislature over state assessment for religious purposes in the fall of 1784 and 1785, that Madison gave literary expression to his ideas in defense of separation. In a speech before the legislature in 1784, the notes of which are preserved, he vigorously asserted that religion is not within the purview of civil authority.⁶⁴ He argued that assessment meant establishment, and in history it was shown that establishments have been against liberty. Establishment involved the state in determining orthodoxy, and the decision of the courts in declaring some to be heretics would violate the rights of private conscience. Against this he upheld the perfect liberty guaranteed by the Bill of Rights.

The views in this speech were fully elaborated in the summer of 1785, in the "Memorial and Remonstrance" against the bill for a general assessment.⁶⁵ Madison said he wrote it at the insistence of George Nicholas and George Mason.⁶⁶ It was circulated over the state and

⁶⁴Rives, op. cit., p. 604. Rives gives the outline of the speech in a note.

⁶⁵It is given by several writers including: Robert B. Semple, History of the Rise and Progress of Baptists in Virginia (Richmond: n.n., 1810), pp. 435ff., in appendix; Rives, op. cit., pp. 634-40, Stokes, op. cit., p. 341; Charles F. James, Documentary History of the Struggle for Religious Liberty in Virginia (Lynchburg, Virginia: J. P. Bell Co., 1900), pp. 256-62.

⁶⁶James Madison, Detached Memoranda, ed. Elizabeth Fleet. (Reprinted from William and Mary Quarterly, Third Series, III, October, 1946), 554.

signed as a petition to be presented to the fall legislature against the passing of the Assessment Bill, which had been carried over from the previous session when it failed to achieve the necessary third reading. This famous paper ably presented the argument that religion should be exempted from control by the state, and that the proposed assessment represented a denial of liberty by the imposition of state control. Echoing his position in the Virginia Bill of Rights, Madison stated his opposition in this manner:

Because we hold it for a fundamental and unalienable truth, "that religion, or the duty which we owe to the Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence." The religion, then, of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is, in its nature, an unalienable right. It is unalienable, because opinions of men depending only on the evidence contemplated by their own minds, cannot follow the dictates of other men. It is unalienable, also; because what is here a right towards man, is a duty towards the creator.⁶⁷

This duty, argued Madison, took precedence over the claims of civil society, in both time and the degree of obligation. He maintained that in matters of religion, no man's right is abridged by the institution of civil society, and that religion is wholly exempt from its

⁶⁷ Semple, op. cit., pp. 435-36, in appendix, quoting James Madison, "Memorial and Remonstrance." Also in James, op. cit., pp. 256ff., and others.

cognizance.⁶⁸ Further, the proposed bill denied the equality guaranteed by the Virginia Bill of Rights that all men are by nature equally free and independent.

Entering into society men are to be considered

. . . as relinquishing no more, and therefore retaining no less, one than another, of their natural rights: above all, are they to be considered as retaining an "equal [*italics in original*] title to the free exercise of religion according to the dictates of conscience."⁶⁹

In the last paragraph of this paper Madison presented with irrefutable logic the case against assessment and the resulting establishment as a violation of natural rights. If one such right be taken away by the legislature, then there is no assurance that others also may not be taken away.

Because, finally, "the equal right of every citizen to the free exercise of his religion according to the dictates of conscience," is held by the same tenure with all other rights. If we recur to its origin, it is equally the gift of nature; if we weigh its importance it cannot be less dear to us; if we consult the "Declaration of those rights which pertain to the good people of Virginia, as a basis and foundation of government," it is enumerated with equal solemnity, or rather with studied emphasis. Either then we must say, that the will of the legislature is the only measure of their authority; and that, in the plenitude of this authority, they may sweep away all our fundamental rights; or, that they are bound to leave this particular right untouched and sacred: either we must say that they may controul sic the freedom of the press; may abolish the trial by jury; may swallow up the executive, and judiciary

⁶⁸Ibid.

⁶⁹Ibid., p. 438, in appendix.

powers of the state: nay, that they may annihilate our very right of suffrage, and erect themselves into an independent, and hereditary assembly; or we must say they have no authority to enact into a law the bill under consideration. . . .⁷⁰

The real impact of this broadside of Madison against assessment may be seen in the flood of petitions to the Assembly when it met October 24, 1785. It has been said that the whole number of subscribers to such petitions was not less than ten thousand, and may have been larger.⁷¹ Many of the petitions were copies of the "Remonstrance" itself while others were paraphrases. This writing of Madison was printed and distributed in every part of the state, and furnished the people of Virginia with able arguments against a threatened restraint of liberty. It has been called the most powerful defense of religious liberty ever written in America.⁷²

The political effect of the "Memorial and Remonstrance" was staggering. After its presentation to the House the Assessment Bill was defeated when it died in committee. As a result of this triumph Madison was left in a commanding position in the House. Taking advantage of this reaction,

⁷⁰Ibid., p. 443, in appendix.

⁷¹H. J. Eckenrode, Separation of Church and State in Virginia (Richmond: n.n., 1910), p. 111.

⁷²Irving Brant, The Nationalist, 1780-1787 (Vol. II of James Madison. 5 vols.; Indianapolis: Bobbs-Merrill Co., 1948), p. 352..

Jefferson's bill of 1779 was brought forward on December 14, 1785, and passed three days later. After certain minor amendments in both Senate and House it was signed into law on January 19, 1786.⁷³ This statute guaranteed religious freedom to the citizens of Virginia. Its author was in Europe as ambassador to France at the time, and James Madison was mainly responsible for securing its adoption.⁷⁴ The victory had actually been won on the battleline of assessment, for Madison's work there made possible the swinging of the tide from a conservative legislature in 1784, which passed the Incorporation Act, to a liberal legislature in 1785, which accepted Jefferson's Bill for Religious Freedom.

One of the men who insisted that Madison write the "Remonstrance," and who helped in the distribution of it was George Mason. This bespeaks his recognition of Madison's felicity of expression, particularly in the matter of rights. Mason was an Episcopalian, but a liberal in both politics and religion. Although he did not attend college, he studied law privately, reading in his uncle's library. He was never admitted to the bar, but was considered to have had great influence in shaping Virginia's government as well as that of the nation.

⁷³James, op. cit., p. 140.

⁷⁴Stokes, op. cit., p. 392.

Mason's most notable contribution was the Virginia Bill of Rights of 1776. There has been some disagreement about the authorship of the Bill of Rights, but it is generally conceded that it came from Mason's pen. Eckenrode, an otherwise reliable authority, held that Patrick Henry was the author of Article XV and XVI of the original draft.⁷⁵ Sanford Cobb attributed Article XVI to Henry.⁷⁶ Others, however, including Brant,⁷⁷ Morais,⁷⁸ and Stokes⁷⁹ have concluded that Mason drew up the original draft, and that Madison was responsible for the significant changes in Article XVI on religion.

A look at the Bill of Rights itself reveals what a prominent place Mason gave to natural rights in the role of government. Article I reads:

That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.⁸⁰

⁷⁵Eckenrode, op. cit., p. 44.

⁷⁶Sanford Cobb, Rise of Religious Liberty in America (New York: The Macmillan Co., 1902), p. 492.

⁷⁷Brant, The Virginian Revolutionist, 1751-1780, p. 243.

⁷⁸Morais, op. cit., p. 114.

⁷⁹Stokes, op. cit., p. 380.

⁸⁰Hening, Statutes At Large, I (second edition; New York: Printed for the author, 1823), 47.

Thus, in the beginning and throughout the document Mason appealed to the inherent rights of the individual as the basis for the claim that there are certain areas which the government must not invade. Though he uses the word "inherent" here, the meaning is the same as the "natural rights" of Jefferson's Statute and Madison's "Remonstrance." Mason, along with other leaders of Virginia, felt compelled to enumerate these rights and incorporate them into the constitution to safeguard them against any encroachment from government. To make it more pointed that these rights were above the government Mason iterated the right of citizens to change the government itself:

. . . A majority of the community hath an indubitable, unalienable, and indefeasible right, to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.⁸¹

It was this type of authority which formed the ground of his pleas for toleration in Article XVI. Religion was one of the areas covered by natural rights, and though Mason's construction of the Article did not go as far in the direction of religious freedom as did Madison's revision, it was by no means based less on natural rights.

It is certainly not an overstatement when Dr. Stokes says concerning the significance of this Declaration of Rights:

⁸¹Ibid., pp. 47-48.

. . . It formed the basis on which the other states and the Federal Government itself took action to guarantee religious freedom. It was drawn upon by Thomas Jefferson, for the first part of the Declaration of Independence and was later the basis of the Federal Bill of Rights.⁸²

No one would make for it the claim of novelty in the sense that these rights had never been recognized before. But rather, like the Declaration of Independence, it was an amalgam of a doctrine of rights long recognized, though not always practiced. Giving its origin Brant said:

It comes from the Magna Carta, from the British Bill of Rights, from the long struggle to establish parliamentary supremacy, from Locke and Montesquieu, from Wycliffe and St. Augustine. Nicholas of Cusa compressed both documents into a single sentence in the fifteenth century: "Since all men are by nature free, then government rests on the consent of the governed."⁸³

Throughout the Virginia Bill of Rights Mason's clear understanding of history, especially of English constitutional history, is evident. The sixteen articles have been called the history of England in miniature.⁸⁴

Mason's own evaluation of it is seen in his letter in 1778 to his cousin, Colonel George Mercer:

We have laid our new government upon a broad foundation, and have endeavored to provide the most

⁸²Stokes, op. cit., p. 302.

⁸³Brant, The Virginian Revolutionist, 1751-1780, p. 241.

⁸⁴Hugh Blair Grigsby, The Virginia Convention of 1776 (Richmond: J. H. Randolph, 1855), p. 163.

effectual securities for the essential rights of human nature, both in civil and religious liberty. ⁸⁵

Mason laid no claim to novelty for his Bill of Rights.

There is nothing here that had not been tacitly recognized since the dethronement of James II, yet

for the first time, fact and form were brought together in official papers. Rights began with nature, and not as concessions of the monarch, and the people, not the King, became the open and acknowledged source of authority. ⁸⁶

Mason was a member of the House throughout the period crucial for separation. He was a supporter of many measures that would free religion from state control. Even when he sided with Patrick Henry in opposition to ratification of the Federal Constitution in 1787-88, it was because he felt there was no guarantee of inherent rights such as had been written into the Constitution of Virginia. Though a liberal in the matter of the rights of the colonists, Mason was by no means a radical. He desired the progress demanded by natural rights, but cherished no love for change. Though earlier he had challenged the right of parliament to tax the colonies in "all cases whatsoever" by writing a tract entitled, "Extracts from the Virginia Charters with Some

⁸⁵Stokes, op. cit., p. 305, quoting George Mason's Letter to Colonel George Mercer.

⁸⁶Lyon Gardiner Tyler, History of Virginia (Chicago: American Historical Society, 1924), II, 248.

Remarks Upon Them,"⁸⁷ he wrote to a friend in England as late as 1770, that there were not five men of sense who would accept independence if it were offered.⁸⁸ He helped draft a law that would suspend state collected taxes for the Church in 1776, but he desired at the same time that the Episcopal Church should keep all of her property. Mason was consistent with this view when he drew up the article on religion in the Virginian Bill of Rights already given.⁸⁹ He emphasized toleration in the exercise of religion because he believed that the Established Church safeguarded itself by tolerating the rights of others. Thus, he desired to see the Anglican Church placed on equal footing with others, yet as a Christian he wanted it to continue its functions, and fought to save its property. It was natural, therefore, that in November, 1776, when the House appointed a committee for religion to implement resolutions calling for effective legislation in accordance with the Bill of Rights, Mason was appointed as chairman. Serving with him were such notables as Jefferson, Madison, and Henry. It was this committee which presented the bill passed December 5, 1776, that abolished collection of taxes

⁸⁷Grigsby, op. cit., p. 157.

⁸⁸Ibid., p. 158.

⁸⁹Supra, p. 27.

from dissenters by the state for the Church, and suspended temporarily the collection of taxes from members of the Anglican Church. This marked the first definite legislation in the separation of church and state. Coupled with it was the reservation of all of the church's property to the Anglican Church.

Patrick Henry, another great political leader of this period, did not speak of religious liberty as much as he did of civil liberty. However, his first opportunity to champion the rights of the people was in a religious dispute known as "Parson's Cause." In this case he represented the vestry of the Established Church against the clergy and the king in a salary dispute. In this first chance to challenge British supremacy Henry came into the public eye suddenly, and remained there for three decades. Concerning religious liberty Henry took a conservative turn after the war. He served on the committee to draft the Incorporation Bill that passed in 1784,⁹⁰ and supporting the Assessment Bill that failed to pass in 1784-85. Although his biographer, Wirt, sought to justify these defections, the record stands that Henry was on the side of the Establishment and against the forces contending for separation in these instances.

⁹⁰William Wirt, The Life and Character of Patrick Henry (sixth edition; New York: M'Elrath, Bangs and Co., 1834), p. 261.

In brilliant fashion he restated the orthodox belief that religion was vital to civil welfare, and therefore should be supported by the state. At this same juncture his opponent, Madison, was defending religious liberty as a natural right.

In spite of this it cannot be denied that earlier Patrick Henry was a great friend and defender of the Baptists in the years prior to the war. There is the well-known, but now discredited, story of his defense of John Waller, Lewis Craig, and James Childs in 1768 on the occasion of their imprisonment in Spotsylvania county for preaching, given by Foote in his Sketches of Virginia.⁹¹ According to Foote, Henry is reputed to have said in part,

May it please your worships, in a day like this, --when truth is about to burst her fetters,--when mankind are about to be aroused to claim their natural and unalienable rights--when the yoke of oppression that has reached the wilderness of America, and the unnatural alliances of ecclesiastical and civil power, are about to be dissevered, --at such a period, when liberty,--liberty of conscience,--is about to wake from her slumberings, and inquire into reason of such charges as I find exhibited here in this indictment . . . these men are accused of preaching the gospel of the son of God.⁹²

Concerning the same incident John Mecklin reflected:

⁹¹William Henry Foote, Sketches of Virginia (Philadelphia: William S. Martien, 1850), First Series, pp. 315ff.

⁹²Ibid., p. 317.

It is most significant that religious liberty was intimately associated in the minds of Henry and other leaders of the time with political liberty and the doctrine of natural and inalienable rights.⁹³

Though the speech certainly does justice to Henry's oratorical style, Lewis Peyton Little who made a thorough study of the incident in 1938, calls this reported speech of Patrick Henry "a fabrication pure and simple."⁹⁴ Little's judgment is probably correct, but it is not unthinkable that Henry could have used such language. He did defend one Jeremiah Moore who was arrested in Alexandria in 1773, for preaching.⁹⁵ Certainly the idea of natural or inalienable rights was not foreign to one so conversant with affairs of Revolutionary Virginia. Upon his election as governor the Baptist General Association of Virginia sent him a letter of hearty approbation which said in part, "Your constant attachment to the glorious cause of liberty leaves us no room to doubt of Your

⁹³ John M. Mecklin, The Story of American Dissent (New York: Harcourt, Brace and Co., 1934), p. 258.

⁹⁴ Lewis Peyton Little, Imprisoned Preachers and Religious Liberty in Virginia (Lynchburg, Virginia: J. P. Bell and Co., 1938), p. 111. He gives the following reasons for his judgment: (1) The trial was two days after the arrest and Henry could not have been notified and made the sixty mile journey; (2) the first published account of the incident was in 1845, or seventy-five years later; (3) Dr. George W. Beale in his revision of Semple's History in 1894 has a footnote attributing the speech to the creation of Rev. J. M. Peck and "what he supposed P. H. might have said."

⁹⁵ Joseph Martin Dawson, Baptists and the American Republic (Nashville: Broadman Press, 1956), p. 89.

Excellency's favorable regards, while we worthily demean ourselves."⁹⁶ Henry in return assured the Baptists, "My constant endeavor shall be to guard the rights of all my fellow-citizens from every encroachment."⁹⁷ Referring to the Bill of Rights and Virginia Constitution he said further,

I trust that the time is not far distant when we shall greet each other as the peaceable possessor of that just and equal system of liberty adopted by the last Convention, and in support of which may God crown our arms with success.⁹⁸

Although his conservative position compelled him to oppose some measures that eventually brought separation, nevertheless Patrick Henry must be numbered with the other statesmen and political leaders who were concerned for rights held to be natural and inalienable by his generation. In their championing of natural rights they helped to bring about separation in Virginia.

III. THE PRESBYTERIANS AND NATURAL RIGHTS

The doctrine of natural rights clearly delineated by the political philosophers became an integral part of the demand forged by other groups for the separation of church and state. Apart from the political leaders, those

⁹⁶James, op. cit., p. 169, quoting Virginia Gazette of August 23, 1776.

⁹⁷Ibid., p. 170. Letter is dated August 13, 1776.

⁹⁸Ibid.

most influential in the separation movement in Virginia were the Presbyterians and the Baptists, whose very right of existence was at stake. Their claim to toleration, and subsequently to complete liberty and separation, rested mainly on their doctrine of the church. But this will be reserved for a later chapter. Here an examination will be made of the idea of natural rights beginning with the Presbyterians, who were first chronologically.

The first great leader of Presbyterians in Virginia, who succeeded in founding the Presbytery of Hanover in 1755, was Samuel Davies (1724-1761). His main concern was for toleration rather than separation as such. Coming from Delaware to Virginia in 1747, he found himself in the struggle for toleration in the matter of securing licenses to preach for himself and fellow Presbyterians. On the occasion of the denial by the governor and his council of a license for a friend, John Rogers, Davies and Rogers "insisted that they had asked only for a right, and not a privilege [*italics in original*],"⁹⁹ and based their right on the Act of Toleration. In the lengthy correspondence resulting from Mr. Davies' appeal to his friend in England, Dr. Phillip Doddridge, and to the Bishop of London, given at length by Foote, there appears only one incidental

⁹⁹Foote, op. cit., p. 165.

reference to natural right. Commenting on a small group in Virginia that had dissented from the Church of England Davies said, "They had a legal as well as natural right to follow their own judgment."¹⁰⁰ Davies left Virginia in 1759 to become president of the College of New Jersey, and with his early death in 1761 passed from the scene before religious liberty as such became an issue in Virginia. His contribution was the winning of recognition of dissenters under the Toleration Act, which Act he held gave them the privilege of worship in their own way. This would be thwarted by failure of the state to license meeting houses, he believed. Davies claimed no more than what was granted dissenters in England.

With the approaching political crisis the Presbyterians became more active in the cause of liberty and separation. Beginning in 1774, especially through the Hanover Presbytery, they prepared a number of important petitions to the legislature setting forth their views. In these can be seen their persistent claim to freedom of worship and freedom of religion as a natural right. A petition from the Peaks of Otter Presbyterian Church, May 17, 1774, asking for permission to incorporate and hold property for the income of their church, spoke a word

¹⁰⁰Ibid., p. 190.

of commendation that "they have hitherto enjoyed their Rights and Privileges, and the free exercise of their Religion as Presbyterian Dissenters unmolested."¹⁰¹ At the session of the Hanover Presbytery meeting in Amherst County November 11, 1774, a petition was drafted and presented to the House of Burgesses June 5, 1775, against certain features of a Toleration Bill proposed in 1772. They reminded the legislature of the assurances the Presbyterians received from Governor Gooch in 1738 as an inducement to settle in the frontier sections of Virginia, that they "should enjoy the full and free exercise of their Religion, and all the other Privileges of good Subjects."¹⁰² They also protested against certain oppressive features of the bill as very grievous and burdensome if passed into law, such as limiting the places of dissenting worship, prohibiting night meetings, requiring church doors to be open for all services, and prohibiting the baptism of slaves. Implying that these were just rights, they said:

There are some other things which we omit because they are less essential to the rights of Conscience and the interest of our Church: We trust that we petition for Nothing but what Justice says ought to be ours: for ample Privileges as any of our fellow subjects enjoy.¹⁰³

¹⁰¹George MacLaren Brydon, Virginia's Mother Church (Philadelphia: Church Historical Society, 1952), II, 552, in appendix.

¹⁰²Ibid., p. 553, in appendix.

¹⁰³Ibid., p. 556, in appendix.

It is interesting that these petitions of May 17, 1774, and November 11, 1774, have the "free exercise of religion" concept even before the Virginia Bill of Rights.

The most famous of the Presbyterian petitions is the Memorial presented to the House October 24, 1776, in which the Hanover Presbytery came out strongly against establishment. In the language of the Bill of Rights they urged the legislature to secure them "the free exercise of religion, according to the dictates of our consciences."¹⁰⁴ They enumerated the burdens which establishment forced upon them such as purchasing glebes, building churches, supporting the Established Church's clergy, and paying taxes for its support. The memorial called these "all which are confessedly so many violations of . . . natural rights; and in their consequences, a restraint upon freedom of inquiry and private judgement."¹⁰⁵ The gospel does not need civil aid, they averred, "if mankind were left in the quiet possession of their inalienable religious privileges."¹⁰⁶ Thus, in strong forceful language they argued against establishment for themselves and for others, and decried

¹⁰⁴Original in possession of Virginia State Library. This Memorial is also given by Foote, op. cit., pp. 323ff.; James, op. cit., pp. 70ff.; and Brydon, op. cit., pp. 364ff.; and others.

¹⁰⁵Ibid.

¹⁰⁶Ibid.

any exclusive emoluments or privileges for any sect of men. They called for every religious group to be protected in its mode of worship and exempted from taxes to support any church, "except what may be agreeable to their own private choice, or voluntary obligation."¹⁰⁷

Caleb Wallace wrote this memorial. It is possible that he wrote that of November 11, 1774, also.¹⁰⁸ V. L. Collins accepted it as a fact.¹⁰⁹

Wallace, along with Samuel Stanhope Smith, John Blair Smith, William Graham, Henry Lee, and James Madison, had studied under John Witherspoon at the College of New Jersey. Among these men were teachers and educators at Hampden-Sidney and Washington Colleges, leaders of Virginia Presbyterians, as well as men of public affairs. The impact of this Scotch Presbyterian, John Witherspoon, on his pupils is well recognized. T. C. Johnson said,

He was possessed of a strong sympathy and attachment to popular rights, "nurtured in the contests he had waged against the claims of privilege and patronage in his mother church; a practical wisdom and talent for affairs acquired by experience of life; and a purity, manliness, and conscientious courage and energy, all his own."¹¹⁰

¹⁰⁷Ibid.

¹⁰⁸William H. Whitsitt, The Life and Times of Judge Caleb Wallace (Louisville: John P. Morton and Co., 1888), p. 34.

¹⁰⁹Collins, op. cit., II, 227.

¹¹⁰Thomas Cary Johnson, Virginia Presbyterians and Religious Liberty in Colonial and Revolutionary Times (Richmond, Virginia: Presbyterian Committee of Publication, 1907), p. 62.

The fact that Wallace must have acquired something of the spirit of his teacher is reflected in his letters and in the Presbyterian petitions he had part in drafting. Typical of the Presbyterian viewpoint of 1777 was Wallace's letter to Rev. James Caldwell of Elizabethtown, New Jersey, dated April 8, 1777, which said in part:

There is one thing, however, which might be called political in which I have interested myself very much. Our Bill of Rights declares that all men are equally entitled to the free exercise of religion according to the dictates of conscience /italics in original/, etc. Yet in some subsequent Acts it is manifest that our Assembly designed to continue the Old Church Establishment. This and some Petitions that were circulated through various parts of the country in behalf of dignified Episcopacy gave a general alarm to people of dissenting principles, and the common cry was, If this is continued, what great advantage from being independent from Great Britain? And is it not as bad for our Assembly to violate their own Declaration of Rights as for the British Parliament to break our charter? . . . These circumstances induced our Presbytery to take the lead and prepare a Memorial on the subject to be presented to our House at the session last fall; and as none of the members who were older in the ministry and better qualified could undertake it, the Presbytery appointed me their Deputy, which obligated me to make the case a particular study, which indeed I had done sometime before, and to attend the General Assembly for six or eight weeks. The result was, the Assembly passed an Act exempting dissenters for all time to come from supporting the Church of England, declaring all penal or persecuting laws against any mode of worship, etc. null and void /italics in original/, and for the present left all denominations to support their clergy by voluntary contributions, reserving the consideration of a general assessment for the support of religion (as they phrase it) to a future session /italics in original/.¹¹¹

¹¹¹Whitsitt, op. cit., p. 40, quoting from Historical Magazine, I, No. 12 (Dec. 1, 1758), 354.

Certainly this Presbyterian saw clearly the issues involved in translating the Bill of Rights into laws for disestablishment. Wallace made the case a "particular study." It could well be, therefore, that he was the author of an article in the Virginia Gazette,¹¹² November 8, 1776, entitled "Queries On the Subject of Religious Establishments," in which the natural rights doctrine was ably set forth. Quoting pertinent parts:

. . . And is it not evident, on an impartial survey that in a state of nature any man or collection of men might embrace what doctrines of faith, and worship the Deity in what form they pleased, without interfering with the same or any other natural right of their neighbors? . . .

. . . And can it be supposed that any man whose entrance into civil society was a rational act ever meant to assign to the magistrate his rights of conscience which all good men hold most sacred, and which of all other rights the magistrate is least qualified to be entrusted with?

Does not the New Testament in almost every page assert the rights and ratify the obligation of conscience in direct repugnance to the unwarranted claims of the civil magistrate?¹¹³

The writer argues that if the nature of religion, the character of rulers, and the principles of Christianity and Protestantism all disclaim any surrender of the rights

¹¹²Whitsitt, op. cit., p. 43, William Wirt Henry was the first to suggest this, based on a comparison with the Hanover Memorial of 1776. Whitsitt seems to accept the fact.

¹¹³Virginia Gazette, Williamsburg, No. 93, Nov. 8, 1776, on microfilm in possession of Southern Baptist Seminary, Louisville, Kentucky.

of conscience on the part of any people, then the magistrate stands disarmed to dictate in matters of religion. Moreover, the state should protect the individual in this right:

It appearing then that when men from social compact each reserves to himself the right of choosing and acting for himself in what relates to religion and conscience, does it not follow that every individual is equally entitled to protection in the exercise of this, as much as any other unresigned right? . . .

Can all men be said to enjoy an equal portion of their rights, religious and temporal, where a law exists to compel every member of the community to contribute a share of his substance for the maintenance of a church to which many can not conform, and from which a part only derive a benefit? . . .¹¹⁴

Such strenuous arguments for religious liberty and separation on the basis of liberty of conscience and natural rights repeatedly made, were certain to be heard and echoed by men in the legislative halls, as well as the man in the street throughout Virginia.

Wallace was by no means superior to, but rather typical of, the small core of leadership in the Hanover Presbytery who were concerned for liberty, both civil and religious. Samuel Stanhope Smith and David Rice were on the committee to draft the petition of April 25, 1777, against a general assessment for the support of the church. This memorial reiterated that "the exercise of religion agreeable to the dictates of our own consciences is an

¹¹⁴Ibid.

unalienable right . . . [that] can never be transferred to another."¹¹⁵ It was probably not a coincidence that the well-known petition which called the Bill of Rights "the rising sun of religious liberty," relieving the people from the "long night of ecclesiastical bondage," came from "sundry inhabitants" of Prince Edward County, the location of Hampden-Sidney College, of which both Samuel Stanhope Smith and John Blair Smith were presidents in succession.

When his older brother returned to teach at the College of New Jersey late in the year 1799, John Blair Smith was asked to head Hampden-Sidney.¹¹⁶ He was but twenty-eight years of age when he helped draft the petition of the Hanover Presbytery in May, 1784, which Eckenrode called a "vigorous and even radical document . . . breathing the spirit of the Revolution."¹¹⁷ In this petition it was declared in the face of growing sentiment for incorporation and assessment, that the Presbyterians expected liberty and equality from the government:

An entire and everlasting freedom from every species of ecclesiastical domination, a full and permanent security of the unalienable rights of

¹¹⁵Original in the Virginia State Library.

¹¹⁶ Foote, op. cit., p. 411.

¹¹⁷ Eckenrode, op. cit., p. 77.

conscience, and private judgment, and an equal share of the protection and favour of government to all denominations of Christians, were particular objects of our expectations, and irrefragable claim.¹¹⁸

Religious rights had been left to common law and the caprices of the legislature rather than made a fundamental part of the constitution, they declared. The Episcopal Church "was expressly styled the established church [*italics in original*], as before; which title was continued as late as the year 1778, and never formerly disclaimed."¹¹⁹

Smith, writing to Madison on June 21, 1784, expressed his consternation over the Incorporation Bill, especially since the Episcopalians had asked for it to enable them to regulate all the spiritual concerns of that Church. This he held to be an illicit connection:

It would be to give leave to do what every class of Citizens has a natural inalienable right to do without any such leave; every religious society in the State possesses full power to regulate their internal police [*policy*]; without depending upon the Assembly for leave to do so. Surely we are not again to be irritated and harassed with the heavy weight of a State Church, that is to sit as sovereign over the rest, by depending . . . upon that antiquated fountain head of influences, the secular power.¹²⁰

The argument of Smith here against incorporation is

¹¹⁸ Foote, op. cit., p. 333.

¹¹⁹ Ibid.

¹²⁰ Eckenrode, op. cit., p. 81, quoting Letters to Madison, Vol. XIII, MS., Library of Congress, and Madison Calendar, p. 624.

essentially that of Madison. Eckenrode noted that it is impossible to tell whether he influenced Madison or not.¹²¹

John Blair Smith and William Graham prepared a memorial from the Hanover Presbytery October 28, 1784, read in the House on the following November 12. This was the petition that has since excited much controversy over whether the Presbyterians wavered from their strong support of religious freedom in the matter of incorporation and assessment, and as James said, "occupied a sort of middle ground."¹²² Without arguing this point here, it will suffice to show that the Presbyterians and Smith maintained that religion did not come under the scope of human legislation at all, for by its nature it belonged to a higher order:

The thoughts, the intentions, the faith, and the consciences of men, with their modes of worship, lie beyond their [the state's] reach, and are ever to be referred to a higher and more penetrating tribunal. . . . It is the duty of every man, for himself to take care of his immortal interests in a future state, where we are to account for our conduct as individuals; and it is by no means the business of a Legislature to attend to this, for THERE government and states as collective bodies shall no more be known.¹²³

Religion belonged to that area of rights beyond human society for which individuals alone are responsible to God.

Once again in a memorial prepared by William Graham

¹²¹Ibid.

¹²²James, op. cit., p. 122.

¹²³ Foote, op. cit., p. 337.

of Liberty Hall, Lexington, August 13, 1785, the Presbyterians stated: "Religion is altogether personal, and the right of exercising it unalienable; and it is not, cannot, and ought not to be resigned to the will of society at large; . . ." ¹²⁴ Religion is here affirmed as a natural right.

Action by the Presbyterians did not stop with petitioning, for like the Baptists, they appointed persons to represent their point of view at the legislature. John Blair Smith was such an appointee in the fall of 1785, and spoke on three successive days against assessment before the committee of the whole house, ¹²⁵ thereby having a definite part in killing the bill in committee.

From this evidence it can be established that for the Presbyterians the doctrine of natural rights, which was a commonly held philosophical tenet in Revolutionary Virginia, was basic to their belief that the state should not interfere at all in religion. Religion was a matter between the individual conscience and God, and therefore belonged to a higher order which could not be surrendered to society, even at will. This order was established by nature, which afforded rights that men in organized society trampled upon

¹²⁴Ibid., p. 342.

¹²⁵Ibid., p. 345.

only with violence to liberty. This idea pervaded the important Presbyterian pronouncements on religious liberty and separation of church and state from 1776 until Jefferson's statute was passed.

IV. THE BAPTISTS AND NATURAL RIGHTS

The Baptists of Virginia are well-known for their stand for religious liberty and separation of church and state. Their friendship with Jefferson, Madison, Henry, and Washington in this matter is attested to by numerous letters. James held that they were the only denomination that maintained a consistent record for religious liberty without wavering.¹²⁶ No other group in Virginia suffered the imprisonment of their preachers for conscience sake as did the Baptists. No group fought to the end of the struggle, to the final disposition of the Established Church's property, as did they.

General Baptists were the first to appear in Virginia early in the eighteenth century, but were never a large group. After 1743, Regular Baptists appeared, and by 1766, the Kettocton Association of Regular Baptists was formed.¹²⁷

¹²⁶James, op. cit., p. 197.

¹²⁷Garnett Ryland, The Baptists of Virginia 1799-1926 (Richmond: The Virginia Baptist Board of Missions and Education, 1955), pp. 9ff.

However, it was the Separate Baptists, who came after 1754 and grew rapidly in the years between 1770 and 1790, that were to figure so prominently in the separation of church and state. The General Association of Separate Baptists in Virginia was formed in May, 1771, with twelve churches represented. It was dissolved in 1784, when the state was divided into four district associations. At that time a General Committee was created with representatives from each district which gave attention to matters of general concern, and acted as guardian of the rights of Virginia Baptists.¹²⁸ In 1787, a union of Regular and Separate Baptists was effected.¹²⁹

Beginning in 1768, Baptist preachers were imprisoned as disturbers of the peace. At least thirty preachers and a few laymen were imprisoned between 1768 and 1775.¹³⁰ It was with vivid memories of this intolerance that Baptists began petitioning the legislature in 1770 for a redress of their grievances. Petitions throughout the period came from the General Association, from the General Committee, and from churches or groups of churches. Sometimes the

¹²⁸Ibid., p. 122.

¹²⁹Semple, op. cit., p. 75.

¹³⁰Eckenrode, op. cit., p. 37. This is sometimes given as around fifty, but Eckenrode, following the account of Leland, is more probably correct.

petitions were from counties in order to make a stronger impression on the legislature, and thus, they may not have been specifically credited to the Baptists by history.¹³¹

The petitions from the Baptists were more numerous than from other religious groups, yet the idea of natural rights in them was more often implicit rather than explicit. The earlier petitions dealt simply with "rights" and "liberty," or with some specific problem connected with achieving these. Not before May 12, 1783, in the petition from Amelia County is the term "natural rights" used. This may be due to the fact that Baptists and their preachers did not have the advantage of higher education as did some Presbyterians and landed gentry, and were unaccustomed to such nomenclature until, through the Bill of Rights, it became the language of the people. Certainly their petitions do not approach the classical language of the Hanover Presbytery petitions of 1774, 1776, 1777, and 1784. Baptists, however, were strong advocates of liberty of conscience.

In 1770 in a petition to the House of Burgesses, Baptists complained of their ministers being compelled to bear arms and attend musters.¹³² In 1772, petitions from

¹³¹William Taylor Thom, The Struggle for Religious Freedom in Virginia--The Baptists (Baltimore: Johns Hopkins Press, 1900), p. 56.

¹³²James, op. cit., p. 32.

Lunenberg, Mecklenberg, Sussex, and Caroline complained of being restricted in the exercise of their religion.¹³³ In the Amelia petition of February 24, 1772, Baptists declared they were restricted in their religious exercises and exposed to persecution, and prayed that liberty of conscience be granted them.¹³⁴ In May, 1774, Baptists protested certain restricting features of a proposed toleration bill. At the meeting of the General Association in August, 1775, held at Dupuy's meeting house, Powhatan County, it was resolved to circulate petitions to the General Assembly praying,

that the church establishment should be abolished, and religion left to stand upon its own merits: And, that all religious societies should be protected in the peaceful enjoyment of their own religious principles and modes of worship.¹³⁵

This was the Baptists' first stand for disestablishment.

The idea of natural rights underlay both the petition to the Virginia Convention of 1776, from the Baptist Church at Occaquon in Prince William County and from "Dissenters from the Ecclesiastical Establishment," October 16, 1776. The former requested the privilege of worshipping God in

¹³³Ryland, op. cit., p. 92. Ryland has a whole chapter on petitions for religious freedom which is very helpful. James also gives the significant petitions.

¹³⁴Ibid.

¹³⁵Semple, op. cit., p. 62.

their own way in order that they might join solidly with the colony in contending for civil rights and liberties of mankind;¹³⁶ the latter praised the Declaration of Rights as providing, "Equal Liberty! that invaluable blessing: which though it be the birth right of every good member of the State has been what your Petitioners have been Deprived of . . ." ¹³⁷

Beginning in 1778, Baptists petitioned for dissenters to be given the right to perform marriages which was prohibited by law. This, along with the vestry law that required a person to be a member of the Church of England to be a vestryman, was the subject of petitions until the question of assessment arose. It was in such a petition from the Baptist churches of Amelia County, May 12, 1783, that we have an explicit reference to natural rights. They asked for the removal of grievances, not as a favor which could be granted or withheld, but as a just claim of free men of the Commonwealth. They trusted that the legislators would consider themselves servants instead of masters of the people they represented, and that "you will not fail in any Instance, to recognize the Natural Rights of all

¹³⁶Photostatic copy of original in possession of Virginia Baptist Historical Society.

¹³⁷Photostatic copy of original in possession of Virginia Baptist Historical Society. Ryland, op. cit., p. 99, says this had been circulated by the Baptists throughout the state.

your Constituents."¹³⁸

When the General Committee met August 13, 1785, at Dupuy's meeting house it was recommended to the counties that had not yet done so to prepare petitions against the bill for general assessment setting forth: (1) that it was repugnant to the spirit of the gospel for the legislature to proceed thus in matters of religion; (2) that no human laws ought to be passed for this purpose, but everyone should be left entirely free in matters of religion; and (3) that should the legislature assume the right of taxing the people to support the gospel, it would destroy religious liberty.¹³⁹ It was in accord with this directive that Baptists affixed their names by the hundreds to Madison's "Memorial and Remonstrance" and other petitions paraphrasing it. Therein they asserted that the right to the exercise of religion as conviction and conscience dictate was by nature inalienable.

Perhaps the most influential Baptist in the struggle for separation was Elder John Leland (1754-1841), who came to the state in 1776 from New England. He was pastor of churches first in Culpepper, then in Orange County, until his return to New England in 1791. According to Semple he

¹³⁸Photostatic copy of original in possession of Virginia Baptist Historical Society.

¹³⁹Semple, op. cit., p. 71.

was appointed by the General Committee to wait upon the legislature in 1786 and 1787, to present petitions against incorporation, and for the sale of the glebes.¹⁴⁰ In Virginia he became a close friend of Madison and Jefferson.

Leland strongly contended for rights and liberty. Freedom of conscience and religious liberty seemed to be the consuming passion of his life. He wrote in the Virginia Chronicle in 1790: "The principle, that civil rulers have nothing to do with religion in their official capacities, is as much interwoven in the Baptist plan, as Phydias's name was in the shield."¹⁴¹ The power of government in no way affected the rights of conscience.¹⁴² To him the right of conscience was so sacred that no human could circumscribe it, for it was a court of judicature erected by God in every human breast.¹⁴³ In the pamphlet, The Rights of Conscience Inalienable, published soon after his return to New England in 1791, are seen opinions he must have formulated while in Virginia. Asking the question, "Are the rights of

¹⁴⁰Ibid., pp. 78-79. He sustained something of the same relationship to the General Committee as that of Isaac Backus to the Warren Association in New England in 1772.

¹⁴¹L. F. Greene, The Writings of the Late Elder John Leland (New York: G. W. Wood, 1845), pp. 117-18.

¹⁴²Ibid., p. 118.

¹⁴³Ibid., p. 123.

conscience alienable, or inalienable?" he answered that they were inalienable because: (1) one must give an account of himself to God; (2) it is sinful to surrender to man what should be kept sacred for God; (3) even if one could surrender his own conscience, it is wrong to bind the conscience of his children; and (4) religion is a matter between God and individuals, and is not subject to the control of civil government.¹⁴⁴

This was language not unlike Madison's "Memorial and Remonstrance" when he held that religion was a natural right. Certainly Leland used the natural rights concept, for in his circular letter on departure from Virginia he spoke against slavery as a "violent deprivation of the rights of nature," inconsistent with republican government and subversive of liberty.¹⁴⁵ Further, in a speech before the House of Representatives of Massachusetts in 1811 on the subject of religious freedom he said: "Mr. Speaker: The right of private judgment, like sight and hearing, is inalienable in nature." Again, "Religion is a matter between individuals and their God--a right inalienable--an article not within the cognizance of civil government,

¹⁴⁴Ibid., p. 181.

¹⁴⁵John Leland, A Circular Letter of Valediction on Leaving Virginia in 1791 (Boston: printed for John Asplund, 1794), p. 4. Photostatic copy in library of Southern Baptist Theological Seminary, Louisville, Kentucky.

nor any way under its control."¹⁴⁶

Leland's championing of the rights of conscience led him to oppose ratification of the Federal Constitution because it failed to have a Bill of Rights. He listed ten objections to it in a paper sent to Colonel Thomas Barker at his request. The first concerned natural rights:

Whenever a Number of men enter into a state of Society, a Number of individual Rights must be given up to Society, but there should be a memorial of those not surrendered, otherwise every natural & domestic Right become alianable [sic], which raises Tyranny at once, and this is as necessary in one Form of Government as in another.¹⁴⁷

The final objection of Leland to the Constitution was that religious liberty was not sufficiently secured. It was only after personal assurances from Madison himself in a much celebrated meeting of the two men in March, 1788, that Leland withdrew as a candidate from Orange County and gave his support, and that of the Baptists, to Madison.¹⁴⁸ This assured Madison's election to the Virginia convention

¹⁴⁶Greene, op. cit., p. 353.

¹⁴⁷L. H. Butterfield, Elder John Leland, Jeffersonian Itinerant (Worcester, Massachusetts: American Antiquarian Society, 1953), p. 187, quoting Madison Papers, Library of Congress.

¹⁴⁸The best documented accounts of this are in Butterfield, op. cit., pp. 183-96, and Dawson, op. cit., pp. 108-17. Some other accounts exaggerate the Baptist claim to sole responsibility for the Federal Bill of Rights. Even Dawson exaggerates at points, as when he says on p. 117, "Without the Baptists Madison might never have been."

where he won a strenuous battle for ratification.

Leland was a close friend of Isaac Backus (1724-1806) whose work on behalf of religious liberty and freedom of conscience in New England is well-known. Backus' numerous writings on liberty were probably known in Virginia, and were certainly known to Leland. It is reasonable to assume that Leland kept Backus informed of the progress of separation in Virginia. Backus visited Virginia in 1789 for a preaching tour.¹⁴⁹

Thus, Leland and the Baptists had the natural right concept as an integral part of their claim to separation. This was not so much explicit as implicit, for instead of "natural rights" they spoke mainly of "rights" and "liberty," especially liberty of conscience. But the same freedom of worship and freedom of conscience for which they contended were demanded as natural rights in Revolutionary Virginia by those acquainted with the philosophy of government and basic religious tenets. The Baptists did not cease to labor for rights until every formal connection between the church and the state was severed.

From this accumulation of evidence it has been demonstrated that one of the ideas at work in Virginia to pull down the Establishment and separate the church and

¹⁴⁹Ryland, op. cit., p. 143.

the state, thus achieving religious liberty, was the idea of natural rights. This doctrine had ancient roots. Its introduction to America and to Virginia was due mainly to the work of John Locke who had given it its modern expression. It was a part of the pattern of thought known as the Enlightenment with its attendant rationalism and Deism. It was used by the political leaders of Revolutionary Virginia as a basis for the claim to religious freedom as seen in their legislation and writings, and was written into the framework of the Virginia government. It is seen in the petitions and the writings of the Presbyterians and Baptists who were the two largest groups of dissenters in Virginia. Freedom of religion, freedom of worship, and freedom of conscience were all demanded as natural, inalienable rights. Natural rights were beyond the power of state either to grant or to regulate since they resided in the individual's relationship with God.

CHAPTER II

POLITICAL LIBERTY AS A FACTOR IN SEPARATION

CHAPTER II

POLITICAL LIBERTY AS A FACTOR IN SEPARATION

In the search for reasons why the church and the state were separated in Virginia the fact of political liberty through the American Revolution cannot be overlooked. Speaking of the nation as a whole it has been said that the achievement of political independence and a democratic form of government was a major factor in promoting religious freedom and securing the legal separation of Church and State.¹ This was not less true in Virginia. It will be the purpose of this chapter to show how political liberty contributed to this separation. Attention will be given to the growing resistance to Great Britain, the part played by individualism and the idea of social contract in political and religious life, the political struggle as a time of opportunity for dissenters to press their claims, and the religious struggle as a part of the larger revolution.

I. GROWING RESISTANCE TO GREAT BRITAIN

The colony of Virginia was founded primarily for

¹Anson Phelps Stokes, Church and State in the United States (New York: Harper Brothers, 1950), I, 258.

commercial reasons. It was not the work of king or parliament, but of individuals interested in trade which the colony would afford. In the latter part of the seventeenth and early eighteenth century there developed the English colonial policy known as the "mercantile" system. The colonies were thought to exist for the economic benefit of the mother country which, through its trading companies, was in desperate economic rivalry with other European countries. The colonists were to furnish raw materials to the mother country, and in turn serve as a market for manufactured goods.

Politically, from the very beginning Virginia was allowed a great deal of self-government through its own representative assembly. For nearly one hundred years prior to the Revolution the colonists governed themselves almost unhindered by the mother country. This is a fact of tremendous consequence in understanding the Revolution. Rights and privileges long exercised by the colonists were looked upon as a part of their historical heritage, and the assemblies viewed these rights as inherent in themselves as representative bodies of the people.²

²Charles M. Andrews, The Colonial Background of the American Revolution (revised edition; New Haven: Yale University Press, 1948), p. 40. By far the best treatment of the background of the Revolution from the standpoint of both Great Britain and the Colonies.

Because of this colonial self-government and the economic policy of the mother country, the two countries had been moving toward irreconcilable positions for a number of years. Such grievances as were afforded by trade and commerce, however, would not have precipitated a break. In 1763 Great Britain concluded a costly war with France, and turned her administrative attention to the colonies. Then the matter of taxation of the colonies came into focus. The Revenue Act of 1764, sometimes called the Sugar Act or the Greenville Act, was passed by parliament to make the colonists help bear the tax burden of the war, and to tighten the mercantile system by strengthening the Acts of Trade and Navigation.³ This was followed in 1765 by the Stamp Act which evoked the famous response by Patrick Henry in the "Virginia Resolves" of that year. "No taxation without representation" became the rallying cry of opposition to Britain. Agitation forced its repeal, but in 1767, the Townshend Acts were passed imposing custom duties on tea and other products entering the colonies.

The year, 1763, has often been designated as the time when Great Britain embarked upon a course of imperialism, or at least the time when imperialistic and mercantilistic

³S. E. Morrison, Sources and Documents Illustrating the American Revolution 1764-1788 and the Formation of the Federal Constitution (second edition; Oxford: The Clarendon Press, 1948), p. xii.

ideas became inextricably interwoven in dealings with the colonies. There is no doubt that this is true. However, it was only when the rigid enforcement of the policies clashed with the rising nationalistic consciousness of the colonists that the break with the colonies became inevitable.

Andrews noted that from the time of the Stamp Act to 1773, the moderates were in the saddle in the colonies, and were able to hold the radicals in check. Favoring compromise and conciliation, they hoped by passive resistance and avoidance of anything more drastic than non-consumption and non-importation to obtain a settlement.⁴ In 1773 it appeared that the crisis had passed and prospects for peace were high. "At this critical juncture . . . Lord North and his cabinet committed an irretrievable blunder."⁵ An act was passed in May, 1773, aimed at relieving the financial distress of the East India Company, the largest tea importing concern of the time, by granting a virtual monopoly of the tea trade with America. With this the quarrel entered the third and final stage. No longer was it simply an argument over trade and revenue, but the status of the colonies and their political and legal relations with the mother country were involved.⁶ Merchants

⁴Andrews, op. cit., p. 149.

⁵Ibid., p. 156.

⁶Ibid., p. 160.

faced ruin by the elimination of the "middle man," but even more important was the fear of similar monopolies in other commodities. The colonists resented having to buy at the "company store," and their indignation was not diminished by the fact that the tea was but half the usual price.

For the first time an issue arose which united the moderates and the radicals. Events moved swiftly. The "Boston Tea-party" was followed by punitive measures against Massachusetts. Twelve colonies answered the call of Virginia's House of Burgesses for a meeting of their committees of correspondence in Philadelphia in September, 1774, in a Continental Congress. Actual fighting began on April 19, 1775. The ultimate result was the independence of the American states.

While it cannot be said that this growing resistance to Great Britain had any religious factors as an immediate cause, it is true that the growing resistance expressed itself in the religious life of the period. The Church of England had been the Established Church virtually from the beginning in Virginia. After 1660, the pattern of government of the Church was very similar to that of the State. Like the king who ruled through the appointed governor, the Bishop of London ruled the Church through a commissary. Like the Assembly, a good deal of self government was allowed the self-perpetuating vestry which concerned itself

with affairs in the local parish. The first noticeable agitation in the churches was in the famous "Parson's Cause" growing out of a suit by James Murray, rector of Fredericksburg parish, to recover salary he felt due because the king had disallowed the acts of the colony which sought to make paper money instead of tobacco the legal tender. Patrick Henry defended the people and won acclaim as a popular leader. Dr. G. MacLaren Brydon in his excellent work, Virginia's Mother Church, interpreted the "Parson's Cause" not as a battle against the Establishment, but as a part of the growing resistance to Great Britain:

Its real meaning lies in the fact that it was a decisive step forward in the continuing movement in which the government and the people of Virginia, as they grew into wider life of self-government, broke the restraining and restrictive bonds which held the colony subject to the board of trade and tradesmen, and a king and privy council three thousand miles away.⁷

Certainly the Anglican clergy in appealing to the king against the colonists had aroused resentment, the roots of which lay not in the questions of taxation or trade, but in a strong feeling of Virginian nationalism. This was what produced the colonial irritation with England.⁸

⁷G. MacLaren Brydon, Virginia's Mother Church (Philadelphia: Church Historical Society, 1952), II, 288.

⁸H. J. Eckenrode, Separation of Church and State in Virginia (Richmond: [n.n.], 1910), p. 26.

It remained the "tinder box" which the radicals ignited to achieve open revolution.

The growing political resistance to Great Britain was paralleled by a time of great growth among the dissenting groups, particularly the Separate Baptists. The Great Awakening in the middle of the century was responsible for much of this growth. Presbyterians under the leadership of Samuel Davies had achieved a status of toleration, and generally obeyed the laws of the colony with regard to the licensing of meeting places and ministers.⁹ The Separate Baptists, however, did not recognize the right of civil authority to regulate preaching and places of worship. Consequently, they practiced civil disobedience in these matters under the banner of freedom of conscience and worship, which brought persecution upon them by the government as disturbers of the peace. The imprisonments began in 1768, and at that time there were but five churches of Separates in Virginia.¹⁰ In 1774, six years later, there were fifty-four churches that sent letters to the Association and possibly others that did not.¹¹ This growth meant

⁹Wesley M. Gewehr, The Great Awakening in Virginia, 1740-1790 (Durham, North Carolina: Duke University Press, 1930), p.105.

¹⁰Robert B. Semple, History of the Rise and Progress of Baptists in Virginia (Richmond: n.n., 1810), p. 25.

¹¹Ibid.

increased influence. As Semple noted,

So favorable did their prospects appear, that towards the close of the year 1774, they began to entertain serious hopes, not only of obtaining liberty of conscience, but, of actually overturning the church establishment, from whence, all their oppressions had arisen.¹²

Baptists saw that their religious struggle was not unlike the political one, and their growing resistance led them to a separation as sure as American Independence.

II. INDIVIDUALISM AND SOCIAL CONTRACT

When men search for categories in which to express the issues of their day, be it revolution, reformation, or a restatement of accepted positions, they usually do so in terms of the ideas that have shaped their thinking. The eighteenth century has been noted for its emphasis on the individual. Borrowing both from the Renaissance and the Reformation the so-called Enlightenment made the individual man the measure of things. A firm confidence in the reason of man to discover the natural law and to improve himself gradually in an ever-steady stream of progress was affirmed. The fight of the individual man against forces that would hinder his development was inspired by terms such as "liberty," "equality," and "freedom of the conscience." When individuals entered into government it was on the

¹²Ibid.

basis of social contract, whereby government was based on the consent of the governed, and sovereignty rested ultimately with the people. The revolution in America, shaped much by Enlightenment thinkers, was cased in such terms.

As early as 1765 Patrick Henry, in the "Resolves on the Stamp Act," asserted that Virginians were entitled to the "liberties, privileges, franchises and immunities" enjoyed by all other subjects of the king of Great Britain.¹³ From the American viewpoint individuals could be taxed only by their own representatives to whom they were responsible, and in this they were asserting their rights as Englishmen. Henry looked upon the body of the people as the basis of society and upon governments as instituted solely for the good of the people.¹⁴ From this viewpoint he sounded the battle cry of liberty.

The Virginia Bill of Rights¹⁵ of June 12, 1776, written mostly by George Mason, declared that all men are equally free and independent, and have certain inherent rights of which they cannot deprive or divest themselves

¹³Morrison, op. cit., p. 17.

¹⁴William Wirt, The Life and Character of Patrick Henry (sixth edition; New York: M'Elrath, Bangs and Co., 1834), p. 75.

¹⁵William Walter Hening, Statutes At Large: A Collection of All the Laws of Virginia, IX(Richmond: Printed for the author, 1821), 109ff.

or their posterity. Individuals do not surrender sovereignty in government, said Mason, but they are represented by magistrates who are trustees and servants, and should the people desire to "reform, alter, or abolish" the government they have an "indubitable, unalienable, and inalienable" right to do so.¹⁶ The government was instituted for the benefit, protection, and security of the people. Thus, the idea of government as a social contract entered into by a sovereign people affirming the natural inalienable rights of individuals had thoroughly penetrated Virginia thinking, and now was used to justify the revolution.

Jefferson gave probably the most classical expression to this philosophy of individualism and government by social contract when in the Declaration of Independence he declared that all men are created equal and endowed with certain inalienable rights--life, liberty, and the pursuit of happiness. In order to safeguard these rights governments are created, he declared, and derive their power from the consent of the governed, who have the right of alteration or abolition of the said government.

Madison was appealing to the rights of individual conscience as early as 1776, when he revised Article XVI of the Virginia Bill of Rights to read that all men are

¹⁶Ibid.

equally entitled to the free exercise of religion, according to the dictates of conscience. Certainly the most noteworthy presentation of his ideas on individual rights as they pertain to the question of religion in Virginia was in the "Memorial and Remonstrance" of 1785, when he stated that religion must be left to the conviction and conscience of every man.¹⁷ Assessment, he argued in the same document, violated that "equality which ought to be the basis of every law."¹⁸ By this equality all men entered society on equal conditions. The right to freedom of conscience was on par with all other individual rights, and to violate this right was to sweep away all fundamental rights.¹⁹

John Leland, who exerted great influence on Virginia Baptist thinking during the period of separation, raised the question in one of his tracts, "Does a man, upon entering into social compact surrender his conscience to society?"²⁰ His answer was no, for every man must give account of himself to God. And since governments cannot answer for individuals in judgment, men must be free. All power of government is vested in, and consequently derived

¹⁷Stokes, op. cit., p. 341.

¹⁸Ibid., p. 342.

¹⁹Ibid., p. 343.

²⁰L. F. Greene, Writings of the Late Elder John Leland (New York: G. W. Wood, 1845), pp. 179ff.

from, the people who enter into a compact by means of a constitution. The people have an indubitable right to alter the government if it should be inadequate to preserve the liberty and property of the people. By entering this social compact, Leland held, man does not surrender his conscience to society.²¹ This same general viewpoint was reflected in the Baptist petitions to the legislature throughout the period.

The idea of social contract has been used to support both individualistic and collective ideals of society; individualistic in the eighteenth century, and collective in the nineteenth and twentieth centuries. In Eighteenth Century Virginia both natural rights and social contract were given an individualistic cast in a frontier setting far removed from the old world patterns, and served to justify a world-shaking revolution. As applied to the Virginia situation this meant that each individual must be left free to manage the affairs of his conscience, and Virginia, an individual state, must be left free to manage its own internal affairs. Richard Bland, ten years before the Revolution, argued that though Virginia was part of the British Empire, "Virginia was no part of the

²¹Gewehr, op. cit., p. 190.

Kingdom of England"²² and under no obligation to receive laws from parliament. In still bolder language Jefferson subscribed to this "prodigious innovation" in his "Summary View of the Rights of the British Colonies" in 1774.²³ It seemed, indeed, that soon many Virginians were of that opinion.

In summation of this stream of influence Andrews said that in contrast to the mother country that had behind her many years of tradition and convention, and who lately had embarked on establishing an "empire," stood the American colonies with an environment favorable to the development of man as an individual rather than as a member of society.²⁴ Communal action was resorted to only in the face of emergency, for the spirit of the frontier was always a "fearless and aggressive individualism."²⁵ There had developed here the theory of the state as a "voluntary compact between contracting parties of various inherent rights."²⁶ These ideas were repugnant to the mind-set of the British governing class. Their only

²²Lyon Gardiner Tyler, History of Virginia (Chicago: American Historical Society, 1924), II, 84.

²³Ibid.

²⁴Andrews, op. cit., p. 195.

²⁵Ibid., p. 196.

²⁶Ibid.

remedy for such radicalism was coercion, and the only possible result of coercion was an open break.

H. J. Eckenrode may have had this in mind when he said that the Revolution in Virginia was not economic, but political in origin:

In truth, the Revolution in Virginia was almost entirely political in origin. It was the effort of a community singularly tenacious of its rights and jealous of the broadening shadow of the British Empire across the world to secure certain positions for its own safety; it was the determination of a proud easy-going, liberty-loving community, conscious of its importance in English eyes, to maintain its old independence and increase it.²⁷

III. THE REVOLUTION A TIME OF OPPORTUNITY FOR DISSENTERS

A most interesting question to consider is why disestablishment and the separation of church and state in Virginia came when it did. Many other states had an established church and some continued to have establishments as much as forty years after the Revolution. Then just why was Virginia one of the first states in the world to divorce religion completely from the state? Certainly the many complex forces that interacted to bring about separation must not be minimized, but if the statement of Eckenrode is correct that "the establishment [in Virginia] was destined to come to its end from two main causes--

²⁷H. J. Eckenrode, The Revolution in Virginia (Boston: Houghton Mifflin Co., 1916), p. 39.

political revolution and the great evangelical revival as represented by the dissenting sects,"²⁸ then it is certainly true that the dissenting sects seized upon the revolution as a time of opportunity to press their claims for religious liberty and separation of the church from the state.

As indicated already the two main dissenting groups in Virginia in terms of size and influence were the Presbyterians and Baptists. The history of the Presbyterian movement shows that it was not adverse to a state-church, as witness the powerful state-church in Scotland. But it must be remembered that many of the Presbyterians who came to this country had done so in a spirit of revolt against the mother country. And some, for instance Witherspoon of Princeton who taught many Virginia boys, had a strong antipathy to a state-controlled church as a result of the fight with the Moderates in Scotland.²⁹

After achieving a measure of toleration by the efforts of Samuel Davies, Presbyterians in Virginia were not openly opposed to the Establishment until the Revolution. They were content to live under the provision of the Toleration Act so long as they were free to preach,

²⁸Eckenrode, Separation of Church and State in Virginia, p. 31.

²⁹John M. Mecklin, The Story of American Dissent (New York: Harcourt, Brace and Co., 1934), p. 291.

organize churches, and worship according to their faith. They agreed as late as November 11, 1774, in a petition to the legislature for their clergymen to take oaths of allegiance to the government and to register their public places of worship.³⁰ Beginning in 1774, however, they began to agitate for more liberty, and after the adoption of the Virginia Bill of Rights began to agitate for disestablishment and full religious liberty. In the cited memorial of November 11, 1774, they objected to certain strictures of a proposed Toleration Bill of 1772, which would confine "ministrations" to definite places, prohibit night meetings, and oppose ministry to servants without the owner's consent. This petition has been called the first document to be read on the floor of the House of Burgesses which demanded genuine religious freedom.³¹

After Virginia declared itself a free state and set up a state government, its first legislature received petitions from Presbyterians declaring their support of the Revolution, and asking for religious liberty as well. A petition from Prince Edward, October 7, 1776, called

³⁰Charles F. James, Documentary History of the Struggle for Religious Liberty in Virginia (Lynchburg, Virginia: J. P. Bell Co., 1900), p. 43.

³¹Daniel Durham Rhodes, "The Struggle for Religious Liberty in Virginia, 1740-1802" (unpublished doctoral thesis, Duke University, Durham, North Carolina, 1951), p. 87.

the last article of the Bill of Rights the "rising Sun of religious Liberty" and urged the legislature to go on and complete what was so nobly begun, to "raise religious as well as civil liberty to the zenith of Glory."³² They requested that all church establishments be pulled down and all taxes for religion be abolished.³³ Soon thereafter a most significant memorial from the Hanover Presbytery, October 24, 1776, sanctioned the Revolution by declaring:

Your memorialists are governed by the same sentiments which have inspired the United States of America; and are determined that nothing in our power and influence shall be wanting to give success to our common cause.³⁴

After establishing their sentiment for the new government they rejoiced in the Bill of Rights which secured the free exercise of religion according to dictates of conscience, and implored that their religious grievances be alleviated under the new government. They saw that religious liberty must be wedded to civil liberty. "Certain it is that every argument for civil liberty gains additional strength when applied to liberty in the concerns of religion,"³⁵ they said.

By right of petition throughout the political crisis

³²Stokes, op. cit., p. 376.

³³Ibid.

³⁴Original in Virginia State Library.

³⁵Ibid.

the Presbyterians evidenced their claim to liberty. On June 3, 1777, a petition was presented strongly protesting against a general assessment for religious purposes as subversive of religious liberty. Even when actual hostilities ended the Presbyterians in their petitions concerning the assessment and incorporation issues of 1784 and 1785, did not fail to remind the legislature of their part in the Revolution. In the petition of May 26, 1784, they said, "In the late arduous struggle for everything dear to us, a desire of perfect liberty and political equality animated every class of citizen."³⁶ They had a right thereby to expect equal security of religious rights. But, they asserted, there remained to the Episcopal Church remnants of its position of privilege in the matter of the property of the Established Church, the right to perform marriage, incorporation in law, and the vestry law which permitted vestries to levy taxes for certain purposes from all the people. In the petitions of October, 1784, and August, 1785, their ground of remonstrating against incorporation and assessment was the liberty achieved in the late Revolution. "This inspired our hearts with resolution in the most distressful scenes of adversity, and served our arm in the day of battle. But our hopes have

³⁶James, op. cit., p. 227, in appendix.

since been overcast . . ."³⁷ with the slow achievement of genuine religious liberty, they said.

In similar fashion the Baptists also sensed that the war of revolution was a time of opportunity to make known their witness concerning religious freedom to their countrymen, who were giving birth to another kind of freedom.

Beginning in 1770, they petitioned the legislature concerning certain denials of toleration. Observing Baptist resistance to state intolerance and the consequent persecution, many people came to see that the Baptists were fighting their battle of liberty also. This resulted in tremendous Baptist growth in the 1770's and 1780's. Mecklin noted that the Baptists were "quick to realize the effect of the war upon the status of the dissenters" in the matter of demanding chaplains.³⁸ In a petition from the General Baptist Association to the first Virginia Convention dated August 14, 1775, they declared: "We look upon ourselves as Members of the Same Commonwealth, and therefore with respect to Matters of civil nature, embarked in the same common cause."³⁹ Having decided that in some cases it was lawful to go to war against oppression and invasion, many Baptists had

³⁷Ibid., p. 236, in appendix.

³⁸Mecklin, op. cit., p. 265.

³⁹Photostatic copy of original in possession of Virginia Baptist Historical Society.

enlisted. Baptists therefore petitioned that Baptist ministers be given the right to preach to the soldiers as chaplains. This wish was granted, and has been called the "beginning of the Baptist war on the state-church."⁴⁰

A most obvious instance of opportunism is found in the petition from the Baptist Church at Occaquon, Prince William County, dated May 19, 1776.⁴¹ Declaring strictest unanimity to be necessary at this juncture of public affairs, they desired that remaining causes of animosity and division be removed, namely, that they be allowed free worship, allowed to maintain their own ministers, and allowed to be married and be buried by their own ministers. "These things granted, we will gladly unite with our Brethren of other denominations, and to the utmost of our ability promote the cause of freedom," they said.⁴² This petition was the exception rather than the rule, however, for most petitions were not in the form of a bargain but a plea like that of October 16, 1776, from Dissenters from the Ecclesiastical Establishment in the Commonwealth of Virginia. It certainly must have included both Baptist and Presbyterian signers who were prepared to declare:

⁴⁰Mecklin, loc. cit.

⁴¹Photostatic copy of original in possession of Virginia Baptist Historical Society.

⁴²Ibid.

Your Petitioners therefore having long groaned under the Burden of an Ecclesiastical Establishment, beg leave to move your Honorable House that this as well as every other yoke may be broken, and that the oppressed may go free.⁴³

There was some opposition to dissenters pressing their claims while the outcome of the political struggle was still in doubt. Yet this did not deter the Baptist Association, for in the memorial of October 16, 1780, from the meeting at Sandy Creek in Charlotte it was stated that every law or usage which did not accord with the republican spirit of the Constitution and the Bill of Rights was "pernicious and detrimental" and should be immediately abolished.⁴⁴ Answering critics who said it was the improper time to ask for such, they declared:

As Religious Oppression, or the interfering with the rights of Conscience, which God has made accountable to none but himself, is of all oppression the most inhumane and insupportable, and as Partiality to any Religious Denomination is its genuine offspring, your Memorialists have with grief observed that Religious Liberty had not made a single advance, in this Commonwealth, without some opposition--They have been much surprised to hear it said of Things indisputably right and necessary "It is not now the proper Time to proceed to such Affairs, let us first think of defending ourselves &c." when there cannot, surely, be a more suitable Time to allow ourselves the Blessings

⁴³Photostatic copy of original in possession of Virginia Baptist Historical Society. A note on this copy says it was subscribed to by over 10,000 freemen. Eckenrode says this was circulated by the Baptists.

⁴⁴Photostatic copy of original in possession of Virginia Baptist Historical Society.

of Liberty, which we have in our own Power, than when contending with those who endeavour to tyrannize over us.⁴⁵

The Baptists here felt it was time for a repeal of the marriage law and the vestry law which guaranteed to the Church of England clergy and vestry special privilege. Petitions in 1782 and 1783, from the Association echoed the same dissatisfaction.

After October, 1783, the General Association ceased meeting, and Baptists organized a General Committee with representatives from four district associations for purposes of attending to their grievances. When the General Committee petitioned in the name of the Association in August 5, 1786, against the Incorporation Act, it was a well worded paper that recalled the Baptist efforts in achieving independence. It said in part:

When Britain with her cruel Usurpation over the Colonies in America, reduced them to the necessity of taking up arms, to vindicate their Natural Claim. A declaration of Rights was made by the good people of Virginia, assembled in full and free Convention, as the basis and foundation of Government, a Constitution as Liberal in Civil, and free in religious concerns, that we readily took the Oath of fidelity to the State. From this principle we expiated! for this free government we advanced our property, and exposed our lives in the field of battle with our fellow Citizens; being Often Stimulated with the harmonious Proclamation of equal Liberty of conscience, equal claim to property.⁴⁶

⁴⁵Ibid.

⁴⁶Photostatic copy of original in possession of Virginia Baptist Historical Society.

There followed a protest against the Incorporation of the Episcopal Church as being a "bitumen to cement the Church and State together," the foundation of Ecclesiastical tyranny, and the first step towards an inquisition. Thus, incorporation, religious assessment, and the possession of the Established Church's property by the Episcopal Church, were all viewed by Baptists as being out of harmony with the Virginia Bill of Rights for which they had fought.

It would appear, therefore, that the Baptist and Presbyterian positions as reflected in these petitions to the legislature regarding matters of religious freedom and separation were based upon a dedication to the principle that civil and religious liberty should go hand in hand. To this end they sought to bring about a complete separation of the churches from the state during the period when the new American states were being politically separated from Great Britain. That they succeeded in the task in Virginia at this time of opportunity is a fact of significance to all subsequent American Church history.

IV. THE RELIGIOUS STRUGGLE A PART OF THE LARGER REVOLUTION

Not all historians have been agreed concerning the exact relation of the religious struggle to the political struggle in Virginia. Baptist historians, Semple, James,

and Little, gave large place to the religious struggle as helping to shape the political, with Baptists playing a large role in the religious struggle. Charles M. Andrews interpreted the revolution as primarily political, with religious differences only intensifying party feeling.⁴⁷ Edward Frank Humphrey⁴⁸ objected to the view that separation of church and state was the natural and inevitable result of separation from the mother country by pointing out that the establishments in America were colonial rather than imperial, and their political connections were with colonial governments rather than Great Britain.⁴⁹ Thom began his account of the Baptist role in the Struggle for Religious Freedom in Virginia--The Baptists by saying that the movement for religious liberty,

was really a part of the greater struggle for political freedom, with which it was so nearly coincident in time. Much the same causes led to each; the logic of both was the same; and there was no time at which the religious struggle was not largely political, and not clearly seen to be so by the leaders of thought.⁵⁰

⁴⁷ Andrews, op. cit.

⁴⁸ Edward Frank Humphrey, Nationalism and Religion in America, 1774-1789 (Boston: Chapman Law Publishing Co., 1924), p. 360.

⁴⁹ It needs to be remembered here, however, that the colonial governments were not free sovereign states yet, and most of them were responsible directly to the crown through the appointed governors.

⁵⁰ William Taylor Thom, The Struggle for Religious Freedom in Virginia--The Baptists (Baltimore: Johns Hopkins Press, 1900), p. 9.

Perhaps a better view is that both the political and religious struggles were phases or parts of a larger revolution of eighteenth century America concerned with the freedom of man. This, in essence, was the view of Eckenrode when he said the struggle for separation cannot be viewed apart from the social and political setting of the times.⁵¹ The controversy had a wider relation than to religion alone; it was a side of the revolution itself. Actually it was a part of the great conflict of the closing years of the century between conservatism and democracy in which liberal forces led by Thomas Jefferson made war upon the political, social, and religious structure of the day.⁵² George MacLaren Brydon, the Episcopal historian, in commenting on the Evangelical Movement of these years in Virginia reflected much the same viewpoint when he said:

It was a revolution--as truly a revolution in the sphere of freedom of the human soul as was the War for American Independence in the sphere of political and civil freedom. Indeed the revolution in the two spheres must be placed together in their interaction and interrelationships if one is to understand the developing character of the American people.

Independence, as the American colonists of 1766 dreamed of and fought for it, was fundamentally a thing of the spirit of man and included freedom from restraints in human thinking and worship of

⁵¹Eckenrode, Separation of Church and State in Virginia, p. 91.

⁵²Ibid.

the Divine as well as release from civil and governmental restraints imposed by an overseas power.⁵³

Thus, any consideration of any part of the revolution must take notice of the larger revolution in which civil and ecclesiastical affairs were leading to a breakdown of the Anglo-American union. Because of the closely knit relationship between church and state, any movement for political independence would involve a corresponding movement for religious freedom; and likewise, any movement for religious freedom would raise the political issues.⁵⁴ Unlike other states, the Virginia situation was a remarkable example of the two revolutions coinciding, because the forces at work there were so intense for these victories and did not rest until both were achieved.

The struggle for separation, then, was a part of the larger revolution because first, it had much the same causes, basically. On the one hand there was the mother country trying to maintain the status-quo in government by the exercise of parliamentary authority to keep the rebellious colonists in check; on the other hand was the state-church trying to maintain the status-quo in religion by the exercise of given authority to keep the dissenters

⁵³Brydon, op. cit., p. 227.

⁵⁴Rhodes, op. cit., p. 41.

in check.⁵⁵ Both colonists and dissenters challenged the authority in the name of natural rights. On the one hand there was the objection of the colonists to taxation without proper representation in the assembly doing the levying; on the other hand dissenters objected to paying taxes to the state-church where they were not represented in membership. This was an added burden since dissenters maintained their own church. On the one hand there were the colonists asserting their right to self-government against the encroaching empirical policy of Great Britain; on the other hand were the dissenters asserting their right to self-government and self-determination in matters of faith and practice against the encroachment of the Established Church. In both instances there were at work the forces of individualism demanding the right of persons to liberty and freedom, culminating in one instance in the Bill of Rights, in the other in the Statute of Religious Freedom.

The fight for separation of church and state was a part of the larger revolution in the second place, because of its logic. The Lockean philosophy of natural, inalienable rights was used as much to justify freedom of worship as it

⁵⁵A reading of the Baptist and Presbyterian petitions to the legislature, many of which are already given, reveals that they thought the Established Church to be as much a symbol of tyranny as that exercised by Great Britain over the colonists in government.

was to justify political liberty of Englishmen. The freedom of the individual man gave him the prerogative to determine matters of religion and conscience for himself as much as it did to determine his form of government and to whom he would delegate governmental authority. Just as the state must be free with sovereignty resting with the people, so the church must be free with sovereignty in its affairs remaining to the people. In the same manner that the tyranny of Great Britain was pulled down, so the tyranny of the Established Church must be pulled down.

In the third place, many of the same people were involved in both. The place of such leaders as Patrick Henry, Thomas Jefferson, James Madison, and George Mason in the religious phase has already been noted. These men are well-known for their leadership in the political struggle. The role of minority groups such as Baptists, Presbyterians is clearly in support of both revolutions, even though the Presbyterians did not join in the property fight. This is sometimes disputed. Brydon emphatically denied the claim of Baptist historians to any dominating influence in either political independence or religious freedom on the basis that they were a minority group with not more than ten thousand persons, and not more than three thousand votes.⁵⁶ Consequently, he said, they

⁵⁶Brydon, op. cit., pp. 227ff.

could not have persuaded a General Assembly, most of whom belonged to the Established Church, to pass the measures they did. He then claimed that the fight for independence from control of the British Parliament "was born and developed among the parishes of the Established Church."⁵⁷ They represented and carried with them, he boasted, all of the more privileged classes east of the Blue Ridge, and furnished the leadership for the colony during the whole Revolutionary period.⁵⁸ These vestrymen may have voted for the Bill of Rights, but one searches in vain in the post-war era when the struggle became mainly religious for any petition to the legislature in behalf of the Bill for Religious Freedom, or against assessment and incorporation, that would place them on the side of separation of church and state. Instead, they petitioned for incorporation and assessment, and tried in every way to retain possession of

⁵⁷Ibid., p. 229.

⁵⁸Ibid. It is interesting that in discussing the persecution of the Baptists in the period prior to the Revolution, p. 189, he absolves the vestrymen, who are now so influential, from all blame by saying that the suffering of the Baptists was "the direct result of their own preaching and their general attitude towards the religion of others. . . ." He blames Baptists for not distinguishing between the political question of establishment and the religious question of doctrines and tenets of the Established Church. Thus their own bitterness and hatred of other forms brought on their ill-treatment. If the vestrymen were as influential as he claimed here, then, either they wanted the persecution to happen, or did not care if it did happen!

the Established Church's property. It remained for the coalition of dissenters, Presbyterians and Baptist, and the liberal political leaders, Madison, Jefferson, and Mason, to achieve separation of church and state by the defeat of assessment and incorporation, and the passage of the Statute for Religious Liberty. The Baptists made the subsequent fight for the sale of the glebelands almost alone.

It becomes clear that freedom of the individual conscience was the point of synthesis for the strong political leaders and the dissenting religious groups. Though Jefferson, Madison, and Mason were not primarily concerned with religion they knew that this battle for freedom was a part of the greater task of liberation to which they had given themselves. At every point, Bill of Rights, Assessment, Incorporation, and Bill for Religious Liberty, they knew the religious struggle to be a part of the larger revolution.

To summarize, one of the factors that contributed to the separation of church and state in Virginia was political liberty. There was in the period immediately prior to the political struggle a growing resistance to Great Britain which manifested itself in both political and religious life. The thinking of the time was

thoroughly conditioned by ideas of individualism and government by social contract, which became the foundation for the demand for rights both political and religious. The political struggle became a time of opportunity for the dissenters in Virginia to press their claims for disestablishment and the complete separation of church and state, which made political and religious liberty then coincidental in time. The religious struggle really was a part of the larger revolution of the latter part of the eighteenth century which sought the freedom of man in every area.

CHAPTER III

DOCTRINE OF THE CHURCH AND SEPARATION

CHAPTER III

DOCTRINE OF THE CHURCH AND SEPARATION

Any treatment of the sources of separation in Virginia must take note of the doctrine of the church to understand just what it was that was being separated from the state. This is especially true since there was already in Revolutionary Virginia, as now, no unanimity of opinion concerning what is the church, of whom it is composed, how it should be governed, and what is its relation to society. All of these questions are of primary significance and must be answered before the relationship of the church to the state is discussed. In turn, the relationship of the church to the state becomes a part of any discussion of the nature of the church. It is even more urgent when it is remembered that separation was achieved by forces friendly to religion rather than those hostile to it, and that the sectarian groups with their doctrine of the free church were perhaps the greatest single factor in the separation of church and state in Virginia.

First will be noted the traditional views of the church of the various Christian groups on the Virginia scene; and second, how these views were related to the various issues of separation in Virginia by the influential

denominations including the Church of England, Presbyterian, and Baptists.

I. DOCTRINE OF THE CHURCH IN VIRGINIA CHURCHES

The Church of England was present in Virginia from the very beginning. Anglicanism has always placed great emphasis upon the institutional church. The Church is one, holy, and apostolic, as the true universal church ought to be. It is focalized in its ministers who are properly and successively ordained for the ministry of the word and sacraments. The church is largely a unifying force in society, and theoretically includes all of the people in a given territory. On this basis it was proper for the Church to demand conformity to its rules and order, and to collect taxes for the support of the Church and ministry. The Church, then, was established by law, with the king as titular head. Parliament exercised a proper right in legislating concerning religious matters. This Church was endowed with authoritative truth in the Scriptures and its creeds, and demanded allegiance to these, and to the head of the state. Laws passed by Parliament regulating the life of the Church must be obeyed by all loyal subjects. Thus, the Church of England was in fact a state-church in Virginia.

The Presbyterian Church had its beginning in Scotland

with the work of John Knox. It was influenced more by John Calvin than by the Lutheran and English Reformations. Its presence in Virginia was due mainly to the Scotch-Irish immigration of the eighteenth century, and the work of Samuel Davis in the Hanover Presbytery. It, too, was an institutional church in the beginning. In the Westminster Confession of Faith of 1643,¹ the traditional Presbyterian confession, the universal catholic Church is affirmed, but it consists of the elect which is the invisible church. The church in the world is "sometimes more, sometimes less, visible," and particular churches are more or less pure, depending upon conformity to Holy Scripture, obedience to the Holy Spirit, its worship, and the holy life of its members. Jesus is the sole head of His Church. The civil magistrate has the duty to take measures to assure that "unity and peace be preserved in the Church," to keep the truth of God pure and entire, and to suppress blasphemy, heresy, and corruptions in worship and discipline.² Government of the Church is by presbyteries as elected representatives, which meeting together forms the synods. Thus, Presbyterians were somewhat

¹"Westminster Confession of Faith" in Henry Bettenson, Documents of the Christian Church (New York: Oxford University Press, 1947), pp. 347ff.

²Ibid.

democratic from the beginning. They affirmed liberty of conscience in "doctrines and commandments of men, which are in anything contrary to His Word," but not in matters relating to the external peace and order which Christ has established in his Church.³ From the beginning the Presbyterian Church in Scotland was in every sense a state-church, but had within its ideas that later in Virginia were developed in the direction of the free-church.

The Baptists who came to Virginia had their beginning in the English Separatist movement of the seventeenth century. The Baptist doctrine of the church, according to H. Wheeler Robinson, is a special form of the Puritan doctrine in general which has passed through the sieve of separation.⁴ Baptists affirm a universal church of all believers known only to Jesus himself. The church in the world is a fellowship of believers whom Christ has gathered into a community on the ground of their confession of personal faith. Christ is the sole head of this fellowship, and the authority in matters of faith and practice is the Holy Scriptures. The church is congregational in polity, because religion is a personal thing and churches are associations of religious men. Baptists, therefore, affirm

³Ibid.

⁴H. Wheeler Robinson, The Life and Faith of the Baptists (London: Kingsgate Press, 1946), p. 83.

the priesthood of all believers. A church has believers only as members, for membership requires a personal commitment of the will. The freedom of the individual conscience was declared from the beginning, and the church must remain separate from any connection with the state. Baptists, then, were of the free church tradition.

This characterization will serve to point out in barest outline the viewpoints of the various Christian groups of Virginia concerning the church. If the categories of Ernst Troeltsch in The Social Teaching of the Christian Churches⁵ were applied, the Church of England in Virginia might represent the "church type." By this type the Christian fellowship "is conceived as an institution, not dependent on individualism, possessing a 'depositum' of absolute truths and wonderful civilizing sacramental powers."⁶ It accommodated itself to the existing secular social order. The Baptists at this time might represent the "sect type," which conceived of the Christian fellowship as a "society whose life is constantly renewed by the deliberate allegiance and personal work of its individual members."⁷ With

⁵ Ernst Troeltsch, The Social Teaching of the Christian Churches, trans. Olive Wyon (London: George Allen and Unwin Ltd.; New York: The Macmillan Co., 1950), II, 461.

⁶ Ibid.

⁷ Ibid.

the Presbyterians at this point in Virginia there is more difficulty in classification since there seems to be a mixture of both church and sect type. In their institutional organization they most certainly would be with the church type, but in the matters of the relation of individual to the state and the separation of church and state they seem to be of the sect type. Due to the fact that they were not the dominant group and had to fight first for toleration, and then liberty, the Presbyterians in Virginia were thoroughly given to free church ideas such as toleration of other church groups, liberty of the individual conscience, voluntarism, and separation of church and state.

II. THE CHURCH OF ENGLAND VIEWS AND SEPARATION

Since the contest was between the state-church and the free-church ideas, it will be important to show first the relation of the Church of England to the concept of separation before dealing with the free churches. It is impossible here to go into its history as the state-church of England, but suffice to say that the church which the colonists brought with them to Virginia was the one which had enjoyed the role of the Established Church in England continuously since the English Reformation. The only interruption was the Puritan revolt in the middle of the seventeenth century.

It was at the time of the Restoration in England that the Virginia Assembly passed certain legislation that fixed the character of the Church up to the Revolution.⁸ In 1662 the Assembly required all ministers to show evidence of ordination by an English bishop, and all others who taught or preached, publicly or privately, were to be silenced by the governor and council. At the same time the vestries of each parish were given great powers in parochial matters. Each vestry was limited to twelve persons who were required to take the oaths of supremacy and allegiance, and subscribe to the doctrine and discipline of the Church of England. Vestries became self-perpetuating, for once elected by the people of the parish, they filled their own vacancies, and continued to rule for many years without being called to account. Their duties included fixing the minister's salary, fixing the assessment for the salary, regulating church expenses, providing relief for the poor, transacting parochial business, and presenting the new minister when a vacancy occurred.⁹ Eckenrode called this an inefficient government, for the ministers were under control of an oligarchy who were interested in keeping expenses down, and hence many ministers of inferior quality

⁸H. J. Eckenrode, Separation of Church and State in Virginia (Richmond: [n.n.], 1910), p. 13.

⁹Ibid.

only would leave England to come over.¹⁰

In summary of the condition of the Church Leo Pfeffer wrote:

The Anglican establishment in Virginia appeared secure as the Revolution approached; at least it was carefully guarded by protective statutes. These provided for: religious services according to the laws and orders of the Church of England; a ministry conformable to the canons; compulsory attendance at religious services; the regulation of nonconformists; glebe lands for the support of the clergy; closed, corporate, and non-responsible vestries empowered to levy tithes for ministers' salaries, upkeep of the church, and support of the poor, and occupied by vestrymen subscribing to the doctrine and discipline of the church and bound by the oath of supremacy.¹¹

The Established Church never had a bishop in the colony, but after 1675, was under the Bishop of London who ruled through a commissary. The commissary had no real disciplinary authority, and exercised neither the rites of ordination and confirmation, nor the right of inducting ministers to parishes. With this in mind Gewehr commented:

The real control over the Colonial Church, lay neither in the Governor, the Commissary, nor the more distant Bishop of London, but rather in the local vestries which managed the affairs of each parish.¹²

The vestry was perhaps the greatest single force in the

¹⁰Ibid.

¹¹Leo Pfeffer, Church, State and Freedom (Boston: Beacon Press, 1953), p. 95.

¹²Wesley M. Gewehr, The Great Awakening in Virginia, 1740-1790 (Durham, North Carolina: Duke University Press, 1930), p. 31.

Colonial Established Church. The men responsible for its proceedings were the real leaders of Virginia. They were the leaders in politics. They were the representatives in the Assembly. By virtue of their position they were officers of both the church and state at the same time. This was to be expected because of the close nexus of church and state in the colony.

It is therefore surprising to find Brydon, the historiographer of the Diocese of Virginia, decrying the accusations of Baptist historians that the Established Church of Virginia fomented and incited the persecution of the Baptists. In his recent work he stated that the Established Church had no way to fight back against dissenting aggression. He says,

The fact is evident that the Anglican Church in Virginia had no organization whatsoever beyond the self-perpetuating committee of twelve men in every parish called the parish vestry . . .¹³

and neither they nor the clergy had any power to meet in higher organization to enact rules or laws, or formulate policies. If the vestries were so incapable to act against the dissenters it is hardly likely that as much credit should be given them as he does in resisting the British.¹⁴

¹³George MacLaren Brydon, Virginia's Mother Church (Philadelphia: Church Historical Society, 1952), II, 183-84.

¹⁴Ibid., p. 299.

The fact remains that the Established Church did resist every move in the state towards religious liberty and separation of church and state, including the discontinuance of state paid salaries for its clergy, the repeal of vestry and marriage laws, the defeat of assessment and incorporation, the passing of the Statute of Religious Freedom, and the sale of the glebes. Furthermore, their organization seems to have been effective for over a hundred years prior to the appearance of the dissenting groups in force in Virginia. It was only when the free church idea present in the religious groups greatly influenced by left-wing Puritanism rose up to challenge the fundamental basis of the state-church structure, that the Established Church was shown clearly to be incompatible with the rising concept of liberty, both political and religious.

It is true that the Protestant Episcopal Church as such did not formulate its organization until after the law providing for its incorporation in 1784, which gave the ministers an effective vehicle to control and regulate the affairs of, and to speak for, the Episcopal Church. This action grew out of the great decline of the Established Church during the Revolution. To argue that it was a weakness not to have this organization sooner is to overlook the fact that there was no need felt before, since the Church of England was in fact the Established Church of

the colony. It could call on the colonial government to levy taxes for the support of its ministers. Through the state it could deny to any minister without Episcopal ordination the right to perform marriages. Through the civil government it could limit places of preaching for dissenters. The colonial government which upheld the Established Church could persecute Baptists as disturbers of the peace. Thus, the state could act for the Church.

There was some agitation for a bishop around 1770, and at least twelve of the one hundred clergymen in Virginia attended a meeting for such a purpose on June 4, 1771.¹⁵ It failed, as did an attempt in the legislature in 1772 to provide for a church court consisting of laymen and clergymen.¹⁶ Though the Episcopal doctrine of the church would logically call for measures such as these, they failed of achievement because there was already suspicion of the Established Church, and pre-war political tensions tended to prevent such moves that would tie the Church closer to Great Britain.¹⁷

The battle for separation in Virginia was not between pro-British and anti-British forces, but between

¹⁵Eckenrode, op. cit., p. 29.

¹⁶Ibid., p. 30.

¹⁷Ibid.

two sides of the Whig Revolutionary movement, the Conservatives and Radicals.¹⁸ The Conservative group, wanted independence with as little innovation as possible. They wanted no upset of the status quo. Though they were interested in equalization of religious liberty, this involved for them no separation of church and state. The Radical party, however, was opposed to the status quo. They were concerned both with achievement of political liberty and recognition of the inviolability of religious conscience. These could be achieved only by disestablishment and separation enforced by law.¹⁹ These were actually the contending forces until the religious settlement was achieved. Thus, the Conservative party contained the bulk of those of the Established Church sentiment who hoped they could save something of the Establishment in the midst of a revolution.

While dissenters were petitioning for disestablishment, petitions against disestablishment were in evidence also.²⁰ A petition from the Methodists, dated October 28,

¹⁸David Durham Rhodes, "The Struggle for Religious Liberty in Virginia, 1740-1802" (unpublished doctoral thesis, Duke University, Durham, North Carolina, 1951), p. 102.

¹⁹Ibid.

²⁰These are given by Charles F. James, Documentary History of the Struggle for Religious Liberty in Virginia (Lynchburg, Virginia: J. P. Bell Co., 1900), pp. 75ff.; Brydon, op. cit., p. 567, in appendix.

1776, opposed the movement by some dissenters to disestablish the Church of England, and prayed that it continue to be the Established Church.²¹ Another petition from inhabitants of Charles City County dated December, 1776, published in the Virginia Gazette, was signed by two hundred and sixty persons, apparently adherents of the Established Church.²² It deplored the progress of dissenters who were teaching doctrines opposed to true Christianity, subverting the morals of the people, destroying the peace of families, and alienating slaves from their masters.²³ Particularly were they distressed about the night meetings which slaves attended. They were willing to grant a "well-regulated toleration" with dissenters being permitted "to serve God in their own way without molestation," but they wanted the night meetings of dissenters prohibited by severe penalties!²⁴

The most significant petition to the House for establishment at this time was that of November 8, 1776, from a "considerable number of the clergy of the Established

²¹Brydon, loc. cit. Many of the petitions with Episcopal sentiment, as well as others, are given by Brydon in appendices.

²²Ibid.

²³Ibid., p. 568, in appendix.

²⁴Ibid.

Church of Virginia."²⁵ Brydon claims this was not representative of the Church, for in the Church there were many who disbelieved in any establishment of religion in a democracy.²⁶ But there is no evidence that this was expressed to the House in any petition. Rather, in this petition the House was reminded: (1) that the clergy depended on public faith to receive recompense during life, which recompense was guaranteed them by law just the same as any citizen's private property; (2) that the education of the clergy precluded them from other means of subsistence; (3) that though they do not favor encroachment on the religious rights of any sect, yet a religious establishment in a state was conducive to its peace and happiness; (4) that the state had a right to propagate opinions most consonant with reason and most efficient in human affairs, and the doctrines of Christianity could best be preserved in their purity in an established church; and (5) that if these great purposes could be answered by the establishment, any hardships on individuals or bodies of men "ought not to be considered."²⁷ This petition was clearly aimed against the move to relieve dissenters of the burden of paying

²⁵Ibid., p. 569, in appendix.

²⁶Ibid., p. 399.

²⁷Ibid., pp. 569-70, in appendix.

taxes for the support of the ministry of the state-church. It was seen by all that the matter of a state levy, or an assessment, was crucial for separation, and it was constantly demanding attention in the years between 1776 and 1785, when the religious liberty statute was enacted.

Concerning the bill passed December 9, 1776, exempting the different societies of dissenters from having to contribute to the support of the Church established by law, Eckenrode said this action was so significant that it "in effect, destroyed the establishment,"²⁸ After January 1, 1777, no taxes for religious purposes were ever paid in Virginia. It must be noted, however, that this act still reserved to the Church all its property, reserved to the vestry the right to levy a tax for the support of the poor, and postponed deciding the question of a general assessment until a future Assembly.²⁹

The Conservatives continued to oppose separation by petitions. Petitions for re-establishment came from Mecklingburg County and from Lunenburg County in the Fall of 1777 and for a general assessment from Amherst County in 1778.³⁰

²⁸Eckenrode, op. cit., p. 53.

²⁹William Walter Hening, Statutes At Large: A Collection of All the Laws of Virginia, IX (Richmond: Printed for the author, 1821), 164-67.

³⁰Brydon, op. cit., p. 576, in appendix.

At the same time Jefferson's Statute for Religious Liberty was being debated in the legislature in 1779, James Henry of Accomac presented the Conservative demands in a "bill concerning religion."³¹ It marked the first great effort of Conservatives to re-establish ecclesiasticism by means of a general assessment and regulation of religion.³² It provided that all persons and religious societies who acknowledged one God, future rewards and punishment, and the necessity of public worship of God, "shall be freely tolerated."³³ The Christian religion would be the established religion of the Commonwealth, and the Church of England would "be continued Corporate, and hold the Religious property now in their possession forever."³⁴ Any other Christian group could apply for incorporation if they subscribed to articles of general orthodoxy. This bill failed to achieve the necessary third reading.

It appears from these efforts that there were many conservatives with Established Church leanings who, being accustomed to the state-church pattern, were reluctant to give it up. They were aware of the consequences of cutting

³¹Eckenrode, op. cit., p. 58.

³²Ibid. Eckenrode calls it substantially the same as the plan brought forth in 1784.

³³Ibid.

³⁴Ibid.

the purse strings of the Church which had enjoyed special privilege from its state connections. For them this meant dire consequences not only for the Church, but also for the state, which would suffer from a lowered morality, and from interruption to the peace and general happiness of its members. This was based upon the view of the church as the cement of society; the state-church was actually called that in the Mecklingburg and Lunenburg petitions.³⁵

Once the state-church began to lose status the attempt was made at every important juncture to regain it. This was certainly true in the matters of assessment and incorporation in the years 1784 and 1785. With the close of the war accounts indicate that the religious life of Virginia reached a low point. Many of the Anglican clergymen bereft of state income were forced to leave their parishes. Others left by choice. The Church was left with no training school for preachers when Jefferson effected the abolition of the two divinity professorships from the faculty of William and Mary.³⁶ Church buildings were in disrepair. War had taken its usual toll in the moral life of the people. The prestige of the churches

³⁵See Brydon, op. cit., p. 576, in appendix.

³⁶Herbert B. Adams, The College of William and Mary--
Circular of Information of the Bureau of Education. No. 1-
1887 (Washington: Government Printing Office, 1887), p. 39.

had suffered. In the face of this situation there was a public reaction in favor of the Conservatives. Many who had been carried along by the weight of events, and who never had been reconciled to the idea of separation of church and state were now eager to place religion under the protection of the government. The Conservatives had behind them many men of wealth, intelligence, and influence. Patrick Henry became the leading advocate of both incorporation and assessment at this time.³⁷ A general assessment was favored by other such notables as Richard Henry Lee, John Marshall, and George Washington. Washington wrote to George Mason, October 3, 1785:

Although no man's sentiments are more opposed to any kind of restraint upon religious principles than mine, yet I confess, I am not among the number of those who are alarmed at making men pay toward the support of that which they profess.³⁸

It is interesting to observe how the arguments used to support assessment and incorporation by its advocates are so much a part of the idea of the institutional church: the church as a unifying force in society, the church for all the people of a given territory, the church centered in its ministry, and the church willing to be supported by the state. A petition from Essex County to the House,

³⁷Eckenrode, op. cit., p. 76.

³⁸Jared Sparks, Writings of George Washington (Boston: Little, Brown & Co., 1855), II, 137.

October, 22, 1779, deplored the "great confusion and disorder" which had arisen since the interruption of the old establishment.³⁹ It expressed alarm at the Bill for Religious Freedom, and asked that the state regulate public worship and the teaching of the Christian religion. To this end they called for a general assessment. A petition from Amherst County, November 10, 1779, was essentially the same as the one from Essex in content, including a demand for prohibition of all non-Protestants from holding any civic office.⁴⁰ A petition from Isle of Wight, November 4, 1784, considered it the duty of the legislature to encourage the progress of religion because the happiness and prosperity of the country were dependent upon it.⁴¹ They called attention "to a principle, as old as society itself, that whatever is to conduce to the advantage of all, should be bourne equally by all."⁴² They wanted an act forcing everyone to contribute to the support of religion.

A significant petition from Amelia, dated November 8, 1784, called for both assessment and incorporation.⁴³ It

³⁹Brydon, op. cit., p. 578, in appendix.

⁴⁰Ibid., p. 579, in appendix.

⁴¹Eckenrode, op. cit., p. 84.

⁴²Ibid.

⁴³Brydon, op. cit., p. 587, in appendix.

assessed the decline in religion chiefly to non-patronage of the state, and feared the future consequences would undermine the strength and stability of the civil government. Religion, like any other public utility, should be supported by everyone, they said.

Your petitioners therefore think that those who legislate, not only have a right, founded upon the principle of public utility, but as they wished to promote the virtue and happiness of their constituents and the good people of this State in general, as they wish well to the strength and stability of Government, they ought *[italics in original]* to aid and patronize religion.⁴⁴

Another petition stated that religion was absolutely requisite for the well-ordering of society. and the aid of government, and that its pastors should be comfortably provided for.⁴⁵ This seemed to be the general Episcopal viewpoint regarding assessment. James Madison, writing to James Monroe on April 12, 1785, said concerning the Episcopal view of assessment that, "the Episcopal people are generally for it though I think the zeal of some of them has cooled."⁴⁶

The Episcopal Church favored incorporation. In a petition dated June 3, 1784, its clergy requested that an

⁴⁴*Ibid.*, p. 588, in appendix. Petition from Amelia County, November 8, 1784.

⁴⁵*Ibid.*, p. 590, in appendix. Petition from Essex County, November 2, 1785, signed by nine who were probably all vestrymen.

⁴⁶Cited in Eckenrode, *op. cit.*, p. 90.

act of incorporation be passed "to enable the clergy of the Protestant Episcopal Church in Virginia . . . to regulate all the spiritual concerns of that Church,"⁴⁷ and that the churches, glebe lands, donations, and all other property of the Established Church be forever secured to them. The notable things about this request have to do with the clergy, vestry, and property. For all practicable purposes the clergy would be incorporated as the Protestant Episcopal Church. Objection was raised to the vestries being chosen by popular vote in a parish, for this decision was then partially decided by dissenters. Vestrymen should be chosen from Episcopal members only, and ought to be absolved from the responsibility of caring for the poor.⁴⁸ Commenting on this move for incorporation Madison wrote:

The Episcopal clergy . . . introduced a notable project for reestablishing their independence of the laity. The foundation of it was that the whole body should be legally incorporated, invested with the present property of the Church, made capable of acquiring indefinitely--empowered to make canons and bye-laws not contrary to the laws of the land, and incumbents when once chosen by vestries, to be immovable otherwise than by sentence of the Convocation. Extraordinary as such a project was, it was saved from a dishonorable death by the talents of Mr. Henry.⁴⁹

This petition was called reasonable by the House.

⁴⁷Brydon, op. cit., pp. 591-93, in appendix.

⁴⁸Ibid.

⁴⁹Eckenrode, op. cit., pp. 80-81, quoting Hunt edition of Madison's Works, II, 59.

The Incorporation Bill was ordered prepared, and was passed finally on December 22, 1784, by a vote of forty-seven to thirty-eight.⁵⁰ The title of the corporate body in the statute was, "The minister and vestry of the Protestant Episcopal Church."⁵¹ The Church received all that it asked for in its petition. And there remained this much connection between church and state, that the state prescribed by legal statute the nature of the corporation, the matter of voting, how meetings were to be convened, how vestrymen were to be elected including qualification of electors, how vacancies were to be supplied, and provision for the transfer of the property of the Established Church to the new corporation.⁵²

After the Statute for Religious Freedom was passed, the Incorporation Bill was repealed January 9, 1787,⁵³ over the protests of the Episcopalians. In depicting repeal of incorporation as injurious to the Church, they even borrowed the arguments of dissenters: (1) that such a measure along with the sale of the glebes would mean the legislature was intermeddling in matters of religion; and (2) by depriving the Church of its pastors the legislature would interfere

⁵⁰Eckenrode, op. cit., p. 101.

⁵¹Hening, op. cit., p. 532.

⁵²Ibid., pp. 532-37.

⁵³Hening, Statutes at Large, XII (Richmond: Printed for the author, 1823), 266.

with the free exercise of religion according to the dictates of conscience!⁵⁴ To this end they had hoped that the Act for Religious Freedom would banish religious disputes from the House. The petition from Amelia, presented to the House early in 1787, begged to show that the Episcopal Church enjoyed no privilege that any other church could not have also, and that incorporation actually was good for Christianity.⁵⁵

From this evidence is seen how much the Episcopal doctrine of the church was the warp and woof of the Episcopal structure of church-state relations. In every event crucial for separation in the significant years between 1775 and 1787, the Episcopalians were found resisting anything that would sever the church from the state. They resisted because of their concept of the institutional church, and because of the influence of the European territorial or state-church system. To them the Church could not be the Church without official connection with the state. Nor could the state be a state without fostering Christianity. In every petition to the legislature where these matters were being decided they sought to hold their ground in the presence of increasing attack against the

⁵⁴Brydon, op. cit., p. 598, in appendix.

⁵⁵Ibid., p. 599.

Established Church by dissenters.

III. THE FREE CHURCH VIEW AND SEPARATION

In contrast to the state-church view as embodied in Episcopal expressions stands the idea of the free church held by leaders and churches of the free church movement, mainly the Baptists and Presbyterians. This was perhaps the most significant religious factor in separation in Virginia. The essential meaning of the free church system, as Troeltsch has pointed out,⁵⁶ was the destruction of the medieval and early Protestant idea of a social order welded together by a state-church. Its main characteristics are: (1) the church a voluntary association, at least in the outward form of church order, with membership by individual choice; (2) the freedom of the individual conscience; (3) the support of the church by private gifts and donations rather than state levy; and (4) religion a thing apart from the state, with the church free from regulation of the state in its internal order, and the state free from coercion by the church. As it has often been put, "a free church in a free state."

It may be surprising at first that the Presbyterians were included here in the free church tradition in Virginia

⁵⁶Troeltsch, op. cit., p. 656.

in view of their history of state-church connections in Europe as well as their parish system. However, when it is remembered that the rise of the free churches was a direct result of Calvinism, as Troeltsch has indicated,⁵⁷ and that Calvinism underwent a modification in the seventeenth century during the Puritan Revolution in England which made it more compatible with liberal democracy,⁵⁸ it can readily be understood how Presbyterianism was found on the side of the free church in Virginia. Especially was this true when they were a minority sect struggling for mere toleration around 1750.

The Presbyterians

The Presbyterians, like the Baptists, had their first real growth in Virginia as a result of the mid-century Evangelical Revival that swept the colony. After 1730, they came into the Shenandoah Valley in large numbers, mainly Scotch-Irish settlers who were welcomed into the western lands as a bulwark against the hostile Indians. They were soon in Eastern Virginia also, the first congregation being formed there in Hanover in 1743.⁵⁹ The first

⁵⁷Ibid.

⁵⁸James Hastings Nichols, Democracy and the Churches (Philadelphia: Westminster Press, 1951), pp. 29ff. Also Gunnar Westin, The Free Church Through the Ages, trans. Virgil A. Olson (Nashville: Broadman Press, 1958), p. 204.

⁵⁹Eckenrode, op. cit., p. 32.

great preacher and leader of note was Samuel Davies, who came to the colony in 1748, and remained eleven years. The problem which Davies wrestled with was the matter of licensing ministers and licensing of meeting houses. It was difficult for dissenters to obtain licenses due to the fact that the Church of England was the only church recognized by law. Davies sought to obtain a license for a friend, John Rogers, and was unsuccessful.⁶⁰ He also sought more preaching places for himself, and was granted seven. The General Court, however, revoked the license of his preaching place in New Kent County.⁶¹ In appealing the case Davies argued that the custom in England regarding dissenting ministers gave any licensed minister the right to preach in any licensed place, and any place might be licensed upon the request of three persons.⁶² Further, he pointed out that the law passed by the Virginia Assembly required persons to attend services of the Established Church once a month "excepting as is excepted in an act made in the first year of the reign of King William and

⁶⁰Thomas Cary Johnson, Virginia Presbyterians and Religious Liberty in Colonial and Revolutionary Times (Richmond: Presbyterian Committee of Publication, 1907), p. 33.

⁶¹Ibid., p. 34.

⁶²Henry R. McIlwaine, The Struggle of Protestant Dissenters for Religious Toleration in Virginia (Baltimore: Johns Hopkins Press, 1894), p. 56.

Queen Mary,"⁶³ and he maintained it was impossible to comply with the law due to the sparseness of population and dearth of ministers unless more places were licensed, Failure to license houses would thwart the Toleration Act. In this he was upheld by the governor and the majority of the court.⁶⁴ The Established clergy became greatly alarmed at this and appealed to the Bishop of London. Davies himself wrote to Dr. Phillip Doddridge and Dr. Samuel Avery, notable English dissenters, and to the Bishop of London as well. The General Court of the colony through Colonel Thomas Lee appealed to the board of trade in London. The board counseled moderation, and the matter was finally disposed of in the governor's council⁶⁵ on April 24, 1753, when it was ruled that "there should be no more meeting houses than pastors." This was interpreted liberally by the Presbyterians to mean no more meeting houses than required for pastoral care. Davies, therefore, had won his point.

The significant thing about Davies' work was his winning for the Presbyterians, and consequently for all dissenters, the right of toleration for the free churches under a state-church system. His method was through legal

⁶³Ibid.

⁶⁴Johnson, op. cit., p. 35.

⁶⁵Composed of the same men as the General Court.

efforts rather than extra-legal action used by the Baptists, for the Presbyterians sought throughout the period to work within the framework of the existing law. He did not attack the Established Church as such, nor did he come to "presbyterianize" the colony as he repeatedly asserted, but he aimed to propagate the evangelical doctrines of Christianity.⁶⁶ A good summation of his view is seen in his letter to Dr. Benjamin Avery, May 21, 1752:

But this, Sir, I would inform you of, that we are not asking a favor of the Government, but entering a legal claim. If it be determined by competent authority, that the Act of Toleration does not allow the dissenters to have meeting-houses licensed, where they may occasionally meet for public worship, we shall quietly resign our claim, till some favorable juncture happens, when we may petition for the enlargement of our liberties. But if we may legally make this claim; if dissenters enjoy this privilege in England; and if the rulers there judge that the Act of Toleration entitles them to it, then we humbly conceive that the pushing the matter to a determination could be attended with no ill consequences; . . . and all the order we desire is this, that wherever ten or fifteen families of Protestant dissenters, who cannot attend the meeting-house already licensed, apply for licenses at the General Court, they shall be granted them.⁶⁷

When in the course of events it seemed proper to speak out in the interest of disestablishment the Presbyterians, and particularly the Hanover Presbytery, brought

⁶⁶Gewehr, op. cit., p. 86.

⁶⁷William Henry Foote, Sketches of Virginia (Philadelphia: William S. Martien, 1850), First Series, pp. 209-10.

the weight of petition to bear upon the legislature for their religious rights. They had already been prepared by their struggle for toleration. The Great Awakening had given rise to popular forms of church government and the people had grown accustomed to self-government in religious habits.⁶⁸ Ideas of the free church had worked to undermine satisfaction with the Established Church, and rose up to challenge its right to unique status in the outburst of liberty which came with the Revolution.

There is no one document in the controversy that sets forth the Presbyterian doctrine of the church, but rather the study of several would indicate certain clear affinities with the free church concepts. In their petitions can be seen the concept of the church as a voluntary association. In the famous memorial of the Hanover Presbytery of October 24, 1776, signed by John Todd and Caleb Wallace, the grievances listed against the state support of the Establishment are based upon their being violations of natural rights and "in their consequences a restraint upon freedom of inquiry and private judgment."⁶⁹ As in other memorials they called for the free exercise of religion according to the dictates of conscience,⁷⁰ that

⁶⁸Gewehr, op. cit., p. 187.

⁶⁹James, op. cit., p. 71.

⁷⁰Ibid.

every species of religious bondage might be removed. The spirit of this memorial challenged the legislature to pull down the Establishment to assure every individual his right to be free in his choice of a church. Prior to this the Hanover Presbytery had petitioned on November 11, 1774, against the proposed Toleration Act of 1772. In this they had protested against certain proposed strictures that would limit their voluntary association together; namely, limiting the places of ministrations, prohibiting night meetings, requiring doors of worship houses to remain open, and prohibiting the reception of servants without their master's consent.⁷¹ Concerning the last stricture they stoutly maintained the right of the individual, even a servant, to free association in the church of his choice. They desired to admit servants with the master's permission, they said, but if the master would not permit it then,

. . . when a servant appears to be a true penitent and makes a profession of his faith in Christ, upon his desire it is our indispensable duty to admit him into our church, and if he has never been baptized, we are to baptize him . . .⁷²

It is significant that this petition of 1774 calls for the "full and free exercise of religion" several months before that phrase was incorporated into the Virginia Bill of Rights.

⁷¹Ibid., pp. 43ff.

⁷²Ibid., p. 45.

In the Virginia Gazette for November 8, 1776, there appeared an article entitled "Queries on the Subject of Religious Establishments" written probably by Caleb Wallace,⁷³ a Presbyterian leader, in which it is affirmed that by social compact each man reserves to himself the right of choosing and acting for himself in those things that relate to religion and conscience.⁷⁴ The author protested the regulation of religion by the magistrate, and on the basis of the freedom of conscience upheld the right of voluntary association in the life of the church.

One of the most emphatic statements of the Presbyterian view was made in the memorial of April 25, 1777, which was sent to the House to reinforce the one of the previous year. It said in part:

We beg leave to observe, that to judge for ourselves, and to engage in the exercise of religion agreeable to the dictates of our own consciences is an unalienable right, which upon the principles that the gospel was first propagated, and the reformation from Popery carried on, can never be transferred to another.⁷⁵

It must be pointed out that here as in the other Presbyterian petitions the idea of voluntary association was not rooted in an uninhibited individualism, but rather

⁷³William H. Whitsitt, The Life and Times of Judge Caleb Wallace (Louisville: John P. Morton and Co., 1888), p. 43.

⁷⁴Cf. ante, p. 51.

⁷⁵Footnote, op. cit., p. 327.

in obedience of the individual to God, a principle upon which the gospel was first propagated. The objection to the state-church was that it interfered with this obedience which reduced men "to the melancholy necessity of saying with the Apostles in like cases 'Judge ye whether it is best to obey God or man;' and also of acting as they acted."⁷⁶

A natural corollary to the church as a voluntary association is the freedom of the individual conscience. This can be found spelled out in many significant petitions from the Hanover Presbytery including those of October 24, 1776, April 25, 1777, May 26, 1784, October, 1784, and August 13, 1785.⁷⁷ They called for the "free exercise of religion according to the dictates of conscience." It was held that the state had no right to interfere in matters of conscience for, "religion is altogether personal, and the right of exercising it unalienable; and it is not, cannot, and ought not to be, resigned to the will of the society at large."⁷⁸ Furthermore, civil governments themselves were limited by the power and authority delegated to them by the people, thus deriving their authority from the consent of the people. And one of the ends of

⁷⁶Ibid.

⁷⁷All of these are found in Foote, op. cit., pp. 323ff.

⁷⁸Ibid., p. 342.

government was to protect mankind in the free exercise of religion. The right to control religion was never resigned to government except for protection. Any assumption of regulation would violate convictions of conscience in discharging one's duty to his Creator. In this the Presbyterians were squarely on the side of the free church at every significant juncture.

Many of the Presbyterian leaders had been trained under John Witherspoon at the College of New Jersey. These included Calbe Wallace, John Blair Smith, Samuel Stanhope Smith, and William Graham. Witherspoon had accepted free church ideas in his opposition to the state-church in Scotland, and defended the right of the people to choose their own ministers. His biographer said that William Graham, rector of Augusta Academy, sounded just like his teacher when as draftsman for the memorial of August 13, 1785, he said:

Religion is altogether personal, and the right of exercising it inalienable; it is not, cannot, and ought not to be, resigned to the will of society at large; and much less to the legislature which derives its authority wholly from the consent of the people and is limited by the original intention of civil association.⁷⁹

Concerning the matter of the public financial support of the church the Presbyterians did not remain so consistent.

⁷⁹Varnum Lansing Collins, President Witherspoon (Princeton: Princeton University Press, 1925), II, 226.

The payment of taxes for the support of religion did not become a public issue until after the adoption of the Virginia Bill of Rights in June, 1776. Consequently, there was no mention of it in the Hanover Presbytery Memorial of November 11, 1774. The Presbyterians saw, however, that a required state levy was incompatible with Article XVI of the Bill of Rights, and in the October 24, 1776, memorial declared that it was a violation of natural rights and freedom of conscience to "annually pay large taxes to support an establishment, from which their consciences and principles oblige them to dissent."⁸⁰ In the same document it was made explicit that they wanted no ecclesiastical establishment for themselves, and disapproved of them when granted to others. They asked for the repeal of all laws which countenance religious domination, and petitioned that all, of every religious sect, be "exempted from all taxes for the support of any church whatsoever, further than what may be agreeable to their own private choice, or voluntary obligation."⁸¹

When the legislature exempted dissenters from paying taxes in December, 1776, and the matter of a general assessment was postponed for future settlement, the Hanover

⁸⁰ Foote, op. cit., p. 323.

⁸¹ Ibid., p. 324.

Presbytery memorialized the Assembly on April 25, 1777, to reiterate their stand against any taxes for support of the church. Their objection again was based on freedom of conscience, but also on the principle of voluntary support of Christianity: "Neither does the church of Christ stand in need of a general assessment [*italics in original*] for its support."⁸² Further, an assessment would be subversive of religious liberty, since the hireling is accountable to those from whom he receives wages, and if the legislature exercised this authority they could also decide who shall preach, what they preach, to whom, when, and at what places. Thus, early did the Presbyterians realize that assessment meant a revival of the old Establishment in its former extent.

The October 28, 1784, petition of the Hanover Presbytery has excited much controversy since it appeared to contain a defection from their strong stand against assessment in both prior and subsequent petitions. Charles F. James, the Baptist historian, made much of this, quoting from the Journal of the House of Delegates to indicate that the petition was interpreted as calling for a general assessment for the support of religion. William C. Rives⁸³

⁸²Ibid., p. 327.

⁸³William C. Rives, Life and Times of James Madison (Boston: Little, Brown and Co., 1859), I, 601.

also expressed wonder that the Presbyterian clergy which had distinguished itself by zeal in favor of the principle of unlimited religious freedom now advocated public support of religion. Upon examination of the petition itself, however, it can be seen that it does not say at all that "general assessment for the support of religion ought to be extended to those who profess the public worship of deity," as carried in the Journal of the House.⁸⁴ What it actually said was,

Should it be thought necessary at present for the Assembly to exert this right of supporting religion in general by an assessment on all the people, we would wish it to be done on the most liberal plan [italics in original].⁸⁵

This was set in the context of a distinction which the petition drew between the support of religion as a spiritual system, and support of religion for what it contributes to the civil system in public morality. The latter principle was stated this way:

On this account it is wise policy in legislators to seek its [religion's] alliance and solicit its aid in a civil view, because of its happy influence upon the morality of its citizens, and its tendency to preserve the veneration of an oath, or an appeal to heaven, which is the cement of the social union.⁸⁶

⁸⁴Eckenrode, op. cit., p. 91.

⁸⁵Footte, op. cit., p. 337.

⁸⁶Ibid.

Upon the principle of public utility they were willing to allow the state to interfere by assessment, but they opposed the support of religion for its own ends. There is some question about the validity of this distinction. Yet it was one that the Presbyterians made, and on the basis of which, according to Foote, they devised a plan for assessment and sent it to the legislature.

Two things must be remembered: (1) this petition came from the clergy of the Presbyterian Church only; and (2) it was conceived in a year in which religion was at a low ebb in Virginia, when many were clamoring for state patronage to bolster sagging religious interests and declining public morality. Apparently some form of assessment was inevitable to the Presbyterians, and they wanted it to be only by the most "liberal plan."

This defection was soon called into question when the Hanover Presbytery met at Bethel, Augusta County, on May 19, 1785, and an explication of the word "liberal" was requested by the Augusta session. A vote was taken and the Presbytery voted unanimously against any kind of assessment.⁸⁷ A strongly worded petition embodying this view, which Foote says expressed the "true feeling of the Presbyterian Church," was prepared August 13, 1785, by

⁸⁷Ibid., p. 341.

"ministers and lay representatives" and sent to the legislature.⁸⁸

In spite of this retraction their wavering was remembered against them. Madison took notice of it in a letter to James Monroe on April 12, 1785, in commenting upon those who were in opposition to the bill: "So are all the Clergy except the Presbyterians who seem as ready to set up an establishment which is to take them in as they were to pull down that which shut them out."⁸⁹ In the light of all of the evidence, however, Madison seemed to overstate the case, for every other pronouncement except this one of 1784 was overwhelmingly on the side of the free church concept of voluntary support of the church by its own members, and strictly opposed to a state levy for religion.

The free church concept that religion was something apart from the state was also evidenced by the Presbyterians. As early as 1776 they held that religious establishments were highly injurious to the temporal interests of any community.⁹⁰ Moreover, the church itself did not need civil aid in any way. In the petition of October 24, 1776, already cited it was stated:

Neither can it be made to appear that the gospel needs any such civil aid. We rather conceive that

⁸⁸Ibid.

⁸⁹Eckenrode, op. cit., p. 103.

⁹⁰Footnote, op. cit., p. 324.

when our blessed Saviour declared his Kingdom is not of this world [*italics in original*], he renounces all dependence upon state power, and as his weapons are spiritual [*italics in original*], . . . we are persuaded that if mankind were left to the quiet possession of their inalienable rights and privileges, Christianity, as in the days of the Apostles, would continue to prevail and flourish in the greatest purity, by its own native excellence, and under the all disposing providence of God.⁹¹

Again in the petition of April 25, 1777, it was affirmed against assessment that:

In the fixed belief of this principle, that the kingdom of Christ, and the concerns of religion, are beyond the limits of civil control, we should act a dishonest, inconsistent part, were we to receive any emoluments from human establishments for the support of the gospel.⁹²

Thus, on the principle that religion is a duty owed to God and is totally apart from the state, they opposed religious assessment, restrictions on dissenting ministers performing marriages, the vestry laws as giving distinction and advantages to one sect, and the incorporation of the Episcopal Church as continuing an illicit connection between church and government. Their disapprobation of incorporation as the entry of legislators into a realm beyond their jurisdiction was expressed in October 28, 1784, petition which said in part:

The thoughts, the intentions, the faith, the consciences of men, with their modes of worship,

⁹¹Ibid.

⁹²Ibid., p. 327.

lie beyond their [legislators] reach, and are ever to be referred to a higher and more penetrating tribunal. . . .

Religion, therefore, as a spiritual system, and its ministers in a professional capacity, ought not to be under the direction of the state.⁹³

In 1785, it was affirmed against assessment and incorporation that religion was altogether personal, an inalienable right, and cannot, and ought not be resigned to society at large, much less to the legislators, its representatives. Its divine author never thought it necessary to render it dependent on earthly government.⁹⁴

Throughout the crucial years for separation in Virginia, therefore, the Presbyterians sought the removal of distinctions, preferences, and emoluments conferred by the state on any one sect, which constituted an infringement of religious liberty. They opposed the conjoining of two areas of life that by their nature were intended to be separate, religion and the state. To this end they brought to bear the weight of petition on the legislature toward the victory of free church ideals in the passage of the Statute for Religious Freedom, and the subsequent repeal of the Incorporation Act.

⁹³Ibid., p. 337.

⁹⁴ Foote, op. cit., p. 342.

The Baptists

The fact of Baptist influence in bringing about separation of church and state in Virginia needs no establishing. It is recognized by everyone conversant with the struggle in Virginia. The immediate task here is to show why Baptists were such a strong factor, and how through their concept of the church they helped shape the pattern of church-state relations which achieved legal status in Virginia.

General Baptists were known to have been in the colony in the second decade of the eighteenth century,⁹⁵ but were never very strong. Regular Baptists appeared at the middle of the century and had sufficient members to organize the Kettocton Association of churches in 1766.⁹⁶ The group which made the greatest progress after 1760, both in numbers and influence, were the Separate Baptists, who appeared in Virginia first in 1754.⁹⁷ It was they who were persecuted for conscience's sake between 1768, and 1770. It was they who petitioned the legislature repeatedly

⁹⁵For a history of Baptists in Virginia the reader is referred to the recent work of Garnett Ryland, The Baptists of Virginia 1699-1926 (Richmond: Virginia Baptist Board of Missions and Education, 1955).

⁹⁶William Fristoe, A Concise History of the Kettocton Baptist Association (Staunton: printed by William Gilman Lyford, 1808), p. 7.

⁹⁷Ryland, op. cit., p. 37.

in the interest of liberty and separation.⁹⁸

The Separate Baptist movement received much of its impetus from the Great Awakening in New England and Virginia in the mid-eighteenth century.⁹⁹ They developed to the fullest extent the strong emotional preaching and revival excitement of Gilbert Tennent and the New-Side Presbyterian preachers.¹⁰⁰ In spite of persecution and imprisonment, they grew from eighteen or nineteen churches with around eight hundred and fifty members in 1770, to seventy-two churches with five thousand members in 1774.¹⁰¹ This number grew in the post-war era to such an extent that John Leland could write in the Virginia Chronicle in 1790 that there were two hundred and two churches, one hundred and fifty ministers, and twenty thousand members, adding that "the number of communicants compose but a small part of those who commonly attend Baptist worship."¹⁰²

⁹⁸All references to the Baptists hereafter will mean the Separates unless otherwise indicated. A union of Regular and Separate Baptists was effected in 1787.

⁹⁹John M. Mecklin, The Story of American Dissent (New York: Harcourt, Brace and Co., 1934), p. 248.

¹⁰⁰Brydon, op. cit., p. 180.

¹⁰¹William Taylor Thom, The Struggle for Religious Freedom in Virginia--The Baptists (Baltimore: Johns Hopkins Press, 1900), p. 30.

¹⁰²John Leland, The Virginia Chronicle (Fredricksburg: T. Green, 1790), p. 38. Also given by L. F. Green, Writings of John Leland (New York: G. W. Wood, 1845), p. 117.

By 1800 the Baptists were numerically the strongest religious denomination in Virginia, according to one writer.¹⁰³

Since their origin in the early seventeenth century Baptists have been noted for their free church views. In a recent book Franklin Littell says the primary emphasis of classical free churchmanship is upon a new concept of a community of discipleship.¹⁰⁴ In contrast to the parochial and territorial patterns the true church is "a voluntary association of convinced believers."¹⁰⁵ Baptists owe more to the Anabaptist tradition on their view of the church, perhaps, than to any other stream of Protestant thought.¹⁰⁶

One of the best succinct statements of the Baptist free church position has been made by James in his introductory remark on religious freedom:

By religious freedom, or soul liberty, is meant the natural and inalienable right of every soul to worship God according to the dictates of his own conscience, and to be unmolested in the exercise of that right, so long, at least, as he does not infringe upon the rights of others; that religion is, and must be, a voluntary [*italics in original*]

¹⁰³Gewehr, op. cit., pp. 106, 173, 176.

¹⁰⁴Franklin Littell, The Free Church (Boston: Star King Press, 1957), p. 1. This is a very excellent study of the Left Wing Protestant (Anabaptist/Mennonite) contribution to the doctrine of the church and political democracy.

¹⁰⁵Ibid., p. 2.

¹⁰⁶See Franklin Littell, The Anabaptist View of the Church (n.p.: American Society of Church History, 1952).

service; that only such service is acceptable to God; and, hence, that no earthly power, whether civil or ecclesiastical, has any right to compel conformity to any creed or to any species of worship, or to tax a man for its support.¹⁰⁷

This includes all the marks of the free church: free voluntary association in the churches, freedom of conscience, free voluntary support, and freedom from state domination or control. These were the ideas which were at work among Virginia Baptists to bring about separation of church and state.

Baptists, with their belief in free voluntary association, soon ran into difficulty against the entrenched parochial church concept of the Established Church. Because of this they were persecuted by the state as disturbers of the peace, and were subjected to the violence and defamation of mobs.¹⁰⁸ Baptists in turn practiced civil disobedience in the matter of submitting to state authorities in the regulation of preaching and places of worship. They did so on the basis of the claim that their authority was from God alone. Though their position would not be recognized in the court of law, they were unwilling to subscribe to a course of action contrary

¹⁰⁷James, op. cit., p. 9.

¹⁰⁸This complete story is told by Lewis Peyton Little, in Imprisoned Preachers and Religious Liberty in Virginia (Lynchburg, Virginia: J. P. Bell Co., 1938).

to the right of free voluntary association of believers in Christ. Baptists began petitioning the legislature in 1770 to remove the strictures against the exercise of their religion,¹⁰⁹ and continued to petition until the sale of the glebe lands in 1802.

Unlike the Established Church which included infants, the Baptists insisted that every member be a believer on his own volition. This volition was rooted in the freedom of conscience of every individual. This freedom, they held, was violated by state laws requiring attendance at worship, regulating preaching places and internal church order, and prohibiting dissenters from performing marriages.

Even before the Virginia Bill of Rights was adopted the Baptist Church at Occaquon, Prince William County, petitioned for the following religious privileges on May 19, 1776:

1. That we be allowed to worship God in our own way, without interruption. 2. That we be permitted to maintain our own Ministers &c. and no other. 3. That we and our friends who desire it, may be married, buried and the like, without paying the parsons of any other denomination.¹¹⁰

As free-churchmen they had been denied these under the state-church system, and now claimed them as a right of

¹⁰⁹Ryland, op. cit., p. 92.

¹¹⁰Photostatic copy of original in possession of Virginia Baptist Historical Society.

the church in free association.

A petition dated October 16, 1776, from Dissenters from the Ecclesiastical Establishment which was circulated by the Baptists¹¹¹ and had ten thousand signatures, expressed desire for equal liberty as the result of the Declaration of Rights when it said in part:

Equal Liberty! That invaluable Blessing; which though it be the Birthright of every good member of the State has been what your petitioners have been deprived of, . . .

Your Petitioners therefore having long groaned under the Burden of an Ecclesiastical Establishment, beg leave to move your Honorable House that this as well as every other yoke may be broken, and that the oppressed may go free; That so every religious Denomination being on a Level, animosities may cease, and that Christian Forbearance, love and charity, may be practiced towards each other, while the Legislature interferes only to support them in their just Rights and equal privileges.¹¹²

This was the petition which was requested to be circulated at the meeting of the Baptist General Association at Dupuy's Meeting House in 1775.¹¹³ Semple commented that the Baptists were uniting "to strive together for the abolition of the hierarchy, or church establishment, in Virginia."¹¹⁴ They

¹¹¹See Ryland, op. cit., p. 99; Eckenrode, op. cit., p. 48.

¹¹²Photostatic copy of original, dated October 16, 1776, in possession of Virginia Baptist Historical Society.

¹¹³See Robert B. Semple, A History of the Rise and Progress of the Baptists in Virginia (Richmond: [n.n.], 1810), p. 62.

¹¹⁴Ibid.

were to a man favorable to any revolution by which they could obtain religious freedom.

Here Baptists were demanding equal liberty for themselves from legislators most of whom had a totally different view of the church; a view which did not admit of the church being a "called out" group, a fellowship of believers only, or a voluntary association. The definition of a church in one of the circular letters of the Kettocton (Regular) Association must have been unthinkable to an Episcopalian when it said:

By a church of Christ, we understand a number of persons selected, and called out from the ungodly world, and subjected to the gospel by almighty, efficacious and sovereign grace; giving themselves to the Lord, and to one another, by the will of God, and are the ground and pillar of truth.¹¹⁵

John Leland who came to Virginia from Massachusetts in 1776, and who "as a preacher, was probably the most popular of any that ever resided in the state,"¹¹⁶ wrote in the Virginia Chronicle in 1790, concerning Baptist reasons for dissent:

No national church, can, in its organization, be the Gospel Church. A national church takes in the whole nation, and no more; whereas, the Gospel Church, takes in no nation, but those who fear God, and work righteousness in every nation.¹¹⁷

¹¹⁵Fristoe, op. cit., p. 110.

¹¹⁶Semple, op. cit., p. 158.

¹¹⁷Greene, op. cit., p. 107.

Again in unmistakable language:

Here, let it be observed, that religion is a matter entirely between God and individuals. No man has a right to force another to join a church; . . . A Church of Christ, according to the Gospel, is a congregation of faithful persons, called out of the world by divine grace, who mutually agree to live together, and execute gospel discipline among them; which government, is not national, parochial, or presbyterial, but congregational.¹¹⁸

To Leland, then, an established church could not be the true church for by its nature it required men to pay obeisance to the state, or some titular head, rather than to God alone, who effects His purpose in his own through his grace. That the church under God might be without interference from the state was the true meaning of the religious liberty for which Leland contended all his life.

It should be noted that Leland was a close friend and disciple of Isaac Backus who published many pamphlets on religious liberty and freedom of conscience in New England including, An Appeal to the Public for Religious Liberty Against the Oppression of the Present Day in 1773. Certainly Backus' works were known and read in Virginia through Leland. Backus himself visited Virginia in 1789,¹¹⁹ and in his Church History of New England from 1620 to 1804 refers to John Leland, "from whom I had many of these

¹¹⁸ Ibid., p. 108.

¹¹⁹ Joseph Martin Dawson, Baptists and the American Republic (Nashville: Broadman Press, 1956), p. 77.

things."¹²⁰

Baptists protested against general assessment and incorporation because of their view of the church as a voluntary association. The records of the Baptist General Association and its successor in 1783, the General Committee, are not extant before 1790, but are accessible in brief paraphrase in Semple. Semple reports that the General Committee in 1786 appointed Leland and Ruben Ford to wait on the legislature as its representatives. The Baptist petition of August 5, 1786, presumably drafted by Leland and Ford, was a well worded petition against the incorporation of the Episcopal church and its receipt of all the Established Church's property. The Incorporation Act was called a "Bitumen to Cement the Church and State together; the foundation of Ecclesiastical Tyranny."¹²¹ Concerning the church it said:

New Testament Churches, we humbly conceive, are, or should be, established by the Legislature of Heaven, and not earthly powers; by the Law of God, and not the Law of the State; by the Acts of the Apostles, and not the Acts of Assembly.¹²²

The Incorporation Act, they said, not only cast contempt

¹²⁰Isaac Backus, Church History of New England from 1620 to 1804 (Philadelphia: American Baptist Publication Society, 1853), p. 232.

¹²¹Photostatic copy of August 5, 1786, petition in possession of Virginia Baptist Historical Society.

¹²²Ibid.

upon the divine author of their religion, but the bestowal of all the Established Church's property on the Episcopal Church was contrary to justice and Article IV of the Bill of Rights. To support the latter claim they pointed out that since the old Establishment was a part of the British Constitution with the Church of England obliged to own the King of Great Britain as her head, the Declaration of Independence had made every son of liberty in America a dissenter including the newly formed Protestant Episcopal Church!¹²³ This has been called one of the most forceful expressions of principles that the long controversy in Virginia produced.¹²⁴

The church as a free voluntary association is the concept that prevailed over the old state-church in the Virginia Bill of Rights, the defeat of assessment, the enactment of the Statute of Religious Liberty, and the repeal of Incorporation Act, as well as the repeal of the marriage and vestry laws, and the sale of the glebes. In all of these the Baptists bore witness to their free church ideas with telling effect.

The free church concept which appealed most to men

¹²³Ibid.

¹²⁴L. H. Butterfield, Elder John Leland, Jeffersonian Itinerant (Worcester, Massachusetts: American Antiquarian Society, 1953), p. 177.

of Revolutionary Virginia was perhaps the liberty of the individual conscience. To a Baptist, liberty of conscience was granted by God, and man ought not surrender it to the state. It remained for John Leland to give the classic expression to this idea in his work, The Rights of Conscience Inalienable.¹²⁵ Though written in 1791, it may be assumed that these thoughts on conscience represented mature and reflected judgment born of the Virginia struggle. These ideas certainly had been preached there during his fourteen years of ministry. In the Virginia Chronicle he wrote that the subject of religious liberty had been so canvassed for fourteen years that a politician could no more be popular without advocating it, than a preacher who denied the doctrine of the new birth.¹²⁶

Leland could also speak of the bonds of conscience along with the rights of conscience:

The rights of conscience are so sacred, that no mortal can justly circumscribe them, and yet the conscience is so defiled by sin, as well as the other powers of the soul, that it may lead men into error. . . . So that conscience is not the rule of life, but the word of God. Though conscience should be free

¹²⁵Cf. ante, p. 63. The full title is The Rights of Conscience Inalienable, and therefore, Religious Opinions not cognizable by Law; or, the High-Flying Churchman, Stripped of His Legal Robe, Appears a Yaho. See Greene, op. cit., p. 177.

¹²⁶Greene, op. cit., p. 132.

from human control, yet it should be in strict subordination to the law of God.¹²⁷

In this passage Leland gave none but the proven Baptist witness on liberty of conscience. He was saying nothing different from what Isaac Backus had written in New England in 1773 when he deplored the blending together of civil and ecclesiastical affairs to the deprivation of "many of God's people that liberty of conscience which he had given them."¹²⁸ Against the provision of the state constitution requiring Baptists to get certificates of good standing to be exempt from paying the church tax, Backus objected strenuously, for "it is a tacit allowance that they [the state] have a right to make laws about such things, which we believe in our consciences they have not."¹²⁹ Rather he upheld fully the freedom of conscience when he said:

. . . By the law of Christ every man [*italics in original*], is not only allowed, but also required, to judge for himself, concerning the circumstances as well as the essentials, of religion, and to act according to the full persuasion of his own mind [*italics in original*]; . . . ¹³⁰

¹²⁷Ibid., p. 123.

¹²⁸Isaac Backus, An Appeal to the Public for Religious Liberty, Against the Oppressions of the Present Day (Boston: John Boyle, 1773), p. 16. On microfilm in Southern Baptist Seminary Library, Louisville, Kentucky.

¹²⁹Ibid., p. 43.

¹³⁰Ibid., p. 47.

We cannot submit to the doctrines and commandments of men and not betray true liberty of conscience, he affirmed.

While Leland and Backus gave classical expression to the principle of liberty of conscience it must be admitted that there were many others who were demanding the same right. An extant sermon by Samuel Hensley, a professor at William and Mary, before the House of Burgesses in Williamsburg on March 1, 1772, contained this statement:

Our duty to our Maker is coeval with our being, and every man must perform it as conscience shall dictate. . . . The rights of conscience are unlike the claims of Society, and cannot therefore be submitted to its direction.¹³¹

An article in the Virginia Gazette on August 22, 1771, dealing with the question of whether the Act of Toleration extended to the colonies, and signed by the anonymous name, "Timeleon," ended with these words: "True Liberty of Conscience is the sacred Property of every Man, which none can take from him without being guilty of Sacrilege and Tyranny."¹³²

Baptists restated this claim to liberty of conscience again and again in essence if not in word. The Baptists of Amelia, February 24, 1772, prayed for redress of their

¹³¹Samuel Hensley, The Distinct Claims of Government and Religion (Cambridge: printed for J. Woodyer and Messieurs Davies and Elmsly, 1772), p. 10.

¹³²Virginia Gazette, Williamsburg, No. 1407, Aug. 22, 1771, on microfilm in possession of Southern Baptist Seminary, Louisville, Kentucky

grievances and that liberty of conscience be secured to them.¹³³ Fristoe speaking of the activities in 1776 of the Kettocton (Regular) Association, said Baptists united their influence to elect members of the legislature who would be favorable to "religious liberty and rights of conscience."¹³⁴ Through their efforts and those of others, the establishment of religion in part was abolished by the Assembly, he said, securing to every denomination the right to worship according to the dictates of its own conscience.¹³⁵

Baptists, as already indicated, demanded liberty of conscience as a natural right.¹³⁶ This differed sharply from the religious liberty and rights of conscience granted to the people of Rhode Island by the charter of 1663, for the Rhode Island grant was not based upon a concept of natural right at all, but upon the king's grace alone:

Charles II granted the right as an act of royal grace, "for that the same, by reason of the remote distances of those places, will (as we hope) be no

¹³³Ryland, op. cit., p. 93.

¹³⁴Fristoe, op. cit., p. 90.

¹³⁵Ibid., p. 91. He is referring to the abolition of taxes for religious purposes for dissenters.

¹³⁶Cf. ante, pp. 59f.

breach of the unity and uniformity established in this nation." 137

It would appear that when Baptists spoke of "liberty of conscience" the concept had much the same meaning to them as "liberty," and "religious liberty." As one recent writer has evaluated the terms:

Conscience, indeed, is the focal point for liberty in any sense of the term. A fortiori /italics in original/, the conscience is the focal point for religious liberty, and liberty of conscience is so truly basic to religious liberty that the term has often been employed as equivalent to religious liberty. 138

Certainly this was the meaning intended by Madison in the Bill of Rights when the "free exercise of religion, according to the dictates of conscience" was assured. This led Madison's biographer to say that he looked upon liberty of conscience as the fundamental factor in religious freedom, and religious freedom as the fundamental freedom.¹³⁹ Certainly the Baptists were in agreement with this in the petition of 1780, from the General Association meeting at Sandy Creek in Charlotte, when they called "religious oppression, or the interfering with the rights of Conscience,

¹³⁷Irving Brant, The Virginian Revolutionist, 1751-1780 (Vol. I of James Madison, 5 vols.; Indianapolis: Bobbs-Merrill Co., 1941), p. 249.

¹³⁸M. Searle Bates, Religious Liberty: An Inquiry (New York: International Missionary Council, 1945), pp. 296-97.

¹³⁹Brant, op. cit., p. 243.

which God has made accountable to none but himself" of all oppression the most inhumane and insupportable.¹⁴⁰ In this Madison and the Baptists were one.

A third aspect of the free church idea held by Baptists was free voluntary support of the church as opposed to public support through taxes collected by the state. It is a well-known axiom in politics that, "He who holds the purse strings, governs." Baptists in Virginia saw just as clearly that if the state held the purse strings it would govern, and the church would not be free. Such a position required that they act both to seek repeal of the law requiring a levy for the support of the Established Church, and to prevent the enactment of an assessment bill for the support of religion. This they did.

The first legislature after the adoption of the Bill of Rights meeting in Williamsburg October 7, 1776, was flooded with petitions calling for abolition of establishment. They were from Baptists, Presbyterians, Lutherans, or simply dissenters by counties. They contained such phrases as: "every tax upon conscience and private judgment must be abolished"; "by taxation their property has been wrested from them"; "obliged by law to contribute to the

¹⁴⁰Petition of October 16, 1780, from General Association. Photostatic copy of original in possession of Virginia Baptist Historical Society.

support of the Established Church"; "are being oppressed by being obliged to pay parochial charges"; "pay large taxes to support an establishment"; all indicating general discontent over the religious tax as inconsistent with the Bill of Rights. The Baptist church at Occaquon, Prince William County, asked that they be permitted to maintain their own ministers and no other.¹⁴¹ The October 16, 1776, petition from dissenters with ten thousand signatures, already cited as circulated by the Baptists,¹⁴² complained of their being deprived of liberty, "in that by taxation their property hath been wrested from them and given to those from whom they have received no Equivalent."¹⁴³

It is beyond question that all of these bore fruit in the law exempting dissenters from taxes for support of the Established Church passed on December 9, 1776. This law did not mean the issue was settled by any means, however, since it had a provision that Church of England members must continue to pay the tax, and it postponed until a future date any decision on the question of having

¹⁴¹Photostatic copy of original petition, May 19, 1776, in possession of Virginia Baptist Historical Society.

¹⁴²Supra, p. 61, n. 137.

¹⁴³Photostatic copy of original in possession of Virginia Baptist Historical Society.

a general assessment or voluntary contributions.¹⁴⁴ According to Semple, Baptists took note of the assessment matter in their October, 1778, meeting when they decided to inform the General Assembly that "should an assessment take place, . . . it would be injurious to the dissenters in general."¹⁴⁵

In the five or six years prior to the 1784 discussion of assessment, Baptists had mentioned taxation only in their protest of the vestry laws. In a June 30, 1782, petition the General Association protested against "taxation without representation" on the vestry, borrowing the political argument against Great Britain.¹⁴⁶ In 1784 general assessment became a crucial issue in a proposed "bill for establishing a provision for teachers of the Christian religion" introduced December 2, 1784. Baptists were quick to take up arms against it. The General Committee, a representative group which had taken the place of the General Association dissolved in 1783, met at Dupuy's Meeting House, Powhatan, August 13, 1785, and requested counties to prepare petitions against the measure. Reflecting the influence of Madison's "Memorial and Remonstrance" their resolution opposed assessment on the following grounds:

¹⁴⁴Hening, op. cit., IX, 165.

¹⁴⁵Semple, op. cit., p. 64.

¹⁴⁶Photostatic copy of original in possession of Virginia Baptist Historical Society.

That it is believed to be repugnant to the spirit of the gospel, for the legislature thus to proceed in matters of religion; that no human laws ought to be established for this purpose; that every person ought to be left entirely free, in respect to the matters of religion: that the holy author of our religion, needs no such compulsive measures for the promotion of his cause: that the gospel, wants not the feeble arm of men for its support: that it has made, and will again through divine power, make its way against all opposition: and that, should the legislature assume the right of taxing the people for the support of the gospel, it will be destructive to religious liberty.¹⁴⁷

This summarization of Baptist opposition became a guide for petitions which Eckenrode says, "came in such numbers as had never been known before,"¹⁴⁸ when the Assembly met October 24, 1785. One of these was a petition of "several Baptist churches meeting by representative in general Association" which is actually the General Committee. Dated September 17, 1785, from Orange, it enumerated the following reasons for opposition to assessment: (1) No civil power has the right to establish such a provision; (2) religion will not fall without state support, but rather will be corrupted thereby; (3) the state must determine who will receive the benefice; (4) it will open the door to religious tyranny, for if you establish one you can establish any church; (5) the act incorporating the Episcopal church is inconsistent with American freedom;

¹⁴⁷ Semple, op. cit., p. 71.

¹⁴⁸ Eckenrode, op. cit., p. 109.

(6) the reservation of ecclesiastical property is a glaring distinction; and (7) the indulgence granted Quakers and Mennonites shows partiality.¹⁴⁹

These two petitions of 1785 contain the substance of the Baptist opposition to assessment, of which their other petitions on the subject are but elaborations. John Leland summarized the position of the Baptists on assessment this way:

A general assessment, (forcing all to pay some preacher,) amounts to an establishment; if government says I must pay somebody, it must next describe that somebody, his doctrine and place of abode. That moment a minister is so fixed as to receive a stipend by legal force, that moment he ceases to be a gospel ambassador, and becomes a minister of state. . . . This doctrine turns the gospel into merchandise, and sinks religion upon a level with other things.¹⁵⁰

Thus, against any form of state support Baptists maintained that the proper method to finance the church's work was free voluntary gifts of the church's members. The triumph of this view, which they shared with Madison, is one of the main reasons that separation of church and state in Virginia was achieved.

In the last place, the free church concept of the Baptists demanded freedom from state domination or control. This includes in part the other three aspects already

¹⁴⁹Photostatic copy of original in possession of Virginia Baptist Historical Society.

¹⁵⁰Greene, op. cit., p. 118.

discussed, free association, free conscience, and free support, yet it goes further than these to declare that religion is something apart from the state.

As early as 1773, Isaac Backus elaborated this principle.¹⁵¹ He states in words that show his familiarity with Locke that God has appointed two kinds of government in the world which are distinct in their nature and never ought to be confounded: civil and ecclesiastical.¹⁵² Civil government is left to human direction, but ecclesiastical government is subject only to God.¹⁵³ By the same token all acts of the civil state are performed in the name of the king, while religious acts are done in the name of the Lord Jesus.¹⁵⁴ Finally, civil governments appoint some as judges who have power to compel others to submit to their judgment, but in religion submission to such authority is most plainly forbidden. Therefore, the state is armed with the sword to guard the peace and civil rights of all and punish violations thereof, while the church is armed with light and truth to pull down iniquity and gain souls

¹⁵¹Backus, An Appeal to the Public for Religious Liberty, Against the Oppressions of the Present Day, p. 16.

¹⁵²Ibid., p. 6.

¹⁵³Ibid.

¹⁵⁴Ibid., p. 12.

to Christ.¹⁵⁵ John Leland drew as sharp a distinction as this when he said, "Government has no more to do with the religious opinions of men, than it has with the principles of mathematics."¹⁵⁶ Certainly Leland reflected the spirit of Backus when he wrote: "That civil rulers have nothing to do with religion in their official capacities, is as much interwoven in the Baptist plan as Phydias's name was in the shield."¹⁵⁷ On this principle Leland not only opposed the assessment plan and incorporation, but objected to the state fixing holy days for divine worship, and paying chaplains from the public treasury.¹⁵⁸

To the Baptists of Virginia this principle meant that every vestige of the old Establishment must be pulled down to remove every connection between church and state. To this end the General Association heartily endorsed the Bill for Religious Freedom when it was introduced in the legislature in 1799, as putting religious freedom upon its proper basis by prescribing the just limits of the state's power with regard to religion, and guarding against partiality towards any denomination.¹⁵⁹ Against assessment

¹⁵⁵Ibid., p. 13.

¹⁵⁶Greene, op. cit., p. 184.

¹⁵⁷Ibid., pp. 117-18.

¹⁵⁸Ibid., p. 119.

¹⁵⁹Semple, op. cit., p. 65.

they employed the historical argument that Christ got along several hundred years without the aid of state power. Further, assessment was against the spirit of the gospel, and had never been a means of prospering the gospel; nor would it revive decaying religion.¹⁶⁰ Incorporation also was viewed as a violation of the separation of the two spheres, for in a memorial from the General Committee, August 5, 1786, it was opposed as a bitumen to cement church and state together.¹⁶¹ New Testament churches, it said, ought to be established by the legislature of heaven, not of earth; the law of God, not that of the state; by the acts of the apostles, not of men.¹⁶² It held that a grave injustice to religious liberty had been done by giving all of the property of the Established Church to one society, the Episcopal Church, not more deserving or virtuous than the others. Further, this action violated Article IV of the Bill of Rights prohibiting rewards and emoluments except for service rendered the state.¹⁶³

¹⁶⁰Petition from Amelia County dated November 18, 1785; Photostatic copy of original in possession of Virginia Baptist Historical Society. It was evidently argued by Conservatives that assessment was needed to stop the growth of Deism, for this petition and several others refute the argument.

¹⁶¹Photostatic copy of original in Virginia Baptist Historical Society.

¹⁶²Ibid.

¹⁶³Ibid.

The Incorporation Act was repealed January 9, 1787, just one year after the passage of the Statute of Religious Liberty. Though Eckenrode says this repeal "definitely marks the separation of church and state in Virginia,"¹⁶⁴ it appears that separation was not yet achieved, due to the reservation of the glebes to the Episcopal Church in the bill. Accordingly the Baptist General Committee urged the churches to petition the legislature, which they did annually between 1789 and 1802. In 1802 an act was passed for their sale. Brydon, the historiographer of the Diocese of Virginia, has called this "the seizure of the glebes."¹⁶⁵ He claims that the glebes belonged to the Episcopal Church by right and custom, citing Eckenrode as saying that most of them were secured before dissenters came to the colony except in western lands.¹⁶⁶ He, along with others,¹⁶⁷ accused Baptists of being actuated by hatred.¹⁶⁸ It would appear from a perusal of the Baptist petitions on the matter and from such non-partisan treatments as Eckenrode, however, that the Baptists were acting on the same principle in this

¹⁶⁴Eckenrode, op. cit., p. 129.

¹⁶⁵Brydon, op. cit., p. 492.

¹⁶⁶Ibid., p. 498.

¹⁶⁷See Rhodes, op. cit., p. 203.

¹⁶⁸Brydon, op. cit., p. 495.

that they did in every other battle in the long struggle for separation of church and state, namely, that religion is something apart from the state; that when the old Establishment was put down the Episcopal Church was on the level with other denominations, and its property which had been secured by public authority and sanction must be disposed of in the same way.¹⁶⁹

Perhaps a word is due with regard to the nature and function of the Baptist General Committee in the light of the free church concepts. It was formed in 1783, to replace the disbanded General Association, and continued until 1799. Composed of delegates from the district associations, its purpose according to Semple was to

consider all the political grievances of the whole Baptist society in Virginia, and all references from the district associations, respecting matters which concern the Baptist society at large.¹⁷⁰

All memorials from associations must originate with the committee. Thus, its original purpose was quasi-political, to organize the Baptist witness for separation of church and state. It was strictly a functional committee and when its work was completed it was dissolved. Since it marked

¹⁶⁹Brydon's analogy (p. 514) of citizen John Doe being allowed to keep his property under the Commonwealth of Virginia that he held while a subject of George III does not hold, since John Doe did not change from a public citizen to a private citizen as did the Established Church when it became the Protestant Episcopal Church.

¹⁷⁰Semple, op. cit., p. 75.

something of a departure from Baptist procedure its status was questioned in 1792, and it began to decline.¹⁷¹ It in no way can be accused of violating separation of church and state since its avowed purpose was the exact opposite.¹⁷²

It has been the burden of this chapter that the doctrine of the church as held by the Established Church and the Protestant Episcopal Church of Virginia favored the continuation of the state church in Virginia, while the doctrine of the free church as held by the Baptists and Presbyterians required that the church be separated from the state. At every significant juncture Episcopalians sought to maintain as much of the old connection with the state as possible. All of their official petitions and pronouncements bear this out. On the other hand the free churches in their petitions maintained that the church must be a free association of persons under God who are allowed full freedom of conscience, and that the church must be supported by free voluntary gifts rather than state assessment. To this end the church must be kept apart from the state. It was the triumph of this view that is largely responsible for the ultimate separation of church and state in Virginia.

¹⁷¹Ryland, op. cit., p. 158.

¹⁷²It can be compared roughly to the present Joint Committee on Public Affairs in Washington, D. C.

CHAPTER IV

SOCIAL AND ECONOMIC SOURCES OF SEPARATION

CHAPTER IV

SOCIAL AND ECONOMIC SOURCES OF SEPARATION

Having treated of the philosophical, political, and religious factors in separation in Virginia, the attention is now turned to the social and economic factors. First will be discussed the social revolution in which dissenters, who were of the lower social and economic classes, achieved status; second will be treated the economic questions of taxes for the state-church, state-paid salaries for the clergy, and assessment, as continuing the Episcopal Church in a position of privilege; third will be considered the final disposal of glebes and state-church property as achieving complete separation.

I. SOCIAL FACTORS

Social factors cannot be viewed as a major cause in separation, but to the extent that they were a part of the general revolutionary movement that swept Virginia in the latter part of the eighteenth century, they can be considered as minor factors. Gewehr took note of this much neglected social aspect in his excellent treatment of The Great Awakening in Virginia, 1740-1790,¹ and especially

¹Wesley M. Gewehr, The Great Awakening in Virginia, 1740-1790 (Durham, North Carolina: Duke University Press, 1930).

in the final chapter on "Religion and the Social Revolution." The social scene of the colony at mid-century was a picture of two Virginias, the Tidewater and the back country.² In the Tidewater since early colonial days lived the planter aristocracy who owned great landed estates on which they grew staple crops, using slave labor mostly. Their manner of living was patterned after the English country gentlemen,³ and their church almost without exception was the Established Anglican Church. Through a system of entails and primogeniture the class lines had been maintained, and a man's social and political status very much depended upon the amount of property he owned.⁴ In the Tidewater, society was an organic entity consisting of the "customs, laws, traditions, and ancient ways of life in which are embodied the tested social wisdom of the past."⁵ To this view religion was an integral part of society, a kind of cement to hold things together.

In direct contrast to the eastern section was the back country, the Piedmont and the Shenandoah Valley, which remained largely unsettled until the eighteenth century,

²Ibid., p. 19.

³Ibid., p. 20.

⁴Ibid., p. 19.

⁵John M. Mecklin, The Story of American Dissent (New York: Harcourt, Brace and Co., 1934), p. 284.

when small landholders and newcomers pushed inland from the Tidewater, and a steady stream of Scotch-Irish and Germans flowed down from Pennsylvania. It became the seat of strong dissenting groups, particularly Presbyterians and Baptists. Baptists were also strong in the eastern sections by Revolutionary times. The western settlement was encouraged by the colony as a bulwark against the hostile Indians. Western Virginia thus became heterogeneous in race and religion, which augmented the spread of ideas of dissent and democracy. This democratic spirit was opposed to privilege and inequality in either church or state, and held to the natural equality of all men. Individualism and ideas of liberty fitted naturally the simple social structure in the western parts, and contributed in no small way to the social revolution which followed. It is Gewehr's thesis that the religious needs of this region were met only by the evangelistic spirit of the Great Awakening, first by the "New Side" Presbyterians, and then by the Baptists and Methodists.⁶

According to Gewehr, a social revolution which paralleled the political and religious took place between 1750 and 1800, whereby the class lines and social distinctions of the mid-century succumbed to a democratic

⁶Gewehr, op. cit., pp. 34ff.

leveling.⁷ The Evangelical churches proclaimed a message of the worth of every individual that appealed to the poorer classes who became bolder in asserting their rights in every area of life. This revolution is vividly illustrated in connection with the Baptists. Before 1776 they were without learning, without patronage, generally very poor, very plain in their dress, unrefined in their manners, and awkward in their address.⁸ In the same vein Fristoe said, "The cant word was, they are an ignorant illiterate set--and of the poor and contemptible class of the people."⁹ Certainly by the Anglicans they were thought to be hopeless enthusiasts, not unlike the Anabaptists of the Reformation, and generally "disturbers of the peace" for which they had been arrested and imprisoned. A definite social stigma was attached to their name.¹⁰ However, by the end of the century Semple could say of them:

Their preachers were become much more correct in their manner of preaching: a great many odd tones, disgusting whoops and awkward gestures, were disused: In their manner also, they had more of sound sense and strong reasoning. Their zeal was less mixed with enthusiasm, and their piety became more rational. They were much more numerous, and of course, in the eyes of the world, more respectable. Besides, they were

⁷Ibid., pp. 251ff.

⁸Robert B. Semple, History of the Rise and Progress of the Baptists in Virginia (Richmond: /n.n./, 1810), p. 26.

⁹William Fristoe, A Concise History of the Kettocton Baptist Association (Staunton: Printed by William Gilman Lyford, 1808), p. 64.

¹⁰Gewehr, op. cit., p. 253.

joined by persons of much greater weight, in civil society: Their congregations became more numerous, than those of any other Christian sect.¹¹

A similar word came in 1808 from Fristoe who saw a "considerable difference between thirty or forty years past, and the present time."¹² Further indications of this social change are seen in the Baptists making provision for more adequate support of their ministers,¹³ and giving more attention to education, both ministerial and secular.¹⁴ While at first their members were only the "poor, ignorant, and lowly," by 1790 some men of means had united with them including Councillor Carter of Nomini Hall,¹⁵ and Eleazer Clay of Chesterfield,¹⁶ to name at least two.

Since this social revolution and the struggle for separation coincided in time, some have raised questions about their inter-relation. Thom, a trustworthy source, gave as one cause of the spread of Baptist doctrine their social appeal. He said:

¹¹Semple, op. cit., p. 39.

¹²Fristoe, op. cit., p. 59.

¹³Ibid., p. 57.

¹⁴Gewehr, op. cit., p. 256.

¹⁵Ibid., p. 258.

¹⁶Norman W. Cox, Dreams, Dungeons, Diadems (Nashville: Historical Commission Southern Baptist Convention, 1954), p. 37. Clay was said to have been worth \$100,000. He and his brother Porter became preachers. Porter was the father of Henry Clay.

The Established Church was the rich man's church unworthily administered; and Quakers were exclusive. The plain, ignorant people would have none of either of these, for their wants were not satisfied by them. They wanted an organization, a ministry, a preaching, responsive to their own manner of thought and to their emotions. The Baptist organization supplied the demands . . .¹⁷

Thus, when the dissenters spoke of liberty of the conscience, the free exercise of religion, the right of every individual to choose his own church, and freedom from church taxes and the excessive burden of the establishment, they were speaking a language that the common people of the state could understand. In view of this it was no surprise to find them winning many converts, for their ideas fitted well the spirit that triumphed in Virginia in the Revolution and the Jeffersonian democracy which followed. With increased numbers and higher status their witness became more and more influential in the legislature in achieving the final steps of separation because of the sheer fact of numbers.

An indication that a great social revolution had taken place is seen in the fact that Baptists became more numerous than any other Christian sect. The Episcopal historian, Brydon, recognized this when he said that though

¹⁷William Taylor Thom, The Struggle for Religious Freedom in Virginia: The Baptists (Baltimore: Johns Hopkins Press, 1900), pp. 32-33.

the Baptists might have taken undue advantage of the political difficulties of the time,

. . . that fact can only be considered an inevitable incident in a transition in which the old ways of life, social classes and primogeniture, an established church and all the rest, were dying and a new conception of freedom of both body and soul were coming to birth. It would seem unquestionable that the aggressive fighting spirit of the lesser privileged people demanding relief helped Virginia win a release from taxation and special privilege of an established church. . . .¹⁸

From this it can be seen that social factors served to augment the revolution taking place on the religious and the political scene.

II. ECONOMIC FACTORS

More important than the social were the economic factors which contributed to separation in Virginia. Indeed, at every critical juncture of the struggle there was an economic question which demanded an answer. The contest had for a prelude the dispute over clergymen's salaries known as "Parson's Cause." The first business of disestablishment after the passage of the Bill of Rights was the abolition of taxes for religious purposes between 1776 and 1779. The great struggle which signaled the ultimate death of the Establishment was the fight over

¹⁸George Maclaren Brydon, Virginia's Mother Church (Philadelphia: Church Historical Society, 1952), II, 230.

assessment in 1784 and 1785, just prior to the passage of the Statute of Religious Liberty. The final curtain came with the disposal of the Established Church's property in the law of 1802. To these and related matters attention is now turned.

The clergy of the Established Church appeared in an unfavorable light in an incident known as "Parson's Cause."¹⁹ Rev. James Maury brought legal action against the collectors of levies in his parish for the remainder of his salary for the year 1758. Patrick Henry was called in to defend the collectors when their lawyer had withdrawn in the face of defeat, and in a brilliant blaze of oratory won a moral victory for the collectors when the jury assessed the damages at one penny.²⁰ Brydon minimizes the effect of this whole episode on the life of the church,²¹ but it is the concerted judgment of many, including Eckenrode,²² that the case injured the prestige of both the Establishment and its ministers.

¹⁹See Anson Phelps Stokes, Church and State in the United States (New York: Harper Brothers, 1950), I, 367.

²⁰William Wirt, Life of Patrick Henry (sixth edition; New York: M'Elrath, Bangs and Co., 1834), pp. 43-45.

²¹Brydon, op. cit., p. 310. He says it is of little importance except to point out the two classes of clergymen in the colony--those who would appeal to England and those who were loyal to the American cause.

²²H. J. Eckenrode, Separation of Church and State in Virginia (Richmond: n.n., 1910), pp. 27, 28.

When the principle of free exercise of religion according to the dictates of conscience had been written into the Bill of Rights by Madison, and adopted in June, 1776, the immediate implications for the state levy for religion were seen by both the liberal statesmen and the dissenters. Indeed, if Madison had been sustained in his first draft at revision of the article on religion which included a clause that "no men or class of men should have special privileges or suffer special liabilities," not only the matter of abolishing the state levy would have been settled, but the related question of assessment would have been prevented from arising later.²³ Many petitions were sent to the first legislature under the new government in 1776 asking for relief from the taxation for religious purposes. Jefferson wrote in his Autobiography that the unrighteous compulsion to maintain teachers of what they deemed religious errors was grievously felt by dissenters.²⁴ "But the first republican legislature which met in '76, was crowded with petitions to abolish this spiritual tyranny," he said. "These brought on the severest contests

²³Irving Brant, The Virginian Revolutionist, 1751-1780 (Vol. I of James Madison. 5 vols.; Indianapolis: Bobbs-Merrill Co., 1941), p. 246.

²⁴Albert Ellery Bergh (ed.), Writings of Thomas Jefferson (Washington, D. C.: Thomas Jefferson Memorial Association, 1907), I, 57.

in which I have ever been engaged."²⁵

Almost without exception the petitions of which Jefferson spoke called for the abolition of the required tax.²⁶ One dated October 11, 1776, from sundry inhabitants of Prince Edward called for all church establishments to be pulled down, and "every tax upon conscience and private judgment abolished."²⁷ A petition from dissenters from the Ecclesiastical Establishment, October 16, 1776, complained that "by Taxation their Property hath been wrested from them and given to those from whom they have received no Equivalent,"²⁸ and prayed that this and every other yoke may be broken. Two petitions from dissenters in Albemarle, Amherst, and Buckingham, stated that they had never been on equal footing with others because they were obliged by law to contribute to the support of the Established Church while supporting their own.²⁹ A petition from the German congregation of Lutherans at Culpepper,

²⁵Ibid.

²⁶Some of these are given in Charles F. James, Documentary History of the Struggle for Religious Liberty in Virginia (Lynchburg, Virginia: J. P. Bell Co., 1900), pp. 68ff.

²⁷Ibid., p. 69.

²⁸Photostatic copy of original in possession of Virginia Baptist Historical Society.

²⁹James, loc. cit.

in one of its few statements, expressed dissatisfaction at being obliged to pay parochial charges other than for the support of their own church and poor.³⁰ Other petitions of dissenters iterating the same claim were presented October 25, November 1, and November 9. The capstone of them all was perhaps the Hanover Presbytery petition of October 24, 1776. It pointed out that in the western counties the dissenters had borne the heavy burdens of purchasing glebes and supporting the Established Church where there were few Episcopalians, in addition to paying large taxes to support the Establishment all over the state.³¹ Their disapprobation of state taxes for religion was based on the comprehensive argument that they were a violation of natural rights, were injurious to civil society, and certainly were not required by the gospel itself since Jesus said His kingdom was not of this world.³²

These petitions were not accepted "prima facie" by the legislature without opposition from the conservative forces, however. They were countered by one from the Methodists, and one from the clergy of the Established

³⁰Ibid., p. 70.

³¹William Henry Foote, Sketches of Virginia (Philadelphia: William S. Martien, 1850), pp. 323-24. Also James, op. cit., pp. 71-72.

³²Ibid.

Church, asking for a continuation of the Establishment. Jefferson, by now leader of the liberals, admitted that his greatest opponents on this issue were Edmund Pendleton and Robert Carter Nicholas.³³ Pendleton had been president of the Convention of 1776 that passed the Bill of Rights, but in the religious question of the fall of that year he remained devoted to the Church of his boyhood, the Established Church, whose forms and ceremonies he loved.³⁴ He, therefore, was the leader of the Conservatives during the Revolution. Pendleton was a skillful parliamentarian, and in every way a match for Jefferson. Mays said, "No quarter was asked or given as the two friends fought it out."³⁵ In the first legislature under the new government in 1776, Jefferson drove Pendleton and Nicholas back inch by inch in the desperate contest between October 11, and December 5. When it became plain that the levy of taxes for the support of the clergy would be abolished, these Conservative champions tried to save as much as possible

³³Bergh, loc. cit.

³⁴David John Mays, Edmund Pendleton, 1721-1803 (Cambridge, Massachusetts: Harvard University Press, 1952), II, 129. This is an excellent biography of Pendleton giving the best account of his work here and in connection with the glebes.

³⁵Ibid., p. 136.

for the Established Church.³⁶ In the act which passed December 9, 1776, Jefferson won the victory of dissenters to be

totally free and exempt from all levies, taxes, and impositions whatever, towards supporting and maintaining the said church, as it now is or hereafter may be established, and its ministers.³⁷

Nevertheless, Pendleton succeeded in saving the Established Church's property, all arrears in salary for the clergy, the system of caring for the poor, and the suspension for one year only of the tithes for adherents of the Established Church.³⁸

What this act meant was not the end of the Establishment, the statement of Eckenrode to the contrary notwithstanding,³⁹ but the solving of the very practical problem of the remission of church taxes. It signaled a victory for the interpretation of Article XVI of the Bill of Rights as a sanction for complete separation of church and state, rather than the interpretation of the Anglicans as aiming only at a more tolerant union between church and state. As subsequent events showed, the church and state.

³⁶Ibid., p. 137.

³⁷William Walter Hening, Statutes At Large: A Collection of All the Laws of Virginia, IX (Richmond: Printed for the author, 1821), 164-67.

³⁸Ibid.

³⁹Eckenrode, op. cit., p. 53.

were not yet securely separate, but factors at work in the life of the people were aiming in that direction. Jefferson and the liberal politicians opposed the taxes as a violation of principle. The dissenters opposed them both from principle and a feeling of unnecessary burden which they bore that was contrary to their fundamental rights. It is not insignificant that this particular victory was won at the time when the political cry of "taxation without representation" was the loudest. This may explain in some measure why an Anglican body such as the Virginia Assembly could take such action.

The same problem, but with some different aspects, was afforded in the matter of a general assessment for the support of teachers of the Christian religion which came into sharpest focus in 1784 and 1785. Actually, the whole struggle for separation between 1777 and 1785 seemed to center around the economic question of whether the state should assume responsibility for the support of religion by assessment or not. Shortly after the statute of December 9, 1776, postponed decision on assessment until some future date, petitions pro and con began to come into the House. It was the burden of the Caroline County petition of December 5, 1777, representative of a number of others, that some means of equal contribution by all men for the support of religious teachers and ministers

ought to be devised since public worship was clearly beneficial to society as a preservative of public peace, order, and decency.⁴⁰ Typical of those against the measure was the Hanover Presbytery Memorial of April 25, 1777, presented June 5, which declared that an assessment injured both the church of Christ and the civil society, and would restore an unwarranted connection between the state and the church, thus subverting religious liberty.⁴¹

In 1779 a bill representing Conservative reaction against all the measures in the direction of separation since 1776 was introduced by James Henry of Accomac on October 25, 1779. This "bill concerning religion" was an attempt to re-establish ecclesiasticism by means of a general assessment with essentially the same plan as that proposed later in 1784.⁴² It recognized the Church of England as already incorporated by law, and provided others the same opportunity on a broad basis of orthodoxy. The actual plan was for everyone to register with his county clerk as belonging to some society of Christians. Each church would be furnished by the clerk with a list of the citizen's tithables, and each church would determine how

⁴⁰Petition given by James, op. cit., pp. 90-91, and Brydon, op. cit., p. 406.

⁴¹Foote, op. cit., pp. 326-27.

⁴²Eckenrode, op. cit., p. 58.

such tithables "shall be laid out for the support of their teacher or places of worship."⁴³ The sheriff would collect the tax. The plan did not succeed, for the bill failed to achieve a third reading at this session. In the wake of this victory the liberals succeeded in passing a bill on December 13, 1779, introduced by George Mason, which made final and complete the repeal of the levy for support of the clergy of the Church of England.⁴⁴

These events were but a prelude to the showdown which followed. The assessment issue remained dormant until after the signing of the Treaty of Paris in September, 1783, when the states were completely severed from Great Britain, but then flared up with a new intensity. With the decline in morale and religion after the war, a conservative reaction set in favoring patronage of religion by the state. This viewpoint captured no less than Patrick Henry who fought strenuously for both assessment and incorporation in 1784 and 1785.⁴⁵ Beginning in November, 1783, the effort was renewed by proponents of assessment in petitions November 8, from Lunenburg, and

⁴³Ibid., p. 60.

⁴⁴Eckenrode, op. cit., p. 64. This Act continued the provision for collecting a tax for the support of the poor, however. See Hening, Statutes At Large, X (Richmond: Printed for the author, 1822), 198.

⁴⁵Wirt, op. cit., pp. 260-61.

another from Amherst, November 27. Later others came from Isle of Wight, Warwick, Amelia, Muhlenburg, and the Episcopal clergy itself. They seemed to argue: (1) that the lack of assessment was responsible for the decay in religion;⁴⁶ and (2) that since religion contributed to the prosperity and happiness of all its financial burden should be borne by all.⁴⁷

When the matter reached the agenda of the legislature giants were again at each other, this time Patrick Henry and James Madison.⁴⁸ Henry used as his chief argument for the measure the relation of religion to the prosperity of the state, dwelling upon the evil fate of nations which neglected religion, and inferring therefrom the necessity of some sort of establishment.⁴⁹ Madison made a speech in the House, the notes of which are preserved,⁵⁰ in which he set forth clearly that the question at hand was not, "Is religion necessary?" but, "Are religious establishments necessary to religion?" To this he answered in the negative. Madison who studied both theology and history at Princeton used these to good

⁴⁶See November 8 petition from Amelia County given by Eckenrode, op. cit., p. 84.

⁴⁷See Isle of Wight petition of November 4, 1784, given by James, op. cit., p. 125.

⁴⁸Jefferson was in Europe at this time.

⁴⁹Eckenrode, op. cit., p. 86.

⁵⁰See William C. Rives, Life and Times of James Madison (Boston: Little, Brown and Co., 1859), I, 605f.

advantage in the speech. He showed instances from history illustrating the evil of establishment, and demolished the argument of his opponents that the present state of religion was due to lack of state patronage. He showed clearly that assessment would involve the state in questions of deciding Christian orthodoxy and heresy which it was ill-equipped to do. Concluding, he rested his case squarely where it should have been, on the Declaration of Rights. This debate was before the entire House as a committee of the whole to decide whether to consider assessment. The vote was in the affirmative, forty-seven to thirty-two,⁵¹ and a committee with Henry as chairman was ordered to prepare a bill. When the bill was prepared it was camouflaged as an educational measure. No longer defining the scheme as a levy for the support of some church, denomination or communion, it was called a "bill establishing a provision for teachers of the Christian religion."⁵² Though having a different title this bill was essentially the same proposal as the "bill concerning

⁵¹Eckenrode, loc. cit.

⁵²Irving Brant, The Nationalist, 1780-1787 (Vol. II of James Madison. 5 vols.; Indianapolis: Bobbs-Merrill Co., 1948), p. 346. Brant says this reflected the mixing of secular and religious education. Much of the schooling except for wealthy families had been in the hands of the clergy who received salary supplements from tuition for classes. Thus inability or failure of parents to support parish schools was one reason for desiring assessment. Jefferson had proposed his free public school system in 1779.

religion" in 1779. The only difference was in circumstances, for now with the war over the Conservatives, who had conceded more than they ever dreamed, wished to return to the former conditions as much as possible due to their lack of faith in democracy. Since the Establishment was an important factor in the old social and political order, they sought its revival in as harmless a fashion as possible. Moreover, they felt this connection between church and state would check the growth of liberalism, for if the Evangelical churches were included in establishment they would not have the advantages of attack from without, but would be a part of the system.⁵³

Before the Assessment Bill was disposed of the Incorporation Bill was introduced and passed December 22, 1784. In the middle of this legislative jousting Patrick Henry was elected governor which removed him from the legislature.⁵⁴ Madison succeeded, then, in getting the third reading of the Assessment Bill postponed until November, 1785, in order to give the people a chance to express themselves on it. Accordingly, it was printed in handbills and distributed to the people.

In the summer of 1785, Madison prepared his famous

⁵³Eckenrode, op. cit., p. 91.

⁵⁴Brant, The Nationalist, 1780-1787, p. 346.

"Memorial and Remonstrance" in opposition to assessment.

He was not disposed to write it at first, and says he did so only at the insistance of George Nicholas and George Mason.⁵⁵ In this paper Madison not only set forth fifteen

arguments against assessment, but in doing so gave an elaborate argument on the whole relation of religion to the state. It has been called one of the great documents in the history of human freedom.⁵⁶ Since this document was

signed by a host of citizens, and served as a model for many other petitions which arrived in the legislature in

the fall of 1785, the main arguments will be briefly noted:⁵⁷

(1) Religion is a duty to God rather than society, and must be left to the conviction and conscience of every man as

⁵⁵ James Madison, Detached Memoranda, ed. Elizabeth Fleet (Reprinted from William and Mary Quarterly, third series, Vol. III, October, 1946), p. 554. Also Eckenrode, op. cit., p. 104. Nicholas wrote to Madison on April 22, 1785, that Madison was the only one capable of doing it properly.

⁵⁶ Leo Pfeffer, Church, State, and Freedom (Boston: Beacon Press, 1953), p. 99. It was known only to a few historical students until reviewed by Justice Rutledge in the Everson case before the Supreme Court in 1947. It is interesting that Brydon does not mention the "Memorial and Remonstrance" in his work Virginia's Mother Church in what is otherwise a thorough treatment, with petitions and documents in appendices. Nor does he give much note to the assessment controversy in the text.

⁵⁷ Semple, op. cit., pp. 435-44, in appendix, citing James Madison, "Memorial and Remonstrance"; also James, op. cit., pp. 256-62, in appendix; Rives, op. cit., pp. 634-40.

an inalienable right. (2) If religion is exempt from the authority of society, still less can it be the subject of a legislative body. (3) It is proper to be alarmed at the first breach of the principle--

Who does not see that 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? that 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. 58

(4) It violates the equality which ought to be the basis of every law. (5) It implies that the civil magistrate is a competent judge of religious truth or that he may employ religion as an engine of civil policy. (6) It is not needed to support the Christian religion. (7) Establishments instead of maintaining purity and efficacy of religion throughout history have done the exact opposite. (8) It is not necessary for the support of civil government. (9) It would depart from the policy which offers an asylum to the persecuted and oppressed. (10) It would tend to banish our own citizens. (11) It would destroy the moderation and harmony which the forbearance of the laws to intermeddle with religion had produced among the several sects. (12) It is adverse to the diffusion of the light of Christianity.

⁵⁸ Semple, op. cit., p. 437, in appendix.

(13) To enforce an act so obnoxious would tend to enervate the laws in general and slacken the bonds of society.

(14) It should not be enacted unless desired by the majority of the people, a fact yet undetermined. (15) And finally, the equal right of every citizen to the free exercise of religion according to the dictates of conscience is on par with all other rights, and to bring this one under control of the legislature is to sweep away all other fundamental rights.

To the mind of Madison in this document, assessment for the support of Christian teachers and ministers was the equivalent of an establishment of religion, and he repeatedly used the word "establishment" in this memorial against assessment. It was not the size of assessment, but the principle against which he fought. Especially is this true in the statement that an authority which can force a contribution of three pence to support establishment can force conformity in all other cases.⁵⁹

Madison's biographer called the "Memorial and Remonstrance" the most powerful defense of religious liberty ever written in America.⁶⁰ It is certainly the most comprehensive statement of the philosophy of separation of church

⁵⁹No doubt the analogy is to the three penny tax on tea which helped precipitate the political controversy.

⁶⁰Brant, The Nationalist, 1780-1787, p. 352.

and state to be found in Virginia annals. What enhances its importance even more is the staggering political effect it had on the legislature in the fall of 1785. Petitions came into the House in such numbers as had never been known before, and the anti-assessment petitions showed with few exceptions the influence of Madison's "Remonstrance."⁶¹ While many were copies of the "Remonstrance" itself and others were paraphrases, nearly every one used Madison's phrases.⁶² The total number of signers of such petitions was estimated at ten thousand and may have been even larger.⁶³ Under this impact the proposed assessment bill never achieved a third reading, but died in committee.

The dissenters were generally opposed to assessment. When the plan became fully known to the Baptists they were very forceful in their opposition in petitions already cited

⁶¹Eckenrode, op. cit., p. 109.

⁶²Ibid. The investigator has examined petitions in Virginia State Library from the following counties with dates: Powhatan, November 28, 1785; Amelia, November 9, 1785; Lunenburg, December 1, 1785; Cumberland, October 26, 1785; Campbell, October 28, 1785; Amelia, November 18, 1785; Prince Edward, November 2, 1785. Most of these were alike and argued as follows: (1) Assessment was against the spirit of the gospel and the Bill of Rights. (2) The Blessed Author of our religion did not intend it. (3) With Constantine came in error in the church regarding state relations. (4) The lack of state support is not responsible for deism now rampant. (5) The argument that the church cannot exist without religious establishment is something new. (6) They plead the Bill of Rights. These show definite influence of the "Remonstrance."

⁶³Ibid., p. 111.

in another connection.⁶⁴ The stand of the Presbyterians was somewhat less certain as has been shown regarding the October 28, 1784, petition of the Hanover Presbytery which stated that should a general assessment be adopted they wish it to be done on the most "liberal plan."⁶⁵ In defense of the Presbyterians, however, it ought to be said: first, in the petition which contained this statement there were repeated objections to an assessment;⁶⁶ and second, to remove any doubt, the Presbytery in its next meeting raised a question regarding the phrase, "liberal plan," and voted unanimously against any measure for assessment.⁶⁷ A memorial was prepared accordingly setting forth this sentiment.⁶⁸ Thus, the main impact of the Presbyterian witness was against the measure. The Quakers added their voice in one of the rare petitions from that group dated November 14, 1785, signed by two hundred and twenty-nine persons:

Christian knowledge . . . is no more dependent on human literature, or pecuniary provision for learned teachers, than the Salvation of Souls depends on human learning and head knowledge.⁶⁹

⁶⁴Supra, p. 159.

⁶⁵Supra, pp. 135-37.

⁶⁶See Foote, op. cit., pp. 336-38.

⁶⁷Ibid., p. 341.

⁶⁸Dated August 13, 1785. See Foote, op. cit., p. 342.

⁶⁹Original in Virginia State Library.

The law was an infringement of religious and civil liberty to them.

In view of the foregoing much of the credit for the defeat of assessment belongs to Madison. Of the leading statesmen in Virginia he stood almost alone in opposition to it. Patrick Henry, George Washington, John Marshall, Richard Henry Lee, Edmund Pendleton, and Edmund Randolph all were in sympathy with assessment. However, he had strong support from the people, particularly the Baptists and the Presbyterians throughout the state. He and these dissenters correctly saw that though disguised as an educational measure the proposed plan involved an establishment of religion that would result in an unwarranted connection between church and state. For them it was a matter of principle which circumstances could not alter, and the principle was the right of every individual to the free exercise of religion without state support or hindrance. It is no coincidence that the very same legislature which defeated assessment was responsible a few weeks later for the triumph of this principle by passing the Statute for Religious Freedom, signed into law January 19, 1786. Indeed, the passing of the Statute was due in no small measure to the fact that the deciding struggle had already taken place on the battleground of assessment, and Madison and the liberal view had won out there. As Eckenrode said,

Its passage [Religious Liberty] came as a fitting epilogue to a drama already played out; separation of church and state in Virginia had been practically effected by the defeat of assessment.⁷⁰

III. FINAL DISPOSAL OF THE CHURCH'S PROPERTY

Though "practically effected," separation was not completely effected by defeat of assessment and the triumph of Jefferson's Statute, for there yet remained the question of the glebes and property of the old Established Church. In all of the legal enactments concerning the Church since the Bill of Rights, the Conservatives had taken care to see that the property of the Established Church was reserved to the Episcopal Church. The Incorporation Act passed as late as December 22, 1784, provided that the ministry and vestry of each parish

shall forever lawfully have, hold, use, and enjoy all and every tract or tracts of glebe lands already purchased, the churches and chapels already built, . . . to the sole and only proper use and benefit of the Protestant Episcopal Church. . . .⁷¹

Even the repeal of this Act in October, 1786, did not affect the status of the property, for the law of repeal reserved the property to each religious society formerly owning it, which continued to hold it through elected

⁷⁰Eckenrode, op. cit., p. 115.

⁷¹Hening, Statutes At Large, XI (Richmond: Printed for the author, 1823), 532.

trustees.⁷²

The whole question has excited much controversy, particularly since it involved mainly the Baptists and Episcopalians.⁷³ The Episcopal Church claimed the property by virtue of vested rights and the fact that the Baptists in the earlier years of the struggle made no protests against their having it. Brydon argued that in no other colony in which there was an established church did other denominations challenge the right of that church to continue to hold the property.⁷⁴ Therefore, the Baptists are accused of acting from prejudice rather than principle, in an era thoroughly pervaded by deism, radicalism, and sympathy with the French Revolution.⁷⁵ The Baptists, however, thought it was a matter of principle. They held that since the land

⁷²Hening, Statutes At Large, XII (Richmond: Printed for the author, 1823), 266.

⁷³Baptist historians generally say the property belonged to all of the people. Brydon, op. cit., who failed to treat the assessment matter, devoted two chapters to this question: "The Seizure of the Glebes," and "A Question of Justice," in which he tries to show that the property belonged to the Episcopal Church by custom and legal right. Daniel Durham Rhodes in his recent thesis, "The Struggle for Religious Liberty in Virginia, 1740-1802" (unpublished doctoral thesis, Duke University, Durham, North Carolina, 1951) devoted some 38 pages to the property matter, concluding that the Baptists and Presbyterians by their action here "had denied, in these latter days, by precept and action, the very principles for which they had formerly struggled," p. 236.

⁷⁴Brydon, op. cit., pp. 492-93.

⁷⁵Ibid., pp. 498-99.

was purchased by a levy of the state on all of the people in any given parish, the land belonged to all of the people rather than one particular church. They further contended that the Episcopal Church with its reorganization in 1784 became a "private" church like all of the others instead of a continuation of the state-church. For the Episcopal Church to continue with the property, then, meant to the Baptists that the Episcopal Church remained to some extent in its former connection with the state. Fristoe described the reservation of the property this way:

. . . It was a shameful partiality exercised by the government in favor of one particular sect, so incompatible with republican principles--moreover we were left to fear it would be made use of in a future day and the established church have it to say, there was a reserve of property to them in preference to all other sects, and that establishment was only in part abolished, and this cockatrice egg produce in time a fiery, flying serpent.⁷⁶

Baptists had protested the reservation of property in their August 5, 1786, petition against the Incorporation Act,⁷⁷ but in their meeting of the General Committee August 10, 1787, it was decided not to send in a petition. This may have been due to the fact that the vote on the question of whether the glebes were public property or not was decided in the affirmative by only one vote.⁷⁸

⁷⁶Fristoe, op. cit., p. 94.

⁷⁷Semple, op. cit., p. 72.

⁷⁸Ibid., p. 74.

The Presbyterians in their only petition concerning the glebes dated October 31, 1787, from the "ministers and lay representatives of the Presbyterian Church in Convention" strongly protested the failure of the legislature to adjust the matter properly. Their petition said in part:

We cannot enjoy the happiness nor place the confidence in our government which we would wish whilst we see our Legislature in the face of Common Justice and the inalienable rights of all the Citizens hold up a particular Sect or Denomination of Christians as the object of Political favour. This we suppose undeniably the case in the exclusive appropriation of the Glebes and Churches to the Protestant Episcopal Church to the possession of which they have not the least shadow of claim. As she differs from the Church of England in the articles of her faith . . . she is no more the same than the Church of England is the same with the Church of Rome. . . .⁷⁹

Thus, the Presbyterians shared with the Baptists the view that the Episcopal Church was something new and different from the old Established Church, and no more entitled to the property than any other religious group.

When the legislature in an Act December 7, 1788, reaffirmed that the trustees of the Protestant Episcopal Church were considered successors to the former vestrymen in holding and managing the property of the former Establishment,⁸⁰ Baptists began in earnest a campaign to push separation of church and state to its logical conclusion. Beginning

⁷⁹Original, dated October 31, 1787, in Virginia State Library.

⁸⁰Hening, op. cit., XII, 705-6.

in 1789, the General Committee sent memorials to the legislature every year until the end they sought was virtually achieved.⁸¹ The petition of August 10, 1789, which was presented to the House on November 14, gave the following reasons for their action:⁸² (1) The law under which the property was procured was manifestly cruel since it was suspended thirteen years ago. It forced property away from people whether they wanted to give or not. (2) One hundred wealthy glebes and other property was not an object too small to take notice of, especially with the state in debt. (3) Leaving it to one society had an undue preponderance on the minds of men; also it was a bait for those entering the ministry of that church. (4) The Episcopal Church had done nothing so superabundant to be thus rewarded. (5) Men ought not be favored by government except for services rendered.

The sixth reason is most interesting for it shows how much the social contract idea of government had taken hold of the grass roots mind, and how it was applied by the Baptist to property. It said in part:

(6) Claims of Land are neither founded in Nature nor Grace; but in Social Right [*italics in original*].

⁸¹Ryland, op. cit., p. 132.

⁸²From photostatic copy of original, dated August 10, 1789, in possession of Virginia Baptist Historical Society.

All Acts of Society in free governments, are framed by a Majority of Voices; and Voices should be always governed by Rights /italics in original/. . . . And now if a Majority of Voices, governed by the Principle of Right /italics in original/, say, that the Episcopal Church ought to have all the property before mentioned, than /sic/ said Church is entitled to it; otherwise the Law by which they hold it, may be as easily repealed as any other Law whatsoever. We are not convinced that the supposed Danger of destroying Claims of Land is as great as the real Danger of Injustice.⁸³

This statement is remarkable indeed since the Declaration of Rights had declared the right to property to be an inherent or natural right. It was as though the Baptists had taken a page out of Rousseau to declare that claims to land were founded not on nature but on social right. Unlike matters of conscience and religious observance, the property settlement to them came within the jurisdiction of the legislature.

To this two other reasons were added: (7) If men upon changing their religious sentiments lose all claim to property, then the parish property in Virginia is without claimants. (8) The Episcopalians have the property, and are under no bond to procure preachers for the parishes. The Baptists specified that they were not concerned about the property which had been donated, but only that which had been purchased by the people.

On this particular matter Baptists were now alone

⁸³Ibid.

in opposition, for no petitions from other religious groups objecting to the Episcopal Church retaining the property are found after 1787. Many petitions from individual counties were sent to the legislature in support of the annual plea from the General Committee.⁸⁴ In 1790, the General Committee charged that there were remains of a high church in the republican government by which other societies did not enjoy equal religious liberty.⁸⁵ The November 25, 1794, memorial of the General Committee used the arguments so successful at other junctures in the struggle for separation that the laws which confirmed to the Episcopal Church the glebe land were: (1) contrary to the Bill of Rights; (2) a violation of rights which renders every other insecure and precarious; and (3) a precedent having a tendency to introduce corruption into government by violating Article IV prohibiting exclusive privileges or emoluments.⁸⁶ This petition strongly emphasized inalienable rights, and declared that Baptists "suffer the mortification to see those rights infringed, which they have paid for in common with their fellow citizens."⁸⁷ They despaired to see the "strong

⁸⁴The investigator read at least eleven petitions from different counties for the year 1790, in photostatic copies in possession of the Virginia Baptist Historical Society. All of them ask for the sale of the glebes and use of the churches by everyone.

⁸⁵Dated October 30, 1790. Original in Virginia State Library.

⁸⁶Original petition from General Committee, November 25, 1794, in Virginia State Library.

⁸⁷Ibid.

Basis of Civil and religious liberty upon the totter, and all their privileges precarious,"⁸⁸ by this violation of liberty and equality.

Baptists by their very persistence had a large share in, and deserve immense credit for, the resultant sale of the glebes.⁸⁹ Commenting on the property settlement Thom said, "During all those years, the Baptist followed with passionate eagerness the ideal of religious freedom to its logical consequence of absolute separation of Church and State."⁹⁰ Their constant reminder to the legislature did not bear fruit until 1799, by which time the radical majority had increased in the House.⁹¹ On January 24 of that year a bill was passed to repeal all of the acts of the legislature relating to religion except the Act for Religious Freedom which was held to be the true exposition of the Bill of Rights and the Virginia Constitution.⁹² Though not settling the question of the glebes, this removed from the statute books every mention of reservation of property to the Episcopal Church since 1776. Accordingly,

⁸⁸Ibid.

⁸⁹Thom, op. cit., p. 91.

⁹⁰Ibid.

⁹¹Eckenrode, op. cit., p. 142.

⁹²Ibid., p. 147.

the Baptist General Committee, believing its work accomplished with this act, dissolved itself in 1799.⁹³ By the action in 1799 the legislature had undercut the Episcopal claim to the glebe lands, and the property devolved on the people of the Commonwealth. The legislature passed on January 20, 1802, an act for its disposition.⁹⁴ The overseers of the poor in each county were authorized to sell vacant glebes, and others as they became vacant, using the money to help the poor unless the county decided otherwise. In no instance were churches, church yards, or property donated privately authorized for sale.⁹⁵

The Episcopal Church did not easily acquiesce. They had petitioned to be allowed to retain the property because of vested right and recognized laws.⁹⁶ In 1796, fatigued by the Baptist insistence, they petitioned that a final settlement be made in a bill guaranteeing to them the property. When this failed they sought to have the matter removed from the legislature and decided by the courts, which

⁹³Ryland, op. cit., p. 132.

⁹⁴Stokes, op. cit., p. 395.

⁹⁵Rhodes, op. cit., p. 225.

⁹⁶Such a petition was in the handwriting of Edmund Pendleton and signed by fifty others dated 1790. Photostatic copy of original in possession of Virginia Baptist Historical Society.

the legislators were reluctant to do.⁹⁷ At last when the legislature decided against them they sought adjudication in the courts in a suit over the Manchester parish in Chesterfield County.⁹⁸ The case reached the Virginia Court of Appeals, and it appears that the law of 1802 would have been declared unconstitutional except for the intervening death of one of the judges, Edmund Pendleton.⁹⁹ Further proceedings in the matter bogged down in legal technicalities and the law stood.

Though the Baptists have been censured as acting from hatred of the Episcopal group since they had suffered under the old Establishment,¹⁰⁰ it would be more correct to say they were interested in seeing a principle established to its fullest extent that would make it impossible for a group to suffer as they had suffered under the old Establishment. It is to their everlasting credit that they could see that the principle of separation of church and state was not fully established until all economic connections

⁹⁷Rhodes, op. cit., p. 217.

⁹⁸Mays, op. cit., p. 340.

⁹⁹Ibid., p. 345. Mays gives an excellent account of the role of Pendleton in this case, as well as the positions of the other judges which would have voted three to one for the unconstitutionality of the law. Brydon treats the matter at some length from the Episcopal viewpoint in his last chapter.

¹⁰⁰Rhodes, op. cit., p. 203.

between church and state had been severed.

From this evidence it can be seen that social and economic factors were at work bringing about separation of church and state in Virginia. Dissenters who were of lower social standing achieved more status during and after the Revolution which made them more respectable. Social factors, however, were only a minor cause of separation. On the other hand, economic factors were destined to play a large part in the struggle that separated church and state. At every crucial juncture the application of the principle involved a grave economic question. The state tax, or tithe, for the Established Church and the state paid salaries for their clergy had to be abolished by the legislature in the late 1770's. The proposals for assessment for religious purposes of 1779 and 1784 had to be defeated. The question of the glebes and property of the old Established Church called for settlement between 1789 and 1802. In all of these the Baptists took a leading part. The Presbyterians also were strong in opposing each measure, except that of the property settlement. These dissenters, together with the liberal politicians such as Jefferson and Madison, were mainly responsible for removing economic hindrances to separation of church and state in Virginia.

CRITICAL SUMMARY

CRITICAL SUMMARY

In Virginia the origin of the concept of separation of church and state cannot be traced to one simple source. Rather, there were a number of factors at work, and a number of significant leaders both political and religious, that had a part in achieving the end result of separation.

One of the factors bringing about separation was the concept of natural rights. This concept had ancient roots. It was introduced to America through the writings of John Locke. Virginian political leaders such as Thomas Jefferson, James Madison, George Mason, and Patrick Henry contended that there were certain inalienable rights and privileges that belong to individuals by virtue of their being persons. These rights were based upon a fundamental natural law, and could not be overthrown or abrogated by the state. One of these natural rights was the free exercise of religion according to the dictates of conscience. Another was the freedom of the individual conscience under God. These natural rights provided the ground of justification for religious freedom and separation, and were written into the Virginia Bill of Rights of 1776 and the Statute of Religious Freedom passed by the Virginian Assembly in January, 1786. Presbyterian and Baptist petitions also demanded freedom in the name of natural rights. The idea of natural rights was explicit in the Presbyterian petitions,

but more often implicit in the Baptist petitions to the Assembly. But the Baptists were forceful in demanding freedom of worship and freedom of conscience, considered to be natural rights in Revolutionary Virginia. The natural rights doctrine thus served as the philosophical justification for separation of church and state.

A second factor which contributed to separation in Virginia was political liberty. It is no mere coincidence that religious liberty was demanded at the same time the colony was winning political freedom from Great Britain. There was a growing dissenter movement in Virginia, and growing political resistance to Great Britain added immeasurably to the force of the dissenters' resistance against the Established Church. The ideas of individualism and social contract used to justify political rights were used also by dissenters to justify religious rights. The political revolution became a time of opportunity for dissenters to press their claims for religious liberty and separation of church and state. Dissenters, along with Madison and Jefferson, saw that religious liberty was of a piece with political liberty for which all of the citizens had fought. They considered their freedom incomplete unless the state went on "to complete what was so nobly begun." For this reason the religious struggle may be said to be a part of the larger revolution

that swept over the colony of Virginia in the last quarter of the eighteenth century. The separation of church and state certainly had a parallel in the separation of the colonies from the mother country.

A third factor was the doctrine of the church. The struggle in Virginia may be viewed as a contest between the state-church views of the adherents of the Established Church, and the free church views of the Baptists and Presbyterians. Episcopalians found no inconsistency between their doctrine of the institutional church and a state-church supported by taxes imposed upon all of the people. Therefore, they resisted almost every move at disestablishment as a move against organized religion. To them the church could not function properly without official connection with the state; nor could the state do justice to the welfare of its citizens without fostering religion. This viewpoint is evident in their petitions to the legislature.

On the other hand, the free church views of the Baptists and Presbyterians were opposed to the idea of the Established Church. Their doctrine of the church led them to demand that the church be free from the control and support of the state. They maintained that the church is a voluntary association; that it is premised upon the freedom of the individual conscience; that it should be supported by private gifts and donations rather than a state levy; and

that religion is something apart from the state. To express these free church views Baptists and Presbyterians exercised the democratic privilege of petition to the legislature with telling effect. This is rather interesting in connection with the Presbyterians who in some instances in Europe have supported a state-church. Presbyterians have often been censured, particularly by some Baptist historians, for their stand on the assessment question in Virginia, but this seems unwarranted. Such a censure is based mainly on an interpretation of one petition which the Hanover Presbytery subsequently abrogated. From an impartial viewpoint it would appear that at this juncture in their history the witness of Virginia Presbyterians strongly upheld the free church view which demanded separation of church and state. It is evident, though, that the Presbyterians considered the victory achieved with the passing of the Statute of Religious Freedom, for they joined in the subsequent property dispute only for a short while.

Baptists, who had suffered persecution under the Established Church, consistently opposed every appearance of state connection. Unlike the Presbyterians, there was never any question where the Baptists stood. They opposed taxes for the Established Church, assessment, incorporation, and the possession of the glebes by the Protestant Episcopal Church. Their greatest leader in the struggle was John Leland,

a close friend of Isaac Backus. Leland and the Baptists saw clearly that any form of establishment was a threat to a free church and the freedom of the individual conscience. Though criticized by some as acting from prejudice, in their every action they adhered to a principle always loved by Baptists that religion must be separated from the state.

Still other factors were the social and economic. Separation was aided by a social revolution which followed in the years after the war. Dissenting groups realized tremendous growth and achieved status in the decade after the war, thereby carrying considerably more weight in the legislative halls. This is particularly true of the Baptists who became the largest religious group in Virginia by the end of the eighteenth century.

Certain economic factors also figured prominently in the entire struggle. These were mainly the abolition of state taxes for the Established Church, the defeat of assessment for religious purposes, and the question of the settlement of the glebes. These economic questions were seen to be crucial by Madison and the dissenters, particularly the Baptists. To Madison belongs the main credit for the defeat of assessment when, through the "Memorial and Remonstrance" circulated over the state while the question was under consideration, he ably presented the arguments against the support of religion by the state,

and stirred the populace to flood the legislature with petitions against assessment. In the "Memorial and Remonstrance" he gave the most forceful defense of separation of church and state to be found in the whole controversy in Virginia. To the Baptists belongs most of the credit for the decision to dispose of the Established Church's glebes in 1802. They were the only group who continued to petition for such action after 1789. Though criticized as being activated by hatred and prejudice, the Baptists were only pressing the principle of separation to its logical conclusion. Baptists maintained that as long as the Episcopal Church held the glebes secured under the old Established Church, there remained a vestige of the Established Church.

It is interesting to observe how men with divergent viewpoints worked side by side for separation. On the one hand were the political liberals whose religious viewpoint was essentially Deistic, and who placed supreme value on human reason. On the other hand were the religiously conservative Presbyterians and Baptists, basically supernaturalists, who placed supreme value on revelation and the Holy Scriptures, and who preached an evangelistic gospel of salvation through Christ alone. Yet these two groups stood in a common front in defending freedom of the individual conscience under God against a strangling

ecclesiasticism. Indeed separation of church and state often makes strange bed fellows.

It is difficult to ascribe to Jefferson or Madison a greater part in achieving separation in Virginia. The work of Jefferson is well-known in connection with the Statute of Religious Liberty. Though not often recognized as such, Madison's work is equally significant in connection with the Virginia Bill of Rights and the "Memorial and Remonstrance." Since the defeat of assessment in 1785 seems to be the turning point in the victory for separation, the role of Madison becomes even more important. He was primarily responsible for the defeat of assessment through his efforts in the legislature and through the influence of his tract, "Memorial and Remonstrance." Thus, Madison exercised a personal influence at this critical juncture while Jefferson was in Europe. From this perspective Madison's significance might exceed that of Jefferson. Each contributed greatly to separation. Jefferson's role was that of the architect; Madison's that of the builder.

BIBLIOGRAPHY

BIBLIOGRAPHY

PRIMARY SOURCES

- Backus, Isaac. An Appeal to the Public for Religious Liberty, Against the Oppressions of the Present Day. Boston: John Boyle, 1773. Microfilm in Southern Baptist Theological Seminary Library, Louisville, Kentucky.
- Bergh, Albert Ellery (ed.). The Writings of Thomas Jefferson. 20 vols. Washington, D. C.: Thomas Jefferson Memorial Association, 1907.
- Bettenson, Henry. Documents of the Christian Churches. New York: Oxford University Press, 1947.
- Collection of County Petitions. MSS in the Virginia State Library, Richmond, filed according to county and dates:
- Petition from Amelia County, November 9, 1775.
 - Petition from Mecklenberg County, December 24, 1784.
 - Petition from Cumberland County, October 26, 1785.
 - Petition from Campbell County, October 28, 1785.
 - Petition from Prince Edward County, November 2, 1785.
 - Petition from Powhatan County, November 28, 1785.
 - Petition from Lunenburg County, December 1, 1785.
- Collection of Miscellaneous Petitions. MSS in the Virginia State Library, Richmond, filed according to dates:
- Petition from Hanover Presbytery, April 25, 1777.
 - Petition from Quakers, November 14, 1785.
 - Petition from Presbyterian Convention, October 31, 1787.
 - Petition from Baptist General Committee, October 30, 1790.
 - Petition from Baptist General Committee, November 25, 1794.

Collection of Miscellaneous Petitions. Photostatic copies of originals in Virginia Baptist Historical Library, Richmond:

Petition from the General Baptist Association,
August 14, 1775.

Petition from Baptist Church at Occaquon, May 19, 1776.

Petition from Dissenters from the Ecclesiastical
Establishment, October 16, 1776.

Petition from Dissenters in Albemarle and Amherst,
November 1, 1776.

Petition from Baptist General Association, October 16, 1780.

Petition from Baptist General Association, June 30, 1782.

Petition from Amelia County, May 12, 1783.

Petition from Baptist General Association, May, 1783.

Petition from Baptist General Association, October, 1783.

Petition from Rockingham County, November 18, 1784.

Petition from Orange County, September 17, 1785.

Petition from Amelia County, November 27, 1785.

Petition from Amelia County, November 18, 1785.

Petition from Caroline County, 1785.

Petition from Baptist General Committee, August 5, 1786.

Petition from Baptist General Committee, August 10, 1789.

Petition from Albemarle County, August 10, 1790.

Petition from Caroline County, 1790.

Petition from Baptist General Committee, November 25, 1794.

Petition from Baptist General Committee, November 17, 1796.

Greene, L. F. The Writings of the Late Elder John Leland.
New York: G. W. Wood, 1845.

- Hening, William Walter. Statutes At Large: A Collection of All the Laws of Virginia. 13 vols. Richmond: Printed for the author, 1819-1823. Vol. I; second edition; New York: 1823.
- Hensley, Samuel. The Distinct Claims of Government and Religion. Cambridge: Printed for J. Woodyer and Messieurs Davies and Elmsly, 1772.
- James Charles F. Documentary History of the Struggle for Religious Liberty in Virginia. Lynchburg, Virginia: J. P. Bell Co., 1900.
- Jefferson, Thomas. Notes on the State of Virginia. Second American edition. Philadelphia: Mathew Carey, 1794.
- Leland, John. A Circular Letter of Valediction on Leaving Virginia in 1791. Boston: Printed for John Asplund, 1794. Photostatic copy in Southern Baptist Seminary Library, Louisville, Kentucky.
- _____. The Virginia Chronicle. Fredricksburg: T. Green, 1790.
- Locke, John. A Letter Concerning Toleration. English translation by William Popple. New York: Liberal Arts Press, 1950.
- Madison, James. Detached Memoranda. Edited by Elizabeth Fleet. Reprinted from William and Mary Quarterly. Third Series. Vol. III. October, 1946.
- Morrison, S. E. Sources and Documents Illustrating the American Revolution 1764-1788 and the Formation of the Federal Constitution. Second edition. Oxford: The Clarendon Press, 1948.
- Sparks, Jared. Writings of George Washington. 12 vols. Boston: Little, Brown and Co., 1885.
- Virginia Gazette, Williamsburg, No. 73, November 8, 1776; No. 1407, August 22, 1771. On microfilm in Southern Baptist Theological Seminary Library.

SECONDARY SOURCES

- Adams, Herbert B. The College of William and Mary. United States Bureau of Education Circular of Information. No. 1-1887. Government Printing Office, Washington, D. C., 1887.
- Andrews, Charles M. The Colonial Background of the American Revolution. New Haven: Yale University Press, 1948.
- Backus, Isaac. Church History of New England from 1620 to 1804. Philadelphia: American Baptist Publication Society, 1853.
- Bainton, Roland H. The Travail of Religious Liberty. Philadelphia: Westminster Press, 1951.
- Bates, Ernest Sutherland. American Faith: Its Religious, Political, and Economic Foundations. New York: W. W. Norton & Co., Inc., 1940.
- Bates, M. Searle. Religious Liberty: An Inquiry. New York: International Missionary Council, 1945.
- Blau, Joseph L. Cornerstone of Religious Freedom in America. Boston: Beacon Press, 1949.
- Brant, Irving. The Nationalist, 1780-1787. Vol. II of James Madison. 5 vols. Indianapolis: Bobbs-Merrill Co., 1941-1956.
- _____. The Virginian Revolutionist, 1751-1780. Vol. I of James Madison. 5 vols. Indianapolis: Bobbs-Merrill Co., 1941-1956.
- Brydon, George MacLaren. Virginia's Mother Church. 2 vols. Vol. I; Richmond: Virginia Historical Society, 1947. Vol. II; Philadelphia: Church Historical Society, 1952.
- Burkitt, Lemuel, and Jesse Read. A Concise History of the Kehukee Baptist Association. Halifax: Printed by A. Hodge, 1803.
- Butterfield, L. H. Elder John Leland, Jeffersonian Itinerant. Worcester, Massachusetts: American Antiquarian Society, 1953.
- Carman, Harry J., and Harold C. Syrett. A History of the American People. 2 vols. New York: Alfred A. Knopf, 1952.

- Cassirer, Ernst. The Philosophy of the Enlightenment.
Trans. Fritz C. A. Koellin and James P. Pettegrove.
Princeton: Princeton University Press, 1951.
- Cathcart, William. Baptists and the American Revolution.
Philadelphia: S. A. George & Co., 1876.
- Chinard, Gilbert. Thomas Jefferson, the Apostle of Americanism. Second edition. Boston: Little, Brown and Co., 1944.
- Cobb, Sanford H. The Rise of Religious Liberty in America.
New York: The Macmillan Co., 1902.
- Collins, Varnum Lansing. President Witherspoon. 2 vols.
Princeton: Princeton University Press, 1925.
- Cornelison, Isaac A. The Relation of Religion to Civil Government. New York: G. P. Putnam's Sons, 1895.
- Cox, Norman W. Dreams, Dungeons, Diadems. Nashville:
Historical Commission Southern Baptist Convention, 1954.
- Crooker, Joseph Henry. The Winning of Religious Liberty.
Boston: Pilgrim Press, 1918.
- Dawson, J. M. Baptists and the American Republic.
Nashville: Broadman Press, 1956.
- Drummond, Andrew Landale. Story of American Protestantism.
Edinburgh: Oliver and Boyd, 1949.
- Eckenrode, H. J. The Revolution in Virginia. Boston:
Houghton Mifflin Co., 1916.
- _____. Separation of Church and State in Virginia.
Richmond: Report of the Department of Archives and
History, Virginia State Library, 1910.
- Ehler, Sidney Z., and John B. Morrall. Church and State
Through the Centuries. London: Burns and Oates, 1954.
- Fiske, John. Old Virginia and Her Neighbors. Vol. II
Boston: Houghton Mifflin and Co., 1900.
- Foote, William Henry. Sketches of Virginia. First Series.
Philadelphia: William S. Martien, 1850.
- Foote, Henry Wilder. Thomas Jefferson. Boston: Beacon
Press, 1947.

- Fristoe, William. A Concise History of the Kettocton Baptist Association. Staunton: William Gilman Lyford, 1808.
- Gewehr, Wesley M. The Great Awakening in Virginia, 1740-1790. Durham, North Carolina: Duke University Press, 1930.
- Greene, Evarts B. Church and State. Indianapolis: National Foundation Press, 1947.
- _____. Religion and the State. New York: New York University Press, 1941.
- _____. The Revolutionary Generation 1763-1790. New York: Macmillan Co., 1943.
- Grigsby, Hugh Blair. The Virginia Convention of 1776. Richmond: J. H. Randolph, 1855.
- Howard, George Elliott. Preliminaries of the Revolution. Vol. VIII of The American Nation: A History. New York: Harper and Brother, 1905.
- Howell, Robert Boyle C. The Early Baptists of Virginia. Philadelphia: American Baptist Historical Society Press, 1857.
- Hudson, Winthrop S. The Great Tradition of the American Churches. New York: Harper and Brothers, 1953.
- Humphrey, Edward Frank. Nationalism and Religion in America 1774-1789. Boston: Chipman Law Publishing Co., 1924.
- Johnson, Alvin W., and Frank H. Yost. Separation of Church and State in the United States. Minneapolis: Minnesota Press, 1948.
- Johnson, Thomas Cary. Virginia Presbyterianism and Religious Liberty in Colonial and Revolutionary Times. Richmond: Presbyterian Committee of Publication, 1907.
- Klingberg, Frank J. A Free Church in a Free State. Indianapolis: National Foundation Press, 1947.
- Le Boutillier, Cornelia Geer. American Democracy and Natural Law. New York: Columbia University Press, 1950.

- Lindstrom, David Edgar. American Foundations of Religious Liberty. Champaign, Illinois: The Garrard Press, 1950.
- Lisitzky, Gene. Thomas Jefferson. New York: Viking Press, 1933.
- Littell, Franklin. The Anabaptist View of the Church. [n.p.]: American Society of Church History, 1952.
- _____. The Free Church. Boston: Star King Press, 1957.
- Little, Lewis Peyton. Imprisoned Preachers and Religious Liberty in Virginia. Lynchburg, Virginia: J. P. Bell Co., 1938.
- Loveland, Clara O. The Critical Years. Greenwich, Connecticut: Seabury Press, 1956.
- Malone, Dumas. Jefferson The Virginian. Vol. I of Jefferson and His Time. 2 vols. Boston: Little, Brown and Co., 1948-1951.
- Maritain, Jacques. The Rights of Man and Natural Law. New York: Charles Scribner's Sons, 1943.
- Mays, David John. Edmund Pendleton, 1721-1803. 2 vols. Cambridge, Massachusetts: Harvard University Press, 1952.
- Meade, William. Old Churches, Ministers and Families of Virginia. 2 vols. Philadelphia: J. B. Lippincott and Co., 1872.
- Mecklin, John M. The Story of American Dissent. New York: Harcourt, Brace and Co., 1934.
- Moehlman, Conrad Henry. American Constitutions and Religion. Berne, Indiana: [n.n.], 1938.
- _____. The Wall of Separation between Church and State. Boston: Beacon Press, 1951.
- Morais, Herbert M. Deism in Eighteenth Century America. New York: Columbia University Press, 1934.
- Mullin, E. Y. The Historical Significance of the Baptists. Richmond: Virginia Baptist Historical Society, 1907.
- MacLean, John. History of the College of New Jersey. Philadelphia: J. B. Lippincott and Co., 1877.

- McIlwaine, Henry R. The Struggle of Protestant Dissenters for Religious Toleration in Virginia. Baltimore: Johns Hopkins Press, 1894.
- Newman, Albert Henry. A History of the Baptist Churches in the United States. Sixth revised and enlarged edition. New York: Charles Scribner's Sons, 1915.
- Nichols, James Hastings. Democracy and the Churches. Philadelphia: Westminster Press, 1951.
- Parker, T. M. Christianity and the State in the Light of History. London: Adam and Charles Black, 1955.
- Parrington, Vernon Louis. The Colonial Mind 1630-1800. Vol. I of Main Currents in American Thought. 3 vols. New York: Harcourt, Brace and Co., 1927-1930.
- Payne, Ernest A. The Fellowship of Believers. Enlarged edition. London: Carey Kingsgate Press, 1952.
- _____. The Free Church Tradition in the Life of England. Third edition. London: S. C. M. Press Ltd., 1951.
- Pfeffer, Leo. Church, State, and Freedom. Boston: Beacon Press, 1953.
- Richie, David G. Natural Rights. Fifth edition. London: George Allen and Unwin Ltd., 1953.
- Rives, William C. Life and Times of James Madison. 3 vols. Boston: Little, Brown and Co., 1859-1868.
- Robinson, H. Wheeler. Life and Faith of the Baptist. London: Kingsgate Press, 1946.
- Ryland, Garnett. The Baptist of Virginia 1699-1926. Richmond: Virginia Baptist Board of Missions and Education, 1955.
- Schaff, Philip. Church and State in the United States. New York: Charles Scribner's Sons, 1889.
- Schneider, Herbert W. A History of American Philosophy. New York: Columbia University Press, 1946.
- Semple, Robert B. A History of the Rise and Progress of the Baptists of Virginia. Richmond: /n.n./, 1810.
- Sperry, Willard L. Religion in America. Cambridge: University Press; New York: The Macmillan Co., 1948.

- Stokes, Anson Phelps. Church and State in the United States. 3 vols. New York: Harper Brothers, 1950.
- Strauss, Leo. Natural Right and History. Chicago: University of Chicago Press, 1953.
- Swancara, Frank. The Separation of Religion and Government. New York: Truth Seeker Co., 1950.
- Sweet, William Warren. Religion in Colonial America. New York: Charles Scribner's Sons, 1942.
- Thom, William Taylor. The Struggle for Religious Freedom in Virginia--The Baptists. Baltimore: Johns Hopkins Press, 1900.
- Torbet, Robert G. A History of the Baptists. Philadelphia: Judson Press, 1950.
- Troeltsch, Ernst. The Social Teaching of the Christian Churches. Trans. Olive Wyon. 2 vols. London: George Allen and Unwin Ltd.; New York: Macmillan Co., 1950.
- Tyler, Lyon Gardiner. History of Virginia. 6 vols. Chicago: American Historical Society, 1924.
- Walton, Robert C. The Gathered Community. London: Carey Press, 1946.
- Westin, Gunnar. The Free Church Through the Ages. Trans. Virgil A. Olson. Nashville: Broadman Press, 1958.
- Whitsitt, William H. The Life and Times of Judge Caleb Wallace. Louisville: John P. Morton and Co., 1888.
- Wirt, William. The Life and Character of Patrick Henry. Sixth edition. New York: M'Elrath, Bangs and Co., 1834.

PERIODICALS

- Chorley, E. Clowes. "The Planting of the Church in Virginia," William and Mary College Quarterly, second series, X, No. 3 (July, 1930).
- Hunt, Gaillard. "James Madison and Religious Liberty," Annual Report of the American Historical Association 1901. Washington: Government Printing Office, 1901.

- Price, Theron D. "The Church and the Churches,"
Review and Expositor, LII, No. 4 (October, 1955).
- Shrader, Wesley. "The Struggle for Religious Freedom
in Early Virginia," Review and Expositor, LIII,
No. 2 (April, 1956).
- Sweet, William Warren. "Natural Religion and Religious
Liberty in America," Journal of Religion, XXV
(January, 1945).

PAMPHLET

- Brydon, George MacLaren. The Established Church in
Virginia and the Revolution. Richmond: Virginia
Diocesan Library, 1930.

UNPUBLISHED THESIS

- Rhodes, Daniel Durham. "The Struggle for Religious
Liberty in Virginia, 1740-1802." Unpublished
Doctoral thesis, Duke University, Durham,
North Carolina, 1951.

APPENDIX

APPENDIX

ACT FOR ESTABLISHING RELIGIOUS FREEDOM

"Whereas Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy Author of our religion, who being Lord both of body and mind, yet chooses not to propagate it by coercions on either, as was in his Almighty power to do; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world, and through all time; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor, whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry those temporal rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labours for the instruction of mankind; that our civil rights have no dependence on our religious opinions, any more than our opinions in physics or geometry; that therefore the prescribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which in common with his fellow-citizens he has a natural right; that it tends only to corrupt the principles of that religion it is meant to encourage, by bribing with a monopoly of worldly honours and emoluments, those who will externally profess and conform to it; that though indeed these are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that to suffer the civil magistrate to intrude his powers into the field of opinion,

and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy, which at once destroys all religious liberty, because he is being of course judge of that tendency will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil government, for its officers to interfere when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail if left to herself, that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interpositions disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them:

"Be it enacted by the General Assembly [*italics in original*], 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.

"And though we well know that this assembly elected by the people for ordinary purposes of legislation only, have no power to restrain the acts of succeeding assemblies, constituted with powers equal to our own, and that therefore to declare this act irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement of natural right."¹

¹William Walter Hening, Statutes At Large: A Collection of All the Laws of Virginia, XII (Richmond: Printed for the author, 1823), 84ff.