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Another of Roger Williams's Gifts: Women's Right to Liberty of Conscience: *Joshua Verin v. Providence Plantations*

Edward J. Eberle*

For cause of conscience, Roger Williams was banished from the Massachusetts Bay Colony in 1635.¹ Faced with little choice, in February of 1636, Williams fled the colony and made his escape from the authorities and religious persecution.² In the spring of 1636, he set out with five companions by canoe and crossed from Seekonk to Slate Rock in what is now Providence, escaping the jurisdiction of Massachusetts Bay.³ By the summer of 1636, Roger Williams had negotiated an agreement with the Narragansett Indians for the land that became Providence.⁴ He founded Providence on democratic principles and religious freedom.

Roger Williams was a learned man, educated at Cambridge, and fluent in six languages.⁵ He had the stature of an English gentleman. He was also conversant in the philosophical and political debates of the time and was, like many of his contemporaries, a social contractarian. The new community of Providence offered

* Professor of Law, Roger Williams University School of Law. © 2002 Edward J. Eberle. All rights reserved. I would like to thank Louise Marcus for her valuable research assistance.

1. Edward J. Eberle, *Roger Williams's Gift: Religious Freedom in America*, 4 ROGER WILLIAMS U. L. REV. 425, 429 (1999).

2. *Id.*

3. WILLIAM WEEDEN, EARLY RHODE ISLAND: A SOCIAL HISTORY OF THE PEOPLE 28 (1910). His friend, John Winthrop, directed him away from Massachusetts and toward Narragansett Bay, Rhode Island. Eberle, *supra* note 1, at 433 n.24 (citations omitted).

4. WEEDEN, *supra* note 3, at 28-29.

5. Eberle, *supra* note 1, at 429, 437.

an opportunity to put these democratic theories to practice. Founding and administering the colony would provide ample experience for Williams to test his skills and mettle as a leader, theoretician and man.

Ironically, the first serious dispute the young colony faced was over the very principle that formed the pillar of the haven Williams called Providence. The controversy concerned Joshua Verin's brutal treatment of his wife, Jane, and the fact that he had forbidden her from attending worship services. For these actions the town met and formally reprobated Joshua Verin for violating his wife's freedom of conscience. The incident was the only disciplinary problem recorded in the colony's first two years of existence.⁶ The case, which occurred in May of 1638, is the first known record recognizing a woman's freedom of conscience in America. It thus appears to be the first time a legal precedent was established supporting the right of a woman to act according to her conscience, independent of her husband.⁷ This was quite a feat, as women of the Puritan time were thought of as servants of their husbands. Viewed against this backdrop, recognizing a woman's independence was an unprecedented act for the time, and a forward-looking vision of things to come.

The *Verin* case is an important early recognition in young America of the value and meaning of liberty of conscience. That such liberty could extend to women as well as men speaks to the early emergence of women as independent human beings in Rhode Island. Given that liberty of conscience was largely the fountainhead of human rights overall, it is fitting that the liberty would give rise to equality claims as well. The *Verin* case is also an early recognition of the wrongness of spousal abuse, notwithstanding the prevailing view that women were subordinate to men. Faced with these twin claims of violation of liberty of conscience and spousal abuse, the case further demonstrates the admirable course of a young democratic community: reproach of such conduct. One value of history is the lesson it poses for the living. It is worthwhile for us to consult the record of the *Verin* case.

6. EMILY EASTON, ROGER WILLIAMS: PROPHET AND PIONEER 218 (1930).

7. Rhode Island Commission on Women, Letter of Invitation on Verin Project (Aug. 18, 2000) [hereinafter RI Commission Letter] (on file with author).

The facts of the case are straightforward. Joshua Verin was one of Williams's original five companions who joined him in crossing the Seekonk River to escape to Providence.⁸ When Williams divided his interest in the lands he acquired from the Narragansetts and laid out property lines, Joshua Verin and his wife obtained the house lot next door and to the north of Williams.⁹ The backyards of the Verins and Williamses joined. This was convenient because worship services were held by Williams in his house. Williams was an effective and accomplished speaker, and he gathered a crowd for religious meetings. Joshua Verin was not among those attending. For twelve months, Williams wrote, "we have bene long afflicted by a young man, boysterous and desparate (Philip Verins sonn of Salem) who, as he hath refused to heare the word with us (wch we molested him not for . . .)"¹⁰ Verin was free to make this choice, which would have been impossible in the Massachusetts Bay and Plymouth colonies, where church attendance was mandatory.¹¹ In Providence, liberty of conscience meant a person was free to believe or not believe according to conscience, above all else.

But Verin's wife, Jane, was a regular participant in Williams's religious meetings. "[T]he good Verin dame found it easy, too easy, to flit across to hear the prophet's sermons and exhortations."¹² Joshua Verin apparently could not tolerate this. It may have been because of the obvious spiritual disagreement between them, or it may have been because of her absence from the household. Wives of the time were the primary custodians of hearth and household, and these duties were substantial in frontier America. On the other hand, it may have been because Verin simply viewed his wife as disobedient, and could not tolerate such disloyalty. We do not know the precise reason for Verin's unhappiness. Whatever the reason, Verin forbade his wife from attending the religious

8. WEEDEN, *supra* note 3, at 28.

9. RI Commission Letter, *supra* note 7.

10. Letter from Roger Williams to John Winthrop (May 22, 1638), reprinted in 1 *THE CORRESPONDENCE OF ROGER WILLIAMS* 155-56 (Glen W. LaFantasie, ed 1988) [hereinafter Williams to Winthrop May 22, 1638 Letter]. Why Verin did not want to attend is a good question, since he followed Williams from Salem, presumably for religious freedom.

11. RI Commission Letter, *supra* note 7.

12. WEEDEN, *supra* note 3, at 33.

meetings.¹³ Worse, "he hath troden her under foote tyrannically and brutishly: wch she and we long bearing though with his furious blowes she went in danger of Life . . ." ¹⁴

What happened next is remarkable. On May 21, 1638, the town of Providence considered Verin's case and decided that he had breached a town covenant for restraining his wife's liberty of conscience. The Providence town record of that day 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."¹⁵

The Providence town government of that time consisted of only about 50 voting members, most of whom were evidently male property holders. A formal governmental arrangement had been established, presumably in 1637, in recognition of increased settlement.¹⁶ Articles of self-incorporation were drawn up and a mutual compact created a "town fellowship" that the "masters of the families" and new settlers signed.¹⁷ These documents, much like the Mayflower compact,¹⁸ constituted the fundamental charter of early Providence.¹⁹ The principal features of both were majority rule by qualified householders and the important qualification that such control extend "only in civil things."²⁰ Such limitation of official power deliberately preserved liberty of conscience, which formed the basis of the *Verin* case. Providence met in the forum of the town meeting, as was the custom in early New England, practiced in Massachusetts Bay and Plymouth colonies. Decision by majority rule after full discussion was the norm.²¹ A majority vote

13. *Id.*

14. Williams to Winthrop May 22, 1638 Letter, *supra* note 10.

15. 1 Providence Town Records 4 (May 21, 1638).

16. PATRICK T. CONLEY, *DEMOCRACY IN DECLINE: RHODE ISLAND'S CONSTITUTIONAL DEVELOPMENT 1776-1841*, at 14 (1977).

17. *Id.* Most of the early records of Providence were destroyed in the King Philip's War. Williams's letter to John Winthrop of around September 1636, 6 *THE COMPLETE WRITINGS OF ROGER WILLIAMS 3-7* (1963), is the best existent record of what happened. CONLEY, *supra* note 16, at 14 n.14.

18. WEEDEN, *supra* note 3, at 31.

19. CONLEY, *supra* note 16, at 14.

20. *Id.*

21. This idea of the town meeting became the idealized version of American democracy, invoked by Federalists and Antifederalists at the time of the Constitution's framing and by prominent theoreticians, like Alexander Meiklejohn. ALEXANDER MEIKLEJOHN, *FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT* (1948) (idealizing free speech to discussion in town meeting).

of citizens determined to "discard him [Verin] from our Civill Freedome, or disfranchize etc"22

The vote was not without controversy. William Arnold pleaded Verin's case. Arnold protested the town vote, believing Verin to be justified by reason of God's ordinance that subjected wives to their husbands. According to Arnold, Verin had only acted "out of conscience."²³ The town's vote of censure could thus be regarded, in Arnold's view, as itself a violation of the Providence order "that no man should be molested for his conscience."²⁴ Viewed such, the *Verin* case could be thought of as a conflict between two claims to conscience. That the town preferred Jane Verin's, in 1638, stands out, again, as a remarkable act indeed.

Arnold's argument did not go uncontested. "One Greene replied that if they should restrain their wives, all the women in the country would cry out of [against] them."²⁵ Others thought "if Verin would not suffer his wife to have her liberty, the church should dispose of her to some other man who would use her better."²⁶

But disenfranchised Verin was, and he was not happy about it. He left Providence immediately. "[H]e will have Justice (as he clamours) at other Courts He will hale his wife with ropes to Salem, where she must needs be troubled and troublesome as differences yet stand. She is willing to stay and live with him or else where, where she may not offend etc."²⁷ Verin moved back to Salem, where the superior rights of men were better "understood."²⁸ Because of Jane's separatist views, Massachusetts Bay courts referred her to Salem elders for observation. She got in trouble for refusing to attend church despite repeated urging.²⁹

22. Williams to Winthrop May 22, 1638 Letter, *supra* note 10.

23. *Id.* at 156 n.7.

24. *Id.*

25. EASTON, *supra* note 6, at 203 (quoting from journal of Governor John Winthrop).

26. *Id.*

27. Williams to Winthrop May 22, 1638 Letter, *supra* note 10.

28. SAMUEL HUGH BROCKUNIER, *THE IRREPRESSIBLE DEMOCRAT: ROGER WILLIAMS* 112 (1940).

29. *Id.*

The Verins never returned to Providence again.³⁰ Williams accused Verin and Arnold of plotting to slander and undermine him and Providence.³¹ Given the precarious situation of Providence on the frontier, surrounded by vengeful and powerful neighbors and not without intrigue in the Providence area, this was no small matter. To Governor Winthrop, Williams's confidant, the incident proved that "at Providence . . . the devil was not idle."³² Williams's numerous enemies rejoiced in his misfortunes. Arnold later became totally disaffected, and moved to the area of Pawtuxett, away from Providence.³³

As we assess the *Verin* case, what seems most significant is its establishment, in official policy, of the guarantee of liberty of conscience. The early Providence compact of 1637, had secured such a right for women; it contained the signatures of two women, who evidently had been elevated to full privileges and participation in the community.³⁴ Thus, Providence most likely made the original claim for equality in status between men and women in matters of conscience on American shores. Actions taken to enforce such a guarantee vest the right with substance, making words ring true and the rights concrete. The 1638 action by Providence over Verin secured a strong foundation for the right in the fledgling colony. Settlement in Providence quickly proceeded to such a point that town business could no longer be decided by general town meeting and, in 1640, articles of government were drawn up. Prominent among the principles was "[w]e agree, [a]s formerly hath been the liberties of the town, so still, to hold forth liberty of conscience."³⁵ Backed by the *Verin* case, these words now had substance. As later confirmed by colonial legislation in Newport, liberty of conscience was made the basis of the law for the first time in the western world.³⁶ The charter of 1640 would set

30. Verin yet retained his rights and interests in his Providence lands, which presumably he later settled. Williams to Winthrop May 22, 1638 Letter, *supra* note 10, at 156 n.7.

31. BROCKUNIER, *supra* note 28, at 112.

32. Williams to Winthrop May 22, 1638 Letter, *supra* note 10, at 156 n.7.

33. BROCKUNIER, *supra* note 28, at 112-15.

34. CONLEY, *supra* note 16, at 16 n.17.

35. Reuben Aldridge Guild, *Introduction to 1 THE COMPLETE WRITINGS OF ROGER WILLIAMS 38-39* (1963). For background on these developments, see Eberle, *supra* note 1, at 434.

36. Eberle, *supra* note 1, at 434.

the basis for later Rhode Island constitutions. When Roger Williams secured a patent for the colony from English authorities in 1644, the patent guaranteed freedom of conscience.³⁷

Liberty of conscience applied to all. The *Verin* case established concretely that the guarantee set forth in the 1637 charter indeed applied to women, not just to men, as was more normally the rule. The momentousness of this precedent can best be appreciated when comparing Providence's actions to the customs of the time. Arnold captured prevailing sentiment when he argued it was God's rule that wives be obedient to the desires of their husbands.³⁸ In Salem, apparently, that was the practice.³⁹ Women were commonly envisioned as servants of their masters, the men that dominated them. Viewed against this sentiment, Providence's actions in according women equal status in matters of conscience stands out as an early, but radical, step in the movement toward recognition of women as free and independent human beings. Complete recognition of gender equality in America, of course, would take another three centuries.⁴⁰

A further contrast to Providence's respect of Jane Verin's conscience illustrates the forward thinking nature of the colony. In Boston, Massachusetts Bay banished Anne Hutchinson for acts of conscience. She was the moving spirit behind a regular meeting of women to discuss and expound upon the sermons of the Bay's leading preacher, John Cotton. Hutchinson was so accomplished and charismatic that she attracted a congregation numbering be-

37. *Id.* at 435 n.33 (citation omitted quoting from charter). The charter declared:

[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 concerns . . . 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.

38. Williams to Winthrop May 22, 1638 Letter, *supra* note 10, at 156 n.7.

39. BROCKUNIER, *supra* note 28, at 112.

40. Women only achieved the right to vote in 1920. See U. S. CONST. amend. XIX (1920). Full recognition of women as equal citizens can be dated to the women's movement of the 1960s and 1970s and its aftermath.

tween sixty and eighty.⁴¹ This captured the attention of Massachusetts Bay authorities, who were agitated by her appeal and viewed some of the doctrines she advocated as unorthodox. For these reasons, Hutchinson suffered the same fate as Roger Williams; she was banished from Massachusetts Bay in 1637.⁴² Not surprisingly, it was Roger Williams who extended the helping hand that got her settled at Aquidneck, now Portsmouth.⁴³ Providence's recognition of women's freedom of conscience, as well as men's, as compared to Massachusetts Bay's suppression of such freedom, for men or for women, is as great a testament as any to the remarkable equality extended by Providence.

As conceived by Roger Williams, Providence was a haven for those seeking liberty of conscience – “where all men can walk as conscience persuade them, every one in the name of God.”⁴⁴ Not just for women and men, but for believers of all sorts, including Jews⁴⁵ and Baptists,⁴⁶ who founded their first houses of worship in America, Roman Catholics, Congregationalists, Quakers, Turks and even agnostics. As Williams said, “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 soever this conscience be (not trangressing against Civilities) whether of Jews or Gentile.”⁴⁷

We can also recognize the *Verin* case as an early incident of spousal abuse, perhaps the first case officially acknowledged in the colonies. *Verin's* brutal treatment of his wife was a factor in his banishment from Providence. As a community, Providence took a stand against violation of liberty of conscience and against spousal abuse.⁴⁸ Sadly, Providence's authority went no further

41. EASTON, *supra* note 6, at 204.

42. *Id.* at 207.

43. *Id.* at 208.

44. OLIVER S. STRAUS, ROGER WILLIAMS: THE PIONEER OF RELIGIOUS LIBERTY, at xi (1894) (quoting Roger Williams).

45. Touro Synagogue, founded in Newport on December 2, 1638, was the first Jewish synagogue in America.

46. Roger Williams established the first Baptist church in America in 1638. See Eberle, *supra* note 1, at 433-34.

47. Roger Williams, The Hireling Ministry None of Christs at 154-55 (1652). Reprinted in 7 THE COMPLETE WRITINGS OF ROGER WILLIAMS 149-87 (1963).

48. Williams to Winthrop Letter of May 22, 1638, *supra* note 10, at 156 n.7.

than its jurisdiction. As Verin took leave of Providence with his wife in tow "in ropes," the limitations of the town's power were reached.⁴⁹ But Providence did what it could.

As we take stock of the *Verin* case, we can appreciate it for what it is: the first legal precedent established in the New World recognizing women's liberty of conscience. The *Verin* case thus ranks with Rhode Island's other notable first accomplishments. These include the first compact establishing liberty of conscience generally; the first haven for free souls; establishment of the first houses of worship for Baptists and Jews, and the first determined treatment, in an equal and fair way, for Native Americans.⁵⁰ For the beautiful area Williams called Providence, that is not a bad legacy.

49. *Id.*

50. Note that Roger Williams recognized Indians' ownership of land in America and was the first to translate native language and customs. See Eberle, *supra* note 1, at 428, 432.

