American "Religious Right" Vs Secular Neutrality In U. S. State And Federal Governments

By
J. O. Hosler, M.A., Th.D.

How involved should the local church be in active, partisan politics? Can a Christian governmental official practice practical neutrality on religion while functioning in office when, at the same time, he is of a definite belief when it comes to his own religious views? What is the argument that the truth will do its best work in the world within an arena of free thought? Dr. Hosler has spent decades collecting these resources and has now compiled them in this single document. Enjoy as you read.

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TABLE OF CONTENTS

Preface

Many new and informative books have been published from the 1980s to the present that have theologically challenged the world view of dominion theology, otherwise known as *reconstructionism* [i.e. *Getting the country back to the religion that it was founded upon*]. The authors have given evangelicalism a thorough response to the error that America should be based upon an established Christianity with the Bible as the *unwritten constitution*. However, many of the books were only meant to be theological polemics against dominion theology.[1]

Unfortunately, most people in the unbelieving world are not interested in reading evangelical theology. On the other hand, too many Christians seem totally unconcerned with the civil rights of unbelievers. This is a cause of deep regret as the situation results in a breakdown of witnessing opportunities in the secular world around them.

In addition to having served in the Baptist pastorate for most of my life, I have been a history and philosophy instructor at a secular college in Indianapolis. Although the Gospel is true all by itself, I have found that most unbelievers will not believe my Gospel unless they can believe me. I cannot establish a believable, redemptive relationship if I only concern myself with the political rights of Christians. The Apostle Paul said: *I am debtor both to the Greeks, and to the Barbarians; both to the wise, and to the unwise. So, as much as in me is, I am ready to preach the gospel to you that are at Rome also.*[2] I, too, consider myself a debtor to the lost world and must speak out for the human dignity of every person created in the image of God—*Whoever sheds the blood of man, by man shall his blood be shed; for in the image of God has God made man* (Gen. 9:6).

Realizing that many good books have been written for Christians on the subject of religion and politics, I thought it wise to produce a work that can be read by Christians and non-Christians in order that they may have an intelligent and informed opinion on the issues surrounding this conflict. For this reason I must make a few qualifying remarks to the Christian reader. Because I am addressing the secular world as well, there may be times when the Christian will question my Christianity. May I assure the reader that I am a biblically orthodox believer and make no apologies for this. So, a caution to the reader, this author believes in the five fundamentals of the faith plus the sole-authority of Scripture for faith and doctrine. He believes that eternal salvation is only by faith in the finished work of Christ for our sins by His death on

[1]See H. Wayne House and Thomas Ice, Dominion Theology: Blessing or Curse?, (Portland, Oregon: Multnomah Press, 1988).

[2]Romans 1:14, 15 [All Scriptural quotations in this work will be from The Holy Bible: New International Version, (1984). Grand Rapids, MI: Zondervan.

the Cross of Calvary. Therefore, the reader is encouraged not to doubt his faith when he finds it necessary to quote from deists, atheists, liberals, evolutionists, etc. There is a difference between compromising with those who believe falsely and co-beligerence with them against a common evil or dangerous point of view.

Nonetheless, this present work is designed to inform secularists and nonbelievers that myself and others like me are willing to defend their freedom of conscience as well as our own. It is my hope that a knowledge of the subsequent material will create trusting and redemptive relationships between Christians and nonbelievers that will result in opportunities for evangelism.

The present work is theological as well as historical, legal and philosophical. Although designed primarily for the secular mindset, it is my prayer that the concerned Christian will also become equipped by the proceeding research. Again, the Apostle Paul spoke of establishing relationships with the lost when he said: *If some unbeliever invites you to a meal and you want to go, eat whatever is put before you without raising questions of conscience*.[3] This is not speaking of spiritual fellowship, but of trusting relationship.

If I appear to be setting forth a double standard, it is because this is my intention. Paul spoke of keeping company with lost sinners while breaking fellowship with professed Christians who would commit some of the same sins: *I have written you in my letter not to associate with sexually immoral people— not at all meaning the people of this world who are immoral, or the greedy and swindlers, or idolaters. In that case you would have to leave this world. But now I am writing you that you must not associate with anyone who calls himself a brother but is sexually immoral or greedy, an idolater or a slanderer, a drunkard or a swindler. With such a man do not even eat.* [4] If Christ so loves the lost world, Christians must learn to view its citizens, not as the enemy, but as the victims of the enemy.

[3] 1 Corinthians 10:27, NIV.
[4] 1 Corinthians 5:9-11, NIV.

Introduction

Dormant for more than three centuries, the roots of puritanism are showing new signs of life, writes J. M. Corbett, associate professor of philosophy at Ball State University. *The new religious-political right is, in many ways, the puritanism of the eighties. Its goals are the same as those of its early forebears, its methods are strikingly similar....*[5] Seminaries sometimes call it *dominion theology, theonomy,* and *postmillinnialism,* the media call it the *new religious right,* but some call themselves the *Christian Reconstruction Movement.* What are their roots? What is their impact on the American political system? Finally, must their historical development be understood and their conclusions challenged in order to preserve freedom of conscience in the United States?

Before further definition, we must be careful to not over-generalize on the preceding labels. Not all postmillennialists embrace the reconstructionist view of dominion theology. Many premillennialists and amillennialists do hold such a view, while other segments of each do not. Also, reconstructionism is held by only segments of evangelicals and fundamentalists. Therefore, when this paper refers to the labels *theonomy*, *postmillennialism*, *new religious right*, and *reconstructionism*, it is only referring to those religious segments which adhere to the view that America is founded on the Christian religion and that the Bible is the *unwritten constitution* of our land. The reader should also note that this paper is discussing a commonly held error and not a nationwide, organized conspiracy. The error, regardless of its title, will be addressed in relation to its challenge to America from Colonial times to the present. The paper will conclude by presenting an alternative to this error, which would serve to preserve the civil rights of any American regardless of his philosophical extremes.

Dominion means *to rule* and it is affirmed by the Christian reconstruction movement that this was God's stated purpose for the creation of Adam (Gen. 1:26). Adam was commissioned to "*…Be fruitful and increase in number; fill the earth and subdue it* (Gen. 1:28). Subdue is a sister word appearing in the text meaning *to bring under control*. In other theological circles this is called the *Dominion Covenant* or the *Cultural Mandate*.

David Chilton, one of the foremost scholars of Christian reconstructionism, states that spirituality's basic characteristics is dominion: *Spirituality does not mean retreat and withdrawal from life; it means dominion*.[6] Another popular exponent is Gary North, who states that

[5]Julie Mitchell Corbett, "The New Puritanism: We Must Say 'No' Again," in The Humanist, (Sept/Oct) 1988, Vol. 48, pp. 19-23.

[6]David Chilton, Paradise Restored: An Eschatology of Dominion, (Tyler, Texas: Reconstruction Press, 1985), p.4. Chilton is best known for his book, Productive Christians

Dominion is still God's assignment to man...God is in charge, waiting for His people to challenge the rulers of the earth and take the steering wheel from them....The battle for the earth is still going on.[7]

Reconstructionist Kenneth Gentry states the issue clearly when he affirms:

> The point of Christian reconstructionism that is a main bone of contention in the wider debate today, is not that it teaches the victory of God's Kingdom on earth (most standard dispensationalists teach that there will be almost 1000 years of such victory), but that it teaches the victory on earth during and continuous with our present era.[8]

George Grant, yet another advocate of this view, declares that the Christian calling is *world conquest. That is what Christ has commissioned us to accomplish.... Thus, Christian politics has as its primary intent the conquest of the land – of men, families, institutions, bureaucracies, courts, and governments for the Kingdom of Christ.*[9]

Evangelical theologian Charles C. Ryrie states that:

> In the latter part of this century an interesting Phenomena has developed. Some former amillennialists have become postmillennialists because of their belief in theonomy. Theonomy is the state of being governed by God. Theonomists promote subduing the earth by means of science, education, the arts, and all other pursuits in order to effect God's dominion over all things. For some this means imposing the Law of the Old Testament on life today not only in moral matters but also in governmental, financial, and others.... Thus, many reformed theologians who

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in an Age of Guilt Manipulators, a response to Ronald J. Sider's Rich Christians in an Age of Hunger, regarded by Reconstructionists as a socialist tract which misinterprets Scripture to justify its arguments. Chilton also wrote Paradise Restored: An Eschatology of Dominion, a major statement of Reconstructionist postmillennialism.

[7]Gary North, Liberating Planet Earth, (Froth Worth: Dominion Press, 1987), pp. 23-24. North is the most controversial of the leading Reconstructionists and was for several years editor of The Journal of Christian Reconstruction.

[8]Kenneth L. Gentry, Jr., "The Reduction of Christianity," Chalcedon Report, (April-May, 1988), Vallecito, Calif., p. 31. The oldest Reconstructionist newsletter, Edited by Garry J. Moes.

[9]George Grant, The Changing of the Guard: Biblical Principle for Political Action, (Fort Worth: Dominion Press, 1987), pp. 50-51. Grant has been a pastor for over 10 years at Believers Fellowship in Humble, Texas.

> strongly support the use of the Law and who were amillennial have switched to embrace postmillennialism as the goal of their theonomistic program.[10]

The theological view of postmillennialism is said to have originated with Daniel Whitby (1638-1725), an English theologian who contended that the millennium is yet future, but will be set up on the earth by present agencies. Postmillennialism is the belief that the second advent of Christ is to follow the setting up of a man-made millennial rule of the law of God.[11]

The majority of the most recent textbooks on political science and political sociology have at least one chapter dedicated to an analysis of the conservative Christian right and its forceful impact on American politics. One text of the late 1980s states:

> During the past 15 years, conservative evangelical churches have experienced a substantial increase in membership. The leaders of these churches have become active participants in the political arena for the first time in recent history...Organizations such as the Moral Majority and the Christian Broadcasting Network have attempted to gain political backing for their views. Indeed, appealing to conservative Christians was a significant element in the Republican campaign strategy in the presidential elections of 1980 and 1984. This was noticeable in their voter registration drives in the South.... They argue that the United States is becoming a secular culture and is discarding the moral values which were the bedrock of personal identity, social stability, and political community. Somehow, the minority of Americans who do not believe in God have usurped power and used their positions to subvert traditional values and the beliefs of what Reverend Falwell calls the "moral majority."[12]

Thus, the Christian right is an important phenomenon, one whose growth and development helps us to understand broader social trends in the recent past. 1988 Presidential

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[10]Charles C. Ryrie, Basic Theology: A Popular Systematic Guide To Understanding Biblical Truth, (U.S.A., Canada, England: Victor Books, 1987), p. 444. Amillennialism is the belief that there will be no literal 1,000 year reign of Christ on Earth. Premillennialism is the belief that the second coming of Christ will occur before the establishment of a literal millennium.

[11]Lewis Sperry Chafer, Systematic Theology, (Dallas, Texas: Dallas Seminary Press, 1964), Vol. IV, pp. 280-281.

[12]Robert D. Holsworth & J. Harry Wray, American Politics and Everyday Life, (New York: Macmillan Publishing Company, 2nd Edition, 1987), pp. 145-146.

candidate Pat Robertson demonstrated often that he had been influenced by reconstructionists. In Tyler, Texas, he announced *The ultimate elimination of Communist tyranny from the face of the earth,* and then he vowed *to bring God back into the classrooms of America*. These words brought the crowd of 800 leaping to their feet, shouting approval.[13] In a keynote address he gave at DALLAS '84, a convention for Maranatha Campus Ministries, he called for his listeners to imagine a world free of godlessness, evil, and degradation, a world where righteousness prevails and God's Word and those who teach it are welcomed and honored. Then he said:

> Now you say, 'That sounds like the Millennium.' Well maybe some of it does, but some of it we're going to see. These things can take place now in this time...and they are going to because I am persuaded that we are standing on the brink of the greatest spiritual revival the world has ever known![14]

One major political sociology textbook takes specific note that, *The conservative resurgence of the 1980s has resulted in the rise of new conservative organizations and alliances, known collectively as the New Right.*[15] The book recognizes that such organizations like the Moral Majority, founded by Reverend Falwell and renamed the Liberty Federation in 1986, plus the Christian Coalition and others, seek to imbue political and educational institutions with Christian values grounded in biblical authority.

> Whatever the magnitude of its constituency, the New Right has had an undeniable influence on American government in the 1980s. This influence is buttressed by an array of conservative think tanks supported by major corporations and private financiers such as Exxon, Dow, Chase Manhattan, and Joseph Coors. Thus, the populist elements of the New Right are galvanized and fostered by a powerful array of elite-backed institutions.[16]

The Christian right and leaders like Falwell and Robertson constantly speak of getting America back to the religion that it was founded upon. To what historical references might they be referring when they speak of our Christian foundations? The pretext for this entire discussion will be the danger of advocating the Bible as the *unwritten constitution* of the United States. Most advocates of reconstructionism seem unable to realize that a distinction cannot be made between an established constitutional Bible and an established interpretation of that same Bible.

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[13]Montgomery Brower, "In the Name of the Lord," People Weekly (March 7) 1988, 29:106-111.

[14]Albert James Dager, "Kingdom Theology," Media Spotlight, part 3, 1987, pp.12-13.

[15]Arnold K. Sherman & Aliza Kolker, The Social Basis of Politics, (Belmont, California: Wadworth Publishing Company, 1987), p. 104.

[16]Ibid. Arnold K. Sherman & Eliza Kollker, p. 104.

What reconstructionism really means is that a particular interpretation of the Bible must be made the supreme law of the land.

Rousas J. Rushdoony has perhaps been the most prolific writer for the movement. He was born in New York City in 1916, the son of Armenian immigrants. He traces his ancestry through an unbroken succession of pastors to the fourth century A.D. He completed undergraduate and graduate work at the University of California and earned his Ph.D. at Valley Christian University. His first book, *By What Standard*? was published in 1959. It was followed by 29 other volumes. He established the Chalcedon Foundation in 1965 at Vallecito, California, which now has its own publishing division. Among his staff and board of affiliates have been educational historian Samuel J. Blumenfield, Washington Times columnist and television commentator John Lofton, and investment counselor R. E. McMaster, Jr. One of his closest associates was Otto Scott, senior editor of Conservative Digest.

Rushdoony's most significant publication is his two-volume work, Institutes of Biblical Law. This is a 1600-page study of the relationship of the Ten Commandments and modern society. The publication of volume 1 in 1973 marked a turning point in the reconstructionist movement as it attracted the attention of the evangelical scholastic community. In this work he states that the death penalty is required by Scripture for a number of offences including murder, striking or cursing a parent, kidnapping, adultery, incest, bestiality, sodomy or homosexuality, unchastity, rape, witchcraft, incorrigible delinquency of children, blasphemy, Sabbath breaking, propagation of false doctrines, sacrificing to false gods, denying the supremacy of the Old Testament Law, and failing to restore the pledge of bailment.[17]

While claiming to defend the religion of the true God, reconstructionist thinking may very well be the greatest challenge to religious freedom in the history of the United States. For this reason religious philosophers must examine the premises of this movement and offer alternative proposals for political development which would neither establish religion nor violate the basic principles of religious freedom in the United States. It is my hope that the proceeding chapters will help to facilitate such a challenge to Dominion theologians.

This present work is not a history of religion in America. The purpose of this paper is to trace the historical conflict between dominion theologians and the idea of practical [not individual] secular neutrality in Government. There will be an explanation regarding the influence of Calvin's reformed concept of theonomy; the view of English Common Law and the effects of both on the structure of Colonial Puritanism.[18] Note will be taken of the most

[17]Rousas J. Rushdoony, The Institutes of Biblical Law, (Phillipsburg, N.J.: Presbyterian & Reformed Publishing Co., 1973), p. 235.

[18]*Theonomy* refers to the rule of God. Most theists believe that God is Sovereign and therefore rules according to His providential will. However, "theocracy" is a reformed concept of *theonomy* which refers to a government of a state which claims to be under the

prominent sects of Christianity in America and their participation in the contest between church and state. It will be interesting to note that the Baptist motive for participation in the Revolutionary War was significantly different than that of the mainstream religious sects.

There will be an investigation of the American Enlightenment, its influence on the French Revolution, and the impact of the latter on Americans. The importance of Deists and religious liberals among the Framers of the Constitution will be noted with their concepts of natural law.

Because of the current debate over "original intent," of Madison's First Amendment to the U.S. Constitution, an analysis of Jefferson's and Madison's struggles to establish religious freedom in Virginia will be the proper foundation for the discussion.

This will lead to an analysis of how the prohibitions of the Establishment Clause in the First Amendment have been incorporated into the Fourteenth Amendment by the Supreme Court since the 1940s. There will be a survey of the cleavage in the Supreme Court regarding interpretation and application of the Establishment Clause. Accommodationists on the Bench favor government accommodation of religion, while strict separationists advocate exactly what their label implies – strict separation of church and state, from the standpoint of formal neutrality [not individual, personal neutrality]. No one is personally neutral yet government officials can participate in a government body that is neutral in practice and procedure. Although the accommodationists are not dominion theologians, they have been an efficient point of contact in winning the support of the new religious right for the Republican Party. The Supreme Court debate revolves around those who argue for a current relativistic interpretation and those who suggest the possible need to restructure the wording in the Establishment Clause altogether.

In order to comprehend dominion theology, it will be important to survey its American historic goals through an observation of such campaigns as Manifest Destiny, God in the Constitution movement, the Scopes trial, Sunday closing laws, Prohibition, "In God We Trust" on coins, religious oaths of office, "under God" in the Pledge, prayer and Bible reading in the public schools, and federal tax subsidies for religious objectives. The culmination of this survey will be an analysis of the emergence of the new religious right in the 70s and 80s forward. What are its contentions and intentions, and what role did it have in the 1980 and every subsequent presidential election?

This paper will conclude with a defense of the proposal that practical/formal religious neutrality is the best policy for American government. The neutrality doctrine will be stated and its main proponents will be documented.

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immediate direction of God. It might be a government by priests or by an ecclesiastical institution claiming to be divinely directed. In some cases the divine direction would be an established interpretation of the Bible rather than by direct revelation.

CHAPTER 1

European And American Roots Of Dominion Theology

The Protestant Reformers And Civil Government

During the Reformation, John Calvin extended the authority and duty of civil government to *Cherish and support the external worship of God, to preserve the true doctrine of religion, to defend the constitution of the Church, and to regulate our lives in a manner requisite for the social welfare*[1] This was the pretext upon which persecution by the State was justified. Offenses against the Church or the State were punishable by fines, imprisonment, exile, and, if necessary, by death. On this ground, the execution of Servetus and other heretics was justified. According to church historian, Philip Schaff, Calvin aimed at the sole rule of Christ and His Word both in Church and State, but without mixture and interference. The law for both Church and State, for Calvin, was the revealed will of God in the Holy Scriptures. Calvin's theocracy was based upon the sovereignty of the Christian people and the general priesthood of believers.[2]

The Puritans And Colonial Government

Reconstructionists consider the Puritans to be the decisive illustration of a Christian society that was theonomic. Bahnsen asserts:

> The penal commandments of the law of God needed to be enforced by godly magistrates, for to fail in this matter was to violate God's righteous demand. The positive attitude of the Puritans toward every stroke of God's law led them to oppose antinomianism in both theology and politics.[3]

It is important therefore, from the above premise, to attempt a primary observation of the social structure in the early American Puritan colonies relating to the established church and state.

Puritans In Old England

[1] Philip Schaff, History Of The Christian Church, (Grand Rapids, Michigan: Wm. B. Eerdmans Publishing Company, 1972), Vol. 8, p. 462.

[2] Ibid. Schaff, Vol. 8, pp. 471-473.

[3] Greg Bahnsen, Theonomy in Christian Ethics, (Phillipsburg, N. J.: Presbyterian and Reformed Publishing Co., 1984), pp. 549-53. Bahnsen states that all of the Scriptures of the Mosaic penal code should be applied directly to American civil law.

However, before proceeding with such an objective, it will be advantageous to examine the philosophical and legal roots of Puritanism in Old England. Sir William Blackstone (1723-1780) was an English jurist who in the 1760s wrote a famous work called *Commentaries On The Law Of England*. By the time the *Declaration of Independence* was signed, there were probably more copies of his commentaries in America than in Britain. His works shaped the perspective of American law at that time and will serve to enlighten the reader regarding the English background of colonial Puritan political thought. In Chapter V of his *Commentary*, Blackstone lists the offences against God and religion in English law such as apostasy; failing to express belief in a future state of rewards and punishments when taking judicial oaths; heresy; reviling the ordinances of the Church; non-conformity to the worship of the Church; absence from Divine worship; gross impieties; blasphemy; cursing; witchcraft and sorcery; Sabbath-breaking; drunkenness; open lewdness and bearing bastard children.[4]

Colonial Virginia

The Virginia Assembly of 1619 was the first legislative assembly to convene in America.[5] The assembly was determined that only certain *Christians* would be entitled to equal rights and equal protection under the law. The Church was required to report all pertinent congregational statistics to the government:

> (Tuesday, August 3, 1619) All ministers in the colony shall once a year, namely in the moneth of Marche, bring to the secretary of Estate a true account of all christenings, burials and marriages upon paine, if they failed, to be censured for their negligence by the Governor and Counsell of Estate; likewise where there be no ministers, that the commanders of the place doe supply the same duty.[6]

This would have been an efficient program of recordkeeping that would eliminate the need for two sets of records as the Church shared its statistics with the state. However, the proceedings further extended absolute control over the ministerial function within the established religion of the colony:

> All ministers shall duly read divine service and exercise their ministerial function according to the Ecclesiastical laws and orders of the Church of England, and every Sunday in the afternoon shall

[4] William Blackstone, Blackstone's Commentaries On The Law, Edited by Bernard C. Gavit, Dean, Indiana University School of Law (Washington, D.C.: Washington Law Book Co., 1941), pp. 770-779.

[5] "Virginia Assembly of 1619:" Proceedings, in Charles E. Hatch, Jr., America's Oldest Legislative Assembly, (Washington: National Park Service Enterprises Series, History No. 2, Revised, 1956), pp. 43, 44.

[6] "Virginia Assembly, Tuesday, August 3, 1619" Proceedings, in Frank Donovan, Mr. Madison's Constitution: The Story Behind The Constitutional Convention, (New York: Dodd, Mead And Company, 1965), p. 104.

> Catechize such as are not yet ripe to come to the communion. And whosoever of them shall be found negligent or faulty in this kind shall be subject to censure of the Governor and Counsel of Estate.[7]

The Virginia Assembly also determined that the Church would become the established police force and court of law for the colony:

> If any person after two warnings, doe not amende his or her life in pointe of evident suspicion of incontincy or of the commission of any other enormous sins, that then he or she be presented by the Churchwardens and suspended for a time from the church by the minister. In which interim if the same person do not amende and humbly submit him or herself to the Church, he is then fully to be excommunicate and soon after a writ or warrant to be sent from the Governor for the apprehending of his person and seizing on all his goods.[8]

Church attendance was mandatory by Virginia law and unexcused absenteeism was subject to fines levied by the church itself:

> All persons whatsoever upon the Sabboath daye shall frequent divine service and sermons both forenoon and afternoon…And every one that shall transgress this law shall forfaicte three schillings a time to the use of the Church, all lawful and necessary impediments excepted.[9]

The General Baptist Committee met in Virginia and discussed whether the new Constitution made sufficient provision for the secure enjoyment of religious liberty, on which it was agreed unanimously, that, in the opinion of the General Committee, it did not.[10]

Plymouth Colony Civil Law

Plymouth Colony passed a law in 1658 that *No Quaker Rantor or any other such corrupt person shall be admitted as a freeman of this corporation.* Maryland, originally settled by Catholics, permitted freedom of religious worship in numerous Protestant sects, but banned Unitarians and Jews. Freethinkers denying *our Savior Jesus Christ to be the source of God* were subject to confiscation of property or death. In 1700, Pennsylvania enacted legislation which

[7] Ibid. "Virginia Assembly, 1619" in Donovan, p. 104.

[8] Ibid. "Virginia Assembly, 1619" Proceedings, in Donovan, p. 104.
[9] Ibid. "Virginia Assembly, 1619" Proceedings, in Donovan, p. 104.
[10] Ibid. Donovan, p. 104.

allowed religious freedom to only those who believed in the God of the Bible, but made Bible reading and church attendance compulsory.[11]

Connecticut Colonial Law

The *Fundamental Orders Of Connecticut, (1639)* expressed belief that an ordered society could not exist apart from an established system of civil religion:

> Forasmuch as it has pleased the Almighty God by the wise disposition of his Divine Providence so to order and dispose of things that we the inhabitants and residents of Windsor, Hartford and Wethersfield are now cohabiting and dwelling in and upon the River of Connecticut and the lands thereunto adjoining; and well knowing where a people are gathered together the word of God requires that to maintain the peace and union of such a people there should be an orderly and decent government established according to God…[12]

Maryland Colonial Law

In 1649 the Maryland *Act Concerning Religion* stated:

> …That whatsoever person or persons within this province and the islands thereunto belonging shall from henceforth blaspheme God, that is curse Him, or deny our Savior Jesus Christ to be the Son of God, or shall deny the Holy Trinity the Father, Son and Holy Ghost, or the Godhead of any of the said three Persons of the Trinity or the unity of the Godhead, or shall use or utter any reproachful speeches, words or language concerning the said Holy Trinity, or any of the said three persons thereof, shall be punished with death and confiscation or forfeiture of all his or her lands and goods to the Lord Proprietary and his heirs…[13]

Virginia Religious Laws

[11] Cohen, Schwarts and Sobul, The Bill Of Rights: A Source Book, (New York: Benziger Brothers, 1968), pp. 51, 252, 253.

[12] Francis N. Thorpe, ed., The Federal and State Constitutions, modernized ed. (Washington: Spelling Publication, 1909), Vol. 1, p. 519.

[13] Review and Herald Publishing Association, American State Papers on Religious Freedom, (Washington, D. C., 1949), pp. 43-47.

Years earlier, the Virginia Colony had passed the *Virginia Laws Divine, Moral, and Marital (1614)* which, under article 6, set forth three stages of discipline for Sabbath-breaking:

> For Sabbath-breaking the offence brought the stoppage of allowance, the second, whipping; and the third, death.[14]

Post Revolutionary Colonial Laws

After the Revolution, Pennsylvania required a man to be a monotheist and believe in a future state of rewards and punishments in order to hold state office. New York's Constitution of 1777 excluded all Catholics from State office. The same was true of New Jersey's Constitution in 1776 and also those of Maryland, New Hampshire, North Carolina and Vermont.[15]

Roger Williams and Rhode Island Law

Roger Williams (1603-1683), founder of Rhode Island, seems to be the exception to this concept of established religion. In a late Nineteenth Century devotional book he is quoted as follows:

> The Public or the Magistrates may decide what is due from men to men, but when they attempt to prescribe a man's duty to God, they are out of place, and there can be no safety; for it is clear that if the magistrate has the power, he may decree one set of opinions or beliefs today and another tomorrow, as has been done in England by different kings and queens, and by the different popes and councils in the Roman Church; so that belief would become a heap of confusion.[16]

In a letter to the Town of Providence dated (January 1655) Roger Williams advocated the revolutionary idea of pluralism, tolerance and absolute religious freedom when he wrote:

> There goes many a ship to sea, with many hundred souls in one ship, whose weal and woe is common, and is a true picture of a commonwealth or a human combination or society. It hath fallen out sometimes that both papists and Protestants, Jews and Turks

[14] S. H. Cobb, The Rise of Religious Liberty in America, (New York: Cooper Square Publishers, 1902), p. 78.

[15] Cohen, Schwarts and Sobul, The Bill of Rights: A Source Gook, (New York: Benziger Brothers, 1968), pp. 51, 252, 253.

[16] Roger Williams, *Statement regarding Religious Freedom* in Bible Readings For The Home Circle, (Battle Creek, Michigan: Review and Herald Publishing Co., 1890), p. 237.

> may be embarked in one ship; upon which supposal I affirm that all the liberty of conscience that ever I pleaded for turns upon those two hinges…that none of the papists, Protestants, Jews or Turks be forced to come to the ship's prayers or worship, if they practice any. I further add that I never denied that, notwithstanding this liberty, the commander of this ship ought to command the ships course, yea, and also command that justice, peace, and sobriety be kept and practiced, both among the seamen and all the passengers.[17]

Williams was considered by most to be an extreme liberal in suggesting that law, order and justice could possibly exist apart from an established religion. It was he who would argue that it was unjust for Christians to confiscate property from native Americans simply because they were *pagans*. After purchasing Rhode Island from the natives, the latter were invited to remain. Under this philosophy, Williams may well have been responsible for the conversion of more natives to Christianity than the other colonies combined. It is easy to see why the colony of Massachusetts could not tolerate Williams' views when one reads from its Body of Liberties (December 10, 1641, Section 58, 59, 94):

> Civil Authoritie hath power and libertie to see the peace, ordinances and Rules of Christ observed in every church according to his word. So it be done in a Civill and not in an Ecclesiastical way…(Section 59) Civill Authoritie hath power and libertie to deal with any Church member in a way of Civill Justice, notwithstanding any Church relation, office or interest… (Section 94) If any man after legall conviction shall have or worship any other god, but the lord god, he shall be put to death. If any man shall blaspheme the name of god, the Father, Sonne, or Holie ghost, with direct, expresse, presumptious or high handed blasphemie, or shall curse god in the like manner, he shall be put to death.[18]

In this case also it may well be observed that the *Fathers* of Massachusetts authorized the Church to impose capital punishment upon any who denied or blasphemed their god.

In 1635 Massachusetts Bay Colony banished Roger Williams for advocating complete separation of church and state and for denying the right of civil authorities to punish persons for breaking the Sabbath or holding heretical opinions. Subsequently, the General Court of the

[17] Roger Williams, *Letter to the Town of Providence (January, 1655)* In John Bartlett, Familiar Quotations, (Boston: Little, Brown and Company, 1968), p. 329.

[18] Massachusetts Body of Liberties; (December 10, 1641, Sections 58, 59, 94) in Richard L. Perry, Sources Of Our Liberties, (Chicago: American Bar Foundation, 1959), pp. 154-158.

colony passed *The General Laws And Liberties Of The Massachusetts Colony (1646)*, prescribing punishment for blaspheming, heresies and church absenteeism.[19] The laws stated:

> That if any Christian within this jurisdiction, shall go about to subvert and destroy the Christian faith and religion, by broaching and maintaining any damnable heresies; as denying the immortality of the soul, or resurrection of the body, or any sin to be repented of in the regenerate, or any evil done by the outward man to be accounted sin, or denying that Christ give Himself a ransom for our sins, or shall affirm that we are not justified by His death and righteousness, but by the perfections of our own works, or shall deny the morality of the fourth commandment, or shall openly condemn or oppose the baptizing of infants, or shall purposely depart the congregation at the administration of that ordinance, or shall deny the ordinance of magistracy, or their lawful authority to make War, or to punish the outward breaches of the first table, or shall endeavor to seduce others to any of the errors or heresies above mentioned; every such person continuing obstinate therein, after due means of conviction, shall be sentenced to banishment….. It is ordered and enacted by authority of this Court, that no Jesuit or spiritual or ecclesiastical person (as they are termed) ordained by the authority of the Pope or see of Rome, shall henceforth at any time repair to, or come within this jurisdiction…. And if any person so banished, be taken the second time within this jurisdiction upon lawful trial and conviction, he shall be put to death.[20]

Early Colonial Quakers

The Quakers also would plague the Massachusetts colony with their beliefs in religious freedom. The town minister of Newbury, Thomas Parker, played a major role in the development of that community. Parker condemned the fact that some of the town's citizens were harboring Quakers. He wrote a letter that was published in London in 1650 which censured his sister-in-law for her Quaker beliefs. She had denied the necessity of institutions thus rising *above the glorious church of New-Jerusalem*. Her sin was that she had claimed to be taught directly by the Spirit of God. Many townspeople would join in the Quaker meetings while other

[19] Darrett B. Rutman, Winthrop's Boston: A Portrait Of A Puritan Town, 1630-1649, (Chapel Hill North Carolina: The University of North Carolina Press, 1965), p. 261.

[20] Ibid. American State Papers On Religious Freedom, pp. 32-34.

residents became sympathetic to the Baptists and formed their own congregation in Newbury as early as 1682.[21]

Early Colonial Quakers were looked upon as more than just advocates of religious liberty. They were conceived by many as total anarchists who held themselves unaccountable to any external form of law and order. They would startle colonists with their contempt for all religious and civil authority. They rejected *pagan temples*, *steeple houses*, Christian ritual, ordained clergy and educated ministers. Unlike the respected Friends of later years, these followers of George Fox appeared as iconoclasts, protesting against order and provoking dissension. One of their women entered the congregation at Newbury in the nude as a symbol of the nakedness of their rulers. Another Quaker entered the meetinghouse in Cambridge with a bottle in each hand and smashed them on the floor crying, *Thus will the Lord break you to pieces*. The Pilgrims called these people *rantors*.[22]

Colonists were upset by the Quaker doctrine of the *Inner Light*, and strange *moving* along with their dependence upon the guidance of the inner spirit as the ultimate authority. Instead, the colonials held that the Bible was the center and guide for the church. Legal attempts to repress the Quakers failed to succeed, as did the persecutions initiated by Elizabeth, James I, Charles I, the Archbishop, the bishops, and the Star Chamber in their futile endeavors to stamp out Puritanism by whipping, torture and burning. A number of Pilgrims felt sympathy for the Quakers, having known the experience of being branded as a heretical minority, considered outcasts, spied upon and manhandled. Charles II became king in 1660 and the colonies were ordered to cease punishing Quakers and to send them back to England to be tried. There were no further efforts to control the friends and the fines that had been levied against them were written off.[23]

Roger Williams was in favor of admitting the Quakers as long as they would subject themselves to all the duties required of them in the colony. He personally could not accept their doctrine and strongly defended his own doctrines against them. He distrusted their guidance of the *inner light*. To Williams, it was blasphemy to assert that Quakers were equal in power and glory with God and to affirm that Jesus Christ had come again to reveal the way to them. Yet, it was Williams who would defend their right to religious freedom. Williams would pioneer a new concept of total religious freedom for all.[24]

> He discovered what a formidable task it was to embrace the ideal of liberty as he contended with Gorton, Hutchinson, Coddington,

[21] David Graysobn Allen, In English Ways, (Chapel Hill, North Carolina: The University of North Carolina Press, 1981), pp. 91-95.

[22] Robert M. Bartlett, The faith Of The Pilgrims: An American Heritage, (New York/Philadelphia: United Church Press, 1978), pp. 77-78.

[23] Ibid. Bartlett, pp. 80-84.

[24] Ibid. Bartlett, pp. 231-232.

> Harris, the Bay people, the Connecticut people, the Indians, and the Quakers. His achievements along the uphill way to tolerance are expressed by the spot where he landed in 1636 with his handful of supporters: *Liberty is reserved for the inhabitants to fetch water at this spring forever*.[25]

Early Colonial Reaction To Baptists

The established churches of colonial America were opposed to the Baptists primarily because of their rejection of infant baptism. Baptists were considered radicals because of their claim that there was no trace of infant baptism in the Bible. They held to *Believer's Baptism* which presupposed instruction, faith and conversion, which is impossible in the case of infants. Voluntary baptism of responsible decision-making converts was therefore the only valid baptism. They denied that ritual baptism of any kind at any age was necessary for salvation, and maintained that infants are saved by the blood of Christ without water baptism. Nonetheless, baptism by immersion was necessary for local church membership as a sign and seal of previous conversion. They became known as *Anabaptists* or *Rebaptizers* because they would rebaptize anyone who had experienced the ritual prior to a decisional conversion experience. This practice antagonized all established churches because it seemed to virtually unbaptize and unchristianize the entire Christian world except for Baptists.[26] However, the fact that Baptists did not believe that any form of baptism was necessary for salvation demonstrates that they did not *unchristianize* other believers for being *improperly* baptized.

The new charter granted to the Massachusetts Bay Colony in 1691 had guaranteed only religious toleration and had not exempted Baptists from taxation for the support of the state church. Baptists refused to pay taxes on the principle that no man should be coerced to support another man's church. As a result, their property frequently was sold for the costs, as at Ashfield, near Boston, where they suffered immensely.[27]

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[25]Ibid. Bartlett, p. 232.

[26]Ibid. Schaff, Vol. 8, pp. 76-85. Note: All humans deserve condemnation because of their inherited Adamic natures at conception. But this is true of all believers and non-believers. So, in the New Testament humans are condemned only on the grounds of willful unbelief. An infant is incapable of willful unbelief. In Romans 7:9 when Paul spoke of himself as being alive once without the Law, he was speaking of his infancy when, though hell-deserving, he was alive in Christ because he was not a willful unbeliever. But when he was able to understand the Law and willfully disobeyed it in unbelief, he became lost and dead and in need of salvation. Baptists do not believe that unbaptized babies are in hell.

[27]Henry S. Burrage, A History of the Baptists in New England, (Philadelphia: American Baptist Publication Society, 1894), pp. 108 f. and Isaac Backus, A history of New England With Particular Reference to the Denomination of Christians Called Baptists, (Newton, Mass.: Backus Historical Society, 1871), Vol. 2, p. 149 f.

During the *Great Awakening* which exploded in the 1730s and 1740s, it is said that Jonathan Edwards believed that hell was *paved with the skulls of unbaptized children*.[28] Thus, those who withheld infant baptism were often considered child abusers and molesters and thought worthy of death. In Reformation Europe, believer's baptism by immersion had been a capital crime resulting in the deaths of many Baptists. This controversy is perhaps the number one factor which made Baptists staunch defenders of freedom of religion for all.

Reconstructionist View Of Colonial America

Thus, it is not difficult for an average American to follow the reasoning of a reconstructionist when he affirms that the roots of colonial civilization were primarily founded on established religion with a constitutional Bible. Many Americans are regularly hearing that they must get their government back to the religion that it was founded upon. In the first two pages of the Institutes of Biblical Law Rushdoony praises the *Hebrew social order*, then cites the Puritan New Haven Colony's adoption of *the law of God, without any sense of innovation*. They attempted to institute the judicial laws of God as they were delivered by Moses to be the rule to all the courts in that jurisdiction. Rushdoony says that the Mosaic code which they tried to establish was *that law which must govern society, and which shall govern society under God*.[29] This is Rushdoony's most important work. It is an exposition of the Ten Commandments as the law structure for all areas of contemporary society.

In order to realize that actual colonial Puritanism is being prescribed for our society, it would be well to note some of Rushdoony's other important works. In Foundations of Social Order: Studies In The Creeds And Councils Of The Early Church he asserts that when the church has had a strong creedal Christology, then maximum freedom, progress, and blessing is experienced by citizens.[30] Thy Kingdom Come is an exposition of his postmillennialism.[31] God's Plan For Victory contains his rational arguments for postmillennialism.[32] Christianity And The State puts forth Rushdoony's view of what a Christian civil government should be.[33]

In contemporary reconstructionism, Baptist views of baptism are accepted in order to incorporate them as a primary force in the movement. Thus, many Baptists have reversed themselves from their heritage of colonial days when they were considered liberal and to the left

[28]Jonathan Edwards, *Statement Regarding Unbaptized Children* quoted in Thomas A. Bailey and David M. Kennedy The American Pageant: A History of the Republic, 8th Edition (Lexington, Massachusetts, Toronto: D. C. Heath and Company, 1987), p. 65

[29]Ibid. R. J. Rushdoony, The Institutes of Biblical Law, pp. 1, 2.

[30]R. J. Rushdoony, The Foundations Of Social Order: Studies In The Creeds And Councils Of The Early Church, (Phillipsburg, N. J. : Presbyterian and Reformed Publishing Co., 1968).

[31]R. J. Rushdoony, Thy Kingdom Come: Studies in Daniel and Revelation, (Phillipsburg, N. J. : Presbyterian and Reformed Publishing Co., 1970).

[32]R. J. Rushsdoony God's Plan For Victory: The Meaning Of Postmillennialism, (Tyler, Texas: Thoburn Press, 1977).

[33]R. J. Rushdoony, Christianity And The State, (Valecito, Calif.: Ross House Books, 1986).

of the traditional Protestant church. Now that Baptists have become a major denomination in America, many of their fundamentalist factions are considered to the far right in their stance regarding Church and State.

The Great Awakening And The Rationalist Enlightenment

The Great Awakening with its revivalism under Jonathan Edwards and George Whitfield had expanded the idea of postmillennialism in a manner that made puritans comrades of the enlightenment and its rationalist theologians. It gave fresh expression to the ancient longing for a golden age of truth, virtue and prosperity. Yet, now there was the new conviction that such a golden age would arise as a result of concentrated national effort.[34]

Most churches represented by the *Great Awakening* were not so much fighting for universal religious freedom as for freedom from the Church of England.[35] Thus, prior to the Revolution, there was a need to unite theological belligerents (i.e. enlightened Rationalists and Puritans) in order to oppose English rule. The common enemy that would unite the American religious factions was the Anglican Church which had been one of the main ties that bound the colonies to the mother country. The *Great Awakening* weakened that tie by winning over to the diverse churches a large number of nominal Anglicans. The Congregational and Presbyterian churches in particular became co-belligerents against the Anglican Church.

This co-belligerent religious mindset in America was one of the prime causes of the Revolution. When Edmond Burke spoke before Parliament in his famous speech on *Conciliation*, he said that religious beliefs and practices in America were in advance of those of all other Protestants in the world in that Americans were accustomed to free and subtle debate on all religious questions, and that there was little regard for priests, councils or creeds among them. Burke explained that their church organizations were simple and democratic, as in the case of Congregationalists and Baptists, and republican as in Presbyterianism. These churches were accustomed to electing or dismissing their own religious leaders.[36] The possession of a limited religious liberty was followed by the demand for political liberty. John Adams stated that this agitation toward the Anglican Church contributed *as much as any other cause, to arouse the attention, not only of the inquiring mind, but of the common people, and urge them to closed thinking on the constitutional authority of parliament over the colonies.*[37]

Sectarianism And The Declaration Of Independence

[34] . Mark A. Noll, Christians In The American Revolution, (Washington, D. C., Christian College Consortium, 1977), p. 46.

[35]Willard L. Sperry, Religion In America, (Cambridge: At The University Press, 1945), pp. 33-34.

[36] William Warren Sweet, The Story of Religion In America, Revised and Enlarged Edition (New York, Evanston, and London: Harper & Row, Publishers, 1950), p. 173.

[37] Ibid. W. W. Sweet, p. 173.

The Congregational Church

The Congregational Church had perhaps the largest influence in the War for Independence. Almost all New England clergy at the time of the Revolution were American-trained and were graduates of Harvard or Yale. The New England ministers, to quote Miss Baldwin: *With a vocabulary enriched by the Bible…made resistance and at last independence and war a holy cause*, and through their influence, perhaps more than any other, New England, and the Congregationalists particularly, gave overwhelming support to the Revolution.[38] New England ministers acted as recruiting agents, chaplains, officers and fighters. They also supported the war with their pens and their meager salaries.

The Presbyterian Church

The Presbyterians in the colonies at the opening of the Revolution were largely Scotch-Irish and had recently immigrated from North Ireland. They were still feeling hostility to England for the wrongs which had caused their migration. John Witherspoon was their most influential leader. He came from Scotland in 1768 to take the presidency of the College of New Jersey. In 1776, he became a member of the New Jersey provincial congress to frame a constitution. It was Witherspoon who would apply the Presbyterian theories of republicanism to the constitutions of the new civil governments. He was chosen as one of the five delegates to represent New Jersey in the Continental Congress and was the only minister to sign the Declaration of Independence.[39]

The Dutch Church

The Dutch Church also greatly supported the Revolution. Their chief churches were located where the British were the most active during the war—in the Hudson Valley and in New York. Consequently, many of their congregations were driven from their churches and much of their property was destroyed.[40]

German Reformed And Lutheran Churches

The two largest German churches, the German Reformed and the Lutheran, were, with few exceptions, decidedly patriotic. However, John Wesley, the great founder of the Methodists in America, was a staunch Tory and a loyal supporter of the policies of George III and his ministers. Soon all of Wesley's English preachers, who were in America, returned to England, except for Francis Asbury, who determined to identify with the Americans.[41]

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[38]Ibid. W. W. Sweet, p. 177.
[39]Ibid. W. W. Sweet, pp. 78-79.
[40]Ibid. W. W. Sweet, p. 181.
[41]W. W. Sweet, Methodism In American History, (New York, Cincinnati, Chicago: The Methodist Book Concern, 1933), pp,. 78-91.

The Roman Catholic Church

Anti-Catholic prejudice decreased during the Revolution because Catholics were needed for the fight. Their loyalty and noble conduct, especially the dedication of the priests and sisters, went a long way to break down the barriers. Also, Frenchmen , such as Lafayette, were assisting the colonies and it would not be expedient to display overt bias in the presence of such allies. Thus, the Revolutionary War brought relief to Catholics as did also the predominant family of the Carrolls in Maryland.[42] The Catholics of Maryland and Pennsylvania gave practically unanimous support to the cause. Archbishop Carroll wrote some years after the war:

> They (Catholics) concurred with perhaps greater unanimity than any other body of men in recommending and promoting that government from whose influence America anticipated all the blessings of justice, peace, plenty, good order, and civil and religious liberty. The Catholic regiment, *Congress Own*, the Catholic Indians from St. John, Maine, under the chief Ambrose Var, the Catholic Penobscots, under the chief Orono, fought side by side with their Protestant fellow colonists. Catholic officers from Catholic lands—Ireland, France, and Poland—came to offer their services to the cause of liberty.[43]

Among the signers of the Declaration of Independence was Charles Carroll of Carrollton, a Catholic who at the time of signing pledged his fortune to the cause. Thus, many Americans learned that Catholic people could be good citizens and good Catholics at the same time, and that they could be good neighbors and good friends in spite of their differences on religion.[44]

The Anglican Church

Again, it must be stated that these patriot sects still aspired to dominion theology and, although seeking freedom from the Anglican Church, they were still far from advocating governmental secular neutrality in religious matters.

Quakers, Mennonites and Moravians

Conscientious Objectors

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[42] J. Gordon Melton, The Encyclopedia of American Religions, Vol. 1 (Wilmington, North Carolina: McGrath Publishing Company, 1978), pp. 22ff.

[43] Ibid. W. W. Sweet, The Story of Religion in America, p. 185.

[44] See Sr. Mary Augustana (Ray), American Opinion of Roman Catholicism in the Eighteenth Century, (New York, 1936), pp. 318-323.

The *conscientious objectors* were located largely in Pennsylvania—the Quakers, Mennonites and Moravians particularly. However, many wealthy Quaker merchants in Philadelphia supported the preliminary non-importation measures. Such methods of passive resistance were consistent with their principles. Moravian buildings at Bethlehem were used as a general hospital for the American army. Moravians also responded to numerous requisitions for supplies.[45]

The Baptist Churches

A survey of the Baptists' struggle for religious freedom in the Colonies indicates that New England Baptists in particular saw in the Revolution an opportune time to press for their cause, and that they anxiously sought the cooperation of all other Baptists. The Baptists were unique in their advocacy of a secular government which would be formally neutral in religious matters.

In 1765 Samuel Harris, a Baptist preacher, was driven out of Culpeper County, Virginia by a mob armed with sticks, whips and clubs. In orange County he was pulled down from a platform by a ruffian and dragged about by the hair of the head, then by the leg, until rescued by a friend. This is just one example of a long list of incidents that could be written about religious persecutions in American history during the years before the Revolution. It was the customary opinion that Baptists were social radicals.[46]

In Massachusetts there had evolved several successive statutes exempting Baptists and Quakers from payment of taxes to support the established church. However, these were valid on the contingency that the exempted person verify his membership in the recognized local church of his choice. A new exemption law was passed by the General Court in 1772, evidently under the pressure of Baptist action, which provided that Baptists might be exempt from paying the church tax if they furnished the authorities with certificates indicating their good standing as Baptists. The Baptists were not satisfied because they denied the right of any man to determine the religious standing of his fellow man. In September of that year, the Warren Association of Baptists appointed a Committee On Grievances with Mr. Backus as chairman. He urged Samuel Adams in the year 1774 to adopt a consistent policy of separation of church and state, pointing out that British taxation of American Colonies was no more unjust than Massachusetts' taxation of Baptists for support of a state church.[47] Was not the main point behind the Revolution a protest against taxation without representation? In spite of their efforts, Baptists were defeated in their attempts to have religious freedom incorporated into the new Revolutionary Constitution of Massachusetts.

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[45] Ibid. W. W. Sweet, The Story Of Religion In America, pp. 185-187.

[46] Wesley M. Gewehr, The Great Awakening In Virginia 1740-1750, (Durham, N. C. Duke University Press, 1930), pp. 119-121.

[47] Alvah Hovey, A Memoir of the Life and Times of the Reverend Isaac Backus, (Boston: Gould and Lincoln, 1859), pp. 196, 197.

Nonetheless, Baptist support of the patriot cause in the American Revolution was regarded by them as support of the cause of religious liberty. The Baptist congregational form of polity combined with no state-church connections was in harmony with prevailing democratic sentiments. Although these Baptists had a common cause (religious liberty) with the constituents of the American Enlightenment, they should not be understood as a product of that enlightenment. Their libertarian beliefs about freedom of conscience ran parallel with enlightenment thinkers but originated much earlier. The General Baptists in a Orthodox Creed, 1679, Article XLVI said:

> And the requiring of an implicit faith, and an absolute blind obedience, destroys liberty of conscience, and reason also, it being repugnant to both, and that no pretended good and whatsoever, by any man, can make that action, obedience, or practice lawful and good…[48]

The Confession of the Particular Baptists, 1689, Article XXI said:

> God alone is the Lord of the Conscience, and hath left it free from the Doctrines and Commandments of men…. So that to Believe such Doctrines, or to obey such Commands out of Conscience, is to betray true liberty of Conscience; and requiring of an implicit Faith, and absolute and blind Obedience, is to destroy Liberty of Conscience, and Reason also.[49]

[48]"General Baptists In An Orthodox Creed", (1679, Article XLVI) quoted in W. L. Lumpkin, Baptist Confessions Of Faith: An Interpretation Of Every Significant Baptist Confession From the Earliest Anabaptists To the Present Day, (Valley Forge: Judson Press, 1978), p. 331.

[49] Ibid. "Confession of the Particular Baptists" (1689, Article XXI) Quoted in W. L. Lumpkin, p. 280.

CHAPTER II

The Post Revolutionary Enlightenment And The Establishment Clause

Newton's Natural Law And European Enlightenment

Isaac Newton's Principia Mathematica of 1685 provided the Atlantic community with a new conception of the world whereby planets in their majestic orbits, as well as falling apples, were brought into a physical and mathematical synthesis. He proclaimed an orderly world where natural laws were the clue to the world's events. John Locke (1632-1704) successfully translated these new scientific notions into the language of philosophy, psychology, morals, religion and government. The result of this intellectual revolution was a crisis in the European mind. Its most significant result was that which is termed the *Enlightenment*.

Natural Law And The Science Of Government

The significance of the science of government was obvious in an age that concerned itself with the discovering of laws in physics, biology, other natural sciences and in all areas of human activity. The popularity of Montesquieu reflected a widespread desire to understand the function and organization of social processes. Americans were the first to have the opportunity to draw up a whole new political system. European Enlightenment thinkers looked at the American experiment with some envy and real pleasure at seeing their ideas realized. Peter Gay entitled the concluding chapter of The Enlightenment, II, 1969, on the American Revolution and the Enlightenment, *The Program In Practice*.[50]

Enlightened Christianity

One of the theological results of the Enlightenment was an *Enlightened Christianity*, wherein the canons of rationalism and *reasonableness* became normative. The more radical, deistic spirits announced that Christianity was not mysterious, that revelation told of nothing that the human reason operating on the evidences provided by the Creation itself could not inductively or deductively infer.[51] Although poles apart in theology, the Baptists and the Rationalists were to become partners in the struggle for freedom of conscience in America.

Enlightenment And The French Revolution

[50] Willi Paul Adams, The First American Constitutions: Republican Ideology and the Making of the State Constitutions in the Revolutionary Era, (Chapel Hill: The University of North Carolina Press, 1973), p. 121.

[51] James Ward Smith & A. Leland Jamison, eds., The Shaping Of American Religion, (Princeton, New Jersey: Princeton University Press, 1961), PP. 243, 244.

The French Revolution was soon to follow the American Enlightenment paralleling a surge of skepticism and secularism in the United States particularly among upper-class youth. So, the new political order in America was determined only in part by the moral and political values of 1776. The other determining influence was *the direct experience with self-government within the British system, on which the dominant middle classes could look back.*[52] Enlightenment ideas were harnessed to Anglo-American experience and institutions whenever a conflict between the two arose.

Enlightenment And The Constitutional Convention

During the Constitutional Convention (May-September, 1787) there were devout Christians present such as Caleb Strong and Richard Bassett, ex-preachers such as Abraham Baldwin and Hugh Williamson and theologians like William Samuel Johnson and Oliver Ellsworth. However, most of the delegates could take or leave their religion and were members of a traditional church.[53] Clinton Rossiter states that:

> Although no one in this sober gathering would have dreamed of invoking the Goddess of Reason, neither would anyone have dared to proclaim that his opinions had the support of the God of Abraham and Paul. The Convention of 1787 was highly rationalist and even secular in spirit.[54]

Nonetheless, the French Revolution seemed to American Deists to be the opening strokes of a long awaited age of reason. When the National Assembly of France formed a procession to the metropolitan church of Notre Dame and bowed their knees in mockery before a common courtesan, they were basely worshipping her as the *goddess of reason*. John Trumbull of Connecticut was shocked when some Americans *threw up their caps, and cried, glorious, glorious, sister republic*![55]

Enlightenment And Deism

[52] Ibid. Willi Paul Adams, p. 121.

[53] Charles Pinkney, (Monday, Aug. 20, 1787) Pinkney submitted a proposition to the House to be referred to the Committee of Detail at the Convention which affirmed that *No religious test or qualification shall ever be annexed to any oath of office under the authority of the U. S.* He had raised the issue before Aug. 3 but Sherman thought it unnecessary, *The prevailing Liberality being a sufficient security against such tests.* In Adrienne Koch, Notes of debates in the Federal Convention of 1787 Reported by James Madison, (Athens, Ohio, Chicago, London: Ohio University Press, 1984), pp. 485, 561.

[54] Clinton Rossiter, 1787 The Grand Convention, (New York & London: W. W. Norton and Co., 1987), p. 148.

[55] James Reichley, Religion In American Public Life, (Washington, D. C.: the Brookings Institution, 1985), p. 172.

Deism was a form of religion that acknowledged a clock-maker God who had set the world in motion governed by mechanical laws discoverable through human reason. It was a rationalized, impersonal theism that in Europe became almost indistinguishable from emerging secular humanism. The influence on the Americana Founders is unmistakable. Rationalist Congregational ministers in Massachusetts, such as Chauncy and Mayhew, had edged toward deistic ideas. In 1755 a lectureship in *Natural Religion* was established at Harvard. By the 1770s, even heirs of the Great Awakening such as John Witherspoon at Princeton were entertaining rationalist attitudes. *Nature's God* in the Declaration could be given a deist as well as a Christian interpretation. Thomas Paine published The Age Of Reason after the War as a deist ridiculing of Christianity. Ethan Allen argued that *reason ought to control the Bible, in those particulars in which it may be supposed to deviate from reason.*[56]

Lutheran theologian, John Warwick Montgomery, made the following comment on the religious views of the *Founding Fathers*:

> The most influential Founding Fathers of the 18th century were not Christian in the biblical sense of the term: they were either outright deists or mediating religious liberals.
> Among the deists were Jefferson, Paine, and Franklin. Jefferson had so little respect for Scriptures that he created his own Bible—the so-called *Jefferson Bible* consisting of the ethical teachings of the New Testament (with the miraculous and divine aspects of Jesus' life carefully excised).[57]

Benjamin Franklin had reacted against orthodoxy in theology and many other fields and consequently formed a bridge between the liberalism brewing in French philosophical and religious thought and the thinking of the new republic. The various movements of freethinkers were closely related to French Deism and both repudiated all forms of Calvinistic election and believed in the equality of all men. This concept strengthened rationalism as distinct from the evangelistic wing of Protestantism.[58]

Natural Law As Self-evident

The dominant political speculations of the Eighteenth Century were an *a priori* order, as both lawyers and philosophers continued to use the ideas of *nature* and *natural law*. Men began to believe that not only the physical laws of the universe but also the laws which govern human

[56] Ibid. A. James Reichley, p. 100.
[57] John Warwick Montgomery, The Suicide Of Christian Theology, (Minneapolis, MN.: Bethanay Fellowship, 1975), p. 381.
[58] Anson Phelps Stokes and Leo Pfeffer, Church And State In The United States, (New York, Evanston, and London: Harper & Row, Publishers, 1950), p. 34.

understanding and the conduct of men and society were dependent on natural laws discoverable by human intellect. These truths were regarded as *self-evident*. Such were the ideas that Paine would use to advocate drastic reforms in the machinery of government. Thus, at the time of the American Revolution, many colonists justified their rebellion against the mother country on great principles stemming from Locke's two treatises On Civil Government, assisted by Rousseau's Contract Social, and by Paine's Common Sense.[59]

Reconstructionist View Of Early American Mindset

Many reconstructionists debate this point and deny the presence of anything non-Christian among the *Founding Fathers*. Rushdoony makes this affirmation when he states that:

> The concept of a secular state was virtually non-existent in 1776 as well as in 1787, when the Constitution was written, and no less so when the Bill of Rights was adopted. To read the Constitution as the charter for a secular state is to misread history, and to misread it radically. The Constitution was designed to perpetuate a Christian order.
>
> The freedom of the first amendment from federal interference is not from religion but for religion in the constituent states.[60]

Natural Law and The Treaty With Tripoli

Nontheless, the records reveal that a strong liberal and deist influence did dominate the Framers of the Constitution. The doctrine of natural law had long enabled Christians to believe that they could deal with Jews and Turks on the basis of a common moral code. An illustration of this very point may be observed in the words of George Washington in the treaty of 1796-97 between the United States and Tripoli, ratified by the Senate and proclaimed by President Adams on June 10, 1797:

> Article eleven. As the government of the United States of America is not in any sense founded on the Christian Religion—and as it has in itself no character of enmity against the laws, religion or tranquility of Musselmen…It is declared by the parties that no

[59] Eulgene C. Gerhart, American Liberty and *Natural Law*, (Boston: The Beacon Press, 1953), pp. 62-64.
[60] R. J. Rushsdoony's, The Nature of the American System in Rus Walton, *One Nation Under God*, cited in The Rebirth of America, (U.S.A.: Arthur S. DeMoss Foundation, 1986), p. 20.

> pretext arising from religious opinions shall ever produce an interruption of the harmony between the two countries.[61]

To grasp the seriousness of this treaty we must look again at Article VI, Section II of the U. S. Constitution regarding how treaties become the supreme law of the country:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The pirates of the Barbary Coast in general and of Tripoli (in what is now called Libya) in particular were destroying U.S. shipping and holding as prisoners U.S. seamen in the 1790s. It was a serious problem and a series of negotiators were sent to try to put together an agreement to improve it.

On November 4, 1796, near the end of George Washington's second term, a treaty with the *Dey and People of Tripoli* was signed, promising cash and other considerations to Tripoli in exchange for peace. Leading the negotiations for the U.S. at that point was Joel Barlow, a diplomat and poet. In fact, Barlow wanted very much to be remembered as America's epic poet. Joel Barlow was a friend of Thomas Jefferson and of Thomas Paine. It was Paine who hurriedly entrusted the manuscript of the first part of the Age of Reason to Barlow when Paine was suddenly arrested by the radicals of the French revolution).[62]

The Religious Right might argue that this line of reasoning is invalid in that there is no Article Eleven in the Arabic Text of this treaty. Probably most of the members of the Senate and the President himself had one thing in common with this present author and most of the readers of this treatise—they could not read Arabic. Therefore, before the treaty could be ratified by the Senate and the President, it had to be considered and voted on in its English translation. It was the task of Joel Barlow, Consul General at Algiers, to translate the treaty from Arabic to English. It is the Barlow English translation that contains Article Eleven. This would have been the version read and understood and ratified by the Senate on June 7, 1797. This would have been

[61] Irving Brandt, The Bill of Rights: Its Origin And Meaning (New York: Mentor Books, 1965), p. 411.

[62] The *Treaty With Tripoli* was signed at Tripoli November 4, 1796, and at Algiers Jan 3, 1797. No treaty becomes law until ratified by a two-thirds majority vote of the Senate. The U.S. Senate gave its advice and consent to ratification June 7, 1797. It was then ratified by the President of the U.S. on June 10, 1797. This would be the date that it was entered into force and proclaimed by the President of the U.S. This treaty was superseded on April 17, 1806 by a treaty of June 4, 1805.

the version that was understood and ratified by the President on June 10, 1797. The Joel Barlow translation has been printed in all official and unofficial treaty collections since it first appeared in 1797 in the Session Laws of the Fifth Congress, first session.[63]

Church historian, Roland Bainton, explains how this attitude toward natural law developed in America:

> This secularized natural law was further developed in the seventeenth century, to become a commonplace in the eighteenth. Such natural law is not anti-Christian but sub-Christian, and ethic of justice that the age commonly interpreted in conservative rather than revolutionary terms. But if political morality rests on a base broader than Christianity, then there is no ground for the Church's direction of governmental affairs. Such a conclusion was already implicit in the view of Aquinas that political principles are discernable by reason without revelation. The Enlightenment went still further by disclaiming the need for divine guidance in reaching political decisions. That was why Benjamin Franklin's proposal of recourse to prayer to resolve a deadlock in the Constitutional Convention was rejected.[64] Cromwell's officers would have a day out to seek the mind of the Lord, but the American founding fathers felt that politics lies within the domain of man's natural reason, which should not be abdicated. Prayer begins where reason ends. This does not mean that the state is emancipated from the will of God, but that in matters of state man need seek no special illumination from God. This point of view, widely prevalent in the age of the Enlightenment, allowed for diversity in

[63] It was the Barlow English translation that was to be considered the official law of the United States, according to Article VI, Section II of the U.S. Constitution.. From the text of the Barlow translation of 1796 it appears that the original Arabic version contained the English translation on the opposite page. It also appears from the text following Article 12 that both the Arabic and the English text had to be signed and sealed by both parties as is usually the custom with U.S. treaties in foreign languages. The following words were signed by Joel Barlow: *…Translated from the Arabic on the opposite page, which is signed and sealed by Hassan Bashaw Dey of Algiers—the 4th day of Argib 1211—or the 3rd day of Jan 1797—by-- JOEL BARLOW.*

[64] Benjamin Franklin, moved: *that henceforth prayers imploring the assistance of Heaven, and its blessings on our deliberations, be held in this Assembly every morning before we proceed to business, and that one or more of there Clergy of the City be requested to officiate in that service*. According to *Notes Of The Debates In The Federal Convention Of 1787 Reported By James Madison*, the motion was received politely but according to Madison's daily records of the convention, *After several unsuccessful attempts for silently postponing the matter by adjourning, the adjournment was at length carried, without any vote on the motion.*

religion and unity in ethics. Thereby a new garb was tailored for Christendom.[65] [66]

The Virginia Contest For Religious Freedom

In Virginia, another contest was transpiring between enlightened rationalists and those seeking religious establishment. Although the Baptists, Quakers and many Presbyterians had little in common with rationalists, they became partners in their opposition to traditional religious establishmentarianism. In 1788 Virginia Baptists resorted to the device of organizing a General Committee to gain their objectives. Finally, when Thomas *Jefferson's Bill for the Establishment of Religious Freedom* was passed by the Assembly in December, 1785, *it was largely the product of the combined efforts of such persecuted sects as Baptists, Presbyterians, Catholics, and Quakers.*[67]

Patrick Henry's Bill For Religious Assessments

During the beginning of the Post Revolutionary War era in Virginia, George Washington, John Marshall and Patrick Henry had advocated the direct state support for religion in order to strengthen social stability. Henry introduced a bill in 1784 that would levy an annual tax or contribution for the support of the Christian religion, or for some form of Christian worship. He argued that state support for Christianity was justified on purely secular grounds. The proposal would have allowed each taxpayer to designate the church to which his tax dollars should be paid. Washington supported the bill with the provision that exemptions would be granted to those declaring themselves to be Jews, Mohamedans, or otherwise.[68]

Madison's Remonstrance Against Religious Assessments

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[65] Ronald H. Bainton, Christianity (Boston: Houghton Mifflin Company, 1987), p. 321.

[66] When the Constitutional Convention was adjourned and the new document was ready to be submitted to the states for ratification, the preamble contained no reference to a higher power and the only reference to religion was in Article VI which read: *but no religious test shall ever be required as a qualification to any office or public trust under the United States*. The only other reference to religion in the current Constitution is in the First Amendment (unless we want to count the recorded dates in the words *in the year of our Lord, 1787* which were ceremonial and customary). An amendment is an afterthought, something we thought of after we were pretty sure that we had thought of everything: *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof*… [Since "Cantwell v Connecticut 310 U.S. 296 (1940)], the Supreme Court has found in the Fourteenth Amendment (ratified by the states in 1868) the purpose of applying to the states all the restrictions placed on the federal government by the religion clauses of the First Amendment.

[67] Robert G. Torbet, A History of the Baptists, Eleventh Edition (Valley Forge: Judson Press, 1980), p. 241. For a detailed study of the Virginia Baptists' struggle for religious liberty, see William T. Thom, Struggle for Religious Freedom in Virginia: The Baptists, (Baltimore: The Johns Hopkins University Press, 1900) 105 pp.

[68] Ibid. A. James Reichley, p. 87.

To rally public opposition to Henry's Bill, Madison wrote his famous *Memorial and Remonstrance Against Religious Assessments*. Many reconstructionists affirm that Madison only meant that no particular denomination was to be established but that Christianity in general was to be the national religion. However, this idea is challenged by Madison's own words:

> Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other sects.[69]

Madison went so far as to defend the rights of unbelievers against religion:

> Whilst we assert for ourselves a freedom to embrace, to profess and to observe the religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us. If this freedom be abused, it is an offence against God, not against man.[70]

If the Bible is to be the *unwritten constitution* of our nation, as many reconstructionists say, then a government interpretation of its text would have to be enforced as law. Again, Madison addressed this concept:

> Because the Bill implies either that the Civil Magistrate is a competent Judge of Religious truth; or that he may employ Religion as an engine of Civil policy. The First is an arrogant pretension falsified by the contradictory opinions of Rulers in all ages, and throughout the world. The second an unhallowed perversion of the means of salvation.[71]

Madison again would be a warning to contemporary reconstructionists that their view is at enmity with true religion:

> Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation. During almost fifteen centuries, has the

[69] James Madison, "Memorial and Remonstrance Against Religious Assessments", Argument No. 3., The Writings of James Madison, (Hunt Ed.) Vol. II, pp. 183-191. Cited in Americans United For Separation Of Church And State, Basic Documents Relating to the Religious Clauses of the First Amendment, (Silver Springs, MD., 1965), pp. 7-14.

[70] Ibid. Madison's Memorial and Remonstrance, Argument no. 4.

[71] Ibid. Madison's Memorial and Remonstrance, Argument no. 5.

> legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the Clergy; ignorance and servility in the laity; in both, superstition, bigotry, and persecution.[72]

Reconstructionists argue that the Christian religion is the author and preserver of our democratic ideal. Again, Madison would take exception:

> What influence in fact have ecclesiastical establishments had on Civil Society? 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 instance have they been seen the guardians of the liberties of the people.[73]

Madison considered the idea of a national religion to be a signal of persecution:

> Instead of holding forth an asylum to the persecuted, it is itself a signal of persecution. It degrades from the equal rank of Citizens all those whose opinions in Religion do not bend to those of the Legislative authority…. What mischiefs may not be created should this enemy to the public quiet be armed with the force of a law.[74]

Jefferson's Bill For Religious Liberty

Madison maintained, in the last of fifteen numbered arguments, for the rejection of Henry's bill, that religious liberty is *the gift of nature*.[75] This statement has led some commentators to conclude that his case for religious liberty was essentially secular. Soon after the appearance of this *Memorial and Remonstrance*, the bill for religious assessments was killed in committee. Madison then moved quickly to secure passage of Jefferson's bill for religious liberty. This bill had been tabled by the legislature in 1779. Though Jefferson was serving as ambassador to France at the jtime, he followed events until the statute was passed, ending establishment in 1785. The idea was not, however incorporated into the Virginia Constitution until 1830.

While the struggle in Virginia was underway, dissenting Baptists and liberals, led by Jefferson and Madison, opposed Patrick Henry's bill. Jefferson's bill stated:

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[72] Ibid. Madison's Memorial and Remonstrance, Argument no. 7.
[73] Ibid. Madison's Memorial and Remonstrance, Argument no. 8.
[74] Ibid. Madison's Memorial and Remonstrance, Argument no. 9 & 11.
[75] Ibid. Madison's Memorial and Remonstrance, Argument no. 15.

> …That to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical.[76]

He also defended the idea that governmental neutrality was essential to the furtherance of true religion:

> Truth is great and will prevail if left to herself, that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them:[77]

Finally, Jefferson would present the Enlightenment view of natural law as the valid alternative to established religion:

> …yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its cooperation, such act will be an infringement of natural right.[78]

In his *Notes on the State of Virginia* (1782), Jefferson defended the right of even atheists to express themselves openly:

> But it does me no injury for my neighbor to say that there are twenty gods, or no God…had not the Roman government permitted free inquiry, Christianity could never have been introduced. Had not free inquiry been indulged at the era of the Reformation, the corruptions of Christianity could not have been purged away. If it be restrained now, the present corruptions will be protected, and new ones encouraged… Difference of opinion is

[76] Thomas Jefferson, *The Bill for the Establishing of Religious Freedom*, taken from XII Henning Statutes of Verginia, pp. 84-86 (1823). Cited in Americans United For Separation of Church and State, Basic Documents Relating to the Religious Clauses of the First Amendment, (Silver Springs, MD., 1965).

[77] Ibid. Jefferson's *Bill for Establishing Religious Freedom.*
[78] Ibid. Jefferson's *Bill for Establishing Religious Freedom.*

> advantageous in religion. The several sects performed the office of a censor morum over each other.[79]

This Jeffersonian concept seems to run directly contrary to the conclusions of reconstructionist research.

Thomas Jefferson was in France as the Ambassador of the United States during the Constitutional Convention of 1787. After the Convention, he wrote to Madison from Paris, in December, 1787, expressing great concern over the lack of a bill of rights:

> I will now tell you what I do not like. First, the omission of a bill of rights, providing clearly, and without the aid of sophism, for freedom of religion, freedom of the press, protection against standing armies, restriction of monopolies, the eternal unremitting force of habeas corpus laws, and trials by jury in all matters of fact triable by the laws of the land, and not by the laws of nations….[80]

After ratification of the Constitution of the U.S. in 1788, Jefferson still argued for the addition of a Bill of Rights.[81]

The Absence of a Bill of Rights in 1787

The Constitution agreed upon at Philadelphia in 1787, unlike the Declaration of Independence, contained no reference to God. The author of Virginia's Declaration of Rights, George Mason, proposed that the Constitution should be prefaced with a *Bill of Rights* but there was no apparent mention of religion. Roger Sherman opposed the proposal, noting that the state declarations of rights *being in force are sufficient.* No states voted for the motion and Massachusetts abstained.[82]

Alexander Hamilton had justified the absence of a Bill of Rights in the draft of the Constitution when he wrote in the *Federalist Papers*, no. 84:

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[79] Thomas Jefferson, *Notes On The State of Virginia* (1782), Albert J. Mendes, Editor, The Best Of Church And State 1948-1975, (Silver Springs, MD.: Americans United For Separation Of Church And State, 1975), pp. 80-81.

[80] Jefferson, Thomas, *Letter to James Madison* (December 20, 1787) in Adrienne Kock and William Peden, eds., The Life and Selected Writings of Thomas Jefferson, (New York: The Modern Library, 1944), pp. 336-44.

[81] Ibid. Jefferson, *Jefferson's Letters to Madison* (July 31, 1788, pp. 450-52; November 18, 1788, p. 452; March 15, 1789), Thomas, Koch and Peden, pp. 462-64.

[82] Documents Illustrative of the Formation of the Union of American States, (Washington: Government Printing Office, 1927), p. 716.

> Bills of rights are, in their origin, stipulations between kings and their subjects, abridgments of prerogative in favor of privilege, reservations of rights not surrendered to the prince,…. They have no application to constitutions professedly founded on the power of the people and executed by their immediate representatives and servants.[83]

Opponents of the proposed Constitution used the absence of a *Bill of Rights* as a pretext to urge its rejection by the states. The first Congress honored the unwritten pledge of the Federalists in Massachusetts, South Carolina, New Hampshire, Virginia and New York to add guarantees of the rights of individuals to the Constitution.[84] The actual ratification of the Federal Constitution by the conventions in Maryland, Virginia, New York, North Carolina and Rhode Island was conditionally pending on the addition of a *Bill of rights.*[85]

Religious Amendment Proposals

An entire package of amendments was referred to a select committee which included Madison. On August 15, 1789 an amendment was brought to the floor which would apply to both federal and state governments: *No religion shall be established by law, nor shall the equal rights of conscience be infringed*. Peter Sylvester of New York objected, cautioning that this *might be thought to have a tendency to abolish religion altogether*. Elbridge Gerry of Massachusetts suggested that the wording be changed to prohibit only *religious doctrine.*[86] This would have limited the amendment to questions of theology and ecclesiastical organization. Roger Sherman had still not changed his mind and found the amendment *Altogether unnecessary*, because *Congress had no authority whatever designated to them by the Constitution to make religious establishments.*[87] Huntington favored an amendment *to secure the rights of conscience*, but not one worded in a way that would *patronize those who professed no religion at all*.[88]

Madison's solution was to insert the word *national* before *religion*, thus making it clear that only establishment by the federal government was prohibited. Samuel Livermore of New

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[83] Alexander Hamilton, *The Federalist Papers*, No. 84 in Charles A. Beard, Editor, The Enduring Federalist, (Garden City, New York: Doubleday and Company, Inc., 1948) pp. 363, 364.

[84] Ibid. Clinton Rossiter, 1787 The Grand Convention, p. 302.

[85] Robert L. Cord, Separation of Church and State: Historical Fact and Current Fiction, (New York: Lambeth Press, 1982), p. 86.

[86] Eldridge Gerry, Debates of Congress, August 15, 1787, Vol. 1, p. 138.

[87] Peter Sylvester, *Objection to the Religious Amendment*, (August 15, 1789) in Abridgment of the Debates of Congress, From 1789 to 1856, (New York: D. Appleton and Company, 1857), Vol. 1, p. 137. See also Annals of the Congress of the United States, (Washington: Gales and Seaton, 1834, Vol. 1, pp. 729-730.

[88] Ibid. Huntington, *Speaking in favor of the Religious Amendment*, Debates of Congress, August 15, 1787, p. 138. See also Journal of Congress Vol. 1, p. 730.

Hampshire, another establishment state, moved that the amendment read: *Congress shall make no laws touching religion, or infringing the rights of conscience*. This motion was approved in the House by a vote of thirty-one to twenty.[89]

On August 20, Fisher Ames of Massachusetts, who personally opposed the idea of a *Bill of Rights*, offered a compromise amendment: *Congress shall make no law establishing religion, or to prevent the free exercise thereof or to infringe the rights of conscience*. After being passed in the House without further discussion, the House then passed, without debate, a Madison amendment restricting the states.[90]

The Senate completed action on the package of amendments that became the *Bill of Rights* on September 9. The separate House amendment directed at the states was dropped. The part of Madison's original fourth amendment dealing with religion was combined with a part instituting freedom of speech and the press to form a single amendment which became the framework of the *First Amendment* as we have it now. The part dealing with religion read, *Congress shall make no establishing articles of faith, or a mode of worship, or prohibiting the free exercise of religion*. This was a victory for Patrick Henry, Senator Richard Henry Lee of Virginia and others who wanted state establishments of religion untouched and who would allow government support of religion even at the national level. The new Amendment only restricted the federal government in matters of theology or forms of worship.

The clauses on religion were approved by two-thirds votes in both houses of congress, ratified by the required three-fourths of the states, and added to the Constitution on December 15, 1791 in the words: *Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof*. In 1941, the states of Connecticut, Massachusetts and Georgia celebrated the sesquicentennial of the *Bill of Rights* by giving their hitherto withheld and unneeded assent.[91]

The Disestablishment of State Churches

The various established state churches were slowly disestablished: South Carolina in 1790; Maryland in 1810; Connecticut in 1818 and New Hampshire in 1819.[92] Finally, in 1833 Massachusetts amended its constitution to end the last state establishment of religion in the United States.

Baptist Contributions to Religious Disestablishment

[89] Ibid. James Madison, Debates of Congress, p. 138. See also Journals of Congress, Vol. 1, p. 731.

[90] Fisher Ames, *Proposed Compromise on the Religious Amendment*, August 20, 1789 in Annals of the Congress of the United States, (Washington: Gales and Seaton, ed. 1834), Vol. 1, p. 766.

[91] Ibid. Rossiter, 1787 The Grand Convention, p. 303.

[92] Ibid. A. James Reichley, p. 111.

Thomas Jefferson, the rationalist, succeeded largely because of encouragement from antirationalist Baptists. Jefferson expressed his appreciation to the Danbury Baptist Association for their support of the First Amendment of the U. S. Constitution in a letter dated January 1, 1802:

> Believing with you that religion is a matter which lies solely between Man and his God, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, and not opinions. I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof', thus building a wall of separation between Church and State.[93]

How could *radical* Baptists receive such an expression of gratitude from such an extreme religious liberal? The answer lies in the fact that both extremes, as well as all other extremes, needed freedom of conscience in order to be faithful advocates of their philosophies. Both believed that the truth would prevail in an arena of free thought.

[93] Ibid. Thomas Jefferson, *Letter to the Danbury Baptist Association* (January 1, 1802) in Writings of Thomas Jefferson, (Monticello Ed.) Vol. XVI, pp. 281-282, cited in Basic Documents Relating To The Religious Clauses Of The First Amendment, p. 19.

CHAPTER III

The 14th Amendment's Incorporation Doctrine And The Resultant Cleavage In The Supreme Court

Religious Establishment In The States

It is clear, from the previous discussion, that the First Amendment only applied to the federal government. The state of Deleware had guaranteed religious liberty only to professing Christians:

> (Delaware Declaration of Rights, Sept. 11, 1776, Section 3) That all persons professing the Christian religion ought forever to enjoy equal rights and privileges in this state, unless, under colour of religion, any man disturb the peace, the happiness or safety of society.[94]

The state of Maryland provided religious freedom only for those who were defined to be *true Christians*:

> (Constitution of Maryland, Nov. 3, 1776, sect. XXXIII) …All persons, professing the Christian religion, are equally entitled to protection in their religious liberty;…Yet the Legislature may in their discretion, lay a general and equal tax for the support of the Christian religion.[95] (Sect. XXXV) That no other test or qualification ought to be required, on admission to any office of trust or profit, than such oath of support and fidelity to this State, and such oath of office shall be direct by this Convention, or the Legislature of this State, and a declaration of a belief in the Christian religion.[96]

Massachusetts required citizens to attend religious instruction sessions taught by state appointed Protestant Bible interpreters:

> (Constitution of Massachusetts, Oct. 25, 1780, Article I, Section III) As the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety,

[94] *Delaware Declaration of Rights* (Sept. 11, 1776, Section 3) cited in Richard L. Perry, Sources Of Our Liberties, (Chicago: American Bar Foundation, 1959), pp. 167-168.
[95] Ibid. *Constitution of Maryland*, (Nov. 3, 1776, Sect. XXXIII) cited in Richard L. Perry, p. 349.
[96] *Constitution of Maryland*, (Sect. XXXV) Cited in Richard L. Perry, pp. 349, 350.

> religion, and morality, and as these cannot be generally diffused through a community but by the institution of the public worship of God, and of public instructions in piety, religion, and morality: Therefore, to promote their happiness, and to secure the good order and preservation of their government, the people of this commonwealth have a right to invest their legislature with the power to authorize and require, the several towns, parishes, precincts, and other bodies politic, or religious societies, to make suitable provision, at their own expense for the institution of the public worship of God, and for the support and maintenance of public Protestant teachers of piety, religion and morality. And the people of this commonwealth have also a right to, and do, invest their legislature with authority to enjoin upon all the subjects an attendance upon the instructions they can conscientiously and conveniently attend.[97]

The Constitution of New Hampshire, (June 2, 1784, Article I, Section VI) followed almost the same verbal pattern of the Massachusetts Constitution and enforced religion by civil law and provided full legal rights only to the constituents of the state religion.

The Limitations Of The First Amendment

Madison had wanted an amendment that would have prohibited the states, as well as Congress, from establishing a religion because some of the states still questioned the propriety of treating Jews, Moslems or Roman Catholics on a basis of civil equality with the Protestants. Thus, until the adoption of the Fourteenth Amendment in 1868, the states were free to do as they saw fit respecting religious practices and beliefs. It was not until 1816 that Connecticut repealed the act making church attendance compulsory, and it was not until 1818 that it disestablished the Congregational Church. As noted previously, the Congregational Church in Massachusetts was disestablished in 1833.[98]

Approval Of The Fourteenth Amendment

One effect of the Civil War was rejection of the *extreme* states-rights position. The Fourteenth Amendment, approved by Congress in 1866 and ratified by the states in 1868, places three restrictions on the states: that they not *abridge the privileges or immunities of citizens of the United States*; that they not *deprive any person of life, liberty, or property without due process of*

[97] Ibid. *Constitution of Massachusetts* (Oct. 25, 1780, Article I, Section III) cited in Richard L. Perry, p. 374.

[98] Milton R. Konvits The Fundamental Liberties of a Free People, (N. Y. : Cornel University Press, 1957), p. 34.

law; and that they not *deny any person…equal protection of the laws.*[99] Neither its background nor its wording indicated any application to the relationship of government and religion. It was not until 1940 that the Supreme Court held, in the case of *Cantwell V. Connecticut* 310 U. S. 296 (1940), that the word *liberty* encompassed liberty of body and also of conscience.[100]

The Supreme Court since 1940 has found, in the Fourteenth Amendment, the purpose of applying to the states all the restrictions placed on the federal government by the religion clauses of the First Amendment.

The chief immediate objective of the Fourteenth Amendment was to extend full rights of citizenship to the foreign slaves who had been freed under the Emancipation Proclamation or the *Thirteenth Amendment*. However, Senator Jacob Howard of Michigan, the Amendment's chief sponsor in the Senate, said that it would give the federal government power to enforce *the personal rights guaranteed and secured by the first eight amendments of the Constitution.*[101] (Article VI. Section III) of the U. S. Constitution states:

> The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath of affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.[102]

However, the state constitutions provided, in most cases, for a religious test. Delaware, 1776, required faith in the triune God and in the Divine inspiration of the Scriptures; Maryland, a declaration of belief in the Christian religion; Georgia, New Jersey and South Carolina required, in addition to the above, belief in a future state of rewards and punishments. Luther Martin said that this provision *was adopted by a great majority of the Convention, and without much debate*[103]

The Incorporation Doctrine

[99] *U. S. Constitution* (Amendment XIV) in The American Pageant, p. xviii.

[100] Leo Pfeffer, God, Caesar and the Constitution: The Court as Referee of Church-State Confrontation, (Boston: Beacon Press, 1975), p. 15.

[101] Ibid. Jacob Howard, *Speaking to Congress for the 14th Amendment* cited in Congressional Globe 39 Cong., 1 Sess., p. 2459 in A. James Reichley, p. 117.

[102] Ibid. The United States Constitution (Article VI. Section III), The American Pageant, p. xv.

[103] David Hutchison, The Foundations of the Constitution, (New Jersey: University Books, Inc., 1975), p. 287.

Thus, a rule of constitutional interpretation known as the *incorporation doctrine* regarding the language of the Fourteenth Amendment—no state denials of liberty—means that the Constitution prevents the states, as well as the United States, from violating the First Amendment. In *Cantwell v Connecticut* 310 U.S. 296 (1940), the Supreme Court incorporated the free exercise of religion clause into the Fourteenth Amendment.

The Separationist And Accomodationist Positions

It should be noted, before further discussion, that most justices are either separationist or accomodationist. A separationist Justice holds that the church and the state should act independently of each other, without any influence by one over the other. Separationists on the Court would include Justices Black; Doluglas; Rutledge; Brennan; Marshall and Stevens.

Accomodationists generally hold that the relationship between church and state would allow some intertwining of the government with religion, for instance allowing moral teachings of religion to influence or dictate the actions of government.

The 1947 Everson Decision

In 1947 the United States Supreme Court initially provided a comprehensive definition of the First Amendment's establishment clause in *Everson v Board of Education of Ewing Township*, 330 U. S. 1, (1947). The Court unanimously agreed that the Fourteenth Amendment incorporated the establishment clause. At this time the incorporation doctrine became a holding of constitutional law.[104] The Court's opinion stated:

> Neither a state nor the federal government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will, or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or nonattendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the federal government can, openly or secretly, participate in

[104] Leonard W. Levy, The Establishment Clause: Religion and the First Amendment, (New York: Macmillan Publishing Company, 1986), p. 123.

> the affairs of any religious organizations or groups, and vice versa.[105]

For decades, successive Supreme Court majorities have held that the establishment clause was intended by its authors to create a high and impregnable wall of separation between church and state; a wall so impregnable as virtually to require an absolute separation between the two.

Court Rulings Following Everson

In 1948, Champaign, Illinois children were released from class to receive religious instruction that was held in classrooms of the school. In *McCollum v Board of Education* 333 U. S. 203 (1948), the Supreme court ruled such instruction to be a violation of the provisions of the First Amendment.[106]

In 1962, in the case *Engle v Vitale* 370 U. S. 421 (1962), the Court, in a 6-1 decision, ruled that official state sanctioning of religious utterances in the schools amounted to a constitutional tendency to *establish religion*.[107]

In *Lemon v Kurtzman*, 403 U. S. 602 (1971), when Pennsylvenia and Rhode Island legislation, providing for state payment of teachers' salaries and costs of instructional materials in parochial schools came before the Court, it declared the legislation an unconstitutional *excessive entanglement between government and religion*. The contention was that state payments to parochial schools would require excessive government controls and surveillance to insure that such funds were not used for religious instruction.[108]

The Court decision, in *McCollum v Board Of Education* 333, U. S. 203 (1948), declared unconstitutional the practice of allowing churches to provide religious instruction during periods of *released time* in the public schools. Since this case, the U. S. Supreme Court has, in general, used this ruling as a standard against which to measure state as well as national legislation.[109] Applying this test of constitutionality to the state legislation that aids sectarian, or nonpublic, school children would not be difficult.

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[105] Carl P. Chelf, Public Policymaking In America: Difficult Choices, Limited Solutions, (Glenview, Illinois: Scott, Foresman and Company, 1981), p. 195.

[106] Paul C. Bartholomew and Joseph F. Menez Summaries Of Leading Cases On The Constitution, Twelfth Ed. (Totowa, New Jersey: Rowman and Allanheld, 1983), p. 293.

[107] N. T. Dowling & G. Gunther Constitutional Law: Cases and Materials, Brooklyn: The Foundation Press, Inc. (1965), pp. 1141, 1142.

[108] Edward Conrad Smith, The Constitution Of The United States With Case Summaries, New York: Harper and Row, Publishers (1972), pp. 125-128.

[109] Robert L. Cord, Separation Of Church And State: Historical Fact And Current Fiction, New York:Lambeth Press. (1982), p. 209.

Reconstructionist Response to Court Decisions

Religious reconstructionists will argue against these rulings by reminding us of the American legal practice of witnesses swearing on Bibles and saying *so help me God*; spending millions of dollars each year on a military chaplain corps; the phrase *In God We Trust* appearing on our currency and the United States Supreme Court opening its public sessions with the proclamation *God Save The United States And This Honorable Court*. They will argue that if Jefferson and Madison believed in strict separation of church and state, they flagrantly violated their own understanding of the First Amendment; their oath of office; their personal principles and the Constitution which they helped to create by their own Thanksgiving Day proclamations and Jefferson's *Bill for Severely Punishing Disturbers of Religious Worship and Sabbath Breakers*, also sponsored by Madison in the Virginia Assembly in1785.[110] With these and many other illustrations, they will argue that the Amendment's Framers, our early Presidents and Congresses embraced a far narrower concept of church/state separation than did the *Everson* Court and most of the subsequent United States Supreme Courts. Robert L. Cord gives several cases in point for this very argument in the *Addenda* of his major work: Separation Of Church And State: Historical Fact And Current Fiction. He includes Presidential Thanksgiving Proclamations by George Washington, 1789 & 1795; John Adams, 1798 & 1799 and James Madison, 1812, 1813, 1814 & 1815. Also included are Jefferson's *Letter of Submission of the Kaskaskia Indian Treaty to the U. S. Senate, 1st Session, 8th Congress, 1803* and the *Treaty with the Kaskaskia Indians and the Other Tribes, 1803.* Finally, Cord cites Laws of the United States providing Land Grant Trusts for *Society of the United Brethren for the Propagating the Gospel Among the Heathen*: Act of March 1, 1800, signed by Adams; Act of April 26, 1802, signed by President Jefferson and the Act of March 3, 1803, signed by Jefferson.[111]

Reconstructionists argue that the *First Amendment* only intended to prohibit the establishment of a particular sect of Christianity while allowing for the establishment of the Christian Religion in general. The Virginia ratifying convention proposed a *Declaration of a Bill of Rights* as amendments to the Constitution, of which *Article Twenty*, in part, stated: *That no particular religious sect or society ought to be favored or established, by law, in preference to others*. Resolutions passed by the New York, North Carolina and Rhode Island conventions were worded almost exactly as Virginia's *Article Twenty*.[112]

Separatist Response To Reconstructionist View

[110] Thomas Jefferson, *The Revisal of the Laws 1776-1786*, (Oct. 31, 1785, Bill No. 84), cited in Robert L. Cord & Howard Ball: The Separation Of Church And State: The Debate, cited in Utah Law Review, (University of Utah, Saltlake City, Utah: *Utah Law Review Society*, Sept. 30, 1987), Vol. 1987, No. 4, p. 901.

[111] Ibid. Cord, Separation Of Church And State: Historical Fact And Current Fiction, pp. 241-268.

[112] Annals of the Congress of the United States, Gales and Seaton, Ed., Vol. 1, p. 451.

Strict separationists will respond to this reconstructionist point by documenting Madison's own reaction to these state resolutions in his original religious amendment proposal:

> The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed. [113]

The annals of the first Congress reveal:

> Mr. Madison said he apprehended the meaning of the words to be that Congress should not establish a religion, and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience… He thought it as well expressed as the nature of the language would admit.[114]

Jefferson contended: *that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical…. The opinions of men are not the object of civil government, nor under it's jurisdiction.*[115] Similarly, Madison's *Detached Memoranda* voiced this concern about national days of prayer, such as Thanksgiving Day and the use of chaplains to open public forums because the Constitution forbade such establishments.

The Founding Fathers' Self-contradictions

These citations make it even more difficult to explain Madison's role as one of the six members of a congressional chaplain's committee which recommended, without recorded dissent, the establishment of a congressional chaplain's system. The First Congress adopted the committee's recommendation and voted a $500 annual salary for a Senate and a House chaplain to offer prayers in Congress.[116]

Also dismissed without explanation is the treaty that Thomas Jefferson, as President, concluded with the Kaskaskia Indians, which, in part, called for the United States to build a

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[113] Ibid. James Madison, Original *Religious Amendment Proposal*, in Richard L. Perry, Sources Of Our Liberties, pp. 167, 168.

[114] Ibid. Annals of Cong., Gales and Seaton, ed., p. 757.

[115] Ibid. *A Compilation Of The Messages And Papers Of The Presidents, (1769-1897),* In Cord and Ball, Utah Law Review, p. 913.

[116] Ibid. *Two Reports of Committees of the House of Representatives, 1854* cited in Cord and Ball, Utah Law Review, p. 902.

Roman Catholic Church and compensate its priest.[117] At Jefferson's urging, Congress passed the law providing the necessary public funds to implement President Jefferson's treaty.[118] Was not this passing a law respecting the establishment of religion?

Further, did Presidents Washington, Adams and Jefferson practice strict separation when they signed into law congressional bills that in effect purchased, with enormous land grants of federal property in controlling trusts, the services of *The United Brethren for propagating the Gospel among the Heathen* in the Ohio Territory?[119]

Evoking Establishment Clause History

Obviously, there is a legal school of thought that will argue for the original intent of the *Framers* of the First Amendment. A simple survey of most of the written opinions of the Court's current personnel show use of establishment clause history either invoked or sanctioned by Justice Brennan; Justice Blackmun; Justice Marshall; Justice O'Connor; Chief Justice Renquist; Justice Stevens and Justice White. Among the more prominent former Justices since *Everson*, establishment clause history was either invoked or sanctioned by Chief Justice Burger; Justice Powell; Justice Black; Justice Clark; Justice Dougless, Justice Frankfurter; Justice Rutledge and Chief Justice Warren.[120] However, these men do not use *original intent* exclusively in their rulings.

Evoking The Non Originalist Interpretation

On the other hand, there are those, such as Justice William J. Brennan, Jr., who argue for a nonoriginalist mode of constitutional interpretation and refuse to accept that the contemporary judiciary is bound by the original understanding of those who wrote and ratified the Constitution. Speaking at Georgetown University in October of 1985, William J. Brennan, Jr. rejected the *arrogance cloaked as humility* of those relying on the *facile historicism* inherent in the original-intent theory.[121] Judge Irving R. Kaufman, Chief Judge of the United States Court of Appeals for the Second Circuit said:

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[117] Ibid. Thomas Jefferson *A Treaty Between the United States of America and the Kaskaskia Tribe of Indians* (Aug. 13, 1803, 7 Stat. 78). In Cord and Ball, Utah Law Review, p. 902.

[118] Ibid. *A Compilation of the Messages and Papers of the Presidents, 1789-1797* cited in Cord and B all, Utah Law Review, p. 901.

[119] Ibid. John Adams and Thomas Jefferson, *Citing an Act regulating the Grants of Land appropriated for Military Services, and for the Society of the United Brethren, for Propagating the Gospel among the Heathen*. Ch. 46, 1 Stat. 490 (1796), amended by ch. 29, 1 Stat. 724 (1799); ch. 30, 2 Stat. 155 (1802); ch. 30, 2 Stat. 236 (1803); ch. 26, 2 Stat. 271, (1804) in Cord and Ball, Utah Law Review, p. 903.

[120] Ibid. Cord and Ball, Utah Law Review, pp. 907-909. An exhaustive list of the cases involving each of these justices is documented in reference to each name, noting their *original intent* citations.

[121] Irving R. Kaufman, *What Did The Founding Fathers Intend?* The New York Times Magazine, 23 (Feb), 1986, p. 59.

> As a Federal Judge, I have found it often difficult to ascertain the *intent of the framers*, and even more problematic to try to dispose of a constitutional question by giving great weight to the intent argument. Indeed, even if it were possible to decide hard cases on the basis of a strict interpretation of original intent, or originalism, that methodology would conflict with a judge's duty to apply the Constitution's underlying principles to changing circumstances.[122]

The Balanced Solution to Interpretation Conflict

Although historical understanding is very useful, the solution to the lasting conflict might be a realization that the best law for the present day may very well be different from the original intent of the Framers. This was the precise point made regarding James Madison by Walter Lafeber, Noll Professor of History, Cornell University, when he stated:

> By 1829… an aged Madison, soon to be known as the Father of the Constitution, concluded that regardless of how well the constitutional system had operated since 1789, its future was limited…. Around 1929, Madison thought, the structure of the American government would have to be restructured.[123]

Madison, the *Father of our Constitution*, would have been surprised to find his words of 200 years ago deciding today's cases. In *The Federalist*, no 14, Madison said:

> Is it not the glory of the people of America that…they have not suffered a blind veneration for antiquity…to overrule the suggestions of their own good sense…?[124]

The mere fact that the Constitution makes provision for itself to be amended and the fact that there are twenty-six amendments to the Constitution is indication that the Founders considered their work unfinished and that unforeseen changes would have to be made in the structure of the law. Judges are constantly required to resolve questions that 18th century statesmen simply could not, or did not, foresee and resolve. It may very well be argued that the strict separationists have not made their case from an appeal to original intent. However, it might also be argued that strict separationism would be the most just application of the law for contemporary America. If this is the case, one possible solution to the conflict would be to

[122] Ibid. Kaufman, p. 42.
[123] Kaufman, p. 42.
[124] James Madison, *The Federalist No. 14* in Charles A. Beard Ed., p. 89.

amend the Constitution again to an accomodationist or the strict separationist view. Although this could be a simple solution, it would be a complex process to create such an amendment. The procedure would require two-thirds of both houses of Congress to propose such an amendment. An alternate procedure would be for two-thirds of the several State legislatures to call for a convention for proposing an amendment. In either case, the proposed amendment would have to be ratified by the legislatures of three-fourths of the several States or by constitutional conventions in three-fourths of the states.

Even such an amendment as just described would not solve all problems relating to church and state. This would particularly be true regarding the matter of government aid to parochial schools. Though there can be no amendment to solve all problems, a limited solution can be achieved which would serve all Americans. In the mean time, we should be confined to precisely what the current Constitution says without going beyond it. If it does not precisely say what we think we need, we should not act or legislate our desires before amending it.

Accomodationist and The Religious Right

As previously stated, most contemporary justices are either separationist or accomodationist in their views of religious establishment. Although it would not be completely proper to label these accomodationists as *dominion theologians*, it is important to realize that their appointment to the Court has served to strengthen the link between the *New Religious Right* and the Republican Party.

Major rulings since the *Everson* case have, outside of the aid to parochial schools realm, taken the separationist viewpoint. One example is *Abington School District v Schemp*, 374 U. S. 203 (1963) wherein the Court said:

> What is the purpose and primary effect of the enactment? If neither is the advancement or inhibition of religion then the enactment exceeds the scope of the legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the establishment clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion.[125]

Professor Robert Cord typifies the accomodationist, or non preferentialist school of thought when he maintains that the First Amendment prohibits only the establishment of a national religion and the placing of one religion in a preferred position over other religions. To Cord, every other state interaction with religious institutions is legitimate, as long as there is no

[125] Ibid. Edward Conrad Smith, The Constitution Of The United State With Case Summaries, pp. 125-128.

religious preference shown. Thus, Cord would contend that a nonpreferentialist or accomodationist concludes that the government, without violating the Constitution, support all religions without preference to any.

Though more moderate in their opinions, accomodationists in politics and in the Court are generally supported by religious reconstructionists for obvious reasons. During the summer of 1985, Attorney General, Edwin Meese III spoke to the American Bar Association. He criticized the Supreme Court's recent decisions reaffirming the First Amendment requirement that government maintain a *strict neutrality* toward religion. He castigated the Court for ignoring the *intent of the Framers* and stated that the Philadelphia Convention would find the doctrine of *a strict neutrality between religion and non-religion…somewhat bizarre.*[126] As we have seen, Justice Brennan called Meese's remarks: *arrogance cloaked in humility.*

Justice Brennan's Relativistic Interpretation

For Justice Brennan, the Federal Judiciary must *read the Constitution in the only way that we can: as Twentieth Century Americans. We look to the history of the time of framing and to the intervening history of interpretation. But the ultimate question must be, what do the words mean in our time.*[127] Advocates of all perspectives in this debate should take great caution at considering this last statement. Brennan is advocating the idea of *a living constitution*. Under this concept, the words should be made to mean anything and everything we think we need them to mean. The result would be an imperial judiciary which some think we may already have to a large extent. There should be an attempt at a literal interpretation of the Constitution based upon a structural analysis of what is actually said and a consideration of the word meanings in their historical context. This is the historical-grammatical method of hermeneutics. Though an infallible recreation of meaning may not be possible, the historical/grammatical method will bring us the closest to the truth.

A pure relativist will argue that words are merely symbols which carry no absolute meanings and thus discount any alternative to a *living Constitution*. However, such a person assumes absolute meanings to his words when he states such a philosophy.

If the actual meaning does not anticipate nor meet the current needs of Americans, it should be amended rather than *relatively* interpreted in a confusing utilitarian manner.

The reader must not be confused that a liberal Justice is called a *strict separationist*. Conservative Evangelicals, who usually consider themselves religious separatists, may

[126] Ibid. Kaufman, p. 42.

[127] Ibid. Cord and Ball, Utah Law Review, p. 924, (Citing W. Brennan, *Address to the Text and Teaching Symposium, Georgetown University, Oct. 12, 1985).*

sometimes consider *separationism* to be liberal when it comes to application of the First Amendment.

When studying the *new religious right*, along with the *reconstructionist* movement, it might become obvious that, in certain cases, invoking the *Framers* is only a cloak to hide their intentions to establish a national religion and the Bible as the *unwritten Constitution* of the United States.

As Hamilton foresaw in *The Federalist*, No. 78, and as Chief Justice Marshall established in *Marbury v Madison*, judicial review of legislation by none elected judges is thoroughly justified. However, this will make necessary a clear guide to constitutional interpretation. If not, then Brennan's relativistic method of interpretation could lead to the opening of a Pandora's Box of corrupt rulings. Judge Kaufman reminds us how history records grave abuses of power when judges feel unrestrained:

> Consider, for instance, the infamous Dred Scott decision in 1857, Dred Scott was a slave whose master had taken him into the Louisiana Territory and under the terms of the Missouri Compromise, was thus made a free man. Scott, however, later was taken to the slave state of Missouri. With the aid of abolitionist lawyers, Scott brought a suit in Federal court to obtain his freedom on the grounds he had been emancipated….On appeal, the Supreme Court ruled against him…. The High Court decided blacks were not citizens and Congress could not regulate slavery in the territories. After noting the subjugation of the black at the time of the Constitution's adoption, Chief Justice Roger Taney concluded *they had no rights which the white man was bound to respect.*[128]

In the early years of the Twentieth Century, the Federal Judiciary regularly invalidated child labor statutes and minimum wage and maximum hours laws. Justices used, as a pretext, that the due process clause embodied the economic liberty of business corporations.

But if original intent is an uncertain guide and relativistic interpretation is a license, is there a more functional approach to interpreting the Constitution? Appealing to precedent alone

[128] Kaufman, p. 60.

could only function to preserve erroneous decisions. The *separate but equal* doctrine survived for more than fifty years before the Warren Court struck it down in 1954.[129]

Literalist Response To Brennan's Relativism

The answer is that we should attempt, though imperfectly, to interpret the Constitution the same as we would a set of blueprints. All contractors on a building site must use the same *twelve-inches-equals-a-foot* standard of measurement. The prints must specify a scale that can be understood by all of the carpenters through an objective analysis. The symbol for window is the same for everyone as is the symbol of a door. If the prints do not self-contain and therefore prescribe their own method of interpretation, the house will never be built. If blueprints were interpreted relativistically, few buildings would stand. If something is wrong and something must be changed in the building procedures, the changes must be first authorized by a revised set of plans. Otherwise, later maintenance engineers will not know how to repair or improve the building without risking the possibility of structural damage. The application of the metaphor is clear. The U. S. is a constitutional democracy. If the Constitution cannot be interpreted with a degree of adequacy, then the federal judiciary itself is either irrelevant or becomes a legislative branch of government. The fact that the Supreme Court is not a legislative branch of government shows that it was never intended that its justices should form an elite club which could negate the will of the majority by decree.

Dr. Roy F. Nichols uses Thomas Hobbes' term *Leviathan* to relate the idea of the constsitutional mechanism. In order to preserve society, Hobbes believed that men had introduced *restraint upon themselves* by living in commonwealths, thereby *getting themselves out from that miserable condition of Warre, which is necessarily consequent…to the naturall*

[129] Separate but equal was a legal doctrine in United States constitutional law that justified and permitted racial segregation as not being in breach of the *Fourteenth Amendment* to the United States Constitution which guaranteed equal protection under the law to all citizens, and other federal civil rights laws. Under this doctrine, government was allowed to require that services, facilities, public accommodations, housing, medical care, education, employment, and transportation be separated along racial lines, provided that the quality of each group's public facilities was equal. The phrase was derived from a Louisiana law of 1890, although the law actually used the phrase *equal but separate*. The doctrine was confirmed in the *Plessy v. Ferguson* decision of 1896, which allowed state-sponsored segregation. Though segregation laws existed before that case, the decision emboldened segregation states during the *Jim Crow* era, which had commenced in 1876 and replaced the *Black Codes*, which had restricted the civil rights and civil liberties of African Americans with no pretense of equality during the *Reconstruction Era*. 17 states had various institutionalized separation laws. The doctrine was overturned by a series of Supreme Court decisions starting with *Brown v. Board of Education* in 1954. However, the overturning of legal separation laws in the United States was a long process that lasted through much of the 1950s, 1960s and 1970s involving many court cases and federal legislation.

passions of men, when there is no visible Powerr to keep them in awe and tye them by fear of punishment to the performance of their covenants, and observation of the Laws of Nature.[130]

Hobbes called such commonwealths *great Leviathans* described as *Automata* or *Engines that move themselves by springs and wheels as doth a watch.*[131] As a mechanism, the engine could be reduced to blueprints and thereby revealed to the world. According to John Locke—another seventeenth-century philosopher—naked savages, sometime in the millennia before history, made a social contract whereby they surrendered some of their absolute liberty to a power or, in Hobbes's term, to a *Leviathan* of their own creation. Dr. Nichols states that:

> The American Leviathan has been the product of hard, adroit thinking. As an *engine*, it requires constant attention and frequent overhauling. Its operators must be men capable of complex intellectual activity, able to adjust the mechanism, to change the specifications as time changes and to be ingenious in supplying new parts…American society has produced a succession of ingeniously minded political inventors and engineers who had unusual success in solving by their intellectual talent the problems involved in creating and maintaining the republic…It is well to keep in mind the essential fact that in the art of government the pen can be mightier than the sword, that in the mind of man rather than in his arm may be found his salvation.[132]

Nichols is here speaking of internal political salvation. Lincoln realized that a failure to design new dimensions to the blueprints contributed to the dividing of the union. Lincoln is thought of as a firm believer in Constitutional amendments. In his April 11, 1865 speech he stated:

> The dogmas of the quiet past are inadequate to the stormy present. The occasion is piled high with difficulty, and we must think anew, and act anew. We must disenthrall ourselves, and then we shall save our country.[133]

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[130] Thomas Hobbes, Leviathan, Everyman's Library edition (London, 1914), p. 87, cited by Roy F. Nichols in *Blueprints for Leviathan: American Style: An historical account of how and why the machinery of American Democracy, despite its expert design and specifications, broke down a century ago and made necessary some new blueprints* (New York: Atheneum, 1963), p. vii. Dr. Nichols holds the Pulitzer Prize for history and has served as a founder and president of the Pennsylvania Historical Association.

[131] Ibid., Hobbes, p. 1.

[132] Ibid., Nichols, pp. viii-xi.

[133] Basler, Lincoln's Works, *Speech of April 11, 1865, VIII, 404*, cited in Nichols, Blueprints For Leviathan: American Style, pp. 278, 279.

The three branches of government are to be subject to the Constitution rather than the Constitution being at the mercy of government. Although the original intent of the *Framers* may not be infallibly recovered, an attempt at that direction will bring one closer to the truth and spirit of our constitutional democracy than any other alternative. If original intent seems to contradict current need, the problem calls for amendment. No branch of government has the constitutional right to unilaterally change constitutional law by imposing a partisan *relevant* interpretation upon the Constitution contrary to Article V of its text.

The judiciary should primarily rely on what the text of the Constitution actually says, consulting also the historical-grammatical usage of the words and phrases contained therein. Though less than perfect, this method will protect us from the irrelevancy of many original intent conclusions while providing us with adequate judicial restraint. If the judiciary deems that something in the Constitution cannot relate to current social needs and personal liberties, it can recommend the Congress to propose to the several states that a revisionary amendment be created. Thus, the Supreme Court would be restrained from becoming a legislative branch of government through a relativistic determination of what the words *mean for us today.* The meanings of the words of the text should not change. If there is something wrong or inadequate, it is the text itself that must change. This must not be the task of the judiciary.

According to Judge Kaufman, the *Constitution balances the danger of Judicial abuse against the threat of a temporary majority trampling individual rights*.[134]

[134] Ibid. Kaufman, p. 62.

CHAPTER IV

The Historical Development Of The
Dominion Vs Neutrality Contest From (1844-1988)

This chapter will trace Dominion Theology [reconstructionism] from the campaign of 1844 to the elections of the 1980s. It will not be the purpose of this section to document the development of the *Religious Right* to the present because the intention is to discuss the pros and cons of the political/religious concepts of reconstructionism as a philosophical/religious point of view.

Manifest Destiny

In May of 1844, the Whigs chose Henry Clay to be their presidential candidate while the Democrats chose James K. Polk. The campaign of 1844 was in part an expression of the emotional upsurge known as *Manifest Destiny*. Countless citizens felt a sense of mission, believing that almighty God had *manifestly* destined the American people for a hemispheric dominance. They believed that Americans would irresistibly spread their institutions over at least the entire continent and possibly over South America as well.[135] Although dominion theology and American nationalism are separate subjects, they were closely related in the doctrine of *Manifest Destiny*. Early in 1848 the New York Evening Post, in a common expression of *Manifest Destiny*, demanded:

> Now we ask, whether any man can coolly contemplate the idea of recalling our troops from the Mexican territory we at present occupy…and…resign this beautiful country to the custody of the ignorant cowards and profligate ruffians who have ruled it for the last twenty-five years? Why, humanity cries out against it. Civilization and Christianity protest against this reflux of the tide of barbarism and anarchy.[136]

In 1899, Senator Albert J. Beveridge of Indiana combined the ideas of *Dominion Theology* and *Manifest Destiny* when he said:

> God has not been preparing the English-speaking and Teutonic peoples for a thousand years for nothing but vain and idle self-admiration. No! He has made us the master organizers of the world to establish system where chaos reigns….He has made us

[135] Ibid. Baily and Kennedy, The American Pageant, p. 278.
[136] Ibid. p. 285.

> adepts in government that we may administer government among savages and senile peoples.[137]

Social Darwinism And Immigration

Social Darwinism had become popular among many religious leaders at this time. Reverend Josiah Strong published a volume in 1855 entitled Our Country: It's Possible Future and It's Present Crisis which sold 170,000 copies and was translated into many foreign languages. Though Strong believed in a social gospel, he was also against immigrants; Catholics; Mormons; saloons; tobacco, large cities; socialists and concentrated wealth. Diplomatic historian, Robert H. Ferrell said that Strong's writings *managed to combine these prejudices of rural Protestant America with a strong feeling of manifest destiny.*[138] Strong wrote that the Anglo-Saxon people are *Multiplying more rapidly than any other European race. It already owns one-third of the earth, and will get more as it grows. By 1980 the world Anglo-Saxon race should number at least 713, 000, 000. Since North America is much bigger than the little English isle, it will be the seat of Anglo-Saxonism.* Was there any room for doubt, he asked, that this wonderful Anglo-Saxon race, *unless devitalized by alcohol and tobacco, is destined to dispossess many weaker races, assimilate others, and mold the remainder, until, in a very true and important sense, it has Anglo-Saxonized mankind?*[139]

From 1854 until 1914 the new waves of immigration became a sociological phenomenon. The national origins of the new immigrants would deeply disturb some religionists, now often referred to as *White Anglo-Saxon Protestants* or *WASPs*. After the Civil War, masses of new immigrants came from eastern and southern Europe—Italy; Poland; the Balkans and Russia. They were mostly from a peasant culture which was poor and illiterate. Usually Roman Catholic or Jewish in religion, they contrasted sharply with the old Protestant Yankee stock.

The Know-Nothing Party and Anti-Catholicism

The fear of Catholics became so strong that in the 1830s and 1840s there were armed confrontations between Protestants and Catholics in New England. In 1845 a movement of nativist Americans, desiring to keep America politically pure, met in convention in Philadelphia. They soon developed a membership of 100,000. In 1849 they formed a secret society known as the *Order of the Star-Spangled Banner* which became the backbone of the *Know-Nothing Party*.

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[137] Robert H. Ferrell, American Diplomacy: A History, (New York: W. W. Norton & Company, Inc., 1969), p. 332.
[138] Ibid. Ferrell, p. 340.
[139] Ibid. Ferrell, p. 340.

The oath required members to promise support for public office only American-born Protestants.[140]

The American Protective Association And Immigration

Though the *Know-Nothing* party disappeared, the *American Protective Association* of the 1880s actively sought to have laws passed to curb immigration and to strengthen Protestant influence in public schools. In the election of 1884, a supporter of James G. Blaine referred to Grover Cleveland's Democrats as the party of *Rum, Romanism, and Rebellion.*[141]

The 1896 Struggle For A National Religion

The idea of religious dominion was further exemplified in an effort to establish a unified national religion, with statutes, in the late Nineteenth Century. The Tulare (Cal.) Times of October 20, 1882, said that General Grant had warned of an impending struggle between the *God in the Constitution party* and the friends of religious freedom. He predicted that the conflict *would shake the very foundations of Government.*[142]

Grant's prediction began to come true during the first session of the 54th Congress at hearings held by the House Judiciary Committee on March 11, 1896. Representatives of various religious organizations appeared to support or oppose *Resolution 28* to amend the *Preamble of the Constitution* by giving it the following opening:

> We the people of the United States, acknowledge Almighty God as the source of all power and authority in civil government, the Lord Jesus Christ as the ruler of nations, and His revealed word as the supreme authority in civil affairs, in order to form a more perfect Union., etc.[143]

Dr. Stockton, moderator of the Presbyterian Synod of Pennsylvania, stated the purpose:

> I wish to call your attention simply to one point…that this is a Christian nation, and ask you to bring the Constitution of the

[140] Madalyn Murray O'Hair, Freedom Under Siege: The Impact of Organized Religion on Your Liberty and Your Pocket-book, (New York: Dell Distributing, Inc., 1974), pp. 40-43.

[141] Ibid. O'Hair, p. 43.

[142] Ibid. Tular (Cal.) Times (Oct. 20, 1882) cited in Bible Readings For The Home Circle, p. 237.

[143] *Proceedings of the House Judiciary Committee* (March 11, 1896) cited in Irving Brandt, The Bill of Rights: It's Origin and Meaning, (N. Y. and Toronto: Mentor Books, 1965), p.p. 413-416. Further quotations from these hearings will be from this same source. Bill (54) H. Res. 28.

> nation in line with what we believe is the unwritten constitution of the nation.

In the course of the hearings, the Rev. Mr. Cole was asked whether this amendment would permit a Jew to accept an election to Congress. Mr. Col: *Logically I think he could not.*

As the hearing progressed, Dr. David McAllister of Allagheny, Penn., editor of the Christian Statesman, began to suspect that the members of the Judiciary Committee did not understand their country. He said:

> I wish you to understand that…this country was settled by Christian people, as has already been said—not by Jews, not by Mohammedans, not by Confucians, but by Christian Forebears, from whom you and I, Mr. Chairman, and you, gentlemen, are proud to be descended, whether they be Quakers….Episcopalians….Presbyterians, or any other denomination… We have as a nation called upon God; we have acknowledged Jesus Christ as the appointed way through whom to seek God's blessing.

The acting chairman, Representative Ray of New York, asked Dr. McAllister to be more specific. What did the amendment mean by *His revealed will?* Dr McAllister answered: *The Bible*. Chairman Ray then asked: *Then you wish the Constitution to recognize the Bible as the supreme authority in civil affairs, do you?* Dr. McAllister answered: *Yes sir*.

Asked for an example of a biblical injunction to be enforced by Congress, Dr. McAllister responded: *Remember the Sabbath Day to keep it holy.* At this point a voice came from the audience: *That is the seventh day.*

It is not the seventh day, replied McAllister. In the ensuing debate it was proposed that Jews and Seventh-Day Adventists would have the right, under this amendment, to observe Saturday as their Sabbath and to work in their own houses on Sunday. They could not plow corn *to the disturbance of those who pass to church*. And it would be criminal to play Sunday baseball.

Suppose, he was asked, *that the Supreme Court should decide that the Bible did not fix the Sabbath to be on Sunday?* McAllister replied: *If the Court should say that and the nation think it not right, we must change it.*

Dr. McAllister told the committee that Congress itself had made this amendment essential by holding *sessions on the Lord's day* when there was no real necessity of it. Rep.

Conolly of Illinois doubted that amending the Constitution would lift the level of congressional piety. He asked: *If the devil should make a constitution for hell and acknowledge the supremacy of God in that constitution, would it make hell any better?*

The hearing was brought back to earth by Rep. Broderick of Kansas. *Is it not true*, he asked, *that Christianity has grown in this country because it has been free of arbitrary legislation?*

Dr. McAllister replied: *Is it arbitrary legislation to have Congress open in prayer?* Mr. Broderick said, *No.* McAllister then asked: *Do you think it is arbitrary legislation that we should have prayers in our public schools?* Broderick responded that he was not certain about that.

McAllister then asked: *Should not the children in the schools be taught that there is a God? Should they not be taught there is a judgment seat?* To this, several gentlemen responded, *No, No!* McAllister then concluded:

> These gentlemen said no. That shows where the conflict is. The conflict is between the denial of the judgment seat, the denial of our responsibility to the God in whose name we swear, and those who hold Christian principles sacred. What is the unwritten constitution of this country? It embodies Christianity. It is Christian in all the facts of our life, as shown by the appointment of chaplains, in the administration of oaths, in the appointment of days of thanksgiving and fasting…

The Scopes Trial And Anti-Evolution Laws

The theories of evolution and theistic evolution were becoming popular in the 1920s. Christian theonomists sought for laws to forbid evolutionary teaching. The states of Tennessee, Oklahoma and Mississippi passed such anti-evolution laws. The Tennessee law forbade teachers in any state-supported school to *teach any theory that denies the story of the divine creation of man as taught in the Bible and to teach instead that man descended from a lower order of animals*.[144]

The Tennessee law came before the courts in 1925 in a case against John T. Scopes, a biology teacher in Dayton, Tennessee, who was accused of teaching evolution. The leading lawyer for the defense was Clarence Darrow. William Jennings Bryan represented the prosecution. The outcome was that the jury at Dayton found Scopes guilty—*Scopes v Tennessee* 289 S. W. 363 (1927).

[144] Ibid. Anson Phelps Stokes and Leo Pfeffer, Church And State In The United States, p. 396.

W. J. Bryan was the venerable champion of populism and postmillennialism and an advocate of religious dominion. During the trial, Brian claimed that the world was created in 4004 B. C.

Darrow and his associates pointed out that the state Constitution promised that: *no preference shall ever be given by law to any religious establishment*. When the case was heard on appeal in June, 1926, by the Supreme Court of Tennessee, great emphasis was laid on the preference shown by the law for the fundamentalist churches. To keep the case out of the United States Supreme Court, Tennessee reversed the conviction on the ground that the fine had been improperly imposed by the judge, *Scopes v State*, 154, Tenn. 105 (1927).[145]

Standing where Bryan stood, in the old Dayton courthouse, Jerry Falwell (considered by many to be a sincere honorable Christian) became controversial when he mounted a major nationwide television appeal in late 1981 for funds to defend new anti-evolution laws in twenty-two states.[146]

Sunday Blue Laws

Still another chapter in the ongoing controversy has been the debate over the legality of *Sunday Blue Laws*. In 1828 a general union for the observance of the Sabbath had been organized in New York and in 1844 a *National Sabbath Convention* was held in Baltimore, attended by seventeen hundred delegates from eleven states.[147]

However, there were many others, sympathetic with the Christian traditions of the nation, who believed that Sunday legislation, especially in any rigid form, was contrary to the fundamental principles of separation of Church and State. They believed that Sunday observance was an individual matter, not one for municipalities, state legislatures and congress to deal with. In 1848, William Lloyd Garrison had formed an appeal for an *American Anti-Sunday Law Convention* as a direct reaction to the *National Sabbath Convention* of 1844 and to work of the *American and Foreign Sabbath Union*. His appeal stated that the combination of the latter two movements:

> …is animated by the spirit of religious bigotry and ecclesiastical tyranny—the spirit which banished the Baptists from Massachusetts and subjected the Quakers to imprisonment and death, in the early settlement of this country….It is managed and

[145] Ibid. Stokes and Pfeffer, p. 398.

[146] Perry Deane Young, God's Bullies: Power Politics and Religious Tyranny, New York: Holt, Rinehart And Winston (1982), p. 58.

[147] Daniel Dorchester, Christianity in the United States, New York: Hunt and Eaton (1895), p. 476.

> sustained by those who have secured the enactment of the penal laws against Sabbath-breaking….Its supporters do not rely solely upon reason, argument, persuasion, but also upon brute force—upon penal law; and thus in seeking to crush by violence the rights of conscience, and religious liberty and equality, their real spirit is revealed as at war with the genius of republicanism and the spirit of Christianity.[148]

Leadership in the enforcement of Sunday laws had been taken by the *Lord's Day Alliance*, an interdenominational organization founded in 1888, with an objective to uphold and defend the sanctity of the *Lord's Day* and the rights of the civil institution of Sunday.

Every state, except Alaska, has had a Sunday-observance law but only one-fourth of the states exempted Orthodox Jews and Seventh-Day Adventists as sabbatarians.[149]

In 1960, the Supreme Court had to respond to the decision of the Federal Court of the First Circuit which had declared the Massachusetts Sunday-observance law unconstitutional while the Federal Court of the Third Circuit had declared, its almost identical twin in Pennsylvania, constitutional. These two cases, with a similar one from Maryland, was now before the Supreme Court. Justice Warren delivered the opinion of the majority with a compromise that removed the religious basis for the Sunday-closing laws. He stated: …*the State's purpose is not merely to provide a one-day-in-seven work stoppage. In addition to this, the State seeks to set one day apart from all the others as a day of rest, repose, recreation and tranquility—a day which all members of the family and community have the opportunity to spend and enjoy together.* (*McGowan v Maryland*, 362 U. S. 959).[150] Thus, the Court affirmed the right of the majority to enjoy the benefits of social legislation despite some incidental injury to the minority resulting from conflict with their religious convictions. Dissents from this majority opinion were filed by Justices Douglas, Brennan and Stewart.

However, the problem of how to accommodate this ruling to the rights of sabbatarians remains unresolved, except in those states where the freedom from the Sunday sales ban on sabbatarians provides an accommodation. In 1963, the Court did hand down a decision favorable to sabbatarians. In *Sherbert v. Verner* 374 U. S. 398, with but two justices dissenting,

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[148] William Lloyd Garrison, *An Appeal for an American Anti-Sunday Law Convention* (1848) cited in William Addison Blakely, American State Papers on Freedom in Religion, Washington: Religious Liberty Association (1949), pp. 328-333.

[149] William H. Marnell, The First Amendment: Religious Freedom in America From Colonial Days to The School Prayer Controversy, Garden City, New York: Doubleday and Company, Inc. (1964), p. 211.

[150] Ibid. W. H. Marnell, p. 212.

the Court held that a Seventh-Day Adventist who, for reasons of conscience, refused to work on Saturdays, could not constitutionally be denied unemployment insurance benefits.[151]

Many conservative churches fought for enforcement of Sunday closing laws and suppression of gambling. By the beginning of the 1960s, most of the larger denominations maintained church offices in Washington to represent their views on national issues.[152]

Prohibition

With the *Anti-Saloon League of America* in 1895, another major reform movement was under way, turning out more than 40 tons of propaganda material each month from its printing plant in Westerville, Ohio. The League was clearly identified with rural America and with the Protestant clergy in small-town and country churches. It called itself *the church in action against the saloon*.[153]

The *Anti-Saloon League* refused to identify with any political party, which seriously seemed to hurt the *Prohibition Party*. It would support any candidate of any party upon a promise to carry out the agenda of the League. One agent of the League, William E. Johnson, wrote that he had lied, bribed and drunk in order to put over prohibition. *The lies that I have told would fill a book,* he announced proudly.[154]

On the evening of January 15, 1920, Billy Sunday held a mock funeral service in Norfolk, Virginia for *John Barleycorn*, the cartoon character that represented alcoholic beverage. In his funeral oration, Sunday said: *You were God's worst enemy; you were hell's best friend*. And then he announced, *The rein of tears is over….The slums will soon be only a memory. We will turn our prisons into factories and our jails into storehouses and corncribs.* The following day, prohibition (*The Eighteenth Amendment*) went into effect throughout the United States and the manufacture, sale and transportation of intoxicating drinks was to be illegal.[155]

The depression defeated the Republicans in the election of 1932. The Democrats in the preceding election had become identified as the *Wets*, and therefore the depression in one sense led directly to prohibition's repeal. When F. D. Roosevelt accepted the Democratic nomination for President, he announced: *I say to you that from this date on, the Eighteenth Amendment is*

[151] Ibid. Stokes and Pfeffer, p. 501.
[152] Ibid. A. J. Reichley, p. 169.
[153] James P. Barry: The Noble Experiment, 1919-33: The Eighteenth Amendment Prohibits Liquor in America, New York: Franklin Watts, Inc., (1972), p. 7.
[154] Ibid. James P. Barry, p. 7.
[155] Ibid. Billy Sunday, *Funeral Sermon for John Barleycorn* (Jan. 15, 1920) cited in James P. Barry, pp, 1, 2.

doomed.[156] Thus with the election of Roosevelt came also the repeal of the amendment and a prohibition defeat.

In God We Trust on Coins

In the 1970s, many fundamentalists were mobilized by an attempt of atheist Madalyn Murray O'Hair to have *in God We Trust* removed from our coins.

In 1977, thousands of supporters received a form letter from Lester L. Buttram, President and founder of the *Gospel Tract Society, Inc.* The letter began with: *Dear Prayer Partner* and continued with *The time has come when all truly born-again Christians, and every red-blooded American must stand together as one great army against those who would seek to destroy all we hold dear and precious.* Mr. Buttram stated further that:

> Our own investigation reveals that a suit was filed on September 1, 1977 in the United States District of Texas, Austin Division by Madalyn Murray O'Hair, Jon Murray and William J. Murray, Plaintiffs vs. Michael Blumenthal, Secretary of the Treasury, and James A. Conlon, Director of Engraving & Printing, Defendants, Civil Action Number A77-CA166. The petition asks that Title 31 United States Code, Sections 324 and 324 (A) (1976), which sections provide for the inscription of the motto "In God We Trust" be inscribed on all United States currency and coins, be declared to be unconstitutional and that an injunction be issued restraining the defendants from printing or inscribing any religious motto on the United States currency and coins.[157]

It was William J. Murray who had filed a million dollar lawsuit against Mr. Buttram and the *Gospel Tract Society, Inc.* in the District Court of Harris County, Texas on January 21, 1977. The Judge ruled in favor of the Tract Society, dismissing the petition for want of jurisdiction.

The inscription issue began in 1861 when the Reverand M. R. Watkinson persuaded the Sec. of the Treasury to try to introduce *In God We Trust* as the inscription on U.S. coinage *when and where sufficient space in the balance of the design* would permit it. He argued on the premise that in a Judeo-Christian nation *there is but one God*. Congress passed the *Coinage Act* of April 22, 1864, which designated the said motto on U. S. coins.[158] In 1867, the *Free Religious Association* was founded to counteract these *fundamentalist* maneuvers with little

[156] Ibid. cited in James P. Barry, p. 73.

[157] Lester L. Buttram, *Form Letter Entitled: In God We Trust*, Independence, Missouri: Gospel Tract Society, Inc., (1977).

[158] Ibid. Madalyn Murray O'Haire, pp. 38, 52.

effect.[159] The inscription issue did not significantly develop any further until after the Second World War.

On July 11, 1955, President Eisenhower signed *Public Law 140*, making it mandatory that all currency and coins bear the motto *In God We Trust*. The following year, on July 30, he signed *Public Law 851*, replacing *E Pluribus Unum* (One Out of Many) with *In God We Trust*. These enactments were claimed as major victories for advocates of *Dominion Theology* throughout the United States.

Religious Oaths For Political Offices

Advocates of religious supremacy in government lost a major battle in 1964 when the *Civil Rights Bill* was going through Congress. The *Ashbrook Amendment* was attached, affirming that anyone discovered to be an atheist could be discharged from his public employment for that reason alone, without right of appeal or compensation. The amendment passed the House of Representatives but was narrowly defeated in the Senate. However, perhaps to appease the defeated Christians, on September 6, 1966, Congress passed *Public Law 89-554*, requiring that any individual elected or appointed to an office of honor or profit in the civil services or the uniformed services (with the exception of the President) must take an oath or affirmation of allegiance concluding with the phrase *so help me God*.[160] This was considered by many to be a direct violation of the U.S. Constitution *Article VI, Section iii*, which says:

> …no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.[161]

The reason that the President is excluded from the oath to God was that his oath is already spelled out in the Constitution, *Article II, Section 1*:

> Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:-- "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."[162]

It should be obvious to the reader by now why the Framers made no mention of God. President Nixon added the expression, *So help me God* to his swearing-in ceremonies and this procedure has now become a precedent.

[159] Ibid. O'Hair, pp. 38-40.
[160] Ibid. Madalyn Murray, p. 53.
[161] Ibid. The United States Constitution, (Article VI, Section III), p. xv. In The American Pageant.
[162] Ibid. The United States Constitution, (Article II, Section 1), p. x in The American Pageant.

Under God in the Pledge of Allegiance

Shortly after Eisenhower's first election, the Hearst newspaper chain began campaigning for the addition of the words *Under God* to the *Pledge of Allegiance*. The American Legion, the Roman Catholic Church and many Protestant churches endorsed the idea. On June 14, 1954, the change of wording was passed into law by Congress without one dissenting vote.[163] *So help me God* is required in several oaths and affirmations, including the oaths of all elected and appointed federal legislative and executive offices (except for the President), the oaths of all individuals seeking passports or naturalization papers, and the oaths of witnesses in most courts of law. Applicants for naturalization or passports have been rejected for refusing to affirm, *So help me God*.[164]

Prior to the addition in the pledge, there were two very interesting court cases: *Minersville School District v Gobitis* 310 U. S. 586 (1940) and *West Virginia State Board of Education v Barnett* 319 U. S. 624 (1943). In the first case, the Court supported a state's requirement of a salute as a means of inculcating the children's loyalty to an orderly political society, holding that such requirement did not interfere with religious freedom. In the second case, the earlier decision was overruled. The Court declared:

> …that any official effort to prescribe orthodoxy in politics or religion, or to force citizens against their will formally to profess adherence to such orthodoxy, is a violation of the Fourteenth Amendment, which incorporates the substance of the First.[165]

Prayer in Public Schools

Proponents of religious dominion received another setback in 1963 when the Supreme Court banned prayer in public schools. This defeat occurred in spite of the fact that they were mobilized across the country to oppose the ruling. In the *School District of Abington Township v Schempp* 374 U. S. 203 (1963) the Court held that *recitation of the Lord's Prayer or reading from the Bible during opening school exercise violates the First Amendment*. The previous year in *Engel v Vitale* 370 U. S. 421 (1962) the Court invalidated the use in public schools of a prayer (the so-called *Regent's Prayer*) as part of its official function of supervising the schools. The Court said that *the prescribing of a prayer violated the First Amendment's prohibition of laws establishing a religion, a restriction which applies to the states through the due-process clause*

[163] Ibid. O'Hair, pp. 51, 52.
[164] Ibid. O'Hair, p. 5.
[165] Edward Conrad Smith, The Constitution Of The United States With Case Summaries, New York: Harper & Row, Publishers (1972), pp. 125-128.

of the Fourteenth Amendment. Justice Black, of the Court of Appeals of New York commented on *Engel v Vitale*:

> It is a matter of history that this very practice of establishing governmentally composed prayers for religious services was one of the reasons which caused many of our early colonists to leave England and seek religious freedom in America….It is an unfortunate fact of history that when some of the very groups which had most strenuously opposed the established Church of England found themselves sufficiently in control of colonial governments in this country to write their own prayers into law, they passed laws making their own religion the official religion of their respective colonies….[166]

Federal Tax Subsidies For Religion

A major disappointment for the idea that Government is subject to religion in America was the failure to obtain federal tax subsidies for sectarian religious objectives. In *Tilton v Richardson* 401 U. S. 672 (1971) the Court ruled that: *Private college buildings constructed with public funds may never be used for religious purposes*.[167]

In *Brusca v State of Missouri* 405 U.S. 1050 (1972) the Court held that the First Amendment *does not require states to assist parents in providing a religiously oriented education for their children*. In *Wolman v Essex* 409 U. S. 808 (1972) the Court ruled that: *State reimbursement of parents for parochial school tuition is unconstitutional*. In *Levitt v Committee for Public Education and Religious Liberty* 413 U. S. 472 (1973) the Court concluded that: *State payments to parochial schools for state mandated testing and record keeping are an impermissible aid to religion*. Finally, in *Kosvdar v Wolman* 413 U. S. 901 (1973) the Court established that *Tax credits to reimburse parents for parochial school tuition violate the First Amendment*.[168]

The Pro-Life Movement

The next disappointment for the advocates of religious supremacy in government took place in 1973 when *Roe v Wade* 410 U. S. 959 established a constitutional right to abortion during the first six months of pregnancy. This was unfortunate indeed. The major *pro-life* political force at this time was the Roman Catholic church. Justice Harry Blackman, writing for

[166] N. T. Dowling & G. Gunther, Constitutional Law: Cases and Materials, Brooklyn: The Foundation Press, Inc. (1965), pp. 1141, 1142.
[167] Ibid. Albert J. Mendes, The Best of Church & State (1948-1975), p. 86.
[168] Ibid. Mendes, p. 86.

the majority, based the right to abortion on a *right to personal privacy*, which he found in *the Fourteenth Amendment's concept of personal liberty*. The sweeping nature of the Court's decision practically guaranteed that opponents of abortion would fight back with a militant spirit. Opponents of abortion organized politically to enact a constitutional amendment that would make outright prohibition of abortion part of the permanent law of the land. In this case there was an unprecedented cooperation among Catholics, mainstream Protestants and fundamentalists alike. Politicians viewed the abortion issue as particularly important because it could actually move voters from one side of the partisan fence to the other.

Determined to preserve moral values in the public sphere, many conservative church members, who had long disdained politics, began organizing furiously. Charles Colson noted that:

> The Pro-Life Movement spread quickly across the country. By 1976 evangelicals were flexing their muscles behind a "born-again" presidential candidate. In 1979 a group of conservative Christian leaders met privately in Washington; the result was the Moral Majority and the Christian New Right. Within only six years this movement became one of the most formidable forces in American politics, registering millions of voters, raising vast war chests for select candidates, and crusading for its "moral agenda" with the fervor of old-time, circuit-riding preachers…. In thousands of precincts across the country, fundamentalist ministers organized voter-registration campaigns, equating conservative political positions with the Christian faith. New Right spokesmen trumpeted the call for God, country, and their hand-picked candidates….Never had religion become such a central issue in a presidential campaign…[169]

Gay Rights Agenda

Many devout Christians who have confidence in the authority of the Bible have been persuaded to believe that Christianity cannot co-exist in a society that allows consenting adults to unite in same-sex marriages. Their view of God's disapproval of homosexuality needs to be respected by Government but should they tolerate a government that has legalized gay unions between consenting adults? The answer, for them, can be found in their Bible which they commendably cherish so much.

[169] Charles Colson, Kingdoms In Conflict: An Insider's Challenging View Of Politics, Power, and the Pulpit, Grand Rapids, Mich.: William Morrow and Zondervan Publishing House, (1987), pp. 45-46.

They have studied the story of Sodom and Gamorrah in Genesis chapters 18 & 19 and believed that God destroyed those cities for the sin of what they call *Sodomy.* Many can quote from memory the first chapter of Romans in verses 18-27 wherein God pronounces judgment on lesbianism and homosexuality. They believe that their God has required them to stand for a definite position of opposition to this kind of a lifestyle as a Church that is called to reach the world with their gospel message.

However, these sincere Christians must be reminded of God's distinction between His Church and the world. God knew that, in the world, most law and order would be mostly handed down by governments constituted of unconverted persons. These inferior government systems, in their limited capacities, would decree enough law and order to allow Christianity to move about freely, spread the good news of redemption from sin and plant local churches. That is why Paul, the same apostle who wrote Romans 1:18-27 also wrote chapter 13 verses 1-7:

> Everyone must submit himself to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God. Consequently, he who rebels against the authority is rebelling against what God has instituted, and those who do so will bring judgment on themselves. For rulers hold no terror for those who do right, but for those who do wrong. Do you want to be free from fear of the one in authority? Then do what is right and he will commend you. For he is God's servant to do you good. But if you do wrong, be afraid, for he does not bear the sword for nothing. He is God's servant, an agent of wrath to bring punishment on the wrongdoer. Therefore, it is necessary to submit to the authorities, not only because of possible punishment but also because of conscience. This is also why you pay taxes, for the authorities are God's servants, who give their full time to governing. Give everyone what you owe him: If you owe taxes, pay taxes; if revenue, then revenue; if respect, then respect; if honor, then honor. [170]

When Paul wrote this chapter of Romans, Nero reigned from that city through A. D. 54 to 68. Sporus was a young boy whom Nero favored, had castrated, and married. Roman men were free to enjoy sex with other males without a perceived loss of masculinity or social status, as long as they took the dominant or penetrative role. Acceptable male partners were slaves, prostitutes, and entertainers. Although Roman men in general seem to have preferred youths between the ages of 12 and 20 as sexual partners, freeborn male minors were strictly off-limits,

[170] *The Holy Bible: New International Version*, (1984) (Ro 13:1–7). Grand Rapids, MI: Zondervan.

and professional prostitutes and entertainers might be considerably older. During the Republic and early Principate, little is recorded of sexual relations among women, but better and more varied evidence, though scattered, exists for the later Imperial period.[171]

Some Christian historians believe that Roman Government was finally destroyed because of this cultural behavior. Nevertheless, Christians were instructed by the Apostle Paul to take a definite stand on this subject and yet, as Roman citizens, co-exist with it in the Roman government and society while submitting to that government. This demonstrates that, in Pauline theology, the Church's authority extends to its local members and not into the world. The existence of this sinful lifestyle in Rome did not prevent the Empire-wide spread of Christianity that preached of God's disapproval of such sexual activity. Romans chapter 1 and chapter 13 are not contradictions. They describe two distinct dimensions of existence for Christians in the Church and home contrasted with living in the world.

The Legal Definition Of Religion

A large part of the confusion in the 1970s and 1980s has resulted from new definitions for the term *religion*. The classic definition of *religion* was stated by the United States Supreme Court in 1890 in the case of *Davis v Beason* 133 U. S. 333 wherein the Court said:

> The term 'religion' has reference to one's views of his relations to his creator and to the obligations they impose of reverence for his being and character, and of obedience to his will… No interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people are not interfered with.[172]

Almost a century earlier, in 1803, the New Hampshire Supreme Court defined religion in *Muzzy v Wilkins* as follows:

> Religion is that sense of Deity, that reverence for the Creator, which is implanted in the minds of rational beings. It is seated in the heart and is conversant with the inward principles and temper

[171] See: *Homosexuality in ancient Rome* From Wikipedia, the free encyclopedia. Also, look up the marriage of Nero and Pythagoras.

[172] Ibid. Anson Phelps Stokes And Leo Pfeffer, Church And State In The United States, p. 559.

> of the mind. It must be the result of personal conviction. It is a concern between every man and his Maker…[173]

Secular Humanism

It is difficult for many religious reconstructionists to consider the valid arguments for neutrality because they believe that the very idea is a cloak to establish atheism as the law of the land. Many will constantly make reference to a conspiracy against them which they call *secular humanism*. Until 1970, only a few thousand Americans had even heard of secular humanists. Christians might never have heard of them if Justice Hugo Black had not mentioned secular humanism, along with Buddhism, Taoism and Ethical Culture as one of the several atheistic religions to be guaranteed full First Amendment rights. Throughout the 70s the proponents of school prayer and government aid to religious schools seized on secular humanism as the established *religion* of modern America.[174]

By 1980, many fundamentalists like Jerry Falwell's colleague, Tim LaHaye, had picked up the term and invested it with vast conspiratorial powers. *Here a line could be drawn, not between Christians and non-Christians (which offended people), but between Judeo-Christianity and "the Enemy", secular humanism. And here a new political line could also be drawn, between Judeo-Christians who acknowledge that the United States had been founded on Holy Writ and those who did not.*[175]

Almost all advocates of secularism and humanism in America considered themselves also believers in a god or even the God of the Bible. They are totally confused at the charge of conspiracy to establish atheism as a religion.

Has something led many religious reconstructionists to draw this conclusion regarding all secularism and humanism? In *Torcaso v. Watkins*, 367 U. S. 488, (1961) the U. S. Supreme Court pointed out that a religion does not have to be rooted in a belief in the existence of God but may be founded upon other beliefs and then made specific reference to Buddhism, Taoism, Ethical Culture, Secular Humanism and *others*.[176] In a 1971 adoption case, the New Jersey Supreme Court held that an organization or practice cannot make itself immune to the Establishment Clause by removing the word *religion* from its beliefs:

> Thus the well-settled principle that government cannot discriminate between religious sects (citations omitted) cannot be

[173] Ibid. Stokes and Pfeffer, p. 559. See also Smith: New Hampshire Reports, p. 1.
[174] Sean Wilentz, *God and Man at Lynchburg*, The New Republic, 25 April 1988, 198:30-44.
[175] Ibid. Wilentz, The New Republic, P. 36.
[176] John E. Patton, The Case Against T. M. In The Schools, Grand Rapids, Michigan: Baker Book House, (1976), pp. 84-87.

> avoided merely by removing the title "religion" from a set of beliefs because the beliefs do not encompass the existence of a Supreme Being or are otherwise unconventional (in Re Adoption of E, 59 N. J. 36 at 54, 55, 1971).[177]

In post revolutionary America, Christians were proud to be called humanists and humanitarian. Baptist advocated humanism as well as secularism as a standard for society. Why then, this new fear of *Secular humanism*? Perhaps a few citations will explain this reaction. Edwin A Burtt of the *Sage School of Philosophy* at Cornell University said:

> Let us then offer the world a religion without a god. Most humanists draw precisely this conclusion…But can we justify calling what we believe and practice a "religion"?.... But from the humanist standpoint, what is left is properly thought of as religion because it meets the same needs that religion at its best has always met.[178]

This same idea is seen as part of a new reformation in some modernistic churches. James H. Leuba informs us that:

> The last century has seen a gradual transformation of many Unitarian churches, the organization of Ethical Cultural Societies and more recently, of other humanist groups, all of which have set aside the worship of the traditional God with the intention of replacing it by natural and more effective ways of furthering the spiritual progress of the individual and of society.
>
> As a matter of fact, the pioneer ethical and humanist societies to which I have referred regard themselves as religious organizations, and their claim is admitted by the federal and state governments. Their leaders are empowered to conduct marriages, their buildings are tax-exempt.[179]

[177] Ibid. John E. Patton, pp. 84-87.
[178] Edwin A. Burtt, Types of Religious Philosophy, New York: Cornell University, (1939), p. 345.
[179] James H. Leuba, The Reformation of the Churches, Boston: The Beacon Press, (1950), pp. 122, 145.

Mr. A. H. Dakin of Princeton University said, *But all humanists insist that a true religious experience without belief in God in the theistic sense is possible.*[180] Most secular humanists of today have never heard of the *Humanist Manifesto of 1933* and yet reconstructionists represent it as the primary convictions of all secular humanists. However, it was only signed by thirty-four humanists of the day. John Dewey, the *father of progressive education*, was one of the signators, part of this Manifesto reads as follows:

> The time has come for a widespread recognition of the radical changes in religious beliefs throughout the modern world….In every field of human activity, the vital movement is now in the direction of a candid and explicit humanism. In order that religious humanism may be better understood we, the undersigned, desire to make certain affirmations which we believe the facts of our contemporary life demonstrate
>
> There is a great danger of a final, and we believe fatal, identification of the word religion with doctrines and methods which have lost their significance and which are powerless to solve the problem of human living in the Twentieth Century. Religions have always been means for realizing the highest values of life. Their end has been accomplished through the interpretation of the total environing situation (theology or world view), the sense of values resulting therefrom (goal or idea), and the technique (cult), established for realizing the satisfactory life. A change in any of these factors results in alteration of the outward forms of religion….
>
> Today man's larger understanding of the universe, his scientific achievements, and his deeper appreciation of brotherhood, have created a situation which requires a new statement of the means and purposes of religion. Such a vital, fearless, and frank religion capable of furnishing adequate social goals and personal satisfactions may appear to many people as a complete break with the past. While this age does owe a vast debt to the traditional religions, it is nonetheless obvious that any religion that can hope to be a synthesizing and dynamic force for today must be shaped for the needs of this age. To establish such a religion is a major

[180] Arthur Hazard Dakin, Man The Measure: An Essay On Humanism As Religion, Princeton, N. J.: Princeton University Press, (1939), p. 20.

> necessity of the present. It is a responsibility which rests upn this generation.[181]

This is a most unfortunate statement in that it places the signators on the same ground with those conservatives seeking religious dominion as they would both seek to rule society and culture with a their subjective points of view.

A Possible Common Goal For Theonomists and *Secular Humanists*

If the goal of many humanists was to establish a religion without a god as America's national religion, it would be easy to understand the paranoia of the religious reconstructionists. However, Christians and *secular humanists* alike need to help each other to understand that, in advocating neutrality on the part of government, they can be "partners" in many of the same objectives. In Henry Bremond's work A Literary History Of Religious Thought In France, I, (1937), he states:

> For its theology, Christian Humanism accepts purely and simply that of the Church. Is it taken for a sect? Without neglecting any of the essential truths of Christianity, it brings forward by preference those which appear the most consoling, encouraging, in a word human, which to it seem the most divine and the most conformed to infinite Goodness.[182]

A conservative Christian might wonder what in the world type of compromise is this discussion leading into. We are not speaking of compromising any biblical teaching. However, in some cases, Christians and non-Christians can find common ground on subjects such as child pornography, rape, assault, robbery, drug trafficking, and school-zone speed limits, etc. This is why the Apostle Paul felt free to appeal his legal case to the Roman government of Nero and reasonably expect justice.

Paul B. Steinmets said that *Christian Humanism is an attempt to get the natural and the supernatural back together in a well-balanced synthesis.*[183] In an address of May 19, 1964, Jeroslav Jan Pelikan said: *Although the term "Christian Humanism" may speak in an accent that has become strange to modern ears, it is the best term I know for the rich and varied legacy of*

[181] *The Humanist Manifesto* in Oliver Leslie Reiser, humanism and New World Ideas, Yellow Springs, Ohio: Antioch Press, pp. 43, 44, cited in Alan N Grover, Ohio's Trojan Horse, Greenville, S. C.: Bob Jones Univrsity Press, Inc., (1977), pp. 33, 34.

[182] Ralph L. Woods, The World Treasury Of Religious, Quotation, New York: Hawthorn Books, Inc. Publishers (1966), p. 450.

[183] Ibid. Ralph L. Woods, p. 452.

theological scholarship upon which our entire culture has been built.[184] Corliss Lamont said that: *Unquestionably the great religious leaders like Buddha and Confucius and Jesus have made a substantial contribution, on the ethical side, to the humanist tradition.*[185] In other words, a Christian should not turn from his stand against theft, slander, murder and rape just because a Buddhist or a Taoist agrees with him. Though they cannot be spiritual partners, they can become cultural partners in humanitarian goals for society.

Militant Response To *Secular Humanism*

Contemporary advocates of religious dominion often represent a militant response to secular humanism. Cal Thomas, a free-lance writer from Lynchburg, Virginia wrote for the late Jerry Falwell's Fundamentalist Journal: *Of greater concern to me, as I have been listening and reading, is the suggestion that religion and politics do not mix, that they somehow should be kept separate from each other….I suggest that Christianity is politics….*[186]

Bob Jones University of South Carolina is perhaps the largest *fundamentalist* college in the United States. As theonomist in philosophy, the school became the antagonist of public education as it exists. Their contention that atheistic secular humanism has taken over the public education system is set forth in the book, Ohio's Trojan Horse, by Alan N Grover. The University also published a monthly paper called Balance. The University demonstrated its belief that true education can take place only within a context of enforced religion when the paper published an 1887 lecture by A. A. Hodge. Dr. Hodge was for years a respected professor of didactic and polemic theology at Princeton Theological Seminary. Balance cited his words as insight into the inherent danger of education apart from its religious foundation. Some of the citations used were:

> There are not two laws for individuals and for communities. The obligations which bind individuals necessarily bind all the communities which these individuals constitute. Every human being is bound to be Christian; therefore every community of human beings is bound to obey the law of Christ. The United States, as a matter of historic fact, have always professed to be a Christian State…. The overwhelming importance this principle and weight of this obligation appear in the clearest light the moment the nation claims to regulate the supreme function of education…. The tendency is to hold that this system must be altogether secular. The atheistic doctrine is gaining currency…. The claim of

[184] Ibid. Ralph L. Woods, p. 453.
[185] Corliss Lamont, The Philosophy of Humanism, (New York: Philosophical Library, (1957), p. 40.
[186] Cal Thomas, *Christianity Is Politics*, Fundamentalist Journal, 23 (Jan) 1983, Vol. 2/Number 1, pp. 8-9.

> impartiality between positions as directly contradictory as that of Jews, Mohammedans and Christians, and especially as that of theists and atheists, is evidently absurd…. The proposal to treat them from a neutral point of view is ignorant and absurd…. The prevalent superstition that men can be educated for good citizenship or for any other use under heaven without religion is as un-scientific and unphilosophical as it is irreligious…. I am as sure as I am of the fact of Christ's reign that a comprehensive and centralized system of national education, separated from religion , as is now commonly proposed, will prove the most appalling enginery for the propagation of anti-Christian and atheistic unbelief, and of anti-social nihilistic ethics, individual, social and political, which this sin-rent world has ever seen.[187]

Many advocates of religious dominion appear militant and aggressive. One of the nation's largest Christian youth ministries, which does much great work among youth in this nation, is Word of Life Fellowship, Inc. located at Schroon Lake, New York. Its president and founder, Jack Wyrtzen, wrote a letter in June of 1977 in which he asked masses of Christians to sign a petition to President Carter. Part of this petition read: *Dear Mr. President: I wish to express my concern over…blasphemous statements against the Bible, Jesus Christ, and the New Birth on television. Will you and our Congress please put pressure on the networks to stop this blatant godlessness that is so undermining our beloved nation?*[188] This petition was asking that the free expression of theological liberalism and outright unbelief be legally suppressed.

During this same time period, a certificate was issued to multi-thousands of fundamentalist supporters of Jerry Falwell's television ministry, Old-Time Gospel Hour. It looked like a presidential proclamation but it was entitled *Declaration Of War* and was signed by Jerry Falwell. It stated: *Be it known to all that the Old-Time Gospel Hour hereby declares war against the evils threatening America during the 1980s. Furthermore, this shall be a Holy War, not a war with guns and bullets, but a war fought with the Bible, prayer and Christsian involvement.*[189]

The late Francis A. Schaeffer was a great philosophical scholar whose works helped many Christian theologians, yet he was also a prominent spokesman for the *Religious Right.* In his work A Christian Manifesto he stated:

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[187] Archibald Alexander Hodge, D.D., L.L.D. *The Dangers Inherent In Public Education*. Balance, Bob Jones University Press (Sept) 1985, Vol. 6, No. 1, pp. 1-2.

[188] Jack Wyrtzen, *Form letter from Word of Life Fellowship, Inc*., Schroon Lake, N. Y. 12870, June, 1977.

[189] Perry Dean Young, God's Bullies: Power Politics and Religious Tyranny, New York: Holt, Rinehart and Winston, (1982), p. 308.

> The civil government, as all of life, stands under the Law of God. In this fallen world God has given us certain offices to protect us from the chaos which is the natural result of that fallenness. But when any office commands that which is contrary to the Word of God, those who hold that office abrogate their authority and they are not to be obeyed. And that includes the state.[190]

Schaeffer's works should be read seriously yet with discernment that worldly government is not under the authority of the Christian Bible. Nevertheless, neither should a Christian submit to a command to perform immorality of any kind. However, it needs to be understood that a Christian has no authority over an absence of morality in some areas of government.

The New Puritanism

Prominent reconstructionist scholar, Gary North, cites some specific developments which, when combined, will make a powerful force for what he hopes will be the Christianization of America:

> A new Puritanism is developing—a Puritanism which offers men the hope of God-honoring social transformation….We are now in a position to fuse together in a working activist movement the three major legs of the Reconstructionist movement: the Presbyterian-oriented educators, the Baptist school headmasters and pastors, and the charismatic tele-communications system. When this takes place, the whole shape of American religious life will be transformed[191]

Religion And The Elections Of The 1980s

The role of religion in the 1984 national election campaign was unusually intense and visible. President Reagan rarely missed a chance to invoke religious themes in his appeals to the *New Religious Right*. A. James Reichley said that white evangelical Protestants, who used to be relatively passive politically and were predominantly Democratic to the extent that they were active, *have switched to political militance and overwhelming support for Ronald Reagan and other conservative Republicans.*[192]

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[190] Francis A. Schaeffer, A Christian Manifesto, Westchester, Illinois: Crossway Books, (1981), p. 90.

[191] Gary North, *The Three Legs of Christian Reconstructionion's Stool*, in Backward Christian Soldiers?, Tyler, Texas: Institute For Christian Economics (1984), pp. 146, 150.

[192] Ibid. A. James Reichley, p. 8.

Using a mailing list of 250,000 prime donors to Falwell's *Old Time Gospel Hour*, the Moral Majority raised one-third of its projected three million dollar first-year budget in one month. By the middle of 1980, the organization claimed a membership of 300,000, including 70,000 ministers.[193] Outside observers estimated that the entire religious right had registered about 2 million voters.[194]

Christian Voice, gathering most of its support from the West and Southwest, sponsored its own political action committee, which raised about $500,000 for conservative candidates in 1980. *Religious Roundtable* founded by Ed McAtee and Jim Robinsosn, a Texas evangelist, set out to attract evangelicals in the mainline denominations.[195]

After the election of 1980, the media credited a large share of the Regan victory and the Republican's surprise capture of control of the Senate to the *Religious Right*. Time speculated that as much as two-thirds of Regan's margin had come from a shift in political attitudes among white fundamentalists.[196] *I am beginning to fear*, said Patricia Harris, Secretary of Health and Human Services under President Carter, *that we could have an Ayatollah Khomeini in this country, but he will not have a beard… he will have a television program.*[197]

On election day, 1984, 81 percent of white evangelicals voted for Reagan, up almost one-third over 1980.[198] At this point of this work, the reader should be cautioned that the last several citations may be exaggerated opinions of opposing points of view. The *fundamentalists* cited are highly respectable men with strong religious convictions who are worthy of our respect even when we disagree with their perspective on a particular point of political view. It should also be noted that many conservative Republicans were never identified with the *Religious Right*. Nonetheless, it is evident that many dominion theologians in America were a viable political force as they worked through the *Religious Right* to gain political influence over elected officials. For this reason, their goals and possible motives must be understood if a valid case is to be made for the establishment of *secular neutrality* in American Government.

In a poll, commissioned by the *Williamsburg Chart Foundation*, a majority of 68 percent of Americans felt that: *religious groups should have a legal right to get involved in politics.* About 80 percent of academics said that Evangelicals, more than any other religious group, had

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[193] Ibid. James L. Guth, *The New Christian Right*, in New Christian Right, p. 32, in A. James Reichley, p. 321.

[194] A. James Reichley, p. 321.

[195] Ibid., Margaret Ann Latus, *Mobilizing Christians for Political Action: Campaigning with God on Your side.* Paper delivered at 1982 meeting of the *Society for the Scientific Study of Religion*, Providence, R. I., pp. 1, 2-5 in A. James Reichley, p. 322.

[196] Ibid. A. Jamaes Reichley, p. 323.

[197] Samuel S. Hill and Dennis E. Owen, The New Religious Right In America, (Abington, 1982), p. 78 in A. J. Reichley, p. 323.

[198] Ibid. A. J. Reichley, p. 325.

too much power and influence. 34 percent of these academics and 27 percent of the rabbinate saw Evangelicals as *a threat to democracy.*[199] Of course, the reader should consider that these people may be protracting the strong statements of a much smaller number regarding how religion should rule and thus labeling much more of Evangelicalism with that extreme position.

Religious Political Action And The Internal Revenue Code

In 1934, Congress enacted a limitation on lobbying activities of public charities, including religious groups, under Section 501 (c) (3) of the *Internal Revenue Code.* The limitation was stated in the form of a definition of a charitable entity: an organization in which *no substantial part of the activities is carrying on propaganda or otherwise attempting to influence legislation.* Examples of activities that the IRS deems prohibitive include: publication or distribution of written or printed statements on behalf of and in opposition to a candidate; evaluation and support of candidates in a school board election; comparative ratings of candidates as average, good or excellent and disseminating ratings to the public; directly approaching candidates to ask them to endorse or sign a code of ethics for political campaigns; publishing in a voter education guide, the responses of candidates to a questionnaire, which contains questions evidencing a bias on certain issues; distributing of a voter education guide concentrating on a narrow range of issues during an election campaign; attacking incumbents and candidates in broadcasts and publications; urging the election or defeat of candidates and endorsing a presidential candidate.[200] Of course, this is not addressing the rights of individual Christians but rather the actions of tax-exempt organizations.

A religious organization does have the option of organizing an entirely separate entity for the purpose of political activity. The IRS regulations allow for action groups, which exist for the purpose of engaging in substantial political activity under Section 501 (c) (4). In this case the entity is income tax-exempt, although contributions to it are not tax deductible. There are also many ways to take advantage of this law.

On August 23, 1987, the Lynchburg Virginia News reported that during a recent three-year period, Rev. Falwell shifted more than 6.7 million dollars in Moral Majority and Liberty Foundation funds over to his religious operations. The News also reported that of the 24 million dollars collected by Rev. Falwell's political operations from 1984 to 1986, *Financial records.…show no substantial political organizing or lobbying.* Falwell biographer and White House domestic policy analyst, Dinesh D. Souza said that Falwell provided *rhetorical leadership.* Twenty-four million dollars worth?[201] Columnist, Cal Thomas, who served as a vice –president of Moral Majority from 1980 to 1985, said in 1987:

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[199] George W. Hunt, *Of Many Things*, America, 27 (Feb) 1988, Vol. 158, p. 202.

[200] Lynn R. Buzzard & Samuel Ericsson, The Battle For Religious Liberty, Elgin, Illinois: David C. Cook Publishing Co., (1982), pp. 228-329.

[201] Ed Doerr, *Falwell's Farewell*, The Humanist (Ja/F) 1988, vol. 48: 40-41.

> Many of the organization's (Moral Majority's) state chapters were little more than a name and a telephone number, the national office having decided to keep the money…. The Moral Majority is now little more than a fundraising machine and probably will be forced to close its doors, for all practical purposes, after the 1988 election.[202]

The historian, Martin Marty, had concluded that by 1984 the fundamentalists could succeed on their own terms only in the event of an utter political and economic collapse, leading to *a state religion, compulsory in character, authoritarian in tone, and "traditional" in outlook.*[203]

Religious Political Organizations

There developed from the 1980s many organizations, large and small, with an explicitly political focus: *Coalition for Religious Freedom, National Federation for Decency, National Council of Churches, Christian Voice, Christian Law Association, World Conference on Religion and Peace, Society of Separationists, Americans for God, American Baptist Black Caucus,* etc.[204] In 1950 there were only sixteen major religious lobbies in Washington representing fairly narrow concerns. By 1985 there were at least eighty and the list has been growing since that time.[205] The postelection situation entered a state of unpredictability in 1990. Rather than speculate on the potential impact of Dominion Theologians on future of the United States, it seemed not likely that the views of the then contemporary reconstructionists would change. The conflict was expected to continue into the next decade with a strong emotional set of expressions on either side. As the issues of abortion, pornography, freedom of the press and freedom of speech are debated, the American people will be the recipients of infinite amounts of paper and broadcast propaganda from all positions.

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[202] Ibid. Edd Doerr, The Humanist, p. 40.

[203] Martin Marty, as quoted by Sean Wilentz, *God and Man at Lynchburg*, The New Republic, (April) 1988, 198: 30-44.

[204] Wilfred M. McClay, *Religion in Politics; Politics in Religion*, Commentary, (Oct) 1988, 86: 43-49.

[205] Charles W. Dunn, Religion in American Politics, Washington, D. C.: Congressional Quarterly, Inc. (1989), p. 123.

CHAPTER V

Proposal For Religious Neutrality In American Government

Strict Neutrality Defined

In the years since the concept of *strict neutrality* was proposed by Professor Phillip Kurland of the University of Chicago, the concept has gained much ground. The Supreme Court has begun to use the terminology of neutrality and the major casebook in the field carries the title Toward Benevolent Neutrality.[206] Kurland said:

> The thesis proposed here as the proper construction of the religion clauses of the first amendment is that the freedom and separation clauses should be read as a single precept that government cannot utilize religion as a standard for action or inaction because these clauses prohibit classification in terms of religion either to confer a benefit or to impose a burden… For if the command is that inhibitions not be placed by the state on religious activity, it is equally forbidden the state to confer favors upon religious activity.[207]

Although Dunn's definition is too general to unite a pluralistic society with diversified moral convictions, many writers in the fields of natural law and ethics believe that there are a limited number of moral values that can be universally accepted as a basis for true civilization.

G. Edward White, Professor of Law at the University of Virginia School of Law, states:

> The American Revolution was in part the product of natural rights theory. In the 1760's England suddenly sought to modify colonial practices that it had long tolerated. In response to attempted modifications, the colonists defined their practices as grounded in inalienable rights, denied the authority of Parliament to usurp such rights, and eventually went to war to secure the ancient rights and liberties of Englishmen… Once they achieved independence, colonial leaders set out to create a governmental structure consistent with natural rights thought.[208]

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[206] Robert T. Miller and Ronald E. Flowers, Toward Benevolent Neutrality: Church, State, and the Supreme Court, Waco, Texas: Baylor University Press, (1987).

[207] Ibid. Charles W. Dunn, Religion In American Politics, p. 30.

[208] Ibid. Dunn, p. 31.

In his work on American Democracy And Natural Law, Le Boutillier states:

> In American history both the Antifederalists and the Federalists, in the fight over ratification of the Federal constitution, used the validity of the rights of man, which they derived from natural law, to bolster, each group, its own position.[209]

The Utility Of Natural Law

Paul Weiss, Professor of Philosophy at Yale University, is a consultant for the *Institute for Philosophic Research.* Indiana University Press, published selections from the *Mahlon Power Lectures* at the University in 1958. These selections appear in his book: Our Public Life. Here he examined the kinds of classes which should constitute an ideal society, and makes a searching study of the nature and range of man's native rights, the problem of sovereignty, the nature of natural law and the function and prospects of the state and civilization. He said that *if natural laws hold anywhere, they hold of men.*[210]

Men do not have to agree on the source of natural law in order to build a society on a common, yet limited, understanding of that law. Weiss makes this point when he says that: *The classicists allow that once God has laid down his laws these can operate without divine supervision, and the positivists allow that once a convention has been established it may operate without human intervention or control. For both, then, there are laws of nature governing men and things.*[211] Positive laws are manmade and, as Weiss points out, the fact that they ought to conform to natural law does not mean that natural law has all the desirable features that positive laws possess. [212]

Weiss pointed out that natural law is what enables man to go beyond his natural self and connect with other individuals to form a society.

> Natural law is part of a public nature, and thus contrasts with that which occurs in the private recesses of a man. Its domain is the realm of space-time beings, though it is first acknowledged in private. Governing only the acts of men, it spreads over and through the public world in such a way as to infect it with the demands of what ought to be. Natural law results from the operation of impersonal forces; it is not the product of volition.

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[209] Cornelia Geer Le Boutillier, American Democracy And Natural Law, New York: Columbia University Press, (1950), pp. 63-64.

[210] Paul Weiss, Our Public Life, Bloomington, Indiana: Indiana University Press, (1959), p. 150.

[211] Ibid. Paul Weiss, pp. 148-149.

[212] Ibid. p. 161.

> One can willingly, of course, turn to it and submit to it. And it does have to do with man and his goals. Men may detest it, may wish that it did not exist. But none of these truths affect its being or operation.[213]

Weiss therefore concludes that natural law tells us to bring about social justice in the best possible way. Natural law is *asking for acts which are relevant to the ends that social and political man ought to attain.*[214]

Weiss believes that all of us are at least dimly aware of natural law because we are all, at least partially, aware of the nature of the social good and of laws of nature that can connect one person with another. This is a subject that is not deeply studied by the average citizen and yet it is still useful. Weiss states:

> Few of us persist in the effort to achieve such knowledge, but all of us adventure enough in that direction to make it possible to say that natural law, its conditions, and its demands are known to some degree by almost all… natural law can and ought to serve as a guide for the formulation and criticism of positive law.[215]

There is a law about behavior that is higher than the individual man and which must be recognized in order for him to be civilized. As Weiss states:

> Beyond the standards of great men, pure religion, and noble symbols stands another, offering a measure of their comparative excellence. It is a neutral "ought-to-be" which the different cultures should realize through the aid of their great men, religions, and symbols. The standards which the men, religions, and symbols set are in fact only standards for the use of effective instruments for the promotion of a good greater than they. That good is the good of public man, a good relevant to all men no matter what their culture, role, or place. This good alone provides a single measure for all cultures.[216]

It makes little difference that men will disagree regarding the existence of such a law. The fact is that a society based on such principles can serve and protect the civil rights of religionists, agnostics, ethical relativists and atheists alike. We are not suggesting the imposition

[213] Ibid. p. 158.
[214] Ibid. p. 159.
[215] Ibid. pp. 162-163.
[216] Ibid. p. 225

of personal neutrality on any individual American. We must remain a pluralistic society. However, non-neutral justices and governmental officials can practice a formal neutrality when the Constitution requires it. The doctrine of governmental formal neutrality has been a unique opportunity for Baptists, Puritans, Catholics, Quakers, freethinkers and many others to align themselves in a common objective to preserve freedom of conscience in America. As Roger Williams put it in his famous tract on The Bloody Tenet of Persecution for Cause of Conscience:

> God requireth not an uniformity of religion to be enacted and enforced in any civil state; which enforced uniformity, sooner or later, is the greatest occasion of civil war, ravishing consciences, , persecution of Christ Jesus in his servants, and of the hypocrisy and destruction of millions of souls.[217]

Secular Uses Of Natural Law

A key factor in presenting the neutrality doctrine is in understanding of the secular uses of natural law. Natural laws that govern society are comprehendible apart from Holy Scripture. Many Bible believers conclude that these precepts were sovereignly planted in the consciousness of man by the God of the Bible while many unbelievers will appeal to them without speculating on their origin. Though this proposed concept of neutrality and natural law may be objectionable to an atheist or an ethical relativist, an understanding of *natural law* will serve theists and non theists alike. Montesquieu in The Spirit of Laws pointed out that antecedent to the laws of religion, or the laws of morality, or political and civil laws, were *those of nature, our frame and existence.*[218] Montesquieu then stated several natural laws, the last resulting *from the desire of living in Society*[219] Bouvier also gave a catalogue of the laws of nature of which he also included *sociability.*[220]

Natural rights and restrictions are constantly referred to in many historical documents as in: The Virginia Statute of Religious Liberty of 1786, Article III; The Writings of John Adams in 1802; The Massachusetts Circular Letter approved by the General Court, Feb. 11, 1786; The Declaration and Resolves of the First Continental Congress; A Declaration of the Rights of the Inhabitants of the Commonwealth, or State of Pennsylvania; Constitution of Vermont, July 8, 1777; A Declaration of the Rights of the Inhabitants of the State of Vermont, Article I; A

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[217] Mark A. Noll, One Nation Under God: Christian Faith and Political Action in America, Sanfrancisco: Harper & Row, Publishers (1988), pp. 65, 66.

[218] Montesquieu, The Spirit of Laws cited by Eugene C. Gerhart, in American Liberty and "Natural Law", Boston: The Beacon Press (1953), p. 25.

[219] Ibid. Gerhart, p. 25.

[220] Bouvier, Law Dictionary, 1984, cited in Gerhart, p. 25.

Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts, Article I and The Constitution of New Hampshire, June 2, 1784, Part I.[221]

A Christian View of Natural Law

The Christian Bible speaks of these natural principles that were designed by God to be a basis for civilization apart from divinely written Scripture. (Romans 1:20) states that *since the creation of the world God's invisible qualities…have been clearly seen…so that men are without excuse.*[222]

> (Indeed, when Gentiles, who do not have the law, do by nature things required by the law, they are a law for themselves, even though they do not have the law, since they show that the requirements of the law are written on their hearts, their consciences also bearing witness, and their thoughts now accusing, now even defending them.) [223]

The Apostle Paul was not referring to every precept of the Bible or even to every statute in the *Law of Moses.* Obviously the pagan world had not come that far. He was speaking of a limited number of civil and moral absolutes that are sufficient to form social contracts whereby pluralistic human beings can live together in a civilized manner. One does not have to be a *born again* Christian in order to enter into such a social contract with people of all faiths or people of no faith. The neutrality doctrine is the only means yet proposed which can implement such freedom and protection fairly in a pluralistic society.

The Pauline View Toward Government

The traditional view of many Christian scholars has held that the unregenerate, or *non-Christian*, world is incapable of conceiving and implementing moral and ethical justice. But, why then would the Apostle Paul use the privilege of a Roman citizen to appeal to the emperor against the decision of an inferior magistrate. Paul made this appeal at an earlier stage in the proceedings because he thought that he might not have justice done in the inferior court. Under the empire, the appeal to Caesar represented the merging of two distinct rights which had existed in the days of the Roman Republic: the right of any citizen to appeal to the sovereign people and the right of a plebeian citizen to appeal to one of the tribunes against the decision of any other magistrate. Paul hoped to secure in Rome the justice which he feared he might not get in Judaea.

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[221] Ibid. Richard L. Perry, Sources of Our Liberties, pp. 28, 275, 276, 303, 329, 362, 364, 374, 382.
[222] The Holy Bible: New International Version, 1984 (Ro 2:14–15). Grand Rapids, MI: Zondervan.
[223] Ibid. The Holy Bible: New International Version, 1984 (Ro 2:14–15).

The new procurator, Festus, might have allowed himself, through inexperience, to be influenced by the Jerusalem Sanhedrin to Paul's detriment.

In Cyprus, the proconsul, Sergius Paulus, gave a favorable reception to the apostles and their message.[224] At Philippi, a Roman colony, the chief magistrates apologized to Paul and Silas for subjecting them to illegal beating and imprisonment.[225] At Corinth, Gallio, proconsul of Achaia from A.D. 51 to 52, ruled that the accusations of illicit religious propaganda, brought against Paul and his colleagues by the local Jewish community, related to internal interpretations of the Jewish law and he pronounced them guiltless of any offence against Roman Law. [226] At Ephesus, the Asiarchs, distinguished citizens occupying positions of responsibility in the province of Asia, were friendly to Paul and the chief executive officer of the municipal administration and publically absolved him of the charge of sacrilege or blasphemy against the established cult of the city.[227] In Judaea, the procurator, Felix, and his successor, Festus, found Paul innocent of the serious crimes of which he was accused by the Sanhedrin. The Jewish client, King Agripa II and his sister, Bernice, agreed that he had done nothing deserving of death or even imprisonment.[228] When Paul finally did appeal from the provincial court to the tribunal of the emperor, he carried on his missionary activity for two years in Rome itself, under constant military surveillance, without any attempt to hinder him.[229] Thus, the Bible itself testifies to the fact that, though the world is corrupt, it is capable of establishing enough human justice to form reasonably safe civilizations.

An Atheistic and Humanistic View Of Natural Law

The late atheist, Ayn Rand, said that *Every political system is based upon some code of ethics.*[230] This is precisely what the Apostle Paul proposes to be the case. James Sellers, professor of Ethics at Vanderbilt University, wrote:

> America needs a new discipline, that of public ethics. Morality in America is far more than personal conduct, far more than religious or theological phenomenon. It embraces the political and social realms, and especially the world of actions, including the whole subject of manners. What we now ought to seek is a new recognition of interdisciplinary character of ethical studies that is inherently demanded both by the moral tradition in America and

[224] Ibid. Acts 13: 1, 12, NIV.
[225] Ibid. Acts 16:37ff., NIV.
[226] Ibid. Acts 18:12 ff., NIV.
[227] Ibid. Acts 19:31, 35ff., NIV.
[228] Ibid. Acts 24:1-32, NIV.
[229] Ibid. Acts 28:30 f., NIV.
[230] Ayn Rand, The Virtue of Selfishness, New York: Signet Books (1964), p. 92.

> by the social crisis that have shattered domestic tranquility in our days.[231]

Natural Law: Common Ground For Creationists & Evolutionists

The idea of natural law and public ethics is precisely what Biblical creationists and most evolutionists have in common. In his book, Morals in Evolution, L. T. Hobhouse stated that: *There are two sides to civil development, social duty and personal right. At times these appear to conflict, but in their full development they are mutually dependent. Their reconciliation would be the principle of the highest social organization.*[232] Some evolutionists have concluded that the social evolutionary progress can proceed no further aside from a special contract of public moderation between moral extremes.

When Darwin's The Descent of Man was published in 1871, John Morley criticized Darwin's concept of human morality. Darwin replied:

> I have endeavored to show how the struggle for existence between tribe and tribe depends on an advance in the moral and intellectual qualities of the members, and not merely their capacity of obtaining food… undoubtedly the great principle of acting for the good of all the members of the same community, and therefore the good of the species, would still hold sovereign sway…. As natural selection works solely by and for the good of each being, all corporeal and mental endowments will tend toward perfection.[233]

Evolutionary philosopher, Julian Huxley, drew precisely this same conclusion when he said:

> The whole evolutionary process can be seen to fall into three main sectors. The first is the inorganic sector;… the second is the organic sector;… and the third is the human or psychosocial sector, operating by mind—accompanied by social pressure superposed upon natural selection and resulting in human societies and their material and cultural products… What man does is decisive; for the future of the evolutionary process on this planet lies in his hand, whether he knows it or not, whether he wants it or not.[234]

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[231] James Sellers, Public Ethics: American Morals and Manners, New York: Harper and Row Publishers, (1970), p. 10.

[232] L. T. Hobhouse, Morals in Evolution, New York, Henry Holt & Co., (1906), p. XII of contents.

[233] Wilbur Marshal Urban, Fundamentals of Ethics, New York: Henry Holt & Co., (1873), p. 96.

[234] John Roddam, The Changing Mind, Boston: Little & Brown, Co., (1966).

The Real Neutrality of Strict Neutrality

Neutrality does not have to be anti-morality nor anti-religion. In *School District of Abington Township v Schempp* 374 U. S. 203 (1963) the Court declared that the Constitution requires a: *wholesome neutrality* between church and state *that neither advances nor inhibits religion.* [235] In *Engel v Vitale* 370 U. S. 421 (1962), Justice Black said:

> It has been argued that to apply the Constitution in such a way as to prohibit state laws respecting an establishment of religious services in public schools is to indicate a hostility toward religion or toward prayer. Nothing, of course, could be more wrong. The history of religion…. (The men) who led the fight for adoption of our Constitution and also for our Bill of Rights… knew that the First Amendment, which tried to put an end to governmental control of religion and of prayer, was not written to destroy… It is neither sacrilegious nor antireligious to say that each separate government in this country should stay out of the business of writing or sanctioning official prayers.[236]

The truth is that prayer has never been prohibited in public schools, as is often represented by the Religious Right. Any student can personally pray over his lunch tray in the cafeteria or personally begin his school day with a private prayer at his locker or on his way to class. The law only requires that prayer cannot be imposed upon the entire student body. In *DeSpain v DeKalb County Community School District* 428, 384 F 2nd 836 (1967) the U. S. Circuit Court of Appeals in Chicago ruled that:

> …The verse may have commendable virtues in teaching kindergarten children "good Manners" and "gratitude" to use Mrs. Watne's words. The fact, however, that children through the use of required school room prayer are likely to become more grateful for the things they receive or that they may become better citizens does not justify the use of compulsory prayer in our public school systems. As the plaintiffs point out, if prayers which tend to teach and inculcate these virtues are not within the ambit of the bar imposed by the activity, any religious activity of whatever nature could be justified by public officials on the basis that the activity has beneficial secular purposes…[237]

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[235] Ibid. Edward Conrad Smith, p. 28.
[236] Ibid. N. T. Dowling & Gunther, pp. 1141-1142.
[237] Ibid. John E. Patton, The Case Against T. M. In The Schools, p. 84.

It is important to understand that those who advocate neutrality today might have been put to death for their views had they lived in early Colonial America. This would have particularly been true of Justice Douglas when he spoke for the Court that freedom of thought…

> … embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove…. (The Fathers of the Constitution) fashioned a charter of government which envisaged the widest possible toleration of conflicting views. Man's relation to his God was made of no concern of the state.[238]

Pioneer Legal Work Yet To Be Done

Even with an intelligent statement of a doctrine of neutrality, there is yet volumes of pioneer work to be done regarding its political ramifications. For instance, how may the government deal with someone who practices lawlessness in the name of religion. The doctrine of neutrality appears to be contradicted by laws prohibiting polygamy which were upheld even though it was the belief of the Mormon Church. Such laws were justified as being *proper measures in defense of public morals.*[239]

Justice Black admits that the real pioneer work is yet to be accomplished on this issue when he said for the Court:

> Examples of governmental involvement in religion can be drawn from almost every walk of life: printing "In God We Trust" on the currency; providing chaplains and chapels in the armed services. There is an inconsistency between doctrine and practice. When governmental practice differs from constitutional requirement, the practice will frequently continue until judicial decree orders it halted. This requires someone to bear the expense of initiating the litigation at the risk of possible notoriety or unpopularity for himself or his child. The constitutionality of many government practices and expenditures which aid religion in one way or another has not yet been authoritatively determined by the courts.[240]

The Fearless Confidence Of Jefferson

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238 Ibid. Milton R. Konvits, The Fundamental Liberties of a Free People, pp. 99, 100.
239 Ibid. Thomas H. Eliot, Governing America: The Politics of a Free People, p. 133.
240 Ibid. Cohen, Schwarts & Sobul, The Bill of Rights: A Source Book, p. 280.

Having noted the rise of the American reconstructionist movement and the *New Religious Right*, it can be concluded that the time may be short in completing the task of preserving freedom of conscience in our political system. We must be convinced that the real truth will do its best work in an arena of free thought. Jefferson had no fear of such freedom when he gave his first inaugural address on March 4, 1801:

> We are all republicans—we are all federalists. If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of safety with which error of opinion may be tolerated where reason is left free to combat it.[241]

Recommending Changes For Refining Freedom

The Framers invited the Americans to change any part of the Constitution that became unwarranted or unclear. However, they did make the process quite difficult and complex in order to promote much forethought. Thus, there have been only 17 amendments added to the Constitution since the Bill of Rights. Today's elected representatives must be bold in recommending changes in the present text of the Constitution if it continues to remain unclear regarding the limits of *freedom of conscience.*[242]

The contemporary war between the religious advocates of *pro-life* and *pro-choice* is a case in point. The Framers could not possibly have anticipated this conflict. There will be no end to the debate if there is a contradiction between the Constitution's guarantee of the right to life and of the right of privacy. Many citizens on both sides of the conflict believe that a constitutional amendment is needed in order to state the will of the majority on the subject of abortion. If the pro-life advocates would lose such a battle, they could react the same as fundamentalists did when prohibition was repealed—live with the legality of liquor yet continue to preach against it and persuade individuals to their ideal of total abstention from alcohol.

In a reply to a question as to the design of the Constitution, George Washington said:

> If I had any idea that the general government was so administered that the liberty of conscience was endangered, I pray you be assured that no man would be more willing than myself to revise and alter that part of it, so as to avoid all religious persecutions.

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[241] Ibid. John Bartlett, Familiar Quotations, p. 473.

[242] See James L. Sundquist, Constitutional Reform and Effective Government, Washington, D. C.: the Brookings Institution, (1986). Sundquist raises practical questions about what changes might work best if a consensus should emerge that the national government is too prone to stalemate to meet its responsibilities.

> You can, without doubt, remember that I have often expressed my opinion, that every man who conducts himself as a good citizen is accountable to God alone for his religious faith, and should be protected in worshipping God according to the dictates of his own conscience.[243]

Future Prospectus

Meanwhile, the contest will continue. It is probable that many theonomists, postmillennialists, reconstructionists and dominion theologians will persistently identify themselves with the *New Religious Right*, which in turn will continue to attempt a domination of the Republican Party. Some anti religionists will continue to seek bans on freedom of religious expression. Many advocates of neutrality will remain unknown or else they will take up the challenge and enter more vocally into the American arena of free thought. They can attempt dialogue with the citizens of America on the advantages of secularism in government and the danger of losing the precious jewel of ***freedom of conscience***.

[243] George Washington, *On the Design of the Constitution*, in Bible Readings For The Home Circle, p. 237.

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