Chapter 9 – For Conscience’s Sake

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For Conscience’s Sake
by Carl Watner

George Smith, in his essay “Philosophies of Toleration,’’ reviews the history of freedom of religion and identifies the moral axiom of “righteous persecution,” which has been part of most religions throughout the ages. The principle underlying this “persecution complex” was that recalcitrant people should be coerced “for their own good.” It made no difference whether people were being compelled to change their earthly behavior or their spiritual beliefs. The justification for persecution was the same in either case: the end – the public welfare in the here-and-now or the salvation of the persecuted in the hereafter – warranted the use of violence. The opposite proposition, based on the principle of persuasion, embraced the voluntaryist prescription for reasonable argument and nonviolent behavior. Many defenders of religious freedom understood that force could only make hypocrites of men, or as William Penn put it, “tis only persuasion that makes (true) converts.”

An interesting twist on Smith’s comments about persecution is to apply them to the ancient practice of State taxation. Since taxation is the taking of another’s property by the public authorities without his voluntary consent, clearly taxation may be viewed as a form of persecution by those who would not willingly pay. Indeed, William McLoughlin described “the principal aspect of the struggle against the Puritan establishment” in America as “the effort to abolish compulsory tax support for any and all denominations.” If it is correct to characterize religious taxes as coercive and as a form of persecution, then it should certainly be proper to categorize other forms of taxation similarly. The principle at work is the same regardless of the purpose behind the tax. Property must be forcibly taken from some people and applied in ways which they (the owners) would not ordinarily direct it.

Seventeenth and eighteenth century advocates of toleration, like Henry Robinson, William Penn, John Locke, and James Madison, all viewed “freedom of conscience” as a form of property. Robinson claimed that “those who are forced to pay a (religious) fine are subject to a forcing of their conscience.” Penn often argued that to punish religious dissent by fines and imprisonment was as much an invasion of conscience as it was of property rights. Locke in *A Letter Concerning Toleration* called “liberty of conscience… every man’s natural right.” Madison, in his essay on “Property,” wrote that “Conscience is the most sacred of all property…” So it was clearly recognized that religious persecution took on many forms –

from being compelled to pay taxes to support a minister one did not patronize, to the confiscation of property for the non-payment of such taxes, to the actual imprisonment of the persecuted minorities who insisted on practicing their religion publicly or refusing to falsely swear their allegiance to a king or god of whom their conscience would not approve.

The entire basis on which religious taxes were laid was the idea that "the authority of the church (wa)s as essential to the continued existence of civil society as that of the (S)tate." It was assumed that religion would not be able to sustain itself without some financial assistance from the State. "Thus," as McLoughlin writes,

> *"the controversy over the establishment of religion in America in 1780 was not over the establishment of any one sect, denomination or creed, but over the establishment of religion in general (meaning, the Protestant religion). The question of support for religion was often compared to the responsibility of the state toward all institutions concerning the general welfare – the courts, the roads, the schools, the armed forces. If justice, commerce, education, religion, peace were essential to the general welfare, then ought these not to be supported out of general taxation? It was no more inconsistent in the minds of most New Englanders to require a general tax for the support of religion than to require, as Jefferson advocated, a general tax for the creation and maintenance of a public school system."*

The purpose of this essay is to demonstrate the uniqueness of the voluntaryist argument for religious freedom. The voluntaryist does not advocate separation of Church and State because the issue is a red herring. To argue for separation of Church and State does nothing more than to legitimize the State since it does not question or challenge the State's existence. The issue, by the nature of the way it is framed, assumes that the State must and should exist. The fact of the matter is that Church and State will never truly be separated until either one or the other disappears. Tax exemption of church property or taxation of church property? So long as a State engages in compulsory taxation to raise its revenue, it must inevitably impact on the religious sphere. Has the religionist, who must support the police with his taxes, had his rights violated when the police come to the aid of the atheist? If the State pays a policeman to direct traffic and protect children going to church schools, might not the atheist object to having his tax money spent in such a fashion? Only a voluntaryist would recognize the injustice inherent in these situations. So long as the State violates property rights by its existence – which it must necessarily do –

religious freedom or any other form of freedom will never be secure. In principle and in practice, all freedoms are interrelated to one other. If a property right may be violated in one sphere, by the same principle it may be violated in another.

The balance of this essay will discuss the issues of toleration, religious freedom, separation of Church and State, and freedom of conscience from the voluntaryist point of view.

Liberty not Toleration

Religious liberty or freedom of conscience, as the early dissenters called it, means thinking as one pleases, and then using one's body and rightfully owned property to express those thoughts without being coercively molested. For example, religious freedom manifests itself in the right to build places of worship, to print religious literature, to speak of one's ideas without the possibility of physical retaliation, and the right not to have ones property taken or used in ways that the rightful owner deems inappropriate. Yet, no historical religious thinker ever thoroughly understood the principle behind religious liberty. A religious radical, like Roger Williams, saw that it was wrong to "steal" a person's property to support a religion he did not practice. Yet no supporter of religious liberty ever questioned the propriety of compulsory taxation as it applied to the secular realm.

The English dissenters of the late 18th Century, however, did go so far as to support the individual against the collective, no matter what form the issue took. For them, freedom of conscience was "a principle implicit in human nature, a right innate in the heart of every man, constituting the essence of personality…" Writing about the dissenters' view of freedom of conscience, Anthony Lincoln says:

> *"It implied that there were certain issues so fundamental that no municipal laws or conventions, no social or conventional machinery, could compass or even approach them, but could be resolved only in the reason and conscience of the individual: an inner sanctuary into which all commands of priest and magistrates penetrated only as idle, meaningless echoes."**

In his 1837 sermon on "Intellectual Liberty," Reverend Horatio Potter described the principle which lies at the foundation of the right to freedom of conscience as one which is at the very basis of all intellectual and religious liberty. It is an epistemological bias against violence which, he said, is predicated on the premise that "error is to be refuted, that truth is to be made manifest and its influence extended not by external force, but by reasoning… Produce your strong reasons – employ your intellect to shew wherein my intellect has erred or led others into error, but abstain from violence, which can prove only that you are

powerful and vindictive, without proving that you have truth and justice on your side." The resort to violence is a confession of weakness because he who would employ force would not do so unless his arguments and reasoning were weak and unconvincing. Truth or the effort to obtain the truth does not need to rely on force. "If a man believes he possesses the truth, then let him convince others by argument, not compel them by threats."

Henry Robinson (1605-1664), along with other Englishmen of his age such as John Milton, John Lilburne, and Richard Overton, were among the first of the moderns to see that the idea that violence was not a convincing argument (and hence compulsion should not be threatened or used in order to bring about a change of opinion) applied just as much to the economic and political realm as it did to the religious sphere. In his book, *Liberty of Conscience*, published in 1643, Robinson brought forth just about every "argument that the modern world has been able to advance in defense of religious liberty." The right of private judgment or freedom of conscience, as Robinson identified it, was as much an individual right as the right to life, liberty, or property. None of these rights were secure so long as people could be imprisoned, fined, and coerced for their religious or political beliefs. In fact, Robinson compared the freedom to choose one's religion to the freedom to engage in free enterprise activities. As William Haller explained, Robinson argued that since "no man has a monopoly on truth" in any sphere of life,

> *"'the more freely each man exercises his own gifts in its pursuit, the more of truth will be discovered and possessed.' As 'in civil affairs… , every man most commonly understands his own business,' as 'every man is desirous to do with his own as he thinks good himself,' and as it would be absurd for the State to make laws requiring men to manage their worldly affairs after one 'general prescript forme and manner,' so in religion every man should be permitted to go his own way. Compulsion compels men only to hypocrisy or rebellion."*

Although the distinction was not articulated until the following century, Robinson and others of his era could see that there was a difference between religious toleration and religious liberty. The voluntaryist argues for the latter, while the statist implicitly endorses the former. The difference is that what the State at one time tolerates, it may, at another time, condemn and prohibit. Hence, whatever freedom of activity is granted by toleration is subject to restriction and/or revocation. "Toleration is not the opposite of intolerance, but is the *counterfeit* of it," wrote Thomas Paine in 1791 in *The Rights of Man*. Religious liberty, no more than the liberty to own property, is not granted by anyone or any institution. It precedes the organization of the State and arises from the nature of man and the manner

in which he best lives. Freedom of religion was “a right so sacred” that Mirabeau once explained to the French Constituent Assembly that the word “toleration” seems to “convey a suggestion of tyranny.” He pointed out that “the existence of any authority which has the power to tolerate is an encroachment upon the liberty of thought, precisely because it tolerates and therefore has the power not to tolerate.”

J.B. Bury in his *A History of Freedom of Thought* (1913) surveyed the many different approaches to intellectual liberty throughout the ages, but they all ultimately reduce themselves to the fact that the coercion of opinion is never successful, and that “reasons’ only weapon” has been logical “argument.” Since the beginning of written history, one can probably find people who “refused to be coerced by any human authority or tribunal into a course which his own mind condemned as wrong.” The conflict between the individual and the collective (whatever form the latter took) is simply a replay of the eternal struggle for the supremacy of individual conscience over man-made statutes.

Religion and Citizenship

Two historical observations become apparent as one reviews the history of arguments and the actual struggle for religious liberty. First of all, those who were in fact persecuted, such as the early Christians or the latter-day Puritans, often resorted to persecution themselves, once they attained political power. “Courageous dissenters often became intolerant conformists.” The advocates of religious liberty sometimes themselves “practiced religious discrimination.” The corruptive influence of political power often manifested itself in such contradictory ways. The other historical observation is that those who supported a tolerant or *laissez faire* attitude toward religious beliefs always thought that man’s religious beliefs were of no harm or consequence to anyone else. The Roman emperor Tiberius (43 B.C.-37 A.D.) said that, “If the Gods are insulted, let them see to it (the punishment of the blasphemers) themselves.” Tertullian (145-225), an early Christian, took the position that one man’s religion can neither hurt nor help another. More modern thinkers embraced the same idea. Martin Luther (1483-1546) – before changing his opinion – defended freedom of religion by declaring that “everyone [should] believe what he likes.” Montaigne, Luther’s contemporary, once remarked that “It is setting a high value on one’s opinions to roast men on account of them.” A century latter, John Locke as much said that, “If false beliefs are an offense to God, it is really his affair.” And Frederick the Great, writing in 1740, a few months after his accession to the throne, noted “that everyone should be allowed to go to heaven in his own way.”

What all these thinkers, and a great number of others not mentioned, shared was the belief that “the right of private judgment must be given free scope and every man, being completely responsible for his own soul, must seek and find the truth in his own way.” For them, “the right to seek the truth in one’s own way” comprises one of the most important and necessary responsibilities of life. Under normal circumstances, whatever faith a person

might profess is irrelevant to his status as a good citizen. The problem is that often times the demands of good citizenship can conflict with the demands of one's religion. Thus Marcus Aurelius, one of the most enlightened and stoical of the Roman emperors, persecuted Christians "because they refused to recognize the sacred character of" his position, "a refusal which threatened to undermine the foundations of the state." Centuries later, the Anabaptists were persecuted because they denied the Magistrate's right to use force, and hence called into question their "right to exist at all." John W. Allen in his *A History of Political Thought in the Sixteenth Century* (1928) pointed out:

> *"…It was mainly on the ground of their denial of rightful jurisdiction in the magistrate that they were everywhere persecuted… They were persecuted as anarchists rather than as heretics. But theirs was a religious anarchism: and it was just this fact that made the problem of dealing with them a difficult one for Protestant governments inclined to toleration. To say that they were condemned as anarchists was, really, simply to suppress part of the truth; since it could be shown that their anarchism was one with their religious opinions. We prate religious toleration as though it rested on some principle of universal validity. But religious toleration may be inconsistent with the maintenance of government."**

In the Netherlands… Menno Simons (1492-1559) taught,

> *"…(the Anabaptists that) (t)he faithful must refuse any military service. If they really held that the use of force was in all cases unlawful… they were logically bound not to accept it (military service and the coercive government which it supported). They were bound, indeed, to refuse to pay taxes at all to support the evil thing."**

Consequently, what was a State to do if it was faced with a large portion of its populace, who refused to serve in the military or pay taxes to support its activities (military or otherwise)? Historically and theoretically, if the State was to continue its State-like functions, it must not and could not tolerate such behavior. Few would serve or pay if conscientious objection to military service and taxation were an integral part of its legal structure.

The British colonies and early American states were faced with this dilemma. For example, the New England Baptists claimed for themselves the same principle which the American revolutionists used to justify their separation from the mother country. Isaac Backus, leader of the New England Baptists, repeatedly used the argument that "the Baptist grievances… were much more serious than the three-penny tax on tea, which anyone could avoid by abstaining from drinking tea." The Baptists thought that they had as much right to seek liberty of conscience (and freedom from religious taxes which they vigorously opposed) in Massachusetts as Americans did to seek civil liberty from Parliament in England. Baptists were repeatedly jailed and had their goods auctioned off for non-payment of religious taxes.

The basic premise behind the imprisonment of Baptists and other dissenters was that civil cohesion could not exist without religious unity. Many Americans reject this premise today, because we have 200 years of "cohesive" nationalism behind us, but the situation in the early 1790s was not so clear. Although the drafters of the federal Constitution confirmed the lack of federal jurisdiction over religion, the fact is that in 1789, when James Madison proposed an amendment to the federal Constitution "prohibiting the states from violating certain rights, including freedom of religion, the House of Representatives approved of Madison's proposal but the Senate voted it down." The "representatives" of the people were not so sure that individuals, rather than the states, could be trusted with responsibility for their own religious freedom.

The Massachusetts Constitution of 1780

The contradictory and inconsistent reception of Church and State "separation" in the early American states is well documented in the case of Massachusetts. Under Article II of its Constitution of 1780, Massachusetts recognized:

> *"It is the right as well as the duty of all men in society, publicly, and at stated seasons, to worship the Supreme Being, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship."*

But Article III of the same document practically denied religious freedom to non-believers and believers in non-protestant faiths in the state:

> *"As the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion, and morality; and as these cannot be generally diffused through a community but by the institution of the public worship of GOD, and of public instruction in piety, religion, and morality: Therefore, to promote their happiness, and to secure the good order and preservation of their government, the people of this commonwealth have a right to invest their legislature with the power to authorize and require, and the legislature shall… authorize and require, the several towns, parishes, precincts, and other bodies politic, or religious societies, to make suitable provision, at their own expense, for the institution of public worship of GOD, and for the support and maintenance of public Protestant teachers of piety, religion, and morality…" (The article then continues, giving the legislature power to compel attendance for the purpose of religious instruction, and the power to coercively assess all citizens of the state for the support of public teachers of religion.)*

The controversy over the passage and ratification of the Massachusetts Constitution of 1780 has been documented by modern-day historians, such as Oscar and Mary Handlin and William McLoughlin. The latter found that Article III "was the only one in the entire constitution which did not receive the necessary two-thirds vote for approval." Those who tabulated the votes "were able by careful juggling of the statistics, to make it appear as though it had." The returns from towns which actually opposed Article III, but offered an amendment to it, were counted in favor of the existing article, rather than opposed to it.

Middleborough, one of the towns that opposed Article III, protested that it "might compel individuals under some circumstances to pay money contrary to the dictates of their consciences." The citizens of West Spring-field, Massachusettes, explained that if the legislature had the power to compel citizens to attend public worship "at stated times and seasons," then it could "prohibit the worship of God at any other time… and also define what worship shall be and so the right of private Judgement will be at an end." One letter writer during the campaign summed up the opposition in the following manner. A person signing himself "Philanthropos," wrote that "The third article is repugnant to and destructive of the second… The second says the people shall be free, and the third says they shall not be free… To use an old saying [Articles II and III are] like a cow that gives a

full pail of milk and then kicks it over."

The supporters of Article III believed that if the restraints on religion were broken down by not compelling religious attendance or support, then it would be hopeless to "preserve the order and government of the state." The "trouble with allowing anyone to exempt himself from religious taxes on grounds of liberty of conscience" was that "the most abandoned wretch who has no conscience at all and is too avaricious to do anything… has only to say that he is conscientiously against" public worship and religious taxation. "The pretended proposal grants full liberty to every man to have no conscience at all, and to be as deceitful and hypocritical as he pleases." The most daring argument for Article III went so far as to claim that its opponents wanted "to deprive a respectable part of the community of what they esteemed a right of conscience, viz., the right of supporting public worship and the teachers of religion by law." In a stunning reversal of natural rights thinking, the supporters of Article III believed that the community at large had the right to tax and control everyone under their jurisdiction. Hence, the loss of this power would be a violation of the consciences of those who advocated religious taxes.

The Baptists, Universalists, Quakers, Shakers, Episcopalians, and Methodists were all sects that opposed Article III, and suffered by its enforcement. Despite the provisions of Article II, the seizure and confiscation of private property of religious believers took place. Some constitutional test cases were taken to court, but none were successful in overturning Article III. Theophilius Parsons, a member of the committee that drew up Article III, wrote a judicial opinion when he was Chief Justice of the Supreme Judicial Court of Massachusetts in 1810, that explained its rationale. He wrote that since "every citizen derives the security of his property and the fruits of his industry, from the power of the state, so as the price of this protection he is bound to contribute in common with his fellow-citizens for the public use, so much of his property and for such public uses as the state shall direct… The distinction between *liberty of conscience and worship, and the right of appropriating money*, is material; the former is unalienable, the latter is surrendered as the price of protection. Religious teaching is to enforce the moral duties and thereby protection of persons and property."

To the objection that it is "intolerant to compel a man to pay for religious instruction from which as he does not hear it, he can derive no benefit," Parsons answered that, "The like objection may be made by any man to the support of public schools, if he has no family who attends; and any man who has no lawsuit may object to the support of judges and jurors on the same ground." Religious instruction supports "correct morals among the people" and cultivates "just habits and manners, by which every man's person and property are protected from outrage and his personal and social enjoyments promoted."

Almost two hundred years after Parsons wrote these words, we find that his arguments are still used to justify statism. The safety of the State and the preservation of the general

welfare both require public taxation. Without money to fund itself, the State could not provide for the security of private property (as though private property is ever secure when subject to the depredations of the State). In a sort of perverse way, those who supported religious taxation in America during the late 18th and early 19th centuries were at least consistent in their reasoning. They realized the “virus” of voluntaryism (whether religious or secular), could undermine the foundation of the State. If the general welfare could be best served by permitting each individual to follow his own self-interest, then this argument should apply as much to the religious sphere as to the economic realm. Just as religious liberty is more than a fight for religion, so economic liberty is more than a fight for free economic transactions. Both are part of the struggle for liberty in all spheres of life. Just as religion flourishes best when left to private voluntary support, so do economic transactions, protection of property, and the settlement of disputes. The “virus” of voluntaryism is contagious and consistent. It leaves no stone unturned; it applies to all the affairs of people, whether public or private. It leaves no room for the State or coercion.

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* For citations, see: http://goo.gl/dHDYz

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