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Roger Williams on Liberty of Conscience

Edward J. Eberle *

INTRODUCTION

Roger Williams was the original American thinker on religious freedom. He thought and wrote about religious freedom in the pivotal 17th century, during the time of great ferment over the role of law, the role of government and the role of religion within civil society. These were especially crucial questions in the England known to Williams, who was born, probably, in 1603 in London. The England of Williams's youth was the era of the Stuart House, a highly contentious reign that, under Charles I, fissured society, causing civil war and contesting these great questions of church and state.¹ In the midst of these great debates, Williams published several of his major works, including his most famous work on religious freedom: *The Bloody Tenent, of Persecution, for Cause of Conscience*, published in London in 1644.²

Williams was able to put his ideas of religion and civil society

* Professor of Law, Roger Williams University School of Law; J.D., Northwestern University; B.A., Columbia University. Copyright © 2005, Edward J. Eberle. All rights reserved. Portions of this article are based on and borrowed from a previous article with permission, *Roger Williams' Gift: Religious Freedom in America*, 4 ROGER WILLIAMS U. L. REV. 425 (1999). I would like to thank Andrew Beerworth for his valuable research assistance and comments on this article.

1. See Edward J. Eberle, *Roger Williams' Gift: Religious Freedom in America*, 4 Roger Williams U. L. Rev. 425, 429-30 (1999).

2. *Id.* at 435; ROGER WILLIAMS, *THE BLOODY TENENT, OF PERSECUTION, FOR CAUSE OF CONSCIENCE* (1644) [hereinafter *BLOODY TENENT*], reprinted in PERRY MILLER, *ROGER WILLIAMS: HIS CONTRIBUTION TO THE AMERICAN TRADITION* 108 (1965).

into practice, conceiving and executing a social contract with his founding of the Providence colony in 1638, an experiment he tinkered with his whole life.³ The opening up of America to Europeans provided people like Williams unparalleled opportunities to escape established civilization and to experiment on new, uncharted ground in order to form a New World. Williams was a man both of ideas and action. He was that rare person who is able both to conceive ideas and have the opportunity to put them into practice, testing first hand to see if they work or not.

Roger Williams's ideas are important, going to the core of religious freedom as we now conceive it within constitutional democracy. His central argument was for the cause of conscience – that each person is entitled through the medium of conscience to communicate with the divine in matters spiritual, and that no person or authority is entitled to exert force or otherwise coerce the sacred haven of conscience. Persecution of conscience was what Williams called “the bloody tenent;” each person was to be free from the “bloody tenent” so that each person could follow his or her sense of the divine.⁴

At the core of Williams's thought is identification of conscience as inviolable both because it is a path to God and because it is an inalienable aspect of being human. To violate conscience, therefore, is to violate God's work and man's dignity. From this core thought Williams elaborated on the primacy of conscience, advocating guarantee of conscience on equal terms for all people, regardless of race or gender; toleration of conscience-motivated conduct, to the extent consistent with law and order; separation of church from state in order to protect the integrity of each from the other; non-establishment of a church; and treatment of churches and other religious institutions on terms equal to other, secular institutions in society. These ideas were designed

3. Williams landed by boat in what is now the Providence area in June 1636. In 1638, Williams drew up a charter for government, based on democratic principles. The charter of Providence would be revised numerous times in subsequent years. Eberle, *supra* note 1, at 433-34.

4. Williams's most famous work was *THE BLOODY TENENT, OF PERSECUTION, FOR CAUSE OF CONSCIENCE*. See *supra* note 2. Williams essentially restated his core arguments in later works. See, e.g., *THE BLOODY TENENT YET MORE BLOODY* (1652), reprinted in *4 COMPLETE WRITINGS OF ROGER WILLIAMS* 1 (Russell & Russell, Inc. 1963) [hereinafter *MORE BLOODY*].

centrally to set out the core essence of religion, but also to identify the bound and nature of government. Williams offered a strategy by which the interests of church and state might be coordinated with each other so that civil peace could reign, government could function smoothly and the fundamentality of religion could yet be preserved amidst the challenges of the modern world. These ideas – non-coercion, equality, non-establishment and separationism – are the core of the American idea of religious freedom.

Yet, for all the power and originality of Williams's thought, he had little, if any, direct influence in the framing of the religious freedoms that comprise the First Amendment of the United States Constitution. His ideas were considered too radical in his own day to be adopted outside the jurisdiction of Rhode Island.⁵ Outside Rhode Island, his contemporaries and later generations tended to view him as a crank.⁶ By the time of the framing of the First Amendment, almost 150 years after Williams wrote, Williams was largely a forgotten man, even though the core of his thought resonates essentially with First Amendment religious freedoms.⁷

Still, Williams's thought and his contributions to the building of a concept of religious freedom, especially one that can function in society, are important, and we should not lose sight of him. Williams was an original and important thinker in his own regard. And, notably, Williams was the very first American

5. In essence, Hall argues that Williams and his "lively experiment" in religious liberty . . . became a despised outcast" in the minds of most colonial Americans, many of whom regarded Rhode Island as "a kind of social outhouse" where the inhabitants "[did] whatever they please[d] without any compunction." TIMOTHY L. HALL, *SEPARATING CHURCH AND STATE: ROGER WILLIAMS AND RELIGIOUS LIBERTY* 116 (1998).

6. Consequently, Williams's work seemingly had little direct influence upon the ideas of Locke, Madison, and Jefferson. *Id.* at 117; *see also* Eberle, *supra* note 1, at 464-71.

7. For elaboration on Williams's indirect influence on the framing of First Amendment freedoms, *see* HALL, *supra* note 5, at 116-45 (1998).

John Locke was the foremost influence on Thomas Jefferson's religious thinking. And Williams's ideas find resonance in the work of John Locke, especially in his famous 1689 *Letter Concerning Toleration*, written some 50 years after Williams. *Id.* at 118-20. However, Locke does not attribute his ideas to Williams, nor is there any evidence that Locke was familiar with Williams's work. *Id.* at 117. By the time of the framing of the Constitution, there were few records of Williams's books in American libraries, and few people thought of him. *Id.* at 116.

thinker and advocate of religious freedom.⁸ Understanding Williams, thus, is a matter of understanding the roots of the American idea of religious freedom. It will always be important to measure American religious freedom against its starting point: Roger Williams. Assessing ideas against their inception helps reveal important truths about ourselves: Do we improve upon, stray from or maintain fidelity with original ideas? And if so, why?

In this article I first offer a partial answer to these questions by examining the core element of Roger Williams's thought: his argument for the inviolability of conscience as the essence of religious freedom and of being human. Conscience is the fulcrum on which religion as a human activity and as a basic freedom rests. Conscience is the foundation of religion itself – what Steven Smith calls the “specialness” of religion.⁹ Conscience is also the basis of religion as a human right, as Michael Perry describes.¹⁰ The core of Williams's argument is that persecution for cause of conscience is sacrilegious – a violation of God's work – and therefore a transgression of governmental authority. Next, I examine in Part II Williams's second premise: because freedom of conscience is available to all people on equal terms, it naturally follows that each person's assertion of conscience must be respected and that the appropriate response to assertion of conscience is toleration of that act of faith. This was the essential human rights strategy by which Williams conceived of a person's religious affairs as a fundamental right beyond official control. In Part III, I examine Williams's institutional strategy for protecting religion: separating the domain of religion from that of government so that neither would interfere much with the other. Lastly, in Part IV, I assess the originality of Williams's thought by comparing his ideas to the main thinker antecedent to him, Martin Luther, in order to obtain some perspective on the

8. “We Therefore cannot pretend to give historical content to the religion clauses without taking seriously their origin, at least in part, in a believing parentage, and Williams is a key theoretician of this parentage.” *Id.* at 117.

9. See Steven D. Smith, *The Tenuous Case for Conscience*, 10 Roger Williams U. L. Rev. 325 (2005).

10. See Michael J. Perry, *A Right to Religious Freedom? The Universality of Human Rights, the Relativity of Culture*, 10 ROGER WILLIAMS U. L. REV. 385 (2005).

evolution of religious freedom. In these respects, we can see that Williams designed an approach by which religious liberty could thrive and be recognized by civil society, and also coexist with civil authority.

I. CAUSE OF CONSCIENCE

"I plead the cause of truth and innocence against the bloody doctrine of persecution for the cause of conscience," asserts Williams in *The Bloody Tenent*,¹¹ his most important work and the one which best encapsulates his argument. By persecution for cause of conscience Williams means that it is "spiritual rape" to force or coerce people to faiths or beliefs they do not voluntarily subscribe to.¹² It is, for example, "a spiritual rape [to] force the consciences of all to one worship,"¹³ or "to batter down idolatry, false worship [or] heresy [with] weapons, [such as] stocks, whips, prisons [or] swords."¹⁴ Such "Soule or Spiritual Rape" is worse than "to force and ravish the Bodies of all the Women in the World."¹⁵ Forcing belief is incompatible with religion because religion rests on the freely chosen quest of man for God.

At the root of Williams's cry for conscience lies several premises integral to his thought. First, conscience is a gift of God, God's voice within man; as God's voice, conscience is the medium by which a person communicates with God. Conscience, thus, is hallowed ground, being both a manifestation of God's work and man's link to God. Through conscience, genuine acts of faith may occur. It is the basis by which one becomes a believer – maybe even a true believer – finding one's path to salvation. For believers, faith is a matter of obligation to divine grace.¹⁶ For

11. BLOODY TENENT, reprinted in MILLER, *supra* note 2, at 108. This section relies in part on and is more fully elaborated upon in Eberle, *supra* note 1, at 441-45.

12. ROGER WILLIAMS, QUERIES OF THE HIGHEST CONSIDERATION (1644), reprinted in MILLER, *supra* note 2, at 83 [hereinafter QUERIES].

13. *Id.*

14. BLOODY TENENT, reprinted in MILLER, *supra* note 2, at 131.

15. *Id.* at 182; see also *id.* at 160 (referring to persecution as "the deflowering of chaste soules"). Forced worship was a "ten thousand fold" greater sin than for "a natural Father [to] force his daughter, or the Father of the commonweale [to] force all the maydens in a Country to the marriage beds of such and such men whom they cannot love." *Id.* at 259.

16. Williams was a Calvinist. Calvin defined conscience as "knowledge (*scientia*) accompanied by a sense of divine justice, and added 'it is a kind of

believers, there is no real choice in this; conscience is not a matter of personal liberty. Rather, conscience is your duty to God, your guide in life, and you are obligated to follow it. The freedom envisioned is the freedom to do God's will, not the freedom to follow personal choice. For Williams, this freedom is preeminently rooted in religious belief, a spirituality emanating from God, not man. This is the concept of "soul liberty" associated with Williams.¹⁷ These thoughts form a justification both for the purpose and importance of religion – what we might call the "specialness" of religion.

Second, "conscience . . . [is] a persuasion fixed in the mind and heart of man, which enforceth him to judge . . . and to do so and so with respect to God, His worship."¹⁸ It is no matter of personal volition as to whether a person has or does not have conscience. Conscience exists by divine gift. As such, conscience is an indispensable, constitutive aspect of being human. For a believer, it is the soul of man: "This conscience is found in all of mankind, more or less: in Jews, Turks, Papists, Protestants, pagans."¹⁹ Conscience is a universal element of the human condition. It is not culturally contingent, although, of course, Williams wrote within the western cultural tradition and thus it is fair to view Williams as western in orientation.

Third, because conscience is universal, it resides in all people, of any race or ethnicity. In the writing of Williams, he made specific mention of "Jews, Turks, Papists, Protestants, pagans" and others as possessing conscience. Enumeration of these people

medium between God and man." EDMUND S. MORGAN, *ROGER WILLIAMS: THE CHURCH AND THE STATE* 130 (1967). Such notion of conscience "was at the center of Puritan theology." *Id.* For Puritans, conscience "represented the voice of God in man . . . the source of natural knowledge of God's will by which man as originally created could have known what was right and wrong." *Id.* Thus, since conscience was divine, man must respect it, whether it was right or wrong. *Id.* Williams subscribed, in essence, to this thinking. So, in actuality, he was more of a standard Puritan thinker, in this respect, than seems generally appreciated. *Id.* at 133.

17. Statue of Roger Williams, located at Roger Williams University Library, Bristol, Rhode Island.

18. ROGER WILLIAMS, *THE COPIE OF A LETTER OF R. WILLIAMS OF PROVIDENCE IN NEW ENGLAND, TO MAJOR ENDICOT, GOVERNOUR OF THE MASSACHUSETTS* (1651), reprinted in MILLER, *supra* note 2, at 159 [hereinafter *LETTER TO MAJOR ENDICOT*].

19. *Id.*

as meriting freedom of conscience was extraordinary in the seventeenth century world of Roger Williams. Jews were not widely tolerated in the European world of Williams's upbringing, and sometimes did not fare noticeably better in the New World of America. Turks were yet viewed as the scourge of Europe, on account of their Islamic faith, their ethnic difference and their threat to European territory and culture.²⁰ Papists and Protestants had been at each others' throats throughout Europe ever since Luther's inspired Reformation, and this tumult continued in Williams's day.²¹ Pagans, of course, were ordinarily decitizenized in matters of religion and, sometimes, in matters of politics as well on account of the belief that people who did not believe in God could not be trusted.²² In contrast to his contemporaries, Williams advocated the cause of conscience for all people, even Native Americans – the Indians – notwithstanding that they were considered barbarians by most Europeans.²³ For Williams, equality meant equality: all people – no matter their status, heritage or belief – were entitled to the same claim of rights.

Fourth, Williams's guarantee of equality of conscience did not stop with males. Williams accorded freedom of conscience to females as well. The 1644 Providence Charter, drafted by Williams and secured from English authorities, was written in gender neutral terms.²⁴ And Williams meant what he said. In

20. The fall of Constantinople in 1453 at the hands of the Muslim Turks was perhaps the genesis of many of the negative stereotypes that most Europeans held against Islam. Turks and other Islamic tribes were commonly depicted through images of "savagery," "sexual excess and perversity." ANDREW WHEATCROFT, *INFIDELS: A HISTORY OF THE CONFLICT BETWEEN CHRISTENDOM AND ISLAM* 260 (2003). Many Europeans feared the Turks specifically for their apparent ferocity and discipline in warfare which was instilled primarily through an uncompromising devotion and loyalty to the Sultan. NICCOLÒ MACIAVELLI, *THE PRINCE* (1531), *reprinted in* NICCOLÒ MACIAVELLI, *THE PRINCE AND OTHER WRITINGS* 19-20 (Wayne A. Rebhorn, trans., Barnes & Noble Classics 2003).

21. John Locke did not extend toleration to Roman Catholics. Eberle, *supra* note 1, at 449 n.108; see also *id.* at 451 (discussing the English Civil War).

22. See, e.g., JOHN LOCKE, *A LETTER CONCERNING TOLERATION* (1689), *reprinted in* FRANKLYN S. HAIMAN, *RELIGIOUS EXPRESSION AND THE AMERICAN CONSTITUTION* 149 (2003).

23. Eberle, *supra* note 1, at 452.

24. The 1644 charter declared:

1638, during the first years of the settlement's existence, the fledgling town disenfranchised Joshua Verin for violating his wife's freedom of conscience.²⁵ Verin was one of the original five companions who set out with Williams to cross the Seekonk River into what is now Providence. Verin's transgression in 1638 was acting to prevent his wife, Jane, from following the dictates of her soul and attending worship services, which occurred next door in the home of Roger Williams.²⁶ The Verin case is the first known record of authorities recognizing a woman's liberty of conscience in the western world.²⁷

Fifth, because conscience is an inviolable aspect of all human beings, intrusion into conscience is a serious affront to religious liberty, and also to human dignity. From a religious standpoint, persecution of conscience is an un-Christian, unreligious act.²⁸ Because conscience is the medium of communication between God and man, its violation infringes on God's domain. No authority can

[No] person within the said colony, at any time hereafter, shall be any wise molested, punished, disquieted, or called in question, for any difference in opinion in matters of religion, and do not actually disturb the civil peace of our said colony; but that all and every person and persons may . . . freely and fully have and enjoy his and their own judgements and consciences, in matters of religious concernments . . . they behaving themselves peaceably and quietly, and not using this liberty to licentiousness and profaneness, nor to the civil injury or outward disturbance of others.

Id. at 435 n.33 (citation omitted). The 1644 charter was the successor to the earliest compact for Providence, the 1640 Articles of Government, which included the following: "We agree, as formerly hath been the liberties of the town, so still, to hold forth liberty of conscience." Reuben Aldridge Guild, *Introduction* to 1 COMPLETE WRITINGS OF ROGER WILLIAMS, *supra* note 4, at 38-39.

25. The Providence town record of March 21, 1638 reads: "It was agreede that Joshua Verin upon the breach of a couenant for restraining of the liberty of conscience shall be withheld from the liberty of voting till he shall declare the contrary." 1 THE EARLY RECORDS OF THE TOWN OF PROVIDENCE 4 (Horatio Rogers et. al. eds., 1892) (1638).

26. *Id.* at 1590-91.

27. Edward J. Eberle, *Another of Roger Williams's Gifts: Women's Right to Liberty of Conscience: Joshua Verin v. Providence Plantations*, 9 ROGER WILLIAMS UNIV. L. REV. 399, 400-01 (2004).

28. "If thou huntest any for cause of conscience, how canst thou say thou followest the Lamb of God who so abhorred that practice?" BLOODY TENENT, *supra* note 2, at 109. Persecution is "most evidently and lamentably contrary to the doctrine of Christ Jesus The Prince of Peace. *Id.* at 155-56.

deny believers the ability to practice their faith. Any religion that benefits from force over faith is not a true religion, but an oppressor of souls.²⁹ Such a religion relies more on power than belief.

Since a religious conversion must involve an actual change of heart, "the arm of flesh" or the "sword of steel" could never "reach to cut the darkness of the mind, the hardness and unbelief of heart, and kindly operate upon a soul's affections to forsake a long continued father's worship, and to embrace a new, though the best and truest."³⁰ Persecution could only force worship, causing hypocrisy: "[F]orc't Worship stincks in Gods Nostrills."³¹ Official coercion "may make . . . a whole Nation of Hypocrites."³² For Williams, such hypocrisy had a "further, tragic consequence."³³ It "hardened" people's souls "in a dreadful sleep and dream of their own blessed estate, and [sent] millions of souls to hell in a secure expectation of a false salvation."³⁴

Forcing belief is an act of power that undercuts man's free will to communicate with God. Thus, we can see how Williams saw coercion of conscience as contrary to God. There can be no place for force of conscience in civil society. Since conscience is the core of religion, a way must be found to safeguard conscience within society. For Williams, the way was law. Law is needed to tame man's natural instinct to control.

29. "[T]hat [r]eligion cannot be true which needs such instruments of violence to uphold it" BLOODY TENENT, *reprinted in* MILLER, *supra* note 2, at 129. There was a related institutional aspect to Williams's argument against persecution. History, Williams believed, showed that force favored orthodox, but false, religion. MORGAN, *supra* note 16, at 141. Thus, force smothered "true" religion. True believers were invariably the objects of state persecution. Williams's argument against persecution is, one can see, actually a way to protect dissenting and minority views, such as Williams's brand of separatism. *See id.*; *infra* Part II.

30. BLOODY TENENT, *reprinted in* 3 COMPLETE WRITINGS OF ROGER WILLIAMS, *supra* note 4, at 354; *see also* Timothy L. Hall, *Roger Williams and the Foundations of Religious Liberty*, 71 B.U. L. REV. 455, 470 (1991).

31. Letter from Roger Williams to Major John Mason and Governor Thomas Prentice (June 22, 1670), *reprinted in* 6 COMPLETE WRITINGS OF ROGER WILLIAMS, *supra* note 4, at 347.

32. BLOODY TENENT, *reprinted in* 3 COMPLETE WRITINGS OF ROGER WILLIAMS, *supra* note 4, at 136.

33. Hall, *supra* note 30, at 470.

34. BLOODY TENENT, *reprinted in* 3 COMPLETE WRITINGS OF ROGER WILLIAMS, *supra* note 4, at 225.

Thus, Williams set out to erect legal structures to protect religious freedom. He conceived liberty of conscience as a human right, designed to safeguard liberty of conscience within the polity. People are "not for their conscience and religion . . . [to] be choked and smothered, but suffered to breathe and walk upon the decks in the air of civil liberty and conversation in the ship of the commonwealth, upon good assurance given of civil obedience to the civil state."³⁵ Forbearance of violence to the cause of conscience should, therefore, be laid "as the Magna Charta of the highest liberties."³⁶ The "civil state is bound before God to take off that bond and yoke of soul-oppression and to proclaim free and impartial liberty to all the people. . . ."³⁷

From Roger Williams's evangelical perspective, the religious aspect of conscience was foremost. The core of religious freedom is the inviolability of conscience because conscience is the medium by which a person communicates with God. No person or authority, therefore, is justified in intruding into this sacred realm. In this way, Williams makes the essential argument for the indispensability of conscience to religion. The conscience-rooted nature of religion also helps lay out the case for the "specialness" of religion. Religion is special because it facilitates man's participation in the divine. Religion addresses matters spiritual, reachable only through the soul of man. Religion is the human pursuit of the divine.

But Williams thought beyond the religious realm. Drawing upon the political science of his day – social contract theory – Williams set out the basis of liberty of conscience as a fundamental right within the polity. Liberty of conscience is the foundation of religious freedom, according to Williams.³⁸ The guarantee is both an empowerment of individuality, facilitating man's striving for the divine, and a limitation on official authority; government ends when it reaches the point of the divine.³⁹ Within

35. BLOODY TENENT, *reprinted in* MILLER, *supra* note 2, at 140.

36. *Id.* at 144.

37. ROGER WILLIAMS, THE HIRELING MINISTRY NONE OF CHRISTS, OR A DISCOURSE TOUCHING THE PROPOGATING THE GOSPEL OF CHRIST JESUS (1652), *reprinted in* MILLER, *supra* note 2, at 204 [hereinafter THE HIRELING MINISTRY].

38. BLOODY TENENT, *reprinted in* MILLER, *supra* note 2, at 110-11.

39. "We readily grant the civil magistrate armed by God with a civil

the sphere of liberty of conscience lies a person's ability to control his or her own thoughts, beliefs and desires. We might thereby think of liberty of conscience as the wellspring of human thought and belief – the cognitive and spiritual process that distinguishes man from animals. In this sense, we might think of liberty of conscience as a foundation of human rights. It was the particular accomplishment of Williams, and those who followed the Enlightenment inspiration,⁴⁰ to recognize that man could only be free when his conscience was secure from authorities or other censorial forces. Freeing the thought process of man set the course for the rooting of society on the free, self-determining process of its citizens.

For Williams, liberty of conscience comprised only the religious realm. Williams did not advocate a more capacious sphere of conscience that could include secular beliefs, philosophies or ways of life. Nor did Williams advocate freedom of expression. For him, the idea of conscience-based thought was exclusively religious. Yet, with inviolability of conscience as a base, Williams crucially helped to establish and fortify religion as a sanctified, preferred activity of man.⁴¹ Further, with such a base it is not much of a leap to extend the realm of a person's ability to control his or her own thoughts, beliefs or desires to matters beyond the religious. In conscience – or, more broadly, the mind – we find the wellspring of all thoughts, beliefs, desires or

sword to execute vengeance against robbers, murders, tyrants. Yet where it merely concerns Christ, we find when His Disciples desire vengeance upon offenders, He meekly answers, 'You know not what spirit you are of; I came not to destroy men's lives, but to save them.' *QUERIES*, *supra* note 12, at 84.

40. See, e.g., JOHN LOCKE, *TWO TREATISES OF GOVERNMENT* (Gryphon 1992) (1690); JEAN-JACQUES ROUSSEAU, *THE SOCIAL CONTRACT* (G.D.H. Cole trans., Fitzhenry & Whiteside 1973) (1762).

41. E.g., Grundgesetz (GG) [Basic Law (German Constitution)] art. 4(1), *translated in* CONSTITUTIONS OF THE COUNTRIES OF THE WORLD: FEDERAL REPUBLIC OF GERMANY 81 (Albert P. Blaustein & Gisbert H. Flanz eds., 1991) ('Freedom of faith, of conscience, and freedom of creed, religious or ideological (weltanschaulich), shall be inviolable.');

CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA [PORTUGUESE CONSTITUTION] art. 41, *translated in* CONSTITUTIONS OF THE COUNTRIES OF THE WORLD: PORTUGAL 27 (Gisbert H. Flanz ed., 1999). For a discussion on the limits of Williams's ideas pertaining to the freedom of conscience, see MORGAN, *supra* note 16, at 141 (arguing that Williams's ideas were "somewhat more limited" than those of Jefferson and Madison because "[Williams's] goal was not freedom of thought for its own sake. . .," but only as a means to ensure that the conscience was free "to reach the true God.").

motivations. Thus, we might think of the sanctity of the mind itself as prime, giving rise to recognition of a broader freedom of thought, mind, opinion and expression. Freedom to shape one's mind – to form one's own thoughts and beliefs – is fundamental to a free society.

It would take later work by John Locke, Thomas Jefferson and James Madison, among others, to work out the basis for this broader freedom of the mind.⁴² We might think of their work as translating the overtly more religiously-oriented work of scholars like Martin Luther and Roger Williams to a more secular, post-Enlightenment, modern social structure.⁴³ In a sense, their work helped reconceive the ideals of religious freedom from pre-modern, late Medieval conceptions to principles applicable to secular constitutional culture, providing a framework by which religious freedom could be realized and acted upon.

Yet, we can see the seeds of these developments in the work of Williams, who set out the initial formulation of this idea and sketched its dimensions. By founding society on recognition of the fundamentality of liberty of conscience, Williams posited that civil peace might be secured: "I affirm that that state policy and state necessity which (for the peace of the state and preventing of rivers of civil blood) permits the consciences of men will be found to agree most punctually with the rules of the best politician that ever the world saw. . . ."⁴⁴ The securing of freedom of conscience within the polity is a means to achieve civil peace. Because conscience is secure – that is, it is a basic right – it is a limitation

42. For a further discussion on how Williams's work on the freedom of religious conscience was later supplemented by the more secular theories of Locke, Jefferson, and Madison, see HALL, *supra* note 5, at 118-36.

43. Timothy Hall draws an apt distinction between the "evangelical or protestant dissent" line of thought as represented by Roger Williams and Issac Backus from the "Enlightenment or humanistic rationalism" of Jefferson, Madison, and Locke. *Id.* at 117. Although the latter line of thought is most commonly credited as being the primary genesis of the Religion Clauses, Hall argues that "[t]here are persuasive grounds for believing that, if anything, the First Amendment owes more to evangelical passion than to Enlightenment skepticism." *Id.*

44. BLOODY TENENT, *reprinted in* MILLER, *supra* note 2, at 135. Although Williams's primary concern was that the conscience be free to seek God without state interference, Timothy Hall suggests that the broader freedoms of the First Amendment were rooted in "a believing parentage, and Williams is a key theoretician of this parentage." HALL, *supra* note 5, at 117.

on governmental authority. Belief is a domain for man and woman, not government. An end of state authority is demarcated at the point a person's conscience is reached. Choice over religion is deregulated – a matter of personal choice, not governmental.

The securing of conscience as a right usefully relieves government from the duty to enforce a particular view of the divine. Relieving government from the obligation to act divine removes a significant cause of stress and discord in the society: the need for government to police personal belief, which generally resulted in official conformity of conscience. This is what Williams called the “bloody tenent . . . of persecution for cause of conscience.”⁴⁵ If conscience was a matter of individual prerogative on communication with the divine, and therefore off limits to authorities, there would be a substantially reduced possibility of persecution for cause of conscience. Williams thus helps solve one of the knottiest problems of western political science: how to secure religious liberty yet maintain civil peace.

Advocacy of these principles of liberty of conscience and their establishment in Providence was a serious and risky enterprise in Roger Williams's day. Most notably, Williams himself bitterly experienced the consequences of his advocacy through his banishment from Massachusetts Bay in 1635.⁴⁶ The establishment of the Providence colony as a place of toleration and freedom of religion was quite radical for the time, the western world's first experiment with the idea of whether liberty of conscience could coexist with civil peace. Thus, we can see clearly that Williams was addressing foundational questions of religious freedom: conscience as the wellspring of religious freedom.

Through Williams's assertion and elaboration of “the cause of conscience” we can see the foundation of a freedom to be religious. First, conscience forms our path to God. It is, therefore, the essence of religion itself, revealing, as it does, the soul of man and his communication with God. This idea provides a strong justification for treating religion as a special activity, the sacred

45. *Id.* at 109.

46. For a first-person account of Williams's flight from Massachusetts Bay, see Letter from Roger Williams to Major John Mason, *reprinted in* MILLER, *supra* note 2, at 228-30. For an insightful analysis of Williams's banishment, see EVE LAPLANTE, *AMERICAN JEZEBEL: THE UNCOMMON LIFE OF ANNE HUTCHINSON, THE WOMAN WHO DEFIED THE PURITANS* 210 (2004).

preserve covering the spiritual dimension of human being. Second, being rooted in human personality and its communication with the divine, conscience is an inviolable aspect of being human. These two foundations form a strong justification for the treatment of conscience as a human right, meriting preferred treatment in a social order. Third, the essence of conscience is protection against persecution and coercion. Compulsion of conscience is contrary to the law of God and the natural law of man; it is “spiritual rape”⁴⁷ – what Williams called “the bloody tenent.”⁴⁸ The following quote is illustrative of how Williams abhorred any form of religious persecution:

“[T]he blood of souls compelled and forced to hypocrisy in a spiritual and soul rape, so deeply guilty of the blood of the souls under the alter, persecuted in all ages for the cause of conscience, and so destructive to the civil peace and welfare of all kingdoms, countries, and commonwealths.”⁴⁹

Fourth, accordingly, securing of conscience is a means to achieve civil peace. Placing conscience off-limits to government removes a serious source of discord in society. Fifth, conscience involves matters of belief – pure thought or opinion – plus matters of action that are motivated by conscience. It is difficult, of course, to say exactly how far the scope of each extends, and Williams only tentatively sketched these limits. We can conclude, however, that religiously motivated conduct is limited by the need for law and order, although the precise line between the two remains elusive.⁵⁰ These thoughts are Williams’s main contributions to the

47. *QUERIES*, *supra* note 12, at 83. “Only let it be their souls choice, and no inforcing sword, but what is spiritual in their spiritual causes.” *THE HIRELING MINISTRY*, *supra* note 37, at 154.

48. *BLOODY TENENT*, *reprinted in* *MILLER*, *supra* note 2, at 143.

49. *Id.* “Soul rape,” as Williams states it, is contrary to the law of God because all men hate persecution: “Do not all men hate the persecutor, and every conscience, true or false, complain of cruelty, tyranny?” *Id.* at 109.

50. “Congress was deprived of all legislative power over mere opinion, but was free to reach actions which were in violation of social duties or subversive of good order.” *Reynolds v. United States*, 98 U.S. 145, 164 (1878). An examination of Williams’s views on the reach of conscience, as it relates to both belief and conscience-motivated acts, is set forth in Eberle, *supra* note 1, at 444-50, including his famous Letter to the Town of Providence (a.k.a. Ship

concept of religious liberty, which took particular root in colonial America, and later reached fuller fruition in the First Amendment of the United States Constitution.⁵¹ Today, the idea of religious freedom has much broader dissemination in western culture. We might characterize it as an essential attribute of western constitutional culture.

II. COMPONENTS OF RELIGIOUS FREEDOM: TOLERANCE AND EQUALITY

Having identified the essence of religion as exercise of conscience, Williams next sought ways to protect the sanctity of religion from the often corrupting influence of the world. For Williams, how to protect religion within civil society was a challenge to which he devoted considerable thought. His theory of religious freedom is comprehensive, and he devised a number of strategies to accomplish his goal. We might think of it as setting out the basis for a human right to religious freedom. The components of his idea of religious freedom include toleration,⁵² equal rights, separation of church and state,⁵³ advocacy and delineation of different jurisdictions of church and state,⁵⁴ no national church,⁵⁵ and treatment of a church as equal in status to other organizations in society.⁵⁶ We can thus observe again that Williams was a political scientist as well as a theologian and prophet of religious freedom. He fashioned the polity according to social contractarian theory, rooting it on core values like religious freedom and democracy.

I next evaluate two important components of religious liberty: toleration of contrary beliefs and opinions and the securing of religious freedom on equal terms to all citizens. We might think of these ideas as enlarging the human rights component to religious freedom.

of State Letter) (January, 1655), *reprinted in* MILLER, *supra* note 2, at 225 [hereinafter Ship of State Letter].

51. LEONARD W. LEVY, *ORIGINS OF THE BILL OF RIGHTS* 79-102.

52. For a full discussion of Williams's idea of toleration, see Eberle, *supra* note 1, at 450-53.

53. *Id.* at 453-56.

54. *Id.* at 456-60.

55. *Id.* at 460-63.

56. *Id.* at 463.

The idea of tolerance follows from Williams's conception of conscience. Recall again that for Williams, conscience is inviolable, both as a person's medium of communication with God and as an indissoluble aspect of being human. All people possess conscience.⁵⁷ Because all people have a conscience, all people are entitled to exercise conscience as they like. They can contemplate spiritual affairs and form beliefs as they like and, if they choose, act on those beliefs, at least to the extent they act in a manner consistent with law and order.⁵⁸ Furthermore, each person has an equal claim to conscience and its exercise. The equality of opportunity in claim to liberty of conscience is a fundamental premise of Williams's thought, and lays a further, egalitarian basis for the liberty as a human right.

Guarantee of the human right to liberty of conscience calls for adjustment of the social order. How other people – especially authorities – are to respond to citizens' assertions of liberty of conscience is the key question. For Williams, the answer is toleration. Since all people are entitled to their beliefs as a matter of liberty of conscience, the only response to individual assertion of conscience is to respect the act, whether one agrees or disagrees with it.

Williams illustrates the point. He certainly disagreed with the religious views of many in his lifetime. For example, in the last major public event of his life, he took it upon himself to row all day from Providence to Newport, at about the age of seventy-three, in order to debate Quakers, whom he believed to be greatly mistaken in their beliefs and practices.⁵⁹ Yet, despite his misgivings, he extended religious toleration to the Quakers as, indeed, he did to all people. The idea of tolerance extends to "Indians . . . French, Dutch, Spanish, Persians, Turks and Jews . . . [all of whom] should be permitted in their worships if

57. "I speak of conscience, a persuasion fixed in the mind and heart of man, which enforceth him to judge . . . and to do so with respect to God, His worship." BLOODY TENENT, *reprinted in* MILLER, *supra* note 2, at 159.

58. Eberle, *supra* note 1, at 445-49.

59. He published his views in *GEORGE FOX DIGG'D OUT OF HIS BURROWS* (1676), *reprinted in* 5 *COMPLETE WRITINGS OF ROGER WILLIAMS*, *supra* note 4, at 1; *see also* Eberle, *supra* note 1, at 438. *GEORGE FOX DIGG'D OUT OF HIS BURROWS* was the last book Williams published, and the only book he published in America.

correspondent in civil obedience. . . ."⁶⁰ We can thus see that equality in claim to liberty of conscience and toleration of disparate and disagreeable views are constituent elements of Williams's thought on religious liberty. Equality of status is a matter of human rights and human dignity. Tolerance is the only proper response to the universal assertion of conscience.

Equality in liberty of conscience and the concomitant obligation of society's members to tolerate their fellow citizens' exercise thereof is also a way to harmonize society, removing religion as an element of friction in the body politic through its transfiguration into a human right. By vesting religion as a human right, it is placed off limits to authorities and majoritarian forces. Religion is a matter of individual choice. People can disagree with someone's religion, but they must respect it as part of the social contract, as their religious choices are, in turn, respected.

Roger Williams framed a remarkably broad and inclusive freedom of religion, extending its protections to all believers, Christian and non-Christian. The broad, inclusive freedom of religion advocated by Williams facilitated democracy, the experiment in government crafted and put to the test in the New World. Williams was one of the earliest framers of the democratic experiment in America, with the "lively experiment" in Providence colony. The practice of democracy, in turn, was facilitated by the habits of mind and conduct encouraged by a guarantee of liberty of conscience: respect of individuals, toleration of others, equality and free discussion in opinions. These habits encouraged a climate of toleration and freedom, a climate that could welcome and integrate diverse and contrary views and people. Guarantee of liberty of conscience thereby helped lay the basis for the smoother functioning of a diverse, pluralistic society. The experiment in democracy set in motion by Williams presaged the type of society that would later emerge in America.⁶¹

60. BLOODY TENENT, reprinted in MILLER, *supra* note 2, at 139. In his Ship of State Letter Williams phrased the idea of tolerance as follows: "Papists, Protestants, Jews and Turks . . . [are all entitled to] liberty of conscience." Ship of State Letter, *supra* note 50, at 225-26.

61. HALL, *supra* note 5, at 124-36. Indeed, even Alexis deTocqueville became impressed with the remarkable civility among the various religious groups living within the fledgling American democracy:

Even in the 1600s Providence was a diverse society for the time, attracting dissenters and contrary thinkers of all sorts.⁶² Providence offered a welcoming, tolerant climate, a distinct contrast from the orthodoxy of views enforced in neighboring colonies, such as Massachusetts Bay.⁶³ Not surprisingly, the first Baptist Church and one of the first Jewish houses of worship were founded in Providence and broader Rhode Island, respectively, and its tolerant climate welcomed Roman Catholics and Quakers, groups which fared less well in other colonies.⁶⁴ We might acknowledge Williams to be the forerunner of important ideas – equality and tolerance – that would provide the foundation necessary for the emerging democratic pluralism of the New World. These ideas are crucial to laying the basis by which a melting pot of people and ideas could function cohesively in society.

We can obtain some measurement of the originality of Williams's views when we set them against those of his contemporaries. In the England of his time, a civil war was raging over religion, among other issues. The contentiousness of religion in Old England was a factor in the emigration of Englishmen to New England in order to found new polities on principles of

There is an innumerable number of sects in the United States. All differ in the worship one must render to the Creator, but all agree on the duties of men toward one another. . . . If it serves man very much as an individual that his religion be true, this is not so for society.

ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* (Harvey C. Mansfield & Debra Winthrop eds., Univ. of Chicago Press 2002) (1835).

62. See DIARMAID MACCULLOCH, *THE REFORMATION, A HISTORY* 520-21 (2003) (contrasting the policy of religious pluralism within the Rhode Island colony from the agenda of John Winthrop to create a religiously homogenous society within the Massachusetts Bay colony based entirely upon Puritan theology).

63. Williams rejected "the common idea" among neighboring colonists in Massachusetts "that God entered into human affairs in making covenants with pious settlers such as John Winthrop." LAPLANTE, *supra* note 46, at 211.

64. Williams founded the first Baptist Church in America and the second, by a few months, in the world. Eberle, *supra* note 1, at 428. Moreover, Rhode Island was among the first havens for Jews in America, as for many faiths. Jews arrived in Rhode Island in 1654-58. This resulted in the founding of one of the country's first Jewish synagogues, the Tauro Synagogue, in Newport, Rhode Island.

desired religious tenets,⁶⁵ such as the rooting of the Massachusetts Bay colony on the strict form of Calvinism known as Puritanism.⁶⁶ With the establishment of the Scottish Stuart dynasty, signaled by James I's accession to the throne in 1603, Protestant England feared the restoration of Catholicism.⁶⁷ The dispute flared into outright civil war during the reign of Charles I, ending in his beheading. Protestants distrusted Catholics, fearing them as "dual citizens," with the superior claim being to church and not to state.⁶⁸ England was among the least tolerant countries affected

65. While reflecting upon the pervasiveness of religious intolerance within English society, Thomas Paine stated the following: "Persecution is not an original feature in any religion but it is always the strongly marked feature of all law-religions, or religions established by law." THOMAS PAINE, *RIGHTS OF MAN* (1791), *reprinted in* THOMAS PAINE, *RIGHTS OF MAN, COMMON SENSE, AND OTHER WRITINGS* 139 (Mark Phillip ed., 1995). Moreover, Paine specifically referred to the systematic persecution of "Quakers and Dissenters" at the hands of the English Crown as the leading cause of emigration to America. *Id.*

66. The Puritan settlers of Massachusetts Bay, led by John Winthrop, "were conscious of themselves as the successors of Ancient Israel, the people with whom God made a covenant." LAPLANTE, *supra* note 46, at 10. To Winthrop and his followers, the Church of England had become too closely associated with the ceremonialism of the Roman Catholic Church. In the eyes of the Puritans, the Catholic Church epitomized "The Antichrist," and the "Great Whore of Babylon." *Id.* This particular form of anti-Catholic polemic within Puritan thought was rooted within the eschatological symbolism of the Book of Revelation, in which Rome (symbolically referenced as "Babylon" and "the mother of harlots") is depicted as the epicenter of evil in the world and as the source of persecution of early Christians. *Revelation* 17:1-6. To the Puritans, therefore, anything associated with Rome was viewed as an abomination against God. See LAPLANTE, *supra* note 46, at 21.

67. Fears among English Protestants of a Catholic rebellion reached a climax in 1605 when a group of Catholic men, led by Guy Fawkes, were arrested for plotting to blow-up the Houses of Parliament. *Id.* at 37.

68. The perceived loyalty of English Catholics became a major issue in English politics when Pope Pius V issued the papal bull, *Regnans in Excelsis*, which condemned Elizabeth I as a heretic. MACCULLOCH, *supra* note 62, at 334. The bull purported to relieve English Catholics of any obligation to pledge allegiance to Elizabeth's reign. *Id.* However, the bull was effectively revoked by Pius's successor, Gregory XIII. *Id.* Furthermore, the Catholic Church sent many missionary priests from mainland Europe into England in an effort to mitigate the decline of Catholicism in England. *Id.* at 392. However, these foreign missionaries, along with their English hosts, were widely condemned as traitors, and thereby subjected to a variety of penalties including "death, banishment, life-imprisonment, forfeiture of property or fines." *Id.*

by the Protestant Reformation.⁶⁹

In continental Europe, the Thirty Years War ravaged the continent. The War was fought over religion, as Catholics strived to contain the revolution of Protestantism.⁷⁰ The War lasted from 1618 to 1648, ending in the Treaty of Westphalia which reaffirmed the principle of *cuius regio eius religio* (the religion of a territory shall be that of its ruler), established in the Religion Peace of Augsburg in 1555 as a compromise between German princes advocating the cause of Catholicism or Lutheranism.⁷¹ Accordingly, mandatory belief in the sovereign's religion was the standard European solution to achieving social harmony in religious matters.⁷² Each sovereign supervised religion within his sphere. There was even some toleration of others' faiths, mainly over private worship. The main guarantee of the Treaty of Westphalia, however, was the right to emigrate to a more tolerant land.⁷³ This form of coercion was the political settlement achieved

69. Douglas Laycock, *Continuity and Change in the Threat to Religious Liberty: The Reformation Era and the late Twentieth Century*, 80 MINN. L. REV. 1047, 1055 (1996).

70. In Münster, the capital of Westphalia, the Anabaptists, forerunners of the American Baptists, took over the town, a Catholic stronghold, in 1534 for a few years. *E.g.*, OXFORD ILLUSTRATED HISTORY OF CHRISTIANITY 269 (J. McManners ed., 1990) [hereinafter OXFORD HISTORY OF CHRISTIANITY]. When the Catholics retook the town, they hanged the leaders of the Anabaptists from the main church steeple. Thus, the Old World suffered tremendous religious war. *See* Eberle, *supra* note 1, at 451 n.115 (citation omitted).

71. Kenneth C. Randall & John E. Norris, *A New Paradigm For International Business Transactions*, 71 WASH. U. L.Q. 599, 626-27 (1993).

72. Harold Berman & John Witte, Jr., *The Transformation of Western Legal Philosophy in Lutheran Germany*, 62 S. CAL. L. REV. 1573, 1627-28 (1989); OXFORD HISTORY OF CHRISTIANITY, *supra* note 70, at 269. Philip Melanchthon was the principle theorist of *cuius regio eius religio*, which he developed in his theory of law in relation to the first table of the Decalogue, or the first of Moses' tables. Berman & Witte, Jr., *supra*, at 1628. A friend of Luther, Melanchthon, was a professor of Greek, theology, law and philosophy at the University of Wittenberg, where Luther was one of his colleagues. Melanchthon was one of the main theorists of the Protestant Reformation. *Id.* at 1601, 1612-35 (describing Melanchthon's philosophy).

73. Laycock, *supra* note 54, at 1052-53; Kenneth C. Randall & John E. Norris, *A New Paradigm for International Business Transactions*, 71 WASH. U. L.Q. 599, 626-27 (1993); Treaty of Westphalia, Oct. 24, 1648, Holy Roman Emperor - King of France, at <http://www.hfac.uh.edu/gbrown/philosophers/leibniz/BritannicaPages/WestphaliaTreaty/WestphaliaTreaty.html> (last visited Feb. 2, 2005) [hereinafter Treaty of Westphalia].

by the Protestant Reformation originated by Luther.⁷⁴ Peaceful coexistence among different faiths – Protestants and Roman Catholics, and among religious and political spheres – through migration to areas of chosen faith, was the primary means by which religion could be practiced in society.

In this contentious climate, Williams wrote his major religious works, calling for liberty of conscience and tolerance of others' beliefs.⁷⁵ Especially notable were his calls for tolerance of Catholics and Native Americans, although the same might be said for Jews and Turks.⁷⁶ In *Queries of the Highest Consideration*, Williams called for tolerance on behalf of Catholics amidst the English civil war, and amidst the doctrinal battle in Protestantism between Presbyterians (Anglicans) and Independents, such as Williams.⁷⁷ Similarly impressive was his embrace of Native Americans, who were regarded by most English settlers as barbarians. Most settlers warred with Indians. Williams tried to understand them and be their friend.⁷⁸ Likewise, Williams

74. Randall & Norris, *supra* note 71, at 627.

75. "[W]e query how with comfort to your souls you may encourage the English treasure to be exhausted, and the English blood to be spilt for the cause of Christ?" *QUERIES*, *supra* note 12, at 84.

76. The Turks's domination of eastern and central Europe spanned a century, ending at Vienna in 1683 with the defeat of the Ottoman army by Christian forces, aided by the Polish King, John Sobieski. 13 EAST CENTRAL EUROPE, A HISTORY OF: THE SECOND HALF OF THE SEVENTEENTH CENTURY, THE GREAT SWEDISH INVASION 8, at <http://historicaltextarchive.com/books.php?op=viewbook&bookid=1&cid=13> (last visited Feb. 2, 2005). Thus, Turks certainly were severely discriminated against in Europe.

Similarly, Williams seems to have had a progressive attitude toward Native Americans. Unlike most of his contemporaries, Williams spent considerable time learning the languages and customs of the indigenous population. He even sought to evangelize the Native Americans, going so far as to publish the first version of the Bible ever written in a Native American dialect in 1663. MACCULLOCH, *supra* note 62, at 522.

77. "We query (if security may be taken by the wisdom of the state for civil subjection) why even the Papists themselves and their consciences may not be permitted in the world?" *QUERIES*, *supra* note 12, at 84. Perry Miller notes that the members of Parliament must have considered *QUERIES* to be a "weird production, asserting in the disarming form of questions that not only should Presbyterians and Independents refrain from cutting each other's throats, but that even Catholics should be tolerated." MILLER, *supra* note 2, at 80.

78. Because of his amicable relationship with the local Indians, Williams was able to seek refuge with the Wampanoag tribe for several months during his flight from Massachusetts Bay. LAPLANTE, *supra* note 46, at 210.

believed in gender equality with respect to liberty of conscience.⁷⁹ For Williams, all consciences – “a rightly informed conscience, or a blind and erroneous conscience”⁸⁰ – are entitled to have their way. Williams was doctrinaire on matters of religion, but tolerant of others’ beliefs: “He was dogmatic in religion, but civil and tolerant in society.”⁸¹

Viewed from Williams’s theological perspective, the world could be divided between true believers (such as Williams) and all others. The church of true believers was voluntary and small. Outside of this church were all others: English, Spanish, European, non-European, Catholic, Protestant, Turk and Jew. Each of these others was entitled to believe or not believe in what they chose as a matter of liberty of conscience. Each person had an equal claim to conscience. Naturally, each believer thought his or her belief to be the one true belief, the divinely chosen way. And each person was entitled to proselytize in order to attract adherents. Within the field of theology, there could be wide and vehement disagreement over spiritual truth.⁸²

Yet, within society the status of people was different. All people were equal. None were better than others. European civilization was not superior to Native American. Equality, respect and toleration were the tools of civil discourse: “I *plead for Impartiality and equal freedom, peace and safety to other Consciences and Assemblies, unto which the people may as freely goe, and this according to each conscience, what conscience soever this conscience be (not transgressing against Civilities) whether of*

Moreover, Williams credited his friendship with the Narragansett sachem, Miantonomo, for his ability to broker the sale of Aquidneck Island to a group of English settlers led by the Hutchinson family. *Id.* at 166.

79. Eberle, *supra* note 27.

80. BLOODY TENENT, reprinted in MILLER, *supra* note 2, at 119. In Williams’s view, all men were depraved before God. In such depravity, all were equal; none had a superior claim to God.

81. For Williams, true believers were those who believed in the separatist brand of Calvinism that Williams advocated. This church should govern its own affairs, yet operate within the laws of civil society. Eberle, *supra* note 1, at 451-52.

82. Williams’s inclusive view of religious freedom stood in stark contrast to that of Locke, who refused to extend the freedom to proselytize to Catholics and Atheists. HALL, *supra* note 5, at 121.

Jews or Gentiles.”⁸³

Williams's views on toleration and equality of rights were novel and original solutions to the knotty dilemma of how to coordinate claims of conscience with claims of society. Many of the best thinkers of the post-Reformation age had been unable to resolve this dilemma satisfactorily. Williams's theory was far reaching. Securing religious freedom as a human right meant that each person was entitled to the integrity of his or her belief. Liberty of conscience meant equality over the domain of the spirit, part of the interior dimension of the mind. And liberty of conscience meant equality in this respect within civil society. The views of each person were to be tolerated and respected within the bounds of law and order.

We can think of these ideas today as comprising the core of a human right to religious freedom. Each person is guaranteed the right to believe what he or she likes and to act on such belief under liberty of conscience. Each person is equal in status and relation to other citizens. The views of each person, no matter how divergent or aberrant, are to be accorded the equal respect of toleration by others.

Guaranteeing equal rights to religion engenders broad respect for religious liberty. A broad guarantee of religious rights among all citizens will tend to induce broad support for the principles of religious freedom: liberty of conscience, equality and toleration. All citizens have an interest in religious freedom because all citizens desire to believe and practice what they wish. Vigorous belief in and exercise of religious rights will act as a bulwark against authority, as citizens will tend to voice objections to official curtailment of liberty. “In a country of diverse religious belief, it will be hard for any one group to impose its beliefs on another.”⁸⁴ Diversity in religious belief promotes security for civil rights, and security for peace and stability of a polity.⁸⁵ Thus, we

83. THE HIRELING MINISTRY, *supra* note 37, at 154-55 (emphasis in original).

84. Edward J. Eberle, *Free Exercise of Religion in Germany and the United States*, 78 TULANE L. REV. 1023, 1059 (2004) (citations omitted).

85. “A religious sect may degenerate into a political faction in a part of the Confederacy; but the variety of sects dispersed over the entire face of it must secure the national councils against any danger from that source.” THE FEDERALIST NO. 10 (James Madison). Hamilton repeated the idea in Federalist No. 51: “In a free government the security for civil rights must be

can see that framing of liberty of conscience as a human right also helps insulate conscience from the "bloody tenent," or persecution for cause of conscience. We can also see that the human right to religious freedom – including liberty of conscience and its companions: freedom from coercion of conscience, equality of rights, respect and toleration – are foundations for the securing of religious freedom within society. These principles set out an essential outline of a core for the pluralistic, constitutional democracy that we now commonly associate with western legal culture.

III. INSTITUTIONAL PROTECTION OF RELIGION: SEPARATION

Having identified and advocated the essence of religion as exercise of conscience, Roger Williams next sought ways to protect and insulate religion from the pressures and reach of the world. He pursued a number of institutional strategies to accomplish this, including delineating the different jurisdictions of state and religion, advocating against any established, national church, and according religious associations the same treatment and on the same terms as other associations within society. But his main idea was separation of religion from the world to the greatest extent possible.⁸⁶ Williams's advocacy of separation of church from state in order to protect each from the other, and his implementation of the idea in Providence, was most likely the first recorded practice of the idea in the western world. In Part III of my article, I want to explicate Williams's idea of separation of church and state in order to obtain insight into Williams's institutional strategy to protect religion. Removing government from religion was a way to safeguard the inviolability of conscience.

Primarily, the movement toward separation was a way to protect the purity and integrity of religion from an evil, confusing world. Williams assumed that the "world lies in wickedness . . . like a wilderness or a sea of wild beasts innumerable."⁸⁷ Thus,

the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects." THE FEDERALIST NO. 51 (Alexander Hamilton).

86. This section relies on and is more fully elaborated upon in Eberle, *supra* note 1, at 453-56.

87. BLOODY TENENT, *reprinted in* MILLER, *supra* note 2, at 124.

religion, if it was to remain intact, must be shielded from the corrupting influence of the world. This called for the drawing of clear lines: the church is the garden, and the world is the wilderness. In delineating bounds between church and state, Williams originated the evangelical strand of separation with which he is commonly associated and which was a major influence in the framing of First Amendment religious protections, complementing the more secular theories of separation of Thomas Jefferson and James Madison.⁸⁸

Yet Williams was not only an evangelical thinker, as we have seen. He was also a political scientist. He further hypothesized that separation would serve the interests of the state. The experience of England, and even the short experience of the New World, was that the mixing of religion in civil matters was a source of serious discord.⁸⁹ Removing religion from state control would eliminate a cause of friction. Government could function untroubled by religious disputes.⁹⁰ Consequently, separation would allow government to concentrate on accomplishing its core function of promoting the common welfare and preserving the civil peace. In short, separation was part of a two-prong strategy: First, it was a means to maintain the purity of religion; second, it was a way to facilitate the way of government to secure civil peace.

Roger Williams's most famous expression of separation was his wall of separation statement written in his 1644 *Cotton's Letter Examined*:

When they have opened a gap in the hedge or wall of separation between the garden of the church and the wilderness of the world, God hath ever broke down the wall itself, removed the candlestick, and made His garden a wilderness, as at this day. And that therefore if He will ever please to restore His garden and paradise again, it must of necessity be walled in peculiarly unto Himself from the world; and that all that shall be saved out of the world are to be transplanted out of the wilderness of the

88. Hall, *supra* note 30, at 489, 496, 505-06, 509-12.

89. For example, in the England of Williams's time, discord over religion was a major factor in the English Civil War. In New England, Williams's dispute with Cotton and other Massachusetts figures led to his banishment.

90. Hall, *supra* note 30, at 482.

world, and added unto His church or garden.⁹¹

In this famous metaphor, separation from the world is designed to preserve the purity of religion. Religion is for believers who voluntarily practice acts of conscience as they communicate with God. To be true to God is to be true to conscience, for in conscience every man and woman finds revealed the eternal truth which illuminates the path to heaven. Thus, fidelity to conscience is a matter of obligation to religious conviction.

Yet, the way of God is not the way of the world. God is pure, the "garden;" the world "lies in wickedness,"⁹² but is also tempting. Moreover, "God's people may lawfully converse and cohabit in cities, towns and, else must they not live in the world but go out of it."⁹³ Therefore, the best course is to guard religion from the world, with all its attractions and dangers: "[I]t must of necessity be walled in peculiarly unto [God] Himself from the world."⁹⁴ At the very least, Williams conceives the wall as an institutional strategy to protect religion from the corrupting influence of the world.

We can thus see the point of Williams's thought: separation is the means by which religion may be nourished and maintained as pure. Religion is a matter for the religious. Adherents of a particular religion are best able to determine the course of that religious association. Religion is devalued to the extent people or forces other than the religious determine its course.⁹⁵

Williams's theory of institutional separation has important implications for government as well. Since religion is a matter for the believers, there is really no role for government to play other than, perhaps, to encourage believers to follow their conscience. Otherwise, the role of government is to leave religion alone. The main role of government is not religion, but the core function of preserving the civil peace, and then securing the health, safety and welfare of its citizens.⁹⁶

91. ROGER WILLIAMS, COTTON'S LETTER EXAMINED (1644), *reprinted in* 1 COMPLETE WRITINGS OF ROGER WILLIAMS, *supra* note 4, at 313, 392 [hereinafter COTTON'S LETTER EXAMINED].

92. BLOODY TENENT, *reprinted in* MILLER, *supra* note 2, at 124.

93. *Id.*

94. COTTON'S LETTER EXAMINED, *supra* note 91, at 392.

95. Eberle, *supra* note 1, at 456.

96. *Id.*

It would seem that the separationist strand of Williams's thought drew upon earlier theological work on the relation of church to state, as had his work on conscience. Influential classical Catholic thought, developed over the eleventh and twelfth centuries, set forth the theory of "two swords." The theory of "two swords" established a "duality of spiritual and secular authority,"⁹⁷ a metaphor Williams himself drew upon. The "spiritual" sword was the Church, a tangible, hierarchical polity governed by canon law and with jurisdiction over its priesthood and laity in matters pertaining to Catholic faith.⁹⁸ The "temporal" sword was wielded by the monarch, who ruled in the earthly sphere. The main job of the monarch was to preserve peace and protect property.⁹⁹

Lutheran reformers altered classic Catholic thought in the famous "two kingdoms" theory. The main focus of Lutheranism was the Church. Rather than the hierarchical corporation of the Roman Catholic Church, Lutherans posited the "true" church, as governed solely by Gospel – the core of Luther's thought – not law.¹⁰⁰ The church does not exercise political power or have jurisdiction;¹⁰¹ rather, the church is an invisible "communion of saints" – a spiritual fellowship, part of the heavenly realm of faith and grace.¹⁰² The sole concern of the church was Gospel. Political power was for the ruler. Christians exercising political power (including rulers) were to be guided by conscience.¹⁰³ Rulers had obligations to secure the peace and welfare of their charges, and to act justly.¹⁰⁴

Reflecting, perhaps, on these conceptions of the different realms of church and state, Williams developed this line of thought in unique ways. The essential insight of his genius was to recognize that mixing church and state, as history and experience had proved, inevitably resulted in friction between the two and in the body politic. Invariably, these battles resulted in the state

97. Berman & Witte, Jr., *supra* note 72, at 1589.

98. *Id.*

99. *Id.*

100. *Id.* at 1590-91.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.* at 1594-95.

winning over the church, or the church compromising with the state, yielding on faith for the sake of peace. The standard price to be paid was, in some way, coercion of conscience. As such, Williams developed his core insight of separatism in the face of a political authority seeking conformity of believers as the price to be paid for peace in society and obedience to authority. Conformity of conscience was the conventional solution to the Protestant Reformation, under the principle of *cuius regio eius religio*. Therefore, religion was inevitably sullied by the influence of politics.

Faced with this, Williams developed his strategy. First, he sought to separate the realms of church and state as much as possible by describing the core purposes of each so that the two jurisdictions could remain as distinct as possible. Second, each realm was to have exclusive control over its mission. The church was responsible for religion; the state for peace and protection of property and public welfare. Neither had a claim over the other, nor the right to intervene in the other's sphere.¹⁰⁵ Separation through enumeration of each jurisdiction's powers was designed to insulate religion, as much as possible, from the corrupting influence of the state, although it had benefits for the state as well.¹⁰⁶ As such, Williams offered the germ of thought that lay behind the American idea of separation.

Finally, one basis for the polity was freedom of conscience. Individual freedom of conscience made religion a matter of personal conviction, and largely insulated religion from political authorities. If nothing else, liberty of conscience facilitated and preserved the inner realm of freedom. In the world of Williams, there was an exterior dimension to freedom as well.

IV. PERSPECTIVES ON WILLIAMS

There is much that is original in these ideas of Roger

105. "[T]he powers of the world or civil state are bound to propose external peace in all godliness for their end, and the end of the church be to preserve internal peace in all godliness. . ." BLOODY TENENT, reprinted in MILLER, *supra* note 2, at 145-46; See also Eberle, *supra* note 1, at 457-58.

106. "[Separation] was a liberating innovation, because it relieved government of the pressure to act divine. Instead, government could address its core function of promoting the general welfare and securing common peace." Eberle, *supra* note 1, at 459 (citation omitted).

Williams on conscience. The idea of conscience and its role in formulating religion was, of course, not wholly original. Williams drew upon a long tradition in western culture of rooting the essence of religion in the conscience of man. For example, Thomas Aquinas conceived of conscience as the fount on which a person judged what is good or evil in a particular circumstance.¹⁰⁷ Martin Luther famously founded his theology on conscience: Conscience is the "bearer of man's relation with God," the "religious root of man."¹⁰⁸ And the Calvinist tradition that sprang from Luther's Reformation saw conscience as "knowledge (*scientia*) accompanied by a sense of divine justice . . . , a kind of medium between God and man."¹⁰⁹

Roger Williams subscribed to much of this basic (especially Calvinist) thinking on conscience, which formed the center of Puritan theology. So, in respect to theological thought on conscience, Williams stood in a long line of established thought that had formed the basis of the Protestant Reformation, most notably the foundational thought of Luther as elaborated upon by Calvin, the main influence among Protestants in England.¹¹⁰ In this tradition, conscience was the means of acquiring knowledge of God.

Yet Williams also elaborated upon these ideas of conscience, staking out new terrain most notably with his seminal argument for cause of conscience that we have just examined. The core idea of Williams – freedom from coercion of conscience for all people, or what we may call the principle of non-coercion – is the foundation for what we now understand to be the right to religious freedom. When we add the principle of non-coercion to the other seminal ideas with which Williams is associated – equality in claim to conscience by all people; toleration and respect of all people's assertion of conscience within society; and separation of church and state to preserve and nourish these ideals – we have a portrait of the core American idea of religious freedom. These were very novel ideas, most notably in shielding religion through legal rights from society. We can obtain a better sense of the novelty of

107. Berman & Witte, Jr., *supra* note 72, at 1645.

108. *Id.* at 1607 (citation omitted).

109. MORGAN, *supra* note 16, at 130; see *supra* text accompanying note 15.

110. See MACCULLOCH, *supra* note 62, at 378-91.

Williams's thought by comparing him to the main thought he inherited in devising his thinking in the seventeenth century. A thorough examination of the development of religious thought before Williams is, of course, beyond the scope of this article. Instead, let us pursue this inquiry briefly by comparing Williams to the main thinker antecedent to him, Martin Luther.

For Luther, the religious experience lay essentially in man's conscience. Man alone, guided by his conscience, communicating with God, seeks and receives forgiveness and absolution.¹¹¹ The revolution in Luther's thought was in freeing man's relationship with God from the intercession of authorities of the Catholic church. No priest had authority or could legitimately intervene in the relationship of man with God. At bottom, Luther advocated freedom of conscience from medieval canon law and papal rule.¹¹² Instead, religious communication is simply and purely a matter between man, through his conscience, and God. Christians are to be guided by conscience through communication with God and the Gospel. The Christian duty is direct communication with God. This is what Luther meant by his famous doctrine – by faith alone is there forgiveness and salvation – in contrast to the Catholic view that good works, or penance, were also required to make a person righteous.¹¹³ In this respect, we might say Luther discovered the fount of man's knowledge of the divine. The main relationship posited by Luther over religion was man-to-God without clerical intercession.

Predicating religion on man's personal relationship with God was nothing short of a revolution, reverberating throughout Europe and especially in German territory where Luther's ideas upset and upturned established authority. Luther's establishment of man's conscience freed man from ecclesiastical authorities. The peeling away of ecclesiastical authorities left man alone, standing on his own two feet, allowing him to communicate directly with

111. Berman & Witte, Jr., *supra* note 72, at 1580-81.

112. *Id.* at 1581. Perhaps the most defiant act of conscience performed by Luther against papal authority was his burning of the papal bull, *Exsurge Domine*, the very document in which Pope Leo X condemned Luther as a heretic. One commentator characterized this act as "enacted prophesy as much as any ceremonial action of an Old Testament prophet..." MACCULLOCH, *supra* note 62, at 124.

113. Berman & Witte, Jr., *supra* note 72, at 1581-85.

God. We might think of this aspect of the Protestant Reformation as a crucial moment in the development of a theory of fundamental rights. The rooting of religious knowledge in man for use and communication by man with God is the basis for a right to freedom of conscience. This was an essential part of the rights revolution of the Protestant Reformation.

As revolutionary as Luther's ideas were, they had a more constrained applicability within fifteenth century Europe, at least as viewed from the privileged vantage of later centuries. There were, of course, many reactions to the dynamic idea of conscience-rooted thought as determined by man's communication with God. Churches or other communities of faith alternative to the Catholic Church formed and some reformers quite radically advocated equality and individual freedom based on conscience, most notably Thomas Müntzer and other firebrands of the Peasant uprisings in Germany.¹¹⁴ But the main outcropping of Lutheran thought was the nourishing and guiding of man's conscience by theologians, clergy or others of Protestant persuasion. The vanguard of the Protestant Reformation arbitrated what was proper in respect to conscience, and these communities became the Protestant churches.

The main result of Protestantism was the formation of communities of belief – communities of Lutherans, Zwinglis, Calvinists and other Protestants. In this sense, man's individual conscience was mediated by the vanguard of these churches. Thus, freedom of conscience fundamentally facilitated the pursuit and nourishing of belief based upon man's conviction, in interpretation and communication with God. This was a radical development at the time, and in the course of western thought. Its main consequence was the freeing of belief from the hegemony of Catholic thought and power and, to an extent, from political power. But in Luther's day, and to Williams's day, the idea of freedom of conscience meant mainly religion as guided and determined by those learned or wise enough to set down the belief structure of the new Protestant communities. Belief generally meant adherence to the tenets of these communities, such as the practice of the Massachusetts Bay Puritan colony. For example, in Massachusetts Bay, church attendance was mandatory.

114. G.R. ELTON, *REFORMATION EUROPE, 1517-1559* 58-59, 91-94 (1963).

Calvinism, in particular, insisted upon conformity of conscience to the community.¹¹⁵ Seventeenth century Protestantism generally, in fact, resulted in conformity of conscience to the best sense of the community. Williams called this coercion of conscience. In Providence, Williams was careful to assign church attendance to be a matter of personal volition.

Viewed this way, we might say one of the main achievements of the Protestant Reformation was freedom to believe within and as determined by the new Protestant communities. Within these communities there was not always real freedom of belief. There might be only the obligation to believe Gospel as determined by the vanguard of the Protestant congregations. These communities could be as intolerant as the Roman Catholic Church they rebelled against. Once established in power, Luther and Calvin, for example, could be as authoritarian and oppressive as Rome. Luther and Calvin both sanctioned the execution of dissidents—heretics in their eyes.¹¹⁶ And we know the familiar story of Massachusetts Bay's intolerance of divergent thinkers, such as Roger Williams and Anne Hutchinson, both of whom were forced into exile.¹¹⁷

With this background on the Protestant Reformation, we can observe the innovation of Williams's thought as he worked through the implications of a conscience-rooted faith. First, like Luther and other Protestant thinkers, Williams continued the idea of rooting religion in man, not ecclesiastical authorities, solidifying further the basis of religion as quintessentially a personal, human experience. In fact, given that Protestant churches tended with time to form their own authority on matters of faith, we might say that Williams established the basis of

115. *Id.* at 227-28. For a more detailed discussion on the propensity of Protestant leaders to impose religious orthodoxy upon their communities, especially within the Massachusetts Bay colony, see MACCULLOCH, *supra* note 62, at 520, 565.

116. James E. Wood, Jr., *Religion and Freedom*, in *THE SEPARATION OF CHURCH AND STATE DEFENDED: SELECTED WRITINGS OF JAMES E. WOOD, JR.* 61-62 (Derek H. Davis ed., 1995) (discussing the policies of Luther and Calvin with regard to the execution of heretics).

117. MACCULLOCH, *supra* note 62, at 521 (discussing the events leading to the expulsions of Williams and Anne Hutchinson from the Massachusetts Bay colony).

religion in human beings even more clearly and fundamentally. Williams thus solidified the idea of man *qua* man to make his own way in the world. In this respect, Williams furthered the work of the conception of a right to freedom of conscience. Especially critical was that Williams was able to do this on the new soil of the New World. The idea of man as individual struck particular resonance in the formation of society amidst the state of nature on the American continent. No doubt, the absence of much in the realm of established, western civilization was a boon to Williams's experiment, allowing him free reign to test.

Second, Williams set out the core of man's lot in religion. Each man or woman was entitled to a claim for freedom from coercion of conscience. Each man or woman was entitled to the integrity of his religious thought process. We might think of this as the core of the religious experience as we think of it today.

Third, Williams amplified the nature of conscience-rooted faith, translating the religious component of conscience (as a medium of communication with God) to legal and social dimensions so that it might function in a polity. Williams advocated a natural right to freedom of conscience. Because conscience naturally arose within man, each person had a claim to conscience on equal terms. We can think of this dimension of equality as comprising part of the component of a human right to religion. And Williams is critical in laying the basis for this theory of fundamental rights. Williams was really the first to endorse and practice a universal freedom of conscience, regardless of creed or status.

Fourth, the human right to freedom of religion had important consequences for the polity. Foremost among these implications was the idea of tolerance. Each person is to accord another's exercise of conscience tolerance and respect. The idea of tolerance is the critical lubricant that allows the jigs and joints of society to function relatively smoothly; it is the *sine qua non* of a diverse, pluralistic, democratic society. Williams was likewise the first to endorse a pluralist approach to religious freedom.

Fifth, Williams developed an original, comprehensive strategy to protect these essential religious ideas from the corrupting influence of the world. His main idea was separation of church from state to the extent possible.

Thus, we can see that Williams was the first to articulate the

unique set of ideas that we associate with the American concept of religious freedom: individualism; noncoercion of conscience; toleration; pluralism; and separationism.

CONCLUSION

Much of the foundational thinking on the idea of liberty of conscience and the human right to religious freedom was done by Roger Williams, writing in the seventeenth century and mostly in obscurity, at least in the New World of America. His ideas were more well known in his mother country, England, where he published all but one of his books. Perhaps this state of affairs had to do with the relative development of civilizations. The England of the seventeenth century was a highly developed culture. More sophisticated cultures naturally tend to be more accepting of books. By contrast, the America of this time was a frontier, at the very early stage of European-influenced development. Books of any sort were not numerous. New books might especially be less welcomed, as pioneers sought solace, perhaps, in proven wisdom, at least to their minds.

Or it might be that the revolutionary climate of seventeenth century England was more hospitable to Williams's work. In the midst of great debates over the role of religion in the polity, Williams's ideas found a receptive audience.¹¹⁸ For sure, Williams addressed the major questions of the England of his time. By contrast, advocacy of liberty of conscience was perhaps too radical an idea for frontier America, preoccupied, as it was, with beginnings and survival.

Whatever the reasons, Williams is mainly an overlooked figure.¹¹⁹ But a thinker he was, and a profound one at that. Today, in fact, with the benefit of historical excavation, we might identify him as the wellspring of the American idea of religious liberty: liberty of conscience, non-coercion, toleration, equality and separatism. This is so even though we cannot point to Williams's definitive influence on the framing of the First Amendment.

In a world beset today by powerful forces – globalization,

118. *Id.* at 435-36.

119. HALL, *supra* note 5, at 116-17 ("Even . . . influential theorists such as Locke, Madison, and Jefferson proceeded without apparent influence from Williams's ideas.").

computerization, terrorism – it pays to take heed from whence we come. Williams's framing of a fundamental right to liberty of conscience and religious freedom, for the domain of a person and outside the domain of authority, amidst the uncertainty of the American frontier, should be a lesson to us as to what is worthwhile in life.

