


Spring 2014

Madison's Memorial and Remonstrance, Jefferson's Statute for Religious Liberty, and the Creation of the First Amendment

Mark Hall

George Fox University, mhall@georgefox.edu

Follow this and additional works at: https://digitalcommons.georgefox.edu/hist_fac

 Part of the [Political History Commons](#), and the [United States History Commons](#)

Recommended Citation

Hall, Mark, "Madison's Memorial and Remonstrance, Jefferson's Statute for Religious Liberty, and the Creation of the First Amendment" (2014). *Faculty Publications - Department of History, Politics, and International Studies*. 82.
https://digitalcommons.georgefox.edu/hist_fac/82

This Article is brought to you for free and open access by the Department of History, Politics, and International Studies at Digital Commons @ George Fox University. It has been accepted for inclusion in Faculty Publications - Department of History, Politics, and International Studies by an authorized administrator of Digital Commons @ George Fox University. For more information, please contact arolfe@georgefox.edu.

Madison's Memorial and Remonstrance, Jefferson's Statute for Religious Liberty, and the Creation of the First Amendment

MARK DAVID HALL

ABSTRACT

Jurists, scholars, and popular writers routinely assert that the men who framed and ratified the First Amendment were influenced by James Madison's Memorial and Remonstrance (1785) and Thomas Jefferson's Statute for Religious Liberty (1786). In this essay I demonstrate that there is little evidence to support these claims. Because these documents represent only one approach to church-state relations in the era, jurists and others who believe that the religion clauses should be interpreted in light of the founders' views need to look well beyond these texts if they want to understand the First Amendment's "generating history."

INTRODUCTION

In *Everson v. Board of Education* (330 U.S. 1 [1947]), Justice Wiley Rutledge observed that "no provision of the Constitution is more closely tied to or given content by its generating history than the religious clause of the First Amendment. It is at once the refined product and the terse summation of that history" (33). Particularly critical for understanding the creation of the religion clauses, in his account, are James Madison's "Memorial and Remonstrance Against Religious Assessments" and Thomas Jefferson's Bill for Establishing Religious Freedom, which became "warp and woof of our constitutional tra-

Mark David Hall is the Herbert Hoover Distinguished Professor of Politics, Department of History, Politics, and International Studies, George Fox University, 414 N. Meridian St., Box 6092, Newberg, OR 97132 (mhall@georgefox.edu). He is also a faculty fellow in the William Penn Honors Program and senior fellow at Baylor University's Institute for Studies of Religion.

I would like to thank Chris Beneke, Thomas Buckley, Donald Drakeman, Daniel Dreisbach, Scott Gerber, Kevin Hardwick, and the six reviewers for *American Political Thought* for reading and commenting on drafts of this article. Richard Johnson and members of the Pacific Northwest Early Americanists colloquium were kind to comment on a late version of the essay.

dition" (31–44).¹ Likewise, Hugo Black's majority opinion in the same case emphasized the significance of these founders and texts: "This Court has previously recognized that the provisions of the First Amendment, in the drafting and adoption of which Madison and Jefferson played such leading roles, had the same objective and were intended to provide the same protection against governmental intrusion on religious liberty as the Virginia statute" (13).²

Jurists are notoriously poor students of history, but numerous scholars have made similar assertions. It is tempting to assume that the Memorial and Virginia Statute were influential because they are eloquently written, tightly argued, and, to many modern jurists and scholars, wonderfully progressive. Yet if one is going to argue that specific texts influenced particular people, it is necessary to provide evidence to support one's claim. In this article I demonstrate that there is little reason to believe that the Memorial or Virginia Statute influenced the men who drafted and ratified the First Amendment.³ Because these documents represent only one approach to church-state relations in the era, jurists and others who believe that the religion clauses should be interpreted in light of the founders' views need to look well beyond these texts if they want to understand the First Amendment's "generating history."⁴

A WIDESPREAD AND CURRENT ASSERTION

Almost as soon as the ink dried on the Court's opinion in *Everson*, scholars began to question the accuracy of Black's and Rutledge's accounts of the

1. Hereinafter I refer to the Bill for Establishing Religious Freedom as "Virginia Statute" and "Memorial and Remonstrance" as "Memorial."

2. Citing *Reynolds v. United States*, 98 U.S. 145 (1878). The Court's use of history to interpret the religion clauses—and its infatuation with Madison and Jefferson—began in the Free Exercise Clause case of *Reynolds*. For an excellent discussion of how this came about, see Drakeman (2010). Many justices have followed *Everson* in using the religion clauses' generating history to shine light on its meaning: "76% of the Justices who have written at least one Religion Clause Opinion have appealed to history [i.e., specific founders or the founding era], and every one of the twenty-three Justices who authored more than four Religion Clause Opinions have done so" (Hall 2006, 572).

3. This essay was inspired in part by Chadsey (2007), which makes a similar argument with respect to Jefferson's *Notes on the State of Virginia*. Chadsey demonstrates that there is little evidence that the *Notes* influenced the views of anyone involved in drafting or ratifying the First Amendment.

4. Jefferson and Madison were important and influential founders, and the Memorial and Virginia Statute are significant documents that deserve to be studied. Indeed, I have been coeditor of two books that reprinted the Memorial and Virginia Statute (Dreisbach et al. 2004; Dreisbach and Hall 2009). The framers of the First Amendment had a plethora of constitutional provisions, proposed amendments, and laws concerning religious liberty and church-state relations to which they could look for guidance. See, generally, Cogan (1997, 11–82).

origins of the religion clauses (e.g., Corwin 1949). Yet many jurists continue to believe that the Memorial and Virginia Statute had significant influence on the framers of the First Amendment. From 1947 to 2011, justices cited the Virginia Statute and Memorial in 15 and 24 religion clause cases, respectively, and the Memorial was reprinted in full as an appendix to two of these cases.⁵ Most recently, justices Anthony Kennedy's and Elena Kagan's opinions in *Arizona Christian School Tuition Organization v. Winn et al.* treat Madison's Memorial as an important text for shining light on the meaning of the Establishment Clause.⁶

Like justices, many scholars have drawn straight lines between the Memorial and/or Virginia Statute and the First Amendment. In *God, Caesar, and the Constitution*, the famous attorney-scholar Leo Pfeffer argued that the Virginia Statute "has long been recognized as the progenitor of the First Amendment's religious clauses" (1974, 159). Likewise, Martin Marty, one of the most prominent students of America's religious history, contends that "whoever wishes to engage in archeology to understand the text and context of the First Amendment does well to focus on the Virginia Statute" (1988, 3). Religion scholar William Lee Miller argues in a chapter on the Virginia Statute that Jefferson's "conception of religious liberty, and complete separation of church and state, did come soon to prevail: in the constitutions of other states, in the First Amendment, in the mind of the public" (1986, 1–150, 357–66). Historian Paul Lucas writes that the "architects" of the Constitution and Bill of Rights "followed the lead of Thomas Jefferson's famous 'Bill for Establishing Religious Freedom' (adopted by the Virginia House of Delegates in 1786) by separating church and state at the national level" (1984, 229). Similarly, Jon Butler contends that the "Virginia debate and the Act for Establishing Religious Freedom directly affected the conceptualization and passage of the First Amendment to the Constitution" (1990, 265). And political theorist Garrett Ward Sheldon asserts that the Virginia Statute "guaranteed liberty of conscience and formed the basis for the religious freedom clause of the First Amendment of the U.S. Constitution" (2003, 35).⁷

5. Space constraints required the deletion of many footnotes from this essay. For the citations for every religion clause case that references the Virginia Statute or Memorial, as well as additional examples of scholars who claim that these texts influenced the authors of the First Amendment, please contact the author at mhall@georgefox.edu.

6. *Arizona Christian School Tuition Organization v. Winn et al.*, slip op. (2011), 12–14 (Kennedy, J.); and 17–18, 21–23 (Kagan, J., dissenting). Madison figures prominently in Chief Justice John Roberts's opinion in *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*, slip op. (2012), 8–9, but he does not cite the Memorial or Virginia Statute.

7. A related claim is that the Memorial and/or Virginia Statute represents the founders' views or somehow explains the amendment: "principles of the [Virginia] statute entered into

Textbooks and books intended for popular audiences also present or imply a connection between the Virginia Statute and the religion clauses of the First Amendment. For instance, the statute is reprinted in the history text *The American Republic since 1877* (Appleby et al. 2005), where it is described as “the basis for the religion clauses in the Bill of Rights” (947). Likewise, the popular *America: Pathways to the Present* (Cayton 1999) quotes only one antecedent to the First Amendment’s religion clauses, an excerpt from the Virginia Statute, which is described as “influenc[ing] changes to the Constitution” (162). College history textbooks are not above making similar connections, as suggested by *Unto a Good Land: A History of the American People* (Harrell et al. 2005), where the authors discuss and quote from the Virginia Statute and then aver that “Virginia had taken the first giant step in 1786; Jefferson encouraged Madison to see that the nation took a similar step in the First Amendment to the Constitution, proposed in 1789 and ratified two years later” (57; see also Ayers et al. 2007, 173–75; Tindall and Shi 2010, 265–71). Also, the Memorial and Virginia Statute are often the only texts on church-state relations printed as appendices in volumes on the First Amendment or church-state relations (Miller 1986, 357–66; Alley 1988, 18–26; Gaustad 1993, 140–52; Miller and Flowers 1996, 835–39).

National Religious Freedom Day is celebrated every year on January 16, the day the Virginia General Assembly passed the Statute for Religious Liberty. A pamphlet entitled *Religious Freedom Day Guidebook* informs educators and others that the “men who drafted the U.S. Constitution leaned heavily on Jefferson’s Statute in establishing the First Amendment’s guarantee of religious freedom.”⁸ In his 2010 National Religious Freedom Day Proclamation, President Barack Obama asserted that “the First Amendment of our Bill of Rights followed the Virginia Statute’s model” (2010). Similarly, in 2012 he observed that “the Virginia Statute formed the basis for the First Amendment” (2012).

Finally, John A. Ragosta, in the most recent book-length study of the disestablishment debates in Virginia, argues that Virginia “proved a model for the First Amendment’s protection of the free exercise of religion and prohi-

the United States Constitution by way of the First Amendment of the Bill of Rights, largely the work of James Madison” (Peterson and Vaughan 1988, ix), and “Madison’s later correspondence makes it clear that he considered the ‘Memorial’ to be his definitive argument for freedom of conscience. As such, it is an unequalled source for understanding the intention of the First Amendment” (Alley 1988, 7–8).

8. *Religious Freedom Day Guidebook*, http://religiousfreedomday.com/images/RFD_Guidebook_2011.pdf, 2. Note that in addition to overemphasizing the significance of the Virginia Statute, the pamphlet conflates the men who wrote the Constitution with those who drafted the First Amendment.

bition on religious establishments” (2010, 1). He correctly notes that there “is broad agreement among judges, lawyers, and historians about the significance of the Virginia experience,” a point he illustrates by providing a variety of quotations from jurists and scholars that overlaps with, but is less extensive than, the collection I collected independently for the above paragraphs (161–63). I concede that if “asseveration and reiteration could establish the truth of history,” the connection between the Memorial/Virginia Statute and the religion clauses would have been proven long ago, but like Edward S. Corwin (1912, 619), I am optimistic that most jurists and scholars are still interested in evidence and rational argument.

The Memorial and Virginia Statute have indisputably come to exert influence on American views of church-state relations, but did they inspire or inform the men who drafted, debated, and ratified the First Amendment? Certainly they were penned by two men who were among the most important and influential founders. Moreover, they were the products of rich, energetic debates in Virginia in which a range of church-state perspectives were aired. But to simply assume that because the Memorial and Virginia Statute came before the First Amendment they influenced it is to commit any number of historical fallacies—most clearly that of *post hoc, ergo propter hoc*.⁹

Madison played a significant role in both the Virginia disestablishment debates and the Congress that drafted the First Amendment, but this does not justify reading the religion clauses solely in light of his views.¹⁰ Jefferson was intimately involved in the initial stages of disestablishment in Virginia, but he was overseas for their conclusion and when the Constitution and First Amendment were drafted. Virtually all founders supported a robust understanding of religious liberty, but Jefferson and Madison favored a stricter separation between church and state than most of their colleagues. If jurists and scholars are really interested in the “generating history” of the Establishment Clause, it is a mistake to assume that Jefferson’s and Madison’s approaches to these issues reflect the views of their peers.¹¹

9. The Latin phrase means “after this, therefore because of this” (Fischer 1970, 166; see also 103–30, 164–242).

10. Of course I am not the first scholar or jurist to point this out: “Although Madison certainly had influence, he was not the sole author [of the First Amendment] and, hence, not solely responsible for the adopted text” (Muñoz 2009, 35). “Whatever the Congress, the ratifiers, or the people thought the establishment clause meant, there is no evidence that any of those groups believed that it encompassed Madison’s Memorial or Jefferson’s Statute” (Drake-man 2010, 259). See also *Flast v. Cohen* (392 U.S. 83 [1968], 126; Harlan, J., dissenting); *Rosenberger v. University of Virginia* (515 U.S. 819 [1995], 856; Thomas, J., concurring); and Amar (2007, 174).

11. I do not mean to suggest that Jefferson and Madison held identical views. Nor were they as extreme in their separationism as some modern jurists and scholars believe. But they

In light of the many and powerful claims that the Memorial and/or the Virginia Statute had significant influence on the men who wrote and ratified the First Amendment, it is remarkable that few if any jurists or scholars have offered evidence that they actually had this effect. Douglas Laycock, in a wonderfully candid discussion of Virginia's influence (and by extension that of the Memorial and Virginia Statute), writes that "the debates in Virginia may have been the best known. I am not sure of that, and the subject deserves further investigation" (1986, 895–96). In this essay I follow his suggestion by attempting to discern whether there is reason to believe that the men who drafted, debated, and ratified the First Amendment were influenced by the Memorial and/or Virginia Statute.

A BRIEF HISTORY OF THE MEMORIAL AND VIRGINIA STATUTE

From the colony's inception, the Church of England was the established church in Virginia. Early laws concerning matters of faith were harsh and intolerant, but by 1775 the establishment had become relatively mild. For instance, blasphemy was no longer punishable by death, Quakers were no longer banned from the state, and dissenters were permitted to worship in their own meetings if they were properly licensed. Yet everyone was still taxed to support the Anglican Church, one had to be a member of the Church of England to hold high civic office, only Anglican clergy could consecrate marriages, and dissenting ministers had to apply for a special license in order to preach. Laws favoring the Anglican Church were not always enforced, but they were on occasion, as indicated by the jailing of Baptist ministers for preaching without licenses well into the 1770s (Middleton 1954; Curry 1987, 29; Nelson 2001; Ragosta 2010, 171–83).

As the colony moved toward independence, the Virginia Convention (a body established to fill the void resulting from Lord Dunmore's dissolution of the House of Burgesses) created a committee to write a constitution and declaration of rights. The task of penning the latter fell largely to George Mason. Printed copies of his draft of Virginia's Declaration of Rights circulated throughout the colonies and had a profound impact on the Declaration

did advocate a stricter separation between church and state than did most founders. As William McLoughlin (1973, 222) has noted, "in many respects it was Jefferson and Madison's position that was eccentric at the time." See also Noonan (1998, 82) and Hall (2013, 122–48). For essays on other individual founders, see Dreisbach et al. (2004, 2009) and Dreisbach and Hall (2014).

of Independence and bills of rights adopted in other states (Rutland 1961, 272–91).¹² Article XVI, the provision most directly related to religious liberty and church-state relations, engendered significant debate. After it was amended at the urging of Madison to make it clear that religious liberty is a natural right rather than a grant from the state, it was adopted by the convention on June 12, 1776. It reads, “That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore that all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practise [*sic*] Christian forbearance, love, and charity towards each other” (Dreisbach and Hall 2009, 241).

Article XVI guaranteed religious liberty, but it did not end state support of the Anglican Church. Religious dissenters were not satisfied with this result, as indicated by a flood of newspaper articles and legislative petitions demanding disestablishment. The General Assembly responded in late 1776 by passing legislation exempting dissenters from laws requiring church attendance, regulating “modes of worship,” and paying ecclesiastical taxes (Hening 1819–23, 9:164–67; Buckley 1977, 36; Ragosta 2010, 60–61).

Shortly after declaring independence, the Virginia legislature appointed a committee consisting of Thomas Jefferson, Edmund Pendleton, George Wythe, George Mason, and Thomas Ludwell Lee to revise Virginia’s laws. Mason and Lee excused themselves from the work because they were not attorneys, and Jefferson took the lead among the remaining committee members. By February 1779, the committee had prepared 126 bills for the General Assembly’s consideration, including bill number 82, Jefferson’s Bill for Establishing Religious Freedom. Jefferson drafted the bill in 1777, the legislature considered it in May of 1779, but voted to postpone acting on it (Dreisbach and Hall 2009, 250).

In the fall of 1779, conservatives introduced a bill entitled a Bill Concerning Religion. The proposed statute, which borrowed from article 38 of South Carolina’s 1778 Constitution, would have established the “Christian Religion” as the official faith of the commonwealth, granted “equal privileges” to “all Denominations of Protestants,” and taxed individuals to support the churches

12. Weighing influence is obviously difficult, but it is entirely plausible that Art. XVI had a greater impact on the men who wrote and ratified the First Amendment than did the Memorial and Virginia Statute combined. If so, it is striking that Supreme Court justices have looked to Mason only six times to shine light on the meaning of the religion clauses, as compared to 189 times for Madison and 112 times for Jefferson (Hall 2006, 568). On Mason and Art. XVI, see, especially, Dreisbach (2000, 5–44).

they choose to attend. The legislature discussed the bill, tabled it, and never considered it again (Dreisbach and Hall 2009, 247–49).¹³

In 1784, the General Assembly debated Patrick Henry's famous Bill Establishing a Provision for Teachers of the Christian Religion. The law would have taxed individuals to support the churches to which they belong, with the exception of "Quakers and Mennonists," who firmly opposed state involvement in such matters. Citizens could also designate their taxes to support "seminaries of learning," a provision presumably aimed at non-church members. The bill likely would have passed if Henry had not been elevated to the governorship, which at the time had little power. On Christmas Eve of 1784, the legislature voted to postpone taking action so that the bill could be printed and citizens could comment on it (Dreisbach and Hall 2009, 252–53; Ragosta 2010, 124).

Concerned that Henry's bill could become law in the fall of 1785, Madison wrote his famous "Memorial and Remonstrance Against Religious Assessments" in the summer of 1785. The text contains an eloquent plea for the "unalienable right" to worship God according to "the conviction and conscience of every man." Making a variety of rationalist and religious arguments, he contended that the right is unalienable because "what is here a right towards men, is a duty towards the Creator." Madison proceeded to argue that state support of religion violates this right and that "the policy of the Bill is adverse to the diffusion of the light of Christianity" (1973, 298–304).

Of particular interest to modern supporters of the strict separation of church and state, Madison pointed out that "the same authority which can force a citizen to contribute three pence only of his property to support of any one establishment, may force him to conform to any other establishment in all cases whatsoever" (1973, 300). The implications of this point go well beyond simply opposing the general assessment bill: they suggest that the state should not fund any religious endeavor at all. Vincent Phillip Muñoz has even argued that the Memorial supports a principle of noncognizance that prohibits the state from using "religion or religious preferences as a basis for classifying citizens." Practically, this means that it may "neither privilege nor penalize citizens on account of religion" (2009, 26, 32, and, generally, 11–48).

Madison's Memorial was printed as a broadside, published in the *Virginia Journal and Alexandria Advertiser* (November 17, 1785), and circulated throughout the state.¹⁴ It is sometimes assumed that it was single-handedly

13. The bill was sharply criticized by "a Friend of Liberty" in an October 30, 1779, essay published in the *Virginia Gazette*, 2.

14. Preceding the copy of the Memorial published in this paper is the following note: "Please to insert the following Copy of a Memorial and Remonstrance, lately presented to

responsible for the defeat of Henry's general assessment bill, and indeed Madison claimed as much in his detached memoranda (c. 1817; Dreisbach and Hall 2009, 590). However, the legislature was inundated with petitions against the bill, and only 1,552 of the 10,929 people who signed them affixed their signatures to copies of Madison's Memorial (Madison 1973, 297–98).¹⁵ Far more popular was an earlier, anonymous evangelical petition signed by 4,899 citizens (including 11 women) that argued that state support of religion is “contrary to the spirit of the Gospel” and that ending it would lead “religion (if departed) [to] speedily return, and Deism be put to open shame, and it's [*sic*] dreaded Consequences removed” (Dreisbach and Hall 2009, 307–8; see also Madison 1973, 297–98). It is noteworthy that virtually every petition against Henry's bill argued that a general assessment should be opposed because it would hurt religion, generally, or Christianity, specifically (Buckley 1977). Although long neglected, it is now widely recognized that evangelical dissenters played a critical role in defeating Henry's assessment bill and promoting religious liberty in Virginia and other states (Buckley 1977; Beneke 2006; Esbeck 2009; Ragosta 2010; Miller 2012).

In the fall of 1785, a legislative committee briefly considered but declined to act on Henry's bill. In its place, Madison reintroduced Jefferson's Bill for Establishing Religious Freedom. The House passed the bill by a vote of 74–20 on January 16, it was amended slightly at the insistence of the Senate, and the Speaker of the House signed it into law 3 days later (Buckley 1977, 159–63; Dreisbach 1991, 172–204). The act contains a powerful argument for religious liberty, and its enacting clause makes it clear that “no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer, on account of his religious opinions or belief” (Dreisbach and Hall 2009, 251). Jefferson viewed the Virginia Statute as one of his most important accomplishments; it was one of three achievements that he wanted inscribed on his tombstone (Koch and Peden 1972, ii). But in practical terms the law changed little (Esbeck 2009, 88). Religious liberty already received extensive protection in the Virginia Declaration of Rights, and the state

the General Assembly of this Commonwealth, now sitting, and you will much oblige many of your Readers, particularly your humble Servant, J.J.”

15. Even scholars who recognize that there were many other petitions and signatures find ways to give the credit to Madison. For instance, Steven K. Green (2010, 40) writes, “Although Madison's Memorial was not the sole memorial opposing the assessment bill, it was the most influential and helped to turn the tide of public opinion.” Similarly, Daniel M. Calhoun (2009, 211–12) asserts without offering evidence that “Madison's treatise inspired more than ninety anti-assessment petitions, signed by more than eleven thousand citizens.” It is difficult to imagine how this was the case as the most popular petition was written at least 7 months before Madison penned his Memorial.

had eliminated compulsory church attendance laws and ecclesiastical taxes for dissenters in 1776. Moreover, Virginia had not attempted to tax anyone (including Anglicans) to support the Episcopalian Church since 1775 (Buckley 1977, 33–37, 60–61). Although it is regularly asserted that the Virginia Statute disestablished the Anglican Church in Virginia, a good case can be made that this did not occur until a 1784 law fixing the church's governing structure was repealed in January of 1787.¹⁶

Madison's Memorial and Jefferson's Virginia Statute were significant documents with respect to the future of church-state relations in Virginia, but as the above discussion indicates, they should be viewed in a larger context. Article XVI of the Declaration of Rights was arguably more influential in other states and at the national level in the founding era, and Madison's Memorial was only one of many petitions written to oppose Henry's general assessment bill. The Statute for Religious Liberty certainly played a role in a long debate in Virginia, but it did not radically change state practices. Nor did Virginia embrace the strict separation of church and state in 1786 as is commonly believed.¹⁷ Also, as will be discussed below, the Memorial and Virginia Statute did not argue for or legislate anything that was not already the practice in some states, and other states retained or adopted significantly different policies (especially in New England).

The Memorial and Virginia Statute have come to have an impact on church-state relations in America. Yet this does not mean that they influenced the men who drafted, debated, and approved the First Amendment. In order to make this case, one needs to show (1) that these texts were read by founders involved in crafting, arguing about, and approving the amendment and (2) that these

16. "Exactly when disestablishment took place has been a favorite parlor game for Virginia historians for years. But it seems to me that it was the repeal of the Incorporation Act in 1787 that really disestablished the church. That 1784 act had fixed the polity of the Protestant Episcopal Church in Virginia. I think that's about as close to an establishment as one can get" (Thomas Buckley to Mark David Hall, February 12, 2012). Similarly, H. J. Eckenrode (1910, 129) asserts that the "repeal of the incorporation act definitely marks the separation of church and state in Virginia" (see also Henning 1819–23, 11:532–37, 12:266–67). Some scholars refuse to play this game; e.g., "There was no single point at which one can say the established church [in Virginia] was disestablished" (McConnell 2001, 10).

17. For instance, the same legislature that passed the Virginia Statute also passed a law drafted by Jefferson aimed at Punishing Disturbers of Religious Worship and Sabbath Breakers, and issues such as the disposal of glebe lands would not be resolved until the nineteenth century (Buckley 1977, 170–72, 181–82; Dreisbach 1991). Similarly, when the Virginia ratifying convention met to consider the proposed national constitution in 1788, its first act was to select a "unanimously elected chaplain, to attend, every morning, to read prayers, immediately after the bell shall be rung for calling the Convention." At the convention's close the delegates voted to pay the chaplain for his services. Madison, a member of the convention, missed the first vote, and no record was taken of the second (Olee 2008, 145, 171).

men were positively influenced by them. The following section explores the first issue by considering the availability of the Memorial and Virginia Statute between 1785 and the ratification of the First Amendment.¹⁸

AVAILABILITY OF THE MEMORIAL AND VIRGINIA STATUTE BEFORE THE RATIFICATION OF THE FIRST AMENDMENT

Madison sent copies of his memorial to George Nicholas and George Mason in the summer of 1785. He insisted on anonymity, and he did not explicitly acknowledge writing the text until 1826 (Madison 1973, 295). Mason had multiple copies printed as broadsides, and he and Nicholas distributed them throughout the state. Thirteen copies of the Memorial signed by 1,552 citizens were submitted to the General Assembly. Altogether, the assembly received about 90 petitions signed by 10,929 Virginians. About 80 of these petitions were against the assessment, which suggests that the bill did not have a tremendous amount and/or depth of public support (Madison 1973, 297–98; Ragosta 2010, 131, 225). According to the US census, Virginia contained 99,113 white males at least 16 years old in 1790, of which approximately 1.6% signed Madison's Memorial (Carter et al. 2006, 1:363). It is impossible to know with certainty, but it is likely that the vast majority of voters in Virginia were unaware of Madison's Memorial.

The Memorial was published in the *Virginia Journal and Alexandria Advertiser* on November 17, 1785, and the *Massachusetts Spy: or, Worcester Gazette* on February 2, 1786.¹⁹ Later, in 1786, Isaiah Thomas, publisher of the *Massachusetts Spy*, reprinted the Memorial together with the Virginia Statute as a pamphlet.²⁰ It also appeared in Charlestown (*American Recorder*

18. Jefferson's draft of the Virginia Statute may have had some influence in other states after it was published in 1779 and 1780. The proposed statute was not widely circulated, but some individuals in other states were aware of it. For instance, the town of Bellingham, MA, proposed that it be adopted as an alternative to Art. III of the Massachusetts Constitution of 1780 (McLoughlin 1971, 1:619).

19. Of course Madison's Memorial was not the only attack on Henry's bill. See, e.g., the lengthy critique of the assessment bill written by the anonymous essayist Vigilarius published in the March 31 and April 7 editions of the *Virginia Journal and Alexandria Advertiser*. The essay focused on the damage the assessment would do to the Christian faith. The following week, the same newspaper printed a letter by "a Friend to the Bill of Rights" arguing against the assessment and suggesting that the assembly pass instead a Bill for Establishing Religious Freedom. Immediately after the essay, Jefferson's draft of the Virginia Statute was printed in full (*Virginia Journal and Alexandria Advertiser*, April 14, 1785, 1–2).

20. *A Memorial and Remonstrance, Presented to the General Assembly, of the State of Virginia, at Their Session in 1785, in Consequence of a Bill Brought into That Assembly for the Establishment of Religion by Law* (Worcester, MA: Thomas, 1786). Thomas, later

and Charlestown [MA] Advertiser, February 17, 1786, 4) and Baltimore (*Maryland Journal and Baltimore Advertiser*, November 11, 1785) newspapers and in Matthew Carey's *American Museum* (August 1789, 5:120–22). It was not reprinted again until 1810, when it was published as an appendix to Robert Semple's *History of the Rise and Progress of the Baptists in Virginia* (1810, 435–44).²¹ The latter version is the first that lists Madison as the author (the editorial apparatus for *The Papers of James Madison* incorrectly states that the 1786 pamphlet published by Thomas attributed the Memorial to Madison; Madison 1973, 305).²² The Memorial was read by at least 1.6% of Virginia's white males, and it must have been considered by other citizens. But not everyone who read Madison's arguments agreed with them.

Mason sent a copy of the Memorial to George Washington hoping to enlist his support in the battle against Henry's bill. The future president apparently skimmed the document, promised to read it "with attention" later, and then wrote that "I must confess, that I am not amongst the number of those who are so much alarmed at the thoughts of making People pay towards the support of that which they profess" (Mason 1970, 2:830–32). He did not sign a copy of the Memorial submitted to the General Assembly (Buckley 1977, 136). It is not clear if Richard Henry Lee read the work, but on November 26, 1785, he wrote Madison a letter that made it evident that he favored Henry's bill.²³ Other significant civic leaders, including Spencer Roane, Benjamin Harrison, John Page, Edmund Pendleton, Philip Barbour, and future Chief Justice John Marshall, also supported the general assessment bill (Buckley 1977, 117; Ragosta 2010, 120).

founder of the American Antiquarian Society, was an important advocate of religious liberty in Massachusetts. In 1780 he printed Isaac Foster's book *A Defence of Religious Liberty*.

21. According to the editorial notes of the *Papers of James Madison*, after 1789 the Memorial was not republished until it appeared in *Niles' Weekly Register* (Baltimore) in 1817 (Madison 1973, 305). I am grateful to Donald L. Drakeman for calling the 1810 version of the Memorial to my attention.

22. The editors write that Thomas's pamphlet was entitled *A Memorial and Remonstrance . . . [sic] by His Excellency James Madison*. As evidence they cite "Sabin 43719" (Madison 1973, 305). Sabin lists two editions of the Memorial, one published in 1786 and one published in 1819. He gives only one title, the one for the 1819 edition: "Religious Freedom: A Memorial and Remonstrance Drawn by His Excellency James Madison, Late President of the United States" (Boston: Lincoln & Edmands, 1819; Sabin 1879, 11:12). The copy of Thomas's 1786 pamphlet possessed by the American Antiquarian Society and available in Early American Imprints does not attribute the Memorial to Madison. The full title of Thomas's pamphlet is *A Memorial and Remonstrance, Presented to the General Assembly, of the State of Virginia, at Their Session in 1785, Consequence of a Bill Brought into That Assembly for the Establishment of Religion by Law*.

23. In this letter Lee observed that "he must be a very inattentive observer in our Country, who does not see that avarice is accomplishing the destruction of religion, for want of a legal obligation to contribute something to its support" (Mason 1970, 2:831).

At least one person was quite impressed with Madison's Memorial and had hopes that it would be influential in other states. The anonymous person who sent a copy of the Memorial to the *Massachusetts Spy* included a note that was published along with the Memorial (February 2, 1786, 2). When Thomas printed the Memorial together with the Virginia Statute as a pamphlet later in 1786, he included the same preface with a few minor revisions. It is worth printing in full:

For THOMAS'S MASSACHUSETTS SPY.

MR. THOMAS,

The following ADDRESS is said to have had great influence on opinions and sentiments in the government where it was first published. The copy was begged of a friend, that it might find a place in your paper. I am not sure that it will please, or even be read. In it the rights of conscience and religious privileges are so clearly stated, and with so much ingenuity and ability contended for, as to merit not only the Printer's notice, but the deliberate perusal of every sober man.—Truth is uniformly the same in all places and at all times, in Virginia and the [*sic*] Massachusetts, but may not meet the same favorable reception. Reasons that have swayed the legislature of a neighboring government would be thought to deserve some consideration. The question discussed has long since divided the world, and is seriously interesting to the Christian, the Citizen, and the Politician. Let each one for himself, compare with attention and weigh with caution, the combined force of every argument. Let him decide with fairness, and with firmness abide the result. If the observation be weak, or the argument inconclusive let them be exposed—let them be answered. If they enlighten, if they convince, let truth, divine truth prevail, and have for its advocates of every denomination, the great and the good.

This note is important for two reasons. First, it offers contemporary evidence that at least one observer thought the Memorial played an important role in advancing religious liberty in Virginia. Second, the author, and presumably Thomas, clearly hoped that it would do the same in Massachusetts. The state did eventually disestablish the Congregational Church, but it did so 47 years after Thomas printed the Memorial. Some Massachusetts citizens were impressed with Madison's Memorial, but there is little evidence that it had significant influence in the state prior to the nineteenth century.

The 80 petitions against the assessment bill, including the 13 copies of the Memorial, almost certainly encouraged the General Assembly to allow Henry's

bill to die a quiet death and to instead pass the Virginia Statute. Jefferson had drafted the bill in 1777, and it was printed as a broadside in Richmond in 1779 (Jefferson 1950, 547–53). It was not reprinted when the legislature briefly considered it later that year, but the draft version was published in the *Independent Chronicle* (Boston, April 20, 1780), the *Massachusetts Spy* (May 25, 1780), and the *Providence (RI) Gazette* (October 13, 1780). When the General Assembly returned to the task of revising the state's laws in 1784, it printed 500 copies of the proposed bills in a folio entitled *Report of the Committee of Revisors Appointed by the General Assembly of Virginia in MDCCLXXVI* (Jefferson 1950, 548). Once the bill was passed in January 1786, it was printed in the state's official *Acts Passed at a General Assembly of the Commonwealth of Virginia*.

According to Dumas Malone (1946, 279), after the assembly passed the Virginia Statute, Jefferson “promptly had it printed and he circulated it as widely as he could.” He was serving as US minister to France at the time, which helps explain why he first published a French and English edition of it in Paris (1786).²⁴ A similar bilingual edition was published in Richmond a few months later (Jefferson 1950, 550). In the same year, the law was reprinted in the *Encyclopedie methodique*, and Richard Price arranged to have it published as a broadside in London (550). It was bound as an appendix to some copies of the first edition of Jefferson's *Notes on the State of Virginia* (Paris, 1786), the 1787 Stockdale edition (London), and the first American edition (Philadelphia, 1788). The Virginia Statute was also published with Madison's Memorial in a 1786 pamphlet prepared by Thomas in Worcester, Massachusetts, noted above. Most critically, it was reprinted in at least 16 American newspapers between 1785 and 1791 in the states of Connecticut (4), Massachusetts (3), Virginia (2), Pennsylvania (2), New Hampshire (2), Maryland (1), Rhode Island (1), and Vermont (1).²⁵

24. *Act de la Republique de Virginie/qui etablit la liberte de religion* (Paris, 1786). Julian Boyd offered an excellent discussion of the slightly different versions of the statute that circulated in the era (Jefferson 1950, 550).

25. Boyd provided a few examples of newspapers that reprinted the Virginia Statute, but he did not attempt to provide an exhaustive account. The figures above are based on different keyword searches of the electronic database Readex Digital Collections, Early American Imprints, Series I, Evans (1639–1800), Early American Newspapers, Series 1–3 (1690–1922), and by tracking down references to newspapers that published the Virginia Statute in secondary sources such as Buckley (1977) and Ragosta (2010). The Early American Newspapers database contains 81 English-language papers published between 1784 and 1792. The database contains most, but not all, newspapers published in the era, but its collections are not complete for each paper. The Virginia Statute was published in the *Virginia Journal and Alexandria Advertiser*, April 14, 1785, 2; *Maryland Journal and Baltimore Advertiser*, November 18, 1785, 2; *Independent Gazetteer* (Philadelphia), February 4, 1786; *Pennsylvania Evening Herald*, February 4, 1786, 14–15; *Massachusetts Spy*, February 23, 1786, 3;

Most newspapers in this era were only four pages long and contained little original reporting. They were filled with advertisements, occasional essays written by concerned citizens, and sundry pieces. It was not uncommon for publishers to reprint laws or other public documents, even if they were from other states. The latter were rarely front-page news, and the Virginia Statute is no exception. The Virginia Statute was certainly reprinted more than most state laws, but the reason may be that Jefferson and Price aggressively promoted the text. Whatever the reason, from 1786 to 1791, it was reprinted in eight of the 13 states and in 16 of the nation's approximately 81 newspapers. The Virginia Statute thus received far greater circulation than Madison's Memorial, which was published in only four newspapers in three different states (Virginia, Maryland, and Massachusetts; Clark 2010, 347–60).

Given the significance attributed to the Virginia Statute today, it is striking that it inspired few responses at the time. It was warmly endorsed by “a Friend to the Bill of Rights” in an essay published in the *Virginia Journal and Alexandria Advertiser* on April 14, 1785.²⁶ In November of 1785 a group of Presbyterians sent a petition to the General Assembly opposing the general assessment bill and supporting the Virginia Statute. It was one of very few petitions specifically supporting or opposing Jefferson's bill (Buckley 1977, 138–39). A Portland, Massachusetts (now Maine), paper reported that the statute was “lately printed at Paris, and is characterized, as affording an example of Legislative wisdom and liberality never before known. ‘Had’ says the publisher of it ‘the principles which have dictated, it, been always acted upon by civil governments . . . most of the evils which have disturbed the peace of the world, and obstructed human improvement, would have been prevented’” (*Cumberland Gazette*, November 31, 1786, 2).²⁷

Massachusetts Gazette, February 13, 1786, 2; *Connecticut Journal*, February 15, 1786, 2; *New Haven Gazette*, and the *Connecticut Magazine*, February 16, 1786, 6; *American Recorder and Charlestown (MA) Advertiser*, February 17, 1786, 4; *New Hampshire Gazette*, February 18, 1786, 3; *Virginia Gazette, or American Advertiser*, February 22, 1786; *Providence (RI) Gazette and County Journal*, February 25, 1786, 3; *Middlesex (CT) Gazette*, February 27, 1786, 3; *Vermont Journal*, March 28, 1786, 3; *Connecticut Gazette*, March 17, 1786; and *New Hampshire Spy*, December 17, 1791. It was also printed in *American Museum* (1787), 501–2. The *New York Journal* ran an advertisement noting that the *Museum* included a copy of the Virginia Statute as well as 71 other texts (June 9, 1788, 4).

26. Jefferson's draft of the Virginia Statute was reprinted immediately after the essay. The draft was attributed to a committee comprising “Thomas Jefferson, George Wythe, and Edmund Pendleton” (2). The same paper published a long essay by Vigilarius attacking Henry's assessment bill on March 31, 1786, 1–2, and April 7, 1786, 1–2.

27. The *Gazette* did not republish the statute. The praise is from Jefferson's friend and publicist of the statute, Richard Price, not the editors of the paper as suggested by Paul Rasor and Richard E. Bond in *From Jamestown to Jefferson* (2011), who also describe the praise as a “typical response” (4; Jefferson 1950, 552; Richard Price to Sylvanus Urban, July 26, 1786,

Newspaper editors republishing the Virginia Statute in other states occasionally commented on the law. Some of these remarks are not clearly positive or negative, such as when the *Pennsylvania Herald* (February 4, 1786) called the act “novel in its kind” or when the *Middlesex (CT) Gazette* noted that Virginia’s General Assembly “passed no less than one hundred and twelve acts: a copy of one of which follows” (February 27, 1786, 3). When Jefferson’s draft of the Virginia Statute was republished in Providence in 1780, Roger Williams, the person who sent the bill to the paper, praised Virginia for being the “first State but one” in America to “boldly declar[e] the rights of humanity.”²⁸ The author evidently believed that the General Assembly had passed the bill and that it should be praised for following the example of Rhode Island, an early beacon of religious liberty in America (*Providence Gazette*, May 13, 1780, 1).

The only serious attempt to engage the arguments of the Virginia Statute was made in a pamphlet entitled *Considerations on an Act of the Legislature of Virginia, Entitled an Act for the Establishment of Religious Freedom* by “a citizen of Philadelphia” (John Swanwick). The essay was printed in Philadelphia in 1786 by Robert Aitkin (publisher of the first American Bible in English; Dreisbach and Hall 2009, 115). Addressed to “the Reverend Clergy of all Christian denominations in the City of Philadelphia, and to the Public Friends of the respectable Society called Quakers, in this Metropolis,” the author began by insisting that he supported the toleration of religious minorities (Swanwick 1786, iii, 7). Yet, because Christianity promotes virtue and keeps vice at bay, “it must unquestionably be the duty of every man to contribute to the support of some religious society or other of those that prevail in the country he lives in, at least as far as the good order shall require, however his private opinion may differ from those of the generality as to the belief thereof” (9). Just as states taxed everyone to support the War for Independence, so too it is reasonable to require everyone to support a Christian church (8–9). The “good order” of society “requires that any small part of it who may differ from the rest, should acquiesce in measures adopted for the general good” (8–9). Also, “a citizen” thought it prudent to exclude non-Christians from public office, as was then the practice in Pennsylvania and many other states

in Price [1994, 3:45]). Similarly, the *State Gazette of South Carolina* noted that “one of the best men in the world” had written from London to a correspondent in Boston that he had “been lately charmed with a declaration of the legislature of Virginia, on the subject of intellectual and religious liberty” (August 10, 1786, 3).

28. Almost certainly a pseudonym. Roger Williams (c. 1603–83) was a significant seventeenth-century advocate of religious liberty and a key founder of Rhode Island.

(iii, 20–21). In May and June, South Carolina's *Columbia Herald* reprinted Swanwick's pamphlet over the course of five issues.²⁹

After 1786, it is safe to assume that many civic leaders in Virginia were familiar with both the Memorial and the Virginia Statute, and some—perhaps many—politically active citizens throughout the nation would have had the chance to read the latter. Yet it does not follow that the documents were admired. Because numerous jurists and scholars have made clear, specific, and unequivocal claims about the influence of these texts on the men who wrote and ratified the First Amendment, we should consider if there is, in fact, evidence that they were influential.

REFERENCES TO THE MEMORIAL OR VIRGINIA STATUTE IN OTHER LEGISLATIVE/CONSTITUTIONAL DEBATES

From 1785 to 1791 the Confederation Congress, several state legislatures, and the new national Congress passed laws or constitutional provisions concerning religion. In every case debates were poorly recorded, if they were recorded at all; but if one is seeking evidence of the Memorial's and/or Virginia Statute's influence, it makes sense to examine existing records to see if either document was referenced. Also, if these texts were convincing Americans that church and state should be separated, one might expect to see these legislative bodies moving in that direction. I cannot provide an exhaustive survey of every state and national act concerning religion from 1785 to 1791, but the following cases are the most significant or they occur in a context in which one might expect to see references to the Memorial or Virginia Statute.

To begin at the national level, in July 1787 the Confederation Congress passed the Northwest Ordinance, a statute that protected religious liberty in territories controlled by the national government and famously proclaimed that "Religion, Morality, and knowledge being necessary to good government and the happiness of mankind, Schools and the means of education shall forever be encouraged" (Dreisbach and Hall 2009, 236–38; see also Davis 2000). Certainly Jefferson and Madison would have supported the protection of religious liberty, but to the extent to which the latter provision suggests that Congress can encourage religion or religious education in the territories, they

29. May 29, June 1, 5, 8, and 12, 1786. The *Massachusetts Centinel* reprinted an objection to the Virginia Statute having been published in a Canadian paper. The author, "a Lover of the British Constitution!!!! [sic]" objected more to the idea that loyal citizens of Canada have anything to learn from American rebels than to the statute per se (April 26, 1786, 2).

may have dissented.³⁰ No delegate is recorded as mentioning the Memorial or Virginia Statute when debating or passing the law. On the contrary, Nathan Dane, who was intimately involved in drafting the ordinance, later wrote that it “was framed, mainly, from the laws of Massachusetts.”³¹

On February 29, 1788, the Confederation Congress (including Madison) voted to pay congressional chaplains \$300 per year (Dreisbach and Hall 2009, 219). Once the Constitution was ratified, the new Congress met and appointed a committee to select chaplains—a committee on which Madison served. Within days Congress had selected and agreed to pay chaplains (Olree 2008, 154, 173–76; Dreisbach and Hall 2009, 472). The new national government also reauthorized the Northwest Ordinance, issued calls for prayer and fasting, and provided for military chaplains (453–57, 473–74). In no instance is anyone recorded as objecting to these acts—including Madison—because they violated the letter or spirit of the Memorial or Virginia Statute.

Between 1785 and 1791, several states passed legislation or altered their constitutions in matters concerning religion. For instance, in 1786 Pennsylvania's legislature voted to grant 10,000 acres to the trustees of Dickinson College, who were required by the school's bylaws to be “clergymen of any denomination.” Between 1787 and 1789, they made similar grants to schools run by “Lutheran, Reformed, and Calvinist” trustees, Lutherans, and the German Reformed Congregation (Antieau et al. 1964, 64). Pennsylvania did liberalize its constitution in 1790 so that all monotheists could hold civic offices (not just Christians, as had previously been the case), but office holding by atheists was still prohibited (Dreisbach and Hall 2009, 241–43). Again, there is no record of anyone appealing to the Memorial or Virginia Statute to support or oppose these acts.

It was not uncommon for legislatures of other states in this era to provide grants of land to support religious schools, as suggested by acts in Massachusetts, New York, Connecticut, and even Rhode Island (Antieau et al. 1964, 64, 165). New York had disestablished the Anglican Church in the few counties in which it had been established in 1777, and again for good measure in

30. Congress did, in fact, support religious organizations in old Northwest. See, e.g., the 1803 treaty with the Kaskaskia Indians, which provided \$100 per year for 7 years to subsidize a Roman Catholic priest and \$300 to “assist the said tribe in the erection of a church.” Such actions suggest that even Jefferson (who was president when the treaty was negotiated) was not the sort of separationist that many contemporary advocates of the strict separation of church and state portray him to be (Dreisbach and Hall 2009, 476). See also the 1796 Act Regulating the Grants of Land Appropriated for Military Services, and for the Society of the United Brethren, for Propagating the Gospel among the Heathen (475).

31. Nathan Dane to Daniel Webster, March 26, 1830. Quoted in Rutland (1962, 109).

1784, but in 1788 it passed a test act that prevented Roman Catholics from holding civic offices (Pratt 1967, 107).

Maryland disestablished the Anglican Church in 1776, but in the early 1780s, religious leaders began circulating petitions calling for a general assessment. This eventually led to a flurry of essays about the proposal. Particularly significant were Presbyterian minister Patrick Allison's articles opposing a general assessment, which were published in the *Maryland Gazette or Baltimore General Advertiser* in 1783 and as a book in 1793 (Werline 1948, 169–75). In 1785, the Maryland House of Delegates submitted to the people a proposed general assessment bill expecting widespread support, but it was met with significant criticism (Dreisbach and Hall 2009, 253–56). Notably, the *Maryland Gazette* published numerous essays against the bill (Werline 1948, 178–80). By early spring the bill was dead, but perhaps to make sure it stayed in its grave, the *Maryland Journal and Baltimore Advertiser* reprinted Madison's Memorial on November 11, 1785, and the Virginia Statute on November 18, 1785. Neither text provoked a response. Because the voters had already rejected the general assessment measure, it is difficult to credit the publication of the Memorial or Virginia Statute with the Maryland assessment's demise.

During this era, states besides Virginia shifted away from supporting religion. For instance, Georgia's 1777 Constitution required civic officeholders to be Protestant and permitted the legislature to pass a law requiring individuals to support churches to which they are members (and it enacted such a law in 1785; Strickland 1939, 163–64). The state's 1789 Constitution removed the religious test for office, but the legislature retained the authority to require citizens to support their own churches (164–65). South Carolina's Constitution of 1778 established the "Christian Protestant religion" and permitted funding a range of Protestant churches, but the state's 1790 Constitution removed these provisions (Levy 1972, 199).³² Jefferson and Madison undoubtedly approved of these changes, but again there is no record that any legislator was influenced either positively or negatively by the Memorial or Virginia Statute.

DEBATES OVER THE CONSTITUTION AND BILL OF RIGHTS

In 1787, delegates from 12 states gathered in Philadelphia to draft a new national constitution. A few provisions of the proposed constitution concerned

32. The Constitution of 1790 also banned clergy from holding civic office (Curry 1987, 150).

religion (e.g., Art. VI's prohibition on religious tests), but there are no recorded instances of a delegate referencing Virginia's example or appealing to the Memorial or Virginia Statute. Near the end of the convention, Mason proposed that a bill of rights be added to the Constitution. The weary delegates refused to do so (Farrand 1966, 2:587–88, 617).

The lack of a bill of rights became a major rallying point for Anti-Federalists. There are recorded debates over the issue in state ratification conventions in Pennsylvania (1787), Massachusetts (1788), Maryland (1788), South Carolina (1788), New Hampshire (1788), Virginia (1788), New York (1788), and North Carolina (1788), and religious liberty or the rights of conscience were often discussed. Yet there is no mention of, or allusion to, the Memorial or Virginia Statute (Schwartz 1971, 2:629–979). This is true even in Virginia, where Madison was a member of the ratifying convention. Ironically, Madison argued specifically that a bill of rights would not be useful for protecting religious liberty (2:796–97).³³ Some ratification conventions proposed constitutional amendments, but none of them are clearly influenced by the Memorial or Virginia Statute. Indeed, the most important model was Article XVI of Virginia's 1776 Declaration of Rights, which was utilized by Virginia, North Carolina, and Rhode Island (Cogan 1997, 11–13).³⁴

With New Hampshire's affirmative vote, the Constitution was ratified by nine of the 13 states. Elections for the first federal Congress were held in early 1789. Madison, running in a tight race against then-Anti-Federalist James Monroe, promised his would-be constituents that he would pursue a bill of rights if he were elected.³⁵ In the Virginia ratifying convention he had called Massachusetts's proposed amendments to the Constitution a “blemish” and

33. Madison alluded to the fact that he had “warmly supported religious freedom,” likely a reference to his support for disestablishment in Virginia (Schwartz 1971, 796). However, because he was arguing against the necessity of a bill of rights, this remark suggests no connection between the Memorial or Virginia Statute and the First Amendment.

34. The first proposal from a ratifying convention concerning religion was made by New Hampshire on June 21, 1788. It reads, “Congress shall make no Laws touching Religion, or to infringe the rights of Conscience.” On June 27, Virginia proposed an amendment reading “that religion or the duty which we owe to our Creator, and the manner of discharging it can be directed only by reason and conviction, not by force or violence, and therefore all men have an equal, natural and unalienable right to the free exercise of religion according to the dictates of conscience, and that no particular religious sect or society ought to be favored or established by Law in preference to others” (de Pauw et al. 1972–2012, 4:15, 17). The wording of the Virginia proposal is very similar to the final version of Art. XVI of the Virginia Declaration of Rights (Dreisbach and Hall 2009, 241).

35. It may also be the case that Madison was convinced by Jefferson that a bill of rights would be a positive, not negative, addition to the Constitution. See, e.g., Thomas Jefferson to James Madison, December 20, 1787, July 31, 1788, and March 15, 1789 (Koch and Peden 1972, 436–41, 450–52, 462–64).

had denied that a bill of rights was necessary to protect religious liberty; yet he kept his word and fought for a bill of rights in the House of Representatives (Schwartz 1971, 2:724, 796, 984, 997). Some congressmen opposed the amendments, and there were significant debates about which rights should be included and how they should be worded. Records of these debates are sparse, but the *Documentary History of the First Federal Congress* contains the House and Senate journals, petitions delivered to Congress, every contemporary newspaper account of the debates in the first Congress, and three volumes of correspondence by members of the House and Senate related to the first Congress. Nowhere in these 20 volumes is there a hint that anyone argued that Congress should follow Virginia's example with respect to religious liberty or church-state relations, and the Memorial or Virginia Statute is never mentioned or discussed (de Pauw et al. 1972–2012, 2:1006–1167).³⁶

Madison was clearly a leader in the fight for the Bill of Rights, but he did not act alone. Nor did he dominate the House of Representatives on this matter. His proposal to intersperse the amendments within the text of the Constitution was rejected, and the wording of every amendment he proposed was changed (Schwartz 1971, 2:1054–1167). Madison originally offered three amendments that touched on religion: (1) “The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext infringed.” (2) “No person religiously scrupulous of bearing arms, shall be compelled to render military service in person.” (3) “No state shall violate the equal rights of conscience” (Dreisbach and Hall 2009, 420–21). He considered the third proposal to be “the most valuable amendment” of all, but it was not adopted (430). Nor was he successful in protecting religious pacifists. Congress eventually approved a version of the first proposal after significant debate and revision. The relevant section reads, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof” (426–33). Madison certainly deserves credit for helping to draft the First Amendment, but he was not a god

36. To reach the conclusion stated above, I went through the index for each volume of *The Documentary History of the First Federal Congress* looking for relevant terms such as “Virginia,” “Virginia Statute,” “Memorial and Remonstrance,” “Madison,” “Jefferson,” and “religious freedom.” I read every newspaper account of the debates over the Bill of Rights carefully, as well as correspondence, petitions, and essays in which one could reasonably expect to find references to the Virginia Statute or Memorial, e.g., James Madison to a Friend in Spotsville County, January 29, 1789 (de Pauw et al. 1972–2012, 15:115–16); Roger Sherman, “Observations on the New Federal Constitution and the Alterations That Have Been Proposed as Amendments,” December 25, 1788 (15:120–25); William R. Davie to James Madison, June 10, 1789 (16:742); and Richard Henry Lee and William Grayson to Thomas Matthews, Speaker of the House of Delegates, September 28, 1789 (17:1634–35).

among men imposing his personal views on cowed colleagues. It simply does not follow that the Memorial and Remonstrance can be read into the First Amendment's religion clauses because Madison was a leader on this issue in the first federal Congress.

Before proceeding, it is worth noting that a good argument can be made that Madison argued for a very different approach to church-state relations in the first federal Congress than he did in the Memorial. Of course in both cases he opposed religious establishments and advocated religious liberty. But Muñoz contends that "Madison did not propose the [Memorial's] rule of noncognizance for the First Amendment" (2009, 38, and, generally, 11–39; cf. Hamburger 2002, 105). Indeed, Madison's amendment aimed at protecting religious pacifists (but not citizens who are pacifists for other reasons) flies in the face of such a principle. Thus one might argue that the Memorial did not even influence Madison's contributions to the framing of the First Amendment.³⁷

The proposed Bill of Rights was sent to the states to be ratified in October of 1789. At the time, many legislative proceedings were closed, those that were not were rarely covered by newspapers, and legislative records primarily consisted of motions and votes. Unlike the proposed constitution, the Bill of Rights did not ignite a war of pamphlets and newspaper pieces (Schwartz 1971, 1171–1203). As Leonard Levy has written with respect to the Establishment Clause, the states "ratified the Bill of Rights, but left nothing to clarify the meaning of an establishment of religion. We have no debates, newspaper coverage, tracts, or personal correspondence that provide clues, except in Virginia, where the evidence is utterly misleading" (1999, 89). In Virginia, opponents of ratification contended that the First Amendment did not protect religious liberty well enough, but Levy argues persuasively that their real motivation was to force more extensive limitations on the national government's power (1972, 188–90). In any case, for present purposes the most important thing to observe is that there is absolutely no reference to the Memorial or Virginia Statute or any indication that these texts had an impact or influence on any supporter of the Bill of Rights.

When Virginia ratified the Bill of Rights on December 15, 1791, the document became part of the US Constitution. Secretary of State Jefferson announced this fact with little fanfare in a note to the governors of the several states in March of 1792. Madison certainly played a role in the process, but Jefferson played no direct role in crafting or ratifying the First Amendment,

37. I do not rely heavily on this or similar arguments because they raise a host of questions about how to properly interpret the Memorial, Virginia Statute, records of the debates in Congress, and, ultimately, the First Amendment. Such questions are important, but they go well beyond the scope of the present essay.

and there is no evidence that the other 68 congressmen or hundreds of state legislators were influenced by the Memorial or Virginia Statute.³⁸

A FEW ADDITIONAL ARGUMENTS

Even if there is no direct evidence that the Memorial or Virginia Statute influenced the men who wrote and ratified the First Amendment, perhaps it is still reasonable to say that these founders followed Virginia's example. But what example? Congress did not disestablish the Anglican Church, as Virginia can be reasonably said to have done in the 1780s. But assuming that this action somehow inspired members of the Congress, why not give the credit to New York? The state had disestablished the Anglican Church in the counties in which it was established in 1777 (and again for good measure in 1784), and the Congress that crafted the First Amendment was, after all, meeting in the state (Pratt 1967, 98–103). If anything, Congress might be said to have followed the example of Rhode Island, Pennsylvania, Delaware, and New Jersey—states that never had an established church.

In *Beyond Toleration: The Religious Origins of American Pluralism*, Chris Beneke (2006) asserts that the “liberal principles” of the Virginia Statute “made their way into the U.S. Constitution” (167). As evidence, he points out that only Virginia and Rhode Island did not have “religious qualifications for government officers.” But this is not accurate. Connecticut did not have religious tests for civic officers other than requiring elected and appointed officials to take oaths “in the Name of the Everliving GOD” and ending with “so help you God” (Cushing 1982, 182–83, *passim*).³⁹ Yet if this oath counts as a religious test, Virginia had religious tests as well because most state offices required officials to take an oath ending with the phrase “so help me God.” This was the case both before and well after the Virginia Statute became law (Cushing 1983b, e.g., 53, 59, 66–67, 70, 89, 92–93, 123, 127, 177, 178, 192, 195, 202).

Even if we stipulate that Virginia did not have a religious test for civic offices, which seems reasonable, then why assume it was Virginia's example

38. The vote in the House of Representatives was 37–14 in favor of the Bill of Rights. There was no recorded vote in the Senate, but in votes leading up to the passage of the Bill of Rights, as many as 18 senators were present, so at least 12 of them must have voted in favor of the Bill of Rights (Schwartz 1971, 2:1159–67).

39. A few offices contained stipulations that may appear to be religious tests. For instance, the governor, lieutenant governor, and assistants had to swear to “further the Execution of Justice . . . according to the Rules of God's Word, and the Laws of the State.” Presumably, someone could honestly take the oath who was not a Christian if he were willing to “further the Execution of Justice . . . according to the Rules of God's Word, and the Laws of the State” (Cushing 1982, 182). The vast majority of offices did not carry such stipulations.

that influenced the drafters of the Constitution rather than the example of Connecticut or Rhode Island? Indeed, although Rhode Island required many officeholders to “swear (or affirm)” oaths ending with “so help me God,” in some cases it gave officials the option of saying “this affirmation I make and give upon the peril of the penalty of perjury” (Cushing 1983a, 142, 148, *passim*). Presumably this was to accommodate atheists and others who did not want to say “so help me God.” Thus, if we want to say that the authors of the Constitution followed any state on this matter, Rhode Island would be the best choice (even though the state did not send delegates to the federal convention).

Pennsylvania did have religious tests for office, but intriguingly, it was the only one of the original 13 states that did not prescribe oaths ending with some variation of “so help me God.”⁴⁰ Hence, Article II’s presidential oath of office is more like oaths required by Pennsylvania than other states. (Many presidents routinely add the phrase when they take the oath. Much ink has been spilled debating whether George Washington did so. There is no definitive evidence that he did, but it would have been odd if he did not as virtually every oath for a military or civic office he took prior to being elected president ended with “so help me God”; Cushing 1983b, *passim*.)⁴¹

In his magisterial book on the disestablishment debates in Virginia, Thomas Buckley argues that Virginia’s example was influential because it was the largest and most populous state, that it had “a leadership noted for its intellectual and political talent,” and that “all sides of the church-state controversy were ably represented” (1977, 6–7). Buckley’s observations about Virginia and the disestablishment controversy may all be true, and it is reasonable to think they should have been influential; yet as we have seen, there is little evidence that they were influential prior to 1791. Buckley, Cushing, Strout, Ragosta, and others have shown that the Memorial and Virginia Statute came to have influence in the nineteenth century, but that they do not extend their arguments back to the 1780s suggests that they were unable to find evidence that these texts influenced the men who drafted, debated, and ratified the First

40. The Pennsylvania Constitution of 1776 required legislators to swear or affirm, “I do believe in one God, the creator and governor of the universe, the rewarder of the good and the punisher of the wicked. And I do acknowledge the Scriptures of the Old and New Testament to be given by Divine inspiration.” The Pennsylvania Constitution of 1790 required only belief in “being of a God and a future state of rewards” (Dreisbach and Hall 2009, 242–43; see also Cushing 1984, *passim*).

41. By the same token, those present at Washington’s inauguration (except those from Pennsylvania) would have been used to hearing oaths ending with “so help me God,” so one suspects that if Washington had neglected to include the phrase, this action (or, rather, inaction) would have been newsworthy/comment worthy.

Amendment (Strout 1988, 201–35; Buckley 2000, 41–64; Ragosta 2009, 2013).⁴²

Prior to the passage of the Virginia Statute, every state had constitutional provisions and/or laws protecting religious liberty, multiple states had never had an established church or had disestablished their churches, and two states did not have religious tests for civic offices. Yet the Virginia Statute was the first law to positively stipulate that a state could not fund churches or have religious tests for office. With respect to religious tests, the Virginia Statute bears important similarities to Article VI of the US Constitution. Yet similarity does not equal influence, and as we have seen, there is little evidence that the Memorial and Virginia Statute influenced the men who drafted and ratified the First Amendment.

CONCLUSION

I am aware that this article comes perilously close to attempting to prove a negative. Strictly speaking, I am not doing so because my argument is not that the Memorial and Virginia Statute had no influence. Instead, my contention is that there is little evidence to support the assertion that the documents had the significant influence on the drafters and ratifiers of the First Amendment that many jurists, scholars, and textbook authors have claimed.

One does not have to be a cynic to recognize that some jurists and others have gravitated toward the Memorial and Virginia Statute because they offer support for a separationist interpretation of the First Amendment (Hall 2006, 570–81). This is particularly true when they are read in conjunction with Jefferson's letter to the Danbury Baptists and Madison's detached memoranda. The strict separation of church and state may be good public policy, but good policy is not a license to fabricate history. As Edward Corwin said with respect to Supreme Court justices, "the Court has the right to make history . . . but it has no right to *make it up*" (1951, 116).

In this article I take no position on whether jurists and scholars should use history to interpret the religion clauses, but I will insist that if they do so they should use an accurate account of the "generating history" of the First

42. Ragosta's paper (2009, 3, 43) is particularly telling as he specifically claims that the Virginia Statute influenced the men who framed the religion clauses. Yet the only eighteenth-century evidence he offers to support this claim is the republication of "a citizen of Philadelphia"'s attack on the Virginia Statute in South Carolina in 1786 (17) and the positive comment from the observer discussed earlier (33). Ragosta's (2013) book reiterates this assertion but adds virtually no primary source evidence to support his claim (117, 258, *passim*).

Amendment. Our cynic might reply that this admonition is meaningless as jurists and scholars simply reach conclusions they desire and then use history to justify them. A slightly less cynical observer might suggest that policy preferences color their understanding of history so that they give greater weight to evidence that supports their desired outcomes. It is true that it is impossible to be completely objective, but as Bernard Bailyn has written, “the fact that there is no such thing as perfect antisepsis does not mean that one might as well do brain surgery in a sewer” (1994, 73).

Fair-minded jurists and scholars should recognize that a balanced account of the creation of the First Amendment cannot rely too heavily on two texts penned by two men—one of whom was not directly involved in drafting or ratifying the Bill of Rights. Of course documents like the Memorial and Virginia Statute are important for understanding the context in which the First Amendment was written and ratified, but they should be studied alongside other memorials, essays, laws, and constitutional provisions from Virginia and similar texts from other states.

One particularly influential text regularly neglected by jurors and scholars is the Massachusetts Constitution of 1780. Article III of this document reflects well the view of many Americans in the era that Christianity is necessary for “the happiness of the people, and the good order and preservation of civic government” and that the state should make provision for the “support and maintenance of public Protestant teachers of piety, religion, and morality” (Dreisbach and Hall 2009, 246). The New Hampshire Constitution of 1784 and the Vermont Constitution of 1786 each incorporated language from Article III, and both states adopted plural or multiple establishments.⁴³ Three members of the Massachusetts constitutional convention of 1779 were serving in the national government when the First Amendment was being debated: Vice President John Adams, Senator Caleb Strong, and Representative Benjamin Goodhue.

Existing records do not suggest that Adams, Strong, or Goodhue played an important role in crafting the First Amendment, but they do reveal that Roger Sherman, Oliver Ellsworth, Benjamin Huntington, Abraham Baldwin, Samuel Livermore, Fisher Ames, and Charles Carroll made significant contributions in the debates and/or served on key committees that helped frame it. Like Jefferson and Madison, each was involved in controversies about

43. Compare, e.g., the first articles in the Massachusetts Constitution of 1780, the New Hampshire Constitution of 1784, and the Vermont Constitution of 1786 (Dreisbach and Hall 2009, 246; <http://www.nh.gov/constitution/billofrights.html>; <http://vermont-archives.org/govhistory/constitut/con86.htm>). On multiple establishments in these states, see Curry (1987, 162–90).

religious liberty and church-state relations in his home state.⁴⁴ Notably, Sherman and Baldwin drafted significant laws for Connecticut and Georgia, respectively, that concerned religious liberty and church-state relations. Sherman's 1783 statute, *An Act for Securing the Rights of Conscience in Matters of Religion, to Christians of Every Denomination in This State*, protected religious minorities and created a multiple or plural establishment of religion (Cushing 1982, 21–22; Hall 2013, 83–90). Similarly, Baldwin's 1785 statute, *For the Regular Establishment and Support of the Public Duties of Religion*, simultaneously protected religious liberty and provided a means whereby tax revenue could be spent "for the support of religion" (Cushing 1981, 2:395–98; Chadsey 2010). Yet Sherman and Baldwin, and their religious liberty statutes, have been virtually ignored by jurists and scholars attempting to understand the creation of the First Amendment (Hall 2006, 568–69). And all of these men favored closer cooperation between church and state than did Jefferson and Madison.⁴⁵

Particularly significant for discerning the views of the men who approved the Establishment Clause are other acts passed by the first federal Congress. With respect to religion, it is noteworthy that the first Congress agreed to appoint and pay chaplains, reauthorized the Northwest Ordinance, and requested a presidential call for prayer and thanksgiving (Dreisbach and Hall 2009, 441–77). Surely these actions are at least as relevant for understanding the First Amendment as a Virginia law passed in 1786.

Finally, if jurists and scholars insist on focusing on individuals like Jefferson who were not immediately involved in drafting or ratifying the First Amendment, they should also discuss other prominent Americans whose actions and writings may have influenced the men who produced the First Amendment. Among others, jurists and scholars should include in their discussions men such as George Washington, John Adams, James Wilson, George Mason, John Jay, John Marshall, John Dickinson, Patrick Henry, John Witherspoon, William Williams, Luther Martin, Jonas Phillips, Samuel Davies, Isaac Backus, and John Leland. Doing so reveals that Jefferson's and Madison's views on the proper relationship between church and state were significantly different from those held by most founders.

The Roman statesman Marcus Tullius Cicero observed that "the first law in writing history [is] that the historian must not dare to tell any falsehood, and

44. Of course when looking at the actions of state legislatures, scholars must take into account the possibility that some political leaders, as a matter of federalism, believed that the state governments could do things that the federal government could not.

45. See Dreisbach and Hall (2009, 426–33) and Dreisbach et al. (2009, 65–100, 248–77) on Ellsworth and Sherman; Arkin (1999) on Ames; and Dreisbach and Hall (2014) on Boudinot.

the next, that he must be bold enough to tell the whole truth" (1884, 237). In the absence of evidence, simply asserting that the Memorial and Virginia Statute influenced the men who framed and ratified the First Amendment comes perilously close to telling a falsehood. And even if evidence surfaces to show that these texts were influential in this era, telling the "whole truth" would still require consideration of more than two founders and two documents.

REFERENCES

- Alley, Robert. 1988. *The Supreme Court on Church and State*. New York: Oxford University Press.
- Amar, Akhil Reed. 2007. "Creation, Reconstruction, and Interpretation of the Bill of Rights." In *The Nature of Rights at the American Founding*, ed. Barry Alan Shain, 163–80. Charlottesville: University of Virginia Press.
- Antieau, Chester James, Arthur T. Downey, and Edward C. Roberts. 1964. *Freedom from Federal Establishment: Formation and Early History of the First Amendment Religion Clauses*. Milwaukee: Bruce.
- Appleby, Joyce, Alan Brinkley, Albert Broussard, James McPherson, and Donald Ritchie. 2005. *The American Republic since 1877*. Teacher ed. New York: Glencoe.
- Arkin, Marc M. 1999. "Regionalism and the Religion Clauses: The Contribution of Fisher Ames." *Buffalo Law Review* 47:763–828.
- Ayers, Edward L., Lewis Gould, and David Oshinsky. 2007. *American Passages*. 3rd ed. Belmont, CA: Wadsworth.
- Bailyn, Bernard. 1994. *On the Teaching and Writing of History*. Hanover, NH: Montgomery Endowment.
- Beneke, Chris. 2006. *Beyond Toleration: The Religious Origins of American Pluralism*. New York: Oxford University Press.
- Buckley, Thomas. 1977. *Church and State in Revolutionary Virginia*. Charlottesville: University of Virginia Press.
- . 2000. "The Use and Abuse of Jefferson's Statute: Separating Church and State in Nineteenth-Century Virginia." In *Religion and the New Republic: Faith in the Founding of America*, ed. James H. Hutson, 41–64. Lanham, MD: Rowman & Littlefield.
- Butler, Jon. 1990. *Awash in a Sea of Faith: Christianizing the American People*. Cambridge, MA: Harvard University Press.
- Calhoun, Daniel M. 2009. *Political Moderation in America's First Two Centuries*. New York: Cambridge University Press.
- Carter, Susan B., Scott Gartner, Michael Haines, Alan Olmstead, Richard Sutch, and Gavin Wright, eds. 2006. *Historical Statistics of the United States*. 5 vols. New York: Cambridge University Press.
- Cayton, Andrew. 1999. *America: Pathways to the Present*. New York: Prentice-Hall.
- Chadsey, Mark J. 2007. "Thomas Jefferson and the Establishment Clause." *Akron Law Review* 40:623–46.
- . 2010. "Abraham Baldwin and the Establishment Clause." *SelectedWorks*, bepress, Berkeley, CA. http://works.bepress.com/mark_chadsey/.
- Cicero, Marcus Tullius. 1884. *Cicero on Oratory and Orators*. Ed. T. S. Watson. London: Bell & Sons.

- Clark, Charles E. 2010. "Early American Journalism: News and Opinion in the Popular Press." In *A History of the Book in America: The Colonial Book in the Atlantic World*, ed. Hugh Amory and David D. Hall, 347–65. Chapel Hill: University of North Carolina Press.
- Cogan, Neil H., ed. 1997. *The Complete Bill of Rights: Drafts, Debates, Sources, and Origins*. New York: Oxford University Press.
- Corwin, Edward S. 1912. "The Pelatiah Webster Myth." *Michigan Law Review* 10: 619–26.
- . 1949. "The Supreme Court as National School Board." *Law and Contemporary Problems* 14:3–22.
- . 1951. *A Constitution of Powers in a Secular State*. Charlottesville, VA: Michie.
- Curry, Thomas J. 1987. *The First Freedoms: Church and State in America to the Passage of the First Amendment*. New York: Oxford University Press.
- Cushing, John D., ed. 1981. *First Laws of the State of Georgia*. Wilmington, DE: Glazier.
- . 1982. *First Laws of the State of Connecticut*. Wilmington, DE: Glazier.
- . 1983a. *First Laws of the State of Rhode Island*. Wilmington, DE: Glazier.
- . 1983b. *First Laws of the State of Virginia*. Wilmington, DE: Glazier.
- . 1984. *First Laws of the Commonwealth of Pennsylvania*. Wilmington, DE: Glazier.
- Davis, Derek. 2000. *Religion and the Continental Congress, 1774–1789*. New York: Oxford University Press.
- de Pauw, Linda Grant, et al., eds. 1972–2012. *Documentary History of the First Federal Congress of America*. 20 vols. Baltimore: Johns Hopkins University Press.
- Drakeman, Donald L. 2010. *Church, State, and Original Intent*. New York: Cambridge University Press.
- Dreisbach, Daniel L. 1991. "A New Perspective on Jefferson's Views on Church-State Relations: The Virginia Statute for Establishing Religious Freedom in Its Legislative Context." *American Journal of Legal History* 35:172–204.
- . 2000. "George Mason's Pursuit of Liberty in Revolutionary Virginia." *Virginia Magazine of History and Biography* 108:5–44.
- Dreisbach, Daniel L., and Mark David Hall, eds. 2009. *The Sacred Rights of Conscience: Selected Readings on Religious Liberty and Church-State Relations in the American Founding*. Indianapolis: Liberty Fund.
- , eds. 2014. *Faith and the Founders of the American Republic*. New York: Oxford University Press.
- Dreisbach, Daniel L., Mark David Hall, and Jeffry Morrison, eds. 2004. *The Founders on God and Government*. Lanham, MD: Rowman & Littlefield.
- , eds. 2009. *The Forgotten Founders on Religion and Public Life*. Notre Dame, IN: University of Notre Dame Press.
- Eckenrode, H. J. 1910. *Separation of Church and State in Virginia*. Richmond: Virginia State Library.
- Esbeck, Carl H. 2009. "Protestant Dissent and the Virginia Disestablishment, 1776–1786." *Georgetown Journal of Law and Public Policy* 7:51–103.
- Farrand, Max, ed. 1966. *The Records of the Federal Convention of 1787*. 3 vols., rev. ed. New Haven, CT: Yale University Press.
- Fischer, David Hackett. 1970. *Historians' Fallacies: Toward a Logic of Historical Thought*. New York: Harper & Row.

- Gaustad, Edwin S. 1993. *Neither King nor Prelate: Religion in the New Republic, 1776–1826*. Grand Rapids, MI: Eerdmans.
- Green, Steven K. 2010. *The Second Disestablishment: Church and State in Nineteenth Century America*. New York: Oxford University Press.
- Hall, Mark David. 2006. “Jeffersonian Walls and Madisonian Lines: The Supreme Court’s Use of History in Religion Clause Cases.” *Oregon Law Review* 85:563–614.
- . 2013. *Roger Sherman and the Creation of the American Republic*. New York: Oxford University Press.
- Hamburger, Philip. 2002. *Separation of Church and State*. Cambridge, MA: Harvard University Press.
- Harrell, David Edwin, Edwin Gaustad, John Boles, and Sally Foreman Griffith. 2005. *Unto a Good Land: A History of the American People*. Grand Rapids, MI: Eerdmans.
- Hening, William, ed. 1819–23. *The Statutes at Large: Being a Collection of All of the Laws of Virginia*. 13 vols. Richmond, VA: Cochran.
- Jefferson, Thomas. 1950. *The Papers of Thomas Jefferson*. Vol. 2, ed. Julian P. Boyd. Princeton, NJ: Princeton University Press.
- Koch, Adrienne, and William Peden, eds. 1972. *The Life and Selected Writings of Thomas Jefferson*. New York: Modern Library.
- Laycock, Douglas. 1986. “‘Nonpreferential’ Aid to Religion: A False Claim about Original Intent.” *William and Mary Law Review* 27:895–923.
- Levy, Leonard. 1972. “No Establishment of Religion: The Original Understanding.” In *Judgments: Essays on American Constitutional History*, 169–224. Chicago: Quadrangle Books.
- . 1999. *Origins of the Bill of Rights*. New Haven, CT: Yale University Press.
- Lucas, Paul. 1984. *American Odyssey, 1607–1789*. New York: Prentice-Hall.
- Madison, James. 1973. *The Papers of James Madison*. Vol. 8, ed. Robert Rutland, William Rachal, Barbara Ripel, and Fredrika Teute. Chicago: University of Chicago Press.
- Malone, Dumas. 1946. *Jefferson and His Time: Jefferson the Virginian*. New York: Little, Brown.
- Marty, Martin. 1988. “The Virginia Statute Two Hundred Years Later.” In *The Virginia Statute for Religious Freedom: Its Evolution and Consequences*, ed. Merrill D. Peterson and Robert C. Vaughan, 1–22. New York: Cambridge University Press.
- Mason, George. 1970. *The Papers of George Mason, 1725–1792*. Vol. 2, ed. Robert A. Rutland. Chapel Hill: University of North Carolina Press.
- McConnell, Michael W. 2001. “The Supreme Court’s Earliest Church-State Cases: Windows on Religious-Cultural-Political Conflict in the Early Republic.” *Tulsa Law Review* 37:7–53.
- McLoughlin, William G. 1971. *New England Dissent: The Baptists and Separation of Church and State*. 2 vols. Cambridge, MA: Harvard University Press.
- . 1973. “The Role of Religion in the Revolution.” In *Essays on the American Revolution*, ed. Stephen G. Kurtz and James H. Hutson, 197–255. Chapel Hill: University of North Carolina Press.
- Middleton, Arthur. 1954. *Anglican Virginia: The Established Church of the Old Dominion, 1607–1789*. Williamsburg, VA: Colonial Williamsburg Foundation.
- Miller, Nicholas. 2012. *The Religious Roots of the First Amendment: Dissenting Protestants and the Separation of Church and State*. New York: Oxford University Press.

- Miller, Robert T., and Ronald B. Flowers, eds. 1996. *Toward Benevolent Neutrality: Church, State, and the Supreme Court*. 5th ed., vol. 2. Waco, TX: Baylor University Press.
- Miller, William Lee. 1986. *The First Liberty: Religion and the American Republic*. New York: Knopf.
- Muñoz, Vincent Phillip. 2009. *God and the Founders: Madison, Washington, Jefferson*. New York: Cambridge University Press.
- Nelson, John K. 2001. *A Blessed Company: Parishes, Parsons, and Parishioners in Anglican Virginia, 1690–1776*. Chapel Hill: University of North Carolina Press.
- Noonan, John T. 1998. *The Lustre of Our Country: The American Experience of Religious Freedom*. Berkeley: University of California Press.
- Obama, Barack. 2010. “Presidential Proclamation—National Religious Freedom Day.” White House, Washington, DC. <http://www.whitehouse.gov/the-press-office/presidential-proclamation-religious-freedom-day>.
- . 2012. “Presidential Proclamation—National Religious Freedom Day.” White House, Washington, DC. <http://www.whitehouse.gov/the-press-office/2012/01/13/presidential-proclamation-religious-freedom-day-2012>.
- Olree, Andy G. 2008. “James Madison and Legislative Chaplains.” *Northwestern University Law Review* 102:145–221.
- Peterson, Merrill, and Robert Vaughan. 1988. “Preface.” In *The Virginia Statute for Religious Freedom: Its Evolution and Consequences*, ed. Merrill D. Peterson and Robert C. Vaughan, vii–xii. New York: Cambridge University Press.
- Pfeffer, Leo. 1974. *God, Caesar, and the Constitution*. Boston: Beacon.
- Pratt, John Webb. 1967. *Religion, Politics, and Diversity: The Church-State Theme in New York History*. Ithaca, NY: Cornell University Press.
- Price, Richard. 1994. *The Correspondence of Richard Price*. Vol. 3, ed. W. Bernard Peach and D. O. Thomas. Durham, NC: Duke University Press.
- Ragosta, John A. 2009. “Jefferson’s Statute for Establishing Religious Freedom: How We Got It, What We Did with It, and Implications for the First Amendment Debate.” Presented at the John Adams and Thomas Jefferson: Libraries, Leadership, and Legacy Conference, Charlottesville, VA, July 27. <http://www.adamsjefferson.com/papers.htm>.
- . 2010. *Wellspring of Liberty: How Virginia’s Religious Dissenters Helped Win the American Revolution and Secured Religious Liberty*. New York: Oxford University Press.
- . 2013. *Religious Freedom: Jefferson’s Legacy, America’s Creed*. Charlottesville: University of Virginia Press.
- Rasor, Paul, and Richard E. Bond. 2011. “Introduction.” In *From Jamestown to Jefferson: The Evolution of Religious Freedom in Virginia*, ed. Paul Rasor and Richard E. Bond, 1–16. Charlottesville: University of Virginia Press.
- Rutland, Robert A. 1961. *George Mason: Reluctant Statesman*. Baton Rouge: Louisiana State University Press.
- . 1962. *The Birth of the Bill of Rights*. New York: Collier.
- Sabin, Joseph, ed. 1879. *Bibliotheca Americana*. Vol. 11. New York: Sabin & Sons.
- Schwartz, Bernard, ed. 1971. *The Bill of Rights: A Documentary History*. 2 vols. New York: Chelsea House.
- Semple, Robert. 1810. *History of the Rise and Progress of the Baptists in Virginia*. Richmond, VA: Semple.

- Sheldon, Garrett Ward. 2003. *The Political Philosophy of James Madison*. Baltimore: Johns Hopkins University Press.
- Strickland, Reba Carolyn. 1939. *Religion and the State in Georgia in the Eighteenth Century*. New York: Columbia University Press.
- Strout, Cushing. 1988. "Jeffersonian Religious Liberty and American Pluralism." In *The Virginia Statute for Religious Freedom: Its Evolution and Consequences*, ed. Merrill D. Peterson and Robert C. Vaughan, 201–36. New York: Cambridge University Press.
- Swanwick, John. 1786. *Considerations on an Act of the Legislature of Virginia, Entitled an Act for the Establishment of Religious Freedom*. Philadelphia: Aitken.
- Tindall, George Brown, and David Emory Shi. 2010. *America: A Narrative History*. 8th ed. New York: Norton.
- Werline, Albert Warwick. 1948. *The Problems of Church and State in Maryland during the Seventeenth and Eighteenth Centuries*. South Lancaster, MA: College Press.