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The Theological Foundations of Religious Liberty in the Thought of John Locke and James Madison¹

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Religious liberty is an important human right supported by both religious and secular arguments. This work explores John Locke's *Letter Concerning Toleration* and James Madison's *Memorial and Remonstrance* and identifies a common theological or religious argument supporting religious liberty as the requisite means to satisfy the duties of conscience to the Creator. Since individual duty and accountability to God is a shared premise among theistic faith traditions, this approach to advancing religious liberty and religious pluralism may have broader appeal and utility to reformers in faith traditions not especially responsive to secular arguments.

Key Words: religious liberty, liberty of conscience, religious tolerance, Locke, Madison

If there is a God . . . it can be expected a priori that He wants a voluntary response born of genuine gratitude and humility themselves rooted in reflection and morally responsible choice. Seen in this light, heresy and even apostasy are morally more acceptable than any hypocritical attachment to orthodox opinion out of the fear of public sanctions.

—Shabbir Akhtar, Muslim Philosopher

At first glance, one would expect theological or religious arguments supporting religious liberty to be advanced by theologians or religious clergy, not Enlightenment thinkers such as John Locke and James Madison. Even a superficial knowledge of religious liberty in the American tradition might prompt one to identify Roger Williams, John Leland, Isaac Backus and other religious

¹ While the author was on sabbatical leave, this work was undertaken at The London School of Economics and Political Science and submitted to reviewers at that institution. Subsequently, the work was submitted to the Kentucky Political Science Association for its annual meeting in 2015.

figures as the contributors of theological or religious arguments on behalf of religious liberty in the United States. After all, religious thinkers in dissenting, minority religious traditions, often experiencing persecution by religious majorities or by government, would be expected to offer theologically grounded arguments to protect and advance their own interests. Nonetheless, both Locke and Madison advanced theologically based arguments for religious liberty that helped to alter the understanding of the church-state relationship in the West generally and to elevate the status of religious liberty that we see reflected in the religion clause of the First Amendment to the U.S. Constitution.

And why might it be important to more fully explicate the theological foundation of religious liberty as advanced by Locke and Madison? First, the prominent and significant influence of both Locke and Madison in the founding of the American republic provides greater credibility to theologically based arguments for religious liberty than would otherwise be the case if we simply examined the arguments of clergy or theologians advancing the same or similar arguments for religious liberty easily assumed to protect their religious interests. Second, there is the commonly held misconception that religion itself is suspect in advancing arguments for religious liberty and that this is instead a task primarily or exclusively for secular reasoning. As scholars associated with The Witherspoon Institute's Task Force on International Religious Freedom argue:

It is commonly argued that, in the defense of religious freedom, appeals to religion itself are somehow illegitimate. Religious freedom, it is argued, must be grounded in, and defended on the basis of, "secular" reasoning about "tolerance" or about the sheer "necessity" of having to get along with others in a pluralistic environment. Religion itself cannot supply a ground for religious freedom, for its own native inclinations are toward irrational fanaticism and coercion. And so, in this line of thinking, the last place to look for strong support for religious liberty is in the convictions and traditions of religious believers themselves.²

Unfortunately, a strictly secular approach to the grounding of religious liberty may not only undermine religious liberty itself domestically in the United States, but may also undermine the appeal of religious liberty abroad, particularly to Muslim reformers who are sympathetic to an Islamic grounding for religious liberty, but averse to a secular foundation. Ironically, recent decades have seen the increased secularization in the understanding of religious liberty in the United States, according to scholars Michael Sandel, Chris Beneke and Thomas Farr, which may work at cross-purposes to both our own historical traditions and our current national security objectives abroad. For instance, Sandel argues that a

² The Witherspoon Institute Task Force on International Religious Freedom, "Religious Freedom: Why Now? Defending an Embattled Human Right" (Princeton: The Witherspoon Institute, 2012), 32.

more secularized understanding of religious liberty has resulted in the commonly held view today that it is simply a matter of "choice" or preference rather than a freedom of "conscience."³ Similarly, Beneke argues that it is not uncommon for many Americans to employ the "market model" to view religious liberty like economic liberty and, therefore, as a utility maximizing preference.⁴ The implication of the Sandel and Beneke analyses is that a strictly secularized understanding of religious liberty makes it difficult to maintain the historically elevated status of what many have called our "first" freedom enshrined and protected by the First Amendment. If religious liberty is simply a preference or choice, it is hard to see how it maintains its status as a fundamental natural right, but instead is viewed as roughly the equivalent of a civil liberty, civil right, or even policy choice.

A neglect of the theological grounding of religious liberty also has potentially adverse consequences for U.S. national security interests. While the promotion of religious liberty abroad, particularly in repressive states, promises to introduce religious pluralism and mitigate against religious extremism, any promotion effort is seriously undermined if religious liberty is viewed strictly or even primarily as a secular value. Whether we like it or not, most of the world have been and continue to be religious rather than secular in world view. Consequently, religious arguments supporting religious liberty may have greater promise in appealing to religious and political leaders in those countries especially threatened by radical Islam. For U.S. foreign policy to be more productive, then, an effort to explore our own theological foundation to religious liberty during the American founding period may link to certain reform efforts advanced by religious and political leaders in those countries troubled by Islamist extremism today. In his book *World of Faith and Freedom*, former Director of the Office of International Religious Freedom and Georgetown University scholar Thomas Farr agrees and argues that:

[But] in its policy of promoting international religious freedom, the world's most powerful nation can do better. It can achieve more than endless discussions of persecution with foreign ministries and the rescue of a few souls in the bargain. It can attack the very structures of persecution by promoting religious liberty as it was understood by America's own founding generation . . . Our foreign policy in general, and our approach to religion and human freedom in particular, exhibit a

³ Michael Sandel, "Freedom of Conscience or Freedom of Choice." In *Articles of Faith, Articles of Peace*. Ed. James Davison Hunter and Os Guinness (Washington, DC: The Brookings Institution, 1990), 75.

⁴ Chris Beneke, "The Free Market and the Founders' Approach to Church-State Relations." *Journal of Church and State* 52 (2), 2010: 323.

dangerous disarray and confusion. We must do better. Our security and well-being depend upon it.⁵

Notwithstanding the constraints and limits of advancing American founding first principles of religious liberty throughout the world in the 21st century, the effort to rediscover and revitalize this earlier understanding of religious liberty is a reasonable one for discourse on the issue today. It seems rather unreasonable to a priori categorically reject the possibility of a contribution to informed discussion and debate on religious liberty issues, both domestically and abroad.

Although many thinkers have contributed to a theological foundation to religious liberty in Western civilization, a survey of the thought of all or even most of these thinkers is beyond the scope of this paper. Rather, we narrow our focus on two of the greatest liberal thinkers in the past several hundred years, John Locke and James Madison, and we examine the theological foundation to religious liberty found within Locke's *A Letter Concerning Toleration* (*Letter*) and Madison's *Memorial and Remonstrance* (*Memorial*), while recognizing that these two liberal thinkers also advanced powerful, non- or less-theological arguments for religious liberty as well. Those arguments, however, are beyond the scope of this inquiry.

LOCKE'S THREE ARGUMENTS

In commenting on Locke's *Letter* as a whole, Richard Vernon states that "the letter itself is an extraordinarily compact web of argumentation and plainly the result of supremely concentrated thought. Point after point is driven home."⁶ Yet, notwithstanding scholarly debates on different aspects of the *Letter*, there are several highly respected scholars who support Mark Goldie's statement that "Locke's *Letter* offers three principal arguments for toleration."⁷ Locke introduces each of the three arguments near the beginning of the *Letter* and, so, most of Locke's commentary in the *Letter* follows from this relatively brief introduction of the three core arguments. Let us, then, identify each argument found in Locke's *Letter* before proceeding to the secondary source commentary and analysis. In the *Letter*, Locke writes:

First, Because the Care of Souls is not committed to the Civil Magistrate any more than to other Men. It is not committed unto him, I say, by God; because it appears not that God has ever given any such Authority to one Man over another, as to compel any one to his Religion. Nor can any such

⁵ Thomas Farr, *World of Faith and Freedom* (New York: Oxford University Press, 2008), x-xi.

⁶ Richard Vernon, *The Career of Toleration* (London: McGill-Queen's University Press, 1997), 9.

⁷ Mark Goldie, "Introduction." In *A Letter Concerning Toleration and Other Writings*. Ed. Mark Goldie (Indianapolis: Liberty Fund, 2010), xii.

power be vested in the Magistrate by the Consent of the People; because no man can so far abandon the care of his own Salvation, as blindly to leave it to the choice of any other, whether Prince or Subject, to prescribe to him what Faith or Worship he shall embrace (emphasis mine).⁸

In the second place. The care of Souls cannot belong to the Civil Magistrate, because his Power consists only in outward force: But true and saving Religion consists in the inward persuasion of the Mind; without which nothing can be acceptable to God. And such is the nature of the Understanding, that it cannot be compell'd to the belief of anything by outward Force.⁹

In the third place. The care of the Salvation of Mens Souls cannot belong to the Magistrate; because, though the rigour of Laws and the force of penalties were capable to convince and change Mens minds, yet would not that help at all to the Salvation of their Souls. For there being but one Truth, one way to heaven; what hope is there that more Men would be led into it, if they had no other Rule to follow but the Religion of the Court; and were put under a necessity to quit the Light of their own Reason; to oppose the Dictates of their own Consciences; and blindly to resign up themselves to the Will of their Governors, and to the Religion, which either Ignorance, Ambition, or Superstition had chanced to establish in the Countries where they were born? . . . Men would owe their eternal Happiness or Misery to the places of their Nativity.¹⁰

These three powerful arguments, deployed by Locke with his anonymous publication of the *Letter* in 1689, have not only greatly influenced discourse on the church—state relationship in Great Britain since the 17th century, but discourse on the church—state relationship in Western civilization more generally, and the understanding of religious toleration and liberty more specifically. Moreover, these three related, yet distinctive arguments for religious toleration have generated a substantial secondary literature assessing and analyzing each of the three arguments and, in some cases, linking Locke's arguments for religious toleration to religious liberty or liberty of conscience. This literature is quite vast and dense, but a piece of it is quite relevant to our current discussion. That is to say, one major divide in the secondary scholarship on Locke's *Letter* appears in the treatment of the first and second arguments. For instance, Jeremy Waldron argues that the core of Locke's case is found in the *Letter*'s second argument on the irrationality and ineffectiveness of employing government coercion in the regulation of religious belief. In Waldron's view, Locke's second argument, although primary to Locke's case, is

⁸ John Locke, *A Letter Concerning Toleration* [1689]. In *A Letter Concerning Toleration and Other Writings*. Ed. Mark Goldie (Indianapolis: Liberty Fund, 2010), 13.

⁹ *Ibid.*

¹⁰ *Ibid.*, 14-15.

quite weak.¹¹ On the other hand, David Wootton rejects Waldron's position and argues instead that the key to Locke's case is found within the *Letter's* first argument. Wootton says:

I have tried to show that Proast and Waldron miss the heart of Locke's case, which is not about the ineffectiveness of persecution, nor (as Waldron thinks it should be) about the moral evils of intolerance or the pathetic fate of the victims of persecution. *Locke's central claim is that there are certain decisions that it is irrational, and perhaps impossible, to allow others to make on our behalf* (emphasis mine).¹²

And, so, for Wootton, Locke's central claim should be understood in terms of the first argument rather than the second. Interestingly, the first [and third] arguments are directed toward subjects and are more theological or religious in nature, while the second argument is directed toward rulers and is more political. Wootton's analysis intimates at this distinction when he states that "the first argument is not about what is rational for rulers, but what is rational for subjects. It is not rational for subjects to hand over to their rulers [the] responsibility for deciding what they should believe."¹³ This responsibility or duty to personal religious belief is so important and so intrinsic to the human person that both Locke and Madison will argue for its fundamental non-alienability or non-delegation. On the ultimate questions in life pertaining to one's accountability to God, it is up to each person to decide regardless of time and place; Locke's first argument in the *Letter* is advanced as a trans-historical theological principle requiring religious liberty. Madison's *Memorial* will advance the same claim.

LOCKE'S THEOLOGICAL FOUNDATION IN THE *LETTER'S* FIRST ARGUMENT

When we look to the entire *Letter*, we find that Locke advances the first argument throughout the text by both repeating the argument and emphasizing its importance. Often, Locke employs the word "care" in describing the individual's responsibility or duty to his soul before God. Naturally, the word "care" would be appropriately and logically employed by Locke, the physician, who would advise on caring for the whole person, both body and soul. For instance, Locke says "the *care* of each man's salvation belongs only to himself";¹⁴ or, again, "the *care* of each man's soul, and of the things of heaven, which neither

¹¹ Jeremy Waldron, "Locke: Toleration and the Rationality of Persecution." In *John Locke—A Letter Concerning Toleration in Focus*. Ed. John Horton and Susan Mendus (London: Routledge, 1991), 100.

¹² David Wootton, "Introduction." In *Political Writings of John Locke*. Ed. David Wootton (London: Penguin Books, 1993), 104.

¹³ *Ibid.*, 99.

¹⁴ John Locke, *A Letter Concerning Toleration* [1689]. In *A Letter Concerning Toleration and Other Writings*. Ed. Mark Goldie (Indianapolis: Liberty Fund, 2010), 46.

does belong to the Commonwealth, nor can be subjected to it, is left entirely to every man's self";¹⁵ and, again, "the principal and chief *care* of every one ought to be of his own soul first, and in the next place of the public peace."¹⁶ Perhaps Locke's strongest statement, buttressing his first argument in the *Letter*, is when he develops a more extended theological argument that:

Every man has an immortal soul, capable of eternal happiness or misery; whose happiness depending upon his believing and doing those things in this life, which are necessary to the obtaining of God's favor, and are prescribed by God to that end; it follows from thence, first, that the observance of these things is the *highest obligation* that lies upon mankind, and that our *utmost care, application, and diligence* ought to be exercised in the search and performance of them; because there is nothing in this world that is of any consideration in comparison with eternity.¹⁷

These preceding quotes from Locke are not exhaustive, but illustrative of the importance he places on the first argument of the *Letter*. By implication, then, the third and subordinate argument of the *Letter* derives significant importance for the individual in ensuring that he or she assumes the care or duty for "obtaining God's favor" rather than leaving this most important endeavor to the capriciousness of civil rule.

Locke's frequent use of the word "care" is applied to "each man" or to "every man" or to "everyone." This suggests that each person has an *equal* duty or obligation to care for his or her own soul before God. And, again, as Locke says, "Every man has an immortal soul, capable of eternal happiness or misery; whose happiness [depends] upon his believing *and doing* those things in this life, which are necessary to the obtaining of God's favor, and are prescribed by God to that end."¹⁸ According to Locke, each person has an equal duty to not only pursue God's favor with the right beliefs, but an equal duty to *do* those things in this life that bring God's favor. This, the most important of human duties according to Locke, cannot be satisfied without some measure of individual liberty. Therefore, Locke's first argument strongly implies some measure of equal liberty in order to satisfy the duty each person has to God.

Locke's *Second Treatise* may be instructive here, since we find Locke's views on equality very consistent in this work with what Locke states about equal duty to God in the *Letter*. For instance, in the second chapter of the *Second Treatise*, Locke's discussion of natural human equality and God's sustained property interest in human beings suggests each person's equal duty to God. This would be clearly consistent with Locke's first argument in the *Letter*. Locke writes in the *Second Treatise*: "For men being all the workmanship of one omnipotent, and

¹⁵ *Ibid.* 48.

¹⁶ *Ibid.*, 49.

¹⁷ *Ibid.*, 45.

¹⁸ *Ibid.*

infinitely wise maker; all the servants of one sovereign master, sent into the world by his order, and about his business, *they are his property*, whose workmanship they are, made to last during his, not one another's pleasure."¹⁹ Since God retains a property interest in each person, each person must exercise stewardship rather than complete ownership over his or her person. And a major stewardship duty, according to Locke, is to *preserve* oneself.²⁰ This language in the *Second Treatise* is very similar to and compatible with Locke's first argument in the *Letter*. That is, Locke's understanding in the *Second Treatise* of the natural duty to preserve oneself can be broadly understood as the preservation of both body and soul, especially since Locke understands the whole person as consisting of both body and soul. Locke's first argument in the *Letter*, then, on the individual person's unalienable duty to exercise care over his soul is clearly consistent with the injunction to preserve oneself as it is found in the *Second Treatise*. Further, the individual duty to God for the "care" or the preservation of oneself, which is a foundational argument in both the *Letter* and the *Second Treatise*, is recognized by Paul Kelly as an important component in Locke's view of human morality. Kelly writes: "the significance of abstract reasoning [in humans] is that it enables each person to understand themselves as a part of the created order and from this they can reason to their obligation to preserve that order including [*themselves and*] other moral equals as part of the basic moral obligation we have to God."²¹ Similarly, in Kelly's commentary on private property and, more specifically, self-ownership found in Locke's *Second Treatise*, Kelly writes: "Locke argues that we are moral equals who enjoy rights against one another because ultimately we are part of the created order and are therefore the property of God. Because we are already the property of someone else we may not kill ourselves and we have a *duty to preserve ourselves and all others like us*, where doing so is not incompatible with our self-preservation."²² This duty to "care" or "preserve" oneself is the foundation for the natural rights of life, liberty and property Locke specifies in the *Second Treatise*. Similarly, one can argue that out of Locke's first argument in the *Letter*, emphasizing the equal, individual duty to care for the soul, is derived some measure of equal liberty to accomplish the task. Although Locke is not explicitly arguing for a natural right to religious liberty, it clearly appears to be implied and latent within his first argument of the *Letter*.

Yet, this linkage between religious duty and religious liberty in Locke's first argument of the *Letter* has not been apparent to some scholars. For instance, in her work "Locke: Toleration, Morality and Rationality," Susan Mendus observes

¹⁹ John Locke, *Second Treatise of Government* [1689]. Ed. Richard Cox (Arlington Heights: Harlan Davidson, 1982), 4.

²⁰ *Ibid.*

²¹ Paul Kelly, *Locke's Second Treatise of Government* (London: Continuum International Publishing Group, 2007), 33.

²² *Ibid.*, 65.

that "Locke, of course, is no stranger to the notion of individual rights, but in the *Letter on Toleration* he concentrates exclusively on the obligations of the magistrates and says little about the rights of the tolerated. Indeed, as has been mentioned already, the *Letter* contains no general argument for a right to freedom of worship at all."²³ Further, as she concludes her argument, Mendus writes that "this, I believe, is a difficulty which lies at the heart of Locke's discussion of toleration: there is no general right to freedom of worship, but still there is something very wrong with religious persecution."²⁴ Perhaps it is because Mendus, like Proast and Waldron, is inclined to focus on Locke's second argument in the *Letter* that she has very little to say about the first argument. In any case, although it is true that Locke does not argue explicitly for religious liberty in the *Letter*, he does argue explicitly for the individual's duty to care for his soul—and this duty implies some measure of liberty for the duty to be satisfied.

Paul Kelly argues along similar lines in his work "John Locke: Authority, Conscience and Religious Toleration." In this work, Kelly advances the notion that for Locke "the problem of toleration arose from the problem of reconciling Christian liberty of conscience with the authority of the sovereign legislator."²⁵ However, this issue of reconciliation was not confined simply to the *Letter*, but rather was the foundational conceptual framework running through Locke's early and mature works on religious and civil issues, especially the *Two Tracts on Government*, the "Essay on Toleration," and the *Letter on Toleration*. Although acknowledging that the policy prescriptions varied across these works spanning about twenty-five years, the theoretical structure of the argument remained the same. Kelly writes: "This essay [Kelly's] is intended to redirect attention from the policy prescriptions of these works to the form of argument within which these policy prescriptions arose. In this way it can be shown that there is not a fundamental change of argument and philosophical purpose between the early and the later writings on the relationship between the Christian liberty of conscience and the sovereign authority of the civil magistrate."²⁶ This conceptual framework was obviously informed by Locke's Puritan faith tradition, particularly the tradition's elevation of "liberty of conscience" and its potential for dissent. Of course, this was even more fundamentally based upon the effects of the Protestant Reformation in which, Kelly writes, "The Protestant emphasis on *individual responsibility* for salvation created the conditions within which the

²³ Susan Mendus, "Locke: Toleration, Morality and Rationality." In *John Locke—A Letter Concerning Toleration in Focus*. Ed. John Horton and Susan Mendus (London: Routledge, 1991), 159.

²⁴ *Ibid.*, 160.

²⁵ Paul Kelly, "John Locke: Authority, Conscience and Religious Toleration." In *John Locke—A Letter Concerning Toleration in Focus*. Ed. John Horton and Susan Mendus (London: Routledge, 1991), 128.

²⁶ *Ibid.*, 127.

individual conscience became the standard for determining the religious and ethical requirements of salvation.²⁷ Within the preceding statement, individual responsibility (or duty) and individual conscience (requiring liberty) are joined together with profound implications for civil authority. Kelly captures this when he writes “the magistrate’s task is not the imposition of a uniformity of belief and worship, but the creation of the conditions within which individuals can seek their own salvation in peace. *This argument reappears throughout Locke’s writings on the relationship between Christian liberty of conscience and the civil authority.*”²⁸ Of course, Locke believes that it is a duty or responsibility for the individual to seek his or her salvation and it is out of this foundational duty that a “Christian liberty of conscience” is derived and which Kelly finds throughout Locke’s writings. Further, as Kelly ties the *Letter* to Locke’s earlier works, Kelly writes that “as in the earlier works, Locke argued that the magistrate had no concern with the salvation of his subjects, *because the responsibility for salvation is placed on each individual and it is inalienable.*”²⁹ This is the first argument advanced in the *Letter*, in which an individual’s inalienable duty requires a “Christian liberty of conscience” for its satisfaction. And, as I have suggested earlier, Locke strongly intimates in the *Letter* that this is an equal duty implying an equal liberty.

Consequently, where Mendus and others see a disconnect between Locke’s case for toleration and modern religious rights or liberty, Kelly sees a conceptual framework based upon a theology of liberty of conscience that fits squarely with Locke’s first argument.

MADISON’S THEOLOGICAL FOUNDATION IN *MEMORIAL AND REMONSTRANCE*

Two of the greatest American founders championing religious liberty were Thomas Jefferson and James Madison, both from Virginia. And where Jefferson’s arguments for religious liberty can at times be understood to represent a break with Locke’s *Letter*,³⁰ Madison’s *Memorial* (1785) reflects a common theological foundation with important elements of Locke’s *Letter*. When we actually compare the two documents, separated in publication dates

²⁷ Ibid., 129-30.

²⁸ Ibid., 136.

²⁹ Ibid., 142.

³⁰ See Daniel Palm’s argument in *Religious Toleration and Religious Liberty at the Founding* “that Jefferson understood the American founding as having taken the decisive step away from Lockean toleration and toward religious freedom . . .” (p. 35). Since Palm’s purpose in writing is to warn his reading audience not to conflate the concepts of religious toleration with religious liberty, he neglects to explore continuities such as common arguments employed in Locke’s *Letter* and Madison’s *Memorial*.

by almost one century, we find important theological arguments for religious liberty sharing common ground.

Let us, then, turn to Madison’s *Memorial*. In response to Patrick Henry’s proposal in the Virginia legislature to apply government assessments for the funding of Christian clergy, Madison opposed the Henry proposal with his fifteen point *Memorial and Remonstrance*. At a general level, Vincent Munoz has observed that the *Memorial* “consists of 15 articles. Each article is written as if to stand alone, but there is an obvious sequence. Articles 1 through 4 argue from principle [and] articles 5 through 14 offer pragmatic reasons for defeating Henry’s proposed assessment. Article 15 returns to the principle articulated in article 1. Madison sets forth his doctrine of religious liberty in the first article.”³¹ It bears repeating, as Munoz has noted, that “there is an obvious sequence” in the *Memorial* with the special importance of article 1 in articulating Madison’s core doctrine of religious liberty. Article 1 of the *Memorial* reads, in part:

*Because we hold it for a fundamental and undeniable truth, 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. The religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable; because the opinions of men, depending only on the evidence contemplated by their own minds, cannot follow the dictates of other men: It is unalienable also, because what is here a right towards men, is a duty towards the Creator. It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to him. This duty is precedent both in order of time and degree of obligation, to the claims of Civil Society. Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governor of the Universe . . .*³²

Again, if we return to Locke’s first argument in the *Letter*, we read, in part:

Because the Care of Souls is not committed to the Civil Magistrate any more than to other Men. It is not committed unto him, I say, by God; because it appears not that God has ever given any such Authority to one Man over another, as to compel any one to his Religion. Nor can any such Power be vested in the Magistrate by the consent of the people; because no man can so far abandon the care of his own Salvation, as blindly to leave it to the choice of any other, whether Prince or Subject, to prescribe to him what Faith or Worship he shall embrace. For no Man can, if he would, conform his Faith to the Dictates, of another. All the Life and

³¹ Vincent Munoz, “James Madison’s Principle of Religious Liberty.” *The American Political Science Review* 97 (1), 2003: 21.

³² James Madison, *Memorial and Remonstrance Against Religious Assessments* [1785]. In *The Mind of the Founder: Sources of the Political Thought of James Madison*. Ed. Marvin Meyers (New York: The Bobbs-Merrill Company, 1973), 9.

Power of true Religion consists in the inward and full persuasion of the mind . . .³³

As we compare these arguments, we find several linkages. First, both arguments are fundamentally religious or theological in nature rather than political. The arguments obviously have political implications, however, and both share in being directed at the individual subject's or citizen's relationship with God, rather than directed toward rulers on the issue. Wootton made this same observation in his commentary on Locke's *Letter* noted earlier, but it also applies to Madison's *Memorial*. Second, not only in Locke's first argument, but throughout the *Letter* as I reviewed earlier, Locke speaks of the importance of "caring" for one's soul. Locke clearly sees this as a fundamentally important individual duty, arguably the most important individual duty, similarly reflected in Madison's first sentence in the *Memorial* referring to "the duty which we owe to our Creator and the Manner of discharging it . . ." So, both Locke and Madison begin their arguments with the duty owed to the Creator: Locke then advances an argument for religious toleration with implied religious liberty and Madison advances an explicit argument for religious liberty. However, both arguments are premised on the individual's duty owed to God.

Third, both arguments advance the notion that this individual duty is unalienable. Locke says "because no man can so far abandon the *care* (or duty) of his own Salvation, as blindly to leave it to the choice of any other, whether Prince or Subject . . ." while Madison says "It is unalienable also, because what is here a right towards men, is a *duty* towards the Creator." Consequently, both Locke and Madison agree in building their respective arguments that the individual duty owed God is an unalienable one. This obviously implies some modicum level of space for individual conscience and points to the broader framework of authority and conscience developed by Kelly in his commentary on Locke's works. It appears that this same framework can accommodate Madison's *Memorial*. That is, as I have suggested earlier, it is Madison's greater use and creative deployment of the liberal value of *equality* that allows him to explicitly argue for religious liberty in his *Memorial*. More specifically, we find Madison elucidating the importance of individual equality to religious liberty in his 4th article of the *Memorial*.

Madison writes: "If all men are by nature equally free and independent, all men are to be considered as entering into Society on equal conditions; as relinquishing no more, and therefore retaining no less, one than another, of their natural rights. *Above all are they to be considered as retaining an equal title to the free*

³³ John Locke, *A Letter Concerning Toleration* [1689]. In *A Letter Concerning Toleration and Other Writings*. Ed. Mark Goldie (Indianapolis: Liberty Fund, 2010), 13.

exercise of Religion according to the dictates of conscience."³⁴ Further, Madison argues in the same article that "as the Bill violates equality by subjecting some to peculiar burdens; so it violates the same principle, by granting to others peculiar exemptions."³⁵

We clearly see with this language Madison invoking the natural, pre-political principle of equality as an important foundation to religious liberty. More specifically, Madison is clearly applying principles found in the *Second Treatise*, such as natural equality and natural rights, to derive a natural right to religious liberty based upon the individual's unalienable duty to the Creator. In essence, Madison logically extends and makes explicit the latent, background value of equality found in the *Letter*. However, Madison's introduction of natural equality and religious liberty as a natural right in his *Memorial* is built upon the premise of one's unalienable duty to God found also in the first argument of Locke's *Letter*. And this common theological foundation presents a compelling argument that the theological arguments for religious liberty found in Madison's *Memorial* and Locke's *Letter* continue to have an important place in contemporary American religious, political and legal discourse.

CONCLUSION

It may come as a surprise to many that two of the greatest liberal Enlightenment thinkers in the modern period who helped shape the values and institutions of America deployed theological arguments to advance the cause of religious liberty. After all, we might hear some say, "Don't we have separation of church and state?" And isn't that separation clearly in the Lockean and Madisonian traditions? Well . . ., in fact, writing nearly a century apart from one another to different audiences and for different immediate purposes, Locke and Madison nonetheless advanced a common theological argument grounded in one's personal responsibility to the Creator as the basis for religious liberty. Admittedly, this is not the only grounding to religious liberty, but it is an important one requiring our attention. There are those who, in fact, argue that the human search for transcendence and ultimate reality is natural to the human condition and reflects both religious and philosophical inquiry. If this is true, and the historical record strongly suggests that it is true, then theological arguments for religious liberty in the Western tradition may have broader relevance throughout the world.

This is particularly evident with Locke's and Madison's "theological minimalism" and their simple claim that a person's inalienable duty to God requires liberty to satisfy the duty. This individual duty suggests individual

³⁴ James Madison, *Memorial and Remonstrance Against Religious Assessments* [1785]. In *The Mind of the Founder: Sources of the Political Thought of James Madison*. Ed. Marvin Meyers (New York: The Bobbs-Merrill Company, 1973), 10-11.

³⁵ *Ibid.*, 11.

accountability—and this is the foundational link to promoting religious liberty in each of the world's theistic faith traditions. That is, in each theistic faith tradition the individual's duty and ultimate accountability to God is supremely important. Locke and Madison agree with this premise and logically extend the argument to include the individual's liberty to satisfy the duties of conscience and sense of accountability to God. And perhaps similar to Martin Luther's appeal to conscience five hundred years ago, Islamic religious and political reformers today may be able to use these concepts and arguments to advance individual religious liberty and thereby undermine and diminish religious extremism.

Of course, a reasonable and modest claim, and the one made in this paper, is that the understanding of religious liberty at the American founding should simply be part of the current discourse on domestic and international religious issues. This includes the theological arguments for religious liberty advanced by John Locke and James Madison. And, of course, no one is suggesting that the Locke and Madison arguments reviewed here offer a "silver bullet" to the very difficult problems of religious repression throughout the world today. However, it is difficult to know in advance how religious and political leaders, especially reformers, from different traditions might respond to American founding arguments. It is also difficult to know in advance how Americans might respond to a rediscovery of their own first principles. So, with hope and optimism that a positive contribution can be made to human flourishing in the world today, let the conversation begin.

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