

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

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

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

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").

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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

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 ALLENO

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;

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

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

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.

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

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

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

"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 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

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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

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*

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

informs their values.¹⁶⁴

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.