

UNDERSTANDING THE
“CHRISTIAN NATION” MYTH

*Steven K. Green**

One debate that apparently has no ending point is the one over the nation’s religious foundings. As predictable as the first daffodils of spring, religious and legal conservatives periodically raise claims about America’s Christian heritage in their efforts to gain the moral (and legal) high ground in the ongoing culture wars. These arguments take on several forms, from assertions that the Founders relied on a pervasive Calvinist ideology to craft notions of republicanism, to claims that the Founders were all devout Christians and guided in their actions by divine providence.

Conservatives find support for such claims in a host of statements and official actions during the founding period—for example, thanksgiving day proclamations—that allegedly demonstrate a reliance on religious principles in the ordering of the nation’s political and legal structure.¹ According to one writer, “[t]he history of America’s laws, its constitutional system, the reason for the American Revolution, or the basis of its guiding political philosophy cannot accurately be discussed without reference to its biblical roots.”²

Additional support, although more qualified, comes from historical scholarship documenting the influence of Puritan

* Steven K. Green is a Professor of Law at Willamette University’s College of Law as well as the director of its Center for Religion, Law & Democracy.

¹ See, e.g., GARY T. AMOS, DEFENDING THE DECLARATION: HOW THE BIBLE AND CHRISTIANITY INFLUENCED THE WRITING OF THE DECLARATION OF INDEPENDENCE (1989); DAVID BARTON, ORIGINAL INTENT: THE COURTS, THE CONSTITUTION & RELIGION (2008); DAVID BARTON, SEPARATION OF CHURCH AND STATE: WHAT THE FOUNDERS MEANT (2007); DAVID BARTON, THE MYTH OF SEPARATION: WHAT IS THE CORRECT RELATIONSHIP BETWEEN CHURCH AND STATE? (3d ed. 1992); GARY DEMAR, AMERICA’S CHRISTIAN HISTORY: THE UNTOLD STORY (1995); JOHN EIDSMOE, CHRISTIANITY AND THE CONSTITUTION: THE FAITH OF OUR FOUNDING FATHERS (1987); BENJAMIN HART, FAITH & FREEDOM: THE CHRISTIAN ROOTS OF AMERICAN LIBERTY (1988); TIM LAHAYE, FAITH OF OUR FOUNDING FATHERS (1987); FRANCIS A. SCHAEFFER, A CHRISTIAN MANIFESTO (rev. ed. 1982); JOHN W. WHITEHEAD, THE SECOND AMERICAN REVOLUTION (1982).

² HART, *supra* note 1, at 19.

thought and the democratizing impulses of the Great Awakening (1740s) on the founding generation.³ Armed with such data, religious and legal conservatives give notice that the accepted interpretation, that the Founders intended to create a secular nation governed by notions of church-state separation, is contestable territory.

These advocates—I will term them “religionists”—are not tilting at imaginary windmills; for more than sixty years, the dominant legal/historical interpretation of the nation’s constitutional founding has been that the Founders intended to establish a high wall of separation between church and state, as Supreme Court Justice Hugo Black insisted in 1947.⁴ The model was Thomas Jefferson’s metaphorical Wall and its scripture was James Madison’s *Memorial and Remonstrance*,⁵ not those annoyingly inconsistent actions like the appointment of a chaplain in the first Congress.

The scholarly historical canon maintains that the Founders relied primarily on Enlightenment principles, not religious ones, when fashioning the nation’s governing norms. Lawyer and historian Leo Pfeffer led the way for the “secularist” interpretation in the 1950-60s, to be followed by outstanding scholars such as Leonard Levy, Gordon Wood, Jon Butler and, more recently, Isaac Kramnick and R. Lawrence Moore in their popular book, *The Godless Constitution*. Leading First Amendment scholar Geoffrey Stone also entered the fray in a 2008 article which asserts that a majority of the Founders held deistic leanings and looked chiefly to Enlightenment principles when constructing the new government.⁶

Although the academy is overwhelmingly committed to the secularist interpretation, a handful of scholars have embraced the religionist argument in recent years, validating

³ See ALAN E. HEIMERT, *RELIGION AND THE AMERICAN MIND: FROM THE GREAT AWAKENING TO THE REVOLUTION* (1966); BARRY ALAN SHAIN, *THE MYTH OF AMERICAN INDIVIDUALISM: THE PROTESTANT ORIGINS OF AMERICAN POLITICAL THOUGHT* (1994).

⁴ *Everson v. Bd. of Educ.*, 330 U.S. 1, 16 (1947).

⁵ JAMES MADISON, *MEMORIAL AND REMONSTRANCE AGAINST RELIGIOUS ASSESSMENTS* (June 20, 1785), reprinted in *Everson*, 330 U.S. at 63–72 [hereinafter *MEMORIAL & REMONSTRANCE*].

⁶ See JON BUTLER, *AWASH IN A SEA OF FAITH: CHRISTIANIZING THE AMERICAN PEOPLE* (1990); ISAAC KRAMNICK & R. LAURENCE MOORE, *THE GODLESS CONSTITUTION: THE CASE AGAINST RELIGIOUS CORRECTNESS* (1996); LEONARD W. LEVY, *THE ESTABLISHMENT CLAUSE: RELIGION AND THE FIRST AMENDMENT* (1986); LEO PFEFFER, *CHURCH, STATE, AND FREEDOM* (1953); GORDON S. WOOD, *THE CREATION OF THE AMERICAN REPUBLIC, 1776-1787* (1969); Geoffrey R. Stone, *The World of the Framers: A Christian Nation?*, 56 *UCLA L. REV.* 1 (2008).

the claims of the popular religionist writers. One goal of this scholarship has been to document the diversity in religious sentiment—particularly forms of Protestant orthodoxy—among members of the founding generation, including those in the political leadership. Unfortunately, this otherwise commendable effort too frequently is blurred with corresponding efforts to marginalize the impact of those Founders who held heterodox religious views (Thomas Jefferson, for example).⁷ Still, the renewed scholarly attention to the nation's Christian foundations has attracted the attention of sympathetic judges such as Antonin Scalia and Clarence Thomas, and (infamously) the members of the Texas Board of Education.⁸

Most recently, a third position has emerged in this debate, one that could be termed an "accommodationist" approach.⁹ This perspective seeks a middle ground between the previous positions, giving due regard for the Founders' personal religious piety and their commitment to a public virtue. It asserts that the Founders could be both religious and committed to a *moderate* scheme of church-state separation. Yet this perspective usually sides with the religionists on issues such as the Founders' belief in divine providence and their reliance on "higher" norms when conceptualizing legal rights and liberties. And like the religionists, many accommodationists place considerable weight on isolated religious statements and actions by the Founders.¹⁰

The debate about America's Christian origins is

7 GERARD V. BRADLEY, *CHURCH-STATE RELATIONSHIPS IN AMERICA* (1987); DANIEL L. DREISBACH, *THOMAS JEFFERSON AND THE WALL OF SEPARATION BETWEEN CHURCH AND STATE* (2002); *THE FORGOTTEN FOUNDERS ON RELIGION AND PUBLIC LIFE* (Daniel L. Dreisbach, Mark D. Hall & Jeffrey H. Morrison eds., 2009); *THE FOUNDERS ON GOD AND GOVERNMENT* (Daniel L. Dreisbach, Mark D. Hall & Jeffrey H. Morrison eds., 2004); VINCENT PHILLIP MUÑOZ, *GOD AND THE FOUNDERS: MADISON, WASHINGTON, AND JEFFERSON* (2009); ELLIS SANDOZ, *A GOVERNMENT OF LAWS: POLITICAL THEORY, RELIGION, AND THE AMERICAN FOUNDING* (1990).

8 *McCreary County v. ACLU*, 545 U.S. 844, 885-89 (2005) (Scalia, J., dissenting); *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 52-54 (2004) (Thomas, J., concurring in judgment); see also Russell Shorto, *Founding Father?*, *N.Y. TIMES MAG.* (Feb. 14, 2010), at 32-39, 46-47.

9 These categorical classifications are my own. Undoubtedly, some people I have placed in the religionist category would insist that they belong in the accommodationist category.

10 See JAMES H. HUTSON, *FORGOTTEN FEATURES OF THE FOUNDING: THE RECOVERY OF RELIGIOUS THEMES IN THE EARLY AMERICAN REPUBLIC* (2003); JON MEACHAM, *AMERICAN GOSPEL: GOD, THE FOUNDING FATHERS, AND THE MAKING OF A NATION* (2006); MICHAEL NOVAK & JANA NOVAK, *WASHINGTON'S GOD: RELIGION, LIBERTY, AND THE FATHER OF OUR COUNTRY* (2006); STEVEN WALDMAN, *FOUNDING FAITH: PROVIDENCE, POLITICS, AND THE BIRTH OF RELIGIOUS FREEDOM IN AMERICA* 93 (2008).

unwinnable on this level. All sides have their favorite quotations and events that they use to bludgeon the opposition. The result is that readers are forced to choose between competing statements, which usually turns on the reader's own predilections (for example, is Washington's "Farewell Address" more representative of attitudes than Madison's *Memorial and Remonstrance*?). This is not to say that one side does not have the better argument. Accommodationists raise important points about the Founders' concerns for piety and virtue, while secularists generally have stronger historical backing about the nation's intellectual foundations. And I have previously stated my position on this issue: the claim of America's Christian nationhood is generally a myth.¹¹ Increasingly, however, I have been led to conclude that this level of the debate misses several larger, more important questions. From where does this claim of America's Christian foundations arise? How should one approach the historical record? And why does this debate retain its saliency today?

The fundamental problem with this debate lies in how all sides use the historical data and the assumptions they draw from that evidence. Religionists in particular—though accommodationists and secularists are not immune from this temptation—engage in a fair amount of proof-texting. By this I mean the extraction of particular events or statements from their larger contexts for the purpose of proving the essential meaning or inclination of that episode or speaker. James H. Hutson of the Manuscript Division of the Library of Congress describes this practice:

What better way to prove that the Founders were grounded in and instructed by Christian principles than by calling the most important of them to the witness stand and letting them testify in their own words to the importance of Christianity in their lives? All quote book compilers employ this strategy, invariably focusing on Washington, Jefferson, Madison, Franklin, Adams, and a handful of lesser luminaries, culling statements from their writings that attest to the beneficent influence of Christianity on their lives and on the public welfare, and presenting these pronouncements in serial form.¹²

¹¹ See STEVEN K. GREEN, *THE SECOND DISESTABLISHMENT: CHURCH AND STATE IN NINETEENTH-CENTURY AMERICA* (2010) [hereinafter GREEN, *SECOND DISESTABLISHMENT*]; Steven K. Green, *The Fount of Everything Just and Right? The Ten Commandments as a Source of American Law*, 14 *J.L. & RELIGION* 525 (1999).

¹² *THE FOUNDERS ON RELIGION: A BOOK OF QUOTATIONS* ix–x (James H. Huston

To be sure, Benjamin Franklin, Thomas Jefferson, James Madison, and even Thomas Paine—that “filthy little atheist,” according to Theodore Roosevelt¹³—made several favorable statements about God and Jesus. The significance of such declarations, however, should always be tempered by reference to the larger philosophical themes contained in the works of the individuals: *Notes on the State of Virginia* (Jefferson), the *Memorial and Remonstrance* (Madison), and the *Age of Reason* (Paine).¹⁴ A failing by the secularist side has been to assert that the majority of Founders were deists—and implying this proves their disregard for religion—without explaining the fluidity of that belief system and its adaptability to more traditional religious forms.¹⁵

In the remaining space, this essay will examine the recurring outlines in the Christian nation debate and the underlying assumptions that accompany the various positions. It will then turn to an often overlooked aspect of the debate: how the Founders and later generations purposefully used religious discourse and imagery in their efforts to legitimize the new nation. This section necessitates an examination into notions of founding myths and their role in establishing a national identity. A final section will discuss why this debate, though irresolvable, is nonetheless important.

I. THE OUTLINES OF THE DEBATE

Most discussions about the nation’s Christian foundations, either pro or con, proceed along similar paths. First, and central to all narratives, is to establish the overarching ideological perspective of the founding period. This generally involves demonstrating the primacy of either Calvinist thought, based on a bibliocentric inclination, or Enlightenment rationalism as the source of natural rights and republican values. From that central point arises the second consideration: the prevalence of religious piety during the

ed., 2005).

¹³ ERIC FONER, *TOM PAINE AND REVOLUTIONARY AMERICA* 270 (rev. ed. 2005).

¹⁴ THOMAS JEFFERSON, *NOTES ON THE STATE OF VIRGINIA* (University of North Carolina Press 1955); *MEMORIAL & REMONSTRANCE*, *supra* note 5; THOMAS PAINE, *THE AGE OF REASON* (Citadel Press 1974).

¹⁵ See EDWIN S. GAUSTAD, *FAITH OF OUR FATHERS: RELIGION AND THE NEW NATION* (1987); KRAMNICK & MOORE, *supra* note 6, at 100–04; FRANKLIN STEINER, *THE RELIGIOUS BELIEFS OF OUR PRESIDENTS: FROM WASHINGTON TO F.D.R.* (1995). Professor Stone does not commit such errors, documenting the variations in belief associated with deism. Stone, *supra* note 6, at 6–21.

founding period. Here, establishing (or disestablishing) the religious bona fides of Founders becomes key.

The general consensus among historians today is that the members of the founding generation relied on multiple ideological sources when they were developing their arguments for revolution, republicanism, and constitutional government. Overall, the Founders were well-educated and well-read for their time; they engulfed histories and theoretical works about classical and medieval republics, the common law, the English Civil War, and the Glorious Revolution. They drew their inspiration about the necessities and forms of republicanism chiefly from Enlightenment and Whig theorists of the preceding generations: John Locke, Baron Montesquieu, Hugo Grotius, Henry St. John Lord Bolingbroke, and James Burgh, among others. Also influential were those writers of the so-called Scottish Enlightenment—Frances Hutcheson, David Hume, and Thomas Reid—whose “common sense” rationalism influenced many of the Founders including James Madison, John Adams, and James Wilson. Most of these writers were religious nonconformists or skeptics who sought to disassociate the legitimacy for government from religious authority. In his influential *Letter on Toleration*, Locke wrote that “the whole power of civil government is concerned only with men’s civil goods, is confined to the care of the things of this world, and has nothing whatever to do with the world to come.”¹⁶ Because the “care of souls” was not the business of government, “the civil power ought not to prescribe articles of faith, or doctrines, or forms of worshipping God, by civil law.”¹⁷ Such words were groundbreaking, in that they implied a commonwealth unconcerned with religious fealty or the maintenance of public virtue. Most scholars acknowledge the commanding influence of Locke and other Enlightenment and Whig thinkers on the founding generation.¹⁸

¹⁶ JOHN LOCKE, A LETTER ON TOLERATION 71 (Raymond Klibansky ed., 1968).

¹⁷ *Id.* at 69.

¹⁸ See JOHN LOCKE, TWO TREATISES OF GOVERNMENT (1965); see also BERNARD BAILYN, THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION 27–29, 35–54 (1967); CARLA H. HAY, JAMES BURGH, SPOKESMAN FOR REFORM IN HANOVERIAN ENGLAND 42–43 (1979); KRAMNICK & MOORE, *supra* note 6, at 82–83; CHARLES-LOUIS MONTESQUIEU, SPIRIT OF THE LAWS (1748), reprinted in 5 THE FOUNDERS’ CONSTITUTION 56–58 (Philip B. Kurland & Ralph Lerner eds., 1987); John M. Murrin, *Fundamental Values, the Founding Fathers, and the Constitution*, in TO FORM A MORE PERFECT UNION: THE CRITICAL IDEAS OF THE CONSTITUTION 22–23, 28–31 (Herman Belz, Ronald Hoffman & Peter J. Albert eds., 1992); WOOD, *supra* note 6, at 152–53, 291–305; Oscar Handlin & Mary Handlin, *James Burgh and American Revolutionary Theory*, 73 PROC. MASS. HIST. SOC’Y 38 (1961).

At the same time, the Founders and their contemporaries lived in a culture imbued with a strong religious tradition. Despite the multiplicity of sects during the founding period, the "common unifying thread" among most churches was Calvinism. A dynamic religious environment, inspired by the revivals of the Great Awakening (1740s), informed republican ideology by providing the Revolution a greater, trans-historical meaning, one that explained events as part of a continuum reaching back to biblical times. Clergy used religious imagery to describe the unfolding events of the revolutionary period, often speaking in millennial and providential terms.¹⁹ Political leaders, too, were not immune from employing religious discourse when making appeals to revolutionary ideals of liberty and republicanism. Most of the Founders sensed no inconsistency in relying on divergent ideologies to justify the new nation. Rather, patriot leaders synthesized these disparate strains of thought into a shared political rhetoric. In spite of the inherent conflicts between the assumptions underlying various traditions (for example, belief in the goodness of human nature common in Enlightenment thought was diametrically opposed to Calvinist thought), colonial leaders were able to extract consistent themes and construct a rhetoric that reflected an amalgam of various ideologies. As Gordon Wood has written, "Enlightened rationalism and evangelical Calvinism were not at odds in 1776."²⁰

That historians generally acknowledge the influence of religious culture and thought on the founding period does not satisfy most religionists, however, chiefly because historians consider Enlightenment thought to be the dominant influence on the Founders' political views.²¹ As a result, religionists

19 HEIMERT, *supra* note 3; HARRY S. STOUT, *THE NEW ENGLAND SOUL: PREACHING AND RELIGIOUS CULTURE IN COLONIAL NEW ENGLAND* (1986); Donald S. Lutz, *The Relative Influence of European Writers on Late Eighteenth-Century American Political Thought*, 78 AM. POL. SCI. REV. 189, 192 (1984). Importantly, scholars have demonstrated how Calvinist clergy also imbued Enlightenment thought and how otherwise biblical concepts like millennialism became secularized. See RUTH H. BLOCH, *VISIONARY REPUBLIC: MILLENNIAL THEMES IN AMERICAN THOUGHT, 1756-1800* (1985); NATHAN O. HATCH, *THE SACRED CAUSE OF LIBERTY: REPUBLICAN THOUGHT AND THE MILLENNIUM IN REVOLUTIONARY NEW ENGLAND* (1977).

20 WOOD, *supra* note 6, at 60; see also BAILYN, *supra* note 18, at 32-33; BUTLER, *supra* note 6, at 195-212; Murrin, *supra* note 18, at 11-21; James T. Kloppenberg, *The Virtues of Liberalism: Christianity, Republicanism, and Ethics in Early American Political Discourse*, 74 J. AM. HIST. 9, 9-33 (1987); Harry S. Stout, *Religion, Communications, and the Ideological Origins of the American Revolution*, 34 WM. & MARY Q. 519, 535-36 (1977).

21 GREEN, *SECOND DISESTABLISHMENT*, *supra* note 11, at 16-24; KRAMNICK &

mount a two-fold response: minimize the impact of those most notable Founders who held rational and heterodox religious views (such as Franklin, Jefferson, or Madison); and, somewhat inconsistently, emphasize those statements and events that suggest an overlooked religious piety among the same individuals. The first argument is that the impact of Enlightenment thought was limited primarily to the educated and elite of the founding generation. The vast majority of people remained relatively untouched by what was taught in the handful of colleges or discussed at the dinners or in the salons frequented by the colonial elite. Rather, the prevailing mass of Americans drew their understandings of government and church-state relations from their religious experiences.²² In essence, both the religious opinions and attitudes of men like Jefferson and Franklin about a secular government were unrepresentative of a host of “second-tier” leaders (including Samuel Adams, Patrick Henry, John Jay, and Elias Boudinot) and the great mass of early Americans. The book titles promoting this interpretation are revealing: *The Forgotten Founders on Religion and Public Life*; *Forgotten Features of the Founding*.²³

Again, religionists make an important point about the diversity of religious opinion during the founding period, even among the founding elite (though this point is at tension with an insistence about the prevalence of Calvinist thought). To be sure, Americans did not march in deistic lock-step. Yet, using that point to marginalize the importance of Enlightenment and Whig thought rings hollow. First, it assumes that the views of the religiously orthodox masses (and their presumed rejection of Enlightenment thought) were as influential on the creation of the new governments as those of the founding elite. With the significantly greater restrictions on voting and participation in civic affairs, and the geographical isolation of many commoners, their views simply did not count as much when it came to constitutional formation.²⁴ Second, this argument—at least where it implies

MOORE, *supra* note 6, at 67–87.

²² Barry Alan Shain claims that ninety-five percent (95%) of early Americans did not share the Enlightenment perspective of the leading Founders, but drew their understanding of human nature from Calvinism. Barry Alan Shain, *Revolutionary-Era Americans: Were they Enlightened or Protestant? Does it Matter?*, in FOUNDERS ON GOD AND GOVERNMENT, *supra* note 7, at 275.

²³ FORGOTTEN FOUNDERS, *supra* note 7, at 1–25; HUTSON, *supra* note 10.

²⁴ This is not to discount the importance of ideology among commoners or their influence on constitutional formation at the state level which, of course, impacted the national level. The perspectives that were most influential, however, were of those commoners who were inspired and radicalized by the evolving political

diametrically opposed perspectives—fails to account for the dramatic increase in political pamphlets and newspapers that disseminated cutting-edge political theories along the seaboard, and made those secular-based rationales for revolution and government accessible to common folk.²⁵ Thomas Paine's *Common Sense* sold an estimated 150,000 copies, and while it lacked the anti-religious polemic of his later works, it, among with hundreds of other pamphlets, advanced essentially secular theories for revolution and government. Scholars have long acknowledged "the massive politicization of American society" during the Revolutionary era.²⁶ Commoners would also have learned of Enlightenment and Whig theories from their clergy who were adept at integrating such thought into their religious addresses. And finally, as just stated, this argument minimizes the extent to which early Americans were willing to synthesize various ideological perspectives. No one at this time was solely Calvinist or Enlightenment rationalist in perspective. A review of the sermons of the period confirms that even orthodox clergy saw little conflict between contrasting ideologies and generously used Enlightenment discourse in their writings and addresses.²⁷

Second, religionists rely heavily on the Founders' occasional use of religious discourse, though they usually fail to place that practice within the broader and immediate contexts. During the eighteenth century, the Bible was the most familiar and universally available book. Religious imagery and symbolism were the common idioms that all speakers employed when making rhetorical points. That one can point to references to God or biblical events in any address or political writing from the era is thus unremarkable. Rather than indicating a level of personal piety, the mass of religious discourse indicates the degree of biblical literacy and use of common idioms. On the more immediate level, however, both religious and political leaders purposefully drew on Biblical types to legitimize their revolutionary efforts. Political and

climate. *See generally* GARY B. NASH, *THE URBAN CRUCIBLE: SOCIAL CHANGE, POLITICAL CONSCIOUSNESS, AND THE ORIGINS OF THE AMERICAN REVOLUTION* (1979); GORDON S. WOOD, *THE RADICALISM OF THE AMERICAN REVOLUTION* (1991).

²⁵ *See generally* BAILYN, *supra* note 18; *PAMPHLETS OF THE AMERICAN REVOLUTION, 1750-1776* (Bernard Bailyn & Jane N. Garrett eds., 1965).

²⁶ FONER, *supra* note 13, at 82; *see id.* at 79–82.

²⁷ *See* the various works reprinted in *AMERICAN POLITICAL WRITING DURING THE FOUNDING ERA: 1760-1805* (Charles S. Hyneman & Donald S. Lutz eds., 1983); *POLITICAL SERMONS OF THE AMERICAN FOUNDING ERA: 1730-1805* (Ellis Sandoz ed., 1991).

religious leaders sought to score symbolic points by identifying America's successes with divine providence; another favorite was to analogize Britain and King George to Egypt and the pharaoh, and the colonists to the Children of Israel (with George Washington as Moses, leading them to the promised land). This use of religious discourse served an important political purpose of anointing the struggle with a transcendent purpose.²⁸ Thus undue significance can be imputed to the Founders' use of religious language and their willingness to speak in providential terms. In light of the extraordinary times and the prevalence of religious discourse, it would have been remarkable if the Founders had not employed biblical terminology in their public statements. Although many of them ascribed a special quality to the nation's foundings, few attributed more than an indirect providential influence in explaining the monumental events. More than anything, the Founders were public figures who utilized contemporary modes of discourse that conflated various strains of thought popular at the time.²⁹

This is why too much significance can be attributed to various official religious acknowledgements that occurred contemporaneous to the founding: legislative chaplains as well as feast and thanksgiving day proclamations, being the most popular. In *Marsh v. Chambers*, a Supreme Court majority upheld the constitutionality of a legislative chaplain in the Nebraska senate, relying almost exclusively on the precedent of the First Congress in establishing chaplains. Chief Justice Burger declared that this historical evidence "sheds light not only on what the draftsmen intended the Establishment Clause to mean, but also on how they thought that Clause applied to the practice authorized by the First Congress—their actions reveal their intent."³⁰ Other justices have relied on similar public acts of religious contrition to illustrate the consistency of Ten Commandment displays and "under God" in the Pledge of Allegiance with constitutional principles.³¹

This form of constitutional analysis is an example of "bad history," in that it assumes that the Founders thought in constitutional terms in all of their actions. It allows for no

²⁸ BLOCH, *supra* note 19; HATCH, *supra* note 19.

²⁹ See Isaac Kramnick, *The Discourse of Politics in 1787: The Constitution and its Critics on Individualism, Community, and the State*, in *TO FORM A MORE PERFECT UNION: THE CRITICAL IDEAS OF THE CONSTITUTION*, *supra* note 18, at 166–204; Murrin, *supra* note 18, at 1–37.

³⁰ *Marsh v. Chambers*, 463 U.S. 783, 790 (1983).

³¹ *Van Orden v. Perry*, 545 U.S. 677, 683–92 (2005); *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 25–33 (2004) (Rehnquist, C.J., concurring in the judgment).

inconsistencies between politically popular policies and overarching constitutional principles. And it gives no allowance for developing attitudes toward church-state matters at a particularly dynamic period in our history.³² This form of analysis also fails to consider the power of tradition. As Derek Davis has documented, many such acknowledgments were derived from colonial practices that pre-dated the constitutional period and were carried over with little debate or thought as to their constitutional implications.³³ To be sure, many of the Founders sensed no inconsistency between legislative chaplains and thanksgiving proclamations on one hand and on notions of religious liberty on the other (however, George Washington and others consciously made such religious affirmations as inclusive as possible, a model that many present-day Christian nation advocates ignore).³⁴ But these holdovers, whether contemplated or not, should not be used to negate the clear progression in attitudes toward greater religious liberty and equality. Notions of church-state separation were slowly developing throughout this period. There is no reason to assume, as religionists often do, that the Founders believed they had achieved perfect church-state arrangement or that they intended to freeze constitutional development in time. On the contrary, the available records indicate the opposite perspective: a belief that much had been achieved in the cause of religious liberty, but much more was yet to be accomplished.³⁵ Replying to criticism that the new Massachusetts Constitution of 1780 still contained a religious test for office holding, Benjamin Franklin quipped that when one considered the harsh legacy of Puritanism, "we must allow they have gone great Lengths in Liberality of Sentiment in religious Subjects; and we may hope for greater Degrees of Perfection, when their Constitution, some years hence, shall be revised."³⁶ And when Pennsylvania reformed its test law in 1786, removing a requirement that officeholders acknowledge the scriptures were given "by Divine inspiration" but retaining

³² See Steven K. Green, *Bad History: The Lure of History in Establishment Clause Adjudication*, 81 NOTRE DAME L. REV. 1717 (2006) [hereinafter Green, *Bad History*]; Steven K. Green, *A 'Spacious Conception': Separationism as an Idea*, 85 OR. L. REV. 443 (2006) [hereinafter Green, *Spacious Conception*].

³³ Derek H. Davis, RELIGION AND THE CONTINENTAL CONGRESS, 1774-1789, at 73-90, 144-48, 227 (2000).

³⁴ *Id.* at 73-93; PAUL F. BOLLER, JR., GEORGE WASHINGTON & RELIGION 58-65 (1963).

³⁵ Green, *Spacious Conception*, *supra* note 32.

³⁶ Letter from Benjamin Franklin to Richard Price (Oct. 9, 1780), in 4 THE FOUNDERS' CONSTITUTION 634 (Philip B. Kurland & Ralph Lerner eds., 1987).

a requirement that public officials “acknowledge the being of God, and a future state of rewards and punishments,”³⁷ Noah Webster predicted that the revision was merely

a prelude to wiser measures; people are just awaking from delusion. The time will come (and may the day be near!) when all test laws, oaths of allegiance, abjuration, and partial exclusions from civil offices, will be proscribed from this land of freedom.³⁸

Thus, there is no need to “blush” over the past religious acknowledgements and other “inconsistencies,” as one writer has suggested, but to understand their context.³⁹

Religionists compound the above errors by assuming that the religious discourse and proclamations of the era indicate a level of individual religious piety among the Founders and, then, that they intended to integrate their personal beliefs into the public realm.⁴⁰ Raised at a time when religious affiliation was a mark of one’s identity, the majority of leaders made public demonstrations of piety, most commonly by attending church. Still, by the 1770s-1780s, the religious enthusiasm of the Great Awakening (which had little influence on the political leadership) had subsided; most scholars describe the level of commitment to Protestant orthodoxy as being at an all time low. Whereas the vast majority of early Americans still self-identified as Protestant, many were only nominally religious.⁴¹ At the same time,

³⁷ PA. CONST. of 1790, art. IX, § 4.

³⁸ Noah Webster, On Test Laws, Oaths of Allegiance and Abjuration, and Partial Exclusions from Office (Mar. 1787), in 4 THE FOUNDERS’ CONSTITUTION 636 (Philip B. Kurland & Ralph Lerner eds., 1987); see also J. WILLIAM FROST, A PERFECT FREEDOM: RELIGIOUS LIBERTY IN PENNSYLVANIA 74–77 (1990).

³⁹ Seth Barrett Tillman, *Blushing Our Way Past History*, 2009 CARDOZO L. REV. DE NOVO 46 (2009) [hereinafter Tillman, *Blushing Our Way Past History*]; Seth Barrett Tillman, *Blushing Our Way Past Historical Fact and Fiction: A Response to Professor Geoffrey R. Stone’s Melville B. Nimmer Memorial Lecture and Essay*, 114 PENN ST. L. REV. 391 (2009). And clearly, no constitutional significance should be drawn from the existence of common, religious nomenclature in the Constitution and Declaration of Independence such as “in the Year of our Lord.” Tillman, *Blushing Our Way Past History*, *supra*, at 47–48.

⁴⁰ See *supra* note 1 and accompanying text.

⁴¹ Many scholars put church membership at ten to fifteen percent (10-15%). See generally EDWIN S. GAUSTAD, HISTORICAL ATLAS OF RELIGION IN AMERICA (rev. ed. 1976); Rodney Stark & Roger Finke, *American Religion in 1776: A Statistical Portrait*, 49 SOC. ANALYSIS 39 (1988). Scholars Patricia Bonomi and Peter Eisenstadt believe the numbers were much higher; inconsistencies among studies chiefly reflect differences in designations, i.e., actual membership, versus occasional attendance, versus self-identification with a particular denomination. Patricia U. Bonomi & Peter R. Eisenstadt, *Church Attendance in the Eighteenth Century British American Colonies*, 39 WM. & MARY Q. 245, 245–48 (1982).

rationalism had made inroads into Protestant theology (again, with many clergy and politicians not sensing any tension).⁴² Secularists are therefore correct that many of the Founders ascribed to forms of deistic thought. But deism should be understood as a rational belief in a God, his goodness, and providential plan (though most viewed providence as indirect, rather than an active force). Most deists, like many of the Founders—Benjamin Franklin, George Washington, Thomas Jefferson—denied the divinity of Jesus, of his substitutional atonement, and the reality of biblical miracles.⁴³ But it mischaracterizes their faith to claim that deists rejected theism or the importance of piety and civic virtue. Most deists viewed their rational theology as consistent with general principles of Christianity—if not a perfection of the latter—and most felt no tension in reading the Bible or attending more orthodox Protestant churches (though George Washington avoided taking communion throughout his adult life). Efforts by modern-day religionists to canonize the Founders are thus misplaced, but so too are those efforts by secularists to characterize the Founders as unconcerned about religious issues.⁴⁴

The third error that builds on the previous two—again, committed chiefly by religionists—is to assume that because some or all of the Founders were religiously devout they would necessarily have insisted on a form of government that was dependent upon religion.⁴⁵ Here, again, context is crucial. There is little doubt that the Founders subscribed to the importance of public virtue for the survival of the new nation. Schooled in the history of governments, they realized that earlier republics had failed chiefly because of self-interestedness and faction. They understood the importance of a virtuous citizenry to make the United States work, and most assumed that an important source of morals and virtue came from religion. No one envisioned a society without an active religious presence that would impact civic affairs.⁴⁶ At the same time, the Founders were pragmatists, with Madison

⁴² HENRY F. MAY, *THE ENLIGHTENMENT IN AMERICA* 65 (1976).

⁴³ See DAVID L. HOLMES, *THE FAITHS OF THE FOUNDING FATHERS* (2006); KERRY S. WALTERS, *RATIONAL INFIDELS: THE AMERICAN DEISTS* 39 (1992); Paul F. Boller, Jr., *George Washington and Religious Liberty*, 17 WM. & MARY Q. 486, 489 (1960) ("Washington was a typical eighteenth-century deist . . ."); Stone, *supra* note 6, at 6–21.

⁴⁴ See Stone, *supra* note 6, at 6–21; see also KERRY S. WALTERS, *THE AMERICAN DEISTS: VOICES OF REASON AND DISSENT IN THE EARLY REPUBLIC* 26–39 (1992).

⁴⁵ BARTON, *supra* note 1, at 11–40; SCHAEFFER, *supra* note 1, at 31–39.

⁴⁶ HATCH, *supra* note 19, at 97–138.

and Hamilton asserting that the nation's survival would depend on a divided government with checks and balances, not on the uncertain assurances of religion.⁴⁷ Thus there is no question that all of the Founders, including the Jeffersons and Paines of the day, expected that religion and religious institutions would play an important role in the maintenance of a moral citizenry.

That recognition begs the question, however, of whether the majority of Founders believed that religion and government should be interdependent and intertwined. Two distinct approaches emerged from the founding period, one represented through the Virginia Act for Religious Freedom, championed by Jefferson and Madison, and the New England settlement of continued state-support for religion. The former model, embraced in varying degrees by a majority of the new states, asserted that government had no authority over religious affairs and was dependent on secular, rationalist principles for its legitimacy. The latter perspective—that a moral government could not be divorced from religious principles—had dominated the New England and southern colonies before the Revolution but was waning in the closing decades of the century.⁴⁸ By the ratification of the First Amendment, the number of states maintaining active religious establishments had shrunk from nine to three, a remarkable shift in only fifteen years time. And in those resistant New England states, the religious establishments remained highly controversial until their ultimate repeals.⁴⁹ The ratification debates over the proposed constitution's prohibition on religious tests for office-holding also reveal that a significant conceptual shift was underway. Several Anti-Federalists raised alarm that the "no religious tests" clause would signify that the new nation was not dependent on religious principles—that people lacking in religious piety could be in command of the government. As Massachusetts Anti-Federalist Charles Turner bemoaned, "without the prevalence of *Christian piety, and morals*, the best republican

⁴⁷ See THE FEDERALIST NO. 51 (James Madison) ("If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.").

⁴⁸ THOMAS J. CURRY, THE FIRST FREEDOMS: CHURCH AND STATE IN AMERICA TO THE PASSAGE OF THE FIRST AMENDMENT 134–92 (1986).

⁴⁹ *Id.*; GREEN, SECOND DISESTABLISHMENT, *supra* note 11, at 119–45. Consequently, there is little basis to claim that the New England establishments existed "comfortably" with the First Amendment. See Tillman, *Blushing Our Way Past History*, *supra* note 39, at 49. On the federalism interpretation of the First Amendment, see Steven K. Green, *Federalism and the Establishment Clause: A Reassessment*, 38 CREIGHTON L. REV. 761 (2005).

Constitution can never save us from slavery and ruin."⁵⁰ Federalists answered such concerns squarely, replying that government had no authority over religious matters and that its authority was derived from popular will, not divine consent. The Federalists won that specific debate about the test clause and the more general debate about the nation's secular character.⁵¹

Other data could be referenced, but overall, there is little evidence to support the argument that the Founders intended to create governments at the federal and state levels that drew their authority from God or Christianity. Although many within the New England Standing Order continued to insist on the duty of government to support public piety and religious institutions, they were in a distinct and decreasing minority. In fact, during the "critical period" (1790s), when the new nation faced challenges of foreign intrigue and internal dissention, conservative clergy regularly condemned the nation for its *lack* of a religious basis. Writing in 1800, Presbyterian minister John Mason lamented that the "Federal Constitution *makes no acknowledgement of that God* who gave us our national existence."⁵² In "the pride of our *citizenship*," he declared, the Founders had "forgotten our *Christianity*."⁵³ Despite their increasing theological and political differences during the transition decades between the two centuries, one matter upon which orthodox Protestants and rationalists could agree was that the authority for the national government, and those of the disestablished states, rested on

⁵⁰ Charles Turner, Speeches in the Massachusetts Ratifying Convention (Feb. 5, 1788), in 4 THE COMPLETE ANTI-FEDERALIST 221 (Herbert J. Storing ed., 1981).

⁵¹ See *id.*; Herbert J. Storing, 1 THE COMPLETE ANTI-FEDERALIST 22-23 (Herbert J. Storing ed., 1981). Future Supreme Court Chief Justice Oliver Ellsworth, writing as "A Landholder" in the Connecticut Courant, responded to the Anti-Federalists' criticism that the Constitution lacked a religious foundation, writing that it presented "the true principle, by which this question ought to be determined . . ." Oliver Ellsworth, *A Landholder*, CONN. COURANT, Dec. 17, 1787, reprinted in 1 DEBATE ON THE CONSTITUTION 524 (Bernard Bailyn ed., 1993). Emphasizing the *civil* nature of the government in his reply, Ellsworth asserted that the "business of civil government is to protect the citizen in his rights, to defend the community from hostile powers, and to promote the general welfare." *Id.* Civil government had no jurisdiction over religious matters and "no business to meddle with the private opinions of the people." *Id.*

⁵² John M. Mason, *The Voice of Warning*, in 4 THE COMPLETE WORKS OF JOHN M. MASON 570 (Ebenezer Mason ed., 1849).

⁵³ *Id.* at 561. Similar jeremiads are found in the sermons of Timothy Dwight and Chauncey Lee, among others. Timothy Dwight, *The Duty of Americans, At the Present Crisis* (July 4, 1798), in POLITICAL SERMONS OF THE AMERICAN FOUNDING ERA: 1730-1805, at 1363-94 (Ellis Sandoz ed., 1991); CHAUNCEY LEE, *THE GOVERNMENT OF GOD THE TRUE SOURCE AND STANDARD OF HUMAN GOVERNMENT* (1813).

secular, not religious matters.

II. MYTHOLOGIZING THE FOUNDING

If the weight of the historical record sides with a secularist interpretation, from where does the Christian nation argument arise? The first source, as discussed, is the body of religious statements and pronouncements that, on their face, appear to support this thesis. Combined with other seeming inconsistencies in the secularist accounting—church affiliation, the continuation of Sunday and behavioral laws, etc.—the argument can appear convincing. The popularity of the Christian nation maxim is also due, in no small part, to the efforts of evangelical revisionist historians who have produced a host of popular works asserting America's Christian nationhood. Although these works have been weak on historical scholarship, they have been appealing in their rhetoric.⁵⁴ As one scholar has written:

The number of contemporary authors on the quest for a Christian America is legion. The Christian America concept moves beyond a simple and fundamental acknowledgement of Christianity's significance in American history to a belief that the United States was established as a decidedly Christian nation. Driven by the belief that separation of church and state is a myth foisted upon the American people by secular courts and scholars, defenders of Christian America historiography claim they are merely recovering accurate American history from revisionist historians conspiring to expunge any remnant of Christianity from America's past.⁵⁵

In characterizing the issue in such dire terms for people of faith, it is no wonder that the claim continues to resonate.

Another cause for the persistence of Christian nation claims has been a failure of people to appreciate the purposeful origins of the maxim. The Christian nation maxim did not arise on its own accord due to the weight of overwhelming evidence; rather, it was purposefully constructed first in the Puritan era and then again in the early nineteenth century. The maxim is essentially a myth created and retold for the purpose of anointing the founding,

⁵⁴ See *supra* note 1 and accompanying text.

⁵⁵ Stephen M. Stookey, *In God We Trust? Evangelical Historiography and the Quest for a Christian America*, 41 SW. J. OF THEOLOGY 41, 42 (1999).

and the nation, with a higher, transcendent meaning. I do not use the word "myth" in the popular sense of an imaginary, unfounded false notion (though the Christian nation thesis has taken on that quality in some of its manifestations). Rather, the word here takes on its older understanding of a narrative of ostensibly historical events that seeks to infuse those events with meaning. Myths are essentially identity-creating narratives. They are simplified and digestible versions of historical events that frequently reinforce popular aspirations. All nations and peoples have myths that help identify them as a distinct group, distinguishable from other peoples, and legitimate their heritage. Because Americans lack a common ethnicity or extensive heritage, our founding myth gives us our identity, helps establish us as a common people, and distinguishes us from other peoples (such as the notion of American exceptionalism). Our myths make us Americans.⁵⁶

A fundamental error among those who use founding-era statements to advocate for America's Christian heritage is that they tend to accept the substance of those statements at face value. Too frequently, they fail to consider what might have motivated particular speakers to assert claims of divine providence or of a special national dependency upon God and his laws. This is curious, considering the overwhelming public skepticism that meets political discourse today. There is no less reason to think that politicians of the late eighteenth century may have had hidden motivations for employing religious language and imagery in their public statements. The Founders were self-consciously aware of their language and its power to represent ideas and inspire people.⁵⁷

Leading historians including Perry Miller, Ernest Tuveson, Sacvan Bercovitch, Catherine L. Albanese, John Berens and Nathan Hatch have documented the long-standing practice of Americans to create identity myths of their past.⁵⁸

⁵⁶ See, e.g., CATHERINE L. ALBANESE, *SONS OF THE FATHERS: THE CIVIL RELIGION OF THE AMERICAN REVOLUTION* 3–18 (1976); JAMES OLIVER ROBERTSON, *AMERICAN MYTH, AMERICAN REALITY* 3–22 (1980).

⁵⁷ See ALBANESE, *supra* note 56, at 8–9. As self-aware, history-making people, the Founders developed their justifications for the new nation self-consciously, which raises "questions of the relationship between the intentional construction of a myth and the authenticity of the religious experience the myth mediates." *Id.* at 9.

⁵⁸ ALBANESE, *supra* note 56; SACVAN BERCOVITCH, *THE AMERICAN JEREMIAD* (1978) [hereinafter BERCOVITCH, *AMERICAN JEREMIAD*]; SACVAN BERCOVITCH, *THE PURITAN ORIGINS OF THE AMERICAN SELF* (1975) [hereinafter BERCOVITCH, *PURITAN ORIGINS*]; JOHN F. BERENS, *PROVIDENCE & PATRIOTISM IN EARLY AMERICA, 1640-1815* (1978); HATCH, *supra* note 19; PERRY MILLER, *ERRAND INTO THE WILDERNESS* (1956); ERNEST LEE TUVESON, *REDEEMER NATION: THE IDEA OF AMERICA'S*

Later generations of Puritans did it of the founding Puritan generation, reinterpreting earlier statements and events in light of later events and aspirations. The flight of Puritans to escape religious persecution in England was reinterpreted by later generations as a goal to establish religious freedom.⁵⁹ Also, Puritans and their Calvinist successors, even well into the revolutionary period, were predisposed to look for biblical types in historical events. Thus the Puritan settlement of New England quickly became an expression of the Exodus story, complete with God's newly chosen people establishing a New Israel.⁶⁰ While these founding myths and motifs fell dormant in the early part of the eighteenth century, Calvinist clergy resurrected them during the French and Indian War and then again in the revolutionary period, extending them to fit all of the American colonies. Clergy expanded the myth of New England's special founding such that the unfolding story of the entire nation became a "narrative of a religious pilgrimage."⁶¹ They self-consciously updated the biblical types from the Puritan era to fit the revolutionary efforts: Americans were God's new chosen people while they were struggling against forces of darkness. Puritan concepts of covenant and of a forthcoming millennial return were partially secularized to fit the revolutionary efforts. Religious discourse was used consciously to sacralize the revolutionary cause while forging an identity of Americans as a special people. The point is that much of the religious discourse of the period was used purposefully. While the biblical motifs never supplanted a reliance on Enlightenment and Whig theories of government, they complemented the secular political theories, despite underlying inconsistencies between the two.⁶²

A third period of national myth-making emerged in the early years of the nineteenth century. As discussed, the euphoria of the 1770s-80s quickly succumbed to the realities of managing a new nation, and for the subsequent twenty years, few claims were made of America's religious founding or Christian heritage. Orthodox clergy persisted in their belief that all legitimate governments were grounded in God's

MILLENNIAL ROLE (1968).

⁵⁹ BERCOVITCH, PURITAN ORIGINS, *supra* note 58, *passim*; Theodore Dwight Bozeman, *The Puritans' "Errand into the Wilderness" Reconsidered*, 59 NEW ENG. Q. 231 (1986).

⁶⁰ See BERCOVITCH, AMERICAN JEREMIAD, *supra* note 58, *passim*; TUVESON, *supra* note 58, *passim*.

⁶¹ David A. Jones, *The Quest for a Religious America*, 35 J. AM. ACAD. OF RELIGION 271, 271 (1967).

⁶² See *supra* note 58 and accompanying text.

authority; yet, they believed that the new American government lacked that necessary foundation. Only God's holy government was perfect; earthly governments were imperfect and transitory. "Christianity, indeed, authorizes no particular form of civil government in preference to another," Boston's Samuel Kendal claimed in 1804.⁶³

Several factors brought about a re-evaluation of the founding period which in turn produced the greatest round of myth-making in American history. First, by the late 1790s many Americans, including Calvinist clergy, abandoned their initial flirtation with the French Revolution, now interpreting the anti-clericalism and other excesses in religious millennial terms. American conservatives, both religious and political, sought to distinguish American republicanism from the French republicanism and, later, French imperialism. The deism and rationalism that had been popular among American elites and had fueled the French Revolution was now called into disrepute, as was evidenced by the public shunning of Tom Paine upon his return to America in 1802.⁶⁴ Second, a new and more significant wave of evangelical revivalism swept the nation beginning in 1801. The Second Great Awakening, as historians have termed it, would last for three decades and have a profound impact on the ordering of American culture and attitudes. Evangelicals rediscovered Puritan motifs of national covenants and millennialism and sought to apply understandings of a millennial role to the new nation.⁶⁵ And third, as members of the founding generation died, those of the second generation sought to anoint the founding with a higher, sacred meaning. Like all peoples, they created a founding narrative in an effort to forge a national identity. All of these impulses converged in the early years of the nineteenth century to produce the myth of America's Christian founding.⁶⁶

⁶³ Samuel Kendal, *Religion the Only Sure Basis of Free Government* (1804), in *2 AMERICAN POLITICAL WRITING DURING THE FOUNDING ERA: 1760-1805*, at 1250 (Charles S. Hyneman & Donald S. Lutz eds., 1983); *see also* RUTH BLOCH, *VISIONARY REPUBLIC: MILLENNIAL THEMES IN AMERICA THOUGHT, 1756-1800*, at 94-115 (1985).

⁶⁴ *See, e.g.*, BERENS, *supra* note 58, at 129-48; BLOCH, *supra* note 63, at 202-231; FONER, *supra* note 13, at 253-58.

⁶⁵ THE AMERICAN EVANGELICALS, 1800-1900, at 1-27 (William G. McLoughlin ed., 1976); PAUL E. JOHNSON, *A SHOPKEEPER'S MILLENNIUM: SOCIETY AND REVIVALS IN ROCHESTER, NEW YORK, 1815-1837* (1978); DONALD G. MATHEWS, *RELIGION IN THE OLD SOUTH* (1977); WILLIAM G. MCLOUGHLIN, *REVIVALS, AWAKENINGS, AND REFORM* 98-140 (1978); WILLIAM WARREN SWEET, *REVIVALISM IN AMERICA: ITS ORIGIN, GROWTH AND DECLINE* (1965).

⁶⁶ BUTLER, *supra* note 6, at 225-288; GREEN, *SECOND DISESTABLISHMENT*, *supra*

This reinterpreting of America's immediate past began with the death of George Washington in 1799. In addition to being anointed America's Cincinnatus, Washington in death became not simply the nation's Moses, but was deified. Orators claimed that Washington had been raised up by God and directed in all of his activities by divine providence. Popular biographers Mason "Parson" Weems, Jared Sparks and Reverend E. C. M'Guire went a step further, turning Washington into a devout Christian with evangelical inclinations. Some of the re-casting of Washington's image reflected the normal exaggeration that accompanies a genuine outpouring of veneration for a beloved leader. Other accounts reflected efforts by Federalists to legitimize their policies by relying on Washington's popularity, while yet others used descriptions of Washington's piety to further discredit deism and religious rationalism.⁶⁷ Later, writers would extend the religious devotion of Washington to other members of the founding generation, *sans* Jefferson. Religious Historian Robert Baird wrote in his widely-read *Religion in America* (1844) that "[a]ll the leading men in it [the Constitutional Convention] were believers in Christianity, and Washington, as all the world knows, was a Christian."⁶⁸ And evangelical New Jersey Senator Theodore Frelinghuysen, writing in 1838 following a national controversy over Sunday mail delivery, attacked the Jeffersonian stance on church-state separation, declaring it to be a "false position." Rather, Frelinghuysen asserted, "[r]eligion was the fountainhead of our history. . . . Our fathers came hither as christians, as men devoted to christianity above all things."⁶⁹

It was but a small step to extend the putative religious orthodoxy of the Founders to the founding documents themselves. If Washington and others in the Second Continental Congress and at the Constitutional Convention were devout Christians, then could the nation's governing instruments be based on anything less than Christian principles? Speaking during the 1820s, evangelical leader Lyman Beecher shamelessly declared:

[O]ur own republic, in its constitution and laws, is of

note 11, at 85-93.

⁶⁷ BERENS, *supra* note 58, at 112-28; BOLLER, *supra* note 34, at 3-23; WILLIAM ALFRED BRYAN, GEORGE WASHINGTON IN AMERICAN LITERATURE 1775-1865, at 14-17, 60 (1952).

⁶⁸ ROBERT BAIRD, RELIGION IN AMERICA 119 (Harper & Brothers 1844) (1844).

⁶⁹ THEODORE FRELINGHUYSEN, AN INQUIRY INTO THE MORAL AND RELIGIOUS CHARACTER OF THE AMERICAN GOVERNMENT 68 (1838); *see also id.* at 10-13, 187.

heavenly origin. It was not borrowed from Greece or Rome, but from the Bible. . . . It was God, that gave these elementary principles to our forefathers, as the 'pillar of fire by night, and the cloud by day,' for their guidance.⁷⁰

Other evangelicals insisted that the American republican system was modeled after Old Testament Israel, which had also been a "confederation of independent States, [with] each tribe retaining its separate sovereignty, yet all combined for general purposes in the United States of Israel" ⁷¹

Later antebellum revisionist writers reiterated the same theme. In 1833 Reverend Jasper Adams, nephew and cousin to presidents, published a widely-circulated pamphlet *The Relation of Christianity to Civil Government in the United States* which argued that the nation had sprung from the efforts of "our pious forefathers, in the exercise of a strong and vigorous faith."⁷² The Christian religion "was intended by them to be the corner stone of the social and political structures which they were founding,"⁷³ Adams insisted. Adams also maintained that the Constitution declared the United States to be a "great Christian nation" despite the explicit prohibitions against establishments and religious tests.⁷⁴ The Establishment Clause, Adams declared, should not be understood as "abolishing a national religion, which had been professed, respected and cherished from the first settlement of the country, and which it was the great object of our fathers in settling this then wilderness."⁷⁵ Rather, it was the duty of Congress "to permit the Christian religion to remain in the same state in which it was, at the time the Constitution was adopted."⁷⁶ For Adams, this meant that while non-Christians were entitled to "full protection in the profession of their opinions and practice, Christianity is the established religion of the nation, [and] its institutions and usages are sustained by legal sanctions" ⁷⁷ Adams referred favorably to laws prohibiting blasphemy and enforcing the religious observance of Sunday as evidence of

⁷⁰ LYMAN BEECHER, 1 BEECHER'S WORKS 189 (1852).

⁷¹ T.V. MOORE, THE CHRISTIAN LAWYER, OR THE CLAIMS OF CHRISTIANITY ON THE LEGAL PROFESSION 13 (1858).

⁷² JASPER ADAMS, THE RELATION OF CHRISTIANITY TO CIVIL GOVERNMENT IN THE UNITED STATES 10 (Charlestown, n. pub.1833).

⁷³ *Id.* at 9.

⁷⁴ *Id.* at 13.

⁷⁵ *Id.* at 7.

⁷⁶ *Id.* at 13.

⁷⁷ *Id.* at 16.

this form of establishment.⁷⁸ Historian Robert Baird was more subtle than Adams but made the same point. The Founders did not “formally mention [Christianity] as the law of the land . . . [because] it was already,” Baird claimed, and they never dreamt that “it should be excluded from the government.”⁷⁹

All of these “powerful Christian explanations” helped establish the “myth of the American Christian past,” to use Jon Butler’s phrase.⁸⁰ These revisionist histories flourished throughout the first half of the nineteenth century because they satisfied a need among many Americans, not solely the evangelical majority, to sanctify the founding and, in no small measure, to connect the American people and the nation’s progress with God’s will. As all national identity myths do, “the myth of the Christian past invoked ‘history’ to shape the present.”⁸¹ These accounts were integrated into public school textbooks and promoted in periodicals and popular literature throughout the nineteenth century. The myth merged with history to significantly impact popular perceptions about the founding period for generations to come, well into twentieth century.

This does not mean that post-founding accounts should be dismissed out-of-hand. All national myths give meaning to past events and, in a sense, can never be fully separated from historical “facts.” But myths, particularly the notion of America’s Christian founding, need to be understood for what they are and not accepted uncritically or at face value.

III. SIGNIFICANCE OF THIS DEBATE

The debate about America’s Christian past is not merely about history. It is about the present and the future. This is a primary function of national identity myths: to tie current aspirations to a reinforcing past. Few national myths perform this function as well as the Christian nation myth. It ties the present to our (allegedly) more religious past, allowing people to see biblical types in present events as had occurred in the past. It promotes the ongoing specialness of America with its

⁷⁸ *Id.* at 11, 14–18.

⁷⁹ BAIRD, *supra* note 68, at 119.

⁸⁰ BUTLER, *supra* note 6, at 212, 286.

⁸¹ *Id.* at 286; *see also* STEPHEN COLWELL, *THE POSITION OF CHRISTIANITY IN THE UNITED STATES* (1854); B. F. MORRIS, *CHRISTIAN LIFE AND CHARACTER OF THE CIVIL INSTITUTIONS OF THE UNITED STATES* (1864).

blessings from God. It says that American exceptionalism is not a bad thing.

The present debate over the nation's official Christian heritage is not merely a theoretical exercise; it has practical consequences. Seth Barrett Tillman chastises Professor Stone and other academics who criticize the Christian nation thesis as setting up a straw man—that few if any people are promoting a form of re-establishment of religion or the enforcement of Christian principles through law.⁸² To be sure, no established academic is arguing for the re-ordering of our system of laws and government along Christian lines. But to insist that this argument holds sway only among the fringes of the Christian right understates the wider influence of the Christian nation thesis. Few people wish to establish a form of theocracy; many more are attracted to the notion that the government should reinforce consensus religious values and support religious institutions in their endeavors. That politicians and commentators continue to endorse the concept speaks to its ongoing popularity.⁸³

The Christian nation thesis is powerful in part because of its inexact meaning. For many, it simply means that we—the nation collectively through its various institutions—should recognize the nation's Christian heritage, whether that is manifested in public school curricula or in Ten Commandments monuments on courthouse lawns. That image does not call for a significant re-ordering of our laws and institutions along religious lines, but merely the acknowledgment of our "religious heritage" (or, the myth). But as the events surrounding the review of social science curriculum standards by the Texas Board of Education in 2010 revealed, the lines between acknowledgment and re-ordering frequently blur. Conservative board members,

⁸² Tillman, *Blushing Our Way Past History*, *supra* note 39, at 50–51 ("Nowhere in Professor Stone's article is there any discussion of the arguments or any acknowledgment, by name, of the persons he is opposing. He asserts that someone somewhere has made the argument that America is a "Christian nation." . . . In no place does he discuss precisely who is making the arguments he has opposed, when and in what forums they have made those arguments, and what arguments or evidence (if any) they have marshaled on behalf of their position. . . . This aspect of Professor Stone's presentation—one lacking acknowledgment (much less substantial development) of opposing viewpoints—is troubling.")

⁸³ One recent example is a statement made by former Alaska governor Sarah Palin during an appearance on the Fox News program "The O'Reilly Factor" on May 6, 2010: "I think we should . . . go back to what our founders and our founding documents meant. They're quite clear that we should create law based on the God of the Bible and the 10 Commandments." Interview by Bill O'Reilly with Sarah Palin (May 6, 2009), www.foxnews.com/story/0,2933,592422,00.html.

relying on the expertise of Christian nation advocate David Barton, among others, turned an ostensible goal of providing a balanced account of the nation's religious heritage into a sanctification of America's Christian past, where the Founders were directed by divine providence and the government and law were based on Christian principles. Anything that conflicted with that interpretation, including the tradition of church-state separation, or contradicted a view of American exceptionalism, was gutted from the standards.⁸⁴

Moreover, the adoption of a Christian nation approach by our courts would significantly impact interpretations of constitutional law. More than sixty years ago Justice Wiley Rutledge observed that “[n]o provision of the Constitution is more closely tied to or given content by its generating history than the religious clause of the First Amendment.”⁸⁵ That statement has proved prophetic as Court decisions concerning Establishment Clause conflicts have frequently turned on the justices' interpretations of history.⁸⁶ This essay has already discussed how the Court's understanding of history determined the constitutionality of legislative chaplains. Historical interpretation has also figured heavily into controversies involving Christmas displays, Ten Commandment monuments, “under God” in the Pledge of Allegiance, public school religious exercises, and the public funding of religious schools and activities.⁸⁷ For example, in *Wallace v. Jaffree*, where the Court struck down a state law authorizing a moment of silent prayer in Alabama schools, Justice Rehnquist dissented on grounds that the historical record supported the idea that the state could promote religious expression generally, provided it did not prefer one religion over another.⁸⁸ In *Lee v. Weisman*, involving prayer at public school graduation ceremonies, Justice Scalia argued that the historical example of official prayers of thanksgiving

⁸⁴ Shorto, *supra* note 8, at 32–49. By way of disclosure, I testified before the Texas Board of Education in opposition to the revisions of the proposed standards.

⁸⁵ *Everson v. Bd. of Educ.*, 330 U.S. 1, 33 (1947) (Rutledge, J., dissenting).

⁸⁶ See Green, *Bad History*, *supra* note 32, at 1734–53.

⁸⁷ *Van Orden v. Perry*, 545 U.S. 677 (2005); *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1 (2004); *Rosenberger v. Rectors & Visitors of Univ. of Va.*, 515 U.S. 819, 852–863 (1995) (Thomas, J., concurring); *id.* at 868–873 (Souter, J., dissenting); *Lee v. Weisman*, 505 U.S. 577 (1992); *Lynch v. Donnelly*, 465 U.S. 668 (1984).

⁸⁸ *Wallace v. Jaffree*, 472 U.S. 38, 91–114 (1985) (Rehnquist, J., dissenting) (“As its history abundantly shows . . . nothing in the Establishment Clause requires government to be strictly neutral between religion and irreligion, not does that Clause prohibit Congress or the States from pursuing legitimate secular ends through nondiscriminatory sectarian means.”).

authorized the modern practice at school graduations.⁸⁹ More recently, in the 2005 Ten Commandments cases, Justice Scalia again argued that the many examples of official acknowledgements of religion arising out of the founding period authorized the government to favor some religions over others.⁹⁰ As he wrote: "With respect to public acknowledgment of religious belief, it is entirely clear from our Nation's historical practices that the Establishment Clause permits this disregard of polytheists and believers of unconcerned deities, just as it permits disregard of devout atheists."⁹¹

This argument was particularly significant in light of the counties' justification of the Ten Commandment monuments as "provid[ing] the moral background of the Declaration of Independence and the foundation of our legal tradition."⁹² To be sure, in none of these decisions have the justices relied expressly on the nation's status as a "Christian nation"—even Justice Scalia has decried the use of that phrase.⁹³ But that theme runs through these various opinions. It is not necessary for a majority of justices to adopt the maxim in its more extreme forms for it to have an impact on not only the law but public opinion about the appropriate lines between church and state. This debate matters.

CONCLUSION

The idea of America's Christian founding persists because it is one of our chief founding myths. It declares that we are a special people and nation, that we have received God's blessings but are also subject to his judgment when we fail in our endeavors. It sanctifies our origins, informs our national identity, and reminds us of our responsibilities. It is a powerful narrative, and it is particularly appealing to people who desire a greater religious presence in the public life of our nation. The myth also persists because it is sufficiently indefinite in its detail and finds plausible, though not convincing, support in the historical record. That is why this debate is unwinnable on a level that simply compares contrasting historical texts. The religious discourse of the

⁸⁹ *Lee*, 505 U.S. at 631–46 (Scalia, J., dissenting).

⁹⁰ *McCreary County v. ACLU*, 545 U.S. 844, 885–912 (2005) (Scalia, J., dissenting); *Van Orden*, 545 U.S. at 692 (Scalia, J., concurring).

⁹¹ *See, e.g., McCreary*, 545 U.S. 844; *Van Orden*, 545 U.S. 677.

⁹² *Id.* at 856.

⁹³ *Lee*, 505 U.S. at 641 (Scalia, J., dissenting) (calling the phrase as used in *Church of Holy Trinity v. United States*, 143 U.S. 457 (1892), an "aberration[']").

founding period needs to be examined in its larger context, including an appreciation of the purposefulness behind the creation of the Christian nation myth.