Thomas Jefferson: Private Heresy and Civic Religion

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Frederick II of Prussia, the putative embodiment of "enlightened despotism," was more successful than his English cousin George III or his French counterpart, Louis XVI, in achieving Henry Bolingbrook's ideal of the modern "patriot king." Frederick owed a portion of his reputation for enlightenment to Voltaire, his one-time collaborator in an attack on Machiavellianism, and another portion to Immanuel Kant, who praised his relatively tolerant attitude to religious opinion. The religious history of seventeenth century Europe had been dominated by the names of Cromwell, Richelieu, and other absolutists, and the continent had memories of a Thirty Years War, which ostensibly had to do with religious authority. In fact, it had eventually made Catholics the bedfellows of Protestants, and Protestants the allies of Muslims. But the religious murders and persecutions in England and on the Continent were still alive in the historical imaginations, if not the memories, of Thomas Jefferson and James Madison, when they worked out their ideas of enlightened religious toleration.[1]

If "Enlightenment" had any meaning at all, to Kant and Voltaire, it signified the rejection of religious absolutism and the bloodshed associated with it in the seventeenth century. By the late eighteenth century, Europeans and Americans were seeking better justifications than religion for murdering one another. The eighteenth century was an age of reasonable violence. The *philosophe*s made religious freedom central to their conception of enlightenment. Kant and Voltaire seemingly extended their views of religious toleration farther than had Milton in his *Areopagitica*, or Locke in his *Letter Concerning Toleration.* So, to his credit, did Thomas Jefferson, but he never produced a treatise on religion comparable to Thomas Paine's *The Age of Reason.* And he vacillated and temporized on the concept of a government independent of religious influence and authority. In fact, as he made clear on more than one occasion, he believed that his secularized and heretical version of "true Christianity" could function as a bulwark of true republicanism. He was a fellow traveler of Benjamin Rush, who pontificated that "Republicanism is a part of the truth of Christianity.[2]

Jefferson desired that his signal, if modest, contributions to philosophy, to wit, his authorship of the Virginia *Act of Religious Freedom* and his authorship of the Declaration of Independence be engraved on his tombstone. These had earned him public recognition, as a voice of the Enlightenment, but by his own admission, had not established him as one of its original thinkers. From 1777 to 1779, he drafted and worked for passage of the Virginia Statute, whose principal effect was that taxpayers would not be responsible for the maintenance of the Episcopal clergy. By contrast, John Adams' Massachusetts maintained its established Congregational church for another half century, despite the gravitation of such Bostonian Congregationalists as Adams to Unitarianism. It has been observed that Jefferson attended the

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[1] J. G. A. Pocock *The Machiavellian Moment* (Princeton, 1975) is a work of tremendous influence, but I have found no specific index references to Frederick II in this work, but many to Jefferson. See index entries. Pocock's startling placement of Jefferson simultaneously in both "a Machiavellian and a Rousseauan moment," arouses wonderment, given the paucity of references to either Machiavelli or Rousseau in Jefferson's writings. Jefferson associated Machiavelli, as do most of us, with the notorious *Il Principe,* not with the more republican *Discorsi,* that Pocock so fruitfully explores. Jefferson accused the British of employing "Machiavelian levers," to destroy the American Republic in a letter to General Thaddeus Kosciusko, June 28, 1812. It is unclear whether he viewed Machiavelli as a observer or an apologist for a "wicked and cowardly" age" in a letter to William Duane, April 4, 1813. Seemingly he used the term "Machiavellian" pejoratively, as did John Adams writing of "the arts of the Pharisees, the ancient priests of all countries, the Jesuits, the Machiavellians, etc., etc." Adams to Jefferson June 20, 1815.

[2] Kant is believed to have been agnostic, but also see Alan Wood's argument for "Kant's Deism," in P. Rossi and M. Wreen (eds.), *Kant's Philosophy of Religion Re-examined* (Bloomington: Indiana University Press, 1991); a counter-argument is Stephen Palmquist's "Kant's Theistic Solution". See F. Forester Church, introduction to *The Jefferson Bible,* (Boston: Beacon, 1989), p. 8. Cf. Jefferson's First Inaugural Address.

Episcopal Church throughout his life, and had his children baptized in it. Perhaps this may reasonably be attributed to the fact that there was no official Unitarian congregation in his part of Virginia, and that he used the term "unitarian" with a small "U" and purely to denote his anti-Trinitarian theological beliefs, rather than to indicate any denominational affiliation. His association with the Episcopal Church may also have signified a pragmatic need to convey an image of religious orthodoxy. It may possibly have reflected a desire, common to many fathers, to socialize one's daughters according to the precepts of an orthodox religious community.[3]

The premises of his argument for toleration, elaborately stated in the Virginia Statute, contained the philosophical basis for his theological assertions in the Declaration. As Pauline Maier has noted, Jefferson's original draft of the Declaration included no references to God, and like Professor Maier, I do not find this startling. There is a major difference in the theological pontifications of the two documents. The Virginia act consists mostly of a series of postulates, presumably based on historical evidence, whereas the assertions about "nature and nature's god" in the Declaration are proclaimed to be as self-evident as the fundamental axioms of geometry and not requiring any sustaining argument at all.

The phrase "nature and natures God" in the Declaration of Independence was presumably acceptable to the Committee of Five, who assisted Jefferson in drafting the Declaration, and the Continental Congress either approved or disregarded it. John Adams, like Jefferson was doctrinally, if not ecclesiastically, "Unitarian" and did not contest the representation. Although Adams made no public issue of Christian doctrine, his letters reveal a contempt for Trinitarianism and for evangelical religion. Neither Adams nor Jefferson was a shamrock-plucker, and their attacks on the logic of the Athanasian Creed were decidedly heterodox, if not blasphemous. In short many English-speaking Christians would have found the God of the Declaration controversial.

The "nature's God" invoked in the Declaration was perfectly acceptable to Benjamin Franklin, whose *Autobiography* asserted beliefs in conformity to the nebulous deistic concept of "powerful goodness." A chortling, avuncular accommodationist in his old age, Franklin had flirted with polytheism in his youth, having suspected that multiple universes might be the creations of several Gods.[4] He had also penned a sneeringly brilliant youthful essay, in which he reconciled Calvinistic determinism with Newton's watchmaker God. He tended in his later years towards extreme flexibility and tolerance on almost all matters of religion. In other words, Franklin hedged his bets and dropped his silver in many diverse collection plates. If the city of Philadelphia had possessed a shrine dedicated to the unknown God, Franklin would probably have burnt incense at that altar as well.[5]

Jefferson's use of the term Deist was inconsistent, but not remarkably so for his era. Such designations as Deism, Theism, Arianism, and Atheism were all nebulous concepts, and as often employed for their pejorative effects as for their various denotations.[6] Jefferson did not overtly label himself a Deist, as Peter Onuf has correctly observed. Jefferson showed no such hesitancy, however, in calling Jesus one. He wrote to Priestley April 9, 1803, that Jesus "endeavored to bring them [the Jews] to the principles of a pure deism." And in a letter to Adams on May 5, 1817, he speaks of "the sublime doctrines of philan-

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[3] George Harmon Knoles, "The Religious Ideas of Thomas Jefferson" *The Mississippi Valley Historical Review,* Vol. 30, No. 2 (Sep., 1943), pp. 187-204. Smelser, *The Democratic Republic*, pp. 7-8.

[4]Benjamin Franklin "Articles of Belief and Acts of Religion," private memorandum, November 20, 1728. Edmund S. Morgan, *Benjamin Franklin,* p. 19 takes Franklin's youthful statement at face value. Kerry Walters, *Benjamin Franklin and His Gods: Beyond Providence and Polytheism* finds the statement indigestible and reasons that a literally polytheistic reading cannot be correct.

[5]St Paul might be ironically identified as the pragmatic founder of Christian syncretism, when he told the pagans that in their worship of the "unknown God," they were actually and unbeknownst to themselves worshipping Yaweh. Acts 17:23.

[6] Northrup Frye *Fearful Symmetry,* p. 161 that Blake would use Deism and Milton Catholicism as terms of opprobrium rather than analysis.

thropism and deism taught us by Jesus of Nazareth." [7] One man's atheism was often another man's deism. The "numerous swarms of atheistic spirits" whose existence was as axiomatic as it was dangerous for Henry More, had a real physical presence in John Milton's and John Locke's worlds. The meaning of atheism was ambiguous when Shelley was "sent down" from Oxford, along with his friend, Thomas Jefferson Hogg, for publishing in 1811 *The Necessity of Atheism,* by which they meant deism. It was not a matter of ignorance, but of definition that led Theodore Roosevelt to call Thomas Paine, who was an avowed and exemplary deist, "a dirty little atheist." William Blake, proclaimed that "there is no natural religion," but Blake, who like Paine, knew little Latin and no Greek, could be dismissed as an "ignoramus." The erudite Hume had to be taken more seriously, however, and he too questioned whether natural religion, defined as deism, made any sense at all.[8]

Emanuel Swedenborg, who despite his theological idiosyncrasies was as impressive a scientist as Jefferson, had found the concept of natural religion inadequate.[9] Benjamin Franklin, even as a young man had decided that a God of nature might well be a Pavlovian monster.[10] There is no record of his either questioning or accepting the phrase, "nature's God," with all its ramifications to the learned. If Blake's religion reminds us of Swedenborg's, Franklin's and Jefferson's seems like Smorgasbord. They picked and chose unsystematically from numerous Deistic theories. Even General Burgoyne, who had no particular credentials as a *philosophe,* could appeal to a God of Nature, as he did on the eve of Saratoga, when he spoke of "the present unnatural rebellion," and compared its "palpable enormities" to those of the "inquisition of the Romish church." Burgoyne marshaled the rhetoric of "common reason," and natural religion, along with appeals to freedom of conscience, thereby demonstrating that a Tory knew how to appropriate the vocabulary of natural religion, and illustrating how that vocabulary could be just as useful to Royalists as to revolutionaries.

The God of Nature that the Declaration of Independence invoked in 1776 implied concepts that William Blake found to be as arrogant as they were incomprehensible. That Blake admired the American Revolution, is both indisputable and well known, but he found the Newtonian God of natural religion hopelessly confounded with the one of orthodox Anglicanism. He addressed this God as Nobodaddy, asking "Why darkness and obscurity in all your works and laws?" Hume found natural religion unsatisfactory for entirely different reasons, while Wesley found it incomplete for the needs of a Christian. American Christians, past or present, have never bothered themselves particularly on the theological implication of "Nature's God." The God most Americans knew in 1776 would have been a product of the awakenings of the 1740s, either the wrathful God of Jonathan Edwards or the somewhat milder and more approachable God of Charles Wesley. William Gerald's oxymoron, "Armenianized Calvinism" might be the best way to describe American protestantism in 1776, although most Americans then as now were untouched by abstract theological controversies. The American intellectual "deists," or as Jefferson, pre-

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[7] Peter S. Onuf , "Thomas Jefferson and Deism" The Gilder Lehrman Institute, http://www.gilderlehrman.org/history-by-era/age-jefferson-and-madisonreligion/essays/thomas-jefferson-and-deism.

[8] Hume *Dialogues Concerning Natural Religion* presented the following objects for reflection "Nothing exists without a cause; and the original cause of this universe (whatever it be) we call God... Wisdom, Thought, Design, Knowledge; these we justly ascribe to him... But let us beware, lest we think that our ideas anywise correspond to his perfections,.... He is infinitely superior to our limited view and comprehension; and is more the object of worship in the temple, than of disputation in the schools."

[9] See Ralph Waldo Emerson, "Swedenborg; or the Mystic" Library of America. J. G. Herder, "Emanuel Swedenborg," in his *Adrastea* (Werke zur Phil. und Gesch., xii. 110–125).

[10] In his *Dissertation on Liberty and Necessity, Pleasure and Pain* (London, 1725) Franklin offered two arguments for determinism: one for mechanical necessity in the universe of a clockmaker God, and a second that human reactions to biological stimuli were irresistable. Centuries later Pavlov "rediscovered" Franklin's second variety of determinism with his demonstration that a dog can be conditioned to involuntarily salivate at the ringing of a bell.

ferred to call them, "unitarians," were loftily removed from the enthusiastic revivalism of the larger population in the Great Awakenings that periodically swept the early republic throughout his lifetime.[11]

In sum, it should be recalled that the "Nature's God of the Declaration," appeared against the backdrop of numerous varieties of enlightenment religion. A word such as Nature was part of a problematic explored by Epicurus and Lucretius in ancient times, and by Aquinas in the thirteenth century. But the idea of an immediate linkage of mechanistic deism with nature was an invention of the eighteenth century. It had numerous manifestations, in the thinking of both the learned and the artificers, like Franklin and Blake, who set the type for their works. The Declaration postulated a "nature's God," as a priori and self-evident. The phrase "nature's God" contains, of course, tacit assumptions accumulated in learned traditions over the millennia. It is not surprising that Jefferson searched the opinions of ancient erudites, although startling to see him referring to a medieval scholiast like Thomas Aquinas, or invoking the authority one Cardinal Toleta to prove that God was a material being, but in one late letter to John Adams, that is exactly what he did.[12]

His concept of God apparently evolved over the years, just as Benjamin Franklin's concept of God so famously evolved. He had decided that God and the world were "co-eternal." God had always co-existed, not only with the intellectual Logos of St John the evangelist, but *"ab aeterno"* with the material world. Jefferson enlisted the third century theologians Tertullian and Origen, renowned for castrating himself, and went so far as to invoke Roman Catholic commentators, such as the Jesuit Bishop of Soissons, Pierre Daniel Huet, to the effect that God's nature was *"spiritus etiam corporis."* In his old age, Jefferson was employing obscure Papist commentaries to refute Protestant theologians, and repugning Calvin's characterization of God as "chiefly copied from that of the Jews," and rejecting both as "blasphemous." To say that God was a disembodied spirit was to remove him from reality. It was a step in the direction of atheism. In denouncing Calvin as an atheist, Jefferson shows himself to be narrower than we expect; in citing a Catholic cardinal's writings on Aquinas he shows himself much broader. [13]

The mechanistic Nature's God of 1776, had evolved into the Pantheistic, and physically immanent, Nature's God of the romantics by the time Emerson entered Harvard Divinity School in 1825. The God of Nature, like the river of Empidocles was constantly undergoing transsubstantiation. While it may be tempting to think that by 1823 Jefferson's theology had something in common with the pantheism of Percy B. Shelley who saw God as physically identical with "the ever changing universe of things," or the transcendentalism of Emerson in which God was a Brahamanistic force, there is no evidence for either supposition. At the time of his eightieth birthday, the "nature's God," of Jefferson made references to primitive Christianity, but attempted to reconcile him with the seventeenth century mechanism of Newton and Locke. His theology did not anticipate the organic naturalism of the romantics. Jefferson examined the early church fathers only to support his "Arianism," the idea that Jesus was a purely mortal man, and a great moral teacher.[14] In his dialogue with Adams, he sought to achieve this by referencing prior theologians who had said that that the human and material Jesus had always existed *ab aeterno.* Thus, he was willing to enlist Matthew, Origin, Aquinas, and even Huet, a Jesuit theologian, in support of his thesis.

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[11] William G. McLoughlin refers to Whitefield's "alleged Calvinism," and emphasizes his focus on a benevolent and approachable God, in *Revivals, Awakenings and Reform,* (Chicago, U. of Chicago Press, 1978), pp. 61-62. In 1741, the erudite Jonathan Edwards was preaching immediately after and probably in response to the 1740 tour of Oxford educated George Whitefield, and the unitarian leaning heretics of his day.

[12] For Lucretius see Stephen Greenblatt, *The Swerve: How the World Became Modern* (Norton, 2011). For invocation of Thomas and Toleta see Jefferson to Adams, April 11, 1823.

[13] Jefferson to John Adams, Apr 11, 1823. Jefferson's religious pragmatism and evolution is briefly presented in Marshall Smelser, *The Democratic Republic,* 1801-185 (HarperCollins, 1968), pp. 7-8.

[14] Whether or not Jefferson was an "Arian" depends on how the term is defined. Jefferson meets the definition in the sense that he believed that Jesus was purely a mortal man with no special pretensions to divinity. Joseph Priestly offered contrary explorations of the term "arian" in his *An history of early opinions concerning Jesus Christ : compiled from original writers, proving that the Christian church was at first Unitarian (1786),* Vol. 1

But his purpose in speaking of the God of nature was not to argue for pantheism; it was to humanize Jesus.[15]

Having humanized Jesus, Jefferson was now prepared to handle him just as he handled Socrates. He had already decided that Plato was the father of lies, insofar as the personality or teachings of Socrates were concerned. Only Xenophon preserved the true Socrates. He did not explain why he thought Plato wrong and Xenophon right; he simply held this truth to be self-evident. And equally self-evident was the postulate that Platonists had sought to "legitimate corruptions," by suppressing the legitimate thoughts of "primitive Christians."[16] Jefferson claimed to have separated the truth of the Gospels from the dross. The rest of the Bible, that which lacked his imprimature had been defiled by a "band of dupes and impostors, Paul was the great Coryphaeus, and first corruptor of the doctrines of Jesus."[17]

Jefferson might flaunt his knowledge of the Greek word Coryphaeus, but was obtuse concerning its meanings both for the dramatic and the religious rituals, which the world embodied. The term refered originally to the intonation and response in the Greek drama, but later to any person who intoned the discourse in matters of religious, and by extension, political doctrine. This intellectual Ouroborus brought matters full cycle, since the Greek drama had its origins in religious ritual. But Jefferson did not like the idea that ritual is a fundamental aspect of religion. He would not admit that the intonation and reaponse of the slaves singing on his plantation, like the Catholic processional of Corpus Christi, or the ritual of circling the Ka'aba, or the Torah processional, are all aspects of religion. Jefferson would relegate all of these to non-essential trappings or superstitious mummery.

But, in fact the Sermon on the Mount, which Jefferson supposedly venerated, is from Matthew, the most Jewish of the four Gospels, and the one in which Jesus admonishes his disciples to observe the law more rigorously than the Pharisees. Jefferson's reading of the Beatitudes removes them from the context of the Book of Matthew and the rest of the content of the Sermon of the Mount, retaining its moralism but rejecting its elements of orthodox Jewish piety. As for the moral teaching of the Sermon, there is nothing in it that cannot be found in that very Talmud that according to Jefferson's imperious pontification was totally devoid of moral teaching. He made this astonishing claim despite his lack of Hebrew, and apparently having made minimal effort to discover what the Talmud contains.[18]

But Jefferson's understanding of Enlightenment Deism was hopelessly outdated by the time he preached it. In fact what Jefferson attributes to Jesus may be said of himself. He encouraged Deism and predicted the triumph of unitarianism. But American religion was moving in the opposite direction. It blended the oily fecund and sweaty enthuiasm of the camp meeting with the cold-water preachments of a repressive Calvinissm. The undeniable reality of this blatant contradiction was far too irrational for Thomas Jefferson, with his vain hope that rational unitarianism would soon permeate the consciousness of ordinary citizens. Christian intellectuals, whether in Europe or America, would never revert to mechanistic Deism that was already out of fashion. In England they would gravitate towards the transcendentalism of Coleridege and Shelley, and in America to the "intelletual anti-intellectualism" of Emerson, Bancroft, and Theodore Parker. The rising American Evanglicalism of the 1820s was already rejecting, not only the Calvinism of Jonathan Edwards but the skepticism of Rush and Priestly as well.

Finney's emotional evangelical revivalism, which was on the rise during Jefferson's final years was destined to forge ahead with a Christianity that pursued the happiness of women, of blacks, and even of women who might be black. Finney began the movement of allowing women to preach to congregations

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[15] One definition of Arianism is the belief that Jesus was a mortal man, but this was not the definition that Priestly used in his attack on that doctrine, and there is no evidence that Jefferson would have called himself an Arianist, although some orthodox theologians might have accused him of that heresy.

[16] Jefferson to John Adams October, 13 1813

[17] The person who intones the chant in a dramatic or religious ritual.

[18] See http://www.sacred-texts.com/jud/rio/rio10.htm for Talmudic Parallels in the Sermon on the Mount. In that same vein, also see

http://jdstone.org/cr/files/thesermononthemount.html Jefferson's negative impressions and reliance on secondary sources for informaton on the Talmud see Jefferson to John Adams, October 13, 1813.

that included both women and men. Eventually, he fostered a Christian egalitarianism completely incompatible with the intellectual snobbery of Jeffersonian religion. Finney's evangelical Christianity was a revelation to the sunburned and sweaty masses, but also to the intellectuals. He would bring with his presidency at Oberlin college a new life of the mind, accepting of women and blacks, and far exceeding the cruel limitations of Jeffersonian democracy.[19]

Jefferson's palladian republicanism embodied a fastidious distaste for, ceremonies and rituals whether in politics or in religion. He seemed intentionally oblivous to the fact that religion cannot be reduced to a moral code. Custom, piety, and ritual are persistent elements in the history of human religious consciousness, and both Jesus and Socrates were observant of ritual. He did not choose to recall, as Aquinas did, that Jesus's last supper was a ritual observance, in which he on his final night reclined at table with his brethren in observance of the Jewish passover. The last supper had no significance in the religious iconography of the American Da Vinci. Nor does Jefferson seem to recall that Socrates, in apparent recognition of the Greek rituals of sacrifice, uttered his last words to Crito, "we owe a cock to Asclepius. Do pay it." In fact, the idea of a Jesus who initiates rituals or a Socrates who offers sacrifices and pours libations is not only useless, but downright repugnant, to the moral universe of Thomas Jeferson. [20]

Children, Indians, and impressionable adults must be shielded not only from the uncut version of the Bible, but discouraged from any empirical definition of religion. Jefferson's arbitrary definition necessitated a denial of the rites ceremonies rituals priestcraft mummery chanting and pageantry reminiscent of the Romish church.

It is purposeless to dispute Jefferson's, or anyone else's religious beliefs. It can be said that his methods of religious discourse, did not appreach the highest standards of his day. The historian of ideas and the sociologist of knowledge must not dispute Jefferson's use of the phrase nature and nature's God but should attempt to understand what he meant by itt. And one should be more critical of his methods than of his conclusions. Determining the nature of is the work of priests and theologians. By contrast, the historian of ideas or sociologist of knowledge should be attempting merely to understand Jefferson's theology, not to contest it, and to evaluate his methodology in comparison to that of his contemporaries. Jefferson's methods were not irreproachable, and Adams reminded him of this, asking him if he was aware of the speculations of Goethe, who, by the way knew Hebrew, and, of course Greek. Our eyebrows are raised when we observe Jefferson's irritability when reminded of the utility of Hebrew for studies such as his own.[21]

We are bemused by his arbitrary employment of razor and paste in creating the "Jefferson Bible," and his dread, similar to that of Roman Catholics, of putting the uncut bible in the hands of children.[22] Jefferson began the project of his Bible with the idea that it should be used in converting the Indians, whom he sometimes addressed as "my children."[23] But Jefferson would give his *nihil obstat* only to Jesus' true teachings. In pontificating that certain words could not have been uttered by Jesus Christ, simply because, in his view, such words would have been out of character for Jesus, he commits the logical fallacy of "begging the question." One is reminded of Professor Malone's begging the question on the Hemings

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[19] For an alternative view see Peter Onuf, Gilder Lehrman Institute, as cited above.

[20] According to David White, *Myth and Metaphysics in Plato's Phaedo* (Associated University Presses, 1989), p. 275, Socrates was at least paying lip-service to the religious practices of the day. Jefferson might have ignored this anecdote due to his contempt for Plato's accounts of Socrates' life and character. But Xenophon, whom Jefferson admired, is believed to have seen Socrates as conventionally pious where sacrifice and ritual are concerned. See Robin Waterfield, *Why Socrates Died,* (Cleveland and Stuart, 2009), pp. 39, 41. Donald R. Morrison, "Socrates" in Gill and Pellegrin, eds. *A Companion to Ancient Philosophy (*Blackwell: London, 2006), p. 116.

[21] His remarks on the work of David Levi, a Jewish scholar of Hebrew is revealing, "I have lately been amusing myself with Levi's book, in answer to Dr. Priestley. It is a curious and tough work. His style is inelegant and incorrect, harsh and petulant and finally, he avails himself all his advantage over his adversaries by his superior knoledge of the Hebrew...." Jefferson's reference to Hebrew seems rather petulant in this letter to John Adams, April 8, 1816.

[22] *Notes on the State of Virginiam,* Waldstreicher p. 183

[23] Owen Edwards, "How Thomas Jefferson Created His Own Bible," *Smithsonian Magazine,* January 2012

paternity question, i.e. the fathering children on an adolescent slave would have been out of character for Mr. Jefferson. One ought not resort to *a priori* assumptions about the character of Jesus or of Jefferson when their character is precisely the question we are attempting to resolve.

Jefferson's claim in his letters to Joseph Priestly, John Adams and Benjamin Rush that he knew something about the character of Jesus was necessitated by political theory. His assertion that Jesus was not divine, was essential to his leaping the wall of separation between church and state, (He had already done this, incidentally, in the Declaration of Independence.) If God was only an abstract natural force embodied in the material world, and if Jesus was not God, but only a great moral teacher, then invocations of God were not a violation of the separation principle. Christian conservatives are fond of reminding us, that the Declaration of Independence presupposes the existence of God, and invokes God in the act of creating the nation. In the reasoning of the Christian conservative, Rick Santorum, the separation of church and state, far from being a fundamental American doctrine, is downright disgusting.[24]

Alan Keyes and other Christian conservatives are equally as fond of reminding us of Jefferson's religious rhetoric in the Declaration, as they are of reminding us that separation of church and state does not appear in the Constitition.[25] The *Bill of Rights* contains no separation clause; in fact the First Amendment ignores freedom of conscience, altogether, and relegates the issue of church establishment to the states. The Constitution's abdication of any moral responsibility to protect freedom of conscience was in deference to colonial tradition. It was no secret that Puritan Massachusetts had been established by fanatics, who discriminated against Quakers and other heretics. The Mayflower Compact swore allegiance to "our dread sovereign lord, King James," and undertook the "advancement of our Christian faith and honor of our king and country."

The puritan colony of Massachusetts is forever associated with missionary zeal, moral uprightness and a protestant ethic. By contrast the Cavalier colony of Jamestown, largely due to the disparaging commentary of its founder Captain John Smith, is associated in historical memory with factions of cutthroats, idlers, and fops, and among them at least one cannibal, who pickled and ate his wife. The more positive aspect of Virginia's foundation legend is that it was relatively innocent of any theocratic mission, ignoring Quakers, and suffering maypoles to stand. Executions for witchcraft were rare and remarkble, if they occurred at all.[26] In obeisance to the diversity of founding traditions, religious backgrounds, and the existing legal codes of the several colonies, the Bill of Rights neither fortified nor denied any state prerogatives "respecting an establishment of religion."

Jefferson, who was representing the Continental Congress in France during the Constitutional Convention, soon joined the ranks of those who persuaded Madison, to draft the first amendment. There was a copycat quality about the American Bill of Rights. The thinking was that since England had a Bill of Rights, including the right of every *Protestant* to bear arms, the United States ought to have a Bill of Rights, as well. Madison, although he was even more committed to religious liberalism than Jefferson, didn't see the necessity of a Bill of Rights, but diplomatically succumbed to pressure. After all, since the

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[24] Commenting on presidential candidate, John F. Kennedy's statement in a 1960 address to the Greater Houston Ministerial Association, "I believe in an America where the separation of church and state is absolute," Senator Rick Santorum said, "I had the opportunity to read the speech, and I almost threw up." The Washington Post, 02/26/2012.

[25] Alan Keyes, Organizational website, RenewAmerica.us, "On The Issues" Aug 3, 2004. Alan Keyes, "School prayer is constitutional. The doctrine of "separation of church and state" is a misinterpretation of the Constitution. The First Amendment prohibition of established religion aims at forbidding all government sponsored coercion of religious conscience. It does not forbid all religious influence upon politics or society. The free exercise of religion means nothing if, in connection with the ordinary events and circumstances of life, individuals are forbidden to act upon their religious faith." Source: www.keyes2000.org/issues/religionschoolprayer.html 1/7/99 Jan 7, 1999

[26] See Monica C. Witkowski and Caitlin Newman, "Witchcraft in Colonial Virginia in *Encyclopedia Virginia,* http://www.encyclopediavirginia.org "English law prescribed harsh punishments for witchcraft, the most extreme being "paines of deathe," but no person accused of the crime in colonial Virginia was executed. By comparison, in the Massachusetts Bay Colony, nineteen so-called witches were executed in 1692 alone."

American Constitution consisted of nothing but a pastiche of compromises, why not make another? Thus, the First Amendment, in its original intent, took a neutral stance on religious liberty, and preserved the traditional rights of the several states to violate the consciences of individuals within their borders.

Since Jefferson was not the actual framer of the Bill of Rights, or any other part of the Constitution, it is ironic, that his pronouncement on the "wall of separation between church and state" became, with the passage of years, an ever-present quasi-Constitutional doctrine in the minds of most Americans who bother to think about the question of religion in public life. Jefferson's hostility to conventional Protestantism with its doctrines of vicarious atonement and the divinity of Jesus Christ are well known to us today. They were known as well to his contemporaries who recklessly accused him of atheism. And it should be remembered that in 1800 atheism was a nebulous term with more than one definition. Jefferson made it clear that he considered almost every aspect of *conventional* Christianity and Judaism as little more than superstition. He believed that religion should consist primarily of a moral code, based on his belief in a God, who agreed with his own notions of justice, and would reward good and punish evil, both in the secular and in the eternal world. [27]

Jefferson's position on Quakers was ambivalent. He retrospectively described the ancient anti-Quaker policies of Walter Raleigh as "cruelly intolerant," but he nonetheless made it clear that he considered the sect undependable. They were, he felt, too readily inclined to accept policies of the Anglocentric mother church. He questioned the sincerity of their pacifism in times of war, suggesting that it was opportunistic, and merely an expression of their essential Anglocentrism. Here as in other instances, Jefferson demonstrated a penchant to help his opponents up with his left hand, after knocking them down with his right, for in another context he professed that he knew Quakers whose patriotism was impeccable. But he questioned outright whether Quakers, as Anglophilic pacifists, were in a position to discharge their republican responsibilities. This seems unjustly demanding for a person who never shouldered arms in any American war.[28]

> The Quakers here have taken sides against their own government, not on their profession of peace, for they saw that peace was our object also; but from devotion to the views of the mother society. In 1797-8, when an administration sought war with France, the Quakers were the most clamorous for war. Their principle of peace, as a secondary one, yielded to the primary one of adherence to the Friends in England, and what was patriotism in the original, became treason in the copy.

In the well-known, but peculiar circumstance, he called for separation of church and state, but throughout his career, he invoked what some historians have termed "civil religion." He characteristically linked Republican liberty to religious values, and in his *Notes on Virginia* he asked whether the liberties of a nation could be secure if separated from a conviction in the minds of the people that their liberties were the gift of God. He recognized the potency of religion as a means of social control, an idea which was not uncommon among enlightened intellectuals. Regardless of what doubts the educated ruling class might harbor about the existence of "nature and nature's God," they found it convenient to invoke him. Voltaire had said that if there had been no God it would have been necessary to create one. Benjamin Franklin had asserted that it was important for the ordinary citizen to believe that God was on the side of law and order in a letter presumably addressed to Thomas Paine. [29]

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[27] Jefferson to Benjamin Rush, April 21, 1803; to Doctor Benjamin Waterhouse, Monticello, June 26, 1822.

[28] Jefferson was not intolerant of the Quaker faith, although unjustly critical of Quaker pacifism, considering that he never shouldered arms, himself. He spoke out against Walter Raleigh's anti-Quaker policies as "cruelly intolerant." Jefferson to Lafayette, Monticello, May 14, 1817. Jefferson to Samuel Kercheval, Monticello, January 19, 1810.

[29] Benjamin Franklin to Thomas Paine, The Ashbrook Center for Public Affairs at Ashland University, a Christian college in Ohio identifies the letter as "Benjamin Franklin December 13, 1757." Walter Isaacson, in *Benjamin Franklin: An American Life* (Simon & Schuster, 2003), finds the date July 3, 1786 "likely" and believes that it was sent to Thomas Paine. Isaacson notes, however, that the editors of the Yale edition of the *Franklin Papers* give six

Jefferson placed himself along with Franklin among those condescending illuminati who felt that popular superstitions concerning the wrath of God were necessary to the preservation of society. Thus Jeffersonian religion demanded a belief in the immortality of the soul. The citizens of the republic must fear, not only a divine retribution against the nation state in this world, but a retribution against the individual sinner in the next. This was one of his complaints against the Jewish people; he believed that Judaism contained no belief in mortality of the soul or in rewards in punishment after death. He wrote.

> Moses had either not believed in a future state of existence, or had not thought it essential to be explicitly taught to his people. Jesus inculcated that doctrine with emphasis and precision.[30]

Obviously he forgot a fact that Voltaire and other historians of Christianity knew, that many Jews at the time of Jesus believed in an afterlife.[31] In fact, he might have recalled that Christ's parable of Lazarus and Dives, presupposed that Jesus' Jewish contemporaries had a prior awareness of the doctrine of lost souls. The Old Testament had indeed referred to the destiny of the blessed to dwell after death in the bosom of Abraham. The apocryphal book of Maccabees also spoke of an afterlife. Jefferson's insistence on an afterlife is difficult to reconcile with the fact that he identified himself in a letter to William Short as an Epicurian. Epicurus had denied the existence of a soul separate from the body and also rejected the principle of an afterlife. Jefferson enlisted Epicurus to support his belief that God and the material universe were co-eval, but Epicurus doctrine of the material composition and perishability of the human soul stood in inconvenient opposition to another of Jefferson's pet theories, to wit, human immortality. Given Jefferson's limitless powers of imagination, I do not doubt that he could have reconciled his Epicurian materialism with his belief in the immortality of the human soul. It is infinitely frustrating that we cannot retrieve any of his writings in which he attempted to square that circle.[32]

Jefferson proclaimed that Jesus was a better teacher than Moses, and that the essential Christian teaching that must be cultivated in national politics was the idea of a just retribution in eternity for sins committed in life. Religion was a means of social control, and thus an appropriate instrument for secular politics. Jefferson, had employed his favorite device of putting radical statements in the form of rhetorical questions, asking, "can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the gift of God? That they are not to be violated but with his wrath?" The implication was that a statesmanly reliance on divine vengeance was necessary and proper to the functions of government.

In James Madison's view, religion, whether "enthusiastic" or "civil," could neither be relied on as a means of social control, nor accepted as a foundation of government. In his appraisal of the "Vices of the Political System of the United States," drafted in April of 1787, and privately circulated to the Constitutional Convention, he questioned whether religion could restrain a government "from unjust violations of the rights and interests of the minority, or of individuals."

> The conduct of every popular assembly acting on oath, the strongest of religious Ties, proves that individuals join without remorse in acts, against which their consciences would revolt if proposed to

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possible dates ranging from 1751 to 1787. Regardless of when the letter was written and whether it was addressed to Paine, it justifies religion as a means of controlling the behavior of "weak and ignorant Men and Women." If Franklin subscribed to such ideas about the social benefits of religion, then his views were similar to Thomas Jefferson's.

[30] Jefferson to William Short, August 4, 1820

[31] Voltaire [1752], *L'Opinion en alphabet* (OEuvres complètes de Voltaire, éd. Louis Moland (Paris, Garnier, 1877-1885), tome 17-20. "Enfin, les pharisiens et les esséniens, chez les Juifs, admirent [paid homage to] la créance d'un enfer à leur mode [after their fashion]: ce dogme avait déjà passé des Grecs aux Romains, et fut adopté par les chrétiens."

[32] "As you say of yourself, I too am an Epicurian. I consider the genuine (not the imputed) doctrines of Epicurus as containing everything rational in moral philosophy which Greece and Rome have left us." Jefferson to William Short, Monticello, October 31, 1819. The term "epicurianism" in its pejorative sense, was applied to Jefferson by Representative William Loughton Smith of South Carolina in 1792, cited in Malone, Volume II, p. 474.

> them under the like sanction, separately in their closets. When, indeed, Religion is kindled into enthusiasm, its force like that of other passions is increased by the sympathy of a multitude. But enthusiasm is only a temporary state of religion, and while it lasts will hardly be seen with pleasure at the helm of Government. Besides as religion in its coolest state is not infallible, it may become a motive to oppression as well as a restraint from injustice.[33]

Madison knew that religion had a history of releasing the volatile emotions of crowds and stimulating individuals to acts of injustice. Jefferson stubbornly insisted that true religion should be rational and, by definition, equivalent to morality. Madison granted that religion was not always linked to the enthusiastic passions of a multitude, but nonetheless, "Even in its coolest state it has been much oftener a motive to oppression than a restraint from it." He was appalled by the idea that religion was just as likely to provoke vice, as to restrain it. He fancied, as did Benjamin Franklin, that religion placed moral restraints on peoples and governments.[34] Madison had a more empiricist, and historically-based perception of religion. Like Voltaire, he could see that religion had never stoped anyone from taking slaves, exterminating tribes, or treating women as the spoils of war. Madison's historical memory never excluded, the ancient attrocities of Joshua at the sack of Jericho, the examples of the feuding Greek democracies, or the horrors of the thirty years war. Whatever his evidence or reasoning, Madison rejected the idea that the American or any other government could depend on religion as the foundation of its political ethic.

Jefferson's political ethos was inseparable from his Miltonic theodicy, his belief that evil would on itself recoil; that while God allowed Comus his temporal triumphs, Providence would always reward the good and punish the wicked. Jefferson knew evil when he saw it, and expected God to do so as well. He had reasoned out a republican code of right and wrong, although he could not practice this code himself. But then, Jefferson prescribed several doctrines for society that he could not live up to himself. Apparently he believed that God would punish an entire nation for the crimes of that slaveholding class to which he belonged, a doctrine that Abraham Lincoln was later to endorse. Jefferson's idea of justice included the confidence that disobedience to nature and nature's God would be judged both in this world and in the next.

When he reflected that God is just, he trembled at the thought that his entire country might be punished for the crimes of its slaveholders. The judgment of the Lord might ultimately require, as another American president would later famously put it, that "every drop of blood drawn with the lash shall be paid by another drawn with the sword." The implication was that republican Government required a republican theodicy where national tribulations must be feared as the probable result of divine justice, not incomprehensible mystery. This was not the theodicy of the book of Job, where the workings of providence were beyond mere human reasoning, and it was not that of William Blake in which the workings of Providence were beyond the measure of natural religion. It was based on the idea that Republican Government must be founded on the rational idea that national tribulations were manifestations of divine justice, and a belief that "the judgements of the Lord are true and righteous altogether."

Jefferson's famous pronouncement, "I tremble for my country when I reflect that God is just: that his justice cannot sleep forever," famously acknowledged the contradiction between his own obsession with "liberty," and the fact that he was a slaveholder himself. Whether he literally feared the possibility of a divine intervention on behalf of the slave is difficult to say. His Notes on the State of Virginia, and his later writings reveal the inference an interventionist God. A slave revolt, which was a Virginian's constant fear, could conceivably "become probable by supernatural interference! The Almighty has no attribute that can take sides with us in such a contest." Whether or not Jefferson should be taken literally in these semi-mystical meanderings cannot be ascertained, but it is certain that he had nary a scruple about mixing religious rhetoric with his theory of the state.

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[33] Madison expressed profound disagreement with Jefferson's opinion on religion as form of social control, in a letter to Jefferson (Oct. 24 & Nov. 1, 1787). His public statement to the same effect, "Vices of the Political System of the United States" drafted in April of (1787), had already been delivered to the Constitutional Convention.

[34] Franklin to Paine, loc. cit.

Jefferson took his first presidential oath of office following a vitriolic campaign in which he had been accused of bloodthirsty Jacobin atheism. In his First Annual Message to Congress, he publicly thanked God, "the beneficent Being who has been pleased to breathe into them [our people] the spirit of conciliation and forgiveness, we are bound with peculiar gratitude to be thankful to him that our own peace has been preserved through so perilous a season." During that perilous season, during which the Hemings scandal had surfaced as only one of several attacks on his character, he was also accuced of atheism. One editorial cartoon depicted him kneeling before the altar of Jacobinism, preparing to hurl the Constitution into a cauldron dedicated to the satanic works of Samuel Godwin and Thomas Paine. It showed the Constitution being snatched from his grasp at the last moment by the American eagle, under the aegis of God's all-seeing eye. His first inaugural address may be seen as an indirect reply to the accusation of atheism. In addition to invoking a Deity, he mentioned religion or religious tolerance several times, alluding to the "enlightened and benign" forms of American religion, and suggesting that the time had come for Godly persons to bury their religious hatchets.[35]

In 1802, less than a year after demonstrating that he was not an atheist by his public ceremonial thanks to the "beneficent Being," Jefferson denied the request of a committee representing the Baptist Association of Danbury, Connecticut, that he officially proclaim a national day of thanksgiving. It was here that Jefferson made his most famous pronouncement on church and state separation. Probably unawares, the Baptists had provided Jefferson with an opportunity that he had "long wished to find," to articulate a principle that was close to his heart and to leave an indelible mark on American Constitutional history. At least that was what he claimed in a letter to Levi Lincoln, his attorney general.[36] One wonders whether the Danbury Baptist Association, realized the controversy they were opening when they asked Jefferson, who was lying in wait, to set aside a national day dedicated to religious purposes. Jefferson's Virginia Statute for Religious Freedom provided no warnings that he desired any religious confrontations. It seemed to represent little more than a healthy and reasonable disestablishmentarianism. One historian has observed some irony in the situation that "Throughout his administration Jefferson permitted church services in executive branch buildings."[37] But Jefferson's private goals must have differed dramatically from what his public behavior indicated. He seemingly desired to pull the props from under any presidential endorsement of orthodox priestcraft.

His famous response to the Danbury Clergy contained, the still controversial phrase "separation between church and state." He asserted, "that religion is a matter which lies solely between man and his God." Then he offered an exceedingly loose interpretation of the Constitutional clause, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." He constructed these words broadly as meaning that the American people had built "a wall of separation between church and State." But in a strict literal sense, the Constitution had built no such wall; it had merely restricted the lawmaking powers of the national Congress, without placing any constraints on the States in matters of religious establishment.[38]

Jefferson's Danbury letter came close to undermining not only his signal position on states rights, but also his dogma on strict construction. He declared in favor of the idea that the Constitution is an expression of the "supreme will of the nation." He referred to the Constitution not only as an expression of the national will, but as a statement "in behalf of the rights of conscience." This seemingly placed a distance between himself and others who suggested that the Constitution was a mere compact between the States.

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[35] "The Providential Detection" Etching by an unknown artist, c. 1800, The Library Company of Philadelphia. Also see James H. Hutson with a forward by Jarlslav Pelikan, *Religion and the Founding of the American Republic,* Exhibition Catalog, (Library of Congress, 1998).

[36] Jefferson to Levi Lincoln (Jan 21, 1802). Also see Leonard Levy, *Jefferson and Civil Liberties,* (Harvard, 1963), pp. 7-8.

[37] http://www.loc.gov/exhibits/religion/rel06-2.html This link is to a web site, apparently under the aegis of the Library of Congress, as of 2013.

[38] Thomas Jefferson, to Messrs. Nehemiah Dodge, Ephraim Robbins, And Stephen S. Nelson, A Committee Of The Danbury Baptist Association, In The State Of Connecticut, Washington, January I, 1802.

He took a position that would later be iterated by Andrew Jackson, that the Constitution was a creation of the people and acted on them collectively, without the intervening medium of the states. This was contrary to the state sovereignty position that Jefferson had asserted on other notable occasions. Jefferson's position usually resembled that of his beloved enemy Patrick Henry, who had claimed that the Constitutional framers should have used the phrase "We the States, and not "We the People." Asserting the sovereignty of the people over the states, was a curious position for the author of the Kentucky resolution of 1798, who had implied that the Constitution created neither a consolidated republic nor a perpetual nation, but only a dissolvable pact between the states. Now, in the Danbury Baptist letter, he called the Constitution an "expression of the supreme will of the nation."[39]

In the Danbury letter Jefferson asserted, as Andrew Jackson later would, the prerogative of the Executive branch to interpret, as well as to enforce, the Constitution. Secondly, he introduced a matter conspicuously absent from the first amendment's religion clause, the issue of individual conscience. In effect, the Danbury letter placed the federal government in the broadly constructed role of protecting individual conscience. The Constitution, he asserted, expressed the national will, and existed "to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties."[40] The assertion that the Constitution had a direct relationship to the individual, implied that it superseded even the rights of those several states that still insisted, in 1801, on their establishmentarian prerogatives.

Although this Jeffersonian interpretation of the Constitution limited the power of the federal government to establish religion; it indirectluy implied that the Federal Constitution protected the individual from religious burdens imposed by state and local authorities, as well as by the national government. According to Jefferson's radically broad and extremely loose construction, the federal Constitution protected the individual from any intrusion by government, whether national or local into matters of religious conscience in any way. His pronouncement on church-state separation partially accounts for the continuing willingness of American liberals, progressives, Quakers, Reform Jews and Unitarians, to overcome their distaste for his libertarian political doctrines, and their abhorence of his apparent sexual behavior.

Jefferson told Levi Lincoln he was seeking a test case, but were the Danbury Baptists, also looking for a test case? Probably not; they were probably expecting a bland positive response, although if a President's setting aside a Thanksgiving day, truly amounted to a broad ecumenical endorsement of Christianity, so much the better. In his first inaugural address Jefferson had smiled approvingly on the nation's benevolent religious institutions. He sounded no different than Washington and Adams, both of them quasi-unitarians, who had obviously considered the American civil religion benign. And neither had seen any harm in making blandly pietistic public pronouncements. Civil religion in America under the unitarians, Washington and Adams, had implied a reverence for law and order, common decency, and the Golden rule. Their civil religion was a simple acknowledgement of "nature and nature's God," and implied nothing more presumptuous than a hope that God would bless America so long as the Republic remained true to the dictates of nature and of conscience.

The Danbury request, although it came from Baptists, was not sectarian. It contained no implication of institutionalized worship, or evangelical manifestations of pietism. More to the point, it did not suggest any violation of the Constitution. Strictly speaking, in order to do so the clergymen's request would have had to call for Congress make a law interfering with the states' prerogative to establish religious practices. But Jefferson inferred that even a presidential proclamation would violate the Constitution. It would compromise the rights of individual conscience and contradict "the progress of those sentiments which tend to restore to man all his natural rights." The First amendment did not address any of these noble and enlightened issues. It limited the powers of Congress to pass laws, but not the powers of the president to make non-binding pious proclamations, such as those he had previously made on state occasions.

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[39] Patrick Henry, speeches in the Virginia Convention, June 4, June 5, 1788. Thomas Jefferson, Kentucky Resolution, November 16, 1798. In Richard Hofstadter, *Great Issues in American History, From the Revolution to the Civil War* (Vintage, 1958), pp. 119-124,176-182.

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The first amendment had nothing to do with the executive branch, although Jefferson's reading of it involved placing limitations on the executive.[41] Strictly constructed, the First Amendment merely placed limitations on Congress' legislative powers. Thus compliance with the Danbury request need not necessarily have been interpreted as a Constitutional issue at all, since it dealt neither with the legislative powers of Congress, nor with the executive power of the President to enforce a law. Furthermore, individual conscience was not a Constitutional matter. The Constitution was no more concerned with the religious conscience of a white Baptist clergyman in Connecticut than it was with the life, liberty or property of a Monticello slave.

Jefferson's response in 1802 to the Danbury request must be contrasted with his 1808 response to a similar request. In the Danbury letter, Jefferson had engaged in broad construction, but by contrast, he used strict construction, and introduced a more proper Constitutional issue, when he addressed a letter to Rev. Samuel Miller on Jan 23, 1808. Miller, like the Danbury Baptists, had suggested that the President set aside a day of fasting and prayer, and Jefferson again responded in the negative. But his strict constructionist reasoning in this letter was strikingly different than his loose constructionist argument in the Danbury letter of 1802. The Danbury letter argued for freedom of conscience and individual rights. The letter to Miller, in glaring contrast, completely avoided the matter of individual conscience, and presented, not only a Constitutional argument in general, *but a states-rights argument in particular*.

The government in Washington was "prohibited by the Constitution from meddling with religious institutions, their doctrines, discipline, or exercises" on two grounds. The first of these was "the provision that no law shall be made respecting the establishment, or free exercise, of religion." This was the provision on which he had based his argument of 1802. But in this instance, he produced a different argument, based on the Tenth Amendment, the constitutional provision "which reserves to the states the powers not delegated to the U.S." It was a strict constructionist argument in that "Certainly no power to prescribe any religious exercise, or to assume authority in religious discipline, has been delegated to the general government." Thus the power to set aside a day of religious observance must "rest with the states, as far as it can be in any human authority." By this logic it was not acceptable for the President even to "recommend, not prescribe a day of fasting & prayer. That is, that I should indirectly assume to the U.S. an authority over religious exercises which the Constitution has directly precluded them from."

A Presidential recommendation would carry authority and imply a sanction "by some penalty on those who disregard it; not indeed of fine and imprisonment, but of some degree of proscription perhaps in public opinion." He followed up with one of his characteristic rhetorical questions: "And does the change in the nature of the penalty make the recommendation the less a law of conduct for those to whom it is directed?" He was far too cautious to assert that his recommendation of a day of prayer would expose those who ignored it to public abuse, but, on the other hand, he mildly chided, he did not think it would be in "the interest of religion" for any religious body to invite the civil magistrate become involved in the implicit propagation of religious doctrine. This would be tantamount to investing the national government "with the power of effecting a uniformity" of time or content of religious observances. The letter to Miller seemingly backed away from the letter to the Danbury Clergy, which implied an executive power to protect the people even from the states in matters of religions conscience.

The Constitution neither limited the powers on the executive regarding religious rites and public prayers, nor did it bestow any powers on him although prior holders of the office of the presidency may have seemed to have set what appeared to be precedents in this regard. Jefferson recognized that the Constitution did not interfere in the question of whether the several states had a right to fix public religious observations. But he felt "that what might be a right in a state government, was a violation of that right when assumed by another" government. That is to say, although the States might have certain powers to violate the conscience of the individual, the Federal government had no powers in the matter. In any case, he chose to act according to the dictates of his own reasoning, which told him "that civil powers

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[41] For another view see, Daniel Jacob Hemel of the Yale University Law School, "Executive Action and the First Amendment's First Word," *Pepperdine Law Review,* Vol. 40, 2013, Forthcoming.

alone have been given to the President of the U S. and no authority to direct the religious exercises of his constituents."

Strictly constructed, the first amendment did not speak to the issue of presidential powers at all; it only placed restrictions on the lawmaking powers of Congress. Secondly, it did not address the individual rights of citizens of the United States in matters of conscience or anything else. The constitution did not guarantee the slave's right to life, liberty or the pursuit of happiness. The First Amendment did not guarantee the white citizen's rights with respect to an establishment of religion, or even restricting the free exercise thereof. The Constitution merely prohibited Congress from passing a law limiting the freedom of exercise of religion. It did not address the rights of Virginia or Massachusetts in this regard. Jefferson's letter to Miller adhered to the strict interpretation of the Constitution, and came dangerously close to implying that any rights related to religious conscience existed purely at the whim of the States.