

Appendix

James Madison's Stance on Unincorporation

The following petition for the repeal of the law incorporating the Protestant Episcopal Church in Virginia, passed in 1784, is found among the papers of James Madison, and in his handwriting.

To the Honorable Speaker and gentlemen of the General Assembly of Virginia:

We, the subscribers, members of the Protestant Episcopal Church, claim the attention of your honorable body to our objections to the law passed at the last session of Assembly for incorporating the Protestant Episcopal Church; and we remonstrate against the said law-

Because the law admits the power of the Legislative Body to interfere in matters of Religion, which we think is not included in their jurisdiction:

Because the law was passed on the petition of some of the clergy of the Protestant Episcopal Church, without any application from the other members of that church on whom the law is to

operate; and we conceive it to be highly improper that the Legislature should regard as the sense of the whole church the opinion of a few interested members, who were in most instances originally imposed on the people without their consent, and who were not authorized by even the smallest part of this community to make such a proposition:

Because the law constitutes the clergy members of a convention who are to legislate for the laity, contrary to their fundamental right in choosing (sic) their own Legislators:

Because by that law the most obnoxious and unworthy Clergyman cannot be removed from a parish except by the determination of a body, one half of whom the people have no confidence in, and who will always have the same interest with the Minister whose conduct they are to judge of:

Because by that law power is given to the Convention to regulate matters of faith, and the obsequious vestries are to engage to change their opinions as often as the Convention shall alter theirs:

Because a system so absurd and servile will drive the members of the Episcopal church over to other sects, where there will be more consistency and liberty:

We therefore hope that the wisdom and impartiality of the present Assembly will incline them to repeal a law so pregnant with mischief and injustice.

The previous handwritten paper by Madison shows a consistency of his belief that incorporation was establishing a church by the state. This was written twenty-seven years before President Madison vetoed a Bill to incorporate a church in the District of Columbia. That veto message, sent to the House of Representatives, reads as follows:

February 21, 1811

To the House of Representatives of the United States:

Having examined and considered the bill entitled "An act incorporating the Protestant Episcopal Church in the town of Alexandria, in the District of Columbia," I now return the bill to the House of Representatives, in which it originated, with the following objections:

Because the bill exceeds the rightful authority to which governments are limited by the essential distinction between civil and religious functions, and violates in particular the articles of the Constitution of the United States which declares that "Congress shall make no law respecting a religious establishment." The bill enacts into and establishes by law sundry rules and proceedings relative purely to the organization and polity of the church incorporated, and comprehending even the election and removal of the minister of the same, so that no change could be made therein by the particular society by the general church of which it is a member, and whose au-

thority it recognizes. This particular church, therefore, would so far be a religious establishment by law, a legal force and sanction being given to certain articles in its constitution and administration. Nor can it be considered that the articles thus established are to be taken as the descriptive criteria only of the corporate identity of the society, inasmuch as this identity must depend on other characteristics, as the regulations established are generally unessential and alterable according to the principles and canons by which churches of that denomination govern themselves, and as the injunctions and prohibitions contained in the regulations would be enforced by the penal consequences applicable to a violation of them according to the local law.

Because this bill vests in the said incorporated church an authority to provide for the support of the poor and the education of poor children of the same, an authority which, being altogether superfluous if the provision is to be the result of pious charity, would be a precedent for giving to religious societies as such a legal agency in carrying into effect a public and civil duty.

James Madison

Shortly thereafter, President Madison also vetoed a land-grant bill intended to remedy the situation of a Baptist church that, as a result of a surveying error, had been built on federal land. Congress sought to rectify the error by permitting the church to have the land rather than buy it or be put off the land. This was an incidental act

by modern standards. This certainly could not be seen as establishing a state church, yet Madison saw it as a dangerous precedent, and vetoed the bill. The following is his veto:

February 28, 1811

To the House of Representatives of the United States:

Having examined and considered the bill entitled “An act for the relief of Richard Tervin, William Coleman, Edwin Lewis, Samuel Mims, Joseph Wilson, and the Baptist Church at Salem Meeting House, in the Mississippi Territory,” I now return the same to the House of Representatives, in which it originated, with the following objection:

Because the bill in reserving a certain parcel of land of the United States for the use of said Baptist Church comprises a principle and precedent for the appropriation of funds of the United States for the use and support of religious societies, contrary to the article of the Constitution which declares that “Congress shall make no law respecting a religious establishment.”

James Madison

It should be interesting to students of the First Amendment that Madison, the “Father” of the Constitution and the Bill of Rights, in a formal message to Congress should have misquoted the amendment in the way that he did, using “religious establishment” synonymously with “an establishment of re-

ligion.” The truth is that Madison never altered his stance that even one church incorporating, or even one church receiving a subsidy from a government entity violated the establishment clause, and “established” a religion, one church preferred over another church.

In an 1822 letter to Livingston, Madison warned of the danger an “...alliance or coalition between Government and Religion...cannot be too carefully guarded against...Every new and successful example therefore of a perfect separation between ecclesiastical and civil matters is of importance...religion and Government will exist in greater purity, without [rather] than with the aid of Government.”

Reaction and response to the vetoes above can be found in the Independent (Boston) Chronicle, on March 18, 1811. Alongside the vetoes on the front page of this influential colonial newspaper was an article by a man signing himself as “A Berean”. His article in the Chronicle is as follows:

Remarks on President Madison’s late Message to Congress in which he refused his signature to an act for incorporating a Church, and which Congress reconsidered and negatived.

There is no sentiment more correct, than that civil and ecclesiastical functions are entirely distinct, and wholly unconnected. This idea is fully recognized by the Saviour, in that remarkable declaration which he made before Pilate, “My kingdom is not of this world – if my kingdom were of this world, then would

my servants fight, that I should not be delivered by the Jews: but now is my kingdom not from hence." Almost every corruption of primitive Christianity may be traced to the blending of civil and ecclesiastical affairs. No appearance of such association is to be found in the conduct of Jesus Christ, or of his Apostles. Our Lord uniformly enforced his holy precepts with his own peculiar authority. To his friends he says, "if ye love me, keep my commandments." – And the penalty threatened against his impenitent enemies is, "everlasting destruction from his presence and the glory of his power." Neither did he nor his Apostles ever enforce his doctrine or precepts by civil penalties.

President Madison remarks, that the bill proposed for his signature "exceeds the rightful authority to which governments are limited by the essential distinction between civil and religious functions." These are words fitly spoken, and remarkably applicable to the case which was before him. – They are a plain declaration, that no civil government has a right to make any laws respecting the internal affairs of a church, or to enforce religion by civil penalties. If this sentiment is just, then all such laws are a violation of the natural, inalienable rights of men.

Whilst professors of religion, of any denomination, demean themselves as good subjects, they are accountable to no civil authority

for their religious opinions. Should the sentiments they embrace lead them to a violation of good and wholesome laws, they are then accountable for this breach of rightful authority; and this accountability answers every purpose of the government, without any recurrence to their peculiar views respecting religion.

The President justly considered the proposed bill as amounting to a religious establishment, and of course a violation of our excellent federal constitution, which provides, that “Congress shall make no law respecting a religious establishment.” If Congress have the right to establish any one denomination of Christians, they have a right to refuse an establishment to every other. And if a majority of Congress should consist of any particular sect, they might favor those, who embrace their religious opinions, above all other sects. They might also enforce, by penal sanctions, a stated tax on the people, for the temporal support of the teachers of morality. And although there might be a frequent change in the views of the rulers as to the particular denomination which they might choose to favor, it would not on that account cease to be a religious establishment. In this view of the subject is manifestly seen the impropriety of civil laws respecting religion, which is entirely “a matter between god and individuals.”

The President also objected to the proposed bill, “because it vested in said incorporated

church an authority to provide for the support of the poor, and the education of poor children of the same; an authority, which, being altogether superfluous if the provision is to be the result of pious charity, would be a precedent for giving to religious societies, as such, a legal agency in carrying into effect a public and civil duty.”

This luminous paragraph deserves to be written in letters of gold. As well might Congress make a statute, that every American shall, in a limited period, repent and believe the gospel, and attempt to enforce the law by imprisonment or torture, as to give to any particular church the authority to support its poor members, and to educate its poor children, under civil penalties; these duties being moral, and not cognizable by human laws.

How different are the sentiments of the President from those lately delivered in the decision of the Justices of the Supreme Judicial Court of Massachusetts, in Cumberland County. – They have decided, that “although the constitution [of Massachusetts] contemplates different denominations of Protestant Christians, yet *no religious societies are referred to, unless incorporated.*” (Italics in original) Does not this opinion, if correct, involve very serious difficulties? If a religious society, with its minister, cannot be recognized in law unless incorporated, how numerous are the adulterers in Massachusetts? On this principle,

are not all the marriages which have been solemnized by the ministers of unincorporated religious societies, wholly illegal, and the children of such parents illegitimate?

How inconsistent is the conduct of all those churches, who, whilst they deny the right of government to enact any religious establishment, are petitioning and receiving from the civil power acts of incorporation for the purpose of enforcing a support of the gospel ministry, and of public worship! Must not such churches be denominated bodies politic? Are they not created by human authority? Do they not practically acknowledge their inability to exist without such exterior aid? It is indeed lamentable, that this corruption should exist among the professed friends of evangelical truth. Is there not reason to fear, that if the means were afforded, such churches would establish themselves above all other communities? There are no marks of these aspiring views in the churches whose history is recorded in the New Testament. There was indeed such a spirit apparent in some individuals. Jesus was once asked, Lord, wilt thou at this time restore again the *kingdom* to Israel? It is probable their views were carnal. He did not, however satisfy their interrogation; but gently reproved them by this remark, "It is not for you to know the times or the seasons, which the Father hath put in his own power."

Is it not (?), that the Baptists in Massachu-

setts, who have so severely suffered in consequence of the establishment of the Pedobaptist by law, should be petitioning and praying the General Court for civil incorporations? Is not this a desertion of these principles of religious liberty, which they have professed to advocate? If they thus take the sword, will it not destroy them?

Should any say, that the Baptists do not mean to use the sword, although they possess it, let such answer the question: Whether any sect or denomination, that has ever been established by law, has failed to abuse dissenters from them? Have the Baptists only that incorruptible virtue, which will withstand so flattering a temptation? It is said that the Calvinistic Baptists, in a town in the District of Maine, lately taxed the Freewill Baptists in the same town for ministerial support, and because one of the latter did not pay, attached, and actually sold his horse. This is the natural effect of any religion supported by law.

The first settlers of New England fled from the oppressions, which were certain consequences of religious establishments. But, alas! (so depraved and weak is man) they had but just begun to taste the sweets of religious freedom, before themselves commenced a similar establishment, and wickedly and cruelly inflicted corporal punishments on those who dissented from them!

It is to be hoped that the wise legislators of

Massachusetts will carefully digest the sentiments expressed by President Madison; and that they will, by some exempting law, remove those oppressions under which a large portion of the inhabitants are now suffering, in consequence of the unjust requirements of some, who, although they profess the peaceful religion of Jesus, are using the civil sword to coerce the support of professedly evangelical ministers.

A BEREAN

The editorial writer, "A Berean", wrote consistently in the Boston Chronicle for months after this initial article. In the same newspaper, he was praised by groups of people writing to the Chronicle. One such group thanked him and said: "...That we view with all detestation, all connexion (sic) between Church and State, as an unnatural alliance, blending those functions which are in their nature distinct, and separated by that eternal barrier, the nature and fitness of things."

This shows the consistency of the arguments against church incorporation in early America, not only by the president of the country, but also by editorial writers of influential newspapers. Is it any wonder again why the Baptists of colonial America thought incorporation was "...unchristian surrender to the state"?