

**III.**

**The Marginalization of  
Religion in American Society  
as a Private Matter**



## Mr. Jefferson

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The modern doctrine of church/state separation developed out of concerns over the temporal powers of the papacy. In the fifteenth century, the Conciliar Movement was successful at the Council of Constance in diminishing the authority of the pope through establishing the independent rights of the state and its people. In the sixteenth century, Protestant Reformers called for the separation of the church from the state, believing that the church had lost much of its original purity and fundamental spiritual mission in the Middle Ages by seeking the dominion of this world and using the coercive measures of temporal power to obtain it. The Reformers wanted to separate church and state for the sake of the church. They thought of the state as corrupting the church but were much less willing to reverse the equation and speak of the church corrupting the state or society. They never thought of the state existing outside the will of God, independent of a special metaphysical commission, or free to lead its citizens in secular autonomy, divorced from religious concern.

This secular view of life was a product of the Enlightenment. Deism arose at the time and rejected the biblical concept of the world's dependence upon God. The Bible summoned its people to depend upon God for their "daily bread" as representing the ultimate force behind the sun, the rain, and the abundance of life (Dt 11:11–17; Ps 65:9–13; Mt 5:45, 6:11, 25–33), but Deism tended to conceive of the world in a much different manner—much like a Cartesian machine

of interrelated parts that ran upon its own principles or natural laws, rejecting the biblical concept of God's general providential care or special miraculous intervention in life. This secular view of the world and its forces was extended to human beings, who received the same autonomy from their Maker as the rest of creation and no longer needed divine grace or revelation to lead their lives. Human beings possessed a self-sufficient capacity to lead a moral life and discover through their God-given reason whatever transcendent, metaphysical, and ethical principles that were necessary for their society, without requiring an intimate knowledge of the divine nature or receiving special illumination from the heavens.<sup>1</sup> Morality was discovered through the eternal principles of nature, or reduced to the simple calculating sum of utilitarianism, making it independent of special revelation and abasing revealed religion as unnecessary for society to function.<sup>2</sup> Deism believed that their people were able to know the will of God apart from the knowledge of God and deemed all theological discussions as speculative, divisive, and unnecessary. Only a Deist like Thomas Jefferson could say, "...it does me no injury for my neighbor to say there are twenty gods or no god," or, "religion is a matter that lies solely between a man & his God"—as if one's conception of the ideal had no relation to one's conduct in society or political point of view. Deism enabled human beings to live outside of God within their separate sphere of power, proceeding to the antithesis of the church's radical dependence upon God for revelation and grace, creating a secular world of absolute autonomy, and laying the foundation for the complete separation of the church and state.

French culture led the way toward secularization in the modern world with its war upon the Judeo-Christian tradition in the French Revolution and the establishment of the secular *état* as the new "voice of God." The country followed their *philosophes* in blaming the church and its priests as the fundamental source of past transgressions in the *Ancien Régime* and demanded that the citizens leave their religious communities behind for a process of cultural *régénération* and accept a new *laïque* identity within *la grande famille française*. The law of 1905 made secularity official by establishing "the Separation of Churches and State," claiming that religion had no role to fulfill in the future of the culture; the future belonged to the *état* and *laïcité*. Many Europeans found France's treatment of the church severe, but the basic trend of modern western culture proceeded in the same general direction.<sup>3</sup> The state became the "absolute power on earth,"<sup>4</sup> assuming the dominant role in the affections of the people by separating, subjugating, and assimilating the former role of the church in education, morality, philanthropy, health care, and ever-increasing areas of life.<sup>5</sup>

## Voltaire

The spirit of the French Enlightenment and subsequent culture centered much of its devotion on the life and teachings of one man. Many of the other great figures of the Enlightenment like Diderot and d'Alembert afforded their unique contribution to the times, but they often deferred to this one man as if serving his legacy.<sup>6</sup> Toward the end of his life, the Parisians crowned a bust of him and celebrated the man with godlike accolades.<sup>7</sup> His life and work seemed to embody all that was fashionable among the social elite of the day—the cynicism, the satire, and the wit—the love of toleration and the hatred of the church.<sup>8</sup> He led his people down the path of irreverence, demeaning the Christian piety of simple peasants, encouraging impious blasphemy among those who were capable of mastering the art of cynicism, and extolling the power of human reason to establish its divine truth. His prominence only grew throughout his life, beginning with the success of his first tragedy in 1718. Thereafter he adopted the enigmatic name of Voltaire and developed along with it an enormous ego and reputation, which grew to become the leading *philosophe* of human prowess and reached God-like immortality upon the occasion of his death. His influence upon the French Revolution and its Civil Constitution of the Clergy (1790) was immortalized when his body was exhumed and enshrined as the first and foremost deity in the *Panthéon* of leading Enlightenment figures. The apotheosis was accompanied with a cavalcade of “military and civil organizations carrying banners and flags, a model of the Bastille, busts of Rousseau and Mirabeau, a statue of Voltaire surrounded by pyramids bearing the titles of his works, and a golden casket containing the seventy volumes of the edition published by Beaumarchais at Kehl.”<sup>9</sup>

Voltaire and the French had a pretext within the many transgressions of their church to develop this extreme and blasphemous aversion to the religion. The revocation of the Edict of Nantes haunted the liberal sensibilities of the *philosophes* during the era and brought considerable justification for those who wished to turn against the church and heap aspersions upon it.<sup>10</sup> The hatred of this policy and others like it seemed to well up in Voltaire from his youth, forming a deep-seated resentment toward the faith; but what drove him over the edge and shocked him into action was a particular event, the unjust execution of a kind and benevolent man from Toulouse. His name was Jean Calas. He was a Protestant cloth merchant and was accused by his fellow citizens of murdering his son for converting to Catholicism, even though all the evidence pointed to an apparent suicide. Voltaire successfully helped to overturn the verdict in the Council of State and clear the name of the father and his family, even if no one could change the initial wrongdoing. Out of the experience, he wrote the widely distributed and esteemed *Treatise*

*upon Toleration* (1763), which recounts the episode in detail at the beginning of the work and proceeds to develop a broad theory of religious “toleration” on the subject, filled with much anti-Christian venom.<sup>11</sup>

The work launches into a particular tirade when it comes to sectarian religious fanaticism. Any religion that divides the human race against itself is wicked and false. He thinks that all religions contain the same basic concept of God, and whatever differences arise in the course of time are the product of the non-essential speculations of dogmatic theologians. There is no reason why Jews, Muslims, and the many sects of Christianity cannot live in harmony under a general theism or deism and a basic code of ethics, which is the most important matter in religion, not doctrine.<sup>12</sup> Religion is essential in creating social order and providing moral orientation through its belief in the ultimate judgment, but it deteriorates into a destructive force when its theologians engage in sectarian disputes over non-essential matters of faith. Ethics unites us together under one God, while doctrine divides us into warring factions.<sup>13</sup>

Of course, Voltaire’s own beliefs are much in harmony with what he wants all others to believe in order to obtain coalescence. True religion is confined in his works to a belief in the goodness of one, true God, the unity of the human race through acts of kindness, and the expectation of divine judgment, which discriminates between the good and the bad.<sup>14</sup> Religion consists of heartfelt reverence and basic acts of justice, not trips to a holy land or an altar, where mystical graces descend from the utterance of magical formulas.<sup>15</sup> True religion is based upon a most rational belief in the order and design of the cosmos and does not require a childlike act of faith in mythical stories, miraculous events, and the contradictory doctrines of biblical revelation. Faith is based on the power of the human intellect and its ability to discover what is revealed for all to see in nature.<sup>16</sup> No grace or special revelation is needed.

The Bible received much criticism in Voltaire’s later writings when it was safer for him to vent his wrath against the entire Christian faith and its sources. He believes that the miraculous nature of the biblical account drives many honest scholars to atheism, who simply find it incredible to believe in talking serpents and donkeys, or prophets eating excrement and marrying prostitutes.<sup>17</sup> The OT is described as a mangle-mangle of teachings that withstand all purity, charity, and reason.<sup>18</sup> The NT is described as a mishmash of inept reason, outright lies, and contradiction in “almost every fact,” and its stories are considered juvenile, superstitious, and fanatical.<sup>19</sup> The Bible is a book of wickedness and inferior literary style, leading Voltaire to deprecate its authors by expressing the typical anti-Semitic epithets of the Enlightenment. The Jewish people are denigrated as a cruel and barbarous enemy of the whole human race, much inferior

to other people in cultural, artistic, and scientific achievement.<sup>20</sup> The only Jewish or biblical figure who is spared the tirade is Jesus of Nazareth, and he receives a favorable review through Voltaire's reduction of his message to liberal toleration and rejection of many other elements in the church's account.<sup>21</sup> His portrait of the historical Jesus is set in contrast with the account of the canonical Gospels, which were written after the fall of Jerusalem and used Platonic categories to turn the simple carpenter from Nazareth into the eternal Son of God.<sup>22</sup>

The severe criticism of the Bible is a by-product of Voltaire's contempt for what the Christian faith represented in his society. The Church of France had supplied its enemies with many reasons to hate it—Dominican Inquisitions, the massacre of Huguenots, Jesuit and Jansenist polemics, and all the rest. During the last year of *l'Ancien Régime* (1789), the French government employed 178 censors to control publications and make sure all of them were compatible with sound faith, public order, and good morality. Voltaire himself had some of his works censored for unsound theological opinions and spent eleven months in the Bastille.<sup>23</sup> No wonder that Voltaire could describe Christians as “the most intolerant of all men.”<sup>24</sup> Their religion should be the most tolerant of all others, considering the words and deeds of its benevolent founder, but instead of following his example it became much the opposite—“a virulent infection, a terrifying madness, a bloodthirsty monster.”<sup>25</sup> Voltaire sees the history of Christianity as filled with little more than “fraud,” “errors,” and “disgusting stupidity,” and so “every sensible man...must hold the Christian sect in horror.”<sup>26</sup> In his *Sermon des Cinquante* (1762), he declares war upon *l'infâme*. He wishes to “terminate and destroy the idol from top to bottom.”<sup>27</sup> This solution is summarized in his famous cry *écraser l'infâme* (crush the filth), which he incessantly repeats throughout his later works. The self-professed man of tolerance is now willing to have certain enlightened despots develop a final solution and destroy the infamous religion as a necessary step in creating a better world.<sup>28</sup>

Throughout his analysis, Voltaire never seems to blame the despots for their own policies. He was too much of a sycophant to go after the main source of oppression and become a martyr for the cause of liberty. He only supported democracy late in his life, when it was safe to do so, and his career was insured.<sup>29</sup> Instead, Voltaire prefers to blame the Christian religion and its clergy as responsible for most of the bloodshed spilled over the last six centuries in Europe.<sup>30</sup> He wants national independence from the Christian religion in general and the political impotence of the clergy in particular. He wants the priestly aristocracy removed from any place of authority in the state. They prey upon the superstitions of the multitude and fill the king's ear with their ambitious plans and petty sectarian disputes, causing continual turmoil within the land. It is the fault of the clergy, not the king, that intolerance continues to fill the land.<sup>31</sup>

In spite of the best efforts of American clerics, the influence of Voltaire migrated to the New World and “corrupted” their constituency with its religious and anti-religious attitudes. The popular newspapers and magazines of the day showed a widespread interest in his controversial ideas. Tobias Small and Thomas Franklin produced an English edition of Voltaire’s works somewhere between 1761 and 1769, making the entire corpus accessible to a wider range of American readers. Libraries contained many of his works, and interest in those works quadrupled by the end of the century if one simply tallies the many catalogue announcements of the day.<sup>32</sup> Voltaire and the French Enlightenment were becoming a major force throughout the colonies and helping to change the ideological commitments of the people. In fact, the influence was so powerful that many of the leading figures or “Founding Fathers” identified as much with the French attitude toward religion as they did with the religion of their forefathers, who migrated to the land. Some remained openly Christian (Patrick Henry and Alexander Hamilton), some attended church but were non-communicants (George Washington and John Marshall), others embraced the religion of the Enlightenment (John Adams and Benjamin Franklin), and still others went all the way, accepting the new religion of reason and using it to assault the Christian faith (Thomas Paine and Thomas Jefferson).<sup>33</sup> Most were guarded about their religious beliefs in public, too clever as politicians to alienate voters or launch a direct attack on their constituency’s most sensitive subject. Thomas Paine, the irrepressible gadfly of the American and French Revolution, was the great exception. He chose to publish the politically incorrect *Age of Reason* against the advice of friends and suffered the political fallout for his indiscretion. In the work, Paine conducts a Voltairean tirade against the Judeo-Christian tradition and calls the Bible a “book of lies, wickedness, and blasphemy.”<sup>34</sup>

Of all the rest, Thomas Jefferson came the closest to adopting the anti-Christian sentiments of Voltaire and Paine, even though he was more discreet about expressing it during his public career. Some like the Federalists detected his Voltairean disaffection with Christianity, calling him an anti-Christ and a Francophile during political campaigns, but found it difficult to make their suspicions resonate with the voters.<sup>35</sup> Jefferson was much too cagey for them. He preferred to remain silent about his religious opinions for the most part and offer some equivocations to please the public whenever necessary, but there is no doubt about the fundamental veracity of the charge once one considers the total weight of his writings. The only question concerns the exact form, time, or setting in which these ideas came to enter his life in an age where historical records were scanty, and footnotes were few and far between. Some point to William Small, who served as Jefferson’s mentor at William and Mary, quickened his interest in

the Enlightenment, and “probably fixed the destinies of my life,” although we know little about his influence beyond these vague generalities.<sup>36</sup> Others mention his tenure in France as a minister plenipotentiary from 1784 to 1789, where he experienced first hand the “misery of kings, priests, and nobles.”<sup>37</sup> Still, others speak of his respect for Voltaire, pointing to the extensive use of Voltaire’s works in the *Commonplace Book*.<sup>38</sup> But whatever the source or sources, the culture provided plenty of opportunities to learn the new ideology of the *philosophes* from the pervasive influence of French culture, and Jefferson gravitated in its direction.

## Viscount Bolingbroke

Perhaps, the clearest and earliest indication of its influence and importance is found in Jefferson’s literary notebook (1765/66). Here he makes continuous use of the *Philosophical Works* of Henry St. John, Viscount Bolingbroke (1678–1751), as providing a direct inspiration for his own enlightened, philosophical orientation. Bolingbroke served as a member of the Tories in the English Parliament, beginning in 1700, and later became a secretary of state during the reign of Queen Anne. In 1714, he fell out of favor with the government when the Whigs gained power and spent the next decade as a political exile in France—a country he grew to admire and love as a young man in the late 1690s during the first of his many visits to the center of the Enlightenment. During his stay there, he developed a friendship with major figures of the French Enlightenment like Voltaire, Montesquieu, and Levesque de Rouilly, his mentor, and became an important conduit between cultures, conveying French ideas to the English-speaking world, and vice versa.<sup>39</sup>

Thomas Jefferson was one of the many exposed to the ideas of the English Deists/French *philosophes* through the writings of Bolingbroke. In the first part of his early notebook, the *Philosophical Works* of Bolingbroke provides “the largest section from any single author—54 excerpts and over 10,000 words.”<sup>40</sup> The excerpts display the impact of Bolingbroke on Jefferson, especially in awakening him to the skeptical, rational, and natural religion of the Enlightenment.<sup>41</sup> Many of these excerpts focus on Bolingbroke’s disdain for the Judeo-Christian tradition, revealing Jefferson’s animus and proclivity toward a hostile analysis of the faith at a very early age.

In the account, the anthropocentric nature of the tradition is emphasized and chastened as an unenlightened, unscientific way of thinking. Bolingbroke contends that human beings are not the sole purpose of the creation or the end of divine activity in this world. In fact, there are inhabitants on other planets in the

universe, and these places are populated with a myriad of creatures superior to us and our limited capabilities.<sup>42</sup> No people are more anthropocentric and display more human arrogance than the Jews. They speak of themselves as the chosen people of God, elected to receive the one unique revelation from on high, as if God remained unknown to other nations and only worked in their “little corner of the world.”<sup>43</sup> This hubris might not matter in and of itself, but it works to the detriment of others when people like the Jews see divine providence working for their own benefit; it made the Jewish people particularly cruel and unjust in their treatment of the non-elect, blinding their hearts and minds to their own imperfections.<sup>44</sup> In fact, “no people was less fit than the Israelites to be chosen for this great trust on every account.”<sup>45</sup> They were an avaricious people, who lived for materialistic “appetites and passions,”<sup>46</sup> lacking any fear of ultimate judgment and any real motive to enhance genuine piety here on earth.<sup>47</sup> They were so occupied with laying up their treasures on earth that they failed to develop a concept of immortality until Hellenistic times and its influences, revealing an ignorance that characterizes their Scripture in general<sup>48</sup> and making the so-called pagans more enlightened and better equipped to accept the Messiah than these fanatics.<sup>49</sup>

The Jewish people receive much of this vitriol because their culture produced the fundamental source of divine revelation for the church—the true enemy of Bolingbroke, Jefferson, and the sons of the Enlightenment. The animosity toward the church leads to the defamation of Hebraic culture and its greatest literary achievement—the Old and New Testament. According to Bolingbroke’s (Jefferson’s) account, the Hebrew Torah displays little knowledge of the true God and contains “palpable falsehoods” on “almost every page.”<sup>50</sup> Its stories are simply fantastic and incredible, defying all rational belief in this modern era.<sup>51</sup> Certainly, Moses’ account of creation must be considered absurd by any person possessing a modicum of education and acquaintance with the Copernican system of modern astronomy.<sup>52</sup> His narration is incredulous, and his concept of law even worse, “more ineffectual than any other law, perhaps, that can be quoted.”<sup>53</sup> The laws of nature contradict the Mosaic economy at important junctures and utterly repudiate the bigoted admonitions of Deuteronomy 13 to slay idolaters,<sup>54</sup> making it impossible to equate the God of nature with the God of the Old or New Testament.<sup>55</sup> The God of Moses is “partial, unjust, and cruel; delights in blood, commands assassinations, massacres, and even exterminations of people”; and the God of Paul “elects some of his creatures to salvation, and predestines others to damnation, even in the womb of their mothers.”<sup>56</sup> Jesus tried to rescue the world from this Jewish nightmare,<sup>57</sup> but his “gospel is one thing [and] the gospel of Paul, and all those who have grafted after him on the same stock, is another.”<sup>58</sup> Paul perverted the teachings of Jesus, turning him into a mystical divine Savior, who satisfies the

angry Jewish God through blood atonement and redeems us from original sin by an act of divine grace. This God of cheap grace still acts with the same injustice as the God of the OT.<sup>59</sup>

The true God of nature never dispenses with justice in seeking the salvation of the sinner, preferring “the repentance of the offender” as the means of atonement to the bloodthirsty need for vengeance through an ignominious spectacle like crucifixion.<sup>60</sup> The theology of nature uses “right reason” and stays within the boundary of proper ethical discourse.<sup>61</sup> It rejects Pauline flights of mysticism as corrupting the original message of Jesus. Pauline theology resulted from the process of Hellenization as the Christian faith moved away from Palestinian soil and injected the theological and speculative mysticism of Platonic philosophy into the faith.<sup>62</sup>

Bolingbroke displays his virulent displeasure with Platonism at this point, rejecting it as a philosophical system and considering it an instrument through which Paul, Augustine, the Cambridge School, and all those who tried to synthesize it with Christianity eventually corrupted the faith.<sup>63</sup> Imagination should never “leave the sensible objects” of this world and climb a “mystic ladder...to a region of pure intellect.”<sup>64</sup> One should never create abstract forms, take mystical flights of fancy, and substitute them for the concrete voice of nature.<sup>65</sup> What is inspirational about the Bible really comes outside of it through the true exercise of reason in its submission to the natural law. In true Christianity, God submits revelation to the sound judgment of our rational faculties.<sup>66</sup> The exercise of right reason provides us with a more reliable source of finding God than submitting ourselves to religious authorities and their blind speculations outside of nature.<sup>67</sup> It is better to use *a posteriori* reasoning and appeal to the “miracles” all around us than trust in the testimonies of others concerning fantastic events that offer no empirical or existential verification.<sup>68</sup>

With this exhortation, Jefferson finds much wisdom and becomes a faithful disciple of Bolingbroke and the religious thought of the Enlightenment. His writings provide a continuous testimony to the same type of religious expression found in the work of Bolingbroke and other sons of the like-minded French spirit.<sup>69</sup> His works include similar remarks that deprecate the Jewish people and their faith, find inspiration within the teaching of the historical Jesus, lament the Platonism in Paul and the church, reduce religion to morality, and extol the ability of reason to discover God in nature and lead a moral life. If there is any significant difference, it involves the place of politics and the means of implementing the message, not the basic nature of their religious convictions. Both Bolingbroke and Jefferson exhibit a kindred spirit in opposing the Judeo-Christian tradition and wanting to promote a more rational religion in its place, based on the evidence of nature. The only significant difference concerns the political means of achieving the goal and

leaves Jefferson looking and finding inspiration from other sources. Bolingbroke appears to respect the place of the church in the Erastian world of British society, while Jefferson wants to use political power to create a new and enlightened order. Jefferson wants to change the religion of America by erecting a wall against the participation of the church in society and substitute his own faith as the wave of the future, placing him squarely within the more extreme and virulent measures of Voltaire and his disciples.

## Religious Opinions

Most of Jefferson's religious beliefs function within the basic parameters of enlightened religion with its emphasis upon reason, morality, and ecumenicity. He grew up in the Episcopalian Church, but never subscribed to any one group and calls himself at various points in his career a "Deist," "Theist," "Unitarian," "Epicurian," "real Christian," "rational Christian," et cetera.<sup>70</sup> As a Deist, he rejects theology as speculative and irrational and dislikes sectarian dogma most of all, which he identifies with the narrow-minded views of Presbyterians, Puritans, and the rest of Calvin's disciples. He prefers a less definitive view of God than Calvin offers in his *Institutes*, and so reserves most of his "dogmatic" statements for the rational analysis of moral, social, and political life, dividing a knowledge of the divine will from theological speculations about the divine essence.<sup>71</sup> He wants religion to emphasize the rational and moral instincts of all humankind, not the speculative constructs of Reformed theologians and their many creeds. Reason is the "umpire of the truth." It is the seat of divine revelation.<sup>72</sup> In a letter to Peter Carr, he encourages his nephew to examine the claims of the Bible in a critical manner and develop his conclusions about its stories, apart from any theological prejudice.<sup>73</sup> Christianity has enslaved the minds of its constituency for two thousand years with its ridiculous stories, stifling dogmas, and "incomprehensible Trinitarian arithmetic."<sup>74</sup> It is time for western society to free itself from this bondage and find the God who is available for all of us to see in nature.

After all, it is morality, not dogma, that comprises the real essence of true religious affection.<sup>75</sup> All human beings are endowed by their Creator with a basic sense of what is right and wrong, whether they serve the divine will as "a plowman [or] a professor."<sup>76</sup> These "moral instincts" are related more to the affections of the heart than the specific rational acuity of each and every individual.<sup>77</sup> In fact, all religions agree on the same essential morality, which God has implanted in each and every one of us. It is metaphysical speculation and ritualistic practices, along with a host of other trivial matters that divide religious people into warring sects

and cause division among the human race.<sup>78</sup> While society needs religion to provide a sufficient basis for its moral laws, there is no need to endure the many acts of religious uniformity in society and much to speak against the continued practice of inculcating a specific profession of faith. The salvation of society and its people is found through a gospel of works, not faith.<sup>79</sup>

In following this emphasis, Jefferson finds in Jesus of Nazareth the greatest of all moral teachers. All religions might follow the same moral code, but the teachings of Jesus represent “the most perfect and sublime that has ever been taught by man,” “more pure than those of the most correct philosophers.”<sup>80</sup> Jesus reformed a religion that was rotten to the core. More than any other faith, Judaism was enslaved to an authoritarian priesthood, a depraved historical record, the materialistic pleasures of this life, and “many idle ceremonies, mummeries, and observances, of no effect towards producing the social utilities which constitute the essence of virtue.”<sup>81</sup> He particularly opposed the monstrous view of a “cruel, vindictive, capricious and unjust” God, which the Jewish people inherited from Moses and their forefathers, as well as their anti-social attitudes toward other nations as the “chosen people” of God. Jesus rejected the ethnocentric nature of their religion and extended his gospel of “universal philanthropy” to all humankind, “gathering all into one family, under the bonds of love, charity, [and] peace.”<sup>82</sup> This emphasis upon universal love and moral goodness is what Jefferson finds most appealing in the life of Jesus, not other parts of the biblical story or the church’s own account of him. Jefferson refers to himself as a “real Christian” in this context, since he follows the moral teachings of the historical Jesus and not the corrupted version of the later church.<sup>83</sup> Those who wrote about Jesus in Scripture were illiterate and uneducated, and composed unreliable accounts long after his life and ministry were over. They disfigured the simple beauty of his instruction through Greek metaphysical categories, transforming him into a mythical divine being and miraculous wonder-worker.<sup>84</sup>

Jefferson decides at this point to launch a quest for the historical Jesus, hoping to rid the gospel account of all its later ecclesiastical corruptions and find “the diamond in the dunghill.” These aspirations sound high-minded and academic at first glance in its attempt to obtain scientific results in the midst of dogmatic prejudice, but his research largely becomes a testimony to the same *a priori* prejudices of the orthodox church and the early liberal efforts in the field. Whatever offends his religious sensibilities is eliminated from the account, and the remaining image of Jesus sounds more like an eighteenth-century *philosophe*, rejecting scholastic views of God and reducing religion to morality, than any real Jew living in the first century.<sup>85</sup> He proposes to cut out all the “Platonising” elements of the later Greek church, which turned the simple carpenter into a metaphysical ideal,<sup>86</sup> but falls into the same trap

by projecting his own modern ideals upon Jesus and incurring the same criticism he levels against the Hellenistic church. He uses Jesus as a receptacle for his own ideas, recreating a first-century Jew in his own enlightened image.<sup>87</sup>

Like the *philosophes* and the later liberals of Germany, Jefferson bases much of his analysis upon a certain understanding of science that was prevalent at the time. Jefferson uses this scientific understanding to reject the possibility of God intervening in history, although he offers no real historical analysis to justify his conclusion. All miraculous narratives are expunged from the text as contradicting “our experience of the laws of nature.”<sup>88</sup> Jefferson simply cuts and pastes and creates an image of a simple, moral teacher worthy of esteem among his peers. His first attempt is found in a modest syllabus of the “genuine” ethical teachings of Jesus, which he composed over “an evening or two” during his tenure as president and entitled “The Philosophy of Jesus” (1804).<sup>89</sup> Later on, after his retirement to Monticello, he sat down and revised his earlier effort creating a much larger version, *The Life and Morals of Jesus of Nazareth* (ca. 1819), which emphasizes the ethical teachings in Luke and Matthew.<sup>90</sup> He points to Joseph Priestly’s writings, especially his “Corruptions of Christianity and Early Opinions of Jesus,” which he read “over and over,” as a special source of inspiration in his work and means of gaining academic credence.<sup>91</sup> The Unitarian theologian certainly creates a similar picture of the historical Jesus as a mere man. Priestly says that the person of Jesus was transformed by the Alexandrian school of theology into the divine Logos of Platonism,<sup>92</sup> and claims his message of repentance and obedience was changed by Augustine into a doctrine of grace.<sup>93</sup> Jefferson follows the same basic understanding of Jesus and the process of Hellenization in his account, except in regard to the question of miracles. Priestly still holds to the resurrection and the rest of Christ’s miracles as recorded in the Gospels,<sup>94</sup> whereas Jefferson rejects them as scientifically impossible and removes them from the text.

The admiration for the teachings of Jesus is contraposed by his disdain for the orthodox portrait of him. He rejects the divine incarnation, the virgin birth, the vicarious atonement for sin, and the resurrection from the dead.<sup>95</sup> He hopes that “the day will come when the mystical generation of Jesus by the supreme being as his father in the womb of a virgin will be classed with the fable of the generation of Minerva in the brain of Jupiter.”<sup>96</sup> Along with the miracles, he mocks the special doctrines of the church, especially the Trinity, which he compares to the “hocus-pocus phantasm of a God like another Cerberus, with one body and three heads.”<sup>97</sup> These and all the other “creeds, formulas, [and] dogmas” of the church pervert the simple Jesus of history and transform him into the Christ of faith.<sup>98</sup> The process started with the Apostle Paul, “the first corrupter of the doctrine of Jesus,” and only increased in the later church with its hierarchical structure, sacramental powers, and

wicked priesthood.<sup>99</sup> It is this development that constitutes the “real anti-Christ” and should incur the wrath of all true followers of Jesus and his teachings.<sup>100</sup>

Jefferson reserves most of his venom for the clergy as the leaders of the apostasy and sponsors of great evil in society. In a Freudian slip, he refers to them as “priests” throughout his works, regardless of their denomination, revealing his deep-seated French resentment toward them.<sup>101</sup> His special wrath is exercised against the “priests” of New England, who propagate the Calvinist faith, the most bigoted of all religions, and support the Federalist opposition to his civil policies.<sup>102</sup> The solution is to eliminate them from the state, and so he proposes legislation at several points in his career to exclude the clergy from holding public office.

The clergy are excluded, because, if admitted into the legislature at all, the probability is that they would form it's majority. For they are dispersed through every county in the state, they have influence with the people, and great opportunities of persuading them to elect them into the legislature. This body, tho shattered, is still formidable, still forms a corps, and is still actuated by the esprit de corps. The nature of that spirit has been severely felt by mankind, and has filled the history of ten or twelve centuries with too many atrocities not to merit a proscription from meddling with government.<sup>103</sup>

James Madison, John Leland, Noah Webster, and many others criticize the proposal as a basic violation of civil rights, which causes him to back down for a time. Jefferson offers some equivocations to please their legitimate concerns and then returns to the agenda, adding new proposals that would eliminate the clergy from school boards and censor political sermons from the pulpit.<sup>104</sup>

Jefferson also hopes to undermine the power of the clergy and the Christian faith by creating a public school system that would exclude religious instruction.<sup>105</sup> In his *Notes on Virginia*, he proposes to take the Bible out of “the hands of children” and replace it with “the most useful facts from Grecian, Roman, European and American history.”<sup>106</sup> Like all sons of the Enlightenment, he hopes to exalt a secular view of history, which finds its cultural roots in the Graeco-Roman world and eliminates from the consciousness of the citizens whatever positive influence developed out of the Judeo-Christian tradition. His new view of history treats religious groups as creating schisms among the human race and spilling “oceans of human blood” over the pettiest doctrinal issues.<sup>107</sup> The new history dismisses any vital “enlightened” concerns to the religious struggles of the past and refuses to consider that many of these struggles were fought over the sacred canon of modern ideals like liberty, equality, and democracy—ideals that Jefferson shares with many of these religious combatants. Jefferson only identifies religious zeal with unjust persecution. He has no idea where the ideals of liberty developed in his own country, claiming

at certain times that the North continues to suppress the spirit of liberty and rights of humankind, which first arose in the South!<sup>108</sup> Like Voltaire, he tends to identify all of Christendom with one specific expression of faith within a certain provincial struggle of his. In Jefferson's case, the Puritans are considered the most intolerant of all religious sects because of the early persecution of Quaker missionaries and the rejection of Jefferson's political agenda, but any positive aspect of the religion is dismissed through the negative stereotype. Jefferson considers the forefathers of Massachusetts and their descendants as nothing but bigots, and his history of the march toward freedom has nothing else to say about them.<sup>109</sup>

## Public Education

To inculcate the new view of history, Jefferson hopes that the public will fund a government-sponsored educational program. Jefferson is hailed in many circles as the "father of public education" in America and deserves much credit for his attempt to educate all citizens, but it is clear that much of his concept of education is devoted to instilling a catechism.<sup>110</sup> Of course, there are many inspiring words that speak much to the contrary: "I have sworn upon the altar of God, eternal hostility against every form of tyranny over the mind of man,"<sup>111</sup> it is unconscionable "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves,"<sup>112</sup> et alia; and Jefferson is truly devoted to protecting civil liberties and promoting freedom of speech in the classroom for the most part. But when it comes to inculcating his own agenda the noble sentiments are set aside by practical necessity to serve the greater good—the greater good in this instance being a democracy, or at least Jefferson's version of it. Jefferson certainly understands that people need to receive instruction in a democracy if they are expected to make informed decisions.<sup>113</sup> The aristocratic governor of Virginia, William Berkeley, maintained his power for so many years by refusing to educate his people through the press and proper schooling.<sup>114</sup> The need for education presents itself wherever the people are empowered to rule over their own affairs. "Wherever the people are well-informed, they can be trusted with their own government.... Whenever things get so far wrong as to attract their notice, they may be relied on to set them to rights."<sup>115</sup> However, the problem with Jefferson's proposal is that its specific motivation tends to color the curriculum with his own philosophy of life. He truly wants to provide a forum for free discussion and inquiry, but he also wants an educational system to counteract the Federalist and Christian influence from the North and instill his own political/religious ideology as a form of catechism.<sup>116</sup> For example, he makes the following statement to a member of the Board of Visitors at the University of Virginia.

In most public seminaries text-books are prescribed to each of the several schools, as the *norma docendi* in that school; and this is generally done by authority of the trustees. I should not propose this generally in our University, because I believe none of us are so much at the heights of science in the several branches, as to undertake this, and therefore that it will be better left to the professors until occasion of interference shall be given. But there is one branch in which we are the best judges, in which heresies may be taught, of so interesting a character to our State and the United States, as to make it a duty in us to lay down the principles which are to be taught. It is that of government. Mr. Gilmer being withdrawn, we know not who his successor may be. He may be a Richmond lawyer, or one of that school of quondam federalism, now consolidation. It is our duty to guard against such principles being disseminated among our youth, and the diffusion of that poison, by a previous prescription of the texts to be followed in their discourses.<sup>117</sup>

Of course, he claims within this rationale that the agenda will cover only a part of the curriculum, but in his mind it covers an essential reason for launching the school in the first place; and as he knows all-too-well, this and other aspects of his agenda will tend to make their way into other areas of the curriculum in a more surreptitious manner.

The interest in using education is displayed right from the start of his time in public service. In October of 1776, he became a member of the committee to revise the legal code of Virginia and proposed three bills to encourage the growth of education in the Commonwealth: The Bill for the More General Diffusion of Knowledge (no. 79), The Bill for Amending the Constitution of the College of William and Mary (no. 80), and The Bill for Establishing a Public Library (no. 81). The first bill was the “most important” and sought to subdivide all Virginia counties into wards, with each ward providing elementary education to all “free children” for three years at the public’s expense. Reading, writing, and arithmetic would serve as the fundamental courses of instruction, and the history of western culture would provide sufficient examples of moral exhortation, rather than turning to the message of Scripture for answers. After the completion of this level, the better pupils would be eligible for more advanced subjects in secondary schools, and the best of these students would be sent to the university and receive training for roles of leadership in the state.<sup>118</sup> However, the bill was attacked from a number of quarters, including Presbyterian ministers concerned about the place of religion in society, Methodist ministers believing that Sunday School could teach literacy just as well, and taxpayers who preferred charity to a coercive measure that would tax the rich to support the children of another.<sup>119</sup> A less effective measure was passed a couple of decades later in 1796, which left its implementation to the discretion of local court officials and provided only for primary education. Since these officials were unlikely to increase the tax burden for themselves and their rich cronies, Jefferson’s dream was “completely defeated,” leaving its fulfillment to another time and place.<sup>120</sup>

Jefferson's Bill no. 80 was designed to "secularize" the College of William and Mary by reducing Anglican control over its board and faculty.<sup>121</sup> The college was chartered in 1693 with the expressed purpose of producing "complete gentlemen and good Christians." The faculty consisted of ministers for the most part and was appointed by the church and its bishops to serve the interests of the ecclesiastical establishment.<sup>122</sup> Jefferson wanted to change the basic purpose of the school by ending its association with the church, eliminating the school of theology, purging it of Tory influences, replacing the governing board, and making the administration responsible to the legislature, not the kingdom of England or its church. In the place of the divinity school, he proposed a professor of "history, civil and ecclesiastical" and a professor of "moral philosophy," who could serve as Jefferson's Trojan horse in the curriculum to inculcate his religious principles.<sup>123</sup> Of course, the proposal upset the religious establishment and was defeated by the legislature in 1779, but what Jefferson could not secure through the normal democratic process he did through his executive powers the same year as a visitor to the college and governor of the state. He converted the Indian mission into the study of cultural anthropology, added "the law of Nature & Nations, & Fine Arts to the duties of the Moral professor," and eliminated the two professors of divinity, substituting "others of law and police, of medicine, anatomy, and chemistry, and of modern languages" in their stead.<sup>124</sup> With these and other measures in place, the fundamental direction of the school changed over the course of time into much the opposite, serving now the ideology of Jefferson rather than that of the church. After visiting the college in 1811, Bishop William Meade made the following observation.

Infidelity, indeed, was then rife in the State, and the College of William and Mary was regarded as the hotbed of French politics and religion. I can truly say, that then, and for some years after, in every educated young man of Virginia whom I met, I expected to find a skeptic, if not an avowed unbeliever. I left Williamsburg, as may well be imagined, with sad feelings of discouragement....

The grain of mustard-seed that was planted at Williamsburg, about the middle of the century, had taken root there and sprung up and spread its branches over the whole state,—the stock still enlarging and strengthening itself there, and the roots shooting deeper into the soil. At the end of the century the College of William and Mary was regarded as the hotbed of infidelity and of the wild politics of France.<sup>125</sup>

Later in 1816, Jefferson supported the state of New Hampshire in its attempt to arrest Dartmouth College, a private Congregationalist institution, away from the board of trustees, although the United States Supreme Court decided otherwise.<sup>126</sup>

Jefferson's most famous and successful project in education was the University of Virginia, one of the first public institutions of higher education in the

country.<sup>127</sup> Jefferson affords a number of exhortations about the importance of free inquiry at the school in January of 1819,<sup>128</sup> but there is no doubt that its curriculum, textbooks, and faculty must submit to his basic philosophical orientation—a framework that is evident from the very outset of the planning stage. The school finds its initial justification not so much in the love of learning or the advancement of knowledge,<sup>129</sup> but in Jefferson’s concern over the influence of the Federalist opposition in northern schools. The school finds its calling in counteracting the nefarious influence of the Federalists in education and promoting the Republican principles of Jefferson, especially in the law school, hoping to stack the state and federal legislatures with a team of his disciples.<sup>130</sup> The fulfillment of the dream is insured in the course of its development by Jefferson and the Board of Visitors, insisting that the law professor share the correct political vision and prescribing specific texts for the classroom, including Locke’s *Two Treatises on Government*, Sidney’s *Discourses on Government*, *The Federalist Papers*, Jefferson’s *Declaration of Independence*, and Madison’s *Virginia Report of 1799–1800, touching on the Alien and Sedition Laws*.<sup>131</sup> Jefferson speaks of his desire for liberty to reign at the school and leaves the choice of books to individual professors in most instances, but when it comes to risking the Jeffersonian program of liberty itself, he was less willing to take any chances. Censorship was always a viable option if circumstances allowed the opposition a forum to undermine the basic mission. In one infamous episode, Jefferson urged an editor to publish an abridged edition of David Hume’s *History of Great Britain*, the “manual of every student” in the country, because it was laden with Tory ideas and needed to be “republicanized.”<sup>132</sup>

At the University of Virginia, the program of censorship was exercised with a special vengeance against the church and its many denominations. The private correspondence of Jefferson speaks in a direct and forthright manner about his dream of witnessing a “quiet euthanasia” upon the fanatical beliefs of the church as a means of restoring a religion of “peace, reason, and morality” in the country, and his plans of using public education in fulfilling the dream.<sup>133</sup> At the University of Virginia, the dream came to fruition under the guise of advocating liberty and non-discrimination through policies that really favored the religious agenda of Jefferson in the end at the expense of the church and its participation in the school. His ultimate design was to eliminate the Christian faith and replace it with his own, and this is exactly what he proceeded to do at the university with the power of the state and its tax dollars providing a considerable source of income. In the name of constitutional freedom, Jefferson freed his university of Christian influence by refusing to appoint a divinity professor or teach “theology, apologetics, and Scripture” against the customary practice of the time.<sup>134</sup> In the name of secularity, he prevented ministers and religious services from obtaining access to the centers of power on campus, only agreeing after

considerable pressure to make sectarian instruction available outside of his famous serpentine wall for those who wanted it.<sup>135</sup> In the absence of the Christian faith, Jefferson commissioned the professor of ethics to teach “the proofs of the being of a God, the creator, preserver, and supreme ruler of the universe, the author of all the relations of morality and the laws and obligations those infer”—all the religion he deemed necessary to believe. Religious instruction was made a part of the curriculum but only in a surreptitious manner to represent Jefferson’s own proclivities, which accent the “most interesting duties” of “every human being” and neglect theological discussions as divisive.<sup>136</sup> The liberal/deist point of view was couched as if representing everybody and placed under a category other than “religion.” Of course, Jefferson refused to acknowledge the specific or sectarian religious nature of the instruction, but as a master of the name game he could hide his hypocrisy under different labels like “ethics” and advocate church/state separation all at the same time.<sup>137</sup> The Presbyterians recognized the underlying danger that Jefferson’s designs represented to their faith and raised a significant opposition to the plans throughout the Commonwealth. An ally of the school, Joseph Cabell, chastened Jefferson in several letters about the legitimate nature of the Presbyterian complaints, informing him that they only wanted their fair share of a public community if their tax dollars were used as a means of support, but the objections went unheeded for the most part,<sup>138</sup> and Jefferson continued his final solution with only a few setbacks. One of the few defeats was the elimination of Thomas Cooper, a virulent anti-Christian and son-in-law of Joseph Priestly, from obtaining a professorship in law and chemistry. Cooper felt that doctrines like “the Trinity and transubstantiation may no longer be entitled to public discussion”—a viewpoint that Jefferson hoped to instill within his students.<sup>139</sup> Those who advocated a strict doctrine of church/state separation tended to agree with Jefferson’s policies. James Madison recognized the problem with denying representation to sectarian groups, but he also felt the discrimination was necessary for maintaining the peace at a public university and religion separate from the power of the civil government.<sup>140</sup>

## Church and State

The exact relationship between religion and the government is subject to the same type of equivocation and duplicity throughout his career. All depends on what suits his political or religious purpose at the moment. On the one hand, he wants to reduce religion to morality like most sons of the Enlightenment and then speak of its importance as the foundation of society. In the Declaration of Independence, he claims that God has endowed all of humankind with inalienable rights and the

purpose of government is found in serving that sacred foundation.<sup>141</sup> In the *Virginia Statute for Religious Freedom*, he speaks in this way, claiming that the statute is based upon the “plan of the Holy author of our religion” to create human beings with a free mind and grant them liberty as a natural right. On the other hand, when religion is understood in terms of the Judeo-Christian tradition, then it suddenly becomes a private matter between “our God and our conscience,” which has no social ramifications whatsoever. He can say that “our civil rights have no dependence on our religious opinions, any more than on our opinions in physics or geometry,” contradicting the very words of his two famous documents.<sup>142</sup> He can treat religion and politics as if they are two different subjects, calling for the complete separation of the two realms and building his famous wall.<sup>143</sup>

One of Jefferson’s proudest achievements was the *Virginia Statute for Religious Freedom* (1786). It received worldwide acclamation, and his tombstone listed it along with the founding of the University of Virginia and the writing of the Declaration of Independence as the three great achievements of which posterity should remember him.<sup>144</sup> The statute disestablished the Anglican Church in Virginia, promoted freedom of religious expression, and eliminated religious tests for public office.<sup>145</sup> Patrick Henry, the chief spokesman of the Anglican Church, had opposed the legislation in favor of multiple establishments, which would support the Christian religion as the one, true faith and provide public assistance to support its various denominations in accordance with the discretion of each and every taxpayer. Henry garnered significant support for his proposal from clerics across the church as well as a number of political heavyweights, including Washington, Marshall, and Lee, but Jefferson’s complete disestablishment would prevail through his considerable political and intellectual talents in the end.<sup>146</sup> Indeed, it was one of Jefferson’s finest hours. The statute rejected any religion from controlling the government through a litmus test or *a priori* commitment to its perpetuity. No special privilege or stature would be accorded to any ideology in the ongoing contest for gaining public support.

However, Jefferson’s position becomes more controversial when he tries to expand the program *a posteriori* by excluding the church from influencing policy or participating in the public arena. This concept of church/state separation finds its most famous expression in a letter he wrote to the Danbury Baptist Association of Connecticut, dated January 1, 1802. The occasion of the letter was a concern on the part of the Northern Baptists that Jefferson was proceeding too far in his desire to separate church and state by refusing to proclaim a national day of fasting and prayer, unlike his two predecessors in the office of the presidency.<sup>147</sup> Jefferson tries to explain his position by making a distinction between the policies of the federal and local governments, emphasizing the word “congress” in the First

Amendment: “*Congress* shall make no law respecting an establishment of religion.” This amendment is interpreted as establishing a secular national government, free from any religious concerns or practices, leaving him with a built-in excuse to omit the proclamation of a special religious observance as a federal official. The amendment is interpreted in a broad and legalistic manner as “building a wall of separation between church & state,”<sup>148</sup> which includes in his mind a prohibition on the federal government from enacting anything of a religious nature, not just creating a national church. He hopes that his expansive interpretation will “make progress” in the future and encompass the other sectors of government, even if he feels restricted by its precise language in limiting the separation to a specific domain. The wall of separation and its consistent application develop from his concept of religion as a “matter which lies solely between Man & his God.” It is a fundamental presupposition he mentions at the beginning of the letter, right after the greeting, and also shares with some of the Baptist leaders in Virginia as common allies in the struggle. This concept of religion can lead in no other direction than the complete secularization of government in all its sectors, and Jefferson is certainly correct in drawing this conclusion, given the questionable nature of his supposition, which remains a matter of considerable debate within the nation today.<sup>149</sup>

The wall of separation represents the most indelible legacy of Jefferson’s thoughts and actions upon the relation between church and state, but he is not without contradiction on the issue. He is a good case in point for those who follow the hermeneutical approach of deconstructionism and find writing filled with complexity or ambiguity in meaning; authors involved in numerous contradictions or blind spots;<sup>150</sup> and interpreters needing to psychoanalyze their subjects and search for underlying motives that sometimes subvert the outward intent.<sup>151</sup> This type of hermeneutical approach will allow the many sides of a person like Jefferson to emerge, without feeling the onus to reconcile the tensions or contradictions. Here are just three ways to look at Jefferson and his view of church/state relations:

One, there is the Jefferson who wishes to forward his religious convictions. This side of Jefferson makes it clear that government cannot exist apart from religion.<sup>152</sup> Here religion refers to his concept of universal morality, and not some special theological set of dogmas associated with sectarian expressions of Christianity. Here religion refers to his convictions about an innate or *a priori* sense of right and wrong that God has implanted in the hearts of all human beings, that Jesus inculcated among his disciples in the most sublime form, and Jefferson finds “necessary for a social being.”<sup>153</sup> Religion is a positive good and necessary aspect of society, as long as it exists *in abstracto*, without making concrete connection with a specific theological dogma in understanding the divine nature, and follows the liberal/

deist penchant in reducing religion to morality—the typical religious conviction of enlightened intelligentsia in the eighteenth and nineteenth centuries.

Two, there is the political side of Jefferson that must accommodate the will of the people to forward his public career or obtain a larger civil agenda. For example, he helped craft a “Bill for Appointing Days of Public Fasting and Thanksgiving” in the state of Virginia, authorizing magistrates to honor the “Almighty God” in this manner, and even proclaimed one of these days of divine worship while serving as its governor.<sup>154</sup> This simple example contains an obvious refutation of the notion that Jefferson championed the absolute secularization of the government throughout his political career. The endorsement of a Puritan-type tradition withstands the possibility of understanding his overt words and actions consistently, as advocating a complete divorce between church and state and interpreting disestablishment to mean the end of religious influence on all levels of the government. The proclamation, along with some other political/religious initiatives, present a problem for those who wish to interpret Jefferson as a strict separationist and provide a uniform interpretation of him on the issue;<sup>155</sup> but it could be that Jefferson simply lacks consistency, or presents a duplicitous position on the issue, which must accommodate the affections of the people. Certainly, as a Deist and proponent of an “eternal wall,” he might find it difficult to embrace the Christian practice of giving thanks (*eucharisteō*) for divine blessing or grace (*charis*), but as a politician, he might have a motive to steer away from his doctrinaire political/religious conviction and find a need to placate or galvanize his people in serving an ultimate objective, accepting a certain amount of compromise along the way. No one can discern his motives; they are hidden and subject to the interpretive difficulties of all deconstruction or psychoanalysis, but it is only the worst sort of American hagiography that protects the name of Jefferson from unveiling the deeper and sometimes darker motivations of his policies. Only the most naïve citizen accepts the overt sincerity and literal truth of a politician’s words and actions.

Three, there is the Jefferson who develops a Voltairean-type of animosity toward the Judeo-Christian tradition and wants to perform a “quiet euthanasia.” The strict doctrine of separation certainly has a pretext in this motive and appears throughout his life, beginning with his literary notebook or *Commonplace Book*.<sup>156</sup> However, the doctrine and hatred only seem to escalate later on in his life during and after the presidential campaign of 1800 because of the clerical assault upon his French ideals, exploding into the public domain and serving as a pretext for his letter to the Danbury Baptist Association. At this time, he makes it clear that politics have no place in the pulpit since Federalist ministers are criticizing him; that religion is a private matter, since he does not want to confirm their suspicions about him.<sup>157</sup> He is now able to understand disestablishment in the broadest sense

and practice it with literal obedience as President of the United States, contradicting his previous policies in Virginia, accenting the strict doctrine of separation on the federal level, and hoping to see its application to the states in the near future. The first draft of his letter implies a general disapproval of ongoing religious practices in the respective northern states by preferring “voluntary regulations and discipline of each respective sect,” and is only stricken for political reasons.<sup>158</sup> The final draft leaves the broad statement intact that religion is a “matter that lies solely between Man & his God,” making all forms of religion irrelevant to all levels of the government.

The attempt of Jefferson to diminish the role of the church and create a secular government is an important aspect of his legacy, but it only represents one side of his multifaceted and complicated career. By emphasizing this side, there is no attempt in this work to provide an overall portrait of the man and his career, or even present a fair and balanced view of his overall position on church/state relations. Certainly, Baptists, Quakers, and other persecuted groups would want to speak of the considerable debt that they and all lovers of freedom owe to Jefferson as a great champion of religious liberty and a powerful advocate of their cause against ecclesiastical establishments. In emphasizing the secular side of Jefferson, there is no intention to dismiss the positive contributions of his legacy regarding religious toleration, which all sides of the present debate have come to admire. In emphasizing the darker side of his relation to the church, the Jefferson Memorial remains secure within the pantheon of religious/political devotion in America, which also must recognize the frailties of its founders and a side of their beliefs and attitudes that remain muted within the plethora of hagiography often surrounding them. There is no understanding of Jefferson and his famous wall without placing it within his context and relationship to the church and state, which included the anti-Semitic/anti-Christian attitudes of the Enlightenment and a clear attempt to marginate the Judeo-Christian tradition through political means.

## Notes

1. Matthew Tindal, *Christianity as Old as Creation*, reprint of 1730 edition (New York and London: Garland Publishing, 1978), 14, 35, 38, 58ff., 104–105, 125; Arnold Ages, “The Dark Side of the French Enlightenment,” *Toronto Journal of Theology* 15/2 (1999): 139; d’Alembert, “Discours Preliminaire des Editeurs,” in *Encyclopédie de Diderot et d’Alembert* [Paris, 1751–1772] (F. M. Ricci, 1970–), 13.xxvi; Daniel Brewer, *The Enlightenment Past: Reconstructing Eighteenth-Century French Thought* (Cambridge: Cambridge University Press, 2008), 36–37. This chapter represents a revised version of a previous article entitled

- “Jefferson’s Opposition to the Judeo-Christian Tradition” in Peter Lang’s series *Major Concepts in Politics and Political Theory* (Vol. 29), and is published with their permission.
2. Abbé Yvon, “Athées,” in *Encyclopédie*, A, 13.230–31; Diderot, *Oeuvres Complètes* (Nendeln: Kraus Reprint Ltd. 1966), 15.253–54; Kingsley Martin, *The Rise of French Liberal Thought* (New York University Press, 1954), 177–91; Charles A. Gliozzo, “The Philosophes and Religion: Intellectual Origins of the Dechristianization Movement in the French Revolution,” *Church History* 40/3 (1971): 283; Peter Gay, *The Enlightenment: An Interpretation* (New York: Knopf, 1967–69) 2.459. E.g., Helvétius, *De l’Esprit*, Guy Besse (intro. et notes) (Paris: Éditions Sociales, 1959), 115–16. Science was proceeding toward moral neutrality. Gay, *The Enlightenment*, 2.163.
  3. See Stephen Strehle, *The Dark Side of Church/State Separation: The French Revolution, Nazi Germany, and International Communism* (New Brunswick, NJ and London: Transaction Publishers, 2014), chaps. 3–5; Ian Bartrum, “Religion and the Restatements,” *Brooklyn Law Review* 79/2 (2014): 579; David Martin, *The Religious and the Secular: Studies in Secularization* (New York: Schocken Books, 1969), 98–99.
  4. George Hegel, *The Philosophy of Right*, in *Great Books of the Western World*, Robert Maynard Hutchins (ed.) (Chicago, IL: Encyclopaedia Britannica, 1977), 108.
  5. Charles Taylor, “Western Secularity,” in *Rethinking Secularity*, 34; Philip S. Gorski, “Historicizing the Secularization Debate: Church, State, and Society in Late Medieval and Early Modern Europe, ca. 1300 to 1700,” *American Sociological Review*, 65 (2000): 139–40. See also Robert Bellah’s *Beyond Belief*; Peter Berger’s *The Sacred Canopy*; Steve Bruce’s *Religion in the Modern World*; Jose Casanova’s *Public Religions in the Modern World*; Auguste Comte’s *Cours de philosophie positive*; Emile Durkheim’s *The Elementary Forms of the Religious Life*; Marcel Gauchet’s *The Disenchantment of the World*; Thomas Luckman’s *Das Problem der Religion in der modernen Gesellschaft*; Talcott Parson’s *The Evolution of Societies*; Herbert Spencer’s *The Principles of Sociology*; Bryan Wilson’s *Religion in Secular Society*.
  6. A. J. Ayer, *Voltaire* (New York: Random House, 1986), 171–72. Diderot was most famous for his *Encyclopédie*, which he began in 1746. He was a strident critic of Christianity and was imprisoned in the Chateau Vincennes for unorthodox and subversive opinions on religion and morality. P. France, *Diderot* (Oxford and New York: Oxford University Press, 1983), 7–9, 35–36. Early in his career he followed the mechanistic view of Descartes and sounded much like a Deist, accepting the teleological and moral arguments for the existence of God in *Philosophical Thoughts*. Later on, beginning with *Letter on the Blind* (1747), he questioned the veracity of these theistic proofs. At that time, he began to follow another aspect of current science, which imputed to matter its own “spontaneous generation.” He also thought it possible that the perfection we see today is the result of a long process, where defective animals become extinct and the best equipped remain. *Pensées Philosophiques* (1746), in *Oeuvres Complètes de Diderot* 1.132–36 (xviii–xxi); *Lettre sur les Aveugles* (1749), in *Oeuvres Complètes*, 1.308–309 [*Diderot’s Selected Writings*, L. G. Crocker (ed.), D. Coltman (trans.) (New York: The Macmillan Co., 1966), 4–6, 14, 20, 22]; A. Vartanian, “From Deist to Atheist: Diderot’s Philosophical Orientation, 1746–1749,” in *Diderot Studies* (Syracuse, NY: University Press, 1949), 47–50, 54, 58–60; P. France, *Diderot* (Oxford and New York: Oxford University Press, 1983), 59, 67. Diderot serves as a good example of the propensity of Deism to proceed toward atheism or complete autonomy from God.

7. Daniel Mornet, *Les Origines intellectuelles de la Révolution française 1715–1787* (Paris: Librairie A. Colin, 1967), 225–26; R. O. Rockwood, “The Legend of Voltaire and the Cult of the Revolution, 1791,” in *Ideas in History*, Richard Herr and Harold T. Parker (eds.) (Durham, NC: Duke University Press, 1965), 111; Peter Gay, *Voltaire’s Politics: The Poet as a Realist* (New York: Vintage Books, 1965), 334–35.
8. Gay, *Voltaire’s Politics*, 243, 310; Rockwood, “The Legend of Voltaire,” 113.
9. M-M. H. Barr, *Voltaire in America 1744–1800* (Baltimore, MD: The John Hopkins Press, 1941), 55; Rockwood, “The Legend of Voltaire,” 132; Gliozzo, “The Philosophes and Religion,” 275.
10. Jürgen von Stackelberg, “1685 et l’idée de la tolérance,” *Francia* 14 (1986) 230. Pierre Bayle wrote one of the first negative reactions to the revocation. He wrote two pamphlets in 1686: “Ce que c’est que la France toute Catholique sous le règne de Louis le Grand” and “Commentaire philosophique sur ces paroles de Jésus-Christ: ‘contrain-les d’entrer.’” *Ibid.*, 230–31; Geoffrey Adams, “Myths and Misconceptions: The Philosophe View of the Huguenots in the Age of Louis XV,” *Historical Reflections* 1/1 (1974): 65–66.
11. *Traité sur la Tolérance*, in *Oeuvres Complètes de Voltaire* (Paris: Garnier Frères, 1877–85), 25.18–26; *The Works of Voltaire* (Paris: E. R. DuMont, 1901), 4.118–34; Barr, *Voltaire in America*, 119; Perez Zagorin, *How the Idea of Religious Toleration Came to the West* (Princeton, NJ and Oxford: Princeton University Press, 2003), 295–96. Hereafter the French edition of Voltaire’s work is designated OCV and the English edition WV.
12. OCV 20.494–95 (WV 12.154–56); OCV 24.439; OCV 25.32 (WV 4.145). Theological disputes are “the most terrible scourge of the world.” Atheism is a monstrous evil, but there is nothing worse than the fanaticism of meaningless, speculative dogma. Voltaire enjoys mocking doctrines like the Trinity, transubstantiation, supralapsarianism, et al. OCV 17.359–61 (WV 4.20–23); OCV 17.475–76 (WV 6.126); OCV 20.467 (WV 14.36–37); OCV 18.412–13 (WV 8.153–54); Ayer, *Voltaire*, 136–38; Gay, *Voltaire’s Politics*, 268.
13. OCV 19.549 (WV 11.29); OCV 18.413 (WV 8.154–55); Ronald I. Boss, “The Development of Social Religion: A Contradiction of French Free Thought,” *Journal of the History of Ideas* 34/4 (1973): 582–84. Voltaire sees the necessity of religion in society, unlike some radicals who want religion expunged entirely. *Ibid.*, 586–89; OCV 21.573. Voltaire’s famous quip speaks to the importance of religion in society. “If God did not exist, it would be necessary to invent him.” His basic tendency is to reduce religion to morality. He accepts the fact that those who espouse a different religion from the prince might be treated as second class. OCV 25.33 (WV 4.147–48).
14. OCV 24.453. The basic rule of thumb is the fewer the dogmas the better. OCV 25.102 (WV 4.269). He expresses the typical doubts of a Deist concerning the belief in an afterlife and divine judgment. Gay, *Voltaire’s Politics*, 266–67.
15. OCV 20.507–508 (WV 14.82–83).
16. OCV 17.476 (WV 6.126); OCV 18.105 (WV 9.87–88); OCV 19.155–56 (WV 8.326–27).
17. OCV 17.476 (WV 6.127); OCV 20.355 (WV 13.84–85). Voltaire does not find God embodied in history or performing miracles, but he rejects those who categorically dismiss the possibility of the supernatural in the name of science. OCV 20.77ff. (WV 11.272ff.); Gay, *Voltaire’s Politics*, 266.

18. OCV 24.439ff.
19. OCV 24.449–50; OCV 20.186–87 (WV 12.146–48).
20. OCV 20.517–18 (WV 14.102); Ayer, *Voltaire*, 70–71, 97.
21. OCV 20.521 (WV 14.104).
22. OCV 20.523 (WV 14.108), OCV 24.451; Ayer *Voltaire*, 132; Zagorin, *Religious Toleration*, 297.
23. Gay, *Voltaire's Politics*, 70–78.
24. OCV 20.517ff., 521 (WV 14.100ff., 104).
25. Gay, *Voltaire*, *Voltaire's Politics*, 271–72.
26. OCV 26.298; Ayer, *Voltaire*, 99.
27. OCV 24.252.
28. Gay, *Voltaire's Politics*, 170, 239, 244–46, 252; Ayer, *Voltaire*, 27; Gliozzo, “The Philosophes and Religion,” 275 (n.12). There is some controversy over the precise interpretation of the phrase *écrazer l'infâme*, but the apparent meaning is to extirpate Christianity. He says in his *Notebooks* (324) that if Frederick of Prussia, his patron, was more daring he could have destroyed the religion.
29. *Ibid.*, 89, 225–26; Ayer, *Voltaire*, 27–28.
30. OCV 20.272 (WV 12.303); Stackelberg, “1685 et l'idée de la tolérance,” 236–39.
31. OCV 20.195 (WV 12.155–56); Rockwood, “The Legend of Voltaire,” 116; Stackelberg, “1685 et l'idée de la tolérance,” 239; Gay, *Voltaire's Politics*, 108, 269, 354, 355, 455. He finds Jesuits a most depraved lot. They cause civil wars wherever they go, and he favors a government policy to disband them. OCV 25.35, 96–97 (WV 4.151, 158).
32. Barr, *Voltaire in America*, 12, 17ff., 32–59.
33. Alf J. Mapp, *The Faiths of Our Fathers: What America's Founders Really Believed* (Laham: Rowman and Littlefield, 2003), 61–63, 66–67, 72, 83, 95, 106–9; Darren Staloff, “Deism and the Founders,” in *Faith and the Founders of the American Republic*, Daniel Dreisbach and Mark David Hall (eds.) (Oxford and New York: Oxford University Press, 2014), 18–30. Hereafter the last reference is designated FFAR. Only a tiny minority of the leaders of the Revolution were militant Deists. Franklin was a militant Deist, materialist, determinist, and anti-Christian in his youth, but he became more tolerant as he matured and even overturned many of his previous convictions, embracing free will, divine providence, and the immortality of the soul. At the Constitutional Convention in 1787, he promoted a type of “civil religion” by speaking of the special divine providence in “our Favour,” exhorting the members to offer thanksgiving and chastening them for impiety. Benjamin Franklin, “Motion for Prayers in the Convention” (June 28, 1787), in *Writings* (New York: The Library of America, 1987), 1138–39; Daniel Dreisbach, “The Bible and the Political Culture of the American Founding,” in FFAR, 158–59.
34. He starts out his work by proclaiming, “My own mind is my own church.” Through the powers of human reason, we all can discover the majesty of God in creation, the eternal laws of nature, and all that is necessary for us to lead productive lives. There is no need to rely upon written texts of old. In fact, the Bible is filled with stories of rapine and murder, including the “horrid assassination of whole nations.” It inspires “the most detestable wickedness, the most horrid cruelties, and the great miseries that have afflicted the human race.” He calls the Jews “a nation of ruffians and cut-throats,” their patriarchs “monsters and

- imposters,” the Apostle Paul a “fool,” and Christians “infidels to God.” The wicked deeds of these wicked men are what the Bible offers us, and beyond this, there is little else other than stupidity. No enlightened mind could possibly believe in its mythological and miraculous stories, or its mystical doctrines, such as the Trinity and the divine incarnation, which defy all logic. *The Complete Religious and Theological Works of Thomas Paine* (New York: Peter Eckler, 1954), 1:5ff, 18–19, 29–31, 43, 39, 60, 67, 91, 103–4, 159, 166, 173, 176, 185, 249, 261–62, 355–56, 378, 398, 415–16.
35. John Thayer, *A Discourse, Delivered, at the Roman Catholic Church in Boston* (Boston, MA: Samuel Hall, 1789), 9ff.; Timothy Dwight, *The Duty of Americans, at the Present Crisis* (New Haven, CT: Thomas and Samuel Green, 1798), reprinted in *Political Sermons of the American Founding Era*, Ellis Sandoz (ed.) (Indianapolis, IN: Liberty Press, 1991), 1381–85; David Osgood, “Some facts evincive of the atheistical, anarchical, and in other respects, immoral principles of the French Republicans, ...” (Boston, MA: Samuel Hall, 1798); Alden Bradford, *Two Sermons* (Wiscasset: Henry Hoskins and John W. Scott, 1798), 19; Noble E. Cunningham, “Election of 1800,” in *History of American Presidential Elections, 1789–1968*, Arthur M. Schlesinger (ed.) (New York: Celesea House, 1971); *The Papers of Alexander Hamilton*, Harold C. Syrett (ed.) (New York and London: Columbia University Press, 1974), 21.402–404; 24.405; Frank Lambert, *The Founding Fathers and the Place of Religion in America* (Princeton, NJ: Princeton University Press, 2003), 274–77; Henry W. Foote, *The Religion of Thomas Jefferson* (Boston, MA: Beacon Press, 1960), 3, 46; Robert M. Healey, *Jefferson on Religion in Public Education* (New Haven, CT and London: Yale University Press, 1962), 164; Carles Ellis Dickson, “Jeremiads in the New American Republic: The Case of National Fasts in John Adams Administration,” *The New England Quarterly* 60/2 (1987): 201; Charles B. Sanford, “The Religious Beliefs of Thomas Jefferson,” in *Religion and Political Culture in Jefferson’s Virginia*, Garrett Ward Sheldon and Daniel Dreisbach (eds.) (Lanham, MD: Rowman and Littlefield Publishers, 2000), 61; Daniel Dreisbach, “Mr. Jefferson, a Mammoth Cheese, and the ‘Wall of Separation Between Church and State’: A Bicentennial Commemoration,” *Journal of Church and State* 43/4 (2001): 733–36; Thomas E. Buckley, “The Political Theology of Thomas Jefferson,” in *The Virginia Statute for Religious Freedom: Its Evolution and Consequences in American History*, Merrill Peterson and Robert Vaughan (eds.) (Cambridge: Cambridge University Press, 1988), 75. Hamilton made religion a central issue in the 1800 campaign, warning the voters of Jefferson’s relationship to the French Revolution and its “atheism.” The Federalists preferred the British model of an evolving society, while the Republicans looked to the radical revolution of France in the political and religious realm.
36. Jefferson, “Autobiography,” in *The Works of Thomas Jefferson*, Paul Leicester Ford (ed.) (New York and London: G. P. Putnam’s Sons, 1904), 1.4; Jennings L. Wagoner, *Jefferson and Education* (Charlottesville, VA: Thomas Jefferson Foundation, 2004), 21; Mapp, *The Faiths of Our Fathers*, 4; Allen Jayne, *Jefferson’s Declaration of Independence: Origin, Philosophy and Theology* (Lexington, KY: University Press of Kentucky, 1998), 19; Douglas Wilson, “Jefferson and Bolingbroke: Some Notes on the Question of Influence,” in *Religion and Political Culture in Jefferson’s Virginia*, 110; Edwin S. Gaustad, *Sworn on the Altar of God: A Religious Biography of Thomas Jefferson* (Grand Rapids, MI: William B. Eerdmans, 1996),

- 16–17. Small came to Virginia from Scotland and was the only member of the college who was not an Anglican clergyman. Hereafter the Ford edition of Jefferson is designated F.
37. “To George Wythe” (Aug. 13, 1786) F 5.153–54. Jefferson’s hate for the clergy grew in Paris, even if it had antecedents in his earlier training. His letters from France are filled with venom toward them. *Jefferson and Madison on Separation of Church and State: Writings on Religion and Secularism*, L. Brenner (ed.) (Fort Lee, NJ: Barricade, 2004), 100–106.
38. *The Commonplace Book of Thomas Jefferson*, Gilbert Chinard (intro. and notes) (Baltimore, MD: The Johns Hopkins Press, 1926), 10, 328 (849), 334–43 (852–61); Barr, *Voltaire in America*, 116. The *Commonplace Book* is designated as CB hereafter. It is hard to assess the direct influence of Voltaire upon his attitudes. Jefferson considers Voltaire a genius, which testifies to some direct knowledge, but the basic influence probably developed through the many secondary sources of the pervasive, Voltairean culture. *Notes on Virginia* (1782) F 3.459–61. Cf. CB 48–49, 58.
39. Isaac Kramnick, *Bolingbroke and His Circle* (Cambridge, MA: Harvard University Press, 1968), 14–15, 265; David G. James, *The Life of Reason: Hobbes, Locke, Bolingbroke* (London, Toronto, and New York: Longmans, Green and Co., 1949), 177, 193.
40. “Jefferson’s Literary Commonplace Book,” in *Papers of Thomas Jefferson*, Douglas L. Wilson (ed.) (Princeton, NJ: Princeton University Press, 1989), 5, 8. Hereafter referred to as LCB. See Gaustad, *Sworn on the Altar of God*, 22–23; Wilson, “Jefferson and Bolingbroke,” 109–11. The excerpts make up almost 40 percent of the material. John Adams told Jefferson that he “read [Bolingbroke] through more than five times in his life.” Kramnick, *Bolingbroke and His Circle*, 262.
41. LCB 11.
42. LCB 29 [16], 43–44 [46]; Henry St. John, Viscount Bolingbroke, *Philosophical Works 1754–77* (New York and London: Garland Publishing, 1977), 2.154–55, 4.316–20; Jayne, *Jefferson’s Declaration of Independence*, 23. Hereafter *Philosophical Works* is designated PW. In the footnotes, LBC is mentioned first and then the reference Jefferson is making in PW. If PW stands alone, it means the idea comes from Bolingbroke and is not cited by LBC.
43. LCB 30–31 [20]; PW 2.220–21, 230–32; 5.333.
44. PW 5.357–59.
45. PW 2.232.
46. PW 5.359.
47. PW 5.356.
48. LCB 40–41 [37]; PW 4.153–54.
49. LCB 31–32 [20–21]; PW 2.232–34, 237–38. Jewish people often followed the concepts and customs (e.g., circumcision) around them. LCB 23 [1], 24 [4]; PW 1.135.
50. LCB 55 [58]; PW 5.367. Jefferson and the Founding Fathers supported the full civil rights of Jews, but his antipathy toward Judaism reflected the Voltairean type of anti-Semitism that will lead to modern bigotry and atrocities against this people. See Strehle, *The Dark Side*, passim; *Letters of Certain Jews to Monsieur de Voltaire*, Philip Lefanu (trans.) (Dublin: William Watson, 1777), 61, 64; “To Benjamin Rush” (Aug. 21, 1803) L 10.384–85; “To John Adams” (Oct. 13, 1813) L 13.389; “To Charles Thompson” (Jan. 9, 1816) L 14.386; “To Ezra Stiles” (June 25, 1819) L 15.203; “To William Short” (Aug. 4, 1820) L 15.260–61; David Dalin, “Jews, Judaism, and the American Founding, in FFAR, 66–76;

Steven Waldman, *Founding Faith: Providence, Politics, and the Birth of Religious Freedom in America* (New York: Random House, 2008), 75. L stands for *The Writings of Thomas Jefferson*, Andrew A. Lipscomb (ed.) (Washington, DC: The Thomas Jefferson Memorial Association, 1905).

51. LCB 53, 55 [58]; PW 5.332–70.
52. LCB 55 [58]; PW 5.370; Jayne, *Jefferson's Declaration of Independence*, 22.
53. PW 5.361.
54. LCB 40 [36]; PW 4.148; Jayne, *Jefferson's Declaration*, 28–29.
55. PW 2.221.
56. LCB 50 [56]; PW 5.217.
57. Bolingbroke does not trust the New Testament canon. It is a later and capricious act of the church (LCB 36–38 [31–33]; PW 3.37–39), and the Gospel accounts are filled with contradictions (LCB 33 [23], 41–42 [40]; PW 2.262; 4.257–59). The ethics of Jesus are not so complete or coherent as some philosophers (LCB 35 [28]; PW 2.305–306), but Bolingbroke can still think of Jesus as the Messiah, Savior, and messenger of God. The original message of Jesus was consonant with reason and the system of nature, even if the church corrupted it (PW 2.328, 332). He even seems to think at one point that the miracles of Jesus established the veracity of the message and speaks of his coming again to reward and punish us in accordance with our faithfulness (PW 2.328–29), although his basic posture is skepticism when it comes to miraculous accounts due to insufficient proof or a violation of natural law (LCB 25 [6]; PW 1.155; Jayne, *Jefferson's Declaration*, 23, 32–33).
58. PW 2.328; James, *The Life of Reason*, 257–58.
59. Jayne, *Jefferson's Declaration*, 27–28, 34–35.
60. LCB 42–43 [44]; PW 4.268–71.
61. PW 5.216.
62. PW 2.332–33; James, *The Life of Reason*, 244.
63. James, *The Life of Reason*, 241; Kramnick, *Bolingbroke and His Circle*, 84.
64. PW 2.359.
65. James, *The Life of Reason*, 241–47.
66. PW 2.222–23, 248–49, 256; 4.147–48.
67. Kramnick, *Bolingbroke and His Circle*, 86–87. Bolingbroke follows the voluntaristic tradition of the late medieval period, which sees God's will establishing the law and not the eternal essence. The commands of God do not express the divine nature, but simply represent a capricious act of the will toward us. In concert with this view, Bolingbroke often speaks of a qualitative distinction between God and human beings, in which the two have nothing in common. *Ibid.*, 85–86; James, *The Life of Reason*, 253–56; e.g., PW 4.307. And yet, he can turn around and submit religion to rational demonstrations, as if the world and its moral code partake of some absolute truth, as if the world is a revelation of God's just ways, not a capricious act of irrationality and immorality. LCB 28 [14–15]; PW 1.30–31. Such contradictions cause many detractors to deprecate his philosophical abilities as more driven by temper tantrums against opponents than sober philosophical discourse. David James finds his work arrogant, contradictory, and unfair, "animated by as much hatred of religion as of the speculative intelligence." *The Life of Reason*, 207, 234, 240.
68. LCB 34 [26–27]; PW 2.279–82.

69. Paul Conkin, Merrill Peterson, and Douglas Wilson have developed the same fundamental conclusion after reviewing the material in Bolingbroke and Jefferson. Wilson, "Jefferson and Bolingbroke," 109–10, 115–16; Paul Conkin, "The Religious Pilgrimage of Thomas Jefferson," in *Jeffersonian Legacies*, Peter Onuf (ed.) (Charlottesville, VA: University of Virginia, 1993), 23–25.
70. Mapp, *Faiths of Our Fathers*, 15; Healey, *Jefferson on Religion*, 26, 136; "To William Short" (Oct. 31, 1819), F 12.140; "To Doctor Benjamin Rush" (Sept. 23, 1800), F 9.148; "To Charles Thomson" (Jan. 9, 1816) F 11.498. Jefferson considers materialism (Epicureanism) compatible with religion. In his *Commonplace Book*, he provides an excerpt from Tertullian that speaks of the corporeal nature of God and the soul. CB 374 (904). Early in his life, he seems to think that consciousness ceases with death and prefers the Stoic attitude in the face of its horror, citing the counsel of Cicero. CB 328–30 (849–50); LCB 17, 56, 58–59 [60–62, 67–68, 71–72]; "To John Adams" (March 14, 1820) L 15.240–41; "To Thomas Cooper" (Aug. 14, 1820) L 15.266–67; "To Judge Augustus B. Woodward" (March 24, 1824) L 16.18–19; Sanford, "The Religious Beliefs of Thomas Jefferson," 80–81. His belief system was far from orthodox, but he was baptized, married, and buried in the Anglican Church, and attended church services regularly throughout his life. Thomas Buckley, "Religion and the Presidency of Thomas Jefferson," in *Religion and the American Presidency: George Washington to George W. Bush with Commentary and Primary Sources*, Gastón Espinosa (ed.) (New York: Columbia Press, 2009), 89–90; Sanford, "The Religious Beliefs of Thomas Jefferson," 61–62.
71. "To Doctor Benjamin Waterhouse" (June 26, 1822) L 15.385; "To Ezra Styles, Esq." (June 25, 1819) L 15.203–204; Sanford, "The Religious Beliefs of Thomas Jefferson," 72; Buckley, "The Political Theology of Thomas Jefferson," 90; Cushing Strout, "Jeffersonian Religious Liberty and American Pluralism," in *The Virginia Statute for Religious Freedom*, 201; Healey, *Jefferson on Religion*, 38, 162; Gaustad, *Sworn on the Altar*, 134, 144. In his *Commonplace Book*, he cites a reference from Voltaire about Calvin burning Michael Servetus at the stake. This excerpt points to a negative image and prejudice toward Calvinism that Jefferson learned and preferred at a young age. CB 339 (859).
72. "To Peter Carr" (Aug. 10, 1787) F 5.323; "To John Adams" (Oct. 13, 1813) L 13.391–392; "To Miles King" (Sept. 26, 1814) L 14. 197; J. Judd Owen, "The Struggle Between Religion and Nonreligion," *American Political Science Review* 101/3 (2007) 497; Sanford, "The Religious Beliefs of Thomas Jefferson," 66–67, 70. Like the *philosophes*, he provides only vague cosmological and teleological proofs for God's existence. "To John Adams" (April 18, 1816) L 14.468–69; "To John Adams" (April 11, 1823) L 16.427; Robert M. Healey, "Jefferson on Judaism and the Jews," *American Jewish History* 78/4 (1984) 363.
73. *Ibid.*, 325–26.
74. "To John Adams" (Jan. 22, 1821) F 12.198; "To Timothy Pickering, Esq." (Feb. 27, 1821) L 15.323.
75. Owen, "The Struggle Between Religion and Nonreligion," 500.
76. "To Peter Carr" (Aug. 10, 1787) F 5.323; Adrienne Koch, *The Philosophy of Thomas Jefferson* (Gloucester, MA: Peter Smith, 1957), 16.
77. *Ibid.*; "To Thomas Law, Esq." (June 13, 1814) L 14.142–44; "To John Adams" (Oct. 14, 1816) L 15.76; Bernard Mayo, *Myths and Men: Patrick Henry, George Washington, Thomas*

- Jefferson* (Athens, GA: University of Georgia Press, 1959), 66; William B. Huntley, "Jefferson's Public and Private Religion," *The South Atlantic Quarterly* 79/3 (1980) 296; Sanford, "The Religious Beliefs of Thomas Jefferson," 76–78; Buckley, "The Political Theology of Thomas Jefferson," 87. Morality is an *a priori*, "self-evident" part of "our constitution." (This conviction clearly inspired the edited version of the Declaration of Independence concerning its self-evident truths, which is attributed to Franklin.) Jefferson's position is similar to what one reads in the writings of Frances Hutcheson, Thomas Reid, Lord Kames and other members of the Scottish Enlightenment. Jefferson uses Lord Kames' work extensively in his *Commonplace Book*. CB 16–18, 96–135, 167 (559–68, 694); Gaustad, *Sworn on the Altar*, 32, 34, 137; Jayne, *Jefferson's Declaration of Independence*, 66–68. In a letter to Thomas Law, Jefferson refers to Kames' "Principles of Natural Religion" and concurs with its position that "a man owes no duty to which he is not urged by some impulsive feeling." "To Thomas Law" (June 13, 1814) L 14.144. See Henry Home, Lord Kames, *Essays on the Principles of Morality and Natural Religion* (Edinburgh: A. Kincaid and A. Donaldson, 1751), 60, 69; *Principles of Equity* (Edinburgh: A. Kincaid and J. Bell, 1767), 30–31.
78. "To James Fishback" (Sept. 27, 1809) L 12.315–16 (along with Jefferson's missing composition draft in *Jefferson and Madison on Separation*, 195).
  79. "To Thomas Parker" (May 15, 1819), in *Jefferson and Madison on Separation*, 273. Jefferson rejects the emphasis of Jesus upon repentance and forgiveness. He rejects any doctrine of cheap grace and emphasizes the necessity of doing good works as a means of reward. He is more of a materialist than Jesus, but later in life he entertains the possibility of an afterlife when he reaches the time of his own death. "To William Short" (April 13, 1820) L 15.244; Healey, *Jefferson on Religion*, 31–34; "Jefferson on Judaism and the Jews," 369; Mapp, *The Faiths of Our Fathers*, 20; Owen, "The Struggle Between Religion and Nonreligion," 498–99.
  80. "To Benjamin Rush" (April 21, 1803) F 9.462, "To William Canby" (Sept. 18, 1813) L 13.377–378; Koch, *The Philosophy of Thomas Jefferson*, 32; Huntley, "Jefferson's Public and Private Religion," 295.
  81. "To William Short" (Aug. 4, 1820) F 15.257; Healey, "Jefferson on Judaism and the Jews," 363, 366.
  82. "To Joseph Priestly" (April 9, 1803) F 9.458–59; "To Edward Dowse, Esq." L 10.376–377; "To Doctor Benjamin Rush" (April 21, 1803) L 10.382–85; "To William Short" (Aug. 4, 1820) L 15.260; Foote, *The Religion of Thomas Jefferson*, 45, 54ff.; Healey, "Jefferson on Judaism and the Jews," 365.
  83. "To Charles Thomson" (Jan. 9, 1816) F 11.498; "To Benjamin Rush" (April 21, 1803) L 10.380.
  84. *Jefferson and Madison on Separation*, 166–70.
  85. Healey, *Jefferson on Religion*, 118.
  86. "To John Adams" (Oct. 13, 1813) L 13.390; "To John Adams" (July 15, 1814) F 11.397–98; "To Charles Thomson" (Jan. 19, 1816) F 11.498–99; "To F. A. van der Kemp" (April 25, 1816) L 15.2–3; Healey, *Jefferson on Religion*, 118.
  87. Albert Schweitzer, *The Quest of the Historical Jesus: A Critical Study of Its Progress from Reimarus to Wrede* (New York: Macmillan Publishing, 1968), 309, 319.

88. "To Peter Carr" (Aug. 10, 1787) F 5.324–25; "To William Short" (Aug. 4, 1820) F 15.257; Foote, *The Religion of Thomas Jefferson*, 57. In more recent times, the Third Quest for the historical Jesus has developed more objective criteria. John P. Meier, a leading figure in the quest, says that miraculous narratives go back to the time of Jesus. There are too many independent, first-century sources that speak of Jesus as a miracle worker to discount these narratives as later additions. Meier, *A Marginal Jew: Rethinking the Historical Jesus* (New York: Doubleday, 1994), 2.619, 622.
89. "To Charles Thomson" (Jan. 9, 1816) F 11.498; "To Francis van der Kemp" (April 25, 1816) L 15.2–3.
90. *Jefferson and Madison on Separation*, 257, 277–331; Sanford, "The Religious Beliefs of Thomas Jefferson," 63–65; Gaustad, *Sworn on the Altar*, 126, 130–31; Foote, *The Religion of Thomas Jefferson*, 65; Mapp, *The Faiths of Our Fathers*, 16. See Foote's discussion on pp. 61–67 for the evolution of the work. It consists of clippings from the four canonical Gospels in Greek, Latin, French, and English, arranged in parallel columns. It was published later on as "Jefferson's Bible"—a Bible that omits the OT and letters of Paul.
91. "To John Adams" (Aug. 22, 1813) F 11.333–34; "To William Short" (Oct. 31, 1819) F 12.141–42; Gaustad, *Sworn on the Altar*, 112.
92. *The Theological and Miscellaneous Works of Joseph Priestly* (New York: Kraus Reprint Co., 1972), 5.14, 16–19, 25–30, 87; 18.9, 17, 19, 25–27. Priestly says that the Apostles and the early Jewish Christians (Ebionites and Nazarenes) did not revere Jesus as divine. Justin Martyr was the first to personify Jesus as the *Logos* of John 1.
93. *Ibid.*, 2.386, 408–409.
94. *Ibid.*, 2.109, 130–39; 5.103–106.
95. "To William Short" (Oct. 31, 1819) F 12.142; "To Ezra Styles, Esq." (June 25, 1819) L 15.203–204; Foote, *The Religion of Thomas Jefferson*, 57–59.
96. Mapp, *The Faiths of Our Fathers*, 19.
97. "To James Smith" (Dec. 28, 1822) L 15.408–409; "To John Adams" (Aug. 22, 1813) F 11.326–29.
98. George H. Knoles, "The Religious Ideas of Thomas Jefferson," in *Thomas Jefferson: A Profile*, Merrill D. Peterson (ed.) (New York: Hill and Wang, 1967), 253.
99. "To William Short" (April 13, 1820) L 15.245.
100. "To Samuel Kercheval [William Baldwin]" (Jan. 19, 1810) L 12.345, 356.
101. Mapp, *The Faiths of Our Fathers*, 11; "To Benjamin Rush" (April 21, 1803) F 9.457.
102. *Jefferson and Madison on Separation*, 240–41, 368–69; "To Doctor Benjamin Waterhouse" (June 26, 1822) L 15.384–85. Calvin "was indeed an atheist, which I can never be, or rather his religion was daemonism." "To John Adams" (April 11, 1823) L 15.425.
103. *Ibid.*, 75 ["To Marquis de Chastellux" (Sept. 2, 1785)]. It is worth noting that the early Puritans of New England also barred the clergy from holding public office, even if their motives were much different. Lambert, *The Founding Fathers*, 82–83.
104. *Ibid.*; "To P. H. Wendover" (March 13, 1815) L 14.282–83; Leonard W. Levy, *The Establishment Clause: Religion and the First Amendment* (Chapel Hill: The University of North Carolina, 1994), 70–72; Hamburger, *The Separation of Church and State*, 81–88, 135; David N. Mager, *The Constitutional Thought of Thomas Jefferson* (Charlottesville: University Press of Virginia, 1994), 165; Healey, *Jefferson on Religion*, 136–37, 227–28. He rejects his former

- position of excluding the clergy from office in the face of mounting criticism but then reinstates it in his Bill for Establishing a System of Public Education (1817). “To Jeremiah Moor” (Aug. 14, 1800) F 9.142–43.
105. Leonard W. Levy, *Jefferson & Civil Liberties: The Darker Side* (Cambridge, MA: Harvard University Press, 1963), 9.
  106. *Notes on Virginia* (1782) F 4.62; Wagoner, *Jefferson and Education*, 35.
  107. “To Rev. Thomas Whittemore” (June 5, 1822) L 15.373–74; “To James Fishback” (Sept. 27, 1809) L 12.315–16 (along with Jefferson’s missing composition draft).
  108. E.g., *Autobiography* (1743–1790) F 1.156.
  109. *Notes on Virginia* (1782) F 4.74–75; “To Marquis de Lafayette” (May 14, 1817) F 12.62; “To John Adams” (May 5, 1817) L 15.108–109.
  110. “To Governor Wilson C. Nicholas” (April 2, 1816) L 14.454; Caleb P. Patterson, *The Constitutional Principles of Thomas Jefferson* (Gloucester: Peter Smith, 1967), 173–76.
  111. “To Doctor Benjamin Rush” (Sept. 23, 1800) F 9.148.
  112. *Virginia Statue of Religious Freedom* (1786). While he is often portrayed in the hagiography of American history as a defender of religious tolerance and freedom of speech, a more sober account cannot affirm this portrait so simply. John Quincy Adams, after reading Jefferson’s *Autobiography*, wondered whether the hero of the story had forgotten about his “double dealing character” and “deep duplicity.” Leonard Levy lists a number of hypocritical practices that marked Jefferson’s career. He did not always support the cause of liberty. For example, he sought to prosecute Aaron Burr, based on mere rumor and suspicion after the courts had exonerated him; he supported a bill of attainder, which would convict a suspect without trial, against Josiah Phillips, an alleged Tory outlaw. Levy, *Jefferson & Civil Liberties*, 18, 35, 49–51, 59, 70–71, 158; *Constitutional Opinions: Aspects of the Bill of Rights* (New York: Oxford University Press, 1986), 111, 167, 174–90.
  113. “To P. S. DuPont de Nemours” (April 24, 1816) F 11.523–24; “To George Wythe” (Aug. 13, 1786) F 5.153; Edward J. Power, *Main Currents in the History of Education* (New York: McGraw-Hill, 1962), 560; Patterson, *The Constitutional Principles*, 174–75.
  114. Foote, *The Religion of Thomas Jefferson*, 18.
  115. “To Richard Price” (Jan. 8, 1789), in *The Papers of Thomas Jefferson*, Julian P. Boyd (ed.) (Princeton, NJ: Princeton University Press, 1950), 14.420. Hereafter this edition is designated B.
  116. Healey, *Jefferson on Religion*, 195–96.
  117. “To \_\_\_\_\_” (Feb. 3, 1825) L 16.103–104.
  118. Wagoner, *Jefferson and Education*, 33–38; Robert O. Woodburn, “An Historical Investigation of the Opposition to Jefferson’s Educational Proposals in the Commonwealth of Virginia” (Ph.D. dissertation, Washington, DC: The American University, 1974), 37–44; Healey, *Jefferson on Religion*, 186–87; Foote, *The Religion of Thomas Jefferson*, 18.
  119. *Ibid.*, 10–12; Woodburn, “An Historical Investigation,” 197ff.
  120. *Ibid.*, 42.
  121. Woodburn, “An Historical Investigation,” 50.
  122. *Ibid.*, 145.
  123. *A Bill for Amending the Constitution of the College of William and Mary*, B 2.539; Levy, *Jefferson and Civil Liberties*, 9–11; Woodburn, “An Historical Investigation,” 51–52.

124. *Autobiography* (1743–1790) F 1.78; Levy, *Jefferson & Civil Liberties*, 10–11; Woodburn, “An Historical Investigation,” 53–54, 148; Wagoner, *Jefferson and Education*, 40.
125. Bishop Meade, *Old Churches, Ministers and Families of Virginia* (Philadelphia, PA: J. B. Lippincott and Co., 1857), 1.29, 175; Thomas Thompson, “Perceptions of a ‘Deist Church’ in Early National Virginia,” in *Religion and Political Culture in Jefferson’s Virginia*, 43–49. Presbyterians reacted to Jefferson’s policies at William and Mary by establishing Transylvania Seminary in Kentucky.
126. Gaustad, *Sworn on the Altar*, 166–67.
127. The University of North Carolina was the first state-supported school. Kentucky and Georgia also had public universities before Virginia. James B. Conant, *Thomas Jefferson and the Development of American Public Education* (Berkeley and Los Angeles: University of California Press, 1963), 27; Wagoner, *Jefferson and Education*, 123.
128. Conant, *Jefferson and the Development of American Education*, 26; Wagoner, *Jefferson and Education*, 105.
129. Of course, Jefferson speaks much to the contrary. Wagoner, *Jefferson and Education*, 9.
130. “To James Madison” (Feb. 17, 1826) F 12.456; Wagoner, *Jefferson and Education*, 125, 137; Levy, *Jefferson & Civil Liberties*, 148–50.
131. “From the Minutes of the Board of Visitors” (March 4, 1825), in Thomas Jefferson, *Writings* (New York: The Library of America, 1984), 479; Wagoner, *Jefferson and Education*, 87, 137–38; Healey, *Jefferson on Religion*, 199–201. Every candidate for the law chair was regarded as a “strict constructionist, states’ rights advocate of the old Dominion school: Thomas Cooper, Francis Walker Gilmer, Henry St. George Tucker, Philip P. Barbour, Peter Carr, William Wirt, and John Taylor Lomax.” Levy, *Jefferson & Civil Liberties*, 153.
132. *The Life and Selected Writings of Thomas Jefferson*, Adrienne Koch and William Peden (eds.) (New York: The Modern Library, 1944), 725–26; Levy *Jefferson & Civil Liberties*, 144–45.
133. “To William Short” (Oct. 31, 1819) F 12.142; Healey, *Jefferson on Religion*, 157–58, 161ff., 204–5.
134. “Report of the Commissioners for the University of Virginia” (Aug. 4, 1818), in *Writings*, 467; “To Dr. Thomas Cooper” (Oct. 7, 1814) L 14.200; Wagoner, *Jefferson and Education*, 139–40.
135. “To Doctor Thomas Cooper” (Nov. 2, 1822) L 15.405; “From the Minutes of the Board of Visitors” (Oct. 7, 1822), in *Writings*, 477–78; Mayer, *The Constitutional Thought*, 166; Wagoner, *Jefferson and Education*, 139–40; Levy, *The Establishment Clause*, 74–75; *Jefferson & Civil Liberties*, 12; Garrett Ward Sheldon, “Liberalism, Classicism, and Christianity in Jefferson’s Political Thought,” in *Religion and Political Culture in Jefferson’s Virginia*, 100; Robert Cord, “Mr. Jefferson’s ‘Nonabsolute’ Wall of Separation Between Church and State,” in *Religion and Political Culture*, 179.
136. “Report of the Commissioners for the University of Virginia” (Aug. 4, 1818) and “From the Minutes of the Board of Visitors, University of Virginia” (Oct. 7, 1822), in *Writings*, 467, 477–78; Healey, *Jefferson on Religion*, 170–72, 205–9, 216ff.; Gaustad, *Sworn on the Altar*, 163; Sanford, “The Religious Beliefs of Thomas Jefferson,” 79.
137. Healey, *Jefferson on Religion*, 17, 209, 225–26, 253; Levy, *The Establishment Clause*, 73.
138. *Early History of the University of Virginia as Contained in the Letters of Thomas Jefferson and Joseph C. Cabell*, Nathaniel F. Cabell (ed.) (Richmond, VA: J. W. Randolph, 1856), 215–16

- (letter 122, “J. C. C. to T. J.”); 230–231 (letter 130, “J. C. C. to T. J.”); Wagoner, *Jefferson and Education*, 114; Woodburn, “An Historical Investigation,” 179.
139. *Virginia Evangelical and Literary Magazine*, John H. Rice (ed.) (Richmond, VA: Franklin Press, 1820), 3/1 (Jan. 1820), 49; 3/2 (Feb. 1820), 63ff., 72 (“Review” of the *Memoirs* of Joseph Priestly, containing “observations on his writings,” by Thomas Cooper); 3/6 (June 1820), 265–70 (“Instructors of Youth. On the Choice of Instructors of Youth”); Wagoner, *Jefferson and Education*, 102–3, 140–41; Healey, *Jefferson on Religion*, 231ff.; Woodburn, “An Historical Investigation,” 174ff.; Gaustad, *Sworn on the Altar*, 175–76.
  140. “To Edward Everett” (March 19, 1823) in *Letters and Other Writings of James Madison* (Philadelphia, PA: J. B. Lippincott and Co., 1865), 3.307.
  141. Koch, *The Philosophy of Thomas Jefferson*, 133–34, 137–38; Evans, *The Theme is Freedom*, 35; David Barton, *Original Intent: The Courts, The Constitution, and Religion* (Aledo, TX: WallBuilder Press, 1997), 319ff.
  142. *Virginia Statute of Religious Freedom* (1786); “To Richard Rush” (May 31, 1813) F 11.292; “To Mrs. M. Harrison Smith” (Aug. 6, 1816) L 15.60. One of the reasons that he is so adverse to making his own religion public is his sense of personal persecution.
  143. *Ibid.*; “Second Inaugural Address” (March 4, 1805), in *Writings*, 519–20; Hamburger, *Separation of Church and State*, 109.
  144. “To James Madison” (Dec. 16, 1786) L 6.10–11; “Epitaph” [1826], in *Writings*, 706. Jefferson’s statute was proposed in 1779, but did not become law until 1786. In many ways, it was the culmination of a legislative process with a number of struggles and actors along the way. For example, the Bill of Nov. 1776 already replaced the requirement of church attendance and tithing; but the Anglican Church remained established and the matter of a general assessment to support religion was still an open question. Daniel Dreisbach, “Church-State Debate in the Virginia Legislature: From the Declaration of Rights to the Statute for Establishing Religious Freedom,” in *Religion and Political Culture*, 142–43, 148.
  145. Foote, *The Religion of Thomas Jefferson*, 25–29. Again, Jefferson says, “It does me no injury for my neighbour to say there are twenty, or no gods.” *Notes on Virginia* (1782) F 4.78. In its narrowest meaning and in concert with the statute, it means that there is no harm in holding any theological opinion; problems develop with the statement only when the meaning is expanded to deprecate religion or one’s theology as irrelevant to one’s actions or corporate life. Only a Deist could make this kind of ridiculous comment. Jefferson tried in the first draft to establish his own religious sensibilities by submitting future religious expression to the judgment of “reason alone,” but the surreptitious attempt was deleted from the final draft. “A Bill for Establishing Religious Freedom,” in *The Papers of Thomas Jefferson*, Julian P. Boyd (ed.) (Princeton, NJ: Princeton University Press, 1950), 2.545; Gaustad, *Sworn on the Altar of God*, 63–64; Buckley, “The Political Theology of Thomas Jefferson,” 86.
  146. Gaustad, *Sworn on the Altar*, 55–59; Levy, *Jefferson & Civil Liberties*, 5; *The Establishment Clause*, 61–62; Woodburn, “An Historical Investigation,” 131.
  147. “To Mssrs. Nehemiah Dodge and Others, a Committee of the Danbury Baptist Association in the State of Connecticut” (Jan. 1, 1802), in *Writings*, 510; “To the Attorney General (Levi Lincoln)” (Jan. 1, 1802) L 10.305; Daniel Dreisbach, *Thomas Jefferson and the Wall of Separation Between Church and State* (New York and London: New York University Press, 2002), 17, 41ff., 46, 48, 56, 185; Dreisbach, “Mr. Jefferson, a Mammoth Cheese, . . .,” 738;

- Hamburger, *Separation of Church and State*, 159–62; Levy, *Jefferson & Civil Liberties*, 7. He drops a specific reference to his refusal to make the proclamation in an earlier draft, lest he offend his Republican constituency up North by going too far. He also strikes out the adjective “eternal” in front of the term “separation,” as well as references to the role of the federal government as “merely temporal” and secular. His practice in regard to fast days is marked by political pragmatism. *Autobiography* (1743–1790) F 1.12; Dreisbach, *Thomas Jefferson and the Wall*, 58, 59. His northern constituency is less radical than Jefferson in regard to church/state relations. Isaac Backus, the leader of Baptists in the North, does not advocate the severe, Jeffersonian position of John Leland and some Virginia Baptists on public religion. Backus never accepted the Deism and anti-clericalism that divorced religion from public life, and even accepted the privileged status of Protestant Christianity. He never “opposed the fact that the Westminster Confession of Faith was mandatory for all Massachusetts school children, nor did he object to laws against ‘profanity, blasphemy, gambling, theater-going, and desecration of the Sabbath, which [he] accepted as within the domain of the government in its preservation of a Christian society.’” Owen, “The Struggle Between Religion and Nonreligion,” 500; William G. McLoughlin, *New England Dissent 1630–1883: The Baptists and the Separation of Church and State* (Cambridge, MA: Harvard University Press, 1971), 2.103; Isaac Backus, *A Door Opened to Christian Liberty* (Boston, 1783), in *Isaac Backus on Church, State, and Calvinism*, McLoughlin (ed.) (Cambridge, MA: Harvard University Press, 1968), 436–38; *A History of New England with Particular Reference to the Baptists* (New York: Arno Press and The New York Times, 1969), 2.321; Dreisbach, *Thomas Jefferson and the Wall of Separation*, 49, 53; Joe Cocker, *Isaac Backus and John Leland: Baptist Contributions to Religious Liberty in the Founding Era*, in *FFAR*, 319–20, 324–27; Gaustad, *Sworn on the Altar*, 107; Stephen Strehle, *The Egalitarian Spirit of Christianity: The Sacred Roots of American and British Government* (New Brunswick, NJ and London: Transaction Publishers, 2009), 259–60; *The Writings of John Leland*, L. F. Greene (ed.) (New York: Arno Press and The New York Times, 1969), 118–19, 122, 182, 184, 354, 441, 446, 475, 564. A couple of days after writing the letter, Jefferson attended a service in the House of Representatives, where Leland spoke of the president as wiser than Solomon. Hamburger says that the dissenters did not endorse a separation of church and state. They led the fight against establishment but saw religion as the moral fabric of society. Even strict separationists were forced to back down on this specific point. The Baptists ignored Jefferson’s letter, and no Baptist organization advocated church/state separation. Hamburger, *Separation of Church and State*, 19–20, 29, 65–78, 92, 177.
148. The concept of a wall antedates Jefferson. It is used by some notable authors: Richard Hooker, Menno Simons, Roger Williams, and James Burgh. The specific source matters little in understanding Jefferson’s concept, but a good guess is James Burgh (1714–1775), a dissenting Scottish schoolmaster, whom Jefferson read and admired. Burgh thought of religion as a private matter and used the metaphor extensively in his works. Dreisbach, *Thomas Jefferson and the Wall*, 71–81; Hamburger, *Separation of Church and State*, 56–57, 63. Separatist groups spoke of a wall to protect the church from worldly influence. Burgh was concerned with the power of established churches. James Burgh, *Crito, or Essays on Various Subjects* (London, 1766–67), 1.7; 2.116–19.

149. His severe position develops early on, as we can see in his *Commonplace Book*. The excerpts reject that Christianity played a role in the common law tradition of England. He cites the work “Houard in his Coutumes Anglo-Normandes, I.87,” which speaks of the “alliance between church and state” as a fraud of the clergy and refers to their falsification of Alfred’s laws with “four surreptitious chapters of Exodus [20–23].” The Bible and its Decalogue are not part of the common law. CB 351ff. (873–79), 362–63 (879); Ethan Bercot, “Forgetting to Weight: The Use of History in the Supreme Court’s Establishment Clause,” *Georgetown Law Journal* 102/3 (2014): 847; Buckley, “The Political Theology of Thomas Jefferson,” 101.
150. Jacques Derrida, *Of Grammatology*, Gayatri Chakravorty Spivak (trans.) (Baltimore, MD and London: The Johns Hopkins University Press, 1976), xxxi–xxxii, xxxvii–xxxviii, 145, 239, 255.
151. Derrida, *Limited Inc*, Samuel Weber (trans.) (Evanston, IL: Northwestern University Press, 1990), 58, 133, 149.
152. E.g., “To De Witt Clinton” (May 24, 1807) F 9.63. Of course, this statement is contradicted elsewhere. He tells his nephew Peter Carr that it is possible to find “incitement to virtue” without belief in God. Religion only provides “additional incitement.” “To Peter Carr” (Aug. 10, 1787) F 4.431–32.
153. “To John Adams” (May 5, 1817) L 15.109; Buckley, “Religion and the Presidency of Thomas Jefferson,” 88–89.
154. *Autobiography*, L 1.9–10; “Resolution of the House of Burgesses Designating a Day of Fasting and Prayer,” in *Papers of Thomas Jefferson*, 1.105–106; “Bill for Appointing Days of Public Fasting and Thanksgiving,” in *Papers of Thomas Jefferson*, 2.556; “Proclamation Appointing a Day of Thanksgiving and Prayer,” in *Papers of Thomas Jefferson*, 3.177–79; Dreisbach, *Thomas Jefferson and the Wall*, 58–59; “Mr. Jefferson, a Mammoth Cheese, . . .,” 738–39; “Religion and Legal Reforms in Revolutionary Virginia,” 199–202; Cord, “Mr. Jefferson’s ‘Nonabsolute’ Wall,” 173. He also sponsored a “Bill for Punishing Disturbers of Religious Worship and Sabbath Breakers,” punishing those who labor or employ labor on Sunday with a fine of ten shillings per offense. Even as president, he provided assistance for a Presbyterian school among the Cherokee. He also approved of a treaty that provided “support of a priest” ministering to the Kaskaska tribe and 300 dollars to erect a church.
155. Daniel Dreisbach supplies the best attempt at a uniform interpretation of his letter to the Danbury Baptist Association, although he admits to some tension within his position. He says the letter is advocating federalism. Jefferson understands the First Amendment as leaving religion to the states. The letter allows for a broad interpretation but only on the federal level. Dreisbach also points to his policies in Virginia to show that disestablishment does not imply strict separation—at least on the state level. *Thomas Jefferson and the Wall*, 54, 63–65, 192–94; “Mr. Jefferson, a Mammoth Cheese, . . .,” 739–40; “Religion and Legal Reforms in Revolutionary Virginia,” 201–2. At the very least, one can say that Jefferson has enough integrity not to abuse the First Amendment and pretend that it calls for a strict separation on the federal and state level, even if he wishes the country would proceed in this direction.
156. See n.149.

157. Hamburger, *Separation of Church and State*, 111–12, 144ff.; Dreisbach, *Thomas Jefferson and the Wall*, 28–29; Thompson, “Perceptions of a ‘Deist Church,’” 46; Hamburger, *Separation of Church and State*, 109ff., 121–22. See nn.103–104. Some Republicans like Tunis Wortman and Abraham Bishop joined Jefferson in wanting to silence the Federalist clergy. Tunis Wortman, “A Solemn Address to Christians and Patriots” [New York, 1800], in *Political Sermons of the American Founding Era 1730–1805*, E. Sandoz (ed.) (Indianapolis, IN: Liberty Press, 1991), 1481–85; Strehle, *The Egalitarian Spirit of Christianity*, 261–62.
158. Dreisbach, *Thomas Jefferson and the Wall*, 34, 44–45.



# The Development of the Wall

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## James Madison

There was no greater political ally in helping to forward the basic agenda of Jefferson on religious issues than James Madison. The two Virginians shared almost identical convictions on the issues, although the precise nature of Madison's "private" religious opinions remains much more obscure than those of his distinguished colleague, whose "private" letters were published and filled with theological commentary. Unfortunately, Madison says very little about the subject in his public words and writings, only some vague testimony about his belief in a "God All Powerful, wise and good," who is "essential to the moral order of the World" and a terse comment later in life about Christianity being the "best and purest religion."<sup>1</sup> And yet, it is well-known that religion played an important role in his early and overall maturation. At the age of twelve, he was sent to a boarding school and tutored by Rev. Donald Robertson, the Scottish Presbyterian headmaster, who instructed him in the classics, literature, science, and Reformed theology. Four years later, he went to Princeton, the academic bastion of New Light Presbyterianism, and experienced particular inspiration from its president, John Witherspoon, who applied his religious convictions to the "general principles of law and politics" and inspired many future leaders of the nation with his criticism of Tory policies and firm belief in religious liberty.<sup>2</sup> As a Virginian, Madison also experienced the

surge of Baptists, Presbyterians, and other dissidents entering the state during the times of the Great Awakening and dominating his region as the majority of the citizens. Both he and Jefferson attended their meetings and joined their push for religious freedom as faithful representatives of the people.<sup>3</sup>

Madison's concern for the issue escalated into a zealous crusade when certain Baptist ministers were jailed in Anglican-controlled Culpepper County for simply preaching their version of the gospel, causing him to develop the most uncompromising position. He began to speak out as early as 1774 about this type of injustice within the established order and developed an extreme view of religious freedom for the time, exceeding the expectations of many reformers, rejecting all talk of toleration as the halfway measure of a religious establishment, and wanting to end its privileges altogether.<sup>4</sup> At the revolutionary convention of Virginia in the summer of 1776, Madison sought to amend George Mason's version of the *Declaration of Rights* with much stronger language about the "free exercise of religion" as an "absolute right." Mason's proposal provided the "fullest toleration" to "all men," whereas Madison went beyond this condescending language of an established order and afforded the "full and free exercise" of everyone's religion, rejecting the "peculiar emoluments or privileges" of a specific religious expression, not just its overt acts of persecution.<sup>5</sup>

Much of the battle came to a head a few years later when a majority of the Virginia legislature wanted to help financially strapped religious institutions through a general assessment supporting "Teachers of the Christian Religion." The measure was sponsored by Patrick Henry and supported by many distinguished politicians in the state, including George Washington, John Marshall, Edmund Randolph, and Richard Henry Lee. With Jefferson serving as a plenipotentiary minister in France, the task fell on the shoulders of Madison to lead the Baptists and other dissident groups in opposing the bill.<sup>6</sup> In the spring of 1785, Madison wrote his famous "Memorial and Remonstrance" attacking establishments in general and Henry's assessment in particular. He argued that the legal establishment of Christianity has led to political tyranny throughout its 1500 years of existence. "In some instances they have been seen to erect a spiritual tyranny on the ruins of civil authority; in many instances they have been seen upholding the thrones of political tyranny; in no instances have they been seen the guardians of the liberties of the people."<sup>7</sup> His solution was to disestablish the Anglican Church, as well as deny public support for the Christian religion and its many sects.<sup>8</sup> His "Memorial and Remonstrance" collected over 1,500 signatures in the central Piedmont, Shenandoah Valley, and Northern Neck, helping to turn the tables and develop overwhelming state-wide disapproval of the bill. Because of Madison's leadership, the measure was defeated and used to forward Jefferson's earlier "Bill

for Establishing Religious Freedom” (*Virginia Statute for Religious Freedom*), which was signed into law on January 19, 1786, and served as an important symbol of disestablishment throughout the country.<sup>9</sup>

Alongside his struggles in Virginia, the name of James Madison is forever linked with the cause of religious liberty through his sponsorship of the first ten amendments to the Constitution. Within his first draft, Madison proposed a couple of amendments that would guarantee freedom of religious beliefs and practices, prohibit the establishment of “any national religion,” and extend the “equal rights of conscience” to the many states.<sup>10</sup> After a number of counter-proposals and drafts, the delegates approved a single amendment upon religious liberty, which reads, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” The final version represents the work of the entire Convention, although Madison served as the guiding light in the overall process and became known as the “Father of the Constitution.” The actual wording seems to pacify the concerns of northern delegates and sounds much like the proposals made by Fisher Ames of Massachusetts and Samuel Livermore of New Hampshire, both wanting to protect local establishments from the intrusion of federal policies.<sup>11</sup> Because of this and other concerns, Madison was unable to extend the dominion of the amendment to the many states, even though his fundamental goal was reached by protecting the free exercise of religion and prohibiting the establishment of a national church. Certainly, if Jefferson and Madison obtained all that they wanted in their most doctrinaire moments, the amendment would have called for the complete secularization of government in all its realms, but this doctrine would go far beyond the political realities of the day. Even Madison’s comments during the debate, as recorded in the annals of Congress on August 15, 1789, appear to limit the scope of the amendment and follow a narrow reading of its intention.<sup>12</sup> There is no talk of separating the sacred and the secular.<sup>13</sup> There is only the desire to prevent the American government from following the example of Europe and establishing a religious institution of its own. While the states are free to continue their practice—many of which allowed townships to establish a church in their districts—the federal government would not seek to establish such an institution; and that is all. If more was intended (and the words are ambiguous), there is little direct proof of a broader reading at the Convention or during the ratification process among the many states, which lean toward the narrow reading of the text, if anything.<sup>14</sup> If one wants to follow a broader meaning, one must find its justification within modern hermeneutical principles, which allow greater freedom and seek to expand or deconstruct the meaning of the text in other directions, beyond the original intentment.

Did Madison intend to proceed all the way in the paradigm toward a complete separation of church and state? The total evidence involves the same equivocations

that Jefferson also expressed throughout his career and writings, with a more doctrinaire position appearing only later in Madison's life, once political motives were set aside and no longer served as an obstacle in expressing his heartfelt convictions. For those who reject the wall of separation and look to Madison as an authority in favor of their viewpoint, there is plenty of evidence to support their interpretation. There is his belief that religion is essential to the moral order—a conviction he shares with Jefferson and the rest of the Founding Fathers.<sup>15</sup> There is the continuous God-talk in his public addresses, referring to “Divine Providence,” the “Divine Author of Every Good and Perfect Gift,” the “Sovereign of the Universe, and Benefactor of mankind,” testifying to a belief in a personal and Christian concept of deity and expressing gratitude for divine grace and goodness to the nation.<sup>16</sup> He exhorted the American people to

...offer, at one and the same time their common vows and adorations to Almighty God...for the devout purpose of rendering to the Sovereign of the Universe and the Benefactor of Mankind the public homage to His holy attributes; of acknowledging the transgressions which might justly provoke the manifestations of His divine displeasure; of seeking His merciful forgiveness, and His assistance in the great duties of repentance and amendment, and especially of offering fervent supplications that in the present season of calamity and war He would take the American people under His peculiar care and protection; that He would guide their public councils, animate their patriotism, and bestow His blessing on their arms; that He would inspire all nations with a love of justice and of concord and with a reverence for the unerring precept of our holy religion, to do to others as they would require that others would do to them; ...<sup>17</sup>

There is evidence of him supporting civil religious practices. While serving in the Virginia state legislature, he endorsed the use of chaplains and days of fasting, prayer, and thanksgiving, exacting a penalty of fifty pounds upon non-conforming ministers who refuse obeisance to the civil religion.<sup>18</sup> As President of the United States, he issued four proclamations of prayer and fasting, beginning on July 9, 1812, with the outbreak of British hostilities and recognizing in all of them the need to seek divine guidance and blessing.<sup>19</sup>

Nevertheless, Madison's absolute and unequivocal position of total separation appears to emerge later in his life, only when political considerations and practical compromises no longer interfere with his intentions. Here he speaks in unequivocal terms of a “total separation of the Church and the State” as a Constitutional principle.<sup>20</sup> “In the Papal System, Government and Religion are in a manner consolidated, & that is found to be the worst of Govts.”<sup>21</sup> He considers any coalition between religion and government as destructive to both institutions and wants the separation applied to the many states, along with other “rights of conscience.”<sup>22</sup> In his “Detached Memoranda,” he rejects military and congressional chaplains as a

violation of the First Amendment and even repudiates his former proclamations of prayer and thanksgiving, offering a number of excuses for his lapse: he only followed the precedent of Washington and Adams while serving in office; he was “disinclined” to do so until Congress forced his hand; he left the observance “up to the people to express it” according to “their own faith & forms;” he always made the proclamations non-sectarian and voluntary, and so forth.<sup>23</sup> What emerges from his explanation is a person who wanted to please the majority while serving as the president and knew the majority rejected his absolute view of church/state separation, making it necessary to compromise and seek divine blessing as a nation in uniting the people.<sup>24</sup> He might find it difficult to “trace the line” and avoid all collisions between the rights of religion and civil authority,<sup>25</sup> but his basic proclivity is found in separating the two realms as much as possible; this doctrinaire position appears to represent his mature and fundamental position.

## John Adams

It was the power of the French Enlightenment and the process of secularization that brought to fruition the basic designs of Jefferson and Madison more than any statute or government policy. Many of the leading figures of eighteenth-century America were convinced secularists and preferred to attribute the creation of the Constitution to the powers of reason or secular historical antecedents than theological dogma. These sons of the Enlightenment produced many works that demonstrate the overall bias, but one of the best examples of the mentality is found in John Adams’ *Defence of the Constitutions of the United States of America*. The first volume was finished just in time to enjoy a wide circulation among the delegates at the beginning of the Constitutional Convention, and the next two volumes were completed a year later.<sup>26</sup> The work represents the growing secularity of America, even more so than Jefferson’s writings, as it simply neglects to mention the religious moorings of the country and looks to other “secular” sources for inspiration, rather than conduct an open or direct assault upon the church. In the preface of the work, Adams claims that the American way of government resulted from the hard work of reason and consultation with scientific writers in the field, not “interviews with the gods” or the “inspiration of Heaven.”<sup>27</sup> He bestows much credit on a number of “secular” experiments in history, extending back to Ancient Greece and Rome, as well as his own considerable ability to analyze their strengths and weaknesses. No direct assault is launched upon the Judeo-Christian tradition *per se*, but through his neglect of mentioning anything significant in the tradition, the work reflects the anti-Semitic and anti-Christian bias of the Enlightenment.

Adams begins his history in the Graeco-Roman world. He mentions the experiment of Solon in Athens as inspiring the Romans and later European models toward a nascent form of democracy and mixed government. The Athenian experiment and other ancient republics are commended as providing an invaluable source of inspiration to Rome and the many Italian republics in the Middle Ages, even if they ultimately failed in the march toward perfection because of an inadequate system of checks and balances.<sup>28</sup> The Puritan Revolution is afforded just a few lines and only mentioned to dismiss its importance as an “unsuccessful and injudicious attempt to abolish monarchy and aristocracy.” Cromwell, Ireton, and all its other leaders are treated as “mad with enthusiasm” and discarded as irrelevant, providing no source of inspiration or example worthy of emulation for the coming era.<sup>29</sup> Instead, Adams prefers to exalt those who offered a more sober, scientific analysis of government than these religious zealots. He gives special credit to Machiavelli for reviving the rational approach of Plato and Aristotle to political discourse. He also mentions many others like Harrington, Milton, Sidney, Locke, Montesquieu, Swift, Franklin, and Price as the “greatest lights of humanity” for helping to establish the modern concept of republican government.<sup>30</sup> Harrington is given much credit for the discovery of checks and balances—“a noble discovery, of which the honor solely belongs to him, as much as the circulation of the blood to Harvey, printing to Laurence Coster, or the invention of guns, compasses, or optic glasses to the several authors.”<sup>31</sup> (Of course, the honor belongs to him because the other authors of the Puritan Revolution used Bible verses to prove practically the same point, and secular or philosophical approaches are what Adams wants to honor as worthy of esteem.)

Adams believes that the evolution of political thought has reached a level of perfection in England and America unsurpassed by all others with its clear separation of executive, legislative, and judicial branches.<sup>32</sup> Most of his work is devoted to spelling out the reason why a proper separation and balance is necessary for preserving a free republic.<sup>33</sup> His argument is filled with detailed historical analyses and rational disputation, which exhibit extensive learning and a considerable amount of thought,<sup>34</sup> but what he fails to understand in all its ratiocinations is the significant debt he and his country owes to the Christian faith, especially to the Puritans of his state of Massachusetts. Regardless of his belief in objective research and rational analysis, he like any other interpreter of history or literature reads texts and considers ideas through the context of a cultural background.<sup>35</sup> His own Puritan culture believed in the separation and balance of powers, and he reads the past and reasons to conclusions like anyone else in a certain *Sitz im Leben*, ever remaining within the interpretive matrix of that culture. Adams might provide further justification for the doctrine and develop his unique statement or idiom.

He might serve the culture as an unconscious or unwitting member of its point of view. He might have no idea how much a role Christianity played in developing the basic outline of government in his country or his own way of thinking, but the evidence of this influence is beyond dispute. Even his mode of argumentation remains indebted as much to faith as it does to his rational acuity. No better illustration of this influence is found than the continuous accent upon human depravity throughout his work as providing the fundamental rationale for separating and balancing powers. Human depravity is a unique doctrine of Christian anthropology, strongly emphasized by the Reformed theology of New England and most essential in distinguishing its confession from all other religions and philosophies in the world. Christianity teaches a darker view of the human condition than other ideologies with its emphasis upon original sin, the accent upon confession, and the complete dependence upon divine grace. Adams argues throughout his work from this concept of human depravity, believing no set of circumstances or values can alleviate the dark condition in which all of us are born. The selfish impulses are much stronger than any positive affection that public service might inflame toward the good of our fellow citizens. The ambitions of politicians cannot be eradicated in this life, but only held in check by a system of government that prevents the hubris of one person or group from obtaining uncontrolled power.<sup>36</sup> This same argument is repeated time and again in Montesquieu, Madison, and all those who defend the need for balancing and separating powers in the modern world—an argument indebted in a most decided way to the dark image of the human condition in Christian anthropology.<sup>37</sup>

In contrast to his secular works, Adam's overt political stance often represents or accommodates the religious affections of his constituency. His exact motives are difficult to ascertain and subject to the same sort of deconstruction that recognizes the contradictions in Jefferson and Madison and problems dividing their actual (or changing) point of view from the reality of political posturing. A good example is the Massachusetts Constitution of 1780, which was drafted, edited, and enacted under the leadership of John Adams, and reflects the need for compromise between elements within the constituency—the Congregationalists who want an establishment to bolster their small, struggling churches and the dissenters who want religious liberty but think of Protestantism as the necessary foundation of that liberty.<sup>38</sup> The new Constitution reflects these concerns and stipulates that all state officials and appointees “believe and profess the Christian religion” and “abjure all allegiance” to any foreign power—civil or ecclesiastical.<sup>39</sup> It says that all human beings have a sacred duty to worship God at “stated seasons” in the public forum. The “publick Worship of God” and “publick instructions in piety, religion, and morality” are necessary in preserving “good order” and “civil government.”<sup>40</sup>

It supports the rights of conscience for dissidents but allows local officials to continue the colonial practice of requiring attendance and financial support of their Congregational churches, with a possible exception for dissidents, if they are able to establish their own fellowship within a community.<sup>41</sup> Later Adams describes the arrangement as providing a “most mild and equitable establishment”<sup>42</sup> and provides some apologetic testimony for its provisions in his writings,<sup>43</sup> but it remains difficult to separate his endorsement from the desires of his constituency and ascertain what he really thinks in an ideal world. On the surface, the interpreter is left with the contradictions of a man who is caught between his own Puritan culture and the ideology of the French Enlightenment—a man who finds religion the foundation of civil government and then turns around and disavows the Puritan background of his own political ideas in the name of rational secularity.

## Liberals and Republicans

The Christian roots of the nation started to fade into distant memory as the tide of secularization began to engulf the whole country. By the second half of the nineteenth century, a number of groups began to advocate a revision of the First Amendment, calling for a complete separation of church and state. One of the most strident groups was the National Liberal League, founded in 1866 by Francis Abbot. Its main goal was the “TOTAL SEPARATION OF CHURCH AND STATE,” as “the very corner-stone of the American Republic.”<sup>44</sup> At their convention that year, they decried “any interference by religion in the affairs of society and the State.”<sup>45</sup> “Christianity...is by its very nature hostile to individual and national liberty, and to equal individual rights.”<sup>46</sup> “Christianity...is averse to republicanism, [and so] the education of the masses out of [the] religion is an absolute necessity for the perpetuation of this Republic.”<sup>47</sup> “Universal education is the only safeguard of universal liberty; no child in the republic should be permitted to grow up without at least a good common school education; the public school system cannot be sustained in equal justice to all except by confining it strictly to secular instruction.”<sup>48</sup> Our public institutions are degraded by the very presence of religion.<sup>49</sup> America was founded by “liberals and free thinkers,” who rejected the hatred of sectarian religious groups, and “succeeded in placing the general government upon a purely secular basis.”<sup>50</sup> The Liberal League wanted to replace the First Amendment with a new amendment, which rejected any union between church and state in all levels of government. The articles of the amendment spelled out some specific demands, including the end of religious tests and tax support for religious sects, schools, and charities.<sup>51</sup> Alongside the amendment, the league also listed a

number of additional demands in their Convention of 1876: (1) the taxation of churches, (2) the elimination of public chaplains, (3) the end of Bible-reading in schools, (4) the rejection of all laws based upon “Christian” morals, (5) the end of Sabbatarian laws, (6) the end of religious fasts and holidays, and (7) the elimination of judicial oaths.<sup>52</sup>

## The Blaine Amendment

Shortly after the liberals began to organize and exercise their political muscle, the President of the United States, Ulysses S. Grant, adopted the essential spirit of their agenda as a part of his Republican platform. On September 30, 1875, he rallied some of his former troops in Des Moines, Iowa for the coming election and warned them concerning the divisive nature of religious superstition in the Republic, hoping to prevent a new “civil war.”

Comrades: It always affords me much satisfaction to meet my old comrades in arms ten to fourteen years ago, and to live over again in memory the trials and hardships of those days,—hardships imposed for the preservation and perpetuation of our free institutions. We believed then and believe now that we had a government worth fighting for, and, if need be, dying for.... Let us, then, begin by guarding against every enemy threatening the perpetuity of free republican institutions.... If we are to have another contest in the near future of our national existence, I predict that the dividing line will not be Mason and Dixon’s, but it will be between patriotism and intelligence on one side and superstition, ambition and ignorance on the other. Now, in this centennial year of our national existence, I believe it is a good time to begin the work of strengthening the house commenced by our patriotic forefathers one hundred years ago at Concord and Lexington. Let us all labor to add all needful guarantees for the perfect security of free thought, free speech, and free press, unfettered religious sentiments, and of *equal rights and privileges to all men, irrespective of nationality, color, or religion*. Encourage free schools, and resolve that not one dollar appropriated to their support, no matter how raised, shall be appropriated to the support of any sectarian school. Resolve that neither the State or nation, nor both combined, shall support institutions of learning other than those sufficient to afford every child growing up in the land the opportunity of a good common school education, *unmixed with sectarian, pagan, or atheistical tenets. Leave the matter of religion to the family altar, the church, and the private school, supported entirely by private contributions. Keep the Church and State forever separate*. With these safeguards I believe the battles which created the Army of Tennessee will not have been fought in vain.<sup>53</sup>

In December of 1875, Grant went to Congress and urged them to pass a new constitutional amendment that would make “Church and State for ever separate and

distinct,” that would require the states to provide “free public schools” for all children, that would forbid religious and anti-religious instruction in the classroom, that would prohibit any level of government from using “school funds or taxes” to benefit a “religious sect or denomination.”<sup>54</sup> A week later James G. Blaine, who was a congressman from Maine and presidential hopeful within the Republican Party, seized upon the popular momentum and offered an amendment for legislative consideration.<sup>55</sup> The amendment read,

No State shall make any law respecting an establishment of religion or prohibiting the free exercise thereof; and no money raised by taxation in any State for the support of public schools, or derived from any public fund thereof, nor any public lands devoted thereto, shall ever be under control of any religious sect, nor shall any money so raised or lands so devoted be divided between religious sects or denominations.<sup>56</sup>

The amendment enjoyed broad support at the time and particularly appealed to the many sides of Blaine’s constituency. Many Republicans preceded the nation in advocating the Jeffersonian doctrine of church/state separation from the very beginning of the party in the early nineteenth century, showing a tendency to apply his strict interpretation of the First Amendment to all levels of government, encouraging the development of a public/secular system of education, and hoping to prevent religious schools from receiving public funds. The Jeffersonian agenda experienced some success in places like Michigan, which led several other states to promote a secular view of government and adopt the strict doctrine of separation in its constitutional framework of 1835; but much of the impetus among other states came later when Catholic immigrants poured into the country and presented an imminent danger to the Protestant hegemony and its concerns over preserving the American way of life.<sup>57</sup> These Americans viewed Protestantism as the foundation of Republican government and Catholicism as a threat to individual freedom. They saw Catholicism and its hierarchical system of polity undermining the democratic spirit of most Protestant churches and challenging the quasi-Protestant character of the common schools.<sup>58</sup> Few of them were able to divorce religion and morality, or denude an educational system from the basic principles that supported good citizenship and their basic view of government and culture.<sup>59</sup> This meant that the common schools must inculcate their general Protestant values through preaching liberty, equality, and democracy, and must add religious exercises like the singing of Protestant hymns, daily prayer, and the reading of the King James Bible to underscore the message.<sup>60</sup> When Catholics challenged these religious practices and set up their own parochial schools, Protestants sought to preserve their privileged status and prevent Catholics from siphoning off public funds away from the common schools toward a sectarian purpose through devices like the Blaine

Amendment. The congressional debate included vitriolic, anti-Catholic polemics concerning the un-American nature of the religion, clearly hoping to capitalize on Protestant fears and bigotry.<sup>61</sup>

The results of the debate were mixed. The measure failed to garner the necessary two-thirds majority in the Senate by a slim margin, after roaring through the House with an overwhelming majority of 180 to 7. However, Congress proceeded in subsequent sessions to compel the new territories into adopting Blaine-like amendments as a condition for entering the union, and some thirty states enacted similar measures by the early part of the twentieth century—some preceding, while others followed the congressional debate.<sup>62</sup> At the turn of the century, the process of watering down religious content within the common schools was transpiring on its own, apart from Catholic complaints, as the culture sought to include as many children as possible and adopt a non-sectarian or secular approach to teaching.<sup>63</sup> With the defeat of the amendment, the attempt to create a more secular government on the federal level was set aside—at least for the time being, and it was left up to the states or local municipalities to pass their own versions. While liberal newspapers and organizations continued to press the issue throughout the rest of the century, the political will soon collapsed after 1876, and liberal Americans were left looking for another avenue to help change the federal government into their secular image and establish secularism as the law of the land.<sup>64</sup>

## The Court

What the liberals could not accomplish through the legislature they were able to secure through the courts of the country as it moved into the twentieth century. For the most part, the liberals of the nineteenth century understood that the First Amendment required a substantial change in its wording to develop a stronger doctrine of separation. But tactics changed when new hermeneutical procedures allowed the courts to become more flexible and activist in applying the law to present circumstances.<sup>65</sup> Legal realists like Oliver Wendell Holmes began to sanction the practical realities of his profession, admitting that judges seldom act in accordance with the authorial intent of the Constitution but often fill in gaps, make deductions, and work for a good social outcome. In the 1920s and 1930s, this position worked its way through the most prestigious law schools of the land and made its impression upon the United States Supreme Court, redefining its nature.<sup>66</sup> As early as 1934, Chief Justice Charles Evans Hughes could say,

It is no answer to say that this public need was not apprehended a century ago, or to insist that what the provision of the Constitution meant to the vision of that day it

must mean to the vision of our time. If by the statement that what the Constitution meant at the time of its adoption it means today, it is intended to say that the great clauses of the Constitution must be confined to the interpretation which the framer, with the conditions and outlook of their time, would have placed upon them, the statement carries its own refutation. It was to guard against such a narrow conception that Chief Justice Marshall uttered the memorable warning—"We must never forget that it is a constitution that we are expounding... [,] a constitution intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs."<sup>67</sup>

With hermeneutics no longer restricted to its original intention, the jurists were free to deconstruct or expand the meaning of the Establishment Clause beyond its limited purview and erect a wall between church and state, based on their own "interpretation," cultural biases, and the genuine need to apply the letter of the law to a new and contemporary situation. The jurists were given the freedom to expand the scope of the First Amendment and go beyond its simple rejection of a national church or providing *a priori* privileges to a specific denomination. They broadened the meaning to promote a much more secular agenda and erected a Jeffersonian wall, which proceeded to bar the majority of Americans from expressing their faith in the public square through sacred symbols and rites, promote a secular concept of life through funding non-religious education, and create a secular establishment in the place of religion in general, maintaining that religion has no serious or beneficial influence upon public policy, as if the government existed outside metaphysical concerns. The wall of separation was not erected by the founders of the Constitution but the secular, activist members of the Court, who wished to "read" the First Amendment in that way, using a more flexible set of hermeneutical principles.

The first mention of the wall is found in *Reynolds v. United States* (1879), just after Grant's administration and its call for the separation of church and state, already indicating the political nature of any interpretation provided by the Court.<sup>68</sup> In this case, the Court ruled against the Mormons and outlawed the practice of polygamy, claiming it violated social norms, disturbed public peace, and represented the despotic practices of the past that were inimical to democratic principles.<sup>69</sup> The Court helped substantiate its case by referring to the words of Madison and Jefferson in their original debate over religious establishment in Virginia and quoting the famous paragraph concerning the wall of separation in Jefferson's letter to the Baptists, treating it as if it contained an authoritative interpretation of the "scope and effect" of the First Amendment. Its verdict was important in helping to open a door toward the doctrine of separation, although it only cited the words of Jefferson without endorsing any specific interpretation or

expanding on what it found so meaningful in the letter. It took the Supreme Court another seventy years before it erected the wall in more unequivocal language. The Court referred to *Reynold v. United States* in its decision as setting an important precedent, although it was not until this later time that the consciousness of the Court was changed decisively through the use of the famous metaphor.<sup>70</sup>

The latter decision was the work of Justice Hugo Black, a New Deal Democrat from the great state of Alabama. As a populist, Black was furious with the elitist Court early in his political career for turning down New Deal legislation and even approved of Roosevelt's attempt to pack the Court by appointing more jurists than stipulated by the Constitution.<sup>71</sup> When this strategy failed, Roosevelt proceeded along the more typical political lines of waiting for a vacancy and appointing a jurist in favor of one's overall political philosophy. Eventually, Hugo Black was tapped and became an Associate Justice of the Supreme Court in 1937. Black certainly represented a basic commitment to the left-wing ideology of the administration, which was leading the country into secular, egalitarian, and socialist policies.<sup>72</sup> In his early days, there were some problems with his profile as a member of the Baptist Church and the Ku Klux Klan,<sup>73</sup> but Black clearly distanced himself from his past and matured into much the opposite during his tenure in Washington, leaving his former religious convictions back in the Bible Belt, becoming a secular liberal progressive, and identifying with the ideology of authors like Dewey, Russell, and Camus—the foremost atheists of the day.<sup>74</sup> Roger Newman, his leading biographer, describes him as basically an “irreligious man,” who “drifted from organized religion,” except for an occasional visit to All Souls Unitarian Church.<sup>75</sup> The constant force in his life was Thomas Jefferson, whom he admired as a Bible-believing Baptist and a secular atheist in his attempt to separate the government from the corrupting influence of religion. According to the testimony of his son, Jefferson was his father's “number one, number two, and number three” historical hero, especially regarding First Amendment issues.<sup>76</sup>

It is no surprise, given this background, that Black used an opportunity in *Everson v. The Board of Education* (1947) to erect a wall of separation between church and state.<sup>77</sup> The case concerned a statute that authorized the payment of tax dollars for the transportation of Catholic children to and from parochial schools. The Protestant majority had no interest in sectarian education and wanted to keep tax dollars within their own public domain. They were represented by groups like the Baptist Joint Committee on Public Affairs and the predecessor of the National Council of Churches—all united in denying any form of aid to parochial schools and pushing the country toward a strict doctrine of separation out of concerns over the spread of the Catholic menace.<sup>78</sup> Black ruled in favor of the statute since transportation is “indisputably marked off from the religious function” of the schools

and all citizens should receive equal treatment under the law in secular matters. However, the specific ruling was not so memorable as his protestations in trying to pacify the left-wing members of the Court and his constituency, reaffirming in spite of the decision his firm belief in the separation of church and state. It is these comments that set an important precedent in the consciousness of the Court and the land up to the present-day. During this part of the opinion, he declares that the First Amendment “has erected a wall between church and state,” which is “high and impregnable.”<sup>79</sup>

At this point, Justice Black and the rest of the Court felt some sense of obligation to justify their decision by appealing to the intention of the Founding Fathers, rather than underscoring their new freedom and activism in accordance with modern hermeneutical methods. It was here that they particularly went astray, abandoning a more credible appeal to interpretive ambiguity and appealing to the old method of seeking the original intent of the author(s). This decision forced them into practicing the worst sort of revisionist history, pre-selecting and weighing evidence to fit their *a priori* interpretative designs. Thus, to fit their theory, they spoke of the First Amendment as a “direct culmination” of struggles for religious liberty in Virginia, and Thomas Jefferson and James Madison as the “leading” actors in the state and national debate, inflating their secular agenda as much as possible, while ignoring the opinions of legislative bodies and everyone else in the process. They particularly pointed to Madison’s “Memorial and Remonstrance” and Jefferson’s Bill for Establishing Religious Freedom, but ended up conflating the basic argument for disestablishing the Anglican Church in these documents with the more strict doctrine of a wall, which the two Virginians wanted to erect later on and often violated throughout their career in trying to please the *majority*.<sup>80</sup> Of course, the Court used much the same historical argument as their pre-selected sources, blaming sectarian religious groups for most of the “turmoil, civil strife, and persecution” that filled Europe in the past centuries,<sup>81</sup> ignoring the positive contributions of Puritans and other religious groups to their own view of government, and turning a blind eye to the infamous secular atrocities right before them, committed by Hitler and Stalin—both militant atheists and ardent supporters of church/state separation.<sup>82</sup> The Court thought of religion as injurious to the public welfare, based upon the Voltairean view of history, and found it necessary to keep it away from the centers of power at all cost and provide it with no tax support. “No tax in any amount, large or small, can be levied to support religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion.”

Thereafter, the concept of separation became an agenda of the Court in its quest to create a secular public arena. The next year, the Court carried out its

intentions with legalistic precision as it declared voluntary religious instruction within the public schools “unconstitutional.” It maintained that church and state “best work to achieve their lofty aims if each is left free from the other within its respective spheres”; it is just that the “lofty aims” of the church need to work without tax dollars and outside the power of government. The case involved a local school board in Champaign, Illinois that provided space during regular school hours for students to receive religious instruction in the faith of their choice. Students could opt out of this instruction if their parents objected to their participation, but these students would need to attend secular classes during that period. In spite of the voluntary nature of the program, the Court struck it down in the name of its wall, maintaining that non-participating students would feel a sense of alienation from their classmates.<sup>83</sup> By using this rationale, the Court clearly moved away from the democratic process in expressing the will of the majority toward emphasizing the “rights” of minorities or non-conforming individuals who feel excluded from the basic religious sentiments of the community.<sup>84</sup> In fact, this argument became normative and fundamental to the Court in subsequent decisions and was sure to shut down any expression of religion if carried out with draconian precision. In rejecting any civil expression or endorsement of religion, Justice Sandra Day O’Connor attempted to make offense the sole criterion. “Endorsement sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.”<sup>85</sup> With this type of litmus test, anything the Court labeled as religious must be excluded from the public square as offensive to some minority interest group, whose “rights” not-to-be-offended now trumped the freedom of the majority to express its religious point of view.

In the numerous cases that followed, the Court attempted to eliminate religion from a public sphere that was steeped in its traditions, and the decisions began to lack consistency because of it. For example, the Court allowed chaplains to continue serving the state legislature of Nebraska, pointing to the “unambiguous and unbroken history of more than two hundred years” of this ministry and looking to the heavens for “guidance on the legislative body.”<sup>86</sup> This kind of historical reasoning proved sufficient to create a crack in the wall and some hesitation toward establishing complete secularism in the government, allowing certain long-standing practices to form an exception to the general rule—practices like legislative and military chaplains, tax exemptions for churches, and public displays of historical and religious meaning.<sup>87</sup> In *Lynch v. Donnelly* (1984), a crèche was allowed to continue standing alongside other “secular” symbols of the yuletide season. Justice Warren Burger and the Court thought it necessary to engender a “friendly spirit of good will in keeping with the season” and accommodate the

“historical origins of this traditional event” or “National holiday,” rather than deny its connection through an extreme process of secularization.<sup>88</sup> Justice O’Connor agreed with Burger and said the crèche was more like a museum piece in a display case. It did not endorse a particular religious message.<sup>89</sup> And yet, five years later in *Allegheny County v. the ACLU of Pittsburgh* (1989), Justice Harry Blackmun decided that the role of government is not so friendly toward religious displays. The purpose of government is to secularize society or denude holidays of religious meaning.

...Christmas and Chanukah are part of the same winter-holiday season, which has attained secular status in our society.... In sum, *Lynch* teaches that government may celebrate Christmas in some manner or form, but not in a way that endorses Christian doctrine. Here, Allegheny County has transgressed this line. It has chosen to celebrate Christmas in a way that has the effect of endorsing a patently Christian message: Glory to God for the birth of Christ.<sup>90</sup>

In this specific case, involving two separate displays, the Court ruled against a crèche that stood alone in the “Grand Staircase” of the Allegheny County Courthouse and conveyed a direct message of specific religious meaning; but it ruled in favor of an eight-foot tall Menorah standing only a few blocks away in an adjacent public building since its religious message was denuded by the proximity of a forty-five-foot Christmas tree and a sign saluting the cause of liberty—both acting as a sufficient means of secularizing the Jewish holiday of Hanukkah in the mind of the Court.<sup>91</sup> In both parts of the ruling, the Court provided the government with the possibility of joining the *Kulturkampf* but only on behalf of non-religious forces. The same type of legal reasoning followed similar cases both before and after this decision, with the Court considering the relationship of the display to cultural tradition and its proximity to other “secular” symbols or messages.<sup>92</sup> In all its cases, the Court showed the capricious nature of their name game in declaring what was religious and what was not without much justification. Black declared the Christmas tree and the menorah to be secular; O’Connor declared the Christmas tree secular and the menorah religious; Brennan declared both symbols religious;<sup>93</sup> but none provided much support for their position beyond, “Yes, it is,” or, “No, it is not.”

The one area the Court proved most vigilant in protecting the wall was the public school system as the most impressionable training ground for the next generation of Americans. Regarding prayer, the hostility toward the presence of religion only seemed to escalate in the course of time.<sup>94</sup> The Court began by prohibiting the government from composing an official prayer for teachers and students as an exercise in the classroom (1962); then it prohibited the voluntary recitation of the

Lord's Prayer and Bible reading (1963); then it rejected a public school from creating a "moment of silence" if it included the mere mention of "voluntary prayer" as an option (1985); then it outlawed religious leaders from praying at graduation (1992); and finally it proscribed student-initiated, student-led prayers at football games (2000).<sup>95</sup> In each case, the right not-to-be-offended was able to trump the will of the majority in its desire to express the basic religious sentiment of the community. Public school prayer was said to place undue pressure upon dissenters at a young age, "jeopardize freedom of conscience," and place the "imprimatur" of the state upon certain religious practices in excluding others.<sup>96</sup> The conservative members of the Court like Antonin Scalia mocked the very notion that standing in a respectful silence during a public prayer constituted serious psychological coercion. Historical establishments of old involved real "force of law and threat of penalty," not listening to a nonsectarian prayer at a public event, where one is free to agree or disagree.<sup>97</sup> Justice William Brennan admitted that the Founding Fathers had nothing to say about devotional exercises and were preoccupied with more serious transgressions of a religious establishment than public prayer or the type of minimal coercion that now concerned the Court.<sup>98</sup>

A number of recent cases have involved the question of "parochialism" or the giving of financial aid to religious schools.<sup>99</sup> The fundamental position of the Court remained committed to facilitating the advancement of secularism in the public schools, but it ran into difficulty along the way maintaining its strict wall and denying all aid to sectarian schools and was forced to compromise and moderate the stance in certain cases. In the mid-1980s, the Court rejected the idea of state-paid teachers going to sectarian schools and teaching "secular" subjects like art, music, reading, and math—fearful that these teachers might take the opportunity to sanction and promote a religious perspective in a non-secular environment.<sup>100</sup> However, it turned around over a decade later and vitiated the earlier position in a Title I case by allowing government aid to benefit disadvantaged children and facilitate remedial instruction at religious schools, as long as sufficient safeguards were enacted to ensure compliance with secular goals.<sup>101</sup> In most cases, the Court refused to alleviate the additional financial burden of parents who sent their children to religious schools, except through some incidental costs like tax deductions and travel expenses.<sup>102</sup> However, in an astonishing reversal of its fundamental philosophy, the Court upheld a program in the state of Ohio that allowed parents to use vouchers in religious and non-religious schools alike.<sup>103</sup> This decision represented the first time the Court allowed a substantial amount of money to flow from the government to private religious schools and might portend a substantial reevaluation of its strict doctrine of separation in the future.

In the meantime, the Court continued to maintain a secular view of the government as its basic presupposition, while many of its actual decisions appeared wavering and arbitrary to outsiders.<sup>104</sup> Justice William Rehnquist was one of the few jurists to derail the decisions, mocking their capricious nature and calling for an end to the wall as an incoherent metaphor, based upon poor history and poor legal analysis.

[A] State may lend to parochial school children geography textbooks that contain maps of the United States for use in geography class. A State may lend textbooks on American colonial history, but it may not lend a film on George Washington, or a film projector to show a history class. A state may lend classroom workbooks, but not lend workbooks in which parochial school children write, thus rendering them nonreusable. A State may pay for bus transportation to religious schools but may not pay for bus transportation from the parochial school to the zoo or natural history museum for a field trip. A State may pay for diagnostic services conducted in the parochial school but therapeutic services must be given in a different building; speech and hearing 'services' conducted by the State inside the sectarian school are forbidden, but the State may conduct speech and hearing diagnostic testing inside the sectarian school. Exceptional parochial school students may receive counseling, but it must take place outside the parochial school, such as in a trailer parked down the street. A State may give cash to a parochial school to pay for the administration of state-written tests and state-ordered reporting services. Religious instruction may not be given in public school, but the public school may release students during the day for religion classes elsewhere, and may enforce attendance at those classes with its truancy laws.<sup>105</sup>

It is impossible to build sound constitutional doctrine upon a mistaken understanding of constitutional history, but unfortunately the Establishment Clause has been expressly freighted with Jefferson's misleading metaphor for nearly 40 years. Thomas Jefferson was of course in France at the time the constitutional Amendments known as the Bill of Rights were passed by Congress and ratified by the States. His letter to the Danbury Baptist Association was a short note of courtesy, written 14 years after the Amendments were passed by Congress. He would seem to any detached observer as a less than ideal source of contemporary history as to the meaning of the Religion Clauses of the First Amendment.... Notwithstanding the absence of a historical basis for this theory of rigid separation, the wall idea might well have served as a useful albeit misguided analytical concept, had it led this Court to unified and principled results in Establishment Clause cases. The opposite, unfortunately, has been true; in the 38 years since *Everson* our Establishment Clause cases have been neither principled nor unified. Our recent opinions, many of them hopelessly divided pluralities, have with embarrassing candor conceded that the "wall of separation" is merely a "blurred, indistinct, and variable barrier," which "is not wholly accurate" and can only be dimly perceived.... The "wall of separation between church and State" is

a metaphor based on bad history, a metaphor which has proved useless as a guide to judging. It should be frankly and explicitly abandoned.<sup>106</sup>

Unfortunately, not even Rehnquist understood that the “bad history” went far beyond the relationship between the First Amendment and Jefferson’s wall of separation to the very telling of the American story, which centered upon the “wisdom of the Founding Fathers” as if they were born in a spiritual vacuum.

Jurists like Rehnquist and Burger abandoned the strict doctrine of separation as hostile to religion and incompatible with the basic notion of equality or fairness.<sup>107</sup> Rehnquist moved toward a more moderate position, known as “accommodationism,” which gives to the various levels of legislative bodies in the country the right to exercise their discretionary powers in accommodating religion and subordinate concerns over the Establishment Clause to the fair treatment of religion in the public square.<sup>108</sup> On the state level, the legislatures adopted the new perspective by providing a greater space for religious participation and expression in the form of public displays, rites, and access to government facilities and funding.<sup>109</sup> On the federal level, the United States Congress passed the Equal Access Act in July of 1984, requiring local school boards to provide the same access to their facilities and properties that non-curricular clubs receive from the districts.<sup>110</sup> In *Board of Education v. Mergens* (1990), the Court declared the act to be constitutional and ruled in favor of a Bible study club wanting like-access to the facilities of an Omaha high school.<sup>111</sup> In *Rosenberger v. University of Virginia* (1995), it reiterated the position, ruling against the wall that Jefferson erected at the school and ordering the university to treat a student-run Christian organization with the same rights as any other campus organization; if the university paid the printing costs of a secular group, it must pay the same costs for a religious group.<sup>112</sup>

This type of accommodationism was not completely new to the Court. Justice Burger represented a less bellicose form of the Rehnquist position in some earlier decisions. He tried to accommodate religious tradition and admitted some difficulty in drawing a simple distinction between church and state.<sup>113</sup> In *Lemon v. Kurtzman* (1971), he suggested changing the metaphor of a “wall” to a “line,” which is a “blurred, indistinct, and variable barrier.”<sup>114</sup> He felt most judicial decisions were based on the “cumulative criteria” of many cases, assembled over a sufficient period from the nuanced interaction with the complexities of real-life problems. In this way, he pointed to three fundamental criteria that the Court had used in the past when determining matters of church/state relations.

Every analysis in this area must begin with consideration of the cumulative criteria developed by the Court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or

primary effect must be one that neither advances nor inhibits religion,...; finally, the statute must not foster 'an excessive government entanglement with religion.' Walz, *supra*, at 674, 25 L.Ed.2d at 704.

These criteria resonated with the members of the Court as it tried to move forward as a more consistent body,<sup>115</sup> but problems continued to abound in settling specific cases, indicating to some observers that the Court's fundamental presupposition from 1947 in establishing the secular nature of the government might present an insurmountable obstacle in developing consistent verdicts and a just relationship between church and state. Is it really possible to divide religion and politics into two separate subjects? Is it possible or even desirable for human beings to lead their corporate lives in the state outside of religious concern as if fulfilling some "secular purpose"?<sup>116</sup> Is a secular establishment really neutral toward religion in denying it serious representation in the public square? Maybe, there is a fundamental problem with all establishments, religious and non-religious alike.

In all these cases, the Court seldom engaged in any clear analysis of the nature of secularity.<sup>117</sup> Too often it used an *argumentum ex ignorantia* to label an idea or symbol as secular by refusing to acknowledge its total history, ignoring any religious connection, and discounting any serious philosophical justification or problem.<sup>118</sup> It preferred not to think of the origins of Santa Claus (Saint Nicholas), or the relation of a Christmas tree to the birth of Christ. It preferred not to think about the Puritan origins of its own conception of government, or any philosophical justification of metaphysical concepts like liberty and equality. It preferred just to assign a label and claim as secular whatever is essential to its vision of society or the government. For example, the Court decided during the 1960s that Sabbatarian or blue laws were constitutional by saying the laws serve a secular, non-religious purpose in giving people a day of rest, without explaining in any coherent manner why rest is a secular idea.<sup>119</sup> In keeping with the charade, the Court must tell the citizens to forget about religion as members of the state: not to remember that the Lord rested after six days of work (Gn 2:2; Ex 20:11), not to recognize rest (Heb. *Shabbath*) as a biblical admonition, not to see religious laws as serving a societal purpose (Mk 2:27), and not to consider the simple fact that admonitions to work or rest involve metaphysical values, or some type of religious leap into transcendental or mystical knowledge, outside a simple scientific or secular view of the world.<sup>120</sup>

The *argumentum ex ignorantia* allowed the Court to label as secular whatever it found beneficial to the nation without explaining why a certain statute or symbol is considered non-religious. The *argumentum ex ignorantia* often declared the values of the Court or the values that Americans possessed as a people to be non-religious without providing any justification for doing so. The list of these "secular" matters,

which served a “secular purpose,” included the following: safety and expeditious travel, “ordinary police and fire protection, public highways and sidewalks”;<sup>121</sup> “solemnizing public occasions, expressing confidence in the future, and encouraging the cognition of what is worthy of appreciation in society”;<sup>122</sup> “education”;<sup>123</sup> “protecting the health” of children and “providing a fertile educational environment” in school;<sup>124</sup> charitable work, social services, relieving poverty, and assisting the handicapped;<sup>125</sup> “liberty,” “academic freedom,” “freedom from indoctrination”; the promotion of “democratic values” in public schools, which nourish “dialog” and “dissent,” not religious dogma;<sup>126</sup> recognition of “religious and cultural diversity” and the “message of religious pluralism”;<sup>127</sup> promoting “secular moral values” like the second table of the Ten Commandments (honoring parents and the proscription on murder, stealing, adultery, false witness, and covetousness).<sup>128</sup> In this list, the Court merely declared through the “will to power” the secular nature of these values, without supplying any justification. In labeling all these and other values “secular,” the Court rejected the Mosaic Law, the Hammurabi Law Code, and the basic Semitic mentality of connecting moral law with the will of God.<sup>129</sup> The Court rejected the analysis of their own Founding Fathers, who thought of religion as the basis of moral valuation and spoke of the divine laws/rights given to all humankind in nature as providing the matrix for the government’s existence and purpose.<sup>130</sup> The Court rejected the former religious foundation of morality and the government and ignored any serious philosophical discussion to determine a new basis for the government and the moral perspective. It ignored the difficult philosophical problem of deriving “ought” from “is”—or, how to derive a transcendent commentary on life from a secular perspective of the world.<sup>131</sup> Instead, the Court preferred to leave that problem to philosophers and lose God at the least possible expense, discounting any problematic nature to their ethical presuppositions or capricious labeling of their values as secular. It wanted to believe that ethics can exist apart from any mystical, religious contemplation of the ideal or ontic reality of the ideal, without explaining how this is possible. It preferred to argue from silence, or use the “will to power.”

This *argumentum ex ignorantia* continued into the Court’s disuse/misuse of history.<sup>132</sup> The Court maintained its doctrine of separation by ignoring or displaying little knowledge of the broad history and development of western ideas. Its use of historical analysis was provincial and ethnocentric, typically relegated to the exaltation of the American government and its leaders. It displayed no real knowledge or acknowledgment of the Puritans, the real spiritual founders of the country, who formed its basic vision and view of government and spearheaded the democratic revolutions in England and New England.<sup>133</sup> Even those jurists who acknowledged religious origins of the culture appeared to possess little

understanding of the specifics and often denied the ongoing religious significance today as if important cultural ideas lose religious connection over time through the process of secular re-education and inculcating ignorance.<sup>134</sup> The very doctrine of church/state separation demanded a rejection of positive religious influence from the past and constant reminder of its shortcomings, as the sponsor of persecution in society. The Court preferred to spin its own story rather than engage in serious historical analyses concerning the evolution of ideas and recognize any complexities or entanglements. The Court liked to tell and reiterate a story that was more false than true, that the early settlers came to this country fleeing religious persecution to provide a negative view of the church and its political influence.<sup>135</sup> The Court told this story to establish its secular concept of church/state separation. It wanted to present freedom as the opposite of the religious impulse and sentence religion to the margins of society as the source of “divisiveness,” especially within the realm of politics.<sup>136</sup> Liberty must be understood as non-religious, even anti-religious.<sup>137</sup>

The Court’s historical understanding of church/state separation also suffered from the same limitations, displaying little understanding of the broad history and problems of the doctrine. Typically, the Court centered its historical analysis upon Jefferson and Madison as the “architects of the First Amendment”—the only Founding Fathers who held to the strict doctrine.<sup>138</sup> It ignored the anti-Semitic/anti-Christian motives behind Jefferson’s position, the inconsistent political careers of both Virginians in patronizing the majority’s religious sensibilities,<sup>139</sup> and preferred to select and cite works like Madison’s “Detached Memoranda” that “proved” their strict position. In all this, the Court failed to acknowledge any dark side to the doctrine of church/state separation. It preferred to think of persecution as a religious disease but failed to note twentieth-century regimes like the Nazis and Communists, who also erected the same French concept of absolute separation in an attempt to destroy the church and slaughtered tens of millions of people in the name of developing an a-theistic, secular state.<sup>140</sup> Most members followed the same doctrine of secularization (*laïcité*) as these regimes. They did so in a more passive way, performing a “quiet euthanasia,” without resorting to militant atheistic propaganda in state-sponsored institutions, or inviting a reaction. They tried to distance their policy from the Nazis and Communists, but the net effect of refusing to represent religion in the burgeoning power of the state and denying its positive social influence is not much different in the long run. (The French idea was originally conceived as a means of forging a *fraternité* of citizens as an alternative to the body of Christ. The French Revolution denuded the culture of all Christian symbols and exchanged them for a new secular identity under the *cocarde tricolore* of the nation-state. In a most telling moment, Abbé Grégoire and the National Assembly offered the Jewish people citizenship as long as they

underwent a process of *régénération*, or leave their distinctive religious community behind and adopt French ways and customs.<sup>141</sup> The process certainly worked as Jews became a secular people after this time. The Third Republic made the process of secularization (*laïcité*) and the “Separation of the Churches and the State” the official *modus operandi* of the state at the end of the nineteenth and beginning of the twentieth century, and the French people were transformed through this process into secular subjects of the state, just like the Jewish people.<sup>142</sup>

The Court engaged in a great deal of double-talk about its role in the secularization of the culture,<sup>143</sup> but it clearly endorsed a secular message and picked the secular side of the cultural war.<sup>144</sup> Occasionally, it ran into a political hot potato and found it necessary to retreat from the basic agenda. For example, the Court engaged in political calculations by refusing to eliminate the Pledge of Allegiance from the public schools. It certainly knew that this devotional exercise was much more coercive than public prayer as it invited the audience to participate with their hands over their hearts, their eyes wide open, and their mouths confessing sacred words, binding the people to the nation, not just asking them to stand and listen.<sup>145</sup> This oath (Lat. *sacramentum*) was intended to bind the audience’s allegiance to the state and confess the unity of the nation in serving the will of God. The phrase “under God” was added to the pledge during the Eisenhower administration in a deliberate and clear attempt to withstand the godless etatism of the Communists, but the Court found it difficult to expunge a direct violation of its strict interpretation, given the power of the civil religion and the basic desire to promote devotion to the state. Justice William Brennan attempted to reconcile the pledge with the secular establishment by claiming that the oath served a secular purpose and the phrase “under God” had lost all “religious significance” through “rote repetition.” He suggested that the public schools substitute the pledge, patriotic material, and a catechism on national values for the former devotional exercises in the Bible and prayer.<sup>146</sup> His suggestion worked within the basic schema of the French Revolution and the Third Republic by wanting the secular state to use its power and replace the former devotion to God with the new religion on the block—etatism.

## The American Civil Liberties Union

The American Civil Liberties Union (ACLU) became the principal group that sponsored the separation of church and state in the courts during the twentieth century, beginning with the famous “Monkey Trial” in the summer of 1925. The group was founded just a few years earlier in January of 1920 and has grown into a formidable force ever since, boasting over 500,000 members, 200 staff attorneys,

hundreds of local chapters, and thousands of volunteers on its latest website. The group started as the brainchild of one man, Roger Baldwin, who grew up in a Unitarian family within the inner circle of Boston and attended Harvard University, where he received a B.A. and M.A. in Social Science and then began a career in social work.<sup>147</sup> He developed into a social activist during World War I, working with the American Union Against Militarism (AUAM) in the spring of 1917 and forming his own group, the National Civil Liberties Bureau (NCLB), in the fall of that year to fight against the war and defend the rights of protestors.<sup>148</sup> Baldwin rejected the use of force to resolve conflicts and was sentenced to a year in prison for resisting the draft and rejecting any form of alternative service as a consistent pacifist, who refused to aid and abet the war effort in any way.<sup>149</sup>

After the war, he decided to expand the scope of his activities beyond the basic mission of the NCLB and formed the ACLU to protect the civil liberties of all citizens, although his concept of civil rights was marked by a social conscious that gravitated toward left-wing political interests. The ACLU particularly focused in its early days upon the “rights” of workers to form unions.<sup>150</sup> Baldwin became an influential player in some left-wing groups that had strong ties with Communism in America and Russia and even served on the board of the Kuzbas Industrial Colony, which tried to plant collective communities in the Urals.<sup>151</sup> In the 1920s and 1930s, he described his political views as “anti-capitalist and pro-revolutionary,” sympathetic to the “economic system being worked out in Soviet Russia,” where “civil liberties [are] far greater than elsewhere in the world,” and wrote a book, *Liberty Under the Soviets*, defending the repressive measures of the Soviet Union as “weapons of struggle in a transition period to socialism.”<sup>152</sup> Even though Baldwin never joined the Communist party, two original members of the ACLU, William Z. Foster and Elizabeth Gurley Flynn, actually served later on as chairs of the party;<sup>153</sup> and the government found it necessary to raid the offices of the ACLU periodically over concerns about subversive Communist activities. Because of this, the ACLU found it necessary to moderate its public image during the heights of the Red Scare, rejecting open communists from joining the group and serving on the board.<sup>154</sup>

The connection with left-wing political goals engendered a tension within the purposes of the ACLU. The group took a leading role throughout its history in defending the cause of freedom and individual liberty, and yet often worked at cross-purposes in expanding the role of the federal government and reducing the space in which the exercise of liberty can operate.<sup>155</sup> Under the Free Exercise Clause, the ACLU defended the rights of non-traditional groups to practice their peculiar religious faith against the tyranny of the majority, earning considerable praise from those who champion religious liberty.<sup>156</sup> Under the Establishment

Clause, the ACLU tried to establish an “a-theocracy,” or its belief in secularity as the ideology of the American people by cleansing the government of all religion, using the public school system to inculcate its beliefs in secularity, and denying any modicum of representation to religious ideas and symbols in the public arena. It interpreted the First Amendment as prohibiting the public endorsement of a religious viewpoint and establishing secularity as the *modus operandi* of the government. Public values, symbols, rituals, and access must be reserved as a forum for representing secular people and their ideas.<sup>157</sup>

The doctrine of church/state separation became the fundamental means used by secular people in the modern world to refashion society into their image. The doctrine was designed during the times of the Reformation to protect the church from the corrupting powers of the state, but the French Enlightenment turned the doctrine around and used it to marginalize the power of the church, eliminate its place in society, and create another version of life in its stead. This motive prompted Jefferson to erect a wall of separation between the two realms and use public education to forward his anti-Christian agenda. He and Madison were unable to eliminate the presence of the church in the federal, state, and local governments during their lifetime, but sympathetic jurists found it possible to resurrect this conception years later and “reinterpret” the words of the Constitution to align with the doctrine of the Enlightenment and their own secular, deistic, or a-theistic point of view. Today, secular groups like the ACLU represent this new interpretation of the Court in a most severe and draconian manner. They might work to defend individual liberties for those who live on the margins of society, but they also work to eliminate the space where those liberties function by consigning more and more power to the state in advancing a left-wing agenda. Christians tend to accept the role of the government in secularizing society, offering little resistance and preferring the NT’s image of the church as a remnant in this world. Muslims have no tradition of church/state separation and fight the introduction of this process of secularization in the Middle East, committing horrible acts of brutality in an attempt to protect their religious traditions and culture. The terrorists and the many who sympathize with their cause do not want the “Great Satan” to destroy the central place of the Mosque as it destroyed the role of its own church in western civilization.<sup>158</sup>

## Notes

1. *The Writings of James Madison*, Gaillard Hunt (ed.) (New York and London: G. P. Putnam’s Sons, 1910), 1.230–31; “To Rev [Jasper] Adams” (1832), in *Writings*, 9.485; Ralph L. Ketchem, “James Madison and Religion: A New Hypothesis,” in *James Madison on Religious*

*Liberty*, Robert S. Alley (ed. and intro.) (Buffalo, NY: Prometheus Books, 1985), 175–80; Garrett Sheldon, “Religion in the Thought of James Madison,” in *Faith and Politics in America*, Joseph Prud’homme (ed.) (New York: Peter Lang, 2011), 93, 96, 112; Lance Banning, “James Madison, The Statute for Religious Freedom, and the Crisis of Republican Convictions,” in *The Virginia Statute for Religious Freedom: Its Evolution and Consequences in American History*, Merrill D. Peterson and Robert C. Vaughan (eds.) (Cambridge: Cambridge University Press, 1988), 110. Like Jefferson, he was baptized in the Anglican Church at a local parish.

2. Garrett Sheldon, “Religion in the Thought of James Madison,” in *Faith and Politics in America*, Joseph Prud’homme (ed.) (New York: Peter Lang, 2011), 91–95; Mary-Elaine Swanson, “James Madison and the Presbyterian Idea of Man and Government,” in *Religion and Political Culture in Jefferson’s Virginia*, 122–28.

Many young men were similarly stimulated by Witherspoon’s teaching on law and government, as is witnessed to by the fact that so many of them later became active in American politics, including a president of the United States (Madison), a vice-president, ten cabinet officers, twenty-one senators, thirty-nine congressmen, a Supreme Court justice, an attorney general of the United States, and twelve governors. It has been estimated that nearly one-fifth of the signers of the Declaration of Independence, one-sixth of the delegates to the Constitutional Convention, and one-fifth of the first Congress under the Constitution were graduates of the College of New Jersey [Princeton]. *Ibid.*, 122.

James Madison, John Adams, and Montesquieu were the most significant individual figures in influencing America to adopt a system of checks and balances. Their analysis was based upon a dark view of human nature. John Witherspoon also made this connection and probably influenced Madison in adopting and stressing the system. E.g., *The Works of the Rev. John Witherspoon*, John Rodgers (intro.) (Philadelphia, PA: William N. Woodward, 1802), 4.351; Sheldon, “Religion in the Thought of James Madison,” 97–99.

3. Jefferson, *Autobiography*, L.1.58; *Notes on Virginia*, L.2.219; Mark A. Beliles, “The Christian Communities, Religious Revivals, and Political Culture of the Central Virginia Piedmont, 1737–1813,” in *Religion and Political Culture in Jefferson’s Virginia*, 4–5, 18–20; Daniel Dreisbach, “Church-State Debate in the Virginia Legislature: From the Declaration of Rights to the Statute for Establishing Religious Freedom,” in *Religion and Political Culture in Jefferson’s Virginia*, Garrett Ward Sheldon and Daniel Dreisbach (eds.) (Lanham, MD: Rowman and Littlefield Publishers, 2000), 142; Michael McConnell, “Taking Religious Freedom Seriously,” *First Things* 3 (1990) 30. L stands for the *Writings of Thomas Jefferson*, Andrew A. Lipscomb (ed.) (Washington, D. C.: The Thomas Jefferson Memorial Association, 1905).
4. “To William Bradford” (April 1, 1774), in *Papers of James Madison*, 1.111–12. See *Ibid.*, 1.170–72; Rob Boston, “James Madison and Church-State Separation,” *Church & State* 54/3 (2001): 10; Sheldon, “Religion in the Thought of James Madison,” 101–138.
5. “Declaration of Rights and Form of Government in Virginia [16 May–29 June 1776],” in *Papers*, 1.170–79; Bellies, *The Christian Communities*, 20–21; Dreisbach, “Church-State Debate,” 139; Robert S. Alley, “The Despotism of Toleration,” *Madison on Religious Liberty*, 147; Sheldon, “Religion in the Thought of James Madison,” 102.

6. "From John Page" (Aug. 23, 1785), in *Papers of Thomas Jefferson*, 8.428–29; Richard Beale Davis, *Intellectual Life in Jefferson's Virginia, 1790–1830* (Chapel Hill, NC: University of North Carolina, 1964), 128–31; Sheldon, "Religion in the Thought of James Madison," 102–3; Dreisbach, "Church-State Debate," 149–50. The Episcopal Church was in favor of Henry's bill. Many Presbyterians were initially for it and then turned against it. "To James Monroe" (April 12, 1785), in *Papers*, 2.261; Banning, "James Madison, . . .," 123; Sheldon, "The Religious Thought of James Madison," 103. Henry was a Christian and conducted a campaign throughout the state warning of the dangers of Deism undermining the faith. Thompson, "Perceptions of a 'Deist Church' in Early National Virginia," 46–47.
7. "Memorial and Remonstrance Against Religious Assessment," in *Writings of James Madison*, G. Hunt (ed.) (New York and London: G. P. Putnam's Sons, 1901), 2.188. Joseph Prud'homme provides a good counter-example to Madison's extreme statement, showing how John Bray and Maryland's establishment actually promoted toleration and religiosity. "Rev. Thomas Bray, Colonial Maryland, and the Role of Religion in Public Life," in *Faith and Politics in America*, 41–48.
8. *Ibid.*, 186–87.
9. "To the Honorable the General Assembly of the Commonwealth of Virginia A Memorial and Remonstrance" (ca. 20 June 1785), in *Papers*, 8.298–99; Donald Drakeman, "Religion and the Republic: James Madison and the First Amendment," *Journal of Church and State* 25/3 (1983): 436; Belilies, "The Christian Communities," 24; Banning, "James Madison, . . .," 109, 122–23; Gary Wills, *James Madison* (New York: Times Books, 2002), 16–18; Ralph Ketcham, "James Madison and Religion—A New Hypothesis," *Journal of the Presbyterian Historical Society* 39/2 (1960): 81.
10. *Jefferson and Madison on Separation of Church and State: Writings on Religion and Secularism*, L. Brenner (ed.) (Fort Lee, NJ: Barricade, 2004), 125–26; Drakeman, "Religion and the Republic," 233; Wills, *James Madison*, 39; Philip Hamburger, *Separation of Church and State* (Cambridge, Mass. And London: Harvard University Press, 2002), 104–5.
11. *The Debates and Proceedings in the Congress of the United States*, J. Gales and W. W. Seaton (eds.) (Washington, DC: Gales and Seaton, 1834), 1.796; Drakeman, "Religion and the Republic," 233–35. Barbara McGraw's *Rediscovering America's Sacred Ground* contains a good summation of the various drafts in Appendix C, pp. 199–202.
12. *Ibid.*, 1.451–52; John T. Noonan, *The Believer and the Powers That Are* (New York: Macmillan Publishing, 1987), 124. Cf. Levy, *The Establishment Clause*, 7, 86ff., 95, 98–99. The Anti-Federalists of Virginia read the amendment in this way and rejected it, because they wanted to exclude religion from receiving any federal support. "The 3rd amendment [the First Amendment], recommended by Congress, does not prohibit the rights of conscience from being violated or infringed; and although it goes to restrain Congress from passing laws establishing any national religion, they might, notwithstanding, levy taxes to any amount, for the support of religion or its preachers; and any particular denomination of Christians might be so favored and supported by the General Government, as to give it a decided advantage over others, in process of time render it as powerful and dangerous as if it was established as the national religion of the country." *Journal of the Senate of the Commonwealth of Virginia; Begun and Held in the City of Richmond on Monday, the 19th day of October, . . . 1789, . . .* (Richmond, VA: Thomas W. White, 1828), 62.

13. Michael McConnell, "Why 'Separation' Is Not the Key to Church-State Relations," *The Christian Century* 106/2 (1989): 43.
14. Of course, Article VI, sect. 3 rejected religious tests for holding office in the federal government.
15. "To Frederick Beasley" (Nov. 20, 1825), in *Writings*, 9.230.
16. See "Thanksgiving Proclamations" (July 9, 1812, July 23, 1813, Nov. 16, 1814, and March 4, 1815), in *A Compilation of the Messages and Papers of the Presidents*, James D. Richardson (ed.) (New York: Bureau of National Literature and Arts, 1905), 1.513, 532–33, 558, 560–61; "Special Message to Congress" (Feb. 18, 1815) and "Seventh Annual Message" (Dec. 5, 1815), in *Writings*, 8.326, 343; Mary-Elaine Swanson, *The Education of James Madison: A Model for Today* (Montgomery, AL: The Hoffman Education Center for the Family, 1992), 262–65; Sheldon, "Religion in the Thought of James Madison," 104–7.
17. "A Proclamation" (July 9, 1812), in *Messages and Papers*, 1.513.
18. "Bill for Punishing Disturbers of Religious Worship and Sabbath Breakers" (no. 84) and "A Bill for Appointing Days of Public Fasting and Thanksgiving" (no. 85), in *Papers of Thomas Jefferson*, 2.555–56; Drakeman, "Religion and the Republic," 441; "James Madison and the First Amendment of the Religion Clause," in *Religion and Political Culture in Jefferson's Virginia*, 226.
19. See n.16; Boston, "James Madison and Church-State Separation," 14; Sheldon, "Religion in the Thought of James Madison," 106; Cord, "Mr. Jefferson's 'Nonabsolute Wall,'" 167, 183; Drakeman, "James Madison and the First Amendment," 226. Cf. with George Washington's "Proclamation: A National Thanksgiving" (Oct. 3, 1789), in *Messages and Papers*, 1.64–65.
20. "To Robert Walsh" (March 2, 1819) and "To Edward Livingston" (July 10, 1822), in *Writings*, 8.431–32; 9.101–103; "Detached Memorandum," in *James Madison on Religious Liberty*, 90; Drakeman, "Religion and the Republic," 437; "To Reverend Jasper Adams" (Spring, 1833), 9.484–88.
21. "To Jasper Adams" (Spring, 1833) 9.485. In contrast to this statement, as well as the belief of most Americans at the time, he says elsewhere that Catholicism is not innately hostile to republicanism. *Papers of James Madison*, 15.432–33 (Jan. 1, 1795). Cf. Strehle, *The Egalitarian Spirit of Christianity*, 250–53.
22. *Annals of Congress (1789–90): Proceedings and Debates...*, at the First Session of Congress, 730–31 (Aug. 15, 1789) and 755 (Aug. 17, 1789); "To Edward Livingston" (July 10, 1822) 9.101–103; Alley, "The Despotism of Toleration," 147; "The Protestant Establishment," in *James Madison on Religious Liberty*, 253–55. Jasper Adams and so many others thought Christianity served as the foundation of civil, legal, and political institutions.
23. "To Edward Livingston" (July 10, 1822) 9.100–103; "Detached Memorandum," 93–94; Drakeman, "James Madison and the First Amendment," 226; "Religion and the Republic," 440; Leo Pfeffer, "Madison's 'Detached Memoranda': Then and Now," in *The Virginia Statute for Religious Freedom*, 304–5. Madison also exhibits his proclivity for church/state separation by opposing theological instruction and prayer at public schools. His motives are more difficult to discern than Jefferson's. Maybe, his strict position represents his attempt to ride a consistent paradigm to its extreme like many Virginia Baptists, rather than any underlying malice toward the Judeo-Christian tradition. The only clear hint of animosity

- is his opposition to the church acquiring property. He expresses concern over the church obtaining too much power, and thinks it is necessary for public authorities to exact measures and limit church property and wealth. As president, he vetoed a bill reserving a parcel of public land for the Baptist Church and its usage, claiming it violated the First Amendment. "To the House of Representatives" (Feb. 28, 1811) and "To Edward Everett" (March 19, 1823), in *Writings*, 8.133; 9.126–27; Pfeffer, "Madison's 'Detached Memorandum,'" 287–88; *Jefferson and Madison on Separation*, 51, 133, 207, 232, 263–68; Drakeman, "Religion and the Republic: James Madison and the First Amendment," 238; Ketcham, "James Madison and Religion," 81–82; Hamburger, *Separation of Church and State*, 182–83; Frank Lambert, *The Founding Fathers and the Place of Religion in America* (Princeton, NJ: Princeton University Press, 2003), 271–73; Leonard Levy, *The Establishment Clause: Religion and the First Amendment* (Chapel Hill, NC: University of North Carolina Press, 1994), 123.
24. Prud'homme, "Rev. Thomas Bray, . . .," 16–17.
  25. "To Jasper Adams" (Spring, 1833) 9.487; Sidney E. Mead, "Neither Church nor State: Reflections on James Madison's 'Line of Separation,'" *Journal of Church and State* 10/3 (Aut. 1968): 350–51. Some consider this metaphor of a "line" less stringent than Jefferson's "wall," but it seems unlikely that Madison intended to depart from a strict position in using the term. The line is certainly not "blurred, indistinct, and variable" in his mind as Justice Warren Burger suggested in *Lemon v. Kurtzman* (1971).
  26. C. Bradley Thompson, *John Adams and the Spirit of Liberty* (Lawrence: University Press of Kansas, 1998), 93, 252–53, 260.
  27. *The Works of John Adams* (Freeport, NY: Books for Libraries, 1969), 4.292–93, 559. He can make an offhand comment about the importance of the Christian religion, but such a testimony is out of character with the overall secular direction of his work. Cf. *Ibid.*, 4.283. His religion is much like Jefferson's and other Deists of the day, except for a belief in some of the biblical miracles. He favored toleration of different religious persuasions, but he accepted the Congregationalist establishment of his constituency, maybe as a fact of life or a necessary political compromise. Patricia Bonomi, *Under the Cope of Heaven: Religion, Society, and Politics in Colonial Virginia* (New York: Oxford University Press, 1986), 103.
  28. *Ibid.*, 4.477–78, 491, 541, 548–49; 5 passim; 6.217. He sees the world as marching toward perfection in science, commerce, philosophy, and religion. Athens developed a popular form of assembly during the time of Solon in the sixth century B.C.E., and Kleisthenes sought to involve all of Attica in the decision-making process with slogans like *isegoria* (equality of speaking) and perhaps *demokratia* (people-power). S. Hornblower, "Creation and Development of Democratic Institutions in Ancient Greece," *Democracy: The Unfinished Journey 508 BC to AD 1993*, J. Dunn (ed.) (Oxford: Oxford University Press, 1992), 4–8. The philosophers and intellectuals of the day enshrined these ideas in their works for future generations to study and to follow. In particular, Aristotle advanced the doctrine by lending his considerable authority to the polity during Hellenistic times and providing a possible source for its dissemination throughout the world. He certainly preferred the collective wisdom of the masses to the wantonness of one man. He accorded the "mass of free-men and citizens" the right to select officers and magistrates, even if most were not worthy to run. Aristotle's *Politics* helped further the cause as it became available throughout Italy at the end of the thirteenth. Aristotle, *Politics*, in *The Basic Works of Aristotle*, R. McKeon (ed.),

(New York: Random House, 1941), 1281a, 1281b, 1286a, 1286b, 1318 (1190–91, 1200, 1268–69). At the end of the eleventh century, many Italian cities to the north began to form republics in accordance with the *polis* of Athens and Aristotle's vision. They rejected the divine right of papal and imperial authorities, complaining about their abuse of power, lack of interest in local affairs, and unconcern for the welfare of the average citizen. They preferred to elect their own officials and councils at the local level. Q. Skinner, "The Italian City-Republics," in *Democracy*, 57–63. The most celebrated works of the day—Marsilius' *Defender of Peace* (1324) and Machiavelli's *Discourses* (1520?)—show a decided Aristotelian influence in their push for democratic ideals. *Marsilius of Padua, the defender of peace* (New York: Columbia University Press, 1956), 45–47; N. Machiavelli, *Discourses*, B. Crick (ed.), L. J. Walker and B. Richardson (trans.) (New York: Penguin Books, 1998), 1.20, 58 (167–68, 255–57). However, a problem develops in the course of this study when one tries to connect these early sources with what transpires in later times. The parallel is striking and interesting and might have served in the nebulous realm of a remote cause, but there is little, concrete proof that the ideals of Athens or Italy served as the basic impetus toward the development of democracy in the world to come. Huguenots and the Puritans pointed to religious concerns in their push for democracy in the sixteenth and seventeenth centuries, not Athenian or Italian antecedents. If anything, the primary sources of modern democracy point more toward Germanic roots when searching for a cultural identity and only mention Graeco-Roman antecedents later on as an anachronistic or scholastic device to justify what has developed for other reasons. Of course, this criticism does not mean that the Graeco-Roman world had no influence whatsoever in shaping modern times. Its doctrines of natural law and mixed government make an important contribution to the modern notion of countervailing political forces. Strehle, *Egalitarian Spirit of Christianity*, 35 (n.134), 92, 107, 112, 120 (nn.119–20), 134–36, 149–50.

29. *Ibid.*, 4.462, 465–66.

30. *Ibid.*, 4.385ff. (chap. 4), 416ff.; 5.95, 183; 6.4.

31. *Ibid.*, 4.428.

32. *Ibid.*, 4.358, 380–81, 440.

33. *Ibid.*, 4.290, 298, 370, 462–63. Certain passages were quoted by Jefferson and other opponents to prove that Adams believed in a monarchy, but these citations clearly overlooked the general context of the work and his overall ideas. David McCullough, *John Adams* (New York: Simon and Schuster, 2001), 429ff., 443–44. Adams rejects hereditary government and hierarchical rule. He feels the people have a right to appoint a monarch for life, but they never abdicate their right to depose a ruler if it is necessary. *Works*, 4.276–77, 358–59; 6.117. Adams does not like to quibble over words like "king," "president," or "republic" since so much depends on the context in which these terms are used. *Ibid.*, 5.452–54; 6.183. He accepts a certain hierarchy of birth, genius, and wealth among the people but grants citizenship to all "people" who owned at least a small amount of property. *Ibid.*, 4.393ff., 397, 414; 5.456–59. See Thompson, *John Adams and the Spirit of Liberty*, 93, 167, 169, 172–3, 183–4, 207, 248, 252, 253, 260, 266ff., 272–3.

34. C. Bradley Thompson points to certain unpublished papers where Adams explains his method as following the empirical reasoning found in Bacon and Newton. His method is much like Machiavelli's, who created an empirical political science, making inductions

from historical examples, rather than fashioning a system out of pure deduction. *John Adams and the Spirit of Liberty*, 110–13, 123.

35. This point is the constant refrain of American postmodernists. It is a truism, even if it can be over-exercised. Stanley Fish, *Doing What Comes Naturally* (Durham, NC and London; Duke University Press, 1989), 129, 301, 304. Of course, Adams rejects many of the literal tenets of Calvinism, as well as the need for divine revelation to guide us in finding our way. Adams believes that “[God] has given us Reason, to find the Truth, and the real Design and true End of our Existence,” along with “all Endeavors to promote them agreeable to our minds.” *Diary and Autobiography of John Adams*, L. H. Butterfield (Cambridge, MA: The Belknap Press, 1961), 1.43; Thompson, *John Adams and the Spirit of Liberty*, 14, 86. These statements cause some scholars like Thompson to discard his Puritan background and place him more within the enlightened views of “Bacon, Newton, and Locke.” Other scholars like Bernard Bailyn and Edmund S. Morgan still consider him a Puritan first and foremost and cite his Protestant work ethic as a good case in point. *Ibid.*, 3–5; Bailyn, “Butterfield’s Adams: Notes for a Sketch,” *William and Mary Quarterly* 19/2 (1962): 244–45; E. S. Morgan, “John Adams and the Puritan Tradition,” *New England Quarterly* 34/4 (1961): 523–27. Adams is clearly a son of the Enlightenment in his outward profession, but like all its children he remains indebted to the past influences of a Christian culture, just like Bacon, Newton, and Locke, who also are difficult to classify with one simple term.
36. *Works*, 4.356, 406, 407; 5.40, 49; 6.57, 61, 97, 99, 211ff. He is most interested in the passions that drive men to seek power—the “notoriety,” the “celebration,” the admiration and applause of others, etc. Thompson, *John Adams and the Spirit of Liberty*, 158–60. The Founding Fathers were very distrustful of human nature in general. Evans, *The Theme is Freedom*, 98ff.
37. In concert with his secular interpretation of Adams, Thompson discounts any Puritan influence upon Adams’ view of human nature. *John Adams and the Spirit of Liberty*, 149.
38. John Witte, “‘A Most Mild and Equitable Establishment of Religion’: John Adams and the Massachusetts Experiment,” *Journal of Church and State* 4/2 (1999): 234; Coker, “Isaac Backus and John Leland,” 314, 325. See chap. 6, pp. 212–13, n.147 for further discussion on the Baptists and their position.
39. Adams, *Works*, 4.241–42, 245, 251, 260–62; Witte, “‘A Most Mild and Equitable Establishment’,” 226–27. Quakers are exempted from taking the oath. Later on, Adams expresses regret over this anti-Catholic provision.
40. *Ibid.*, 4.221; Witte, “‘A Most Mild and Equitable Establishment’,” 216, 226.
41. Art. III; Witte, “‘A Most Mild and Equitable Establishment’,” 228–31, 242. Apparently, Adams told Isaac Backus, “We must as soon expect a change in the solar system as to expect [the Congregationalists] would give up their establishment.” *Isaac Backus on Church, State, and Calvinism*, 12; McLoughlin, *New England Dissent*, 1.560.
42. Adams, *Works*, 2.399.
43. In his writings, he sees religion and morality as a foundation of society and thinks the government should encourage right belief and conduct. *Works*, 4.293; 9.636. As president, Adams emphasized the need for national repentance in his proclamations of prayer and thanksgiving, unlike Washington and closer to the original idea of a Puritan-style Jeremiad. “Proclamation” (March 23, 1798 and March 6, 1799), in *Messages and Papers*,

- 1.268–70, 284–86; *Works*, 9.291; Charles Ellis Dickson, “Jeremiads in the New American Republic: The Case of National Fasts in the John Adams Administration,” *The New England Quarterly* 60/2 (1987): 188, 191.
44. *Equal Rights in Religion. Report of the Centennial Congress of Liberals, and Organization of the National Liberal League* (Boston, MA: The National Liberal League, 1876) 22, 37, 175; Hamburger, *Separation of Church and State*, 293ff.; Dreisbach, *Thomas Jefferson and the Wall of Separation*, 97. Abbot was a former Unitarian minister, who developed an extreme disdain for traditional Christian teachings. Some liberal religious groups like the Reform Jews joined their number in calling for a strict separation of church and state, while others were militant agnostics. Tisa Wenger, “The God-in-the-Constitution Controversy: American Secularism in Historical Perspective,” in *Comparative Secularisms*, Linell E. Cady and Elizabeth Hurd (eds.) (New York: Macmillan, 2010), 97–101.
  45. *Ibid.*, 145.
  46. *Ibid.*, 72.
  47. *Ibid.*, 80.
  48. *Ibid.*, 135.
  49. *Ibid.*, 126, 129.
  50. *Ibid.*, 164.
  51. *Ibid.*, 5.
  52. *Ibid.*, 7.
  53. *American State Papers Bearing on Sunday Legislation*, W. A. Blakely (New York: The National Religious Liberty Association, 1891), 202–4.
  54. “Annual Message (Dec. 7, 1875), in *The Papers of Ulysses S. Grant*, John Y. Simon (ed.) (Carbondale and Edwardsville, IL: Southern Illinois University Press, 1967), 26.388; *New York Tribune* (Dec. 8, 1875) 6.
  55. “Two ‘Favorite Sons’,” in *The Nation* (March 16, 1876) 173–74; Steven K. Green, “The Insignificance of the Blaine Amendment,” *Brigham Law University Review* 2008/2 (2008): 322; “The Blaine Amendment Reconsidered,” *The American Journal of Legal History* 36/1 (1992): 54; Mark Edward DeForrest, “An Overview and Evaluation of State Blaine Amendments: Origins, Scope, and First Amendment Concerns,” *Harvard Journal of Law and Public Policy* 26 (2003): 565–66. When Blaine lost the presidential nomination of his party, he lost interest in his amendment and did not participate in the final vote, showing the proposal was a political ploy. Liberals were not pleased with the amendment because the separation was not total and allowed Protestants to continue dominating the school system. Hamburger, *Separation of Church and State*, 298–300.
  56. *Congressional Record* [44th Congress, 1st session, 4/1 (Dec. 14, 1875)] 205. See Cushing Strout, “Jeffersonian Religious Liberty and American Pluralism,” in *Virginia Statute for Religious Freedom*, 215; Green, “The Insignificance of the Blaine Amendment,” 295. A number of people were concerned about the question of states’ rights, or allowing the federal government to meddle in education. Blaine knew he was changing the First Amendment in imposing strict separation and applying it to the states. Few saw the Fourteenth Amendment as applicable to this issue at the time. It took two more decades before the Supreme Court applied the Bill of Rights to the states. Green, “The Blaine Amendment

Reconsidered," 39, 50, 68; "The Insignificance of the Blaine Amendment," 320–21; DeForrest, "An Overview and Evaluation," 604.

57. Hamburger, *Separation of Church and State*, 10–11; Toby J. Heytens, "School Choice and State Constitutions," *Virginia Law Review* 85/1 (2000): 135–37; DeForrest, "An Overview and Evaluation," 561; Green, "The Insignificance of the Blaine Amendment," 296–98, 304, 312–15. John Jeffries and James Ryan say,

At the time of the Revolution, 30,000 Catholics lived in the new United States, barely one percent of the population. By 1830, that number had increased to 600,000. By 1850, there were 1.6 million U.S. Catholics, and twice that many ten years later. The number quadrupled to twelve million in 1900, and doubled again by 1930. This population was mostly immigrant, in the early days mostly Irish, and mostly poor. "A Political History of the Establishment Clause," *Michigan Law Review* 100 (2001): 299–300.

Of course, the papacy's rejection of modernity, democracy, and the American way of life helped in fueling the Protestant concerns. R. L. Moore, *Religious Outsiders and the Making of Americans* (New York: Oxford University Press, 1986), 49, 57, 69.

58. Timothy L. Smith, "Protestant Schooling and American Nationality, 1800–1850," *The Journal of American History* 53/4 (1967): 679–81; Stephen Macedo, *Diversity and Distrust: Civic Education in a Multicultural Democracy* (Cambridge, MA and London: Harvard University Press, 2000), 60–63; Jeffries and Ryan, "A Political History of the Establishment Clause," 297, 302; DeForrest, "An Overview and Evaluation," 563–64; Green, "The Insignificance of the Blaine Amendment," 316–17; Hamburger, *Separation of Church and State*, 10–11, 204–18, 234ff. American Catholics tried to show their love of freedom and rejected the pope's temporal powers over the country.
59. Benjamin Rush, "Thoughts Upon the Mode of Education Proper to a Republic," in *Essay on Education in the Early Republic*, Frederick Rudolph (ed.) (Cambridge, MA: Harvard University Press, 1965), 17–18; Noah Webster, "On the Education of Youth in America," in *Essays on Education*, 65–66; Green, "The Insignificance of the Blaine Amendment," 300–2; "The Blaine Amendment Reconsidered," 45.
60. Lyman Abbott, "Secular and Sectarian Schools," *Harper's New Monthly Magazine* 40 (May, 1870) 910; Green, "The Blaine Amendment Reconsidered," 41; "The Insignificance of the Blaine Amendment," 303; Hamburger, *Separation of Church and State*, 220–29, 372–75.
61. "The Alarm About the Schools," in *The Nation* (Dec. 16, 1875) 383–84; "The Catholics and the Free Schools," *Harper's Weekly* 20/992 (Jan. 1, 1876): 11; "The Rights of the Church Over Education," *Catholic World* 21/126 (Sept. 1875): 738–39; "Anti-Catholic Movements in the United States," *Catholic World* 22/132 (March 1876): 817, 822; "The Catholic Church in the United States," *Catholic World* 23/136 (July 1876): 446–49; Diane Ravitch, *The Great School Wars: A History of the New York City Public Schools* (New York: Basic Books, 1988) passim; Green, "The Blaine Amendment Reconsidered," 41–43, 51–52; DeForrest, "An Overview and Evaluation," 565, 569. The Senate version of the amendment protected the "reading of the Bible" in the common schools. It wanted to appease those who felt the secularization process was proceeding too far.

62. Heytens, "School Choice and State Constitutions," 134; DeForrest, "An Overview and Evaluation," 554–55, 567–68, 573, 576; Green, "The Blaine Amendment," 67; "The Insignificance of the Blaine Amendment," 296–98.
63. Green, "The Insignificance of the Blaine Amendment," 305–9; "The Blaine Amendment Reconsidered," 46–47. Horace Mann wanted to include every Christian and spurned sectarian doctrines in his vision for the common schools. Mann also insisted on reading the Bible without comment. Horace Mann, et al., *Annual Report on Education* (Boston, MA: Horace B. Fuller, 1868), 129–30 (Report of 1848); Noah Feldman, "Non-Sectarianism Reconsidered," 28 *Journal of Law and Politics* 65 (2002): 80–81; Jefferies and Ryan, "A Political History of the Establishment Clause," 298; Green, "The Insignificance of the Blaine Amendment," 305–7.
64. For further discussion of this and other matters in this section, see W. M. McAfee, "Historical Context of the Failed Federal Blaine Amendment of 1876," *First Amendment Law Review* 2 (2003): 1–22; Thomas E. Buckley, "A Mandate for the Anti-Catholicism: The Blaine Amendment," *America: The National Catholic Weekly* 191/8 (2004): 18–21; Hamburger, *Separation of Church and State*, 323–28, 334.
65. Hamburger, *Separation of Church and State*, 285, 335ff.
66. G. Bassham, *Original Intent and the Constitution: A Philosophical Study* (Savage, MD: Rowman and Littlefield Publishers, 1992), 7–11.
67. *Home Building & Loan Association v. Blaisell* 290 US 442–43.
68. Donald L. Drakeman, "Reynolds v. United States: The Historical Construction of Constitutional Reality," *Constitutional Commentary* 21 (2004): 723–24.
69. Since the 1860s, the U.S. Congress tried to reign in polygamy and the power of the Mormon Church through various measures like the Morrill Act and Poland Act. The territory of Utah was subject to federal jurisdiction, allowing Congress to regulate matters like marriage, usually left up to the states. Drakeman, "Reynolds v. United States," 700–702.
70. *Reynolds v. United States* 98 US 164; Barton, *Original Intent*, 13, 51; Dreisbach, *Thomas Jefferson and the Wall*, 1–5, 97–100, 120; Ronald B. Flowers, *That Godless Court?: Supreme Court Decisions on Church-State Relationships* (Louisville, KY: Westminster John Knox Press, 2005), 22. Drakeman thinks Chief Justice Waite was influenced by the great American historian George Bancroft and Robert Howison's *History of Virginia* in pointing to Jefferson, Madison, and Virginia as the basic source of authority in this matter. Why Jefferson's letter to the Danbury Baptist Association became a basic authority is not so clear. "Reynolds v. United States," 697–98, 704–16.
71. Roger K. Newman, *Hugo Black: A Biography* (New York: Pantheon Books, 1994), 154ff., 209–11.
72. The administration begins to adopt terms like "liberal" and "progressive" to describe its policies. Thomas L. Krannawitter and Daniel C. Palm, *A Nation Under God? The ACLU and Religion in American Politics* (Lanham, MD: Rowman and Littlefield Publishers, 2005), 46.
73. Newman, *Hugo Black*, 20, 91, 94, 97–98. A furor broke out over his membership in the KKK shortly after he was confirmed. He almost was forced to resign. *Ibid.*, 247ff., 258. Hamburger believes that his anti-Catholic past in the KKK moved him to erect the wall of separation, but it appears as if his connection to the group was motivated more by political

- interests than sincere heartfelt convictions. Whether it is a factor remains open to question, but there is no doubt that his increasing secularity played a vital role. Cf. Hamburger, *Separation of Church and State*, 399ff., 422ff., 451; Catherine M. A. McCauliff, "Religion and the State," *The American Journal of Comparative Law* 58 (2010): 32–33. Hamburger is certainly right that anti-Catholicism played a role in Black and the nation in developing church/state separation, and maybe his relation to the KKK helped further this bigotry.
74. *Ibid.*, 463.
  75. *Ibid.*, 521; C. Mauney, "Justice Black and the First Amendment Freedoms: Thirty-Four Influential Years," in *The Emporia State Research Studies*, 35/2 (1986): 45.
  76. *Ibid.*, 67, 141–43, 448–50.
  77. *Everson v. Board of Education* 330 US 1.
  78. Richard E. Morgan, *The Politics of Religious Conflict: Church and State in America* (New York: Pegasus, 1968), 54; Ronald James Boggs, "Culture of Liberty: History of Americans United for Separation of Church and State, 1947–1973" (Ph.D. Dissertation: The Ohio State University, 1978), 5–9, 42–43; Paul Blanshard, *Religion and the Schools: The Great Controversy* (Boston, MA: Beacon Press, 1963), 120ff.; Jefferies and Ryan, "A Political History of the Establishment Clause," 313, 315, 318.
  79. The dissent only wanted to proceed further and deny Catholics the use of buses in the name of the wall. The dissent was spearheaded by Felix Frankfurter, a secular Jew, a founder of the ACLU, a left-wing socialist, and Harvard professor. Black's decision went through eight drafts in his attempt to please the opposition and reiterate his commitment to church/state separation. James F. Simon, *The Antagonists: Hugo Black, Felix Frankfurter, and Civil Liberties in America* (New York: Simon and Schuster, 1989), 81; Hamburg, *Separation of Church and State*, 461, 465–68, 474–75; Newman, *Hugo Black*, 361. For a discussion of Frankfurter and the ACLU, see Krannawitter and Palm, *A Nation Under God?*, 60–63. The ACLU and the National Council of Catholic Men and Women both filed briefs as *amici curiae*, representing the opposite sides of the issue. The ACLU pointed the Court to Jefferson's letter to the Danbury Baptist Association and its "wall of separation"—maybe, inspiring Black's usage of the metaphor. The Catholics recognized the metaphor as containing some "validity," but felt that it was not undermined by the transportation law and should not become an "iron curtain." *Brief of American Civil Liberties Union as Amicus Curiae* (Nov. 14, 1946), in *Everson v. Board of Education*, 4, 7, 12, 26–27, 32, 34–35; *Brief Amici Curiae of National Council of Men and National Council of Women* (Nov. 18, 1946), in *Everson*, 4, 32–36; Dreisbach, *Thomas Jefferson and the Wall of Separation*, 100.
  80. Ethan Berot, "Forgetting to Weight: The Use of History in the Supreme Court's Establishment Clause," *Georgetown Law Journal* 102/3 (2014): 859; Sidney Hooks, *Religion in a Free Society* (Lincoln: University of Nebraska, 1967), 43–44, 64–67; Strout, "Jeffersonian Religious Liberty and American Pluralism," 228; A. E. Dick Howard, "The Supreme Court and the Establishment of Religion," in *James Madison on Liberty*, 280. Of course, Jefferson was not present in the country during the writing or signing of the U.S. Constitution, and his letter to the Danbury Baptist Association was written a decade later.
  81. Noah Feldman, "From Liberty to Equality: The Transformation of the Establishment Clause," *California Law Review* 90/2 (2002): 681; Ervin, "Colonial History and the First Amendment," 216–17; Prud'homme, "Rev. Thomas Bray, ...," 21. Among the books Black

- recommended to his law clerks was Foxe's *Book of Martyrs* (*Actes and Monuments*, 1563), which emphasized the persecutions of the church down through the ages. Howard, "The Supreme Court and the Establishment Clause," 280.
82. For a discussion of the religious opinions and policy of church/state separation in Hitler, Nazism, Lenin, Stalin, and Communism, see Strehle, *The Dark Side of Church/State Separation*, 123–26, 243–48, 343–44.
  83. *McCullum v. Board of Education* 333 US 203. In a subsequent case, *Zorach v. Clauson* (1952), the Court allowed for religious studies, which were not taught upon school grounds. Flowers, *That Godless Court?*, 101.
  84. *McCullum v. Board of Education* 333 US 227–28. Frankfurter is the first to raise this principle of offense. He thinks of public schools as the training ground for the "secular habits of the community." Children who opt out of the program feel the scorn of the community in this peer-pressure-laden environment. Both Jackson and Reed question Frankfurter's criterion and wonder whether the Constitution really protects a person from embarrassment. *McCullum v. Board of Education* 333 US 233, 241.
  85. *Lynch v. Donnelly* 465 US 688, 695; *Elk Grove Unified School District v. Newdow* 542 US 34; *Allegheny v. ACLU of Pittsburgh* 492 US 628–29; *Wallace v. Jaffree* 105 S. Ct. 2479, in Robert T. Miller, *Toward Benevolent Neutrality: Church, State, and the Supreme Court* (Waco, TX: Baylor University Press, 1987), 439 [TBN hereafter]; Feldman, "From Liberty to Equality," 694, 697–98. Feldman mocks this standard: "Is Veterans' Day to be celebrated? This may send a message of identity exclusion to pacifists. Labor Day? Exclusion of homemakers (or perhaps capitalists). Columbus Day? Native peoples. Many governments require the teaching of evolution in biology courses, an alliance with secularist ideology that excludes those who adhere to biblical literalism in matters of creation" (713). See also *Van Orden v. Perry* 545 US 708; *Santa Fe Independent School District v. Doe* 530 US 305. Kennedy rejects O'Connor's endorsement test. He says it comes only from her concurring opinion in *Lynch v. Donnelly*; it is based on her idea of offense or exclusion; it ignores the numerous government practices that offend minorities. *Allegheny v. ACLU of Pittsburgh* 492 US 668–69. He finds the displays of the crèche and menorah "purely passive," one is free to ignore them or not. *Allegheny v. ACLU of Pittsburgh* 492 US 662–64. Rehnquist and others agree with this line of reasoning. *Van Orden v. Perry* 545 US 691.
  86. *Marsh v. Chambers* 463 US 783, 792.
  87. Witte, "Publick Religion," 32; Pfeffer, "Madison's 'Detached Memoranda,'" 298.
  88. *Lynch v. Donnelly* 465 US 668, 680–81.
  89. *Lynch v. Donnelly* 465 US 691–92. Brennan accuses Blackmun and O'Connor of taking "Christ out of Christmas" by denying the religious origins of the tree and disconnecting the crèche from the divine incarnation. *Allegheny v. ACLU of Pittsburgh* 492 US 639; *Lynch v. Donnelly* 465 US 708ff. Then Brennan turns around and declares with O'Connor that Thanksgiving is "unquestionably a secular and patriotic" holiday. It celebrates "patriotic values" rather than "particular religious beliefs," "despite its religious origins." *Allegheny v. ACLU of Pittsburgh* 492 US 631; *Lynch v. Donnelly* 465 US 371.
  90. *Allegheny v. ACLU of Pittsburgh* 492 US 575, 601–2, 616.
  91. *Allegheny v. ACLU of Pittsburgh* 492 US 573; Flowers, *That Godless Court?*, 152–53.

92. E.g., Supreme Court decisions on the Decalogue. *Stone v. Graham* 449 US 39 (1980); *Van Orden v. Perry* 545 US 677 (2005); *McCreary County v. ACLU of Kentucky* 545 US 844 (2005); Keith Gunnar Bentele et al., “Breaking Down the Wall Between Church and State: State Adoption of Religious Inclusion Legislation, 1995–2009,” *Journal of Church and State* 56/ 3 (2014): 513; Flowers, *That Godless Court?*, 118.
93. *Allegheny v. ACLU of Pittsburgh* 492 US 616–17, 633–34, 639.
94. Jeffries and Ryan, “A Political History of the Establishment,” 290; Howard, “The Supreme Court and the Serpentine Wall,” 336.
95. *Engel v. Vitale* 370 US 421 (1962); *Murray v. Curtlett* 228 Md. 139, 179 A. 2d 698 (Md. 1962); *Abington Township v. Schempp* 374 US 203 (1963); *Wallace v. Jaffree* 472 US 38 (1985); *Lee v. Weisman* 505 US 577 (1992); *Santa Fe Independent School District v. Doe* 530 US 290 (2000); Flowers, *That Godless Court?*, 104, 108–13; Charles J. Russo and Ralph D. Mawdsley, “The Supreme Court and the Establishment Clause at the Dawn of the New Millennium: ‘Bristl[ing] with Hostility to All Things Religious’ or Necessary Separation of Church and State?,” *Brigham Young Education and Law Journal* 2001/2 (2001): 235–36, 241–45.
96. *Lee v. Weisman* 505 US 592–93, 597–98, 605–606; *Engel v. Vitale* 370 US 442.
97. *Lee v. Weisman* 505 US 637–42.
98. *Abington Township School District v. Schempp* 374 US 237–39; *Marsh v. Chambers* 463 US 798–99.
99. Howard, “The Supreme Court and the Serpentine Wall,” 340–41. Ca. 85 percent of private schools are religious. The majority of the schools remain Catholic, but Evangelical Christians started forming their own Christian academies in the next few decades. They also felt disenfranchised by the public school system as it proceeded in the 1960s toward complete secularization. They now represent a significant portion of the private religious schools and have joined Catholics, Orthodox Jews, and a growing number of Blacks in supporting vouchers or some form of financial aid for these private schools. For all the statistics and details, see Jefferies and Ryan, “A Political History of the Establishment Clause,” 327–61; Stephen L. Carter, *The Culture of Disbelief: How American Law and Politics Trivialize Religious Devotion* (New York: Doubleday, 1994) 194–97.
100. *Grand Rapids School District v. Ball* 473 US 373 (1985); *Aguilar v. Felton* 473 US 402 (1985); Flowers, *That Godless Court?*, 82–83; *Lemon v. Kurtzman* 403 US 617–18; McConnell, “Why ‘Separation’ Is Not the Key to Church-State Relations,” 43. Most members of the Court find it easy to identify and separate secular and religious education. *Lemon v. Kurtzman* 403 US 613; *Everson v. Board of Education* 330 US 205; *Zorach v. Clauson* 343 US 314. The Court’s problem with sectarian education is the mixing of the two together in its schools. *School District of the City of Grand Rapids v. Ball* 105 S. Ct. 3216, 570 [TBN]; *Committee for Public Education and Religious Liberty v. Regan* 444 US 668–69. The members say that sectarian schools are given over to proselyting and present a “theocentric” view of subjects like history. Some jurists fear that this sectarian bias will make its way into the nation’s textbooks. *Board of Education v. Allen* 392 US 260–66, 270; *Tilton v. Richardson* 403 US 694; *Zelmann v. Simmons-Harris* 536 US 685; *Rosenberger v. Rector and Visitors of University of Virginia* 515 US 895. The battle over curriculum and textbooks shows that no curriculum is neutral. In the postmodern world, the distinction between subjects has

- broken down; the distinction between objectivity and subjectivity (reason and faith) has broken down; and the justification for excluding religion along with it. Paul J. Toscano, *Invisible Religion in the Public Schools: Secularism, Neutrality, and the Supreme Court* (Bountiful, UT: Horizon Publishers, 1990), 33, 82–83; Michael McConnell, “The Influence of Cultural Conflict on the Jurisprudence of the Religious Clauses of the First Amendment,” in *Law and Religion in Theoretical and Historical Context*, Peter Cane, Carolyn Evans, and Zoë Robinson (eds.) (Cambridge: Cambridge University Press, 2008), 109, 118. Jackson recognized the problem with this simple dichotomy early on. He recognized that religious bias permeates academia and its many disciplines. “. . .nearly everything worth transmitting, everything which gives meaning to life, is saturated with religious influence, derived from paganism, Judaism, . . . Christianity, [et al.]” Brennan tries to reduce secular education to the transmission of “certain skills, such as reading, writing, and arithmetic, as well as a minimum amount of information and knowledge. . .,” as if skills and “facts” exist outside of ideology, theory, and content. *McCollum v. Board of Education* 333 US 235–37; *Lemon v. Kurtzman* 403 US 655. Kennedy says a strict view of separation must exclude the teaching of philosophers like Plato, Spinoza, Decartes, Marx, Sartre, et al., and reduce education to making “pasta or peanut butter cookies.” *Rosenberger v. Rector and Visitors of University of Virginia* 515 US 836–37.
101. *Agostini v. Felton* 521 US 203 (1997); Donald A. McFairlane, “The State, Religion, and Schools: Enduring Constitutional Battles and Political and Legal Ideologies in American Democracy,” *Franklin Business & Law Journal* 2012/3 (2012): 85; Flowers, *That Godless Court?*, 93–94; Russo and Mawdsley, “The Supreme Court and the Establishment Clause,” 240, 252–53; McConnell, “The Influence of Cultural Conflict. . .,” 15–16. See also *Mitchell v. Helms* 530 US 793 (2000).
  102. *Everson v. Board of Education* 330 US 1 (1947); *Board of Education v. Allen* 392 US 236 (1968); *Lemon v. Kurtzman* 403 US 602 (1971); *Sloan v. Lemon* 413 US 825 (1973); *Meek v. Pittenger* 421 US 349 (1975); *Wolman v. Walter* 433 US 229 (1977); *Committee for Public Education v. Regan* 444 US 646 (1980); *Mueller v. Allen* 463 US 388 (1983); *Aguilar v. Felton* 473 US 402 (1985); *Grand Rapid School District v. Ball* 473 US 373 (1985); *Zobrest v. Catalina Foothills School District* 509 US 1 (1993); Jeffries and Ryan, “A Political History of the Establishment Clause,” 288–89; Flowers, *That Godless Court?*, 83–85; Russo and Mawdsley, “The Supreme Court and the Establishment Clause,” 236.
  103. *Zelman v. Simmon-Harris* 536 US 639 (2002); Flowers, *That Godless Court?*, 97–98; DeForrest, “An Overview and Evaluation of the State Blaine Amendments,” 552–54; McFairlane, “The State, Religion, and Schools,” 85.
  104. Jeffries and Ryan, “A Political History of the Establishment Clause,” 289; Bentele et al., “Breaking Down the Wall Between Church and State,” 506.
  105. *Wallace v. Jaffree* 472 US 110–11.
  106. *Wallace v. Jaffree* 472 US 92, 106–7. See Howard, “The Supreme Court and the Serpentine Wall,” 340.
  107. Phillip E. Hammond, “American Church/State Jurisprudence from the Warren Court to the Rehnquist Court,” *Journal for the Scientific Study of Religion* 40/3 (2001): 457, 460–61; Russo and Mawdsley, “The Supreme Court and the Establishment Clause,” 254–55;

- Howard, "The Supreme Court and the Serpentine Wall," 318; Dreisbach, *Thomas Jefferson and the Wall of Separation*, 103–5; Witte, "Publick Religion," 32.
108. Derek Davis, *Original Intent: Chief Justice Rehnquist and the Course of American Church/State Relations* (Buffalo, NY: Prometheus Books, 1991), 127–28.
  109. Bentele et al., "Breaking Down the Wall Between Church and State," 503–4. This study counts 87 religious inclusion laws passed between 1995 and 2009, mainly sponsored by Evangelical groups and conservative legislators. *Ibid.*, 508–9, 515, 529–32.
  110. Flowers, *That Godless Court?*, 120; Howard, "The Supreme Court and the Serpentine Wall," 324.
  111. *Board of Education v. Mergens* 496 US 226. See also *Lamb's Chapel v. Center Moriches Union Free School District* 508 US 384 (1993); *The Good News Club v. Milford Central School* 533 US 98 (2001); Howard, "The Supreme Court and the Serpentine Wall," 318–21, 327, 345.
  112. *Rosenberger v. University of Virginia* 515 US 819; Hammond, "American Church/State Jurisprudence," 458.
  113. He speaks of "accommodation" and "benevolent neutrality." *Lynch v. Donnelly* 465 US 673; *Walz v. Tax Commission of New York City* 387 US 676.
  114. *Lemon v. Kurtzman* 403 US 602. For other jurists who sympathize with Burger, see *McCollum v. Board of Education* 333 US 239, 244, 254–55 [Reed]; *Lemon v. Kurtzman* 403 US 642 [Brennan]; *Abington Township School District v. Schempp* 374 US 241, 294 [Brennan]; *Board of Education v. Allen* 392 US 242 [White]. The metaphor of a line is heartening to those people who find the situation complex and the distinction between church and state harder to find. The metaphor goes back to Madison, although he never meant for a few exceptional problems and the use of this metaphor to undermine his basic view of strict separation. See n.25; Richard P. McBrien, *Caesar's Coin: Religion and Politics in America* (New York: Macmillan Publishing, 1987), 65–66; Mead, "Neither Church nor State: Reflections on James Madison's 'Line of Separation'," 350–51; Dreisbach, *Thomas Jefferson and the Wall of Separation*, 88–89.
  115. *Lemon v. Kurtzman* 403 US 612–13. The criteria come from earlier verdicts. *Engel v. Vitale* 370 US 421, 423, 433; *Walz v. Tax Commission* 397 US 664, 670; Ronald Flowers, "The Supreme Court's Three Tests of the Establishment Clause," *Religion in Life* 45/1 (1976): 41–42, 46–48; Josh Blackman, "This Lemon Comes as a Lemon: The Lemon Test and the Pursuit of a Statute's Secular Purpose," *Civil Rights Law Journal* 20 (2009–10): 355. Burger listed the criteria already in *Tilton v. Richardson* 403 US 672, where a fourth criterion is also mentioned (whether a statute inhibits the free exercise of religion). A number of justices had problems with the Lemon test, even if the Court continually came back to it. O'Connor wanted to replace the Lemon test with a simple endorsement test, forbidding the government from approving or disapproving of religion. The test had some traction in subsequent cases. *Lynch v. Donnelly* 465 US 687–90 (1984); Russo and Mawsdley, "The Supreme Court and the Establishment Clause," 260–62; Feldman, "From Liberty to Equality," 694ff. Rehnquist rejects the Lemon test as based on false history. *Wallace v. Jaffree* 105 S. Ct. 2479, 450 [TBN]. Scalia and Thomas also reject the Lemon test and believe the government can advance religion. *McCreary County v. ACLU of Kentucky* 545 US 887–89, 893; *Van Orden v. Perry* 545 US 692; *Rosenberger v. Rector and Visitors of University of Virginia* 515 US 860–61. For an evaluation of Scalia's view of "inclusive nonaccommodation," see

- Andrew Koppelman, "Secular Purpose," *Virginia Law Review* 88/1 (2002): 122; McConnell, "Taking Religious Freedom Seriously," 32; Micah Schwartzman, "What If Religion Is Not Special?," *The University of Chicago Law Review* 79/4 (2012): 1363, 1395–96. Those who reject Lemon's blurred line and want a firm wall include Frankfurter, Kennedy, Stevens, and Souter. *McCollum v. Board of Education* 333 US 213, 231; *Allegheny v. ACLU of Pittsburgh* 492 US 649; *Van Orden v. Perry* 546 US 709 (n.4), 729, 731; *Committee for Public Education and Religious Liberty v. Regan* 444 US 671; *Agostini v. Felton* 521 US 244, 254; *Zelman v. Simmons-Harris* 536 US 717; *Lee v. Weisman* 505 US 613–15.
116. Philosophers have difficulty looking outside the text and finding some mystical, mental "purpose." Even if motives are available for interpretation, a multitude of motives lie behind any statute in a democratic process, filled with compromise. *Edwards v. Aguillard* 482 US 636–37; *Epperson v. Arkansas* 393 US 112–13; Blackman, "This Lemon Comes as a Lemon," 363–68. Some jurists selectively read a legislative history and find what purpose they are looking for in order to justify their verdict. Blackman, "This Lemon Comes as a Lemon," 395–99. Other jurists try to find the "purpose" through what a "reasonable" or "objective observer" might discern about a given law, display, or ritual, although the philosophical community lives in a more subjective, postmodern world than these jurists. *McCreary County v. ACLU of Kentucky* 545 US 862–63, 866–68; *Allegheny v. ACLU of Pittsburgh* 492 US 630. Scalia is particularly interested in the objective effect or result of a statute, not its *a priori* subjective purpose. *Edwards v. Aguillard* 482 US 636–38; Susanna Dokupil, "Thou Shalt Not Bear False Witness': 'Sham' Secular Purposes in Ten Commandments Displays," *Harvard Journal of Law and Public Policy* 28 (2005): 625ff.: Koppelman, "Secular Purpose," 158.
117. The Christian Right got a particular hoot out of Hugo Black's recognition of "Secular Humanism" and "Ethical Culture" as a religion in an opinion's dicta. With one slip of the pen, he completely demolished his wall. *Torcaso v. Watkins* 367 US 488, n.11 (1961); Flowers, *That Godless Court?*, 117. Many view secularism as a religion. Phillip Hammond, "The Courts and Secular Humanism," *Society* 21/11 (1984): 11; Toscano, *Invisible Religion in the Public Schools*, 17, 46, 131. The Court also prefers to use rather than define "religion," although the position of strict separation demands a clear definition and clear distinction between it and secularity. For the problem of defining religion, see Stephen Strehle, *The Separation of Church and State: Has America Lost Its Moral Compassion* (Lafayette, LA: Huntington House Publishers, 2002), 13–21.
118. This problem causes a philosopher like Richard Rorty to want a political discourse that brackets philosophical justifications since he wants to privilege his own secularity, and his postmodern view of life is unable to justify his or any views. Life and politics would be based on groundless assertions or the will to power, much like Thomas Hobbes' political philosophy. "The Priority of Democracy to Philosophy," in *The Virginia Statute for Religious Freedom*, 261–62; *Philosophy and the Mirror of Nature* (Princeton, NJ: Princeton University Press, 1979), 392–94; Koppelman, "Secular Purpose," 134–35. Certainly, sociologists like Durkheim and Weber reject the notion that reason can eliminate religion and find society's ultimate values beyond the sacred. Chadwick, *The Secularization of the European Mind*, 6–7. The Court clearly engages in some type of metaphysical judgment in trying to distinguish religion and non-religion.

119. *McGowan v. Maryland* 366 US 420, 433–36, 443, 483 (1961).
120. See the first paragraph of the Conclusion for the problems with this type of argumentation in religion and secularity. The Court shows skepticism toward Creation Science, which uses the *argumentum ex ignorantia* when pointing to the sudden and inexplicable appearance of certain things in nature and asserts some sort of miracle created them. This argument of Creation Science is bad because further evidence might explain the phenomenon and no longer need the miracle. *Edwards v. Aguillard* 482 US 600.
121. *Everson v. Board of Education* 330 US 17–18; *Board of Education v. Allen* 392 US 252–53. Of course, these matters exist only within an ethical framework that lowers speed limits to save lives or raises them to save time, that widens the sidewalks to protect children or forgoes the sidewalk to save money.
122. *Allegheny v. ACLU of Pittsburgh* 492 US 625; *Lynch v. Donnelly* 465 US 693.
123. *Wolman v. Walter* 433 US 236; *Mueller v. Allen* 463 US 395.
124. *Wolman v. Walter* 433 US 236.
125. *Zelman v. Simmons-Harris* 536 US 649; *Walz v. Tax Commission of New York City* 387 US 687–89; *Witters v. Washington Department of Services for the Blind* 106 S. Ct. 748 [TBN]; *Everson v. Board of Education* 330 US 25.
126. *Allegheny v. ACLU of Pittsburgh* 492 US 619, 635–36; *Edwards v. Aguillard* 482 US 627–28; *Lee v. Weisman* 505 US 607; *McCullum v. Board of Education* 333 US 231; *Abington Township School District v. Schempp* 374 US 242–43.
127. *Allegheny v. ACLU of Pittsburgh* 492 US 619–20; *Van Orden v. Perry* 545 US 741 (n.4). Brennan recognizes how deeply offensive this inclusive message is to conservative religious groups who refuse to participate in ecumenical services. *Allegheny v. ACLU of Pittsburgh* 492 US 645. The liberal religious bias on the Court seems to gloat over their perception that diversity is growing in America.
128. *McGowen v. Maryland* 366 US 443; *McCreary County v. ACLU of Kentucky* 545 US 869, 874; *Van Orden v. Perry* 545 US 715–16; *Abington Township School District v. Schempp* 374 US 224; *Stone v. Graham* 449 US 41–42.
129. Souter specifically forbids connecting ethics and God together in prayer as deeply offensive. *Lee v. Weisman* 505 US 617.
130. Stephen Strehle, *Egalitarian Spirit of Christianity: The Sacred Roots of American and British Government* (New Brunswick, NJ and London: Transaction Publishers, 2009), 111–13, 134–49. In the early part of the nineteenth century, even those dissenters and Jeffersonian Republicans who espoused a strict separation were forced to back down when confronted with the problem of separating God and morality. They were accused of destroying the moral fabric of society. Hamburger, *Separation of Church and State*, 77.
131. See Albert Einstein, *Ideas and Opinions* (New York: The Modern Library, 1994), 33, 45, 48, 54. Immanuel Kant tries to make reason prescriptive rather than descriptive of the world and his inner subjective appropriation of it. He tries to rescue scientific law (the category of causality) and make it an expression of objective universal reality, but his synthetic *a priori* is considered a failure. He also tries to create a universal moral imperative, but he can never transcend the way his mind happens to work and make it truly prescriptive. Utilitarian philosophers like J. S. Mill try to make ethics a calculating sum, but they are ultimately unsuccessful in establishing the goal or “end” that humans must achieve in determining the

- “means”; or, in the case of Mill, he commits the “naturalistic fallacy” by trying to make our desires “desirable.”
132. O'Connor tries to emphasize in her decisions that the relevant viewpoint is that of a “reasonable observer, fully cognizant of the history, ubiquity, and context of the practice in question.” *Elk Grove Unified School District v. Newdow* 542 US 40. She has little appreciation of her historical bias and ignorance.
  133. I cannot present the details in this chapter, but they are presented in my book *The Egalitarian Spirit of Christianity*. Kennedy says a religious group cannot “persuade the government to adopt an idea.” Brennan says that “one religious denomination cannot be officially preferred over another.” *Lee v. Weisman* 505 US 591, 599; *Larson v. Valente* 456 US 244. These statements are patently false. The Puritans (Congregationalists) have everything to do with the American view of government. Other groups certainly joined them like the Quakers (who grew out of the Puritan movement) and Presbyterians (who were radicalized by them). Even their opponents, the Catholic Church, made significant contributions like the concept of natural/inalienable rights, which grew out of the work of William Ockham, Jean Gerson, and the Decretalists in the late medieval period. See Strehle, *Egalitarian Spirit of Christianity*, chaps. 1–4.
  134. Douglas, writing for the majority, said, “We are a religious people whose institutions presuppose a Supreme Being.” *Zorach v. Clauson* 343 US 313. Conservative members like Rehnquist speak of the close identification of religion with our nation’s history and government but offer few details. *Stone v. Graham* 449 US 46; *Van Orden v. Perry* 545 US 687–88. Brennan acknowledges the early connection but sees religion and the government losing connection over a period of time. The Court sees the development of our society and government in secular terms. *Marsh v. Chambers* 463 US 821–22; *Abington Township School District v. Schempp* 374 US 303–304; Dokupil, “Thou Shalt Not Bear False Witness,” 628.
  135. *Edwards v. Aguillard* 482 US 605; *Van Orden v. Perry* 545 US 725–26; *McCreary v. ACLU of Kentucky* 545 US 881–82; *Zelman v. Simmons-Harris* 536 US 685–86, 718–19. David Hackett Fischer’s work *Albion’s Seed* (New York and Oxford: Oxford University Press, 1989) provides an analysis of the four major waves of immigrants who came to this country in its formative years and shows the specious nature of the Court’s simplistic point of view. See chap. 3, pp. 88, 114 (n.6) for details.
  136. *McCreary v. ACLU of Kentucky* 545 US 883; *Edwards v. Aguillard* 482 US 607; *Meek v. Pittinger* 421 US 372; *Zelman v. Simmons-Harris* 536 US 685–86, 718–19; *Engel v. Vitale* 370 US 432–35. “Divisiveness” is now part of the Lemon test and continually used by the Court to rid the government of religion. *Lemon v. Kurtzman* 403 US 622; *Zelman v. Simmons-Harris* 536 US 718–19. Rather than considering religion the backbone of society, much of the Court considers it the enemy. Even Voltaire would disagree with this assessment. “If God did not exist, it would be necessary to invent him.” “Égyptre,” in *Oeuvres Complètes de Voltaire* (Paris: Garnier Frères, 1877–85), 104.
  137. This certainly would be news to the “Protestants” of the Schmalkald League, who fought for religious liberty in the early sixteenth century, following the admonitions of Martin Luther. It would be news to William Walwyn and the many non-Conformists of Puritan England, including Oliver Cromwell, who dreamed of religious pluralism, or a society founded upon liberty, following Paul’s admonitions in Rom 14. It certainly would be news

- to all those individuals who looked to the example of Jesus as most essential in the development of religious toleration in the sixteenth, seventeenth, and eighteenth centuries. The example of Jesus was followed by the many sectarian and dispensational groups (Anabaptists, Arminians, Baptists, and Levellers) and many of the early champions of toleration (Sebastian Castellio, Desiderius Erasmus, Roger Williams, and John Locke). It was even followed by those who rejected the basic dogma of the church—all still admiring the simple, moral teachings of the carpenter from Nazareth (Diderot, Voltaire, and Jefferson). Both Jesus and Paul emphasized freedom in their ministry in rejecting the heavy-handed legalism of the Pharisees (Mt 11:28–30 and Gal 5:1), and both rejected violence in spreading their message (Mt 5:39 and Rom 12:14–13:5).
138. *Everson v. Board of Education* 330 US 11–13; *Marsh v. Chambers* 463 US 807–8; *Abington Township School District v. Vitale* 374 US 214; *Lee v. Weisman* 505 US 620; *McCreary v. ACLU of Kentucky* 545 US 878–79; *Van Orden v. Perry* 545 US 724–25. The Court points to Madison's defeat of the general assessment in Virginia to support "Teachers of the Christian Religion." The Court concludes that no taxes can go to support religion, even on a nonpartisan basis. *Everson v. Board of Education* 330 US 41–45.
  139. This clearly shows that the majority disagreed with the strict position.
  140. On church/state separation among the Nazis and communists, see Strehle, *Dark Side of Church/State Separation*, 123, 244–48, 307–8, 326–27, 344.
  141. *Ibid.*, 73–78.
  142. *Ibid.*, 101–7.
  143. *Abington Township School District v. Schempp* 374 US 225. Much of the Court speaks of its "neutrality" in regard to religion and irreligion. *Epperson v. Arkansas* 393 US 104; *Rosenberger v. Rector and Visitors of University of Virginia* 515 US 846; *Van Orden v. Perry* 545 US 735; *Walz v. Tax Commission of New York City* 387 US 701–4, 707–8. Some like Rehnquist, Scalia, Thomas, and Burger (to a lesser degree) can prefer religion to non-religion. *Wallace v. Jaffree* 105 S. Ct. 2479, 450 [TBN]; *Edwards v. Aguillard* 482 US 639–40; *Lamb's Chapel v. Center Moriches Union Free School District* 508 US 398–99; *Lynch v. Donnelly* 465 US 683. O'Connor, along with the conservatives, thinks that "sweep[ing] away all government recognition and acknowledgement of the religion in the lives of our citizens...would exhibit not neutrality but hostility." *Allegheny v. ACLU of Pittsburgh* 492 US 623; *Van Orden v. Perry* 545 US 697; *McCreary v. ACLU of Kentucky* 545 US 897–99.
  144. *Lynch v. Donnelly* 465 US 692, 709–11, 717, 725; *Allegheny v. ACLU of Pittsburgh* 492 US 610, 643–44.
  145. *Elk Grove Unified School District v. Newdow* 542 US 46–49.
  146. *Lynch v. Donnelly* 465 US 716–17; *Abington Township District v. Schempp* 374 US 279–81, 294. O'Connor essentially agrees with this sentiment concerning the Pledge. *Elk Grove Unified School District v. Newdow* 542 US 40, 41. Even a conservative jurist like Rehnquist engages in the claptrap. "Reciting the Pledge, or listening to others recite it, is a patriotic exercise, not a religious one; participants promise fidelity to our flag and our Nation, not to any particular God, faith, or church." *Ibid.*, 31. It might be true that certain matters are drained of religious significance over a period of time (e.g., names of cities like Los Angeles and San Francisco), but the Court's secularization is hardly neutral; it sponsors this worldview through government and public education. It is not neutral to favor non-religious

- expression of matters. Koppelman, "Secular Purpose," 109, 153; Rafael Palomino, "Legal Dimensions of Secularism: Challenges and Problems," *Contemporary Readings in Law and Social Justice*, 4/2 (2012): 211; Toscano, *Invisible Religion in the Public Schools*, 77–78; Michael McConnell, "Equal Treatment and Religious Discrimination," in *Equal Treatment of Religion in a Pluralistic Society*, Stephen Monsma and J. Christopher Soper (eds.) (Grand Rapids, MI: William B. Eerdmans Publishing, 1998), 33. Cf. *Epperson v. Arkansas* 393 US 103–4.
147. Garey, *Defending Everybody*, 24–26.
148. Samuel Walker, *In Defense of American Liberties: A History of the ACLU* (Carbondale and Edwardsville, IL: Southern Illinois University Press, 1990), 11–12, 17, 28–29; Krannawitter and Palm, *A Nation Under God?*, 60; Donohugh, *The Politics of the American Civil Liberties Union*, 28–29; Garey, *Defending Everybody*, 35.
149. Garey, *Defending Everybody*, 43; Walker, *In Defense of American Liberties*, 39–40.
150. *Ibid.*, 55, 70.
151. Krannawitter and Palm, *A Nation Under God?*, x; Garey, *Defending Everybody*, 91–93.
152. Roger N. Baldwin, "Freedom in the U.S.A. and the U.S.S.R.," *Soviet Russia Today* (Sept. 1934): 11; *Liberty Under the Soviets* (New York, Vanguard Press, 1928), 4; Cletus Daniel, *The ACLU and the Wagner Act* (Ithaca, NY: Cornell University, 1980), 81, 129–30; Donohue, *The Politics of the American Civil Liberties Union*, 138, 230; *Twilight of Liberty*, 134; Krannawitter and Palm, *A Nation Under God?*, 62–63; Garey, *Defending Everybody*, 93. He would confess at times, "I am for socialism.... I seek the social ownership of property, the abolition of the propertied class and sole control of those who produce wealth. Communism is the goal." In an article for *Soviet Russia Today*, he says that the "class struggle is the central conflict of the world; all others are incidental." While he prefers non-violent means of creating a socialist state, he recognizes that "violent tactics" against the ruling class are necessary and "some suppression" of civil liberties are necessary to achieve "the only ground on which liberty really matters—economic." "Thirty Years Later" (Harvard Class Book of 1935), quoted in Peggy Lamson, *Roger Baldwin: Founder of the American Civil Liberties Union* (Boston, MA: Houghton Mifflin Co., 1976), 192; Krannawitter and Palm, *A Nation Under God?*, 63. Baldwin follows this American version of the socialist program in his work on *Liberty Under the Soviets* (1928). He continues to emphasize civil liberties, preferring to work at a slower pace than compromise ethical standards through revolutionary tactics, but he lauds the Soviet experiment in accordance with the title of the book as seeking and accomplishing the same ultimate goal. He recognizes and lists a number of problems with Soviet policy in compromising civil liberties but proceeds to provide a favorable review of its overall direction, considering the "basic economic freedom of workers and peasants and the abolition of privileged classes based on wealth" more significant than these other issues. The Soviet policy represents the "interests of the overwhelming majority of the population" and the "most heroic piece of social reorganization in history." In contrast to the suppression of cultural life under the Czars, the many nationalists of the Soviet Union are enjoying "unparalleled freedom" at the present time, and much of the criticism directed at the Communist Party is based upon exaggerated accounts of its methods, which fail to appreciate what is requisite in leading a successful revolution. Stalin and the majority of the Party are steering a "middle course between right and left extremes," exhibiting an

“amazing capacity for self-criticism,” and displaying a “freedom from the outside dictation of a propertied class practically eliminat[ing] the corruption and big graft which marked the czar’s regime, and which, let Americans bear in mind, mark politics in the United States.” Baldwin appears to endorse the Politburo with these types of comments and even patronizes the tactics of its state police (G.P.U.), given the ongoing threat of foreign governments and counter-revolutionaries like the Mensheviks or Social-Democrats. While he clearly prefers the more genteel method of a pacifist in accomplishing the goal, he accepts the Soviet rationale as a way of justifying the means and tends to believe the party line that speaks of its measures as only transitional, imposed by the necessity of a temporary dictatorship and meant to dissipate with the dawning of a classless, democratic state. Baldwin, *Liberty Under the Soviets*, 2–6, 11–12, 19–23, 34–35, 58–60, 72, 134, 195–96, 206–209, 219, 234–35, 272.

Of course, his concern for the restoration of civil rights shows little interest in the religious community. Baldwin speaks of the Soviet censorship of religious material, the end of religious ceremonies from public view, and the promotion of anti-religious propaganda among Jews and Christians by the state, without expressing much indignation. All this seems justified in his eyes because of the need to rid the “peasant masses” from “primitive superstitions” and “childlike belief” in “miracles,” “rites,” and “prayer” through inculcating a social scientific view of life. He even accepts the persecution of the Orthodox Church as a necessary measure in ending its former status as the church/state monopoly and undoing its place as a bastion of anti-communist sentiment. *Ibid.*, 74–75, 91–100. In his summation, he writes,

[I]t is evident that religious liberty under the Soviets is vastly greater than it was under the czar, despite the fact that the czar was for religion and the Soviets are against it. Freedom for anti-religion is naturally much greater than anywhere else in the world, since it is officially encouraged and directed as part of the Communist program—although it is still a weak force except as it opposes scientific agriculture to peasant superstition.

The sectarians, evangelicals, and non-Christian oriental religions enjoy about as much freedom as in other countries, and more than in most with a state church. The old Orthodox and Roman Catholic churches alone suffered severe restrictions, primarily due to their anti-Soviet political activity. Such restrictions on general religious activity as exist, are not aimed at religious freedom. They are restrictions common to the licensing of all private organizations and the censorship of all journals and books in the interest of promoting the Communist program.

On the other hand, the state is freer of religious influence than in any other country in the world—which is something to be said even in comparison with the United States, where the legal separation of church and state does not prevent the interference of sectarian interests in education—for instance through the prohibition of teaching evolution and through the compulsory reading of the Protestant Bible in public schools, to say nothing of the power of religious prejudice in elections. *Ibid.*, 103–104. Baldwin endorses the Soviet doctrine of “complete separation of church and state,” hoping to eliminate the influence of the church as an effective force in society and endorse his own social “scientific” viewpoint through the power of an expanding state. *Ibid.*, 91, 97.

153. Walker, *In Defense of American Liberties*, 52, 132; Robert C. Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union* (New York: Columbia University Press, 2000), 176; Krattawitter and Palm, *A Nation Under God?*, x, xiii, 61.
154. Garey, *Defending Everybody*, 74–76, 103–4, 107, 131. The Smith Act of 1939 made it illegal to advocate the overthrow of the government or even join a group that advocated revolution. Baldwin continued to defend the civil liberties of communists, but he did not want them on the board. In 1968, the ACLU rescinded the decision and reinstated Flynn a decade later. *Ibid.*, 111–12. Since the 1960s, the group began a more concerted march to the left and has provided high marks for left-wing senators and representatives in public. Today it still claims to have no specific political orientation as a group, but most of their people clearly have left-wing sympathies. Donohue, *The Politics of the American Civil Liberties Union*, 3–5; *Twilight of Liberty*, ix–xi.
155. When the very concept of civil liberties was established in the Middle Ages by William Ockham and the Decretalists, it rested upon the strong belief in property rights. These scholastics withstood the Pope's claim to a "fullness of power" over the possessions of his subjects and believed that all human beings were entitled to their life, liberty, and possessions as an inalienable or natural right; and so, it would seem to many of Baldwin's critics that a civil libertarian should defend property rights as a necessary hedge against the power of government controlling and determining the thought, decisions, and activities of the citizens, but it appears as if most of the ACLU's activities have defended much the opposite. Strehle, *The Egalitarian Spirit of Christianity*, 137–41; Ockham, *De Imperatorum et Pontificum Potestate*, 4.7–11; 7.157–60; 26.36–41; *Breviloquium de Principatu Tyrannico*, 1.3, 26–28; 4.10–11; Brian Tierney, *The Idea of Natural Rights* (Atlanta, GA: Scholars Press, 1997), 184–85, 190–91. Ockham's works are found in *Opera Politica*, Hilary Seton Offler (ed.) (Manchester: Manchester University Press, 1963).
156. This is not without duplicity. For example, the ACLU denies the Boy Scouts, Catholic schools, and the Salvation Army the right to refuse homosexuals. Donohue, *Twilight of Liberty*, 118–19, 130–33. The ACLU would never think of suing Ivy League schools for practicing religious and political discrimination against right-wing intellectuals.
157. Barry Lynn, Marc D. Stern, and Oliver S. Thomas, *The Right to Liberty: The Basic ACLU Guide to Religious Rights* (Carbondale and Edwardsville, IL: Southern Illinois University, 1995), 1–2, 11–12, 15, 20, 25, 73–74; Krattawitter and Palm, *A Nation Under God?*, 1–2; Donohue, *The Politics of the American Civil Liberties Union*, 304–305. In addition, the ACLU rejects "shared time" (public students going to religious schools for education) and "released time" (students from religious schools attending public schools to meet state standards). It also rejects the tax-exempt status of churches but not for non-profit organizations. Donohue, *The Politics of the Civil Liberties Union*, 305–306; *Twilight of Liberty*, 98; Lynn, Stern, and Thomas, *The Right to Liberty*, 44. The pretext for many of its cases is the offense religion presents to certain people, although the ACLU shows less concern about the offense generated by anti-religious material. Lynn, Stern, and Thomas, *The Right to Liberty*, 14, 16, 24–25.
158. Sayyid Qutb, *Social Justice in Islam*, John B. Hardie (trans.) (New York: Octogan Books, 1970), 2–11, 245–47, 258; *Milestones* (Indianapolis, IN: American Trust Publications, 1990), 6, 119. Qutb is the godfather of modern Islamic terrorism in the Middle East. He

certainly says a number of disturbing things that remain worthy of condemnation from a western viewpoint, but it is not as if everything he says is false. Unfortunately, westerners spend too much time speculating over the motives of the jihadists rather than reading their actual words. Most people prefer to condemn rather than understand their enemies; Understanding them would mean “blaming the victim” or mitigating the responsibility of their enemies, who must be condemned as evil. This attitude makes issues difficult to resolve.

