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Liberty above All Liberties

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"I never will, by word or act, bow to the shrine of intolerance, or admit a right of inquiry into the religious opinions of others."

—Jefferson.

"Give me," said John Milton, "the liberty to know, to utter and to argue freely according to conscience, above all liberties."

John Stuart Mill affirmed that the appropriate region of human liberty comprised among other things "The inward domain of consciousness; demanding liberty of thought and feeling; absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral or theological."

If a comparison in importance of these subjects were justified, then certainly freedom of opinion on moral and theological subjects is most important. Such was the opinion of Thomas Jefferson, expressed in the ripeness of years and wisdom. He directed that on his tomb stone should be inscribed these words:

Here was Buried
Thomas Jefferson,
Author
Of the Declaration of
American Independence
of
The Statute of Virginia
For Religious Freedom and
Father of the University
of Virginia.

In this age of comparatively universal recognition of the legal equality of all religions and of their free exercise, we are prone to forget the battles fought, the blood spilt, and the lives lost in the struggles by which such liberty has been attained.

The conflicts which have raged have been for more than mere toleration, which is odious. They have been for absolute equality of all religions before the law, but such equality is only possible where there is full and complete separation of the civil from the ecclesiastical authority.
The separation of Church and State was best delineated, perhaps, by Jefferson in the preamble of the Virginia Statute for Religious Freedom, wherein he asserted "that to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous fallacy, which at once destroys all religious liberty," and declared "that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break into overt acts against peace and good order."

An adequate comprehension of religious liberty in our own land cannot be realized unless we have some knowledge of the progress of that freedom in other countries, prior to and contemporaneous with the founding of the original colonies.

Whatever prehistoric man must have been, we know fairly well what degrees of tolerance existed among ancient historical peoples. While intolerance was not confined to theological differences, the real spirit of intolerance is expressed in an order of the prophet, Samuel, to Saul, the King, and in the subsequent conduct of the prophet.

"Now, go," said Samuel, "and smite Amalek, and utterly destroy all that they have, and spare them not; but slay both man and woman, infant and suckling, ox and sheep, camel and ass."

This cruel command was not strictly obeyed by Saul, who saved the King of the Amalekties alive and brought him back to camp, and then the prophet of Israel "hewed Agag in pieces before the Lord in Gilgal".

The Greeks of classic times were no exception to the almost universal sway of intolerance. Athens had a complete inquisition. Accusations of impiety were numerous. Describing this period Renan says:

"Not only philosophic heresies, such as the denial of a God or of a Providence, but the slightest infractions of the rules of municipal worship, the preaching of foreign religions, and the most puerile departures from the absurdly strict legislation concerning the mysteries, were crimes punishable by death."

Death was the penalty exacted of Socrates who was tried and convicted for impiety. Aristotle and Euripides and many other famous Greeks did not escape the bitterness of persecution.
Centuries later, under Roman rule liberty of thought existed in Greece.

In Athens, amidst general idolatry, Jews worshipped freely in their synagogue. St. Paul was given an unrestrained and respectful hearing on Mar’s Hill. An altar was dedicated “To The Unknown God”. “All the Athenians and strangers which were there spent their time in nothing else but either to tell or to hear some new thing.” The thirst for knowledge opened their intellects to all opinions.

Christianity spread and became predominant in the Roman Empire, “because the persecutions of which we have heard much were only occasional, lasting but a short time, and separated by long intervals of almost undisturbed propagandism.” (Mills Liberty.)

In Apostolic times no Roman legislation prohibited freedom of thought and the profession of monotheistic creeds. The systematic persecutions against both Jews and Christians were instigated and conducted in the belief that the persecuted were intolerant and hostile towards other sects and a least impliedly denied the authority of the state. “In a word,” says Renan, “the only phase of religious belief against which the Roman empire declared war was theocracy.”

The Emperor, Constantine, in the Edict of Milan, promulgated in 313 A.D., granted “both to Christians and to all others free power of following whatever religion each may have preferred. . . . . . . The absolute power is to be denied to no one to give himself either to the worship of the Christians, or to that religion which he thinks most suited to himself.”

This edict proved to be, however, but a candle and not a star of religious freedom. It was soon suppressed and mankind struggled on for 1500 years before so broad a statute was again enacted.

So sanguine were the conflicts of those years that Voltaire estimated that nearly 10,000,000 people had been sacrificed on the altar of intolerance.

Christianity was carried to Japan by the Portuguese in 1542. It rapidly increased and attained an estimated 300,000 of communicants. A period of persecution came; great numbers were slain; tortures no less horrible and fiendish than those of Christian Europe were inflicted upon persons who persisted in the Faith.
In the face of such cruelties, some fled the country, others recanted and after the final persecution of 1638, Christianity was practically extirpated and for two centuries did not exist in the land of cherry blossoms.

An imperial edict was promulgated which reads: “So long as the sun warms the earth, let no Christian be so bold as to come to Japan, and let all know that if King Phillip himself, or even the very God of the Christians, or the great Buddha contravenes this prohibition, they shall pay for it with their heads.”

This exterminating effect of persecution in Japan is but one of many instances which could be cited to refute the agreeable falsehood so often heard and widely believed that truth always triumphs over error. “Persecution has always succeeded,” said John Stuart Mill, “save where the heretics were too strong a party to be effectually persecuted.”

France was in almost continual religious conflict from 1562 to 1628. It has been said, all too truly, that “both parties displayed a ferocity of disposition more befitting pagans than Christians.” . . . . “Sieges, battles and truces followed one another in rapid and confusing succession. Conspiracies, treacheries and assassinations helped to fill up the dreary record of the period.”

The climax of this fratricidal strife was the Massacre of St. Bartholomew’s Day (August 24, 1572) in which the number of Huguenot victims throughout France was in excess of 20,000. The struggle finally ended with the annihilation of the political power of the French Protestants, although they saved for themselves practical freedom of worship.

The Thirty Years’ War (1618-1648) was chiefly a contest between the German Protestants and Catholics. When the struggle began, the population of the country was thirty million; when it ended, twelve million. Cities were reduced to shells, everywhere were the charred remains of palace and hovels. Commerce was almost destroyed, some trades and industries were swept out of existence. It is said that “In character, in intelligence, and in morality the German people were set back two hundred years.” The war was ended by the Treaty of Westphalia, which provided that every prince was to have the right to make his religion the religion of his people, and to banish all who refused to adopt the established creed.
It is estimated that in the sixteenth century seventy-five thousand persons perished in the Netherlands as the result of religious differences, but Holland learned its lesson and by the early part of the seventeenth century had established at least a semblance of religious freedom. It gained thereby the contempt and disgust of many contemporaries. The criticisms made were: “all strange religions flock thither,” . . . it is “a common harbour of all heresies,” a “cage of unclean birds,” “the great mingle-mangle of religion.”

This island of tolerance in a sea of persecution afforded the Pilgrim Fathers a temporary refuge immediately prior to the founding of the colony at Plymouth Rock.

The ancestral home of much American blood, and most of our legal concepts, has a record of intolerance far from enviable. In the two centuries ending with the reign of James I, four hundred persons were burned at the stake for conscience sake.

An old pamphlet of the late sixteenth century described the treatment accorded Separatists in the time of Elizabeth:

“At length they catcht one of them alone, but they kickt him so vehemently as if they meant to beat him into a jelly. It is ambiguous whether they have kil’d him or no, but for certainty they did knock him about as if they meant to pull him to pieces. I confess it had been no matter if they had beaten the whole tribe in the like manner.”

The good Queen did not hesitate when her assertion of ecclesiastical authority was challenged by two leaders of the Separatists to send them to the gallows. Shakespeare reflected the prevalent thought of his day. He makes Bassanio, pondering over Portia’s caskets, say:

“In religion
What damned error but some sober brow
Will bless it, and approve it with a text,
Hiding the grossness with fair armament?”

King James, at a conference of Puritan clergymen, said of the Presbyterians and other non-conformists: “I will make them conform or I will harry them out of the land.”

Milton, who was far advanced in his day, had some glimmering of true tolerance. He wrote:

“Yet, if all cannot be of one mind, as who looks they should
be? This doubtless is more wholesome, more prudent, and more Christian that many be tolerated, rather than all be compelled.”

Observe, however, what limitations he placed upon the exercise of tolerance:

“I mean not tolerated popery, and open superstition, which as it extirpates all religious and civil supremacies, so itself should be extirpated, provided first that all charitable and compassionate means be used to win and regain the weak and misled; that also which is impious or evil absolutely either against faith or manners no law can possibly permit; that intends not to unlaw itself, but those neighboring differences, or rather indifferences, are what I speak of, whether in some point of doctrine or of discipline, which though they may be many, yet need not interrupt the unity of spirit if we could but find among us the bond of peace.”

An Act of Parliament passed in 1675 provided that none but those who received Communion according to the rites of the Episcopal Church could hold public office in England. By virtue of this and similar legislation Catholics were not admitted to Parliament until 1828, and Jews, not until 1858. Even now the Lord Chancellor must be a Protestant.

Having thus briefly reviewed conditions in the European countries from which came the vast majority of the colonists who early ventured to our shores, we need not be astonished to find in American colonies similar ideas and practices relative to religious freedom.

Massachusetts, founded by Puritans; Rhode Island, settled by Baptists and other dissenters; Maryland, first refuge of Catholics; and Virginia, the home of Cavaliers and the Church of England, furnish us with sufficiently characteristic historical data to give a comprehensive view of the entire thirteen colonies from their establishment to the Revolution.

The Puritans who formed the Massachusetts Bay Colony fled from England to avoid persecution and the tyranny of an established church. We might have expected to find them Good Samaritans to the cause of freedom of conscience. Such was not their attitude. This corner of the continent, said they, is ours. If others come to it who want a different religion and different kind of government, we give them full liberty—to move on.
The Puritans established an intolerant theocracy under the dominance of the Clergy. In this narrow oligarchy the political order was determined according to a rigid interpretation of theology. "The sins of believers were to be punished by civil authority." A rigid scrutiny of individual lives and habits was indulged in, which was hardly in accord with democracy or personal liberty and resulted in driving from the colony many of its best men.

The franchise was limited to church members which debarred five-sixths of the population from voting and holding office. Immediately upon the formation of the first Congregational Church in Massachusetts, John Endicott sent back to England two members of the Salem group, who attempted to set up a separate church in conformity with Episcopal models. The principle was virtually laid down that the Episcopal form of worship would not be tolerated in the colony.

In 1637 eighty were adjudged heretics, disarmed and banished. Seven years later the Baptists became the objects of the relentless vigilance of the Puritans who solemnly and ominously enacted:

"It is ordered and agreed that if any person or persons within this jurisdiction shall either openly condemn or oppose the baptizing of infants, or go about secretly to seduce others from the approbation or use thereof, or shall purposely depart the congregation at the administration of the ordinance, . . . . and shall appear to the court wilfully and obstinately to continue therein after due time and means of conviction, every such person or persons shall be sentenced to banishment."

Three years thereafter a similar law was passed which banished Jesuits and Romish priests and threatened them with death if they should return.

The "noble sect of Quakers" was condemned even before any of its members reached the colony. Quaker books were burned in 1654; two years later the first comers of the sect were shipped away; shipowners were fined one hundred pounds for bringing them to the colony; any of the colonists who ventured the third time to defend the opinion of the Friends were forthwith expelled.

The Quakers insisted upon the absolute right of private judgment; and refused to attend church, to pay tithes and to
render military service. They steadfastly asserted that there should be no distinction between clergy and laity. They were accordingly regarded by the dominant group as infidels and blasphemers. They were scourged in Plymouth, branded in New Haven, flogged at cart’s tail on Long Island and chained to wheelbarrows at New Amsterdam. In Massachusetts thirty were whipped, fined and imprisoned; twenty-two banished on pain of death, three had their right ears cut off, some were branded, and four were executed. Each of the persons executed had returned from banishment. One of them was a woman, Mary Dyer, who was spared after being taken to the scaffold in 1659 and again banished. But her conscience troubled her and she returned in 1660 in violation of her sentence of banishment and was hung.

These outrages aroused popular indignation. The law was modified and no more people were executed in Massachusetts for matters of religious conviction. However, in 1661 King Charles II sent a message to the colony which in part stated: “That if there were any of those people called Quakers amongst them, now already condemned to suffer death or other corporal punishment, or if they were imprisoned and obnoxious to the like condemnation, they were to forbear to proceed any further therein and should send such persons to England for trial.”

Needless to say, these royal directions were not complied with.

It is not necessary for the present purpose to investigate claimed justifications for the gruesome story just related. It suffices to recite the facts. However, it has been asserted that self-preservation demanded the course pursued. “Only an iron discipline, it is said, that knew neither charity nor tolerance could have successfully resisted the attacks on the standing order.” Palfrey says that as Massachusetts became more powerful she grew confident enough to relax or abolish the restrictions on dissentients. He also declares:

“But seldom have enthusiasts been more coarse, more unfriendly, more wild and annoying than the early Friends. It seemed to be their ‘very stuff of the conscience’ to make trouble and give offence.”

And the writer suggests that:

“They should not have put them to death. Sooner than put
them to death, it were devoutly to be wished that the annoyed dwellers in Massachusetts had opened their hospitable drawing rooms to naked women, and suffered their ministers to ascend the pulpits by steps pave with fragments of glass bottles.

I cannot depart from this review of New England persecutions without bringing to your attention the considered language of General Robert E. Lee, who in 1856 said:

"Is it not strange that the descendants of those Pilgrim Fathers who crossed the Atlantic to preserve the freedom of their opinion have always proved themselves intolerant of the spiritual liberty of others?"

Surprising as it may seem, the colony nearest geographically to Massachusetts was the most distant from her in the matter of toleration. In Rhode Island do we discover the mustard seed from which the tree of religious liberty in the United States has grown. From the beginning (1636) entire freedom of conscience and opinion was given every resident, not only to all varieties of Protestants, not only to Catholics, but also to Jews and more than this even to unbelievers. Thus men of all religious and of no religion were secure from molestation so long as they behaved themselves. Although for a time Catholics and Jews were not permitted to vote, there was in Rhode Island no favored or established church, no conformity, no enforced support of religious institutions. In this smallest of colonies there was complete separation of Church and State. The principle of "soul liberty" was there first put into practice and may it be said, to the everlasting honor and glory of Rhode Island, that "not a single blot of religious persecution rests on the fair pages of" her history.

This principle, that government has nothing whatever to do with the control of religious belief, was so novel and strange that many in other colonies thought it false and dangerous, and predicted that it would soon die out.

The Moses who led the children of liberty out of theocratic bondage was Roger Williams. Protege of the great English Jurist, Sir Edward Coke, a graduate of Pembroke College, Cambridge, he came to Plymouth Colony in 1631. Two years later he removed to Salem. He complained to the magistrates for oppression and to the elders for injustice and preached separation of Church and State, and by reason thereof was compelled to
leave Massachusetts during the winter of 1635 and 1636. Undaunted, he immediately began the work of establishing what we now know as the colony of Rhode Island. A leader, a thinker and consecrated to the betterment of his fellows, he became the dominant character of the little colony.

He it was who first laid down on American soil that liberty of conscience which we now hold to be inalienable. He advocated and put into practice entire separation of Church and State, equal protection of all forms of religious faith, abolition of compulsory attendance on and support of public worship.

Roger Williams understood the value and necessity of a governing power, self imposed perhaps, which should secure to all the fullest measure of enjoyment of the liberties he preached.

In a letter to the people of Providence written in 1655 we find a succinct statement of his ideal.

"There goes many a ship to sea, with many hundred souls in one ship, whose weal and woe is common, and is a true picture of a commonwealth or a human combination or society. It hath fallen out sometimes that both Papists and Protestants, Jews and Turks may be embarked in one ship; upon which supposal I affirm that all the liberty of conscience that ever I pleaded for turn upon these two hinges, that none of the Papists, Protestants, Jews or Turks be forced to come to the ship's prayers or worship, nor compelled from their own particular prayers or worship, if they practice any. I further add that I never denied that, notwithstanding this liberty, the commander of this ship ought to command the ship's course, yea, and also command that justice, peace and sobriety, be kept and practiced, both among the seamen and all the passengers."

Maryland, however, was the first colony in which any degree of religious freedom was enjoyed. Lord Baltimore, a Roman Catholic, established the first settlement in 1634. Absolute freedom of worship was given to all Christians only. In this respect Maryland was unique among the colonies. This liberty was confirmed by the Toleration Act of 1649, which in part provided:

"Whereas the enforcing of the conscience in matters of religion hath frequently fallen out to be of dangerous consequence in those commonwealth where it hath been practiced, and for the
more quiet and peaceful government of this Province, and the better to preserve mutual love and amity amongst the inhabitants thereof, be it therefore... enacted... that no person or persons within this province... professing to believe in Jesus Christ, shall henceforth be in any way troubled, molested or discountenanced for or in respect to his or her religion, nor in the free exercise thereof... nor in any way compelled to believe or exercise any other religion against his or her consent, so that they be not unfaithful to the Lord proprietary, or molest or conspire against the civil government."

This statute did not protect those who denied the doctrine of the Trinity, but the advance which it marks in the thoughts and minds of men is indeed very great. As a result of this before almost unheard of freedom, Maryland became a haven of refuge "not only for the oppressed Catholics of England, but also for many of the oppressed Protestants of the other colonies of America". Puritans driven out of Virginia, Quakers exiled from Massachusetts, both came to Maryland and found homes there.

Dynastical changes in England produced varied and shameful results upon this record so nobly begun. In 1654 commissioners from the Puritan Government came to Maryland, ordered an election, prohibited all Catholics from voting, removed Lord Baltimore, and repealed the Toleration Act. Four years later Lord Baltimore was restored by Parliament and freedom of worship re-established. When William and Mary came to the throne in 1689, Maryland was made a crown colony; the King appointed a governor; the Church of England was established and all were compelled by taxation to support it. Catholic worship was not again allowed to be openly observed until Maryland became independent.

In Virginia, until 1788, the Episcopal Church was established by law and no other sect had any legal right to existence. James Madison on one occasion in his youth stood with his father outside the jail in the Village of Orange and listened to several Baptists preach from the window of the cell in which they were confined because of their religious opinions. This incident made a deep impression on him and aroused him to an intense and enduring hatred of religious intolerance.
In the Virginia convention of 1776, Madison proposed unsuccessfully an amendment to the Declaration of Rights. This amendment in substance was that "no man or class of men ought, on account of religion, to be invested with peculiar emoluments or privileges." The time was not yet ripe for the great step forward. Indeed in 1784 and 1785 such eminent apostles of liberty as Patrick Henry, George Washington, and John Marshall supported a proposed statute to insure a better provision for the clergy and their churches. It was argued that compulsory support of the churches would encourage church attendance and lessen the existing immorality. Public opinion was apparently overwhelmingly in favor of the bill.

Madison drew up a memorial and remonstrance which was circulated throughout the state. Thousands read it, thousands signed it and when the Assembly met in 1785 the bill was buried beyond resurrection. The opposing sentiment was so strong that Madison completed the victory by introducing and securing the enactment of Jefferson's famous religious liberty bill, to which we have already referred and which had lain dormant since 1779. It is said that "there are few instances where the tide of public opinion has been so completely turned by a single document as it was in this instance by Madison's remonstrance."

The Act for Establishing Religious Freedom has been declared to be about the last word in that important matter. I quote a part:

"Be it therefore enacted by the General Assembly, 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; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religious, and that the same shall in no wise diminish, enlarge, or affect their civil capacities."

Jefferson himself stated that this great act was designed "to comprehend within the mantle of its protection the Jew and the Gentile, the Christian and Mahometan, the Hindu and Infidel of every denomination."

Of the thirteen colonies it may be said that toleration was only a question of degree. No colony ever allowed all persons to
hold office without regard to religious belief. Some colonies excluded all who did not belong to a particular church, others made Christianity the basis of religious qualification; a third class allowed full rights to Protestants.

In the seventeenth century the particular objects of persecution were the Quakers; regulations against Catholics were comparatively rare, but after the creation of the test oath by the Act of Parliament in 1689 all the colonies except Rhode Island enacted laws requiring the administration test oaths. The laws against Quakers were, however, ameliorated and they were in some colonies permitted to affirm. All other Protestants were by the time of the Revolution accorded complete political equality before the law.

During the period between the Declaration of Independence and Washington's inauguration, seven states disqualified Catholics from holding office and in all, except New York and perhaps Rhode Island, some religious test was applied. Virginia emerged from this condition in 1785 by the enactment of its statute for religious freedom.

Article I of the Ordinance of Congress for the government of the Northwest Territory, enacted July 13, 1787, merits reading:

"No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory."

Such was the situation when the Constitution was drafted and adopted. This great compromise was indeed a compromise with respect to religion. The diversity of religious opinions, practices and institutions in the several states was so great that no one group could prevail.

John Stuart Mill has said that "so natural to mankind is intolerance in whatever they really care about, that religious freedom has hardly anywhere been practically realized except where religious indifference, which dislikes to have its peace disturbed by theological quarrels has added its weight to the scale."

I do not believe that this explanation of indifference applies to the framing and adoption of the Constitution. Rather am I of the opinion that there existed a very wholesome and substantial fear in the minds of the people of each state that the people of other states might secure control of the Federal government, and
establish a different church and enact test oaths. We must keep in mind also that while the practice of the colonies had been conservative and intolerant, the political philosophy of the Revolution was liberal and tolerant. In the Federal Constitution the liberal tendency prevailed with respect to religious tests as qualifications for office.

The only provision in the Constitution related to religion is that part of Article VI which provides that "no religious test shall ever be required as a qualification to any office or public trust under the United States."

This clause provoked much discussion throughout the country in the debates over the adoption of the Constitution. Many people expressed the fear that Catholics, Mohammedans, Jews, pagans and deists might hold office. James Iredell, later a Justice of the Supreme Court of the United States in supporting the adoption of the Constitution, said with respect to the absence of a test oath:

"I met by accident with a pamphlet this morning in which the author states as a very serious danger that the Pope of Rome might be elected President." He then proceeded in all seriousness to demonstrate how exceedingly difficult it would be for the Pope to become President, admitting that it was possible.

But though the liberal tendency of the Revolution prevailed in the Federal Constitution with respect to religious tests for office, the conservative influence was predominant in the state constitutions and persisted tenaciously for many years. Of the seven states which by test oaths excluded Catholics from office, Georgia, Vermont and South Carolina dropped the provision before 1800. Massachusetts, under the influence of Daniel Webster, abolished it in 1822; North Carolina, in 1835 and New Jersey, in 1844. In New Hampshire, in 1852 an amendment to the Constitution eliminating this obnoxious qualification was defeated by popular vote; and it was not until 1877 that Catholics of that State were accorded full equality before the law.

1826 Jews in Maryland were allowed to take an oath of belief in God and a future state of rewards and punishments.

The states organized after 1792 followed the pattern of the Federal Constitution and today it may be said that, as a practical matter, religious tests have entirely disappeared throughout the
United States. Article Five of the Constitution of Indiana provides that "No religious test shall be required as a qualification for any office of trust or profit".

The Federal Constitution was accepted after very bitter contests and upon a tacit agreement for the adoption by proper amendments of the bill Constitution before adoption, expressed his disappointment at the absence of an express declaration insure freedom of religion. He, however, recommended its acceptance in the hope that proper amendments would be made. Madison at the first session of the first Congress proposed several amendments which were later duly adopted.

Bitter recollections of wrongs endured by minorities at the hands of majorities in the name of religion produced a powerful demand for such further security of the liberty of conscience.

There was no doubt a very real appreciation of the fact that the duty of toleration is admitted with mental reservations, even by the most tolerant of religious persons. "Wherever," declares John Stuart Mill, "the sentiment of the majority is still genuine and intense, it is found to have abated little of its claim to be obeyed."

The first amendment contains these words: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

No better interpretation of this epoch making language is to be found than that contained in a letter written by President Jefferson to a committee of the Danbury Baptist Association. He said: "Believing with you that religion is a matter which lies solely between man and his God; that he owes account to none other for his faith or his worship; that the legislative powers of the government reach actions only, and not opinions,—I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion or prohibiting the free exercise thereof,' thus building a wall of separation between church and State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore man to all his natural rights, convinced he has no natural right in opposition to his social duties."
So far as the Federal Government is concerned the full and free right is conceded to everyone to practice any religious principles and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights of others. "The law knows no heresy and is committed to no dogma, the establishment of no sect."

At the present time all states profess to practice the principle of religious freedom. The Constitution of Indiana is very explicit in its provisions on this subject. I have already quoted the section prohibiting test oaths. Sections 2, 3, 4, 6 and 7 are as follows:

2. All men shall be secure in their natural right to worship Almighty God according to the dictates of their own consciences.

3. No law shall, in any case, whatever, control the free exercise and enjoyment of religious opinions or interfere with the rights of conscience.

4. No preference shall be given, by law, to any creed, religious society, or mode of worship; and no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent.

6. No money shall be drawn from the treasury for the benefit of any religious or theological institution.

7. No person shall be rendered incompetent as a witness in consequence of his opinions on matters of religion.

Voltaire many years ago attempted to fix the bounds of governmental control over human action.

"For a government," he declared, "to have the right to punish the errors of men it is necessary that their errors must take the form of crime; they do not take the form of crime unless they disturb society; they disturb society when they engender fanaticism, . . . ."

In 1878 the Supreme Court of the United States had before it an appeal from the Territory of Utah from a conviction of a Mormon for bigamy. The defense was that polygamy of celestial marriage was an accepted doctrine of the Mormon Church, and a duty imposed by divinely inspired books and enjoined by Almighty God in a revelation to Joseph Smith; that the failure to practice it would be punished by damnation in the life to come; and that the second marriage was performed in conformity with the doctrine of the Church. The defendant claimed the full bene-
fit of the First Amendment and asserted that the Federal statute was unconstitutional as being beyond the power of Congress and a restraint upon the free exercise of religion.

Since religion is not defined in the Constitution, the court accepted Jefferson's interpretation of the First Amendment and held that Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order.

The court after declaring that polygamy had been for centuries an offense against society in England and the colonies, and was such throughout the United States, decided that the defense must fail. To permit a man to excuse the commission of a crime because of religious belief would be, says the court, to make the professed doctrines of religious belief superior to the law of the land, under which circumstances government could exist in name only.

To make clearer the limits of religious freedom in this country, we may say that any act violative of the social order is not permissible. For examples the following acts would not, under the assertion of religious belief and practice, be permitted: human sacrifice; the burning of a widow on the funeral pyre of her husband; the deposit of human bodies in open gratings for birds to devour; running nude through public streets.

The Federal Constitution in no manner restrains the several states in religious matters.

There is nothing except the enlightened consciences and the variety of opinions of the inhabitants of any state to prevent it from establishing a religion, or restricting the free worship of God according to the dictates of one's conscience, or imposing disabilities based on religious grounds. New Hampshire has already been referred to as a state which within the past fifty years removed such disabilities from Catholics.

When the Legislature of Georgia enacts a law prohibiting the teaching of evolution in the public schools, and when such a law fails of passage by a scant minority in Kentucky, we should pause to consider how near some of our states may be to placing restraints on the exercise of religion.

When the General Assembly of New York, over the protest of such distinguished citizens and lawyers as Charles Evans
Hughes and Elihu Root, expels from its midst legislators elected by the votes of the people of New York because they subscribe to the doctrines of the Socialist Party, we may well wonder when some Legislature will attempt to exclude duly elected members because of the religious beliefs of such members.

But constitutions and laws have not abolished intolerance, persecution and disabilities. What once was done under sanction of law may now be done in violation and disregard of it. That religious prejudices exist in every day life is known to every observing person. It is to be noted that nobody ever thinks of himself as being intolerant. He is determined that the other person is the bigot. This current prejudice finds expression in loose, defamatory and scurrilous talk, in exclusions from employments, clubs and societies, in attempted exclusions from colleges and universities. Occasionally the fires of prejudice are fanned into devastating flames and then come civil war or organized political effort or both.

The history of our country affords ample proof that the fires of conflict are eternally smouldering under the detestable refuse of hate and prejudice.

Such a conflict was that which occurred in Missouri less than a century ago between Mormons and non-Mormons.

The Mormons, founded in New York and organized in Ohio, attempted in the early thirties to establish a colony in Jackson County, Missouri. The original settlers of this county acquired a strong antipathy for the religion of the Mormons, and saw that if let alone the new-comers would in a short time become a majority and rule the county. These opinions, perhaps by reason of indiscretions on the part of the Mormons, were intensified to the point where the non-Mormons determined to drive from the county the Mormons who had already bought land, and built houses, and prohibit thereafter if possible the immigration of others of the despised sect.

Mobs were formed, night riding was freely indulged in and for a period extending from 1832 to 1838 what was to all intents and purposes a state of civil war existed in three or four Missouri counties. Stoning of houses, breaking of windows, burning of haystacks, shooting into houses, followed each other in rapid succession. Then came mob action which demanded the removal of
the Mormons. The formal answer to the demand was not satisfactory so the mob proceeded with the "utmost order and the least violence and disturbance possible" to raze the Mormon newspaper office and plant and to tar and feather a Mormon Bishop. Then followed whippings and after that the retaliation. Both sides took arms and battles were fought and lives of American citizens destroyed. Bloody and shameful massacres were perpetrated, one of which occurred on October 30, 1838. The Mormons had not abandoned their homes with the desired dispatch and on that day a small group of them were suddenly surrounded at Far West and practically butchered in cold blood. Thirty were slain. The bodies of many were thrown into a well. An old man was hacked to pieces with a corn cutter. A small boy was numbered among the victims.

In Jackson County alone 1500 people were driven from their homes and between 200 and 300 houses were burned. The trouble finally ended by the removal of all the Mormons from the state.

The attitude and purpose of the prevailing majority is clearly defined in a manifesto issued at Independence, July 20, 1833:

"We, the undersigned, citizens of Jackson County, believing that an important crisis is at hand, as regards our civil society, in consequence of a pretended religious sect of people that have settled and are still settling in our country, styling themselves Mormons and intending, as we do, to rid our society, peaceably if we can, forcibly if we must; and believing as we do that the arm of civil law does not afford us a guarantee, or at least a sufficient one, against the evils which are now inflicted upon us and seem to be increasing, by the said religious sect, we deem it expedient and of the highest importance to form ourselves into a company for the better and easier accomplishment of our purpose—a purpose which we deem it almost superfluous to say is justified as well by the law of nature as by the law of self-preservation."

A Justice of the Peace refused warrants for the arrest of non-Mormons caught in the act of destroying property. Circuit Judge Ryland at Lexington also refused a warrant but told the Mormons to defend themselves and kill the "outlaws". Legal protections were destroyed for the time being. The Governor of Missouri refused aid. The Federal Government declined protection for the reason that the matter was purely a state affair.
Governor Dunklin in a message to the Legislature expressed the opinion that "conviction for any violence committed against a Mormon cannot be had in Jackson County" and told the lawmakers it was for them to determine what amendments were necessary to guard against such acts of violence for the future. The Legislature took no action whatever in the matter.

In 1836 the Governor answered a request for protection by saying that if the Mormons could not convince their neighbors of their innocence of the calumnies charged against them, all he could say to them was that in this republic the voice of the people is the voice of God. (Vox populi vox dei est.)

What occurred in Missouri to the Mormons can occur anywhere and to any minority. A majority which is determined to exterminate, expel or suppress a smaller group can do so, and in doing so can completely paralyze the machinery of local government and suspend constitutional guarantees.

The history of our country also affords several examples of organized political effort founded largely, if not entirely, upon differences of opinion in religious matters.

Perhaps the most astounding revelation of bigotry and fanaticism in this country was that evidenced by the Anti-Masonic Party which came into existence in 1827 and perished in 1840. This party had a religious and moral basis. Indeed, if there ever was in this country a religious party it was the Anti-Masonic. It wielded religion as one of its strongest weapons. The period was one of intense religious activity. Several Protestant Churches condemned the Masonic Fraternity; every effort was directed against clergy and laity who were members of the fraternity to force them to renounce their affiliation. Presbyterians, Congregationalists, Methodists, Dutch Reformed, Dunkards and Quakers were among those composing the Anti-Masonic Party. They attacked the Masonic institution as unfit for professing Christians and proscribed Masons from all public offices. The persecution was so severe that over four hundred lodges disbanded in New York. Violent efforts were made to revoke the charters of the Grand Lodges of New York and Massachusetts. An attempt was made in Pennsylvania to suppress and prohibit by law all secret oath bound societies.
Anti-Masonic newspapers published lists of the membership of Masonic Lodges. The order was accused of being an empire, extending over Europe and America and governed by laws paramount to all other law.

The religious significance of this hysteria is more apparent from a consideration of the groups proscribed along with the Masonic Fraternity. In New York the Unitarians and Universalists and the Masons were attacked in the same breath. In Pennsylvania, strange to say, Catholics, Monks, the Inquisition and Masonry were placed in the same category. An expression commonly used was “Popery and Freemasonry.”

That a political party in America cannot long survive on a diet of hysteria, bigotry, intolerance and proscription is demonstrated by the Anti-Masonic Party. After becoming a great power in New York, Pennsylvania, Massachusetts, and Ohio, electing state officers and congressmen, it entered the presidential campaign of 1832. It sought Henry Clay as its standard bearer in vain. Finally William Wirt accepted the presidential nomination, and in this is a paradox. Andrew Jackson was a high and enthusiastic Mason, Clay was a faithful though perhaps indiscreet one, and William Wirt, the candidate of the Anti-Masonic Party was also a member in good standing of the Masonic Fraternity.

This campaign, in which three Masonic Brethren contended for the highest office in the land, was a political anti-climax, and the Anti-Masonic movement was started on the path to merited extinction.

The second movement based on prejudice and intolerance was that known as “Know Nothingism,” which endured for some thirty years. It originated in New York in the early thirties as a protest against alleged abuses in the naturalization of immigrants by the Tammany organization of that city. By 1835 the movement became a political party under the name of “American Republican”. In 1844 this party elected six congressmen from New York City and Philadelphia. For a time its influence waned. In 1852 under the name of “American Party” it combined with the Whigs, but failed to defeat Franklin Pierce. In 1854 and 1855 the American Party elected governors and legislatures in seven or eight states and in 1857-1859 had five senators and fifteen
representatives in the National legislature. In the next congress its members numbered two senators and twenty-three representatives. The Civil War gave it its death blow.

The American Party was organized as a secret fraternity under the name of "The Sons of '76" or "The Order of the Star Spangled Banner". Members were pledged by solemn oath not to reveal the real name but to answer all questions with the words "I don't know". Hence the origin of the name "Knownothing", by which the party was generally known.

The oaths are said to have bound the members to disclose their identity under no circumstances and to proscribe their opponents both politically and socially. Their rules required them to post their notices between midnight and daybreak. The favorite countersign was an order which Washington, on uncertain authority, is reported to have given on a critical occasion:

"Put none but Americans on guard tonight."

The principal tenets of the Know Nothing Party were the restriction of citizenship to persons born in this country, exclusion from office of all Catholics and all foreign born inhabitants, and opposition to the supposed hierarchical tendencies of Roman Catholicism.

In describing the membership and methods of the Know Nothing Party, Henry A. Wise, Governor of Virginia, said in 1854:

"They not only appeal to the religious element, but they raise cry about the Pope. The men, many of whom are neither Episcopalian nor Presbyterian, Baptist, Methodist, Congregationalist, Lutheran or what not—who are men of no religion, who have no church, who do not say their prayers, who do not read their Bible, who live God-defying lives every day of their existence, are now seen with faces as long as their dark lanterns, with the whites of their eyes turned up in holy fear lest the Bible be shut by the Pope. Men who were never known before on the face of God's earth to show any interest in religion, to take any part with Christ or his kingdom, are all of a sudden very deeply interested for the word of God and against the Pope!"

There was in that day a futile effort made to assimilate and identify Free Masonry with Know Nothingism. Governor Wise in the same speech declared that he was a Mason and said.
"I know not how any Mason can be a Know Nothing...."

"Masonry has no secret but the simple test by which it recognizes its brotherhood. It is bound to respect the law and tolerate difference of opinion in religion and politics."

Abraham Lincoln met the issues presented by the anomalous movement with frankness and clarity. In a letter to his friend, Joshua Speed, dated at Springfield, Illinois, August 24, 1855, he voiced his position:

"You inquire where I now stand. This is a disputed point. I think I am a Whig; but others say there are no Whigs and that I am an Abolitionist.

"I am not a Know-Nothing; that is certain. How could I be? How can anyone who abhors the oppression of negroes be in favor of degrading classes of white people? Our progress in degeneracy appears to me to be pretty rapid. As a nation we began by declaring that 'all men are created equal,' we now practically read it 'all men are created equal except negroes'. When the Know-Nothings get control, it will read: 'All men are created equal except negroes, and foreigners and Catholics'.

"When it comes to this, I shall prefer emigrating to some country where they make no pretense of loving liberty—to Russia, for instance, where despotism can be taken pure and without the base alloy of hypocrisy."

This idea so detested by Lincoln came into activity again in 1887 by the organization of the American Protective Association, which was short lived but at one time claimed a membership of over two million.

The chief doctrine of this body was that "subjection to and support of any ecclesiastical power not created and controlled by American citizens, and which claims equal if not greater sovereignty than the government of the United States of America is irreconcilable with American citizenship." Consequently a concerted effort was made to exclude all Catholics from holding any public offices. Sectarian schools were also bitterly opposed. The association never attempted to put separate party tickets in the field but sought to control existing parties, and elect friendly and defeat objectionable candidates.

It is always difficult to speak dispassionately about any contemporaneous movement. The lapse of time and maturer thought
enable us to obtain a better perspective. We will be abler a generation hence to appraise the motives, methods and objects of that Ku Klux Klan which is now active in our midst. From such knowledge as is available to the midst. From such knowledge as is available to the uninitiated we must place this organization in the same category as the Anti-Masonic and Know-Nothing Parties and the American Protective Association, with respect at least to the attempted proscription of persons of certain religious beliefs. Whatever may be the features most emphasized in other parts of the country, it is reasonably certain that in the central west, including Indiana, the dominant motive of the organization is to exclude from public office all members of the Catholic Church. But its objects, although not different in quality from that just mentioned, are apparently more numerous.

Roughly, we find combined in the Ku Klux Klan an antisemitism not unlike that of central Europe and the pale of Russia; an urge for white supremacy not unfamiliar south of the Mason-Dixon line and in California; and an anti-Catholicism taken bodily from the practices and tenets of the Know-Nothing Party and the American Protective Association. The phrase used to describe persons approved by this modern organization, “One hundred percent American” was acquired from the American Legion, an order from which no man is excluded by reason of race, color or religion.

The methods used are not new. A secret order or fraternity has been formed after the plan of the “Sons of ’76”. The method of political action is that of the American Protective Association rather than of the Anti-Masonic and Know-Nothing Parties. Even the uniform or fraternal garb has been taken from the past, not of this country and the South, but of Europe and from the professed opponents of the order. In the eighteenth century in France secret societies were formed to antagonize those of non-conforming faith. Several of these organizations wore for a uniform a long hood with a cloth mask so pierced as to accommodate vision. Voltaire, writing from Switzerland about these robed societies, said:

“What a sight it would be to have all Europe in hoods and masks, with two little round holes in front of the eyes! Do they seriously think that God prefers this costume to that of ordinary
folk? Further, this garment is the uniform of Controversialists, warning their opponents to get to arms."

Thus we find that counter-organizations such as the Knights of the Flaming Circle have been conjured into ephemeral existence by fear of the activities and propensities, real or imagined, of the Ku Klux Klan.

Fortunately, men cannot hate each other long, waves of passion subside, and flames of fanatical zeal die down. I am not a prophet, but I believe sincerely that the life of the Ku Klux Klan will be of no longer duration than that of any of the three similar religio-political organizations which preceded it.

Having thus traced the progress of religious freedom throughout the history of the American colonies and of our nation, we may be warranted in drawing certain conclusions by way of summary.

Liberty of conscience, including religious belief and practice, is the highest liberty, and was acquired at a terrible price of torture, blood and life.

This liberty is only secured when all religions are equal before the law and this is possible only where Church and State are separated. On American soil, after long and bitter struggles and under the guidance and inspiration of such lovers of freedom as Roger Williams, Thomas Jefferson and James Madison, all religions are today equal before the law and there is complete separation of civil and ecclesiastical authority.

The United States is a mighty fulfillment of that desire of Roger Williams which was "to hold forth a lively experiment that a most flourishing civil state may stand and best be maintained with full liberty of religious concerns." The great variety of opinions on religious matters, which exists in our country, is perhaps the greatest security for religious freedom.

Although the law discriminates against none by reason of religion or the lack of it, there persists an atavistic tendency of intolerance, persecution and proscription which, although non-legal, is nevertheless at times very powerful.

This tendency however has never been powerful enough to amend the laws of any state or of the nation so as to re-establish legal disqualifications and discriminations. It finds expression
from time to time in political organizations, founded in whole or in part for the purpose of discriminating against and proscribing persons because of religious beliefs. Such organizations have not succeeded and cannot thrive on our soil.

Intolerance begets intolerance. "Whenever a man," said Voltaire, "is prompted to declare offensively that he is of the true flock and must exterminate the wolves—he becomes a wolf and will be treated as such."

Mutual forbearance and respect for the rights of others to their own opinions in religious matters are essential to a well ordered state.

What the future of religious freedom in our country will be is beyond our power to foretell. Should any one sect become a militant majority in any state, nothing but the voluntary restraint of its members will prevent an establishment of religion and the placing of limitations on the free exercise thereof.

Shall we revert to the conditions which existed in the seventeenth and eighteenth centuries or shall we continue the evolutionary process toward light and liberty so nobly begun on American soil by Roger Williams and other lovers of the rights of men?

In making secure the blessings of liberty to our posterity, everyone plays a part. I, for one, am solemnly resolved that with Jefferson:

"I never will, by word or act, bow to the shrine of intolerance, or admit a right of inquiry into the religious opinions of others."