



Written by [Joe Wolverton, II, J.D.](#) on August 20, 2010

## Mosques, Magistrates, and Madison

A vituperative debate rages over the propriety of building a mosque near Ground Zero. President Obama stepped into the ring by obliquely promoting the right of Muslims to worship when, how, and where they please, even in Manhattan, even post-9/11.

The predictable parade of partisan parrots have flapped their wings and squawked the talking points on every possible outlet. The name of the speaker alone is enough to telegraph the position he will take and the keywords he will read into the record.

Avoiding playing a part in this manufactured mayhem is important to constitutionalists. As a group, they understand the inalienability of the freedom of religion, the unencumbered right to practice or not practice devotion according to the dictates of their conscience. The legal protection of this natural right is provided by the First Amendment to the Constitution, the first of the ten amendments to the Constitution known as the Bill of Rights. The influential patron of the adoption of that list of liberties (despite personally believing they were unnecessary) was none other than James Madison.

From the first days of his public career, James Madison espoused the often controversial cause of absolute religious liberty and the dis-establishment of a state religion (the Anglican Church was the official religion of the Old Dominion and was supported by compulsory contribution).

Madison was not the first to persuasively commend the freedom of religion as the palladium of liberty. As a matter of fact, it was one of Madison's primary influences in the wider sphere of government that informed much of his thinking on this subject, as well.

Long ago scholars identified the arches and loops of John Locke's fingerprint on the writings of James Madison. Evidence of this influence is often noted in Madison's espousal of Lockean liberalism in the arguments set forth in *The Federalist*, particularly *Federalist*, No. 51. The design of this article, however, is not to expose the originality of Madison's thinking; rather, it is to note how in regard to his view of religious toleration (a term Madison despised as being, as Thomas Paine said, "not the opposite of intolerance, but the counterfeit of it. Both are despotisms. The one assumes to itself the right of withholding liberty of conscience, the other of granting it.").

Underlying both works is the understanding that man is a creature of dual nature: He is a curious





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admixture of elements both spiritual and temporal. Man's dual nature demands dual allegiances, one to a religious authority and another to a civil authority. Man's duty of loyalty to God animates his observations of obedience to ecclesiastical law, while his duty of loyalty to a civil magistrate proscribes any behavior contrary to the public weal. That is to say, man, in a state of nature, enters into religious society with one goal: "the worship of God, and by means thereof, the acquisition of eternal life" (Locke); a man enters into society, however, with a different end in view, that of preserving his life, liberty, and property. Two distinct magistrates rule these two societies. God or his earthly ministers rule religious society and the King, President, or other worldly executive rules civil society.

Beyond simply advocating the clear delineation of the spheres of religious and civil authority, Madison and Locke asserted that any effort on the part of the civil magistrate to blur those frontiers was tyrannical and inimical to the cause of liberty. "The rulers who are guilty of such encroachment ... are tyrants. The people who submit to it are governed by laws made neither by themselves nor by an authority derived from them, and are slaves," Madison declared. Locke declared, "There is only one thing which gathers people into seditious commotions and that is oppression." Madison agrees and uses the experience of the American War for Independence to explain his position: "It is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of Citizens, and one of the noblest characteristics of the late Revolution. The free men of America did not wait till usurped power had strengthened itself by exercise and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle."

Madison feared that the legal establishment of the Christian religion would be but the first step toward the legal establishment of a particular sect of the Christian religion. He remembered the persecution of Baptists in his native Virginia and knew that such restriction was contrary to the principles of freedom. Madison was a Christian, but he wisely recognized that under that rubric there were numerous denominations and that oppression of one was harmful and threatening to them all. "Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects?" Madison warned.

Locke and Madison were Christians, as were their respective rulers. Not everyone subject to those rulers, however, professed this faith. Madison believed that in society all men entered on equal conditions and retained an equal right to worship according to their own consciences. "While we assert for ourselves a freedom to embrace, to profess and to observe the Religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us," Madison averred.

Madison and Locke agree that government influence always corrupts religion. Madison reviewed the history of 15 centuries of the legal establishment of religion and declared the fruits of that relationship to be: "pride and indolence in the Clergy, ignorance and servility in the laity, in both, superstition, bigotry and persecution." Locke also decried the corruption caused by the mixture of government and religion. "How happy and how great would be the fruit" if religious and secular authority could be forever separate, Locke mused. When endowed with the seal of state, "ecclesiastical men" soon supply their want of reasons with the instruments of force."

As stated above, Madison and Locke believed that men in a state of nature established government to protect "civil goods." Civil goods are described by Locke as "life, liberty, bodily health, freedom from pain, and the possession of outward things, such as lands, money, furniture, and the like." These are the



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only areas of life that the civil authority is competent to judge. Madison regarded the belief that civil magistrates are capable of deciding matters of eternal or spiritual truth as “an arrogant pretension falsified by the contradictory opinions of rulers in all ages and throughout the world.” Locke’s first consideration when setting forth the reasons why the magistrate’s power does not reach the ecclesiastical realm was the fact that God did not give authority “to one man over another as to compel anyone to his religion.” Also, no such power can be “vested in the magistrate by the people.” The civil magistrate is impotent in matters of religion.

Madison sees another problem with the mixture of religion and state being the employment of “religion as an engine of civil policy.” Madison saw any attempt to use the sword as a weapon of conversion to be “an unhallowed perversion of the means of salvation.” Men who disagree with the established religion will be kept from ever embracing its saving ordinances because they will be constant witnesses of the blood and force used in “proving” its divinity, and they will thereby be blinded to the grace, mercy, and love that form its purest expression.

Another problem that results from the use of civil power to enforce religious practices is the disquieting of society and the disharmony among the congregants of the various sects. Madison reminded the Virginia legislators, “Torrents of blood have been spilt in the old world, by vain attempts of the secular arm to extinguish religious discord by proscribing all difference in religious opinion.” Locke remarked that “it is not the diversity of opinions (which cannot be avoided), but the refusal of toleration to those that are of different opinions (which might have been granted) that has produced all the bustles and wars that have been in the Christian world upon account of religion.” Madison believed that just as a “multiplicity of interests” worked to secure civil rights in a free government, a “multiplicity of sects” would secure the right of free expression of religion. History taught Madison and Locke that societal peace and harmony waned when the civil authority attempted to shoulder the ecclesiastical mantle.

Finally, Madison and Locke agree that religious freedom is a gift of nature. “This right is in its nature an unalienable right.” Furthermore, “all men are by nature free and independent.” Man’s obligation to God preceded his obligation to civil authority, thus the civil magistrate had no natural or artificial right to divest man of nature’s endowment of the freedom to decide for oneself the best way to please God. Civil authority is unqualified to act in matters of religious importance and when they do it is the infancy of tyranny and both worlds, civil and ecclesiastical, are harmed by the encroachment and the fruits born of such intermingling are discord, sedition, and war. Therefore, despite a magistrate’s best intentions, the legal establishment of religion always diminishes that which is the end of all good government — justice.

When it comes, then, to the right or wisdom of a sect to build a house of worship, the less the civil authority intervenes in the matter, the cause of religious liberty is better served, as is the cause of He who is the Author of this and all other rights.

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