

THE WORLD OF THE FRAMERS: A CHRISTIAN NATION?

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Each year, the UCLA School of Law hosts the Melville B. Nimmer Memorial Lecture. Since 1986, the lecture series has served as a forum for leading scholars in the fields of copyright and First Amendment law. In recent years, the lecture has been presented by distinguished scholars such as Lawrence Lessig, David Nimmer, Robert Post, Mark Rose, Kathleen Sullivan, and Jonathan Varat. The UCLA Law Review has published each of these lectures and proudly continues that tradition by publishing an Essay by this year's presenter, Professor Geoffrey R. Stone.

Mel Nimmer was one of my heroes. Along with a handful of other giants of his generation, Mel helped transform our understanding of the First Amendment. Much of my own thinking about free speech builds on his insights. Most particularly, his explanation of categorical balancing as a central mode of First Amendment analysis both captured and redefined the evolution of free speech jurisprudence.

Mel was also a brilliant First Amendment lawyer. My favorite story about him as a lawyer, which I have told to every First Amendment class I have taught over the past thirty-five years, and which I hope is familiar to many of you, involves the landmark U.S. Supreme Court decision in *Cohen v. California*.¹

Forty years ago, at the height of the Vietnam War, Paul Robert Cohen was arrested for wearing a jacket bearing the words "Fuck the Draft" inside the Los Angeles courthouse.² He was prosecuted and convicted for disturbing the peace.³ Mel Nimmer successfully represented Cohen before the Supreme Court, winning a landmark decision that Cohen's message was protected by

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1. 403 U.S. 15 (1971).
2. *Id.* at 16.
3. *Id.*

the First Amendment.⁴ Chief Justice Burger was very anxious about the oral argument. In 180 years of Supreme Court history, no one had ever uttered the word “fuck” in the Supreme Court chamber, and Burger was determined that it would not happen on his watch. Thus, as Nimmer approached the podium to begin his argument, the white-haired Burger leaned over the bench and said, “Mr. Nimmer, . . . the Court is thoroughly familiar with the factual setting of this case, and it will not be necessary for you . . . to dwell on the facts.”⁵ To which Nimmer, understanding full well the importance of saying the word, replied, “At Mr. Chief Justice’s suggestion . . . I certainly will keep very brief the statement of facts What this young man did was to walk through a courthouse corridor . . . wearing a jacket upon which were inscribed the words ‘Fuck the Draft.’”⁶ And lo and behold, the walls of the courthouse did not crumble. At that moment, I believe, Mel Nimmer won his case.

This lecture is not about freedom of speech. It is, rather, about the subject of religion. It grows out of a book I am currently writing tentatively titled “Sexing the Constitution,” which explores the intersection of sex, religion, and law from the ancient world to the present. Mel would surely have approved of such reckless ambition. The work as a whole, and the small piece upon which I will draw today, is relevant to many constitutional issues, including not only the freedom of religion, but also sexual freedom and the freedom of speech, including the First Amendment issue addressed in *Cohen*. After all, when all is said and done, the State’s effort to forbid the use of the word “fuck” in public lies squarely at the intersection of sex, religion, and law. And that brings me to my topic: *The World of the Framers: A Christian Nation?*

Let me begin with a recent story from the *New York Times*, which reported that each Sunday, at the Naval Academy Chapel in Annapolis, at a few minutes past eleven a.m., the choir stops singing and a color guard carrying the American flag strides up the aisle. Below a cobalt blue stained-glass window of Jesus, a midshipman dips the American flag before the altar cross. Evangelical Christians in the Navy defend this practice on the ground that it represents the highest traditions of our nation.⁷ One Air Force Academy graduate, however, objected to this practice, stating that the oath he and

4. See BOB WOODWARD & SCOTT ARMSTRONG, *THE BROTHERS: INSIDE THE SUPREME COURT* 128–31 (1979).

5. *Id.* at 128–29.

6. *Id.*

7. See Neela Banerjee, *Clashing Over Church Ritual and Flag Protocol at the Naval Academy Chapel*, N.Y. TIMES, Mar. 8, 2008, at A9.

others had “taken is to protect and defend the Constitution, not the New Testament.”⁸ Is there a difference?

We begin, as do the arguments of the Evangelical Christians, with the Puritans. When the Puritans arrived in the New World, they established rigidly theocratic societies. As they declared in 1639 in the Fundamental Orders of Connecticut, “the word of God requires that . . . there should be an orderly and decent Government established according to God.”⁹ Without any ambiguity, they established their churches as the official state religion, which was directly “supported by tax revenues and defended by the coercive arm of government.”¹⁰ The laws of the early Puritan colonies were expressly justified by reference to specific biblical passages. The state punished blasphemy and aggressively enforced religious doctrine.¹¹ Citizenship was tied directly to religious faith, and the Puritan settlements were designed with the expectation that “only godly Christians” would rule.¹²

Invoking that past, modern-day Christian evangelicals assert that the United States was founded as a “Christian nation,” but that in recent decades out-of-control secularists have broken faith with our most fundamental traditions.¹³ Nothing could be further from the truth. Long before the American Revolution, the Puritan vision of a unified and orthodox religious community had proved unattainable.

In the generations leading up to the Revolution of 1776, the American colonies grew dramatically in population, ethnic and religious diversity, economic production, and cultural sophistication. The small, insular, self-selected Puritan communities of the seventeenth century were literally blown apart by the forces of change, and as people were released from their traditional social roles, they were made free in new and unexpected ways.¹⁴ Throughout the eighteenth century, conventional sources of authority were called into question. As the Harvard historian Bernard Bailyn once observed, mid-eighteenth

8. *See id.*

9. THE FUNDAMENTAL ORDERS OF CONNECTICUT (1639), reprinted in DOCUMENTS OF AMERICAN HISTORY 23 (Henry S. Commager ed., Appleton-Century-Crofts 7th ed. 1963).

10. FRANK LAMBERT, THE FOUNDING FATHERS AND THE PLACE OF RELIGION IN AMERICA 1–2 (2003).

11. *See id.* at 2.

12. *See id.* (quoting THE FUNDAMENTAL ORDERS OF CONNECTICUT, *supra* note 9).

13. *See, e.g.,* JERRY FALWELL, LISTEN AMERICA! 25 (1980); ISAAC KRAMNICK & R. LAURENCE MOORE, THE GODLESS CONSTITUTION: THE CASE AGAINST RELIGIOUS CORRECTNESS 22–23 (1996); TIM LAHAYE, FAITH OF OUR FOUNDING FATHERS 29 (1987).

14. GORDON S. WOOD, THE RADICALISM OF THE AMERICAN REVOLUTION 129–33 (1993).

century Americans “sought to achieve a profound transformation” in their society, personal lives, government, and religion.¹⁵

This transformation was of course shaped in large part by the Enlightenment. Under the influence of Enlightenment ideals, the American colonists converted their frustration with overbearing British rule into a bold new conception of freedom, a conception that involved new understandings “of God, man, human rights, the state, and history.”¹⁶ With the Declaration of Independence, these new understandings became a “cornerstone of the American political tradition,” a tradition that “was born in the full illumination of the Enlightenment.”¹⁷

Thomas Paine reminded Americans of the Revolutionary era that they had boldly thrown off the prejudices of the Old Order and had embraced a new, enlightened, more rational conception of man: “We see,” he said, “with other eyes; we hear with other ears; and think with other thoughts, than those we formerly used.”¹⁸ The ignorance and superstition of the Old World, he declared, had finally been expelled, and the “mind once enlightened cannot again become dark.”¹⁹ The United States was conceived “not in an Age of Faith . . . but in an Age of Reason.”²⁰ The Framers viewed “issues of religion and politics through a prism” that was highly critical of what they saw as Christianity’s historical excesses and superstitions.²¹

In fact, the Revolutionary era was a period of serious decline for American Christianity. By the time the Framers began drafting the United States Constitution, church membership had dropped to the point that “not more than one person in . . . ten” was affiliated with a Christian church.²²

15. See BERNARD BAILYN, *TO BEGIN THE WORLD ANEW: THE GENIUS AND AMBIGUITIES OF THE AMERICAN FOUNDERS* 6, 35 (2003) (“bold,” “recast”); HENRY F. MAY, *THE ENLIGHTENMENT IN AMERICA* 88 (1976) (“nature of man”).

16. SYDNEY E. AHLSTROM, *A RELIGIOUS HISTORY OF THE AMERICAN PEOPLE* 362 (1972).

17. *Id.*

18. Letter From Thomas Paine to the Abbé Raynal (1782), in *THOMAS PAINE READER* 147, 163 (Michael Foot & Isaac Kramnick eds., 1987).

19. *Id.* at 163–65.

20. LAMBERT, *supra* note 10, at 161.

21. *Id.*

22. AHLSTROM, *supra* note 16, at 365; see also ROGER FINKE & RODNEY STARK, *THE CHURCHING OF AMERICA, 1776–1990: WINNERS AND LOSERS IN OUR RELIGIOUS ECONOMY* 16 (1992) (finding that 17 percent were churchgoers); KRAMNICK & MOORE, *supra* note 13, at 17 (noting that 10 to 15 percent of the population were church members); LAMBERT, *supra* note 10, at 281–82 (noting that 17 percent were churchgoers); Jon Butler, *Why Revolutionary America Wasn't a "Christian Nation,"* in *RELIGION AND THE NEW REPUBLIC: FAITH IN THE FOUNDING OF AMERICA* 187, 191 (James H. Hutson ed., 2000) [hereinafter *RELIGION AND THE NEW REPUBLIC*] (noting that it is “impossible to calculate church membership at more than 20 percent of colonial adults before the American Revolution”); Rodney Stark & Roger Finke, *American Religion in 1776: A Statistical*

Evangelicalism, as defined by its contemporary exponents, played at most a “negligible role in the founding era.”²³

Indeed, it is quite striking, and certainly no accident, that unlike the Fundamental Orders of Connecticut, the U.S. Constitution made no reference whatsoever to God and cited as its primary source of authority not “the word of God,”²⁴ but “We the People.”²⁵ The stated purpose of the Constitution was not to create a “Government established according to God,”²⁶ nor to establish a “Christian nation,”²⁷ but rather to create a secular state. The *only* reference to religion in the original Constitution prohibited the use of any religious test for holding office, and the First Amendment made clear that there “would be no Church of the United States.”²⁸ From the Declaration of Independence through the adoption of the Bill of Rights, no one of any consequence ever referred to the United States as “a Christian nation.”²⁹

One illustration of the profound shift from the Fundamental Orders of Connecticut to the Constitution can be seen in the transition in higher education from what was called the Old Learning to the New Learning over the course of the eighteenth century.

The pre-Enlightenment Old Learning emphasized theological study. At an institution like Harvard, which was Puritan in its origins, seventeenth-century tutors taught students the received truths of the Puritan divines. A central goal of the Old Learning was “to instruct students in biblical interpretation,” and students were directed to accept the “absolute authority of the Bible as the sole repository of truth.”³⁰

The New Learning, which was rooted in the Enlightenment, taught students to question authority, including the authority of the Bible. It taught that there were truths that “lay outside the Scriptures,” truths that could be discerned through careful observation and reason.³¹ Much of the intellectual impetus for the New Learning derived from the works of Francis Bacon, Isaac Newton, and John Locke. Bacon had insisted that reasoned argument must

Portrait, 49 SOC. ANALYSIS 39, 39 (1988) (observing that 10 to 20 percent in colonial America belonged to a church).

23. Mark A. Noll, *Evangelicals in the American Founding and Evangelical Political Mobilization Today*, in RELIGION AND THE NEW REPUBLIC, *supra* note 22, at 137, 146.

24. THE FUNDAMENTAL ORDERS OF CONNECTICUT, *supra* note 9, at 23.

25. U.S. CONST. pmbi.

26. THE FUNDAMENTAL ORDERS OF CONNECTICUT, *supra* note 9, at 23.

27. See, e.g., KRAMNICK & MOORE, *supra* note 13, at 13.

28. LAMBERT, *supra* note 10, at 2.

29. See Butler, *supra* note 22, at 196.

30. LAMBERT, *supra* note 10, at 164–65.

31. *Id.* at 165.

proceed from “the concrete data of experience.”³² Newton had demonstrated that the universe was knowable because it was rational.³³ And Locke, whose writings most directly shaped the intellectual and political worldview of eighteenth-century Americans, warned against “claims to sacred truths.”³⁴

Almost all of the Framers were educated in the New Learning. This does not mean that they were anti-Christian. Most of the founding fathers at least occasionally attended church and identified with one or more of the Christian denominations. But as men of the Enlightenment, few of them put much stock in traditional Christianity.³⁵ Indeed, as we shall see, many of the leaders of the Revolutionary generation were not Christians in any traditional sense. They were broad-minded intellectuals who viewed religious passion as divisive and irrational, and who consistently challenged, both publicly and privately, the dogmas of traditional Christianity.

The most important religious trend of the mid-eighteenth century—the belief in deism, or rational religion—had a profound influence on the founding generation. The roots of deism are ancient, but its modern revival can be traced to a series of British writers in the late seventeenth and early eighteenth centuries. John Toland, for example, argued that in order to be credible, a religion must be logical and it must be consistent with the laws of nature.³⁶ Thomas Woolston challenged the doctrine of miracles, arguing that the New Testament’s account of Jesus’s miracles was “broken, elliptical and absurd.”³⁷ And Matthew Tindal charged that revealed theology was nothing more than wishful thinking and irrational superstition.³⁸

The deists were not atheists. They challenged religious beliefs they could not reconcile with reason, but they accepted the idea of a Supreme Being. The deist God was not the Judeo-Christian God, who intervenes in human history and listens to personal prayers, but a more distant being whom the deists referred to as the “Creator,” the “First Cause,” the “Grand

32. *Id.*

33. See LAMBERT, *supra* note 10, at 165–66; KERRY WALTERS, *RATIONAL INFIDELS: THE AMERICAN DEISTS* 13–17 (1992).

34. LAMBERT, *supra* note 10, at 165–66; see also DAVID L. HOLMES, *THE FAITHS OF THE FOUNDING FATHERS* 40 (2006); WALTERS, *supra* note 33, at 13, 17.

35. See HOLMES, *supra* note 34, at 134; WOOD, *supra* note 14, at 330.

36. WALTERS, *supra* note 33, at 22–23.

37. Thomas Woolston, *A Second Discourse on the Miracles of Our Saviour*, in *SIX DISCOURSES ON THE MIRACLES OF OUR SAVIOUR AND DEFENCES OF HIS DISCOURSES, 1727–1730*, at 48 (René Wellek ed., Garland Publ'g, Inc. 1979) (1727).

38. See BROOKE ALLEN, *MORAL MINORITY: OUR SKEPTICAL FOUNDING FATHERS*, at xii–xiii, 172–73 (2006); HOLMES, *supra* note 34, at 40 (deism in Britain); WALTERS, *supra* note 33, at 23 (Toland, Collins, Woolston, and Tindal).

Architect,” and “Nature’s God.”³⁹ The deists believed that the Supreme Being who had created the universe, including the laws of nature, was a benign God, that the Creator had revealed both his existence and his nature in the laws of nature, and that he had given man the capacity to understand those laws through the exercise of reason. They believed further that the Creator had embedded both the meaning of morality and the existence of inalienable human rights within the laws of nature, and that they too could be discerned through the use of reason.⁴⁰

Most deists did not accept the divinity of Jesus, the truth of miracles or revelation, or the doctrines of original sin or predestination.⁴¹ They rejected these concepts as “antithetical to the dictates of reason” and argued that such doctrines had “not only kept mankind in the shackles of superstition and ignorance,” but also “insulted the majesty and dignity of God.”⁴² Most deists believed that people had no need to read the Bible, pray, be baptized or circumcised, attend church, or conform to any of what they regarded as the irrational beliefs and practices of Christianity (or of any religion).⁴³

Of course, there were more and less radical versions of deism. Some deists flatly rejected Christianity; others regarded themselves as Enlightened Christians. To understand our national origins, it is essential to understand that deism had a powerful impact on the colonists.

Many of our founding fathers, including Thomas Paine, Thomas Jefferson, Benjamin Franklin, Ethan Allen, and Gouverneur Morris, were flat-out deists, and many others, such as John Adams, James Madison, Alexander Hamilton, James Monroe, and George Washington, were at least partial deists who accepted most elements of the deist critique.⁴⁴

The significance of deism for the creation of the United States “can hardly be overstated.”⁴⁵ From roughly 1725 through the end of the eighteenth century, deistic beliefs played a central role in the framing of the American republic. The founding generation viewed religion, and par-

39. See HOLMES, *supra* note 34, at 47.

40. WALTERS, *supra* note 33, at ix–xi.

41. *Id.* at x.

42. *Id.*

43. HOLMES, *supra* note 34, at 47.

44. See AHLSTROM, *supra* note 16, at 358–59 (American deists); ALLEN, *supra* note 38, at 172–73 (American deists); HOLMES, *supra* note 34, at 143–60; LAMBERT, *supra* note 10, at 161–62 (American deists); WALTERS, *supra* note 33, at xii–xiii.

45. LAMBERT, *supra* note 10, at 161; see also HOLMES, *supra* note 34, at 49–50; WALTERS, *supra* note 33, at ix.

ticularly religion's relation to government, through an Enlightenment lens that was deeply skeptical of orthodox Christianity.⁴⁶

Of course, not all the founding fathers were deists. Many, such as Patrick Henry, Sam Adams, and John Jay, were traditional Christians.⁴⁷ But it is instructive to consider some of those who were, in varying degrees, influenced by deism. To that end, I would like to explore the beliefs of five key members of the founding generation: Benjamin Franklin, Thomas Jefferson, John Adams, George Washington, and Thomas Paine.

Franklin was the embodiment of the American Enlightenment. He had "a deep dislike of religious enthusiasm,"⁴⁸ and in his autobiography, he revealed that at an early age he had become "a real doubter in many points of our religious doctrine."⁴⁹ "Revelation," he said, has "no weight with me, as such."⁵⁰ As Franklin made clear in his autobiography, he was a "thorough Deist."⁵¹ Franklin dismissed much of Christian doctrine as "unintelligible,"⁵² and was quite critical of how Christianity had affected mankind:

If we look back into history for the character of the present sects in Christianity, we shall find few that have not in their turns been persecutors, and complainers of persecution. The primitive Christians thought persecution extremely wrong in the Pagans, but practiced it on one another. The first Protestants of the Church of England blamed persecution in the Romish church, but practiced it upon the Puritans. These found it wrong in the Bishops, but fell into the same practice themselves.⁵³

Only days before his death, in response to an inquiry about his religious beliefs, Franklin replied: "Here is my Creed. I believe in one God, the Creator of the Universe: That he governs the World by his Providence. That he ought to be worshiped. That the most acceptable Service we can render

46. The concepts of "natural rights" and "natural law," which played a central role in the Declaration of Independence, the Constitution, and the Bill of Rights, flourished during the Enlightenment. As Voltaire observed, the "eternal and immutable truths [are] founded upon natural rights and the necessary order of society." M. DE VOLTAIRE, *Rights*, in 2 A PHILOSOPHICAL DICTIONARY 412, 417 (W. Dugolale 1843); see also ALLEN, *supra* note 38, at 179.

47. See ALLEN, *supra* note 38, at 102; HOLMES, *supra* note 34, at 143–60.

48. GORDON S. WOOD, *REVOLUTIONARY CHARACTERS* 69 (2006).

49. BENJAMIN FRANKLIN, *AUTOBIOGRAPHY*, reprinted in A BENJAMIN FRANKLIN READER 47, 59 (Nathan G. Goodman ed., 1945) (1868).

50. *Id.* at 97.

51. *Id.* at 96.

52. *Id.* at 117.

53. Letter From Benjamin Franklin to the Printer of the London Packet (June 3, 1772), reprinted in 19 THE PAPERS OF BENJAMIN FRANKLIN 163, 164 (William B. Wilcox ed., 1975).

to him, is doing good to his other Children.”⁵⁴ These, he added, are “the fundamental Principles of all sound Religion.”⁵⁵

With respect to Jesus, Franklin observed, “I think the System of morals & his Religion, as he left them to us, the best the World ever saw or is likely to see; but I apprehend it has received various corrupting changes.”⁵⁶ Turning to the question of Jesus’ divinity, Franklin wryly concluded: “I have . . . some Doubts as to his Divinity, tho’ it is a Question I do not dogmatize upon, [having] never studied it, & think it needless to busy myself with it now, when I expect soon an [Opportunity] of [knowing] the Truth with less Trouble.”⁵⁷

Like most deists who rejected the doctrines of original sin and predestination, Franklin believed in a deity who “delights” in man’s pursuit of virtuous behavior, which Franklin defined as “the Knowledge of our *true Interest*; that is, of what is best to be done in all the Circumstances of Humane Life, in order to arrive at our main End in View, HAPPINESS.”⁵⁸ In Franklin’s opinion, man achieves happiness both by satisfying his own needs and by promoting the well-being of his fellow men. He believed that for man to pursue his own happiness pleases the Creator, because a truly benevolent deity “delights in the Happiness of those he has created.”⁵⁹

Franklin believed that people serve God best not when they obey irrational dogmas and believe in miracles, but when they perform good works on behalf of humanity. He faulted Christianity for not being “more productive of good works than I have generally seen it: I mean real good works, works of kindness, charity, mercy, and public spirit; not holiday-keeping, sermon-reading . . . or making long prayers, filled with flatteries and compliments.”⁶⁰

In sum, Franklin regarded all religions as more or less interchangeable in their most fundamental tenets, which he believed required men to pursue their own happiness and to treat others with kindness and respect. He regarded Jesus as a wise moral philosopher, but not necessarily as a divine or divinely inspired figure, and he had no particular use for Christian doctrine insofar as

54. Letter From Benjamin Franklin to Ezra Stiles (Mar. 9, 1790), in 3 THE LITERARY DIARY OF EZRA STILES 387, 387 (Franklin B. Dexter ed., Charles Scribner’s Sons 1901).

55. *Id.*

56. *Id.*

57. *Id.*

58. BENJAMIN FRANKLIN, A MAN OF SENSE, reprinted in 2 THE PAPERS OF BENJAMIN FRANKLIN 15, 16 (Leonard W. Labaree ed., 1960) (1735).

59. BENJAMIN FRANKLIN, ARTICLES OF BELIEF AND ACTS OF RELIGION, reprinted in 1 THE PAPERS OF BENJAMIN FRANKLIN, *supra* note 58, at 101, 103.

60. Letter From Benjamin Franklin to Joseph Huey (June 6, 1753), in A BENJAMIN FRANKLIN READER, *supra* note 49, at 235.

it departed from the core teachings of Jesus. A longtime friend despaired “that a man of Dr. Franklin’s general good character and great influence” was such “an unbeliever in Christianity.”⁶¹

No member of the founding generation “embodied America’s democratic ideals . . . more than Thomas Jefferson.”⁶² “The principles of Jefferson,” said Abraham Lincoln, “are the definitions and axioms of free society.”⁶³ Like Franklin, Jefferson was a true Enlightenment *philosophe*. A thoroughgoing skeptic, Jefferson “subjected every religious tradition, including his own, to scientific scrutiny.”⁶⁴ He had little patience for talk of miracles, revelation, or resurrection. Jefferson saw his age as a unique opportunity for man to push back the forces of darkness and to unleash man’s reason in order to comprehend the true order of the universe.

Jefferson believed that the universe was comprehensible and that in the long run the application of reason would explain its mysteries. On the subject of religion, Jefferson cautioned his nephew, Peter Carr, to “shake off all the fears, & servile prejudices under which weak minds are servilely crouched.”⁶⁵ He urged Carr to “question with boldness even the existence of a God; because, if there be one, he must more approve of the homage of reason, than that of blindfolded fear.”⁶⁶

Like Franklin, Jefferson admired Jesus as a moral philosopher. He wrote John Adams that the moral beliefs espoused by Jesus reflected “the most sublime and benevolent code of morals which has ever been offered to man,”⁶⁷ and on another occasion he described Jesus’ character as “the most eloquent . . . that has ever been exhibited to man.”⁶⁸ Although Jefferson

61. JOSEPH PRIESTLY, AUTOBIOGRAPHY 117 (1970). On Franklin’s religious beliefs, see A BENJAMIN FRANKLIN READER 376–78 (Walter Isaacson ed., 2003); ALLEN, *supra* note 38, at 3, 8–13; BAILYN, *supra* note 15, at 65; HOLMES, *supra* note 34, at 53–57; LAMBERT, *supra* note 10, at 159–60; MAY, *supra* note 15, at 126–32; JON MEACHAM, AMERICAN GOSPEL: GOD, THE FOUNDING FATHERS, AND THE MAKING OF A NATION 20–22 (2006); WALTERS, *supra* note 33, at 44–81; WOOD, *supra* note 48, at 70; see also STEVEN WALDMAN, FOUNDING FAITH: PROVIDENCE, POLITICS, AND THE BIRTH OF RELIGIOUS FREEDOM IN AMERICA 18–26 (2008).

62. WOOD, *supra* note 48, at 93.

63. Letter From Abraham Lincoln to H.L. Pierce and Others (Apr. 6, 1859), in ABRAHAM LINCOLN: HIS SPEECHES AND WRITINGS 488, 489 (Roy P. Basler ed., 1946).

64. ALLEN, *supra* note 38, at 70.

65. Letter From Thomas Jefferson to Peter Carr (Aug. 10, 1787), in THOMAS JEFFERSON: WRITINGS 900, 902 (Merrill D. Peterson ed., 1984).

66. *Id.*

67. Letter From Thomas Jefferson to John Adams (Oct. 12, 1813), in 2 THE ADAMS-JEFFERSON LETTERS: THE COMPLETE CORRESPONDENCE BETWEEN THOMAS JEFFERSON AND ABIGAIL AND JOHN ADAMS 383, 384 (Lester J. Cappon ed., 1987) [hereinafter THE ADAMS-JEFFERSON LETTERS].

68. Letter From Thomas Jefferson to Joseph Priestly (Apr. 9, 1803), in 10 THOMAS JEFFERSON: WRITINGS, *supra* note 65, at 1120, 1122 (describing Jesus as “most innocent” and “most eloquent”); see also HOLMES, *supra* note 34, at 82–85; Letter From Thomas Jefferson to William

denied Jesus' divinity,⁶⁹ he ascribed to Jesus "every *human* excellence" and maintained that Jesus himself "never claimed any other."⁷⁰

But Jefferson insisted that Jesus' teachings had been distorted out of all recognition by a succession of "corruptors."⁷¹ He described such doctrines as predestination, the inefficacy of good works, and original sin, as "nonsense," "dross," "distortions," "abracadabra,"⁷² "insanity," a "hocus-pocus phantasm,"⁷³ "demoralizing dogmas," and a "deliria of crazy imaginations."⁷⁴ In a letter to John Davis, Jefferson disdained the "metaphysical abstractions," "maniac ravings," and "foggy dreams" of Jesus' followers, who, he said, had so burdened Christianity "with absurdities and incomprehensibilities, as to drive into infidelity men who had not the time, patience, or opportunities to strip it of it's [sic] meretricious trappings."⁷⁵ Jefferson concluded that "ridicule" was the only rational response to Christianity's "unintelligible propositions."⁷⁶ The clergy, he wrote, were "false shepherds" and "usurpers of the Christian name," who were like "scuttle fish," which use "darkness" to make themselves "impenetrable to the eye of a pursuing enemy."⁷⁷

Short (Apr. 13, 1820), in 15 THE WRITINGS OF THOMAS JEFFERSON 243, 243–45 (Albert E. Bergh ed., 1905); Letter From Thomas Jefferson to Benjamin Waterhouse (June 28, 1822), in 15 THE WRITINGS OF THOMAS JEFFERSON, *supra*, at 383, 383–85.

69. See Letter From Thomas Jefferson to William Short (Aug. 4, 1820), in THOMAS JEFFERSON: WRITINGS, *supra* note 65, at 1435, 1437–38 (suggesting that the claim that Jesus was the son of God was the result of the overheated zealotry of his era).

70. Letter From Thomas Jefferson to Benjamin Rush (Apr. 21, 1803), in 10 THE WRITINGS OF THOMAS JEFFERSON, *supra* note 68, at 380, 380 ("[T]o the corruption of Christianity I am, indeed, opposed, but not to the genuine precepts of Jesus himself.").

71. See *id.*

72. HOLMES, *supra* note 34, at 82–87.

73. Letter From Thomas Jefferson to James Smith (Dec. 8, 1822), THE WRITINGS OF THOMAS JEFFERSON, *supra* note 68, at 408–10.

74. Letter From Thomas Jefferson to Benjamin Waterhouse (June 26, 1822), THE WRITINGS OF THOMAS JEFFERSON, *supra* note 68, at 383, 383–85; Letter From Thomas Jefferson to Benjamin Waterhouse (July 19, 1822), THE WRITINGS OF THOMAS JEFFERSON, *supra* note 68, at 390–92; Letter From Thomas Jefferson to Jared Sparks (Nov. 4, 1820), in 15 THE WRITINGS OF THOMAS JEFFERSON, *supra* note 68, at 287, 287–88.

75. Letter From Thomas Jefferson to John Davis (Jan. 18, 1824), in JEFFERSON & MADISON ON SEPARATION OF CHURCH AND STATE: WRITINGS ON RELIGION AND SECULARISM 373 (Lenni Brenner ed., 2004).

76. Letter From Thomas Jefferson to Francis Adrian Van der Kemp (July 30, 1816), in JEFFERSON'S EXTRACTS FROM THE GOSPELS 375 (Dickinson W. Adams ed., 1983).

77. Letter From Thomas Jefferson to William Short (Apr. 13, 1820), in 15 THE WRITINGS OF THOMAS JEFFERSON, *supra* note 68, at 243, 244–47 ("We have most unwisely committed to the hierophants of our particular superstition . . ."); Letter From Thomas Jefferson to Benjamin Waterhouse (June 26, 1822), in 15 THE WRITINGS OF THOMAS JEFFERSON, *supra* note 68, at 383, 383–85; Letter From Thomas Jefferson to Francis Adrian Van der Kemp (July 30, 1816), in JEFFERSON'S EXTRACTS FROM THE GOSPELS, *supra* note 76, at 374, 375 (comparing clergy to "scuttle fish").

Jefferson was not, however, a godless man.⁷⁸ Though deeply committed to the separation of church and state and fiercely anticlerical, he was also a man of “deeply felt private religious conviction”⁷⁹ who believed in a benign Creator whose “only revelation to man is made through Nature and Reason.”⁸⁰ Like other deists, Jefferson believed that the Creator had endowed man with a moral compass—an innate and natural sense of right and wrong.⁸¹ Man’s “moral sense, or conscience,” Jefferson reasoned, “is as much a part of a man as his leg or arm.”⁸² All people, he wrote, have “implanted in our breasts” a “moral instinct” and a “love of others,” which “prompts us . . . to feel and to succor their distresses.”⁸³ Jefferson praised this moral law as “the brightest gem with which the human character is studded,” and he believed that it was these natural moral dispositions that made self-governance possible.⁸⁴

To Jefferson, then, the nature of virtue was neither dependent upon nor “to be comprehended” through “Christian revelation,” but was “clearly evident in nature and discernible through the exercise of reason.”⁸⁵ The “dogmas of religion,” he wrote Matthew Carey, are quite distinct from “moral principles,”⁸⁶ and Jefferson had no difficulty with the proposition that even atheists could be moral.⁸⁷

Indeed, Jefferson viewed most claims of religious dogma not as principles of morality, but as sectarian bids for power. As he wrote Thomas Leiper, most dogmas that differ among religions do not instruct “us how to live well,” but

78. KRAMNICK & MOORE, *supra* note 13, at 95.

79. *Id.*

80. See ALLEN, *supra* note 38, at 78.

81. Letter From Thomas Jefferson to John Adams (Oct. 14, 1816), in 2 THE ADAMS-JEFFERSON LETTERS, *supra* note 67, at 490, 492.

82. Letter From Thomas Jefferson to Peter Carr (Aug. 10, 1787), in THOMAS JEFFERSON: WRITINGS, *supra* note 65, at 900, 901.

83. Letter From Thomas Jefferson to Thomas Law (June 13, 1814), in THOMAS JEFFERSON: WRITINGS, *supra* note 65, at 1335, 1337–38.

84. THOMAS JEFFERSON, OPINION ON FRENCH TREATIES (1793), reprinted in THOMAS JEFFERSON: WRITINGS, *supra* note 65, at 422–23.

85. ALLEN, *supra* note 38, at 180.

86. Letter From Thomas Jefferson to Matthew Carey (Nov. 11, 1816), in 10 THE WRITINGS OF THOMAS JEFFERSON 67 (G.P. Putnam’s Sons 1899).

87. See Letter From Thomas Jefferson to Thomas Law (June 13, 1814), in THOMAS JEFFERSON: WRITINGS, *supra* note 65, at 1335, 1336 (noting that atheists are moral). Many of the *philosophes*, including Rousseau and Condorcet, took this position. Some went even further and argued that Christianity actively hampered the moral instincts that had been endowed by the Creator. See, e.g., BARON D’HOLBACH, GOOD SENSE WITHOUT GOD: OR, FREETHINKING OPPOSED TO SUPERNATURAL IDEAS ARTICLE 178 (1772), quoted in ALLEN, *supra* note 38, at 180; see also ALLEN, *supra* note 38, at 87, 180.

are designed to gain power and support for those “who inculcate them.”⁸⁸ For Jefferson, the fundamental precepts of morality, which he believed were held in common in all religions, were captured by Jesus’ maxims, “Treat others as you would have them treat you” and “Love thy neighbor as thyself.”⁸⁹ As Jefferson never tired of saying, “[t]he essence of virtue is in doing good to others.”⁹⁰

Jefferson was, of course, the primary drafter of the Declaration of Independence. In the light of his views as a deist and in the light of the similar views of many other signers, it is important to note the precise language of the Declaration. It does not invoke Jesus, Christ, the Father, the Lord, the Almighty, or any of the other traditional characterizations of the Christian deity. Rather, it invokes Nature’s God, the Creator, the Supreme Judge, and Divine Providence.⁹¹

The Declaration of Independence was a document of the Enlightenment. It was not a Puritan, Methodist, Protestant, Catholic, or Evangelical Christian statement. It was, rather, a statement that deeply and intentionally invoked the language of American deism. It was a document of its own time, and it speaks eloquently about what Americans of that time believed.⁹²

John Adams saw the world as a hostile place, both “to himself and to the American cause, which was the great passion of his life.”⁹³ None of the founders “read more and thought more about law and politics” than Adams, and none “was more attuned to the hopes and promise of the Enlightenment.”⁹⁴

Like Jefferson, Adams believed that the original teachings of Jesus were sound, but that they had been “corrupted by the various creeds and philosophies that had been grafted onto them.”⁹⁵ As Adams grew older, he became increasingly suspicious of religious dogma. As he wrote to Benjamin Rush, “there is a germ of religion in human nature so strong that whenever an order

88. Letter From Thomas Jefferson to Thomas Leiper (Jan. 21, 1809), in *THE FOUNDERS ON RELIGION: A BOOK OF QUOTATIONS* 148 (James H. Hutson ed., 2005) [hereinafter *FOUNDERS ON RELIGION*].

89. WALTERS, *supra* note 33, at 181.

90. Letter From Thomas Jefferson to John Adams (Oct. 14, 1816), in 2 *THE ADAMS-JEFFERSON LETTERS*, *supra* note 67, at 490, 492.

91. See generally *THE DECLARATION OF INDEPENDENCE* (U.S. 1776).

92. On Jefferson’s religious beliefs, see AHLSTROM, *supra* note 16, at 367–68; ALLEN, *supra* note 38, at 70–87; HOLMES, *supra* note 34, at 79–80; KRAMNICK & MOORE, *supra* note 13, at 95–96; LAMBERT, *supra* note 10, at 174–77, 279; MEACHAM, *supra* note 61, at 3–12; John M. Murrin, *Religion and Politics in America From the First Settlements to the Civil War*, in *RELIGION AND AMERICAN POLITICS: FROM THE COLONIAL PERIOD TO THE 1980S*, at 19, 32–33 (Mark A. Noll ed., 1990); WOOD, *supra* note 48, at 101–07; see also WALDMAN, *supra* note 61, at 72–85.

93. BAILYN, *supra* note 15, at 64.

94. WOOD, *supra* note 48, at 178–79.

95. ALLEN, *supra* note 38, at 59; see also AHLSTROM, *supra* note 16, at 367–68.

of men can persuade the people by flattery or terror that they have salvation at their disposal, there can be no end to fraud, violence, or usurpation.”⁹⁶ Noting the rise of religious fundamentalism early in the nineteenth century during the Second Great Awakening, Adams warned that “instead of the most enlightened people, I fear we Americans shall soon have the character of the silliest people under Heaven.”⁹⁷

Religion and churchgoing were important to Adams, and to a greater extent than either Franklin or Jefferson he believed in a personal God. But like other deists, he “substituted a simpler, less mysterious form of Christianity” for the dogmas he had inherited from his Puritan forebears.⁹⁸ His reading and reflection led him to reject such doctrines as predestination and original sin. The Creator, he declared, “has given us Reason, to find out the Truth, and the real Design and true End of our Existence.”⁹⁹

Though a Congregationalist, Adams more closely identified with Unitarianism.¹⁰⁰ A religious movement that had developed in England in the seventeenth century, Unitarianism was closely related to deism. Unitarians understood Jesus as a moral teacher, rather than as a divine, and rejected the traditional Christian tenets of predestination, original sin, scriptural revelation, and atonement. The chief eighteenth-century proponent of Unitarianism was the English scientist Joseph Priestly. Adams, Franklin, Jefferson, and many other Americans of this era were avid readers of Priestly’s works.¹⁰¹ Reflecting these beliefs, Adams wrote to Jefferson that his religion could be “contained in four short words, ‘Be just and good.’”¹⁰²

96. Letter From John Adams to Benjamin Rush (June 12, 1812), in *THE SPUR OF FAME: DIALOGUES OF JOHN ADAMS AND BENJAMIN RUSH, 1805–1813*, at 244 (John A. Schutz & Douglass Adair eds., 2001) [hereinafter *SPUR OF FAME*].

97. Letter From John Adams to Benjamin Rush (Dec. 28, 1807), in *SPUR OF FAME*, *supra* note 96, at 101.

98. See *HOLMES*, *supra* note 34, at 73–74, 78.

99. JOHN ADAMS, *DIARY AND AUTOBIOGRAPHY*, in 1 *THE ADAMS PAPERS* 42–44 (Lyman H. Butterfield ed., 1963); see also *WOOD*, *supra* note 14, at 330 (noting that Adams rejected the divinity of Jesus as an “awful blasphemy”).

100. See *THE SEPARATION OF CHURCH AND STATE: WRITINGS ON A FUNDAMENTAL FREEDOM BY AMERICA’S FOUNDERS* 31 (Forrest Church ed., 2004) [hereinafter *THE SEPARATION OF CHURCH AND STATE*].

101. See SYDNEY E. AHLSTROM & JONATHAN S. CAREY, *AN AMERICAN REFORMATION: A DOCUMENTARY HISTORY OF UNITARIAN CHRISTIANITY* 23, 36–37 (1985).

102. Letter From John Adams to Thomas Jefferson (Dec. 12, 1816), in 2 *THE ADAMS-JEFFERSON LETTERS*, *supra* note 67, at 499; see also ANN HOLT, *A LIFE OF JOSEPH PRIESTLY* 140 (1931). Jefferson wrote back that he agreed that this was the result of their “fifty or sixty years of religious reading.” Indeed, he wrote, “What all agree in, is probably right.” Letter From Thomas Jefferson to John Adams (Jan. 11, 1817), in 2 *THE ADAMS-JEFFERSON LETTERS*, *supra* note 67, at 499.

Adams was acutely aware of the need to separate religion from politics. “Nothing,” he wrote, “is more dreaded than the national government meddling with religion.”¹⁰³ As Adams wrote Benjamin Rush, “I mix religion with politics as little as possible.”¹⁰⁴ His *Dissertation on the Canon and Feudal Law* was a sharp attack against the “civil and ecclesiastical tyranny of earlier Catholic and Protestant establishments,”¹⁰⁵ and in his *Defense of the American Constitutions*, he devoted several chapters to condemning “the horrors of religious wars, crusades, inquisitions, and pogroms.”¹⁰⁶ He warned that, given the opportunity, nineteenth-century “evangelicals would whip and crop, and pillory and roast” in America just as they had earlier in Europe.¹⁰⁷ In 1775, one of the delegates to the Second Continental Congress was a clergyman who wanted Congress to focus upon America’s Christian identity.¹⁰⁸ Adams wrote his wife Abigail that “as he is the first gentleman of the cloth who has appeared in Congress, I cannot but wish he may be the last. Mixing the sacred character with that of the statesman . . . is not attended with any good effects.”¹⁰⁹ When Adams was President, he signed the 1797 Treaty of Tripoli, which had been unanimously approved by the Senate, and in which the United States emphatically affirmed that “the Government of the United States . . . is not in any sense founded on the Christian religion.”¹¹⁰

Twenty years later, Adams wrote to Jefferson, “Twenty times, in the course of my late Reading, have I been upon the point of breaking out, ‘This would be the best of all possible Worlds, if there were no Religion in it.’”¹¹¹ But he then added that “[w]ithout Religion this World would be Something not fit to be mentioned in polite Company, I mean Hell.”¹¹²

103. Letter From John Adams to Benjamin Rush (June 12, 1812), in SPUR OF FAME, *supra* note 96, at 224.

104. Letter From John Adams to Benjamin Rush (Apr. 12, 1809), in SPUR OF FAME, *supra* note 96, at 155.

105. See John Witte, Jr., “A Most Mild and Equitable Establishment of Religion”: John Adams and the Massachusetts Experiment, in RELIGION AND THE NEW REPUBLIC, *supra* note 22, at 1.

106. *Id.* at 19; see also *id.* at 1, 18–19.

107. JOSEPH J. ELLIS, PASSIONATE SAGE: THE CHARACTER AND LEGACY OF JOHN ADAMS 123 (1993).

108. See Letter From John Adams to Abigail Adams (Sept. 17, 1775), in THE LETTERS OF JOHN AND ABIGAIL ADAMS 97 (Frank Shuffelton ed., 2004).

109. *Id.*

110. Treaty of Peace and Friendship Between the United States of America and the Bey and Subjects of Tripoli of Barbary art. 11, U.S.-Tripoli, Jan. 3, 1797, 8 Stat. 154, *quoted in* ALLEN, *supra* note 38, at 142.

111. Letter From Thomas Jefferson to John Adams (Oct. 12, 1813), in 2 THE ADAMS-JEFFERSON LETTERS, *supra* note 67, at 509.

112. Letter From John Adams to Thomas Jefferson (Apr. 19, 1817), in 2 THE ADAMS-JEFFERSON LETTERS, *supra* note 67, at 509.

This ambivalence reflected Adams' lifelong belief that all of history had proved that the People, unrestrained, tend to be "unjust, tyrannical, brutal, barbarous, and cruel."¹¹³ This view of man posed a serious problem for Adams as a political theorist, for like the other founders he knew that self-governance ultimately depends on the character of the people. No republican government can last, he observed, unless there is "a positive Passion for the public good."¹¹⁴ Given his skepticism about man's tendency to misbehave, he doubted whether the People had the integrity necessary to make the republican experiment in self-governance succeed. As he told Mercy Warren in January 1776, there is "so much Rascality, so much Venality and Corruption, so much Avarice and Ambition, such a Rage for Profit and Commerce among all Ranks and Degrees of Men," that the very idea of republicanism seems precarious.¹¹⁵

Adams "rested his hopes for the future on the regenerative effects of republican government and on the emergence of politicians who could mold the character of the people, extinguishing their follies and vices and inspiring their virtues and abilities."¹¹⁶ The American Revolution, he believed, "had to reform the culture, or it could not succeed."¹¹⁷ He warned that unless a public-spirited virtue could "be inspired into our People," they "will not obtain a lasting Liberty."¹¹⁸

It was here that Adams, like many of the founders, believed that religion could play a positive role in helping to shape both the "people's moral

113. 6 THE WORKS OF JOHN ADAMS 10 (Charles Francis Adams ed., 1850-1856); see also JOHN ADAMS, A DEFENCE OF THE CONSTITUTIONS OF GOVERNMENT OF THE UNITED STATES OF AMERICA, reprinted in 5 THE WORKS OF JOHN ADAMS, *supra*, at 488; 4 THE WORKS OF JOHN ADAMS, *supra*, at 406; WOOD, *supra* note 48, at 182, 188.

114. Letter From John Adams to Mercy Warren (Apr. 16, 1776), in 1 THE FOUNDERS' CONSTITUTION 670 (Philip B. Kurland & Ralph Lemer eds., 1987).

115. Letter From John Adams to Mercy Warren (Jan. 8, 1776), in 1 THE WARREN-ADAMS LETTERS 201, 202 (Worthington Chauncey Ford ed., 1917); see also Letter From John Adams to Benjamin Rush (May 21, 1787), in FOUNDERS ON RELIGION, *supra* note 88, at 146 (Adams laments the "ominous dissolution of Morality . . . throughout the civilized World."); WOOD, *supra* note 48, at 180.

116. WOOD, *supra* note 48, at 180.

117. *Id.* at 181.

118. Letter From John Adams to Zabdiel Adams (June 21, 1776), in 2 ADAMS FAMILY CORRESPONDENCE 21, 22 (L.H. Butterfield ed., 1963); JOHN ADAMS, DISSERTATION ON THE CANON AND FEUDAL LAW (1765), reprinted in 3 THE WORKS OF JOHN ADAMS, *supra* note 113, at 455-57; Letter From John Adams to Mercy Warren (Apr. 14, 1776), in 1 THE WARREN-ADAMS LETTERS, *supra* note 115, at 201-02, 225; see also WOOD, *supra* note 48, at 181; JOHN ADAMS, A DEFENCE OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA (1787-1788), reprinted in THE PORTABLE JOHN ADAMS, at xxv-xxvi (John Patrick Diggins ed., 2004) (noting that "the nature of mankind is one thing, and the reason of mankind is another" and that "human nature must be taken as it is, as it has been, and will be").

conduct” and their “ideas about justice, decency, duty, and responsibility.”¹¹⁹ Religion, he believed, could be a source of republican virtue.¹²⁰

But neither Adams nor most of the other founders meant traditional Christianity, with all of its complex dogmas and tenets, when they invoked religion as a foundation of republican government. Rather, as Adams wrote Jefferson, the essence of sound religious belief was captured in the phrase, “[b]e just and good.”¹²¹ And, as Jefferson replied, “What all agree in, is probably right.”¹²²

The vast majority of the founders believed that the principle “be just and good” could play a critical role in nurturing the sort of public-spiritedness they deemed essential to self-governance. And they believed that some version of what Rousseau called “civil religion,” and what Jefferson referred to as “Nature’s God,” would be salutary in fostering the spirit of American republicanism.¹²³ But this was a far cry from endorsing the sanctity of Christian doctrine.¹²⁴

Compared with Franklin, Jefferson, and Adams, George Washington was not a learned man. He was a man of affairs, rather than a man of ideas. His greatness lay in his character, which left an indelible mark upon the nation. Washington’s public conduct epitomized the sort of public-spirited and disinterested republican integrity that the new nation needed.

A man of the Enlightenment, Washington was “liberal on matters of religion.”¹²⁵ He was, in his own words, “no bigot myself to any mode of worship.”¹²⁶ Unlike Jefferson, though, he was not contemptuous of traditional Christianity. He believed that an unseen but benevolent power guided both the universe and human affairs, and he variously referred to this force as “Providence,” the

119. MEACHAM, *supra* note 61, at 27–28.

120. See FOUNDERS ON RELIGION, *supra* note 88, at 147; see also John Adams, Hand-Written Note in Condorcet’s *Outlines of an Historical View of the Progress of the Human Mind*, quoted in Zoltan Haraszti, JOHN ADAMS AND THE PROPHETS OF PROGRESS 252 (1952) (“There is no such thing [as morality] without a supposition of a God. There is no right or wrong in the universe without the supposition of a moral government and an intellectual and moral governor.”).

121. Letter From John Adams to Thomas Jefferson (Dec. 12, 1816), in 2 THE ADAMS-JEFFERSON LETTERS, *supra* note 67, at 499.

122. Letter From Thomas Jefferson to John Adams (Jan. 11, 1817), in 2 THE ADAMS-JEFFERSON LETTERS, *supra* note 67, at 506.

123. See, e.g., THE DECLARATION OF INDEPENDENCE (U.S. 1776).

124. JEAN-JACQUES ROUSSEAU, ON THE SOCIAL CONTRACT 131 (Roger D. Masters ed., Judith R. Masters trans., St. Martin’s Press 1978); see also AHLSTROM, *supra* note 16, at 363; LAMBERT, *supra* note 10, at 282; JOHN G. WEST, THE POLITICS OF REVELATION AND REASON: RELIGION AND CIVIC LIFE IN THE NEW NATION 76–77 (1996).

125. WOOD, *supra* note 48, at 35.

126. Letter From George Washington to Marquis de Lafayette (Aug. 15, 1787), in 29 THE WRITINGS OF GEORGE WASHINGTON 258, 259 (John C. Fitzpatrick ed., 1939).

“Almighty Ruler of the Universe,” the “Great Architect of the Universe,” and the “Great Disposer of Events.”¹²⁷

Washington was reticent about his own religious beliefs. He paid little attention to religion in his personal life and was not an avid churchgoer. He was “neither religiously fervent nor theologically learned.”¹²⁸ He described his own religious tenets as “few and simple.”¹²⁹ His biographer Joseph Ellis observed that at his death, “Washington did not think much about heaven or angels; the only place he knew his body was going was into the ground, and as for his soul, its ultimate location was unknowable. He died as a Roman Stoic rather than as a Christian saint.”¹³⁰

It is not even clear that Washington considered himself a Christian. Although he maintained a connection with the Anglican Church, this was prudent behavior for a cautious political leader. Washington’s personal papers, however, offer no evidence that he believed in biblical revelation, eternal life, or Jesus’s divinity. In several thousand letters, he never once mentioned Jesus, and the name of Jesus was “notably absent from his will.”¹³¹ All in all, Washington’s practice of Christianity has aptly been characterized as “limited and superficial,” at best.¹³²

Clergymen who knew Washington bemoaned his skeptical approach to Christianity. The Reverend Dr. Bird Wilson acknowledged that Washington “was not a professing Christian,” and Bishop William White admitted that no “degree of recollection will bring to my mind any fact which would prove General Washington to have been a believer in Christian revelation.”¹³³ Washington has variously and accurately been described as a “cool deist,”¹³⁴ a “warm deist,”¹³⁵ a “theistic rationalist,”¹³⁶ a “Stoic,”¹³⁷ and a “Christian Deist.”¹³⁸

127. See WILLIAM J. JOHNSON, *GEORGE WASHINGTON THE CHRISTIAN* 288–90 (1919); see also PETER R. HENRIQUES, *REALISTIC VISIONARY: A PORTRAIT OF GEORGE WASHINGTON* 170 (2006).

128. PAUL LONGMORE, *THE INVENTION OF GEORGE WASHINGTON* 169 (1988); see also PAUL F. BOLLER, JR., *GEORGE WASHINGTON AND RELIGION* 31 (1963); HENRIQUES, *supra* note 127, at 168–69; MAY, *supra* note 15, at 72; FRANKLIN STEINER, *THE RELIGIOUS BELIEFS OF OUR PRESIDENTS: FROM WASHINGTON TO F.D.R.* 17–18 (1995) (Washington was not an avid churchgoer even during his presidency).

129. HENRIQUES, *supra* note 127, at 168–69, 175; see also BOLLER, *supra* note 128, at 67; Edwin S. Gaustad, *Disciples of Reason*, *CHRISTIAN HIST.*, Spring 1996, *quoted in* ALLEN, *supra* note 38, at 40.

130. JOSEPH J. ELLIS, *HIS EXCELLENCY: GEORGE WASHINGTON* 269 (2004).

131. A.W. Greely, *The Personal Side of George Washington*, *LADIES HOME J.*, Apr. 1896, at 7, *quoted in* ALLEN, *supra* note 38, at 35.

132. BARRY SCHWARTZ, *GEORGE WASHINGTON: THE MAKING OF AN AMERICAN SYMBOL* 175 (1987); see also MEACHAM, *supra* note 61, at 11–12; STEINER, *supra* note 128, at 39 (noting that there were no religious references in Washington’s will, which was unusual at the time).

133. RUPERT HUGHES, *GEORGE WASHINGTON: THE SAVIOR OF THE STATES 1777–1781*, at 286, 287 (1930); see also BOLLER, *supra* note 128, at 89; MEACHAM, *supra* note 61, at 78.

134. KRAMNICK & MOORE, *supra* note 13, at 101.

135. HENRIQUES, *supra* note 127, at 170–75, 182–83, 185.

As president, Washington was always careful not to invoke Christianity. His official speeches, orders, and other public communications scrupulously reflected the perspective of a deist. His references to religion omitted references to Jesus, Christ, Lord, Father, Redeemer, and Savior, and he invariably edited such terms out of his official documents whenever his subordinates tried to insert them. Instead, he used such deistic phrases as “Providence,” the “Supreme Being,” and the “Deity.”¹³⁹

Like Adams, however, Washington believed that some form of religion was useful both to public morality and republican government. In his Farewell Address, for example, he warned that “reason and experience both forbid us to expect that national morality can prevail in the exclusion of religious principle.”¹⁴⁰

Thomas Paine’s *Common Sense* helped catalyze the colonies and inspire the Declaration of Independence. After the Revolution, Paine returned to England and published *The Rights of Man*, a forceful defense of republicanism based upon the theory of natural rights. He soon followed up with *The Age of Reason*, which sharply criticized Christian doctrine and declared that “reason, not supernaturalist creeds or dogma,” must be man’s sole guide in moral and religious matters.¹⁴¹

In *The Age of Reason*, Paine announced:

I believe in one God, and no more . . . I believe in the equality of man; and I believe that religious duties consist in doing justice, loving mercy, and endeavoring to make our fellow-creatures happy. . . . I do not believe in the creed professed by the Jewish Church, by the Roman Church, by the Greek Church, by the Turkish Church, by the

136. *Id.*

137. ALLEN, *supra* note 38, at 36.

138. HOLMES, *supra* note 34, at 140–41; *see also* WALDMAN, *supra* note 61, at 57 (noting that Washington was a “deeply spiritual man” who sometimes disdained “important facets of Christianity”). Some early writings about Washington, such as (Parson) M.L. WEEMS, *THE LIFE OF GEORGE WASHINGTON* (1800), depicted Washington as a pious Christian, but such works have long been discredited as nineteenth-century evangelical propaganda. *See* HOLMES, *supra* note 34, at 68–69; STEINER, *supra* note 128, at 21–33 (debunking popular myths about Washington’s supposed religious beliefs and practices).

139. *See* ALLEN, *supra* note 38, at xiii; FRANK GRIZZARD, *THE WAYS OF PROVIDENCE: RELIGION AND GEORGE WASHINGTON* 4–5 (2005); HENRIQUES, *supra* note 127, at 173–75; HOLMES, *supra* note 34, at 65; LAMBERT, *supra* note 10, at 282; MAY, *supra* note 15, at 72.

140. *See* BOLLER, *supra* note 128, at 94; JAY FLIEGELMAN, *PRODIGALS AND PILGRIMS: THE AMERICAN REVOLUTION AGAINST PATRIARCHAL AUTHORITY, 1750–1800*, at 212 (1982); HENRIQUES, *supra* note 127, at 183; HOLMES, *supra* note 34, at 67–68; WEST, *supra* note 124, at 37; WOOD, *supra* note 48, at 34–35, 41, 60.

141. WALTERS, *supra* note 33, at 125.

Protestant Church, nor by any church that I know of. My own mind is my own church.¹⁴²

Paine maintained that “the religion of Deism is superior to the Christian religion,” because it “is free from all those invented and torturing articles that shock our reason.”¹⁴³ Deism’s creed, he wrote,

is pure, and sublimely simple. It believes in God, and there it rests. It honours Reason as the choicest gift of God to man, and the faculty by which he is enabled to contemplate the power, wisdom, and goodness of the Creator displayed in the creation; . . . it avoids all presumptuous beliefs, and rejects, as the fabulous inventions of men, all books pretending to revelation.¹⁴⁴

Paine was merciless in his attack on Christian doctrine. He denied “that the Almighty ever did communicate anything to man, by any mode of speech, in any language, or by any kind of vision.”¹⁴⁵ He characterized Christianity as “[a] fable, which, for absurdity and extravagance, is not exceeded by any thing that is to be found in the mythology of the ancients.”¹⁴⁶ He castigated the Bible as a fraud, pointed out its internal contradictions, contrasted its teachings with the findings of science, and harangued it for its immorality.¹⁴⁷ “It is,” he charged, “a book of lies, wickedness and blasphemy; for what can be greater blasphemy than to ascribe the wickedness of man to the orders of the Almighty?”¹⁴⁸ Paine derided Christianity’s acceptance of miracles as ignorant and he charged that the postulation of miraculous interventions by God degrades Him to the “character of a showman” who plays “tricks to amuse” and to make “the people stare and wonder.”¹⁴⁹ Paine maintained that, by demanding unquestioning belief in miraculous revelation, insisting that believers accept superstition as truth, and denying believers the right to criticize religious dogma, Christianity had

142. THOMAS PAINE, *THE AGE OF REASON: PART ONE* (1794), reprinted in 8 THOMAS PAINE READER, *supra* note 18, at 399.

143. THOMAS PAINE, *OF THE RELIGION OF DEISM COMPARED WITH THE CHRISTIAN RELIGION, AND THE SUPERIORITY OF THE FORMER OVER THE LATTER*, in 4 THE WRITINGS OF THOMAS PAINE 322 (Moncure Daniel Conway ed., 1896).

144. *Id.*

145. THOMAS PAINE, *THE AGE OF REASON: PART SECOND* (1795), reprinted in 8 THE LIFE AND WORKS OF THOMAS PAINE 103, 268 (William M. Van der Weyde ed., 1925).

146. THOMAS PAINE, *THE AGE OF REASON: PART FIRST* (1794), reprinted in 8 THE LIFE AND WORKS OF THOMAS PAINE, *supra* note 145, at 3, 14.

147. MAY, *supra* note 15, at 174.

148. PAINE, *supra* note 145, at 136.

149. PAINE, *supra* note 146, at 94; see also WALTERS, *supra* note 33, at 128–31.

fundamentally undermined the freedom of conscience and encouraged intolerance and persecution.¹⁵⁰

Paine's works—*Common Sense*, *The Rights of Man*, and *The Age of Reason*—“became the three most widely read political tracts of the eighteenth century.”¹⁵¹ Paine was the “greatest spokesman of popular deism,”¹⁵² and to orthodox American Christians he was “a villain and an infidel.”¹⁵³

Indeed, throughout the second half of the eighteenth century, orthodox Christianity worried deeply about the impact of deism. As already noted, the Revolutionary era was a period of decline for American Christianity, and the rise of deism was seen as a continuing threat. By the latter years of the eighteenth century, colleges like Yale, William & Mary, and Princeton had become hotbeds of deism, and even staid, Puritan Harvard had become “enmeshed in free thought.”¹⁵⁴

The Christian establishment responded with a vengeance. As early as 1759, Ezra Stiles warned that “Deism has got such Head” that it is necessary to “conquer and demolish it.”¹⁵⁵ Thirty years later, Timothy Dwight, the president of Yale, published a biting antideist work, *The Triumph of Infidelity*, and Edward Gibbon's *Decline and Fall of the Roman Empire* was literally put to the torch at Harvard because of “its uncomplimentary interpretation of early Christianity.”¹⁵⁶ In 1784, Ethan Allen, the leader of the Green Mountain Boys and the hero of the Battle of Ticonderoga, published a book-length argument for deism. This work, *Reason the Only Oracle of Man*, was furiously condemned by the clergy.¹⁵⁷ Timothy Dwight accused Allen of championing “Satan's cause,” Ezra Stiles charged that Allen was “profane and impious,” and the Reverend Nathan Perkins called him “one of the wickedest men that ever walked this guilty globe.”¹⁵⁸

Did the Framers intend the United States to be a Christian nation? Clearly they did not. The Declaration of Independence marked a funda-

150. PAINE, *supra* note 146, at 12.

151. WOOD, *supra* note 48, at 207; see also JOHN KEANE, *TOM PAINE: A POLITICAL LIFE*, at xiv–xiii (1995).

152. MAY, *supra* note 15, at 124.

153. HOLMES, *supra* note 34, at 42; see also LAMBERT, *supra* note 10, at 175.

154. WALTERS, *supra* note 33, at 9.

155. Letter From Ezra Stiles to Thomas Clap (Aug. 6, 1759), in *AMERICAN PHILOSOPHY* 217 (I. Woodbridge Riley ed., Dodd, Mead & Co. 1907).

156. WALTERS, *supra* note 33, at 8–9.

157. *Id.* at 86–89.

158. TIMOTHY DWIGHT, *TRIUMPH OF INFIDELITY* 23–24 (1788), *quoted in* WALTERS, *supra* note 33, at 92, 93; CHARLES A. JELLISON, *ETHAN ALLEN: FRONTIER REBEL* 311, 331 (1969); see also AHLSTROM, *supra* note 16, at 266–367; ALLEN, *supra* note 38, at 159; HOLMES, *supra* note 34, at 44–49; MAY, *supra* note 15, at 123; WALTERS, *supra* note 33, at 84–114.

mental shift in our history. Before 1776, public expressions of faith in the colonies were often overtly Christian. In declaring themselves independent of Britain, however, the American founders invoked the language and spirit of the Enlightenment. The Declaration was signed by men of widely diverse religious beliefs, ranging from traditional Christians to committed deists.¹⁵⁹ But in acknowledging Nature's God, the Creator, and Divine Providence, the Declaration carefully and quite consciously eschewed any invocation of the Christian religion.¹⁶⁰

At the same time, and as we have seen, the Framers were acutely aware that a republican form of government presupposes certain qualities of civic virtue among the people,¹⁶¹ and many believed that there was a direct link between religion and civic virtue.¹⁶² This was certainly true of those who held traditional religious beliefs. Phillips Payson, for example, an influential Congregationalist minister, maintained that religion is "of the highest importance to . . . civil society. . . as it keeps alive the best sense of moral obligation."¹⁶³ John Witherspoon, a Presbyterian clergyman and signer of the Declaration, warned that even a "good form of government" cannot protect the people against their natural "profligacy and corruption" unless religion

159. Among the members of the Revolutionary generation who did not entertain deist beliefs and might properly be described as traditional Christians were Samuel Adams, Patrick Henry, and John Jay. See ALLEN, *supra* note 38, at 102; HOLMES, *supra* note 34, at 143–60. Jay, for example, who along with Madison and Hamilton was one of the authors of the Federalist Papers and later served as the first Chief Justice of the United States, believed that laws enforcing the Sabbath are necessary to civil society because the Sabbath is a divine institution sanctioned by the Bible. See Letter From John Jay to Edward Livingston (July 28, 1822), in 4 THE CORRESPONDENCE AND PUBLIC PAPERS OF JOHN JAY 464, 465 (Henry P. Johnston ed., G.P. Putnam's Sons 1890–1893). Similarly, although Jay supported religious tolerance and the right of conscience, he secured passage of a clause in the New York State Constitution providing that "the liberty of conscience . . . shall not be construed to encourage licentiousness." JOHN JAY: THE MAKING OF A REVOLUTIONARY, UNPUBLISHED PAPERS, 1745–1780, at 392 (Richard B. Morris ed., 1975); see also WEST, *supra* note 124, at 53–55.

160. Of course, this is not to say that the Framers in any way intended to establish the United States as an antireligious or anti-Christian nation.

161. THE FEDERALIST NO. 55 (James Madison). For example, the precursor to the Declaration of Independence, the Virginia Declaration of Rights, which was drafted by George Mason and adopted by the Virginia Constitutional Convention on June 12, 1776, provided in Section XV: "That no free government, or the blessings of liberty, can be preserved to any people but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles." THE VIRGINIA DECLARATION OF RIGHTS, *reprinted in* THE SEPARATION OF CHURCH AND STATE, *supra* note 100, at 29.

162. ALLEN, *supra* note 38, at 179; see also KRAMNICK & MOORE, *supra* note 13, at 47–54.

163. Phillips Payson, *Election Sermon of 1778*, in 1 AMERICAN POLITICAL WRITING DURING THE FOUNDING ERA, 1760–1805, at 523, 529 (Charles S. Hyneman & Donald S. Lutz eds., Liberty Press 1983).

informs their values.¹⁶⁴ Benjamin Rush wrote that for the new nation to succeed, Americans would have to adhere “to the religious principles and moral habits of the first settlers.”¹⁶⁵ Rush expressed his fear that “attempts to produce political happiness by the solitary influence of human reason will be . . . fruitless.”¹⁶⁶ Although conceding that “[r]eason produces . . . great and popular truths,” he cautioned that it “affords *motives* too feeble to induce mankind to act agreeably to them.”¹⁶⁷ Religion, on the other hand, he argued, “unfolds the same truths and accompanies them with *motives*, agreeable, powerful, and irresistible.”¹⁶⁸

Even those founders who were not committed to the “religious principles . . . of the first settlers” generally agreed that religion could help to foster republican virtue.¹⁶⁹ In a letter to Rush, John Adams opined that “Religion and Virtue” are the necessary “Foundations . . . of Republicanism and of all free Government,”¹⁷⁰ and in a letter to Zabdiel he noted that, “[s]tatesmen . . . may plan and speculate for liberty, but it is religion and morality alone which can establish the principles upon which freedom can securely stand.”¹⁷¹ Alexander Hamilton also believed that religion could promote civic virtue. Hamilton reasoned that liberty depends upon morality and that “morality must fall without religion,” because religion “alone can curb the impetuous passions of man, and confine him within the bounds of social duty.”¹⁷² Even Benjamin Franklin thought that religion had a role to play in sustaining the morals of ordinary citizens. In a letter admonishing

164. John Witherspoon, *The Dominion of Providence Over the Passions of Man* (May 17, 1776), in 3 *THE WORKS OF THE REVEREND JOHN WITHERSPOON* 41 (1802), quoted in *FOUNDERS ON RELIGION*, *supra* note 88, at 148.

165. Letter From Benjamin Rush to Noah Webster (July 20, 1798), in 2 *LETTERS OF BENJAMIN RUSH* 798, 799 (Lymna H. Butterfield ed., Princeton Univ. Press 1951).

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. Letter From John Adams to Benjamin Rush (Aug. 28, 1811), in *FOUNDERS ON RELIGION*, *supra* note 88, at 191.

171. Letter From John Adams to Zabdiel Adams (June 21, 1776), in 9 *THE WORKS OF JOHN ADAMS*, *supra* note 113, at 401; see also Letter From John Adams to Benjamin Rush (Aug. 28, 1811), in *OLD FAMILY LETTERS* 352, 354 (Alexander Biddle ed., J.B. Lippincott Co. 1892); Letter From John Adams to Abigail Adams (1775), quoted in EDWIN S. GAUSTAD, *A RELIGIOUS HISTORY OF AMERICA* 127 (1966); John Adams, *To the Officers of the First Brigade of the Third Division of the Militia of Massachusetts* (October 11, 1798), in *OUR SACRED HONOR* 369, 370 (William J. Bennett ed., 1997). The Massachusetts Declaration of Rights, drafted by John Adams in 1780, stated that “the happiness of a people and the good order and preservation of civil government essentially depend upon piety, religion, and morality.” *THE SEPARATION OF CHURCH AND STATE*, *supra* note 100, at 33.

172. Alexander Hamilton, *The Stand*, No. 3 (April 7, 1798), in 21 *THE PAPERS OF ALEXANDER HAMILTON* 405 (Harold C. Syrett ed., 1973).

a young writer who had made a particularly strident attack on religion, Franklin cautioned:

You yourself may find it easy to live a virtuous Life without the assistance afforded by Religion; you . . . possessing a Strength of Resolution sufficient to enable you to resist common Temptations. But think how great a Proportion of Mankind consists of weak and ignorant Men and Women . . . who have need of the Motives of Religion to restrain them from Vice, to support their Virtue, and to retain them in the Practice of it till it becomes *habitual*. . . If Men are so wicked as we now see them *with Religion* what would they be if *without it*!”¹⁷³

Not all of the founders believed that religion was necessary for an orderly and virtuous republican society. Jefferson believed that religion was not essential for moral conduct.¹⁷⁴ But even Jefferson acknowledged that “the liberties of a nation” are more secure when the people see them as the gift of the Creator.¹⁷⁵

In the light of these views, it should be evident that the Framers’ treatment of religion in the Constitution was not “an act of irreverence.”¹⁷⁶ Rather, the Framers recognized that religion could and should play a role in helping “to preserve the civil morality necessary to democracy.”¹⁷⁷ But the Framers drew a sharp distinction in their understanding of the proper relation between religion and law in a free society. They valued religion, but given their knowledge of the religious strife that had plagued man’s history and their appreciation of the importance to individual liberty of both freedom of and freedom from religion, “they saw the wisdom of distinguishing between private and public religion.”¹⁷⁸ In churches, temples, and homes, “anyone could believe and practice” what he wished.¹⁷⁹ But in the “public business of the nation,” it was essential for the government to speak of religion “in a way that was unifying, not divisive.”¹⁸⁰

Now, you may wonder, whatever happened to deism? With the French Revolution following hard on the heels of the American Revolution, it seemed for a moment that the world was on the cusp of

173. Letter From Benjamin Franklin to— (Dec. 13, 1757), in 7 THE PAPERS OF BENJAMIN FRANKLIN, *supra* note 58, at 293, 294–95.

174. Letter From Thomas Jefferson to Thomas Law (June 13, 1814), in JEFFERSON’S EXTRACTS FROM THE GOSPELS, *supra* note 76, at 355, 355–56 (stating that atheists can be moral people).

175. Thomas Jefferson, Notes on the State of Virginia, in THOMAS JEFFERSON: WRITINGS, *supra* note 65, at 289 (“gift” of the Creator).

176. KRAMNICK & MOORE, *supra* note 13, at 24.

177. *Id.*

178. MEACHAM, *supra* note 61, at 23.

179. *Id.*

180. *Id.*

a new era of individual liberty, dignity, and equality, based on a commitment to human reason. But as the violence of the French Revolution collapsed into a fearsome reign of terror, Americans were shocked to see self-styled rationalists transformed into a new breed of tyrant—“ideological rather than religious” in nature.¹⁸¹

As the guillotine became the public image of the French Revolution, the terror came “to be linked in popular opinion with the . . . religious skepticism” of the Enlightenment.¹⁸² Doubt and reaction soon set in everywhere, and the Enlightenment project began to be viewed with increasing suspicion and alarm. With the excesses of the French Revolution, people increasingly became fearful of the possible consequences of a less directive religious culture and for many the appeal of a more distant and impersonal deity began to cool.

Instead, people sought for a closer relationship with a divine that better understood their daily struggles, hopes, and dreams. This backlash in both Europe and America pushed the rationalism of the eighteenth century off center stage, and at the turn of the nineteenth century the Second Great Awakening burst upon the United States as a “wave of conservatism and religiosity” swept the nation.¹⁸³ Deism was simply overwhelmed by the surge of Christian revivalism.¹⁸⁴

By the end of his life in 1826, Thomas Jefferson could look back with a sense of despair, because, in his view, American society was going backward.¹⁸⁵ Instead of becoming more enlightened, Americans now seemed to be returning to the superstitions of the past.¹⁸⁶ The ordinary people, in whom Jefferson had placed such confidence, now seemed to him “less rational than they had been at the time of the Revolution.”¹⁸⁷

And what, you might sensibly ask, is the point of all this? It is, I think, simply this: Whether you fancy yourself an originalist or an interpretivist, a champion of a living Constitution or a dead hand, when you puzzle over the meaning of the Establishment Clause, the Free Exercise Clause, the Ninth Amendment, the Due Process Clause, or the Free Speech Clause, when you consider whether the Constitution allows the

181. ALLEN, *supra* note 38, at 181.

182. *Id.*

183. *Id.*

184. See *id.*; see also *id.* at 143; WALTERS, *supra* note 33, at 287; WEST, *supra* note 124, at 1; WOOD, *supra* note 48, at 231. On the demise of deism, see AHLSTROM, *supra* note 16, at 367; HOLMES, *supra* note 34, at 49; WALTERS, *supra* note 33, at 271–73.

185. WOOD, *supra* note 48, at 115–17.

186. *Id.* at 116.

187. *Id.* at 116–17.

government to have faith-based initiatives, deny homosexuals the right to marry, prohibit obscenity, forbid abortions, the use of contraceptives, or stem-cell research, teach creationism, dip the flag to Jesus, or ban the word “fuck” in public, it helps to know the truth about the Framers, about what they believed, and about what they aspired to when they created this nation. Mel Nimmer, I am sure, would expect no less of you.