

**CONSPIRACY IN PHILADELPHIA**  
**ORIGINS OF THE UNITED STATES CONSTITUTION**

Other Books by Gary North

- An Economic Commentary on the Bible, 31 vols. (1982–2012)  
*Marx's Religion of Revolution* (1968, 1989)  
*An Introduction to Christian Economics* (1973)  
*Puritan Economic Experiments* (1974, 1988)  
*None Dare Call It Witchcraft* (1976)  
*Unconditional Surrender* (1980, 2010)  
*Successful Investing in an Age of Envy* (1981)  
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*Mises on Money* (2012)

# CONSPIRACY IN PHILADELPHIA

*ORIGINS OF THE UNITED STATES  
CONSTITUTION*

GARY NORTH

## **Conspiracy in Philadelphia: Origins of the United States Constitution**

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This book is an update of Part 3 of *Political Polytheism: The Myth of Neutrality* (Tyler, Texas: Institute for Christian Economics, 1989). (<http://bit.ly/gnpolpol>)

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This book is dedicated to the  
members, living and dead, of the

**Reformed Presbyterian Church  
of North America (Covenanters)**

who for over two centuries have  
smelled a rat in Philadelphia



## TABLE OF CONTENTS

Foreword . . . . .	ix
Preface . . . . .	xvii
Introduction . . . . .	1
1. The Theological Origins of the U.S. Constitution . . . . .	13
2. Renewed Covenant or Broken Covenant? . . . . .	73
3. The Strategy of Deception . . . . .	115
4. From <i>Coup</i> to Revolution . . . . .	147
5. “We the People”: From Vassal to Suzerain to Serf . . . . .	195
6. A New National Covenant . . . . .	229
Conclusion . . . . .	239
Appendix A: Rushdoony on the Constitution . . . . .	265
Appendix B: Shays’ Rebellion: Legend and Reality . . . . .	297
Appendix C: Philadelphia’s Other Constitutional Convention . . . . .	311
Appendix D: Freemasons in the American Revolution . . . . .	321





## FOREWORD

This book is the history of a deception. I regard this deception as the greatest deception in American history. So successful was this deception that, as far as I know, this book is the first stand-alone volume to discuss it. The first version of this book appeared as Part 3 of *Political Polytheism* (1989), 201 years after the deception was ratified by representatives of the states, who created a new covenant and a new nation by their collective act of ratification-incorporation.

This new covenant meant a new god. The ratification of the United States Constitution in 1787–88 was not an act of covenant renewal. It was an act of covenant-breaking: the substitution of a new covenant in the name of a new god. This was not understood at the time, but it has been understood by the humanists who have written the story of the Constitution. Nevertheless, they have not presented the history of the Constitutional Convention as a deception that was produced by a conspiracy. The spiritual heirs of the original victims of this deception remain unaware of the deception's origins. Most of the heirs go about their business as if nothing unique had happened, just as the original victims did after 1788. But a few of the heirs rail against the humanistic historians who have told the story of the new American nation: a “grand experiment” in which the God of the Bible was first formally and publicly abandoned by any Western nation. They have argued that there was no deception, that America is still a Christian nation, that the Constitution “in principle” was and remains a Christian document, and it is only the nefarious work of the U.S. Supreme Court and the American Civil Liberties Union that has stripped the Constitution of its original Christian character. There is no greater deception than one which continues to deceive the victims, over two centuries after the deed was done.

Political conservatives call for a return to the “original intent” of the Framers of the Constitution. If only, they say, we could just get back to original intent, things would be good once again. America would be restored. Christian conservatives follow close behind, af-

firming this recommendation. Problem: political conservatives are deceived theologically because they do not recognize the implications of the intellectual shift from the deistic unitarian god of Sir Isaac Newton to the purposeless universe of Charles Darwin. They do not comprehend that the Darwinian god of man-controlled organic evolution (Lester Frank Ward)<sup>1</sup> has replaced Newton's god of the balanced machine. Process philosophy has replaced natural law theory. The conservatives' allies, the Christian conservatives, also do not see this.

This book is my attempt to teach a Christian remnant the true and long-ignored story of how this nation was hijacked politically in 1788 by the spiritual heirs of the self-conscious spiritual disciples of Isaac Newton. Then, in 1789, a social revolution organized by the victors' spiritual cousins began in France.

There are five biblical covenants in history: dominion, personal, ecclesiastical, familial, and civil. Every covenant has five points: sovereignty, authority, law, sanctions, and succession. I have put this structure in the form of five questions:

Who is in charge here?  
 To whom do I report?  
 What are the rules?  
 What do I get if I obey (disobey)?  
 Does this outfit have a future?

The supreme covenantal issue is the issue of sovereignty. Christianity teaches that the God of the Bible is sovereign. As both the creator and judge, He alone possesses original sovereignty. But, beginning with Adam, He has delegated authority to man to rule in His name (Gen. 1:28–29). I have called this the dominion covenant.<sup>2</sup>

All sovereignty that is not possessed exclusively by God is delegated sovereignty. It is also plural sovereignty institutionally. *There is no final earthly sovereignty.* God, not man, is the final judge. But man, in his continuing rebellion against God, seeks to bring final sovereignty in history down to earth, to award some spokesman or institution with final, unitary sovereignty. What is in fact a form of delegated authority under God (point two) becomes final sovereignty (point one). In 1600 in England, this was called the divine right of kings. Beginning with Henry VIII (d. 1553), the king was the head of the national church: no

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1. Gary North, *Sovereignty and Dominion: An Economic Commentary on Genesis* (Dallas, Georgia: Point Five Press, 2012), chaps. 3, 4.

2. ???

earthly appeal beyond him, officially speaking. The king was the head of the state: no earthly appeal beyond him, officially speaking. The king answered to no earthly sovereignty. This violation of the separation of church and state was inaugurated by a consummate Renaissance prince: theologian, adulterer, false accuser (Anne Boleyn), husband of six wives, sacrilegious thief (confiscation of monastic properties), glutton, and currency debaser.

In the Civil War of 1642–60, the Puritans and Parliament challenged the divine right of kings in both covenants, civil and ecclesiastical. Charles I was beheaded in 1649 by Parliament. The head of church and state lost his head. After the restoration of Charles II in 1660, there was a political stalemate between Parliament and the king. But there was no ecclesiastical stalemate. The king was restored as head of the church. About 2,000 Puritan pastors were removed from their pulpits for refusing to sign the Act of Uniformity (1662), which mandated the Book of Common Prayer. Similar laws, the Clarendon Codes, were passed, 1660–65. Opponents were dissenters.

In 1688–89, another revolution occurred: the Glorious Revolution. James II, who came to the throne when his childless brother died in 1685, fled the nation in 1688 when another civil war loomed. Parliament replaced the missing king with his Dutch son-in-law, William of Orange, who was also the grandson of Charles I. King William III was a constitutional monarch. From that time on, England operated politically under the doctrine of the divine right of Parliament, a legal doctrine affirmed by the jurist William Blackstone in his book, *Commentaries on the Laws of England* (1765–69).<sup>3</sup> This became the law book of the American colonists. But in 1775, the colonists were in revolt against Parliament, although officially in the name of a revolt against the king, as the Declaration of Independence affirmed.

What is rarely discussed in the history textbooks and even specialized monographs is the fact that the American Revolution was also a revolt against the king's ecclesiastical sovereignty, the continuation of a colonial revolt that had begun with the Pilgrims in 1620. The American Revolution was motivated by widespread opposition to the right of the Church of England to send a bishop to the colonies. Without a bishop to ordain pastors, the Church of England was hampered in its evangelism and church-planting efforts. Every candidate for the ministry in the Church of England had to journey to England to be or-

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3. William Blackstone, *The Commentaries on the Laws of England*, 4 vols. (Chicago: University of Chicago Press, [1765] 1979), I, pp. 156–57.

dained by the Bishop of London. This was an expensive journey.

From 1620, the Pilgrims of Plymouth, who were ecclesiastical separatists, had opposed the hierarchical authority of the Church of England. From 1629/30, so had the newly arrived Puritans, although obliquely: officially, they were not separatists. The Presbyterians of the middle colonies and the interior of the southern colonies also opposed the sending of a bishop. There was widespread belief in the early 1770s that the Church of England, under the king's headship, was planning to send a bishop. The story of colonial resistance to this prospect has been told in detail in Carl Bridenbaugh's *Mitre and Scepter* (1962). It deserves re-telling in every textbook on American history. There had been institutional opposition to the final ecclesiastical authority of the king ever since the English Civil War broke out in 1642. The American Revolution was an extension of that revolution, in both church and state. But the official language of the justifying documents of America's revolutionaries was confined to civil government. No one in authority on either side of the war focused on the theological-ecclesiastical issue of delegated sovereignty, i.e., society-wide institutional authority under God. This moved the American Revolution from what might have been a comprehensive revolt against the king's ecclesiastical authority and also the divine political right of Parliament to a revolt against the divine right of Parliament in the name of a rejection of the authority of the king. But in whose name was this revolt launched? By what legitimate authority? The formal answer came retroactively in 1788: *We the People*. This was a new god with a new sovereignty.

The Revolution's exclusive focus on political sovereignty was extended to the debates over the ratification of the Constitution. This political focus made possible the great deception; indeed, it was the heart, mind, and soul of the great deception. This deception had begun in 1644, when Roger Williams obtained a charter from Parliament for the tiny colony of Rhode Island.<sup>4</sup> The colony officially was neutral with respect to God: a unique political experiment in the history of the Christian West. Members of the chartering committee that had been appointed by Parliament, which was in an open revolt against the king and his bishops, either did not notice this omission or did not care. By the time Williams' attack on the idea of a Christian commonwealth, *The Bloody Tenent of Persecution* (1644), was published in London, he was safely on board a ship back to New England. Parliament ordered

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his book burned. Too late.

The fundamental judicial issue of civil government is sovereignty: original, final and delegated. Who or what is affirmed as being finally sovereign, which means originally sovereign? Who is the creator and the final judge? Secondly, who is affirmed as representing this ultimate sovereign? To whom has political sovereignty been delegated? Who, in short, is the voice of civil authority in history?

God holds civil leaders responsible for their actions. He also holds the people under these leaders responsible. This is taught in Leviticus 4. There is dual authority under God: representatives who represent God to men and men to God.<sup>5</sup> The leaders' authority comes from God (top-down) and from those represented (bottom-up).

Sovereignty is claimed by every political entity. The question is this: How can those speaking in the name of the original sovereign prove that they possess delegated sovereignty, i.e., that they are the voice of political authority in history? This is the issue of legitimacy. *The issue of **sovereignty** is inescapably the issue of **legitimacy**.* Who possesses legitimate political authority? This raises the question of incorporation: What document or historical event identifies a particular entity as the voice of authority in politics?

Legitimacy is earned. People choose to obey. No institution possesses sufficient power and sufficient wealth to impose its will on people who have decided to resist at all costs. This is why God holds the ruled responsible for the acts of those to whom they have submitted. If they did not possess the power to resist, God would not hold them responsible. With power comes responsibility (Luke 12:42–48).<sup>6</sup>

What government possesses legitimacy? This is the supreme *institutional* question of government: church, state, and family. But the supreme *covenantal* question is this: What sovereign authority has incorporated a government? This is the question of society's god.

Modern man believes that he can safely avoid identifying the God of the Bible as the incorporating agent. Modern man identifies, either explicitly or implicitly, other gods of incorporation: Man, the People, the Volk, or the Proletariat. Each of these gods has his day in the sun. But the sun eventually sets.

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5. Gary North, *Boundaries and Dominion: An Economic Commentary on Leviticus*, 2nd ed. (Dallas, Georgia: Point Five Press, [1994] 2012), ch. 4.

6. Gary North, *Treasure and Dominion: An Economic Commentary on Luke*, 2nd ed. (Dallas, Georgia: Point Five Press, [2000] 2012), ch. 28.

## Conclusion

The thirteen colonies in 1775 had charters or constitutions. Only Rhode Island's charter allowed men of no trinitarian confession to be elected to civil office, i.e., to serve as part of the voice of civil authority. Therefore, only Rhode Island refused to identify the God of the Bible as the sovereign incorporating agent of the colony.

The Articles of Confederation (1781) served as a halfway national covenant. They identified "the Great Governor of the World" as the sovereign incorporating agent (Article XIII).

The United States Constitution (1788) identifies "We the People" as the sovereign incorporating agent.

This book is the story of this covenantal transition: *new covenant, new god.*



No religious test is ever to be required of any officer or servant of the United States. The people may employ any wise or good citizen in the execution of the various duties of the government. In Italy, Spain, and Portugal, no protestant can hold a public trust. In England every Presbyterian, and other person not of their established church, is incapable of holding an office. No such impious deprivation of the rights of men can take place under the new foederal constitution. The convention has the honour of proposing the first public act, by which any nation has ever divested itself of a power, every exercise of which is a trespass on the Majesty of Heaven.

No qualification in monied or landed property is required by the proposed plan; nor does it admit any preference from the preposterous distinctions of birth and rank. The office of the President, a Senator, and a Representative, and every other place of power or profit, are therefore open to the whole body of the people. Any wise, informed and upright man, be his property what it may, can exercise the trusts and powers of the state, provided he possesses the moral, religious and political virtues which are necessary to secure the confidence of his fellow citizens.

Tench Coxe (1787)<sup>1</sup>

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1. Tench Coxe, *An Examination of the Constitution* (Fall, 1787), in *The Founders' Constitution*, eds. Philip B. Kurland and Ralph Lerner, 5 vols. (Chicago: University of Chicago Press, 1987), IV, p. 639.



## PREFACE

*One of the most striking features of the United States Constitution of 1787 is the absence of an explicit acknowledgment of the Deity or the Christian religion. The invocation of a deity to authenticate or attest to divine sanction for public acts or decrees is a tradition that predates the Christian era and is found in non-Western, as well as Western, cultures. In this respect, the Constitution departed from the pattern of most public documents of the day. **The Declaration of the Causes and Necessity of Taking Up Arms** (1775), **The Declaration of Independence** (1776), **The Articles of Confederation** (1781), virtually all state constitutions, and other official documents are replete with claims of Christian devotion and supplication for the Supreme Being. However, the federal Constitution makes no such religious affirmation or declaration, even of the perfunctory kind that was typical of other documents written by the framers. . . . This omission is remarkable since, despite any revolutionary ardor of the time, there was little sentiment that the new republican order broke with the prevailing Christian traditions of the American people.*

Daniel Dreisbach (1996)<sup>1</sup>

## Introduction

This book is my attempt to explain this historical anomaly: a significant break in history that did not seem to be a break at the time. It still doesn't. I explain it in a way that Dr. Dreisbach does not. He defends the traditional view of Protestant Christians in the United States. They have believed, from 1788 onward, that the United States has been a Christian nation under its Constitution. This is an odd belief on the face of it, since the United States Constitution's sole reference to God is indirect: the words, "the year of our Lord," referring to 1787. If this is the sole *judicial* basis of the Christian American national civil

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1. Daniel Dreisbach, "In Search of a Christian Commonwealth: An Examination of Selected Nineteenth-Century Commentaries and References to God and the Christian Religion in the United States Constitution," *Baylor Law Review*, 48 (Fall 1996), pp. 928–30.

covenant, then the case for America as a Christian civil order rests on a very weak reed.

### A. The Received View Among Protestants

There have been many detailed intellectual defenses of the United States as a Christian nation. These studies invariably rest on a conceptual error: equating *state* (civil government) with *nation* (society). That the United States has been a Christian society during its post-1788 period is obvious. This is not the same thing as the United States civil order when considered in terms of its defining judicial document, on which the United States rests its civil covenant.

In contrast, humanistic historians turn to the U.S. Constitution and point out that it is a secular document, and uniquely secular for the eighteenth century. They, too, confuse state with nation. They conclude that the United States is a non-Christian nation because it operates under a non-Christian civil constitution.

The most detailed defense of the United States as a Christian state, as far as I am aware, is B. F. Morris' 1864 book, *Christian Life and Character of the Civil Institutions of the United States*. He presented a strong case until he reached the Constitution. At that point, he not only reached, he stretched. His defense of the Union's 1861 invasion of the South concluded his argument, all in the name of Christianity. That the book did not sell well in the South after 1865 is understandable. But it did not sell well in the North, either. After 1865, theological unitarians, whose denominational peers had led the abolitionist movement, steadily took control over the political order, leaving Christian evangelicals, who had served as the foot soldiers of abolitionism,<sup>2</sup> as the political losers, a position that their covenantal heirs retain. Morris' thesis surely did not appeal to unitarians.

Beginning at about the time of the rise of the independent Christian day school movement, 1960–65, there has been a growing market for Christian history textbooks that proclaim some variation of Morris' book, though without the cheerleading for the North in 1861–65. One

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2. Richard J. Carwardine, *Evangelicals and Politics in Antebellum America* (New Haven, Connecticut: Yale University Press, 1993), chaps. 5–9; C. C. Goen, *Broken Churches, Broken Nation* (Macon, Georgia: Mercer University Press, 1985); Bertram Wyatt-Brown, *Lewis Tappan and the Evangelical War Against Slavery* (Cleveland, Ohio: Case Western Reserve University, 1969); Timothy L. Smith, *Revivalism and Social Reform: American Protestantism on the Eve of the Civil War* (New York: Peter Smith, [1957] 1976), chaps. 12, 13.

marker of this revival of interest in America as a Christian nation, at least within conservative Protestant circles, is Verna Hall's book, *Christian History of the Constitution* (1960), a compilation of primary source documents. It was the first in a series of books, sometimes known as the "red books," despite the fact that *Consider and Ponder*, the final volume, was published in blue. This series had a crucial defect: it never did reach the era of the Constitutional Convention, and so never got around to presenting the case for the Constitution as a Christian document. What is not widely known is that Miss Hall had been trained privately in colonial American history by a politically conservative Christian Science teacher, Mildred LeBlond. On the title page of *Christian History of the Constitution*, we read that the editor was Joseph Allan Montgomery. Mr. Montgomery had been part of Miss Hall's Christian Science study group after she replaced Mrs. LeBlond.<sup>3</sup> Miss Hall abandoned Christian Science before her book appeared, but there is no doubt that its origins were not in Protestantism.

I first met Miss Hall at a 1963 summer conference sponsored by the Center for American Studies in Burlingame, California. The Center was a spin-off of the William Volker Fund. The conference had been organized by Rousas J. Rushdoony, who was a full-time staff member at the Center. The idea of America as a Christian nation received support from Rushdoony's book, *This Independent Republic*, which was printed by the Center in a spiral binding format in 1962 and in book format by Craig Press in 1964. Neither that book nor his follow-up volume, *The Nature of the American System* (1965), is a systematic history. Both are collections of essays.

Chapter 6 of *The Nature of the American System*, "The Religion of Humanity," is a study of the political implications of American Unitarianism and the impact that these implications have had in American history. It begins with these words: "The Civil War was a triumph for the religion of humanity." He treats Unitarianism as a nineteenth-century phenomenon. Ecclesiastically, it was, but ecclesiastically, it was always a tiny movement. It gained influence politically after 1830 in the North because most American Protestants in the North had already

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3. I was informed of all this by David Keyston, a Christian Scientist, whose mother was in Mrs. LeBlond's study group before Miss Hall took over. On Mrs. LeBlond's continuing influence in Christian Science circles, see the *Mary Baker Eddy Letter*, #4 (July 1, 1997). She is quoted as teaching that "America" means "the second coming of the Christ." <http://www.mbeinstitute.org/LTR4.htm>

adopted its political conclusion regarding the necessity of a unitary state, a state that matched Unitarianism's doctrine of God. Theologically and philosophically, unitarianism was an eighteenth-century phenomenon, with theological roots in the late seventeenth century, especially in the systematically concealed theology of the most influential unitarian in Western history, Sir Isaac Newton.

Chapter 5 of *The Nature of the American System* is "Neutralism." Rushdoony rejected the concept in principle, as well as its political uses. "Politicians must assure every last plundering faction of its sanctimonious neutralism while also insisting on their own. Each particular faction, of course, insists on its own impartial, neutral and objective stance while deploring the partisan and subjective position of its adversaries. All men are equally committed to the great modern myth that such a neutrality is possible. The myth is basic to classical liberalism and most schools of thought, conservative and radical, which are derived from it" (p. 68). This is a fine statement of the modern politics of self-proclaimed neutralism. What his followers (including me until the mid-1980s) and even Rushdoony himself did not recognize is that this view of political neutralism produces a head-on collision with Rushdoony's arguments in his early years that the Constitution is an implicitly Christian document, and in his later years as a procedurally neutral document.<sup>4</sup>

I argue in this book that the interpretation of the American Revolution as a revolt justified by its promoters in the name of Christianity—Tom Paine and Ethan Allen<sup>5</sup> excepted—is correct, but that any interpretation of the United States Constitution as a Christian document is incorrect. I argue that the Constitution was a covenantal break with the Christian civil religion of twelve of the thirteen colonies. The exception was Rhode Island. Rhode Island was the first civil order in the West to be established self-consciously on a secular foundation. That took place in 1644, when Parliament during the English Civil War issued a charter to Rhode Island. The colony's founder, Roger Williams, was the first self-consciously secular political theorist in the West to receive a covenantal charter for a supposedly religiously neutral civil order. The story of the Constitution is the story of Rhode Island's conquest of America. It did this without sending delegates to the Convention. This has not been the conventional view of the origins of

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4. See Appendix A, below.

5. G. Adolph Koch, *Religion of the American Enlightenment* (New York: Crowell, [1933] 1968), ch. 1.

the United States Constitution.

## B. A Successful 225-Year Deception

In this book, I argue that the United States Constitution is the product of eighteenth-century unitarianism, though not Unitarianism, which was a nineteenth-century movement. The supposed Founding Fathers (Framers) of repute were trinitarians in much the same way that Sir Isaac Newton had been: members of publicly confessing churches, but not personally believing the confession. John Adams and Thomas Jefferson were self-conscious about their rejection of trinitarianism, as their later correspondence reveals.<sup>6</sup> George Washington was less identifiably unitarian, but he refused as an adult to take the Lord's Supper, and he avoided the use of the word "Christ" as systematically as Abraham Lincoln did, four score and seven years later. Benjamin Franklin's religion was a religion of practical gentility, devoid of the disturbing concept of hell. Madison, to the extent that he wrote about religion, was self-conscious in his attempt to reduce the impact of confessions of faith and theology on politics, which he regarded as religiously neutral.

In response, critics of my thesis argue along these lines: "If what you say is true, then good Christian men who attended the Constitutional Convention were deceived by the men who called together the Convention." This is my conclusion. But this admission does not satisfy the critics. "You are saying that there was a hard-core group of conspirators who actively deceived the other attendees." This is exactly what I am saying. "But how could you say this terrible thing about our Founding Fathers?" On this basis:

The Convention was assembled under false pretenses.  
 All attendees took a vow of lifetime silence.  
 They held their meetings on the second floor: no eavesdroppers  
 The press was barred from attending.  
 The legislatures' instructions were deliberately violated.

On the final page of Jack Rakove's study of the Continental Congress, an organization which committed suicide in September, 1787, the author has put it as well as any historian ever has.

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6. John Murray Allison, *Adams and Jefferson: The Story of a Friendship* (Norman: University of Oklahoma Press, 1966), pp. 294–97. Cf. Edwin S. Gaustad, *Faith of Our Fathers: Religion and the New Nation* (New York: Harper & Row, 1987), ch. 5.

For the most remarkable aspect of the Convention's four-month inquiry was that it was conducted in virtual absolute secrecy, uninfluenced by external pressures of any kind. No detailed instructions bound the delegates to specific goals, nor did the Convention even feel constrained to confine itself to proposing mere revisions of the Articles, as some of its members' credentials stipulated. No crowds assembled in the streets outside to shout for the redress of grievances or to protest its decision to meet behind closed doors. Except for occasional rumors—many of them inaccurate—that American newspapers published, the general public knew nothing of the Convention's deliberations.<sup>7</sup>

If I could prove today that a group of politicians is planning to call another Constitutional Convention, operating under the same terms that Madison imposed on the Convention in 1787, Christians and conservatives would protest the plot vocally. They would argue that a *coup d'état* was in progress. They would be correct. But the same observation can and should be made regarding the 1787 Constitutional Convention.

This was the opinion of one of America's most influential political scientists and Constitutional scholars, John W. Burgess. He was the founder of the first American graduate program in political science, at Columbia University, in 1880. His final book, *Recent Changes in American Constitutional Theory* (1923),<sup>8</sup> remains a classic defense of limited national government. Here is his assessment of the Constitutional Convention.

The natural leaders of the American people were at last assembled for the purpose of deliberating upon the whole question of the American state. They closed the doors upon the idle and the crude criticism of the multitude, adopted the rule of the majority in their acts, and proceeded to reorganize the state and frame for it an entirely new central government. . . . This was the transcendent result of their labors. It certainly was not understood by the Confederate Congress, or by the legislatures of the commonwealths, or by the public generally, that they were to undertake any such program. It was generally supposed that they were there for the purpose simply of improving the machinery of the Confederate government and increasing somewhat its powers. There was, also, but one legal way for them to proceed in reorganizing the American state as the original

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7. Jack Rakove, *The Beginnings of National Politics: An Interpretive History of the Continental Congress* (New York: Knopf, 1979), p. 336.

8. <http://www.constitution.org/jwb/burgess.htm>

basis of the constitution which they were about to propose, *viz.*; they must send the plan therefore, *as a preliminary proposition*, to the Confederate Congress, procure its adoption by that body and its recommendations by that body to the legislatures of the commonwealths, and finally secure its approval by the legislature of every commonwealth. The new sovereignty, thus legally established, might then be legally and constitutionally appealed to for the adoption of any plan of government which the convention might choose to approve. The convention did not, however, proceed in any such manner. What they actually did, stripped of all function and verbiage, was to assume constituent powers, ordain a constitution of government and liberty, and demand the *plebiscite* thereon, over the heads of all existing legally organized powers. Had Julius or Napoleon committed these acts they would have been pronounced coups d'état. Looked at from the side of the people exercising the *plebiscite*, we term the movement revolution. The convention clothed its acts and assumptions in more moderate language than I have used, and professed to follow a more legal course than I have indicated.

Burgess went on to observe that the public in 1787 did not understand what was going on. "Of course the mass of the people were not at all able to analyze the real character of this procedure." This is still true today. The primary victims of the Convention, Bible-believing Christians, come to the defense of the Constitution whenever they believe it is under attack.

What had happened in Philadelphia? A *coup*. "Really, however, it deprived the Congress and the legislatures of all freedom of action by invoking the *plebiscite*. It thus placed those bodies under the necessity of affronting the source of their own existence unless they yielded unconditionally to the demands of the convention."<sup>9</sup>

The Convention's proposal of a plebiscite proved to be politically irresistible. Congress refused to challenge the Convention's deliberate overturning of Congress' own authority and also the rules governing the amending process that were specified in the Articles of Confederation. Instead, on September 28, 1787, Congress passed along copies of the proposed Constitution to the state legislatures, which in turn authorized the calling of state ratification conventions that would be completely independent of the legislatures, thereby transferring sovereignty to the state conventions. Thus did Congress and the state legislatures allow the better-organized Federalists to replace the existing

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9. John W. Burgess, *Political Science and Constitutional Law* (Boston: Ginn & Co., 1890), I, pp. 104–6.

national constitution in the name of the people. But to do this, they needed justification. The conspirators in Philadelphia, and above all, George Washington, provided them with this justification. He was the main source of the conspiracy's legitimacy.

In 1916, a two-volume biography of Chief Justice John Marshall was published. It was written by Senator Albert Beveridge. Two more volumes followed in 1919. Senator Beveridge agreed with Burgess, whom he quoted briefly. I wish that every American high school student would read this paragraph and think about its implications. I wish my critics would, too.

The general Federal Convention that framed the Constitution at Philadelphia was a secret body; and the greatest pains were taken that no part of its proceedings should get to the public until the Constitution itself was reported to Congress. The Journals were confided to the care of Washington and were not made public until many years after our present government was established. The framers of the Constitution ignored the purposes for which they were delegated; they acted without any authority whatever; and the document, which the warring factions finally evolved from their quarrels and dissensions, was revolutionary. This capital fact requires iteration, for it is essential to an understanding of the desperate struggle to secure the ratification of that then unpopular instrument.<sup>10</sup>

This is not the prevailing view of the Constitution in the textbooks. It is rarely mentioned in specialized academic monographs on the Constitution. The historians have accepted the mythology of the Convention itself, a mythology that prevailed only because James Madison was a master political manipulator. He did his work well, both at the Convention and through the state ratification conventions. But it was Washington's letter to Congress, at the close of the Convention, which did more than anything else to move the conspiracy from a *coup* to successful revolution. I regard this as the most significant letter in American history, the *sine qua non* of the nation.

We have now the honor to submit to the consideration of the United States in Congress assembled, that Constitution which has appeared to us the most adviseable.

The friends of our country have long seen and desired, that the

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10. Albert J. Beveridge, *The Life of John Marshall*, 4 vols. (Boston: Houghton Mifflin, 1916), I, pp. 323–24.



power of making war, peace, and treaties, that of levying money and regulating commerce, and the correspondent executive and judicial authorities should be fully and effectually vested in the general government of the Union: But the impropriety of delegating such extensive trust to one body of men is evident—Hence results the necessity of a different organization.

It is obviously impracticable in the federal government of these states, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all: Individuals entering into society, must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered, and those which may be reserved; and on the present occasion this difficulty was increased by a difference among the several states as to their situation, extent, habits, and particular interests.

In all our deliberations on this subject we kept steadily in our view, that which appears to us the greatest interest of every true American, the consolidation of our Union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each state in the Convention to be less rigid on points of inferior magnitude, than might have been otherwise expected; and thus the Constitution, which we now present, is the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable.

That it will meet the full and entire approbation of every state is not perhaps to be expected; but each will doubtless consider, that had her interest been alone consulted, the consequences might have been particularly disagreeable or injurious to others; that it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish.<sup>11</sup>

Robert Rutland wrote about what the Antifederalists concluded after their defeat, what James Monroe wrote to Jefferson in 1788. “The prospect of Washington as president had ruined their chances, he told

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11. *Documents Illustrative of the Formation of the United States*, ed. Charles C. Tansill (Washington, D.C.: Government Printing Office, 1927), pp. 1003–4. (<http://bit.ly/GWletter1787>)

Jefferson. 'Be assured his influence carried the government.'"<sup>12</sup>

The combination of two factors produced this revolution: (1) the personal authority of George Washington; (2) the politically irresistible invocation of the invisible People as the new sovereign god of the nation. This new sovereign, announced the Constitution, would be represented in history by delegates to future state ratifying conventions rather than by elected representatives to existing state legislatures (Article VII). This *new doctrine of representation-investiture* was the central dogma of the revolution of 1787/88, from which the new nation subsequently derived its legitimacy. *This dogma constituted both a theological and a political revolution.* This revolution began with a *coup*: a conspiracy in Philadelphia.

### C. An Update of My 1989 Book

I published the bulk of this book as Part 3 of my book, *Political Polytheism: The Myth of Pluralism*. It appeared in 1989. That book served as a 760-page appendix to my 1,287-page *Tools of Dominion* (1990).<sup>13</sup> The earlier sections of *Political Polytheism* dealt with covenant theology, the ethical system of Cornelius Van Til, Francis Schaeffer's defense of political pluralism, and the theory of the non-Christian nationhood of the United States, which was offered by a trio of Christian historians: Noll, Hatch, and Marsden. The full book is available at here: <http://bit.ly/gnpolpol>.

I have waited for over a decade for a detailed, documented critique of my thesis on the origins of the United States Constitution. There have been almost none. I regard only one critic as having done his homework on at least one aspect of my book's thesis, namely, the Constitution's ban on religious test oaths (Article VI, Clause 3). Dr. Dreisbach takes the same position that Rushdoony did, namely, that the Framers wanted only to keep Congress from regulating religion. Dr. Dreisbach, in a detailed and heavily footnoted article in the *Baylor Law Review* (1996), failed to mention me or my book in his voluminous footnotes, although he cited Rushdoony and Archie P. Jones, two Christian Reconstructionists who promote his thesis.

As his article shows, his thesis is of ancient vintage, stretching back

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12. Robert Allen Rutland, *The Ordeal of the Constitution: The Antifederalists and the Ratification Struggle of 1787-1788* (Boston: Northeastern University Press, [1966] 1983), p. 253.

13. Gary North, *Tools of Dominion: The Case Laws of Exodus* (Tyler, Texas: Institute for Christian Economics, 1990). (<http://bit.ly/gntools>)

to the nineteenth century. He argued that the Constitution's silence about God, although a radical break with Western political history (except for Rhode Island, which sent no delegates to the Convention), was not based on secularism. It was merely an attempt by the members of the Convention to keep Congress out of ecclesiastical matters.<sup>14</sup> In my view, this argument has served as an anesthetic for Christians ever since 1787. The unitarians and freemasons who engineered the *coup* used similar arguments and sentiments to strip God out of the nation's founding covenantal document for the civil order.

For all of his footnotes, he nevertheless provided lots of evidence for my original book's central thesis, namely, that there is no neutrality, and that any attempt to achieve it in covenantal affairs inevitably winds up favoring covenant-breakers in their active pursuit of God-defying agendas. This is what happened to the Constitution, as I argued in 1989 and I argue here. *The myth of neutrality is a myth, and every attempt to implement it judicially works to undermine the kingdom of God.* Dr. Dreisbach seemed almost surprised that a series of Supreme Court decisions after 1960 secularized the nation judicially. "Gosh all whillikers, how did this happen?" he seemed to ask. In this book, as in *Political Polytheism*, I argue that this development was built into the original covenantal document.

## D. The Second American Revolution

The Constitutional Convention did not take place in response to a democratic movement of the people. The voters in early 1787 were generally uninterested in national politics and were jealous of a transfer of sovereignty to the central government. This outlook was not shared by the men who became the Constitution's Framers and then, retroactively, the Founders.

As I shall show, what they did was illegal. It was far more illegal than what Daniel Shays did in Massachusetts, despite the fact that Shays' Rebellion in late 1786 and early 1787 was a major motivating factor in George Washington's last-minute decision to attend the Convention.<sup>15</sup> Without this decision, the Convention would probably have failed. What is more, the Framers knew that they were acting illegally.

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14. Dreisbach, "In Search of a Christian Commonwealth," *op. cit.*, pp. 927–1000. He wrote a parallel article, also published in 1996: "The Constitution's Forgotten Religious Clause: Reflections on the Article VI Religious Test Ban," *Journal of Church and State*. Here, *Political Pluralism* received a footnote: #151.

15. See Appendix B.

Shays' Rebellion had provided an opportunity for a majority of a group of 55 men, more than half of whom were lawyers,<sup>16</sup> to break the law of the land and get away with it.

This is not how historians of the Constitution have treated the Convention in Philadelphia. This fact provides additional support for the ancient rule of historiography, indeed, its only known rule: the victors write the textbooks.

The *coup* in Philadelphia became a revolution with the ratification of the Constitution. This transformed the legal order of the new nation. This was a second American revolution. Here I follow the analysis of legal historian Harold J. Berman, who spoke of a revolution as an event demonstrated retroactively to be a revolution, after it has transformed both the law and society for at least two generations.<sup>17</sup> He identified the American Revolution as one of six major revolutions in the history of the West: the Papal, beginning in 1076, the Protestant Reformation (1517–55), the English Revolution (1642–60; 88/89), the American Revolution (1775–89), the French Revolution (1789–1815), and the Russian Revolution (1917–53).<sup>18</sup>

## Conclusion

I can do no better than to end my Preface by quoting the opening words of the Preface to Forrest McDonald's *E Pluribus Unum: The Formation of the American Republic, 1776–1790* (1965).

The first function of the founders of nations, after the founding itself, is to devise a set of true falsehoods about origins—a mythology—that will make it desirable for nationals to continue to live under common authority, and, indeed, make it impossible for them to entertain contrary thoughts.

The founders of the American civil order, whose work culminated with the ratification of the Constitution in 1788, lent their post-1788 authority to the creation of a grand mythology, as McDonald outlines it. It was a mythology of *American nationalism*, as distinguished from American federalism.<sup>19</sup> This is the grand mythology of the textbooks.

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16. Selma R. Williams, *Fifty-Five Fathers: The Story of the Constitution* (New York: Dodd, Mead, 1970), p. 4.

17. Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, Massachusetts: Harvard University Press, 1983), p. 20.

18. *Ibid.*, pp. 18–19.

19. Forrest McDonald, *E Pluribus Unum: The Formation of the American Republic*

The only historically significant challenge to this mythology took place on approximately 10,400 battlefields, 1861–65.

But there was another aspect of this mythology. It has been so successful that Professor McDonald and his contemporary academic peers, let alone the nationalist historians of the nineteenth century, do not consider it relevant, and hence rarely bother to mention it: the transformation of a dozen independent Christian civil commonwealths in 1775 into the covenantally agnostic civil order of 1788 that would, over the next two centuries, become covenantally atheistic. It is the story of the conquest of colonial America by Rhode Island—a victory that Rhode Island enjoyed without actually having participated in the struggle: the only colony not to send delegates to the Convention, and the last of the 13 to ratify it, just barely, in 1790. It is this story that I have decided to tell one more time. The silence that greeted *Political Polytheism* indicates that once was not enough.

Article XIII. Every State shall abide by the determination of the United States in Congress assembled, on all questions which by this confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State.

And Whereas it hath pleased the Great Governor of the World to incline the hearts of the legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said Articles of Confederation and perpetual Union. Know Ye that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual Union, and all and singular the matters and things therein contained: And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions, which by the said Confederation are submitted to them. And that the Articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual.

Articles of Confederation (1781)<sup>1</sup>

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1. *Documents Illustrative of the Formation of the United States*, Charles C. Tanill, editor (Washington, D.C.: Government Printing Office, 1927), pp. 35–36.

# INTRODUCTION

*Ye have seen what I did unto the Egyptians, and how I bare you on eagles' wings, and brought you unto myself. Now therefore, if ye will obey my voice indeed, and keep my covenant, then ye shall be a peculiar treasure unto me above all people: for all the earth is mine: And ye shall be unto me a kingdom of priests, and an holy nation. These are the words which thou shalt speak unto the children of Israel. And Moses came and called for the elders of the people, and laid before their faces all these words which the LORD commanded him. And all the people answered together, and said, All that the LORD hath spoken we will do. And Moses returned the words of the people unto the LORD (Ex. 19:4–8).*

## Introduction

In the fall of 1965, I took a graduate seminar on the history of the American Revolution. The instructor was Douglass Adair, a one-year visiting professor from nearby Claremont College. I had not heard of him when I began that seminar; I have heard about him many times ever since. That seminar was a marvelous academic experience in a world of infrequent marvelous experiences. The most memorable aspect of it was the day that he asked a pair of questions that have been in the back of my mind—and occasionally at the front—ever since. The first question was: “Who taught the tutors of the members of the Virginia dynasty?” And the second question was like unto it: “What books did the members of that dynasty read?” He did not answer these questions in great detail, but the general answers he suggested were these: the tutors, more often than not, had been educated in some Scottish university or by a graduate of such a university, and the books they assigned to their students were the books of the Scottish Enlightenment. Whether he was right or wrong, these are the sorts of questions that historians ought to be asking.

### A. Who Were the “Founders”?

There is a more fundamental question, one that I am asking here: *Who were America’s Founding Fathers, and what, exactly, did they found?* To ask this question regarding the founders is to ask a distinctly covenantal question. A covenantal question always has five essential and inescapable parts in relation to any founding:

1. On whose authority did the founder act?
2. What kind of authority did the founder impose?
3. What were the boundaries that he established?
4. What kind of sanctions does his institution impose?
5. What are the connecting links between him, us, and the future?

In a church, the answer to the first question is clear: on God’s authority. Second, the founder imposed a church hierarchy. Third, the church has boundaries, which are theological and legal. Fourth, most churches have membership lists, and therefore a sanction: excommunication, i.e., cutting off a deviant member from access to the Lord’s Supper (communion). Churches with open communion and no membership roles adopt other, less visible and less clear forms of sanctions, but there are always positive and negative sanctions in any organization. Finally, the question of membership. The link between the founder and today’s church member may be confessional (in credal churches), emotional, liturgical, or legal (membership), or any mixture thereof. In the case of immigrant churches, it may be linguistic or racial.

Nations have an analogous set of questions. First, in whose name did the founder act? His own (the charismatic leader)? His family’s (patriarchal-traditional)? The Party’s (ideological)? God’s (theological)? Nature’s (rational)? Someone had to authorize it. There had to be an *author*.

Second, what is the nature of the national organization’s hierarchy? What is the basis of obedience to this hierarchy? Personal allegiance (military-patriarchal)? Theocratic investiture (theocracy)? Public investiture (democracy)? The leader’s office (bureaucracy)?

Third, what are the boundaries of political authority? Boundaries are both geographical and legal. In other words, what are the limits of political authority?

Fourth, what are the positive and negative sanctions of government? Are they essentially negative (limited government)? Positive



(welfare state)? A mixture? The basic question is this: In what ways do leaders encourage *self-government*, since the consent of the governed is always necessary.

Finally, there is the question of succession or continuity. This is the question of rulership and citizenship. What is the legal basis of transition, ruler to ruler, citizen to citizen? Birth? Legal adoption? Election? Naturalization? People are born and they die. They move. They change allegiances. Societies and civil governments must deal with these facts of life and death. To do so, they create judicially binding public events, events that are best understood as acts of *covenant renewal*. An election is an act of covenant renewal. So is swearing an oath of office. *Especially* swearing an oath of office, for the oath explicitly or implicitly calls down the negative sanctions of the covenant, should the swearer break the legal terms of the covenant.

## B. Covenantalism: An Inescapable Concept

This book deals primarily with the political and judicial implications of point four of the biblical covenant model: *oaths/sanctions*. This is not to say that none of the other points is involved. A covenant is presented to men as a unit, and it is either accepted or rejected as a unit. When we deal with any of God's covenant institutions, we must consider all five aspects of the biblical covenant model. Following Ray Sutton's lead,<sup>1</sup> I divide up the covenant into these five points:

Transcendence (sovereignty), yet immanence (presence)  
 Hierarchy/authority/representation  
 Ethics/law/dominion  
 Oath/judgment/sanctions (blessings, cursings)  
 Succession/continuity/inheritance

The acronym is THEOS, the Greek word for God.

All three of the authorized corporate covenant institutions—church government, family government, and civil government—must bear the institutional marks of these five points. There is no escape. All five points are basic to each of the covenant institutions. The covenant may identify a god different from the God of the Bible, but the covenant structure itself is inescapable. There can be no government apart from this structure. The covenant is an inescapable concept. It is never

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1. Ray R. Sutton, *That You May Prosper: Dominion By Covenant*, 2nd ed. (Tyler, Texas: Institute for Christian Economics, 1987). (<http://bit.ly/rstymp>)

a question of “covenant vs. no covenant.” It is always a question of *which* covenant. More to the point, it is a question of *which sovereign master*.

Because Western Protestantism ever since the late seventeenth century has cooperated with the forces of rationalism in abandoning the original covenantal foundations of Western civilization, we still face a 300-year-old dilemma. It is most acute in the United States, where vestiges of the older covenantal Christianity still remain, and where the conflict between covenant-breakers and covenant-keepers has visibly escalated since about 1975. American church historian Sidney Mead stated the nature of the intellectual problem, which has now begun to assert itself as a cultural and political problem—an ancient one in American history. Writing in 1953, he observed:

... But the great item of unfinished intellectual business confronting the Protestant denominations was and is the problem of religious freedom. And here the situation is almost as desperate as increasingly it becomes clear that the problem cannot be solved simply by maligning the character of those who question the American practice.

Is it not passing strange that American Protestantism has never developed any sound theoretical justification of or theological orientation for its most distinctive practice? Today we should probably have to agree with the writer of 1876 who said that “we seem to have made no advance whatever in harmonizing (on a theoretical level) the relations of religious sects among themselves, or in defining their common relation to the Civil power.”<sup>2</sup>

I ask the question: To what extent is the U.S. Constitution a covenant document? If I can show that it is a covenant document, then a second question arises: What kind of covenant, Christian or secular humanist? To answer these two questions, I shall present a considerable quantity of historical material, much of it unfamiliar even to professional historians unless they are specialists in colonial American history and eighteenth-century religious controversies. I was trained

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2. Sidney E. Mead, “American Protestantism During the Revolutionary Epoch,” *Church History*, XXII (1953); reprinted in *Religion in American History: Interpretive Essays*, eds. John M. Mulder and John F. Wilson (Englewood Cliffs, New Jersey: Prentice-Hall, 1978), p. 175; citing J. L. Diman, “Religion in America, 1776–1876,” *North American Review*, CXXII (Jan. 1876), p. 42. Mead also cited the views of Wilhelm Pauck, “Theology in the Life of Contemporary American Protestantism,” *Shane Quarterly*, XIII (April 1952), pp. 37–50.

professionally in the former field, yet what I discuss in this section was never mentioned in any graduate seminar I ever took or any book I ever read in the 1960s. The source materials, both primary and secondary, did exist, but they had been long forgotten.

I argue that the Constitution's Framers were not the nation's Founding Fathers. Though I do not develop the theme extensively, it is my view that Gov. John Winthrop of the Massachusetts Bay Colony rather than George Washington deserves the title of Founding Father. So, however, does Roger Williams, for because of Williams, George Washington and the Framers became politically possible. I argue that the Constitution, like the charter of colonial Rhode Island, is a substitute covenant. This is not the standard textbook account of the Constitution, or a standard anything account. But it is a true account, assuming that the Bible is true. I assume that it is.

Warren Burger, the former Chief Justice of the U. S. Supreme Court, offered his opinion that "The United States, as a true nation, was conceived in Philadelphia in the summer of 1787, but it was not yet born until the document was ratified."<sup>3</sup> This sentence summarizes what I call the myth of the Constitution as the sole covenantal basis of the nation we call the United States of America. I contend that this myth is the legacy of a humanist conspiracy.

The Declaration of Independence of the United States against Great Britain in 1776 was a formal declaration of political independence.<sup>4</sup> It was the first step in a more important Declaration of Independence: a covenantal declaration of independence from the God of the Bible. That latter declaration is the document we know as the United States Constitution. To prove my point, I have written this book.

I focus on the crucial but much-neglected section of the Constitution, the one prohibiting religious test oaths: "The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all the executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under

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3. Warren E. Burger, Foreword, Patrick T. Conley and John P. Kaminski (eds.), *The Constitution and the States: The Role of the Original Thirteen in the Framing and Adoption of the Federal Constitution* (Madison, Wisconsin: Madison House, 1988), p. vii.

4. Gary North, "The Declaration of Independence as a Conservative Document," *Journal of Christian Reconstruction*, III (Summer 1976), pp. 94–115.

the United States” (Article VI, Clause 3). This seemingly innocuous provision was and is far more important than the First Amendment in establishing the religious character of the American nation, yet it is seldom discussed, even by specialists in Constitutional theory. The quiet revolution which this provision has produced is still equally quiet, two centuries after the revolution began. As Gareth Garrett said, speaking of Franklin Roosevelt’s New Deal of the 1930s and early 1940s, “the revolution was.”

### C. Historiography

There is no neutrality. One’s presuppositions about the nature of God, man, law, causation, and time shape one’s interpretation of all facts. There is no brute factuality, as Cornelius Van Til insisted; there is only interpreted factuality.

The history of the origins of the U.S. Constitution in the twentieth century was a debate between the Whig view—the Constitution as an instrument written by men who sought to increase human liberty—and the economic-Marxist-Beardian view: a document written by a particular economic class of men who were seeking economic advantage. There was also a modified Tory view, represented by the “Imperial” histories written by men like Charles M. Andrews and Lawrence H. Gipson, who argued that things really were not so bad, 1763–75, and that the disputes could have been worked out between the colonies and Great Britain within the framework of the imperial system. The Whig view has predominated. This view goes back to the very era of the Constitution itself, to South Carolinian David Ramsay. There have been wide variations within this tradition, reflecting the divisions within the Constitutional Convention: big government (Hamiltonian Federalist), limited government (Jeffersonian republican), and state’s rights. To put it bluntly, the winners write the history textbooks, and even the losers (e.g., Alexander H. Stephens’ *A Constitutional View of the Late War Between the States*) wind up siding with one or another party within the camp of the winners.

This study of the Constitution is an exception to the rule. I am writing from the perspective of the real losers, the ones whose case is virtually never even considered, let alone defended. I am arguing the case from the point of view of the Founders of America, the Christians. It was they who steadily lost the battle, beginning with the restoration of Charles II to the throne in 1660. It took over a century for this de-

feat to be consummated by the ratification of the U.S. Constitution. They had basically lost the war by 1684, marked by the revocation of the Massachusetts charter under Charles II, who died in 1685. After the Glorious Revolution against James II—a Whig revolution—of 1688–89, Massachusetts was granted a new royal charter (1691), but one which was no longer Puritan in origin. Voting henceforth was regulated strictly in terms of property ownership, not religion. Covenantally speaking, the lawyers and the merchants inherited the Puritan commonwealth.<sup>5</sup>

## D. The Rhode Island Experiment

Theologically and even covenantally, this was not the beginning of the battle; this was the beginning of the end. The first skirmish in the struggle to create the modern world was in the winter of 1636, when Roger Williams fled Massachusetts and headed into the wilderness of what was to become Rhode Island. Williams successfully created a new colony, but it was far more than a new colony; it was a new concept of civil government. It was a concept that has become dominant today—the distinguishing mark of political modernism. He founded a colony that was openly secular; there would be no church-state connection, or even a religion-state connection.

In 1642, the General Court of Rhode Island organized a new government. It required an oath of office from magistrates to “walk faithfully” and taken “in the presence of God.”<sup>6</sup> There was no other mention of religion. The colony’s civil government was formally recognized as “a democracy, or popular government.”<sup>7</sup> In March of 1644 (old calendar, 1643), Parliament granted a charter to the Providence Plantations.

In response, in 1647, acts and orders were agreed upon. The colony was again identified as “democratical,” meaning “a government held by the free and voluntary consent of all, or the greater part of the free inhabitants.”<sup>8</sup> This supplemental document admitted the existence of “our different consciences touching the truth as it is in Jesus,”

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5. Bernard Bailyn, *The New England Merchants in the Seventeenth Century* (New York: Harper Torchbooks, [1955] 1965), ch. 7.

6. “Organization of the Government of Rhode Island, March 16-19, 1641/42,” in W. Keith Kavenaugh (ed.), *Foundations of Colonial America: A Documentary History*, 3 vols. (New York: Chelsea House, 1973), I, p. 343.

7. *Idem.*

8. *Ibid.*, I, p. 347.

and affirmed “each man’s peaceable and quiet enjoyment of his lawful right and liberty. . . .”<sup>9</sup> It enacted civil laws and sanctions for various crimes, including murder, rebellion, misbehavior, witchcraft, adultery, fornication, perjury, kidnapping, whoremongering, etc. It did not, as had been done in Massachusetts, identify these crimes as crimes listed in the Old Testament, with passages cited (e.g., Massachusetts’ Body of Liberties, 1641). Instead, it made this statement:

These are the laws that concern all men, and these are the penalties for transgression thereof, which, by common assent, and ratified and established throughout the whole colony; and otherwise than thus what is herein forbidden, all men may walk as their consciences persuade them, everyone in the name of his god. And let the saints of the most high walk in this colony without molestation in the name of Jehovah, their God for ever and ever, etc., etc.<sup>10</sup>

This meant, however, that non-saints had the same civil powers and immunities, that they, too, could walk in the colony without molestation, and more to the point covenantally, vote in all colonial elections, “everyone in the name of his god,” or lack thereof.

In 1663, Charles II, as a self-identified Christian monarch, granted to them in the name of “the true Christian faith,” a special dispensation: they would not have to worship God according to the Church of England, “or take or subscribe the oaths and articles made and established in that behalfe; . . .” The charter then adopted language that was to be repeated again and again in the next hundred years of charter-granting and constitution-making: “. . . noe person within the sayd colonye, at any tyme hereafter, shall bee any wise molested, punished, disquieted, or called into question, for any differences in opinione in matters of religion, and doe not actually disturb the civill peace of our sayd colony: . . .”<sup>11</sup> This he called a “hopefull undertakeinge.”<sup>12</sup> The charter mentioned “the good Providence of God, from whome the Plantationes have taken their name,”<sup>13</sup> but that was a mere formality; the heart of the experiment was judicial. What is remarkable in retrospect—and what has become standard fare in making the case for modern Christian pluralism—was the King’s express hope that by

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9. *Idem.*

10. *Ibid.*, I, p. 349.

11. “Charter of Rhode Island and the Providence Plantation, July 8, 1663,” *ibid.*, I, p. 121.

12. *Ibid.*, I, p. 120.

13. *Idem.*

severing the colony's civil government from religion, the settlers "may be in the better capacity to defend themselves, in their just rights and liberties against all the enemies of the Christian faith, and others, in all respects."<sup>14</sup>

## E. A Formal Transfer of Civil Sovereignty

Finally, this book argues that a new view of civil sovereignty was implied by the Rhode Island theology. This new view transferred civil sovereignty from God to the people, considered as an autonomous agent. That is, this view of sovereignty moved from theonomy to autonomy, paralleling the shift of the civil covenant from God as finally sovereign in history to man as finally sovereign in history.

The clearest statement of this shift came in 1790, two years after the ratification of the Constitution. It was written by James Wilson of Pennsylvania, who had been one of the major participants at the Convention and also in the state legislature in Pennsylvania in the fall of 1787. He was a member of the nationalist faction, holding a view of centralized political power that was closer to Hamilton's view than Jefferson's. He was also a strong supporter of the Bank of North America, which had been authorized by the Continental Congress.<sup>15</sup>

We are told, however, that, at last, the source of the Nile has been discovered; and that it consists of—what might have been supposed before the discovery—a collection of springs small, indeed, but pure.

The fate of sovereignty has been similar to that of the Nile. Always magnificent, always interesting to mankind, it has become alternately their blessing and their curse. Its origin has often been attempted to be traced. The great and the wise have embarked in the undertaking; though seldom, it must be owned, with the spirit of just inquiry; or in the direction, which leads to important discovery. The source of sovereignty was still concealed beyond some impenetrable mystery; and, because it was concealed, philosophers and politicians, in this instance, gravely taught what, in the other, the poets had fondly fabled, that it must be something more than human: it was impiously asserted to be divine.

Lately, the inquiry has been recommenced with a different spirit, and in a new direction; and although the discovery of nothing very aston-

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14. *Ibid.*, I, p. 121.

15. Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence, Kansas: University Press of Kansas, 1985), pp. 149–50.

ishing, yet the discovery of something very useful and true, has been the result. The dread and redoubtable sovereign, when traced to his ultimate and genuine source, has been found, as he ought to have been found, in the free and independent man.<sup>16</sup>

Here is the underlying story of the U.S. Constitution: the formal transfer of covenantal civil sovereignty from the God of the Bible in twelve of the 13 states to “We the People” of the Constitution.

## Conclusion

It is my contention—argued, many will say, contentiously—that the experiment in political pluralism in the Rhode Island wilderness set the standard for all modern political developments. It was the first civil order in the West to break with the concept of trinitarian civil covenantalism. This tiny colony, established self-consciously as an alternative to the theocracy of the Massachusetts Bay Colony, was the birthplace of modern political pluralism. More than this, I contend that the major arguments in defense of Christian political pluralism invariably sound like those used by Williams to justify his opposition to, and departure from, Massachusetts.

The political history of the United States after 1688 has essentially been the extension of Roger Williams’ view of civil government, as opposed to John Winthrop’s.<sup>17</sup> The defenders of democracy have not often quoted either man, but they have quoted Williams more often. Williams and his colleagues laid the covenantal foundations for modern democracy, but they have not been given sufficient credit for their pioneering effort. Modern defenders of democracy prefer to avoid naming Jesus in their defenses of political pluralism. They are therefore far more consistent in their understanding of the theology of pluralism. It is mainly Christian defenders of political pluralism who are drawn to Williams these days.

But if Rhode Island was not the explicit political-theological representative model in eighteenth-century colonial America, what was? We must begin therefore with the question: What were the religious and intellectual roots of the U.S. Constitution?

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16. James Wilson, *Introductory Section. Of the Study of Law in the United States* (1790), in *Collected Works of James Wilson*, eds. Kermit L. Hall and Mark David Hall (Indianapolis, Indiana: Liberty Fund, 2007), co. 1. (<http://bit.ly/WilsonLawUS>)

17. Edmund S. Morgan, *The Puritan Dilemma: The Story of John Winthrop* (Boston: Little, Brown, 1958).





It is only against the background of the Old World Enlightenment that we can appreciate the political achievements of the men who were to be immortalized as Founding Fathers of the new Republic, their resourcefulness, their ingenuity, their wisdom, their sagacity, their virtue. Where most of the philosophes of the Old World were recruited from Naturalists and doctors and ecclesiastics—how the Abbés disported themselves in the pages of the *Encyclopédie!*—in America most of them were students of the law. Law was the common denominator of Jefferson and Madison, of George Mason who wrote Virginia’s famous Bill of Rights and George Wythe who presided over her highest court, of Alexander Hamilton and of John Jay, of John Adams who was the chief justice of his state (he never took office, to be sure) and Roger Sherman and Oliver Ellsworth of Connecticut, and the American Blackstone, James Wilson, and his fellow commentator on the Constitution, Nathaniel Chipman of Vermont, and the two brilliant Pinckneys of South Carolina, and even of the educator and lexicographer Noah Webster. And even those who were not trained to the law, like Franklin, Dr. Rush, and Tom Paine, were more than lawyers, they were political philosophers. It was the lawyers who had written the Declaration of Independence and the Northwest Ordinance—and it was mostly lawyers who drafted the Constitutions of the States and of the new United States. For forty years every President of the new nation, with the exception of Washington himself, and every Vice-President and Secretary of State, without exception, was a lawyer. In America politics was the universal preoccupation, legislation the universal resource, and Constitutions the universal panacea.

Henry Steele Commager (1977)<sup>1</sup>

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1. Commager, *The Empire of Reason: How Europe Imagined and America Realized the Enlightenment* (New York: Oxford University Press, 1977), pp. 176–77.

# 1

## THE THEOLOGICAL ORIGINS OF THE U.S. CONSTITUTION

*As has been noted, many men use words which to others imply a religious view not held by the speaker or writer without an awareness either of the divergence of meaning or the mixed presuppositions. Witness, for example, Rev. John Witherspoon (1722–1794), Presbyterian leader who in 1768 assumed the presidency of the College of New Jersey (now Princeton University). Witherspoon taught many who later played an active role in American life. His own belief in sound money, mixed government and a division of powers was pronounced. An orthodox Calvinist, Witherspoon, without any sense of contradiction, also followed the philosophy of Thomas Reid (1710–1796), Scottish realism, using this questionable tool against Hume, Deism and French philosophers. In his **Lectures on Moral Philosophy**, he spoke the language of rights and reason, combining with this man-centered emphasis his own theocentric faith.*

R. J. Rushdoony (1964)<sup>1</sup>

### Introduction

Men know of Harvard and Yale, but Princeton seems to be a newcomer to the ranks of the Big Three. Not so, or at least not quite so. Princeton has had its ups and downs over the centuries, but Princeton, even before it was called Princeton (before 1896), served a crucial role in American history: the transmission belt of rationalism and classical-liberalism into Presbyterianism. According to recent monographs on the school's history, whenever it failed to do this, it fell into a period of decline and insignificance, i.e., fell under the control of men who really did believe in Presbyterianism's Westminster Confession of Faith.

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1. R. J. Rushdoony, *This Independent Republic: Studies in the Nature and Meaning of American History* (Vallecito, California: Ross House, [1964] 2001), p. 3. (<http://bit.ly/rjrtir>)

Princeton has had more well-known presidents than any school in American history: Jonathan Edwards,<sup>2</sup> John Witherspoon, and the Virginian, Woodrow Wilson. Two other less famous presidents played important roles in transforming the Presbyterians: Virginian Samuel Davies, a leader in the Great Awakening,<sup>3</sup> who succeeded Edwards briefly until his death, and the Scottish defender of natural law who brought “Christian” evolutionism to young Presbyterian gentlemen in the late nineteenth century, James McCosh.<sup>4</sup> If we count William Tennent’s “Log College” as the predecessor of the College of New Jersey, then we should add his name to the list. Every Presbyterian clergyman except one who was prominent in the Great Awakening was a Log College man.<sup>5</sup>

I begin my discussion of apostate covenantalism where Rushdoony began his discussion of what he regarded as covenantally Christian America: with Rev. John Witherspoon. He was the teacher of the man who is often called the Father of the Constitution, James Madison.<sup>6</sup> He was a signer of the Declaration of Independence, the only minister of the gospel to do so.

## A. The Witherspoon Connection

Witherspoon serves as perhaps the best example in the history of the Christian church of a man who defended a halfway covenant philosophy and subsequently pressed for an apostate national covenant. He was the most prominent clergyman in the colonies during the Revolutionary War. He was hated by the British. When British troops cap-

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2. Aaron Burr was Edwards’ son-in-law; Burr’s father had been president of Princeton, where Burr graduated. He requested and received permission to be buried in the cemetery plot of the presidents of Princeton, although for the first twenty years, the grave went unmarked. Milton Lomask, *Aaron Burr: The Conspiracy and Years of Exile, 1805–1836* (New York: Farrar, Straus, Giroux, 1982), pp. 404–5.

3. It was during a college fund-raising tour in England with Gilbert Tennent in 1755 that Davies presented his civil case for religious toleration of dissenting churches in Virginia, which Davies won. This subsequently increased the degree of toleration for colonial dissenters generally. This was probably the most significant college fund-raising program in American history. See the entry for Davies in *Dictionary of American Religious Biography*, ed. Henry Warren Bowden (Westport, Connecticut: Greenwood Press, 1977).

4. J. David Hoeveler, Jr., *James McCosh and the Scottish Intellectual Tradition: From Glasgow to Princeton* (Princeton, New Jersey: Princeton University Press, 1981). After he retired, McCosh wrote a biography of Witherspoon (1890).

5. *Dictionary*, entry under William Tennent, p. 459.

6. For example, Neal Riemer, *James Madison: Creating the American Constitution* (Washington, D.C.: Congressional Quarterly, 1986).

tured Rev. John Rosborough, they bayoneted him on the spot, thinking that they had captured Witherspoon.<sup>7</sup> He was therefore *the* representative of the church in that era. He did not merely sign the Declaration of Independence; he symbolically signed his brightest student's 225-year (or more) jail sentence for the American church.

Witherspoon, in the name of Calvin's God, substituted Locke's compact theory of civil government for biblical covenantalism: society as contractual, not covenantal. He did not distinguish society from the state. This is a fundamental error of political analysis. It must either limit the concept of society to the state and its monopoly of coercion, or else expand the concept of the state to encompass all other corporate human relationships. "Society I would define to be an association or compact of any number of persons, to deliver up or abridge some part of their natural rights, in order to have the strength of the united body, to protect the remaining, and to bestow others."<sup>8</sup> Sovereign men in a state of nature agreed with each other to set up a political hierarchy, to pass and enforce laws, and to bestow rights on others in the future. Here is the Lockean covenant in all its autonomous grandeur. Society, Witherspoon wrote, is a "voluntary compact" among equals.<sup>9</sup> Most important, his discussion of oaths was limited strictly to contracts (person to person) and vows: personal promises between God and an individual. Oaths, he said, "are appendages to all lawful contracts; . . ."<sup>10</sup> He did not discuss covenants as oath-bound contracts among men in which God is the enforcing party. Had he done so, he would have had to abandon Locke and the whole Whig political tradition.

Witherspoon made the assumption that there is a common sense logical realism that links the logical processes of all men, Christians and non-Christians. He appealed to this common sense realism in his defense of the Christian faith. This was the heritage of eighteenth-cen-

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7. James Hastings Nichols, "John Witherspoon on Church and State," *Journal of Presbyterian History*, XLVII (Sept. 1964), pp. 166–67.

8. John Witherspoon, *An Annotated Edition of Lectures on Moral Philosophy*, ed. Jack Scott (Newark: University of Delaware Press, 1982), Lecture 10, p. 123.

9. *Ibid.*, p. 124. Slavery was a problem for him, and he took the view that original slavery is only valid for those captured in war or lawfully punished as criminals (pp. 125–26). Here we see the Old Testament's influence, not Locke's. But we are not obligated to release them, once we find them in slavery. Here we see everyone else's influence in the history of man except the Quakers (after 1770). See Gary North, *Tools of Dominion: The Case Laws of Exodus* (Tyler, Texas: Institute for Christian Economics, 1989), ch. 4: "A Biblical Theology of Slavery." (<http://bit.ly/gntools>)

10. *Ibid.*, Lecture 16: "Of Oaths and Vows," p. 177.

tury Scottish rationalism, the birthplace of the right wing of the Enlightenment. Specifically, this was Thomas Reid's philosophy.

Because he believed that there is such a realm of neutral human reason, it was easy for Witherspoon to fall into the trap of believing in common principles of political philosophy. After all, this was the common error of a generation of level-headed Scots who were in the process of reshaping the intellectual heritage of Western civilization. It was the most common cultural error of eighteenth-century English-speaking Protestantism. It was also the most devastating; it led to the transfer of political and judicial authority to the humanists. Yet Rushdoony adds this cryptic evaluation: "This confusion, however, was slight in contrast to other phenomena of the American scene." On the contrary, this was the heart of that confusion, a confusion which led to the public breaking of the civil covenants of the first century and a half of American political life. That Rushdoony did not see how devastating the results of this confusion were points to an almost equally great confusion on Rushdoony's part. (See Appendix A.)

Without citing his source, Rushdoony said that Witherspoon trained many of the future leaders of the new nation. They included a president (James Madison), a Vice President (Aaron Burr), 10 cabinet officers, 21 U.S. Senators, 39 congressmen, and 12 governors. He could have added that six served in the Continental Congress and 56 served in state legislatures. Furthermore, of the 25 college graduates at the Constitutional Convention, nine were Princetonians and six had Witherspoon's signature on their diplomas.<sup>11</sup> The magnitude of what these men did—breaking the civil covenants of the original colonial settlement—testifies to the catastrophic confusion in Witherspoon's system.

Madison, after remaining in New Jersey to study with Witherspoon for an extra year, returned to Virginia and vowed to devote his life to overturning the religious oaths required to hold public office in Virginia, a task that he and Jefferson achieved in early 1786. He was not in revolt against his teacher; he was applying what he had been taught, as he continued to do for the remainder of his career.<sup>12</sup> The next year, he did much better (or worse) than this: he made illegal any such oath at the national level. Yet it was Witherspoon who had intro-

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11. Varnum Lansing Collins, *President Witherspoon*, 2 vols. (New York: Arno Press, [1925] 1969), II, p. 229.

12. James H. Smylie, "Madison and Witherspoon: Theological Roots of American Political Thought," *Princeton University Library Chronicle*, XXII (Spring 1961).

duced him to the writings of the Scottish Enlightenment philosophers through his syllabus on “Moral Philosophy”: David Hume, Francis Hutcheson, Adam Smith, Thomas Reid, Lord Kames, and Adam Ferguson. It was these writings, he later said, that had brought him to his views on civil and religious liberty,<sup>13</sup> i.e., apostate covenantalism.

## **B. The Blackstone Connection**

William Blackstone’s *Commentaries on the Laws of England* was published in 1765. Almost immediately, it became the standard textbook for apprentices in law in the American colonies. It is occasionally referred to in American history textbooks, but it is seldom read today.

In retrospect, it seems strange that we should identify him as the teacher of American colonial lawyers. He was a staunch defender of the absolute judicial sovereignty of Parliament. Any law that was physically possible for Parliament to enforce was valid law, he insisted. In short, he denied his other operating presupposition: the binding authority of natural law. Americans paid less and less attention to this aspect of Blackstone’s theories as the Revolution approached and then broke out. They took what they liked from his system and ignored the rest.

To answer the question, “In whose authority did the Framers act?” we need first to go to Blackstone. The *Commentaries* provide an official answer, yet one which hides a far more important clue as to the nature of the Constitutional covenant and its true author. In one of the few passages comprehensible to readers who are not intimately familiar with the intricacies of the English common law in 1765, Blackstone wrote:

This law of nature, being co-eval with mankind and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times: no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original.

But in order to apply this to the particular exigencies of each individual, it is still necessary to have recourse to reason; whose office it is to discover, as was before observed, what the law of nature directs

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13. Douglass Adair, “James Madison,” in Willard Thorpe (ed.), *The Lives of Eighteen from Princeton* (Princeton, New Jersey: Princeton University Press, 1946), pp. 141–42.

in every circumstance of life; by considering, what method will tend the most effectually to our own substantial happiness.<sup>14</sup>

Blackstone said that he believed in a literal ethical Fall of a literal man. The Fall of man had corrupted human reason. “And if our reason were always, as in our first ancestor before his transgression, clear and perfect, unruffled by passions, unclouded by prejudice, unimpaired by disease or intemperance, the task would be pleasant and easy; we should need no other guide but this. But every man now finds the contrary in his own experience; that his reason is corrupt, and his understanding full of ignorance and error.”<sup>15</sup> Therefore, God gave us revelation regarding His law in the Bible. “The doctrines thus delivered we call the revealed or divine law, and they are to be found only in the holy scriptures.”<sup>16</sup>

He went so far as to argue that “the revealed law is (humanly speaking) of infinitely more authority than what we generally call the natural law.” He based this conclusion on the weakness of human reason to understand the natural law. Revealed law is more certain. “If we could be as certain of the latter as we are of the former, both would have an equal authority; but, till then, they can never be put in any competition together.”<sup>17</sup>

Having said this, he then spent four volumes describing English common law with only a few footnote references to the Bible. In the first three volumes, running almost 500 pages each, each has one footnote reference to the Bible. The fourth volume, on criminal law (*Public Wrongs*), has 10 references. Not one of them is taken by Blackstone as authoritative for civil law; they were seen merely as historical examples. There is not a single reference to “Bible,” “Moses,” or “Revelation” in the set’s index.

How could this be if he was persuaded that biblical law and natural law are the same, but with biblical law so much clearer to us? Blackstone’s preliminary remarks were familiar in his era. Englishmen commonly tipped the brim of their epistemological caps to God and the Bible, but they did not take off their caps in the presence of God. They

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14. William Blackstone, *Commentaries on the Laws of England*, 4 vols. (Chicago: University of Chicago Press, [1765] 1979), I, *The Rights of Persons*, p. 41. This is a facsimile reproduction of the first edition. This set was first printed in the American colonies in 1771.

15. *Idem*.

16. *Ibid.*, I, p. 42.

17. *Idem*.



pursued their academic specialties just as Christians do today: with no systematic study of what biblical law specifically reveals regarding those disciplines. It was considered sufficient for Blackstone to have formally equated biblical law with natural law. Having done so, he could then safely ignore biblical law.

This common equation of biblical law with natural law faced two monumental problems in the eighteenth century: (1) the continuing negative legacy of the English Civil War, 1642–60, in which the various Christian churches and sects had failed to agree on much of anything, a social and political experiment which ended with the restoration of Charles II; (2) the intellectual legacy of Isaac Newton, which had created a blinding illusion of the near-perfectability of reason's ability to discern the perfect laws of nature in the physical world, and which therefore held out hope that this could also be accomplished in the moral and social realms.<sup>18</sup> This dual legacy indicated that biblical revelation—or at least men's understanding of that revelation—is far less certain as a guide to human action than unaided, unregenerate reason. Biblical higher criticism was a century old in English religious thought *and politics* by the time Blackstone wrote his *Commentaries*.<sup>19</sup> Thus, by the time that the *Commentaries* appeared, the foundation of his defense of the superiority of biblical law to natural law—the greater clarity of biblical revelation compared to reason's perception of natural law—was not believed by most men who called themselves educated.

This raises another question: Was Blackstone in fact deliberately lying? In a perceptive essay by David Berman, we learn of a strategy that had been in use for over a century: combating a position by supporting it with arguments that are so weak that they in fact prove the opposite. This was a tactic used by those who did not believe in immortality to promote their skepticism. Berman makes a very shrewd observation regarding academic historians and scholars: "Most of us do not like liars or lying; nor are we inclined to accept conspiracy theories or explanations that postulate secret codes or cabals. These aver-sions may explain why the art of theological lying has been so generally ignored. . . ." <sup>20</sup> There is at least reasonable suspicion that Blackstone

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18. Louis I. Bredvold, *The Brave New World of the Enlightenment* (Ann Arbor: University of Michigan Press, 1961), ch. 2.

19. Henning Graf Reventlow, *The Authority of the Bible and the Rise of the Modern World* (London: SCM Press, [1980] 1984; Philadelphia: Fortress Press, 1985). This neglected book is a gold mine of information on English political philosophy through the mid-eighteenth century.

20. David Berman, "Deism, Immortality, and the Art of Theological Lying," in J. A.

was lying. If he was not lying, then he was naive beyond description, for his lame defense of biblical revelation greatly assisted the political triumph of the enemies of Christianity in the American colonies.

By 1765, the Newtonian view of the authority of universal reason had long since transformed English political thought.<sup>21</sup> In this chapter, we will explore the background of this monumental intellectual and moral transformation. This survey is necessary, in order to answer this question:

### **C. The U.S. Constitution: Christian or Secular?**

The Constitution of the United States is a unique document. It has served as the integrating legal framework for the United States for two centuries. People around the world give lip service to its greatness, although no other nation operates in terms of a constitution modeled after the U.S. Constitution. The conservative columnist Richard Grenier is correct: "It has never occurred to most Americans that their Republic—the first democratic state on a national scale—adopted a Constitution that has been taken seriously as an enduring model by nobody. I said, nobody."<sup>22</sup> While other nations have sometimes attempted to rewrite their national governments in terms of it, some *coup* comes, or some revolution, and sweeps away most traces of the imported, culturally foreign document.<sup>23</sup> The Constitution apparently cannot be successfully exported. It was the product of a unique set of historical circumstances that cannot be duplicated, circumstances so fundamental to the coming of the Constitution that without them, the document cannot operate successfully.

It is not surprising that many present-day religious and political groups in the United States want to take credit for it. Over a century ago, in the midst of the Civil War, B. F. Morris wrote his massive (but

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Leo Lemay (ed.), *Deism, Masonry, and the Enlightenment* (Newark, New Jersey: University of Delaware Press, 1987), p. 61.

21. I am not arguing that Englishmen trusted *a priori* reason as the sole guide to human institutions; they also placed great weight on historical experience. My point is only that they placed almost zero practical weight on Old Testament law and experience, and when they cited the Old Testament, they did so because it was merely one historical source among many.

22. Richard Grenier, "A system out of balance?" *Washington Times* (July 13, 1987). I do not agree with Grenier's opening lines: "I'm tired of the U.S. Constitution. What has it done for me lately?"

23. See, for example, Claudio Veliz, *The Centralist Tradition in Latin America* (Princeton, New Jersey: Princeton University Press, 1980).

unfortunately unfootnoted) *Christian Life and Character of the Civil Institutions of the United States* (1864). A similar theme has been pursued by Verna Hall and Rosalie Slater in their *Christian History of the Constitution* series of reprinted primary source documents and extracts from uncopyrighted late-nineteenth-century politically conservative humanist history textbooks.

Yet this view of the Constitution has always had its challengers, for good reasons. There was little mention of theology and ecclesiastical influences in the common textbook histories of the early Republic until the late 1930s. This change came about largely as a result of Harvard's Perry Miller and his student Edmund Morgan, who taught history at Yale. Miller rehabilitated the Puritans and early American Protestant religious ideas, beginning in the 1930s, and Morgan carried on this tradition.

The fact remains, however, that John Locke, who was a cautious trinitarian, made no mention of Christianity in presenting the case for political liberty in his *Second Treatise of Government* (published in 1690; written around 1682).<sup>24</sup> It was to the *Second Treatise* that literate defenders of English liberties in the American colonies (but only rarely in Whig England)<sup>25</sup> appealed in the mid-eighteenth century, not to his *Paraphrase and Notes on the Epistles of St. Paul*, which was non-political,<sup>26</sup> or his book, written in the last years of his life, when he returned openly to Christianity, *The Reasonableness of Christianity* (1695).<sup>27</sup>

We also find few references to the Christian religion in *Cato's Letters* and *The Independent Whig*, the anticlerical<sup>28</sup> and libertarian English newspapers of the 1720s, which became popular reading in the colonies during the 1770s, according to contemporary figures such as

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24. The standard edition is Peter Laslett's: *Locke, Two Treatises of Government* (New York: Cambridge University Press, 1963; Mentor, 1965).

25. Margaret Jacob, *The Radical Enlightenment: Pantheists, Freemasons and Republicans* (London: George Allen & Unwin, 1981), p. 85. Whigs are revolutionaries before the success of their revolutions; not afterwards. This was as true after 1788 as after 1689.

26. These manuscripts were published posthumously in 1704–7, and have been ignored by historians: *A Paraphrase and Notes on the Epistles of St. Paul*, 5th ed. (London, 1751). Locke, in discussing chapter 2 of Galatians, affirms both God's revelation to Paul and the miracles Paul performed (p. 10, note 2). He speaks of the Holy Ghost and His bestowal of the office of apostle on Peter and Paul, "whereby they were enabled to do Miracles for the Confirmation of their Doctrine" (p. 14, note 8).

27. For a detailed analysis of Locke's epistemology, theology, and political theory, see Reventlow, *Authority of the Bible*, pp. 243–85.

28. On the anticlericalism of *The Independent Whig*, see Reventlow, *ibid.*, pp. 330–31.

John Adams<sup>29</sup> and patriot historian David Ramsay.<sup>30</sup> At best, the biblical element in “Whig” political theory during the American Revolution is unclear.<sup>31</sup> If one were to trace the political thought of John Adams back to anyone, it would have to be James Harrington, the author of *The Commonwealth of Oceana* (1656), a secular, aristocratic document that is concerned with questions of property and political power, not covenants and dominion.<sup>32</sup> Harrington himself was essentially a pantheist.<sup>33</sup> He explained the Puritan conflict of the English Civil War of the 1640s in terms of social forces, not religion, a secular tradition of historiography to which Marxist historian Christopher Hill appeals.<sup>34</sup> The textbook histories of the American Revolution from the earliest days have been far closer to Harrington’s view of historical causation than to R. J. Rushdoony’s.<sup>35</sup>

We do not find authoritative references to the Bible or church history in either *The Federalist Papers* or the Antifederalist tracts. Adrienne Koch’s compilation of primary source documents, *The American Enlightenment*, is not mythological, even though it is self-consciously selective.<sup>36</sup> There was an American Enlightenment, though subdued in its hostility to Christianity.<sup>37</sup> Jefferson, after all, kept hidden his cut-up, re-pasted New Testament, purged of the miraculous and supernatural; he knew what his constituents would have thought of

29. David L. Jacobson (ed.), *The English Libertarian Heritage* (Indianapolis, Indiana: Bobbs-Merrill, 1965). Adams’ remark is reproduced in the Introduction, p. xvii.

30. David Ramsey, *History of the United States* (1816), I; extract in Verna M. Hall (ed.), *The Christian History of the American Revolution: Consider and Ponder* (San Francisco: Foundation for American Christian Education, 1976), p. 435.

31. Mark A. Noll, “The Bible in Revolutionary America,” in James Turner Johnson (ed.), *The Bible in American Law, Politics, and Political Rhetoric* (Philadelphia: Fortress Press, 1985), pp. 43–48.

32. Zoltan Harasti, *John Adams and the Prophets of Progress* (New York: Grosset and Dunlap, [1952] 1964), pp. 34–35.

33. Jacob, *Radical Enlightenment*, p. 80, citing W. C. Diamond, “Natural Philosophy in Harrington’s Political Thought,” *Journal of the History of Philosophy*, XVI (1978), pp. 387–98.

34. Christopher Hill, *Puritanism and Revolution: Studies in Interpretation of the English Revolution of the 17th Century* (New York: Schocken, [1958] 1964), p. 5.

35. For my critique of Rushdoony’s view of the Constitution, see the Appendix A: “Rushdoony on the Constitution.”

36. Adrienne Koch (ed.), *The American Enlightenment: The Shaping of the American Experiment and a Free Society* (New York: Braziller, 1965). See also Koch, *Power, Morals, and the Founding Fathers: Essays in the Interpretation of the American Enlightenment* (Ithaca, New York: Cornell University Press, 1961).

37. Henry F. May, *The Enlightenment in America* (New York: Oxford University Press, 1976).

such a theology.<sup>38</sup> He refused to publish this book, he told his friend, Christian physician Benjamin Rush, because he was “averse to the communication of my religious tenets to the public, because it would countenance the presumption of those who have endeavored to draw them before that tribunal, and to seduce public opinion to erect itself into that inquest over the rights of conscience, which the laws have so justly proscribed.”<sup>39</sup> That is, if word got out to the American voters, who were overwhelmingly Christian in their views, regarding what he really believed about religion, he and his party might lose the next election, despite a generation of systematic planning by him and his deistic Virginia associates to get Christianity removed from the political arena in both Virginia and in national elections. (The book was not made public until 1902. In 1904, the 57th Congress reprinted 9,000 copies, 3,000 for use by Senators and 6,000 for the House.<sup>40</sup> It was a very different America in 1904.)

The Framers rhetorically appealed back to Roman law and classical political models in their defense of the Constitution. Madison, Jay, and Hamilton used the Roman name “Publius” in signing the *Federalist Papers*. Publius was a prominent founder of the Roman Republic. The Antifederalists responded with pseudo-Roman names. Yet both groups were heavily dependent on late seventeenth-century political philosophy, as well as on early eighteenth-century Whig republicanism—although perhaps not so dependent as was thought in the 1960s and 1970s.<sup>41</sup> They shared a common universe of political discourse, and trinitarian Christianity was what both sides were attempting to downplay. The political discourse of the age was dominated by classical allusions, not by Hebraic ones. The curricula of the colleges at Oxford and Cambridge had always been grounded on the ideal of thorough knowledge of the pagan classics, and even the Puritans, while always officially skeptical about such training, and always filled with fear and trembling about its threat to the soul, were forced to submit their min-

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38. *The Life and Morals of Jesus of Nazareth Extracted textually from the Gospels*. Reprinted as *An American Christian Bible Extracted by Thomas Jefferson* (Rochester, Washington: Sovereign Press, 1982).

39. Cited by Russell Kirk, *The Roots of American Order* (LaSalle, Illinois: Open Court, 1974), pp. 342–43.

40. Introduction, *American Christian Bible*, p. 4.

41. Other important themes were liberalism, individualism, and capitalism. See Joyce Appleby, *Capitalism and the New Social Order* (New York: New York University Press, 1984); Robert E. Shalhope, “Republicanism and Early American Historiography,” *William and Mary Quarterly*, 3rd ser. XXXIX (April 1982), pp. 334–56.

isterial candidates and the sons of the gentry and merchants to the classroom rigors of the humanists, generation after generation.<sup>42</sup> They did not succeed in changing the curricula of the universities during the Puritan Revolution, and after that, there was no possibility of trinitarian educational reform.

The classical educational model of Oxford and Cambridge did its steady work of secularization in the English-speaking world, even in Puritan Harvard and Yale. Decade by decade, the two universities moved toward epistemological unitarianism, and in the early nineteenth century, official Unitarianism triumphed.<sup>43</sup> But this commitment to the classics was steadily tempered, not by Christianity, but by Newtonian science. “In the second half of the seventeenth century,” wrote Morgan, “as the impact of Hobbes, Locke, and Newton illustrates, men were seeking knowledge of a new fixity in their lives and in the world around them.”<sup>44</sup> In the eighteenth century, this quest for fixity accelerated. The college curricula did not change, but the spirit and motivation of educated men did. What we must understand is that the U.S. Constitution is in large part a product of a *rhetorical* Enlightenment appeal back to the Greco-Roman world, yet it was in fact something quite modern: specifically, a reaction against the Puritanism of both seventeenth-century American colonialism and the Puritanism of the Cromwellian revolution of 1642–60.

To what extent was this verbal appeal back to Rome rhetorical? Pangle believes, as I do, that the Framers were essentially “moderns” rather than “ancients.” They were far more influenced by late seventeenth-century social thought than by the events of Roman history, let alone classical political philosophy, which had little impact on them except in a negative sense. “Generally speaking, the ancients, in contrast to the American Founders, appear to place considerably less emphasis on protecting individuals and their ‘rights’—rights to private property and family safety, to property, to freedom of religion, and to the ‘pursuit of happiness.’”<sup>45</sup> Also, he argued—I believe correctly—that

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42. John Morgan, *Godly Learning: Puritan Attitudes towards Reason, Learning, and Education, 1560–1640* (New York: Cambridge University Press, 1986).

43. Daniel Walker Howe, *The Unitarian Conscience: Harvard Moral Philosophy, 1805–1861* (Middletown, Connecticut: Wesleyan University Press, [1970] 1988).

44. Morgan, *Godly Learning*, p. 308.

45. Thomas L. Pangle, *The Spirit of Modern Republicanism: The Moral Vision of the American Founding Fathers and the Philosophy of Locke* (Chicago: University of Chicago Press, 1988), p. 53.

the classical philosophers put virtue above fraternity and liberty.<sup>46</sup> The Framers, while they discussed the need for virtue and religion—always carefully undefined—did so as defenders of political and economic freedom. Virtue was therefore *instrumental* for them—a means of achieving social stability and progress, liberty and security.<sup>47</sup>

This was also their view of religion. In this, they were not fundamentally different in principle from Robespierre, who established a formal civic religion of nature and reason in the midst of the Terror in 1794. De-Christianization was morally debilitating, Robespierre concluded; it had to be followed by the establishment of a new civic religion.<sup>48</sup> He knew that men needed to believe in God's sanctions in order to keep them obedient. Talmon calls this impulse "cosmic pragmatism."<sup>49</sup> The major figures among the Framers were wiser men than Robespierre, and more influenced by traditional Christianity, but they were Enlightenment men to the core. Their veneer and their constituencies were different from those of the French Revolutionaries, but not their theology. *Their religion was civic religion.* The difference is, they saw civic religion as a decentralized, individual matter rather than as a state affair; it was to aid the national government but not be part of the national government. John Adams, a theological unitarian, wrote in his autobiography, presumably for himself and not the electorate:

One great advantage of the Christian religion is that it brings the great principle of the law of nature and nations, Love your neighbour as yourself, and do to others as you would that others should do to you, to the knowledge, belief and veneration of the whole people. Children, servants, women and men are all professors in the science of public as well as private morality. No other institution for education, no kind of political discipline, could diffuse this kind of necessary information, so universally among all ranks and descriptions of citizens. The duties and rights of the man and the citizen are thus taught, from early infancy to every creature. The sanctions of a future life are thus added to the observance of civil and political as well as domestic and private duties. Prudence, justice, temperance and fortitude, are thus taught to be the means and conditions of future as well as present happiness.<sup>50</sup>

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46. *Ibid.*, p. 54.

47. *Ibid.*, pp. 72–73.

48. R. R. Palmer, *Twelve Who Ruled: The Year of the Terror in the French Revolution* (Princeton, New Jersey: Princeton University Press, 1941), pp. 323–26.

49. J. L. Talmon, *The Origins of Totalitarian Democracy* (New York: Praeger, 1960), p. 148.

50. L. H. Butterfield, et al, (eds.), *The Diary and Autobiography of John Adams*, 4

Not a word about the atonement; not a word about the sacraments: the entire passage is geared to the requirements for public morality. The churches are viewed as effective educational institutions; no other institution could accomplish this task more effectively. Hence, Christianity is a good thing socially. The whole perspective is civic.

### E. The Right Wing of the Enlightenment

At the heart of the Enlightenment's right-wing branch philosophically (the Scottish Enlightenment)<sup>51</sup> and also its left-wing branch (the French *philosophes*, but above all, Rousseau) was the doctrine of natural law (whatever is to be restricted by the state) and natural rights (what man can naturally do). *This commitment to natural law theory, in fact, was what made both branches part of the same movement.* It would not be far from wrong to summarize the origins of the two wings as follows:

The Scottish Enlightenment philosophy was developed by Presbyterians who had abandoned Christian orthodoxy, but who maintained certain outward forms of belief by substituting a new humanistic theory of contracts for the Calvinistic theory of covenants.<sup>52</sup> Continental Enlightenment philosophy was developed by graduates of Roman Catholic institutions who had abandoned Christianity altogether, and who substituted the state for the church as the agency of social salvation.<sup>53</sup>

The former were closet heretics; the latter were open apostates. The former were philosophical nominalists; the latter were philosoph-

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vols. (Cambridge, Massachusetts: Harvard University Press, 1962), III, pp. 240–41.

51. I would call the early seventeenth-century Anglican-Whig movement conservative, but it did not develop a systematic moral philosophy and political philosophy comparable in interpretive power to that produced by the Scottish Enlightenment.

52. Adam Ferguson (1723–1816), a founder of the Scottish Enlightenment tradition, and a close friend of skeptic David Hume, was also an ordained minister in the Church of Scotland and had been chaplain to the Black Watch regiment. He taught natural philosophy (science) at the University of Edinburgh, and later moral philosophy, a chair he resigned in 1785, to be replaced by Dugald Stewart. His last words were: "There is another world." *Dictionary of National Biography* (Oxford University Press, 1921–22), vol. 6, pp. 1200–4. F. A. Hayek regarded his work as crucial to his own economic worldview.

53. The best example is Adam Weishaupt, founder of the Bavarian Illuminati, who was for a time professor of canon law at the University of Ingolstadt. Another example is Robespierre, who had been a prize-winning student at Louis-le-Grand college of the University of Paris. Otto Scott, *Robespierre: The Voice of Virtue* (New York: Mason/Charter, 1974), pp. 18–19.



ical realists. The former were methodological individualists; the latter were methodological collectivists. The former saw the “natural” development of society as the unplanned, evolutionary outcome of voluntary legal contracts among men, contracts capable of revision; the latter saw society as a voluntary metaphysical contract that cannot subsequently be broken after consummation, and which is incarnate in the state. Both groups sought to establish a new order of the ages by substituting their respective forms of the covenant for the biblical forms.

### 1. *The Commonwealthmen*

Bailyn traced the ideological origins of the American Revolution to five sources: classical antiquity, especially Rome; the writings of Enlightenment rationalism—Locke, Rousseau, Voltaire, Grotius, Montesquieu, Vattel, Pufendorf, Baccaria; English common law; Puritan covenant theology; and, most important, the “Old Whigs” of the early eighteenth century.<sup>54</sup> These were the Commonwealthmen, the intellectual heirs of those dissenting religious and humanist groups that first made their appearance during the English Civil War of 1642–60.<sup>55</sup>

The early eighteenth-century Commonwealthmen appealed back to the tradition of religious toleration that had been established by Oliver Cromwell during the Puritan Revolution. His New Model Army was filled with religious dissenters, and Cromwell gave them what they wanted: religious freedom.<sup>56</sup> He created a trinitarian civil government in which all Protestant churches would have equal access politically, and the state would be guided by “the common light of Christianity.”<sup>57</sup> (I call this “Athanasian pluralism.”)<sup>58</sup> This outraged the Presbyterian

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54. Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Massachusetts: Belknap Press of Harvard University Press, 1967), ch. 2.

55. A detailed study of their movement is found in Caroline Robbins, *The Eighteenth-Century Commonwealthman* (Cambridge, Massachusetts: Harvard University Press, 1959).

56. Christopher Hill, *The World Turned Upside Down: Radical Ideas During the English Revolution* (New York: Viking, 1972).

57. Nichols, “John Witherspoon,” *op. cit.*, p. 172. He argued that this was Witherspoon’s view, not Roger Williams’ secularized version. There is nothing in the writings or life of Witherspoon that I have seen that would persuade me of Nichols’ thesis. Witherspoon echoed Locke, and Locke’s theory was basically Williams’ theory with deistic modifications: a natural law-based political polytheism in the name of an undefined Divine Agent. He did not refer to Cromwell.

58. See Gary North, *Political Polytheism: The Myth of Pluralism* (Tyler, Texas: Institute for Christian Economics, 1989), ch. 12. (<http://bit.ly/gnpolpol>)

members of the Westminster Assembly, which met in 1643–47 to hammer out the Westminster Confession of Faith and its catechisms. It outraged Presbyterian Thomas Edwards, whose 60-page treatise tells the story: *Grangraena; or, a Catalogue and Discovery of many of the Errors, Heresies, Blasphemies, and Pernicious Practices of the Sectaries of this Time* (1645). His list included 16 heretical sects: Independents, Brownists (i.e., Pilgrims), Millenarians, antinomians, Anabaptists, Arminians, libertines, familists, enthusiasts, seekers, perfectionists, socinians, Arians, antitrinitarians, antiscripturists, and skeptics.<sup>59</sup>

The spiritual heirs of these groups became the Whig Commonwealthmen. For the most part, their most prominent figures were non-trinitarian in their theology, uninterested in questions of theology and ecclesiology except insofar as these questions in any way interfered with political liberty as they saw it. Their influence in the colonies was all-pervasive. Wrote Bailyn: “The colonists identified themselves with these seventeenth-century heroes of liberty: but they felt closer to the early eighteenth-century writers who modified and enlarged this earlier body of ideas, fused it into a whole with other, contemporary strains of thought, and, above all, applied it to the problems of eighteenth-century English politics. . . . But more than any other single group of writers they shaped the mind of the American Revolutionary generation.”<sup>60</sup> Some were liberal (“latitudinarian”) Anglicans; some were non-religious; most were members of nonconformist churches. Their leaders included Joseph Priestley, the chemist and theologian, and his friend Richard Price, the economist and theologian, who were both hostile to trinitarianism. Their influence in America increased as anti-English activities escalated after 1770. These were the radical republicans. Their intellectual roots can be traced back to Harrington. New Left historian Staughton Lynd summarized the Dissenters’ views:

Participation in radical Protestant church life critically influenced the Dissenters’ ideas. Further, their refusal to swear prescribed religious oaths excluded them from political office and university employment. . . . From 1750 through the American Revolution the Dissenters poured forth books and pamphlets which cited one another profusely . . . and cumulatively expounded a common doctrine. This was the doctrine of natural law, made by God, evident to every man, consonant with the best parts of the traditional law of England but su-

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59. Philip Schaff, *The Creeds of Christendom*, 3 vols. (Grand Rapids, Michigan: Baker Book House, [1877] 1977), I, p. 797n.

60. Bailyn, *Ideological Origins*, p. 35.

perior to any law or government which was arbitrary or unjust. When, on the brink of open rebellion, Americans needed an intellectual resource more potent than the rights of Englishmen to justify actions so obviously seditious as the Boston Tea Party, they turned to the rights-of-man teaching of their staunchest English supporters. [Wrote Clinton Rossiter:] "Not until the argument shifted substantially away from English rights and over to natural justice did Price and Priestley influence American minds."<sup>61</sup>

This hostility to religious oaths as a requirement of holding political office was basic to the Dissenters and Protestant nonconformists generally, who faced an oath of allegiance to the Church of England and not just to the Trinity.<sup>62</sup> This same hostility later flared up at the Constitutional Convention, as we shall see. The intellectual basis of a crucial alliance in 1787 between dissenting Protestantism and incipient unitarianism was the shared faith in natural law. Where did this faith come from?

It should be clear that it did not come from Thomas Aquinas or medieval scholasticism generally. The Framers did not read the scholastics, nor did many other Protestant thinkers of the eighteenth century. They were far more likely to read René Descartes, or summaries of his thought.

## 2. *The Lure of Geometry*

Descartes' vision of a logical, geometrical universe fascinated political thinkers throughout the seventeenth century. Thomas Hobbes' defense of the state's near-absolute sovereignty in *Leviathan* (1651) was surely governed by his Cartesian worldview: a political world analyzed in terms of mathematical precision. Belief in mathematical laws that govern the affairs of men—laws that can be discovered by the enlightened few—remained a tenet of Continental Enlightenment thought, especially in France.<sup>63</sup>

Nevertheless, more was needed than Descartes' mere theoretical assertions in order to make this mathematical vision a part of all educated Englishmen's thinking. French speculation was not sufficient to

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61. Staughton Lynd, *Intellectual Origins of American Radicalism* (New York: Vintage, 1969), p. 25.

62. The University of London was founded in 1828 for nonconforming church members. Oxford and Cambridge were closed to them.

63. Bredvold, *Brave New World of the Enlightenment*; Margaret C. Jacob, *The Cultural Meaning of the Scientific Revolution* (Philadelphia: Temple University Press, 1988), ch. 2.

persuade these “practical men of affairs.” What was needed was a practical and seemingly irrefutable demonstration of the inescapable relationship between man’s rigorous mathematical speculations and the physical operations of the external world. This was what Sir Isaac Newton’s *Principia* gave to mankind in 1687. His work was part of a one-generation shift in worldview that transformed European thinking. This era was the beginning of both rationalism and romanticism, the eighteenth century’s incarnation of two sides of autonomous man’s thinking: rationalism and irrationalism.<sup>64</sup>

In philosophy, the reaction was pantheism, especially in the works of Spinoza. In trinitarian religion, a dual reaction was evident within a decade of Newton’s death: the rise of Arminian Methodism in England and the revivalism of the Great Awakening in the colonies. In the colonial case, the authority of the established churches over the thinking of the laity, especially in politics, received a mortal wound from which it has yet to recover, especially in Puritan New England.<sup>65</sup>

## F. Isaac Newton: The Trojan Horse

The central figure in Enlightenment thought was Isaac Newton. This is a conventional view of the Enlightenment. There is little question that Newton was a touchstone for philosophy in the United States in the eighteenth century. When men spoke of Nature with a capital N, they meant nature as interpreted by Newton: a world whose operations are governed by religiously neutral mathematics, either as a primary cause (autonomously) or secondary, under God. I call this the unitarian worldview, a world in which the doctrine of the trinity is superfluous scientifically.

Isaac Newton was a secret unitarian. Had he admitted this fact in public, he would have lost his job at Cambridge University, as his friend and associate William Whiston did, just as Newton had warned him, advising that he continue to deceive the public. Newton was the

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64. Paul Hazard, *The European Mind, 1680–1715* (New York: Meridian, [1935] 1964). See Margaret C. Jacob, “The crisis of the European mind: Hazard revisited,” in *Politics and Culture in Early Modern Europe: Essays in Honor of H. G. Koenigsberger*, eds. Phyllis Mack and Margaret C. Jacob (New York: Cambridge University Press, 1987), pp. 251–71. She emphasized the growth of pantheism and mysticism as a side-effect of rational Newtonianism, an irrational side of Newtonianism that Hazard did not clearly recognize.

65. Cf. Richard L. Bushman, *From Puritan to Yankee: Character and the Social Order in Connecticut, 1690–1765* (Cambridge, Massachusetts: Harvard University Press, 1967), Parts 4 and 5.

dominant intellectual influence in the eighteenth century, and he remained so until the publication of Darwin's *Origin of Species* (1859). His mechanical model of a not-quite autonomous cosmos was then stripped of its few traces of deity by his successors. His ideal, so stripped, was unitarian: a world that can be understood by its effects in terms of reason rather than traditional theological confession. It is in this sense that I discuss the world of the Framers as Newtonian.

With Isaac Newton, we can mark the overwhelming triumph of Enlightenment faith in the English-speaking world. From 1690 to 1790, we can date a major and nearly self-contained intellectual era that laid the philosophical and cultural foundations of modern atheism.<sup>66</sup> Because of what was done during that century—begun by Newton and ended by the French Revolution—and also because of what Darwin did in 1859, we live in a culture in which, for the first time in mankind's history, belief in God is optional, a world in which "The option of not believing has eradicated God as a shared basis of thought and experience and retired him to a private or at best subcultural role. The bulk of modern thought has simply dispensed with God."<sup>67</sup> It began with Newton, of whom Alexander Pope wrote:

Nature and Nature's Laws lay hid in Night.  
God said, *Let Newton be!* and All was Light.

American Christians consented, step by step, to the transformation of this nation into a theologically pluralistic republic. It began with natural law theory. The Puritans had been compromised to some degree by natural law doctrine from the beginning, and this influence increased after the magisterial successes of Isaac Newton in the field of natural philosophy. They did not know that he had abandoned trinitarian Christianity and had become an Arian, although a very private and cautious one, at least a decade before his *Principia* (1687) was published.<sup>68</sup> They also were unaware of another side of Newton, a side which was suppressed by his followers immediately after his death, and which was then forgotten for two and a half centuries (and is known only to highly specialized historians today): his occultism.     Newton

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66. James Turner, *Without God, Without Creed: The Origins of Unbelief in America* (Baltimore, Maryland: Johns Hopkins University Press, 1985), ch. 2.

67. *Ibid.*, p. xii.

68. Gale E. Christiansen, *In the Presence of the Creator: Isaac Newton and His Times* (New York: Free Press, 1984), pp. 249–54, 470, 564. Newton's hand-picked successor at Oxford, William Whiston, adopted Newton's opinions, published his Arian ideas, and was fired from the faculty. *Ibid.*, p. 471.

was a dedicated practitioner of the occult art of alchemy. This has been known by Newton specialists ever since 1947. John Maynard Keynes, the Cambridge University economist, bought half of Newton's papers at auction in 1936 and discovered this fact. He wrote an article on this in 1941. It appeared posthumously in 1947.<sup>69</sup>

Keynes identified Newton as "the last of the magicians, the last of the Babylonians and Sumerians. . . ." <sup>70</sup> Why did he call him this? "Because he looked on the whole universe and all that is in it *as a riddle*, as a secret which could be read by applying pure thought to certain evidence, certain mystic clues which God had hid from the world to allow a sort of philosopher's treasure hunt to the esoteric brotherhood."<sup>71</sup>

Day and night, Newton would pursue his alchemical experiments, sometimes without eating.<sup>72</sup> His experiments in alchemy were as rigorous and as detailed as his other scientific experiments. Wrote Frances Yates, the remarkable historian of early modern occultism: ". . . Newton attached equal, or greater importance to his alchemical studies than to his work in mathematics."<sup>73</sup> He actually believed that in discovering the law of gravity, he was rediscovering an ancient secret truth which had been known by Pythagoras.<sup>74</sup>

The academic community did not learn of Newton's alchemy until Keynes' revelation. Three decades later, in 1974, Betty Dobbs wrote a book on the subject, *The Foundations of Newton's Alchemy; Or, "The Hunting of the Green Lyon,"* but this book did not become widely known. Then came Michael White's book, *Isaac Newton: The Last Sorcerer* (1998), which discusses this aspect of Newton's career. The book received considerable academic publicity.

That it took over half a century for this story to filter down to the upper division college level from the graduate seminar level is not really remarkable. The secularists who dominate academia found the

69. John Maynard Keynes, "Newton the Man," in *Newton Tercentenary Celebrations* (Cambridge: Cambridge University Press, 1947). This is reprinted in Keynes, *Essays in Biography* (New York: Norton, 1951).

70. Keynes, "Newton the Man," *Essays in Biography*, p. 311.

71. *Ibid.*, p. 313

72. Christiansen, *In the Presence of the Creator*, p. 223.

73. Frances A. Yates, *Collected Essays*, vol. 3, *Ideas and Ideals in the North European Renaissance* (London: Routledge & Kegan Paul, 1984), p. 121. For more extensive documentation of her assessment, see J. E. McGuire and P. M. Rattansi, "Newton and the Pipes of Pan," *Notes and Records of the Royal Society of London*, XXI (1966), pp. 108-43.

74. Yates, *ibid.*, 3, p. 269.

information unacceptable until quite recently. They still do not like to think about it, but at least they occasionally do think about it these days. Only since 1999 has The Newton Project begun to organize and publish his papers on-line. Newton's alchemy is mentioned briefly by Lynn Thorndike in his eight-volume set, *A History of Magic and Experimental Science* (1958), which indicates either his lack of interest or his hope that his readers would lack interest.<sup>75</sup> In a study this large, concerning a man so important, on the very topic the study is supposed to be dealing with, such an omission is not accidental; it is systematic. Most historians have downplayed the importance of alchemy in his life and thought. They still see him more in terms of the rationalistic picture painted by his immediate successors. They do not understand, or choose to ignore, the deeply mystical and magical goal of alchemy: *the self-transcendence of the alchemist*. The alchemist, by a manipulation of the elements, seeks to achieve a leap of being, what today would be called an evolutionary leap. The familiar legend of the philosopher's stone—the alchemical means of transforming base metals into gold—neglects the real goal which this transformation merely symbolizes: the transformation of the alchemist, and by implication and representation, of humanity.<sup>76</sup> "Gold, we repeat, is the symbol of immortality."<sup>77</sup> To dabble in alchemy, even for intellectually technical reasons, is to come very close to the messianic impulse of the deification of man. It is like dabbling in magic; it has consequences.

One of the consequences was the French Revolution. Margaret Jacob's *Radical Enlightenment* is clear about the spread of pantheistic versions of Newtonianism into France through the Netherlands and Freemasonry. With it came a proclivity for the old neoplatonic Renaissance view of man, a view analogous to alchemy's view of man. They both begin with the presupposition of magic and hermeticism: "As above, so below."<sup>78</sup> There is an *ontological* relationship between man and the cosmos, a chain of being. Molnar put it this way: ". . . it means

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75. New York: Columbia University Press, 1958, VII, p. 8; VIII, p. 240.

76. Mircea Eliade, *The Forge and the Crucible: The Origins and Structures of Alchemy* (New York: Harper Torchbooks, [1956] 1971). See especially chapter 13: "Alchemy and Initiation." For a detailed bibliography on alchemy, see Alan Pritchard, *Alchemy: A bibliography of English-language writings* (London: Routledge & Kegan Paul, 1980).

77. Eliade, *ibid.*, p. 151.

78. Hermeticism is named after the mythical Hermes Trismegistus, who enunciated this above-below principle. Molnar quite properly makes this the theme of his discussion of modern subjectivist philosophy and revolutionary politics. Thomas Molnar, *God and the Knowledge of Reality* (New York: Basic Books, 1973).

that there is an absolute although hidden concordance between the lower and the higher worlds, the key of which lends to the magus incalculable powers.”<sup>79</sup> Thus, by manipulating the cosmos, the initiate can change the nature of man (e.g., environmental determinism). On the other hand, by manipulating something near at hand, he can affect something far away<sup>80</sup> (e.g., voodoo). One manipulates the external elements in order to change the nature of man. One also changes the nature of individual men in order to transform the environment. E. M. Butler described the goal of magic; it is also the goal of social engineering: “The fundamental aim of all magic is to impose the human will on nature, on man or on the supersensual world in order to master them.”<sup>81</sup>

Alchemy involves initiation—access to secrets not known to common men.<sup>82</sup> The alchemist uses his chemicals in a kind of *self-initiation process*. The virtue of the alchemist is crucial to the outcome of the experiment.<sup>83</sup> Alchemical literature is filled with the theme of death and rebirth.<sup>84</sup> Man is viewed as co-creator with God.<sup>85</sup> This is a radically different conception from modern chemistry.

The alchemist’s procedures are seemingly similar to, yet radically different from, the chemist’s procedures. He mixes his chemicals in exactly the same way, again and again, waiting for a transformation. The chemist, in contrast, alters his procedure slightly if the experimental results repeatedly do not conform to his hypothesis. The main difference procedurally between alchemy and chemistry is in the techniques of cause and effect. The chemist publicly verifies the validity of his experiment by specifying the conditions under which he conducted the experiment, so that others can duplicate the experiment’s results. The alchemist, on the contrary, seeks to keep his procedures secret, as Newton did, and he expects most of these repetitions to produce no change. Then, after many attempts, after an unspecified series of repetitions of the mixing of the elements, there will be a discontinuous leap of being. The alchemist transcends himself, symbolized and verified by the transformation of the elements.

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79. *Ibid.*, p. 82.

80. *Ibid.*, p. 83.

81. E. M. Butler, *Ritual Magic* (San Bernardino, California: Borgo Press, [1949] 1980), p. 1.

82. Eliade, *Forge and Crucible*, ch. 13.

83. *Ibid.*, p. 159.

84. *Ibid.*, pp. 155, 161.

85. *Ibid.*, p. 170.



This view of man and change has inevitable social implications. The alchemist sees himself as the first man of a new race, the representative in the present of a new people. It is an elitist view of social transformation. Rushdoony's summary is correct: "The purpose of the alchemist was to create the conditions of chaos in order to further the leap ahead in evolution. It is not at all surprising, therefore, that in the Enlightenment alchemists were closely allied to and central to the forces of revolution. *Revolution is simply the theory of social alchemy.*"<sup>86</sup>

In one sense, the intermediate goal of the alchemist is the same as the practical goal of the chemist: greater power over the environment through specialized experimental techniques. A detailed knowledge of mathematics is basic to both; a knowledge of the characteristics of normally inert substances is basic to both. The alchemist wants to transform man's very being; the chemist wants to transform man's environment and quality of life.

## **G. Deism and Pantheism**

The Bible teaches that God created the world. He is not part of this world. He rules over it. Yet He also is present with it. He interacts with it. People pray to God. He answers. He responds to what men do in history. He brings rewards and punishments in history.

The New Testament teaches that God sent His son, who is divine, into history as a man. The incarnation is the ultimate doctrine of the presence of God in history. So, God is not part of the creation, yet He has participated in history. He is simultaneously transcendent to the world and present with it. This is point one of the biblical covenant model.<sup>87</sup>

### *1. Non-Christian Theological Dualism*

In religions that have not been influenced by the Bible, God is seen either as transcendent to the world or immersed in it. God is therefore either distant from the world, and therefore he only rarely or never interacts with people, or else he is part of the world, and therefore he is not in a position to control events. In both cases, men are left as co-

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86. R. J. Rushdoony, *Law and Liberty* (Vallecito, California: Ross House, [1971] 2009), p. 58. (<http://bit.ly/rjrlal>)

87. Ray R. Sutton, *That You May Prosper: Dominion By Covenant*, 2nd ed. (Tyler, Texas: Institute for Christian Economics, [1987] 1992), ch. 1. (<http://bit.ly/rstymp>)

participants with god in bringing events to pass. God is seen either a kind of cosmic backdrop to mankind's dominion over history (deism) or else a co-participant with mankind (pantheism).

A deistic god is a god of cosmic order. He created a self-sustaining universe, and then he departed. He is not trapped in or threatened by the flux of history. He remains at a distance. He is the architect of the universe, but he is not a resident in the universe. In contrast, a pantheistic god is a god of history, but he is not separate from history. A pantheistic god is identified with nature. He or she brings no laws to nature that are independent of nature and its processes.

Neither a deistic god nor a pantheistic god speaks with absolute authority in history. A deistic god does not speak at all. A pantheistic god may speak through nature as nature, but he cannot omnipotently bring his word to pass. This leaves mankind as a co-ruler in history. One man relies on a deistic god to keep the universe running smoothly, so that the man can get his work done. Another man relies on a pantheistic god to provide specific assistance for him, just so long as the man displays proper respect for nature or certain rituals. Ethics does not count in history. A deistic god pays no attention to men's dealings with men. Neither does a pantheistic god.

A deistic god is the god of rationalism who rules over a predictable universe. He is not approachable by man. A pantheistic god is the god of irrationalism who is identified with an unpredictable universe. He is approachable by man through nature or through ritual, but he is not sovereign. These two views of god are in perpetual tension. This is because they are theological manifestations of two rival views of the universe: rationalism and irrationalism.

Rationalism and irrationalism are inherent in all forms of non-Christian thought. One man asserts the ability of man's mind to order the world. In reaction, other men assert the necessity of escaping this imposed order through forms of irrationalism. So, whenever we find an assertion of ultimate rationalism, we can always find a counter-assertion of an offsetting irrationalism.

## *2. Newtonianism's Rationalism and Irrationalism*

Margaret Jacob demonstrated that there were two versions of Newtonianism: an official, Anglican, hierarchical, providential, scientific, and orderly Newtonianism, and a mystical, pantheistic, republican, and ultimately revolutionary Newtonianism. Her rational/irrational-

al division is cut too sharply between the Moderate Whigs and the Radical Whigs. She made it appear as though the irrationalism and the nature mysticism of the Radical Whig pantheists had not been part of Newton's worldview. But they were, although not in the official, public system. Newton's commitment to alchemy reveals the dualism of his thought. The official, publicized side of his scientific system was rationalistic in a transcendent, deistic sense, but there was a dark and troubled side of his beliefs and practices that led him into experiments that had originally been grounded in the mystical pantheism of Renaissance neoplatonism. Neoplatonism is always mystical.

Newton's system was not intellectually self-sustaining on the basis of its formal scientific categories. As I shall show, Newton had to appeal to a providential, transcendent god, which he publicly identified with the God of the Bible, in order to sustain his system metaphysically. But it was equally easy for the pantheists of the radical Enlightenment to appeal to a god inherent in nature. Such an appeal was an intellectual necessity. Jacob wrote: "Absolutely central to the Radical Enlightenment is the search for the philosophical foundations of a new religion."<sup>88</sup>

The debate between the two views of Newtonianism ceased after 1859. Darwinism made unnecessary the hypothesis of any god—an appendage with no further scientific usefulness. But because so many Christians in the late seventeenth century and the eighteenth century had grounded their philosophical defense of Christianity on Newton's natural theology, Darwin successfully destroyed this foundation of Christianity.<sup>89</sup>

### 3. *Providentialism*

Newton was a providentialist. He believed in God's creation of the universe out of nothing, its inevitable running down, and the need for God occasionally to intervene in nature to keep the cosmic clock running in good order.<sup>90</sup> In his *General Scholium*, which he added to Part III of the *Principia*—"The System of the World"—in 1713, a quarter century after the *Principia* first appeared, he insists that "The six

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88. Jacob, *Radical Enlightenment*, p. 176.

89. Margaret C. Jacob, *The Newtonians and the English Revolution, 1689–1720* (Ithaca, New York: Cornell University Press, 1976), p. 16.

90. Stanley Jaki, *Science and Creation: From eternal cycles to an oscillating universe* (Edinburgh and London: Scottish Academic Press, [1974] 1980), p. 287. Jaki took very seriously Newton's Scholium.

primary planets *are revolved* about the sun in circles concentric with the sun. . . .<sup>91</sup> Notice his use of the passive voice: are revolved. In other words, *revolved by something or someone*. He immediately tells us that it is someone: "This most beautiful system of the sun, planets, and comets, could only proceed from the counsel and dominion of an intelligent and powerful Being."<sup>92</sup> He then formally rejects all pantheism: "This Being governs all things, not as the soul of the world, but as Lord over all; and on account of his dominion he is wont to be called *Lord God*. . . ."<sup>93</sup> The phrase, "soul of the world," is pantheistic. "He is not eternity and infinity, but eternal and infinite; he is not duration or space, but he endures and is present."<sup>94</sup> Motion is therefore imposed on matter by spiritual forces that are not innate to matter. The laws of nature are *imposed* laws, not laws that are inherent in nature.<sup>95</sup>

Newton's system of natural causation is deistic. It demands belief in an inherently impersonal God who reveals Himself only in nature. This God can be known only through His attributes in nature. In Newton's system, there is no reliance on God's revelation of Himself in Scripture. There is of course no mention of the Trinity, which Newton rejected. Newton insists: "We know him only by his most wise and excellent contrivances of things, and final causes; we admire him for his perfections; but we reverence and adore him on account of his dominion: for we adore him as his servants; and a god without dominion, providence, and final causes, is nothing else but Fate and Nature."<sup>96</sup> In this sense, Newton's system is unitarian. It points to a god who need not be considered both one and many. It points to a god who does not need to reveal himself verbally in order to be understood by scientifically trained men. The universe is mathematical, not covenantal-judicial. This was Newton's public confession of faith.

#### 4. *Metaphysical Architecture*

This Newtonian god exercises dominion, but his system gives us no warrant for believing that men can know him ethically through

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91. Isaac Newton, *Mathematical Principles of Natural Philosophy*, vol. 34 of *Great Books of the Western World* (Chicago: Encyclopaedia Britannica, Inc., [1934] 1952), p. 369.

92. *Idem*.

93. *Ibid.*, p. 370.

94. *Idem*.

95. Francis Oakley, "Christian Theology and the Newtonian Science: The Rise of the Concept of the Laws of Nature," *Church History*, XXX (1961), p. 437.

96. Newton, *Mathematical Principles*, p. 370.

written revelation. We can only know him metaphysically and indirectly through his creation. We know him only through his manifestation physically and mathematically. Geometry was seen as the common language among educated men. "If God was to be discerned in the creation at all," wrote Baigent and Leigh, "it was not in the multiplicity of forms, but in the unifying principles running through those forms and underlying them. In other words, God was to be discerned in the principles of shape—determined ultimately by the degrees in an angle—and by number. It was through shape and number, not by representation of diverse forms, that God's glory was held to be manifest. And it was in edifices based on shape and number, rather than on representational embellishment, that the divine presence was to be housed."<sup>97</sup> This is one reason why Newton was so fascinated with the dimensions of the Temple built by Solomon.<sup>98</sup> The Temple was seen as a *metaphysical* representation of God's cosmos, not as the place where the tablets of the law of God resided in the Ark of the Covenant, and where His glory cloud resided.<sup>99</sup> The Temple was seen more as a talisman than as a place of ethical worship.

The origins of this geometrical religion can be traced back to the ancient world. It was kept alive in the West by both rabbinic Judaism and Islam. Baigent and Leigh wrote:

The synthesis of shape and number is, of course, geometry. Through geometry, and the regular recurrence of geometric patterns, the synthesis of shape and number is actualized. Through the study of geometry, therefore, certain absolute laws appeared to become legible—laws which attested to an underlying order, an underlying design, an underlying coherence. This master plan was apparently infallible, immutable, omnipresent; and by virtue of those very qualities, it could be construed, easily enough, as something of divine origin—a visible manifestation of the divine power, the divine will, the divine craftsmanship. And thus geometry, in both Judaism and Islam, came to assume sacred proportions, becoming invested with a character of transcendent and immanent mystery.<sup>100</sup>

The Roman architect Vitruvius recommended the establishment

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97. Michael Baigent and Richard Leigh, *The Temple and the Lodge* (London: Jonathan Cape, 1989), p. 132.

98. Frank E. Manuel, *Isaac Newton Historian* (Cambridge, Massachusetts: Harvard University Press, 1963), plate facing page 148.

99. Christiansen, *In the Presence of the Creator*, p. 257.

100. Baigent and Leigh, *Temple and Lodge*, p. 132.

of *collegia* of builders. "Let the altars look to the east," he said.<sup>101</sup> The architect is to become in effect a kind of magus. Geometry was at the heart of this office. "In this respect, too, Judaism and Islam were to converge with classical thought. For was not architecture the supreme application and actualization of geometry. . . . Was it not in architecture that geometry in effect became incarnate? . . . It was thus in structures based on geometry, with no embellishment to distract or deflect the mind, that God's presence was to be accommodated and worshipped. The synagogue and the mosque, therefore, were both based not on decoration, but on geometric principles, on abstract mathematical relationships. And the only ornamentation allowed in them was of an abstract geometrical kind—the maze, for example, the arabesque, the chessboard, the arch, the pillar or column and other such 'pure' embodiments of symmetry, regularity, balance and proportion."<sup>102</sup> There was a revival of scholarly interest in Vitruvius during the Renaissance.<sup>103</sup>

This vision of the architect as magus goes back to Plato's *Timaeus* (53c to 62c). The creator god is equated with the Architect of the Universe. The *tekton* is the craftsman; the *arche-tekton* is the master craftsman. This arche-tekton created the universe by means of geometry.<sup>104</sup> There is little doubt that geometry, and specifically Pythagorean geometry, was basic to Plato's teachings. Philosopher Karl Popper has identified Plato as the founder of the geometrical theory of the world.<sup>105</sup> While the designer of the Cheops pyramid seems to possess a better claim on this title,<sup>106</sup> surely Plato has been the more influential historically. He saw the mastery of geometry as fundamental to the philosopher-king's creation of a politically centralized social order and his control over the affairs of mankind. So have his more pantheistic spiritual heirs.

Baigent and Leigh argue that such a neoplatonic and hermetic theology was of necessity occult—hidden—during the Middle Ages. It

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101. *Ibid.*, p. 133.

102. *Idem.*

103. Frances A. Yates, *The Rosicrucian Enlightenment* (London: Routledge & Kegan Paul, 1972), p. 11. On John Adams' fascination with Vitruvius, see pp. 106–7, below.

104. Baigent and Leigh, *Temple and Lodge*, p. 138.

105. Karl Popper, *The Open Society and Its Enemies*, 2 vols., 4th ed. (Princeton, New Jersey: Princeton University Press, 1963), I, p. 335.

106. Peter Tomkins, *Secrets of the Great Pyramid* (New York: Harper Colophon, [1971] 1978).

could be transmitted safely only within a secret fraternity. The stonemasons were one such fraternity. Here were the seeds of the later “speculative” Freemasonry.<sup>107</sup>

This Newtonian impulse is basic to understanding the close association of Newton’s followers in the Royal Society and the spread of reconstituted Freemasonry after 1717. Freemasonry worshipped geometry, even as the *Principia* had rested on geometry to prove its case.

There was another aspect of this theology of geometry: the search for God in history. God’s transcendence is manifested by geometry, but this was not sufficient; God had to make Himself manifest to man. Again, geometry was the key. This was the reason for the fascination with Solomon’s Temple. Wrote Baigent and Leigh:

Within this ‘esoteric’ tradition of ‘initiated’ masters, sacred geometry was of paramount importance—a manifestation, as we have seen, of the divine. For such masters, a cathedral was more than a ‘house of God’. It was something akin to a musical instrument, an instrument tuned to a particular and exalted spiritual pitch, like a harp. If the instrument were tuned correctly, God Himself would resonate through it, and His immanence would be felt by all who entered. But how did one tune it correctly? How and where did God specify His design requirements? Sacred geometry provided the general principles, the underlying laws.<sup>108</sup>

Geometry was not enough. Music was not enough. There must be intellectual content to this divine immanence. There must be ethical content, including the assurance of personal salvation, itself defined as presence with God in eternity. This is what scientific Newtonianism could not provide. The creation of speculative Freemasonry—a guild open to men without any connection to stonemasonry—was a major theological and institutional attempt to provide this assurance, but within the geometrical worldview of Newtonian science.

## *5. A Distant God*

The god of Newton was not the God of the Bible; it was the god of the Deists. It was the cosmic clockmaker rather than the Sovereign Judge of all men, in history and in eternity. It was this concept of God that persuaded European intellectuals in the eighteenth century. Any

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107. *Temple and Lodge*, p. 134.

108. *Idem*. Cf. J. E. McGuire and P. M. Rattansi, “Newton and the Pipes of Pan,” *Notes and Records of the Royal Society of London*, XXI (1966), pp. 108–43.

attempt to argue that this god was not the biblical God was doomed to failure. Before Darwin, this false connection left men under the social and political dominion of those who had rejected the Bible as the final voice of earthly authority. After Darwin, society was under the dominion of men who were not even willing to acknowledge the existence of the stripped-down god of Newtonianism.

The Newtonian system, being unitarian-Socinian<sup>109</sup> theologically and epistemologically, left mankind without a personal, covenantal God who intervenes in history in order to meet the needs of mankind. At best, Newton's god intervenes to meet the needs of a disjointed universe. This Newtonian god really was the distant, transcendent god of older high school textbook accounts of Deism. There was insufficient presence of this Newtonian god with his people. He was all system and no sanctions. The parallel quest for an immanent god led a segment of the Newtonian movement back into pantheism's mystical paths. Any segment of Newtonianism that did not go down these paths eventually headed to the far shores of atheism. Newton's god of gravity—influence at a distance but without physical connection—was too little for the pantheists and too much for the atheists.<sup>110</sup> This god of gravity became even too much for Newton to bear as time went on. Like a dog returning to its vomit, in the second edition of *Opticks* (1717), he once again returned to his experimentally untenable theory of the “ether” that fills all intermediary spaces.

He hoped to find a way to explain physical (mass) attraction at a distance.<sup>111</sup> He had offered his theory of the ether in an early paper to the Royal Society (1675), a paper which had been cogently attacked by Robert Hooke.<sup>112</sup> Newton had defended this ethereal theory in Book IV of the 1693 manuscript *Opticks*, but he later concluded that the existence of the ether could not be verified, so he did not publish this section in the first edition of 1704. But he capitulated in 1717, disinterring

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109. Socinianism is named after Fausto Paolo Sozzini, who lived in the late sixteenth century. He proclaimed the doctrine of an omnipotent God. He denied the atoning nature of the death and resurrection of Jesus Christ. Jesus' influence is primarily moral. It was essentially a unitarian faith. See “Socinianism,” James Hastings (ed.), *Encyclopaedia of Religion and Ethics*, 12 vols. (Edinburgh: T. & T. Clark, 1920), XI, pp. 650–54.

110. For a study of Newton's religious perspective on the origin of gravity, see J. E. McGuire, “Force, Active Principles, and Newton's Invisible Realm,” *Ambix*, XV (1968), pp. 154–208. *Ambix* is a scholarly journal devoted to the history of alchemy.

111. Edwin Arthur Burt, *The Metaphysical Foundations of Modern Physical Science* (Garden City, New York: Doubleday Anchor, [1925] 1954), p. 266.

112. Christiansen, *Presence of the Creator*, pp. 189, 447.



the theory from its resting place in the quiet graveyard of unverifiable hypotheses, thereby converting his system into what could later stand alone as a mechanistic theory of the cosmos and its interconnected physical operations.<sup>113</sup> Christiansen calls this problem of the ether Newton's "thirty-year nightmare."<sup>114</sup> Friction in this hypothetical universe, filled with substance (ether), made it necessary for Newton to hypothesize the need for God to intervene periodically to restore this insufficiently harmonious system to full harmony.<sup>115</sup> Burttt describes this view of God: the cosmic plumber.<sup>116</sup> This god went down the scientific drain in the nineteenth century.

Newton could have concluded instead that the universe will simply run down over time, but this "entropic" worldview did not appear until the mid-nineteenth century.<sup>117</sup> This was the price of Newton's materialism, which Samuel Clarke had predicted would eventually lead to atheism.<sup>118</sup> It was a price that nineteenth-century atheists paid enthusiastically. That, however, was a century and a half in the future. Koyré concluded: "At the end of the [seventeenth] century Newton's victory was complete. The Newtonian God reigned supreme in the infinite void of absolute space in which the force of universal attraction linked together the atomically structured bodies of the immense universe and made them move around in accordance with strict mathematical laws."<sup>119</sup> In the eighteenth century, this sounded impressive to the educated public. Mechanism, atheism, and entropy came later, long after Christians had hitched their epistemological wagon to Newton's bright shooting star.

## 6. *The Return of Pantheism*

Van Til wrote of Platonic thought that its deism (world of fixed Ideas) and its pantheism (world of sense perception) were correlative. "In all of Plato's methods he took for granted that all things are at bottom one. Even when he seemed to be abstracting the Ideal world from

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113. Reventlow, *Authority of the Bible*, p. 338.

114. Christiansen, *Presence of the Creator*, p. 447.

115. Jaki, *Science and Creation*, p. 287.

116. Burttt, *Metaphysical Foundations*, p. 298.

117. Cf. Gary North, *Is the World Running Down? Crisis in the Christian World-view* (Tyler, Texas: Institute for Christian Economics, 1988), ch. 2. (<http://bit.ly/gnworld>)

118. Alexander Koyré, *From the Closed World to the Infinite Universe* (Baltimore, Maryland: Johns Hopkins Press, [1957] 1970), p. 238.

119. *Ibid.*, p. 274.

the sense world so far that they seemed to have nothing to do with one another, Plato was not denying the assumption of an underlying unity of all reality. In his most deistic flights, Plato was pantheistic still. Deism and Pantheism are at bottom one."<sup>120</sup> The same was true of Newtonianism.

Newtonianism was officially deistic. The "establishment" Newtonians, including Newton, had no use for pantheism. They did not want a revival of Giordano Bruno's magic or his speculations regarding a world soul. Nevertheless, pantheism could not be successfully overcome by the Newtonian moderate Whigs, given the reality of Newton's heavy Socinian emphasis on the absolute transcendence of God. The unsolved theological problem for Newton was *immanence*. Where is God's *personal* presence in this world?

Puritans and Presbyterians possessed a consistent answer to this problem, one based on the doctrine of the Trinity. We see this in the Presbyterians' statement of faith, the Westminster Confession (1646), and the New England Puritans' adaptation of that confession, the Savoy Declaration (1658). First and foremost, God is transcendently in control of all things—the doctrine of covenantal providence.<sup>121</sup> This same God is also present with His people in the Person of the Holy Spirit, who dwells in the hearts of regenerate men and who enables both regenerate and unregenerate to perform good works.<sup>122</sup> He gives His people new hearts. "Those who are once effectually called, and regenerated, having a new heart, and a new spirit created in them, are further sanctified, really and personally, through the virtue of Christ's death and resurrection, by His Word and Spirit dwelling in them: . . ."<sup>123</sup> God interacts with mankind in history, for He had been a man in history, and in His perfect manhood, He now sits at the right hand of God the Father.<sup>124</sup> God is present representatively in the Bible, the revealed Word of God in history, and also in His church.

In contrast to the Puritans' concept of *cosmic personalism* stands Newton's cosmic impersonalism. His was a halfway covenant cosmology: relying on the intellectual residue of Puritanism, he denied the power thereof. Newton was not a trinitarian. His cosmology did not al-

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120. Cornelius Van Til, *A Survey of Christian Epistemology*, vol. 2 of *In Defense of Biblical Christianity* (den Dulk Foundation, 1969), pp. 54–55. Cf. pp. 42–43.

121. Westminster Confession of Faith, V, "Providence." Savoy, sect. 5.

122. *Ibid.*, XVI, "Of Good Works." Savoy, sect. 16.

123. *Ibid.*, XIII:1, "Sanctification." The language in Savoy differs, sect. 13.

124. *Ibid.*, VIII:4, "Christ the Mediator." Savoy, sect. 14.

low for ethical interaction between God and man, and even his scientific peers resented his discussion of God's direct interventions to shore up the rusting cosmic clock.<sup>125</sup>

The writings of deistic Newtonians, such as Voltaire,<sup>126</sup> were far more visible and influential in French intellectual circles than the literature of the pantheistic Newtonians, yet in the final analysis, the pantheists triumphed in the Terror. Irrationalism empowered rationalism. The religion of bloody revolution overcame the religion of rational democracy.

In Newtonian rationalism, Van Til would say, there lay hidden a Newtonian irrationalism, as is true of every form of rationalism. Pantheism simply made this implicit irrationalism more visible to a handful of Masonic initiates. Newton's Socinian providentialism ultimately contained the seeds of its own destruction. It could not resolve the problem of the one and the many, structure and change, mathematics and matter. It could not explain why mathematics, an artful creation of man's intellect, should have such a close correlation with the operations of the external world. This modern faith in mathematics as a means of exercising power over nature is, in the words of Nobel Prize-winning physicist Eugene Wigner, an unreasonable faith.<sup>127</sup>

Pantheism led a furtive, underground existence in English thought during the eighteenth century. This did not mean that pantheists were irrelevant to events; it just means that they were not open in their intellectual defenses of the system. Jacob's studies indicate that pantheism spread from England to the Netherlands and from there into France.<sup>128</sup> On the Continent, this became part of the occult underground that eventually produced the French Revolution.

Atheists clearly won the battle after Darwin. But in the twentieth century, there was a successful boring from within at the very heart of the secular Newtonian temple: quantum mechanics.<sup>129</sup> This sent a signal to the pantheists that the atheists in the temple can no longer de-

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125. Jacob, *Radical Enlightenment*, pp. 59–60.

126. "Once in England, Voltaire embraced Newton's system of the world and natural philosophy like a religious convert embraces a new faith. Indeed, throughout his life that cosmic system possessed an almost religious intensity; it lay at the foundations of Voltaire's understanding of the world." *Ibid.*, p. 105.

127. Eugene Wigner, "The Unreasonable Effectiveness of Mathematics in the Natural Sciences," *Communications on Pure and Applied Mathematics*, XIII (1960), pp. 1–14. (<http://bit.ly/WignerMath>)

128. Jacob, *Radical Enlightenment*.

129. Nick Herbert, *Quantum Reality: Beyond the New Physics* (Garden City, New York: Anchor Press/Doubleday, 1985).

fend the outskirts of their empire. Since about 1965, the pantheists and mystics have begun to make a serious assault on the fringes of atheism's institutional empire.<sup>130</sup> The fact that Frances Yates could find a mainstream publisher for her revisionist study of the pantheistic magic of Giordano Bruno<sup>131</sup> had a great deal to do with the paradigm shift that began in the mid-1960s: a move toward irrationalism and mysticism. Pantheists moved out of the underground. But they had always been there, working to provide what rationalism cannot provide: freedom and meaning in a world governed by mathematics. Van Til argued throughout his career that there is a secret pact between rationalists and irrationalists against the God of the Bible.<sup>132</sup> He said they support themselves by taking in each other's washing.

## H. The Triumph of Natural Law Theory

### 1. *Newton and Natural Law Theory*

Reventlow's summary of the impact of Newtonian thought is crucially important in understanding the nature of eighteenth-century science, religion, and social theory.

In practice, in the long run the Newtonians only played into the hands of the Deists, against whom they wanted to fight, and the Atheists (who at that time were more a chimaera than a real danger, though their time came in the second half of the century). The Arianism widespread among them (which was accepted e.g. by Newton himself, [Samuel] Clarke, and most naturally by [William] Whiston) is an indubitable sign that the view of God held by these people was primarily oriented on the 'book of his works'. Above all, however, moralistic ethics, already a living legacy of humanistic theology, gained an additional foundation in the 'new philosophy', which made it increasingly independent of the Bible and thus more and more independent of theology generally.<sup>133</sup>

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130. Cf. Lyle Watson, *Supernature: A Natural History of the Supernatural* (Garden City, New York: Anchor Press/Doubleday, 1973); Thelma Moss, *The Probability of the Impossible: Scientific Discoveries and Exploration in the Psychic World* (Los Angeles: Tarcher, 1974); Fritjof Capra, *The Tao of Physics: An Exploration of the Parallels Between Modern Physics and Eastern Mysticism*, 2nd ed. (Boulder, Colorado: Shambhala, 1983).

131. Frances Yates, *Giordano Bruno and the Hermetic Tradition* (New York: Vintage, [1964] 1969).

132. Van Til, *Apologetics* (Syllabus, Westminster Theological Seminary, 1961), p. 81.

133. Reventlow, *Authority of the Bible*, p. 341.

Richard Westfall was even more specific about the intellectual role of natural religion. “Natural religion was supposed to be the sure defender. Yet in the end the defender turned out to be the enemy in the gates.”<sup>134</sup> None of this was suspected by the literate Christian public in the early eighteenth century. Surely it was not suspected by the Rev. Cotton Mather, whose *A Christian Philosopher* (1721) is a long tract praising Newton’s system. It was not suspected by John Witherspoon when he began his first lecture on moral philosophy in 1768: “Dr. Clarke was one of the greatest champions for the law of nature; but it is only since his time that the shrewd opposers of it have appeared.”<sup>135</sup> Or when he said, “Yet perhaps a time may come when men, treating moral philosophy as Newton and his successors have done natural [philosophy], may arrive at greater precision.”<sup>136</sup> Yates is correct about the cover-up of Newton’s alchemy: “Modern science, beginning its victorious career, had blotted out the immediate past.”<sup>137</sup> By the early eighteenth century, natural law doctrines were universally accepted by all educated men in the colonies.<sup>138</sup> It was by means of the twin doctrines of *natural law* and the *autonomy of man’s reason* that the Enlightenment’s intellectual conquest of America took place. Historian Keith Thomas wrote: “The triumph of the mechanical philosophy meant the end of the animistic conception of the universe which had constituted the basic rationale for magical thinking.”<sup>139</sup> The Newtonian pantheists/animists moved underground.

This inherently mechanical Newtonian worldview also in principle meant the end of the Christian conception of the universe, with its doctrine of cosmic personalism—providence with miracles.<sup>140</sup> Again, citing Thomas: “The mechanical philosophy of the later seventeenth century was to subject the doctrine of special providences to a good deal of strain. Under its influence many writers tended to speak as if God’s providence consisted solely in the original act of creation and

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134. Richard Westfall, *Science and Religion in Seventeenth-Century England* (Ann Arbor: University of Michigan, 1973), p. 106.

135. Witherspoon, *Lectures on Moral Philosophy*, Lecture I, p. 65.

136. *Ibid.*, *Recapitulation*, p. 186.

137. Yates, *Collected Essays*, III, p. 121.

138. Witherspoon, *Lectures on Moral Philosophy*, Lecture 13: “On the Law of Nature and Nations.” He asserts: “If there are natural rights of men, there are natural rights of nations” (p. 150).

139. Keith Thomas, *Religion and the Decline of Magic* (New York: Scribner’s, 1971), p. 644.

140. Gary North, *Sovereignty and Dominion: An Economic Commentary on Genesis* (Dallas, Georgia: Point Five Press, 2012), ch. 1.

that thereafter the world had been left to be governed mechanically by the wheels which the Creator had set in motion."<sup>141</sup> This view was the outlook of English Deism, which also was steadily adopted by liberal Arminian Anglicans. They became its promoters, as did many of the dissenters. Margaret Jacob wrote:

Eventually the more ingenious clergy, largely of Protestant Europe, realized that it would be necessary to construct a new Christian religiosity based in large measure on mechanical assumptions. That was precisely the synthesis developed by moderate Anglicans, who had been forced under the impact of the English Revolution to rethink the relationship between natural order, society, and religion. Eventually all progressive European Christians, from the German philosopher Leibniz to the Cartesian priest Melabranche, would be forced to restructure the philosophical foundations of Christianity to conform to one or another version of the new science. It is hardly surprising that liberal Anglicanism, wedded as it was by the 1690s to Newtonian science, took the lead in this enterprise.<sup>142</sup>

Earlier, she had written: "The linkage they forged between liberal Protestantism and early Newtonianism was never entirely broken during the eighteenth century. . . . The latitudinarian proponents of early Newtonianism had succeeded in resting their social ideology on the model provided by the Newtonian universe."<sup>143</sup> There is great irony here, she said, given the humanistic society that emerged as a result of their worldview. "The society that the latitudinarians wished to create was to be Christian and godly in the biblical sense of those terms. Their vision of history had been conditioned by the Reformation, and they believed themselves to be preparing Englishmen for the millennial paradise."<sup>144</sup> These were not strictly Enlightenment men; they were transitional figures, 1680–1720.<sup>145</sup>

As time passed, the differences separating liberal Anglicans from the Whig Commonwealthmen became political rather than theological. A new common ground theologially became possible because of the new science. Arminians, Calvinists, and dissenting Socinians all could agree on the nature of the relationship between the Creator and the heavens. That relationship was Newtonian, which was inherently

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141. Thomas, *Religion and the Decline of Magic*, p. 80.

142. Jacob, *Cultural Meaning of the Scientific Revolution*, p. 111.

143. Jacob, *Newtonians*, p. 19.

144. *Idem*.

145. *Ibid.*, p. 20.

deistic.

## 2. Deism and Christianity

We are wise to mark the growth of Deism with the triumph of the Newtonian worldview. This outlook was not limited to nature, any more than Darwin's worldview is. Russell Kirk's summary of Deism is accurate: "Deism was neither a Christian schism nor a systematic philosophy, but rather a way of looking at the human condition; the men called Deists differed among themselves on many points. (Thomas Paine often was called an atheist, but is more accurately described as a rather radical Deist.) Deism was an outgrowth of seventeenth- and eighteenth-century scientific speculation. The Deists professed belief in a single Supreme Being, but rejected a large part of Christian doctrine. Follow Nature, said the Deists (as the Stoics had said before them), not Revelation: all things must be tested by private rational judgment. The Deists relied especially upon mathematical approaches to reality, influenced in this by the thought of Sir Isaac Newton."<sup>146</sup>

The deistic implications of the Newtonian system were first fully developed by the third Earl of Shaftesbury in his multi-volume *Characteristics of Men, Manners, Opinions, Times* (6th edition, 1738). He was the grandson of the enormously popular Whig political opponent of Charles II and James II and defender of Parliamentary rights.<sup>147</sup> The grandson was a close friend of John Locke. He regarded himself as Locke's friend and foster-son,<sup>148</sup> but he abandoned his Lockeanism late in life and returned to faith in Greek philosophy, especially Xenophon.<sup>149</sup> Shaftesbury set the tone of the age of mild (non-revolutionary) skepticism regarding Christianity. He rejected the Bible as a source of ethics, preached a god subordinate to independent ethical principles, and relied on Newton's worldview to defend his system. The Bible in the late seventeenth century, even in the liberal Protestant camp, was a principle of formal authority. Not so with the Deists. Beginning with Shaftesbury, they proclaimed the *autonomy of ethics*. Shaftesbury, said Reventlow, connected ethics "with the idea of a harmony within the

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146. Kirk, *Roots of American Order*, p. 338.

147. K. D. H. Halley, *The First Earl of Shaftesbury* (New York: Oxford University Press, 1968).

148. J. Aronson, "Shaftesbury on Locke," *American Political Science Review*, LIII (Dec. 1959), p. 1103.

149. Pangle, *Spirit of Modern Republicanism*, pp. 25, 37.

world as established by Newton,” and then “he showed that the revelation contained in the Bible and handed down by historical tradition could be dispensed with.”<sup>150</sup>

It was this Newtonian view of the universe that influenced most of the leaders who organized the Constitutional Convention in 1787. But why did the voters accept the deistic work of the Convention? Deism in the colonies as a separate religious movement was virtually nonexistent prior to the ratification of the Constitution. Ethan Allen and Thomas Paine were the only famous Deists (if, in fact, Paine was a Deist rather than an atheist) in that era.<sup>151</sup> Also, why were church members who attended the Constitutional Convention in 1787 and those who later voted to ratify the Constitution willing to accept a document that was clearly the theological product of Deism? Christian historians have adopted three approaches to these questions. First, ignore or deny the fact that the Constitution is deistic (the strategy of *self-deception*). Second, argue that the religious presuppositions of the Constitution can be equally agreed to by Deists, Christians, and just about every other rational person of good will (the strategy of *the myth of neutrality*). Third, argue that the Constitution is essentially Christian, yet Deists, by the grace of God, not only can accept it, but they actually wrote it God’s way (the strategy of *providential schizophrenia*). The question is this: Were the Deists at the Convention the intellectual schizophrenics, or the Christians who today defend existence of Christian roots for the Constitution by an appeal to its “hidden” or “ultimate” biblical principles?

The second strategy seems most common today. Christian students of the Constitution insist that the Constitution is in conformity with commonly shared judicial principles, *on the implicit or explicit assumption of the validity of some version of natural law theory*. They begin with the misleading presupposition of the commonality of “ $2 + 2 = 4$ ,” just as the Framers did, and from this they conclude that political polytheism is valid. It does not even occur to them that the phrase “ $2 + 2 = 4$ ” does not mean the same thing in a Christian theory of God-created reality as it does in a non-Christian theory of evolutionary reality. It does not occur to them that without the presupposition of the trinitarian God of the Bible, it takes a gigantic leap of faith to conclude that

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150. Reventlow, *Authority of the Bible*, p. 318.

151. G. Adolf Koch, *Religion of the American Enlightenment* (New York: Crowell, [1933] 1968). What the book shows is that there were almost no Deists prior to 1789, although this was not its intent.



“ $2 + 2 = 4$ .”<sup>152</sup> They still think in terms of eighteenth-century Newtonianism rather than either six-day creationism or modern quantum physics and chaos theory. They have not yet come to grips with Immanuel Kant, let alone Werner Heisenberg.

By 1787, Newtonianism had diffused for a century through the English-speaking world in the name of natural theology. Christians had not studied Newton’s *Principia*, any more than modern humanists have studied Einstein’s original essays on the photoeffect, Brownian motion, and general relativity. They were not familiar with the book’s technical details. But they had accepted Newton’s vision of a mechanical, orderly universe, a view of the cosmos that was undergirded by a unitarian-deistic god who has made himself known primarily through mathematics and astronomy—a world whose operations can be discovered by scientifically trained men, irrespective of their theological views. Educated Westerners accepted this worldview during the eighteenth century. Wrote Thomas: “It did not matter that the majority of the population of eighteenth-century England had possibly never heard of Boyle or Newton and certainly could not have explained the nature of their discoveries. At all times most men accept their basic assumptions on the authority of others. New techniques and attitudes are always more readily diffused than their underlying scientific rationale.”<sup>153</sup> The problem was, these attitudes had implications for politics—unitarian implications.

Eighteenth-century Christians were not ready to see what the Newtonian worldview of impersonal mechanical causation necessarily implied: *the abolition of God’s presence with, and His direct intervention into, His world*. Thomas is correct: “Yet most of those who conceived of the universe as a great clock were in practice slow to face up to the full implications of their analogy.”<sup>154</sup> Not until Charles Darwin in 1859 destroyed the necessity and even the scientific acceptability of natural theology—by removing the need of a Divine Clockmaker and cosmic purposefulness for explaining the orderliness of nature<sup>155</sup>—and not until Van Til and a handful of other Christian philosophers ex-

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152. Vern S. Poythress, “A Biblical View of Mathematics,” in Gary North (ed.), *Foundations of Christian Scholarship: Essays in the Van Til Perspective* (Vallecito, California: Ross House Books, 1976), ch. 9.

153. Thomas, *Religion and the Decline of Magic*, pp. 646–47.

154. *Ibid.*, p. 80.

155. R. J. Rushdoony, *The Biblical Philosophy of History* (Nutley, New Jersey: Craig Press, 1969), p. 7.

plained what Kant's epistemological dualism<sup>156</sup> and Darwin's epistemological monism<sup>157</sup> had accomplished, did this naive Christian attitude regarding natural law and its empire begin to erode. (Slowly, ever so slowly.)

### 3. *The Newtonian Dynamic*

There is one additional aspect of Newtonianism that needs to be dealt with. Newton's nearly impersonal god is a Tory kind of God—distant, hierarchical, and preserving. His days of creating are over; he now is a preserver and repairer of cosmic order. This was a transitional concept of God.<sup>158</sup> Hume's skepticism undermined faith in this Tory god. Scientists systematically found ways of removing the need for this god by finding ways of autonomously shoring up nature's friction-bound autonomous order. Nevertheless, the idea of an orderly system of nature under the universal rule of mathematics remained (and remains) a powerful motivating idea for men in their quest to master nature—including man's own nature and society—by means of rigorous investigation and the application of practical science to the environment. Like the doctrine of predestination, faith in which supposedly should make fatalists and passivists out of Calvinists, who subsequently turn out to be a dynamic social force, so was Newtonian mathematical law. It delivered practical knowledge to man, and in doing so, offered him the possibility of dominion and power.

What was needed to infuse Newtonianism with power was a new dynamic. Also needed was a view of the possibility of man's ethical transformation, which could then produce social transformation. What was needed was a doctrine of *the new man*. Rousseau provided one version of this doctrine of human transformation; the American revivalists provided another. Both views rested on a doctrine of man as being more than—transcendent to—the mechanical laws of matter in motion. Both views therefore rested on a program of personal and social change that was beyond the boundaries of reason.

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156. Richard Kroner, *Kant's Weltanschauung* (Chicago: University of Chicago Press, [1914] 1956).

157. Loren Eiseley, *Darwin's Century: Evolution and the Men Who Discovered It* (Garden City, New York: Doubleday, 1958), ch. 11: "Wallace and the Brain."

158. Burt, *Metaphysical Foundations*, pp. 301–2.

## I. The First Great Awakening

The shift from rationalism to emotionalism in the life of colonial America can best be seen in the writings of Jonathan Edwards. He began with his youthful speculations on science: “. . . it is self-evident I believe to every man, that Space is necessary, eternal, infinite and omnipresent. But I had as good speak plain: I have already said as much as, that Space is God. And it is indeed clear to me, that all the Space there is, not proper to the body, all the Space there is without the bounds of Creation, all the Space there was before the Creation, is God himself; . . .”<sup>159</sup> Yet he was to write that lengthy defense of “sweet” emotionalism, the *Treatise Concerning the Religious Affections* (1746). René Descartes was the intellectual godfather of the youthful Edwards—God as Space was clearly not Newtonian—but Newton was surely the intellectual godfather of the Edwards of the Great Awakening. Men needed confidence that God’s millennial judgments on the world would not melt the predictable order of the universe. Newtonianism gave them this confidence. Men needed assurance that, after abandoning the “legalism” of the older covenantal Puritanism, there would be something to replace the shattered civil foundations. Lockeanism and its derivatives gave them this assurance. “At the heart of the evangelical ethic,” wrote Heimert and Miller, two master historians of the era, “was the hope of human betterment, the vision of a community in which men, instinctively as it were, would seek the general welfare.”<sup>160</sup> Calvinists knew better: in a world in which men are totally depraved, it takes more than instinct to persuade men to seek the common welfare. It takes civil law to restrain them. But eighteenth-century Christians had no specific system of civil law to recommend in the name of God. So, they recommended other law-orders and sources other than the Old Testament. (Conditions have not changed since then.)

### 1. *Experience vs. Creeds*

The heart of the theological problem with the Great Awakening was its abandonment of the biblical doctrine of the covenant. This led to an institutional crisis. When push came to shove, the proponents of

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159. “Notes on Natural Science. Of Being.” Cited by Rushdoony, *This Independent Republic*, p. 6.

160. Alan Heimert and Perry Miller, Introduction, in Heimert and Miller (eds.), *The Great Awakening: Documents Illustrating the Crisis and Its Consequences* (Indianapolis, Indiana: Bobbs-Merrill, 1967), p. lviii.

the Great Awakening wanted a new Christian community based on warm, fuzzy feelings rather than creedal orthodoxy. They wanted emotionalism. The halfway covenant theology of New England was a complex theological invention to deal with the unforeseen outcome of requiring a prospective church member to relate his experience of conversion as one basis of acceptance into the church. Halfway covenant theology, dominant for a century, was abandoned by the revivalists because they abandoned Puritan covenant theology altogether. They decided to abandon any test other than the conversion experience as the ultimate standard of church fellowship. Every other test was secondary, at least in practice. The experience of ecstatic rapture steadily replaced the historic creeds of the church as the basis of men's church communion in the thinking of the Calvinist revivalists. Their Arminian colleagues readily agreed. This opened the door to Arminianism and then, when the fires cooled, to Deism and rationalism. It established "hot gosselling" as the basis of evangelism. The least-common-denominator principle took hold, until people fell to their knees and barked like dogs for Jesus.

In the next century, "Old School" Calvinist Charles Hodge referred to this as "the leaven of enthusiasm." As he said, such outbursts were opposed by Jonathan Edwards, the Boston clergy, by Gilbert Tennent, and others (though initially, not by George Whitefield).<sup>161</sup> Hodge defended the Presbyterian Church's disciplinary structure and its essentially judicial, covenantal theology in opposing such antinomian outbursts of revivalism. Hodge spoke for the orthodox, hierarchical church of all ages against antinomian lawlessness when he wrote:

Those under its influence pretended to a power of discerning spirits, of deciding at once who was and who was not converted; they professed a perfect assurance of the favour of God, founded not upon scriptural evidence, but inward suggestion. It is plain that when men thus give themselves up to the guidance of secret impressions, and attribute divine authority to suggestions, impulses, and casual occurrences, there is no extreme of error or folly to which they may not be led. They are beyond the control of reason or the word of God.<sup>162</sup>

He clearly had in mind Presbyterian revivalist Gilbert Tennent, a founder of the Log College, which became the College of New Jersey in

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161. Charles Hodge, *The Constitutional History of the Presbyterian Church in the United States of America*, 2 vols. (Philadelphia: Presbyterian Board of Publication, 1851), II, p. 82.

162. *Ibid.*, II, p. 83.

1746, and finally became Princeton University in 1896. Tennent wrote *The Danger of an Unconverted Ministry* (1741). He accused his creed-proclaiming, jurisdiction-protecting fellow Presbyterians of being reprobates and “Old Pharisee-Teachers.”<sup>163</sup> They had, he insisted, “exerted the Craft of Foxes,” and had displayed “the Cruelty of Wolves.”<sup>164</sup> Their piety was worthless, he said; they were after money. “The old Pharisees, for all their long Prayers and other pious Pretences, had their Eyes, with *Judas*, fixed upon the bag.”<sup>165</sup> Judas’ ministry was also “partly legal.”<sup>166</sup> Tennent invoked the language of the senses in his diatribe, just as Edwards did: “Their Conversion hath nothing of the Savour of Christ, neither is it perfum’d with the Spices of Heaven.”<sup>167</sup> (Years later, he apologized publicly for his intemperate language, long after the damage had been done and the fires of enthusiasm had burned across the colonies.)

This is taste-bud theology and aromatic creedalism, however loudly its proponent claimed that he was defending Calvinism. It is also self-consciously anticlerical. This anticlericalism was a common outlook among the itinerant preachers, many of them unordained men, who willfully invaded the territories of local churches throughout the colonies, justifying this challenge to local church authority on the pretence that the local pastors had failed to preach a pure gospel. Worse, as Tennent’s tirade shows, they accused pastors of not being converted men. They made few attempts to bring formal charges against these supposed apostate pastors in their respective denominations; they simply conducted nondenominational, non-worship public meetings in the local communities. The anticlericalism, anti-denominationalism, and anti-creedalism of the Great Awakening became progressively more self-conscious as the movement spread intermittently across the colonies for more than two decades.

The problem with the evangelists of the Great Awakening period, Hodge wrote a century later, was that “They paid more attention to in-

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163. Gilbert Tennent, “The Danger of an Unconverted Ministry” (1741), in Heimert & Miller, *Great Awakening*, p. 73.

164. *Ibid.*, p. 74.

165. *Ibid.*, p. 75. This was a reference to John 12:4–6: “Then saith one of his disciples, Judas Iscariot, Simon’s son, which should betray him, Why was not this ointment sold for three hundred pence, and given to the poor? This he said, not that he cared for the poor; but because he was a thief, and had the bag, and bare what was put therein.”

166. *Ibid.*, p. 83.

167. *Ibid.*, p. 79.

ward impressions than on the word of God.”<sup>168</sup> The individualistic inwardness led to an institutional inclusivism that was based on personal experience rather than the Bible, creeds, and church sanctions. They screened their ranks in terms of outward signs of enthusiasm rather than profession of faith. “If an honest man doubted his conversion, he was declared unconverted. If any one was filled with great joy, he was pronounced a child of God. . . . If they did not feel a minister’s preaching, they maintained he was unconverted, or legal.”<sup>169</sup> *Or legal*. This was *the* problem, in their eyes. The revivalists were voluntarists, individualists, and inclusivists; they were offended by the rules and procedures of organized churches. This analysis was made a century later by a critic, but Hodge’s criticism was based on his knowledge of the historical sources within the denomination, minutes of the presbyteries, and his knowledge of other historical studies of the era. He understood the revivalists’ assault on the church.

Tennent was ejected from the denomination in 1741. The emotionalists and the creedalists (“rationalists,” as their opponents called them) could tolerate each other’s fellowship no longer. The Presbyterian Church split in 1741: Philadelphia Synod (Old Side) and New York Synod (New Side). The New Side (semi-creedalists) and the Old Side (rigorous creedalists) did not reunite until 1758. One result of this restored unity was the erosion of creedalism, culminating in the revision of the Westminster Confession in 1787.<sup>170</sup> What happened to the Presbyterians during the First Great Awakening was paralleled in Congregationalism: Old Lights vs. New Lights.<sup>171</sup>

Tennent was not alone. Heimert has noted Edwards’ rationalistic aesthetics: “Edwards turned to nature, not for refuge from the still, sad music of humanity, but because he believed that God had devised a world of natural beauty—where ‘one thing sweetly harmonizes with another.’ . . .”<sup>172</sup> That view was widely shared in the colonies. Indeed, even Voltaire would have agreed. Where did Edwards get such an

168. Hodge, *Constitutional History*, II, p. 83.

169. *Idem*.

170. See Appendix C. A parallel split (1838) and reunion (1869) took place in the next century—New School vs. Old School—with the same long-term result: the spread of semi-creedalism after 1870, the rise of Arminianism after 1893, the triumph of liberalism in 1925, the expulsion of the Calvinists in 1936, and the complete revision of the creed in 1967. See Gary North, *Crossed Fingers: How the Liberals Captured the Presbyterian Church* (Tyler, Texas: Institute for Christian Economics, 1996).

171. Alan Heimert, *Religion and the American Mind: From the Great Awakening to the Revolution* (Cambridge, Massachusetts: Harvard University Press, 1966), p. 2.

172. *Ibid.*, p. 103.

idea? From Newton, the master theologian of not quite perfectly harmonious nature. What Newtonianism did for American civil polity, experientialism eventually did for American ecclesiastical polity: create a new judicial basis for communion and confederation. Unitarian rationalism and non-creedal Christian irrationalism joined forces in the second half of the eighteenth century, and the result was a new nation, conceived in neutrality, and dedicated to the proposition that all church creeds are created equal.

If anything other than verbal profession of faith and outward walk according to God's Bible-revealed law is suggested as a substitute requirement for church membership, the result is the creation of a distinction in membership based on this added requirement. If the added requirement is experience, then someone in the church will not meet this inherently undefinable standard. If experience becomes in any way a formal basis of membership, detailed creeds will then be seen as inherently divisive within the church, and the defenders of such creeds will be seen as narrow bigots. The supplemental standard will become the primary screening device in the eyes of those who believe that it is more than supplemental. This is what happened during the Great Awakening and its aftermath in the 1760s. The Great Awakening restructured church government as surely as it restructured civil government.<sup>173</sup>

Samuel Davies, a leader in Virginian Presbyterian circles, who succeeded Jonathan Edwards as president of the College of New Jersey, began in the late 1750s to urge a "*unity of affection and design*" among all of Virginia's dissenters, Baptists and Presbyterians. He argued that this unity would not be based on doctrine or logic, but on "experimental and *practical Religion*."<sup>174</sup> In the revival of 1763, this was the basis of another call to Christian union. Christians were to be "*one in heart, one in affection*" in attending to "the same great concern," which was the Work of Redemption.<sup>175</sup> Contrary to Heimert's assertion that "the essentials of Calvinism" were "the New Birth and experiential religion,"<sup>176</sup> there was nothing explicitly or even implicitly Calvinistic about this concern. There was clearly nothing Puritan. The Great Awakening was creating a new basis of Christian unity: experientialism and a least-common-denominator creedalism.

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173. See Bushman, *From Puritan to Yankee*.

174. Cited in Heimert, *Religion and the American Mind*, p. 142.

175. *Idem*.

176. *Idem*.

This unity could not be maintained ecclesiastically. Baptists were Baptists; Presbyterians were Presbyterians (and separated from their brethren until 1758). Where, then, was this hoped-for unity to be manifested? *Civic religion*. This would require a common view of civil law to match the ever-leaner creedal confessions and the ever-less covenantal conception of Christian society. This was reflected in the Presbyterians' steady acceptance of a practice they had never been comfortable with, public fast days. These days were a celebration of God's common moral law among nations. Heimert wrote:

By the 1770's the notion of God's moral government of the nations had been fully translated by the Calvinist mind into its own interpretation of the course of empire. . . . By the late years of the Revolution Calvinists were urging thanksgivings in terms of "the common laws of society" that obliged all men to join in expressions of gratitude and felicity of "communities as collective bodies." . . . Over the course of thirty years they had moved from a disenchantment with the course of colonial history to a celebration of the fact that the saints, having engaged themselves in political affairs, had seemingly succeeded in imposing their moral law on American society.<sup>177</sup>

On the contrary, the unitarians had imposed their view of the revelation-free moral law on the Calvinists and everyone else. The non-creedal Great Awakening, followed by the national spirit of the Revolution against a common political enemy, had destroyed all traces of the Puritan holy commonwealth ideal. It had virtually destroyed its original internationalism—the city on a hill—and had seriously damaged its civil localism. Common-ground, minimal-creed religious experientialism had combined with common-ground Newtonian rationalism to produce the national civil religion.

There was a spirit of rebellion at the heart of the Great Awakening: against church authority and against state authority. It tore up the churches and it tore up the last remnant of the trinitarian holy commonwealth ideal in New England. The individualists had organized against the particularism of the creeds. It unleashed the same forces that the revolution in England had unleashed a century earlier. This time, however, the wave of anti-creedalism could not be stopped, short of the restructuring of civil government in New England. The spirit of Spirit-filled individualism—so similar in effects to the spirit of pantheistic autonomy—coupled with the inevitable quest for some basis of

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177. *Ibid.*, pp. 296, 297.



fellowship outside the organized churches, even if this period lasted only for a year or two in a man's life, transformed men's thinking. They were never again willing to fight for trinitarian oaths as the foundation of citizenship. The Great Awakening's one-generation spirit of rebellion washed away the biblical covenant ideal along with the last political remnants of that ideal. It has yet to be restored.<sup>178</sup>

## 2. *New Theology, New Ecclesiology*

The revivalists in 1735–55 did not ask themselves a crucial question: What would remain after the honeymoon fires of the revival cooled, and theological strangers found themselves in ecclesiastical beds together?<sup>179</sup> The answer was a new theology, *a civil theology*, common to vaguely defined and vaguely disciplined Christians. Rushdoony noted in 1964 that there was a shift in the character of preaching as Puritanism declined. Colonial election sermons “shifted from an attempt to preserve the integrity of the *church* to an attempt to preserve the integrity of civil government. The holy commonwealth was now increasingly *civil government and Christianity* rather than church and state, or civil and ecclesiastical governments.”<sup>180</sup> The process of secularization accelerated, especially during the Revolution. Some historians believe that the Great Awakening made the Revolution possible.<sup>181</sup> I am one of them.

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178. Rushdoony, in *This Independent Republic* (1964), was hostile to Edwards, experientialism, and the Great Awakening (p. 98). It was significant that Rushdoony's *Chalcedon Report* in July of 1989 began a series of articles defending the revivalists of the First Great Awakening against the church authorities of their day. Here is my assessment of his reversal: it paralleled the spirit of ecclesiastical independency in his post-1970 career. The spirit of independency, when unchecked by church authority and the sacraments, has an innate tendency to triumph over men's formally professed creeds. Creeds without formal sanctions cannot survive. This is always the threat of Whiggery, whether ecclesiastical or political: it hates ecclesiastical sanctions, and it hates creeds if they are enforced by sanctions. Because it hates creeds and sanctions, Whiggery eventually comes to terms with the myth of neutrality. By 1989, Rushdoony had become a political Whig. He had come to terms with the myth of neutrality. See Appendix A, below.

179. Also literal beds. The combination of antinomianism, emotionalism, and a breakdown of local church authority was potent. The era of the First Great Awakening was an era of rampant sexuality. In Bristol, Rhode Island, in the period 1720–40, the number of new marriages with a child born in the eighth month was 10%. In the 1740–60 period, it was 49%. In 1760–80, it dropped slightly to 44%. John Demos, “Families in Colonial Bristol, Rhode Island: An Exercise in Historical Demography,” *William and Mary Quarterly*, 3rd ser., XXV (Jan. 1968), p. 56.

180. Rushdoony, *This Independent Republic*, p. 98.

181. Heimert, *Religion and the American Mind*.

The process of heating and cooling did take place. The fires of the Great Awakening spread across the face of the land from 1735 until the mid-1750s. But after the fires of revival went out, and shattered ecclesiastical structures lay divided across the American landscape and soulscape, what other institutional structure could offer men the sense of fellowship, fraternity, and commonality that the churches no longer seemed able provide? The advent of such a fraternity has been a neglected story—indeed, *the* neglected story—of the transformation of the American covenant. It is the story of the rise of Freemasonry.

### 3. *Edwards vs. Covenant Theology*

Jonathan Edwards is sometimes viewed as the last of the Puritans. This is a mistake. He was not among the “Calvinist ancients.” He is better described as the first of the “Calvinist moderns.” Edwards’ theology of experientialism<sup>182</sup> helped to destroy Calvinist covenant theology in America, which is one reason why virtually all modern scholars praise him as the greatest theologian in American history: he abandoned “legalism.” He took predestination, humanistic rationalism, postmillennialism, and emotionalism, and he fused them into a non-covenantal theology. His theology was antinomian.<sup>183</sup> But the biblical covenant model depends on the presence of God’s Bible-revealed stipulations. Heimert is correct: Edwards repudiated the covenant as a meaningful concept.<sup>184</sup> His itinerant Arminian imitators did not even begin with the older covenant model, let alone repudiate it implicitly, as he did. Their spiritual heirs in the next generation were even more adrift covenantally in a new nation and new society. Thus, by the 1780s, the nation was without a covenantal rudder. This vacuum was filled by a new covenant theology, unitarian in content and political in application (as unitarian theology generally is).<sup>185</sup>

From the Puritan founders and their requirement for experience

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182. Most notably, his book on *The Religious Affections* (1746). *The Select Works of Jonathan Edwards*, vol. III (n.p.: Banner of Truth Trust, 1961).

183. Biblical law is nowhere even mentioned by Edwards in his study, *The True Nature of Virtue* (1755); instead, Edwards discussed such topics as “Concerning the Secondary and Inferior Kind of Beauty” (Chapter 3), “Of Natural Conscience and the Moral Sense” (Chapter 5) and “In What Respects Virtue or Moral Good Is Founded in Sentiment; and How Far It Is Founded in the Reason and Nature of Things” (Chapter 8). Here is pre-Kantian ethical dualism by a Calvinist.

184. Heimert, *Religion and the American Mind*, p. 126.

185. The best definition of Unitarian theology I have ever heard was offered by a philosophy professor, David Harrah: “There is, at the most, one God.”

as a mark of true conversion and church membership until the Synod of 1662 and the halfway covenant—baptism but no Lord’s Supper for grandchildren of members—took 30 years. From that Synod to Solomon Stoddard’s theology of open communion as a means of conversion took another forty-five years. From Stoddard to his grandson Jonathan Edwards and the Great Awakening, it took 30 more years.<sup>186</sup> By then, Calvinist covenant theology was dead or terminally ill. Experimentalism had mortally wounded it in the 1630s and had buried it in the 1740s. From Edwards’ death in 1758—the year of Presbyterian reunion—to the ratification of the Constitution was another thirty years.

Men need a covenant. The question is: Which covenant? This book is basically a trinitarian and covenantal development of a brief insight made by E. S. Corwin in 1929, who is generally regarded as the most influential student of the Constitution in the twentieth century.<sup>187</sup> Corwin’s original 1928–29 essays in the *Harvard Law Review* were published in 1955 as *The “Higher Law” Background of American Constitutional Law*.<sup>188</sup> Corwin traced the Constitutional ideal of the ordered political universe back to Newton and Grotius: a “ $2 + 2 = 4$ ” view of man’s world.<sup>189</sup> He got the idea from historian Carl Becker.<sup>190</sup> Becker had traced the idea in part back to *The Newtonian System of the World the Best Model of Government, an Allegorical Poem* (1728), published the year after Newton’s death. The author was J. T. Desaguliers. Becker unfortunately did not identify Desaguliers, who is one of the most important “forgotten men” in eighteenth-century Anglo-American history. He was Newton’s hand-picked popularizer of his scientific system, the first paid scientific lecturer in modern history, and the founder, along with James Anderson, of modern Freemasonry.

Philosopher Morton White rejects this Newtonian interpretation of the Framers’ thinking. His argument is negative: Corwin did not prove his case.<sup>191</sup> This was hardly a persuasive argument in 1978, and today, after Margaret Jacob’s books, it is woefully out of date. But there

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186. James Carse, *Jonathan Edwards and the Visibility of God* (New York: Scribner’s, 1967), p. 24.

187. He held sway from the 1920s through the 1940s; after his death, there were too many contenders for the title for any one of them to match his influence.

188. Ithaca, New York: Cornell University Press.

189. *Ibid.*, pp. 58–59.

190. Carl Becker, *The Declaration of Independence: A Study in the History of Political Ideas* (New York: Vintage, [1922] 1942), ch. 2.

191. Morton White, *The Philosophy of the American Revolution* (New York: Oxford University Press, 1978), pp. 157–60.

are other acceptable ways of avoiding the Corwin-Becker thesis. The most academically effective way to do this is to adopt a strategy of silence regarding Newton, and then reproduce detailed citations from lesser subsequent figures who were influenced heavily by Newton, a fact which the author seldom mentions or even considers.

## J. The Strategy of Silence

We see this strategy in the work of Forrest McDonald. There is little doubt in my mind that McDonald is the best-informed historian of the origins of the U.S. Constitution. Yet in his book, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (1985), he mentions Isaac Newton only once, and then only in a list of names of famous people that appeared in a 1781 colonial oration, delivered by an obscure figure, Thomas Dawes.<sup>192</sup> McDonald went into great detail, as my teacher Douglass Adair used to do, regarding the influence of Coke, Bolingbroke, Montesquieu, Hume, Blackstone, Locke, Grotius, Vattel, and dozens of long-forgotten figures. Yet the towering intellectual figure of the age—indeed, the towering intellectual figure of the modern era, whose *Principia* dates the advent of this era—the man who set the foundational paradigm of all modern scientific thought, is not even discussed. (Professor Adair was equally guilty of this neglect.) It was Isaac Newton who, more than any other figure, made possible the culture-wide ideological shift of the West from trinitarianism to Deism, and then from Deism to atheism. It was Isaac Newton who, in his meticulous, geometrical, guarded way, turned the world upside down—ether or no ether.

McDonald is representative of the best of the humanist historians of the origins of the American Revolution and the Constitution. His mastery of the facts of the 1780s is impressive; he has read every colonial newspaper of the era. His mistake is in asking subordinate questions regarding subordinate figures. He ignores the source of the modern West's paradigm shift—Isaac Newton—and concentrates instead on its diligent developers in the limited field of political theory. He does not discuss the origin of the politics of the 1780s in the scientific laboratories of the 1660s.

The story of the Constitutional Convention began in the mid-seventeenth century in the sometimes furtive studies of about a dozen

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192. Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence, Kansas: University Press of Kansas, 1985), p. 69.

Freemasons. This group has come to be known retroactively as the Invisible College.<sup>193</sup> This name was given to it by the young scientist, Robert Boyle, in 1646. He used the phrase repeatedly, also calling the group the Philosophical College.<sup>194</sup> At least one member of the group, Elias Ashmole (of Oxford's Ashmolean Museum fame), was a practicing magus and alchemist.<sup>195</sup> This was in an era in which the practice of alchemy was a capital crime.<sup>196</sup>

With Charles II's restoration to the throne in 1660, the group succeeded in getting itself incorporated in 1660 by the king. Henceforth, the organization would be known as the Royal Society. Following Masonic doctrine, the group forbade theological issues to influence scientific discussion. This rule was honored, despite the fact that many of its members in the seventeenth century were Puritans.<sup>197</sup> The philosophy of neutralism became dominant. Newton, also a practicing alchemist, was elected to membership in 1672.<sup>198</sup> He used the Royal Society to extend his influence over British Science.<sup>199</sup>

The same self-conscious rejection of theology in scientific debate dominated the emerging science of economics.<sup>200</sup> By the time of the Constitutional Convention, this attitude was nearly universal among educated men. The acceptance of common ground scientific speculation was widespread. This also applied to what we would call political science.

## K. Ancients and Moderns

What eighteenth-century men believed that Newton had accomplished for the physical universe—explaining the physical cosmos without any appeal to the details of Christian theology—they also believed the human mind could do for the political universe. They believed that a well-crafted contractual document could produce the blessings of liberty and the reduction of the influence of political fac-

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193. Robert Lomas, *The Invisible College: The Royal Society, Freemasonry and the Birth of Modern Science* (London: Headline, 2002).

194. Yates, *Rosicrucian Enlightenment*, pp. 182–83.

195. *Ibid.*, ch. XIV.

196. Christiansen, *In the Presence of the Creator*, p. 233.

197. R. Hooykaas, *Religion and the Rise of Modern Science* (Cambridge: Scottish Academic Press, 1972), pp. 98–99. It was published in the United States by Eerdmans.

198. Christiansen, *In the Presence of the Creator*, p. 146.

199. *Ibid.*, pp. 480–85.

200. William Letwin, *The Origins of Scientific Economics* (Cambridge, Massachusetts: M.I.T. Press, 1963), ch. 6.

tions, as Madison asserted in *Federalist 10*. Hamilton had framed the question of questions in *Federalist 1*: “. . . whether societies of men are really capable or not, of establishing good government from reflection and choice, or whether they are forever destined to depend, for their political constitutions, on accident and force.”<sup>201</sup> What the Federalists needed, politically speaking, was a crisis, a looming discontinuity—or better yet, the appearance of a looming discontinuity—so that they could persuade voters to adopt the Constitution rather than drift along with the existing political order. Thus, said Hamilton, “the crisis, at which we are arrived, may with propriety be regarded as the era in which that decision is to be made; . . .”<sup>202</sup>

### 1. *A New National Order*

Here was the great opportunity of a lifetime: to impose a new system of national civil government on the 13 mostly independent colonies. But what kind of order would this new order be? It would not be formally Christian, meaning covenantally Christian. There is no doubt that during the period after the Revolution, the practical focus of the civil government became one of protecting individual liberty and property rather than protecting the institutions of Christian society (e.g., sexual morality), even in once-Puritan Massachusetts.<sup>203</sup>

Michael Lienesch’s superb summary of the Framers’ outlook demonstrates that they held a “modern” view of politics—a view of politics that was analogous to Newtonian astronomy. Although the Framers referred to Roman history, their minds were governed by a very different paradigm, especially when they sought to defend the work of the Constitutional Convention.

With this new form of political science, Federalists sought to create a timeless form of politics. Transcending any need for the lessons of the past, preventing any possibility of declension in the future, the American Constitution existed entirely in a theoretically perfect present. The discoveries of modern science had made it possible to bring the principles of the political realm into complete conformity with the laws of the natural world. Written in “the language of reason

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201. Hamilton, *Federalist 1*, in *The Federalist*, ed. Jacob E. Cooke (Middletown, Connecticut: Wesleyan University Press, 1961), p. 3.

202. *Idem*.

203. William E. Nelson, *The Americanization of the Common Law: The Impact of Legal Change on Massachusetts Society, 1760–1830* (Cambridge, Massachusetts: Harvard University Press, 1975), pp. 89–110.

and truth,” based on principles “as fixed and unchangeable as the laws which operate in the natural world,” the Constitution was intended to be a perfect system, “as infallible as any mathematical calculations.”<sup>204</sup> Secure in their scientific faith, Federalists waxed euphoric on the superiority of the new Constitution; it was, as one said, the “best form of government that has ever been offered to the world.”<sup>205</sup> Whereas other schemes had fallen into corruption and decline, a perpetually balanced federal Constitution seemed capable of continuing forever. With it, predicted an admiring Robert Davidson, the American states “shall resemble, the Solar System, where every obedient planet moves on its proper path,—never seeking to fly from, nor even approaching the great attractive orb, than the wise author of nature intended.”<sup>206</sup> The federal Constitution was created to apply equally to every age, never running down, wearing out, or falling into disrepair. As far as these Federalist writers were concerned, the new republic could continue in this perfect state forever—“a system,” Barlow rhapsodized, “which will stand the test of ages.”<sup>207</sup>

Throughout the debates, Federalists would continue to argue that the Constitution was a theoretically perfect instrument. As the state conventions went on, however, they came to admit the cold hard truth so often propounded by the Antifederalists—that the Constitution, however excellent in theory, might well be flawed in practice. Equally important, they realized that the case for ratification could be strengthened by embracing the Antifederalist demand for an amendment procedure. Thus, in Federalist rhetoric, “experience” began to undergo one final change, from experience as scientific truth to experience as scientific experimentation.<sup>208</sup>

This appeal to experience was no deviation from Newtonianism. Newton had admitted in the *Scholium* that God must occasionally reimpose His will on a declining, friction-bound cosmic order. The uni-

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204. The Friends of Union and Just Government, *An Address to the Citizens of Pennsylvania* (Philadelphia: n.p., [1789]; Elizur Goodrich, D.D., *The Principles of Civil Union and Happiness considered and Recommended. A Sermon . . .* (Hartford, Conn.: Hudson and Goodwin, 1787), p. 8; Hamilton, address to the New York Convention, 28 June 1788, in [Elliot’s] *Debates*, II, p. 366.

205. Simeon Baldwin, *An Oration Pronounced Before the Citizens of New-Haven, July 4, 1788 . . .* (New Haven, Conn.: J. Meigs, 1788), p. 13.

206. Robert Davidson, D.D., *An Oration on the Independence of the United States of America . . .* (Carlisle, Pa.: Kline and Reynolds [1787]), p. 15.

207. Joel Barlow, *An Oration, Delivered in the North Church in Hartford . . . July 4, 1787 . . .* (Hartford, Conn.: Hudson and Goodwin, [1787]), p. 19.

208. Michael Lienesch, *New Order of the Ages: Time, the Constitution, and the Making of Modern American Political Thought* (Princeton, New Jersey: Princeton University Press, 1988), pp. 134–35.

verse is not a perfect autonomous cosmic clock. Thus, the revised view of those who defended this “modern” view of the Constitution was really consistent with Newtonianism. Lienesch does not make this clear in his study. He does correctly point out that eighteenth-century science accepted a dualistic view of science: theoretical permanence and practical improvement.<sup>209</sup> Law must deal with change. Law is fixed. Change is not. Somehow, men must find a way to relate the two, both philosophically and institutionally.

This dilemma is the continuation of the ancient philosophical problem of law vs. flux, logic vs. history, or as Van Til liked to put it, the static ice block philosophy of Parmenides vs. the fluctuating flowing river of Heraclitus. This is the fundamental antinomy of all humanist thought. Plato tried to reconcile the two, Van Til said, but he failed. “Plato could not stop his ice cubes from becoming water unless he would freeze all the water into ice.”<sup>210</sup> This dualism between law and historical change cannot be reconciled apart from the doctrines of the Trinity, the creation out of nothing, and God’s absolute providence over history in terms of His sovereign decree and plan (Eph. 1:4; II Tim. 1:9). Once men abandon the Bible as God’s only permanent Word in history, they are caught between the false, tyrannical permanence of man’s word and the chaotic flux of history. But this solution is not acceptable to those who reject the New Testament.

A fundamental dualism between theoretical permanence and historical change is present in every philosophical system. There has to be a *system of permanence* that undergirds and gives coherence to all change—if nothing else, then at least a communications system based on grammar (fixed rules, yet with allowance for change through usage). With regularity, there also has to be a way to deal with *human experience*. The Framers were well aware of this dilemma, and they devoted considerable time and effort to studying the experience of political orders in the past, especially classical politics. This was also a heritage of the Whig tradition.<sup>211</sup> That paradigm was Newtonian. But for a

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209. *Ibid.*, p. 135.

210. Van Til, *A Survey of Christian Epistemology*, p. 43.

211212. H. Trevor Colbourn, *The Lamp of Experience: Whig History and the Beginnings of the American Revolution* (Chapel Hill: University of North Carolina Press, 1965). See especially J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, New Jersey: Princeton University Press, 1975), Pt. 3. Pangle’s warning is legitimate: we can easily overlook the modernist impulse of the Whig tradition if we take too seriously the rhetorical references to the ancient classics in the writings of these “Machiavellian” republicans.



dozen of the Convention's members, especially the President, Newtonianism was filtered through his disciples, James Anderson and John Desaguliers.<sup>212</sup>

## *2. Old Dilemma, New Wardrobe*

The fundamental problems of the political philosophy of the "ancients" reappear in the political philosophy of the "moderns." Both of these humanist viewpoints are anti-trinitarian and anti-biblical covenant. There was no Constitutional solution to the problems of political philosophy in either Federalist Whig Newtonian republicanism or Antifederalist Whig Newtonian republicanism. The sought-for Constitutional balance of the one and the many, apart from the Bible and the Old Testament case laws, is unattainable. Like Newton's universe apart from God's constant, active providence, the "balanced Constitution" will inevitably move toward centralized tyranny (the fear of the Antifederalists) or toward dissolution (the fear of the Federalists). Both movements took place in 1861–65. The centralists won the intellectual battle of political philosophy on the military battlefields of the U.S. Civil War. (So did the bankers.)<sup>213</sup> The federal bureaucracy began to expand as never before after 1860, although it appears small in retrospect in today's bureaucratic world. Contrary to Madison's vision, but consistent with Madison's system after the Fourteenth Amendment (1868) had made judicially possible the increasing centralization of the nation, these new bureaucracies were geared to special interests in a diversifying economy.<sup>214</sup>

The Framers believed they had constructed a workable model: a fixed governmental system that would deal with man as he is, yet also encourage him to act in ways that are best for him and society. It had taken them less than four months to do this behind closed doors. The Framers were almost messianic. They believed that such a constitution had never before been devised. The republics of Greece and Italy had failed, Hamilton said, for they had oscillated between tyranny and an-

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Pangle, *Spirit of Modern Republicanism*, ch. 4.

212. See below, pages 165–67.

213. Gary North, "Greenback Dollars and Federal Sovereignty, 1861–1865," in Hans F. Sennholz (ed.), *Gold Is Money* (Westport, Connecticut: Greenwood, 1975), pp. 122–56.

214. James Q. Wilson, "The Rise of the Bureaucratic State," *Public Interest* (Fall 1975), p. 88.

archy<sup>215</sup>—the perpetual problem of the one and the many.<sup>216</sup> But there is hope, he assured his readers: “The science of politics, however, like most other sciences has received great improvement. The efficacy of various principles is now well understood, which were either not known at all, or imperfectly known to the ancients.”<sup>217</sup> Were this not the case, pessimism alone would be appropriate regarding republics, that is, “If it had been found impracticable, to have devised models of a more perfect structure. . . .”<sup>218</sup> But *The Federalist* is a defense of a new day, a new way, a new model, a new order of the ages. This new order would be judicially non-Christian.

These men saw themselves as architects of a new nation and a new order of the ages: *Novus Ordo Seclorum*. This identification with architecture was not a clever piece of rhetoric. Constitution-building was, in their minds, analogous to the work of a Great Architect. It was a new creation. It was a break from the past—a specifically Christian past. Yet there was a sufficient legacy from that past, including a millennial aspect,<sup>219</sup> to persuade them that such an experiment would succeed.

To make possible this hypothetically disinterested experiment in constructive politics, the Constitution removed religious test oaths as judicial requirements for judges and officers of the new national government. This, in and of itself, delivered the republic into the hands of the humanists. Nothing else was necessary after that. From that point on, the secularization of America was a mopping-up operation. That operation is still in progress. Those being mopped up are unappreciative, but they cannot seem to identify when the turning point came. It came in 1788.

## Conclusion

The Framers were Newtonians. So were most intellectuals in that era. From at least the time of Cotton Mather’s booklet, *The Christian Philosopher* (1721), Christian scholars have equated Newtonianism

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215. Hamilton, *Federalist* 9, *Federalist*, p. 50.

216. R. J. Rushdoony, *The One and the Many: Studies in the Philosophy of Order and Ultimacy* (Vallecito, California: Ross House, [1971] 2007). (<http://bit.ly/rjroam>)

217. Hamilton, *Federalist* 9, *Federalist*, p. 51.

218. *Idem*.

219. Lienesch, *New Order*, ch. 8. Cf. Ruth Bloch, *Visionary Republic: Millennial Themes in American Thought, 1756–1800* (New York: Cambridge University Press, [1985] 1988), chaps. 5, 6.

with biblical providentialism. This inability of Christian scholars to recognize a unitarian worldview continues to hamper the development of a systematically biblical world-and-life view. The typical Christian college curriculum remains Newtonian whenever it is not Darwinian. The closer we get to the doctrines of man and society, the more dangerous Newtonianism becomes.

McDonald's neglect of Newton is matched by his far less well-informed equivalents in the Christian academic community. For well over a century, a handful of Christian conservatives have attempted to place the American Revolution within the context of Christian thought and culture, despite the steady expiration of both explicitly Christian thought (moral casuistry) and culture in the early eighteenth century. This approach can be somewhat successful with respect to certain moral defenses of the American Revolution itself, especially in sermons preached by pastors who had adopted the revolutionaries' defense of violence against Parliament. Even in this case, the Christian character of revolution's defenses was not without compromise. There must be a clear recognition of the effects of Newtonian natural law philosophy in the defenses of the best of the Christian political apologists.<sup>220</sup> But a Christian apologetic is hopeless with respect to the ideological origins of the U.S. Constitution.

Unfortunately, beginning with the unread red books, we have had a dedicated movement of Christian non-historians, would-be historians, and lawyers pretending to be historians, who think that historical revisionism applied to the prevailing humanist textbook account of the Constitution is called for, not to show the conspiratorial basis of that judicial *coup*, which the humanists prudently ignore, but to show that somehow, if we just look closely enough, we will find traces of Christianity in the Constitution. To which I say: *let us cut our losses now*. It is time to scrap this particular revisionist effort. It has produced nothing but confusion in the minds of Christians, and ridicule from the humanists who have the footnotes on their side in this confrontation.

What specialists need to do in the future is to examine the records of the Constitutional Convention, as well as the Constitution's intellectual *and institutional* background. This will begin to open a long-closed book. This procedure must be done by Christian scholars in

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220. Archie P. Jones, "The Christian Roots of the War for Independence," *Journal of Christian Reconstruction*, III (1976), pp. 6–51.; M. E. Bradford, "And God Defend the Right: The American Revolution and the Limits of Christian Obedience," *Christianity and Civilization*, 2 (1983), pp. 233–41.

terms of a biblical presupposition: *the quest for permanent political pluralism is inherently a demonic quest*. This presupposition has been rejected by both sides, Christian and non-Christian. So, we have yet to be presented with a serious study of the historical and theological origins of the U.S. Constitution. This book is little more than an outline of the work that needs to be done by several generations of presuppositionally self-conscious Christian researchers.

For over two centuries, Christian historians have neglected to conduct such a detailed study of the origins of the Constitution. Most of them have accepted the view of the victors of 1788: the Constitution is a philosophically neutral, procedurally neutral, morally neutral, religiously neutral document that is somehow consistent with “true” Christianity. Yet it is also supposedly consistent with Christianity’s rivals. If these assumptions are true, then Stoic natural law philosophers were right, Newtonian unitarians were right, and Freemasons are right: there is a morally and theologically neutral system of fixed law that is both unchanging and accessible to the minds of rational men in the midst of history. The Constitution is the incarnation of this religion of neutrality.

It is a shame that no other nation has understood this, we are told by the defenders of original intent, who are running a two-front war: against Darwinists, with their doctrine of an organic, living, and evolving Constitution, and against recalcitrant foreigners who resist accepting the American way of life and democratic freedom. Muslims in the Middle East are not enthusiastic about coming under a legal order that is consistent with Christianity. This is the perennial problem with religious pluralism. Members of those supernatural religions that reject the concept of religious pluralism resist being placed on an equal judicial footing with members of all the other religions. This was the same objection that the early church had against the Roman Empire.

Oliver Cromwell’s version of trinitarian political pluralism was derived from the Bible: the concept of an oath-bound civil covenant. His contemporary, Rhode Island’s Roger Williams, secularized this position and universalized it by means of natural law theory. This is the theological foundation of modern political polytheism. James Madison and the Framers put forth a new national covenant based on Williams’ model in 1787, and the voters’ representatives ratified it in 1788. We still live under its jurisdiction.



Madison could not pause to rest. His dominant role in drafting the Constitution and forcing the First Amendment upon a reluctant Congress in 1789 is well known. In the light of history, it would have been an irony had any other man performed the task—certainly no one in the House of Representatives or Senate could match his record as a fighter for religious freedom. Some thirty years later Madison was still as concerned about the need for separation of church and state as he had been in 1774. Around 1832 he wrote a retrospective memorandum on the scenes of public life he had witnessed and also set down a few of his fears. Among the latter was a feeling that “the danger of silent accumulations & encroachments by Ecclesiastical Bodies have not sufficiently engaged attention in the U.S.” . . .

Warming to the issue, Madison called on the errant states to build an impenetrable wall separating the church and state and thus “make the example of your Country as pure & compleat, in what relates to the freedom of the mind and its allegiance to its maker, as in what belongs to the legitimate objects of political and civil institutions.” . . .

With Madison the line between church and state had to be drawn with absolute firmness. “The establishment of the chaplainship to Cong[re]ss is a palpable violation of equal rights, as well as of Constitutional principles.” And what about presidential proclamations involving religious feast days and fasts? Even though they come as “recommendations only, they imply a religious agency” and are therefore suspect. On balance, Madison reasoned, even these proclamations are not a good idea, and he appears to have regretted those issued during his presidency. “They seem to imply and certainly nourish the erroneous idea of a national religion,” he explained. “During the administration of Mr. Jefferson no religious proclamation was issued.” Looking back, Madison wished he had followed the same rule.

Robert A. Rutland (1983)<sup>1</sup>

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1. Rutland, “James Madison’s Dream: A Secular Republic,” *Free Inquiry* (Spring 1983), p. 11.

## 2

# RENEWED COVENANT OR BROKEN COVENANT?

*For with what judgment ye judge, ye shall be judged; and with what measure ye mete, it shall be measured to you again (Matt. 7:2).*

*In every country where an oath of office is required, as is required in the United States by the Constitution, the oath has reference to swearing by almighty God to abide by His covenant, invoking the cursings and blessings of God for obedience and disobedience.*

R. J. Rushdoony (1983)<sup>1</sup>

*The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all the executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or 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.*

Article VI, Clause 3, U.S. Constitution

## Introduction

The fourth point of the biblical covenant model relates to the oath and the sanctions attached to it. The individual swears an oath to God, who in turn promises to bless the individual for covenantal faithfulness or curse him for disobedience. It is the cursing aspect of an oath that establishes it as a covenant oath, as distinguished from a mere contract, for the curses establish it as a *self-maledictory* oath. It is the oath that ratifies the covenantal bond between the sovereign and the subordinate.

God, the covenantal Sovereign, rules in history through a coven-

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1. R. J. Rushdoony, *The "Atheism" of the Early Church* (Blackheath, New South Wales: Logos Foundation, 1983), p. 77.

ant-bound trio of hierarchies: church, state, and family. The head of each covenantal organization is required to take an oath before God to preserve and defend the organization and its members. Those beneath the oath-taker in the hierarchy are under the covenant's law-order through the oath-taking representative agent. Until she says "I do," the woman is not a wife; once she does, she is bound legally to God through her husband and to her husband under God. Similarly, when a citizen agrees to remain under the jurisdiction of the civil government, he has implicitly taken an oath to defend it and obey its authorized representatives. The same is true in a church.

The oath invokes negative covenant sanctions; once invoked, there is no escape from its stipulations: "And Moses came and called for the elders of the people, and laid before their faces all these words which the LORD commanded him. And all the people answered together, and said, All that the LORD hath spoken we will do. And Moses returned the words of the people unto the LORD" (Ex. 19:7–8). He was their representative agent. When they promised to obey, they took an oath for themselves *and their posterity*. The oath has continuity over generations. *So do its stipulations*. Only the sovereign who establishes the oath can change the stipulations or the oath. The ability to change the stipulations or the oath is therefore a mark of ultimate sovereignty.

With this in mind, we begin our discussion of the U.S. Constitution as a covenant document.

## A. A Civil Covenant

The U.S. Constitution reveals its covenant structure in its five divisions:

- Sovereignty: Preamble
- Law: Legislation (Congress: Article I)
- Sanctions: Enforcement (Executive: Article II)
- Hierarchy: Appeals (Judicial: Articles III, IV)
- Succession: Amendments (Article V)

The five points do not appear in the same order that they do in the biblical covenant model, but all five are present. In this sense, the Constitution is surely a covenant document—one that is far more visibly covenantal in structure than is the case in other constitutions.

The Constitution begins with a declaration of sovereignty, point



one of the covenant model: “We the People of the United States . . . do ordain and establish this Constitution for the United States of America.” This Preamble could not be clearer. The Framers presented the document for ratification in such a form that the entire population acting corporately through the states would gain formal credit for the document. Warren Burger, who served as Chief Justice of the U.S. Supreme Court, said that these are the document’s most important words.<sup>2</sup> As he wrote to me when I questioned him about the meaning of his statement, “They are the key words *conceptually*.”<sup>3</sup>

The “suzerain” of this covenant is the People. We have here an echo of classical Roman political philosophy, enunciated by Cicero, who was one of the favorites of the Framers: *vox populi, vox dei*. The voice of the people is the voice of God. Professor Clark is correct: *vox populi, vox dei* is a divine-right slogan.<sup>4</sup> The divine-right doctrine teaches that no earthly appeal beyond the specified sovereign agent or agency is legitimate. Nothing lawfully separates the authority of the divine-right agency from God. If there is no personal God in the system, then this agency takes the place of God in society. This phrase announces in principle the genius of the people.<sup>5</sup> We should not forget that genius in pre-imperial Rome meant the divinity of the city of Rome and its people (in the *Dea Roma* cult), and later became an attribute of the Emperor’s divinity.<sup>6</sup>

This raises an inescapable problem for politics: Who speaks for the sovereign? In no covenantal system does God speak continually and directly to those under the authority of the covenant. The debate in the West until the twentieth century was between those who defended the king or executive branch and those who defended the legislature. It was the question of “the enforcer vs. the declarer.” As I will show later in this chapter, in twentieth-century America, the locus of final earthly sovereignty shifted to the judicial branch of the U.S. government. The U.S. Supreme Court became the sovereign’s exclusive voice, its sole authorized interpreter.<sup>7</sup>

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2. *Orlando Sentinel* (Sept. 8, 1988), p. A-2.

3. Letter to author: Sept. 26, 1988. Emphasis his.

4. George Clark, *The Seventeenth Century*, 2nd ed. (New York: Oxford University Press, [1947] 1961), p. 223.

5. Charles L. Mee, Jr., *The Genius of the People* (New York: Harper & Row, 1987).

6. R. J. Rushdoony, *The One and the Many: Studies in the Philosophy of Order and Ultimacy* (Vallecito, California: Ross House, [1971] 2007), pp. 98–99. (<http://bit.ly/rjroam>)

7. The courts have gained a potent rival from a wholly new source: executive bur-

## B. People, King, and Parliament

“We the People” can also be interpreted in a more Protestant fashion. The anti-monarchical *Vindiciae Contra Tyrannis*, by “Lucius Junius Brutus,” published in 1579, offered a biblical and covenantal justification for political rebellion. It was translated into English and published in the year following the Glorious Revolution of 1688. This book became a familiar reference during the American Revolution. It asserted the sovereignty of the people above the sovereignty of kings. One of the sections of “The Third Question” announces: “The whole body of the people is above the king.”<sup>8</sup> So common were these ideas among Protestants in the late sixteenth century that even Richard Hooker appealed to the *Vindiciae* in his *Laws of Ecclesiastical Polity* (1594) in his defense of the divine right of the kings of England.<sup>9</sup> He said that the representatives of the “people’s majesty” crown the king.<sup>10</sup> The king rules by God through the people. He rules by law, meaning *natural law*, which is the same as God’s revealed law in the Bible. Hooker began his study with a discussion of natural law, which remained the hypothetical law structure that supposedly serves autonomous man as a legitimate substitute for biblical law.

### 1. James I

Within half a decade after the death of Hooker, James I came to the throne. A pagan Renaissance monarch to the core,<sup>11</sup> James I asserted the divine right of kings far more forcefully than Hooker had. He viewed kingship as directly under God, without any reference to the sovereignty of the people. “It is atheisme and blasphemic to dispute what God can doe, so it is presumption and high contempt in a sub-

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eaucracy. The untouchable administrative agencies of civil government have nearly triumphed all over the world in this century. The rise of administrative law is in fact a true revolution, one which threatens the very fabric of freedom in the West. On this point, see Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, Massachusetts: Harvard University Press, 1983), Introduction. I regard this Introduction as one of the most important academic discussions of my generation.

8. *A Defence of Liberty Against Tyrants*, Introduction by Harold J. Laski (Gloucester, Massachusetts: Peter Smith, 1963), p. 124.

9. Hooker, *Laws of Ecclesiastical Polity*, Book VIII, Ch. 2, Sect. 7; in *The Works of Mr. Richard Hooker*, arranged by Rev. John Keble, 3 vols. (Oxford: At the Clarendon Press, 1865), III, pp. 347n, 348n.

10. *Ibid.*, p. 348.

11. Otto Scott, *James I* (New York: Mason/Charter, 1976).

ject, to dispute what a King can do. . . .<sup>12</sup> This arrogance did not go without a challenge. In a document published by the House of Commons in 1604, *An Apology*, the argument appears that the rights of Englishmen are as old as the monarchy, especially property rights. "The voice of *the people* is said to be as the voice of God."<sup>13</sup> In response, James suspended Commons. The theoretical and institutional battle between Stuart kings and Parliament began. It ended only with the Revolution of 1688.

In the Puritan Revolution of the 1640s, Parliament conducted its revolt against James I's son Charles I in the name of both God and the people. Obviously, the Jacobite concept of the divine right of kings had to be jettisoned. But jettisoned in the name of what earthly agent? The divine-right doctrine always meant that the named agent would be the final earthly court of appeal. The person of the king had been that sole agent, Charles I's father had maintained. Not so, said Parliament. They reasserted the older Protestant view of the sovereignty of God as delegated to all civil governments through the people.<sup>14</sup> Nevertheless, during the Restoration period, 1660–1688, the views of James I resurfaced. In a 1681 address to Charles II by the University of Cambridge, we read:

We will still believe and maintain that our kings derive not their title from the people but from God; that to him only they are accountable; that it belongs not to subjects, either to create or censure but to honour and obey their sovereign, who comes to be so by a fundamental hereditary right of succession, which no religion, no law, no fault of forfeiture can alter or diminish.<sup>15</sup>

## 2. *The Triumph of Parliament*

These sentiments did not last long. Parliament overthrew Charles II's brother James II in 1688. Nevertheless, the problem of sovereignty still remained: someone must speak for the People-Deity in the People's corporate political capacity. Parliament asserted that Parliament's sovereignty is unbounded. In this political theorists were fol-

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12. Cited by C. Northcote Parkinson, *The Evolution of Political Thought* (Boston: Houghton Mifflin, 1958), p. 80.

13. Cited by Scott, *James I*, p. 285.

14. Edmund S. Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York: Norton, 1988), p. 56.

15. Quoted by John N. Figgis, *The Divine Right of Kings*, 2nd ed. (1914; reprinted by Peter Smith, Gloucester, Massachusetts), p. 6.

lowing Sir Edward Coke ["Cook"], who had drawn James I's ire for his defense of absolute Parliamentary sovereignty.

This view of Parliamentary sovereignty was carried down in William Blackstone's *Commentaries on the Laws of England* (1765) to the era immediately preceding the American Revolution. As we have seen in Chapter 1, Blackstone was a defender of natural law, which he formally equated with God's law.<sup>16</sup> He wrote:

This law of nature, being co-eval with mankind and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times; no human laws are of any validity, if contrary to this. . . .<sup>17</sup>

Yet he also defended the absolute sovereignty of Parliament, indicating that he believed that Parliament always and inevitably adhered to the dictates of natural law. Blackstone began his defense of Parliamentary sovereignty by citing Coke. "Sir Edward Coke says: The power and jurisdiction of Parliament is so transcendent and absolute, that it cannot be confined, either for causes and persons, within any bounds." Blackstone continued in this vein: "It can, in short, do everything that is not naturally impossible; and therefore some have not scrupled to call its power, by a figure rather too bold, the omnipotence of Parliament. True it is, that what the Parliament doth, no authority on earth can undo."<sup>18</sup> Blackstone was wrong: beginning a decade later, the American colonies undid a lot of what Parliament had done.

### **C. The American Revolution**

The American Revolution was a revolt against Blackstone's view of Parliamentary sovereignty. This revolt was conducted after 1774 in the name of the legitimate legislative sovereignty of the colonial parliaments, i.e., the state assemblies. During the Revolutionary War, the state legislatures transferred specified portions of their own limited sovereignty to Congress. Late in the war, they transferred limited sovereignty again to the central government in the Articles of Confederation (1781). This transfer was then challenged by the Constitutional

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16. William Blackstone, *Commentaries on the Laws of England*, 4 vols. (reprint of first edition, University of Chicago Press, [1765] 1979), I, p. 41. This was first printed in the American colonies in 1771.

17. *Idem*. See pages 21–22, above.

18. Cited by A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, 8th ed. (Indianapolis, Indiana: Liberty Classics, [1915] 1982), p. 5.

Convention in 1787 and by the ratification of the U.S. Constitution in 1788. But the fundamental intellectual question of the Revolution, as historian Bernard Bailyn has maintained, was the question of sovereignty. “Representation and consent, constitution and rights—these were basic problems, consideration of which led to shifts in thought that helped shape the character of American radicalism. But of all the intellectual problems the colonists faced, one was absolutely crucial: in the last analysis it was over this issue that the Revolution was fought.”<sup>19</sup> That issue was sovereignty.

The solution to this intellectual problem was settled in a preliminary way in 1788, with the ratification of the Constitution; it was settled more decisively on the battlefields of 1861–65. But it is still not settled in the United States. It will not be settled historically in any nation until the whole world formally affirms the crown rights of King Jesus.<sup>20</sup>

I argue in this book that the Articles of Confederation served as a national halfway civil covenant. This chapter is about the Constitution, but the Constitution was the covenantal successor of the Articles. The Articles did not explicitly deny that the God of the Bible is Lord over all governments, nor did they affirm it. Several of the state constitutions did affirm this. Thus, the national civil government was a covenantal mixture, for the national government prior to 1788 was a confederation, not a unitary state. It was a halfway covenant. As we shall see, the U.S. Constitution is far more consistent. What the Articles did not positively affirm, the Constitution positively denies: the legitimacy of religious test oaths as a screening device for officers of the national civil government. It is this shift that marks the transition from the older trinitarian state covenants to what became, over decades, apostate state covenants. This transition at the national level did not occur overnight; there was an intermediary step: the Articles of Confederation. Yet when the next-to-the last step was taken—the Constitutional Convention—those who took it ignored the original by-laws of the Articles and appealed forward to the People. The Framers publicly ignored the Declaration of Independence, which had formally incorporated the national government, for they were interested in upholding the myth of the sovereign People, and the Declaration had re-

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19. Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Massachusetts: Belknap Press of the Harvard University Press, 1967), p. 198.

20. Gary North, *Healer of the Nations: Biblical Blueprints for International Relations* (Ft. Worth, Texas: Dominion Press, 1987). (<http://bit.ly/gnhealer>); Cf. Gary DeMar, *Ruler of the Nations: Biblical Blueprints for Government* (Ft. Worth, Texas: Dominion Press, 1987). (<http://bit.ly/gdmruler>)

peatedly mentioned God. Thus, the Declaration and the Articles both disappeared from the American judicial tradition and its system of legal precedents, and the Articles disappeared from American political thought. Two things were retained, however: the national name established by the Articles—the United States of America—and the seal of the nation that had been formally incorporated on July 4, 1776.

## D. The Articles of Confederation

What was wrong with the Articles? According to Madison and the critics, it was the absence of sanctions. There was no power to tax and compel payment. Also, there was no executive who could enforce sanctions. In his letter to George Washington (April 16, 1787), Madison insisted: “A National Executive must also be provided. . . . In like manner the right of coercion should be expressly declared.”<sup>21</sup> In that same month, a month before the convening of the Convention, Madison had noted his objections to the Articles in his unpublished “Vices of the Political System of the United States.” He included this momentous criticism: “A sanction is essential to the idea of law, as coercion is to that of Government. The federal system being destitute of both, wants the great vital principles of a Political Constitution. Under the form of such a constitution, it is in fact nothing more than a treaty of amity of commerce and of alliance, between independent and Sovereign States.”<sup>22</sup>

He wanted more than a treaty. He wanted a national government. But this, he knew, had been achieved in the past only through an agreement regarding a common god that sanctioned the creation of civil government. Without such a god to sanction the civil government, the government could not legitimately impose sanctions on those under its jurisdiction. The sanction on the people could only be justified in terms of the ultimate sanctioning power of the agreed-upon god of the covenant. What Madison and the Framers proposed was a revolutionary break from the history of mankind’s governments, with only one glaring exception: the state of Rhode Island—the number-one obstructionist state that had produced the paralysis of the Confederation. But instead of abandoning the covenantal legacy of Rhode Island, the Framers adopted it as the judicial foundation of the

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21. Marvin Meyers (ed.), *The Mind of the Founder: Sources of the Political Thought of James Madison* (Indianapolis, Indiana: Bobbs-Merrill, 1973), p. 97.

22. Madison, “Vices of the Political System of the United States,” *ibid.*, pp. 85–86.

proposed national government. The leaven of neutrality would now leaven the whole lump.

## E. The Structure of National Authority

The Constitution officially divides national judicial spokespersonship into three branches: legislative, executive, and judicial. Each of these is a separate juridical sphere. Each has its own section in the document itself. For a law (piece of legislation) to be binding, all three branches must agree.

### 1. *He Who Interprets the Law is Sovereign*

Originally, this was not clear to the Framers. They believed that the agreement of the executive and the legislature would be sufficient. They divided the legislative branch into two sections, House of Representatives and Senate. Very little was said of the judicial branch. It was assumed that it would be by far the weakest of the three. Alexander Hamilton went so far as to say that “the judiciary is beyond comparison the weakest of the three departments of power,” and assured his readers that “it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks.”<sup>23</sup> The Framers did not recognize that *he who interprets the law authoritatively is in fact the true voice of sovereign majesty*. They also did not fully understand that the implicitly vast powers of political centralization that the Constitution created on a national level would lead to the creation of a new hierarchy. The federal (national) government would steadily swallow up subordinate jurisdictions. Why? Because in any covenant, there must be a hierarchy, and the pinnacle of that hierarchy is the agent who possesses the authority to announce the law and therefore sanctify the law’s sanctions.

So, there was initial confusion over hierarchy and representation, point two of the biblical covenant model. This had been the great political debate immediately prior to the Revolution: Which body had legitimate legislative sovereignty in the colonies, the English Parliament or the colonial legislatures? This was also the heart of the political debate over the Bill of Rights, the first ten amendments to the Constitution. The voters, as represented by state ratifying conventions in 1788, had insisted on retaining numerous powers in the states. Any

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23. Hamilton, Federalist 78: *The Federalist*, ed. Jacob E. Cooke (Middletown, Connecticut: Wesleyan University Press, 1961), p. 523.

power not expressly transferred to the central government automatically resides in the states (Amendment 10). Thus, the debate became one of state's rights vs. national power.

## 2. *John Adams, Architect*

The major intellectual influence in the actual structuring of the U.S. Constitution was probably John Adams rather than Madison. In December of 1787, the final volume appeared of Adams' famous three-volume study of the state constitutions, *A Defense of the Constitutions of the Government of the United States*. The first volume had appeared while the Convention was assembling. This study was a defense of the idea of the separation of powers, a theme that he had written about earlier. Adams had been the primary architect of the 1780 Massachusetts constitution. Thus, his blunt speaking was both representative of the new worldview and authoritative nationally.

He viewed their earlier constitution-writing actions as unique in history: the creation of a republic founded on the sovereignty of the people, with only a brief peripheral mention of Christianity. Notice carefully his reference to Vitruvius, the Roman architect. This fascination with Vitruvius had been basic to European humanism since the Renaissance.<sup>24</sup>

It was the general opinion of ancient nations that the Divinity alone was adequate to the important office of giving laws to men. . . . The United States of America have exhibited, perhaps, the first example of governments erected on the simple principles of nature; and if men are now sufficiently enlightened to disabuse themselves of artifice, imposture, hypocrisy, and superstition, they will consider this event as an era in their history. . . . It will never be pretended that any persons employed in that service had interviews with the gods or were in any degree under the inspiration of Heaven, more than those at work upon ships or houses, or laboring in merchandise or agriculture; it will forever be acknowledged that these governments were contrived merely by the use of reason and the senses, . . . Neither the people nor their conventions, committees, or subcommittees considered legislation in any other light than as ordinary arts and sciences, only more important. Called without expectation and compelled without previous inclination, though undoubtedly at the best period of time, both for England and America, suddenly to erect new

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24. Frances A. Yates, *The Rosicrucian Enlightenment* (London: Routledge & Kegan Paul, 1972), p. 11. See above, p. 51.



systems of laws for their future government, they adopted the method of a wise architect in erecting a new palace for the residence of his sovereign. They determined to consult Vitruvius, Palladio, and all other writers of reputation in the art; to examine the most celebrated buildings, whether they remain entire or in ruins; to compare these with the principles of writers; and to enquire how far both the theories and models were founded in nature or created by fancy; . . . Thirteen governments thus founded on the natural authority of the people alone, without a pretense of miracle or mystery, . . .<sup>25</sup>

Adams' fascination with the example of Vitruvius, who had become a magician in the writings of Renaissance neoplatonists, is ignored by modern historians. Adams was not speaking of building physical structures; he was speaking of constructing civil covenants. He used the analogy of looking at the records of ancient buildings when he really meant a close examination of ancient constitutions. He saw himself as the chief architect of new civil governments for a new age. Although he was in England at the time, the great architectural work was in progress in Philadelphia when his first volume appeared. Adams knew that it would be, when he was writing it.

Adams briefly mentioned Christianity: "The experiment is made and has completely succeeded; it can no longer be called in question whether authority in magistrates and obedience of citizens can be grounded on reason, morality, and the Christian religion, without the monkery of priests or the knavery of politicians."<sup>26</sup> In short, a state constitution can be architecturally constructed without benefit of clergy or elected politicians. This is exactly what the delegates at Philadelphia intended to prove at the national level. The architects were about to rebuild the structure of American government on a foundation that would have been unrecognizable to the Founding Fathers of the seventeenth century, with one exception: Roger Williams.

## F. Before the Constitution

The Framers knew that religious test oaths were required for testifying in local and state courts. The word "test" in both cases—test oath and testify—refers back to the biblical language of the covenant, i.e., *testament*. It refers judicially to a witness who testifies in a court. The

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25. John Adams, "Defense of the Constitutions," in *The Political Writings of John Adams*, ed. George A. Peek, Jr. (Indianapolis, Indiana: Bobbs-Merrill, [1954] 1980), pp. 116–18.

26. *Ibid.*, p. 118.

Framers knew that religious oaths were sometimes required for exercising the franchise in state elections. But they made it clear: *federal jurisdiction is to be governed by another covenant, and therefore by another god*. It is therefore a rival system of hierarchy. It is not a complementary system of courts; it is rival system, *for an oath to the God of the Bible is prohibited by law in one of these hierarchies*.

To serve in Congress under the Articles, a man had to be appointed by his state legislature. He could be recalled at any time. He could serve in only three years out of every six. He was under public scrutiny continually. In order to exercise the authority entrusted to him by his state legislature, he had to take an oath. These oaths in most states were both political and religious. The officer of the state had to swear allegiance to the state constitution and also allegiance to God. Consider Delaware's required oath:

Art. 22. Every person who shall be chosen a member of either house, or appointed to any office or place of trust, before taking his seat, or entering upon the execution of his office, shall take the following oath, or affirmation, if conscientiously scrupulous of taking an oath, to wit:

"I, A B, will bear true allegiance to the Delaware State, submit to its constitution and laws, and do no act wittingly whereby the freedom thereof may be prejudiced."

And also make and subscribe the following declaration, to wit:

"I, A B, do profess faith in God the Father, and in Jesus Christ His only Son, and in the Holy Ghost, one God, blessed for evermore; and I do acknowledge the holy scriptures of the Old and New Testament to be given by divine inspiration."

And all officers shall also take an oath of office.<sup>27</sup>

The Constitution of Vermont in 1777 was not much different:

Section IX. A quorum of the house of representatives shall consist of two-thirds of the whole number of members elected and having met and chosen their speaker, shall, each of them, before they proceed to business, take and subscribe, as well the oath of fidelity and allegiance herein after directed, as the following oath or affirmation, viz.

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27. Philip B. Kurland and Ralph Lerner (eds.), *The Founders' Constitution*, 5 vols. (Chicago: University of Chicago Press, 1987), IV, p. 633–34.

*I \_\_\_\_\_ do solemnly swear, by the ever living God, (or, I do solemnly affirm in the presence of Almighty God) that as a member of this assembly, I will not propose or assent to any bill, vote, or resolution, which shall appear to me injurious to the people; nor do or consent to any act or thing whatever, that shall have a tendency to lessen or abridge their rights and privileges, as declared in the Constitution of this State; but will, in all things, conduct myself as a faithful, honest representative and guardian of the people, according to the best of my judgment and abilities.*

And each member, before he takes his seat, shall make and subscribe the following declaration, viz.

*I do believe in one God, the Creator and Governor of the universe, the rewarder of the good and punisher of the wicked. And I do acknowledge the scriptures of the old and new testament to be given by divine inspiration, and own and profess the protestant religion.*

And no further or other religious test shall ever, hereafter, be required of any civil officer or magistrate in this State.<sup>28</sup>

Notice the language: no *further or other* religious test shall ever be required. There could be only one kind of oath: to the trinitarian God of the Bible. This made trinitarianism the permanent judicial foundation of the state.

In order to break this trinitarian monopoly, the Framers had to undermine the states' oaths.<sup>29</sup>

## G. A New Covenant Oath

I began this chapter with Article VI, Clause 3 of the Constitution, which prohibits religious oaths as a requirement for holding federal office. This is not one of the better known sections of the Constitution. It is seldom discussed by historians.<sup>30</sup> Typical is Saul K. Padover's clause-by-clause recapitulation of the debates at the Convention.

28. *Ibid.*, IV, p. 634

29. A compilation of these oaths appears in Appendix B of Edwin Scott Gaustad's book, *Faith of Our Fathers: Religion and the New Nation* (New York: Harper & Row, 1987).

30. An exception was church historian Philip Schaff, who, a century ago, began his discussion of the Constitution with a two-page discussion of test oaths. Philip Schaff, *Church and State in the United States* (New York: Arno Press, [1888] 1972), pp. 20–22. Another exception is E. S. Gaustad, who understands exactly what it meant: a judicial break with Christian civil law at the national level. Gaustad, *Faith of Our Fathers*, pp. 113–15.

When he comes to Article VI, he did not even mention Section 3; he summarizes only the debate over the oath of allegiance to the Constitution.<sup>31</sup> Even more amazing is the near-silence of Edwin S. Corwin, acknowledged as the twentieth-century master of the Constitution: one brief, undistinguished paragraph out of ten pages devoted to Article VI.<sup>32</sup>

Everyone today assumes automatically that no religious test should be administered as a requirement for holding public office. Everyone also assumes that office-holders should swear allegiance to the Constitution. Yet in 1787, the reverse was true. There was considerable debate at the Constitutional Convention regarding the propriety of requiring state office-holders to swear allegiance to the Constitution. Furthermore, the states had religious tests of various kinds for office holders. A great reversal in the legal structure of the nation took place when the Constitution was ratified, and this is revealed by the alteration of the oaths required to hold representative (hierarchical) office. A great change in public thinking also took place subsequent to ratification.

The ratification of the Constitution was in fact simultaneously a covenant-breaking and covenant-making act. As with all covenant acts, this one involved the acknowledgment of legitimacy. When the voters sent the first representatives to the Congress in Philadelphia in 1789, the legitimacy of the new government was secured.<sup>33</sup> The theological and judicial terms of the new covenant began to be imitated at the state level until the resistance of the South called a halt to this process. The Civil War and the Fourteenth Amendment revived it.

Article VI, Clause 3, established the third covenantal pillar of what is one of the three keys to a proper understanding of the nature of the Constitutional covenant. The first pillar is *the locus of authorizing sovereignty*: the People. This is the designated creator of the covenant. This appears as the Constitution's Preamble. The second pillar is *the nature of political participation*: the authorizing electorate. Who is a citizen? This establishes the nature of, and legal access to, formal acts of covenant renewal in a republican system of government. This was

31. Saul K. Padover, *To Secure These Blessings* (New York: Washington Square/Ridge Press, 1962), pp. 80–82.

32. Edwin S. Corwin, *The Constitution and what it means today*, 12th ed. (Princeton, New Jersey: Princeton University Press, [1920] 1958), pp. 177–87.

33. Steven R. Boyd, *The Politics of Opposition: Antifederalists and the Acceptance of the Constitution* (Milwood, New York: Kraus-Thomson Organization, 1979), ch. 7: "The Capstone of Legitimacy: The First Federal Elections."

not definitively settled until the passage of the Fourteenth Amendment in 1868. The third pillar is *the nature of public oaths by federal officers*. This is the authorized representative's act of formal covenant affirmation of, and subordination to, the terms of the covenant.

An officer is the person who is charged with the assignment of enforcing the covenant's sanctions (point four of the biblical covenant model). He must therefore swear allegiance to the covenant—subordination (point two)—and also to its stipulations (point three). He agrees to obey the law. In the biblical covenant, this agent must also swear allegiance to the Sovereign Himself: God. This last requirement is dealt with in Article VI. Article VI represents the Constitution's definitive break with the previous American political tradition except Rhode Island's, and with all previous civil covenants except Rhode Island's.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all the executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or 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.

The basic principle of any covenant is that *all those under the covenant's positive sanctions are to be governed by its statutes and provisions*. The public mark of being under the sovereign is the taking of an oath. Public officers must take the oath verbally. They are to enforce the law of the covenant by imposing the sanctions of the covenant. If they do not swear to uphold it, they are not legally entitled to define, interpret, or enforce its sanctions. State officers have to swear allegiance to the Constitution. The final prohibition by the federal government on the states with regard to religious test oaths came in 1961.<sup>34</sup>

The weak link in the oath system was the U.S. Senate. A Senator was an indirectly appointed officer. The state legislatures elected Senators. Thus, a preliminary screening based on a religious test oath was still likely because the legislatures presumably would elect men from their own ranks. In some states, Senators would already have taken

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34. *Torcaso v. Watkins* (1961). A Maryland notary public, the lowest level state officer in America, had been denied his office because he refused to say that he believed in God. The Court overturned this state law as unconstitutional under the Fourteenth Amendment. Congressional Research Service, Library of Congress, *The Constitution of the United States of America: Analysis and Interpretation* (Washington, D.C.: Government Printing Office, 1972), p. 935.

such an oath. This problem did not definitively end until 1913, the year the Constitution was amended to require the direct election of Senators. (That was also the year of the supposed ratification of the Sixteenth Amendment, the income tax, which was ratified as illegally as the Fourteenth Amendment was.<sup>35</sup> The other major national judicial event of 1913 was the passage of the Federal Reserve Act, which created the nation's quasi-private central bank.)

## H. The Convention's Judicial Revolution

At the Constitutional Convention of 1787, Edmund Randolph defended this national oath of allegiance. He said that the officers of the states were already bound by oath to the states. "To preserve a due impartiality they ought to be equally bound by the Natl. Govt. The Natl. needs every support we can give it. The Executive & Judiciary of the States, notwithstanding their national independence on the State Legislatures are in fact, so dependent on them, that unless they be brought under some tie to the Natl. system, they will always lean too much to the State systems, whenever a contest arises between the two."<sup>36</sup> He added this comment as debate progressed: "We are erecting a supreme national government; ought it not be supported, and can we give it too many sinews?"<sup>37</sup>

### 1. *Hamilton and Rousseau*<sup>38</sup>

It is to Hamilton's explanation on the need for this loyalty oath that we must turn in order to see what was really involved. He was the most eloquent defender of the strongest possible national government. In *Federalist 27*, he stated plainly what was being done by means of this required oath. A new judicial relationship was being created by the Constitution: *a direct covenant between the new national civil government with the individual citizen, without any intermediary civil government*. This alteration is generally regarded by legal theorists as the most important single innovation that the Constitution imposed. They are wrong; the prohibition of religious test oaths was its most innovat-

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35. Bill Benson and M. J. "Red" Beckman, *The Law That Never Was* (South Holland, Illinois: Constitutional Research, 1985).

36. Max Farrand (ed.), *Records of the Federal Convention*, I, p. 203; extract in *Founders' Constitution*, IV, p. 637.

37. *Records*, I, p. 207; *idem*.

38. Chapter 4:C:1.

ive breakthrough: one nation, under the god of the People, indivisible, with a civil war to prove it.

The lack of intermediate governments, social and civil, between the individual and the national civil government, was the heart of Rousseau's concept of the General Will, meaning the heart of Rousseau's totalitarianism, as Robert Nisbet and many other scholars have argued.<sup>39</sup> Colonial political and social traditions were Christian, decentralized, and *institutionally* pluralist, though not ethically and confessionally pluralist. The Constitution would not have been proposed or debated publicly by the existing Congress. The Philadelphia conspirators fully understood this. They were ready to abandon the colonial Christian tradition of decentralized power. Hamilton made it clear that the Constitution, when ratified, would take a major step forward in the direction of Rousseau's General Will ideal of weakening intermediary civil governments. He wrote:

The plan reported by the Convention, by extending the authority of the foederal head to the individual citizens of the several States, will enable the government to employ the ordinary magistracy of each in the execution of its laws. It is easy to perceive that this will tend to destroy, in the common apprehension, all distinction between the sources from which they might proceed; and will give the Foederal Government the same advantage for securing a due obedience to its authority, which is enjoyed by the government of each State; in addition to the influence on public opinion, which will result from the important consideration of its having power to call to its assistance and support the resources of the whole Union. It merits particular attention in this place, that the laws of the confederacy, as to the *enumerated* and *legitimate* objects of its jurisdiction, will become the SUPREME LAW of the land; to the observance of which, all officers legislative, executive and judicial in each State, will be bound by the sanctity of an oath. Thus the Legislatures, Courts and Magistrates of the respective members will be incorporated into the operations of the national government, *as far as its just and constitutional authority extends*; and will be rendered auxiliary to the enforcement of its laws.<sup>40</sup>

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39. Robert A. Nisbet, *Tradition and Revolt: Historical and Sociological Essays* (New York: Random House, 1968), ch. 1: "Rousseau and the Political Community." Cf. J. L. Talmon, *The Origins of Totalitarian Democracy* (New York: Praeger, 1960), pp. 40–49.

40. Hamilton, Federalist 27, *The Federalist*, pp. 174–75; extract in *Founders' Constitution*, IV, p. 641.

Hamilton did not consider the loyalty oath irrelevant. He understood very well the important role it would play judicially and also in public opinion.

Objections to this national loyalty oath were raised at the Convention. James Wilson of Pennsylvania said "A good Govt. did not need them, and a bad one could not or ought not to be supported."<sup>41</sup> His objection was voted down. The delegates to the Convention knew the importance of oaths, public and secret.

## 2. *Religious Tests*

Now we come to the second part of Article VI's provisions on a *religious* loyalty oath. That meant, in the context of the required state oaths, a *Christian* loyalty oath. At this point, the arguments for and against oaths were reversed. There is no need for such an oath, most of the Convention's delegates concluded. Echoing Wilson's comments on the uselessness of a federal oath, Madison later wrote to Edmund Pendleton: "Is not a religious test as far as it is necessary, or would be operate, involved in the oath itself? If the person swearing believes in the supreme Being who is invoked, and in the penal consequences of offending him, either in this or a future world or both, he will be under the same restraint from perjury as if he had previously subscribed to a test requiring this belief. If the person in question be an unbeliever in these points and would notwithstanding take an oath, a previous test could have no effect. He would subscribe to it as he would take the oath, without any principle that could be affected by either."<sup>42</sup> In short, a believer already believes; a liar will subscribe; so why bother with an oath? This argument was used by other defenders of the abolition of a religious test oath.<sup>43</sup>

But the argument misses a key point: What about *honest* Deists and unitarians who would not want to betray their principles by taking a false oath to a trinitarian God? A Christian oath would bar them from serving as covenantal agents of the ultimate sovereign, the God of the Bible. By removing the requirement of the oath, the Conven-

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41. *Records*, II, p. 87; in *Founders' Constitution*, IV, p. 638.

42. *Founders' Constitution*, IV, p. 639. Cf. Mr. Spencer, North Carolina ratifying convention, in Jonathan Elliot (ed.), *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787*, 5 vols. (Philadelphia: Lippincott, [1836] 1907), IV, p. 200.

43. Cf. Mr. Shute in the debate in Massachusetts' ratifying convention: *ibid.*, IV, p. 642; Mr. Iredell of North Carolina: Elliot, *Debates*, IV, p. 193.



tion's delegates were in fact opening up the door to federal office-holding that would otherwise be closed to *honest* non-Christians, a point observed by some of the defenders of the removal of the religious test.<sup>44</sup> It would also open up offices of authority to *men who had taken other binding oaths that were hostile to Christianity—men who had taken these rival oaths in good faith*. That possibility was never openly discussed, but it was a possibility which lay silently in the background of the closed Convention in Philadelphia. By closing the literal doors in Philadelphia, the delegates were opening the judicial door to a new group of officials. They were therefore closing the judicial door to the original authorizing Sovereign Agent under whom almost all officials had been serving from the very beginning of the country. The proposal was submitted by Charles Pinckney of South Carolina. After debate, it was accepted overwhelmingly. North Carolina opposed it; Maryland was divided.<sup>45</sup>

Those delegates at the ratifying conventions who were hostile to Article VI, Clause 3 suspected what might happen: “. . . if there be no religious test required, pagans, deists, and Mahometans might obtain offices among us, and that the senators and representatives might all be pagans.”<sup>46</sup> A prophetic voice, indeed! It was not heeded. But this objection was more distinctively political and practical. The more important issue was covenantal, but the opponents of the Constitution did not fully understand this. (Surely today's textbook commentators do not.) The officers of the U.S. government are not to be subjected to a religious test for holding office.

We must understand what this means. It means that *civil officers are not under an oath to the God of the Bible*. It means that in the exercise of their various offices, civil magistrates are bound by an oath to a different god. That god is the American People, considered as an autonomous sovereign who possesses original *and final* earthly jurisdiction. This view of the sovereign People is radically different from anything that had been formally stated or publicly assumed by previous Christian political philosophers. The People were no longer acting as God's delegated judicial agents but as their own agent. This same view of political sovereignty undergirded Rousseau's political theory, and also the various constitutions of the French Revolution. The rati-

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44. Tench Coxe, Oliver Ellsworth, Mr. Shute, Edmund Randolph: *Founders' Constitution*, IV, pp. 639, 643, 644.

45. Farrand, *Records*, II, pp. 461, 468.

46. Henry Abbot, North Carolina ratifying convention: Elliot's *Debates*, IV, p. 192.

fication of the U.S. Constitution was therefore a formal covenantal step toward the left-wing Enlightenment and away from the halfway covenant political philosophy of Christianity combined with right-wing Scottish Enlightenment rationalism.<sup>47</sup> It would take the victory of Darwinism after 1859 and the victory of the North in the Civil War in 1865 and the aftermath (Reconstruction) to make clear the definitive nature of this judicial step toward Rousseau's unholy commonwealth.<sup>48</sup>

The Fourteenth Amendment (1868) brought the federal government's religious toleration to the states, a procedure originally denied to the federal government by the First Amendment, which prohibited Congress from making laws regarding religion. In *Cantwell v. Connecticut* (1940), the Supreme Court declared: "The First Amendment declares that Congress shall make no laws respecting the establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws."<sup>49</sup> Finally, in 1961, the last state religious test oath was declared unconstitutional: in Maryland. Justice Black cited the conclusion of *Cantwell v. Connecticut* to overturn this last vestige of the pre-Constitutional oath-bound civil covenants: the lowly office of notary public.<sup>50</sup>

The heart, mind, and especially soul of the conflict within American political philosophy between state's rights and federal sovereignty is seen here, in Article VI of the U.S. Constitution. Yet this clause regarding civil oaths is virtually never discussed in detail—or even mentioned, in some instances—by modern history textbooks, Constitutional law textbooks, or even the "Christian Constitutional" monographs and collections of old primary source documents. The neutral

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47. This is not to say that Americans steadily abandoned Scottish common sense rationalism after 1787. They did not. It remained the dominant intellectual tradition in the U.S. until Darwinism broke its hold on men's thinking. But the major function of this school of thought was to preserve Newtonian rationalism and eighteenth-century natural law philosophy in the thinking of evangelicals. See George M. Marsden, *The Evangelical Mind and the New School Presbyterian Experience: A Case Study of Thought and Theology in Nineteenth-Century America* (New Haven, Connecticut: Yale University Press, 1970), pp. 231–33.

48. I am not arguing that this was a self-conscious step toward Rousseau. Rousseau's influence in colonial America was minimal, limited mainly to his educational theories in *Emile*. See Paul M. Spyrin, *Rousseau in America, 1760–1809* (University, Alabama: University of Alabama Press, 1969).

49. *Cantwell v. Connecticut*, in John J. McGrath (ed.), *Church and State in American Law: Cases and Materials* (Milwaukee, Wisconsin: Bruce, 1962), p. 281.

50. In the case of *Torcaso v. Watkins*, *ibid.*, p. 353.

common-ground reasoning of the natural law tradition receives its mark of sovereignty here. Here is the soul of pre-Darwinian humanism. (Darwinism destroyed it, and has left historicism, existentialism, relativism, and remnants of Marxism as its evolving spiritual successors.) Here is the juridical foundation of the American Civil Liberties Union's protests against all traces of religion in public places. Here is the baptismal font of the U.S. Department of Education's atheism. All that was needed was a centralization of judicial control through the federal (national) courts, and the extension of mandatory federal judicial atheism to the states. Both were provided by the Fourteenth Amendment.

## I. The Fourteenth Amendment: Citizenship Without God

The culmination came with the Civil War (1861–65) and the unconstitutionally ratified Fourteenth Amendment (1868).<sup>51</sup> It is with the Fourteenth Amendment, as Harvard legal historian Raoul Berger has so conclusively demonstrated, that we find the origins of what he calls government by judiciary.<sup>52</sup> I agree with Rushdoony's assessment of its impact: "The Canaan and refuge of pilgrims is becoming the house of bondage."<sup>53</sup>

We need to consider the Fourteenth Amendment in relation to citizenship. The first sentence of Section 1 reads:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside.

This amendment was added in 1868 in the aftermath of the Civil War. Why was it considered necessary? Because the Constitution had not previously defined "citizen." Citizenship was left to the individual states to define. Freed slaves needed judicial protection. Thus, they were made citizens under the protection of the law. They had not been protected as citizens prior to the war. This was one reason why the

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51. Walter J. Suthon, Jr., "The Dubious Origin of the Fourteenth Amendment," *Tulane Law Review*, XXVIII (1953), pp. 22–44.

52. Raoul Berger, *Government by Judiciary: The Transformation of the Fourteenth Amendment* (Cambridge, Massachusetts: Harvard University Press, 1977).

53. R. J. Rushdoony, *This Independent Republic: Studies in the Nature and Meaning of American History* (Vallecito, California: Ross House .[1964] 2001), p. 44. (<http://bit.ly/rjrtir>)

Constitution had been silent regarding citizenship: to avoid a walk-out by Southern delegates to the Convention.

### 1. *Taking the Oath of Citizenship*

American citizens now take this inherently atheistic civil oath. They take it at birth. It is taken *implicitly* and *representatively*. They are citizens by birth. This concept—citizenship by physical birth and geography—is crucial in understanding the transformation of the American covenant. It made civil covenant membership dependent on an oath of strictly civil subordination rather than profession of religious faith, i.e., ecclesiastical and civil subordination.

In the Massachusetts Bay Colony in the seventeenth century, an adult male became a citizen by formal church covenant. Without formal church membership, he was merely a town resident, not a citizen. This system began to break down almost from the beginning; becoming a property holder made you eligible to vote in town elections, though not always in colony-wide elections. Steadily, the possession of capital replaced the oath as the basis of political citizenship. Later, the formal development of this principle of civil contract became one of John Locke's intellectual legacies to political thought, if not the major one.<sup>54</sup>

Nevertheless, there was always the oath taken in a civil court. God's name was brought into the proceedings. Locke was aware of the binding nature of an oath, and also its religious foundations. In his *Essay on Toleration* (1685), he specifically exempted the atheist from the civil protection of toleration: "Lastly, those are not all to be tolerated who deny the being of God. Promises, covenants, and oaths, which are the bonds of human society, can have no hold upon an atheist. The taking away of God, though but even in thought, dissolves all; besides

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54. I do not wish to overemphasize Locke's direct impact on American political thinking. An American edition of his *Treatise on Civil Government* did not appear until 1773. His influence was indirect through his popularizers, just as Newton's influence was. Of far greater direct influence were the writings of the 1720s by John Trenchard and Thomas Gordon in *Cato's Letters* and *The Independent Whig*. See Bailyn, *Ideological Origins*, pp. 25–36, 43–45. Nevertheless, Locke's indirect influence, like Newton's, should not be underestimated. See Thomas L. Pangle, *The Spirit of Modern Republicanism: The Moral Vision of the American Founders and the Philosophy of Locke* (Chicago: University of Chicago Press, 1989). Before the Revolution, colonists knew Locke more for his *Essay Concerning Human Understanding* than for the *Treatise*: Henry F. May, *The Enlightenment in America* (New York: Oxford University Press, 1976), p. 38.

also, those that by their atheism undermine and destroy all religion, can have no pretence of religion whereupon to challenge the privilege of toleration.”<sup>55</sup> The oath to God reminded a citizen of the Sovereign who would impose sanctions on courtroom liars, so men were required to swear with one hand on a Bible and the other one raised toward heaven. Presidents still do this when they have the Constitutional oath administered to them. This rite is not required by law. It is an empty formal rite in the eyes of most people, yet rites are never entirely empty. There is always some mysterious element in a rite, some degree of foreboding if the proper traditional formulas are not observed. The outward shell of the original colonial civil covenants still perseveres, just as baptism and the Lord’s Supper do in apostate churches.

## 2. *The Triumph of the Federal Judiciary*

By default, the federal judiciary has triumphed, for it alone speaks the “true word” of the silent, amorphous sovereign. Professor Berger begins his book on government by judiciary with these words: “The Fourteenth Amendment is the case study par excellence of what Justice Harlan described as the Supreme Court’s ‘exercise of the amending power,’ its continuing revision of the Constitution under the guise of interpretation.”<sup>56</sup> The Supreme Court or final court of appeal in any covenantal institution provides the day-to-day judicial continuity; only rarely are there fundamental, discontinuous revisions made in this process of judicial continuity. There is no escape from this aspect of temporal continuity. The primary question of covenantal sanctions is this one: Who authorizes the application of the covenant’s sanctions? The answer: *the agency that administers the covenant oath*. Therefore, we need to identify the character of the civil oath. The Constitution is clear: “. . . no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.”

The second sentence of Section 1 of the Fourteenth Amendment has been the wedge by which federal judicial sovereignty has split apart the original Constitutional federalism, although this was not fully apparent until the rise of Progressivism after 1880.

No State shall make or enforce any law which shall abridge the priv-

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55. Locke, *Treatise of Civil Government and A Letter Concerning Toleration*, ed. Charles L. Sherman (New York: Appleton-Century Co., 1937), pp. 212–13.

56. Berger, *Government by Judiciary*, p. 1.

ileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

Ever since the early 1940s, the Supreme Court has been unwilling to protect private property from all kinds of confiscation and control by local, state, and federal governments.<sup>57</sup> Post-Darwinian liberalism has been victorious over Lockean liberalism. In 1973, the Supreme Court determined that lives in the womb are not under this protection because of a Court-invented Constitutional guarantee of privacy: woman and physician. State civil sanctions could no longer be brought against this class of murderers who had successfully conspired to deprive another person of life.<sup>58</sup> Post-Darwinian liberalism won again. Human life can now be legally sacrificed on the altar of convenience. The hope of the Framers—to place judicial limits on the worst decisions of the legislature—did not succeed, although this fact took a century and a half to become clear to everyone. If anything, the Supreme Court, insulated from direct public opinion, proved in 1973 that it was the worse offender as an agent of the formally sovereign People.

### 3. *A Political Judiciary*

The procedural limits of the Constitution proved to be no safeguard from the substantive apostasy of the humanists who dominated politics in the twentieth century. The Lockean liberals of 1787 designed a system that was neither substantively nor procedurally immune to the Darwinian liberals of the twentieth century. Whig liberalism won in 1788, and its spiritual heir is still winning today. Constitutional procedure has revealed itself to be as morally “neutral” as hu-

57. Bernard H. Siegan, *Economic Liberties and the Constitution* (Chicago: University of Chicago Press, 1980); Siegan, “The Supreme Court: The Final Arbiter,” in David Boaz and Edward Crane (eds.), *Beyond the Status Quo: Policy Proposals for America* (Washington, D.C.: Cato Institute, 1985). See also the symposium on Siegan’s Constitutional studies published in the *Cato Journal*, IV (Winter 1985). For having taken this hard line, Professor Siegan’s nomination to the United States Court of Appeals by President Reagan was rejected in 1988, by a vote along party lines, 8 to 6, by the Senate Judiciary Committee. Of 340 previous nominations by President Reagan, only one had been successfully blocked by the Judiciary Committee; two others—both conservatives—had also been opposed by the committee, but the final vote went to the whole Senate, where one was defeated, Robert Bork. “Panel Rejects Reagan Court Nominee,” *New York Times* (July 15, 1988).

58. In the United States, the death penalty is exclusively a state sanction, except in the case of treason within the military.

manism's ethics is, i.e., not at all.<sup>59</sup> It sometimes takes longer for procedure to respond to the shifting moral and political winds, although in the case of the Warren Court, procedure shifted more rapidly than politics did. It was not, after all, the U.S. Congress that forced racial integration of the public schools of Topeka, Kansas, and therefore the nation, in 1954.<sup>60</sup>

Darwinian jurist Oliver Wendell Holmes, Jr., who later served on the U.S. Supreme Court, began his 1881 lectures on the common law with this observation: "The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed."<sup>61</sup> This was put less academically and more memorably by the fictional Mr. Dooley (humorist Finley Peter Dunne) in the early years of the twentieth century: "The Supreme Court follows the election returns."

The ambivalence of eighteenth-century Scottish moral philosophy regarding the judiciary as a field independent from politics now has been answered: it is not independent from politics; it is an arm of politics. Witherspoon had warned Madison about this, but Madison and his colleagues did not take the brief warning seriously enough.<sup>62</sup>

This failure of procedural structure to match the speed of social change has become a familiar theme of liberalism. Clinton Rossiter, known (incorrectly) as a political conservative, dismisses the Articles of Confederation as an heir of both Madison and Holmes:

Although handicapped in many ways in the battles of rhetoric and political maneuver with the fearful republicans, the nationalists had one advantage that, in the long run and therefore in the end, would prove decisive: they knew, as did many of their opponents, that the prescriptive course of nation-building in America had run beyond the Articles of Confederation to serve national needs. By 1787 . . . the constitutional lag had become too exaggerated for men like Wash-

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59. See Appendix A: "Rushdoony on the Constitution."

60. *Brown v. Board of Education of Topeka, Kansas* (1954).

61. Oliver Wendell Holmes, Jr., *The Common Law* (Boston: Little, Brown, [1881], 1923), p. 1. My aging copy (undated) was listed as the 47th printing.

62. Witherspoon wrote: "Moral philosophy is divided into two great branches, Ethics and Politics, to this some add Jurisprudence, though this may be considered as a part of politics." John Witherspoon, *An Annotated Edition of Lectures on Moral Philosophy*, ed. Jack Scott (Newark: University of Delaware Press, 1982), Lecture 1, p. 65.

ington and Madison to bear patiently.<sup>63</sup>

## J. Locke's Legacy: Life, Liberty, and Property

Locke's contractual formula—life, liberty, and property—echoes down through the centuries in the Fourteenth Amendment. Actually, Locke never wrote this famous phrase, although the three categories are found in his *Second Treatise on Government* (1690). Edmund Burke did use the phrase, in *Reflections on the Revolution in France* (1790). But Locke gets credit for it. Jefferson's insertion into the Declaration of Independence the phrase of "life, liberty, and the pursuit of happiness" was an echo of Locke's categories, though deliberately distorted by Jefferson.

John Locke, the defender of universal natural rights through universal natural law, substituted the concept of the civil contract or civil compact for the biblical notion of an oath-bound civil covenant. So did Jean Jacques Rousseau. The rival political philosophies of the two wings of the eighteenth-century Enlightenment, Scottish *a posteriori* (empirical) rationalism vs. French *a priori* (deductive) rationalism, developed out of these two rival conceptions of the civil contract. Locke's compact offered three stated goals that provided legitimacy to any civil contract: life (i.e., self-preservation), liberty, and property. Rousseau's theory had none. The General Will supposedly speaks through the state, and no one can stay its sovereign hand. The French Revolutionaries, especially the Jacobins, picked up the slogan of French Grand Orient Masonry, "Liberty, Equality, Fraternity,"<sup>64</sup> and fused it with Rousseau's General Will. Rousseau's political theology was totalitarian; so was the French Revolution.<sup>65</sup>

### 1. *The Two Revolutions*

One important difference that distinguishes the ideological defense of the American Revolution from that of the French Revolution can be seen in these rival Enlightenment concepts of civil contract. Locke's version of the theory had something specific in history that could identify a valid civil compact: its defense of private property. He made

63. Clinton Rossiter, *1787: The Grand Convention* (New York: Norton, [1966] 1987), p. 38.

64. Albert G. Mackey (ed.), *An Encyclopaedia of Freemasonry and Its Kindred Sciences*, 2 vols. (New York: Masonic History Co., [1873] 1925), I, p. 445.

65. A. D. Lindsey, *The Modern Democratic State* (New York: Oxford University Press, 1943), pp. 126–36. See also Talmon, *Origins of Totalitarian Democracy*.



this the touchstone of his political theory: “The great and *chief end*, therefore, of Mens uniting into Commonwealths, and putting themselves under Government, is the *Preservation of their Property*.”<sup>66</sup> The French view of the social contract had no link between the transcendent sovereign will and history, except the voice of the political sovereign.

Jefferson hesitated to use Locke’s *property* and substituted *pursuit of happiness*. It is not clear why he did this. He had personal faith in private property, including the right of owning slaves; he never freed his. His economic thinking seems to have been shaped by Hume’s free market thinking and, later, by Adam Smith’s *Wealth of Nations* (1776). But when he sought a substitute for the biblical concept of transcendent legitimacy, he turned away from history and adopted undefined, timeless categories: life, liberty, and the pursuit of happiness. Perhaps he was merely writing to please the *philosophes* and intellectuals in France, knowing well their preference for grand slogans devoid of historical content.<sup>67</sup> Or perhaps the reason may have been merely stylistic.<sup>68</sup>

There was also another factor, one recognized by British political philosopher A. D. Lindsey: “The American limitations on government were largely of Puritan origin and partly designed to secure freedom of the churches. But in France there was only one church, regarded in the minds of the upholders of the Revolution as an enemy of the state and therefore in their mind an institution to be attacked, not to be secured in its liberties.”<sup>69</sup> In short, it was the *ecclesiastical pluralism of competing trinitarian churches* that made possible the Americans’ confidence in the possibility of limited civil government. This acceptance of ecclesiastical pluralism *within the judicial framework of confessional trinitarianism* then led to the public’s naive acceptance of a radically different doctrine: *the religious pluralism of a nation’s moral and judicial foundations*. This same confusion of concepts—judicial blindness—is the foundation of modern Christian political pluralism.<sup>70</sup> It was Roger

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66. Locke, *Second Treatise of Government* (1690), paragraph 124. Emphasis in original. I am using Peter Laslett’s edition (New York: Mentor, 1965), p. 395.

67. The appeal to French sensibilities was suggested by Carl Becker, *The Declaration of Independence: A Study in the History of Political Ideas* (New York: Vintage, [1922] 1942), p. 129.

68. This is the opinion of Adrienne Koch, *Jefferson and Madison: The Great Collaboration* (New York: Oxford University Press, [1950] 1964), pp. 78–80.

69. Lindsey, *Democratic State*, p. 128.

70. Gordon Spykman labeled these views as structural pluralism—plural institu-

Williams' concept.

This distinction was not clearly understood by most Christian voters in 1788 when they voted for or against ratification. Most of them simply assumed that trinitarianism was socially normative in America, and also that it would probably continue to be normative. The distinction between *confessional* pluralism and *ecclesiastical* pluralism under a common trinitarian confession *was* understood, and well understood, by the intellectual leaders of the Constitutional Convention, as we shall see. Thus, church historian Sidney Mead has a valid point: “. . . the struggles for religious freedom during the last quarter of the eighteenth century provided the kind of practical issue on which rationalists and sectarian-pietists could and did unite, in spite of underlying theological differences, in opposition to ‘right wing’ traditionalists.”<sup>71</sup> This was the political triumph of Deism and unitarianism over Christianity. In the second half of the twentieth century, this became the political triumph of atheism over all forms of rival public religious expression. Deism, unitarianism, and atheism achieved this political victory without ever having been more than tiny minority faiths in the United States.<sup>72</sup> They scored their initial victories in the eighteenth century because the vast majority of Christians defaulted. Christians imported an alien faith into church, society, and state throughout the eighteenth century. They did this in the name of Christianity. Newton was the intellectual wedge. A century later, Darwin completed the conquest.

## 2. *The Appeal to God*

John Witherspoon adopted a compact theory of the state, following Locke. He accepted as historically valid the legal fiction of the ex-

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tions under God, or “sphere sovereignty”—and confessional pluralism. He and his peers argued that the second necessarily requires the first. Spykman, “The Principled Pluralist Position,” in Gary Scott Smith (ed.), *God and Politics: Four Views on the Reformation of Civil Government* (Phillipsburg, New Jersey: Presbyterian & Reformed, 1989), p. 79. See also the introduction to this essay by Smith: p. 75.

71. Sidney E. Mead, “American Protestantism” (1953), in John M. Mulder and John F. Wilson (eds.), *Religion in American History* (Englewood Cliffs, New Jersey: Prentice-Hall, 1978), pp. 165–66. Cf. Mead, *The Lively Experiment: The Shaping of Christianity in America* (New York: Harper & Row, 1963), ch. 3.

72. On the relatively small numbers of Deists in America in the early days of the Republic, see G. Adolph Koch, *Religion of the American Enlightenment* (New York: Crowell, [1933] 1968). On Unitarianism’s influence, see Rushdoony, *The Nature of the American System* (Vallecito, California: Ross House, [1965] 2001), ch. 6: “The Religion of Humanity.” (<http://bit.ly/rjrnas>)

istence of an original state of nature.<sup>73</sup> Russell Kirk may be correct that Hamilton and Madison, in devising their political theories, were disciples of Scottish skeptic David Hume rather than Locke.<sup>74</sup> Douglass Adair agrees.<sup>75</sup> If this was the case, then this fact has important implications for political theory. To invoke Hume is also to call into question every appeal to natural rights. Hume dismissed Locke's natural rights theory and natural law theory as emphatically as he dismissed the concept of physical cause and effect. Madison's political theory has also been attributed to his reading of the ancient classics, especially Thucydides.<sup>76</sup> This only extends the problem: On what judicial basis was the Constitution to be made legitimate? The Framers appealed to the will of the People. But could this be considered both necessary and sufficient in late-eighteenth-century American life? Would there not also have to be an appeal to God?

There was no escape. *There had to be an appeal to God.* This was what Hume sensed, and he forthrightly rejected all traces of theism in his political theory. Locke had known better. At the end of his *Second Treatise*, he invoked the name of God. He did so when he raised the question of sanctions. We can see here his attempted fusion between Christianity and natural law theory. It was an attempted fusion that has dominated Christian political theory down to our own era. He raised the question of the right of political rebellion, the dissolution of the civil compact.

Here, it is like, the common question will be made: Who is to judge whether the prince or legislative act contrary to their trust? This, perhaps, ill-affected and factious men may spread among the people, when the prince only makes use of his due prerogative. To this I reply: the people shall be judge. . . . But further, this question, Who shall be the judge? cannot mean that there is no judge at all; for where there is no judicature on earth to decide controversies among men, God in heaven is Judge. He alone, it is true, is Judge of the right. But every man is judge for himself, as in all other cases, so in this,

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73. Witherspoon, *Lectures on Moral Philosophy*, Lecture 10: "Politics."

74. Russell Kirk, "Burke, Hume, Blackstone, and the Constitution of the United States," in *The John M. Olin Lectures on the Bicentennial of the U.S. Constitution* (Reston, Virginia: Young America's Foundation, 1987), p. 13.

75. Douglass Adair, "'That Politics May Be Reduced to a Science': David Hume, James Madison, and the Tenth Federalist" (1957); reprinted in *Fame and the Founding Fathers: Essays by Douglass Adair*, ed. Trevor Colbourn (New York: Norton, 1974), pp. 93–106. Reprinted by Liberty Fund, Indianapolis, Indiana, 1998, pp. 132–51.

76. Ralph L. Ketcham, "James Madison and the Nature of Man," *Journal of the History of Ideas*, XIX (Jan. 1958), pp. 62–76.

whether another has put himself into a state of war with him, and whether he should appeal to the Supreme Judge, as Jephthah did.<sup>77</sup>

So, there was some degree of transcendence in Locke's system. But he invoked the name of an undefined God rather than an earthly hierarchy in formal covenant with a specific God. He placed man as a sovereign agent acting directly under God. There is no hierarchical chain of command, no hierarchy of temporal appeal, no doctrine of *defined representation*, in Locke's concept—a convenient theoretical backdrop—of a theocratic covenant. How is God to enforce His transcendent covenant in the midst of history? Directly or mediatorially through specific judicial institutions? That was the question Locke needed to answer. He did not even attempt to do so.

Almost a century later, Rousseau's concept of political legitimacy was strictly immanent. In his system, there is no transcendent Sovereign who enforces the terms of His covenants in history. Rousseau's sovereign is immanent: humanity. The political hierarchy is strictly political. All other loyalties are to be excluded, which is the heart of his totalitarianism.<sup>78</sup>

The Constitution follows Rousseau: civil laws as the product of exclusively human deliberation. The sanctions are exclusively historical, so the oath acknowledges only the authority of the document and, by implication, the amorphous sovereign People. Finally, succession is a matter of formal alterations of the civil contract. *Everything civil is self-consciously "immanentized," i.e., the transcendent has been entirely removed.*

Then came Darwinism. The transcendent was erased from the concept of scientific cause and effect. God the Creator, Sustainer, and Judge was shoved unceremoniously out of the cosmos. The Darwinian worldview rapidly swept the field of law as surely as it swept every other academic field. This took less than a generation. Process philosophy fused with democratic theory to produce a concept of law that is completely divorced from the transcendent. The judicial result can be found in Oliver Wendell Holmes' *The Common Law* (1881), a defense of unrestricted judicial sovereignty, but all in the name of the evolving preferences of the judges and the electorate.

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77. *Second Treatise*, paragraphs 240, 241. Here I am using Sherman's edition.

78. Nisbet, "Rousseau and the Political Community," *op. cit.*; see also Nisbet, *The Quest for Community* (New York: Oxford University Press, 1952), ch. 5.

## K. Evolutionism: From Witherspoon to Holmes

The element of evolutionism was inherent in Scottish Enlightenment theory. The empiricism of Scottish common sense realism was inherently evolutionary. There is a connection between the judicial theory of Scottish empiricism and post-Darwinian theories of justice. Holmes announced: “The life of the law has not been logic: it has been experience.” Over a century earlier, Witherspoon had taught Madison and his other students that philosophers could not agree on the answer to the question: “What distinguishes man from the animals?” The philosophers, Witherspoon said, had wanted to find one incommunicable characteristic in man, but they could not find one: reason, memory, laughter, religion, and a sense of ridicule.<sup>79</sup> Witherspoon was not sure what the difference between man and beast is. He appealed to “the beauty of his form, which the poet takes note of,”<sup>80</sup> an argument that no longer carries any weight in a world of relativism, especially aesthetic relativism. He listed “the knowledge of God and a future state,”<sup>81</sup> another dead argument in the eyes of the secular humanist. This line of reasoning was philosophically convenient in the eighteenth century. It is no longer even remotely convenient.

The Framers also could have appealed to this eschatological aspect of church teaching in their quest for public support of the national government, but Article VI, Clause 3 removed the idea as a covenantally serious factor. The civil oath of the nation was severed from any conception of God’s sanctions in eternity. In fact, Witherspoon could not, given his empiricism, locate a fixed, reliably incommunicable attribute in man that is acknowledged by autonomous man’s philosophy. This was the unmistakable message of his *Lectures on Moral Philosophy*. He appealed to an undefined virtue,<sup>82</sup> but so did the Deists and unitarians. So had the Renaissance atheists and Renaissance magicians.

Witherspoon, like all other eighteenth-century Protestant moral philosophers, refused to appeal to biblical law as the foundation of conscience. They wanted something else to serve as the authoritative guide to understand God’s will. “The result of the whole is, that we ought to take the role of duty from conscience enlightened by reason, experience, and every way by which we can be supposed to learn the

79. Lecture 1, in *Lectures on Moral Philosophy*, pp. 66–67.

80. *Ibid.*, p. 67.

81. *Idem.*

82. Lecture 4.

will of our Maker, and by intention in creating us such as we are. And we ought to believe that it is as deeply founded as the nature of God himself, being a transcript of his moral excellence, and that it is productive of the greatest good.”<sup>83</sup> But without the biblical doctrine of creation and the doctrine of man as the image of God, there is no incommunicable attribute in man to separate him from the animals. When Darwin destroyed both the historic and biological barriers between man and animal, the restrained evolutionism of Locke and his successors in Scotland was transformed into the modern version. Only biblical covenantalism can successfully negate evolutionism and its ethics of temporary power. It was biblical covenantalism that the Framers self-consciously abandoned.

## L. An Atheistic Covenant

There is no escape from this conclusion: *the United States Constitution is an atheistic, humanistic covenant*. The law governing the public oath of office reveals this. Unfortunately, this oath is rarely discussed.

### 1. Christian Mythology

Christians who do not analyze social and political institutions in terms of the biblical covenant model are not sufficiently alert to this crucial but neglected section of the Constitution. *The Constitution is not a Christian covenantal document; it is a secular humanist covenantal document*. While there have been many attempts over the years by Christians to evade this conclusion, they have all been unsupported with primary source documents. These attempts have also been obscurely argued. That the word “Lord” appears in Article VII, “the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven,” is not what I would call a persuasive argument for its Christian character.<sup>84</sup> It has taken the Civil War, the Fourteenth Amendment, and Supreme Court decisions, beginning around 1960, to make the Constitution’s humanistic foundation obvious to everyone except a handful of Christians scholars, most of whom were not trained as historians. The only people who have been deceived by these interpretations are evangelical Christians. They, like

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83. Lecture 4, *ibid.*, p. 87.

84. For example, Archie P. Jones’ critical review of *Political Polytheism*, “The Myth of Political Polytheism,” *Journal of Christian Reconstruction*, XIV (Fall, 1996), p. 279.

their teachers, are the victims of two centuries of Whig propaganda and two millennia of natural law theory.

I realize that I am breaking with the fundamental thesis of the Rushdoony-Hall-Slater-Whitehead-Titus interpretation of American Constitutional history. I am also breaking with C. Gregg Singer's thesis of the "Deist Declaration" of Independence, and the idea of the Constitution as somewhat more Christian, somewhat more conservative. Singer was categorically incorrect when he wrote that "The basic philosophies of the two documents were not compatible."<sup>85</sup> Both documents were humanistic. Both were cut from the same covenantal cloth. If anything, the Declaration was more Christian; Congress added two extra references to God.<sup>86</sup> Of course, that god was the undefined god of common civil ceremonies of the era, or perhaps more to the point, common Masonic ceremonies. While Harold O. J. Brown did not pursue the matter, he has put his finger on the problem: "America's symbolism is not really theism at all, even of an Old Testament variety. The Seeing Eye is sometimes found in Christian art, but on the Great Seal of the United States it, like the pyramid, reflects the vague 'Great Architect' deism of American Freemasonry rather than faith in the personal God of Christianity."<sup>87</sup>

That Brown should appeal to the reverse of the Great Seal—the all-seeing eye and the pyramid—is significant, though even Brown is unaware of just how significant. The Congress on July 4 appointed a committee to recommend designs for a seal of the United States. The committee was made up of Thomas Jefferson, John Adams, and Benjamin Franklin.<sup>88</sup> The obverse (front) of the Great Seal is the eagle. The reverse of the Great Seal is the all-seeing eye above a pyramid, a familiar Masonic symbol.

There is an oddity here, one which is seldom mentioned: *there is no reverse side of a corporate seal*. A seal is used to produce an impression. It is either a one-piece seal for impressing wax, or a convex and concave matching pair for impressing a piece of paper. This "reverse seal" was ignored by the government for a century and a half until

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85. Singer, *A Theological Interpretation of American History* (Nutley, New Jersey: Craig Press, 1964), p. 43.

86. David Hawke, *A Transaction of Free Men: The Birth and Course of the Declaration of Independence* (New York: Scribner's, 1964), p. 198.

87. Harold O. J. Brown, "The Christian America Major Response," in *God and Politics*, p. 256.

88. Monroe E. Deutsch, "E Pluribus Unum," *Classical Journal*, XVIII (April 1923), p. 387.

Henry A. Wallace, Franklin Roosevelt's politically radical Secretary of Agriculture and resident occult mystic, persuaded the Secretary of the Treasury to restore it to public view by placing it on the back of the one dollar bill, the most common currency unit. This was done in 1935, and remains with us still.<sup>89</sup> Men need symbolic representations of ultimate sovereignty. America returned symbolically in the twentieth century to two forgotten symbols of the original but short-lived national halfway covenant era, symbols that invoke the god of Freemasonry. The eagle is no longer emotionally sufficient in a judicially secular age. But the lawyers' impersonal Constitutional covenant provides no symbol that appeals to men's longing for cosmic personalism. The all-seeing eye does.

## 2. *Deism and Unitarianism*

The Declaration of Independence is a deistic document. Three of the five-man committee that was responsible for writing it were theological unitarians: Jefferson, Franklin, and John Adams.<sup>90</sup> Three were Masons: Sherman (maybe),<sup>91</sup> Livingston,<sup>92</sup> and Franklin. As David Hawke wrote of Adams: "He verged on deism in religion and found it no easier than Jefferson to admit his waywardness publicly. He respected the findings of natural philosophy and was inclined to extend those findings into the social and political world. He believed that natural law resembled the axioms of mathematics—'Self-evident principles, that every man must assent to as soon as proposed.'"<sup>93</sup>

In their old age, Adams and Jefferson renewed their friendship in a long correspondence that lasted for more than a decade. Their letters

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89. Arthur M. Schlesinger, Jr., *The Coming of the New Deal* (Boston: Houghton Mifflin, 1959), vol. 2 of *The Age of Roosevelt*, pp. 29–34. Wallace was later Roosevelt's Vice President, 1941–45. He was replaced as V.P. by Harry Truman in January of 1945, three months before Roosevelt's death; otherwise, Wallace would have become President.

90. The other two members were Roger Sherman, a Connecticut Calvinist Congregationalist, and Robert Livingston. For brief biographies and an account of the surrounding events, see Merle Sinclair and Annabel Douglas McArthur, *They Signed for Us* (New York: Duell, Sloan and Pearce, 1957).

91. Philip Roth said that Sherman was a Mason. Roth, *Masonry in the Formation of Our Government* (Milwaukee, Wisconsin: by the author, 1927), p. 53. Heaton said there is no proof that he was a Mason, although he may have been. Ronald E. Heaton, *Masonic Membership of the Founding Fathers* (Silver Spring, Maryland: Masonic Service Association, [1965] 1988), pp. 100–1.

92. Roth, *Masonry in the Formation of Our Government*, p. 114.

93. Hawke, *Transaction*, pp. 81–82.



reveal that they were almost totally agreed on religion. They hated Christianity, especially Calvinism.<sup>94</sup> In Jefferson's April 11, 1823, letter to Adams, he announced that if anyone ever worshipped a false God, Calvin did. Calvin's religion, he said, was "Daemonianism," meaning blasphemy.<sup>95</sup> He knew that Adams was already in basic agreement with him in these opinions. After surveying their letters, Cushing Strout concluded: "Whatever their political differences, Jefferson and Adams were virtually at one in their religion." Strout identifies the creed of this religion: unitarianism.<sup>96</sup> Jefferson was systematic in his hatred of trinitarian Christianity. In his old age, he sent a letter to James Smith, which he stressed was confidential, in which he expressed confidence that "the present generation will see Unitarianism become the general religion of the United States."<sup>97</sup> In a letter to Benjamin Watterhouse that same year, he wrote: "I trust that there is not a young man now living in the United States who will not die a Unitarian."<sup>98</sup> The Bible is just another history book, he wrote to Peter Carr: "Read the Bible, then, as you would read Livy or Tacitus."<sup>99</sup> As for Adams, he was buried in a crypt at the United First Parish Church (Unitarian) in Quincy, Massachusetts.

What, then, becomes of widespread belief in the supernatural sanctions preached by organized religion that the Framers hoped would be placed in the service of society as a non-political means of securing social stability and personal generosity to the poor? As Pangle asked: "Can belief in immortality of the soul or in providential interventions in this life be divorced from belief in miracles, and can one easily confine theological disputation once one encourages the belief in miracles? We search in vain for answers in Jefferson's writings, public or private. . . ."<sup>100</sup> The same question must be posed regarding the other Framers' views, and the same silence is ominous. Some of them based their hopes of social stability on a religion they had personally rejected. They drew large drafts on a trinitarian cultural bank account

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94. John Murray Allison, *Adams and Jefferson: The Story of a Friendship* (Norman: University of Oklahoma Press, 1966), pp. 267 (on Adams' rejection of the doctrine of predestination), 269–71, 294–97 (on their theological agreement).

95. *Ibid.*, p. 295.

96. Cushing Strout, *The New Heavens and the New Earth: Political Religion in America* (New York: Harper & Row, 1974), p. 81.

97. Jefferson to Smith, Dec. 8, 1822; cited in Pangle, *Spirit of Modern Republicanism*, p. 83.

98. Jefferson to Watterhouse, June 26, 1822; *idem*.

99. Jefferson to Carr, Oct. 31, 1787; *ibid.*, p. 84.

100. *Ibid.*, p. 85.

into which they made few deposits in their lifetimes.

### 3. *The Declaration of Independence*

The Declaration of Independence announced the creation of a new nation in 1776. The day it was approved, July 4, 1776, the Congress authorized a committee to create a national seal. A seal is an aspect of incorporation, just as baptism is. This is why we know that the Declaration was an incorporating document.

The by-laws of the nation were agreed to in November of 1777, but they were not ratified until 1781: the Articles of Confederation. What very few people are ever told today is that this was not the full name of the Articles. The document was called, "Articles of Confederation and perpetual Union between the States. . . ." It then listed the 13 states by name. The words "perpetual Union" reveal the nature of the Constitutional Convention of 1787 and the call for state ratifying conventions: an initially illegal revocation of the original by-laws of the nation, which was to have been a perpetual union.

This original union was legally dissolved in 1788 by the ratification of the Constitution. A new deity was identified, "We the People." The old deity of the Declaration, the undefined god of nature, was not mentioned in the Constitution. This is why the Framers made no mention of the Declaration; it was this halfway covenant that was self-consciously being replaced. But the Framers knew that the new nation would need *symbolic continuity* to support the *judicial discontinuity*. First, the Articles' official designation of the Confederation as "the United States" was retained in the new by-laws in order to provide the illusion of judicial continuity: "We the People of the United States. . . ." (The same public relations strategy was used in 1945 when the name "United Nations," which had been used to designate the Allied forces during World War II, was appropriated by the international organization known thereafter as the United Nations.) Second, they appropriated the other visible token of national continuity: the Great Seal.

An analogous revolution can be seen in twentieth-century American churches. The apostates who control today's mainline churches have scrapped the creeds of the churches, but they still administer the sacraments. The churches have reduced the procedural signs of the original covenant oath to mere formalities, yet these formalities still convey a sense of legitimacy and continuity. They are the signs of continuity with the past, despite the fact that the church covenant has

been broken, as the revisions of the creeds reveal, denomination by denomination, but especially the Presbyterians, who have been the most creedal church of all, with the most rigorous creed.<sup>101</sup>

Two questions need to be answered. First, if the foundational documents of the American civil covenant are deistic and humanistic, then why did Bible-believing Christians agree to define the Revolutionary War as Jefferson did in the Declaration of Independence? Second, why did Christians ratify the Constitution?

To answer the first question, we need to recognize that the Declaration was never directly ratified by the voters. They ratified it only representatively, through the officials sent to Congress by state revolutionary legislatures. Nobody in the colonial public paid much attention to the Declaration. It was not ratified by anyone outside the Assembly in 1776. It was signed in August.<sup>102</sup> The names of the signers were not released until January of 1777.<sup>103</sup> The Declaration was primarily a foreign policy document aimed at France and Europe, although it was designed to unify those at home.<sup>104</sup> It expressed only commonplace sentiments in America. It did not become a well-known document of the history of the Revolution until decades later. It had not even been a part of Fourth of July ceremonies in the decade of the 1790s.<sup>105</sup> Until the Presidential election of 1796, when John Adams ran against Thomas Jefferson, the public had barely heard of the Declaration. Jefferson's supporters resurrected it as a symbol of their candidate's importance, much to the displeasure of Adams, who was one of the five men on the committee that was responsible for drafting it. The Federalist Party did its best to de-emphasize Jefferson's part in the Declaration's drafting.<sup>106</sup> But Adams could hardly deny that the language and concepts were mostly Jefferson's.<sup>107</sup>

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101. The Presbyterian Church U.S.A. (Northern) revised its creed in 1967.

102. Hawke, *Transaction of Free Men*, p. 209.

103. *Ibid.*, p. 186.

104. *Ibid.*, p. 143.

105. *Ibid.*, p. 212.

106. Philip F. Detweiler, "The Changing Reputation of the Declaration of Independence: The First Fifty Years," *William and Mary Quarterly*, 3rd. ser., XIX (1962), pp. 565–66.

107. For my views on the Declaration, see my essay, "The Declaration of Independence as a Conservative Document," *Journal of Christian Reconstruction*, III (Summer 1976), pp. 94–115. I did not discuss the character of the Declaration as an incorporating document, however, an oversight common to historians and most lawyers. I was informed of this judicial character in 1985 by a retired president of an obscure and defunct conservative law school.

John Witherspoon signed the Declaration and served in the war-time Congress. He therefore served as the new nation's baptizing agent for the American Whig churches. This was the public anointing that was covenantally needed in all Christian nations prior to the ratification of the U.S. Constitution. This was, in short, the *sanctioning* of the new revolutionary constitutional order of 1776. This is why Witherspoon was so important in American history, and why the Whig churches ever since have praised his actions and designated him as *the* ecclesiastical figure in the Revolutionary War era, which he undoubtedly was, but not for the reasons listed today. He was not merely a political representative who happened to be an ordained Presbyterian minister; he was in effect the covenantal representative agent of the Whig-Patriot churches. The British recognized him as such, which is why the military immediately bayoneted the man they believed to be Witherspoon.<sup>108</sup> Witherspoon was crucial to the American Revolution because of his representative office. Protestant churches saw him as "their man in Philadelphia."<sup>109</sup>

We still need to deal with the second question: ratification. I have already mentioned the confusion in the minds of the voters regarding confessional pluralism vs. ecclesiastical pluralism under a trinitarian oath.<sup>110</sup> I consider this question in greater detail in Chapter 4. Before we get to that question, however, we need to consider some neglected facts regarding the actual writing of the Constitution, which I cover in Chapter 3.

## Conclusion

Two features of the U.S. Constitution mark it unmistakably as a humanistic covenant: the Preamble and the religious test oath clause of Article VI. The famous phrase of Jefferson's regarding "a wall of sep-

108. James Hastings Nichols, "John Witherspoon on Church and State," *Journal of Presbyterian History*, XLVII (Sept. 1964), pp. 166–67.

109. Three Roman Catholics, cousins, who had political views similar to Witherspoon's, exercised similar influence by bringing the American Catholic Church into the American civil religion: the Carrolls, who ran Maryland. Charles Carroll was probably the richest man in the colonies, owning 80,000 acres. He signed the Declaration of Independence. He helped manage the finances of the Continental Army. His cousin John was a Jesuit priest. He later became Archbishop of Baltimore. John's brother Daniel, who signed the Articles of Confederation in 1781 and the Constitution, was a Freemason: Masonic Lodge No. 16 of Baltimore. He had joined in 1780. Solange Hertz, *The Star-Spangled Heresy: Americanism* (Santa Monica, California: Veritas, 1992), pp. 31–45.

110. See above, under "Locke's Legacy: Life, Liberty, and Property," p. 131.

aration between church and State” in his 1802 letter to the Danbury Baptists<sup>111</sup> is not in the Constitution in this familiar form, but it is nonetheless in the Constitution judicially. While the Preamble has received considerable attention, Article VI, Clause 3 has been almost universally ignored. Despite the silence of the commentators and historians, there is no single covenantal cause of the suppression of Christianity in America, and therefore in the modern world, that has had greater impact than the test oath clause. It is this clause that established judicially the anti-Christian nature of the Constitutional experiment. While the phrase, “We the People,” is viewed by some Constitutional scholars as having no legal impact, the test oath clause is so sacrosanct that it receives little attention. Its legitimacy, its normality, is assumed by everyone who reads it. This was generally the case in 1788, too. This fact testifies to the impact of natural law philosophy in the history of Christendom. Ideas do have consequences—in this case, disastrous consequences. But few people recognize the cause of the disasters. Like the Israelites in Egypt, Christians would rather serve as slaves in the household of God’s enemies than serve those who profess biblical religion. The politics of American Christian envy begins with Article VI, Clause 3.

I argued at the beginning of this chapter that “the oath has continuity over generations. *So do its stipulations*. Only the sovereign who establishes the oath can change the stipulations or the oath. The ability to change the stipulations or the oath is therefore a mark of ultimate sovereignty.” The Constitution can legally be amended. Doesn’t this indicate that the nation’s sovereign is the electorate rather than God? This is exactly what the amending process indicates under the present Constitution. This is why the Constitution is a broken covenant. It was a break with God’s civil covenants, which had been in force in a dozen states in 1776, which had not been replaced by the halfway covenant of the Articles of Confederation.

The idea that the Constitution is a Christian document is a myth promoted by Whigs, their spiritual heirs, and their original political victims, the Christians. The Whigs’ influence faded with the triumph of Darwinism, which rendered the Newtonian worldview intellectually obsolete with respect to the impersonal origin and purposeless evolution of the cosmos. In a world devoid of both cosmic purpose and a God who brings judgment, there are neither natural rights nor natur-

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111. *Thomas Jefferson: Writings* (New York: Library of America, 1984), p. 510.

allows of society. Everything is evolving. Only survival matters.

Today, the related concepts of natural rights and a natural law order that upholds natural rights are promoted mainly by Christians, who have not yet made their peace with Darwinism's impersonal universe, although most of them have signed a temporary cease-fire. The Whig worldview was never compatible with Christian orthodoxy, but at least its political success did, for a time, restrain the expansion of the state. But with the defeat of Whiggery by Darwinism, American Christians have been left politically high and dry. They still cling to Whiggery and Whiggery's once successful defense of the Constitution. This does them little good. Rammed by the *Darwin*, The good ship *Whig* has a gaping hole in its hull. Like the *Titanic*, its demise is sure. It is time for Christians to abandon ship.



At some point, [George] Washington surely learned—what he might have suspected anyway—that Madison planned to arrive in Philadelphia with a plan that moved the adoption of a new government to be adopted by state conventions, not the legislatures. Once that motion was taken up, every delegate would be at odds with his instructions to amend within the guidelines of the Articles. And if that step were made known to the public, the delegates would be able to take no others; the debate would be less among themselves than with their foes in public, at home in their state legislatures, or in the federal Congress. All the procedural fights that did follow on the eventual publication of the draft would have been conducted simultaneously with the debates on further changes to be made. So the pledge of secrecy was made, and enforced by Washington; and the embarrassing record of the convention's procedures was entrusted, at the final session, to Washington, who took it to Mount Vernon, where few would dare to challenge him for its surrender. (As has often been noted, if that record had come to light at the time of the ratification debates, the Constitution would never have passed. Madison's original plan, with a stronger central government able to veto state laws, and a stronger veto on congressional legislation, would have confirmed the worst fears of the antifederalists.)

Garry Wills (1984)<sup>1</sup>

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1. Garry Wills, *Cincinnatus: George Washington and the Enlightenment* (Garden City, New York: Doubleday, 1984), pp. 156–57.



### 3

## THE STRATEGY OF DECEPTION

*Before I arrived, a number of rules had been adopted to regulate the proceedings of the Convention, by one of which, seven states might proceed to business, and consequently four states, the majority of that number, might eventually have agreed upon a system which was to affect the whole Union. By another, the doors were to be shut, and the whole proceedings were to be kept secret; and so far did this rule extend, that we were thereby prevented from corresponding with gentlemen in the different states upon the subjects under our discussion—a circumstance, sir, which I confess I greatly regretted. I had no idea that all the wisdom, integrity, and virtue of this state [Maryland], or of the others, were centred in the Convention.*

Luther Martin (1788)<sup>1</sup>

### Introduction

The U.S. Constitution is a covenantal document that was drawn up by delegates to an historic Convention. This Convention had been authorized by Congress, operating under the Articles of Confederation, in February of 1787, “for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress and the several legislatures such alterations and provisions therein as shall when agreed to in Congress, and confirmed by the states, render the federal Constitution adequate to the exigencies of government and the preservation of the Union.”<sup>2</sup> It was on this explicit legal basis alone that three of the state legislatures sent delegates to Philadelphia: Massachusetts,

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1. Letter from Luther Martin, Attorney-General of Maryland, to Thomas C. Deye, Speaker of the House of Delegates of Maryland (Jan. 27, 1788); in Jonathan Elliot (ed.), *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787*, 5 vols. (Philadelphia: Lippincott, [1836] 1907), I, p. 345.

2. “Report of Proceedings” (Feb. 21, 1787), *Ibid.*, I, p. 120.

Connecticut, and New York.<sup>3</sup> Madison cites these provisions in *Federalist* 40, claiming that the Convention honored the first provision—suggesting alterations truly necessary to create a national government—while it legitimately violated the second: bypassing the legislatures. Clinton Rossiter called this the “short-range bet” of the Framers: that they could get away with a four-step transgression of the rules under which the Convention had been authorized.<sup>4</sup> This is why men such as Rufus King and Sam Adams believed that the Convention had been unconstitutional and dangerous.<sup>5</sup>

Virginia delegate George Mason had written a letter in late May stating that the “most prevalent idea I think at present is a total change in the federal system and instituting a great national council.”<sup>6</sup> From the opening of the Convention, no consideration was given to a mere revising of the Articles of Confederation. Governor Edmund Randolph of Virginia opened the main business of the Convention on May 29 by giving a speech on why a totally new government ought to be created, and he then submitted the fifteen-point “Virginia Plan” or large-states’ plan to restructure the national government.<sup>7</sup> According to New York’s Chief Justice Yates, who became an opponent of the Constitution, and who made notes for his personal use (but not for publication): “He candidly confessed that they were not intended for a federal government—he meant a strong, *consolidated* union, in which the idea of states should be nearly annihilated.”<sup>8</sup>

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3. The wording of Congress—“for the sole and express purpose of revising the Articles of Confederation”—was adopted by the formal authorization of the delegates from Massachusetts, Connecticut, and New York. *Ibid.*, I, pp. 126–27. See also *Documents Illustrative of the Formation of the Union of the American States*, ed. Charles C. Tansill (Washington, D.C.: Government Printing Office, 1927), pp. 56–59.

4. The steps were the decisions of the delegates: (1) to become Framers of a new government; (2) to go beyond their instructions; (3) to designate special conventions to ratify the new document; and (4) to determine that the new government would come into existence when only nine of the state conventions ratified it. Clinton Rossiter, *1787: The Grand Convention* (New York: Norton, [1966] 1987), p. 262.

5. Steven R. Boyd, *The Politics of Opposition: Antifederalists and the Acceptance of the Constitution* (Milwood, New York: Kraus-Thomson Organization, 1979), p. 4.

6. Mason to Arthur Lee, May 21, 1787: *The Papers of George Mason*, ed. Robert Rutland, 3 vols. (Chapel Hill: University of North Carolina Press, 1970), III, p. 882; cited in *ibid.*, p. 6.

7. Elliot, *Debates*, I, pp. 143–45. The plan had been written by Madison. Irving Brandt, *The Bill of Rights: Its Origin and Meaning* (Indianapolis, Indiana: Bobbs-Merrill, 1965), p. 16.

8. *Ibid.*, I, p. 391. Reprinted also in *Documents Illustrative of the Formation of the Union*, p. 747.

## A. A Handful of Disgruntled Men

The Articles were completely scrapped by the delegates. There is little doubt that this had been the original intention of the small group of men who first promoted the idea of the Convention, beginning with the meeting held in the spring of 1785 at Washington's home at Mount Vernon. These men, in the words of Forrest McDonald, had been "chagrined by the impotence of Congress, the recalcitrance of state particularists and republican ideologues, and the seeming indifference of the population at large. . . ." This phrase, "the seeming indifference of the population at large," is highly significant. It testifies to a lack of concern and the absence of any sense of national crisis on the part of the public in the year of the great Convention. The sense of crisis was felt mainly by the nationalists at the Convention, the sense of crisis that they might "miss the moment," or in contemporary terms, "miss the window of opportunity."

Americans think of the Philadelphia Convention as the place where all the giants of the Revolutionary War era met to settle the fate of the republican experiment. Some giants did show up; not all of them. In retrospect, historians have usually defined "giants" as those who did show up and did "stay with the program," meaning Madison's *coup*. (The victors write the textbooks.) McDonald's description of the opening day of the Convention is far closer to the truth: *some of the best men stayed away*.

The list of distinguished Americans certain not to come was large. Only one of the great diplomats of the Revolution, Franklin, would be there; John Jay of New York and Henry Laurens of South Carolina had not been chosen, and Thomas Jefferson and John Adams were in Europe as ambassadors. Most of the great Republicans would likewise be missing. Thomas Paine ("Where liberty is not, Sir, there is my country") was also in Europe, hoping to spread the gospel of republican revolution. Neither Sam Adams nor John Hancock of Massachusetts nor Richard Henry Lee and Patrick Henry of Virginia chose to come (Henry did not because, he said, "I smelt a rat"; the others offered no excuses).<sup>10</sup>

Henry was a dedicated, Bible-believing Christian.<sup>11</sup> Sam Adams

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9. Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence, Kansas: University Press of Kansas, 1985), p. 172.

10. Forrest McDonald, *E Pluribus Unum: The Formation of the American Republic, 1776–1790* (Indianapolis, Indiana: Liberty Press, [1965] 1979), pp. 259–60.

11. On Henry's Christian faith, see John Eidsmoe, *Christianity and the Constitu-*

was either a Calvinist or influenced by Calvinism.<sup>12</sup> (Hancock was a Freemason; Adams was not; Henry was not; and Richard Henry Lee also seems not to have been one.)<sup>13</sup> Henry was the primary opponent in the debate over ratification. For this, he has been relegated into the “outer darkness” by the historians. I agree entirely with M. E. Bradford’s amusing assessment of the modern historical guild’s treatment of Henry: “Our scholars, most of them rationalists and neo-Federalists, had a vested interest in producing Henry’s present reputation: that he was a simple-minded country politician turned demagogue, a Populist trimmer whose talents happened to serve his more far-sighted contemporaries when the Revolutionary crisis came. That Madison was the fellow to read, and Jefferson before him—or certain selected Boston radicals, as reprinted under the auspices of the Harvard University Press.”<sup>14</sup>

A handful of men had decided to take the new nation down a different path. It was not enough to amend the Articles by taking such steps as repealing all internal tariffs and establishing gold or silver coins as legal tender for a national currency.<sup>15</sup> They wanted a completely new system of national government. This would have to be achieved through a *coup*. Congress was unwilling and probably unable to undertake such a radical revision of the Articles in 1787. Yet the Articles of Confederation, as the legal by-laws of the national government, specified that all changes would have to be approved by Congress and then by all of the state legislatures: “And the Articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a congress of the united states, and be afterwards confirmed by the legislatures of every state” (Article XIII). Congress and the state legislatures would

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*tion: The Faith of the Founding Fathers* (Grand Rapids, Michigan: Baker Book House, 1987), pp. 313–15.

12. On Adams’ Calvinism, see William Appleman Williams, “Samuel Adams: Calvinist, Mercantilist, Revolutionary,” *Studies on the Left*, I (1960), pp. 47–57.

13. Ronald E. Heaton, *Masonic Membership of the Founding Fathers* (Silver Spring, Maryland: Masonic Service Association, [1965] 1988), pp. 25, 110, 88, 92.

14. M. E. Bradford, *A Better Guide Than Reason: Studies in the American Revolution* (LaSalle, Illinois: Sherwood Sugden & Co., 1979), p. 107.

15. The Constitution did make gold and silver coins legal tender for the states, but said nothing explicit about any such restriction on the national government. See Gerald T. Dunne, *Monetary Decisions of the Supreme Court* (New Brunswick, New Jersey: Rutgers University Press, 1960), Preface. The Constitution’s silence here opened the door to fiat money.

therefore have to be bypassed. This required some very special preparations.

It required, in short, a conspiracy.

## **B. Sworn to Secrecy**

To conceal the nature of this attempted *coup* from the public, especially from any members of Congress who did not attend the Convention, the debates in Philadelphia were closed to the public. (Can you imagine the hue and cry of the press and news media if such a convention were closed to them today? No scoops for Pulitzer Prize-seeking reporters? No “details at eleven”?) So secretive were the attendees that Madison, who was the primary engineer of the *coup* and its unofficially designated scribe,<sup>16</sup> refused to allow his transcripts to be published until after his death. They did not become public until 1840.<sup>17</sup> This code of silence was mentioned by Warren Burger, shortly after he announced his resignation as Chief Justice of the U.S. Supreme Court, who informed a national television audience: “I think one of the reasons of the success of the Constitution was the iron code of silence that bound all of the members who were there.”<sup>18</sup>

It was not just Madison who felt so bound. Robert Yates, who was at the time Chief Justice of the State of New York, attended the early days of the Convention. He left in disgust, convinced that the Convention served ill purposes. He had taken notes of the proceedings through July 5. Yet even this opponent of the Constitution refused to publish these notes. In a public transcript of them, published first in 1838, his anonymous biographer took great care to explain that Yates had not broken the Convention’s code of silence: “Chief Justice Yates, though often solicited, refused during his life, to permit his notes of those debates to be published, not only because they were originally not written for the public eye, but because he conceived himself under honourable obligations to withhold their publication. These notes, after his death, fell into the hands of his widow, who disposed of them,

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16. Major William Jackson was voted the official secretary, and his signature appears on the Constitution as secretary.

17. The publication of these notes contributed to a period of vacillation over slavery questions in the courts; the abolitionists saw in the notes proof of the Framers’ compromise over slavery. Michael Kammen, *A Machine That Would Go of Itself: The Constitution in American Culture* (New York: Vintage, [1986] 1987), p. 97.

18. Transcript, CBS News Special, “The Burger Years” (June 9, 1986), p. 13.

and they are thus become public.”<sup>19</sup>

The delegates were sworn to secrecy in advance. Every member honored this oath. Even those participants who soon opposed the whole procedure as illegal never revealed what had gone on inside those walls, not even in their old age. Why not? In a modern world filled with “leaks” to the press and everyone else, we can hardly imagine what it might have been that persuaded these men to keep their silence. I have read no history book that has even raised the question. But of this we can be confident: they all feared some kind of negative sanctions, either internal or external for breaking this oath of secrecy. So tight was the lid on leaks that the debates were conducted on the second floor of the State House. No one could listen in. Throughout the summer, the sidewalk outside the State House was covered with dirt. This reduced traffic. This was done, according to one observer, to reduce noise.<sup>20</sup>

When the Convention ended, they took the final step. They handed all the minutes over to George Washington to take back to Mount Vernon. They knew that no one in the nation would have the audacity to tell George Washington that he had to hand over the evidence of what was in fact a *coup*. Madison’s notes state specifically that “The president, having asked what the Convention meant should be done with the Journals, &c., whether copies were to be allowed to the members, if applied for, it was resolved, *nem. con.*, ‘that he retain the Journal and other papers, subject to the order of Congress, if ever formed under the Constitution.’ The members then proceeded to sign the Constitution. . . .”<sup>21</sup> In short, if the *coup* was successful, then the new Congress could gain access to the records. If not, no one would have any written evidence to prove anything except the untouchable General Washington. On that basis, they signed.

Historian Jack Rakove argued that this element of secrecy was the result of years of near-secrecy by the Continental Congress itself. To this extent, he implies, the secrecy of the Convention was a fitting end to the old Congress. This is a strange argument. Nothing in Congress’ history rivaled the degree of secrecy that was imposed in Philadelphia. Rakove is nevertheless correct about the degree of secrecy at the Con-

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19. *Secret Proceedings and Debates of the Constitutional Convention* (1838), p. 333n. Reprinted by Omni Publications, Hawthorne, California, 1986.

20. Max Farrand, *The Framing of the Constitution of the United States* (New Haven, Connecticut: Yale University Press, 1913), pp. 54–55.

21. Elliot, *Debates*, V, p. 558.

vention: “For the most remarkable aspect of the Convention’s four-month inquiry was that it was conducted in virtual absolute secrecy, uninfluenced by external pressures of any kind. . . . Except for occasional rumors—many of them inaccurate—that American newspapers published, the general public knew nothing of the Convention’s deliberations.”<sup>22</sup>

### C. Bypassing Congress

Instead of submitting the Constitution to Congress for debate, as originally agreed to by all the delegates, and also as demanded by Congress, Article VII of the proposed Constitution passed over the Congress and announced that ratification by nine state conventions would suffice to abolish the Articles. The state legislatures would be bypassed. This was a calculated gamble by the members of the Constitutional Convention. Madison believed that he and the nationalists could control these one-time state ratification conventions to a degree that they could not possibly control the state legislatures or Congress. On this, Madison proved accurate. The Convention adopted the idea of a one-time plebiscite as a means of short-circuiting any opposition to the Constitution within the existing governments. They would try to persuade the existing governments to surrender sovereignty to independent conventions likely to be controlled by the conspirators.

The loss of either New York or Virginia would have been fatal. Hence, he, Hamilton, and Jay wrote a series of articles in New York newspapers. These have become known as the *Federalist Papers*. The *Federalist Papers* were propaganda devices that were crucial in order to win ratification. Winning ratification was necessary to persuade the voters to sanction the legitimacy of the *coup*. The ratification process was in fact a plebiscite for or against the legitimacy of a *coup*. The plebiscite was necessary to override the objections of the state legislatures, which alone had the legal authority to revise the Articles, which in turn required unanimity. As historian Richard Buel, Jr., has pointed out: “Although the Constitution had been designed to remove the national government from the immediate reach of the populace, its power was still ultimately dependent on public opinion. . . .”<sup>23</sup> The public was allowed to ratify the *coup*; after that, the voters were to be

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22. Jack N. Rakove, *The Beginnings of National Politics: An Interpretive History of the Continental Congress* (New York: Knopf, 1979), p. 399.

23. Richard Buel, Jr., *Securing the Revolution: Ideology and American Politics, 1789–1815* (Ithaca, New York: Cornell University Press, 1974), p. ix.

kept at bay. This is why the nationalists had to submit to their opponents' demand for the Bill of Rights in 1789. The nationalists resented having to do this, but they had little choice in the matter if the ratification of 1788 was to become a legitimizing event.

Once sanctioned by the ratification process, the original conspirators became, retroactively, Founding Fathers. The fact that the Convention had been a *coup* was concealed from the general public. The victors and their allies wrote the textbooks. Therefore, the Antifederalists became in retrospect "men of little faith."<sup>24</sup> Only in recent years have the Antifederalists been taken seriously as political thinkers.<sup>25</sup>

Biblically speaking, this direct appeal to the people in the states to ratify the Constitution was either an act of *covenant renewal* or it was an act of *covenant creation*. There is no doubt which the Convention had in mind: the latter. This is clear from the debates in the Convention, the ratifying conventions, and *The Federalist*. The delegates recognized clearly that a new government was being established. To ratify the Constitution was therefore an act of *covenantal discontinuity*. It was a revolt against existing judicial authority. Patterson of New Jersey admitted this at the Convention: "If the confederacy was radically wrong, let us return to our States, and obtain larger powers, not assume them for ourselves."<sup>26</sup>

#### D. Were the Convention's Leaders Christians?

Were the leaders of the Convention Christians? After all, many of them belonged to churches. M. E. Bradford concluded that 50 of the 55 attendees were Christians, as determined by church membership.<sup>27</sup> The answer to the question, however, is not resolved simply by an appeal to church membership. As Margaret Jacob remarks regarding members of the subversive Knights of Jubilation, a freethinking, pan-

24. Cecelia Kenyon, "Men of Little Faith: The Anti-Federalists on the Nature of Representative Government," *William and Mary Quarterly*, 3rd ser., XII (Jan. 1955), pp. 3–46.

25. Herbert J. Storing, *What the Anti-Federalists Were For* (Chicago: University of Chicago Press, 1981). This is a paperback version of Volume 1 of Storing's collection of primary source documents, *The Complete Anti-Federalist*, 7 vols. (Chicago: University of Chicago Press, 1981).

26. June 16; Max Farrand (ed.), *Records of the Federal Convention*, I, p. 250. Cited in *The Founders' Constitution*, eds. Philip B. Kurland and Ralph Lerner, 5 vols. (Chicago: University of Chicago Press, 1987), IV, p. 649.

27. M. E. Bradford, *A Worthy Company: Brief Lives of the framers of the United States Constitution* (Marlborough, New Hampshire: Plymouth Rock Foundation, 1982), p. viii.



theistic Dutch secret society of the first half of the eighteenth century, its members maintained church membership in Calvinist Walloon<sup>28</sup> congregations throughout their lives. “The churches gave them a social identity and the hint of irreligion would have destroyed their reputations and probably their businesses.”<sup>29</sup> We therefore need to examine in greater detail the religious opinions of three of the most famous of the Framers: Washington, Franklin, and Madison. The most influential member of the Convention was Washington. He is also the subject of the most widespread campaign of misinformation.

### *1. George Washington’s Religion*

Washington was a member of the Anglican Church all his life. Officially, he was a communicant member, but he never took communion in church, even though his wife did. He would rise and leave the church as soon as communion was about to be served. When challenged publicly about this by the rector of Christ Church in Philadelphia, Bishop William White, he later apologized indirectly by way of a U.S. Senator, and promised never again to attend the church on communion day, a promise that he apparently kept.<sup>30</sup> Dr. James Abercrombie had been assistant rector of Christ Church during Washington’s Presidency, and he did not mince words in an 1831 statement: “That Washington was a professing Christian is evident from his regular attendance in our church; but, Sir, I cannot consider any man a real Christian who uniformly disregards an ordinance so solemnly enjoined by the divine Author of our holy religion, and considered as a challenge to divine grace.”<sup>31</sup>

Here was the strange situation: George Washington was formally a communicant church member who systematically refused to take communion. The institutional problem here was the unwillingness of church authorities to apply formal church sanctions. Any church member who refuses to take communion has thereby excommunicated himself. A refusal to take communion or a prohibition against one’s taking communion is what excommunication means. *Self-excommunication is excommunication, just as surely as suicide is first-*

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28. Southern Netherlands.

29. Margaret Jacob, *The Radical Enlightenment: Pantheists, Freemasons and Republicans* (London: George Allen & Unwin, 1981), p. 162.

30. Paul F. Boller, Jr., *George Washington & Religion* (Dallas, Texas: Southern Methodist University Press, 1963), p. 34.

31. Cited in *ibid.*, p. 18.

*degree murder*. Nevertheless, the churches to which Washington belonged did not take official action against him by either requiring him to take communion or by publicly excommunicating him. It was this disciplinary failure on the part of these churches that led to the public legitimizing of Washington as a Christian. This failure later indirectly legitimized the Constitution that he conspired to impose on the nation. Without Washington's support of the actions of the Convention, the Constitution would never have been ratified. But Washington was deemed either too powerful or too sacrosanct to bring under church discipline.

A failure of sanctions here, at the heart of the church's sanctioning process, the communion table, reveals the extent to which eighteenth-century Christianity had abandoned the very concept of sanctions. This ecclesiastical failure was reflected in the colonial political order throughout the period, but especially after the ratification of the Constitution. The churches were subsequently brought under a new kind of discipline: formal removal of Christianity from the national civil covenant by means of the Constitutional prohibition of religious test oaths. The churches reaped what they had sown. They had refused to impose God's negative ecclesiastical covenant sanctions; thus, God imposed His negative sanctions on them. This was the lesson of the Book of Judges, one repeated throughout church history. Jordan was correct: "Where there is compromise with sin, the very sin becomes the means God uses to chastise His children. Our sins become our scourges."<sup>32</sup> The sin of our day, as he pointed out, is Baalistic pluralism.<sup>33</sup>

There is very little evidence in Washington's public communications that he accepted the doctrine of the Trinity. Boller insists that not once in his voluminous letters does he actually mention the name of Jesus Christ,<sup>34</sup> although announcing universal negatives is always risky. Washington refused to commit to public pronouncements any statement of his personal faith besides a commitment to divine Providence. Except during wartime, he attended church once a month.<sup>35</sup> Thus, concluded Boller, "if to believe in the divinity and resurrection of Christ and his atonement for the sins of man and to participate in the sacrament of the Lord's Supper are requisites for the Christian

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32. James B. Jordan, *Judges: God's War Against Humanism* (Tyler, Texas: Geneva Ministries, 1985), p. 42. (<http://bit.ly/jjjudges>)

33. *Ibid.*, p. 45.

34. Boller, *Washington*, p. 75.

35. *Ibid.*, pp. 28–29.

faith, then Washington, on the evidence which we have examined, can hardly be considered a Christian, except in the most nominal sense.”<sup>36</sup>

The key to understanding Washington’s public religion is found on the page facing the title page of J. Hugo Tatsch’s book, *The Facts About George Washington as a Freemason*. There we find Williams’ 1794 painting of Washington in the regalia of Grand Master of a Masonic lodge. It was an official painting; his lodge at Alexandria paid \$50 to the painter.<sup>37</sup> Washington had served as Grand Master of the Alexandria lodge in 1788 and 1789. When he was inaugurated President of the U.S., he was therefore a Grand Master, the only Mason ever to be inaugurated President while serving as a Grand Master.<sup>38</sup>

Later in his Presidency, on September 18, 1793, President Washington, dressed in full Masonic regalia, along with the Grand Master of the Alexandria Lodge 22 and the Grand Master *pro tem* of Maryland, laid the south-east cornerstone of the Capitol building in Washington, D.C.<sup>39</sup>

President Washington proposed, and Congress authorized, the laying of 40 milestones to mark the boundaries of the city. Prior to 1846, Alexandria, Virginia was part of the Territory of Columbia. On April 15, 1791, the cornerstone of the city was laid at Jones Point, in Alexandria. It was laid by Lodge 22, Washington’s lodge.<sup>40</sup>

The White House—then called the President’s House—had its cornerstone laid on the south-west corner: Oct. 13, 1792.<sup>41</sup> The Washington Monument looks very much like a Masonic project, and it was.<sup>42</sup> Subsequent Masonic-administered Capitol cornerstones were laid: Senate and House, July 4, 1851; Capitol, Sept. 18, 1932; Capitol, July 4, 1959.<sup>43</sup>

The laying of cornerstones had a religious purpose in the colonial

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36. *Ibid.*, p. 90.

37. J. Hugo Tatsch, *The Facts About George Washington as a Freemason* (New York: Macoy, 1931), p. 43.

38. *Ibid.*, p. 6.

39. *Ibid.*, pp. 24–27. Cf. *Your Masonic Capital City* (Silver Spring, Maryland: Masonic Service Association, n.d., 1988?), pp. 1–4; Michael Baigent and Richard Leigh, *The Temple and the Lodge* (London: Jonathan Cape, 1989), pp. 261–62.

40. *Your Masonic Capital City*, pp. 26–27.

41. *Ibid.*, pp. 13–14. The report appeared in the Nov. 15, 1792 issue of the Charleston, South Carolina *City Gazette*. The designer of the Capitol and the President’s House, James Hoban, was a resident of Charleston at the time he submitted his designs.

42. *Ibid.*, pp. 19–26.

43. *Ibid.*, pp. 5–12.

and early Republic eras. The practice of having Freemasons lay the cornerstones of cities and public buildings was widespread in the post-Revolutionary era. This had been true in England for decades. Professor Bullock wrote:

Masonry's connections with civilization and the Republic (created in large part by the new fraternal language of virtue, learning, and religion) received ultimate confirmation in the spread of cornerstone ceremonies. In the years after the Revolution, and especially after 1790, American officials increasingly called upon the brothers to solemnize public enterprises. The fraternity anointed bridges, boundary stones, Erie Canal locks, and the Universities of Virginia and North Carolina, Government buildings, such as the Massachusetts and Virginia State Houses, and memorials to the creation of the Republic, such as Bunker Hill and Concord Minutemen monuments, also were baptized by the symbolic corn, oil, and wine. Even churches received Masonic blessing. . . .<sup>44</sup>

The practice of Masonic cornerstone laying began in England, but it took on particular significance in a country attempting to redefine its metaphorical foundations. The American ceremonies were part of a self-conscious attempt to create new images that could celebrate and inculcate Revolutionary ideals. During the colonial period, civic ritual had centered on the monarchy and its underpinnings—the elite and the church. The Revolution called each into question. The overthrow of the king's rule undermined the power of the hierarchy he had symbolized, and the separation of church and state weakened the ability of a single church or clergyman to represent religion itself. Rebuilding the foundations of society, post-Revolutionary America found Masonry's republican ideals and symbols a means of incarnating the “new order of the ages.”<sup>45</sup>

Let us return to Washington's Masonic career. He was initiated into the lodge at Fredericksburg on November 4, 1752.<sup>46</sup> In the 1780s, his name was proposed as Grand Master of a proposed United Grand Lodge of all military lodges, but the various state Grand Lodges refused to authorize the creation of such a lodge.<sup>47</sup> No national Grand

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44. Stephen C. Bullock, *Revolutionary Brotherhood: Freemasonry and the Transformation of the American Social Order, 1730–1840* (Chapel Hill: University of North Carolina Press, 1996), p. 150.

45. *Ibid.*, pp. 150, 152.

46. James D. Carter, *Masonry in Texas: Background, History, and Influence to 1846* (Austin: University of Texas Press, 1955), p. 26.

47. *Ibid.*, p. 104.

Lodge ever came into existence.

Carter's account of Washington's first inauguration as President is illuminating: "On April 30, 1789, Washington took the oath of office as President of the United States administered by Chancellor Robert R. Livingston, Grand Master of the Grand Lodge of New York. General Jacob Morton, Worshipful Master of St. John's Lodge in New York City—the oldest lodge in the city—and Grand Secretary of the Grand Lodge of New York, was marshal of the inauguration. It was one of his duties to provide a Bible for the occasion. Morton brought from the altar of St. John's Lodge the Bible upon which Washington placed his hand while repeating the obligation to uphold the Constitution of the United States and then kissed the sacred volume to complete the ceremony."<sup>48</sup>

You will not read in the textbooks that thirty-three of Washington's generals were Freemasons.<sup>49</sup> You will also not read that Lafayette was not given command over any troops until after he agreed to be initiated into Union Lodge No. 1, at which ceremony Washington officiated as Master Mason. But such was the case.<sup>50</sup> Washington presided over a procession in Philadelphia on December 27, 1778, after the evacuation of the British. Dressed in full Masonic attire, he marched through the city with three hundred other Masons, and then held a Masonic service at Christ Church, which became his congregation of preference during his Presidency.<sup>51</sup>

As President, he received many honors from local lodges. His written replies to them were generous. He never wavered in his attachment to Freemasonry. In a letter to King David's Lodge No. 1 of Newport Rhode Island, written on Sunday, August 22, 1790, Washington

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48. *Ibid.*, p. 144. Freemasons in attendance were Leonard Bleecker, Amos Doolittle, Pierpont Edwards, Benjamin Franklin, Samuel Hinsdale, David Humphreys, Henry Knox, Morgan Lewis, Robert Livingston, William Malcom, Jacob Morton, Frederick Muhlenberg, James Nicholson, Arthur St. Clair, and Frederick William von Stueben. James R. Case, *Freemasons at the First Inauguration of George Washington* (Silver Spring, Maryland: Masonic Service Association, n.d., 1964?), pp. 25–29.

49. Heaton, *Masonic Membership*, p. xvi.

50. Bernard Faÿ, *Revolution and Freemasonry, 1680–1800* (Boston: Little, Brown, 1935), pp. 249–50. He cites Philip A. Roth, *Masonry in the Formation of Our Government, 1761–1799* (by the Author, 1927), pp. 43–45. Roth was the Manager of the Masonic Service Bureau in Washington, D.C. Lafayette's statement that Washington never willingly gave senior command to non-Masons is repeated by Sidney Morse, *Freemasonry in the American Revolution* (Washington, D.C.: Masonic Service Association of the United States, 1924), p. ix.

51. *Ibid.*, p. 246; citing Roth, pp. 63–64, and Tatsch, *Freemasonry in the Thirteen Colonies*, pp. 206–11.

wrote: "Being persuaded that a just application of the principles, on which the Masonic Fraternity is founded, must be promotive of private virtue and public prosperity, I shall always be happy to advance the interests of the Society, and to be considered by them as a deserving brother."<sup>52</sup> In several letters, he referred to God as the Supreme Architect. A representative example is his letter to Pennsylvania Masons (Dec. 27, 1791): ". . . I request you will be assured of my best wishes and earnest prayers for your happiness while you remain in this terrestrial Mansion, and that we may thereafter meet as brethren in the Eternal Temple of the Supreme Architect."<sup>53</sup>

John Eidsmoe, in his book-length defense the Constitution as a Christian document, takes seriously Washington's outright lie—it can be nothing else—in a letter to G. W. Snyder in 1798, that he had not been in a Masonic lodge "more than once or twice in the last thirty years."<sup>54</sup> One did not become the Grand Master of a lodge by attending services once or twice over thirty years, but one can certainly fool two centuries of Christian critics by lying through one's wooden teeth about it.<sup>55</sup> The problem is, Grand Master Washington's word to Mr. Snyder is trusted by Christians. The documentary record is not.

That he may have been a Christian in his private beliefs is possible, though his attitude toward the church betrays a woeful misunderstanding of Christian responsibilities. He did possess a personal prayer book, written in his own hand, which he called *Daily Sacrifice*. It contained familiar formal set prayers, such as this one: "I beseech Thee, my sins, remove them from Thy presence, as far as the east is from the west, and accept of me for the merits of Thy Son Jesus Christ."<sup>56</sup> This sounds good, but similar trinitarian prayers are published in the *Ahi-*

52. Tatsch, *Facts About Washington*, p. 14.

53. *Ibid.*, p. 18.

54. Eidsmoe, *Christianity and the Constitution*, p. 125, citing John C. Fitzpatrick (ed.), *The Writings of George Washington from the Original Manuscript Sources, 1745–1799* (Washington, D.C.: U.S. Government Printing Office, 1931–44), vol. 34, p. 453.

55. Washington's false teeth, attributed to fellow Freemason Paul Revere, were made by John Greenwood, who as a boy was a neighbor of Revere's during the period of Revere's brief, ill-fated or ill-fitting career as a dentist. Esther Forbes, *Paul Revere and the World He Lived In* (Boston: Houghton Mifflin, [1942] 1962), p. 133.

56. Cited in Benjamin Hart, *Faith & Freedom: The Christian Roots of American Liberty* (Dallas, Texas: Lewis & Stanley, 1988), p. 274. Seven of these set prayers are reprinted in Tim LaHaye, *Faith of Our Founding Fathers* (Brentwood, Tennessee: Wolgemuth & Hyatt, 1987), pp. 111–13. LaHaye cites W. Herbert Burk, *Washington's Prayers* (Norristown, Pennsylvania: Published for the Benefit of the Washington Memorial Chapel, 1907).

*man Rezon*, the constitutional handbook for the Ancient Masons.<sup>57</sup> He perhaps was a “closet trinitarian” in the way that John Locke was. Nevertheless, when it came to his public life, he was a Masonic unitarian. Of him it can legitimately be said, as Mark Noll in fact said: “In short, the political figures who read the Bible in private rarely, if ever, betrayed that acquaintance to the public.”<sup>58</sup>

In contrast, Patrick Henry was a member of the Protestant Episcopal Church, and he took regular communion. While he was governor of Virginia, he had printed at his own expense Soame Jenyns’ *View of the Internal Evidence of Christianity* and an edition of Butler’s *Analogy*. These books he gave to skeptics he would meet.<sup>59</sup> He never joined the Masonic fraternity. He wrote to his daughter in 1796: “Amongst other strange things said of me, I hear it said by the deists that I am one of their number; and, indeed, that some good people think I am no Christian. This thought gives me more pain than the appellation of Tory; . . .”<sup>60</sup>

## 2. Benjamin Franklin’s Religion

In order to modify the argument that Franklin was a Deist, Rushdoony cites Franklin’s June 28 plea at the Constitutional Convention that they pray to God in order to resolve their differences. Then, speaking of Jefferson and Franklin, he wrote: “That both these men were influenced by Deism, among other things, is certainly to be granted, but, unless one charges these statements off as the most arrant kind of hypocrisy, it becomes equally clear that even stronger colonial influences were at work. Here, in clear and forthright language from these men, is Calvinism’s predestination and total providence, and, at the same time, the near unitarian exclusion of Christ from the Godhead. God is not seen as an absentee landlord, and not only reason but more than reason is appealed to. It becomes clear that, in view of the mixed linguistic, religious and philosophical premises, *no facile classi-*

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57. *Ahiman Rezon Abridged and Digested* (Philadelphia: Hall & Sellers, 1783), pp. 111–12.

58. Mark A. Noll, “The Bible in Revolutionary America,” in James Turner Johnson (ed.), *The Bible in American Law, Politics, and Political Rhetoric* (Philadelphia: Fortress Press, 1985), p. 43.

59. Moses Coit Tyler, *Patrick Henry* (New Rochelle, New York: Arlington House, [1887] 1975), pp. 392–95. Henry adopted this practice toward the end of his life. Henry Mayer, *A Son of Thunder: Patrick Henry and the American Republic* (New York: Franklin Watts, 1986), pp. 467–68.

60. *Ibid.*, p. 392.

fication can be ventured.”<sup>61</sup>

On the contrary, a very accurate “facile” classification can be ventured, the one which Rushdoony appealed to over and over in his discussion of the French Revolution: *the providentialism of the Masonic theological system*. Franklin became the Grand Master of the most influential Masonic lodge in France, the “Nine Sisters” (Neufs Soeurs), in 1779.<sup>62</sup> He had been present when the lodge initiated Voltaire in 1778, four months before Voltaire died.<sup>63</sup>

Christian authors who cite Franklin’s famous prayer request should inform their readers that only three or four of the delegates voted to sustain it.<sup>64</sup> The motion was opposed by Hamilton and others, and it did not come to a vote.

### 3. James Madison’s Religion

Historian Robert Rutland was correct regarding James Madison’s view of religion. The former student of Witherspoon at the College of New Jersey had a dream. That dream was the creation of a secular republic.<sup>65</sup> He had spent an extra year in post-graduate study with Witherspoon studying Hebrew, ethics, and theology,<sup>66</sup> so he knew what Christianity is. He wanted no part of an explicitly Christian republic. (Neither did Witherspoon.) He worked hard to see to it that such a republic, which existed at the state level under the Articles of Confederation, would not survive. “He was a guiding force behind the Mount Vernon Conference (1785) and the subsequent Annapolis Convention (1786), where with other ‘choice spirits’ he planned out the set of maneuvers which finally led to the Great Convention in Philadelphia the following May.”<sup>67</sup>

Madison was a dedicated man. As we shall see in Chapter 4, what had long motivated him was his commitment to remove the religious

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61. R. J. Rushdoony, *This Independent Republic: Studies in the Nature and Meaning of American History* (Fairfax, Virginia: Thoburn Press, [1964] 1978), p. 6. Emphasis his.

62. Carl Van Doren, *Benjamin Franklin* (New York: Viking, 1938), p. 655.

63. *Ibid.*, p. 606.

64. Max Farrand (ed.), *The Records of the Federal Convention of 1787*, 4 vols. (New Haven, Connecticut: Yale University Press, [1913] 1966), I, p. 452n.

65. Robert A. Rutland, “James Madison’s Dream: A Secular Republic,” *Free Inquiry* (Sept. 1983), pp. 8–11. Reprinted in *James Madison On Religious Liberty*, ed. Robert S. Alley (Buffalo, New York: Prometheus, 1985), pp. 199–206.

66. Bradford, *A Worthy Company*, p. 142.

67. *Ibid.*, p. 144.



test oath, first from Virginia politics and then national politics. He achieved both of these goals within a three-year period, 1786–88.

Madison is often called the “Father of the Constitution.” Intellectually speaking, it was John Adams, the American ambassador in England at the time of the Convention, who was an equally dominant figure at the Convention because of his detailed studies of the state constitutions, especially his pre-Convention, three-volume work, *Defense of the Constitutions of the Government of the United States*. His model of the “balanced constitution” was an important influence at Philadelphia.<sup>68</sup> Nevertheless, it was surely Madison who was the father of the Convention, with Washington sitting silently as the godfather. It was Madison who, more than any other man, broke the national covenant with God.

## E. Conspiracy

“Arrant hypocrisy?” Rushdoony asked rhetorically. Not at all. Arrant *conspiracy*. These men were conspirators. They knew exactly what they were doing. Their political opponents did not, nor do the opponents’ confessional heirs.

The Articles of Confederation had stated clearly that “No two or more states shall enter into any treaty, confederation or alliance whatever between them, without the consent of the united states in congress assembled, specifying absolutely the purposes for which the same is to be entered into, and how long it shall continue” (Article VI). This is why the conspirators tried to surround the proposed Constitution with an air of legality by stating in the Preamble: “. . . in Order to form a more perfect Union, establish Justice,” etc. The specified time limit was perpetual: “. . . to secure the Blessings of Liberty to ourselves and our Posterity. . . .” But Congress had not authorized any such treaty, confederation or alliance. The conspirators knew it, especially the man who made the *coup* possible, George Washington. “More than most men,” comments Garry Wills, “he showed an early and unblinking awareness that the Philadelphia convention would engage in acts not only ‘irregular’ or extralegal, but very likely illegal. John Jay had alerted him to this problem as early as January.”<sup>69</sup> Jay’s fears were only par-

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68. Gordon S. Wood, *The Creation of the American Republic, 1776–1787* (Williamsburg, Virginia: Institute of Early American History, published by the University of North Carolina Press, 1969), ch. 14.

69. Garry Wills, *Cincinnatus: George Washington and the Enlightenment* (Garden City, New York: Doubleday, 1984), p. 154.

tially allayed when in February, Congress authorized the Convention, but only to suggest amendments to Congress. On March 10, Washington wrote to Jay: "In strict propriety a Convention so holden may not be legal."<sup>70</sup> But they proceeded anyway.

They knew the whole thing was illegal, a subversive act of revolution. Half of them were lawyers, and they had read their Blackstone.<sup>71</sup> Blackstone had commented on the convention-parliament that had called William III to the throne in 1688–89. It had been legal, he said, only because James II had abdicated. (Blackstone failed to mention the less-than-voluntary circumstances of the king's departure.) Blackstone wrote: "The vacancy of the throne was precedent to their meeting without any royal summons, not a consequence of it. They did not assemble without writ, and then make the throne vacant; but the throne being previously vacant by the king's abdication, they assembled without writ, as they must do if they assembled at all. Had the throne been full, their meeting would not have been regular; but, as it was empty, such meeting became absolutely necessary."<sup>72</sup> The American "throne" was occupied in 1787; Congress had not abdicated. Delegates of several states had been issued writs by their state legislatures. These writs expressly prohibited the substitution of a new constitutional document. Those who came to Philadelphia for any other purpose were conspirators. Yet most of those who came to Philadelphia had a death sentence in their pockets against the existing Confederation and also the authorizing Congress.

It was this well-organized conspiracy that had control over the institutional levers that made possible the events of the Revolutionary War era "that transformed the entire political and social structure of the thirteen colonies in less time than it now takes to send a First Amendment case from appeal to the Supreme Court."<sup>73</sup>

## F. The Masonic Connection

James D. Carter wrote his doctoral dissertation under Professor Walter Prescott Webb, one of the most distinguished American his-

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70. *Ibid.*, p. 155.

71. Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Massachusetts: Belknap Press of Harvard University Press, 1967), p. 31; McDonald, *Novus Ordo Seclorum*, p. xii.

72. William Blackstone, *Commentaries on the Laws of England*, 4 vols. (Chicago: University of Chicago Press, [1765] 1979), vol. I, *Of the Rights of Persons*, p. 148.

73. Rutland, "James Madison's Dream," *op. cit.*, p. 9.

torians of the mid-twentieth century. The dissertation was published by the University of Texas Press as *Masonry in Texas*. Webb was laudatory: "After reading Dr. Carter's book, no one can doubt that Freemasonry has exerted an influence on the nation and the state which cannot and should not be ignored."<sup>74</sup>

Carter began with the history of colonial lodges in the early eighteenth century. He includes an 80-page chapter on "Freemasonry and the American Revolution," and a 30-page chapter, "Freemasonry and United States Government." He exaggerated the number of Masons involved in the formation of the Union, but his basic presumption is correct: they were very influential in this process.

Leaders on both sides of the Constitutional debate were members of Masonic lodges. There is a problem in knowing precisely how many of the participants were Masons. Lodge membership was not always flaunted by members, and historians have not paid much attention to the subject. Tatsch said that 18 of the 56 signers of the Declaration were Freemasons, and 18 of the 39 signers of the Constitution.<sup>75</sup> Roth reduced this to possibly a dozen signers of the Declaration.<sup>76</sup> Heaton placed it at nine.<sup>77</sup> Heaton said that 13 of the 39 signers of the Constitution were Masons: Bedford, Blair, Brearley, Broom, Carroll, Dayton, Dickenson, Franklin, Gilman, King, McHenry, Paterson, and Washington.<sup>78</sup> Of these, five had been or later became Grand Masters.<sup>79</sup> Edmund Randolph was also a major Masonic figure in Virginia and a major figure at the Convention, but he did not sign the document because of doubts, although he later supported its ratification at the Virginia

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74. Webb, flyleaf, James D. Carter, *Masonry in Texas*. I refer to the first edition of this book, which has all of the appendixes.

75. Tatsch, *The Facts About George Washington as a Freemason*, p. xiv.

76. Roth, *Masonry in the Formation of Our Government*, pp. 154–64.

77. Heaton, *Masonic Membership of the Founding Fathers*, p. xvi. Carter's study—which I find greatly exaggerated and insufficiently documented on this point—concluded that at least 32 of the signers of the Declaration were Masons, including Ben Franklin, Elbridge Gerry, John Hancock, Thomas Jefferson, Richard Henry Lee, Robert Morris, Benjamin Rush, Roger Sherman, and John Witherspoon. *Masonry in Texas*, pp. 67–68. There is considerable doubt regarding the Masonic membership of all but Hancock and Sherman (possible). Carter incorrectly includes Sam Adams, who was not a Mason, although Adams cooperated with the Masons of the Green Dragon Tavern. Heaton, *Masonic Membership*, pp. xvi–xxiii. See also Morse, *Freemasonry in the American Revolution*, pp. 44–45.

78. Heaton, *Masonic Membership*, p. xvi. Carter said that of the 55 delegates to the Constitutional Convention, 33 were Masons. Carter, *Masonry in Texas*, p. 138.

79. Bedford (Delaware), Blair (Virginia), Brearley (New Jersey, but in 1806), Franklin (Pennsylvania), Washington (Virginia, but in 1788).

ratifying convention. He had been a former military *aide-de-camp* for Washington, and he had been the official who signed the charter documents that created Alexandria Lodge No. 39, later No. 22, when Washington, as its first or Charter Master, served as Grand Master.<sup>80</sup>

Does lodge membership of several prominent nationalists prove my thesis regarding the Constitutional Convention as a Masonic *coup*? No, because men on both sides of the Constitutional debate were found in the lodges, just as evangelical Christians today are in the lodges, despite two centuries of protest from the historic Reformed churches and traditional dispensational leaders.<sup>81</sup> Daniel Shays was a Mason,<sup>82</sup> yet it was his rebellion in Massachusetts that so frightened the nationalists.<sup>83</sup>

What has to be considered in assessing the accuracy of my thesis regarding the Convention is the theological character of the Constitution itself. Was the Constitution a civil covenant modeled along the lines of Masonic theology? Was it closer to the Masonic ideal than the existing state constitutions were? In other words, *were the terms of judicial and political discourse shaped by the Masonic worldview*? It is my contention that Masonry did shape the terms of discourse, translating the near-impersonal mathematical providentialism of Newton's Creator into the language of the average man. The Mason's Grand Architect of the Universe was in fact the Newtonian Deity.

## G. Why Ignore Colonial Freemasonry?

Carl Van Doren, in his popular biography of Franklin, wrote: "Freemasonry in America had been social and local, with little influence in politics."<sup>84</sup> This was the standard view as recently as 1989. Ma-

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80. Heaton, *Masonic Membership*, pp. 56, 74.

81. Christian Reformed Church, "Report 37: Lodge and Church Membership," *Acts of Synod 1974* (Grand Rapids, Michigan: Board of Publications of the Christian Reformed Church, 1974), pp. 504–67; Lutheran Church, Missouri Synod, *Masonry in the Light of the Bible* (St. Louis, Missouri: Concordia, 1964); Alva J. McLain, "Freemasonry and Christianity," reprinted in E. M. Storms, *Should a Christian Be a Mason?* (Fletcher, North Carolina: New Puritan Library, n.d.). From a Roman Catholic perspective, see Paul A. Fisher, *Behind the Lodge Door: Church, State and Freemasonry* (Washington, D.C.: Shield, 1988). A very easy to read yet well documented introduction to this topic is John Ankerberg and John Weldon, *Christianity and the Secret Teachings of the Masonic Lodge: What Goes on Behind Closed Doors* (Chattanooga, Tennessee: John Ankerberg Evangelistic Association, 1989).

82. Bullock, *Revolutionary Brotherhood*, p. 127.

83. Appendix B, below.

84. Van Doren, *Franklin*, p. 656.

sonry was merely “clubbery.”<sup>85</sup>

### 1. A Nagging Question

But a nagging question remains: What other inter-colonial club produced so many leaders during the American Revolution? The textbooks ignore all this. Masonry is seldom discussed as a factor in American history; it appears only in chapters devoted to the Anti-Masonic political party of the 1820s and 1830s. This has long annoyed Masonic historians.<sup>86</sup> Freemasonry is a major missing link in early American historiography. More than this: it is *the* missing link.

This is not true only of American historiography. Margaret Jacob observed a similar lack of interest in the Masonic connections in English history. “Despite the importance of Freemasonry for the Enlightenment, of whatever variety, this originally British institution has received scant attention from British academic historians. . . . This is a particularly unfortunate gap in the historiography of the eighteenth century, not only for intellectual but also for political history.”<sup>87</sup> She was careful to distance herself from conspiracy theorists. She referred disparagingly to “Fay’s paranoid reading” of the Masonic connection, repeatedly misspelling Fay, ignoring the diaeresis over the y.<sup>88</sup> Her statement is reminiscent of Crane Brinton’s dismissal of Nesta Webster’s books on the French Revolution: “. . . frightened Tories like Mrs. Nesta Webster. . . .”<sup>89</sup> She hastened to assure her readers that “We can now dispense with conspiracy theories and still show the survival throughout the first half of the eighteenth century of a social world that was often, but not necessarily, Masonic wherein some very dangerous ideas were in fact discussed and disseminated.”<sup>90</sup> She qualified her book’s thesis down to a bare minimum: Freemasonry as one *possible* source of several sources of revolutionary *ideas*. “It seems not unreasonable to suggest that this social circuit was international in scope while at the same time acknowledging that we still have a very imperfect account of the extent to which some Masonic lodges, under cer-

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85. Robert Micklus, “The Secret Fall of Freemasonry in Dr. Alexander Hamilton’s *The History of the Tuesday Club*,” in J. A. Leo Lemay (ed.), *Deism, Masonry, and the Enlightenment* (Newark, New Jersey: University of Delaware Press, 1987), pp. 127–28.

86. Cf. Morse, *Freemasonry in the American Revolution*, pp. 7–8.

87. Jacob, *Radical Enlightenment*, pp. 121–22.

88. *Ibid.*, p. 224.

89. Crane Brinton, *The Anatomy of Revolution* (New York: Vintage, [1938] 1952), p. 56.

90. Jacob, *Radical Enlightenment*, pp. 240–41.

tain circumstances, would encourage a radical critique of the existing order.”<sup>91</sup> But she had already gone way too far, and her book’s mild thesis, intelligently argued, was savagely ridiculed by one reviewer as a “farrago of pretentious and portentous moonshine.”<sup>92</sup> Mention Freemasonry as an organization that spread the ideas of revolution, let alone provided the revolution’s organizational backbone, and you risk losing your academic reputation. Historians know this, so they take great care to avoid transgressing this crucial professional boundary. Even great care is sometimes insufficient, as Dr. Jacob learned.

Forrest McDonald’s three volumes on the origin of the Constitution have become nearly definitive. There is not a word in any of them on Freemasonry, despite the fact that *Novus Ordo Seclorum* (1985) is subtitled, *The Intellectual Origins of the Constitution*. Wilson Carey McWilliams’ book, *The Idea of Fraternity in America*, almost 700 pages long, devotes only one brief paragraph to pre-Constitution Freemasonry, and then only as a social club made up of outsiders: “Its members were less comfortable in the established order than were the elites. . . .”<sup>93</sup> There are pages of paintings and sculptures of George Washington in Garry Wills’ *Cincinnatus*, but not one example of him dressed in his Masonic garb, and not one reference to the “craft.”

Washington was the man who led the military Society of Cincinnati, and who had as his subordinate generals only those initiated into Masonry. This was the man who gave Lafayette a separate command only after the latter had been initiated personally by Washington. The army was the only functioning national civil hierarchy in the Patriot cause. It was an ideal recruiting ground, for Washington was the source of promotions (positive sanctions). He made sure his senior officers were Freemasons. This was the man who had at least ten military Masonic lodges in his army.<sup>94</sup> Stephen Bullock’s summary is significant. “Fraternal ties among the officers helped create and sustain the sense of common purpose necessary for the survival of the Continental army—and thus the winning of the war. The success of this esprit de

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91. *Ibid.*, p. 241.

92. G. C. Gibbs, “The Radical Enlightenment,” *British Journal of the History of Science*, XVII (1984), p. 75.

93. Wilson Carey McWilliams, *The Idea of Fraternity in America* (Berkeley: University of California Press, 1974), p. 205.

94. Morse, *Freemasonry in the American Revolution*, p. 17. A list of these lodges and a brief history of them is found in Roth, *Masonry in the Formation of Our Government*, pp. 138–48. For a list of the 34 lodges in the British military forces in 1775–77, see Baigent and Leigh, *Temple and Lodge*, Appendix 2.

corps would be represented in the postwar Society of the Cincinnati, an attempt to continue the officers' corporate identity using language and symbols that recalled Masonry's earlier significance."<sup>95</sup> The textbooks are nonetheless silent.

How many people have ever heard of the Temple of Virtue? This was the building in Newburgh, New York, that was constructed on Washington's instructions for his headquarters and for a meeting place for the troop lodges. It was in this building that he warned the members of the Society of Cincinnati to be prudent in their demands, thus cutting short a potential military *coup*.<sup>96</sup> The textbooks are silent on all of this.

## 2. *The Boston Tea Party*

There is an occasional exception to the blackout. Page Smith's "people's history" of the Revolution, suggestively titled *A New Age Now Begins*, does mention that Joseph Warren and Paul Revere were Freemasons.<sup>97</sup> It also mentions something almost never seen in a textbook, that Boston's famous Green Dragon Tavern, which was the central meeting place of the patriots, had been chosen for a reason. "This tavern was doubtless chosen because patriot organizer Joseph Warren was also Grand Master of the Boston Masonic Lodge, and the Masons had their headquarters there."<sup>98</sup> Esther Forbes, in her well-received yet popular biography of Revere,<sup>99</sup> describes the background of the Boston Tea Party, where colonials dressed up as Indians and tossed into the harbor the taxed tea that had been brought to Boston on board British ships.

Two of Revere's clubs, the North Caucus and Saint Andrew's lodge, are known to have had a hand in it. The Masons had met the night the ships arrived, but their records read, 'Lodge adjourned on account of few Brothers present. N.B. Consignees of Tea took the Brethren's time.' This night the record is even briefer: 'Lodge closed on account of few members present.' Saint Andrew's had by this time bought the old 'Green Dragon.' This was a large, brick tavern stand-

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95. Bullock, *Revolutionary Brotherhood*, p. 122. See his discussion of Masonry in the officers' corps: pp. 122–30. On the Society of Cincinnati, see pp. 130–32.

96. Morse, *Freemasonry in the American Revolution*, p. 131.

97. Page Smith, *A New Age Now Begins: A People's History of the American Revolution* (New York: McGraw-Hill, 1976), I, p. 306.

98. *Ibid.*, I, p. 464.

99. This book was assigned by Douglass Adair in a 1965 graduate seminar on the American Revolution.

ing on Union Street. . . . More Revolutionary eggs were hatched in this dragon's nest than in any other spot in Boston. Other lodges and radical clubs were beginning to meet there, sheltered by the inviolable secrecy of the Masons. It was at the Green Dragon the plan to destroy the tea was perfected and either there or at Benjamin Edes' house Paul Revere and others put on their disguises.<sup>100</sup>

The immediate aftermath of the tea party in 1773 was the closing of Boston Harbor by the British—what soon became known as the Intolerable Acts. Sam Adams' Committees of Correspondence went to work. This led to an inter-colonial organized outrage. More than any other single event, this launched the Revolution. And who were these Boston men? In a specialized historical monograph on Boston politics during this era, we are treated to one brief, tantalizing reference: "At least eight of the twenty-one members also belonged to the North End Caucus, a private political club which met regularly in several Boston congregations, in both of Boston's Masonic lodges, the fire companies of several wards, as well as a variety of private clubs."<sup>101</sup> But that is all.

Even such brief references as these are few and far between. The average student of American history is never told that the Committees of Correspondence and Committees of Safety were very often headed by Masons, held their meetings in lodges or taverns that served as lodge headquarters, and became leaders of the Provincial assemblies.<sup>102</sup> In Philadelphia in 1775, where the first Continental Congress met, there were approximately one thousand Masons, although we do not know on which side they fell out initially.<sup>103</sup> As the war progressed, the "Ancient" lodges became dominant in Philadelphia.<sup>104</sup>

## H. Bernard Faÿ

For decades, the one major exception to this historical blackout of the American Revolution by academic historians was the French historian Bernard Faÿ. His book, *Revolution and Freemasonry* (1935), went into many of these details. He reported that Franklin, as Deputy Postmaster General for the English Colonies in America, traveled ex-

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100. Forbes, *Paul Revere*, pp. 197–98.

101. Richard D. Brown, *Revolutionary Politics in Massachusetts: The Boston Committee of Correspondence and the Towns, 1772–1774* (Cambridge, Massachusetts: Harvard University Press, 1970), p. 60.

102. Morse, *Freemasonry in the American Revolution*, p. 58.

103. *Ibid.*, p. 60.

104. *Ibid.*, pp. 99–100.



tensively and joined together Masonic lodges. Franklin's American Philosophical Society, a colonial model of the Royal Society, founded in 1741, was made up mostly of Freemasons.<sup>105</sup> Perhaps most important, Franklin set up a number of Freemason-owned newspapers around the colonies, including John Peter Zenger's *New York Journal* and Eden's *Boston Gazette*.<sup>106</sup>

Faÿ explained why it is that so many historians think that the Freemasons were politically irrelevant in this era. The lodges were enjoined on both sides of the Atlantic to avoid politics, but they could set up ancillary organizations that could get involved politically. "They were careful to keep politics as much as possible outside the regular meetings of the lodges. . . . But their political influence was based on the fact that in America a 'lodge' meant a tavern. All lodges met in alehouses, inns and taverns; most of them owned their meeting places or met in a building which was owned by a member of the lodge. The lodge itself held its ceremonies discreetly and formally in a back room, after which the members gathered informally and less directly in the main room to drink and, when the lodge was not in session, to speak and act without restraint."<sup>107</sup> Maybe even toss a bit of tea into the harbor!

Conventional historians do not consider such matters because few of them know anything about Freemasonry, and those who have heard anything about it view it primarily as a social club. They have never asked themselves the obvious question: *What are the institutional connections that make possible a successful revolution?* They have been taught by traditional historiography to look at political events or military events. They have been taught by Marx to examine class alignments, and by Charles Beard and his intellectual heirs to examine the personal economic self-interest of the participants. Historians in recent years have been far more willing to consider the influence of religious ideas, but they have been trained to play down the "great man theory of history." They have been taught, above all, that serious, reputable scholars do not raise the question of conspiracies. Special-interest groups, yes; elites, yes;<sup>108</sup> just not conspiracies.

Why is this? I think the reason is theological. Conspiracies point

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105. Faÿ, *Revolution and Freemasonry*, p. 232.

106. *Ibid.*, p. 233.

107. *Ibid.*, p. 234.

108. By far the most impressive study of American elites is the little-known set by Philip H. Burch, *Elites in American History*, 3 vols. (New York: Holmes & Meier, 1981).

too closely to personalism as the basis of historical change, and personalism points to a God who brings sanctions in history.<sup>109</sup> Historians prefer to write about historical forces and economic classes. Usually, only non-academicians, such as Nesta Webster, ask the forbidden questions, and for their indiscreet behavior, they are written off by professional historians. In Crane Brinton's bibliography, he acknowledged only Webster's less scholarly, less detailed book, *Secret Societies and Subversive Movements* (1924). He conveniently ignored her masterpiece, *The French Revolution* (1919), which presents a far more detailed case for what he sneers at as "the 'plot' theory of revolution."<sup>110</sup> Brinton knew better. His first published book was *The Jacobins* (1931). He showed how closely they were associated with the Masonic lodges of France. He *knew*. But he also knew enough to keep his mouth shut and his opinions conventional. To paraphrase: "Just a bunch of local good old bourgeois boys looking for a few business deals, good food, and lively discussion."

## I. Nesta Webster's Blind Spot

Nesta Webster's influence on Rushdoony is very strong in *This Independent Republic*. He relies heavily on her book, *The French Revolution*, to explain those events. He also fell into the same trap that she did: he concentrates his exposé on the evils of French Grand Orient Masonry, but deliberately ignores the mild-mannered apostasy of Anglo-Saxon Masonry.

Rushdoony and Webster were not the first critics of Grand Orient Masonry to fall into this trap. So did John Robison, whose *Proofs of a Conspiracy* (1798), along with Abbé Barruel's book, *Memoirs Illustrating the History of Jacobinism* (1797), was an early source of the story of the connections between secret societies and the French Revolution. Robison's was the first book to gain wide attention on this subject in the colonies. It launched a major anti-French and anti-Masonic movement, especially among Federalists in New England.<sup>111</sup> With respect to French Freemasonry, in a Postscript to his book, Robison wrote disparagingly of the "frifery," profligacy, and impiety of Grand Orient

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109. See R. J. Rushdoony, *The Nature of the American System* (Vallecito, California: Ross House, [1965] 2001), ch. 8: "The Conspiracy View of History." (<http://bit.ly/rjrmas>)

110. Brinton, *Anatomy of Revolution*, p. 300.

111. Vernon Stauffer, *New England and the Bavarian Illuminati* (New York: Russell & Russell, [1918] 1967).

Masonry. In contrast to French Masonry, he said, Masonry “has been retained in Britain in its original form, simple and unadorned, and the lodges have remained scenes of innocent merriment, or meetings of Charity and Beneficence.”<sup>112</sup>

Webster echoed Robison: “. . . British Masonry, by taking its stand on patriotism and respect for religion, necessarily tends to unite men of all classes and therefore offers a formidable bulwark against the forces of revolution. Any attacks on British Masonry as at present constituted and directed are therefore absolutely opposed to the interests of the country.”<sup>113</sup> This was also the attitude of virtually all the American Revolution’s leaders regarding colonial Masonry. Naively, she wrote on the next page regarding the Masonic rite of the self-maledictory blood oath, which she dismissed as something that is not inherent in Freemasonry. “In the opinion of M. Copin Albancelli, the abolition of the oath would go far to prevent penetration of British Masonry by the secret societies.”<sup>114</sup> But that comment would apply equally well to Grand Orient Masonry.

What she failed to grasp is this: *the heart of Freemasonry is its oath*. It was Freemasonry’s top-down hierarchical system of bureaucratic authority, coupled with its self-maledictory oath of secrecy, obedience, and loyalty, that provided Adam Weishaupt and his Illuminist conspirators with the organizational system and source of infiltration that they had sought. Weishaupt saw Freemasonry as an organizational structure that paralleled the tightly knit Jesuit Order that had trained him. No one’s writings have made clearer Weishaupt’s strategy of subversion than Mrs. Webster’s.<sup>115</sup>

Like the patriotic colonists of 1776, Webster also failed to recognize that Anglo-Saxon Masonry’s universalism led to the subversion of Christian civilization. French Masonry’s open hostility to absolutism led to open revolution, but subversion by stealth is no less a threat to an existing social order than subversion by revolution. Stealth calls less attention to itself. Historians are less prepared to admit the existence of stealth. They prefer to explain revolutions by an appeal to impersonal social forces.

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112. John Robison, *Proofs of a Conspiracy*, 4th ed. (New York: George Forman, 1798), p. 394.

113. Webster, *Secret Societies and Subversive Movements* (Hawthorne, California: Omni Press, [1924] 1964), p. 293.

114. *Ibid.*, p. 294.

115. *Ibid.*, ch. 9. See also Webster, *World Revolution: The Plot Against Civilization* (Boston: Small, Maynard, & Co., 1921), ch. 1. (<http://bit.ly/NHWWR>)

## Conclusion

I have called the Convention a *coup*. I have argued that Masonic influence was important both in terms of the philosophy of the delegates and their membership in the lodges. If the entire nation had been Masonic, then this would not have been a *coup*. But very few colonists were Freemasons. Prior to the Revolutionary War, there were about two hundred lodges in the 13 colonies.<sup>116</sup> Their combined membership was somewhere between 1,500 and 5,000. Yet the total population of the nation was about 2.5 million. By 1800, there were perhaps 16,000 members.<sup>117</sup> Thus, to argue that the Constitution was essentially Masonic is necessarily to argue for a conspiracy. Colonial Freemasonry was also one of the major components of the American Revolution, and especially of the Constitutional settlement. On this point, Rushdoony remained silent, almost as if he has been afraid to raise the question. Had he pursued it, he would have found his thesis regarding the Christian roots of the Constitution seriously threatened.

Christians at the state conventions ratified the Constitution. They were unaware of the covenantal implications of their decision. The defenders of the document were able to appeal to a common body of opinion regarding religious freedom and the supposed tyranny of Christian creeds. This anti-creedalism was a heritage of the pietism and revivalism of the middle third of the eighteenth century.<sup>118</sup> The conspirators presented to the electorate a supposedly creedless covenant—there are no creedless covenants—devoid of any explicit religious oath. The Christians failed to recognize the true nature of the inescapable implicit oath: the sovereignty of the People, meaning the official sovereignty of five Supreme Court judges and the real sovereignty of a massive, faceless, national bureaucracy. The manifestation of both these new sovereigns appeared within a single generation: the decisions of Federalist Supreme Court Chief Justice John Marshall and the advent of the Federalist Party-dominated civil service.<sup>119</sup>

The conspirators were successful. In retrospect, Americans call

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116. Morse, *Freemasonry in the American Revolution*, p. 28.

117. William Preston Vaughn, *The Anti-Masonic Party in the United States, 1826–1843* (Lexington: University Press of Kentucky, 1983), p. 11. Vaughn estimates that there were only a hundred lodges at the outbreak of the Revolution.

118. Sidney E. Mead, "American Protestantism" (1953), in John M. Mulder and John F. Wilson (eds.), *Religion in American History* (Englewood Cliffs, New Jersey: Prentice-Hall, 1978), pp. 164–65, 173–74.

119. Carl E. Prince, *The Federalists and the Origins of the Civil Service* (New York: New York University Press, 1977).

them the Founding Fathers. They were surely founders. They sought to give Americans a new inheritance. What they did was to appropriate an older inheritance in the name of a new family of man. It was the theft of a nation by the spiritual heirs of Roger Williams.

One man had understood this in 1788. We do not know his name. He signed his essay "David," one of the few instances of any author in the debate over the ratification of the Constitution who used a biblical pseudonym. He was a resident of Connecticut. His comments appeared in the March 7, 1788 issue of the *Massachusetts Gazette*. He reminded his readers that throughout history, civil governments had called upon God to defend them. People had long understood the corporate threat of the negative sanctions of God: ". . . it has been generally if not always a fundamental article that moral offences would be punished by the Deity, even if they escaped the laws of human society, unless satisfaction was made to the sovereign of the universe for the violation of good order."<sup>120</sup> He also reminded them that the states had always had fast days and other "frequent and publick acknowledgments of our dependence upon the Deity."<sup>121</sup> Speaking of Connecticut, he insisted: "Never did any people possess a more ardent love of liberty than the people of this state; yet that very love of liberty has induced them to adopt a religious test, which requires all publick officers to be of some Christian, protestant persuasion, and to abjure all foreign authority. Thus religion secures our independence as a nation, and attaches the citizens to our own government."<sup>122</sup>

The problem, in David's view, was that the new nation was about to imitate the government of Rhode Island, or as he referred to that province, "our next neighbours." As editor Herbert J. Storing comments, "This is one of the rare statements in the Federalist-Anti-Federalist debate concerning the widely agreed-upon political excesses of Rhode Island and her religious toleration."<sup>123</sup> David foresaw that if the new nation adopted as its civil model the anti-covenantal, anti-oath contractualism of Rhode Island's political theory, it would eventually become like Rhode Island. That thought terrified him: the result would be tyranny.

We have now seen what have been the principles generally adopted by mankind, and to what degree they have been adopted in our own

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120. "Letter by David," in *Complete Anti-Federalist*, IV, p. 247.

121. *Idem*.

122. *Ibid.*, IV, pp. 247–48.

123. *Ibid.*, IV, p. 249n.

state. Before we decide in favour of our practice, let us see what has been the success of those who have made no publick provision for religion. Unluckily we have only to consult our next neighbours. In consequence of this publick inattention they derive the vast benefit of being able to do whatever they please without any compunction. Taught from their infancy to ridicule our formality as the effect of hypocrisy, they have no principles of restraint but laws of their own making; and from such laws may Heaven defend us. If this is the success that attends leaving religion to shift wholly for itself, we shall be at no loss to determine, that it is not more difficult to build an elegant house without tools to work with, than it is to establish a durable government without the publick protection of religion. What the system is which is most proper for our circumstances will not take long to determine. It must be that which has adopted the purest moral principles, and which is interwoven in the laws and constitution of our country, and upon which are founded the habits of our people. Upon this foundation we have established a government of influence and opinion, and therefore secured by the affections of the people; and when this foundation is removed, a government of mere force must arise.<sup>124</sup>

David was a voice crying in the wilderness. Or, more to the point, he was a voice crying in the promised land, warning people against departing into the wilderness: the Rhode Island wilderness.

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124. *Ibid.*, IV, p. 248.



It was Madison who came up with the remedy that ultimately prevailed, the United States Constitution, though it did not take quite the form that he initially hoped for, as he and his contemporaries groped their way toward it at the great Constitutional Convention of 1787. That convention, which Madison was instrumental in bringing about, did not conform to the ideal prescription for simulating an exercise of constituent power by the people, for the members were chosen by the state legislatures, not directly by popular vote. But even before the convention met, Madison recognized that it could achieve the objectives he had in mind for it only by appealing to a popular sovereignty not hitherto fully recognized, to the people of the United States as a whole. They alone could be thought to stand superior to the people of any single state. And what Madison had most directly in view was to overcome the deficiencies of the locally oriented representatives who sat in the state legislatures. To that end he envisioned a genuine national government, resting for its authority, not on the state governments and not even on the peoples of the several states considered separately, but on an American people, a people who constituted a separate and superior entity, capable of conveying to a national government an authority that would necessarily impinge on the authority of the state governments.

The full implications of what he was going to propose were not at first apparent even to Madison himself. As the English House of Commons in the 1640s had invented a sovereign people to overcome a sovereign king, Madison was inventing a sovereign American people to overcome the sovereign states.

Edmund S. Morgan (1988)<sup>1</sup>

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1. Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York: Norton, 1988), p. 267.



## 4

# FROM COUP TO REVOLUTION

*The conduct of every popular assembly acting on oath, the strongest of religious ties, proves that individuals join without remorse in acts, against which their consciences would revolt if proposed to them under the like sanction, separately in their closets. When indeed Religion is kindled into enthusiasm, its force like that of other passions, is increased by the sympathy of a multitude. But enthusiasm is only a temporary state of religion, and while it lasts will hardly be seen with pleasure at the helm of Government. Besides as religion in its coolest state is not infallible, it may become a motive to oppression as well as a restraint from injustice.*

James Madison (1787)<sup>1</sup>

## Introduction

At age 36, James Madison was an angry young man in the spring of 1787. He had been angry for a long time. Everything he saw—in the Articles of Confederation, in the state legislatures, in the economy—made him angry. He was determined that there would soon be a change. This change would have to be both political and national. He set down his private thoughts in the weeks before the great Convention that he had organized, a convention that he had begun planning at the meeting at Mount Vernon two years earlier.

He was also determined to achieve his long-term goal of separating Christianity from civil government—not just separating church from state, but Christianity from civil government. He knew what had to be done in order to accomplish this goal: the severing of the binding power of trinitarian religious oaths that were required of state officers in several states. Those oaths had to be circumvented. Yet most of the

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1. James Madison, “Vices of the Political System of the United States” (April 1787); reprinted in Marvin Myers (ed.), *The Mind of the Founder: Sources of the Political Thought of James Madison* (Indianapolis, Indiana: Bobbs-Merrill, 1973), p. 90.

members of Congress who had authorized the Convention had taken such oaths. Thus, Congress itself had to be circumvented, and then overthrown.

It was a tribute to Madison's political genius that he came up with a five-point tactical solution—tactics that matched the five-point model of all covenantalism, point for point.

*First*, the Convention would be authorized by a naive and trusting Congress to make minor adjustments in the Articles. The old national government had been the creation of the states. The new one would be the creation of the People.

*Second*, under cover of an implicit oath-bound secrecy, this Convention would, from its opening day, violate the instructions of the superior legislative agency, Congress, and propose the abolition of the Articles. This would break the hierarchical chain of command. This Convention replaced Congress as the voice of authority. It became the representative of the people. This is why it was a *convention*.

*Third*, the nation's legal order would be reconstituted, including the prohibition of religious test oaths at the Federal level. New judicial boundaries assessing relative state and national power would be created. New internal judicial boundaries—federalism—would be created for the national government, most notably a nationally elected executive, which the Articles had lacked.

*Fourth*, the Convention would appeal to a new sanctioning agency, the People. The will of the People would be voiced judicially in state ratifying conventions that Madison expected the nationalists (a political faction) to dominate.

*Fifth*, the ratifying conventions would authorize a new covenant. What was to have been an act of national covenant renewal (revision of the Articles) would become the cutting of a new national covenant. Subsequent changes (renewals) would be by amendment by Congress and voting by state legislatures, but the door was left open for another Convention, called by the state legislatures or by Congress, with subsequent ratification by either state legislatures or by state conventions (Article V).

### **A. The Meaning of “Convention”**

Edmund Morgan recognized the revolutionary implications of calling the Constitutional Convention a convention. This word had been invoked during the two previous transfers of executive sover-

eighty in English history. These two conventions marked temporary replacements of Parliament in order to award new kings their lawful executive authority: Charles II in 1660 and William III in 1689.<sup>2</sup> Writing of these two English precedents, he observed:

But the idea of an elected convention that would express enduring popular will in fundamental constitutions superior to government was a viable way of making popular creation and limitation of government believable. It was fictional, for it ascribed to one set of elected representatives meeting in convention a more popular character, and consequently a greater authority, than every subsequent set of representatives meeting as a legislature. But it was not too fictional to be believed and not so literal as to endanger the effectiveness of government. It never came into use in England, but it was reinvented in the American Revolution.<sup>3</sup>

The term “convention” was also used by the revolutionaries in France in September of 1792 to launch the radical phase of the Revolution. R. R. Palmer wrote: “It was called a convention from the precedent of constitutional conventions in the United States.”<sup>4</sup> Under this Convention four months later, Louis XVI was beheaded. This was surely a transfer of executive power. It led to the rise of a new executive: Robespierre. The Convention then wrote a new constitution, later called the stillborn constitution of 1793.<sup>5</sup> The centralization of power in Paris escalated under this new constitution. To accomplish this, the Jacobins imitated Madison’s tactic: they had the constitution ratified by plebiscite.<sup>6</sup>

Madison planned an initial *coup*—the immediate scrapping of the Articles—to be followed by a plebiscite. The plebiscite, as the voice of the People, would consolidate and sanction the *coup*. Thus, a bloodless revolution could be achieved—a revolution in national sovereignty, testified to by a change in judicial oaths. Had there been no alteration of the oath structure, there would have been no revolution.

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2. Edmund S. Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York: Norton, 1988), pp. 94–95, 107–21.

3. *Ibid.*, p. 91.

4. R. R. Palmer, *Twelve Who Ruled: The Year of the Terror in the French Revolution* (Princeton, New Jersey: Princeton University Press, 1941), pp. 20–21.

5. Leo Gershoy, *The French Revolution and Napoleon* (New York: Appleton-Century-Crofts, 1933), p. 258.

6. *Idem.*

## B. Deliberately Creating Religious Factions

It is well known that Madison's greatest fear was his fear of the triumph of any particular political faction. *Federalist 10* is devoted to this theme. What Madison wanted was political neutrality: a world of politically impotent factions, only as strong as necessary to cancel out each other. In the 1787 "Vices" essay, he inserted this conclusion immediately following the paragraph on state religious oaths: "The great desideratum in Government is such a modification of the sovereignty as will render it sufficiently neutral between the different interests and factions, to controul one part of the society from invading the rights of another, and at the same time sufficiently controuled itself, from setting up an interest adverse to that of the whole Society."<sup>7</sup> This was his argument against Montesquieu, who had argued that republics can only function in small nations. On the contrary, argued Madison in *Federalist 10*, republics can insulate themselves best from the effects of faction by becoming so large that the factions offset themselves. To control the power of any given faction, we must create lots of factions. That he was arguing against Montesquieu in *Federalist 10* is generally recognized by historians of the *Federalist Papers*.

### 1. Protestant Denominations

What has not been emphasized sufficiently by scholars is the *denominational context* of Madison's concerns about faction. It was religious faction that was on his mind from the beginning, just as it had been on the minds of the English Whigs for a century. Like the eighteenth-century Whigs' anti-clerical dissent against the Tory-controlled Anglican Church and its political alliance with the crown,<sup>8</sup> so Madison hoped from the outbreak of the Revolution to find some way to break up state-established churches. His tactic was to create mutually offsetting denominational factions. He wanted the discontinuity of "sects" to substitute for the continuity of state-supported churches. He said this explicitly in *Federalist 51*: "In a free government, this security for civil rights must be the same as for religious rights. It consists in the one case in the multiplicity of interests, and in the other, in the multiplicity of sects. The degree of security in both cases will depend on the num-

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7. Myers (ed.), *Mind of the Founder*, p. 91.

8. Henning Graf Reventlow, *The Authority of the Bible and the Rise of the Modern World* (London: SCM Press, [1980] 1984; Philadelphia: Fortress Press, 1985), pp. 321–31.

ber of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government.”<sup>9</sup> Epstein was correct: “It is clear from Madison’s previous versions of *Federalist 10*’s arguments that religious factions were his primary concern among opinionated parties.”<sup>10</sup> Epstein unfortunately did not follow through on this cogent observation.

## 2. Madison’s Fear of Trinitarian Society

Madison expressed his concern over consolidated churches in a letter to William Bradford of Philadelphia in 1774:

If the Church of England had been the established and general religion in all the northern colonies as it has been among us here, and uninterrupted tranquility had prevailed throughout the continent, it is clear to me that slavery and subjection might and would have been gradually insinuated among us. Union of religious sentiments begets a surprising confidence, and ecclesiastical establishments tend to great ignorance and corruption; all of which facilitate the execution of mischievous projects.

But away with politics!<sup>11</sup>

Away with politics? It is clear that politics was the context of his discussion of churches. Madison was *judicially* unconcerned about religion as such; he was very concerned about politics. In this sense, he was a consistent secular humanist, and has been correctly identified as such.<sup>12</sup> He railed against the “pride, ignorance, and knavery among the priesthood, and vice and wickedness among the laity.” He then said, “I want again to breathe your free air.”<sup>13</sup> In these sentiments, he revealed himself as a true independent Whig dissenter.

Several states had created established churches. Pennsylvania was an exception in 1774—“free air.” Within any one state, a single denomination could gain special powers or favors. Rather than merely oppose compulsory state financing of churches, as he did in 1779 and

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9. *The Federalist*, ed. Jacob E. Cooke (Middletown, Connecticut: Wesleyan University Press, 1961), pp. 351–52.

10. David F. Epstein, *The Political Theory of The Federalist* (Chicago: University of Chicago Press, 1984), p. 76.

11. Madison to Bradford (Jan. 24, 1774), *Mind of the Founder*, p. 3.

12. Robert A. Rutland, “James Madison’s Dream: A Secular Republic,” *Free Inquiry* (Spring 1983). Reprinted in *James Madison On Religious Liberty*, ed. Robert S. Alley (Buffalo, New York: Prometheus, 1985), pp. 199–206.

13. *Mind of the Founder*, p. 4.

1785<sup>14</sup>—a worthy and legitimate political goal, biblically speaking, in order to reduce the economic dependence of the church on the state—Madison wanted to remove from civil government all sources of political dependence on Christianity. In his *Memorial and Remonstrance* of 1785, written against the move of Governor Patrick Henry and the legislature to provide limited state aid to churches (not to any one church),<sup>15</sup> he wrote: “During almost fifteen centuries, has the 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.”<sup>16</sup> He continued in this vein:

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. Rulers who wished to subvert the public liberty, may have found an established clergy convenient auxiliaries. A just government, instituted to secure & perpetuate it, needs them not.<sup>17</sup>

He invoked the biblical principle of sanctuary or asylum, but dressed in new secular garb: “Because the proposed establishment is a departure from that generous policy, which, offering an asylum to the persecuted and oppressed of every Nation and Religion, promised a lustre to our country, and an accession to the number of its citizens.”<sup>18</sup> He equated *asylum* with a *religiously neutral State*, ignoring the truth of the Old Testament’s example: it is only when a civil government is explicitly God-honoring, and when it screens those from public office who refuse to place themselves under God’s covenant oath as His servants, that the sanctuary can be maintained.

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14. *Ibid.*, p. 8

15. Robert Douthat Meade, *Patrick Henry: Practical Revolutionary* (New York: Lippincott, 1969), p. 280. Henry had opposed the pre-Revolutionary Anglican Church’s position, which prohibited the free exercise of worship by other Christian faiths. As a lawyer, he had opposed Edmund Pendleton’s active civil persecution of non-conforming churches. Norine Dickson Campbell, *Patrick Henry: Patriot and Statesman* (Old Greenwich, Connecticut: Devin-Adair, 1969), pp. 100–1.

16. *Mind of the Founder*, p. 12.

17. *Ibid.*, p. 13.

18. *Idem.*

### 3. *Nature's God or Nature Is God?*

Madison called all state-established religion an Inquisition in principle.<sup>19</sup> He ended his plea with a prayer to the officially nonspecific "Supreme Lawgiver of the Universe."<sup>20</sup> He made it clear who this Lawgiver is: *nature itself*.

Because, finally, "the equal right of every citizen to the free exercise of his Religion according to the dictates of conscience" is held by the same tenure with all our other rights. If we recur to its origin, it is equally the gift of nature; . . .<sup>21</sup>

A year and a half before the Constitutional Convention, Madison and Jefferson combined forces to get passed into law the now-famous Virginia Statute of Religious Freedom. The Act began with a summary of late eighteenth-century Arminian and deistic theology: "Whereas Almighty God hath created the mind free, so that all attempts to influence it by temporal punishments or burdens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy author of our religion. . . ."<sup>22</sup> This preamble is the longest sentence I have ever seen in a piece of legislation: approximately 600 words without a period. It represents the literary triumph of the semicolon. It includes this openly Newtonian sentiment regarding civil liberties: ". . . our civil rights have no dependence on our religious opinions, any more than our opinions in physics or geometry; . . ."<sup>23</sup> The Act ends with a statement that those passing it into civil law recognized that the legislature has no power to bind future legislatures, so that no piece of legislation is irrevocable. Nevertheless, they appealed to permanent natural rights: ". . . the rights hereby asserted are of the natural rights of mankind, and that if any act shall hereafter be passed to repeal the present, or to narrow its operation, such act will be an infringement of natural right."<sup>24</sup> A year and a half later, the Framers established this provision for the national government. This was the capstone of Madison's fifteen-year war against religious test oaths.

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19. *Idem*.

20. *Ibid.*, p. 16.

21. *Ibid.*, p. 15.

22. "Virginia Statute of Religious Freedom" (Jan. 16, 1786), in *The Annals of America*, 18 vols. (Chicago: Encyclopedia Britannica, 1968), III, p. 53.

23. *Ibid.*, III, p. 54

24. *Idem*.

### C. Political Unitarianism: Rousseau With Factions

By centralizing judicial power under a national government that prohibited the use of religious oaths as a test for holding national office, Madison correctly believed that this would undermine the ability of any single denomination to influence local policy permanently in any question under the national government's ultimate jurisdiction. The doctrine of judicial review—first consistently promoted in the *Federalist*<sup>25</sup>—coupled with the abolition of religious test oaths, guaranteed the long-term eradication of the pre-Revolutionary War's concept of oath-created civil covenants under God. One judicial body—the Supreme Court—could override the oath-bound “factionalism” of the various state courts. As it has turned out, the Supreme Court can also overturn the decisions of state legislatures and even the Federal legislature, although this was not fully understood by the authors of the *Federalist*.

Understand what Madison assumed throughout: religious factions—indeed, all factions—are an essentially surface phenomenon; they disturb an underlying national unity. In other words, *there is an inherent unity in man's political affairs apart from factions*. All that is needed to allow this underlying political unity to flourish is to expand the geographical boundaries of government in order to absorb (and therefore offset) more and more factions. Implicitly, this is a one-world impulse.

#### 1. Madison and Rousseau

Such an outlook regarding factions makes Madison an implicit follower of Rousseau. It is this assumption of a unitary reality behind factions that undergirds Rousseau's theory of the General Will.<sup>26</sup> I am not arguing that Madison was a strict follower of Rousseau. Rousseau thought of all of life as political. Intermediary institutions are to have no influence in society at all because all of life is political. Man is a citizen and *only* citizen. Madison was not politicized to this extent. But

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25. Wrote political theorist Gottfried Dietze: “The *Federalist's* creation of the doctrine of judicial review cannot be evaluated too highly.” Dietze, *The Federalist: A Classic on Federalism and Free Government* (Baltimore, Maryland: Johns Hopkins University Press, 1960), p. 331.

26. Robert A. Nisbet, *Tradition and Revolt: Historical and Sociological Essays* (New York: Random House, 1968), ch. 1: “Rousseau and the Political Community.”



the two men were agreed in those cases where the actual exercise of political power was concerned. Rousseau sought the abolition of all institutional barriers to the expression of the General Will; Madison wanted total decentralization for the factions and national centralization in a large nation. Rousseau wanted no factions; Madison wanted the multiplication and political trivialization of factions. The goal in each case was the same: the unification of national policy apart from any meaningful special-interest group pressures. By creating a national government that could act judicially directly on its citizens, the Constitution achieved this Rousseauvian goal.<sup>27</sup>

In *Federalist 51*, Madison described his goal for the creation of this new political order, one which would protect the rights of minorities and also create ethically just government decisions. The key is the diffusion of interests: "Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: The one by creating a will in the community independent of the majority, that is, of the society itself; the other by comprehending in the society so many separate descriptions of citizens, as will render an unjust combination of a majority of the whole, very improbable, if not impracticable."<sup>28</sup> The first approach is monarchy; the second is the U.S. Constitution.

His assumption was that there is justice available, and politicians can discover it; they need only to escape the "noise" of the competing factions. This enables politicians to render just decisions, to escape the tyranny of the majority by finding out what the "just" interests of society are. This was Rousseau's goal, too. The technique is different: not the suppression of interests but the privatizing of them, making them politically irrelevant. Rousseau's goal was the politicization of private interests. But both men believed that there is justice attainable through the overcoming of factions.

In this sense, Madison was as utopian and as messianic as Rousseau was; the difference lies in his approach. He was a man of the Scottish Enlightenment, a man in revolt against Presbyterianism. Rousseau was a man in revolt against political authoritarianism and the Roman Catholic hierarchy. Each man's system resembled his enemy's system. Madison wanted to overcome Presbyterianism by making the world socially Congregational and national politics neutral. Rousseau wanted

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27. Chapter 2:G.

28. Madison, *Federalist 51*, *Federalist*, p. 351.

to overcome Roman Catholicism by making the world socially unitarian and all politics state-salvational.

Ancient Rome sought Madison's political goal by inviting all conquered cities of the Empire to send their local gods into the pantheon; Madison told the conquered cities of the republic to keep their gods home and multiply them. He then emptied the pantheon. This confidence in what should be described as a unitarian political settlement was based on some version of Newtonian or Ciceronian natural law. It was also the worldview of Freemasonry. Freemasons believed that the religious "factions" or traditions—creeds, liturgies, and unique institutional histories—are peripheral to the true spiritual unity of the Brotherhood under the Supreme Architect.

The Constitution had not yet been ratified when the Antifederalists began organizing to capture Congress under the new Constitution.<sup>29</sup> Political factions and parties had already sprung up during the Revolutionary War era.<sup>30</sup> They developed even further during the Confederation period.<sup>31</sup> They became entrenched after 1788.<sup>32</sup> Madison's dream was shattered before sunrise. There is universal agreement among historians: this Madisonian faith in a world devoid of politically influential factions was utopian in 1788, just as it would be utopian today. What few of them are willing to say forthrightly is that the very presence of such a faith marks Madison as the most rationalistic of political philosophers. He paid no attention to the realities of politics in constructing the rationale for the constitutional blueprint. He believed that the Constitution would actually balance real-world politics into oblivion. Patrick Henry's assessment of the man was on target: "a man of great acquirements, but too theoretical as a politician."<sup>33</sup> Madison and his peers were totally naive on this point, historians agree. But the historians tend to ignore the origins of his utopian faith; it just somehow was universal among the nationalists. They do not

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29. Merrill Jensen and Robert A. Becker (eds.), *The Documentary History of the First Federal Elections, 1788–1790*, 2 vols. (Madison: University of Wisconsin Press, 1976), I, p. ix.

30. Stephen E. Patterson, *Political Parties in Revolutionary Massachusetts* (Madison: University of Wisconsin Press, 1973). I find it ironic that the publisher is located in a city called Madison.

31. Jackson Turner Main, *Political Parties Before the Constitution* (Williamsburg, Virginia: Institute for Early American History and Culture, published by the University of North Carolina Press, 1973).

32. Richard Hofstadter, *The Idea of a Party System: The Rise of Legitimate Opposition in the United States, 1780–1840* (Berkeley: University of California Press, 1969).

33. Quoted by Meade, *Patrick Henry*, p. 435.

pursue the obvious: the intellectual ideal of a political world of Newtonian mechanism<sup>34</sup> and the rhetoric of Ciceronian natural law had fused with the Masonic ideal of a creed-overcoming brotherhood to produce a political world without men's passions and interests. It was a still-born ideal by 1788.

## 2. *Shopkeepers' Millennium*

By 1787, the Framers had begun to think commercially. Adam Smith's *Wealth of Nations* (1776) had been circulating widely within educated republican circles. The defenders of republican liberties had begun to recognize that the old Roman republican virtues, while laudable, were untrustworthy for building a modern nation or maintaining an old one successfully. What was needed, they increasingly concluded, was something like Adam Smith's promised shopkeepers' millennium. Commerce would bind men together in a common effort.<sup>35</sup> Men in their private efforts would produce a good society.<sup>36</sup>

There was a fundamental difference between the Framers' understanding of their self-appointed task and the Scottish Enlightenment rationalists' vision of the competitive market order. Adam Ferguson's observation summarizes the view of the social framework of the Scots: "Nations stumble upon establishments, which are indeed the result of human action, but not the execution of any human design."<sup>37</sup> This was a self-consciously evolutionary worldview. The Framers, in sharp contrast, were motivated by the vision of the Great Architect. They believed that they could sit down together and write an historically unique document that would accomplish for the political order what Smith's minimal legislation free market promised to accomplish: greater freedom for individuals, greater wealth for nations. Ferguson, as an ordained Presbyterian minister, at least had a liberal Presbyterian

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34. Louis I. Bredvold, *The Brave New World of the Enlightenment* (Ann Arbor: University of Michigan Press, 1961).

35. Thomas L. Pangle, *The Spirit of Modern Republicanism: The Moral Vision of the American Founding Fathers and the Philosophy of Locke* (Chicago: University of Chicago Press, 1988), ch. 9.

36. Michael Lienesch, *New Order of the Ages: Time, the Constitution, and the Making of Modern American Political Thought* (Princeton, New Jersey: Princeton University Press, 1988), pp. 172–73.

37. Adam Ferguson, *An Essay on the History of Civil Society* (1767); cited by F. A. Hayek, "The Results of Human Action but not of Human Design," in Hayek, *Studies in the Philosophy, Politics and Economics* (Chicago: University of Chicago Press, 1967), p. 96n.

view of God to undergird his social evolutionism. Smith had a more deistic view of God as the foundation of morality. He spoke of “the all-seeing Judge of the world, whose eye can never be deceived, and whose judgments can never be perverted.”<sup>38</sup> He believed in final judgment, including negative sanctions.<sup>39</sup> He did not appeal to religion as an instrumental value for civic religion. The Framers were much less clear about such supernatural supports, except insofar as widespread belief in such a God would strengthen social order.

With their faith in God as the cosmic Architect of the moral world, by tying the operations of a competitive market order to God’s ultimate design, the Scottish rationalists could offer the suggestion that men can increase their wealth by trimming away most legislation. The world works better when politicians remove themselves from the market. The designing schemes of politicians are the source of the poverty of nations. While Jefferson may have believed in such an economic world—Hamilton surely did not—it took a leap of faith to believe that a Convention could revolutionize civil government by designing a totally new experiment in national government without falling into the trap that the Scots said that politicians always fall into: not seeing the long-term consequences of their actions. The Scots believed in a Grand Architect, but they were of the opinion that a wise politician will leave God’s handiwork alone. The Framers had a different opinion, at least regarding civil government.

In modern times, the collapse of faith in any underlying unity apart from either coalitions or the outright abolition of rival factions has destroyed the Madisonian paradigm. Unitarianism has been replaced by philosophical relativism and the consequent cacophony of single-issue politics. The physical world of Newton has been replaced by the world of Heisenberg, at least at the subatomic level. The social world of Newtonianism has been replaced by theories of pluralism. The individual gods of the pluralist universe are unwilling to take “no” for an answer. Anarchy—that great fear of the Framers—has once again raised its many heads. The Framers had relied on a trinitarian social order to preserve their unitarian civil settlement. The result has been a war between anarchy’s polytheism and tyranny’s monotheism. To control the central government is to control access to the voice of authority. The new rule of democracy, exhibited best in polytheistic tribal

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38. Adam Smith, *The Theory of Moral Sentiments* (Indianapolis, Indiana: Liberty Classics, [1759] 1976), p. 228.

39. *Ibid.*, pp. 280–81.

Africa, is simple: one man, one vote, once.<sup>40</sup>

### D. A Coup

The idea that the Convention was a *coup* is not new. It had its origins in the pamphlets of the Antifederalists who opposed the Constitution. It became popular again in the years immediately preceding World War I, when Charles A. Beard published his famous *Economic Interpretation of the Constitution* (1913). The *coup* thesis was modified by Merrill Jensen in 1940—*The Articles of Confederation*—and again in 1950, when he published *The New Nation*. Jensen, unlike Beard, believed that the period of the Articles was not really that critical a period, that the basic economy and political structure of the nation were sound. I am not entirely persuaded by this. There were tariffs between states, although the tariff wars had begun to fade by 1787. There was no executive in charge of the armed forces. There was no direct taxation power at the national level. But, on the whole, Jensen's assessment of the political division is accurate.

Politically the dominating fact of the Confederation Period was the struggle between two groups of leaders to shape the character of the states and judicial branches subservient to them. The members of the colonial aristocracy who became the Patriots, and new men who gained economic power during the Revolution deplored this fact, but they were unable to alter the state constitutions during the 1780's. Meanwhile they tried persistently to strengthen the central government. These men were the nationalists of the 1780's.

On the other hand, the men who were the true federalists believed that the greatest gain of the Revolution was the independence of the several states and the creation of a central government subservient to them. The leaders of this group from the Declaration of Independence to the Convention of 1787 were Samuel Adams, Patrick Henry, Richard Henry Lee, George Clinton, James Warren, Samuel Bryan, George Bryan, Elbridge Gerry, George Mason and a host of less well known but no less important men in each of the states. Most of these men believed, as a result of their experience with Great Britain before 1776 and of their reading of history, that the states could be best governed without the intervention of a powerful central government.<sup>41</sup>

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40. Paul Johnson, *Modern Times: The World from the Twenties to the Eighties* (New York: Harper & Row, 1983), ch. 15: "Caliban's Kingdoms."

41. Merrill Jensen, *The New Nation: A History of the United States During the Confederation, 1781-1789* (New York: Vintage, [1950] 1965), p. 424.

## E. The Nationalists

Who were the nationalists? Robert Morris, Alexander Hamilton, George Washington, James Wilson, James Madison, and John Jay. Of them, Jensen wrote: "Most of these men were by temperament or economic interest believers in executive and judicial rather than legislative control of state and central governments. . . ." <sup>42</sup> This is the key: *judicial and executive control*. They feared the popular majority. They feared the mob. They wanted to put restraints on the voters. The traditional view of their intention focuses on the political and the economic. They sought power and money, it is said. Thus, say their critics, the Constitutional Convention was a *coup d'état*.

Perhaps the most interesting suggestion was made by a pair of historians whose 1961 article focused on *age differences* among the leaders of both camps. This essay was reprinted by the American Historical Association in 1962 as a publication of its Service Center for Teachers of History. Elkins and McKittrick had discovered that the Antifederalist leaders listed by Jensen were on average 10 to 12 years older than the nationalist leaders. Of the nationalists, Washington was the oldest when the war broke out; he was 44. Six were under 35, and four were in their twenties. Almost half the nationalists had their careers launched during the Revolution. This was especially true of Madison and Hamilton. The careers of the Antifederalists were state-centered. Their careers had begun before the Revolution. The two authors concluded that the energy of the nationalists had much to do with their perception of a true national interest, where they had first reached the limelight. The nationalists had the ambition and drive to overcome the less organized efforts of the Antifederalists. <sup>43</sup>

### 1. A Careful Plan of Action

The question remains: How did they do it? How did they organize the Convention, gain the Congress' post-Convention acceptance of its own extinction, get the state legislatures to do the same, and then defeat the Antifederalists in the state ratifying conventions? There is reasonable evidence that Antifederalist sentiments were held by at least an equal number of citizens in 1788 as those favoring the Consti-

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42. *Ibid.*, p. 425.

43. Stanley Elkins and Eric McKittrick, *The Founding Fathers: Young Men of the Revolution* (Washington, D.C.: Service Center for Teachers of History, 1962), pp. 22–27.

tution's ratification.<sup>44</sup> Was the victory of the Federalists due to better organization or a better case philosophically?

In their preparation for a paradigm shift, those who are promoting the new paradigm constantly call attention to the fact that the existing paradigm cannot solve major empirical, factual, real-world problems. The defenders of the older paradigm cling to the old system, trying to show that the empirical problems raised by the critics are really not so threatening and are best solved by using the familiar terms of the older system. But as the incongruities between the new facts—meaning either newly observed, recently re-discovered, or *newly emphasized* facts—and the old paradigm continue to grow, and as younger men tire of putting up with these anomalies, the next generation of leaders shifts its allegiance to the newer paradigm.<sup>45</sup>

The young men of the Revolution produced this paradigm shift in 1787–88. The older political paradigm of the trinitarian colonial charters was very nearly dead in 1787. Biblical covenantalism at the state level had steadily been replaced after 1776 by halfway covenantalism. Halfway covenantalism at the national level proved unable to survive the onslaught of apostate national covenantalism. The Federalists successfully portrayed the problems of the late 1780s as being of crisis-level proportions, an argument denied by the defenders of the Articles from 1787–88 until the present. In the summer of 1787, most people agreed with the Antifederalists; there was little sense of the existence of a national crisis, let alone an unsolvable national crisis.<sup>46</sup> The Framers wanted to “seize the moment,” even if they had to invent it in order to seize it.

There was a decided lack of leadership from Congress. Congress in some sense committed suicide by not calling a halt to the Convention when the rule of secrecy was imposed in May. Some members of Congress sat in the Convention; they did not rebel against the oath of secrecy. Clinton Rossiter did not exaggerate in 1966 when he wrote: “Congress was already failing when the Framers gave it their famous push.”<sup>47</sup> The old men of the Revolution were losing their confidence.

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44. Jackson Turner Main, *The Anti-Federalists: Critics of the Constitution, 1781–88* (Williamsburg, Virginia: Institute of Early American History and Culture, published by the University of North Carolina Press, 1961), Conclusion.

45. Thomas Kuhn, *The Structure of Scientific Revolutions*, 2nd ed. (Chicago: University of Chicago Press, 1970).

46. Jack P. Rakove, *The Beginnings of National Politics: An Interpretive History of the Continental Congress* (New York: Knopf, 1979), p. 396.

47. Clinton Rossiter, *1787: The Grand Convention* (New York: Norton, [1966])

The Articles had required unanimity for the ratification of any amendment (Article XIII). This provision had delivered the destiny of the national government into the hands of Rhode Island, and Congress knew it. They knew by 1787 that Article XIII was wrong when it stated that “the union shall be perpetual.” But they did not know how simultaneously to escape both Rhode Island and dissolution. There was a failure both of vision and nerve in Congress. The sanctioned representatives of real-world voters did not have sufficient confidence in their own offices to challenge the self-designated representatives of the metaphysical People. The magistrates in the halfway covenant could not muster sufficient drive to defend it successfully in the face of a more consistent apostate covenant. They had forgotten that God gives His covenanted men confidence only when they obey His revealed law.<sup>48</sup> Thus, they meekly acquiesced to the transfer of sovereignty that was going on illegally in their midst, with the connivance of some of Congress’ members. George Washington in effect stared them down from Philadelphia.<sup>49</sup>

The voters had not been willing to require of their national representatives what most states required of state representatives: an oath of allegiance to God and His Bible. The voters had been embarrassed by God. The Framers were not embarrassed by Him; they simply prohibited any public oath to Him in their new covenant document. They regarded Him as some sort of senile uncle who could be trotted out on holidays, counted on to make a toast or two—judicially non-binding, of course—and then be sent back to His retirement home.

## 2. *The Antifederalists*

The Antifederalists were placed in the unenviable position of say-

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1987), p. 52.

48. “This book of the law shall not depart out of thy mouth; but thou shalt meditate therein day and night, that thou mayest observe to do according to all that is written therein: for then thou shalt make thy way prosperous, and then thou shalt have good success. Have not I commanded thee? Be strong and of a good courage; be not afraid, neither be thou dismayed: for the LORD thy God is with thee whithersoever thou goest” (Josh. 1:8–9).

49. Wrote McDonald: “In an age in which most Americans stood about five feet six and measured nearly three-fourths of that around the waist, Washington stood six feet and had broad, powerful shoulders and slim hips; and he had learned the trick, when men said something beyond his ken, of looking at them in a way that made them feel irreverent or even stupid.” Forrest McDonald, *E Pluribus Unum: The Formation of the American Republic, 1776–1790* (Indianapolis, Indiana: LibertyPress, [1965] 1979), p. 262.



ing that there was a need for reform, but not a great need, and not a great reform. Also, they could not show how these reforms could be achieved legally, given the limitations imposed by the Articles. Limited reform on the basis of traditional foundations is always a difficult position to defend after decades of philosophical compromise with those who are pressing for ever-greater social change in terms of ever-greater philosophical consistency. The Antifederalists learned the truth of politics: “You can’t beat something consistent if you don’t offer anything specific.”

Philosophically and theologically, the Antifederalists could not and did not match the Federalists with respect to faithful conformity to the “spirit of the age.” They could not successfully appeal to the great overarching principle of Newtonian rational coherence, for such coherence pointed to universalism. Newton’s laws applied to the whole universe, even including Rhode Island. In an age of growing universalism, the Antifederalists clung to particularism and localism.

For example, they could not deal politically with the inter-colonial economic problems that the Articles had not solved. Adam Smith’s *Wealth of Nations* defended the world of free trade and open borders, but this is always a difficult idea to sell to tax-hungry politicians and local producers who face competition from imports. Smith’s view, like that of Scottish rationalism generally, was “systems-oriented,” intellectually speaking. It was mechanical rather than organic. Smith had built a towering intellectual system in defense of free trade. He showed what should be done—the abolition of political restraints on trade—but he did not show how a confederation might achieve this by political means. The Federalists did: no more internal tariffs, no more provincial fiat money, no more begging for financial support. A national central government would compel economic decentralization.<sup>50</sup> Thus, the Antifederalists could not beat something with nothing, i.e., demonstrate publicly how they could solve the fundamental weaknesses politically with “more of the same.”

The Federalists could appeal to the need for a new union that would abolish these internal restraints on trade. This was Madison’s

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50. Free market economist Ludwig von Mises argued the same way with respect to international government: *Omnipotent Government: The Rise of the Total State and Total War* (New Haven, Connecticut: Yale University Press, 1944), pp. 243–45. (<http://bitly/MisesOG>). If the barriers to trade can be removed individually, nation by nation, fine (what the state politicians could not understand or attain in 1786); if not, then world government is an alternative. Mises was being faithful to the vision of the Framers, but at the next level up.

vision: political centralization for the sake of economic liberty and decentralization. Hamilton had other ideas, as he proved when he was Secretary of the Treasury, but this was not known to his colleagues in 1788. Madison even hoped for an international economic decentralization based on American force. He thought that a strong central government could coerce England into opening up the West Indian ports to U.S. commerce. America would compel the world to accept free trade.<sup>51</sup> This was very far from the vision of the Antifederalists.

### 3. *A Clean Break*

The Federalists also had made a nearly clean break with the halfway covenant Articles. It took the Civil War and the Fourteenth Amendment to complete it. The halfway covenant of the Articles was neither openly Christian nor openly secular. Colonial social and political thinkers had steadily abandoned biblical covenantalism for well over a century. The lawyers had won political control even in formerly Puritan New England. The preachers had grown muddled in offering specifics to colonial political leaders after the restoration of Charles II in 1660, and especially after King Philip's War (the Indian war) in 1675–76.<sup>52</sup> Step by step, Christians had compromised with Newtonianism and Deism, at least with respect to social theory. They had also been educated in the pagan classics. The Antifederalists referred in their pamphlets to ancient Rome, not ancient Israel. They had no principle of transcendence, no voice of authority. The Federalists did: the voice of the sovereign People.

But it was not merely the intellectual case for apostate covenantalism that won the day; traditionalism always dies hard. It was also a question of better political organization. If the Federalists were better organized, as they surely were,<sup>53</sup> then what was the basis of this better

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51. Pangle, *Spirit of Modern Republicanism*, p. 101.

52. Gary North, *Puritan Economic Experiments* (Tyler, Texas: Institute for Christian Economics, [1974] 1989), pp. 35–38; 54–55. (<http://bit.ly/gnpuritan>). For a more detailed study, see North, "From Medieval Economics to Indecisive Pietism: Second-Generation Preaching in New England, 1661–1690," *Journal of Christian Reconstruction*, VI (Summer 1979); pp. 136–74; North, "From Covenant to Contract: Pietism and Secularism in Puritan New England, 1691–1720," *ibid.*, VI (Winter 1979–80), pp. 155–94.

53. This is not to say that the Antifederalists were disorganized. That myth has been laid to rest by Steven R. Boyd: *The Politics of Opposition: Antifederalists and the Acceptance of the Constitution* (Milwood, New York: Kraus-Thomson Organization, 1979).

organization? What was the source of the cooperation these leaders received from so many others in the state conventions? Where did the common vision come from? These events were not random. Politics is not impersonal either—not the product of “vast social forces.” The issues of politics are organizational.

What I argue is very different from what appears in any textbook on U.S. history. I argue that 1787 was indeed a *coup d'état*. But this *coup* had a side to it that the history books refuse to mention: *religion*. The Constitutional Convention was a successful attempt by a small group of men whose most influential leaders had long since rejected the doctrine of the Trinity. The voters were Christians; the Convention's leaders were what two decades later would be called Unitarians. They had imbibed their theology, not from the creeds of the nation's churches, but from dissenting Whig political theory—Newtonian to the core—and from the secret rites of the Masonic lodges to which a dozen of them belonged, which was also Newtonian to the core. What the Constitutional Convention was all about was this: *a national political transformation by a group of men who really believed in secrecy and oaths*. That almost a quarter of them had taken Masonic self-maledictory oaths is at least worth considering when it comes to assessing their personal motivations.

## F. Trinitarian State Constitutions

The colonies' state constitutions were explicitly religious. This was especially true of New England's constitutions. The old Puritan rigor was still visible at the outbreak of the Revolution. Vermont's 1777 constitution begins with the natural rights of man (Section I), goes to a defense of private property (Section II), and then sets forth the right of religious conscience, “regulated by the word of GOD. . . .” There is full religious freedom for anyone to worship any way he chooses, *just so long as he is a protestant*: “. . . nor can any man who professes the protestant religion, be justly deprived or abridged of any civil right, as a citizen, on account of his religious sentiment. . . .” The public authorities have no authorization to interfere with people's rights of conscience; “nevertheless, every sect or denomination of people ought to observe the Sabbath, or the Lord's day, and keep up, and support, some sort of religious worship, which to them shall seem most agreeable to the revealed will of GOD.”<sup>54</sup>

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54. Richard L. Perry and John C. Cooper, *The Sources of Our Liberties* (Chicago:

The 1780 Massachusetts constitution and the 1784 New Hampshire constitution had almost identical passages requiring public worship. Section I of the Massachusetts document affirms that "All men are born free and equal, and have natural, essential, and unalienable rights," and then lists men's lives, liberties, and property ownership. Section II says: "It is the right as well as the duty of all men in society, publicly, and at stated seasons, to worship the SUPREME BEING, the great Creator and Preserver of the universe." This sounds universalistic and even Masonic. But Section III establishes the right of the state to support the building of churches and the payment of ministers' salaries. All the denominations were placed on equal status. Section III ends with these words: "And every denomination of Christians, demeaning themselves peaceably, and as good subjects of the commonwealth, shall be equally under the protection of the law. . . ." <sup>55</sup> The same religious provisions are found in Sections I–VI of the New Hampshire constitution, and Section VI repeats verbatim the statement from Massachusetts' constitution: "And every denomination of christians. . . ." <sup>56</sup> In short, these state commonwealths were explicitly designated as Christian.

The Virginia constitution of 1776 was less specific. It affirmed freedom of conscience, and it recommended "Christian forbearance, love, and charity towards each other."<sup>57</sup> Virginia had a state-supported church. Pennsylvania's 1776 constitution specified that a man's civil rights could not be abridged if he "acknowledges the being of a God."<sup>58</sup> The test oath had been removed through the influence of Franklin.<sup>59</sup>

Delaware in 1776 was more theologically explicit. "That all persons professing the Christian religion ought forever to enjoy equal rights and privileges in this state, unless, under color of religion, any man disturb the peace, the happiness or safety of society."<sup>60</sup> Maryland's 1776 constitution was similar to Delaware's: ". . . all persons, professing the Christian religion, are equally entitled to protection in their reli-

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American Bar Foundation, 1952), p. 365. Not reproduced in this American Bar Foundation's compilation are the crucially important clauses regarding the required confessional oath administered to state officers, such as those I have reproduced in Chapter 2:E.

55. *Ibid.*, p. 375.

56. *Ibid.*, p. 383.

57. *Ibid.*, p. 312.

58. *Ibid.*, p. 329.

59. Philip Schaff, *Church and State in the United States* (New York: Arno Press, [1888] 1972), p. 22.

60. Perry and Cooper, *op. cit.*, p. 338.

gious liberty. . . .” Furthermore, “the Legislature may, in their discretion, lay a general and equal tax, for the support of the Christian religion. . . .”<sup>61</sup> North Carolina required an affirmation of the Protestant religion for office-holders.<sup>62</sup>

## G. Subverting the State Constitutions

The state governments of most of the colonies—always excluding Rhode Island—combined legitimate Christian oaths and illegitimate state-financed churches. It is one of the great ironies of American history that Rhode Island served as the religious model of the Constitutional settlement, yet it was this state’s intransigence after 1783 in the area of commercial policy and its wave of paper money inflation in the mid-1780s that persuaded the Framers to replace the Articles. Rhode Island refused to ratify the Constitution until 1790. It was the outcast of America in the 1780s as surely as it had been the outcast of Puritan New England in the 1640s and 1650s.<sup>63</sup> The people of the colonial era recognized that an oath to God and an affirmation of the authority of the Bible were basic to the preservation of Christian social order, political freedom, and economic prosperity.

What the colonists did not fully understand is that the God-given function of civil government is inherently negative: to impose sanctions against public evil. It is not the function of civil government to use coercively obtained tax money in order to promote supposedly positive causes. By using tax revenues to finance specific denominations, the state governments created ecclesiastical monopolies. This was a catastrophic error—one shared by the whole Western world from the beginning of the West. This error could have been solved by the Constitution’s refusal to subsidize churches with direct economic grants of any kind. Instead, the Constitution created a secular humanist, anti-Christian republic in the name of religious freedom. Tax money is used to subsidize this rival religious worldview in the name of religious neutrality.

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61. *Ibid.*, p. 353.

62. *Ibid.*, p. 356. North Carolina was the twelfth colony to ratify the Constitution. Rhode Island was last.

63. Irwin H. Polishook, *Rhode Island and the Union, 1774–1795* (Evanston, Illinois: Northwestern University Press, 1969). Cf. Patrick T. Conley, “First in War, Last in Peace: Rhode Island and the Constitution, 1786–1790,” in Patrick T. Conley and John P. Kaminski (eds.), *The Constitution and the States: The Role of the Original Thirteen in the Framing of the Federal Constitution* (Madison, Wisconsin: Madison House, 1988), ch. 13.

It was the legitimate hostile reaction of the various non-established Protestant churches to this misuse of tax revenues. Mead wrote: "The struggles for religious freedom during the last quarter of the eighteenth century provided the kind of practical issue on which rationalists and sectarian-pietists could and did unite, in spite of underlying theological differences, in opposition to 'right wing' traditionalists."<sup>64</sup> Tax-funded economic support of specified ecclesiastical groups led politically to the Constitutional destruction of the explicitly trinitarian judicial foundations of the United States. It created the political alliance between the Deists-Masons and dissenting churches. The Federal example reminded men that national leaders were not bound by any trinitarian oath. Why should state officers be similarly bound? The symbol of the oath was real; this covenantal example could not be ignored. The Deists who wrote this provision into the Constitution fully understood this; their opponents were not equally alert. A century of Newtonian rationalism and an ancient heritage of Stoic natural law theory had blinded the opponents to the importance and inescapable nature of covenantal civil oaths.

Freemasons had a definite goal: to make illegal at the national level the imposition of a rival theocracy to their own. This put them at odds with the covenants of twelve of the 13 state constitutions, which they intended to subvert. Rushdoony argued in 1973 that theocracy is judicially mandatory; therefore, he concluded, there must not be toleration of non-Christian religions. "The modern concept of total toleration is not a valid legal principle but an advocacy of anarchism. Shall all religions be tolerated? But, as we have seen, every religion is a concept of law-order. Total toleration means total permissiveness for every kind of practice: idolatry, adultery, cannibalism, human sacrifice, perversion, and all things else. Such total toleration is neither possible nor desirable. . . . And for a law-order to forsake its self-protection is both wicked and suicidal. *To tolerate subversion is itself a subversive activity.*"<sup>65</sup> The toleration of religious subversion: it would be difficult to produce a more accurate yet succinct description of the results of the Constitutional Convention from a biblical point of view.

It was the explicitly Christian character of state constitutions that

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64. Sidney Mead, "American Protestantism During the Revolutionary Epoch," in *Religion in American History*, eds. John M. Mulder and John F. Wilson (Englewood Cliffs, New Jersey: Prentice-Hall, 1978), pp. 165-66.

65. R. J. Rushdoony, *The Institutes of Biblical Law* (Nutley, New Jersey: Craig Press, 1973), p. 89.

became the target of the delegates in Philadelphia.

## H. Franklin's Theology of Union

Benjamin Franklin has been regarded as a conservative Deist. He was not. When he died, a printed document was found in his pocket. He had carried it around with him for years: "Articles of Belief." It declared his faith in the plurality of worlds, a widely held Renaissance doctrine.<sup>66</sup> The universe is filled with many suns like ours, and many worlds like ours, the document said. It also announced his idea that the "INFINITE has created many beings or Gods, vastly superior to Man. . . . It may be that these created Gods are immortal; . . . Howbeit, I conceive that each of these is exceeding wise and good, and very powerful; and that Each has made for himself one glorious Sun, attended with a beautiful and admirable System of Planets. It is that particular Wise and good God, who is the author and owner of our System, that I propose for the object of my praise and adoration."<sup>67</sup> If he was anything theologically, he was a proto-Mormon.

In 1734, he was appointed as provincial Masonic Grand Master for the Province of Pennsylvania.<sup>68</sup> He had been seeking a high Masonic position for over a year.

In 1754, Franklin had worked to create a national government. This took place at the Albany Convention. This was the first attempt at colonial national union. Some two dozen delegates from seven states attended. The goal was to create a defense system against the French who were challenging British expansion in the Ohio Valley. A committee of five men was appointed to draw up a Plan of Union, and three were Masons: Hutchinson of Massachusetts, Franklin, and Hopkins of Rhode Island. Franklin on May 9, 1754, printed in his *Pennsylvania Gazette* a woodcut of a snake in eight pieces, labeled "Join or Die." Then he submitted his Plan of Union. Wrote Carter:

The plan provides for a president-general to be appointed by the Crown, and for a grand council to be elected by the colonial assemblies—the identical plan of organization of American Provincial Grand Lodges at that time. . . . Franklin left no hint that he used the

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66. Arthur O. Lovejoy, *The Great Chain of Being: A Study of the History of an Idea* (New York: Harper & Row, [1936] 1965), ch. 4.

67. Bernard Fay, *Revolution and Freemasonry, 1680–1800* (Boston: Little, Brown, 1935), pp. 160–61.

68. Melvin M. Johnson, *The Beginnings of Freemasonry in America* (New York: Doran, 1924), ch. 8.

constitution of Freemasonry as a model for his Albany Plan but, since he had published *Anderson's Constitutions* in 1734 and had served as Grand Master of the Provincial Lodge of Pennsylvania also in 1734, there can be no doubt that he was familiar with the Masonic constitution. The fact that he called the council of the representatives of the several colonies a grand council and that the council of the representatives of Masonic lodges is called a Grand Lodge is circumstantial evidence that Masonry was influencing his thinking.<sup>69</sup>

### I. Anderson's *Constitutions*

What was Anderson's *Constitutions*? This was the organizational handbook of English "speculative Freemasonry," or at least of the branch that became known by its opponents as the "Moderns." A rival Masonic group, formed in 1751, called themselves the "Ancients" or "Antients." These men tended to be recruited from the non-elite members of society, unlike the "Modern" branch of speculative Freemasonry.<sup>70</sup> The Ancients' organization manual, the *Ahiman Rezon*, was heavily dependent on Anderson's *Constitutions*.

What was originally known as speculative Freemasonry, as distinguished from the economic guild of professional masons, grew out of the early masons' guilds. Several masons' guilds formed The Premier Grand Lodge of London in 1717.<sup>71</sup> Non-masons joined it and immediately captured it. Within three years, the Grand Lodge became the heart of English speculative Masonry, meaning modern Freemasonry.

James Anderson, a Presbyterian clergyman and genealogist,<sup>72</sup> joined the Premier Grand Lodge in 1720.<sup>73</sup> He was also a Fellow of the Royal Society, the prestigious scientific society, as was his Masonic colleague, Church of England clergyman and scientist John Desaguliers. Desaguliers had been hand-picked by Newton to be the first "experimental scientist" of the Royal Society. The latter became the first paid public lecturer in science history. He had been inducted into the Society in 1714. He and Anderson became the links between Newton, the Royal Society, and speculative Freemasonry.

69. James D. Carter, *Masonry in Texas: Background, History, and Influence to 1846* (Austin: University of Texas Press, 1955), pp. 130–31.

70. An account of this rivalry in the colonies appears in Stephen C. Bullock, *Revolutionary Brotherhood: Freemasonry and the Transformation of the American Social Order, 1730–1840* (Chapel Hill: University of North Carolina Press, 1996), ch. 3.

71. Dorothy Ann Lipson, *Freemasonry in Federalist Connecticut* (Princeton, New Jersey: Princeton University Press, 1977), p. 14.

72. *Idem.*

73. *Ibid.*, p. 26.



They were self-conscious agents of Newton. The Royal Society was not some loose association of scientists and philosophers in this era of British history. Newton ran the Royal Society with an iron fist. Wrote his biographer: "Newton protected his disciples, advanced their careers, and, in return, demanded and received total obedience almost to a man."<sup>74</sup> Dr. Lipson concurs: "Newton, whose *Philosophiae Naturalis Principia Mathematica* (1686)<sup>75</sup> epitomized the mathematical work of that century, lived long enough to welcome Anderson and Desaguliers to the fellowship of the Royal Society. Thus the great intellectual revolution of the preceding century was telescoped in the Royal Society into the work of two generations: progenitors and heirs. Among their heirs were the founders of Freemasonry."<sup>76</sup> Anderson wrote the supposedly anonymous *Constitutions of Free Masons* in 1723.

Freemasonry in London has been traced back by Masonic historians to at least the year 1620. There is a reference from a 1665 Company record to the *Old Charges*, or Gothic Constitutions, also known as *The Book of the Constitutions of the Accepted Masons*.<sup>77</sup> A major change had begun to take place by the time of the centralization of the lodges in 1717, as Masonic historian Joseph Fort Newton pointed out. In the *Old Charges* we read: "The first charge is this, that you be true to God and Holy Church and use no error or heresy." Newton instructs his readers to "Hear now the charge of 1723," meaning Anderson's *Constitutions*. On this point, I agree with Newton: pay close attention. Here is Anderson's charge:

A Mason is obliged by his Tenure, to obey the moral law; and if he rightly understands the Art, he will never be a stupid Atheist nor an irreligious Libertine. But though in ancient times Masons were charged in every country to be of the religion of that country or nation, whatever it was, yet it is now thought more expedient only to oblige them to that religion in which all men agree, leaving their particular Opinions to themselves: that is, to be Good men and True, or Men of Honor and Honesty, by whatever Denomination or Persuasion they may be distinguished; whereby Masonry becomes the Centre of Union and the Means of conciliating true Friendship

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74. Gale E. Christiansen, *In the Presence of the Creator: Isaac Newton and His Times* (New York: Free Press, 1984), p. 481.

75. Published in 1687.

76. Lipson, *Federalist Connecticut*, p. 15.

77. Joseph Fort Newton, *The Builders: A Story and Study of Freemasonry* (Richmond, Virginia: Macoy, [1914] 1951), p. 154.

among persons that must have remained at a perpetual distance.<sup>78</sup>

The universalism of the new position is obvious. This is an institutional manifestation of the ecumenical impulse of Newtonianism, which was Socinian and monotheistic. God the Architect was necessary to hold the original Newtonian system together; a belief in god the Architect was also necessary to hold Freemasonry together. But, like the god of Newton, this god of Freemasonry was not marked by attributes that are invisible to covenant-breaking rational men, unlike the God of the Bible. Thus, this Masonic god, universal in nature, and manifest only through nature, is to replace men's less universal, less rational, less mathematical, more denominational God.

We have in Freemasonry a manifestation of the Whig ideal of a world in which there is denominational equality through denominational irrelevance. Simultaneously, we have an incarnation of the Tory ideal of a world devoid of powerful centrifugal religious forces that lead to revolution and chaos. There is an institutional fusion of the one and the many, with unity provided by the common creed regarding an Architectural deity manifested only in his physical handicraft—the god of Newton—and with diversity provided by the personally legitimate but Masonically irrelevant creeds of the lodges' members.

This is the theological foundation of political pluralism. It is the revival of the Roman pantheon. All that is missing is political power. That, however, could be taken care of through careful organization outside the official meetings of the fraternity. Like Christians who conducted worship services generally devoid of politics, but who then met together for civic purposes after the worship service had formally ended, so were the Masons.

These men agreed with the sentiments articulated by William Blackstone in his comments on the distinction between natural law and biblical revelation. It is man's ability to perceive clearly the stipulations of the civil law that supposedly determines which of the two laws is to be regarded as dominant for society.<sup>79</sup> Blackstone said that biblical revelation is clearest to men, but if he really believed this, then he was John the Baptist crying in the eighteenth century's Enlightenment wilderness. No one, especially the Framers, took him seriously on this

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78. *Ibid.*, p. 165. A more complete, though not fully complete, version of Anderson's *Constitutions* is reprinted as an appendix in Margaret Jacob, *The Radical Enlightenment: Pantheists, Freemasons and Republicans* (London: George Allen & Unwin, 1981), pp. 279–300.

79. See Chapter 1:B.

point.

## J. The Universalism of Freemasonry

The Christian church is trans-historical. It carries forward into eternity (Rev. 21; 22). It is one in Jesus Christ. It is therefore international. But it has, to the present, failed to manifest organizationally both its internationalism and a unified system of courts. Its disputes have repeatedly led to bloodshed. By 1700, these religious wars seemed unavoidable unless there was a change in national covenants; therefore, a handful of enlightened men sought to base the civil order on something other than the Christian religion.

### 1. Faith in Unity

There were precedents for this Enlightenment hope. The development of economic science in the late seventeenth century was a self-conscious attempt to produce a scientific inquiry of society without any appeal to religion.<sup>80</sup> A growing minority of educated men had begun a quest for principles of social order beyond the disputes of revealed religion. So had advocates of a new paganism. Jacob wrote: "In the early eighteenth century, the return to paganism, especially of an indigenous variety, seemed to offer a solution to the religious problem bequeathed by the English Revolution. Radicals in the 1690s who desired a republican version of the constitution, true religious toleration, social reform, a Parliament ruled by gentlemen in the interest of the people, had to recognise that those goals had been rejected in 1660 at the Restoration."<sup>81</sup> They asked themselves: Why had the two English Revolutions failed? Religious conflict, concluded a radical minority. They concluded that what was needed was a program of reform based on a new "religious consensus, in a civil and universal religion. . . ."<sup>82</sup> Freemasonry was the eighteenth-century's institutional culmination of this quest.

Freemasonry's principles, like its organizational structure, were highly "portable," to use Dr. Lipson's term. While I understand that readers have a tendency to skip over lengthy block quotations, I strongly suggest that this temptation be resisted at this point. Lipson

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80. William Letwin, *The Origins of Scientific Economics* (Cambridge, Massachusetts: MIT Press, 1963), ch. 6.

81. Jacob, *Radical Enlightenment*, p. 154.

82. *Ibid.*, p. 155.

wrote:

The first problem on which Freemasonry worked was how a society with an established church could accommodate both a growing religious diversity and the rationalistic universalism that had attended the growth of the new sciences. The Masonic response was to provide a secret (arcane) pseudo-religion by developing an elaborate mythology and system of rituals for teaching moral values that Masons claimed were universal. The leaders were not unaware of the parallels of Masonry and religion. Churches, however, required uniformity over a wide range of beliefs and values, from the immediate to the ultimate, while Masonry only required fidelity to a generally accepted system of moral values related to daily life. As [Wellins] Calcott reminded his English and American readers [in 1769 and 1772, respectively], in the implicit anticlericalism that pervaded Freemasonic literature, the church's interpretation of history was one of "enmity and cruelty." Masonry, on the other hand, was a system of morality based on the will of God and "discoverable to us by the light of reason without the assistance of revelation." According to the *Constitutions*, a Mason was obliged "to obey the Moral law," or the "Religion in which all men agree, leaving their particular Opinions to themselves; that is to be *good Men and true*, or Men of Honour and Honesty, by whatever Denominations or Persuasions they may be distinguished." Masonry was designed to encompass all religions, or as the Ancients put it, to be "the universal religion or the religion of nature 'as' the Cement which unites men of the most different Principles into one Sacred Band." . . . Masonry expressed another kind of universalism, which was not religious but humanistic.<sup>83</sup>

Freemasonry is a rival religion to Christianity. It is universalist in scope, rationalist in its ethics, and internationalist in its institutional goal. It is humanistic to the core.

## 2. *Silent Majority, Secret Minority*

I argue in this book that most Americans were Christians in the eighteenth century. During the American Revolution, especially through Masonic lodges in the army, a subtle change took place. A small but significant minority of the army adopted rival oaths to those of their churches. This new allegiance fused with a long tradition of republican ideology that had been devised and promoted by the English Commonwealthmen, whose theological commitment was not always

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83. Lipson, *Freemasonry in Federalist Connecticut*, pp. 37–38.

orthodox. This minority of freethinkers, or at least seriously compromised Christians, in the armed forces led to a political transformation of the nation, especially in top national leadership positions. A minority could later subvert the American Christian commonwealth, just as a minority did in revolutionary Europe. This process of subversion had been going on for well over half a century, as Jacob said, referring to the career of John Toland, a pantheist and major figure of the Commonwealthmen. Jacob wrote:

Most significantly, English radicals like Toland played an essential role in transmitting that originally English form of social behaviour on to the Continent, decades before that process began in earnest. They laid roots that flourished in the period after 1730 when official Freemasonry, that is Masonic lodges affiliated with the Grand Lodge of London, took hold in various European cities and towns. It now seems increasingly clear that from its earliest formation as an international culture, the social world of the Radical Enlightenment, although not necessarily all of its adherents, was Masonic. This milieu reveals a living historical culture where the connections between religion, natural philosophy and politics take on a human reality, where ideas about nature, social equality, the new science, as well as the republican ideal produced a new kind of European (few in number to be sure) who worshipped the natural world in a new temple and who found in the brotherhood of the lodge a private, secret expression of an egalitarianism that in the course of the eighteenth century became, and remains to this day, so vital to the programme and ideals of Western reformers. In purely demographic terms, during the eighteenth century the Enlightenment had few adherents, and the Radical Enlightenment had still fewer. But in assessing the force or validity of reforming ideals, then or now, it would be most discouraging to rest one's faith or programme on a mathematical reckoning.<sup>84</sup>

By the outbreak of the Revolution, there were about 200 lodges in the colonies.<sup>85</sup> That was a significant number for any inter-colonial association in the 1770s. By the time of the Constitutional Convention, Freemasonry had become the major, if not the sole, inter-colonial organization.<sup>86</sup>

When I presented this thesis in 1989, there was considerable skep-

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84. Jacob, *Radical Enlightenment*, p. 156.

85. Sidney Morse, *Freemasonry in the American Revolution* (Washington, D.C.: Masonic Service Association of the United States, 1924), p. 28.

86. Baigent and Leigh, *Temple and Lodge*, p. 260.

ticism among my critics. Three years after my book appeared, one of the most influential historians of the Revolutionary era, Gordon S. Wood, offered this assessment of Freemasonry's influence during the Revolution.

The institution that best embodied these ideals of sociability and cosmopolitanism was Freemasonry. It would be difficult to exaggerate the importance of Masonry for the American Revolution. It not only created national icons that are still with us; it brought people together in new ways and helped fulfill the republican dream of reorganizing social relationships. For thousands of Americans, it was a major means by which they participated directly in the Enlightenment. . . . Freemasonry was a surrogate religion for an Enlightenment suspicious of traditional Christianity. It offered ritual, mystery, and congregativeness without the enthusiasm or sectarian bigotry of organized religion.<sup>87</sup>

New York Congressman Sol Bloom wrote a brief article in 1938 for the Masonic publication, *The New Age*, "Masons and the Constitution." Bloom at the time was the Director General of the United States Constitution Sesquicentennial Commission. The Government Printing Office in 1943 published the Commission's 900-page volume, *History of the Formation of the Union Under the Constitution*. Bloom was a 32nd-degree Mason, according to the article. In his article, he asserted that a majority of the Founders of the American Republic were Freemasons. This was an exaggeration, but his comments on Washington were not. He praised Washington as a man whose life was faithful to the teachings of the Masonic Craft.<sup>88</sup>

The Framers, he wrote, were practical men. "From the political institutions in the states, the makers of the Constitution drew the bulk of the provisions which they adapted and utilized in perfecting their marvelous structure. . . . When the time came for ratification, the doubts and fears of citizens were set at rest by showing them that the Constitution was made up of provisions which had already been used and tested in one state or another." But he ignored one obvious difference: the absence of the trinitarian test oaths that were required to hold office in most state constitutions. These test oaths the Framers deliberately abandoned. In place of an affirmation of faith in the God of the

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87. Gordon S. Wood, *The Radicalism of the American Revolution* (New York: Knopf, 1992), p. 223.

88. Sol Bloom, "Masons and the Constitution," *The New Age*, vol. 46 (March 1938), p. 159. Published by the Supreme Council, Scottish Rite of Freemasonry.

Bible, the Constitution offered a new divinity: the People. Bloom wrote: "All these pillars rest upon an unmovable foundation, a foundation nothing other than the fixed will and affection of the people. They made it. It secures their liberty."<sup>89</sup>

He then raised the banner of Freemasonry.

This is a most opportune time to make plain the noble part which Masonry has played in the making of the Constitution and in the history of the United States. We owe it to our ancient brethren to make known to this and coming generations what sacrifices they made, what labors they performed, and what triumphs they achieved. We owe it to future Masons to perpetuate the history of Masonry in connection with the history of the country. . . . A lively appreciation of what Masons have done will inspire Masons of today to defend the Constitution of the United States.<sup>90</sup>

## K. Rival Covenant

Masonry is self-consciously a parallel covenant to the church. For example, Matthew 18:20 reads: "For where two or three are gathered together in my name, there am I in the midst of them." The following prayer is attached to the American edition of the *Ahiman Rezon*:

Most high and glorious Lord God, thou art the great architect of heaven and earth, who art the giver of all good gifts and graces, and hast promised that when two or three are gathered together in thy name, thou wilt be in the midst of them: In thy name we assemble and meet together, most humbly beseeching thee to bless us in all our undertakings, that we may know and serve thee aright, that all our doings may tend to thy glory and the salvation of our souls.<sup>91</sup>

If this parallelism is the case, then Freemasonry ought to be structured in terms of the Bible's five-point covenant model. It is.

### 1. *Transcendence/Presence*

First, Freemasonry began with the doctrine of the transcendent Grand Architect. This Architect, however, was not the creedal God of the Bible, and therefore supposedly not the divisive God of either the Puritans or the Anglicans. This universalism or ecumenism can be

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89. *Ibid.*, p. 160

90. *Ibid.*, p. 161.

91. *Ahiman Rezon Abridged and Digested* (Philadelphia: Hall & Sellers, 1783), pp. 111–12. Published for the Grand Lodge of Philadelphia.

seen clearly in the *Ahiman Rezon*, the constitutional handbook of Ancient Masonry.

The world's GREAT ARCHITECT is our *supreme Master*; and the unerring rule he has given us, is that by which we work; religious disputes are never suffered within the Lodge; for, as Masons, we only pursue the universal religion, or the religion of nature. This is the centre which unites the most different principles in one sacred band, and brings together those who were most distant from one another.<sup>92</sup>

This God was a kind of Kantian hypothesis that undergirds the phenomenal realm of mechanical and social cause and effect. He was as impersonal as a mathematical formula. Freemasons regarded the knowledge of God in man to be essentially the same as the knowledge of geometry.<sup>93</sup> God's manifestation in history is in His Masonic brotherhood. Freemasons in fellowship manifest his presence. This quest for God's presence is why the pantheists could so easily capture existing Masonic lodges and adapt them for their own purposes.

## 2. *Hierarchy/Representation*

The theory of Masonic hierarchy was very much like that of Puritan congregationalism: a structured assembly of moral equals with ranks in terms of ordination and function. A commoner outside the Masonic hall could be elected Grand Master inside. Buck privates could rule generals. There was a hierarchy, but it was officially egalitarian. It was officially open to all men, not just the elite. More to the point, Masonry was a means by which average men could come into contact with the rich and famous. Unlike real-world churches, which officially possess an egalitarian worldview regarding its members, but whose members seldom display it, Masonry appeared to embody this originally Christian ideal, expounded in the Epistle of James:

My brethren, have not the faith of our Lord Jesus Christ, the Lord of glory, with respect of persons. For if there come unto your assembly a man with a gold ring, in goodly apparel, and there come in also a poor man in vile raiment; And ye have respect to him that weareth the gay clothing, and say unto him, Sit thou here in a good place; and say to the poor, Stand thou there, or sit here under my footstool: Are ye not then partial in yourselves, and are become judges of evil

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92. *Ibid.*, pp. 106–7.

93. [James Anderson], *The Constitutions of Free-Masons*, p. 7. Printed by Benjamin Franklin, 1734.



thoughts? Hearken, my beloved brethren, Hath not God chosen the poor of this world rich in faith, and heirs of the kingdom which he hath promised to them that love him? But ye have despised the poor. Do not rich men oppress you, and draw you before the judgment seats? Do not they blaspheme that worthy name by the which ye are called? If ye fulfil the royal law according to the scripture, Thou shalt love thy neighbour as thyself, ye do well: But if ye have respect to persons, ye commit sin, and are convinced of the law as transgressors (James 2:1–9).

Masonry was like the early church in another respect. As in the church, Masons were forbidden to take other Masons to civil court until the lodge had heard the dispute. The early church's prohibition was total (I Cor. 6); it was forbidden to take a brother into a civil court ruled over by non-Christians. The Masons' prohibition was partial; it was forbidden until the Masonic court appeals had been exhausted.<sup>94</sup>

The fact is, however, that the "craft" was divided by the mid-eighteenth century between the "Ancients" (lodges started a generation after the formation of London's Grand Lodge in 1717) and the original "Moderns" (which the Grand Lodge called itself). Masonic historian Sidney Morse said that the "Ancients" were often lodges of sea-faring men. These men were excluded from membership in the Grand Lodge-connected lodges in Boston and Philadelphia because of their inferior social status, so they started lodges of their own.<sup>95</sup> The St. Andrews lodge of Boston, better known as the Green Dragon Tavern lodge, was headed by Joseph Warren at the time of the Tea Party affair. Another member was Paul Revere.<sup>96</sup> It was an "Ancient" lodge begun in 1752, the year after the founding of the first "ancient" lodges in England. The St. Andrews lodge could not settle its continuing dispute with St. John's, the older Boston lodge, which resented these upstarts. Only with the victory of the Americans in the war and the severing of ties with the Grand Lodge did the original lodge make peace.<sup>97</sup> Thus, the age-old distinctions of status and wealth began to undermine the original egalitarian goal of Masonry. The fact that a single negative vote by a member could keep a proposed member out also indicates

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94. Ahiman Rezon, pp. 45–46.

95. Morse, *Freemasonry in the American Revolution*, p. 19.

96. Stephen C. Bullock, *Revolutionary Brotherhood: Freemasonry and the Transformation of the American Social Order, 1730–1840* (Chapel Hill: University of North Carolina Press, 1996), p. 107. Warren was the Lodge's Grand Master: *ibid.*, p. 113.

97. J. Hugo Tatsch, *Freemasonry in the Thirteen Colonies* (New York: Macoy, 1929), pp. 33–36.

that the lodge system was not all that egalitarian.<sup>98</sup>

This Masonic hierarchical structure was gnostic. The Masonic degrees were—or rapidly became—official manifestations of a series of initiations into secret wisdom. This gnosticism was inherent in its commitment to secrecy. In the *Ahiman Rezon*, the constitutional document of the Ancients, we are told regarding secrecy: “The last quality and virtue I shall mention, as absolutely requisite in those who would be Masons, is that of SECRECY. . . . So great stress is laid upon this particular quality or virtue, that it is enforced among Masons under the strongest penalties and obligations. . . .”<sup>99</sup> What was seemingly a vertical hierarchy was in fact concentric. This desire to be elevated into a hierarchy by means of access to concentric degrees of illumination is the key to understanding Masonry and all other illuminist secret societies. Every covenant requires a priesthood, whoever the elected Grand Master may be. The priests were those with higher knowledge who could select which of the brethren would be allowed to advance upward, i.e., *inward*. Masonry became an ideal recruiting ground for future revolutionaries.

Masonry cloaks its operations by means of parties and conviviality. Many of its own members do not suspect that it has ulterior motives, the main one being the substitution of a different cosmology from that taught by the church. But the gnostic organization of its hierarchy—initiation into the “inner circles”<sup>100</sup>—is what distinguishes Masonry from clubs. Masonry can easily become a recruiting ground for those who are willing to submit unconditionally to others on the basis of hidden hierarchies. Secret societies inherently tend to promote institutional centralization and rigorous hierarchical obedience.<sup>101</sup>

### 3. *Ethics/Law*

Officially, law in Freemasonry meant Newtonian natural law, which is accessible to reason, a universal human attribute. Modern

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98. “By-Laws or Regulations” (1733), First Lodge, Boston: reprinted in Johnson, *Beginnings of Freemasonry*, p. 104.

99. *Ahiman Rezon*, pp. 19–20.

100. Wrote the sociologist Georg Simmel regarding secret societies: “The contrast between exoteric and esoteric members, such as is attributed to the Pythagorean order, is the most poignant form of this protective measure. The circle composed of those only partially initiated formed a sort of buffer region against the non-initiates.” Simmel, “Features of the Secret Society,” in *The Sociology of Georg Simmel*, ed. Kurt H. Wolff (New York: Free Press, [1950] 1964), p. 367.

101. *Ibid.*, pp. 370–72.

Freemasonry began as a “cult of Newtonian science,” in the words of Margaret Jacob.<sup>102</sup> Newtonian scientists controlled Freemasonry in London. At least 25% of the members of the Royal Society were Freemasons in the 1720s, during the period when the society was personally controlled by Newton.<sup>103</sup> He died in 1727.

The link between the Royal Society and Freemasonry goes back to the very origin of Scottish Freemasonry in England. The first man to be initiated into this ancient form of Freemasonry was Robert Moray, on May 20, 1641.<sup>104</sup> He was knighted by King Charles I a year and a half later. His brother William became Master of Works, meaning Master of operative masons, immediately after the restoration of Charles II in 1660. Among Robert Moray’s associates in the post-1660 period were scientist Christian Huygens and diarist Samuel Pepys. He was a patron of the Invisible College (pre-Royal Society). He was also one of the founders of the Royal Society; Huygens said Moray was its “soul.”<sup>105</sup> He was the Society’s primary link to the king and his patronage.<sup>106</sup>

The Royal Society’s formal, reason-based goal of open scientific investigation would appear to be in conflict with the inescapable gnostic impulse of Masonry. This is why so few scholars until Francis Yates made the connection. But the links had been there from the beginning. These links are essentially priestly. Mathematics and science, while officially democratic impulses, are in fact far closer to priestly efforts, with membership closed to those who do not understand the language of mathematics, just as the Pythagorean priesthood had been closed on this basis. There is an esoteric aspect of science that is not discussed by standard textbook accounts of the history of science. They do not cite Yates’ findings.

The great mathematical and scientific thinkers of the seventeenth century have at the back of their minds Renaissance traditions of esoteric thinking, of mystical continuity from Hebraic or ‘Egyptian’

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102. Jacob, *Radical Enlightenment*, p. 120.

103. *Ibid.*, p. 112. See J. R. Clarke, “The Royal Society and the Early Grand Lodge Freemasonry,” *Ars Quatuor Coronatorum*, LXXX (1967), pp. 110–19.

104. Baigent and Leigh, *Temple and Lodge*, p. 153.

105. *Ibid.*, p. 154.

106. Frances Yates, *The Rosicrucian Enlightenment* (London: Routledge & Kegan Paul, 1972), p. 210. Another link between the Royal Society and the “Invisible College” was Elias Ashmole. Ashmole owned an enormous library of alchemical and magical works, including five manuscripts by the sixteenth-century astrologer John Dee. Ashmole was a Rosicrucian and a founder of the Royal Society. *Ibid.*, pp. 209–10.

wisdom, of that conflation of Moses with ‘Hermes Trismegistus’ which fascinated the Renaissance. These traditions survived across the period in secret societies, particularly in Freemasonry. Hence it is that we do not know the full content of the minds of early members of the Royal Society unless we take into account the esoteric influences from the Renaissance surviving in their background. Below, or beyond, their normal religious affiliations they would see the Grand Architect of the Universe as an all-embracing religious conception which included, and encouraged, the scientific urge to explore the Architect’s work. And this unspoken, or secret, esoteric background was a heritage from the Renaissance, from those traditions of Magia and Cabala, of Hermetic and Hebraic mysticism, which underlay ‘Renaissance Neoplatonism’ as fostered in the Italian Renaissance.<sup>107</sup>

The possession of the knowledge of the laws of mathematics had been one of the screening devices used by operational stonemasonry. Officially, geometry was to serve a similar function in speculative Freemasonry, but the “craft’s” rituals were officially substituted for the specialized knowledge of geometry and building materials. Eighteenth-century Freemasonry was tied to the legend of Hermes Trismegistus, the mythical teacher of the secret mathematical wisdom of ancient Egypt and Greece.<sup>108</sup> Hermes was one of the gods of Renaissance neoplatonism. Freemasonry had been esoteric from at least the 1690s,<sup>109</sup> and the roots of this esotericism can be traced back to early fifteenth century.<sup>110</sup> It was not sufficient for a Mason to master mathematics and practical physics; a more occult metaphysics was always present. Their rituals testify to this. Modern historians seldom take these rituals seriously. (They take very few rituals seriously, except perhaps a funeral, that most democratic of rituals.) Ritual may have been fakery and fun at the level of the outer ring, but remove the rituals, and you disembowel Masonry. Ritual is fundamental to establishing any secret society’s boundaries.<sup>111</sup> As the grandfather says in the movie, *Peggy Sue*

107. *Ibid.*, p. 219.

108. Jacob, *Radical Enlightenment*, p. 116.

109. *Ibid.*, p. 114.

110. Baigent and Leigh have traced back to a guild document of 1410 the legend of the “king’s son of Tyre” which associates him with an ancient science that survived the Noachic flood, transmitted by Pythagoras and Hermes. Baigent and Leigh, *Temple and Lodge*, p. 129.

111. Wrote Simmel: “The striking feature in the treatment of ritual is not only the rigor of its observance but, above all, the anxiousness with which it is guarded as a secret. . . . Under its characteristic categories, the secret society must seek to create a sort of life totality. For this reason, it builds round its sharply emphasized purposive content a system of formulas, like a body round a soul, and places both alike under the

*Got Married*: “Without the funny hats, there isn’t any lodge.” The hats are not funny ha ha; they are funny peculiar. They are funny occult.

Mathematics is a universal language, just as Latin was among educated men until the 1880s, when Harvard University began its pace-setting curriculum revision. (There are two other such languages: music and international money.) It was this quest for universal laws of nature and society that undergirded speculative Freemasonry. This quest included universal moral law. In the second edition of Anderson’s *Constitutions* (1738), we read: “A Mason is obliged by his tenure to observe the moral law as a true Noachida.” This word *Noachida* did not appear in the first edition. In the *Ahiman Rezon*, which follows Anderson’s lead word for word, though not comma for comma, we read: “A Mason is also obliged, by his tenure, to observe the moral law, as a true *Noachide*.”<sup>112</sup> In a note to this peculiar word, we read: “Sons of Noah; the first name for Free-Masons.” The contributor in the *Encyclopaedia of Freemasonry* said that Anderson was not the inventor of the term; it first appeared, he said, in a letter sent by the Grand Lodge of England to the Grand Lodge of Calcutta in 1735.<sup>113</sup> One 1877 example of the word appears in the *Oxford English Dictionary*, but only as an adjective, not a noun.

A Noachide is a son of Noah who possesses the knowledge of geometry and also a common morality. Just as the Bible is not needed in order to grasp the logical principles of geometry, so is it not needed to grasp the principles of morality.

This originally Masonic word *Noachite* was used by the translator of the medieval Jewish commentator, Rabbi Moses ben Maimon (“Rambam” or “Maimonides”), to describe the gentile sons of Noah. The Talmud’s concept of the sons of Noah is even more hostile than Masonry to the idea of the need for biblical revelation as the basis of civil law. The gentile *Noahide*, according to at least some of the rabbis and Maimonides, is not supposed to study the Old Testament, especially Old Testament law. If he does, he is deserving of death.

A heathen who busies himself with the study of the Law deserves death. He should occupy himself with the (study) of the seven com-

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protection of secrecy, because only thus does it become a harmonious whole in which one part protects the other.” *Sociology of Georg Simmel*, p. 359.

112. *Ahiman Rezon*, p. 14.

113. Albert G. Mackey, William J. Hughan, and Edward L. Hawkins (eds.), *An Encyclopaedia of Freemasonry and Its Kindred Sciences*, 2 vols. rev. ed. (New York: Masonic History Company, 1925), II, p. 514: “Noahidae.”

commandments only. So too, a heathen who keeps a day of rest, even if it be on a weekday, if he has set it apart as his Sabbath, is deserving of death. It is needless to state that he merits death if he makes a new festival for himself. The general principle is: none is permitted to introduce innovations into religion or devise new commandments. The heathen has the choice between becoming a true proselyte by accepting all the commandments, and adhering to his own religion, neither adding to it nor subtracting anything from it. If therefore he occupies himself with the study of the Law, or observes a day of rest, or makes any innovation, he is flogged, or otherwise punished and advised that he is deserving of death, but he is not put to death.<sup>114</sup>

Sufficient social order within the gentile world is supposedly achieved through their adherence to the seven commandments specifically given to the heathen, meaning gentiles. Six of these laws were first given to Adam, according to Jewish law: the prohibitions against idolatry, blasphemy, murder, adultery, and robbery, plus the command to establish courts of justice. A seventh law was also supposedly given to Noah: the prohibition against eating the limb of a living animal.<sup>115</sup> Beyond this minimal list of seven laws, the gentiles—"Noahides" or "Noahites," the descendants of Noah<sup>116</sup>—are not supposed to go in their inquiry into the ethical requirements of Old Testament law, which belongs exclusively to the Jews. In making this assertion, Maimonides was faithfully following the teaching of the Talmud. He was taking the rabbis at their word: "R. [Rabbi—G.N.] Johanan said: A heathen who studies the Torah deserves death, for it is written, *Moses commanded us a law for an inheritance*; it is *our* inheritance, not theirs."<sup>117</sup> Resh Lakish (third century, A.D.) said that a gentile who observes the Sabbath deserves death.<sup>118</sup>

The ethical goal of both Masonry and Talmudic Judaism is the same: to keep gentiles from reading and applying Old Testament law in society. (The traditions and legends are also similar, according to at least one favorable student of Masonry.)<sup>119</sup> Masonry defends a com-

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114. Moses Maimonides, *The Book of Judges*, Book 14 of *The Code of Maimonides*, 14 vols. (New Haven, Connecticut: Yale University Press, [1180] 1949), "Laws Concerning Kings and Wars," X:9, p. 237.

115. *Ibid.*, IX:1, pp. 230–31.

116. *Ibid.*, IX:2, p. 231.

117. Babylonian Talmud, *Sanhedrin 59a*. I use the Soncino Press edition.

118. *Sanhedrin 59b*.

119. E. Cecil McGavin, *Mormonism and Masonry* (Salt Lake City: Bookcrafter Publishers, 1956), p. 195: "The Jewish Talmud furnishes many illustrations of the Masonic system. Many of the traditions and legends, especially of the higher degrees, are

mon-ground, non-revelational morality for all members. In this, it agrees entirely with rabbinic Judaism regarding gentiles.<sup>120</sup> What is remarkable is that this same idea of a common morality since Noah has been adopted by both modern Reformed theology and modern dispensationalism.<sup>121</sup>

This leaves Christians at the mercy of the wisdom of fallen man. By default, it puts the covenant-breaker in charge of society. It implicitly denies that God brings His sanctions in history in terms of His Bible-revealed law. This brings us to point four of the covenant model: oath/sanctions.

#### 4. Oath/Sanctions

Here we come to the heart of Masonry: the self-maledictory oath. What circumcision is to the Jew, what baptism is to the Christian, the oath is to the Mason. It is the screening ritual which allows a man access to the ritual meals and libations in Judaism (Passover), Christianity (Holy Communion), and Masonry's fraternal meals. Here is where the covenantal aspect of Masonry becomes manifest. Of course, this is manifest only to members of the "craft." These oaths are not published. The *Ahiman Rezon*, in the section describing the proper means of initiating the apprentice, refers cryptically to "some other ceremonies that cannot be written. . . ."<sup>122</sup> Masonic oaths call down judgments on those who would violate the secret terms of the covenant (see below, "Rival Oaths"). But those inside the brotherhood were promised positive sanctions: good connections, protection in civil suits, etc. This is why the Masonic sign or password is supposed to open doors, and it sometimes does.

The biblical view of the covenant oath is that only three institutions can lawfully compel them: church, state, and family. God has authorized only these three monopolies as His covenantal organizations. By requiring self-maledictory oaths for membership, Masonry has set itself up as a rival church and, in eighteenth-century France and in late

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either found in or are corroborated by the Talmud." The author, who was a Mormon, connected Mormonism and Masonry, but was not hostile to Masonry.

120. Gary North, *The Judeo-Christian Tradition: A Guide for the Perplexed* (Tyler, Texas: Institute for Christian Economics, 1990), ch. 5.

121. John Murray, *Principles of Conduct: Aspects of Biblical Ethics* (Grand Rapids, Michigan: Eerdmans, 1957), pp. 118–19; H. Wayne House and Thomas Ice, *Dominion Theology: Curse or Blessing?* (Portland, Oregon: Multnomah, 1988), p. 130.

122. *Ahiman Rezon*, p. 34.

nineteenth-century Mexico, as a rival state. In the words of Count Savioli ("Brutus"), a member of Weishaupt's Illuminati in the late eighteenth century: "The Order must possess the power of life and death in consequence of our Oath; and with propriety, for the same reason, and by the same right, that any government in the world possesses it: For the Order comes in their place, making them unnecessary."<sup>123</sup>

### 5. Succession/Inheritance

Finally, we come to point five of the covenant: continuity or inheritance. Here is where politics enters the picture. Those inside the organization are promised power outside the organization. Initiation and continued membership are the basis of this inheritance. Those who refuse to examine this "conspiratorial" side of secret societies miss the point. Those who see Masonry as "clubbery" miss the point. Clubs are leisure-oriented. They are established for revelry and companionship. Secret societies are established to gain power. The goal of the secret society is analogous to the goal stated by Psalm 37:9: "For evildoers shall be cut off: but those that wait upon the LORD, they shall inherit the earth."

Who will exercise political power in a democracy or a republic? Those who gain the support of those who can communicate with and mobilize the parties, the media, and then the voters. It is this aspect of Masonry that can be of crucial importance. Those who have been sanctioned by the continuing brotherhood have a great advantage in the transfer of political power.<sup>124</sup> The continuity of the Masonic order provides a means of access to *political continuity*, even though Masonry is officially nonpolitical. It was not nonpolitical in 1776 or 1788 in America, and surely not nonpolitical in 1789 in France.

## L. Rival Oaths

The average Christian may not understand the importance of oaths, except those taken in marriages and to the national government. He does not understand the function of the oath in a secret society. Some criminal secret societies, and even seemingly harmless secret societies, require their members to invoke a self-maledictory oath.

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123. Cited in John Robison, *Proofs of a Conspiracy*, 4th ed. (New York: George Forman, 1798), p. 170.

124. Stephen Knight, *The Brotherhood: The Secret World of the Freemasons* (London: Granada, 1984).



This is why they frequently refer to themselves as “families.”

### 1. *The Brotherhood*

Freemasons are self-professed brothers, part of an international brotherhood. Theodore Graebner’s book, critical of Freemasonry, *A Treatise on Freemasonry*, reports that Freemasons require the following oath of their Apprentice Masons: a promise not to reveal any of the secrets of the “craft.” Kneeling in front of the Grand Master’s pedestal, blindfolded, with a noose placed symbolically around his neck, and the point of a compass pointed at his breast, he said: “To all of this I most solemnly and sincerely promise and swear, with a firm and steadfast resolution to keep and perform the same without any equivocation, mental reservation, or secret evasion of mind whatever, binding myself under no less a penalty than that of having my throat cut across, my tongue torn out by its roots and buried in the rough sands of the sea at low water mark, where the tide ebbs and flows twice in twenty four hours, should I ever knowingly or willingly violate this my solemn oath or obligation as an Entered Apprentice Mason. So help me God, and keep me steadfast in the due performance of the same.”<sup>125</sup> A Masonic third-degree oath contains: “Binding myself under no less a penalty than that of having my body severed in twain, my bowels taken from thence and burned to ashes, the ashes scattered to the four winds of heaven, so that no more trace of remembrance may be had of so vile and perjured a wretch as I. . . .”<sup>126</sup> This imagery is straight out of the Old Testament’s account of God’s covenant with Abraham: the dividing of the animals and the appearance of the consuming sacred fire of God.<sup>127</sup>

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125. A similar version of this oath is reproduced in part in *Secret Societies*, ed. Norman MacKenzie (New York: Holt, Rinehart and Winston, 1967), p. 155.

126. Cited by Everett C. De Velde, “A Reformed View of Freemasonry,” in *Christianity and Civilization*, I (1982), p. 283. (<http://bit.ly/CAC1982>) For reproductions of these oaths, plus several higher degree oaths, see John Ankerberg and John Weldon, *Christianity and the Secret Teachings of the Masonic Lodge: What Goes on Behind Closed Doors* (Chattanooga, Tennessee: John Ankerberg Evangelistic Association, 1989), ch. 10.

127. “And he said unto him, I am the LORD that brought thee out of Ur of the Chaldees, to give thee this land to inherit it. And he said, Lord GOD, whereby shall I know that I shall inherit it? And he said unto him, Take me an heifer of three years old, and a she goat of three years old, and a ram of three years old, and a turtledove, and a young pigeon. And he took unto him all these, and divided them in the midst, and laid each piece one against another: but the birds divided he not” (Gen. 15:7–10). “And it came to pass, that, when the sun went down, and it was dark, behold a

Freemasons do not admit publicly that such oaths are required. How could they? The oaths are secret. As the *Encyclopaedia of Freemasonry* admits, “the conscientious Freemason labors under great disadvantage. He is at every step restrained by his honor from either the denial or admission of his adversaries in relation to the mysteries of the Craft.”<sup>128</sup> Everett De Velde, Jr., concluded: “These oaths are a direct breaking of the third commandment. They take God’s name in vain by connecting His Holy Name with murder.”<sup>129</sup> He was too reserved. Taking such an oath involves violations of the third commandment other than merely linking God’s name with murder. First, the concept of God’s covenant in the Old Testament involved a severing of an animal in two parts. The use of this imagery in an oath taken in a non-Christian secret society is illegitimate. Second, the oath is innately self-maledictory. It calls the judgment of man down upon oneself, if one reveals the secrets of the society. Such a self-maledictory oath is legitimate only when making a covenant with one of God’s three sovereign governments: family, church, and civil government.

## 2. *A Separate Kingdom*

The Masonic leadership unquestionably has long recognized the self-maledictory nature of oaths taken before law courts. To the extent that Masonry comprises a self-proclaimed separate order or kingdom, the oaths sworn by initiates would have to be regarded by the hierarchy as comparable to oaths sworn before a civil magistrate. In fact, the Masonic oaths would have to supersede a civil oath, for the initiate is prohibited from revealing the details of his “craft” to the civil magistrate. The Mason, as an initiate, would face conflicting loyalties when called on by the civil magistrate to reveal details of his “craft.” Should he reveal secrets to the magistrate or remain faithful to his “craft”? If he takes seriously the terminology of the reported oaths in Masonry, then there would be a strong temptation to refuse to testify and suffer the civil consequences, or else to lie. We would expect to find that Masonic literature would *publicly* place all oaths on equal par. In secret, of course, this public neutrality would vanish; the key loyalty would have to be to the guild. This publicly revealed position of “equally

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smoking furnace, and a burning lamp that passed between those pieces. In the same day the LORD made a covenant with Abram, saying, Unto thy seed have I given this land, from the river of Egypt unto the great river, the river Euphrates” (Gen. 15:17–18).

128. “Oath,” in *Encyclopaedia of Freemasonry and Its Kindred Sciences*, II, p. 522.

129. *De Velde*, p. 283.

binding oaths” would tend to weaken the initiate’s commitment to the civil magistrate, leaving him to worry about the vivid verbal terms of Masonry’s self-maledictory oaths. What we find is just such “public neutrality” concerning the equality of all oaths.

The oath of the third-degree Mason refers to “so vile and perjured a wretch as I.” Using this as a guide, we can learn just how well Masonic leaders understand the close relationship between self-maledictory oaths and God’s judgment. Under “perjury,” the *Encyclopaedia of Freemasonry* declares:

In the municipal law perjury is defined to be a wilful false swearing to a material matter, when an oath has been administered by lawful authority. The violation of vows or promissory oaths taken before one who is not legally authorized to administer them, that is to say, one who is not a magistrate, does not in law involve the crime of perjury. Such is the technical definition of the law; but the moral sense of mankind does not assent to such a doctrine, and considers perjury, as the root of the word indicates, the doing of that which one has sworn not to do, or the omitting to do that which he has sworn to do. The old Romans seem to have taken a sensible view of the crime of perjury. Among them oaths were not often administered, and, in general, a promise made under oath had no more binding power in a court of justice than it would have had without the oath. False swearing was with them a matter of conscience, and the person who was guilty of it was responsible to the Deity alone. The violation of a promise under oath and of one not under such a form was considered alike, and neither was more liable to human punishment than the other. But perjury was not deemed to be without any kind of punishment. Cicero expressed the Roman sentiment when he said “*perjurii poena divina exitium; humana dedecus*”—*the divine punishment of perjury is destruction; the human, infamy*. Hence every oath was accompanied by an execration, or an appeal to God to punish the swearer should he falsify his oath. . . .

Freemasons look in this light on what is called the *penalty*; it is an invocation of God’s vengeance on him who takes the vow, should he ever violate it; men’s vengeance is confined to the contempt and infamy which the foreswearer incurs.<sup>130</sup>

If the human penalty were merely “contempt and infamy,” then the perjurer would not fear for his property or life. On the other hand, oaths that are self-maledictory with respect to men as well as God are

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130. *Encyclopaedia*, II, pp. 555–56.

doubly fearful. If Masons do take the oaths described by Graebner, then they have a human sword hanging over them—the imitation covenantal oath—whenever they are tempted to reveal the society’s mysteries. The language of the reported oaths is bloody—*covenantally bloody*. There is little doubt that Masonic leaders understand what an oath is, as distinguished from a contract, and they regard the verbal oaths of their members as oaths in the same way that a magistrate of a kingdom regards an oath in one of the kingdom’s courts of law. An oath places a person under a *sovereign*, and this sovereign possesses power, at the very least, and presumably a degree of authority (legitimacy).

It is easy to understand why orthodox Christianity has been hostile to secret societies over the years. A secret society sets up a rival kingdom with rival oaths and therefore rival gods.

### M. A Lawyers’ Revolution

Henry Steele Commager has remarked that “The constitutional convention, which has some claim to be the most original political institution of modern times, legalized revolution.”<sup>131</sup> This comes close to the mark, but not dead center. What legalized the revolution were the mini-conventions at the state level. These individual representative plebiscites sanctioned the *coup* in Philadelphia, and from that point on, the revolution was secured. Not the original American Revolution, but a lawyers’ revolution.

The problem with exposing the *coup* in Philadelphia is that it was such a successful *coup*. It was a *coup* that produced a true revolution. Berman regards the American Revolution as one of the six successful revolutions in Western history.<sup>132</sup> To be a true revolution, he argued, a revolution must be a revolution in law, and it must survive more than a generation; otherwise, it is just a *coup*. It must change the fundamental foundations of the political order.<sup>133</sup>

The American Revolution of 1776–1783 had done this. What took place in 1787–88 was not a continuation of the revolution against Great Britain. It was a second American Revolution. It violated the

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131. Henry Steele Commager, *The Empire of Reason: How Europe Imagined and America Realized the Enlightenment* (New York: Oxford University Press, 1977), p. 182.

132. Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, Massachusetts: Harvard University Press, 1983), pp. 5, 18.

133. *Ibid.*, p. 20.

terms of the national covenant of 1781. It also laid the judicial foundation for the violation of the state covenants in 1861–65. It established a new civil legitimacy, meaning a new civil sovereignty. President Andrew Jackson invoked this legitimacy in 1832. Abraham Lincoln invoked it again in 1861, calling men to arms to uphold it.

What transformed the *coup* in Philadelphia into a revolution was the national plebiscite. It was a stroke of genius to appeal to the voters in state-wide conventions rather than to existing legislatures. It was a stroke of providence that they succeeded in overcoming the one man who might have stopped them: Patrick Henry. Henry knew the whole strategy was illegal. At the Virginia ratifying convention, he introduced a motion to this effect: the need to consider the details of the original 1786 Annapolis Convention,<sup>134</sup> which had called for the Convention at Philadelphia. This consideration would have reminded the attendees that the whole procedure at Philadelphia had been illegal. His motion:

That the act of Assembly appointing deputies to meet at Annapolis to consult from some other states, on the situation of the commerce of the United States—the act of Assembly appointing deputies to meet at Philadelphia, to revise the Articles of Confederation—and other public papers relative thereto—should be read.<sup>135</sup>

Edmund Pendleton, President of the convention, replied: “Mr. Chairman, we are not to consider whether the federal Convention exceeded their powers. It strikes my mind that this ought not to influence our deliberations.” Henry then withdrew the motion.<sup>136</sup> But why? The central issue of ratification should have been whether the federal Convention had exceeded its powers. This is the question of whether a *coup* had taken place. For all his eloquence at the ratifying convention after that monumental but seemingly inconsequential decision to withdraw his motion, Henry never again came close to winning over the Virginia convention—one convention that the nationalists had to win, since it was a large state and the state in which so many of the Framers lived. It was crucial to the Framers symbolically. Once he

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134. “Proceedings of Commissioners to Remedy Defects of the Federal Constitution” (Sept. 11, 1786), in Charles C. Tansill (ed.), *Documents Illustrative of the Formation of the Union of the American States* (Washington, D.C.: Government Printing Office, 1927), pp. 39–43.

135. Jonathan Elliot (ed.), *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787*, 5 vols. (Philadelphia: Lippincott, [1836] 1907), III, p. 6.

136. *Idem*.

agreed to let the Philadelphia Convention with its plebiscite procedure pass without criticism, the *coup* became a revolution. A Christian nation became, judicially and covenantally, a politically pluralist nation.

The Convention had broken covenant with Congress, which had delegated authority to it, and also with the Articles of Confederation, which had sanctioned Congress. Maryland's Luther Martin understood that the Convention's appeal to the People in mini-conventions was itself an act of revolution against the existing Constitution. He also correctly perceived that this was an act of rebellion against God: the violation of a covenantal oath.

Agreeably to the Articles of Confederation, entered into in the *most solemn manner*, and for the *observance* of which the states pledged themselves to each other, and called upon the *Supreme Being* as a witness and avenger between them, no alterations are to be made in those Articles, unless, after they are approved by Congress, they are agreed to, and ratified, by the legislature of every state; but by the resolve of the Convention, this Constitution is not to be ratified by the legislature of the respective states, but is to be submitted to conventions chosen by the people, and, if ratified by them, is to be binding.

This resolve was opposed, among others, by the delegation of Maryland. Your delegates were of opinion that, as the form of government proposed was, if adopted, most essentially to alter the *Constitution of this state*, and as our Constitution had pointed out a mode by which, and by which only, alterations were to be made therein, a convention of the people could not be called to agree to and ratify the said form of government without a *direct violation* of our Constitution, which it is the duty of every individual in this state to protect and support.<sup>137</sup>

## Conclusion

The god of the Articles of Confederation was a halfway covenant god, just as the Articles were a halfway national civil covenant. The fear of this god was fading in the minds of the Framers of 1787. He seemed unwilling to bring sanctions through Congress against organized covenant-breakers. Rhode Island's mass inflation was one example. In the months prior to the Convention, Daniel Shays and his

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137. Letter from Luther Martin, Attorney-General of Maryland, to Thomas C. Deye, Speaker of the House of Delegates of Maryland (Jan. 27, 1788), *ibid.*, I, pp. 386–87.

armed followers in Massachusetts appeared to be even more threatening examples.<sup>138</sup> Men must fear something; this is the basis of social order. The Framers feared the weakness of the central government more than they feared the threat of centralized political power.

A new god, with new stipulations and new sanctions, was necessary, the Framers believed. That god was a convenient metaphysical construct: the People. The monotheism of Newtonian natural law, as incorporated in the Masonic fraternity, had provided the model for the creation of national political polytheism. The Great Architect, through his covenantally faithful servants, had once again laid the cornerstone of another working model of the Tower of Babel.

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138. Appendix B.

And here I would make this inquiry of those worthy characters who composed a part of the late federal Convention. I am sure they were fully impressed with the necessity of forming a great consolidated government, instead of a confederation. That this is a consolidated government is demonstrably clear; and the danger of such a government is, to my mind, very striking. I have the highest veneration for those gentlemen; but, sir, give me leave to demand, What right had they to say, *We, the people*? My political curiosity, exclusive of my anxious solicitude for the public welfare, leads me to ask, Who authorized them to speak the language of, *We, the people*, instead of, *We, the states*? States are the characteristics and the soul of a confederation. . . . I have the highest respect for those gentlemen who formed the Convention, and, were some of them not here, I would express some testimonial of esteem for them. America had, on a former occasion, put the utmost confidence in them—a confidence which was well placed; and I am sure, sir, I would give up any thing to them; I would cheerfully confide in them as my representatives. But, sir, on this great occasion, I would demand the cause of their conduct. . . . The people gave them no power to use their name. That they exceeded their power is perfectly clear. It is not mere curiosity that actuates me: I wish to hear the real, actual, existing danger, which should lead us to take those steps, so dangerous in my conception. . . . But, notwithstanding this, we are wandering on the great ocean of human affairs. I see no landmark to guide us. We are running we know not whither. Difference of opinion has gone to a degree of inflammatory resentment in different parts of the country which has been occasioned by this perilous innovation. The federal Convention ought to have amended the old system; for this purpose they were solely delegated; the object of their mission extended to no other consideration. You must, therefore, forgive the solicitation of one unworthy member to know what danger could have arisen under the present Confederation, and what are the causes of this proposal to change our government.

Patrick Henry (1787)<sup>1</sup>

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1. Jonathan Elliot (ed.), *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787*, 5 vols. (Philadelphia: Lippencott, [1836] 1907), III, *Virginia*, pp. 22–23.



## 5

# “WE THE PEOPLE”: FROM VASSAL TO SUZERAIN TO SERF

*We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common Defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.*

Preamble, U.S. Constitution

*How paradoxical that the first nation to base its political philosophy on the principle that all political authority derives from the people, and that the people express their will through elected representatives, should also be the first to embrace the principle that the ultimate interpretation of the validity of the popular will should be lodged not in the people themselves, or in their representatives, but in the one non-elected and, therefore, non-democratic branch of the government.*

Henry Steele Commager (1977)<sup>1</sup>

## Introduction

Warren Burger, who served as Chief Justice of the U.S. Supreme Court in the 1970s and half of the 1980s, said that “We the People” are the Constitution’s most important words.<sup>2</sup> On September 26, 1988, he sent me a one-sentence reply when I questioned him about the meaning of his statement. “They are the key words *conceptually*.” This gets right to the point.

At the time that I read his reply, I did not fully understand the reason why his statement is correct. I had not yet recognized the extraordinary construction of the Preamble: it precisely follows the bib-

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1. Henry Steele Commager, *The Empire of Reason: How Europe Imagined and America Realized the Enlightenment* (New York: Oxford University Press, 1977), p. 229.

2. *Orlando Sentinel* (Sept. 8, 1988), p. A-2.

lical covenant structure. The (1) sovereign creating agency, “We the People” (2) acts in history (historical prologue) to establish a union that will (3) establish justice and insure the common defense (boundaries) to secure (4) the blessings of liberty for ourselves and (5) our posterity.

When I finally recognized this five-point structure, as I was writing this chapter, I immediately went to my library to get a copy of Meredith G. Kline’s *The Structure of Biblical Authority*. I wanted to be sure I had part two correct—what he, following George Mendenhall, calls the historical prologue. Lo and behold, Kline even uses the word *preamble* in describing the Ten Commandments section of Exodus 20: “I am the Lord thy God,” the opening words of the Sinaitic proclamation (Exod. 20:2a), correspond to the preamble of the suzerainty treaties, which identified the suzerain or “great king” and that in terms calculated to inspire awe and fear.<sup>3</sup>

There is no historical prologue in the Preamble to the Constitution. Why not? Because the Constitution literally was announcing the advent of *a new covenantal divinity* whose prior existence had no independent legal status in American jurisprudence. The People had been referred to time and again in colonial political theory, but the People had no independent legal status. The unitarian god of Locke’s theory of government and Newton’s cosmos had previously always been mentioned in close association with the god of the People. The People had heretofore always been under a god of some kind. This was about to change.

This new independently sovereign divinity, the People, would formally announce its advent as the sole covenantal agent of national incorporation by means of public ratification. The People, the Preamble states, “do ordain and establish this Constitution for the United States of America.” The new god of the Constitution was *both suzerain and vassal*—something covenantally unique in the history of man prior to 1787. *The Constitution’s Preamble elevated the People from point two in the covenant structure—representation—to point one: the creator.* Warren Burger was correct: “We the People” are the key words *conceptually*.

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3. Meredith G. Kline, *The Structure of Biblical Authority*, rev. ed. (Grand Rapids, Michigan: Eerdmans, 1972), p. 114.

## A. Covenant: An Inescapable Concept

The Preamble is structured using the five points of the biblical covenant. The Constitution’s five parts—with the Preamble as part one (the suzerain)—also conform to the biblical five-point covenant model, though not in the same order. Do I think that the Constitution’s Framers were *that* self-conscious? Were they the original discoverers of the covenantal insight that was first presented by George Mendenhall in 1954?<sup>4</sup> I think not. Were they operating with the biblical model in the back of their minds? Had they stolen the model from the Puritans? No, because the Puritans never systematically articulated their model of the covenant, although they wrote a great deal about all five points. We can find discussions of all five points scattered throughout their writings, but these discussions are not systematically arranged in the five-point outline.

What the Framers did do was write a constitution, and a constitution is a covenant document. All covenants must contain or at least deal with the five features of the biblical covenant model. There is no escape. This five-point model is an inescapable concept for every covenant institution. Nevertheless, the fact that the Preamble is structured in the same order as the biblical covenant model is remarkable.

In adopting this five-point model, the Framers were being faithful to something written by God into man’s mind and his covenantal institutions. They remained true to their self-assigned calling: to create a new national covenant. Authorized by Congress to go to Philadelphia in order to revise and renew the Articles of Confederation—the by-laws of the old national covenant—they substituted a new covenant with a new God. *The Preamble was the new Declaration of Independence*, and the remaining four parts of the Constitution served as the covenant’s by-laws.

The Framers also broke the older state covenants by establishing a new one outside of the oath provisions of most of the original covenant documents, and against the express intention of the Congress. But they could not beat something with nothing. They offered a new covenant in the name of a new sovereign agent, the People.

### 1. A New Declaration of Independence

This was the Constitutional Convention’s official Declaration of

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4. G. E. Mendenhall, “Covenant Structure in Israelite Tradition,” *Biblical Archaeologist*, XVII (1954), pp. 50–76; cited in *ibid.*, p. 114n.

Independence—independence from the god of Newton. Unlike the Continental Congress' public Declaration of Independence from Great Britain in 1776, which implicitly broke covenant with the trinitarian God of the Bible in the name of the unitarian god of Isaac Newton, which was the only god that Thomas Jefferson was willing to tolerate, this brief Preamble-Declaration publicly identified a new, immanent god: the People. Also unlike the older Declaration, this one would have to be ratified in legally open but well-managed state conventions. This public ratification could not be done by representatives of the legislatures, as the original Declaration had been ratified, because, unlike the Continental Congress in 1776, the Convention of 1787 had no independent legal status nationally. National status belonged solely to the existing Congress, whose official subordinate agent the Convention was.

The Convention broke covenant with Congress when it broke covenant with the deistic god of the Declaration of Independence. This was the legal meaning of the shift from a halfway national covenant to an apostate national covenant. The voters in state conventions then ratified the decision of the Convention.

In short: *new covenant, new god.*

The representatives of the People in the state conventions voted to ratify the People's new-found divinity. They voted to elevate the People from point two—representative—to point one: suzerain. In their legal capacity as representatives of the subordinate colonial people, who had previously been legal subordinates to the god of Newton (national covenant) and—in most cases—also the God of the Bible (state covenants), the state conventions declared the corporate People as the sole and exclusive suzerain god of the nation. They forgot the example of Herod:

And Herod was highly displeased with them of Tyre and Sidon: but they came with one accord to him, and, having made Blastus the king's chamberlain their friend, desired peace; because their country was nourished by the king's country. And upon a set day Herod, arrayed in royal apparel, sat upon his throne, and made an oration unto them. And the people gave a shout, saying, It is the voice of a god, and not of a man. And immediately the angel of the Lord smote him, because he gave not God the glory: and he was eaten of worms, and gave up the ghost (Acts 12:20–23).

The worms of humanism have taken longer to do their work, but

they have been at their jobs continuously since 1788.

## 2. From Covenant to Contract

The essence of the shift in the Framers’ thinking is a shift from covenant to contract. This explanation of eighteenth-century political theory is standard in many historical studies. The language of the market place was steadily imported into political theory through the concept of the social contract or social covenant. Nevertheless, the covenantal aspect of civil government cannot legitimately be evaded. Words can change, explanations can change, formal procedures can change, but covenantalism is an inescapable concept.

A covenant is a voluntary contract established under God, and it is then sealed by a self-maledictory oath, either implicit or explicit. The parties to the covenant call down God’s negative sanctions on themselves should they violate the specified stipulations (laws) of the covenant. A contract, on the other hand, is an agreement between two or more parties for attaining specified objectives, the terms of which are enforceable in a court of law. There are no sanctions involved other than those specified by the contract or in the civil law. The motivation of the agreement is personal self-interest or the attainment of some personal goal. God’s name is not lawfully invoked in contracts. This is what John Witherspoon forgot in his discussion of oaths and vows. He did not limit use of the oath to the three institutions of church, state, and family.<sup>5</sup> This destroyed the biblical concept of covenantal institutions. The presence of an oath implicitly equalized all other voluntary institutions with the three covenantal institutions, which in the hands of Madison and the other voluntarists and compact theorists led to the secularization of civil government.

This shift in language from covenant to contract accelerated on both sides of the Atlantic after the Glorious Revolution of 1688–89.<sup>6</sup> The eighteenth-century world steadily abandoned the earlier view of the civil covenant: government under God. It became popular to speak of a social contract between or among the people, as the sovereign ini-

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5. John Witherspoon, *Lectures on Moral Philosophy*, ed. Jack Scott (Newark, New Jersey: University of Delaware Press), ch. 16.

6. C. B. McPherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (New York: Oxford University Press, 1962). On the New England development, see Gary North, “From Covenant to Contract: Pietism and Secularism in Puritan New England, 1691–1720,” *Journal of Christian Reconstruction*, VI (Winter 1979–80), pp. 155–94.

tiators. It is, in Wood's phrase, "the equation of rulers and ruled."<sup>7</sup> Charles Backus declared in a 1788 sermon: "But in America, the *People* have had an opportunity of forming a compact *betwixt themselves*; from which alone, their rulers derive all their authority to govern."<sup>8</sup>

The heart of the judicial apostasy of the modern world is found here: the shift from the formal biblical covenant to a state-enforced contract, so-called. The state, as the highest court of appeal—short of revolution—became the operational Sovereign of the civil covenant, since it was no longer formally covenanted under God. As the human agency with the greatest power, the state steadily has asserted jurisdiction over churches and families. Since the state is regarded as beyond earthly appeal, no other human covenant supposedly can be said to have a higher court of appeal than the state.

This shift in language—covenant to contract—formally unleashed the state from its traditional shackles under God and God's law. Darwinism later completed the process of emancipation from God and deliverance into the bondage of the state. But Darwinism was simply a development in the field of biology of the judicial and covenantal viewpoint of seventeenth-century Whigs—the philosophers of the voluntary political contract—and the eighteenth-century Scottish Enlightenment thinkers—the philosophers of the voluntary economic contract.<sup>9</sup>

Nevertheless, this shift in language is misleading. There is no escape from covenantalism. Covenants are inescapable concepts. Many attempts have been made over the last three centuries to convert the three covenantal institutions into contractual ones, but the biblical fact is this: men produce broken covenants when they speak of church, state, and family as merely contractual. Men are self-deceived when they speak this way. There will always be some new sovereign agent under whom these three covenants are ratified and sealed. There will always be a voice of authority who speaks in the name of the recognized sovereign who has authorized a covenant.

This was not clear to those who ratified the Constitution. It prob-

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7. Gordon S. Wood, *The Creation of the American Republic, 1776–1787* (Williamsburg, Virginia: Institute of Early American History, published by the University of North Carolina Press, 1969), p. 600.

8. Charles Backus, Sermon Preached at Long Meadow (1788); cited in *ibid.*, p. 601.

9. On this point, see F. A. Hayek, *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960), pp. 58–59. For my critique of Hayek's evolutionism, see Gary North, *Sovereignty and Dominion: An Economic Commentary on Genesis* (Dallas, Georgia: Point Five Press, [1982] 2012), Appendix B.

ably was not clear to those who drafted it, although Madison was very close to the truth. But one thing is clear: the God of the Bible was formally removed from the Constitution. Not even the lingering traces of His name in the Declaration of Independence were allowed to pass into the Constitution. There was nevertheless an incorporating authority: the People. There would therefore still be a voice in history of this final trans-historical authority. There have been several claimants for this title, but in the twentieth century, one triumphed: the Supreme Court.

## B. The Voice of Authority

We have seen who the official authority is. In order to make the results of their closed-door conspiracy sound more authoritative and legitimate, the conspirators added these three words in the Preamble: “We the People.” The fact is, the document would be more accurate had it announced, “We the States,”<sup>10</sup> for it was submitted to the state-wide conventions that were called by the states’ legislatures. But the Framers took great care to make certain that voters perceived the Constitution as the work of the people as a whole, even though it was ratified by state ratifying conventions. The Convention, in drawing up the Constitution, was supposedly acting in the name of the sovereign People, as distinguished from the voters’ legislatures, thereby gaining legitimacy for a revolution against the states-established Declaration of Independence and the Articles of Confederation. The Framers were determined to gain legitimacy for the Constitution from a trans-historical sovereign in a one-time event that would be difficult to duplicate. Once the metaphysical People had spoken in the ratifying conventions, they were collectively to go on a permanent vacation, just as the textbook god of the Deists was supposed to do. Unlike children, who were to be seen but not heard, the People were to be neither seen nor heard after 1788.

### 1. Keeping the People in Their Place

In *Fiddler on the Roof*, a stage play and movie about Jewish village life in pre-Revolutionary Russia, the rabbi of a small village is asked publicly if he has a blessing for the Czar. The rabbi, a wise man, has an

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10. *We the States: An Anthology of Historic Documents and Commentaries thereon, Expounding the State and Federal Relationship*, published by the Virginia Commission on Constitutional Government (Richmond, Virginia: William Byrd Press, 1964).

appropriate blessing: “May God bless the Czar . . . very far from here.” This was essentially the prayer of the nationalists in 1787 regarding the People. The People, as the incorporating god, were to bless the completed work of the Framers, and then go very far away. The nationalists had the Bill of Rights forced on them by the Antifederalists, but this was the last time any wholesale imposition on the Constitution was to take place. The People were then to sit down and shut up.

In acknowledging the original *judicial* sovereignty of the People, the Constitution greatly augmented the *political* sovereignty of the Nation-State, which is the only incorporated institution in society that has been officially produced by the people as a whole. The Framers fully understood that the Constitution’s transfer of judicial authority from the People to the national government was a unique act of incorporation, and it would be very difficult to duplicate in the future. They wanted it this way. Madison rejected Jefferson’s assertion that it is a good idea to go to the people whenever there is any encroachment of one department of government on another. Madison appealed to the power of the People almost as if it were a one-time event. But first he began with the familiar theme of the sovereignty of the People, for “the people are the only legitimate fountain of power, and it is from them that the constitutional charter, under which the several branches of government hold their power, is derived; . . .”<sup>11</sup> He warned against “The danger of disturbing the public tranquility by interesting too strongly the public passions. . . .”<sup>12</sup> In short, “the expedients are of too ticklish a nature to be unnecessarily multiplied.”<sup>13</sup>

Madison was concerned about the evils of paying too much attention to the passions of temporary public opinion.<sup>14</sup> Years later, he distinguished between a “constitutional majority” and a “numerical majority of the people.” The constitutional minority, even if a majority of the people, has to submit to the constitutional majority until the constitution could be amended. Nisbet wrote: “The only remedy, therefore, for the oppressed minority is in the amendment of the Constitution or a subversion of the Constitution. This inference is unavoidable.”<sup>15</sup> The act of incorporation was a unique event, unlikely to be re-

11. Madison, Federalist 49, *The Federalist*, ed. Jacob E. Cooke (Middletown, Connecticut: Wesleyan University Press, 1961), p. 339.

12. *Ibid.*, p. 340.

13. *Ibid.*, p. 341.

14. Robert Nisbet, “Public Opinion versus Popular Opinion,” *Public Interest* (Fall 1975), pp. 170–74.

15. Madison to [unknown] (1833), in Marvin Meyers (ed.), *The Mind of the*



peated, Madison believed. Thus, while voters could reject candidates for public office, it was unlikely that they would reject the Constitution itself. The states could, however, fight a civil war when major disagreements arose, a possibility he prudently declined to discuss. Thus, the new national government was virtually secure, short of civil war or invasion. Its very judicial security transferred unprecedented political sovereignty to the national government.

## 2. A New Theory of Constitutions

Madison's view of the future represented a break with the Whig theory of the origin and fate of constitutions. The Whigs, in turning to classical political models, were drawn into the classical world's cyclical theory of history. Cyclical history had been rediscovered by the Enlightenment humanists of eighteenth-century America, and it had become widespread.<sup>16</sup> The Whigs believed, as the Greeks had, that new orders inevitably decline. Hesiod said in the *Works and Days* (eighth century B.C) that the original age of gold degenerated into silver, then into bronze, then into the age of the heroes, and finally into iron.<sup>17</sup> Society, the classical world believed, needs periodic revolutions to restore new orders; this idea became common in Whig political philosophy.<sup>18</sup>

Jefferson had reworked Tertullian's comment that the blood of martyrs is the seed of the church, turning it into the blood of patriots and tyrants refreshing the tree of liberty every twenty years<sup>19</sup>—a classical, cyclical concept of development. This perspective is reflected in the Virginia constitution of 1776, which authorized the judicial principle that "a majority of the community hath an indubitable, inalienable, and infeasible right to reform, alter, or abolish it [the government], in such manner as shall be judged most conducive to the public weal."<sup>20</sup>

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*Founder: Sources of the Political Thought of James Madison* (Indianapolis, Indiana: Bobbs-Merrill, 1973), p. 529.

16. Stow Persons, "The Cyclical Theory of History in Eighteenth Century America," *American Quarterly*, VI (Summer 1954), pp. 147–63.

17. *Hesiod*, translated by Richmond Lattimore (Ann Arbor: University of Michigan Press, 1959), lines 109–201, pp. 31–43.

18. Michael Lienesch, *New Order of the Ages: Time, the Constitution, and the Making of Modern American Political Thought* (Princeton, New Jersey: Princeton University Press, 1988), ch. 3.

19. Jefferson to William Stevens Smith, Nov. 13, 1787.

20. "Constitution of Virginia" (June 12, 1776), in Richard L. Cooper and John C. Cooper (eds.), *Sources of Our Liberties* (Chicago: American Bar Foundation, 1959), p. 311.

By 1787, the Framers preferred to avoid such rhetoric. They wanted linear history, not cyclical. They hoped that constitutional balance would give them this providential fruit of Christianity, but without the theological or covenantal root. The Federalists had cried “crisis” in 1787, even as the Whigs of 1688 had done; and, like the victorious Whigs of 1688, thereafter they wanted consolidation, stability, and continuity. They wanted the orderly, constitutional transfer of power and liberty to their posterity. They became “court Whigs,”<sup>21</sup> once they had created the new national court.

his permanent transfer of political sovereignty to the national state was not obvious at first, even to the Framers. The political boundaries were vague, as is testified to by Madison and Jefferson’s Virginia and Kentucky Resolves in 1798 and 1799, written to protest the Federalist Party’s Alien and Sedition Acts of 1798.<sup>22</sup> Furthermore, it was not always clear just how the People had revealed themselves judicially in 1788: as a unit or through each state or through “the States as a *whole*,” as Madison later put it.<sup>23</sup>

One man saw the constitutional implications of what was being proposed by the Federalists in 1788: Patrick Henry. His protest was not sufficiently persuasive at Virginia’s ratification convention, but in retrospect, he seems prophetic.

### 3. Patrick Henry: “By Whose Authority?”

Patrick Henry had been invited to attend the Philadelphia Convention, but he had refused. A year later, he spoke out against ratification. He had seen the meaning of “We the People,” and he warned against its implications during the debates over ratification. I quoted his statement at length at the beginning of this chapter. It bears repeating.

Give me leave to demand, what right had they to say, ‘We the People,’ instead of ‘We the States’? States are the characteristics, and the soul of a confederation. If the States be not the agents of this compact, it must be one great consolidated national government of the people of all the States. . . . Had the delegates, who were sent to Philadelphia a power to propose a consolidated government instead of a confederacy? Were they not deputed by States, and not by the

21. Lienesch, *New Order*, p. 64.

22. *The Annals of America*, 18 vols. (Chicago: Encyclopedia Britannica, 1968), IV, pp. 62–67.

23. See Madison’s letter to the *North American Review* (Aug. 28, 1830), in *Mind of the Founder*, p. 540.

people? The assent of the people, in their collective capacity, is not necessary to the formation of a federal government. The people have no right to enter into leagues, alliances, or confederations: they are not the proper agents for this purpose: States and sovereign powers are the only proper agents for this kind of government. Show me an instance where the people have exercised this business: has it not always gone through the legislatures? . . . This, therefore, ought to depend on the consent of the legislatures.

Henry said emphatically of the delegates to the Constitutional Convention in Philadelphia, “The people gave them no power to use their name. That they exceeded their power is perfectly clear.” In modern terminology, this was a form of property infringement. He reminded his listeners of the nature of the original authorization of the Convention: “The federal convention ought to have amended the old system; for this purpose they were solely delegated: the object of their mission extended to no other consideration.”<sup>24</sup> But because the legislatures authorized the conventions, they in effect had sanctioned this public transfer of the locus of sovereignty. This transfer was illegal.

### C. Divine Right, Closed Universe

Henry could not overcome Americans’ commitment to a new theology, the theology of *the divine right of the invisible People*. This theology had now replaced the divine right of kings and the divine right of parliament. There could ultimately be no appeal beyond the sovereign will of the voters. The People as a collective unit are best represented by the voters. The People collectively are originally sovereign; hence, the voters are intermittently sovereign. Men can build in institutional safeguards against the misuse of this authority—the Constitution is full of them—but ultimately the voters are sovereign. The People speak through the voters. This was why the Convention appealed to a plebiscite of voters, state by state, not as they were legally represented in the established legislatures, but in state-wide conventions—mini-conventions modeled along the lines of the Philadelphia Convention, and dominated by the same national political faction.. The language of political philosophy in 1787 had made this appeal to

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24. I am using the version in Norine Dickson Campbell, *Patrick Henry: Patriot and Statesman* (Old Greenwich, Connecticut: Devin-Adair, 1969), p. 338. This appears in Jonathan Elliot (ed.), *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787*, 5 vols. (Philadelphia: Lippincott, [1836] 1907), III, p. 22.

the voters not only logical but covenantally necessary. And being necessary, Mr. Madison did his organizational homework well in advance. He made sure that the Federalists would speak for the People.

Let us not be naive. When we used to read of elections behind the Iron Curtain, or elections yesterday in some African “democracy,” we are not surprised to learn that the existing national administration has been re-elected almost unanimously. We are not surprised because we know that the elections are rigged by those in power. We know it was not a representative procedure. Yet how many American history textbooks raise the obvious question: How did it happen that nine out of the first nine state ratifying conventions voted to ratify, yet from what we can determine from the documentary record, the actual voting public was evenly split? The Man Who Hated Monolithic Faction organized one whale of a monolithic faction in 1787–88. In 1800, he and Jefferson created a faction to deal with the faction that had split the faction that had ratified the Constitution. In 1812, his then-dominant faction got him elected President. He took America into a second war with Great Britain, thereby inducing the Federalist faction in New England to threaten to secede. The Spirit of '76 lived on!

This praise of the People had been prominent in Protestant political theory since at least the sixteenth century, but it had been offset by the Christian doctrine of the Creator God. He was seen as both the initiating authority and the final authority. Men had long debated over who held lawful claim to be God’s final earthly authority, but there had been no doubt that this final earthly authority was under God. But in the early eighteenth century, this assumption steadily disappeared in the writings of the Commonwealthmen, especially in the popular newspaper, *Cato’s Letters*. The language of divinity is applied to the People in this 1721 essay on libel:

I have long thought, that the World are very much mistaken in their Idea and Distinction of Libels. It has been hitherto generally understood that there were no other Libels but those against Magistrates, and those against private Men: Now, to me there seems to be a third Sort of Libels, full as destructive as any of the former can possibly be; I mean, Libels against the People. It was otherwise at *Athens* and *Rome*; where, though particular Men, and even great Men, were often treated with much Freedom and Severity, when they deserved it; yet the People, the Body of the People, were spoken of with the utmost Regard and Reverence: *The sacred Privileges of the People, The inviolable Majesty of the People, The awful Authority of the People,*

and *The unappealable Judgment of the People*.<sup>25</sup>

Notice the final phrase: the unappealable judgment of the People. This is the essence of the divine right philosophy: a final, *unitary* court of earthly appeal. But in this case, there is no heavenly court of transcendent appeal. This doctrine of the closed universe is the essence of humanism, as Rushdoony pointed out in 1967.

Humanistic law, moreover, is inescapably totalitarian law. Humanism, as a logical development of evolutionary theory, holds fundamentally to a concept of an evolving universe. This is held to be an “open universe,” whereas Biblical Christianity, because of its faith in the triune God and His eternal decree, is said to be a faith in a “closed universe.” This terminology not only intends to prejudice the case; it reverses reality. The universe of evolutionism and humanism is a closed universe. There is no law, no appeal, no higher order, beyond and above the universe. Instead of an open window upwards, there is a closed cosmos. There is thus no ultimate law and decree beyond man and the universe. Man’s law is therefore beyond criticism except by man. In practice, this means that the positive law of the state is absolute law. The state is the most powerful and most highly organized expression of humanistic man, and the state is the form and expression of humanistic law. Because there is no higher law of God as judge over the universe, over every human order, the law of the state is a closed system of law. There is no appeal beyond it. Man has no “right,” no realm of justice, no source of law beyond the state, to which man can appeal against the state. Humanism therefore imprisons man within the closed world of the state and the closed universe of the evolutionary scheme.<sup>26</sup>

The Darwinian philosophy of law that has dominated American legal theory since at least O. W. Holmes, Jr.’s *The Common Law* (1881) had been made judicially enforceable by the Constitution itself. Darwinian evolutionary thought is consistent with the Preamble. It is naive—I am tempted to say “terminally naive”—to regard the modern evolutionary view of American constitutional law as being a deviation from the Constitutional settlement; on the contrary, it was guaranteed

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25. “Reflections upon Libelling” (June 10, 1721); reprinted in *The English Libertarian Heritage*, ed. David L. Jacobson (Indianapolis, Indiana: Bobbs-Merrill, 1965), p. 75. Italics in original.

26. R. J. Rushdoony, “Humanistic Law,” introduction to Hebden Taylor, *The New Legality* (Nutley, New Jersey: Craig Press, 1967), vi-vii. Cf. Cornelius Van Til, *The Doctrine of Scripture*, vol. 1 of *In Defense of Biblical Christianity* (den Dulk Foundation, 1967), p. 5.

by that settlement. If we should appeal to the idea of the Framers' original intent, we are driven straight to the worldview of political Darwinism: a final earthly political court of appeal from which no heavenly appeal is judicially warranted. Well, perhaps not absolutely final. We can always call another Constitutional Convention. We the people. Madison set the precedent.

And Madison was well organized years in advance.

### D. Judicial Sovereignty

The Constitution's transfer of the locus of initiating sovereignty and therefore final sovereignty to the People has led to a special situation, which was not foreseen by most of the Framers: the United States Supreme Court's appropriation of nearly total judicial sovereignty.<sup>27</sup> There is no effective, clear-cut check placed on the Court's authority because this threat was not perceived by most of the Framers. Inevitably, the Court's authority expanded, for it can declare the true law which governs all legislation.

The Framers believed that Congress would possess the greatest power because it would make the laws. But the biblical covenant model tells us that it is the person who *interprets* the law who is sovereign. The Constitution was written on the assumption that there is a higher law that is sovereign. This was a natural law theory version of biblical law, but it did govern the thinking of the Framers, and the Constitution reflects this belief.<sup>28</sup> Thus, the Supreme Court has attained final judicial sovereignty, for it judges the legitimacy of the laws of Congress in terms of the higher law that the Constitution supposedly embodies, and voters are unwilling generally to overturn the Court by Constitutional amendment. The Supreme Court provides *retroactive legitimacy* to legislation, just as the voters in their ratifying conventions in

27. As Constitutional scholar and historian Forrest McDonald pointed out, Congress was originally the most powerful branch, with the Supreme Court the weakest. (Hamilton certainly believed this to be the case: *Federalist 78*.) McDonald said that the Court's power to declare acts of Congress unconstitutional was exercised only twice prior to the Civil War, "and on both occasions the ferocity of the ensuing opposition caused the justices to fear, with some reason, that the court system would be emasculated if not destroyed." McDonald, "Interpreting the Constitution: Judges versus History," *The John M. Olin Lectures on the Bicentennial of the U.S. Constitution* (Reston, Virginia: Young America's Foundation, 1987), p. 18. The second case was the infamous *Dred Scott* decision of 1857, in which the Court forced a former slave who was then residing in a free state to return to his condition of enslavement in a slave state.

28. Edwin S. Corwin, *The "Higher Law" Background of American Constitutional Law* (Ithaca, New York: Cornell University Press, [1928] 1955).

1788 provided retroactive legitimacy to the *coup* of 1787. Five unelected jurors for life, immune from the retroactive vengeance of voters, now speak finally in the name of the sovereign People. No wonder, in the words of Forrest McDonald regarding public opinion in 1787, that “few Americans except lawyers trusted a truly independent judiciary.”<sup>29</sup>

Political conservatives cry out against the concentration of power in the hands of the Supreme Court.<sup>30</sup> Such complaining does little good. Others have called the Court’s authority judicial tyranny.<sup>31</sup> This also does little good. The Court’s power is still unchecked because of public opinion. The voters really do regard the Supreme Court as sacrosanct. Conservatives for a generation have appealed to the Constitution’s explicit language and point to the obvious fact that the Framers expected Congress to be the dominant branch.<sup>32</sup>

Such appeals are futile. They do no good. The Court’s authority is untouched by such appeals. What the Framers may have expected or wanted is here judicially irrelevant. What is crucial is the hierarchical structure of the Constitution’s underlying and fundamental principle of *judicial declaration*. The United States Constitution created a system of representation that passes to the Supreme Court the authority to legislate in the name of judicial interpretation.

## 1. Legislation Through Declaration

The Court *is* the legislator, for it declares the “true” law of the land, and voters perceive it as possessing the legitimacy to do this. Chief Justice John Marshall’s doctrine of implied powers was a correct view of the Constitution.<sup>33</sup> These powers are implied by the very structure of all covenantalism. The earthly judge who declares the true law and applies it to specific circumstances is the earthly sovereign. He who declares the unchanging moral law in individual cases—the *casuist*—is the true lawmaker. So is he who declares the evolving amoral

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29. Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence, Kansas: University Press of Kansas, 1985), p. 85.

30. Rosalie Gordon, *Nine Men Against America: The Supreme Court and Its Attack on American Liberties* (New York: Devin-Adair, 1958).

31. Caroll D. Kilgore, *Judicial Tyranny* (Nashville, Tennessee: Thomas Nelson, 1977).

32. James Burnham, *Congress and the American Tradition* (Chicago: Regnery, 1959).

33. Cf. Gerald Gunther (ed.), *John Marshall’s Defense of McCulloch v. Maryland* (Stanford, California: Stanford University Press, 1969).

law. Chief Justice Burger has set forth this position clearly: “The cornerstone of our constitutional history and system remains the firm adherence of the Supreme Court to the *Marbury* principle of judicial review that ‘someone must decide’ what the Constitution means.”<sup>34</sup> Cornerstone, indeed! It was what John Marshall formally announced concerning the sovereignty of the Supreme Court, not what the Framers announced about it, that has determined the history of civil government in the United States. That the Court under Chief Justice Earl Warren produced what Professor Alexander Bickel called a “web of subjectivity”<sup>35</sup> should surprise no one. This web of subjectivity is the inevitable product of a combining of two doctrines: the biblical doctrine of hierarchical representation and the Darwinian doctrine of the autonomy of man in a world of ceaseless flux. The mythical “higher law” of natural law theory was erased from modern man’s thinking by Darwin, as Rushdoony noted in 1969.<sup>36</sup> This left the Voice of the People in control. This voice in the United States is the latest pronouncement of the civil agency beyond which there is no judicial appeal: the Supreme Court.

## 2. *Point Two of the Covenant*

Hierarchy is the second point of the biblical covenant model. It is the section that deals with representation. Some office, agency, or individual must represent the people before the throne of God and God before the people. In the church, this is the local pastor or elders. In Presbyterianism, it will be the General Assembly, or in some cases, the Synods or Presbyteries acting as a constitutional unit. But the agency, commission, or person with the authority to issue a binding judgment on disputed cases is the *final earthly authority* for that sphere of covenantal human government. In the U.S. government, this clearly is the Supreme Court.

There is no escape from the principle of judicial authority. There must always be a final earthly court of appeal. It can in theory be a plural voice, however: legislature, court, and executive combined, or any two of them. In the twentieth century, the U.S. Supreme Court be-

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34. Warren Burger, Introduction, William E. Swindler, *The Constitution and Chief Justice Marshall* (New York: Dodd, Mead, 1978), p. xiii.

35. Alexander M. Bickel, *The Supreme Court and the Idea of Progress* (New York: Harper & Row, 1970), ch. 3.

36. R. J. Rushdoony, *The Biblical Philosophy of History* (Vallecito, California: Ross House, [1969] 2000), p. 7. (<http://bit.ly/rjrbph>)



came America's final court of appeal. Five justices speak for the invisible metaphysical People through the judicially flexible words of the Constitution. The Framers did not recognize this possibility. They did not even bother to stipulate how many Supreme Court justices there should be. They did not understand point two of biblical covenantalism, although the Constitution is structured in terms of the five-point biblical covenant model (with a different order, however—see page 97). They should have seen that the doctrine of judicial review was inevitable. Someone must speak definitively in the name of the sovereign People.

The only way that they could have overcome this transfer of ultimate sovereignty to the Supreme Court would have been through the creation of some sort of institutional appeals structure beyond the authority of the Court. If, for instance, the Court's declaration that a law is unconstitutional could be constitutionally overturned by a vote of three-quarters of both houses of Congress plus the signature of the President, a truly federal system of checks and balances would now exist.<sup>37</sup> Instead, the Constitution lodges theoretical judicial sovereignty in the People, and final practical authority in the hands of five people: a five-to-four decision of the Court. It is significant that this constitutional structure was the work of lawyers rather than common people.

### 3. *The Evolving Voice of Authority*

The fact is that *there must always be a voice that interprets the will of the sovereign agent in history*. Today, the amorphous deity "We the People" is represented in a sovereign way by five people. This was admitted casually and almost cynically by Chief Justice Burger in a televised interview by Bill Moyers:

CHIEF JUSTICE BURGER: Constitutional cases—constitutional jurisprudence is open to the Court to change its position, in view of—of changing conditions. And it has done so.

MOYERS: And what does it take for the Court to reverse itself?

CHIEF JUSTICE BURGER: Five votes.<sup>38</sup>

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37. The conservative political philosopher Wilmoore Kendall said in a 1962 speech at the University of California, Riverside, that Madison had considered proposing this judicial option to the Convention, but had not done so. I have never seen any documentary evidence for this assertion, but the idea is a good one.

38. Transcript, CBS News Special, "The Burger Years" (June 9, 1986), p. 6.

This is process philosophy, a view which has steadily gained control of American law ever since justice Oliver Wendell Holmes, Jr. announced its principles in *The Common Law* in 1881. (His father, O. W. Holmes, Sr., was the author of the clever poem attacking the supposed fragility and rigidity of Calvinism, "The Deacon's Masterpiece; or the Wonderful One-Hoss Shay.") This is process philosophy "by the numbers." The People speak by way of five votes out of a maximum of nine.

The Court had reversed itself in 219 cases by 2000.<sup>39</sup> Of this total, all but seven instances came after the Civil War.<sup>40</sup> All but 28 came after 1913.<sup>41</sup> Over 60% came after 1941.<sup>42</sup> This process is accelerating. Judicial discontinuity has begun to undermine the concept of the Constitution as fundamental law, as *covenant*. Legal scholars have all but abandoned such a view of the Constitution. Respect for the intentions of the Framers, respect for the idea that the document's language is perpetually binding, and respect for the idea of binding judicial precedent are now all but gone. This loss of faith has undermined the very concept of Constitutional legitimacy.<sup>43</sup> But without faith in legitimacy to undergird a legal system, self-government becomes anarchy, and the state asserts its will in the name of power alone. Like the Persian kings of old, whose word was law, but only for as long as their power could enforce their word, so is the modern state when the public's confidence in its judicial legitimacy wanes in response to what Nathan Glazer has called the imperial judiciary.<sup>44</sup>

The doctrine of judicial review was the only available alternative to the idea of continuing plebiscites. Until the Civil War, the Supreme Court reigned but did not rule. It only asserted its authority to declare a Congressional law unconstitutional twice. By 2000, it had overturned

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39. Congressional Research Service, Library of Congress, *The Constitution of the United States of America: Analysis and Interpretation—2000 Supplement*, 106th Congress, Senate Document No. 106-27 (Washington, D.C.: Government Printing Office, 2000), p. 171.

40. Congressional Research Service, Library of Congress, *The Constitution of the United States of America: Analysis and Interpretation* (Washington, D.C.: Government Printing Office, 1992), p. 2245.

41. *Ibid.*, p. 2247.

42. *Ibid.*, p. 2249.

43. Robert Bork, Foreword, Gary L. McDowell, *The Constitution and Contemporary Constitutional Theory* (Cumberland, Virginia: Center for Judicial Studies, 1987), pp. viii–ix.

44. Nathan Glazer, "Towards an Imperial Judiciary?" *Public Interest* (Fall 1975).

151 Congressional laws,<sup>45</sup> plus 1130 state laws.<sup>46</sup> As its arrogance has increased, and it has attempted to rule, it has become the ever-changing plebiscite that the Framers feared. But it is a plebiscite of a majority of nine rather than a majority of the voting public. The Constitutionally unavoidable doctrine of the Court’s legitimate representation cannot survive the public’s loss of faith in the existence of a stable, permanent, *fundamental* law which is being represented by the Court. There must be continuity between the voice of the fundamental law and the law itself over time. This continuity has been destroyed in theory by Darwinism and in fact by the twentieth century’s political wars to control appointments to the Court. The idea of the legitimate earthly sovereignty of the Court cannot be maintained once the public loses faith in the heavenly origin of the law.

Hamilton, the consummate defender of centralism among the Framers, argued in *Federalist* 78 that the Supreme Court would be the weakest of the three branches of the Federal government. But, he added, “liberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments; . . .”<sup>47</sup> The rise of the Executive branch’s power in the twentieth century, its control over appointments to the Court, and the voluntary abandonment by Congress of its own authority, combined to make the Supreme Court the threat to liberty that Hamilton admitted as an outside possibility. Yet had he been wiser, he would have seen what would come, and what John Marshall asserted as the Court’s prerogative as the voice of final authority. Hamilton wrote:

The interpretation of the laws is the proper and peculiar province of the courts. A constitution is in fact, and must be, regarded by the judges as a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought of course to be preferred; or in other words, the constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.<sup>48</sup>

This is sophistry. The “superior obligation” is not the Constitution, but the institutional authority that claims, five to four, to be the final

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45. *Constitution—2000 Supplement*, p. 158.

46. *Ibid.*, p. 168.

47. *Federalist*, p. 523.

48. *Ibid.*, p. 525.

voice of authority of the finally sovereign but silent people. Who is to say what “the intention of the people” is, as distinguished from “their agents”? Are the justices of the Court uniquely agents of the people, appointed but not elected? Why is a statute any less authoritative as the expression of the will of the silent, invisible, sovereign People than a five-to-four decision of the Court? A statute must pass both branches of Congress and be signed by the President, or else be passed by two-thirds of Congress if the President vetoes the proposed statute. Why is this procedure less representative of the People’s will than a five-vote majority of the Court? But it is, because the voters have been taught that the Court possesses this sovereignty, i.e., this legitimacy. The Constitution established this final sovereignty, and Hamilton was either blind or a deceiver to argue that the Supreme Court would not become, step by step, the voice of authority. His own analysis pointed to the truth: Constitution over statute.

The incorporation of *legitimate*, delegated, earthly sovereignty was destroyed by the voters in 1788 when they ratified the Constitution, with its denial of the legitimacy of a covenantal oath to the covenantal God who alone is the source of all law. Here is what is most significant covenantally about the Constitution, and therefore most significant overall. *It abandoned the source of legitimacy, the Creator.* The state constitutions on the whole were explicitly Christian. The Constitution was explicitly non-Christian: see Article VI, Clause 3 on official Federal oaths. The language of natural law in the Declaration, the absence of any religious test oath in the Articles, and the concept of the religiously neutral civil compact in the Constitution, began the formal judicial break nationally with Christianity. The Fourteenth Amendment completed it.

Then came Darwinism. We can accurately date the advent of unbelief in the United States: 1865–90.<sup>49</sup> With the rapid philosophical erosion of the traditional eighteenth-century worldview, the long-term covenantal basis of U.S. Constitutional law was undermined. No one has described this process better than Thomas Woodrow Wilson, Ph.D., who in 1908 wrote this of the Constitution: “The government of the United States was constructed upon the Whig theory of political dynamics, which was a sort of unconscious copy of the Newtonian view of the universe. In our day, whenever we discuss the structure or development of anything, whether in nature or in society, we con-

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49. James Turner, *Without God, Without Creed: The Origins of Unbelief in America* (Baltimore, Maryland: Johns Hopkins University Press, 1985), Pt. II.

sciously or unconsciously follow Mr. Darwin; but before Mr. Darwin, they followed Newton. Some single law, like the law of gravitation, swung each system of thought and gave it its principle of unity.”<sup>50</sup> Once we accept this view of the Constitution, there are inescapable judicial implications. Wilson spelled them out forthrightly.

The trouble with the theory is that government is not a machine, but a living thing. It falls, not under the theory of the universe, but under the theory of organic life. It is accountable to Darwin, not to Newton. It is modified by its environment, necessitated by its tasks, shaped to its functions by the sheer pressure of life. No living thing can have its organs offset against each other as checks, and live. On the contrary, its life is dependent upon their quick cooperation, their ready response to the commands of instinct or intelligence, their amicable community of purpose. Government is not a body of blind forces; it is a body of men, with highly differentiated functions, no doubt, in our modern day of specialization, but with a common task and purpose. Their cooperation is indispensable, their warfare fatal. There can be no successful government without leadership or without the intimate, almost instinctive, coordination of the organs of life and action. This is not theory, but fact, and displays its force as fact, whatever theories may be thrown across its track. Living political constitutions must be Darwinian in structure and in practice.<sup>51</sup>

Civil government in Darwin’s world requires an active coordinator. The Constitution must be a living document, meaning a changing document, meaning actively changed by the voice of authority. What was suitable for a Constitution that had been interpreted in terms of a Newtonian worldview is no longer suitable. We have moved from mechanism to organism, from repairing to healing.

## E. The Antifederalists’ Warning

Patrick Henry was one of the few critics who sensed the danger. He warned that the implicit doctrine of judicial review would eventually lead to a conflict with the common law principle of trial by jury.<sup>52</sup>

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50. Woodrow Wilson, *The Constitutional Government of the United States* (New York: Columbia University Press, [1908] 1961), pp. 54–55.

51. *Ibid.*, pp. 56–57.

52. Elliot, *Debates*, III, pp. 539–42. It is one of the strangest ironies of American history that Chief Justice John Marshall, the man who first declared openly the doctrine of judicial review in *Marbury v. Madison* (1803), was appointed Chief Justice by President Adams in the fall of 1800, after the Federalists had lost the election of 1800. Marshall’s predecessor, Oliver Ellsworth, had, as a U.S. Senator, written the Judiciary

As mentioned earlier, Hamilton went so far as to say that “the judiciary is beyond comparison the weakest of the three departments of power,” and he assured his readers that “it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks.”<sup>53</sup> Hamilton was wrong.

### 1. *Visionaries*

At least some of the Antifederalists saw what was coming. Professor Storing wrote: “The weakening of the place of the jury, the provision for a complete system of national courts, the extensive jurisdiction of the national judiciary, the provision for appeal to the Supreme Court on questions of fact as well as law, and the supremacy of the Constitution and the laws and treaties made thereunder all seemed to give enormous power over the daily concerns of men to a small group of irresponsible judges.”<sup>54</sup> Storing then cites “Brutus,” whose Antifederalist writings he regards as the best regarding the ultimate authority of the Federal judiciary under the proposed Constitution.<sup>55</sup> “Brutus” prophesied that “the supreme court under this constitution would be exalted above all other power in the government, and subject to no controul.”<sup>56</sup> He forecasted clearly what subsequently has taken place:

The power of this court is in many cases superior to that of the legislature. I have shewed, in a former paper, that this court will be authorised to decide upon the meaning of the constitution, and that, not only according to the natural and ob(vious) meaning of the words, but also according to the spirit and intention of it. In the exercise of this power they will not be subordinate to, but above the legislature. For all the departments of this government will receive their powers, so far as they are expressed in the constitution, from the people immediately, who are the source of power. The legislature can only exercise such powers as are given them by the constitution, they cannot assume any of the rights annexed to the judicial, for this plain

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Act of 1789, which permitted the Supreme Court to overturn acts of state courts and legislatures. He resigned in time for outgoing President John Adams to appoint Marshall to the position. Had Ellsworth waited just a few weeks before resigning, the likely nominee by Jefferson would have been Spencer Roane, Henry’s son-in-law, who was a defender of the state’s rights position. Campbell, *Patrick Henry*, pp. 367–68.

53. Hamilton, *Federalist 78: The Federalist*, p. 523.

54. Herbert J. Storing, *What the Anti-Federalists Were For* (University of Chicago Press, 1981), p. 50.

55. Storing, introductory remarks, “Essays of Brutus,” *The Complete Anti-Federalist*, 7 vols. (Chicago: University of Chicago Press, 1981), II, p. 358.

56. *Ibid.*, II, pp. 437–37.

reason, that the same authority which vested the legislature with their powers, vested the judicial with theirs—both are derived from the same source, both therefore are equally valid, and the judicial hold their powers independently of the legislature, as the legislature do of the judicial.—The supreme co[u]rt then have a right, independent of the legislature, to give a construction to the constitution and every part of it, and there is no power provided in this system to correct their construction or do it away. If, therefore, the legislature pass any laws, inconsistent with the sense the judges put upon the constitution, they will declare it void; and therefore in this respect their power is superior to that of the legislature. In England the judges are not only subject to have their decisions set aside by the house of lords, for error, but in cases where they give an explanation to the laws or constitution of the country, contrary to the sense of the parliament, though the parliament will not set aside the judgement of the court, yet, they have authority, by a new law, to explain a former one, and by this means to prevent a reception of such decisions. But no such power is in the legislature. The judges are supreme—and no law, explanatory of the constitution, will be binding on them.<sup>57</sup>

Today, only a handful of legal scholars still argue that both Congress and the Executive possess the authority to enforce and interpret the Constitution. Constitutional historians do not tell their students the truth, namely, that John Marshall had to grab at historical straws in his attempt to find Constitutional support for his conclusion that the Supreme Court alone was charged with the duty of interpreting the Constitution. He used the strange argument that the judges take an oath to the Constitution. As Gordon Tullock reminded us, the argument makes equal sense when applied to all other departments of the Federal government.<sup>58</sup>

## 2. A Final Interpreter

Nevertheless, Marshall’s position, while not grounded in the words

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57. *Ibid.*, II, pp. 440–41.

58. Gordon Tullock, “Constitutional Mythology,” *New Individualist Review*, III (Spring 1965), p. 584. (<http://bit.ly/TullockCM>). This has been reprinted in one volume by Liberty Press, Indianapolis, Indiana. Tullock held a law degree but is a self-taught economist, and he is one of the two developers of the economics subdiscipline known as public choice theory. His co-author James Buchanan received the Nobel Prize in economics in 1985; that Tullock did not was probably because he never took a college class in economics. This was too much of an embarrassment for the Nobel Committee. He was Professor of Economics at the University of Arizona, but for many years taught at the University of Virginia.

of the Constitution, was fully grounded in covenantal reality. There must always be a final interpreter of the civil law, and by refusing to specify a judicial appeals system based on plural interpreters—for instance, three-quarters of both branches of Congress plus the President vs. the Supreme Court—the Framers implicitly accepted the notion of a unitary interpreter. There are no obvious Constitutional checks and balances in this crucial task of civil government, the task of declaring valid law. The Framers, by not specifying a means of appeal beyond the decisions of the Supreme Court, except for the involved system of Constitutional amendment, left no institutional basis for rejecting the Court’s position as the final voice of authority. Over time, the Supreme Court gained sufficient legitimacy—*legitimacy by default*—to monopolize this sovereign power of judicial review, especially after the Civil War.

Scholars properly regard as a Constitutional aberration President Andrew Jackson’s decision to ignore the Supreme Court’s decisions in *Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832), which defended the Indians’ tribal lands from encroachment by the State of Georgia.<sup>59</sup> The President was not impeached for his decision, nor did anyone in Congress suggest that he should be. The fact remains that this is the only example in U.S. history of a peacetime President’s successful public denial of the authority of the Court. The authority of the Court was established implicitly because of the structure of the biblical covenant, which the Constitution imitates.

### 3. *Fundamental Law*

The Framers regarded the Constitution as fundamental law. This, Paul Eidelberg argued persuasively, is the foundation of the concept of judicial review.<sup>60</sup> Article VI, Clause 2 states that “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 to the Contrary notwithstanding in the Constitution or Laws of any State to the Contrary notwithstanding.” But a fundamental law needs a fundamental interpreter, a fundamental ca- suist, and a final earthly court of appeal. Someone must speak *repres-*

59. Alfred H. Kelly and Winfred A. Harbison, *The American Constitution: Its Origins and Development*, rev. ed. (New York: Norton, 1955), pp. 302–3.

60. Paul Eidelberg, *The Philosophy of the American Constitution: A Reinterpretation of the Intentions of the Founding Fathers* (New York: Free Press, 1968), p. 216.



entatively for the sovereign source of law. This is the U.S. Supreme Court. It was not intended to be so by the Framers, but it has become so. Just as the Massachusetts Bay Colony’s General Court became the legislature,<sup>61</sup> so has the modern Supreme Court become the legislature. The difference is, Puritans in New England acknowledged the transformation and made this court elective.

The Constitution is a covenant, Eidelberg correctly observes, “for this term denotes its juridical basis as a permanent law.”<sup>62</sup> If the People are the true source of law, as the Constitution states in the Preamble, then there is only one alternative to the doctrine of judicial review: continual plebiscites. But decision-making by means of continual political plebiscites would eventually destroy the concept of permanence, which is the heart of a covenant.<sup>63</sup> Too much political change, too much political passion, and too many shifting majorities will destroy the very idea of a covenant. The Framers recognized this, and sought ways to cool public passions.<sup>64</sup> Thus, concluded Eidelberg, the doctrine of judicial review was implicit in the Constitution, whether the Framers saw this or not.

## F. Appellate Jurisdiction

The Framers did insert a clause to limit the Court’s authority, but it has been used infrequently and is inherently not in agreement with the spirit of the Constitution: the ability of Congress to remove most issues from the Court’s jurisdiction. All Congress has to do is to pass a resolution removing the Supreme Court’s appellate jurisdiction. That would do it. Article III, Section 2, Clause 2 of the Constitution reads as follows:

In all Cases affecting Ambassadors, and other public Ministers and Consuls, and those in which a State shall be a Party, the Supreme Court shall have original Jurisdiction. In all other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

There is no mention of the President. Whether he must agree with

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61. Gary North, *Boundaries and Dominion: An Economic Commentary on Leviticus*, 2nd ed. (Dallas, Georgia: Point Five Press, [1994] 2012).

62. Eidelberg, *op. cit.*, p. 225.

63. *Ibid.*, p. 227.

64. *Ibid.*, pp. 229–32.

Congress on this removal of the Court's appellate jurisdiction has never been decided. An interesting question is: What if the Court were to say that the President must agree with Congress, but Congress disagrees? What if Congress should remove the jurisdiction of the Court in this particular area of disagreement?

### 1. *Ex Parte McCardle*

The Supreme Court has original jurisdiction only in cases where ambassadors and consuls are involved, or in cases in which states shall be a party. The Supreme Court has in the past acknowledged this long-neglected judicial fact. Consider the case of *Ex Parte McCardle* (1868). In the late 1860's, Congress imposed a military dictatorship over the defeated South. During Reconstruction, a man was convicted in a military court of certain acts that were deemed by that court as obstructing Reconstruction. The Supreme Court decided to review the case. Here is the analysis of the case from the Library of Congress:

Anticipating that the Court might void, or at least undermine, congressional reconstruction of the Confederate States, Congress enacted over the President's veto a provision repealing the act which authorized the appeal *McCardle* had taken. Although the Court had already heard argument on the merits, it then dismissed for want of jurisdiction. "We are not at liberty to inquire into the motives of the legislators. We can only examine into its power under the Constitution; and the power to make exceptions to the appellate jurisdiction of this court is given by express words."<sup>65</sup>

The President had been asked to sign the measure, but the text of the analysis does not say why. The Constitution surely does not mention any such requirement. Perhaps Congress submitted it to President Johnson out of spite; they knew his veto could be overridden. In any case, the Court withdrew peacefully. It had no choice. The Constitution is clear, and previous cases had admitted such authority on the part of Congress.

### 2. *Initial Judicial Restraint*

Obviously, this is a very ticklish subject. Like the principle of judicial review, it was seldom invoked in the early days of the republic. Judicial review is not a principle written into the Constitution. Chief

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65. *Constitution of the United States: Analysis*, p. 781.

Justice John Marshall invoked it in the famous *Marbury v. Madison* case in 1803 when he declared an Act of Congress unconstitutional. The only other time prior to the Civil War that the Court invoked it was in the *Dred Scott v. Sandford* case of 1857, which more or less guaranteed the Civil War. The Court determined that Dred Scott was the property of his Southern owner, even though he had been taken into states that did not recognize the lawfulness of chattel slavery. He did not thereby become a citizen, so he could not sue in Federal court, the Supreme Court declared. The Court declared that Negroes could not be citizens of the U.S., although they could become state citizens. That decision was overruled at the cost of 700,000 dead. The 14th Amendment (1868) was the result.

Congress is no longer willing to remove the Court’s appellate jurisdiction over specific laws. This decrease in its assertion of authority has paralleled the increase of the Court’s willingness to declare laws unconstitutional. *Congress has deferred authority to the Supreme Court.* A power that was never announced by the Constitution (judicial review) has triumphed, and a power clearly announced by it—Congress’ lawful control over the Court’s appellate jurisdiction—has dropped from memory.

The source of the Court’s power is the *implied* doctrine of judicial review, the idea that in law, as in politics, there must be this sign on someone’s desk: “The buck stops here.” Again, citing former Chief Justice Burger, who has set forth this position clearly: “The cornerstone of our constitutional history and system remains the firm adherence of the Supreme Court to the *Marbury* principle of judicial review that ‘someone must decide’ what the Constitution means.”<sup>66</sup>

## G. The Break With the Colonial Past

Sociologist Robert Bellah, in his provocatively titled book, *The Broken Covenant*, began with a chapter titled, “America’s Myth of Origin.” He spoke of the era of the Revolution, from the Declaration to Washington’s inauguration in 1789, in religious terms: “We will want to consider the act of conscious meaning-creation, of conscious taking responsibility for oneself and one’s society, as a central aspect of America’s myth of origin, an act that, by the very radicalness of its be-

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66. Burger, Introduction, in Swindler, *Constitution and Chief Justice Marshall*, p. xiii.

ginning, *ex nihilo* as it were, is redolent of the sacred.”<sup>67</sup> He referred to these acts as “mythic gestures” that stirred up images and symbols of earlier myths. The newness of America is one such myth. So was the wilderness theme. So is reform and rebirth. So is the promised land and the city on a hill. These are all biblical images, he said.<sup>68</sup> (The book is a collection of lectures delivered at Hebrew Union College and the Jewish Institute of Religion.) He recognizes the Augustinian-Calvinist-Puritan roots of the American experiment in freedom.<sup>69</sup> The Revolution appropriated these biblical themes by reworking them in a secular mold.

We can see this clearly in a statement by James Madison toward the end of his life. He appropriated the postmillennial eschatology of John Winthrop’s city on a hill in describing the position of America as the workshop of liberty: “The free system of government we have established is so congenial with reason, with common sense, and with a universal feeling, that it must produce approbation and a desire of imitation, as avenues may be found for truth to the knowledge of nations. Our Country, if it does justice to itself, will be the workshop of liberty to the Civilized World, and do more than any other for the uncivilized.”<sup>70</sup> This was nothing short of messianic. It was also a false prophecy; no nation has ever successfully imported and applied our Constitution. At best, a few have imitated our economic policies, not our political structure.

The men who consciously felt themselves to be “founding fathers” had a profound conviction of the solemnity of their role as lawgivers. John Adams wrote a long letter in April, 1776, in which he said that he was grateful to have “been sent into life at a time when the greatest lawgivers of antiquity would have wished to live.”<sup>71</sup> At the end of the seventeenth and the beginning of the eighteenth century, Americans had wavered about claiming to be a city set on a hill with the eyes of the world upon it. In 1787, the Framers were certain once more.<sup>72</sup>

67. Robert N. Bellah, *The Broken Covenant: American Civil Religion in Time of Trial* (New York: Crossroad Book, Seabury Press, 1975), p. 4.

68. *Ibid.*, pp. 5–16.

69. *Ibid.*, pp. 17–18.

70. Cited in Adrien Koch, *Power, Morals, and the Founding Fathers: Essays in the Interpretation of the American Enlightenment* (Ithaca, New York: Cornell University Press, [1961] 1975), p. 105.

71. Adams, *Thoughts on Government*, in *The Founders’ Constitution*, eds. Philip B. Kurland and Ralph Lerner, 5 vols. (Chicago: University of Chicago Press, 1987), I, p. 110.

72. Koch, *Power, Morals*, p. 33.

Historians rarely discuss the relationship between the antinomianism and anticlericalism of the Great Awakening and the pseudo-classicism of the Framers. The Framers' loudly professed moralism was conspicuously vague about details. In short, the moralism of the Framers, like the moralism of the pastors inside the churches, was devoid of casuistry. The Framers had substituted undefined classical virtue for the Great Awakening's undefined Christian piety; both views were self-consciously opposed to biblical law.

The basis of the American civil religion was its abandonment of (1) biblical covenantalism, (2) the public announcement of the historic creeds of the church, and (3) the pre-Revolutionary requirement of civil magistrates to invoke trinitarian oaths. Christianity became instrumental to the preservation of the political order. It became an appendage of the state to the extent that it retained any civil function at all. The doctrine of the separation of church and state became in practice subordination of Christianity to the state. Despite the fact that the national government was prohibited by Article VI, Clause 3 from formally recognizing the civil government's dependence on Christianity, the churches have nevertheless been expected by the politicians to become unpaid cheerleaders for the Constitution and the judicially secular state. This, the churches have dutifully done. There is no escape from the principle of the civil covenant. The churches have faithfully come to the altar of the empty Pantheon to drop their pinches of rhetorical incense to the genius of the sovereign People.

The covenant's law-order had already been broken by Jonathan Edwards and his emphasis on emotionalism and "sweetness."<sup>73</sup> The Framers worked out judicially what had been accepted morally: the irrelevance of biblical law for civil government. The shattered church covenants of the First Great Awakening, especially Presbyterianism, like the shattered civil covenants of New England that the First Great Awakening produced,<sup>74</sup> could be restored only by an appeal to the newly emerging civil religion, a religion devoid of biblical law and trinitarian oaths. For over a century, the Calvinists had talked about the law of God but rarely the laws of God; they talked moralism, not covenantalism. They talked about the moral law of God but not the civil law. (They still do.) The result was a crabbed theology that did not

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73. Edwards, *Treatise on the Religious Affections* (1746).

74. Richard L. Bushman, *From Puritan to Yankee: Character and the Social Order in Connecticut, 1690–1765* (Cambridge, Massachusetts: Harvard University Press, 1967), Parts 4 and 5.

offer specific judicial standards for social transformation, but at the same time burdened men with guilt. It was a theology, as Joseph Haroutunian has described it, of “a consistent and unlovable legalism.”<sup>75</sup> The unitarian revolt in the 1770s steadily replaced Calvinism in the thinking of intellectual and political leaders.<sup>76</sup> Baptized unitarianism had replaced pietistic Calvinism as an operational social ideal by the late 1780s. The heirs of the Commonwealthmen replaced the heirs of the Holy Commonwealth in the seats of authority.

Thomas Pangle emphasized the sharp covenantal break with the past made by the Framers. He insisted that “there is a striking discontinuity, as regards underlying constitutional theory, between the seventeenth-century charters or compacts and the grounding documents of the Revolution and the Founding.”<sup>77</sup> We can see the difference in the covenanting documents. “The Mayflower Compact, for example, does not suggest a social contract of independent and equal men constituting by consent their own sovereign and representative government for the purpose of the protection of their own liberties and property.”<sup>78</sup> They characterized themselves as loyal subjects of King James. Their purpose was twofold: the glory of God and the honor of king and country. The Fundamental Articles of New Haven (1639) asked everyone to assent to the truth that “The Scriptures doe hold forth a perfect rule for the direction and government of all men in all duties which they are to perform to God and men as well in the government of famlyes and commonwealths as in matters of the church.”<sup>79</sup> After surveying several other early colonial laws, Pangle then states what should be obvious to any Christian historian and any secular historian who has studied the primary source documents of the two eras.

These were the constitutional foundations of the first American civil societies, societies that comprised men who believed, and rightly believed, that they were liberating themselves from the oppressions and fanaticisms of the Old World. *This was the moral world*, or the freest that the moral world could conceive itself as being, before the conceptions of Thomas Hobbes, Benedict Spinoza, and John Locke

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75. Joseph Haroutunian, *Piety Versus Moralism: The Passing of the New England Theology* (New York: Holt, 1932), p. 177.

76. *Ibid.*, ch. 8: “The Unitarian Revolt.”

77. Thomas L. Pangle, *The Spirit of Modern Republicanism: The Moral Vision of the American Founding Fathers and the Philosophy of Locke* (Chicago: University of Chicago Press, 1988), p. 112.

78. *Ibid.*, pp. 112–13.

79. *Ibid.*, p. 113.

shattered its foundations.<sup>80</sup>

*Shattered foundations*: this is the covenantal legacy of the U.S. Constitution in the history of the American nation. It is time for Christians to stop living in the shadow of Whig and unitarian historiography. It is time to admit the obvious. The conspiracy in Philadelphia was a success, and so was the revolution that followed in the ratifying conventions. The subsequent events proceeded as outlined by the Antifederalists: the centralization of power, the weakening of local juries,<sup>81</sup> the Civil War, the Fourteenth Amendment, and a Senate filled with atheists.

## Conclusion

The Preamble of the Constitution and the plebiscite of 1788 established a new covenantal foundation for the American republic. It transferred ultimate sovereignty from God to the people as a whole, and mediatory political sovereignty from the states to the national government. The question then became: Which branch speaks authoritatively in the name of the new divinity? While the Framers did not expect the Supreme Court to emerge as the People’s spokesman, it was inherent in the nature of the Constitutional settlement: (1) the inescapable doctrine of judicial review; (2) a unitary reviewer (i.e., no provision for an appeal to the plural sovereignties of President and Congress); (3) tenure for good behavior for Federal judges (continuity of the spoken word). The lawyers created a civil government made in their own image, and they transferred penultimate sovereignty to the “lawyers’ lawyers,” those sitting permanently on the Supreme Court until they die or voluntarily resign. Only the voters can overcome the Court through the amending process, or so it has developed.

There is no escape from judicial authority. There must always be a final earthly court of appeal. The Framers did not fully recognize this. They should have seen that the Constitutional doctrine of judicial review was inevitable. The only way that they could have overcome this transfer of ultimate sovereignty to the Supreme Court would have been the creation of some sort of appeals structure beyond the Court, such as my three-quarter’s vote suggestion. Instead, the Constitution lodges theoretical judicial authority in the People, and final practical authority in the hands of five people (a five-to-four decision of the

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80. *Ibid.*, p. 114.

81. *Ibid.*, p. 106.

Court).

The fact is that *there must always be a voice that interprets the will of the sovereign agent in history*. Today, the amorphous deity “We the People” is represented in a sovereign way by five people. A Constitutional amendment can override the Court, as can a new Convention, but these alterations are costly to organize and infrequent. The Court not only reigns today; it also rules.

The remarkable fact is that this development was foreseen clearly by “Brutus.” Analyzing the Preamble, he recognized that the centralization of political power was inevitable:

To discover the spirit of the constitution, it is of the first importance to attend to the principal ends and designs it has in view. These are expressed in the preamble, in the following words, viz. “We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution,” &c. If the end of the government is to be learned from these words, which are clearly designed to declare it, it is obvious it has in view every object which is embraced by any government. The preservation of internal peace—the due administration of justice—and to provide for the defence of the community, seems to include all the objects of government; but if they do not, they are certainly comprehended in the words, “to provide for the general welfare.” If it be further considered, that this constitution, if it is ratified, will not be a compact entered into by states, in their corporate capacities, but an agreement of the people of the United States, as one great body politic, no doubt can remain, but that the great end of the constitution, if it is to be collected from the preamble, in which its end is declared, is to constitute a government which is to extend to every case for which any government is instituted, whether external or internal. The courts, therefore, will establish this as a principle in expounding the constitution, and will give every part of it such an explanation, as will give latitude to every department under it, to take cognizance of every matter, not only that affects the general and national concerns of the union, but also of such as relate to the administration of private justice, and to regulating the internal and local affairs of the different parts.

Such a rule of exposition is not only consistent with the general spirit of the preamble, but it will stand confirmed by considering more minutely the different clauses of it.<sup>82</sup>

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82. “Brutus,” *Complete Anti-Federalist*, II, p. 424.



The means of this centralization, he predicted, would be the Supreme Court’s power of judicial review.

Perhaps nothing could have been better conceived to facilitate the abolition of the state governments than the constitution of the judicial. They will be able to extend the limits of the general government gradually, and by insensible degrees, and to accomodate themselves to the temper of the people. Their decisions on the meaning of the constitution will commonly take place in cases which arise between individuals, with which the public will not be generally acquainted; one adjudication will form a precedent to the next, and this to a following one. These cases will immediately affect individuals only; so that a series of determinations will probably take place before even the people will be informed of them. In the mean time all the art and address of those who wish for the change will be employed to make converts to their opinion. . . .

Had the construction of the constitution been left with the legislature, they would have explained it at their peril; if they exceed their powers, or sought to find, in the spirit of the constitution, more than was expressed in the letter, the people from whom they derived their power could remove them, and do themselves right; and indeed I can see no other remedy that the people can have against their rulers for encroachments of this nature. A constitution is a compact of a people with their rulers; if the rulers break the compact, the people have a right and ought to remove them and do themselves justice; but in order to enable them to do this with the greater facility, those whom the people chuse at stated periods, should have the power in the last resort to determine the sense of the compact; if they determine contrary to the understanding of the people, an appeal will lie to the people at the period when the rulers are to be elected, and they will have it in their power to remedy the evil; but when this power is lodged in the hands of men independent of the people, and of their representatives, and who are not, constitutionally, accountable for their opinions, no way is left to controul them but *with a high hand and an outstretched arm*.<sup>83</sup>

In the history of political forecasting, let alone prophecy, few analysts rival “Brutus” for both his accuracy and rhetorical skill. His warning was ignored in 1788. Americans paid a heavy price after 1857: Dred Scott. They have continued to pay ever since 1868: the Fourteenth Amendment.

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83. *Ibid.*, II, pp. 441, 442. The language in italics are from the King James Bible: Deuteronomy 26:8 and Jeremiah 27:5. Both passages apply to God and his sanctions.

Should the provisions of the Constitution as here reviewed be found not to secure the Government & rights of the States against usurpations & abuses on the part of the U.S. the final resort within the purview of the Constitution lies in an amendment of the Constitution according to a process applicable by the States.

And in the event of a failure of every constitutional resort, and an accumulation of usurpations & abuses, rendering passive obedience & non-resistance a greater evil, than resistance & revolution, there can remain but one resort, the last of all, an appeal from the cancelled obligations of the constitutional compact, to original rights & the law of self-preservation. This is the ultima ratio under all Government whether consolidated, confederated, or a compound of both; and it cannot be doubted that a single member of the Union, in the extremity supposed, but in that only, would have a right, as an extra & ultra constitutional right, to make the appeal.

James Madison (1830)<sup>1</sup>

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1. Letter to the *North American Review* (Aug. 28, 1830), in Marvin Meyers (ed.), *The Mind of the Founder: Sources of the Political Thought of James Madison* (Indianapolis, Indiana: Bobbs-Merrill, 1973), p. 529.

## 6

# A NEW NATIONAL COVENANT

*If I shall be in the minority, I shall have those painful sensations which arise from a conviction of being overpowered in a good cause. Yet I will be a peaceable citizen. My head, my hand, and my heart, shall be at liberty to retrieve the loss of liberty, and remove the defects of that system in a constitutional way. I wish not to go to violence, but will wait with hopes that the spirit which predominated in the revolution is not yet gone, nor the cause of those who are attached to the revolution yet lost. I shall therefore patiently wait in expectation of seeing that government changed, so as to be compatible with the safety, liberty, and happiness of the people.*

Patrick Henry (1788)<sup>1</sup>

## Introduction

Christians lost the battle in 1788. The lawyers in Philadelphia won it. Christians accepted the ratification of the Constitution, not just as good losers, but as enthusiastic cooperators. They have yet to identify their problem, as decade by decade, the American republic grows evermore consistent with the apostate foundation of the Constitution. Christians find themselves besieged today, and they vainly expect to get rid of their problems by a return to the “original intent” of the Framers. On the contrary, what we have today is the political outcome of that original intent, as Patrick Henry warned so long ago. Darwinism, socialism, and several major wars speeded up the process of moral disintegration, but the judicial foundation of this disintegration had

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1. Jonathan Elliot (ed.), *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787*, 5 vols. (Philadelphia: Lippincott, [1836] 1907), III, p. 652. Henry remained true to his word. He remained loyal to the United States, even when he opposed the Federalist Party’s Alien and Sedition Acts at the end of his life. He was opposed to anarchy. Norine Dickson Campbell, *Patrick Henry: Patriot and Statesman* (Old Greenwich, Connecticut: Devin-Adair, 1969), pp. 426–28.

been established in 1787–88.

The political question facing American Christians today is this: *How much longer will the Constitution serve as the protector of our legal immunities from state interference?* At some point in time, the Constitution will become too great a threat to one side or the other: to covenant-breakers who resent any residue of Constitutional restraint or to covenant-keepers who have been pushed to the limits of their endurance by the culmination of the original apostate covenant. The Constitution's provisions were written by self-consciously apostate men and conspiratorial Christian colleagues whose understanding of the biblical covenant had been eroded by a lifetime of Newtonian philosophy and training in the pagan classics.<sup>2</sup> Nevertheless, these men were under restraints: political (a Christian electorate) and philosophical (natural rights doctrines). Both of these restraints have almost completely disappeared in the twentieth century. Thus, the evils implicit in the ratified national covenant have grown more evil over time.

## A. Declining Restraints

### 1. *Natural Rights Philosophy*

The first set of restraints on the Framers was philosophical: *natural rights philosophy*. Officially, the Constitution does not recognize natural rights. It was from the beginning far more in tune with the Darwinian world to come than the world of eighteenth-century Whig moral philosophy. Today, almost no one in a place of intellectual influence or political authority defends the older natural rights viewpoint. Take the case of the man who is perhaps the most distinguished and best-known legal scholar and judge in American conservatism, Robert Bork. Because of his conservative judicial views, Bork was refused confirmation to the Supreme Court by the U.S. Senate in 1987. We might expect him to be a defender of natural rights. Not so. He was the author of a 1971 essay denying the natural rights foundation of judicial decisions. He denied that moral considerations can properly enter into judicial decisions, except insofar as the political decision of the legislature has colored a law.<sup>3</sup> Judges, he insisted, must remain morally

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2. Carl J. Richard, *The Founders and the Classics: Greece, Rome, and the American Enlightenment* (Cambridge, Massachusetts: Harvard University Press, 1994).

3. Robert Bork, "Natural Principles and Some First Amendment Problems," *Indiana Law Journal* (Fall 1971). In this essay, Bork called on judges to adopt a principle of moral neutrality in making judicial decisions. Critical of Bork was Christian Recon-

neutral. The older, pre-Darwin moral framework for American Constitutional law is dead. It was a long time dying, both philosophically and judicially.<sup>4</sup>

The humanists have abandoned natural law; so have the theonomists. The Marxists never did accept the theory. Thus, whether the case law approach of the Harvard Law School is adopted or the case law approach of the Bible, natural law or natural rights philosophy no longer provides either covenantal legitimacy or judicial restraint. The original philosophical-moral foundation of the original Constitutional settlement—but not the actual document—has disappeared. It is therefore just a matter of time and escalating crises for the U.S. Constitution to go the way of the Articles of Confederation. It can be redefined into something new by the courts, as has been done for over a century, or else it can be replaced by a series of amendments over many years or overnight by a Constitutional convention. If the final option is selected by those who make long-term political plans, it is not the Christians who are the likely candidates to achieve a victory.

## 2. *Strangers in Their Own Land*

The second set of restraints on the Framers was political: *Christian voters*. They still controlled or heavily influenced state politics. They had lost only the battle in Philadelphia. For a time, they remained a threat to the humanists who ran the country, but it was a downhill battle after 1788. Liberal theologian and University of Chicago professor of church history Martin Marty waxed eloquent regarding Franklin and his Deist peers. “Fortunately for later Americans, the Founding Fathers, following the example of Franklin, put their public religion to good use. While church leaders usually forayed only briefly into the public arena and then scurried back to mind their own shops, men of the Enlightenment worked to form a social fabric that assured freedom to the several churches, yet stressed common concerns of society.”<sup>5</sup>

What Marty and virtually all contemporary historians fail to disclose is that virtually all of these leaders of the American Enlighten-

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struction columnist John Lofton, “Soft on Natural Rights?” *Washington Times* (July 8, 1987).

4. Gary Jacobsohn, *The Supreme Court and the Decline of Constitutional Aspiration* (Totowa, New Jersey: Rowman and Littlefield, 1986).

5. Martin E. Marty, *Pilgrims in Their Own Land: 500 Years of Religion in America* (Boston: Little, Brown, 1984), p. 158.

ment had a working model for this common “social fabric”: the Masonic lodges of America (and in Franklin’s case, of France). Some were actual members, bound by its oaths; others were simply literate men of their time, and Masonry was *the* religion of the Newtonian era. Its worldview spread far beyond its closed doors in the back rooms of local taverns. This fact most historians fail to mention.

“Public religion,” continued Marty, “looked for institutional embodiment. A few enterprising deists thought they should make churches of their movement for enlightenment and public religion, but little came of their efforts.”<sup>6</sup> Then he adds this non-illuminating note: “Masonic lodges embodied some of the teachings of public religion, but the public who were not their members did not see them doing so.”<sup>7</sup> This is literally true, but hardly relevant. Of course the public could not see inside the lodges; that was the whole point of lodge secrecy. Had the Christians who voted for the Constitution in 1788 understood what was being done to them, and why it was being done, the Constitution would not have been ratified. But secrecy prevailed: in the lodges and in Philadelphia. Christians became, to cite the stunning title of Marty’s book, pilgrims in their own land.

But are Christians still in their own land? If we are, then this means that there is some sort of continuity between the original civil covenants and today’s wilderness condition. If we are strangers in our own land, then this is because we have lost out to interlopers. This, of course, is exactly what the Bible predicts for those who break covenant with God: “The stranger that is within thee shall get up above thee very high; and thou shalt come down very low” (Deut. 28:43). What was lost can be regained. The means of re-conquest is to press toward a new national covenant, and a better national covenant, with God.

## B. Continuity Despite Discontinuity

I have stressed the covenantal discontinuity between the Articles of Confederation and the Constitution. I have argued that the Constitution was the product of a *coup*. This *coup* was ratified by the voters and thereby given legitimacy retroactively. The covenantal question is: Is the United States now a Christian nation? How can it be, if the Constitution is, as I have argued, judicially anti-Christian?

Is the United States a Christian nation? The answer lies in the bib-

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6. *Ibid.*, pp. 164–65.

7. *Ibid.*, p. 165.

lical idea of a covenant. Once formally under the terms of God's personal covenant, there is no escape for the individual. The sanctions will eventually be applied, both positive and negative. The same is true for ecclesiastical and national covenants. Some nations have departed completely from the Christian faith in the past, most notably northern Africa, which fell militarily to the Moslems in the seventh and eighth centuries. Christians were defeated in history, and their Muslim descendants have suffered from poverty and backwardness ever since. There is no trace of that original Christianity. But what about Europe? World War I, the Nazis, World War II, and the fall of Eastern Europe to the Communists indicate the presence of negative historical sanctions, not an escape from God's covenant.

### *1. The State Covenants' Stipulations Remain in Force*

When Jeroboam pulled the ten tribes out of the kingdom of Israel, he did not escape the terms of Israel's covenant. He created a halfway covenant political order. He imposed halfway covenant ritualism: Jehovah worship with Baalism's rituals. He set up the golden calves and hired the lowest elements of the society to become priests (I Ki. 12:28, 31). Nevertheless, Northern Israel did not escape the negative sanctions of the national covenant. The nation drifted into apostasy. Ahab later imposed pure Baalism. But even under Ahab, there remained 7,000 in Israel in Elijah's day who had not bowed the knee to Baal (I Ki. 19:18). *The presence of this remnant church provided the historical continuity with the original covenant.* Their presence allowed God to impose his sanctions. The result was the captivity under Assyria. Jeroboam and Ahab had not escaped the covenant. They only brought the historic sanctions of God on Israel.

The continuing presence of the church in the United States provides the covenantal continuity with the true founders of this nation, those tiny bands of Calvinistic Christians who fled from Europe in the seventeenth century and came to the colonies here to build a city on a hill. The true Founding Fathers were the nearly forgotten men like William Bradford of Plymouth Colony and John Winthrop of the Massachusetts Bay Colony.<sup>8</sup> John Rolfe of Virginia was another.

Like Jeroboam before them, and also like Roger Williams, Professors Noll, Hatch, and Marsden looked to the outward symbols of Amer-

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8. John Adair, *Founding Fathers: The Puritans in England and America* (Grand Rapids, Michigan: Baker, [1982] 1986).

ican civil religion and the details of the nation's civil "contracts." They believed that there never really had been a national covenant—Ahab's covenantal perspective—and that in any case, the Constitution's pluralism is today the true religion of this society.<sup>9</sup> They are incorrect. There is covenantal continuity in the United States as surely as there was in the Northern Kingdom in Elijah's day. *It is the continuing presence of people who affirm the gospel that provides covenantal continuity with the past, as well as with the future.* It is this covenantal continuity that will bring forth (and has brought forth) God's historic sanctions—sanctions leading either to national oblivion, as they did in North Africa in the seventh century, or to covenantal restoration. Let us pray that it will be the latter.

The U.S. Constitution is one step beyond Jeroboam's golden calves, but not yet the covenant of Ahab and Jezebel. Today's political leaders are the judicial equivalent of Jeroboam's priesthood. They are morally superior to Ahab's 450 priests of Baal and 450 priests of the groves (Asherah). Christians therefore should defend the golden calf of the Constitution as a temporary device that gives us freedom to work for an eventual return to Jerusalem.

Jeroboam's halfway covenant world did not survive. Neither did the Articles of Confederation. Jeroboam's halfway covenant moved forward into Ahab's Baalism. We also live under a transitional covenantal settlement. Either this nation will return to its pre-Constitution orthodoxy or else it heads into outright paganism. Judicially speaking, the latter is more likely than the former. We are already judicially pagan.

### C. Closing the Constitution's Open End

The Constitution is presently a judicially open-ended document. I am hereby asking: *What if someday a majority of citizens should vote to close this open end?* The Constitution clearly allows amendments. If voters change their minds about any Constitutional provision of the past, they possess the authority to rewrite it. To cite Justice Burger regarding the authority of the Supreme Court: "But when we decide a constitutional issue, right or wrong, that's—that's it until we change it or the people change it. Don't forget that. The people made it, and the people can change it. The people could abolish the Supreme Court en-

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9. Gary North, *Political Polytheism: The Myth of Neutrality* (Tyler, Texas: Institute for Christian Economics, 1989), ch. 5. (<http://bit.ly/gnpolpol>)



tirely.”<sup>10</sup>

The question of the possibility of legally amending the U.S. Constitution in order to remove all traces of its political pluralism is a question that none of the pluralist defenders of today’s anti-Christian pluralistic republic cares to discuss in print. I can hardly blame them. Raising this question exposes to the voting public the existence of the Achilles heel of all political pluralism: its first principle—the sovereignty of the voters<sup>11</sup>—allows pluralism to commit suicide. At any time, and for any reason, a sufficient number of voters can legally amend the U.S. Constitution to abolish its character as a religiously or even politically pluralistic document.

My point should be clear enough: once the political pluralist opens the judicial door to the political expression of all possible views, religious and ideological, this has to include the views of those who say that no one holding a rival view will be allowed to vote, once those holding this covenantal view legally amend the Constitution. The voters already say this to released felons, who are not allowed to vote in most states. Why not say it also to those who hold religious or ideological views that would threaten the very foundations of Christian civilization? (When I ask, “Why not?” I have in mind pluralism’s formal legal principles, not substantive reasons.) This is the inescapable dilemma of democratic pluralism. *Pluralism officially allows the pluralistic system to make subsequent pluralism illegal.* Pluralists do not talk about this very often. The political pluralist cannot escape his own traditional liturgy: “The people giveth, and the people taketh away; blessed be the name of the people.”

## Conclusion

We cannot expect to go back to the Articles of Confederation, nor

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10. Transcript, CBS News Special, “The Burger Years” (June 9, 1986), p. 11.

11. Prior to ratification, it was not clear where political sovereignty lay. The Framers of the Constitution stated that it was in the people, but specifically people as citizens of states. As historian Forrest McDonald said, “When the framers of the Constitution referred the proposed supreme law to the people of the states, in their capacities as people of states—rather than having it ratified in any of several ways—they were in fact asserting that was where sovereignty lay. The Congress, the state governors, the state legislatures, and the voters in every state, each in their turn, had opportunity to reject this assertion; when they unanimously confirmed the procedure, they necessarily confirmed the assertion.” Forrest McDonald, *E Pluribus Unum: The Formation of the American Republic, 1776–1790* (Indianapolis, Indiana: LibertyPress, [1965] 1979), p. 311n.

do I believe that the Articles were capable in 1781 of solving the covenantal problem of the one and the many, unity and diversity. This document was a halfway covenant. Inter-state tariffs, paper money, and other errors had to be dealt with. The Articles needed major revisions, as well-informed men of the day knew, which is why state legislatures allowed delegates to attend the Convention, but only to revise the document, not replace it. It may well be that the U.S. Congress in 1787 would not have agreed to the necessary revisions: the strengthening of the executive, the abolition of the unanimous state agreement rule, the abolition of all internal tariffs, and the abolition of state government fiat (unbacked) paper money. What I object to as a Christian is the continuing silence regarding the two fundamental flaws of the U.S. Constitution: (1) the prohibition of a trinitarian oath for all U.S. officials; and (2) the removal of the affirmation of the Bible as the revealed, sovereign, exclusive, and authoritative word of God. Most of the state governments had not made these two covenantal mistakes in 1787.

A halfway covenant Christianity cannot survive the clash of irreconcilable worldviews. Neither can a halfway covenant secular humanism. One or the other will prevail. Only if Islam or some other world-transforming religion gains temporary power in a once-Christian country can the continuing battle between Christianity and humanism be put on a society's back burner. This is why the U.S. Constitution will be amended, either directly by the voters or by the Supreme Court. This process is already well advanced. The Court is amending the Constitution to make it consistent with the secular humanism that has always undergirded it. It does no good to stand on the sidelines and proclaim that it was never meant to be this way. Of course it was meant to be this way, from the day that Madison began planning his *coup* against the Articles.

Critics of my view of the U.S. Constitution prefer to ignore the truth, namely, that the Constitution has become a convenient smokescreen concealing the true basis of political rule in America. The long-term system of elitist control over national affairs in America, which Rutgers University political scientist Philip Burch described in exhaustive detail in *Elites in American History*,<sup>12</sup> which Georgetown University's Carroll Quigley wrote about favorably in *Tragedy and*

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12. Philip H. Burch, *Elites in American History*, 3 vols. (New York: Holmes & Meier, 1981).

*Hope*,<sup>13</sup> and which George Washington University's Arthur Selwyn Miller wrote about favorably just before he died in 1988,<sup>14</sup> is never mentioned in polite academic circles. This system of hidden hierarchies is nonetheless the way our political world works today.

The inescapable political fact is this: *there must always be judicial representation*. This representation can be open or hidden, or more likely, hidden with the illusion of being open. It is time for Christians to cease deluding themselves about the hidden hierarchies of the modern democratic world. There will always be political hierarchies. The question is: Will they be open or hidden? In modern democracy, where the political hierarchy is formally open, it is in fact secretly closed. It was planned that way, beginning no later than 1787.

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13. Carroll Quigley, *Tragedy and Hope: A History of the World in Our Time* (New York: Macmillan, 1966), especially Chapter 17. This book has been reprinted by GSC & Associates. I saw it in the window of a local Barnes & Noble store in 2000. Quigley taught history to Bill Clinton, which Clinton referred to in his 1992 Presidential nomination acceptance speech at the Democratic National convention, and which he again refers to in his 2004 autobiography, *My Life*.

14. Arthur Selwyn Miller, *The Secret Constitution and the Need for Constitutional Change* (Westport, Connecticut: Greenwood Press, 1987).

The Federal District of Columbia, both in its formal character as a capital and also in its self-conscious attempt at a certain visual splendor, is, for every visitor from the somewhat sovereign states, a reminder that the analogy of ancient Rome had a formative effect upon those who conceived and designed it as their one strictly national place. What our fathers called Washington City is thus, at one and the same time, a symbol of their common political aspirations and a specification of the continuity of those objectives with what they knew of the Roman experience. So are we all informed with the testimony of the eye, however we construe the documentary evidence of original confederation. So say the great monuments, the memorials, the many public buildings and the seat of government itself. So the statuary placed at the very center of the Capitol of the United States. And much, much more.

But Roman architecture and sculpture were not the primary inspiration for America's early infatuation with the city on the Tiber. That connection came by way of literature, and particularly from readings in Roman history. What Livy, Tacitus, Plutarch, and their associates taught the generation that achieved our independence was the craft of creating, operating, and preserving a republican form of government. For gentlemen of the eighteenth century, Rome was the obvious point of reference when the conversation turned to republican theory. The Swiss, the Dutch, the Venetians and (of course) the Greek city states sometimes had a place in such considerations. And in New England the memory of Holy Commonwealth survived. Yet Rome had been the Republic, one of the most durable and impressive social organisms in the history of the world. Moreover, there was a many-sided record of how it developed, of how its institutions were undermined and of the consequences following their declension. This Rome was no construct issuing from deliberations upon the abstract "good", no fancy of the "closet philosophers". Public men might attend its example with respect, learn from its triumphs and its ruin. On these shores they did. And, once we were independent, with a special urgency.

M. E. Bradford (1977)<sup>1</sup>

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1. M. E. Bradford, *A Better Guide Than Reason: Studies in the American Revolution* (LaSalle, Illinois: Sherwood Sugden & Co., 1979), pp. 3–4.

## CONCLUSION

*And there came one that had escaped, and told Abram the Hebrew; for he dwelt in the plain of Mamre the Amorite, brother of Eshcol, and brother of Aner: and these were confederate with Abram (Gen. 14:13).*

*Thou shalt make no covenant with them, nor with their gods (Ex. 23:32).*

*When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them. . . .*

Continental Congress (July 4, 1776)

## Introduction

What went wrong with the American experiment in Christian freedom? Essentially, the same thing that has been going wrong with Christianity since the early second century: *a compromise with false gods*. It began in the early church with the assumption that the false gods of Greek philosophy spoke to man with the same common language and message that the God of the Bible speaks. This intellectual error has continued to undermine all attempts to construct Christian civilization ever since.

The idea that there is common ground intellectually with covenant-breakers is really a symptom of a much worse error: the idea that there is common *ethical* ground between the believer and unbeliever. This is not to say that there is no possible connection. There is. It is based on the fact that *all men are made in God's image*. There can therefore be limited cooperation under some historical conditions because of the *work* of the law written on the hearts of all covenant-breakers (Rom. 2:15). This does not refer to God's law itself, which

is the exclusive heart-engraved possession of Christians (Heb. 8:8–11).<sup>1</sup> The possibility of such cooperation declines as covenant-breakers and covenant-keepers begin to act more consistently with their underlying rival religious presuppositions.<sup>2</sup>

The idea that there can be common ground ethically and intellectually between covenant-keepers and covenant-breakers then leads to the third error: there can be common ground judicially (civil covenants). This is the assumption that officially undergirds the common hierarchies, laws, and courts of all modern secular civil governments.

It does not matter if, for a time, subordinate civil governments continue to maintain a Christian confession. The covenantal confession of the national civil government inevitably will determine the covenantal confession of the regional civil governments under it. The central government must settle regional disputes and make national policy in terms of a single confession. Regional and local civil governments have agreed to subordinate themselves to a common central government. The god of this central government then becomes the suzerain of the local governments. The national pantheon may be full or it may be empty; the fact of the matter is, the god of the national covenant is the god of the composite local governments. There is no escape from the five points of the covenant. Things may not appear to be this way when the covenant is first cut, but here is where the system must end up, unless the nation: (1) changes its covenant voluntarily, (2) falls militarily to another nation, or (3) breaks apart into smaller jurisdictional units.

Two centuries after the United States broke covenant with God, very few American Christians have any idea that this was what took place in 1788. They see the growing evils that surround them, yet they do not even suspect a connection between these events and the events of 1785–88. They do not think in terms of sanctions against covenantal apostasy. They do not think covenantally.

James Madison did. So did John Adams.

## A. The American Revolution

Having a common enemy in 1776, i.e., Great Britain, made it easy for the Christian state commonwealths to forget a biblical covenantal

1. John Murray, *The Epistle to the Romans*, 2 vols. (Grand Rapids, Michigan: Eerdmans, 1959), I, pp. 72–76.

2. Gary North, *Dominion and Common Grace: The Biblical Basis of Progress* (Tyler, Texas: Institute for Christian Economics, 1987), ch. 6. (<http://bit.ly/gndcrg>)

requirement: the prohibition of covenants between covenant-keeping commonwealths and covenant-breaking commonwealths. “Thou shalt make no covenant with them, nor with their gods” (Ex. 23:32). Temporary political and military alliances and confederations with covenant-breakers are legitimate, as the example of Abraham shows (Gen. 14:13); civil covenants are not.<sup>3</sup> They forgot because the unitarian religion of Isaac Newton had already successfully compromised the trinitarian religion of Jesus Christ.

Everyone in colonial America assumed that there are common, God-given (“natural”) laws and rights. Everyone assumed that a public acknowledgment of the sovereignty of the unitarian god of Newton was the covenantal equivalent of a public acknowledgment of the sovereignty of the trinitarian God of the Bible. They assumed, as Christian Masons assumed (and still assume), that the Great Architect of the Universe (G.A.O.T.U.) is the Creator God of the Book of Genesis. Thus, when Great Britain became perceived as the common enemy of all the colonies, the patriots of the covenantally Christian states assumed that they could make a military alliance with the one state that was not formally covenanted to the God of the Bible, or at least less formally covenanted. They assumed that because the citizens of all the states were Christians, there was no danger in a confederation among the state governments that politically represented these Christian citizens. There was great danger, as events soon proved.

The war escalated rapidly, and self-defense appeared to require more than a mere confederation; it required a covenant. The Declaration of Independence was more than a statement of the creation of a new alliance; it declared the creation of a new nation of sovereign states. It was a classic halfway covenant. In the words of Lincoln in the Gettysburg Address, it was a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal.

All men are indeed created equal: equally guilty of transgressing God’s covenant with Adam, equally under the negative sanctions of God. But a new birth is possible by God’s grace: adoption by God through Jesus Christ into the household of God (John 1:12). This makes men *covenantally unequal*. It creates an eternal distinction between two kinds of people: covenant-keepers and covenant-breakers. These rival judicial conditions must be revealed in radically different views of their civil judicial status. There will be screening. The

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3. Gary North, *Healer of the Nations: Biblical Blueprints for International Relations* (Ft. Worth, Texas: Dominion Press, 1987), ch. 9. (<http://bit.ly/gnhealer>)

question is: *By whose covenant?*

The problem in understanding this *judicial screening process* is easy to state but hard to comprehend, namely, *covenants are judicially binding under God*. He takes them seriously—as seriously as He takes church covenants and family covenants. The civil and military alliance of the Revolutionary period, from July 4, 1776, until the ratification of the Articles by the state legislatures in 1781, was more than an alliance; it was a covenant. The Declaration of Independence was not heralded as a covenantal document, but it was one. It had to be; it formally dissolved the previous civil covenantal ties with Great Britain: “When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them. . . .” The sovereign of this new civil covenant was Newton’s unitarian god of nature. Thus, the next step—establishing the by-laws of a formal covenant—was far easier to take.<sup>4</sup>

### 1. *A Unitarian Rebellion*

In their act of unitarian political rebellion, the colonies committed treason, not just against Great Britain, but against God. This is what the heirs of the American Revolution never admit, even in private. Neither the revolutionaries nor their heirs have taken covenant theology seriously, so the covenantal character of that civil rebellion has simply been ignored for over two centuries.

The revolutionary leaders did not clearly and formally appeal to the trinitarian God of the Bible in defending their rebellion; instead, they appealed forthrightly again and again to Newton’s unitarian god. The Congress asked a committee of five men to write the covenantal document that formally broke the existing covenant with the King. Jefferson became their covenantal representative, and therefore the new nation’s representative (point two of the biblical covenant). Congress then sanctioned this act of civil covenant-breaking when its members signed the document (point four). Had they made their case

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4. The Declaration is sometimes referred to as having established the nation’s “organic” law. This is the language of philosophical realism, religious pantheism, secular conservatism, and Roman Catholicism. The Declaration was a covenant treaty under a god that bound the formerly subordinate British states into a new judicial union. Covenants are *judicial*, not organic. We must abandon both nominalism (contractualism) and realism (organicism) in our thinking.



for separation in terms of the monarchy's two-century-old break with the Bible—Erastianism, the theology of the national state church—or with the growing Deism of the Parliament and the resultant corruption and tyranny, an unlimited Parliamentary power asserted by Parliament<sup>5</sup> and defended by Blackstone, they could have justified their civil rebellion biblically. But they chose to have Christianity's mortal enemy write the nation's covenant-breaking document. And so John Winthrop's dream died.

*There is no neutrality.* There is no neutral legal ground between a civil covenant under one sovereign and a civil covenant under another. A new covenant and a new sovereign are substituted for an earlier covenant and sovereign. To use the language of the Arminian and deistic social contract theorists, there is never a return to the "state of nature." The colonists knew this much, even if they did not understand biblical covenant theology very well. They were necessarily creating a new civil covenant when they broke the old one. This is why Congress on July 4 set up a committee to create a national seal.

Great Britain had unquestionably become bureaucratic. It was no longer the nation it had once been. But it was still a covenantally Christian nation. In fact, one of the major resentments that the Protestants of the colonies had against Great Britain was that they believed that the Church of England was planning to send a bishop to the colonies, therefore making it much easier to ordain new Anglican pastors here. Previously, candidates for the Anglican ministry had been required to travel to London, where the Bishop of London would consider ordaining them. No one else had this authority. This sea journey drastically reduced the supply of Anglican pastors in the colonies. The colonists suspected that this move by the Anglican Church was an attempt to strengthen Anglicanism and therefore the English crown, for the King was the head of the church.<sup>6</sup> Thus, the original Erastian error

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5. Parliament's Declaratory Act of Feb. 3, 1766, was announced in preparation for Parliament's repeal of the Stamp Act (taxes on formal sanctioning documents in the colonies) two weeks later. The Declaratory Act affirmed the following: "That the King's Majesty, by and with the advice and consent of the Lords spiritual and temporal and Commons of Great Britain in parliament assembled, had, hath, and of right ought to have, full power and authority to make laws and statutes of sufficient force and validity to bind the colonies and people of America, subjects of the crown of Great Britain, in all cases whatsoever." Edmund S. Morgan and Helen M. Morgan, *The Stamp Act Crisis: Prologue to Revolution* (New York: Collier, 1963), pp. 347–48.

6. Carl Bridenbaugh, *Mitre and Sceptre: Transatlantic Faith, Ideas, Personalities, and Politics, 1689–1775* (New York: Oxford University Press, 1962); Leonard Trinterud, *The Forming of an American Tradition: A Re-examination of COLONIAL PRES-*

of Reformation England—a national church with the civil sovereign as its head—had led once again to a major political crisis, just as it had in the 1640s.

## 2. *The Defection of the Pastors*

A majority of colonial patriot pastors became Whig Commonwealthmen rather than Holy Commonwealthmen during the years of the Revolution. They became dissenters in the sense of the Whig radical dissenters. They saw the need to escape an Anglican bishop in the colonies, but they did not see the enormous threat to Christian civilization posed by the unitarians and Masons who were becoming the colonial leaders, and who were articulating the civil principles of the Revolution. The pastors became “the black regiment” of the Revolution,<sup>7</sup> but they did not become its general officers. In 1776, they became chaplains at home and in camp for an army that was under the hierarchical control of a dedicated Mason of great public virtue. They preached their fast-day sermons and their regimental sermons just as they had preached election-day sermons since the Indian wars of 1675–76: as anointers of the state. Their messages had been self-consciously devoid of specific biblical judicial content for a century by the time of the Revolutionary War.<sup>8</sup> This did not change, 1776–1788. The pastors had long since deferred politically to the lawyers. The lawyers inherited the kingdom of politics during the American Revolution. They did this ingeniously; in fact, like the rise of the empire in Rome, politics fell into their hands as a by-product of war. Christians made that most fundamental of foreign policy mistakes: “The enemy of my enemy is my friend.” They made it within each colony when they allowed unitarians, Deists, and Masons to make the civil case for revolution, and they made it again in the creation of a new nation that was formally subordinate to the unitarian god of Mr. Jefferson and Mr. Adams. When they broke their state covenants with the English King on the basis of political and economic grievances—the self-interested complaints of the lawyers and the merchants—when in fact they

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BYTERIANISM (New York: Arno, [1949] 1970), ch. 13.

7. Peter Oliver's *Origin & Progress of the American Rebellion: A Tory View*, eds. Douglass Adair and John A. Schutz (Stanford, California: Stanford University Press, [1781] 1961), pp. 41–45.

8. Gary North, “From Medieval Economics to Indecisive Pietism: Second-Generation Preaching in New England, 1661–1690,” *Journal of Christian Reconstruction*, VI (Summer 1979).

needed to break covenant with a morally corrupt Parliament and the Erastian Anglican Church, they broke their covenant with the God of the Bible. He immediately delivered them into the hands of their theological enemies. They wound up in 1788 with a broken national halfway covenant and a new covenantal bondage. Americans remain in that bondage.

From the day that John Witherspoon signed the Declaration of Independence, as the symbolic representative of the colonial clergy, with Christian physician Benjamin Rush alongside, the new halfway covenant was sealed. Rush's confidence in the wisdom of this act began to waver within a year;<sup>9</sup> Witherspoon's never did. After July 4, 1776, it was then just a matter of extending the apostate principles of the original halfway covenant into a full-scale apostate covenant.

## B. The New Nationalism

Nature, nature's god, natural law, and natural rights disappeared from the Constitution. Historian Carl Becker wrote in 1922: "In the Declaration the foundation of the United States is indissolubly associated with a theory of politics, a philosophy of human rights which is valid, if at all, not for Americans only, but for all men. This association gives the Declaration its perennial interest."<sup>10</sup> Yet a few pages later he noted, almost as an aside, that these ideas disappeared in nineteenth-century constitutions. Natural rights are absent, he said, "even where we should perhaps most expect it, in the Constitution of the United States. . . ."<sup>11</sup>

On the contrary, if my theory of apostate covenantalism is correct,

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9. Wrote Rush's biographer, David Freeman Hawke: Rush "had banked on the Declaration to bring about a real revolution in America—a purified people marching as one in a glorious crusade while the world looked on. A year with the reality of independence had darkened the dream. Rush still hoped for a revolution in the hearts of the people, still dreamed the war would introduce 'among us the same temperance in pleasure, the same modesty in dress, the same justice in business, and the same veneration for the name of the Deity which distinguished our ancestors.' But by the summer of 1777 hopes were tarnished with doubts, and he saw 'a gloomy cloud hanging over our states.' He once feared Tories would subvert the cause; now he saw the corrosiveness of internal danger. 'If we are undone at all,' he said in early August, 'it must be by the aristocratic, the mercenary, the persecuting, and the arbitrary spirit of our own people—I mean the people who are called Whigs.'" Hawke, *Benjamin Rush: Revolutionary Gadfly* (Indianapolis, Indiana: Bobbs-Merrill, 1971), p. 203.

10. Carl L. Becker, *The Declaration of Independence: A Study in the History of Political Ideas* (New York: Vintage, [1922] 1942), p. 225.

11. *Ibid.*, p. 234.

this is exactly where we should *not* expect it. When the American nation moved from biblical covenantalism to halfway covenantalism, it remained open to a universal god, though Newtonian-unitarian. Article VI, Clause 3 of the Constitution closed the door judicially to any transcendent god beyond the political order itself. The Constitution is therefore an apostate covenant; a wholly new god is ordained in it, a god acknowledged by the Framers in order to ordain it and ratify it: the American People. This is not a universal god; it is a national god. This national god can neither offer nor defend any universal rights of man. It can only offer power to the national State, with derivative power in the states. The national state becomes the sole definer and guarantor of American rights, which today means five people on the U.S. Supreme Court.

Washington's Farewell Address of 1796 (a newspaper article, not an actual verbal address) reflected a major change in the thinking of Americans. A new nationalism had already appeared. Washington's address merely ratified this shift in popular thinking. There must be no covenants with other nations, Washington said. He did not use the words, "no entangling alliances," but this is what he meant. He thereby announced the end of the older Puritan vision of trinitarian universalism, the kingdom of God on earth. There can be no covenanted community of nations in a world marked by nation-states created by exclusively national democratic gods. The new democratic nationalism destroyed the covenantal foundation of Christendom when it removed the covenantal foundation of trinitarian national covenants.

*There is no neutrality.* There are two kingdoms in history. Both kingdoms seek to establish covenantal connections. Satan's kingdom is an empire: a top-down, centralized, bureaucratic system. Initiative is at the top. God's kingdom is a bottom-up, decentralized, appeals court system. Initiative is at the bottom. In God's kingdom, Christian localism is supposed to lead also to Christian regionalism, to Christian nationalism, and finally to Christian internationalism, just as it was supposed to do in Old Covenant Israel.<sup>12</sup> Israel failed in internationalizing God's kingdom, so God gave the kingdom to a new nation, the Church International (Matt. 21:42–43). Christian civil governments are supposed to imitate the churches, and the churches are not to remain the tiny, fragmented, isolated institutions that Madisonian political nominalism and extreme denominational confessionism have made

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12. North, *Healer of the Nations*.

them. Like the Trinity who created it, the international church of Jesus Christ is to be both *one*—a unity based on Athanasian confessionalism—and *many*: traditional denominational practices and confessions. The problem is, the churches for over three centuries have imitated the national State, a disastrous legacy of Erastianism: the national church-nation state alliance. It was this that the American colonies should have revolted against in 1776. Instead, they allowed the merchants, the lawyers, the unitarians, and the Freemasons to set the agenda for covenant-breaking revolution. The result is today's apostate national covenantalism and denominational impotence, just as Madison planned.

In contrast to God's kingdom, Satan's empire leads to the reduction of localism through the investiture of total political power at the top: the central international state facing the lone, atomized individual. This is Rousseau's nationalism writ large: the political elimination of all intermediary institutions. It is also Madison's and Hamilton's: the political trivialization of all intermediary institutions. Hamilton wrote in *Federalist* 23 that "there is an absolute necessity for an entire change in the first principles of the system: That if we are earnest about giving the Union energy and duration, we must abandon the vain project of legislating upon the States in their collective capacities: We must extend the laws of the Federal Government to the individual citizens of America. . . ."

But where would this principle of extension end? At what border? By what standard? This new nationalism also created the need for a new humanist international pantheon, i.e., the revival of Imperial Rome: an international one-world order which must be a one-state order, a world in which the national gods remain forever silent except as relics of the new world order. That was not clear to the participants in 1787. By the twentieth century, it had become more clear.

What I am arguing is that *nationalism is an intermediary historical step in the progress of the two kingdoms*. It is not the final resting place of either Christian covenantalism or humanistic covenantalism. We are inevitably headed toward world government, both civil and ecclesiastical. World government is an inescapable concept, given the universalistic claims of both God and Satan. Neither God nor Satan is about to "back off" in his claims for total allegiance. The political question therefore is this: *By whose covenant will this world government be created?* The authority of the modern nation state is now visibly fading. It faces break-up through fragmentation on one hand and break-

down through absorption into larger geopolitical entities on the other.<sup>13</sup> The international one is being accompanied by the international many. As the call for international sovereignty increases, so does the call for ethnic autonomy. The nation-state is caught between rival movements. It is losing legitimacy.

Jefferson's Declaration of Independence compromised the original Christian covenantalism of the states by joining them together in an alliance of independent states under the authority of nature and nature's god, a myth of unitarian theology. The Articles of Confederation completed the Declaration's halfway covenant by creating the United States of America: a true covenant document rather than a mere alliance of judicially independent states. The Constitution then eliminated all references to the Newtonian god and his supposed grant of rights to men. It created a new national god, one that is an affront to humanist internationalism, but also an affront to Christian internationalism.

So powerful is the Constitution in the eyes of American Christians that they have rejected Christian internationalism as if it were a satanic philosophy. They have lost the Puritan vision. That was precisely Madison's agenda in 1787. By trivializing the churches and by exalting the new national government, he dealt a blow against Puritanism. Puritanism has yet to recover. Yet Christians cheer<sup>14</sup>—even those who think of themselves as neo-Puritans.<sup>15</sup>

### C. Miss Hall's Dilemma

The late Verna Hall is well known to conservative Christian teachers in America. Her "red books" serve as textbooks for many Christian day schools and home schools. I first met her in the summer of 1963. She was an attendee at a conference on American history sponsored by the Center for American Studies, a spin-off of the William Volker Fund. The organizer of the conference was R. J. Rushdoony.

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13. Martin van Creveld, *The Rise and Decline of The State* (New York: Cambridge University Press, 1999). Jacques Barzun, *From Dawn to Decadence: 1500 to the Present: 500 Years of Western Cultural Life* (New York: HarperCollins, 2000), Epilogue.

14. Gene Fisher and Glen Chambers, *The Revolution Myth* (Greenville, South Carolina: Bob Jones University Press, 1981).

15. After I had delivered a brief speech summarizing my book, *Healer of the Nations*, one Christian Reconstructionist leader who carries a lot of weight in the movement quipped: "Have you joined the Council on Foreign Relations?" This man's theology is officially Puritan; his kingdom worldview, however, is exclusivist and nationalist.

I have mentioned in the Preface that Miss Hall began her *Christian History of the Constitution* project when she was a Christian Scientist. She had been secretary for Mildred LeBlond, a teacher in the Christian Science movement. Mrs. LeBlond got in trouble with church authorities over her work in American colonial history, so she turned over the leadership of her study group to Miss Hall in the 1950s. Miss Hall subsequently left Christian Science, but the editor of her first volume, Joseph Montgomery, did not.

That a case can be made for the Christian history of the American Revolution is obvious. There were dedicated and articulate Christians on both sides, just as there were Freemasons on both sides. There were few freethinkers on either side. Tom Paine and Ethan Allen are the famous ones. What is difficult to demonstrate from the historical record is the Christian history of the Constitution. Miss Hall's project was begun by a Christian Scientist. Miss Hall's books never reached the era of the Convention.

Miss Hall articulated the dilemma that we Christians face as Christians: *the nature of self-government*.

The first lesson the American Christian must learn if he would successfully develop, maintain or restore the Christian republic, is Christian self-government. Self-government without the modifier "Christian" in its full Biblical meaning, is nothing more than self-will regardless of initial intent to be or do good. Man without Christ cannot succeed in producing lasting good.<sup>16</sup>

Never in the history of the world has there been such an example of Christian voluntary union in civil affairs as was exhibited by the colonists between 1775 and 1783. This costly experience laid the groundwork for the adoption of our National Federal Constitution six years later in 1789.<sup>17</sup>

## 1. Madison's Strategy

Madison began to plan for the Convention in 1785. This was his self-conscious attempt to overthrow what Miss Hall calls "Christian voluntary union in civil affairs." She never understood that her task was inherently impossible: to reconcile the theology of the Constitu-

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16. Verna M. Hall, Preface (1978), *The Christian History of the Constitution of the United States of America, Christian Self-Government With Union*, ed. Joseph Allen Montgomery, Compiled by Verna M. Hall (San Francisco: Foundation for American Christian Education, [1962] 1979), pp. II–III.

17. *Ibid.*, p. III.

tion with the theology of the Christian covenantal federation that had preceded it. Miss Hall's volumes end no later than 1777. There is surely a reason for this, other than lack of time or money, for the first volume appeared in 1960; the last, *Consider and Ponder*, appeared in 1976.<sup>18</sup> She died over a decade later, her publishing foundation still solvent—a remarkable achievement, given the narrow intellectual focus of its publications.

I single out her dedicated efforts because she devoted her life to this project, yet it never came close to reaching its stated goal: the Constitutional Convention. Her books never even reached the formal introduction of the Articles of Confederation in 1777. These collected primary sources are useful, but they do not prove the thesis of her books' titles: the *Christian* history of the Constitution. Her books do reveal the Christian history of the colonial American period, *up to 1777*. They do not show anything after that. They end.

To escape the restriction of the copyright laws, Miss Hall included extracts from late nineteenth-century textbooks and other narrative sources. These narratives were frequently written by non-trinitarians, for non-Christians controlled American publishing after the Civil War. John Fiske,<sup>19</sup> for example, was one of the great champions of evolutionism. Historiography is not a neutral enterprise. It is shaped by the presuppositions of the authors. There was no market for explicitly Christian histories in 1890; there is very little demand even today, and even then what we get is Noll-Hatch-Marsden.

There are a lot of conservative Christians who have seen the set's title, but who have not read the contents. They take it for granted that the set's primary source documents really do prove that the Constitution was originally Christian. This is a grave mistake. There are no primary source documents in these books that extend beyond the outbreak of the Revolutionary War. What the documents of the era do show is that after the war ended, Christian influences in the country declined for a decade or more. The Second Great Awakening began after the Constitution was ratified, no earlier than 1797, and most notably in 1800. This decline in Christian influence is the argument of Noll, Hatch, and Marsden, and it is corroborated by most of the primary sources that I am familiar with. American pastors certainly

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18. This gorgeously printed book adopted the general title to *The Christian History of the American Revolution*.

19. Reprint from Fiske, in *Christian History of the Constitution* (1966 edition), pp. 271–82.



complained about this moral decline in their published sermons and private correspondence and diaries.

## 2. *The Unasked Questions*

In the Preface to *Christian History of the Constitution* (1960), Miss Hall said that she began her intellectual journey when she was employed by a federal bureaucracy that she recognized was socialistic in intent. (She made no mention of Mildred LeBlond's original efforts, nor Mr. Montgomery's unchanging theological commitment.) She wondered how this had come about, given the existence of the Constitution. There is a correct simple answer, one which would have pained her greatly: *because of the Constitution*. The Constitution's Framers unquestionably began their historic efforts with the presupposition of the indispensability of moral self-government. Nevertheless, the document they produced categorically and formally rejects the concept of *Christian* self-government. And, citing Miss Hall again, "Self-government without the modifier 'Christian' in its full Biblical meaning, is nothing more than self-will regardless of initial intent to be or do good. Man without Christ cannot succeed in producing lasting good." The good that the Constitution was intended to do could not survive unscathed.

The hard question that is never faced clearly and decisively by those who defend the theory of the Christian origins of the Constitution is this one:

**Why were the Articles of Confederation inherently less Christian than the Constitution, and so ineffective that a conspiracy had to be entered into, organized initially in 1785–87 by Freemasons, Deists, and proto-Unitarians, in order to restore inherently Christian principles of national government?**

To put it another way, why were the lawyers in charge of the Convention and the pastors absent? Why were the pamphlet debates of 1787–88 conducted in terms of Roman historical examples and not biblical historical examples? Why was there never any appeal to specific biblical laws, but endless appeals to natural laws? Why were the symbols adopted by the Continental Congress, the Convention, and the post-war nation systematically non-Christian? Why, if the Constitution is Christian, is the name of Jesus Christ missing?

There is only one sensible answer: *the U.S. Constitution is not*

*Christian*. But Christians resist this answer. They want to blame later generations of politicians for the decline of Christian political influence. They want to share in the glory of the Convention. This is a strategic mistake, and it is surely an historiographical mistake.

### D. Surprised Christians

We should not be surprised to learn that Joseph Smith, founder of Mormonism, taught that the Constitutional Convention was either divinely inspired or very close to it. "And for this purpose," he has God say, "have I established the Constitution of this land, by the hands of wise men whom I raised up unto this very purpose, and redeemed the land by the shedding of blood."<sup>20</sup> Smith prayed: "Have mercy, O Lord, upon all the nations of the earth; have mercy upon the rulers of the land; may those principles, which were so honorably and nobly defended, namely, the Constitution of our land, by our fathers, be established forever."<sup>21</sup> The reason why we should not be surprised at this is because Joseph Smith was a Freemason, and Mormonism adopts many Masonic symbols, most notably the beehive. It also adopts Masonic rituals.<sup>22</sup> These facts were freely admitted by E. Cecil McGavin in his book, *Mormonism and Masonry* (1956), which is often sold in Mormon bookstores. The same title was used by Grand Master S. H. Goode for his 1925 book, which makes many of the same observations regarding the parallels. Smith's last words, "O Lord my God," is a Masonic cry, and he uttered it because he hoped that the Masons in the crowd that killed him would intervene on his behalf. He received no mercy from that constituency.<sup>23</sup>

What *is* surprising is that so many conservative Christians today are seeking the previously hidden Christian roots of the U.S. Constitution. These are not hidden roots; they are missing roots. The roots of the Constitution are Rhode Island political theory, Newtonian philosophy, Deist-unitarian-Whig social theory, Scottish Enlightenment ra-

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20. *Doctrine and Covenants*, 101:80.

21. *Ibid.*, 109:54.

22. Clyde R. Forsberg, Jr., *Equal Rites: The Book of Mormon, Masonry, Gender, and American Culture* (New York: Columbia University Press, 2004).

23. McGavin, *Mormonism and Masonry*, ch. 3. Of nine men indicted for the murder, one was a Freemason at the time of the murder; three were initiated after they were indicted. The Grand Lodge of Illinois protested. In 1845, the local Masonic lodge, begun in 1843, surrendered its charter. Dallin Oaks and Marvin S. Hill, *Carthage Conspiracy: The Trial of the Accused Assassins of Joseph Smith* (Urbana: University of Illinois Press, 1979), pp. 66–67.

tionalism, and Masonic universalism. The Constitution's structure was Christian-Puritan; its content was humanist. There may well be trappings that are Christian, for the Framers were men of their era, and that era was at bottom Christian. But the Christianity of eighteenth-century America was deeply schizophrenic. Newton was the favored model, not Paul on Mars Hill (Acts 17).

The primary problem with Protestant Christianity in the eighteenth century was its ethical and judicial dualism: biblical law vs. natural law. The problem has been dualism for eighteen hundred years. The two systems are rival systems, yet Christians persist in arguing that they are at bottom the same, even when they simultaneously insist that there is no neutrality. They affirm, yet subsequently deny, that "The first lesson the American Christian must learn if he would successfully develop, maintain or restore the Christian republic, is Christian self-government. Self-government without the modifier 'Christian' in its full Biblical meaning, is nothing more than self-will regardless of initial intent to be or do good. Man without Christ cannot succeed in producing lasting good."

### E. Constantine or Pharaoh?

I have argued that the Framers were generally committed to a specific historical model: republican Rome. They used Roman pseudonyms in their pamphlet wars. So did their Antifederalist adversaries. They adopted Roman architecture for the nation's capitol. But there was a problem that they all recognized and feared, for good reason: republican Rome became imperial Rome. Cicero was no doubt eloquent; he also died a fugitive from justice, slain by agents of the civil authorities.<sup>24</sup> If *vox populi* is in fact *vox dei*, why did Cicero die a fugitive of the people's justice?

The pantheon of Rome was polytheistic in appearance, but it was monotheistic in substance. The many gods of the expanding Republic were united by their place in Rome's religious order. They publicly manifested the unifying power of the Roman state. By the time of Christ, the Republic had become the Empire. The Roman pantheon was then international in scope. Every god of every captive people had a lawful place in the pantheon, testifying publicly to the subordination

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24. The legacy of Rome continues today. Our military adopts the names of Greek and Roman gods for weapons systems. (The Thor missile reveals a tolerant spirit of ecumenism: giving the Norse gods their due.) The Israelis call their battle tank the David. This sets a good example.

of each god's city to the Empire.

One God was conspicuously absent from this pantheon: the God of the Bible. This God acknowledged no other god and no other kingdom but His own. Rome was under the authority of this God, not over it. And so, there was from the beginning an inevitable civil war between Christ and Caesar, church and state. This war was eventually won by the earthly representatives of the ascended Christ.<sup>25</sup> Christians finally replaced pagans in the offices of civil authority.

This "Constantinian settlement" still outrages and embarrasses political polytheists in the modern church: fundamentalists, pietists, neo-evangelical liberals, and Christian college professors everywhere.<sup>26</sup> They much prefer to see pagans occupy the seats of civil authority; so, the example of Constantine offends them. They prefer a contemporary political polytheism analogous to that of the Roman pantheon, either because they secretly worship the messianic monotheism of the state (political liberals, humanists, and some neo-evangelicals) or because they refuse to acknowledge that statism is always the political manifestation of polytheism (fundamentalists, Lutherans, most Calvinists, and any remaining neo-evangelicals). Like the Hebrew slaves in Egypt, they prefer rule by polytheistic taskmasters in the service of a divine state to self-rule under God's revealed law, administered in terms of biblical covenants. The end results of this perverse preference are grim: added years of bondage in Egypt, followed by aimless wandering in the wilderness, or else the fate of Korah and Dathan (Num. 16).

It is time to begin making plans for the conquest of Canaan.

## F. Biblical Law or Natural Law

In a perceptive essay on the relationship between the biblical covenant and modern Constitutional law, E. M. Gaffney presents a subsection: "American Constitutional Law as a Corrective to Religion." He announced: "The main burden of this essay has been to show that secular law influenced the formation and development of major themes of biblical religion. It is now my point that American constitutional law can continue to serve this function by correcting adherents to biblical

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25. Ethelbert Stauffer, *Christ and the Caesars* (Philadelphia: Westminster Press, 1955).

26. A representative statement is Leonard Verduin, *The Anatomy of a Hybrid: A Study in Church-State Relationships* (Grand Rapids, Michigan: Eerdmans, 1976). This has been the Anabaptist position ever since the military defeat of the communist Anabaptist revolutionaries at Münster in 1535.

religion when they fail either to accept the demands of biblical religion concerning justice and freedom, or when they fail to acknowledge that in some major respects biblical religion did not adequately resolve issues of justice and freedom.”<sup>27</sup> He then appealed to the Torah as a document promoting a pluralism of legal traditions. This is proved, he said, by the conflicting interpretations of the Bible.<sup>28</sup>

He forthrightly contrasted the Bible and justice. This is standard humanist fare, especially humanism within the churches. Biblical law is seen as offering society a potential threat of tyranny, a means of unleashing oppressive forces in society. The presumption here is that humanistic law is the proper corrective for biblical oppression. Christianity is therefore desperately in need of humanism in order to maintain freedom. So runs the standard halfway covenant party line.

The historical problem with such arguments is that the church has almost always systematically avoided the implementation of biblical law. We have not seen biblical law in action in Christian societies. Instead, century after century, church scholars have imported the prevailing brands of humanist philosophy, social theory, and jurisprudence into the churches, all in the name of justice. And when one society did its best to avoid this error—New England Puritanism—Roger Williams appeared on the scene and started the first covenantally “open” society to serve as the model.

Yale historian Edmund Morgan described the Puritans:

Nevertheless, the Puritans did make strong demands on human nature, for they were engaged in a mission that required great exertion. They had undertaken to establish a society where the will of God would be observed in every detail, a kingdom of God on earth. While still aboard the *Arbella*, Winthrop had explained to his fellow immigrants their solemn commitment to this task. Every nation, they all knew, existed by virtue of a covenant with God in which it promised to obey His commands. They had left England because England was failing in its promise. In high hope that God was guiding them and would find their efforts acceptable, they had proposed to form a new society. Now God had demonstrated His approval. He had made way for them by a “special overruling providence.” By staying His wrath so long and allowing them to depart in peace, by delivering them safe across the water, He had sealed a covenant with them and given them a special responsibility to carry out the good intentions

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27. Edward McGlynn Gaffney, Jr., “Of Covenants Ancient and New: The Influence of Secular Law on Biblical Religion,” *Journal of Law and Religion*, II (1984), pp. 137–38.

28. *Ibid.*, p. 18.

that had brought them into the wilderness. Theirs was a special commission. And “when God gives a special commission,” Winthrop warned them, “He looks to have it strictly observed in every Article.”<sup>29</sup>

Willard Sperry, Dean of the Harvard Divinity School, painted an accurate picture of Williams, who took for his social model natural law rather than covenant theology.

He lived only some forty miles from Boston; but between Providence and Boston a great gulf was fixed, theologically and ecclesiastically. Williams believed that the sources of the state should be sought and found in the secular rather than in the spiritual order. The right of magistrates is natural, human, civil, not religious. The officer of the state gains nothing and loses nothing by being a Christian, or by not being. Likewise, the Christian merchant, physician, lawyer, pilot, father, master are not better equipped for fulfilling their social function than are the members of any other religion. There can be no such thing as a Christian business, or a Christian profession of law or medicine. These vocations stand in their own right. No state may claim superiority over any other state by virtue of being, or professing to be, Christian. The state is not irreligious; it is simply non-religious. As for the church, Williams said it was like a college of physicians, a company of East India merchants, or any other society in London, which may convene themselves and dissolve themselves at pleasure. Roger Williams’s ideas in these matters were and still are overstatements and oversimplifications of the problem. Indeed, he followed the logic of his own thinking so far that he outgrew the visible organized church, even of his own independent kind, and finally parted with all institutional religion. Yet his overstatements were so true to Baptist convictions that one can readily see how this strongest single sect in the colonies, advocating religious liberty for all, was in entire good conscience prohibited by its own faith from any slightest interest in a union of church and state.<sup>30</sup>

But this does not answer the more fundamental covenantal problem: What about the union of *religion* and State? No state can live without a religion. *There is no neutrality*. The question is: *Which* religion? There is no question which religion the Baptists chose for their

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29. Edmund S. Morgan, *The Puritan Dilemma: The Story of John Winthrop* (Boston: Little, Brown, 1958), pp. 69–70.

30. Willard L. Sperry, “The Separation of Church and State: Its Causes,” in Phillip E. Hammond and Benton Johnson (eds.), *American Mosaic: Social Patterns of Religion in the United States* (New York: Random House, 1970), pp. 121–22.

State: Jeffersonian unitarianism. This remains the continuing political manifestation of the failure of the American Baptist culture.<sup>31</sup>

The choice for Christians in America has been this one since 1636: John Winthrop or Roger Williams, God's law or man's law, civil covenant-keeping or civil covenant-breaking. For well over three centuries, Americans have made the wrong choice.

## G. Civil Compacts Are Broken Covenants

I have not discussed in detail in this book what I regard as the great myth of modern liberalism, from Locke to the present: the myth that out of correctly devised procedural arrangements, coupled with an undefined personal and civil virtue, society can produce, or at least encourage, the creation of a good society. This myth was the foundation of eighteenth-century Enlightenment humanism, both right wing and left wing. The virtuous humanist leader, whether Washington or Robespierre, is not a defender of explicitly Christian virtues. The theoretical foundations of this myth collapsed with the coming of Darwinism, but the myth's rhetoric still persists whenever the covenantal remains of that lost world are proclaimed as the law of the land, i.e., whenever Christians are told that the idea of biblical theocracy is morally perverse and the idea of political pluralism is God's preferred plan for the New Covenant era.

To build a good society there must first be an accurate vision of the good society: a fixed vision unaltered by the flux of history. There must also be a permanent concept of personal morality that remains constant despite changing circumstances. These two visions must reinforce each other: the good society and the righteous individual. This combination was lacking in Greek political philosophy. The righteous philosopher, who was to be a master of doubt, was seen both by Socratic philosophers and by Athenian civil authorities as a threat to the stability and peace of conventional society. There was supposedly great virtue in big lies. This is one reason, though not the only reason, why the philosopher-king was supposed to resort to misleading rhetoric and "noble lies."<sup>32</sup>

There must also be an institutional arrangement to bridge the gap

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31. James B. Jordan (ed.), *The Failure of the American Baptist Culture*, Issue No. 1 of *Christianity and Civilization* (1982). (<http://bit.ly/CAC1982>)

32. Thomas L. Pangle, *The Spirit of Modern Republicanism: The Moral Vision of the American Founding Fathers and the Philosophy of Locke* (University of Chicago Press, 1988), p. 60.

between the mutually reinforcing social and individual ideals within the flux of history. Humanism offers no consistent, widely agreed-upon solution to these problems.

This is why the voluntary civil contract between men or among men is no valid substitute for the civil covenant between or among men under the sovereign Creator God of the Bible. We must never forget that there is no such thing as a civil compact; all such hypothetical compacts are in fact covenants under God, whether the participants believe this or not. (The same is true of marriage “contracts.”) Such a contractual view of society denies that God has created society, established hierarchies, declared His permanent law, enforces this law in history through positive and negative sanctions, and directs history so that His people progressively inherit the earth. This view denies the reality of Psalm 37:9: “For evildoers shall be cut off: but those that wait upon the LORD, they shall inherit the earth.” It replaces the personal God of the Bible with the god of the state. The State, as the judge and enforcer, becomes the agent that declares the will of the People.

Modern civil justice is viewed by liberals as the product of procedurally precise confrontations between trained specialists in the law—rule by lawyers. The almost pathological and potentially bankrupting quest for procedural perfection in the modern American court system is a consistent development of this seventeenth- and eighteenth-century liberal philosophy.<sup>33</sup> But there is no way for the humanist to prove that procedural precision during the lawyers’ confrontation can in fact produce justice, except by *defining* justice as “the product of a procedurally precise process.” There is no higher law to appeal to, and no sanctioning agency other than the state, except during a revolution.

### *1. The Expansion of the Autonomous State*

When men abandon biblical covenantalism, they must find a substitute. There is no escape from covenantalism; the question always is: *Whose* covenant? Modern liberalism became steadily statist, except for a brief interlude during the nineteenth century (pre-1890), because the state, as the sovereign enforcer of the People’s covenant, has attained the position of divine-right status: there is no appeal beyond it. It alone supposedly speaks authoritatively for the sovereign People. Revolution alone can legitimately overturn the state, but this must always be in

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33. On the extent of the crisis, see Macklin Fleming, *The Price of Perfect Justice* (New York: Basic Books, 1974).



the name of the true sovereign, the People. This worldview is the legacy of John Locke.

### *1. A Political Compact*

A political compact among autonomous men has replaced the biblical covenant as the agreed-upon source of social continuity. Therefore, the primary goal of politics today (and just about everything else) is to gain control over the monopolistic voice of authority, the state. Claimants today for the crucial position of “voice of the sovereign People” are surely as numerous as the defenders of contract theory assert with regard to their traditional opponents, the theocratic Christians.

Whig liberals, in reaction to the Puritan Revolution of 1642–60, successfully ridiculed the churches and sects on this basis: surely they could not all have represented God. But the same accusation can be made against the critics today: surely not all the claimants to the office of Official Spokesman are accurately representing the sovereign People. When it comes for numbers of claimants, in fact, the humanists today are far more numerous than theocratic claimants who say they are the voice of the sovereign God of the Bible. In this day and age, Christians are almost completely politically humbled. They are terrified of the thought they might in fact really be God’s lawful designated authorities in speaking for God in the realm of civil law. They do not even want to think about the possibility that God’s revealed laws in the Bible are God’s required standards for modern jurisprudence. They do not want to bring God’s covenant lawsuit against any nation. They have been steadily browbeaten on this point since at least 1660.

### *2. The Religion of Procedure*

Contractualism is evolutionary when honored and revolutionary when transcended. It is an empty ethical shell. Lenin once remarked about making omelettes, that you have to break a lot of eggs. If there are no ethical standards inside the contractual shells, then we should expect to see a lot of broken shells as time goes by, as people continue their search for righteous civil government.

There is no sovereign God in contractualism who will judge the righteousness of men’s contracts, in time or eternity. Man is officially on his own. Thus, there is only procedure. In cases of civil dispute, the only question is: Which of the parties best honored the formal terms

of the contract, meaning the letter of the contract? This means *the triumph of fine print* and the lawyers who alone can interpret it. To the extent that questions of ethics enter into the judge's decision—substantive questions—the result is judicial arbitrariness. Such judicial arbitrariness erodes the very foundation and justification of contractualism: *procedural predictability*. This creates an intellectual atmosphere favorable to revolution. Every would-be spokesman for the People wants to be sure that his version of god's word is enforced. The inherent, inevitable dualism or dialecticism between formal procedure and ethics, between the letter of humanist law and the spirit of humanist law, offers no permanent solution to the perpetual question: What is the righteous decision of the civil magistrate, jury, or judge? And this means there is no humanist answer to the question: What procedural arrangement can be devised to increase the likelihood that righteous decisions will be made by those in authority?

The Framers attempted to devise such a system, but their endeavor was doomed from the beginning, for they denied the legitimacy of the biblical covenant. They broke the halfway national covenant as surely as the Articles broke the trinitarian state covenants nationally.

## Conclusion

By 1800, the myth of the national covenant was just about gone. The churches, in the words of Perry Miller, "were forced to recognize that in fact they now dealt with the Deity only as particular individuals gathered for historical, capricious reasons into this or that communion. They had to realize, at first painfully, that as a united people they had no contractual relationship with the Creator, and that consequently a national controversy with Him could no longer exist."<sup>34</sup> He wrote *contractual*, but he clearly meant *covenantal*.<sup>35</sup> Miller saw what the key issue was: *sanctions*. There would be no more national controversies with God. He would no longer threaten the nation with His negative sanctions.

Despite the facts that I have surveyed in this study, we find that from the beginning of the Constitutional era, Christian historians have promoted the myth of the Christian origin of the Constitution. Philip Schaff, the most prominent American church historian of the late

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34. Perry Miller, *Nature's Nation* (Cambridge, Massachusetts: Belknap Press of Harvard University, 1967), p. 113.

35. His chapter is titled, "From the Covenant to the Revival."

nineteenth century, summarized this view, and the language of his imitators has not deviated in any significant respect:

We may go further and say that the Constitution not only contains nothing which is irreligious or unchristian, but is Christian in substance, though not in form. It is pervaded by the spirit of justice and humanity, which are Christian. . . . The Constitution, moreover, in recognizing and requiring an official oath from the President and all legislative, executive, and judicial officers, both of the United States and of the several States, recognises the Supreme Being, to whom the oath is a solemn appeal. . . . And, finally, the framers of the Constitution were, without exception, believers in God and in future rewards and punishments, from the presiding officer, General Washington, who was a communicant member of the Episcopal Church, down to the least orthodox, Dr. Benjamin Franklin. . . .<sup>36</sup>

There are minor variations, of course. Rushdoony argued that the Constitution is neutral both in substance and in procedure.<sup>37</sup> But, on the whole, Schaff's statement is representative of two centuries of incomparable historical misrepresentation—a myth that is taken seriously by virtually all conservative American Christians.

The conspirators of 1787 were successful beyond their wildest dreams. Their victims still do not know what happened to them. That a serious historian could write about the oath in this manner—the oath that is in fact the exact opposite of what Schaff claimed it is—is mind-boggling. It is self-deception on a scale not normally encountered, even in academia. This oath does indeed recognize the Supreme Being, to whom the oath is a solemn appeal; that Supreme Being is the sovereign incorporating People. Article VI, Clause 3 announces, theologically speaking, “Thou shalt have no other gods before me.”

Cornelius Van Til was correct when he argued that Christian philosophy has always been corrupted by the Greek idea of autonomous man. This compromise is the intellectual foundation of political polytheism. The humanists until the era of Darwin successfully appealed to the Christians' philosophy of common-ground law and morality. They invoked a traditional intellectual compromise: the language of scholastic philosophy's natural law, natural rights, and right reason. Christians cannot legitimately expect to beat something with nothing.

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36. Philip Schaff, *Church and State in the United States or the American Idea of Religious Liberty and Its Practical Effects* (New York: Arno Press, [1888] 1972), pp. 40–41.

37. See Appendix A.

Yet they officially have nothing biblical to offer. So, they surrender civil government to their covenantal enemies, on principle. The humanists of course abandon neutrality as soon as they gain sufficient political power to isolate the Christians. Their former acceptance of the principle of “equal time for Jesus” becomes “no time for Jesus.” Because they are epistemologically naive, this always surprises the Christians. Neutrality is a myth. Humanists understand this.



All created reality is revelational in character; its revelation of God is unavoidable and inescapable. But the natural man seeks to suppress this witness as well as that of his own nature. As a result, the only point of contact he tolerates is one which concedes his claim to autonomy. The only way the Christian can deal with this stubborn and wilful blindness is by “head-on collision,” by an all-out challenge to the natural man. He must reason by presupposition, and the ontological trinity, as taught in the Scriptures, is the presupposition of all human predication.

All reasoning is by presupposition, but too little reasoning is consistently and self-consciously presuppositional. Some years ago, a Western trader found his work vastly enhanced by his half-white, half-Indian status. Among the Indians, he naturally and easily spoke of his mother’s tongue, acted as one of them, and reasoned in terms of their culture and faith. Among the white miners and ranchers, he readily fell into his father’s ways, his father’s skepticism of Indian myth, and the white man’s sense of superiority. Although often accused of hypocrisy, a sin not uncommon among such mixed bloods and a source of advantage to them, this was not entirely true in his case. He shared in both outlooks and lived in unresolved tension and frustration. In a sense, this is the position of a natural man today. A creature, created in God’s image, his entire being is revelational of God. In order to have science, he must begin with Christian assumptions and presuppose the unity of science and of knowledge. But, being fallen, he now presupposes his autonomy and attempts to suppress, wherever he becomes conscious of its implications, this basic presupposition of God. As a result, his thinking is inconsistent, reveals his tension and frustration, and lacks an epistemological self-consciousness. To live consistently in terms of his autonomy would plunge him into the shoreless and bottomless ocean of relativity, but to live and think consistently in terms of the self-contained God would involve a total surrender to His sovereignty. The natural man tries, as indeed too many regenerate men do also, to live in terms of both presuppositions, to have a foot in both camps and have the advantages offered by both God and Satan, but the results of this conscious and subconscious effort is tension and frustration.

R. J. Rushdoony (1959)<sup>1</sup>

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1. R. J. Rushdoony, *By What Standard? An Analysis of the Philosophy of Cornelius Van Til* (Vallecito, California: Ross House, [1959] 1995), pp. 103–4. (<http://bit.ly/rjr-standard>)

# APPENDIX A

## RUSHDOONY ON THE CONSTITUTION

*The Constitution gives us procedural law, not a substantive morality, so anyone can use the Constitution for good or ill. So the Constitution gives us a good procedural manual, and is on the whole a very good one. But it has to be the people as they change and govern themselves; the Constitution cannot save this country.*

R. J. Rushdoony (1987)<sup>1</sup>

*The church . . . was thrown out into the street by the lawyers of Philadelphia, who decided not to have a Christian country. . . . [I]n effect, they took all the promises of religion, the pursuit of happiness, safety, security, all kinds of things, and they set up a lawyers' paradise, and the church was disenfranchised totally.*

Otto Scott (1988)<sup>2</sup>

### Introduction

Otto Scott, in a perceptive essay on the ever-changing U.S. Constitution, warned us against becoming deluded by “a sloganized history” of this nation and its Constitution. He traces the history of growing tyranny in the United States in terms of the steady transformation and reinterpretation of the Constitution. “The history of the Constitution of the United States, like all other aspects of our national history, reflects the changes in American society and government through the years. To understand these changes it is essential to understand that history as it was, and ourselves as we are. Yet we have as a nation failed

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1. Rushdoony's response to Bill Moyers: Transcript, “God and Politics: On Earth as It Is in Heaven,” Public Affairs Television (broadcast date: Dec. 23, 1987), p. 4.

2. “Easy Chair” audiotape #165 (March 10, 1988), distributed by the Chalcedon Foundation, P. O. Box 158, Vallecito, California 95251.

to confront the truth of our history in many important respects.”<sup>3</sup> He then calls for the restoration of Christianity to “its early prominence among us. Let us, therefore, abandon the legend that the Constitution is intact, and set about the task of Christian Reconstruction—and Constitutional restoration.”<sup>4</sup>

Stirring words, indeed! But what he failed to note in this perceptive essay is something he called to Rushdoony’s attention during a taped discussion they had regarding the theological foundation of the Constitution. Scott, over Rushdoony’s protest, identified the Constitutional Convention accurately: a successful effort by lawyers to overcome Christianity.<sup>5</sup> Thus, if we are to achieve Scott’s two-fold goal—the restoration of Christianity as it once prevailed in this nation and Constitutional restoration—we must return to the expressly Christian oaths of the state constitutions of 1787, which were the constitutions that prevailed before the Philadelphia lawyers displaced them by means of a new national oath, an oath that openly refused to acknowledge the sovereign God of history who had made possible this nation’s experiment in freedom. We must no longer ignore Scott’s analysis: “The United States is the only government in the history of the world that has been established without a god . . . without specifically acknowledging any definition of any religion. The Constitution of 1788 was unique in that respect. No society had ever done that.”<sup>6</sup> Actually, Rhode Island had, but that experiment in pluralism was protected by a larger commonwealth.

Scott may not have understood that he was challenging one of Rushdoony’s most cherished beliefs. In 1965, Rushdoony had written: “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.”<sup>7</sup> This was mytho-history on a grand scale, and he never deviated from it. Scott had challenged it head-on.

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3. Otto Scott, “The Legend of the Constitution,” *Journal of Christian Reconstruction*, XII (1988), p. 59.

4. *Ibid.*, p. 59.

5. “Easy Chair” audiotape #165.

6. Otto Scott, question and answer session, message on Leviticus 8:1–13 by R. J. Rushdoony (Jan. 30, 1987).

7. R. J. Rushdoony, *The Nature of the American System* (Vallecito, California: Ross House, [1965] 2001), p. 7. (<http://bit.ly/rjrnas>)



Beginning in the eighteenth century in Northern Europe, anti-trinitarian humanists combined with dissenting (non-State-established) churchmen and Deists<sup>8</sup> to restructure the existing basis of citizenship, which had previously been explicitly Christian. The two wings of the Enlightenment, Scottish *a posteriori* empiricism and French *a priori* rationalism, both proclaimed a new concept of citizenship: citizenship without a required profession of faith in the God of the Bible. It was this new concept of citizenship which was ratified into law in the United States in 1788. The issue was covenantal. The deciding factor was the abolition of an explicitly trinitarian oath of allegiance by the Constitution.

### A. The American Enlightenment

Rushdoony, as a disciple of Van Til, should have been more alert to this crucial and early Enlightenment invasion of America, but throughout his career, he did his best implicitly to deny its implications. He viewed early American thought as a mixture of Christianity and natural law, which it was, but not as being at bottom dominated by the key foundation of Enlightenment thought: the doctrine of the autonomy of man's reason. He always refused to say of the Constitution, as he said in Chapter 1 of *By What Standard?* regarding every other "hybrid world-view," every other compromise with the intellectual systems of self-professed autonomous man: "Behold, it was Leah!" He assumed that the colonists' faith in the Christian God was more fundamental than their faith in Enlightenment thought. This was no doubt true of considerable segments of the population, especially after the revivals of the second quarter of the century. But this was not true of the *intellectual leaders* of the Revolutionary War era, who were overwhelmingly Deist (proto-Unitarian) in outlook. On this point, at least with respect to those men who wrote defenses of the War, C. Gregg Singer's view of the American Revolution is correct.<sup>9</sup> I think that Henry May's assessment is fair: ". . . most forms of the Enlightenment developed among the middle and upper classes of European cities, spread mainly among similar groups in America, and failed to

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8. A detailed study of their movement is found in Caroline Robbins, *The Eighteenth-Century Commonwealthman* (Cambridge, Massachusetts: Harvard University Press, 1959). Rushdoony distributed this book when he was employed by the William Volker Fund in 1962 through 1964. He gave me a copy of the book.

9. C. Gregg Singer, *A Theological Interpretation of American History* (Nutley, New Jersey: Craig Press, 1964), ch. 2: "Deism in Colonial Life."

reach the agrarian majority. On the whole, various forms of Protestant Christianity served the emotional needs of most Americans better.”<sup>10</sup> But when we inquire about the beliefs of the articulate leadership of the nation, especially the triumphant nationalists of 1788, we find that the philosophy of the Scottish wing of the Enlightenment was dominant.

### 1. *The Two Wings of the Enlightenment*

Rushdoony repeatedly referred to the anti-French Revolution attitude that prevailed in the last decade of eighteenth-century America. He offered this as evidence of an attitude hostile to the Enlightenment. What he never said is that he was defining “Enlightenment” solely in terms of its left-wing ideology: the *philosophes* of France. This is only half of the story of the Enlightenment. That in 1798 we find an anti-Jeffersonian, anti-French Revolution outlook among many Americans<sup>11</sup>—those who agreed with Edmund Burke regarding the horrors of the French Revolution—should be no more surprising than the fact that we also find pro-French, pro-Jefferson sympathizers.<sup>12</sup> The mere presence of an anti-French Revolutionary outlook in the late-eighteenth century was no guarantee of Enlightenment-free wisdom.

Edmund Burke had been the most eloquent opponent of the French Revolution from the very beginning, and nineteenth-century European conservative intellectual thought was overwhelmingly Burkean. Yet Burke was surely a representative thinker of the right wing of the Enlightenment. He was a correspondent with Adam Smith, David Hume, and other Scottish Enlightenment figures. His conservative philosophy of pluralism and social traditionalism agreed with their classical liberal doctrine of social evolutionism. This outlook is reflec-

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10. Henry F. May, *The Enlightenment in America* (New York: Oxford University Press, 1976), p. xviii.

11. Vernon Stauffer, *New England and the Bavarian Illuminati* (New York: Russell & Russell, [1918] 1967); Zoltan Haraszti, *John Adams and the Prophets of Progress* (New York: Grosset & Dunlap, [1952] 1964); David Hackett Fischer, *The Revolution of American Conservatism: The Federalist Party in the Era of Jeffersonian Democracy* (New York: Harper & Row, 1965).

12. On the conflict, see John C. Miller, *The Federalist Era, 1789–1801* (New York: Harper Torchbooks, [1960] 1963); Daniel Sisson, *The American Revolution of 1800* (New York: Knopf, 1974); Richard Buel, Jr., *Securing the Revolution: Ideology in American Politics, 1789–1815* (Ithaca, New York: Cornell University Press, 1972). For an interesting monograph on one such Jeffersonian, see Charles Warren, *Jacobin and Junto* (New York: Blom, [1931] 1968). The man was the brother of Federalist leader Fisher Ames.

ted in Burke's statement that "The science of constructing a commonwealth, or renovating it, or reforming it, is, like every other experimental science, not to be taught *a priori*. Nor is it a short experience that can instruct us in that practical science, because the real effects of moral causes are not always immediate; . . ." <sup>13</sup> Burke had been a supporter of the American Revolution, actually serving as the paid London agent-lobbyist of the New York Legislature right up until the War broke out. <sup>14</sup> His defense was that the British Parliament should "leave the Americans as they anciently stood." <sup>15</sup> Was this opinion inherently conservative, liberal, or radical? This is why he is such a difficult man to interpret. <sup>16</sup> But he was clearly a man of his age: an Enlightenment thinker.

We should never forget that the Scottish Enlightenment's social evolutionism served as the model for nineteenth-century biological evolutionism, including Darwinism. <sup>17</sup> F. A. Hayek, as a representative of the classical liberal position, claimed allegiance to the Scots, especially Adam Ferguson, <sup>18</sup> and he made their social evolutionism the foundation of his legal and economic analysis. <sup>19</sup> (Hayek's philosophical and institutional target is the other half of the Enlightenment heritage: top-down, *a priori*, "French" social planning.) <sup>20</sup> James McCosh, president of Presbyterian Princeton from 1868–88, invoked a version of Christian apologetics based on Scottish Enlightenment philosophy, and he also adopted a naive, pre-Darwinian, purposeful (teleological) system of geological evolution. <sup>21</sup> Two presidents later, Princeton got

13. Edmund Burke, *Reflections on the Revolution in France* (Indianapolis, Indiana: Bobbs-Merrill, [1790] 1955), p. 69.

14. Robert B. Dishman, "Prelude to the Great Debate," *Burke and Paine: On Revolution and the Rights of Man* (New York: Scribner's, 1971), pp. 27–28.

15. Isaac Kramnick (ed.), *Edmund Burke* (Englewood Cliffs, New Jersey: Prentice-Hall, 1974), ch. 2.

16. Cf. Isaac Kramnick, *The Rage of Edmund Burke: Portrait of An Ambivalent Conservative* (New York: Basic Books, 1977).

17. F. A. Hayek, *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960), pp. 59–59.

18. F. A. Hayek, *Studies in Philosophy, Politics and Economics* (Chicago: University of Chicago Press, 1967), ch. 6: "The Results of Human Action but not of Human Design." This phrase is taken from *Ferguson's Essay on the History of Civil Society* (1767), p. 187.

19. Gary North, *Sovereignty and Dominion: An Economic Commentary on Genesis* (Dallas, Georgia: Point Five Press, [1982] 2012), Appendix B.

20. F. A. Hayek, *The Counter-Revolution in Science: Studies of the Abuse of Reason* (Indianapolis, Indiana: Liberty Press, [1952] 1979).

21. James McCosh, *The Supernatural in Relation to the Natural* (1862). Cf. J. David Hoeveler, Jr., *James McCosh and the Scottish Intellectual Tradition: From Glasgow*

Woodrow Wilson. That decision firmly established Princeton University's academic reputation and also ended its previous public commitment to evangelical Christianity.<sup>22</sup>

After 1788, the battle in American intellectual thought was between the two rival wings of the Enlightenment. Protestant Christianity had no separate worldview. It was much the same in Northern Europe. The division in social philosophy keyed on the French Revolution. The conservatives clung to Burke;<sup>23</sup> the anti-revolutionary liberals clung to Lamennais and Tocqueville;<sup>24</sup> the revolutionaries clung to Babeuf;<sup>25</sup> and most dynastic politicians hoped and prayed—if they prayed at all—that the rising tide of Napoleonic nationalism could be contained at home by patriotism and kept from turning into revolution. It couldn't. My point is this: the intellectual conflict was between the two sides of the Enlightenment: the decentralizing social pluralists vs. the centralizing political revolutionists. The terms of the debate were established by the presupposition of the Enlightenment: autonomous man. Conservative Protestant Christians lined up behind Burke.<sup>26</sup> They offered no explicitly biblical alternative, socially or judicially,

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to *Princeton* (Princeton, New Jersey: Princeton University Press, 1981), pp. 194–211. Hoeveler's description of McCosh applies as well to members of the American Scientific Affiliation as it does to McCosh: ". . . a literal adherence to the Word forced a foolish and wrongheaded consistency on Christian believers. McCosh therefore chastised fellow believers who resisted the geologists' evidence respecting the age of the earth. When expert study of fossil remains continued to increase the age of the world, even into the 'millions of ages,' it was useless to be calculating the generations of Adam as a reliable guide to this essentially scientific question. Religion would surely be the loser in such an unnecessary contest." Hoeveler, p. 203. After Darwin's *Origin of Species* took hold of his thinking, McCosh abandoned his previous strong defense of purposefulness in the process of evolution, accepting in its place natural selection as the mode of development: pp. 204–5.

22. Henry Wilkinson Bragdon, *Woodrow Wilson: The Academic Years* (Cambridge, Massachusetts: Harvard Belknap, 1967).

23. Russell Kirk, *Edmund Burke: A Genius Reconsidered* (New Rochelle, New York: Arlington House, 1967); Kirk, *The Conservative Mind: From Burke to Santayana*, rev. ed. (Chicago: Regnery, 1954); Robert Nisbet, *The Social Philosophers: Community and Conflict in Western Thought* (New York: Crowell, 1973), pp. 407–18.

24. Nisbet, *Social Philosophers*, pp. 418–29.

25. James Billington, *Fire in the Minds of Men: Origins of the Revolutionary Faith* (New York: Basic Books, 1980).

26. The creation of the Calvinistic Anti-Revolutionary Party in Holland was a reaction to the French Revolution. Out of this came the writings on social philosophy of Groen van Prinsterer and Abraham Kuyper, who served as Prime Minister in 1896. Theologically, Kuyper and Herman Bavinck were the leading Calvinist thinkers. From Bavinck we arrive at Cornelius Van Til, by way of Geerhardus Vos, who had left the Netherlands to teach in the United States. But none of them developed an explicitly

to the Enlightenment. By 1790, they were not aware that there was a legitimate alternative. The U.S. Constitution had officially abandoned this alternative in Article VI, Clause 3.

## 2. *The Denial of Natural Law*

Ironically, it was with Rushdoony's writings of the 1960's that a separate, anti-natural law, Bible-based Protestant social philosophy first began to emerge. Rushdoony did not understand in 1964 the extent to which his view and Van Til's had broken with the American intellectual and political tradition. That tradition was grounded in natural law and natural rights theory. Rushdoony did not recognize in 1964 what ought to be obvious to any person who has read the tracts and treatises of that Constitutional generation: the American Deists of the second half of the eighteenth century adopted the same strategy of infiltration that the followers of neo-orthodox theologians Karl Barth and Emil Brunner adopted in the twentieth century, namely, *importing alien religious and philosophical principles under the cover of language that had long been considered Christian*. In fact, this process of infiltration has been going on in Christianity since the second century, as Van Til argued throughout his career. The difference by 1770, however, was that the anti-Christians in America were self-consciously using these alien Greek and Roman stoic concepts to undermine the religious and especially the judicial foundations of what was then clearly a Christian society. Christians had long invoked natural law philosophy as a support for orthodoxy. The main Framers of Constitutional nationalism—Washington, Franklin, Jefferson, Hamilton, John Adams, and Madison<sup>27</sup>—used natural law philosophy as a tool to undermine orthodoxy. Historian David Hawke is correct regarding Jefferson's writing of the Declaration of Independence in 1776: "He did more than summarize ideas accepted by all thoughtful Americans of the time. He intentionally gave new implications to old terms."<sup>28</sup>

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Bible-based social philosophy. Rushdoony did: by substituting biblical law for natural law.

27. Selections from the writings of the last five men comprise Koch's *The American Enlightenment*. See Adrienne Koch (ed.), *The American Enlightenment: The Shaping of the American Experiment and a Free Society* (New York: Braziller, 1965).

28. David Hawke, *A Transaction of Free Men: The Birth and Course of the Declaration of Independence* (New York: Scribner's, 1964), p. 3.

## B. Rushdoony's Error: Judicial Continuity

I think Rushdoony's error was both emotional and intellectual. He saw himself as one who was calling for a return to the theological and judicial foundations of the American experiment in freedom. This experiment was grounded in the Bible. But in his attempt to trace his own worldview back to the Framers, he neglected to adhere to the principles he learned from Van Til. He did not acknowledge the extent of the religious war that was in principle going on in the eighteenth-century American colonies. This is in direct contrast to anti-covenantal historians like Noll, Hatch, and Marsden, who have chosen to ignore the explicitly Christian covenantal foundations of pre-Constitution America, because they can point to the U.S. Constitution as the covenanting document of the nation.<sup>29</sup> They understand what Rushdoony refused to admit, namely, that *the U.S. Constitution is judicially anti-Christian*. It is an explicitly covenantal document; it is also explicitly not Christian. It was designed that way. But if it is *not Christian*, then it must be *anti-Christian*. There is no neutrality, after all.

Rushdoony argued that it was against just such a notion of an earth-bound final judicial sovereignty that the American Revolution was fought. Such a view of judicial sovereignty, he said, had been foreign to American political philosophy prior to 1788, for American political philosophy had been primarily Christian and Calvinist. He admitted, however, that the terminology of popular sovereignty had been influenced by the doctrine of the *political* sovereignty of the people.<sup>30</sup>

The problem with this line of reasoning is that there is no way to distinguish judicial sovereignty from political sovereignty in the documents of the Revolutionary War era. The Delaware Declaration of Rights of 1776 begins with this declaration: "That all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole."<sup>31</sup> The state constitutions usually began with a statement of natural rights. While no other state con-

29. Noll, Hatch, and Marsden, *The Search of Christian America* (Westchester, Illinois: Crossway, 1983). For my critique of this book, see Gary North, *Political Polytheism: The Myth of Pluralism* (Tyler, Texas: Institute for Christian Economics, 1989), ch. 5. (<http://bit.ly/gnpolpol>)

30. R. J. Rushdoony, *This Independent Republic: Studies in the Nature and Meaning of American History* (Vallecito, California: Ross House, [1964] 2001), ch. 4: "Sovereignty." (<http://bit.ly/rjrtir>)

31. Richard L. Perry and John C. Cooper, *The Sources of Our Liberties* (Chicago: American Bar Foundation, 1952), p. 338.

stitution began with a formal declaration of popular sovereignty, they all had a section stating this principle. Section V of Massachusetts spoke of “All power residing originally in the people, and being derived from them. . . .”<sup>32</sup> This means, it continued, that all public officials are answerable to the people. The same declaration of the people’s sovereignty was in Section VIII. Officials are “at all times accountable to” the people.<sup>33</sup>

By formally announcing the will of the people as politically sovereign, the constitutional documents revealed the extent to which the older theocratic foundations had been steadily undermined since John Locke’s *Second Treatise on Government*. The supposedly religiously neutral common-ground philosophy of natural law was believed in by all participants. The language of political sovereignty is found in all the state constitutions of the Revolutionary War era. It is also found in Blackstone’s *Commentaries on the Laws of England*, the common legal textbook of English common law, which was read widely in the colonies just before the outbreak of the Revolution. Rushdoony noted that nearly 2,500 copies of the *Commentaries* were sold in the colonies in the decade prior to the Revolution.<sup>34</sup> Nevertheless, Rushdoony never cited Blackstone directly; and the one quotation he cited from secondary sources was Blackstone’s defense of the absolute sovereignty of Parliament.<sup>35</sup> Had he read Blackstone, he would have had great difficulty in defending his own chapter on sovereignty. Consider Blackstone’s general statement: “Sovereignty and legislature are indeed convertible terms; one cannot subsist without the other.”<sup>36</sup> He went on to speak of “the natural, inherent right that belongs to the sovereignty of a state, wherever that sovereignty is lodged, of making and enforcing laws.”<sup>37</sup> This is surely the language of political sovereignty. I regard Rushdoony’s chapter on sovereignty as the weakest in *This Independent Republic*. He made it look as though the Constitution possessed judicial continuity with Christianity. It did not. It represented a fundamental break from Christianity, a break that the Lockean concept of humanistic sovereignty and civil compact had been eroding for almost a century. Rushdoony always believed that a restoration of Constitu-

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32. *Ibid.*, pp. 375.

33. *Ibid.*, pp. 383.

34. Rushdoony, *This Independent Republic*, p. 29.

35. *Ibid.*, p. 18 (from a book by Clarence Manion).

36. William Blackstone, *Commentaries on the Laws of England*, 4 vols. (University of Chicago Press, [1765] 1979), I, *The Rights of Persons*, p. 46.

37. *Ibid.*, I, p. 47.

tional order is the best strategy for Christian Reconstruction in the United States. Not only is this impossible eschatologically—time does not move backward—but it is naive judicially. In his desire to make the case for Christian America, he closed his eyes to the judicial break from Christian America: the ratification of the Constitution. The Christian cultural continuity of America was not able to be sustained by subsequent generations; the judicial break with Christianity had been definitive.

### C. Rushdoony's Rewriting of Constitutional History

It is this covenantal fact which Rushdoony, in his 30-year defense of the Constitution as an implicitly Christian document, refused to face. Indeed, he created a whole mythology regarding the oath in order to buttress his case. To an audience of Australian Christians, who could not be expected to be familiar with the U.S. Constitution, he said in 1983: "In every country where an oath of office is required, as is required in the United States by the Constitution, the oath has reference to swearing to almighty God to abide by His covenant, invoking the cursings and blessings of God for obedience and disobedience."<sup>38</sup> But what does the Constitution actually say? Exactly the opposite: "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." To put it mildly, this was deliberate deception. Rushdoony was determined not to face the facts of the U.S. Constitution, and he did not want his audience to do so, either.

To his audiotape audience, Rushdoony insisted the following with respect to the President's oath of office: "The Constitution required an oath of office. To us this doesn't mean much. Then it meant that you swore to Almighty God and involved all the curses and blessings of Deuteronomy 28 and Leviticus 26 for obedience and disobedience. Nobody knows that anymore."<sup>39</sup> Nobody knew it then, either. Deuteronomy 28 was about as far from George Washington's mind as might be imagined. Rushdoony never offered so much as a footnote supporting such a claim. By tradition, the President's oath of office has involved swearing loyalty to the Constitution with the left hand on a Bible. This

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38. Rushdoony, *The "Atheism" of the Early Church* (Blackheath, New South Wales: Logos Foundation, 1983), p. 77.

39. Rushdoony, question and answer session at the end of his message on Leviticus 8:1–13 (Jan. 30, 1987).



was Washington's tradition. It was a Masonic Bible, which has been used by numerous Presidents since then. Rushdoony's story was mythical. He pretended that the trinitarian oath-taking that did take place at the state level had somehow become a Christian oath-taking ceremony at the Federal level. The opposite was the case, and it was the statist element of the federal oath, which steadily replaced the theistic oaths in the states.

He wrote: "An oath to the men who wrote the Constitution was a Biblical fact and a social necessity."<sup>40</sup> If this was true, then why did they exclude God from the mandatory oath? They well understood the importance of oaths. Albert G. Mackey, the Masonic historian, wrote: "It is objected that the oath is attended with a penalty of a serious or capital nature. If this be the case, it does not appear that the expression of a penalty of any nature whatever can affect the purport or augment the solemnity of an oath, which is, in fact, an attestation of God to the truth of a declaration, as a witness and avenger; and hence every oath includes in itself, and as its very essence, the covenant of God's wrath, the heaviest of all penalties, as the necessary consequence of its violation."<sup>41</sup> They insisted on a required oath as the judicial (and psychological) foundation of a Federal officer's allegiance to the U.S. Constitution. Their insistence on the importance of oaths was not because they were all Christians; it was because so many of the leaders were Freemasons.<sup>42</sup> They had all sworn to a Masonic self-maledictory blood

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40. Rushdoony, "The United States Constitution," *Journal of Christian Reconstruction*, XII, No. 1 (1988), pp. 28–29.

41. Albert G. Mackey (ed.), *An Encyclopaedia of Freemasonry and Its Kindred Sciences*, 2 vols. (New York: Masonic History Co., [1873] 1925), II, p. 523.

42. James D. Carter, *Masonry in Texas: Background, History, and Influence to 1846* (Austin: University of Texas Press, 1955), chaps. 2,3, Appendix 2; Dorothy Ann Lipson, *Freemasonry in Federalist Connecticut* (Princeton, New Jersey: Princeton University Press, 1977), ch. 1; Sidney Morse, *Freemasonry in the American Revolution* (Washington, D.C.: Masonic Service Association, 1924); J. Hugo Tatsch, *Freemasonry in the Thirteen Colonies* (New York: Macoy, 1929); Tatsch, *The Facts About George Washington as a Freemason* (New York: Macoy, 1931); Philip A. Roth, *Masonry in the Formation of our Government, 1761–1799* (Wisconsin: Masonic Service Bureau, 1927). A comparative study of freemasonry in both the American and French revolutions is Bernard Faÿ, *Freemasonry and Revolution, 1680–1800* (Boston: Little, Brown, 1935). A non-Masonic historian who is familiar with Masonic historical records needs to produce a detailed study of the lodge membership of signers of both the Declaration of Independence and the Constitution. William J. Whalen said that a certain Gen. John C. Smith discovered that only six signers of the Declaration were lodge members, rather than the 55 claimed by Masons, but Whalen did not footnote this source nor mention it in his bibliography. William Whalen, *Christianity and American Freemasonry* (Milwaukee: Bruce, 1958), p. 6.

oath, for there was (and is) no other way to become a Mason. This is the most crucial neglected topic in the historiography of the Revolutionary War era, and especially the Constitutional Convention, which Rushdoony knew about from the beginning of his published career,<sup>43</sup> but which he refused to discuss publicly. The reader must search his footnotes for the appropriate bibliographical leads, and very few readers do this. He only discussed Freemasonry in relation to the French Revolution, which he knew was pagan to the core, and in relation to New England in the nineteenth century. This represented theological decline from a higher standard. "This decline came later. At the time of the Revolution and much later, New England and the rest of the country shared a common faith and experience."<sup>44</sup>

Absolutely crucial to his interpretation of Constitutional history is what he never mentioned: the legally secular ("neutral") character of Article VI, Clause 3. He pretended that it does not say what it says, and that it does not mean what it has always meant: *a legal barrier to Christian theocracy*. Instead, he rewrote history:

Forces for secularization were present in Washington's day and later, French sympathizers and Jacobins, deists, Illuminati, Freemasons, and soon the Unitarians. But the legal steps towards secularization were only taken in the 1950's and 1960's by the U.S. Supreme Court. For the sake of argument,, we may concede to the liberal, and to some orthodox Christian scholars,<sup>45</sup> that Deism had made extensive inroads into America by 1776, and 1787, and that the men of the Constitutional Convention, and Washington, were influenced by it. The fact still remains that they did not attempt to create a secular state. The states were Christian states, and the federal union, while barred from intervention in this area, was not itself secular. The citizens were citizens of their respective states and of the United States simultaneously. They could not be under two sets of religious law.<sup>46</sup>

This is mytho-history designed to calm the fears of Bible-believing Christians as they look back to the origin of the Constitution. Yes, the Framers created a secular state. The secular character of the Federal union was established by the oath of office. Politically, the Framers could not in one fell swoop create a secular state in a Christian coun-

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43. See his reference to Faÿ in *Nature of the American System*, p. 160n.

44. Rushdoony, *This Independent Republic*, p. 56.

45. He seems to have in mind here Singer's *Theological Interpretation of American History*, ch. 2: "Deism in Colonial Life."

46. Rushdoony, *Nature of the American System*, p. 56.

try; judicially and covenantally, they surely did. Hamilton made it clear in *Federalist* 27 that the oath of allegiance to the Constitution superseded all state oaths. That was why he insisted on it. Yet Rushdoony substituted the language of church worship when speaking of early American politics: "Officers of the federal government, president and congress, worshipped as an official body, but without preference extended to a single church."<sup>47</sup> This is true enough, but it implies a great deal more than denominational neutrality; it implies secularism. The practice led directly to the rise of religious pluralism, in which Christianity receives no notice as the nation's religion.

Today's secularism is not simply the product of Chief Justice Earl Warren and his court, let alone the theology of atheist Madalyn Murray O'Hair. It was implicit from 1788. It was made official in February, 1860, when the House of Representatives invited the first rabbi to give the invocation, only a few years after the first synagogue was established in Washington. They invited a New York rabbi, since no officially ordained rabbi was yet in Washington.<sup>48</sup> It took no Supreme Court decision to make this covenantal denial of a judicially Christian culture a reality. This was not the product of nineteenth-century Freemasonry. It was the product of late-eighteenth-century Freemasonry. It was an outworking of Article VI, Clause 3.

That a President might, as Washington did (and George H. W. Bush did two centuries later) swear his non-religious oath of office with his hand on a Masonic Bible, is legally and covenantally irrelevant. (That this same copy of the Bible was used by four other Presidents at their inaugurations is surely symbolically significant.)<sup>49</sup> An oath, to be judicially binding, must be *verbal*. It must call down God's sanctions on the oath-taker. This is what is specifically made illegal by the U.S. constitution. Any implied sanctions are secular, not divine. Without this self-maledictory aspect, a symbolic gesture is not a valid biblical oath. Rushdoony knew this, which is why he invented the myth of the Levitical and Deuteronomic "almost-oath." The Presidents have thrown a sop of a symbol to the Christians—one hand on a Bible while

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47. *Idem*.

48. Bertram W. Korn, "Rabbis, Prayers, and Legislatures," *Hebrew Union College Annual*, XXIII, Part II (1950–51), pp. 95–108. Part of the reason for this delay was that there had not been a Jewish congregation in Washington, D.C. until 1852, and they worshipped in homes until 1855. Those pastors asked to pray before Congress were usually local pastors (p. 109). The rabbi who gave the prayer was Dr. Morris J. Raphall of New York City.

49. *Life* (Feb. 1989), p. 8.

taking an explicitly and legally non-Christian oath—and the Christians have accepted this as being somehow pleasing in God’s eyes.

## D. Covenants and Sanctions

Every covenant has sanctions. Without sanctions, there is no covenant. Rushdoony knew this, which is why he invoked Leviticus 26 and Deuteronomy 28: they set forth God’s sanctions in history. The Constitution is a covenant document. He wrote that “the Constitution is not only a law but also a contract or covenant.”<sup>50</sup> The question is: Whose sanctions are invoked by this covenant document? Clearly, autonomous man’s sanctions. Rushdoony knew this. So, he was forced to restructure all political theory in order to create a justification of this absence of any reference to God’s law or God’s sanctions in the Constitution. He moved his discussion from the oath to mere technical procedure: “*Second*, we must remember that the Constitution can make no man nor nation good; it is not a moral code. It does not give us a substantive morality, but it does reflect a procedural morality.”<sup>51</sup>

### 1. Judicial Procedure

Notice, first, that this is basically the same language he first introduced on his 1987 interview with Bill Moyers on national television. His essay used terms that are found in technical legal discussions; we do not find anything like this language in his earlier writings. Perhaps he consulted a law professor. If so, he weakened his theological case. Law professors are concerned with judicial procedure because of the nature of the adversarial system of American law. Modern legal theory assumes that substantive (righteous) judgment is the result of procedurally rigorous but morally neutral confrontations between lawyers. Contrast this outlook with what Rushdoony wrote in 1975: “In the Anglo-American tradition of jurisprudence, the Biblical revelation has been decisive. The purpose of law is to codify and enforce the moral system of Biblical faith. The common law embodied this purpose.”<sup>52</sup>

What he refused to ask was this: *What if judicial procedure is not religiously neutral?* It should have been an obvious question for Rushdoony; he made it his standard practice in all other areas of his writ-

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50. Rushdoony, “U.S. Constitution,” *JCR* (1988), p. 21.

51. *Ibid.*, p. 22.

52. R. J. Rushdoony and Fred André, “The Adversary Concept,” *Journal of Christian Reconstruction*, II (Winter 1975–76), pp. 29–30.

ings to deny the possibility of religious neutrality in any area of life. If judicial procedure is not religiously neutral, then it is either covenant-keeping or covenant-breaking procedure. Covenant-breaking procedure will tend to produce immoral outcomes. It is not some neutral judicial tool. This should be obvious to anyone who has studied Van Til. It was not obvious to Rushdoony, or even a question to be considered, when he discusses the U.S. Constitution. He adopted the epistemological position of eighteenth-century humanism whenever he discussed the Constitution.

## 2. Making People Good

Second, notice the shift in his argument: the Constitution cannot make anyone good. This is the standard humanist line against all Christian legislation: “You can’t legislate morality!” What Rushdoony always maintained is that you can’t legislate *anything except morality*. As he wrote in the *Institutes of Biblical Law* (1973), “But, it must be noted, *coercion against evil-doers is the required and inescapable duty of the civil authority.*”<sup>53</sup> Again, “law is a form of warfare. By law, certain acts are abolished, and the persons committing those acts either executed or brought into conformity to law.”<sup>54</sup>

Of course the Constitution cannot make anyone good. Furthermore, the purpose of biblical civil law is not to make anyone good; it is *to suppress public evil*. Four years earlier, Rushdoony had stated this judicial principle clearly with respect to the purposes of civil law. “It is impossible to separate morality from law, because civil law is simply one branch of moral law, and morality is the foundation of law. Laws cannot make men good; that is the work of the Holy Spirit. But laws can prevent men from doing evil.”<sup>55</sup> Again, while “man can be *restrained* by strict law and order, he cannot be *changed* by law; he cannot be saved by law.”<sup>56</sup> For 30 years, Rushdoony previously had argued

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53. Rushdoony, *The Institutes of Biblical Law* (Nutley, New Jersey: Craig Press, 1973), p. 292. Contrast this statement with the following position taken in the *Journal of Christian Reconstruction*: “God did not make salvation coercive. Neither is morality coercive. . . . Punishing sin is *not* a role delegated to civil government.” Tommy W. Rogers, “Federalism and Republican Government: An Application of Biblically Derived Cultural Ethos to Political Economy,” vol. XII, No. 1 (1988), p. 95.

54. *Ibid.*, p. 191. See also pp. 92–95.

55. Rushdoony, *Bread Upon the Waters* (Nutley, New Jersey: Craig Press, 1969), p. 15.

56. Rushdoony, *Law and Liberty* (Vallecito, California: Ross House, [1971] 2009), p. 3. (<http://bit.ly/rjrlal>)

that any other view of civil law is the “works doctrine” of all non-Christian religion: *salvation by law*. This is humanism’s view, he always insisted: “Humanistic law aims at saving man and remaking society. For humanism, salvation is an act of state.”<sup>57</sup> Again, “Man finds salvation through political programs, through legislation, so that *salvation is an enactment of the state*.”<sup>58</sup> What is the Christian alternative? To enforce God’s law and God’s sanctions in history, and *only* God’s law and God’s sanctions.

The second aspect of *man under law* is that man’s relationship to law becomes *ministerial, not legislative*, that is, man does not create law, does not decree what shall be right and wrong simply in terms of his will. Instead, man seeks, in his law-making, to approximate and administer fundamental law, law in terms of God’s law, absolute right and wrong. Neither majority nor minority wishes are of themselves right or wrong; both are subject to judgment in terms of the absolute law of God, and the largest majority cannot make valid and true a law contrary to the word of God. All man’s law-making must be in conformity to the higher law of God, or it is false.<sup>59</sup>

A fourth aspect of man under law is that *law means true order as justice*. The law is justice, and it is order, godly order, and there can be neither true order nor true law apart from justice, and justice is defined in terms of Scripture and its revelation of God’s law and righteousness. The law cannot be made more than justice. It cannot be made into an instrument of salvation without destruction to justice. Salvation is not by law but by the grace of God through Jesus Christ.<sup>60</sup>

The issue is *justice, not salvation*. So, why did he raise here the spurious issue that the Constitution “can make no man nor nation good; it is not a moral code”? This is utter nonsense; *every law-order is a moral code*. This had been Rushdoony’s refrain for 30 years! As he wrote in the *Institutes*, there is “an absolute moral order to which man must conform.”<sup>61</sup> He insisted therefore that “there can be no tolerance in a law-system for another religion. Toleration is a device used to introduce a new law-system as a prelude to a new intolerance.”<sup>62</sup> In this

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57. *Idem*.

58. Rushdoony, *Politics of Guilt and Pity* (Vallecito, California: Ross House: Ross House, [1970] 1995), p. 145.

59. *Ibid.*, p. 143.

60. *Ibid.*, p. 144.

61. Rushdoony, *Institutes*, p. 18.

62. *Ibid.*, p. 5.

sentence, he laid the theological foundation for a biblical critique of the U.S. Constitution as a gigantic religious fraud, a rival covenant, “a device used to introduce a new law-system as a prelude to a new intolerance,” which it surely was and has become. But he has been blinded for 30 years by his love of the Constitution. In a showdown between his theocratic theology and the U.S. Constitution, he chose the Constitution. He did this early, before he had written *Institutes of Biblical Law*. He refused to alter his views regarding the supposed biblical legitimacy of the Constitution in light of his fully developed theology.

### *3. Prohibiting Judicial Evil*

He said in 1988 that it will do no good for Christians to appeal to the Constitution. “The Constitution can restore nothing, nor can it make the courts or the people just.”<sup>63</sup> The courts are the enforcing arm of the Constitution, which supposedly cannot make the courts good. Of course it cannot; but a Constitution can and must *prohibit evil, lawless decisions by lower courts*. It must reverse all lower court decisions that are not in conformity to the fundamental law of the land. This is the doctrine of judicial review. This is the whole idea of American Constitutional law. Rushdoony knew this. In 1973, he appealed to that crucial covenantal and legal concept: *sanctions*. He warned Christians that the concept of treason is inescapably religious:

But no law-order can survive if it does not defend its core faith by rigorous sanctions. The law-order of humanism leads only to anarchy. Lacking absolutes, a humanistic law-order tolerates everything which denies absolutes while warring against Biblical faith. The only law of humanism is ultimately this, that there is no law except self-assertion. It is “Do what thou wilt.” . . . To tolerate an alien law-order is a very real subsidy of it: it is a warrant for life to that alien law-order, and a sentence of death against the established law-order.<sup>64</sup>

## **E. The Death Warrant**

The Framers at the Constitutional Convention issued a death warrant against Christianity, but for tactical reasons, they and their spiritual heirs refused for several generations to deliver it to the intended victims. They covered this covenantal death sentence with a lot of platitudes about the hand of Providence, the need for Morality, the

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63. Rushdoony, “U.S. Constitution,” p. 39.

64. Rushdoony, *Institutes*, pp. 66, 67.

grand design of the universe, and similar Masonic shibboleths. The death sentence was officially delivered by the Fourteenth Amendment. It has been carried out with escalating enthusiasm since the 1950s. But Rushdoony dared not admit this chain of covenantal events. He wrote as though everything humanistic in American life is the product of a conspiracy of New England's Unitarians and the radical Republicans of the Civil War era. To admit the historical truth of 1787–88 would mean that a restoration of so-called "original American Constitution-ism" would change nothing covenantally. The nation would still rest judicially on an apostate covenant.

The Constitution must prevent treason. Every constitution must. Treason is always a religious issue. The question must be raised: In terms of the U.S. Constitution, what constitutes treason, Christianity or pluralism (secular humanism)? If you want to see the change in Rushdoony's thinking, consider these observations:

[1973:] The question thus is a basic one: what constitutes treason in a culture? Idolatry, i.e., treason to God, or treason to the state?<sup>65</sup>

[1973:] Because for Biblical law the foundation is the one true God, the central offense is therefore treason to that God by idolatry. Every law-order has its concept of treason. . . . Basic to the health of a society is the integrity of its foundation. To allow tampering with its foundation is to allow its total subversion. Biblical law can no more permit the propagation of idolatry than Marxism can permit counter-revolution, or monarchy a move to execute the king, or a republic an attempt to destroy the republic and create a dictatorship.<sup>66</sup>

[1973:] The commandment is, "Thou shalt have no other gods before me." In our polytheistic world, the many other gods are the many peoples, every man his own god. Every man under humanism is his own law, and his own universe.<sup>67</sup>

[1988:] The Constitution is no defense against idolatry; . . .<sup>68</sup>

## F. The Problem of Dualism

Here is a basic dualism of all humanistic thought: ethics vs. procedure in the judicial system. Max Weber, the great German sociologist, spent considerable space dealing with this dualism, and I devoted

65. *Ibid.*, p. 68.

66. *Ibid.*, pp. 38–39.

67. *Ibid.*, p. 40.

68. Rushdoony, "U.S. Constitution," p. 43.



a section of my essay on Weber to just this topic in Chalcedon's book of essays honoring Van Til.<sup>69</sup> I concluded that discussion with this warning: "Weber's vision of the increasingly bureaucratic, rationalized society hinged on the very real probability of such a subordination of substantive law to formal law. . . . He hated what he saw, but he saw no escape. Bureaucracy, whether socialistic or capitalistic, is here."<sup>70</sup>

In the late 1980s, reversing his entire intellectual career (except for his early view on the Constitution as somehow an implicitly Christian document), including his commitment to Van Til's presuppositional apologetics, as well as his commitment to biblical law, Rushdoony said that the Constitution's procedural morality can be *and is* legitimately religiously neutral, and that any interest group can adopt the Constitution's procedural morality to create whatever law-order they choose, without violating the text of the nation's covenanting document. *But the text is all there is of the underlying religious foundation.* If the text were silent, then there would be no formal underpinning. But the text is not silent. The text categorically prohibits the imposition of the biblical covenant oath in civil law. Let us put it covenantally: *what the text of the U.S. Constitution prohibits is Christianity.*

There can be no ultimate dualism in a covenantal document. It either serves the God of the Bible or some other god. There can be no neutral ground adjudicating between the God of the Bible and any rival authority. Constitutions are inherently substantive; their ethical foundations are manifested in their procedural stipulations. Rushdoony built the case for biblical law in society by arguing that every covenant requires a unique law structure that reflects its concept of ultimate authority, i.e., *sovereignty*. Rushdoony rejected as "heretical nonsense"<sup>71</sup> Calvin's guarded affirmation in the *Institutes* of a universal law of nations in preference to Mosaic law—a position which Calvin rejected in his sermons on Deuteronomy 28.<sup>72</sup> (That Calvin was no

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69. Gary North (ed.), *Foundations of Christian Scholarship: Essays in the Van Til Perspective* (Vallecito, California: Ross House Books, 1976), pp. 141–46.

70. *Ibid.*, p. 146.

71. Rushdoony, *Institutes of Biblical Law*, p. 9.

72. Calvin wrote: "I would have preferred to pass over this matter in utter silence if I were not aware that here many dangerously go astray. For there are some who deny that a commonwealth is duly framed which neglects the political system of Moses, and is ruled by the common law of nations. Let other men consider how perilous and seditious this notion is; it will be enough for me to have proved it false and foolish." *Institutes of the Christian Religion*, IV:20:14. Ford Lewis Battles Translation (Philadelphia: Westminster Press, 1960), p. 1502. He was speaking here of revolutionary Anabaptists who denied the legitimacy of non-"Hebraic" political commonwealths. A few pages

theonomist is clear; that he was no defender of secular natural law theory is also clear. The *Institutes* are misleading if read apart from his other writings on civil law.)<sup>73</sup>

So, following his lead, I cannot but conclude that his distinction—indeed, *dualism*—between the Constitution’s supposedly neutral procedural law and the supposedly implicit Christian religious foundations of America is simply nonsense. It is an affirmation of neutrality that cannot possibly exist, if Van Til is correct. Constitutional procedure is the covenantal development of the religious foundation of that covenant: in church, state, and family. To argue that a system of covenantal procedural sanctions is anything but a judicial development of the underlying covenantal law-order is to adopt a domestic version of the natural law (equity) of nations, and we know what Rushdoony used to think of that idea.<sup>74</sup>

Rushdoony did admit that there is nothing in the U.S. Constitution to protect itself from the transformation from substantive (ethical) law to procedural (bureaucratic) law. “The U.S. Constitution gives us no substantive morality, only a procedural one.”<sup>75</sup> This worldwide legal transformation is the crisis of Western civilization, wrote Harvard legal historian Harold J. Berman,<sup>76</sup> yet Rushdoony said that the U.S. Constitution is inherently powerless to do anything about it. His assess-

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later, he referred to the notion of *equity*, which he left conveniently devoid of specific judicial content: “It is a fact that the law of God which we call the moral law is nothing else than a testimony of natural law and of that conscience which God has engraved upon the minds of men. Consequently, the entire scheme of this equity of which we are now speaking has been prescribed in it. . . . Whatever laws shall be framed to that rule, directed to that goal, bound by that limit, there is no reason why we should disapprove of them, howsoever they may differ from the Jewish law, or among themselves. . . . For the statement of some, that the law of God given through Moses is dishonored when it is abrogated and new laws preferred to it, is utterly vain. For others are not preferred to it when they are more approved, not by a simple comparison, but with regard to the condition of times, place, and nation; or when that law is abrogated which was never enacted for us. For the Lord through the hand of Moses did not give that law to be proclaimed among all nations and to be in force everywhere. . . .” *Ibid.*, pp. 1504–5. On Calvin’s hostility to the revolutionary Anabaptists, see Willem Balke, *Calvin and the Anabaptist Radicals*, trans. William Heynen (Grand Rapids, Michigan: Eerdmans, [1973] 1981).

73. In his sermons on Deuteronomy 28, he reaffirmed the Old Testament’s penal sanctions: *The Covenant Enforced: Sermons on Deuteronomy 27 and 28*, ed. James B. Jordan (Tyler, Texas: Institute for Christian Economics, 1989).

74. Rushdoony, *Institutes*, p. 9.

75. Rushdoony, “U.S. Constitution,” p. 36.

76. Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, Massachusetts: Harvard University Press, 1983), Introduction.

ment of the U.S. Constitution—that it is only a procedural document—is the same as saying that logic is only procedural or liturgy is only procedural, or that church government is only procedural, or that family government is only procedural. In short, he was saying what Van Til denied: that form can be segregated from content, ethically speaking. Rushdoony wrote in the *Institutes* that “The basic premise of the modern doctrine of toleration is that all religious and moral positions are equally true and equally false.”<sup>77</sup> This is exactly the worldview which the Framers wrote into the Constitution when they abolished state religious tests for holding Federal office.

I cannot avoid the obvious conclusion: if a defense of the U.S. Constitution as being somehow inherently Christian, or in some way fundamentally conformable to Christianity, is the position of the Christian Reconstruction movement, this means the suicide of Christian Reconstructionism. Rushdoony said it best: “The modern concept of total toleration is not a valid legal principle but an advocacy of anarchism. Shall all religions be tolerated? But, as we have seen, every religion is a concept of law-order. Total toleration means total permissiveness for every kind of practice: idolatry, adultery, cannibalism, human sacrifice, perversion, and all things else. Such total toleration is neither possible nor desirable. . . . And for a law-order to forsake its self-protection is both wicked and suicidal.”<sup>78</sup>

## G. Defending Madison

Rushdoony correctly observed that politicians understand that each group votes its conscience and/or its pocketbook; the politicians know that there is no neutrality. Factions are a denial of the myth of neutrality, he argued.<sup>79</sup> This is a correct observation. He called such politicians hypocrites. This is an unfair accusation. If they are hypocrites, then anyone who defends the U.S. Constitution while also denying neutrality is equally vulnerable to this accusation of hypocrisy. In the American political tradition, factions are an institutional affirmation of neutrality.

Rushdoony knew very well where the theory of the “politics of faction” comes from: James Madison’s *Federalist 10*. But his love of the Constitution made him a necessary supporter of Madison. In one of

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77. Rushdoony, *Institutes*, p. 295.

78. *Ibid.*, p. 89.

79. Rushdoony, *Nature of the American System*, p. 79.

the most startling about-faces in intellectual history—page 68 vs. page 73—he assured us that Madison did not believe in neutrality. “First of all, Madison denied the doctrine of neutralism. He denied the Enlightenment faith in the objectivity of reason, which, in Christian terms, he saw as inalienably tied to self-love. Man’s reasoning is thus not objective reasoning; it is personal reasoning and will thus be governed by ‘the nature of man’ rather than an abstract concept of rationality.”<sup>80</sup> This, quite frankly, makes no sense. If you doubt me, read it again. If taken literally, it would lead to a dead end for all public policy, institutional paralysis in the name of Constitutional law. If a civil government makes any decision, it must do so in terms of a particular moral and legal framework. It usually does so in the name of the common good. There is no such thing as *neutral* common good. Madison hated the churches, hated the concept of Christendom, and self-consciously devised the Constitution to create multiple factions that would cancel each other out. But he obviously had to make a crucial though unstated assumption: that whatever remains after the factions had cancelled themselves out is the common good—the *religiously neutral* common good.

The fact that Madison did not appeal to an abstract concept of rationality is irrelevant. The Framers, both individually and as a faction, always balanced their appeals to abstract rationality with an appeal to historical experience. This, as Van Til argued, is what covenant-breaking men have done from the beginning. This is the old Parmenides-Heraclitus dualism. Madison appealed to reason, experience, common sense, morality, and any other slogan he could get his hands on. “The free system of government we have established is so congenial with reason, with common sense, and with universal feeling, that it must produce approbation and a desire of imitation, as avenues may be found for truth to the knowledge of nations.”<sup>81</sup> So did his colleagues. These men were politicians, first and foremost. If a slogan would sell the Constitution, good; if a brilliant idea would, excellent; if a convoluted or improbable argument would, fine. It was all grist for their unitarian mill. Christians should not be deceived, especially self-deceived.

James Madison was a covenant-breaking genius, and the heart and

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80. *Ibid.*, p. 84.

81. Cited in Adrien Koch, *Power, Morals, and the Founding Fathers: Essays in the Interpretation of the American Enlightenment* (Ithaca, New York: Cornell University Press, [1961] 1975), p. 105.

soul of his genius was his commitment to religious neutralism. He devised a Constitution that for two centuries has fooled even the most perceptive Christian social philosophers of each generation into thinking that Madison was not what he was: a unitarian theocrat whose goal was to snuff out the civil influence of the trinitarian churches whenever they did not support his brainchild. For two centuries, his demonic plan has worked.

Rushdoony's equating of Enlightenment rationalism with *a priori* rationalism, and then his denial that the Americans ever affirmed *a priori* rationalism, was at the heart of his general myth that there was never a serious Enlightenment in colonial America. It was also at the heart of the traditional conservatives' myth that Burkean conservatism was not part of the Enlightenment. Both views are myths. Burke was in correspondence with all the major figures of the Scottish Enlightenment; they were all intellectual colleagues. They were all members of the right wing of the Enlightenment, just as F. A. Hayek was. There was no one left on either side of the Atlantic who was publicly preaching the Puritan view of the covenant, meaning covenant law and covenant oaths. They had all returned to the leeks and onions of Egypt.

The point is, in order to make public policy, there must be a concept of the common good. Biblically, there are only two choices available: a covenant-keeping common good or a covenant-breaking common good. The best that can be said for a covenant-breaking common good is that it may correspond outwardly to God's revealed law's standards for public policy. It is therefore a *common grace* common good. But as Christianity fades in influence, and as covenant-breakers become more consistent, this element of common grace will necessarily fade. This is what has happened all over the world as Christianity has been replaced by either right wing Enlightenment empiricism-experimentalism or left wing Enlightenment *a priorism*. It does not make any long-term difference whether the legal system is based on humanistic common law or humanistic Napoleonic law; the end result is humanism. *There is no neutrality.*

## H. The Question of Sovereignty

Rushdoony's rewriting of U.S. history went on from the beginning. In the *Institutes of Biblical Law*, he said that "The presidential oath of office, and every other oath of office in the United States, was in earlier years recognized precisely as coming under the third commandment,

and, in fact, invoking it. By taking the oath, a man promised to abide by his word and his obligations even as God is faithful to His word. If he failed, by his oath of office, the public official invoked divine judgment and the curse of the law upon himself."<sup>82</sup> This is Presidential mytho-history.

Rushdoony's view of U.S. political history was heavily influenced by a bizarre idea that he picked up in a speech by President John Quincy Adams,<sup>83</sup> who shared his President father's unitarian theology. So far as I know, no one else has maintained the following interpretation: the U.S. Constitution rests on no concept of God because the Framers believed that only God has legal sovereignty. In his brief chapter on "Sovereignty," Rushdoony wrote this of American thought during the 1780s: "*Legal* sovereignty was definitely denied. . . ."<sup>84</sup> He said this distrust of legal sovereignty "was both early medieval and Calvinist." He offered no evidence for this statement. The thesis is sufficiently peculiar that some reference to primary source documentation is mandatory, but none was offered. He refused to define what he meant by "legal sovereignty," which makes things even more difficult. He cited some historians on Americans' opposition to the sovereign state, but it is clear from the context that their hostility was to a centralized, monopolistic sovereignty, which is not the point Rushdoony was trying to make.

The question Rushdoony attempted for three decades to avoid answering from the historical record is this one: *Why did the Framers refuse to include a trinitarian oath?* If the states had such oaths—and they did—and the Patriot party regarded the colonies as legal, sovereign civil governments under the king, which is the thesis of *This Independent Republic*, then why not impose the oath requirement nationally? The presence of an oath is basic to any covenant, as Rushdoony knew. The question is: *Who is the identifiable sovereign in the Federal covenant?* And the answer of the Framers was clear, "We the People." Not we the states, but "We the people." It is right there in the Preamble.

## 1. *We the People*

Patrick Henry recognized what was implicitly being asserted in the

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82. Rushdoony, *Institutes*, p. 111.

83. Cited in Rushdoony, *This Independent Republic*, p. 36.

84. *Ibid.*, p. 31.

Preamble. In the Virginia debate over ratification in 1788, he spoke out against ratification. He warned against the implications of “We the People”:

Give me leave to demand, what right had they to say, “We the People,” instead of “We the States”? States are the characteristics, and the soul of a confederation. If the States be not the agents of this compact, it must be one great consolidated national government of the people of all the States. . . . Had the delegates, who were sent to Philadelphia a power to propose a consolidated government instead of a confederacy? Were they not deputed by States, and not by the people? The assent of the people, in their collective capacity, is not necessary to the formation of a federal government. The people have no right to enter into leagues, alliances, or confederations: they are not the proper agents for this purpose: States and sovereign powers are the only proper agents for this kind of government. Show me an instance where the people have exercised this business: has it not always gone through the legislatures? . . . This, therefore, ought to depend on the consent of the legislatures.

Henry said emphatically of the delegates to the Philadelphia Convention, “The people gave them no power to use their name. That they exceeded their power is perfectly clear.”<sup>85</sup> Rushdoony, for all his praise of Henry’s Christianity, steadfastly refused to discuss the religious and judicial foundation of Henry’s opposition to ratification. This was not an oversight on Rushdoony’s part. He knew exactly why Henry objected. Henry knew where this new government was headed. And so it has.

The Constitution was ratified under the presumption of the sovereignty of the people. But it was more than mere presumption: it is right there at the beginning of the document. Here is why there is no trinitarian oath in the Constitution: the Framers were operating under the legal fiction that the sovereign People, not the God of the Bible, had authorized the new national covenant.<sup>86</sup> “We the People” were not the vassals of the Great King in this treaty; “We the People” were the great king, and there shall be no other gods beside “We the People.”

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85. I am using the version in Norine Dickson Campbell, *Patrick Henry: Patriot and Statesman* (Old Greenwich, Connecticut: Devin-Adair, 1969), p. 338. This statement appears in *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787*, ed. Jonathan Elliot, 5 vols. (Philadelphia: Lippincott, [1836] 1907), III, p. 22.

86. Edmund S. Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York: Norton, 1988).

Thus, the Framers outlawed religious oaths. *Outlawed!* Yet this crucial Constitutional provision is rarely mentioned today. The humanist defenders of the Constitution automatically assume it, and the Christian defenders either do not recognize its importance, or else do not want to face its obvious implications. Instead, the debate has focused on Congress and the freedom of religion. This provision is not the heart of the Constitutional covenant; it is merely an application of it.

## 2. *Only Earthly Sovereignty*

It was hardly the case that the Framers had no concept of earthly legal sovereignty. It was that they had *only* a concept of earthly legal sovereignty. They wanted divine rights—not of kings, not of legislatures, but of the People. The divine right of kings doctrine meant that no one and no institution could appeal any decision of the king; he was *exclusively* sovereign under God. This was exactly what the oath of Article VI, Clause 3 was intended to convey: *no appeal*. The national government was the final voice of the people, for it operated under the treaty of the great collective king: the Constitution. This was why the Framers insisted on requiring an oath of allegiance to the Constitution that made illegal any judicial allegiance to God by Federal officers. The oath made the Federal government sovereign. This is exactly what Hamilton announced in *Federalist 27*.<sup>87</sup> Yet Rushdoony never abandoned this bit of mytho-history regarding the idea of sovereignty in the early American period in order to justify his defense of the Constitution. He made orthodox Christian theologians out of the Framers. “The Constitution is unique in world history in that there is

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87. Rushdoony pointed to an incident late in Hamilton’s career that indicates Christian faith, Hamilton’s call to create a Christian political party just before he was killed. He relates this in his taped lecture on Leviticus 8:1–13. What Rushdoony was referring to is Hamilton’s 1802 call for a “Christian Constitutional Society.” This society was not to be a separate political party, but a means of challenging atheism in politics generally, especially the Jeffersonians. It was to be a network of political clubs. He also proposed the creation of charitable societies, a Christian welfare program. Hamilton’s biographer Jacob Cooke pointed out that this concern for Christianity came only after he had lost all political influence nationally. “Perhaps never in all American political history has there been a fall from power so rapid, so complete, so final as Hamilton’s in the period from October, 1799, to November, 1800.” Cooke, *Alexander Hamilton: A Profile* (New York: Hill & Wang, 1967), p. 246. While Cooke believed that Hamilton was actually transformed internally, he ties this to his loss of political influence. In short, when he had power, Hamilton was not a Christian, and he helped to destroy the remaining Christian civil foundations of the national government.



no mention of sovereignty, because sovereignty was recognized as being an attribute of God.”<sup>88</sup> Indeed, sovereignty truly was seen by them as an attribute of God, and they identified this god in the Preamble: the People.

The transformation of Rushdoony’s biblical judicial theology of the early 1970s into a theological defense of judicial neutrality in the late 1980s was accurately predicted . . . by Rushdoony: “If a doctrine of authority embodies contradictions within itself, then it is eventually bound to fall apart as the diverse strains war against one another. This has been a continuing part of the various crises of Western civilization. Because the Biblical doctrine of authority has been compromised by Greco-Roman humanism, the tensions of authority have been sharp and bitter.”<sup>89</sup> No sharper and no more bitter than in the remarkable case of *Rushdoony v. Rushdoony*.

## I. A Matter of Polytheism

Rushdoony began *The Nature of the American System* with this observation: “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.”<sup>90</sup> He never retreated from this position; indeed, he escalated his commitment to it—so much so, that he undercut the covenantal foundation of *The Institutes of Biblical Law*.

The problem with the U.S. Constitution was and is *polytheism*. Rushdoony described the problem of political polytheism: “Modern political orders are polytheistic imperial states, but the churches are not much better. To hold, as the churches do, Roman Catholic, Greek Orthodox, Lutheran, Calvinist, and all others virtually, that the law was good for Israel, but that Christians and the church are under grace and without law, or under some higher, newer law, is implicit polytheism.”<sup>91</sup> But he always refused to identify the obvious polytheism of the Constitution. Thus, he has had to explain modern political pluralism

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88. This was his reply to Otto Scott’s comment about the U.S. being the first nation to establish itself without reference to God. Q & A, Leviticus sermon, Jan. 30, 1987.

89. Rushdoony, *Institutes of Biblical Law*, p. 213.

90. Rushdoony, *Nature of the American System*, p. 7.

91. Rushdoony, *Institutes*, p. 18.

as a deviation from the Constitution rather than its inevitable product.

The ratification of the U.S. Constitution in June of 1788 created a new nation based on a new covenant. It placed the new nation under a “higher, newer law.” The nation had broken with its Christian judicial roots by covenanting with a new god, the sovereign People. There would be no other God tolerated in the political order. There would be no appeal beyond this sovereign god. That collective god, speaking through the Federal government, began its inevitable expansion, predicted by the Anti-Federalists, most notably Patrick Henry. The secularization of the republic began in earnest. This process has not yet ceased.

Nevertheless, the surrender to secular humanism was not an overnight process. The rise of Unitarian abolitionism, the coming of the Civil War, the advent of Darwinism, the growth of immigration, the spread of the franchise, the development of the public school system, and a host of other social and political influences have all worked to transform the interdenominational American civil religion into a religion not fundamentally different from the one that Jeroboam set up, so that the people of the Northern Kingdom might not journey to Jerusalem in Judah to offer sacrifices (I Ki. 12:26–31). The golden calves may not be on the hilltops today, but the theology is the same: religion exists to serve the needs of the state, and the state is sovereign over the material things of this world. There are many forms of idol worship. The worship of the U.S. Constitution has been a popular form of this ancient practice, especially in conservative Christian circles.

The sanctions of the pre-Constitutional colonial covenants are still binding in God’s court. One cannot break covenant with the Great King. He will bring additional negative corporate sanctions unless those original covenants are renewed. This, however, requires that we break covenant with the present god of this age, the People. The People are under God as legally protected vassals. If this is not acknowledged covenantally and formally, then the common people will eventually find themselves under tyrants as legally unprotected vassals.

## **J. Anabaptism or Covenantalism**

Why did Rushdoony steadfastly refuse to see this? The easiest explanation is covenantal. He always refused to acknowledge the ecclesiastical aspects of theocratic civil government. He correctly saw that the institutional church should not give orders to the state, but he nev-

er faced the hard question of the suffrage: How can non-trinitarians be allowed to vote in a theocratic nation? Obviously, they would not be allowed to vote. Those not under the covenant should not be allowed to impose civil sanctions.

This raises the question of *which* covenantal authority, or more to the point, *authorities*? Who is to determine whether a person is a Christian? There can be only one Bible-based answer: a trinitarian local assembly or synod. A person can be regarded judicially as a Christian only if he is a member in good standing in a local assembly or presbytery. Everyone else is outside a church covenant and therefore cut off from the sacraments by self-excommunication. Judicially speaking, a person who does not have legal access to the sacraments is not a Christian, nor is someone who refuses to take the sacraments. Men cannot lawfully search other men's hearts; they must make public decisions and judgments in terms of other men's professions of faith and their outward obedience to God's law. God's law requires people to be baptized, to subordinate themselves to a church, and to take the sacrament of the Lord's Supper on a regular basis. Those who refuse are outside the church covenant. Therefore, in a theocratic republic, they would not be entitled to impose civil sanctions.

This raises the other question that he has always avoided: the state must identify which churches are trinitarian and therefore whose members are authorized to vote. A Christian republic inevitably must face the question analogous to the one today disturbing the State of Israel: Who is a Jew?

## Conclusion

On this dual point—the question of civil sanctions and ecclesiastical sanctions—Rushdoony remained conspicuously silent throughout his career, but his actions in the 1980s indicate that he sided with the Baptists and Anabaptists in American history, i.e., church membership as having nothing to do with voting or holding civil office. This conclusion led him straight into the pluralistic arms of Roger Williams. There is no halfway house between John Winthrop and Roger Williams. There is no halfway covenant. There is no neutrality.

Instead, there are church sacraments. These are the foundation of Christian civilization—not the franchise, not the gold standard, not the patriarchal family, not the tithe to parachurch ministries, and not

independent Christian education. *The sacraments*.<sup>92</sup> Deny this, and you necessarily deny the biblical church covenant as well as the biblical civil covenant. Rushdoony implicitly denied both. The sign of this denial is his life-long designation of the U.S. Constitution as an implicitly Christian covenant, meaning a halfway national covenant. That was what the Articles of Confederation constituted; the Constitution is apostate.

2004 note: This essay appeared as Appendix B in *Political Polytheism*. Except for a few words added for clarification, I did not revise this appendix except to (1) add footnote 28, (2) replace “Founders” with “Framers,” and (3) shift verb tenses to the past tense, due to Rushdoony’s death in 2001. He did not respond to this 1989 essay, which was always his policy: never respond to critics. It is an unwise policy strategically. It makes it look as though you cannot respond. Of course, if you really cannot respond, then the policy makes sense. Nevertheless, an author can publish clarifications regarding what he believes and does not believe in response to inaccurate representations of his position. Rushdoony refused to do this from 1989 until his death in 2001. I think the reason for silence is that he could not reconcile his conflicting positions: his biblical presuppositionalism vs. his defense of the Constitution. He never wavered in this defense of the Constitution, from *This Independent Republic* until the end of his life. He sacrificed the basics of his philosophy –Van Til’s presuppositionalism, Calvin’s covenant theology, biblical law, and the idea that neutrality is always a myth—on the altar of this false deity: the U.S. Constitution. It was a high price to pay.

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92. Understand, I mean the sacraments as covenant-sealing (baptism) and covenant-renewing (Lord’s Supper). I see the sacraments as *judicial*, in opposition to both Protestant nominalism (memorials) and Roman Catholic realism (infusions of grace).



A letter which I have just received from Genl Knox, who had just returned from Massachusetts (whither he had been sent by Congress consequent of the commotion in that State) is replete with melancholy information of the temper, and designs of a considerable part of that people. Among other things he says,

there creed is, that the property of the United States, has been protected from confiscation of Britain by the joint exertions of *all*, and therefore ought to be the *common property* of all. And he that attempts opposition to this creed is an enemy to equity and justice, and ought to be swept from off the face of the Earth. . . .

How melancholy is the reflection, that in so short a space, we should have made such large strides towards fulfilling the prediction of our transatlantic foe! “leave them to themselves, and their government will soon dissolve.” Will not the wise and good strive hard to avert this evil? Or will their supineness suffer ignorance, and the arts of self-interested designing disaffected and desperate characters, to involve this rising empire in wretchedness and contempt? What stronger evidence can be given of the want of energy in our governments than these disorders? If there exists not a power to check them, what security has a man for life, liberty, or property? To you, I am sure I need not add aught on this subject, the consequences of a lax, or inefficient government, are too obvious to be dwelt on. Thirteen Sovereignties pulling against each other, and all tugging at the foederal head will soon bring ruin on the whole; whereas a liberal, and energetic Constitution, well guarded and closely watched, to prevent incroachments, might restore us to that degree of respectability and consequence, to which we had a fair claim, and the brightest prospect of attaining.

George Washington (1786)<sup>1</sup>

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1. Letter from George Washington to James Madison, November 5, 1786. *The George Washington Papers at the Library of Congress, 1741–1799*. <http://tinyurl.com/6sx3b>

# APPENDIX B

## SHAYS' REBELLION: LEGEND AND REALITY

### Introduction

The 1786/7 rebellion in Massachusetts known as Shays' Rebellion is generally believed to be the event that moved George Washington off the sidelines regarding Madison's proposed convention in Philadelphia. He had resisted Madison's repeated requests that he attend the convention. Washington was told by two trusted informants in Massachusetts that this was a widespread revolt of the lower classes. These rebels were undermining public order in their quest to overturn property rights. Washington believed these reports. He decided that it was time for a change in the fundamental laws of the United States.

What I did not know in 1989, and no historian knew, was that the Shays' Rebellion was an armed resistance movement of about 4,000 property-owning men in western Massachusetts. Contrary to reports from the anti-Shays faction in 1787, and contrary to most textbook accounts ever since, it was not a revolt of impoverished, indebted rural radicals. It included men of all economic classes. Many of them were veterans of the American Revolution, including Daniel Shays, who served from the battle of Bunker (Breed's) Hill onward, and was a distinguished officer who worked his way up from the ranks to captain. Lafayette awarded him a sword for his valor.<sup>1</sup> These men revolted against a group of speculators who had recently gained control of the governor's office.

For over two centuries, Americans did not know the truth. Then, in one of those fluke events that every historian dreams about, Professor Leonard Richards of the University of Massachusetts (Amherst) stumbled onto a fact that no previous historian had bothered to invest-

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1. Leonard L. Richards, *Shays's Rebellion: The American Revolution's Final Battle* (Philadelphia: University of Pennsylvania Press, 2002), p. 26.

igate. After the defeat of the rebels, the state required each of them to sign a loyalty oath. Unlike previous political rebellions, there were archival records of those who had participated. These records were right under Prof. Richards' nose, yet it took several months for him to learn that they were actually in his own university's library: on microfilm.<sup>2</sup> He then made a detailed investigation of the participants: the towns they lived in, their family connections, their debt position in 1786, and their political offices, if any. What he learned enabled him to re-write the story of Shays' Rebellion. It was not a revolt of indebted farmers. It was a tax revolt.

### A. Taxes and Special Interests

During the Revolution, the Continental Congress had issued irredeemable paper currency to pay for the war, the infamous Continentals, as in "not worth a Continental." These notes quickly fell to zero value. States issued IOU's to pay militia members. Notes issued in April, 1778, in Massachusetts quickly fell to 25% of their face value. By 1781, they were at two percent of face value.<sup>3</sup> Other states followed suit. Virginia's notes fell to one-thousandth of face value.<sup>4</sup> Soldiers in the field sold these notes in order to keep their families solvent. The political question after independence was attained in 1783 revolved around the redemption price. At what percent of face value would states repay note-holders?

Unlike all other states, Massachusetts' legislature passed a law to redeem the notes at face value. The legislature was dominated by Boston's mercantile interests. While it is not possible to trace the ownership of all of the debt after the war, what little can be traced indicates that 80% of the speculators lived in or near Boston, and almost 40% of the notes were held by 35 men. Most had bought these notes at tremendous discounts.<sup>5</sup> Then, to add insult to injury, interest on these notes was retroactively made payable in silver.<sup>6</sup> To pay off these speculators, taxes were raised. The main ones were the poll tax and the property tax, beginning in 1785. Prof. Richards described the nature of this tax burden:

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2. *Ibid.*, Preface.

3. *Ibid.*, pp. 74–75.

4. *Ibid.*, p. 75.

5. *Idem.*

6. *Ibid.*, p. 81.



Every farmer knew that he was going to have to pay for every son sixteen years or older, every horse he owned, every cow, every barn, every acre in tillage. Everyone also knew that the tax bite was going to be regressive. Only about 10 percent of the taxes were to come from import duties and excises, which fell mainly on people who were most able to pay. The other 90 percent was direct taxes on property, with land bearing a disproportionate share, and polls. The latter was especially regressive, since it mattered not a whit if a male sixteen years of age or older had any property or not. Rich or poor, he was going to have to pay the same amount, and altogether polls were going to pay at least one-third of all taxes.<sup>7</sup>

But would these taxes actually be collected? After the Revolution, the most popular politician in Massachusetts was John Hancock, the ex-smuggler/merchant whose signature is so large on the Declaration of Independence. He was among the richest men in the state. He was lenient to all poor debtors who owed him money personally. He let them pay him in depreciated paper money. The rich had to pay in silver. He was elected governor in 1780 and served for five years. He also was elected in 1787 and served until his death in 1793. He did not serve in 1785–87, the crucial period. He declined to run in 1785 because of gout.<sup>8</sup> Gout normally affects the big toe. It can accurately be said that the great turning point in post-Revolutionary America was John Hancock's big toe.

Hancock had understood that the soldiers had been forced to sell their promissory notes for a small fraction of their face value. He was accused by opponents of refusing to collect taxes. When he left office, he was replaced by James Bowdoin, a holder of at least £3,290 in depreciated notes.<sup>9</sup> He did not receive enough votes to command a majority, so the legislature had to choose. The senate insisted on him, and the house capitulated.<sup>10</sup> Under his leadership, the political faction whose members had bought up these notes gained power. The government passed new taxes and insisted on collecting taxes that were in arrears.<sup>11</sup> That tax burden was now higher by several times what they had been under Great Britain.<sup>12</sup>

Western counties had petitioned the government for relief for sev-

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7. *Ibid.*, p. 83.

8. *Ibid.*, p. 85.

9. *Idem.*

10. *Ibid.*, p. 87.

11. *Idem.*

12. *Ibid.*, p. 88.

eral years, but their petitions had been ignored.<sup>13</sup> In July, 1786, a revolt began. It soon became an armed political revolt by towns, not by individuals.<sup>14</sup> The rebels met as a convention to draw up a list of 21 grievances.<sup>15</sup> This was not a mob. Daniel Shays became the head of this revolt after it had begun.

Until Richards' book appeared, the standard account of Shays' Rebellion emphasized the theme of farmers in the state's western counties as being heavily in debt to merchants in Boston. This account never had much evidence to support it. Boston merchants traded little with western towns, which were close to self-supporting.<sup>16</sup> Also, western towns in Connecticut did not revolt.<sup>17</sup> If the decisive political issue was debt, why not? There is no evidence of any debt-revolt relationship in the western counties,<sup>18</sup> two-thirds of which had not revolted.<sup>19</sup> The revolt's leaders were often from the higher classes. Most of the insurgents were not heavily in debt. Kinship ties, town by town, accounted for recruiting far more than debt did.<sup>20</sup>

## B. The Winter of 1787

The State of Massachusetts petitioned Congress to send in Federal troops, but the U.S. Army at that time had approximately 700 men. Congress responded by promising to add another 1,340 men, but Massachusetts was supposed to raise 660 of these. Congress then made up a phony war story to justify sending troops to quell a tax revolt. There was a pending Indian war, Congress said. Few believed this ruse.<sup>21</sup> The U.S. Army raised a total of 100 recruits.<sup>22</sup> Meanwhile, militia members in Massachusetts were joining the rebels.<sup>23</sup> Boston's militia responded to the legislature's call; western counties ignored it. Especially revealing were Revolutionary War veterans. Of 637 veterans in the militia in Northampton, only 23 volunteered for duty.<sup>24</sup> The two senior officers

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13. *Ibid.*, p. 6.

14. *Ibid.*, ch. 1.

15. *Ibid.*, p. 8.

16. *Ibid.*, p. 62.

17. *Ibid.*, p. 58.

18. *Ibid.*, pp. 62, 116.

19. *Ibid.*, p. 89.

20. *Ibid.*, ch. 5.

21. *Ibid.*, p. 15.

22. *Ibid.*, p. 16.

23. *Ibid.*, p. 11.

24. *Ibid.*, p. 18.

from Northampton who responded had between them a total of 14 days of service in the War. All of the rebel captains had at least three years' experience.<sup>25</sup> Baron von Steuben, who had served under Washington, identified the problem in an article that he signed "Belisarius." Massachusetts had 92,000 militiamen on its rolls. Why did the state need military support from Congress? He provided the correct answer: Massachusetts' government was not representative of the opinions of the people.<sup>26</sup>

The rebellion was defeated in battles and skirmishes in the winter and early spring of 1787. The commander of the state's militia was General Benjamin Lincoln, who had served under Washington during the American Revolution. Lincoln's force of 4,400 men had not been authorized by the legislature, so 153 private citizens, mostly Bostonians, provided the funds to pay the troops. None of the contributors served in Lincoln's army.<sup>27</sup> One impoverished Harvard graduate did serve, Royall Tyler, and soon wrote a play about the rebellion. It became the first American play, and it made his reputation.<sup>28</sup>

Shays and other leaders escaped across the northern border into New Hampshire, and from there went west into Vermont. Vermont's governor refused to extradite any of them, despite protests from the Massachusetts government. Shays and several other rebel leaders were staying at a farm next door to the governor.<sup>29</sup>

### **C. Motivating George Washington**

Without the participation of George Washington at the Constitutional Convention, there would not have been a Constitution. The nationalists, who were preparing to overturn the country's legal order were convinced of this. So are most historians of the Constitutional Convention. Washington had resisted offers from Madison and others to attend the Convention. He wanted to stay out of public life. Shays' Rebellion provided the motivational hook for the nationalists to persuade him to reverse his position and attend.

Two men were crucial in motivating Washington. One was General Lincoln, who wrote to him repeatedly as the rebellion accelerated. He lamented the rebellion and painted it in terms of a social revolution

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25. *Ibid.*, pp. 18–19.

26. *Ibid.*, p. 16.

27. *Ibid.*, p. 24.

28. *Ibid.*, p. 25.

29. *Ibid.*, p. 120.

by the poorer classes, who had tried to imitate their betters by going into debt and adopting “a luxuriant mode of living,” and who were now having to pay off their debts, which were owed to “the industrious,” who were now in a position “to reap the fruits of their industry. . . .”<sup>30</sup> The other was Henry Knox, who had also served as a general under Washington, and who was a former Bostonian.

Knox’s letter of October 23, 1786, was as persuasive to Washington as it was misleading. This letter undermined Washington’s firm resolve to remain a private citizen, although he did not consent to attend the Convention until the following spring. Knox wrote that he had been east of Boston on business, and had hurried back because of “the commotions.” He immediately launched into a critique of the present political structure under the Articles of Confederation.

Our political machine constituted of thirteen independent sovereignties, have been constantly operating against each other, and against the federal head, ever since the peace—The powers of Congress are utterly inadequate to preserve the balance between the respective States, and oblige them to do those things which are essential for their own welfare, and for the general good. The human mind in the local legislatures seems to be exerted, to prevent the federal constitution from having any beneficial effects. The machine works inversely to the public good in all its parts. Not only is State, against State, and all against the federal head, but the States within themselves possess the name only without having the essential concomitant of government, the power of preserving the peace; the protection of the liberty and property of the citizens.<sup>31</sup>

So far, none of this has anything to do with Shays’ Rebellion. It is clear that Knox was a nationalist. He was offering a general critique of the Confederation. He then offered what seems to be substantiating specific evidence. But his account was neither accurate nor relevant. The State of Massachusetts was in a position to suppress the rebellion, assuming that the militia would respond to the call. The fact was, the handful of speculators close to the governor could not persuade the legislature to fund the counter-attack, nor could local officers persuade militia members to respond to the call to arms. This was a grass-roots rebellion, as surely as the American war for independence had been,

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30. Lincoln to Washington (Dec. 4, 1786), in *The Papers of George Washington, Confederation Series*, eds. W. W. Abbot and Dorothy Twohig, 4 vols. (Charlottesville: University of Virginia Press, 1995), IV, p. 418.

31. Knox to Washington (Oct. 23, 1786), *Ibid.*, IV, p. 299

and with far better cause. None of this impressed Knox, who continued in the same paragraph:

On the very first impression of Faction and licentiousness the fine theoretic government of Massachusetts has given way, and its laws arrested and trampled under foot. Men at a distance, who have admired our systems of government, unfounded in nature, are apt to accuse the rulers, and say that taxes have been assessed too high and collected too rigidly—This is a deception equal to any that has hitherto been entertained. It is indeed a fact, that high taxes are the ostensible cause of the commotions, but that they are the real cause is as far remote from truth as light from darkness. The people who are the insurgents have never paid any, or but very little taxes—But they see the weakness of government; They feel at once their own poverty, compared with the opulent, and their own force, and they are determined to make use of the latter, in order to remedy the former.<sup>32</sup>

That the western farmers had not paid high taxes prior to 1786 was true. Hancock had refused to collect them. But Bowdoin, as a holder of Massachusetts notes, was ready to enforce the law. He had the support of his cronies, who also held the state's notes, but not of the Massachusetts legislature, which never did vote to fund Lincoln's troops. Knox did not convey any of this information to Washington. Instead, he turned the revolt into a revolt against property. It was in fact a revolt against the confiscation of property by a tiny group of speculators in government debt. But Knox painted the movement as an organized, inter-state conspiracy of communists against property.

Their creed is "That the property of the United States has been protected from the confiscations of Britain by the joint exertions of all, and therefore ought to be the common property of all. And he that attempts opposition to this creed is an enemy to equity and justice, and ought to be swept from the face of the earth." In a word they are determined to annihilate all debts public and private and have agrarian Laws which are easily effected by the means of unfunded paper money which shall be a tender in all cases whatever.

The numbers of these people may amount in Massachusetts, to about one fifth part of several populous counties, and to them may be collected, people of similar sentiments, from the States of Rhode Island, Connecticut and New Hampshire so as to constitute a body of 12 or 15000 desperate & unprincipled men—They are chiefly of the

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32. *Ibid.*, IV, p. 300.

Young and active part of the community, more easily collected than perhaps Kept together afterwards—But they will probably commit overt acts of treason which will compell them to embody for their own safety—once embodied they will be constrained to submit to discipline for the same reason.<sup>33</sup>

None of this was true. The men were led by adults, and these adults were leaders in their respective towns. There was no connection to Rhode Island, which had debased its currency, or any other colony. They were fighting a system of oppressive taxation that was being imposed in the name of paying off investors who had bought the depreciated notes of the Revolutionary War era from the soldiers who made that political rebellion successful. Rebels were fighting against the transformation, mostly at their expense, of the unfunded paper money of the war era into post-war currency, with interest payable in silver. They had been stiffed by the politicians during the war, who paid them with unfunded promises to pay. Now they were being stiffed by the politicians again—speculators who had taken advantage of them when they were on the battlefield. But Knox ignored all of this. He had a political agenda, and Washington's presence at the Convention was the linchpin, the *sine qua non*, of the nationalists' political agenda. Knox proceeded with the grand deception of the grand old man:

Having proceeded to this length for which they are now ripe, we shall have a formidable rebellion against reason, the principles of all government, and the very name of liberty. This dreadful situation has alarmed every man of principle and property in New England—They start as from a dream, and ask what can have been the Cause of our delusion? What is to afford us security against the violence of lawless men? Our government must be braced, changed, or altered to secure our lives and property. We imagined that the mildness of our government and *the virtue* of the people were so correspondent, that we were not as other nations requiring brutal force to support the laws.<sup>34</sup>

Hence, it was time to brace, change, or alter the national government, so as to supply the required brutal force.

But we find that we are men, actual men, possessing all the turbulent passions belonging to that animal and that we must have a government proper and adequate for him.<sup>35</sup>

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33. *Idem*.

34. *Ibid.*, IV, pp. 300–1.

35. *Ibid.*, IV, p. 301.

Knox was writing a direct-response sales letter, which turned out to be the second most influential sales letter in American history, second only to Washington's letter to Congress on September 17, 1787. Every direct-response letter needs a powerful close, what is called the "act now" offer. Knox called on Washington to join with the besieged men of property in Massachusetts—speculators in government bonds—to turn back these rural communists of the lower sort. The nationalists were ready to defend the true interests of society. What about you, George? Will you wimp out at this crucial juncture? Knox was a master of the close.

The people of Massachusetts for instance, are far more advanced in this doctrine, and the men of reflection, & principle, are determined to endeavor to establish a government which shall have the power to protect them in their lawful pursuits, and which will be efficient in all cases of internal commotions or foreign invasions—They mean that liberty be the basis, a liberty resulting from the equal and firm administration of laws. They wish for a general government of unity as they see the local legislatures, must naturally and necessarily tend to retard and frustrate all general government.

We have arrived at that point of time in which we are forced to see our national humiliation, and that a progression in this line, cannot be productive of happiness either public or private—something is wanting and something must be done or we shall be involved in all the horror of faction and civil war without a prospect of its termination—Every tried friend to the liberties of his country is bound to reflect, and to step forward to prevent the dreadful consequences which will result from a government of events—Unless this is done, we shall be liable to be ruled by an Arbitrary and Capricious armed tyranny, whose word and will must be law.<sup>36</sup>

He followed up with a similar letter on December 17. "A Government without any existing means of coercion, are at a loss to combat, or avert a danger now & so pressing."<sup>37</sup> "It is probable that about one fifth part of the people of New-England whose habits and manners are similar are liable to be infected by the principles of the Insurgents, and of consequence to act in the same manner."<sup>38</sup> His letter elicited this response from Washington on December 26.

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36. *Idem*.

37. *Ibid.*, IV, p. 460.

38. *Ibid.*, IV, p. 461.

I feel, my dear Genl Knox, infinitely more than I can express to you, for the disorders which have arisen in these states. . . . [N]otwithstanding the boasted virtue of America, we are far gone in every thing ignoble & bad. . . . In this, as in most other matter[s], we are too slow. When this spirit first dawned, probably it migh[t] easily have been checked; but it is scarcely within reach of human ken, at this moment, to say when—where—or how it will end. There are combustible[s] in every State, which a spark may set fire to.<sup>39</sup>

He then inquired regarding Madison's proposed Convention in Philadelphia. He relied on Knox as an accurate source of intelligence regarding public opinion.

. . . By a late act, *it* seems very desirous of a General Convention to revise and amend the foederal Constitution. . . . What are the prevailing sentiments of the one now proposed to be held at Philadelphia, in May next? & how will it be attended? You are the fountain of intelligence, and where the wisdom of the Nation, it is to be presumed, has centered; consequently better able (as I have had abundant experience of your intelligence, confidence, & candour) to solve these questions.<sup>40</sup>

Knox had the answer ready to go. He sent it five days before Washington asked his opinion. The letters probably crossed en route to each other. "The commotions of Massachusetts have wrought prodigious changes in the minds of men in that State respecting the Powers of Government every body says they must be strengthened, and that unless this shall be effected there is no Security for liberty or Property."<sup>41</sup> Next, having been asked, Knox sent a long letter to Washington on January 14 that presented the case for the Convention. He said that some people regard the proposed Convention as "an irregular assembly, unauthorized by the Confederation, which points out the mode by which any alterations should be made." Others think that the Convention should be attended by people appointed by state conventions. Madison used this system of state conventions to legitimize the Convention after the fact: state conventions to vote the new Constitution up or down. "There are others who are of the opinion that Congress ought to take up the defects of the present system, point them out to the respective Legislatures, and recommend certain alterations." He then told Washington that if he would attend, eastern states would

39. *Ibid.*, IV, pp. 481–82.

40. *Ibid.*, IV, 482.

41. Knox to Washington, December 21: *ibid.*, IV, p. 470.



send delegates. He said that he thought the people would accept the changes if they were recommended by a "respectable a set of men as could be sent to the convention. . . ." Furthermore, "were strong events to arise between this and the time of the meeting, enforcing the necessity of a vigorous government, it would be a preparation which might be embraced by the convention to propose at once an efficient system."<sup>42</sup> How convenient that, as he was writing this letter, just such a strong event was taking place in Massachusetts.

In a series of letters to Washington, the nationalists put pressure on him to attend. In his replies, he made it clear that he was on the side of law and order, and that he was becoming pessimistic regarding the future of the country. He resisted making a commitment to attend, but eventually he consented.

He was already a nationalist, as his letters reveal from 1783 on. He had written to John Jay the previous spring, "That it is necessary to revise, and amend the articles of Confederation, I entertain *no* doubt; but what may be the consequences of such an attempt *is* doubtful. Yet, something must be done, or the fabrick must fall. It certainly is tottering!"<sup>43</sup> The gun was already loaded. The misinformation passed on to him about Shays' Rebellion was the trigger. Eventually, Washington pulled it.<sup>44</sup> He attended the Convention and even agreed to keep Madison's secret notes of the debates, which were not made public until every participant had died.

## Conclusion

Shays' Rebellion was used effectively by the nationalists to scare voters into accepting both the legitimacy of the Convention and the legality of the Constitution. "Within months, Shays's Rebellion gave the nationalists the edge they needed.. It provided the spark on which to advance the nationalist cause and play on the fears of others."<sup>45</sup> In the post-Convention debates over ratification, Antifederalists were labeled "Shaysites."<sup>46</sup> With respect to Massachusetts, the accusation was inaccurate. Two-thirds of the towns opposed ratification.<sup>47</sup> Yet

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42. *Ibid.*, IV, pp. 520–21.

43. Washington to Jay, 18 May 1786. *Ibid.*, IV, p. 56.

44. Richards, *Shays's Rebellion*, pp. 129–32.

45. *Ibid.*, p. 127.

46. *Ibid.*, p. 139.

47. *Ibid.*, p. 144.

only one-third had joined the rebellion.<sup>48</sup>

Had John Hancock not been struck by gout in 1785, he would have run for governor. He would have won, just as he did in 1787, the year that the rebellion was put down. Because Governor Bowdoin's faction gained control of law enforcement in 1785–87, the rebellion had taken place.

The rebellion in Massachusetts was what forced Washington's hand. He decided to support Madison's plan for the meeting in Philadelphia of leading politicians, who would then create a new form of civil government, therefore replacing the Articles of Confederation. He decided to attend the Convention, contrary to his previous statements. His presence at the Convention and his promotional letter to Congress that accompanied the proposed Constitution were crucial to the success of the nationalists' plans to overturn the existing national government. Thus, the fate of the proposed United States Constitution had turned on John Hancock's big toe.

This sequence of events reminds me of a truth suggested by the sociologist-historian, Robert Nisbet, in 1968. He was writing of academic techniques of scientific forecasting.

What the future-predictors, the change analysts, and trend-tenders say in effect is that with the aid of institute resources, computers, linear programming, etc. they will deal with the kinds of change that are *not* the consequence of the Random Event, the Genius, the Maniac, and the Prophet.

To which I can only say: there really aren't any; not worth looking at anyhow.<sup>49</sup>

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48. *Ibid.*, p. 89.

49. Robert A. Nisbet, "The Year 2000 and All That," *Commentary* (June 1968), p. 66.



But some Protestant confessions of faith, framed in the Reformation period, when church and state were closely interwoven, ascribe to the civil magistrate ecclesiastical powers and duties which are Erastian or caesaro-papal in principle and entirely inconsistent with the freedom and self-government of the church. Hence changes in the political articles of these confessions became necessary.

The Presbyterian Church took the lead in this progress even long before the American Revolution. . . . After the revolutionary war, the United Synod of Philadelphia and New York met at Philadelphia, May 28, 1787 (at the same time and in the same place as the Convention which framed the Federal Constitution), and proposed important alterations in the Westminster Confession, chapters XX. (Closing paragraph), XXIII. 3, and XXXI. 1, 2, so as to eliminate the principle of state-churchism and religious persecution, and to proclaim religious liberty and legal equality of all Christian denominations. These alterations were formally adopted by the Joint Synod at Philadelphia, May 28, 1788, and have been faithfully adhered to by the large body of the Presbyterian Church in America. It is worthy of note that the Scripture passages quoted by the Old Confession in favor of state-churchism and the ecclesiastical power of the civil magistrate are all taken from the Old Testament.

Philip Schaff (1888)<sup>1</sup>

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1. Philip Schaff, *Church and State in the United States; or the American Idea of Religious Liberty and Its Practical Effects* (New York: Arno Press, [1888] 1972), p. 49.

# APPENDIX C

## PHILADELPHIA'S OTHER CONSTITUTIONAL CONVENTION

### Introduction

On Friday, May 25, 1787, the first meeting of the Constitutional Convention began in Philadelphia. George Washington was elected president of the Convention. A secretary was elected, Major Jackson. The meeting then adjourned. The Convention began its first full session on Monday, May 28.

Across town, another meeting was ending on that fateful Monday. The united Presbyterian Synods of New York and Philadelphia had met together. What they did at that final session, and at the meeting exactly one year later, was to change the course of Protestantism in America. It also paralleled to a remarkable degree the political events being engineered by James Madison. The issues were also similar: the relation of church and state, and the issue of centralized authority.

Like Madison and his associates, between 1785 and 1787, a quiet group of churchmen in the Presbyterian Church had been preparing for a major reorganization. Even today, it is not entirely clear from the historical records just who was behind this push. There was no sense of imminent ecclesiastical crisis, but there was a sense of failure in the face of continuing problems that never seemed to get resolved.

The standard argument of the "Christian Constitution" defenders is that the Constitution is implicitly Christian because it was accepted by Christian voters at the time. What they do not understand is the extent to which Whig notions of sovereignty had affected the Christians of that era. To argue that Christians would have opposed the Constitution had it been non-Christian assumes that the terms of political discourse in Christian circles was self-consciously Christian. On the contrary, Christian discourse had become Whig-unitarian with respect to the issues of church-state relations. The English dissenters or Com-

monwealthmen of the early eighteenth century had moved the idea of pluralism from Oliver Cromwell's Protestant religious pluralism to some variant of Roger Williams' religiously neutral civil order. The dissenters of 1720 had abandoned Cromwell's idea of religious toleration of all Protestant sects. They had done so by extending the concept of religious toleration to the concept of the secular republic. This outlook had taken over political discourse at the Constitutional Convention in 1787. It had also taken over Presbyterian discourse at the Philadelphia Convention in 1787. The Presbyterian attendees at the Westminster Assembly (1643–47), which produced the foundational judicial documents of Presbyterianism, would not have understood the theology undergirding the revisions of 1787.<sup>1</sup>

### A. The Problem of Geography

War weariness had affected all the denominations, Presbyterians included. What had begun as a sacred cause of liberty had produced unforeseen negative results, as war always does. The loose morals that the war had unleashed made the church's work that much more difficult.<sup>2</sup> Power shifts were taking place within the denomination. Increased immigration from Scotland was making the church more theologically conservative, and therefore less enthusiastic about the pluralistic theological heritage of the era of the First Great Awakening.<sup>3</sup> At the same time, these immigrants were heading West, where there were no well-organized presbyteries.<sup>4</sup> There was also a growing reaction against Deism, skepticism, and the increasingly liberal rationalism of the remnants of Jonathan Edwards' rationalistic theology, the New Side heritage.

Attendance at the annual synod meetings had declined during the war and had not recovered. The expanding geography of the American nation by 1780 had overthrown the theory of a single annual Synod meeting that could handle all business not capable of being handled at the presbytery level.<sup>5</sup> Changes were needed. A committee was appoin-

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1. Gary North, *Crossed Fingers: How the Liberals Captured the Presbyterian Church* (Tyler, Texas: Institute for Christian Economics, 1996), Appendix C. (<http://bit.ly/gncrossed>)

2. Leonard Trinterud, *The Forming of an American Tradition: A Re-examination of COLONIAL PRESBYTERIANISM* (New York: Arno, [1949] 1970), pp. 258–61.

3. *Ibid.*, pp. 263–64.

4. *Ibid.*, pp. 268–72.

5. *Ibid.*, pp. 281–82.

ted in 1785 to draw up a new form of Presbyterian discipline. Then, later in the day, another overture was suggested: the creation of a Synod, along the lines of the Scottish church, and the creation of three synods. The records do not indicate who made this overture.<sup>6</sup>

On the face of it, this overture was highly peculiar. If the institutional problem facing the denomination was geographical, why would anyone propose the creation of a Synod? The answer should have been obvious: *to centralize the denomination once and for all*. If the regional presbyteries were becoming more distant from the center, then there would have to be a *central representative body* as well as *central judicial body* that could hold the church's governmental system together. (This was exactly what Madison had concluded regarding American civil government.) The Committee on Overture took over; a second study on church government began. As is usual for Presbyterianism, no official decision was made at that time. (This was paralleled by the late-March meeting at Mount Vernon at which Maryland and Virginia commissioners proposed ways of settling trade disputes. And like the Synod meeting, the records of what took place are unclear.)<sup>7</sup>

A poorly attended Synod in 1786 resolved to create 16 new presbyteries. Action on the creation of four synods was postponed.<sup>8</sup> The report of the committee on discipline was discussed, but no action was taken. A new committee was set up to continue the study. A meeting in September of 1786 led to a draft of a whole new constitution, to which the presbyteries generally paid little attention.<sup>9</sup> (These events were paralleled by Madison's and Hamilton's inconclusive Annapolis convention in September, which in turn led to the call for the Convention in Philadelphia.) Then came the Synod of 1787. From May 16 to May 28, the Synod met in Philadelphia to discuss the formation of a new church structure. On the last day of the Synod, May 28, the Synod voted to create yet another committee to print a thousand copies of the draft of the proposed form of government to be sent to the presbyteries for consideration. But the presbyteries did not have to confirm the plan in order for the 1788 Synod to make the changes official, unlike the Constitutional Convention's decision to have state ratifying

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6. *Ibid.*, p. 283.

7. Wrote Burton K. Hendrick: "The gathering attracted little attention at the time, and has not figured extensively in history since. Yet its outcome, two years afterward, was the Constitution of the United States." Hendrick, *Bulwark of the Republic: A Biography of the Constitution* (Boston: Little, Brown, 1937), p. 11.

8. Trinterud, *Forming of a Tradition*, p. 285.

9. *Ibid.*, p. 288.

conventions vote on the proposed new plan of government.

The changes recommended by the committee were approved by the joint Synod meeting exactly one year later in Philadelphia: May 28, 1788. This judicial act established a new constitution, 46 pages long, for the Presbyterian Church in America. The form of government radically centralized power in the national Synod. From that time on, it would take a two-thirds vote of the presbyteries plus the assent of the Synod (or later, the General Assembly) to make further changes. The 1788 Synod did this on its own authority, after consultation with the presbyteries; the presbyteries did not vote.<sup>10</sup>

Trinterud tried to make this sound as if it were not a monumental centralization of power. After all, he said, the Synod could not initiate any further changes; only the presbyteries could.<sup>11</sup> This is hardly persuasive. Try to organize presbyteries that are scattered across a growing country. Get them to initiate and then organize fundamental change. The whole discussion of the change in church government had arisen in 1785 because of the supposed need to escape the annual meetings in Philadelphia.

The new plan also entitled the Synod to issue standing rules, which a majority of the presbyteries would have to ratify. Any student of bureaucracy can see what the results would be. The Synod would normally be attended by the activists in the presbyteries. Thus, any organized resistance in over half of the presbyteries would be unlikely. To change this new system, it would take a two-thirds vote of the presbyteries.

## B. Church and State

The restructured form of government included a revision of the Westminster Confession of Faith: specifically, Chapter XX (closing paragraph), XXIII:3, and XXXI:1, 2. These were the sections dealing with the relationship of church and state, in which the civil magistrate was charged with certain tasks, such as defending the church and calling church assemblies. The main figure on the committee was John Rogers, who had served on all of them since 1785. He became an ecclesiastical leader in the late 1760's during the colonial battle against the sending of an Anglican bishop to the colonies.<sup>12</sup> He believed so greatly

10. *Ibid.*, p. 295.

11. *Ibid.*, p. 296.

12. Carl Bridenbaugh, *Mitre and Sceptre: Transatlantic Faith, Ideas, Personalities, and Politics, 1689–1775* (New York: Oxford University Press, 1962), p. 281.



in the separation of church and state that he thought ministers should not vote in civil elections.<sup>13</sup> The Synod was adjourned. In 1788, it reconvened, and the recommended changes in the Confession were approved. Church historian Philip Schaff described these alterations:

The changes consist in the omission of those sentences which imply the union of Church and State, or the principle of ecclesiastical establishments, making it the duty of the civil magistrate not only to protect, but also to support religion, and giving to the magistrate power to call and ratify ecclesiastical synods and councils, and to punish heretics. Instead of this, the American revision confines the duty of the civil magistrate to the legal protection of religion in its public exercise, without distinction of Christian creeds or organizations. It thus professes the principle of religious liberty and equality of all denominations before the law. This principle has been faithfully and consistently adhered to by the large body of the Presbyterian Church in America, and has become the common law of the land.<sup>14</sup>

The synod of 1788, in its last official act as a Synod, appointed John Witherspoon to address the new Synod before it elected a moderator, which was John Rogers. This seemed appropriate, for it was Witherspoon who almost certainly had written the Preface to the proposed new form of government back in 1786. The Preface stated:

“God alone is Lord of the conscience; and hath left it free from the doctrine and commandments of men, which are in any thing contrary to his word, or beside it in matters of faith or worship;” Therefore they [Presbyterians] consider the rights of private judgment, in all matters that respect religion, as universal and inalienable: they do not even wish to see any religious constitution aided by the civil power, further than may be necessary for protection and security, and, at the same time, be equal and common to others.<sup>15</sup>

Thus ended the ideal of the theocratic republic in mainstream Presbyterianism and American Protestantism in general. That this official position had been articulated by the president of the College of New Jersey was fitting. Its predecessor, the Log College, had been the

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13. Trinterud, *Forming of a Tradition*, p. 260.

14. Philip Schaff, *The Creeds of Christendom*, 3 vols. (Grand Rapids, Michigan: Baker Book House, [1877] 1977), I, p. 807.

15. Cited in James H. Smylie, *A Cloud of Witnesses: A History of the Presbyterian Church in the United States* (Richmond, Virginia: Covenant Life Curriculum, 1965), p. 26. The Presbyterian Church in the U.S. was the Southern Presbyterian Church until it merged with the P.C.U.S.A. (Northern) in 1983.

leading light in the battle against what Trinterud calls “the narrow spirit of denominationalism.”<sup>16</sup> Founded in 1746, its trustees had invited newly appointed Governor Jonathan Belcher onto the Board of Trustees in 1748. They immediately voted him president of the Board. Governor Belcher saw to it that the college was granted a new charter, and he worked hard to create a new board filled (with three exceptions) with graduates of Harvard and Yale. This is understandable; he had been the Governor of Massachusetts from 1730–41. The College of New Jersey college was moved to Newark; in 1755, it was moved to Princeton.<sup>17</sup>

That Jonathan Belcher became the driving force of the development of the College of New Jersey is representative of what was taking place throughout the colonies. Belcher was not a Presbyterian. Nevertheless, he found it easy to cooperate with Presbyterians. His theology was expressly geared to cooperation. Jonathan Belcher was a Freemason. But this puts it too mildly. Jonathan Belcher was the original Freemason in the colonies, having been initiated in London in 1704.<sup>18</sup> He was literally the pioneer. One Masonic historian refers to him as “the Senior Freemason of America.”<sup>19</sup> After his initiation, he experienced rapid success as a merchant.<sup>20</sup> His son became the Deputy Grand Master of the Provincial Grand Lodge of Massachusetts at its founding in 1733.<sup>21</sup> In 1741, the brethren of the First Lodge read a message to Mr. Belcher, who had been succeeded by a new governor the previous spring. The lodge thanked him for “the many favours You have always shared (when in Power) to Masonry in General. . . .”<sup>22</sup> The spirit of nondenominationalism at the College of New Jersey was not going to be overturned by Brother Belcher!

It should be no surprise to learn what President Witherspoon revealed in 1776, in his quest for nondenominational money from donors in Bermuda, namely, that no discussion of church government was tolerated at the college. Ecclesiology apparently is subsumed un-

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16. Trinterud, *Forming*, p. 131.

17. Jacob Harris Patton, *A Popular History of the Presbyterian Church in the United States of America* (New York: Mighill, 1900), pp. 118–19.

18. J. Hugo Tatsch, *Freemasonry in the Thirteen Colonies* (New York: Macoy, 1929), p. 27.

19. Melvin M. Johnson, *The Beginnings of Freemasonry in America* (New York: Doran, 1924), p. 49.

20. His father had been a successful merchant, too, but not on Jonathan's scale.

21. Tatsch, *Freemasonry*, p. 30.

22. Cited in Johnson, *Beginnings*, p. 255.

der adiaphora: things indifferent to the Christian religion. "Every question about forms of church government is so entirely excluded that . . . if they [the students] know nothing more of religious controversy than what they learned here, they have that Science wholly to begin."<sup>23</sup> Thus, concluded Trinterud, James Madison did not learn about Presbyterian polity from Witherspoon. "The theological doctrine of natural law and the political theory of natural rights provided the meeting place for Presbyterian and citizen rather than the Presbyterian form of church government. New England Congregationalists and Virginia Episcopalians stood with American Presbyterian laymen in this political theory, and with this common heritage they were able to work together although their heritages in ecclesiastical polity still separated them widely."<sup>24</sup>

Brother Belcher would have been proud.

### C. Whigs Ecclesiastical

Three weeks after Witherspoon delivered his speech, on June 21, 1788, New Hampshire's convention became the ninth state convention to ratify the U.S. Constitution, which immediately went into force as the new covenant of the nation. Thus, the Whigs political and the Whigs ecclesiastical had at last overturned the covenantal foundations that had been established by their seventeenth-century Puritan enemies, and had done so in a period of slightly less than 13 months.

Governor William Livingston of New Jersey was correct when he observed in 1790 that the clergy of America were "almost all universally good Whigs."<sup>25</sup> He himself had been "the American Whig" in 1768, when he wrote or at least organized a series of *New York Gazette* and *Pennsylvania Journal* articles against sending an Anglican bishop to the colonies, a step regarded by many colonists as being the first step in Parliamentary control over colonial religion.<sup>26</sup> Yet it was "the American Whig" himself who had asked rhetorically the most important question in American history: ". . . why might not Christianity have

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23. Cited in Trinterud, *Forming of a Tradition*, p. 256.

24. *Ibid.*, p. 257.

25. William Livingston, "Observations on the Support of the Clergy," *American Museum*, VIII (1790), p. 254; cited in Alan Heimert, *Religion and the American Mind: From the Great Awakening to the Revolution* (Cambridge, Massachusetts: Harvard University Press, 1966), p. 1.

26. Bridenbaugh, *Mitre and Sceptre*, pp. 297–98.

been allowed the honor of being called the National Religion?"<sup>27</sup> The answer should be clear by now: because the unitarians did not want it that way, and the Whigs ecclesiastical did not really think that the implicit Christianity of the nation was threatened by the idolatry of the new national covenant, i.e., the People as the new national god.

A year after the 1788 Synod, in May of 1789, the Synod had John Witherspoon again chair a committee, this time to prepare an address to the newly elected President of the United States. The alternate chairman was John Rogers. The committee drafted a lengthy report in which it expressed those sentiments that have been passed down from textbook to textbook. Echoing Washington's Masonic rhetoric, the address announced: "Public virtue is the most certain means of public felicity, and religion is the surest basis of virtue. We therefore esteem it a peculiar happiness to behold in our Chief Magistrate a steady, uniform, avowed friend of the Christian religion, and who on the most public and solemn occasions devoutly acknowledges the government of Divine Providence." The address then identified the role of the Presbyterian Church in the American political religion: "We shall consider ourselves as doing an acceptable service to God in our profession when we contribute to render men sober, honest, and industrious citizens, and the obedient subjects of a lawful government."<sup>28</sup>

The Grand Master from Virginia politely responded in kind.<sup>29</sup>

## Conclusion

I have argued elsewhere that the church sets the pattern for what the state does.<sup>30</sup> The pair of constitutional assemblies held on May 28, 1787—one civil, the other ecclesiastical; one beginning, the other ending—are the best representative examples in American history of how a change in the thinking of Christians parallels a change in the thinking of politicians. As the Presbyterians closed their meeting and the Framers opened theirs, the nation was turned down a path that would have been covenantally unthinkable anywhere on earth a generation earlier (except, of course, in Rhode Island). In this case, the change in

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27. "Colonial Criticism of the Appeal (1768)," in John F. Wilson and Donald L. Drakeman (eds.), *Church and State in American History: The Burden of Religious Pluralism*, 2nd ed. (Boston: Beacon Press, 1987), p. 57.

28. Cited in Patton, *Popular History*, p. 209.

29. *Idem*.

30. Gary North, *Healer of the Nations* (Ft. Worth, Texas: Dominion Press, 1987), especially pp. 4–5. (<http://bit.ly/gnhealer>)

men's thinking transformed the constitutional, i.e., covenantal foundations of both church and state in America. What had been called the Presbyterian Rebellion by its enemies in England became a Presbyterian revolution judicially. The Presbyterians and the Framers ended the holy commonwealth ideal in America. The Presbyterians in Philadelphia, like the lawyers in Philadelphia, removed the covenantal foundations of the American Christian experiment in Christian self-government. Without these covenantal cornerstones to support it, the American trinitarian edifice collapsed. We live today in its ruins.



# APPENDIX D

## FREEMASONS IN THE AMERICAN REVOLUTION

This is not an easy topic to sort out. Masonic historians disagree among themselves. Two books deal in detail with this question, one by Ronald Heaton and the other by Philip Roth.

### A. Ronald Heaton

The Masonic Service Association published Ronald Heaton's *Masonic Membership of the Founding Fathers* in 1965.<sup>1</sup> This book contains detailed biographies of about two hundred men of the Revolution, of whom about a third were Masons, and a third may have been. He is judicious in naming the lodges and source documents for attributing membership to anyone.

He said that 10 of the signers of the original continental Articles of Association were Masons, nine of the signers of the Declaration of Independence, nine of the signers of the Articles of Confederation, 13 of the signers of the Constitution, 33 general officers of the Continental Army, and eight of Washington's 29 aides or military secretaries (p. xvi). His list includes the following men:

Thomas Adams	John Hancock	William Patterson
Benedict Arnold	Edward Hand	Israel Putnam
Hodijah Baylies	Cornelius Harnett	Rufus Putnam
Gunning Bedford, Jr.	Joseph Hewes	Edmund Randolph
Edward Biddle	James Hogun	Peyton Randolph
John Blair	William Hooper	Daniel Roberdeau
David Brearley	Charles Humphreys	Arthur St. Clair
Jacob Broom	David Humphreys	Jonathan Bayard Smith

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1. Address: 8120 Fenton St., Silver Spring, MD 20910; reprinted in 1974 and 1988.

Daniel Carroll	Rufus King	John Stark
Richard Cary	Henry Knox	Baron von Steuden
Richard Caswell	Lafayette	Richard Stockton
James Clinton (father of DeWitt)	Henry Laurens	John Sullivan
Jonathan Dayton	Benjamin Lincoln	Jethro Sumner
Elias Dayton	James McHenry	William Thompson
John Dickenson	William Maxwell	James Mitchell Varnum
William Ellery	Hugh Mercer	John Walker
John Fitzgerald	Richard Montgomery	George Walton
Benjamin Franklin	J. P. G. Muhlenberg	George Washington
Joseph Frye	John Nixon	George Weedon
Nicholas Gilman	Robert Treat Paine	William Whipple
Mordecai Gist	William Palfrey	Otho Holland Williams
John Glover	Samuel Holden Parsons	William Woodford
John Greaton	John Patterson	David Wooster

To this list should be added Joseph Warren and Paul Revere of Boston, whose lodge was closely associated with the Boston Tea Party. James Otis is missing. So is Robert Livingston of New York. So is John Paul Jones. Above all, so is John Marshall.

## B. Philip Roth

Philip A. Roth self-published *Masonry in the Formation of our Government* in 1927. He was the Past Master of Henry L. Palmer Lodge No. 301 and was at the time manager of the Masonic Service Bureau in Washington, D.C. The book provides biographies of key figures in the American Revolution, including English figures, and also includes some brief summaries of key events, such as the inauguration of President Washington. Roth was judicious; he did not claim that anyone was a Mason unless he could document the actual Lodge in which he was a member or was initiated. His list includes the following men:

Gen. Benedict Arnold	Nicholas Herkimer	Israel Putnam
Col. William Barton	Gen. James Jackson	Rufus Putnam
John Blair	John Paul Jones	Edmund Randolph



Edmund Burke (British)	Jean Paul Lafayette	Peyton Randolph
Richard Caswell	Henry (Light Horse Harry) Lee	Paul Revere
George Clinton	Richard Henry Lee	Maj. Gen. Philip Schuyler
Gen. James Clinton	Morgan Lewis	Roger Sherman (probably)
Gen. Johann DeKalb	Gen. Benjamin Lincoln	Gen. John Stark
Gen. William Davie	Robert Livingston	Baron von Steuben
Gen. Mordecai Gist	John Marshall	Gen. John Sullivan
Benjamin Franklin	Gen. Hugh Mercer	Joseph Warren
Nathaniel Greene	Jacob Morton	George Washington
Richard Gridley	Rev. John Peter Muehlenberg	Gen. Anthony Wayne (probably)
Nathan Hale	James Otis	Gen. Otho Williams
Alexander Hamilton (probably)	Gen Sam Parsons	Gen. David Wooster
John Hancock	William Pitt (British)	
Gen. Edward Hand	Gen. Thomas Proctor	