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FOREWORD

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This *Regent University Law Review* Issue will shine a light on several current topics related to our freedom of religion, often rightfully called our “First Freedom.” Rather than read the short phrases in the First Amendment of the U.S. Constitution, it is much more illuminating to read the text of the foundational Virginia Statute for Religious Freedom, which was adopted by the Virginia General Assembly on January 16, 1786.

Fortunately, one need not translate languages to comprehend the revolutionary concept of religious freedom in the writings of George Mason in the Virginia Declaration of Rights which preceded our Declaration of Independence and was the basis for the later-adopted Bill of Rights to the U.S. Constitution.¹

The Virginia Statute for Religious Freedom was originally drafted and introduced by Thomas Jefferson and passed seven years later under the essential leadership of James Madison in the Virginia General Assembly. It is valuable to read these powerful words slowly and out loud to understand the full contextual meaning of religious freedom.

Whereas, Almighty God hath created the mind free; that all attempts to influence it by temporal punishment, 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 chose not to propagate it by coercions on either, as was in his Almighty power to do²

Essentially, humans are naturally created free according to God’s plan. If God wanted us to all believe the same, He would have created us without free will. The Virginia General Assembly further observed:

[T]he 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

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¹ Daniel L. Dreisbach, *George Mason’s Pursuit of Religious Liberty in Revolutionary Virginia*, 108 VA. MAG. HIST. & BIOGRAPHY 5, 9, 41 (2000).

² VA. CODE ANN. § 57-1 (LexisNexis, LEXIS through 2015 Reg. Sess.).

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.³

These brave freedom-securing members proclaimed “that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical.”⁴

This sensibility emanated in rebellion from the established Church of England, which was originally formed by King Henry VIII partly due to the restraints of the Roman Catholic Church that forbade his many divorces and remarriages. Historically, monarchs and their established church were co-conspirators in granting each other exclusive, monopolistic franchises for ruling over the people. The monarchy would grant or state-sanction only to one official established religious organization. And the leaders of that church would reciprocate by granting the monarchs and their family the divine right to rule, notwithstanding their merit or qualifications. These institutions garnered power and tremendous wealth through centuries of religious control.

For these reasons, the revolutionary, enlightened American concept of individual liberty and responsibility threatened the long history of subjugation of people and their God-given Natural Rights by rulers and established religious operations. Understandably, the General Assembly of Virginia emphatically asserted:

[N]o 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.⁵

Indeed, as Thomas Jefferson emphasized in his address to the University of Virginia Board of Visitors in 1822, “the constitutional freedom of religion [is] the most inalienable and sacred of all human rights.”⁶ President George Washington also praised the American concept in his letter to the Hebrew Congregation in Rhode Island (which was in response to warm remarks from the Jewish congregation in Newport, R.I.), stating:

The Citizens of the United States of America have a right to applaud themselves for having given to mankind examples of an enlarged and

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Minutes of the Board of Visitors of the University of Virginia, during the Rectorship of Thomas Jefferson* (Oct. 7, 1822), in 19 THE WRITINGS OF THOMAS JEFFERSON 408, 416 (Andrew A. Lipscomb & Albert Ellery Bergh eds., definitive ed. 1905).

liberal policy: a policy worthy of imitation. All possess alike liberty of conscience and immunities of citizenship. It is now no more that toleration is spoken of, as if it was by the indulgence of one class of people, that another enjoyed the exercise of their inherent natural rights. For happily the Government of the United States, which gives to bigotry no sanction, to persecution no assistance requires only that they who live under its protection should demean themselves good citizens, in giving it on all occasions their effectual support. . . . May the Children of the Stock of Abraham, who dwell in this land, continue to merit and enjoy the good will of the other Inhabitants; while every one shall sit in safety under his own vine and figtree, and there shall be none to make him afraid.⁷

These foundational principles of the American Revolution and of the new American Government remain relevant in the United States and throughout the world.

Regardless of the procedural approaches and structure, I believe there are four pillars of a free and just society:

1. *Freedom of Religion*: A citizen's rights or opportunities are not enhanced nor diminished on account of their religious persuasion. Individuals should be allowed to exercise their religious beliefs and the government should not tell a religious organization how to operate. The corollary also applies, as I will discuss later.
2. *Freedom of Expression*: All men and women express themselves without fear of retribution from government authorities. This also means that the government derives its just powers from the owners of the government: the People.
3. *Private Ownership of Property*: Property is owned by individuals, creating incentives and the basis of a free enterprise system where people decide who has the best product or service, not the government. There is competition and better quality when property is privately owned, rather than by a government authority or monarchy.
4. *Rule of Law*: Citizens benefit from fair adjudication of disputes, enforcement of contracts, and protection of our God-given individual Natural Rights.

Consider the present dangers to our country and the countries with the worst unrest and seemingly hopeless poverty. The most serious threats and unfortunate conditions are in nations where people do not enjoy the blessings of liberty—for example, the sectarian violence and wars in the Middle East where people are ruled by theocracies and dictatorships without freedom of religion. Due to indulgences for favored religions or persecution and retribution against believers of disfavored

⁷ Letter from George Washington to the Hebrew Congregation in Newport, Rhode Island (Aug. 18, 1790), in 6 THE PAPERS OF GEORGE WASHINGTON 284, 285 (Dorothy Twohig et al. eds., 1996).

sects, there is often no freedom of expression or, in some cases, no equality of opportunity for women. Moreover, there are no norms for equal protection or due process under the law.

Imagine if the oppressed people in these ravaged countries considered what Thomas Jefferson wrote in his *Notes on the State of Virginia*: “[t]he 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.”⁸ A good test of any society would be whether a female private business owner could express religious views without reprisals from authorities. Allowing religious doctrines to override the will of the people and civil laws imposes excessive dogma as well as the implementation of excessive bans. Bans would be implemented covering alcohol, tobacco, coffee, caffeine, pork products, soft drinks, guns, internal combustion and other power engines, electricity, electrical appliances, equal treatment and opportunity for women, marriage outside of a religious sect, divorce, military service, as well as commerce and activities on certain days of the week. Adherence to countless religious doctrines, regardless of personal belief, would restrict our lives.

Australian Cardinal George Pell showed theological restraint when asked about Pope Francis’s call for regressive action on climate change. Pell observed that “the church has got no mandate from the Lord to pronounce on scientific matters.”⁹ The Pope’s encyclical gives aid and comfort to those political interests advocating drastic governmental policies that would result in higher electricity, fuel, and food costs. These increased costs burden and regressively inflict more harm proportionately on lower- and middle-income families as well as diminish job opportunities and American competitiveness. Some opponents use religion as a tactic against the production and utilization of coal, oil, natural gas, and hydraulic fracturing. These well-funded groups and politicized government agencies seem to look at these energy resources as a curse. Yet, the United States is blessed with more energy resources than any country in the world. We should responsibly and efficiently unleash these resources for the benefit of all Americans’ quality of life as well as for more jobs, thriving communities, government revenues without raising taxes, entrepreneurial competitiveness, our balance of trade, and national security.

Theological restraint also applies to government officials performing their duties. A department of motor vehicles office clerk cannot deny a

⁸ THOMAS JEFFERSON, *Notes on the State of Virginia*, in THOMAS JEFFERSON: WRITINGS 123, 285 (Merrill D. Peterson ed., 1984).

⁹ Rachel Sanderson & James Politi, *Reformer Tries to Bring Light to Closed World of Vatican Finance*, FIN. TIMES (July 16, 2015), <http://www.ft.com/intl/cms/s/0/7f429c28-2bc6-11e5-acfb-cbd2e1c81cca.html#axzz3sGEMVwid>.

woman a driver's license because it is contrary to his religious beliefs. A county clerk's office is not a religious organization to determine whether to record a deed to a dance hall where alcohol is served. These offices are civil authorities, not religious authorities.

In our society, if someone wants to live without electricity, not use alcohol, coffee or tobacco, not serve in the armed services, not allow women to rise in their church, or hold certain days holy, then that is their conscientious choice, which can be protected, respected, and accommodated in their private lives. And, most certainly, religious organizations must not be compelled to participate in activities contrary to their deeply held religious beliefs. The due process and equal protection of our laws and commerce should not be impaired for those individuals whose views and God-given natural rights of individual freedom are reflected in the Constitution and duly enacted laws by elected representatives of the people.

Religious freedom, free enterprise, equal opportunity, individual liberty, and personal responsibility can peaceably be protected in our free and just society through their enshrinement in the Constitution and the Bill of Rights. The United States seceded from the British monarchy and the established church to create a civil, free society, in which government derives its just powers from the consent of the governed, not to create a different type of monarchy or theocracy.

The measureable objective truth is that people in countries with these freedoms have better, healthier, and happier lives. Where the invigorating breeze of freedom blows, there are well-educated people who see growth in opportunity, innovation, and prosperity. As one's conscience is engaged in this Issue of the *Regent University Law Review*, one can appreciate that these principles of religious freedom are pertinent today. Furthermore, these personally empowering principles can be easily spread on the internet (the greatest invention since the Gutenberg Press for the dissemination of ideas and information).

For example, think back to Martin Luther's vigorous objections to the corrupt practice of selling indulgences by the established Roman Catholic Church. Acting on the belief that salvation could be reached through faith and divine grace only, he wrote the *Disputation on the Power and Efficacy of Indulgences*, also known as *The Ninety-Five Theses*, which were a list of questions and propositions for debate. Martin Luther nailed his theses to the door of Schlosskirche (Castle Church) in Wittenberg in 1517 and they were promptly torn down.¹⁰ Nevertheless, the theses were printed and Luther's ideas distributed thanks to an enterprising printing press.

¹⁰ Timothy George, *Reformation Day: Did Martin Luther really nail 95 theses on the castle door?*, AL.COM (October 31, 2014, 1:15 PM), http://www.al.com/living/index.ssf/2014/10/reformation_day_did_martin_lut.html.

Indeed, in our times these foundational principles of freedom can be spread via today's enterprising technology of the internet and smartphones.

Think of how quickly and universally President Ronald Reagan's toast on December 9, 1987, at dinner with Soviet General Secretary Mikhail Gorbachev would have dispersed with social media. President Reagan (with that twinkle in his eye) raised his glass, looked at the Soviet leader, and said:

General Secretary Gorbachev, you've declared that in your own country there is a need for greater glasnost, or openness, and the world watches expectantly and with great hopes to see this promise fulfilled. . . . Thomas Jefferson, one of our nation's great founders and philosophers, once said, "The God who gave us life, gave us liberty as well." He meant that we're born to freedom and that the need for liberty is as basic as the need for food. And he, as the great revolutionary he was, also knew that lasting peace would only come when individual souls have the freedom they crave. What better time than in this Christmas and Hanukkah season, a season of spirit you recently spoke to, Mr. General Secretary, when you noted the millennium of Christianity in your land and spoke of the hopes of your people for a better life in a world of peace. These are hopes shared by the people of every nation, hopes for an end to war; hopes, especially in this season, for the right to worship according to the dictates of the conscience.¹¹

Amen, amen.

I hope and pray that people throughout the world will be able to enjoy their God-given freedoms protected by the principles enshrined by our Founders in our Constitution.

¹¹ Ronald Reagan, Toast at a Dinner Hosted by Soviet General Secretary Mikhail Gorbachev (Dec. 9, 1987) (transcript available at <http://www.reagan.utexas.edu/archives/speeches/1987/120987b.htm>).