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Is This a Christian Nation? | An Introduction

Carl T. Bogus*

INTRODUCTION

Near the beginning of his wonderful screenplay for *Charlie Wilson's War*, Aaron Sorkin includes a scene in which Congressman Charlie Wilson is visited in his office on Capitol Hill by a constituent named Larry Liddle.¹ In the movie, Tom Hanks plays Charlie Wilson, a real person who represented the Second Congressional District of Texas for twelve terms.² Liddle, who presumably is an entirely fictitious character, is played in the movie by Peter Gerety.³ The scene takes place sometime in the early

* Professor of Law, Roger Williams University School of Law. Many thanks to my research assistant, Edward Gencarelli, Jr., for his valuable help.

1. AARON SORKIN, CHARLIE WILSON'S WAR 20 (2005) (screenplay), https://screenplaysandscripts.com/script_files/C/Charlie%20Wilson%27s%20War.pdf [perma.cc/SA76-N7E3] (last visited Apr. 6, 2021).

2. CHARLIE WILSON'S WAR (Universal Studios 2007).

3. *Id.* Despite his convincing performance as a man from rural Texas, Peter Gerety hails from Providence, Rhode Island. *Peter Gerety*, IMDB, <https://www.imdb.com/name/nm0314253/> [perma.cc/SN8Z-VXB9] (last visited Apr. 6, 2021). Other actors in the movie include Julia Roberts, Philip Seymour Hoffman, Amy Adams, Ned Beatty, and Emily Blunt; Mike Nichols directed the film. CHARLIE WILSON'S WAR, *supra* note 2. The scene establishes something about Charlie Wilson's character, particularly when he tells Liddle that he cannot tell the judge how to decide the case because that would be against "a whole shitload of really good laws." *Id.* Sorkin's original script does not include "really good." SORKIN, *supra* note 1, at 25. The movie is not about religion in America, however; it is about how Wilson got Congress to covertly fund Afghan freedom fighters in their war against Russian occupation. See CHARLIE WILSON'S WAR, *supra* note 2.

1980s.⁴ While he is waiting in the Congressman's outer office, Liddle mentions that he is Vice President of an organization named Americans for American Values.⁵ Shortly thereafter, Wilson brings Liddle into his office and shuts the door, and the two men sit for a private chat.⁶ After brief preliminaries, their conversation about the purpose of Liddle's visit begins as follows:

LIDDLE: Every single year since the world was young, a firehouse in the Town of Nacogdoches has displayed a crèche at Christmas time. Now the ACLU has filed a suit against the Township for displaying a religious symbol on public property. It's Christmas time, it's a crèche. I could understand if we were in fucking Scarsdale, but this is in east Texas and I want to know who we're offending except two lawyers from the ACLU.

WILSON: That's a terribly interesting and complicated question. Let me suggest this though. A block and a half from the firehouse is a church. First Baptist Church of Nacogdoches and they've got a beautiful rolling lawn in front and you can pick that crèche up and put it on church property and everybody goes home happy.

LIDDLE: There's a larger point here.

WILSON: I was afraid of that.

LIDDLE: This is a Christian country, Charlie, founded on Christian values and beliefs. We welcome other faiths to worship as they wish, but when you can't put a nativity scene in front of a firehouse in Nacogdoches Township, something's gone terribly wrong.⁷

Charlie Wilson tries again. Something hasn't necessarily gone terribly wrong, he suggests, because the crèche can just be moved to the church.⁸ "That's not the point," Liddle says to Wilson.⁹ "Help

4. *Id.*

5. SORKIN, *supra* note 1, at 21.

6. *Id.* at 22.

7. SORKIN, *supra* note 1, at 23.

8. *Id.*

9. *Id.*

me with the point,” responds Wilson.¹⁰ Liddle’s reply is what we lawyers call non-responsive. He tells Wilson that he just broke ground on a location for his sixth Dairy Queen restaurant in Wilson’s district, which will make him the largest Dairy Queen franchisee in the South.¹¹

“This is related to a Nativity scene in Nacogdoches how?” asks Wilson.¹² Liddle vaguely suggests the connection is that he, a restaurateur—“we don’t just serve cakes and cones, we serve burgers, shakes and hot dogs”—understands the people of the community.¹³ “My employees and my customers find that crèche inspirational,” he tells Wilson.¹⁴

Liddle never does help Wilson understand the “larger point” of why the crèche cannot be moved to the church.¹⁵ He does not, of course, because he cannot.¹⁶ That is not because there is not a larger point. There is indeed a larger point. It is because the larger point cannot be said out loud in polite company. The larger point has nothing to do with the religious inspiration or holiday spirit in Nacogdoches, for those would be served at least as well by placing the crèche on the beautiful, rolling lawn of the church, where it presumably would be just as visible.¹⁷ The larger point involves having the crèche at the firehouse for the very reason that it is public property and having it there sends the message, “This is a Christian nation.” While Liddle has already said those five words, he cannot very well say, “the larger point, Charlie, is to officially proclaim that this is a Christian nation, and that while we *permit* other faiths to worship as they please, we are the genuine Americans and others are here at our sufferance.”

10. *Id.* at 24.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *See id.* at 23.

16. *See id.*

17. Liddle never suggests there is a problem with the location. When Charlie Wilson says “there’s like nine churches within a six-block area of that firehouse,” Liddle again responds, “That’s not the point.” *Id.* at 24. By this time, however, Wilson has given up asking Liddle to explain what exactly the point is.

Am I unfairly trying to read Larry Liddle's mind? I do not think so. Aaron Sorkin gave us a strong hint about how Larry Liddle thinks when Liddle boasted of being Vice President in the tautologically named organization Americans for American Values.¹⁸ Liddle is the archetype of the individual who assumes that what they believe is what genuine Americans believe, and what genuine Americans going back to the Founders always believed. Sorkin, who came from a Jewish family and was raised in Scarsdale ("fucking Scarsdale," according to Larry Liddle¹⁹), was sensitized to these attitudes from childhood, as are all kids from non-Christian families in the United States.²⁰

It is important to note that Larry Liddle feels aggrieved. How do we know that? Because there is no point to belonging to an organization named American for American Values unless you believe your values—the values you believe are the genuine American values—are under threat. He is hardly alone in that belief. "I will tell you, Christianity is under tremendous siege, whether we want to talk about it or we don't want to talk about it," Donald J. Trump declared in a speech at a Christian college in Sioux Center, Iowa in January 2016, when he was campaigning for the Republican presidential nomination.²¹ The vast majority of Americans are Christians, Trump noted, and then added: "[a]nd yet we don't exert the power that we should have." "Christianity will have power," if I am elected President, Trump promised.²²

Is America a Christian nation? If the test is whether most Americans are Christians, then the answer is yes, America is indisputably a Christian nation. As of 2020, almost seventy-four

18. *Id.* at 21.

19. *Id.* at 23. Scarsdale is well known for having a large Jewish population. See, e.g., Samuel Freedman, *Muslim Scholar, Looking to 'Speak the Truth' Teaches the Holocaust and Islam*, N.Y. TIMES (Feb. 20, 2015), https://www.nytimes.com/2015/02/21/us/muslim-scholar-looking-to-speak-the-truth-teaches-about-holocaust-and-islam.html?_r=0 [<https://perma.cc/E3Y2-BNMK>].

20. *Jews Making News: Aaron Sorkin Renewed, Pens Steve Jobs Biopic*, ATLANTA JEWISH TIMES <https://atlantajewishtimes.timesofisrael.com/jews-making-news-aaron-sorkin-renewed-pens-steve-jobs-biopic> [perma.cc/T7WW-PRUJ] (last visited Apr. 6, 2021). As someone who grew up in a Jewish family myself, I speak from personal experience.

21. Elizabeth Dias, 'Christianity Will Have Power', N.Y. TIMES, (Aug. 9, 2020), <https://www.nytimes.com/2020/08/09/us/evangelicals-trump-christianity.html> [perma.cc/57A7-JCJN].

22. *Id.*

percent of all Americans are affiliated with a Christian sect.²³ In terms of numbers of adherents, no other group compares. The second largest group, agnostics, comprise only about seventeen percent of the U.S. population.²⁴ The third largest group are atheists, and they make up only 3.2% of America.²⁵ Jews, Muslims, and Buddhists, respectively, comprise only 1.7%, 1.5%, and 1.3% of America.²⁶ No other religious group makes up even one percent of the population.²⁷

America is, in fact, so overwhelmingly Christian, one has to wonder why—and of what—Christians could possibly be afraid. Yet, many Christians are afraid. If you doubt that, Google the phrase “war on Christianity” or “Christianity under attack.” You will quickly find things such as a commentary piece in *Time Magazine* titled *Regular Christians Are No Longer Welcome in American Culture*,²⁸ a newspaper article titled *Franklin Graham: Christianity under attack, believers should engage in politics*,²⁹ and a recent speech by the former Attorney General of the United States that included the dark message, “I think we all recognize that over the past fifty years religion has been under increasing attack.”³⁰ Sometimes the fears seem bizarrely overwrought. A number of years ago, one of my students at the Roger Williams University School of Law told me that liberals wanted to ban the Bible. Being

23. THE WORLD ALMANAC AND BOOK OF FACTS 2020, at 697 (Sarah Janssen ed., 2020).

24. *Id.*

25. *Id.*

26. *Id.*

27. *See id.*

28. Mary Eberstadt, *Regular Christians Are No Longer Welcome in American Culture*, TIME (June 29, 2016, 9:48 AM), <https://time.com/4385755/faith-in-america/> [<https://perma.cc/885S-QUGN>].

29. Jordan Buie, *Franklin Graham: Christianity under attack, believers should engage in politics*, THE TENNESSEAN (May 16, 2017 5:57 PM), <https://www.tennessean.com/story/news/religion/2017/05/16/franklin-graham-christianity-under-attack-believers-should-engage-politics/325667001> [perma.cc/HS8C-RT22].

30. William P. Barr, U.S. Att’y Gen., Remarks to the Law School and the de Nicola Center for Ethics and Culture at the University of Notre Dame (Oct. 11, 2019), <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-law-school-and-de-nicola-center-ethics> [<https://perma.cc/PUD4-XUJJ>].

a dyed-in-the-wool liberal, myself, I was flabbergasted that this intelligent woman could actually believe such a thing.

There are, of course, issues such as abortion and gay marriage that involve matters of government regulation and arouse enormous passions that, for many people, are related to deeply held religious beliefs. My focus in this introductory Symposium Essay, however, is primarily on matters that are largely symbolic. Placing a crèche at the township firehouse rather than at the local church is the quintessential example of such a matter. So is placing a thirty-two-foot Latin Cross atop a monument on a public highway (though the question of whether it is necessary to remove the gigantic stone Cross after it has stood in place for eighty-nine years is more complicated).³¹ The whole purpose of placing such a symbol on public property is to communicate the message, “This is a Christian nation.” For the moment, I am not asking whether such symbols violate the Establishment Clause. I am simply asking whether that message is true.

As already noted, America is a Christian nation if the test is whether most Americans are Christians. But I do not remember hearing anyone even suggest that is what they mean when they say we are a Christian nation. In fact, I assume they would consider that a perilous position. Where the majority stands may depend on shifting sands. What happens if, say, atheists and agnostics someday comprise the majority? Would America then be properly described as a godless nation? The whole purpose of claiming that America is a Christian nation is to declare that America is—and will always properly be—a Christian nation. That may explain why

31. I refer to *American Legion v. American Humanist Association*, 139 S. Ct. 2067, 2077 (2019). In a seven–two decision, the Court held that the Cross did not have to be removed. *Id.* at 2073. Writing for the majority, Justice Alito said:

[W]hen time’s passage imbues a religiously expressive moment, symbol, or practice with this kind of familiarity and historical significance, removing it may no longer appear neutral, especially for the local community for which it has taken on particular meaning. A government that roams the land, tearing down monuments with religious symbolism and scrubbing away any reference to the divine will strike many as aggressively hostile to religion.

Id. at 2084–85. Although I express no opinion about whether the case was properly decided, this consideration is one for which I have considerable sympathy. I was disappointed, however, that none of the justices who voted to protect the Cross declared that erecting such a symbol today would violate the Establishment Clause.

what I generally hear is the suggestion that America is a Christian nation because the Founders were Christian. “We started out as a Christian nation,” Cheryl Driesen, who attended Trump’s speech in Sioux Center, Iowa, told the *New York Times*.³² “The Founding generation were Christians,” argued then Attorney General William P. Barr in a speech at Notre Dame Law School.³³ One might think of this as a kind of cultural equivalent of original intent. America is Christian because the Founders were Christian.

This argument has an additional advantage. The pantheon of men we think of as the Founders—most prominently, George Washington, James Madison, Alexander Hamilton, John Adams, Benjamin Franklin, and Thomas Jefferson³⁴—are deeply associated with our ideas of what America is, and what it means to be an American. This is not only not surprising; it is necessary. In every nation, there are historic figures whose personal stories help define national identity. For us, the Founders are such figures. That is why it matters whether the Founders were Christian and intended to found a Christian nation.

I. RELIGION OF THE FOUNDERS

So, were the six most prominent Founders Christian? The answer may be more complicated than one might expect. We first must decide how to define “Christian.” I am going to define it as one who believes in the divinity of Jesus of Nazareth. Other definitions are, of course, possible. One could, for example, define “Christian” as one who believes in the teachings of Jesus, one who belongs to a Christian church or religious society, or one who self-identifies as a Christian. But I believe the definition I have chosen makes the most sense for our purpose. The definition “one who believes in the teaching of Jesus” is too broad and vague to be useful. Rabbi Milton Steinberg, for example, wrote that Jesus “propounded no ethical doctrine in which the Jewish Tradition had not anticipated him,” and suggested that Jews accept Jesus as “a

32. Dias, *supra* note 21.

33. Barr, *supra* note 30.

34. There is no definitive list of the Founders. One could compile a much longer list, but those six men are generally recognized as the best known and most revered of those associated with the founding of United States. See, e.g., John Mikhail, *The Necessary and Proper Clauses*, 102 GEO. L.J. 1045, 1115 (2014).

gifted and exalted teacher.”³⁵ Defining “Christian” in a way that would include many Jews is obviously problematic. My personal experience also leads me to reject equating “Christian” with belonging to a traditionally Christian denomination. I, myself, am a member of the Religious Society of Friends and thus a Quaker. But while Quakerism is a traditionally Christian denomination, I neither believe in the divinity of Jesus nor consider myself Christian. By no means am I alone. Liberal Quakers, as many call us, make up a large portion of Quakers in the eastern United States and Britain.³⁶ Finally, defining “Christian” as one who so self-identifies is not helpful in evaluating whether the Founders were Christian, as we cannot ask them how they would identify themselves.

If being Christian means believing in the divinity of Jesus of Nazareth, then some of the Founders probably were not Christian. Here is a quick survey of the six most prominent Founders.

A. *James Madison*

James Madison never made his personal views on religious matters known.³⁷ Madison’s most widely respected biographer, Ralph Ketcham, wrote that Madison “seems never to have been an ardent believer himself” but “never took an antireligious or even an anti-Christian stance.”³⁸ Ketcham notes that Madison was educated “from a Christian viewpoint” as every teacher he had through college was “either a clergyman or a devoutly orthodox Christian layman.”³⁹ This was common among well-educated Americans from wealthy families of the day. “It seems clear,” Ketcham concluded, that Madison “neither embraced fervently nor rejected utterly the Christian base of his education.”⁴⁰

35. MILTON STEINBERG, *BASIC JUDAISM* 107, 111 (1947).

36. Among British Quakers, for example, only thirty-nine percent say they consider Jesus an important figure in their spiritual life and only thirteen percent say they consider Jesus to be “Christ, the son of God.” PINK DANDELION, *THE QUAKERS: A VERY SHORT INTRODUCTION* 65–68 (2008).

37. See EDWIN S. GAUSTAD, *FAITH OF THE FOUNDERS: RELIGION AND THE NEW NATION 1776–1826* 47 (2d ed. 2011) (stating that Madison was “[n]otoriously reticent about his religious beliefs”).

38. RALPH KETCHAM, *JAMES MADISON: A BIOGRAPHY* 46–47 (1971).

39. *Id.* at 46.

40. *Id.* at 47.

In 1825, an Episcopal minister sent Madison a religious text that he had written and asked Madison what he thought of it. Madison's carefully polite, deliberately vague, four-paragraph reply may be the most complete statement of his religious beliefs available to us.⁴¹ Madison expressed the view that a "belief in a God Allpowerful [sic] wise & good, is so essential to the moral order of the world & to the happiness of man."⁴² Madison also said he believed that the mind "finds more facility in assenting to the self-existence of an invisible cause possessing infinite power, wisdom & goodness, than to the self-existence of the universe."⁴³ These statements seem to reflect a deist viewpoint but are not necessarily inconsistent with Christianity.

Deism was popular among intellectuals during the Age of Enlightenment. Professor Steven Green, an author in this Symposium Issue, tells us that "deism should be understood as a rational belief in a God, his goodness, and providential plan."⁴⁴ While many deists held fast to Jesus's moral and ethical teachings and some remained nominally Christian, deism rejected Christianity's most fundamental beliefs. Deism sought to ground religious belief in science and reason rather than in revelation and faith; and deists believed in a single, universal God, rather than in the Trinity and the divinity of Jesus.⁴⁵ Many deists also thought of God as a prime mover who created the universe but did not intervene in its affairs.⁴⁶ As for James Madison, the best we can say is that he was a theist and almost certainly accepted many of the precepts of Christianity. We do not know, however, whether he accepted the divinity of Jesus Christ.

41. See Letter from James Madison to Frederick Beasley (Nov. 20, 1825), NAT'L ARCHIVES, <https://founders.archives.gov/documents/Madison/04-03-02-0663> [perma.cc/AB87-JDDH] (last visited Apr. 6, 2021).

42. *Id.*

43. *Id.*

44. Steven K. Green, *Understanding the "Christian Nation" Myth*, 2010 CARDOZO L. REV. DE NOVO 245, 257 (2010).

45. KAREN ARMSTRONG, *THE CASE FOR GOD* 211–13 (2009).

46. RON CHERNOW, *WASHINGTON: A LIFE* 131 (2010).

B. *George Washington*

George Washington was raised in a devoutly religious family,⁴⁷ and he attended church throughout his adult life, albeit intermittently.⁴⁸ It is difficult, nonetheless, to say that he believed in the divinity of Jesus. Washington never took communion, and he made a practice of avoiding church services when communion would be offered.⁴⁹ Although Washington often referred to God, he did so by using terms such as “Providence,” “Heaven,” “Grand Architect of the Universe,” “Almighty Being,” “Author of our Being,” and “the invisible hand, which conducts the affairs of men.”⁵⁰ Washington seldom referred to Christianity, and as far as I know, never publicly referred to Christ.⁵¹ During the Revolutionary War, Washington believed religious sustenance was good for his troops, and he asked Congress to authorize attaching a chaplain to each regiment.⁵² He took great care, however, to ensure that the top echelon of the army (and that would have been him) could not favor a particular denomination by having local military units select their own chaplains.⁵³ Both when he was in the army and afterwards, Washington personally rotated his own attendance at religious services among different denominations.⁵⁴ Most often, these were Protestant denominations, but on at least one occasion Washington attended a Catholic Mass.⁵⁵ When he was at Mount Vernon, Washington attended church services about one Sunday

47. *See id.* at 130–33 (regarding Washington’s religious upbringing, practices, and beliefs generally).

48. *See id.* at 470 (regarding intermittent church attendance).

49. *See id.*

50. *See id.* at 131, 294, 500, 569 (regarding Washington’s use of these terms); *see also* GAUSTAD, *supra* note 37, at 63 (stating that “Washington’s many allusions to God . . . all possessed a vaguely impersonal, broadly benign, calmly rational flavor,” and listing other terms including “Higher Cause”).

51. *See* CHERNOW, *supra* note 46, at 294 (regarding Washington rarely referring to Christianity); *see also* Steven K. Green, *A “Spacious Conception”: Separatism as an Idea*, 85 OR. L. REV. 443, 476–77 (2006) (stating that Washington used deist terms for God and avoided references to Jesus).

52. CHERNOW, *supra* note 46, at 293–94.

53. *Id.* at 294.

54. *Id.* at 294, 611.

55. *Id.* at 534.

per month, the attendance rate required by Virginia law at the time.⁵⁶

Ron Chernow, one of Washington's premier biographers, concludes that Washington was not a deist because Washington believed that America was guided by Providence, but he also notes that "nowhere did he directly affirm the divinity of Jesus Christ."⁵⁷ Chernow also tells us Paul Weber's famous painting depicting Washington on his knees in prayer at Valley Forge has to have been imagined by the artist because Washington "would never have prayed so ostentatiously" in front of his troops.⁵⁸ Thomas Jefferson once remarked that Washington attended church services only to "keep up appearances" and that in reality Washington was "an unbeliever."⁵⁹ This view can safely be ignored; Jefferson could be a viper to political opponents and was especially unkind to Washington after the ideological divisions between Washington's Federalists and Jefferson's Republicans came to the fore.⁶⁰ What cannot be so easily dismissed, however, is a statement by Bishop William White, who was Washington's own pastor while Washington was President and the government was seated in Philadelphia.⁶¹ White said, "I do not believe that any degree of recollection will bring to my mind any fact which would prove General Washington to have been a believer in the Christian revelation."⁶²

56. *8 Facts about George Washington and Religion*, MOUNT VERNON (Jan. 3, 2021), <https://www.mountvernon.org/george-washington/religion/8-facts-about-george-washington-and-religion/> [<https://perma.cc/6N75-JFQR>]. It could take up to two hours for George and Martha Washington to travel to church. *Id.*

57. CHERNOW, *supra* note 46, at 131.

58. *Id.* at 326.

59. *Id.* at 130 (citing MARY V. THOMPSON, *IN THE HANDS OF A GOOD PROVIDENCE: RELIGION IN THE LIFE OF GEORGE WASHINGTON 1* (2008)).

60. *See id.* at 669–711, 742–43; RON CHERNOW, *ALEXANDER HAMILTON* 352–57, 402–03, 437–41, 444–47, 498–500 (2005) (recounting Jefferson's duplicity and disloyalty toward Washington, his administration, and policies while serving as Washington's Secretary of State).

61. CHERNOW, *supra* note 46, at 130.

62. *Id.* (quoting PETER R. HENRIQUES, *REALISTIC VISIONARY: A PORTRAIT OF GEORGE WASHINGTON* 246 (2008)).

C. *John Adams*

Historians generally classify John Adams as a deist.⁶³ Adams tried out the services of many denominations and was particularly put off by bloody images of Christ on the Cross.⁶⁴ He ultimately chose Unitarianism and considered himself a Unitarian throughout most of his adult life.⁶⁵ As such, Adams presumably rejected the Trinity and the divinity of Jesus. He explicitly said he rejected any form of divine authority and considered a belief in revelation to be nothing more than superstition.⁶⁶ Adams summed up his religious belief as follows: “The love of God and His creation; delight, Joy, tryumph [sic], Exultation in my own existence . . . are my religion.”⁶⁷ He was very much a man of the Enlightenment and said that while Christianity was a “religion of the heart,” “the heart is deceitful above all things, and unless controuled [sic] by the dominion of the head, will lead us into Salt Ponds.”⁶⁸ That is classic deist thinking. Adams’s attitude toward those who accused him of not being a Christian was, “ye will say, I am no Christian: I will Say ye are no Christians: and there the Account is ballanced [sic].”⁶⁹ Presumably, therefore, Adams would not be offended by our classifying him a non-Christian according to the definition we are using.

D. *Benjamin Franklin*

We do not have to make many guesses about what Franklin thought about religion because he expressed his views directly on the subject. One month before Franklin died, Reverend Ezra Stiles asked him about his religious beliefs and Franklin’s replies were

63. *E.g.*, GAUSTAD, *supra* note 37, at 78; CHERNOW, *supra* note 60, at 205.

64. DAVID MCCULLOUGH, *JOHN ADAMS* 84 (2001).

65. GAUSTAD, *supra* note 37, at 87.

66. *Id.* at 79.

67. Letter from John Adams to Thomas Jefferson (Sept. 14, 1813), NAT’L ARCHIVES, <https://founders.archives.gov/documents/Jefferson/03-06-02-0389> [perma.cc/3Z24-E46C] (last visited Apr. 6, 2021).

68. Letter from John Adams to Benjamin Waterhouse (Dec. 18, 1815), NAT’L ARCHIVES, <https://founders.archives.gov/?q=Author%3A%22Adams%2C%20John%22%20Recipient%3A%22Waterhouse%2C%20Benjamin%22%20Dates-From%3A1815-12-01%20Dates-To%3A1815-12-31&s=1111311111&r=1> [perma.cc/5VYL-TZF7] (last visited Apr. 6, 2021).

69. Letter from John Adams to Thomas Jefferson, *supra* note 67.

direct and revealing: “I believe in one, God, creator of the universe,” Franklin said.⁷⁰ He believed that God governs the universe through his Providence, and that “the most acceptable service we render to him is doing good to his other children.”⁷¹ He believed the soul was immortal.⁷² “These I take to be the fundamental points in all sound religion,” said Franklin.⁷³ He believed that the soul would be treated with justice in the next life in accordance with one’s conduct in this life, but that God did not draw distinctions between believers and nonbelievers.⁷⁴ “As to Jesus of Nazareth,” wrote Franklin, “I think his system of morals and his religion, as he left them to us, the best the world ever saw or is like to see.”⁷⁵ But, he added, he had “some doubts as to his Divinity.”⁷⁶ Franklin added that he was not dogmatic on that question.⁷⁷ It was a question he had never studied, and he was not going to “busy myself with it now, when I expect soon an opportunity of knowing the truth with less trouble.”⁷⁸

Franklin had little personal use for organized religion. He had tried it and found religious services boring.⁷⁹ He believed, however, that religion served a socially useful purpose because (unlike him) some people needed it as an inspiration for leading a moral life.⁸⁰

In his biography of Franklin, Walter Isaacson concludes that Franklin’s views were consistent with deism but not with the strong

70. Letter from Benjamin Franklin to Ezra Stiles (Mar. 9, 1790), in 3 A LIBRARY OF AMERICAN LITERATURE FROM THE EARLIEST SETTLEMENT TO THE PRESENT TIME: LITERATURE OF THE REVOLUTIONARY PERIOD 45, 45 (Edmund C. Stedman & Ellen M. Hutchinson eds., 1894).

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. WALTER ISAACSON, BENJAMIN FRANKLIN: AN AMERICAN LIFE 84 (2003). At one point, however, Franklin became enamored with the sermons of George Whitefield, a traveling preacher who strongly advocated good works and raised money to support schools, libraries, and an orphanage in Georgia. *Id.* at 110–11.

80. *See id.* at 87–88.

version, which held that God set up the universe to operate according to natural laws and allows the universe to unfold according to those laws without intervening.⁸¹ After giving the matter some thought, Franklin decided that God “sometimes interferes by His providence and sets aside the effects which would otherwise have been produced by [natural] causes.”⁸² Franklin arrived at that conclusion, however, not by consulting Scripture or theology but through philosophical deduction, a classic deistic method.⁸³ Moreover, Franklin rejected the ideas that we should be guided by faith or that faith alone could, or should, lead to salvation.⁸⁴ Franklin believed that leading a moral life was more important than faith.⁸⁵ Walter Isaacson also concluded that even though Franklin held some views that may not have comported with the enhanced form of deism, “[h]e did not, however, stray too far from deism,” because, among other things, Franklin put little stock in praying to God for help in personal matters.⁸⁶

E. *Alexander Hamilton*

When Alexander Hamilton was a student at Kings College (now Columbia University), he was, according to a close friend at the time, “attentive to public worship and in the habit of praying on his knees night and morning,” and “a zealous believer in the fundamental doctrines of Christianity.”⁸⁷ His religiosity cooled in midlife, however. He and his wife Eliza had three of their children baptized on the same day at Trinity Church, in the presence of Eliza’s family for whom this was important, and a couple of years later Alexander and Eliza rented a pew in that Episcopalian Church.⁸⁸ However, Hamilton did not take communion or attend

81. *See id.* at 86–87.

82. *Id.* at 87 (quoting Benjamin Franklin, *On the Providence of God in the Government of the World* (1732), in 1 *THE PAPERS OF BENJAMIN FRANKLIN* 264, 264 (Leonard W. Labaree ed., 1959)).

83. *See id.* at 86–87.

84. *Id.* at 85, 108.

85. *Id.* at 108.

86. *Id.* at 87.

87. CHERNOW, *supra* note 60, at 52–53 (quoting 1 *JOHN CHURCH HAMILTON, THE LIFE OF ALEXANDER HAMILTON* 47 (1840)).

88. *Id.* at 205.

church frequently.⁸⁹ His biographer Ron Chernow writes, “Like Adams, Franklin, and Jefferson, Hamilton had probably fallen under the sway of deism, which sought to substitute reason for revelation and dropped the notion of an active God who intervened in human affairs.”⁹⁰

That may have been how it was through most of Hamilton’s adult life, but near the end, two things prompted a resurgence in Hamilton’s embrace of Christianity. The first was the death of Hamilton’s son, Philip, who was killed in 1801, during a duel in which he engaged to defend his father’s honor.⁹¹ The second was Hamilton’s desire to find a foothold in a bitter political war with then-President Thomas Jefferson and the Republican Party.⁹² To create such a foothold, Hamilton formed an organization named the Christian Constitutional Society, with the avowed purpose of promoting Christianity, the Constitution, and the Federalist Party.⁹³ Hamilton knew better, but he was shattered and desperate at this particular time of his life.⁹⁴ Ron Chernow writes, “[t]he society was an execrable idea that would have grossly breached the separation of church and state and mixed political power and organized religion. . . . Fortunately, other Federalists didn’t cotton to the idea.”⁹⁵

89. *Id.*

90. *Id.* “At the same time,” continues Chernow, Hamilton “never doubted God’s existence, embracing Christianity as a system of morality and cosmic justice.” *Id.*

91. *Id.* at 650–54. Losing a beloved relative, especially a child, provides incentive to believe in a benevolent God. *Id.* at 654. Moreover, Hamilton was surely moved when he witnessed his son profess his faith in Jesus Christ during his last moments. *Id.*

92. *Id.* at 665.

93. *Id.* at 659.

94. Following his son’s death, “Hamilton tumbled into a bottomless despair.” *Id.* at 655. Meanwhile, only four years earlier, Hamilton had been humiliated and politically wounded by a scandal that involved his having an extramarital affair and naively succumbing to blackmail to keep the affair secret; with good reason, Hamilton blamed Republicans, including Jefferson, Madison, and especially James Monroe, for making these things public. *Id.* at 528–37.

95. *Id.* at 659.

Hamilton, however, highly valued his own integrity,⁹⁶ and he surely wanted to believe—and therefore persuaded himself—that his desire to promote Christianity was sincere. These events provide some background that may help explain why, on his deathbed, Hamilton went to extraordinary lengths to receive Holy Communion from the Episcopal Church.⁹⁷ He first sent for Reverend Benjamin Moore, who was the rector of the church to which Hamilton and his wife belonged.⁹⁸ Moore initially declined his request because Hamilton had not been attending church (and also because Moore considered dueling to be impious).⁹⁹ A Presbyterian minister who was a friend of Hamilton's also declined, even though Hamilton grasped the man's hand and declared, "I have a tender reliance on the mercy of the Almighty, through the merits of the Lord Jesus Christ."¹⁰⁰ Hamilton then renewed his requests to Reverend Moore, who ultimately relented.¹⁰¹ After receiving Holy Communion, Hamilton declared he was happy.¹⁰²

96. See, e.g., *id.* at 287, 293–94, 319, 341, 725 (outlining various instances of Hamilton's personal integrity).

97. *Id.* at 706–08.

98. *Id.* at 706.

99. *Id.* at 707.

100. *Id.* (quoting JACOB VAN VECHTEN, MEMOIRS OF JOHN M. MASON 184 (1856)).

101. *Id.* at 707–08.

102. Hamilton wanted to maintain a wall of separation between church and state, however. When, during the Constitutional Convention in Philadelphia, Benjamin Franklin made a motion to open sessions with a prayer, Hamilton objected. ISAACSON, *supra* note 79, at 451–52. While Hamilton suggested that instituting a prayer five weeks into the Convention might cause the public to fear that delegates were resorting to prayer out of desperation, he probably thought that was easier than launching into an argument that prayer was inappropriate in that setting. See JAMES MADISON, NOTES OF DEBATES IN THE FEDERAL CONVENTION OF 1787 210 (1966). Franklin's suggestion, in fact, went over like a lead balloon. After a few brief remarks, the delegates simply voted to adjourn. *Id.* at 210–11. Franklin penned the following note to himself: "The convention, except for three or four persons, thought prayers unnecessary." ISAACSON, *supra* note 79, at 452. In a similar vein, when Hamilton was later asked why the framers never mentioned God in the Constitution, he tersely replied: "We forgot." CHERNOW, *supra* note 60, at 235.

F. *Thomas Jefferson*

For Thomas Jefferson, religion became a hot political issue. Political opponents accused Jefferson of being a “howling atheist” who was hostile to churches and the clergy.¹⁰³ Frequently offered as Exhibit A for these charges was a statement in Jefferson’s 1787 book, *Notes on the State of Virginia*: “[b]ut it does me no injury for my neighbor to say there are twenty gods, or no god. It neither picks my pocket nor breaks my leg.”¹⁰⁴ It was an unfair indictment. In the passage, Jefferson was not expressing his own religious views but arguing that the state has no business regulating religion.¹⁰⁵ The immediately preceding sentence was: “[t]he legitimate powers of government extend to such acts only as are injurious to others.”¹⁰⁶ Nevertheless, Jefferson himself added fuel to the fire by repeatedly refusing to publicly answer questions about his religious beliefs.¹⁰⁷ He refused because he believed that religion was an entirely private matter that had no bearing on a person’s fitness for public office.¹⁰⁸ He sought to establish the principle that inquiring about another’s religious beliefs, including those of a political candidate, was improper.¹⁰⁹ After all, the Constitution forbids imposing any religious test as a qualification for any public office.¹¹⁰

Jefferson’s enemies, of course, argued that he was hiding something. And so, eventually, Jefferson considered it necessary to defend himself against the charges and suspicions.¹¹¹ He did so by sending a letter to his friend Benjamin Rush.¹¹² Jefferson began

103. GAUSTAD, *supra* note 37, at 38, 64.

104. THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA 159 (William Peden ed., Univ. of N.C. Press 1982) (1787).

105. *See id.*

106. *Id.*

107. GAUSTAD, *supra* note 37, at 40.

108. *Id.*

109. *Id.*

110. U.S. CONST. art. VI, cl. 3.

111. Letter from Thomas Jefferson to Benjamin Rush (Apr. 21, 1803), NAT’L ARCHIVES, <https://founders.archives.gov/?q=Author%3A%22Jefferson%2C%20Thomas%22%20Recipient%3A%22Rush%2C%20Benjamin%22&s=1111311111&r=11> [perma.cc/6L6G-Y227] (last visited Apr. 6, 2021).

112. *Id.*

by reminding Dr. Rush that, in response to an earlier inquiry, Jefferson promised that someday he would give his friend his views on religion.¹¹³ He was now ready to do so.¹¹⁴ In his letter, Jefferson said his religious views were the result of a lifetime of inquiry and reflection, and were:

[V]ery different from that Anti-Christian system, imputed to me by those who know nothing of my opinions. [T]o the corruptions of Christianity, I am indeed opposed; but not to the genuine precepts of Jesus himself. I am a Christian, in the only sense in which he wished any one to be; sincerely attached to his doctrines, in preference to all others; ascribing to himself every *human* excellence, & believing he never claimed any other.¹¹⁵

Jefferson enclosed, with his letter, another document he had prepared and titled *Syllabus of an Estimate of the merit of the doctrines of Jesus, compared with those of others*.¹¹⁶ This was, in outline form, a summary of Jefferson's thoughts about Jesus's teachings.¹¹⁷ Jefferson asked Dr. Rush to keep his letter and enclosure private because, said Jefferson, "it behoves [sic] every man, who values liberty of conscience for himself, to resist invasions of it in the case of others."¹¹⁸ Jefferson, however, was a politician, and politicians of the day sometimes sent supposedly private letters to friends with a tacit understanding that the friend would make the contents public.¹¹⁹ This was a technique for persuading others that the views expressed were sincere. Whether this was Jefferson's intention or not, no one can say, although it is worth noting that Jefferson wrote this letter while he was in his first term as President of the United States and contemplating running for a

113. *Id.*

114. *Id.*

115. *Id.*

116. Thomas Jefferson, *Doctrines of Jesus Compared to Others* (Apr. 21, 1803), NAT'L ARCHIVES, <https://founders.archives.gov/documents/Jefferson/01-40-02-0178-0002> [perma.cc/LG7M-ZNL6] (last visited Apr. 6, 2021).

117. Letter from Thomas Jefferson to Benjamin Rush, *supra* note 111.

118. *Id.*

119. See HARLOW GILES UNGER, *THE LAST FOUNDING FATHER* 68 (2009) (describing how Patrick Henry publicized a letter that James Monroe sent him "under an injunction of secrecy," to Monroe's great political advantage).

second term.¹²⁰ Even a polymath and genius such as Jefferson presumably had little time to spare while serving as President of the United States; thus, it is reasonable to believe that anything to which a president devoted significant attention may well have had political objectives. Leaving open the possibility that Jefferson's letter and syllabus may have had political spin in the sense of casting matters in the most favorable light, there is no reason to believe that Jefferson misrepresented his views, especially as they are consistent with other evidence about Jefferson's beliefs.

What Jefferson said quite clearly in his letter to Dr. Rush was that while he was "sincerely attached" to Jesus's teachings; he believed that Jesus was "human" and never claimed otherwise.¹²¹ Jefferson reiterates this in the syllabus: "The question of [Jesus] being a member of the god-head, or in direct communication with it, claimed for him by some of his followers, and denied by others, is foreign to the present view, which is merely an estimate of the intrinsic merit of his doctrines," Jefferson wrote.¹²² The present view to which Jefferson referred was deism, which Jefferson defined as "the belief of one only god." Jefferson said the ancient Jews were deists, but their views on morality and ethics were "imperfect" and "often irreconcilable with the sound dictates of reason."¹²³ Jesus's moral and ethical teachings were far superior to both those of the ancient Jews and Greek philosophers, thought Jefferson.¹²⁴ Yet, Jefferson added that he did not consider Jesus's teachings to be perfect because Jesus died at only about thirty-three years of age, before he had the opportunity to achieve full intellectual energy or develop a more complete system of morals.¹²⁵ Jefferson's comments were entirely conclusory; he did not discuss or even identify the specific precepts or moral views of the ancients with which he disagreed or the specific teachings of Jesus with which he agreed.

120. Letter from Thomas Jefferson to Benjamin Rush, *supra* note 111.

121. *Id.*

122. Jefferson, *supra* note 116.

123. *Id.*

124. *Id.*

125. *Id.* "Hence the doctrines which [Jesus] really delivered were defective as a whole," wrote Jefferson. *Id.*

In 1820, Jefferson completed a book that was published after his death as *The Jefferson Bible*.¹²⁶ What Jefferson essentially did was excise from the New Testament all miracles and other supernatural events.¹²⁷ He eliminated, for example, all references to angels attending the birth of Jesus.¹²⁸ He entirely omitted the Book of Revelations, which he considered “merely the ravings of a Maniac.”¹²⁹ Leaning heavily on Luke and Mark, Jefferson was careful to include all of Jesus’s teachings, including most importantly the Sermon on the Mount, but eliminated miracles that Jesus supposedly performed in conjunction with his teachings.¹³⁰ He also omitted any mention of Jesus rising from the dead.¹³¹ The last sentence read: “There laid they Jesus, and rolled a great stone to the door of the sepulcher, and departed.”¹³² For his private library, Jefferson bound one copy of this work in red leather, trimmed with gold edging, and titled it *The Life and Morals of Jesus*.¹³³ Jefferson privately claimed this work proved he was a true Christian, but he kept it secret because he believed that the clergy—who were committed to “heathen mysteries”—would consider it definitive proof that he was an atheist.¹³⁴

In this, Jefferson was undoubtedly correct. Few Christian clergy would have considered Jefferson a Christian. Jefferson rejected the Trinity. In retirement, he said “the genuine doctrine of only one God is reviving, and I trust that there is not a *young man* now living in the U.S. who will not die a Unitarian.”¹³⁵ Jefferson

126. THOMAS JEFFERSON, *THE LIFE AND MORALS OF JESUS OF NAZARETH: EXTRACTED TEXTUALLY FROM THE GOSPELS, TOGETHER WITH A COMPARISON OF HIS DOCTRINES WITH THOSE OF OTHERS* (Thompson Publ’g Co. 1902) (1820) [hereinafter *THE JEFFERSON BIBLE*]

127. See, e.g., GAUSTAD, *supra* note 37, at 84–85.

128. *Id.* at 85.

129. *Id.* (quoting in Letter from Thomas Jefferson to Benjamin Rush (April 21, 1803), in *JEFFERSON’S EXTRACTS FROM THE GOSPELS* 337, 337–38 (Dickenson W. Adams ed., 1983)).

130. *Id.*

131. *Id.*

132. *THE JEFFERSON BIBLE*, *supra* note 126, at 168.

133. FAWN M. BRODIE, *THOMAS JEFFERSON: AN INTIMATE HISTORY* 498 (1974).

134. *Id.*

135. Letter from Thomas Jefferson to Benjamin Waterhouse (June 26, 1822), NAT’L ARCHIVES, <https://founders.archives.gov/documents/Jefferson/98-01-02-2905> [perma.cc/LG7M-ZNL6] (last visited Apr. 6, 2021).

predicted that the day would come when the virgin birth of Jesus would be considered “a fable.”¹³⁶ He clearly realized that he was not a Christian by anyone else’s definition. “I am of a sect by myself, as far as I know,” he said.¹³⁷ Jefferson said that Jesus “has told us only that god is good and perfect, but has not defined him.”¹³⁸ He thought that was as far as theology should go. If we could only “leave the subject as undefinable, we should all be of one sect, doers of good & eschewers of evil.”¹³⁹

G. *The Six Founders: Summing Up*

And so, sticking with our definition that a Christian is someone who believes in the divinity of Jesus of Nazareth, how many of the six most prominent Founders were themselves Christian? Two, Franklin and Jefferson, expressly disavowed belief in the divinity of Jesus, and therefore cannot be classified as Christian. Adams may not be quite as clear but should probably also be classified as a non-Christian. Alexander Hamilton expressly said he believed in the divinity of Christ and therefore must be classified as Christian. The remaining two, George Washington and James Madison, cannot be definitively classified one way or the other. They were surely either deists or leaned heavily toward the deist viewpoint; however, neither expressly said he did not believe in the divinity of Jesus. Thus, we can confidently classify only one of the six most prominent Founders as a Christian.

That might surprise Larry Liddle, who I suspect—like many people—assumed that the past is similar to the present. The past, however, is often considerably different. As L.P. Hartley famously put it in his novel *The Go-Between*, “The past is a foreign country: they do things differently there.”¹⁴⁰ No historian would be

136. Letter from Thomas Jefferson to John Adams (April 11, 1823), NAT’L ARCHIVES, <https://founders.archives.gov/documents/Jefferson/98-01-02-3446> [perma.cc/42D7-WHPJ] (last visited Apr. 6, 2021).

137. Letter from Thomas Jefferson to Ezra Stiles Ely (June 25, 1819), NAT’L ARCHIVES, <https://founders.archives.gov/?q=%20Author%3A%22Jefferson%20Thomas%22%20Dates-From%3A1819-06-25&s=1111311111&r=2> [perma.cc/9VTF-45BU] (last visited Apr. 6, 2021).

138. *Id.*

139. *Id.*

140. Ali Smith, *Rereading: The Go-Between by LP Hartley*, THE GUARDIAN (June 17, 2011), <https://www.theguardian.com/books/2011/jun/17/lp-hartley->

surprised to discover that even Founders who thought of themselves as Christians may have had quite a different view of what that meant than would Larry Liddle, who lived in a small Texas town at the end of the twentieth century. Historians also understand that late eighteenth-century America was very different in terms of religiosity than it is today, and often in ways that might surprise us. Many people assume—especially those on the political right—that Americans were more religious at the time of the founding than they are today. But according to historian Jill Lepore, “[t]he United States was founded during the most secular era in American history, either before or since.”¹⁴¹

H. *Did the Founders Intend to Found a Christian Nation?*

Regardless of their personal beliefs, did the Founders intend to establish a Christian nation? That is, arguably, an even more important question than whether they themselves were Christian. Countless books and articles have addressed that question, and I am not going to take it on in this introductory Essay in any depth. But I do not want to wholly ignore it, either. If I did, the reader might well wonder why I ignored it. So, allow me to make the briefest comment about how I see it.

For me, the question “Did the Founders intend to found a Christian nation?” is quite simple to answer. We know they did not. The Constitution of the United States—the charter of our government, which the Founders labored over for nearly four months in Philadelphia—never mentions Christianity. The omission was no oversight. The Constitution, as originally adopted, alludes to religion twice.¹⁴² It provides that “no religious Test shall ever be required as a Qualification to hold any Office or public Trust

go-between-ali-smith#:~:text=%22The%20past%20is%20a%20foreign,silence%2C%20a%20shaking%20of%20heads [https://perma.cc/D2UV-NAEG].

141. JILL LEPORE, *THESE TRUTHS: A HISTORY OF THE UNITED STATES 199–200* (2018).

142. By contrast, God or the divine is mentioned in all fifty state constitutions, three state constitutions mention Christianity, and seven prohibit atheists from holding public office. Aleksandra Sandstrom, *God or the divine is referenced in every state constitution*, PEW RESEARCH CTR, (Aug. 17, 2017) <https://www.pewresearch.org/fact-tank/2017/08/17/god-or-the-divine-is-referenced-in-every-state-constitution> [perma.cc/L3R4-TB3J]; Laurie Goodstein, *In Seven States, Atheists Push to End Largely Forgotten Ban*, N.Y. TIMES (Dec. 6, 2014) https://www.nytimes.com/2014/12/07/us/in-seven-states-atheists-push-to-end-largely-forgotten-ban-.html?_r=0 [https://perma.cc/WE3D-BHFP].

under the United States.”¹⁴³ It also provides that public officials shall pledge loyalty to the Constitution “by Oath or Affirmation,” thereby allowing Quakers and others who objected to taking an oath to make the pledge in a non-religious form.¹⁴⁴ Those are the total references. Many issues were hotly debated during the ratification process, but these clauses produced only minor discussion. “In the state ratifying conventions, even some clergymen argued for allowing Jews, Catholics, and Muslims to be eligible for public office against broad popular conviction that religious freedom, and indeed, freedom in general was safest in the hands of Protestants,” observed historian Pauline Maier.¹⁴⁵ To the extent that religion was a significant issue during the ratification debates, it was because some advocated that freedom of religion be protected in a bill of rights.¹⁴⁶ That, of course, was accomplished by the First Amendment to the Constitution, which states simply: “[c]ongress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”¹⁴⁷

If the Founders intended to establish a Christian nation, they would have said so. They did not say so. For me, that by itself is decisive. And even more, everything they did say in the Constitution suggests they did not so intend.

There is one more thing worthy of mention. On one occasion, a group of American Founders expressly said they did not intend to

143. U.S. CONST. art. VI, cl. 3.

144. U.S. CONST. art. II, §1, cl. 8 (regarding President); U.S. CONST. art. VI cl. 3 (regarding all executive, legislative, and judicial officers of both the United States and the several states).

145. PAULINE MAIER, *RATIFICATION: THE PEOPLE DEBATE THE CONSTITUTION, 1787–1788* 467 (2010).

146. The Virginia Ratifying Convention, for example, proposed a declaration of rights including the following provision:

That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men have an equal, natural, and unalienable right to the free exercise of religion, according to the dictates of conscience, and that no particular religious sect or society ought to be favored or established, by law, in preference to others.

3 THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTIONS 659 (Jonathan Elliot ed., 2d ed. 1836), https://oll-re-sources.s3.us-east-2.amazonaws.com/oll3/store/titles/1907/1314.03_Bk.pdf [perma.cc/PWW9-N32L].

147. U.S. CONST. amend. I.

found a Christian nation. In 1797, the United States entered into the Treaty of Tripoli, which declared that “the government of the United States of America is not in any sense founded on the Christian Religion.”¹⁴⁸ A bit of mystery surrounds that clause because Article 11 of the Treaty, which contained it, was apparently omitted from the original, Turkish version of the Treaty.¹⁴⁹ But that is irrelevant for our purposes. What matters is what the Americans knew. Article 11 appears in the English version translated and certified by Joel Barlow, one of the two American negotiators to the Treaty.¹⁵⁰ That version was also read to and ratified unanimously by the United States Senate (at a time when unanimous votes were unusual),¹⁵¹ and signed and officially proclaimed by President John Adams on June 10, 1797.¹⁵²

I do not want to make too much out of the Treaty of Tripoli. I am aware of arguments attempting to diminish its significance, including the omission of Article 11 from an 1805 treaty that superseded the 1797 Treaty. Yet, the Treaty of Tripoli ought not to be ignored either.¹⁵³ It is, after all, a formal statement—and to the best of my knowledge, the only formal statement—by American Founders about whether they intended the United States to be a Christian nation.

In the next section of this Essay, we go a century back in time to investigate how it came to pass that the American Founders established a government that was to be neutral in all matters religious, and to guarantee that neutrality by erecting a wall separating church and state. It is only the beginning of the story that I will address, and I shall only present a capsulized version of that beginning. It is, nevertheless, fitting we take this up because

148. 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, https://avalon.law.yale.edu/18th_century/bar1796t.asp [perma.cc/Y756-GVSW] (popularly known as the Treaty of Tripoli).

149. 2 TREATIES AND OTHER ACTS OF THE UNITED STATES OF AMERICA 383–84 (Hunter Miller ed., 1931).

150. *See id.* at 384–85.

151. *See* Phil Zukerman, *Ye of Little Faith*, 12 CONTEXTS 80, 80 (2013).

152. 2 TREATIES AND OTHER ACTS OF THE UNITED STATES OF AMERICA, *supra* note 149, at 349.

153. *See Treaty of Tripoli*, WALLBUILDERS (Dec. 29, 2019), <https://wallbuilders.com/treaty-of-tripoli/> [https://perma.cc/35YU-Y2EU].

beginnings are important—and yet, the beginning is the least generally known part of this story.

II. ROGER WILLIAMS AND AMERICA

Within Rhode Island, Roger Williams is a well-known and revered historical figure. A hospital, a national park, a city park, a zoo, a middle school, a university, and indeed even this *Law Review* bear his name. He is, however, far from a household name outside Rhode Island. In fact, when out-of-state people hear Williams's name, they often make an amusing assumption. For example, our law school, the Roger Williams School of Law, appears to draw some students from colleges such as Brigham Young University and Bob Jones University because those students believe they would be more comfortable continuing their studies at another religiously affiliated school.¹⁵⁴ They eventually learn that that expectation was not just wrong but ironic. Anyone who knew much about Roger Williams would correctly surmise that a university bearing his name would not be religiously affiliated. For although Roger Williams was a man passionately devoted to religion—someone who was both a cleric and a theologian¹⁵⁵—his historical significance is that he sought to protect religion by separating it fully and entirely from government. A historian writing at the time of the American Revolution called Roger Williams “[t]he first founder and supporter of any truly civil government on earth.”¹⁵⁶

The significance of that can hardly be overstated. If America is not a Christian nation, that is due, in the first instance, to Roger Williams. We must, therefore, understand something about the man himself and how he influenced the American Founders, who lived a century later. While I am not going to dip deep in this introductory Essay, I am going to deal a bit with Williams's upbringing, education, and relationships in England, as well as his journeys back to England to lobby the English government to grant his colony a charter. That is important because Roger Williams's

154. A number of students have told me this over the years.

155. JOHN M. BARRY, *ROGER WILLIAMS AND THE CREATION OF THE AMERICAN SOUL* 73, 149–50 (2012).

156. EDWIN S. GAUSTAD, *LIBERTY OF CONSCIENCE: ROGER WILLIAMS IN AMERICA* 203 (1999) (quoting ISAAC BACKUS, *A HISTORY OF NEW ENGLAND AND PARTICULAR REFERENCE TO THE DENOMINATION OF CHRISTIANS CALLED BAPTISTS* (1777)).

influence on the American Founders took a circuitous route. Williams lived most of his life in America, and during his lifetime he was well known—and a major annoyance—to the leaders in other American colonies. But, in the main, that is not how Williams influenced the American Founders. Rather, Williams had a significant impact within intellectual and governmental circles in England, and his ideas migrated from England back to America. Williams's background, education, and relationships in England are relevant to understand this. In the seventeenth century, England was a society in which class and status mattered a great deal. As we will see, while Williams was not a member of the aristocratic class, he had a sufficient pedigree and more than sufficient education and relationships for English leaders—including a king and a consequential political philosopher—to pay him heed.

A. *The Radicalism of Roger Williams*

From the very earliest of times in the Western World until the founding of the United States of America, nations had established churches. The Church of England, also known as the Anglican Church, was the established church of England, and the Monarch of England was head of both the secular government and the church.¹⁵⁷ And, as even middle school students know, a number of religious dissenters in seventeenth-century England—including, most famously, the Puritans—emigrated from England to America to be free of that church.¹⁵⁸ But while they wished to worship as they pleased, they had no intention of granting others the same privilege within their colony.¹⁵⁹ While the Puritans had some formal separation between church and state—clergy were not permitted to hold civil office, for example—separation did not go

157. *Church of England*, BBC, https://www.bbc.co.uk/religion/religions/christianity/cofe/cofe_1.shtml [perma.cc/P357-MVWU] (last updated June 30, 2011).

158. LEPORE, *supra* note 141, at 43–44 (2018); see BARRY, *supra* note 155, at 81–143. The formal sentence said that Williams had “broached and divulged diverse new and dangerous opinions, against the authority of magistrates,” and refused to retract his opinions. *Id.* at 205 (quoting JOHN WINTHROP, *JOURNAL OF JOHN WINTHROP* 150 (Richard Dunn ed., 1996)) (spelling modernized).

159. LEPORE, *supra* note 141, at 42–43; BARRY, *supra* note 155, at 81–82.

far.¹⁶⁰ The state was considered the “nursing father” of the church, and it enforced religious requirements, including attendance at church services.¹⁶¹ Those who did not attend were fined.¹⁶² And only members of the church could vote for governor and other civil officers.¹⁶³ In 1635, the Massachusetts Bay Colony banished a young preacher named Roger Williams for arguing that the state had no business enforcing religious requirements and for advocating religious tolerance.¹⁶⁴ The officials ordered that Williams be seized and physically put aboard a ship departing for England, but a violent snow storm delayed the fifteen men sent to execute the order.¹⁶⁵ When they arrived at Williams’s house, he had disappeared.¹⁶⁶

With the aid of American Indians—probably especially the Wampanoag tribe, with which Williams already had a relationship—Williams made his way south, through the freezing cold and snow of one of the worst winters in history, to Narragansett Bay, where, with Indian consent, he established a new settlement.¹⁶⁷ Williams named his settlement Providence in recognition “of Gods [sic] merciful providence unto me in my distress,” and declared it would be “a shelter for persons distressed for conscience.”¹⁶⁸ Williams’ settlement grew to include Aquidneck Island (which was purchased from the Narragansett tribe), on which Newport was built, and became known as Rhode Island.¹⁶⁹

160. BARRY, *supra* note 155, at 169.

161. *Id.* at 169 (regarding attendance at religious services required); *Id.* at 179 (regarding the state being considered the “nursing father” of the church).

162. *Id.* at 226.

163. *Id.* at 178–79.

164. Among other things, Williams objected to the state enforcing the first four of the Ten Commandments because they relate exclusively to the relationship between the individual and God. *Id.* at 187.

165. *Id.* at 209.

166. BARRY, *supra* note 155, at 4, 208–09.

167. *Id.* at 213–19.

168. *Id.* at 220.

169. The white settlers on Aquidneck Island were a group of Antinomians who had their own problems in Massachusetts. Their settlement was originally unconnected to Williams’ settlement at Providence. Williams was not a friend of Antinomian theology, but he had sympathy for those fleeing Massachusetts as a result of religious persecution and used his special relationships

Williams promised everyone complete religious freedom.¹⁷⁰ At a time when there was no toleration of religious differences in Massachusetts and no member of Parliament even advocated religious toleration of different Protestant sects, Williams's promise of complete religious freedom for everyone was unique, and Rhode Island became a haven for people unwelcomed elsewhere, including Quakers, Jews, Catholics, Turks (i.e., Muslims), and even atheists.¹⁷¹ Rhode Island's only religious prohibition forbade practicing witchcraft, but not a single individual was ever prosecuted for violating it and women accused of being witches elsewhere also migrated to Rhode Island.¹⁷² Rhode Island's neighbors were both disdainful of it, as well as upset at having a haven for the flotsam and jetsam of humanity on their border.¹⁷³ They called Williams' settlement "Rogues Island," and they denounced it as a "receptacle for all sorts of riff-raff" and the latrine of New England.¹⁷⁴ And, as we shall see shortly, they intended to do something about it.

Just how unpopular was the idea of religious toleration? When Williams published a book in England advocating religious toleration, Parliament decreed that all copies be seized and burned.¹⁷⁵ Much the same was going on in American settlements. In Boston, for example, dangerous books were routinely burned in the marketplace upon orders of the court.¹⁷⁶ Williams considered

with the Indians—in this instance, with the Narragansett tribe—to purchase Aquidneck Island. *Id.* at 254.

170. *Id.* at 226.

171. For more information regarding how no one within Parliament advocated religious freedom even for different Protestant groups, see *id.* at 320 (quoting W.K. JORDON, 3 THE DEVELOPMENT OF RELIGIOUS TOLERATION IN ENGLAND 29 (1932)). See also *id.* at 302 ("Parliament was moving away from rather than toward any toleration of religious differences."). For more information regarding how Rhode Island became a haven for outcast religious groups, see *id.* at 226; TERESA M. BEJAN, MERE CIVILITY: DISAGREEMENT AND THE LIMITS OF TOLERATION 12 (2017).

172. BARRY, *supra* note 155, at 354.

173. BEJAN, *supra* note 171, at 81.

174. *Id.* (quoting 14 DOCUMENTS OF THE SENATE OF THE STATE OF NEW YORK: ONE HUNDRED AND TWENTY-FIFTH SESSION 400 (1902)).

175. BARRY, *supra* note 155, at 338.

176. *Id.* at 370.

book burning to be, well, intolerable.¹⁷⁷ Rhode Island, therefore, became not merely a haven for religious dissidents; it became a haven for dissenting books, too.

Elsewhere, religious toleration was considered downright dangerous. After all, monarchs derived their sovereignty from God, the church and state were one, and questioning the church inherently questioned the monarch. “There cannot be two religions in one State,” Queen Elizabeth I said.¹⁷⁸ This was serious business. Elizabeth’s father, Henry VIII, created the Church of England because the Pope had refused to grant him an annulment from Elizabeth’s mother, Anne Boleyn.¹⁷⁹ When he did so, Parliament enacted a law declaring the king the “Supreme Head” of the Church of England, and priests who refused to conform to the newly established Church were executed.¹⁸⁰ When Henry died, his daughter Mary became queen and returned the nation to Catholicism.¹⁸¹ Although Mary ruled for only five years, she attempted to solidify England’s return to Catholicism by burning at the stake three hundred Protestants, including the Archbishop of Canterbury, thereby earning the enmity of her people and the sobriquet “Bloody Mary.”¹⁸² When Mary died, Elizabeth became queen, and returned the nation to Protestantism.¹⁸³ The Pope responded by absolving Elizabeth’s subjects for refusing to obey her; excommunicating her, thereby making her a heretic; and decreeing that killing a heretic was not a sin.¹⁸⁴ Elizabeth lived under genuine fear of assassination, and survived by developing a robust counterintelligence system that spied on the Catholic underground.¹⁸⁵ “There cannot be two religions in one State,” indeed!

177. *Id.*

178. *Id.* at 12.

179. *Id.* at 12–13.

180. *See id.* at 11–12 (regarding declaring the king “Supreme Head” of the Church of England and regarding the execution of priests).

181. BARRY, *supra* note 155, at 13.

182. Meilan Solly, *The Myth of ‘Bloody Mary’*, SMITHSONIAN MAG. (Mar. 12, 2020, 6:00 AM), <https://www.smithsonianmag.com/history/myth-bloody-mary-180974221/>.

183. BARRY, *supra* note 155, at 12.

184. *Id.*

185. *Id.*

Elizabeth ruled for forty-five years. She is considered one of the most skilled, beloved, and successful monarchs in history, and the person who transformed England from a relatively small, weak, and backward state into a modern nation and a major power.¹⁸⁶ Through deft conduct of foreign affairs, she managed to keep powerful Catholic states from invading until England was strong enough to defend itself.¹⁸⁷ In religion, she negotiated a relatively moderate path between her subjects who preferred a more Catholic style of worship and increasingly aggressive Calvinists and other dissenters who rejected elaborate rituals and wanted to move further to a simpler and, in their words, more “pure” style of worship.¹⁸⁸

Elizabeth’s successor, James I, had previously been King of Scotland but he had a bumpy reign as King of England.¹⁸⁹ He attempted to overcome internal difficulties by doubling down on the religious side and fully embracing the theory of the divine right of kings.¹⁹⁰ From the time of the Magna Carta in 1215, the King of England was not considered to be above the law.¹⁹¹ James, however, insisted that the king was the law: “[r]ex est loquens” (the king is law speaking), his Lord Chancellor declared.¹⁹² “Kings sit in the throne of God, and thence all judgment is derived,”¹⁹³ James himself declared, adding: “[i]t is atheism and blasphemy to dispute what God can do.”¹⁹⁴

The man who challenged that view, even to the King’s face, was Sir Edward Coke. Coke, a lawyer and legal scholar who over time held many high government offices, is known as one of the greatest

186. *Elizabeth I (r.1558–1603)*, THE ROYAL HOUSEHOLD, <https://www.royal.uk/elizabeth-i> [perma.cc/H9XK-KWGA] (last visited Apr. 6, 2021).

187. A supposedly invincible Spanish Armada attacked England in 1588. By that time, England had developed a naval force of small, maneuverable warships and skilled seamen that, under the leadership of Sir Francis Drake, defeated the Armada. See O.F.G. Hogg, *England’s War Effort Against the Spanish Armada*, 44 J. SOC’Y ARMY HIST. RES. 25, 38–40 (1966).

188. BARRY, *supra* note 155, at 13.

189. *Id.*

190. *Id.* at 9, 19.

191. *Id.* at 20.

192. *Id.* at 38.

193. *Id.* at 40.

194. *Id.*; see also *id.* at 333 (stating James argued that to disobey a monarch was to disobey God).

defenders of the common law in all of Anglo-American history.¹⁹⁵ When James I told Coke that he, the King, would protect the common law, Coke had the effrontery to tell His Majesty that things were properly the other way around: “[t]he common law protecteth the king.”¹⁹⁶ When the King flew into a rage, Coke prudently dropped to his knees and begged the King to forgive him for his over-zealousness.¹⁹⁷ Yet, Coke did not recant.¹⁹⁸ On the very next morning, in his role of judge, Coke issued an order prohibiting the King’s High Commission from issuing charges against a layman, stating, “[c]ogitationis poenam nemo emeret,” (no man may be punished for his thoughts).¹⁹⁹

B. *The Education of Roger Williams*

It was probably a year or two later when Edward Coke took on a boy of about fourteen years of age as an apprentice. How he met this young lad or why he decided to engage him is unknown.²⁰⁰ It does not appear that Coke ever hired another boy in a similar role.²⁰¹ Perhaps it was because the boy knew shorthand, for one of his tasks was to accompany Coke to court, the Star Chamber, or the Privy Council, record in shorthand Coke’s speeches to those bodies, and then translate his shorthand notes into prose for Coke to revise and include in *Coke’s Reports*, which were the most authoritative law books of the day.²⁰² The boy came from a middle-class family. His father was a merchant, and although the family was not wealthy, it was presumably comfortable.²⁰³ And the boy’s extended family was not without political influence: one uncle was the High Sheriff of Hertfordshire and another was Mayor of London.²⁰⁴ While we do not know why Coke decided to engage this particular

195. *See id.* at 1, 31.

196. *Id.* at 31.

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.* at 45.

201. *Id.*

202. *Id.* at 40, 44.

203. *Id.* at 44.

204. *Id.*

boy, we do know it was not a decision that Coke ever regretted.²⁰⁵ Indeed, Coke became so devoted to the boy that he sometimes referred to him as his son.²⁰⁶ And after the boy had served him well for several years, in 1621, Coke, at his own, considerable expense (more than twice the tuition of Cambridge University) sent the boy to the Charterhouse School, one of England's most elite boarding schools.²⁰⁷ Two years later, the boy earned a scholarship to Pembroke College at Cambridge.²⁰⁸ That boy was Roger Williams.²⁰⁹

A biography of Roger Williams is beyond the scope of this Essay, but a few highlights will help explain how Williams came to believe in a complete separation between church and state, and why he believed that separation was necessary to protect the church from the state.

Williams was deeply interested in theology. After graduating from Cambridge in 1627, he started work on an advanced degree but was forced to abandon those studies because of a new requirement that one could not receive a degree without swearing that the religious services mandated by the Church of England conformed to Scripture.²¹⁰ Charles was now king.²¹¹ He was making Anglican services more Catholic in style.²¹² This horrified the Nation and greatly upset Parliament, which began taking the position that only it, and not the king, had the authority to declare the content of church services.²¹³ The oath was required at the king's behest to ensure that University graduates could not criticize the more Catholic-like services decreed by the King and his bishops.²¹⁴ Williams could not take the oath because he had

205. *Id.* at 45.

206. *Id.* at 44.

207. *Id.* at 57. Moreover, Coke had to use special influence to have Williams admitted because he was then two years too old under the school's normal admission rules. *Id.*

208. *Id.*

209. *Id.* at 45.

210. *Id.* at 73.

211. *Id.* at 60.

212. *Id.*

213. *Id.* at 61, 75.

214. *Id.* at 73.

become a Puritan cleric.²¹⁵ Puritans thought the highly ritualized, Catholic form of worship was corrupting Christianity; they got their name from wanting to “purify” the church by radically simplifying worship.²¹⁶ Puritans were “enemies of monarchs,” according to King Charles, and Puritan clerics were forbidden to hold church positions.²¹⁷ Therefore, following graduation, Williams (probably at Coke’s recommendation) became the family chaplain for Sir William Masham, a barrister who was both a member of both the Inner Temple and the House of Commons.²¹⁸ Shortly thereafter Parliament precipitated a showdown with the King over the issue of who had the right to control the Church of England by declaring that whoever sought to introduce innovations in religion—and that was the King and his Archbishop—were “capital enemies.”²¹⁹ Capital enemies were, under English law, to be sentenced to death.²²⁰ The King promptly dissolved Parliament.²²¹

Things had reached a point where Williams himself was in danger. He had been in open defiance of state-imposed obligations for clerics: he did not wear a surplice, use the Book of Common Prayer, or make the sign of the Cross.²²² Word reached Williams that the King’s High Commission intended to investigate him, and so, on December 1, 1630, Williams packed his library, and he and his wife boarded ship *Lyon*, which was bound for Massachusetts.²²³ As we know, Williams lasted only five years and one month before

215. *Id.*

216. *See id.* at 82. For information regarding the Puritan beliefs, see *id.* at 13, 81–84, 86–89.

217. *Id.* at 73.

218. *Id.*; see also *Sir William Masham, 1st. Bt. (1591–1656), of Otes, High Laver, Essex*, THE HIST. OF PARLIAMENT, <https://www.historyofparliamentonline.org/volume/1604-1629/member/masham-sir-william-1591-1656> [per ma.cc/DB8U-5MK9] (last visited Apr. 6, 2021).

219. BARRY, *supra* note 155, at 77.

220. *Id.*

221. *Id.* at 78.

222. *Id.* at 139.

223. *Id.* at 143.

his religious views had once again so upset state officials that he was forced to flee again.²²⁴

C. *The Evolution of Roger Williams's Ideas*

Roger Williams's theory of government was not fully formed when he first established Rhode Island, it evolved over time.²²⁵ At its core, it consisted of two related principles. The first was complete religious tolerance.²²⁶ No one would be "molested, punished, or disquieted" for worshipping as he or she pleased, or for not worshipping at all.²²⁷ Williams's commitment to religious toleration did not spring from any form of multiculturalism.²²⁸ He did not tolerate other religious views because he respected them.²²⁹ Just the reverse.²³⁰ Williams firmly believed that only what he believed was correct (even as his own beliefs changed over time), and he wanted to convert others to his viewpoint.²³¹ Williams wanted to save souls.²³² He wanted to convert heathens—Indians, atheists, Jews, Turks—to Christianity; and he wanted to convert other Christians to his particular brand of Christianity.²³³ Religious toleration was essential because only sincere conversions mattered; compelled conversions were worthless.²³⁴ Thus, people had to have complete religious freedom in order to be able to convert voluntarily.

Williams's belief in religious toleration—and, of course, his own personal experience as a religious dissenter in England and in Massachusetts—led him to believe that the way to deal with

224. Caryn E. Neumann, *Roger Williams*, THE FIRST AMENDMENT ENCYC., <https://www.mtsu.edu/first-amendment/article/1231/roger-williams> [perma.cc/5RJJ-3ULD] (last visited Apr. 6, 2021).

225. BARRY, *supra* note 155, at 228.

226. GAUSTAD, *supra* note 37, at 21.

227. *Id.* at 21 (quoting SYDNEY V. JAMES, COLONIAL RHODE ISLAND: A HISTORY 70 (1975)).

228. BEJAN, *supra* note 171, at 64.

229. *See id.* at 64–65.

230. *See id.*

231. *Id.* at 65.

232. *See id.*

233. *Id.* at 65–67.

234. *Id.* at 65–69.

dissenters was not to silence them but to debate them.²³⁵ One story, in particular, illustrates that sentiment. The religious group that Williams held in the very lowest regard were Quakers.²³⁶ He even wrote a book, *George Fox Digg'd Out of His Burrows*, devoted to attacking the founder of Quakerism.²³⁷ This is not without irony. Some of the things that so upset Williams about Fox could be said—and have been said—about Williams himself.²³⁸ Like Williams, Fox was a troublemaker who insisted on telling clerics they were wrong, although in fairness to Williams, Fox was more extreme as he sometimes disrupted the church services to announce his criticisms.²³⁹ And like Williams, Fox was a champion of religious freedom, although here again Fox was the more extreme.²⁴⁰ Fox, along with other early Quakers, insisted that the ultimate authority for religious truth were not clerics, theologians, or even Scripture, but the individual.²⁴¹ “You will say, Christ saith this, and the apostles say this; but what canst thou say? Art thou a child of Light and hast walked in the Light, and what thou speakest is it inwardly from God?” Fox said.²⁴² For Williams, this was akin to letting the inmates run the asylum.²⁴³ Yet, as much as he disliked Quakers, Williams allowed Quakers to settle, worship, and preach in Rhode Island.²⁴⁴ And when, in 1672, George Fox visited Newport, where he had a large following, Williams did not try to prevent the visit or silence Fox.²⁴⁵ Instead, Williams, then nearly seventy, climbed into his canoe at Providence and rowed himself

235. See *id.* at 75.

236. See BARRY, *supra* note 155, at 366.

237. *Id.* at 383.

238. For Williams's disagreements with George Fox and Quakerism, see generally BARRY, *supra* note 155, at 366–69; BEJAN, *supra* note 171, at 70–76; GAUSTAD, *supra* note 37, at 21.

239. See BEJAN, *supra* note 171, at 70–71.

240. See H. LARRY INGLE, *FIRST AMONG FRIENDS: GEORGE FOX AND THE CREATION OF QUAKERISM* 180 (1994).

241. DANDELION, *supra* note 36, at 74.

242. *Id.* at 92.

243. See BEJAN, *supra* note 171, at 71.

244. See GAUSTAD, *supra* note 37, at 21.

245. See BARRY, *supra* note 155, at 383.

the twenty miles to Newport to debate Fox.²⁴⁶ That was how Williams dealt with dissent.

While a few people had imagined a society with religious tolerance, no other society had ever instituted it in a lasting fashion.²⁴⁷ As a governmental reality, this was unprecedented.²⁴⁸

Williams' second, interrelated idea was even more radical. Religion was to keep out of governmental affairs, and—for Williams this was even more important—government was to keep out of religious affairs.²⁴⁹ There was, said Williams, to be a “hedge or wall of separation between the garden of the church and the wilderness of the world.”²⁵⁰ A century later, Thomas Jefferson would adopt the “wall of separation” metaphor, but here is where it originated.²⁵¹ Williams advocated that the state should treat religious organizations as it treated other organizations.²⁵² As Williams put it, a church as a “company of worshipers,” and the government was to treat it no differently than it would, for example, treat the East India Company.²⁵³ John Barry writes: “Williams created the first government in the world which broke church and state apart.”²⁵⁴

The implications of erecting a wall between church and state can hardly be overstated. Previously, the state sovereignty came from God.²⁵⁵ In his book, *The Bloody Tenant, of Persecution, for cause of Conscience, discussed in A Conference between Truth and Peace*, Williams wrote: “I infer that the sovereign, original, and foundation of civil power lies in the people.”²⁵⁶

246. By the time Williams arrived, Fox had left, but Williams engaged in a ten-hour debate with three of Fox's followers. *Id.* at 382.

247. *Id.* at 316–20.

248. *Id.*

249. *Id.* at 332–33.

250. GAUSTAD, *supra* note 156, at 207 (quoting 1 ROGER WILLIAMS, THE COMPLETE WRITINGS OF ROGER WILLIAMS 392 (Perry Miller ed., 1963)).

251. BARRY, *supra* note 155, at 6; *see also* GAUSTAD, *supra* note 37, at 39.

252. *See* BARRY, *supra* note 155, at 332–33.

253. *Id.* (quoting ROGER WILLIAMS, THE BLOODY TENENT OF PERSECUTION (1644), *reprinted in* 3 THE COMPLETE WRITINGS OF ROGER WILLIAMS 73 (Perry Miller ed., 1963)).

254. *Id.* at 389.

255. *Id.* at 333–34.

256. *Id.* at 335 (quoting WILLIAMS, *supra* note 253, at 366).

D. Rhode Island Must Defend its Ideas

Eventually, Rhode Island was forced to fight for its political life. Its four neighbors—Massachusetts Bay Colony, Plymouth Plantations, New Haven Colony, and Connecticut Colony—joined together in a military and trade alliance, named the United Colonies of New England, from which they excluded Rhode Island.²⁵⁷ Two of the colonies argued that Indian grants of lands to Roger Williams were invalid, and that they were the rightful owners of much of the land on which Rhode Island was located.²⁵⁸ Then, the United Colonies made Rhode Island an offer it thought Rhode Island could not refuse: The United Colonies offered to admit Rhode Island to membership—provided Rhode Island agreed to stop harboring Quakers.²⁵⁹ Some Quakers who had fled to Rhode Island returned in defiance to preach against the established churches of the colonies. The best known is Mary Dyer, who had followed Roger Williams to Providence, and then returned to Massachusetts Bay to preach; the colony hung her on the gallows.²⁶⁰ If Rhode Island joined, it would be included in a military alliance that would provide meaningful security from potential attacks by Indians or the Dutch. Both were genuine threats at the time, and on its own, little Rhode Island was an appetizing sitting duck. If Rhode Island declined its invitation, the United Colonies threatened to “cut off . . . all commerce and trade” with it.²⁶¹ That would snuff out Rhode Island economically.

257. *Id.* at 290–91, 376–77. The efforts of these colonies to snuff out Rhode Island and acquire its land involve complicated political relationships and rivalries among the colonies and several Indian tribes, which are beyond the scope of this Essay. At the risk of oversimplifying, suffice it to say that Williams enjoyed close relationships with both the Wampanoag and Narragansett tribes, but because of threats from Plymouth Plantations, he moved his settlement largely on to Narragansett land. Narragansett protection of Williams’ settlement was thrown into jeopardy when a party of assassins from the United Colonies and the Mohegan killed a powerful leader of the Narragansett, Miantonomi, with whom Williams had a close relationship. *Id.* at 292. For more, see generally *id.* at 229–42, 290–96.

258. *Id.* at 293.

259. *Id.* at 374–76.

260. *Id.* at 375–76.

261. *Id.* at 376 (quoting Letter from John Safford to John Clark (Nov. 2, 1658), in 1 RECORDS OF THE COLONY OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, IN NEW ENGLAND 396, 396–98 (John Russel Bartlett ed., 1856)).

The General Assembly of Rhode Island took up the United Colonies' offer. Roger Williams was not a member of the Assembly. This was, therefore, a test not of Williams's commitment to religious freedom but of the colony's commitment. The General Assembly's response began by assuring the United Colonies that it would do its utmost to ensure that Quakers performed all duties required of citizens in the colony.²⁶² However, it then reminded the United Colonies that Rhode Island had been founded on the principle of "freedom of different consciences," which, it declared, was a "freedom we still prize as the greatest happiness in the world."²⁶³ As for the threat of the United Colonies, the General Assembly said it would be appealing to the English government for protection.²⁶⁴ In essence, Rhode Island's message was, "see you in London."

Rhode Island was not without influence in the Mother Country. While Roger Williams had not come from the aristocracy, he had all but been adopted by it. He had had a highly esteemed mentor and been educated at two of England's most prestigious institutions, where we may assume Williams developed relationships among boys and young men who went on to occupy positions at the highest levels of English government.²⁶⁵ And Williams had learned much about how politics was conducted at the highest levels during his work for Sir Edward Coke and Sir William Masham.

Williams previously made two trips to England to secure a royal charter for Rhode Island.²⁶⁶ On his first trip, Williams obtained a charter from Parliament's Committee on Foreign Plantations.²⁶⁷ On his second, which took place during the rule of Oliver Cromwell and the Protectorate, Williams had obtained from the Cromwell's Council of State a reaffirmation of the original charter; a document amounting to a right of safe passage that explicitly directed the United Colonies "not to molest" Williams in his travels back to Rhode Island; and most consequential of all, a

262. *Id.* at 377.

263. *Id.*

264. *Id.*

265. *See id.* at 272–73 (commenting on Williams' "superior connections to the powerful").

266. *See id.* at 278, 355.

267. *See id.* at 308–09.

statement of policy “that Liberty of Conscience should be maintained at all American plantations etc.”²⁶⁸

Now, in 1658, Rhode Island needed help again from England to protect it from the United Colonies. This time it turned to John Clarke, a medical doctor and a Baptist minister, who had accompanied Williams on his first trip and had remained in England.²⁶⁹ By this time, the Protectorate had ended, and Clarke presented Rhode Island’s request to King Charles II, who was on the throne. Some may have thought this a fool’s errand. And, indeed, the King’s advisers recommended that the King not grant Rhode Island’s request. A very great friend of Williams had been a man named Henry Vane, who had been prominently influential in securing the reaffirmation of Rhode Island’s charter from Oliver Cromwell. The King had just beheaded Vane for two reasons: Vane’s association with Cromwell, and Vane’s participation in drafting for Cromwell a petition that declared that sovereignty originated with the people—a position championed, of course, by Roger Williams.²⁷⁰

Charles, however, happened to believe in religious toleration. He came to that view because his mother had been Catholic in a nation hostile to Catholics. Charles surprised his advisers by rejecting their counsel and granting Rhode Island a royal charter—and on the terms requested. Charles noted that Rhode Islanders had “declared, that it is much on their hearts (if they may be permitted) to hold forth a lively experiment, that a most flourishing civil state may stand and best be maintained . . . with a full liberty in religious concernments.”²⁷¹ The King then continued that in order “to secure them in the free exercise and enjoyment of all their civil and religious rights²⁷²” and “because some of the people and inhabitants of the same colony cannot, in their private opinions,

268. *Id.* at 362 (quoting Letter from Roger Williams to John Winthrop, Jr., (July 12, 1654), in 2 THE CORRESPONDENCE OF ROGER WILLIAMS 390–95 (Glenn W. LaFantasie ed., 1988)).

269. *Id.* at 355, 380.

270. *Id.* at 380.

271. *Rhode Island Royal Charter, 1663*, R.I. STATE ARCHIVES, <https://www.sos.ri.gov/assets/downloads/documents/RI-Charter-annotated.pdf> [perma.cc/LP84-6BQ5].

272. It is worth noting that here Charles acknowledged the distinction made in Rhode Island between civil and religious authority.

conform to the public exercise of religion, according to the liturgy, forms and ceremonies of the Church of England,”²⁷³ he therefore declared “that no person within the said colony, at any time hereafter shall be any wise molested, punished, disquieted, or called in question, for any differences in opinion in matters of religion,” as long as they did not “actually disturb the civil peace of our said colony,” and that every person and group of persons may “at all times hereafter, freely and fully have and enjoy his and their own judgments and consciences, in matters of religious concernments”²⁷⁴

The charter was so prized by Rhode Island that, unlike its sister colonies, it did not replace it with a state constitution during the Revolutionary War and, in fact, continued to live under the charter until the mid-nineteenth century.²⁷⁵ Rhode Islanders continue to refer to their state as the “lively experiment” to this day.²⁷⁶

E. *Roger Williams’s Influence on America*

So, how influential were his thoughts about religious toleration, freedom of conscience, and separation of church and state? The answer is enormously influential. In all likelihood, Parliament only brought more interest and visibility to *The Bloudy Tenent* by burning it. Within a few years of its publication, at least

273. Here, the King specifically mentioned that some within Rhode Island could not in good conscience swear oaths. For different reasons, neither Roger Williams nor Quakers would swear oaths. See BARRY, *supra* note 155, at 192 (regarding Williams); DANDELION, *supra* note 36, at 12 (regarding Quakers). This is why the United States Constitution expressly permits the President to either swear *or affirm* to faithfully execute his office and defend the Constitution. U.S. CONST. art. I, §1, cl. 8 (emphasis added).

274. *Id.* The charter included many references to the Christian faith. For example, it suggested that religious freedom would place Rhode Islanders “in the better capacity to defend themselves, in their just rights and liberties, against all the enemies of the Christian faith, and others.” *Id.* Such references were good politics for King Charles II, but in no way did the charter state, or even suggest, that freedom of religion was limited to Christians. See *id.* The substantive language was clear: religious freedom for all was absolute.

275. Carl T. Bogus, *The Battle for Separation of Powers in Rhode Island*, 56 ADMIN. L. REV. 77, 103, 106–08 (2004).

276. *E.g.*, a show about state governmental matters on the Rhode Island PBS television station is called “A Lively Experiment.” *A Lively Experiment*, R.I. PBS, <https://www.ripbs.org/production/locals/a-lively-experiment/> [perma.cc/6GUA-K27D] (last visited Apr. 6, 2021).

sixty pamphlets discussed Williams's views and 120 more quoted him.²⁷⁷ One contemporary observer of London politics noted—“warned,” may be a better word, as he considered Williams's ideas dangerous—that “Mr. Williams has drawn a great number after him.”²⁷⁸ Much of Williams's influence has been indirect. Charles II so much liked the concept of religious freedom expressed in Rhode Island's charter that he repeated some of the key language—such as the declaration that no one should be “molested, punished, or disquieted” for their religious views—in the charters of New Jersey and Carolina, in 1664 and 1665 respectively.²⁷⁹ In 1682, Pennsylvania declared (in language explicitly applying to both genders, no less) that no person living “peaceably and quietly under the civil government, shall in any case be molested or prejudiced for his or her conscientious persuasion or practice.”²⁸⁰

It is difficult to overstate the importance of Williams's views. One scholar said that Williams's argument for a complete separation between church and state “may be regarded as the most important contribution [of the seventeenth century] in this significant area of political thought.”²⁸¹

Roger Williams's ideas were widely read and discussed by intellectuals of the day. Six years after Williams's death, John Locke published his two most important works: *Two Treatises on Government*, which is widely considered to have originated the idea that government derives its authority from a social contract among the people; and *A Letter Concerning Toleration*, which argued for religious liberty.²⁸² Yet, Locke's main ideas were “strikingly similar” to those of Williams.²⁸³ Williams maintained, for example, that civil authority originates not through the divine right of kings

277. BARRY, *supra* note 155, at 339–40.

278. *Id.* at 339 (quoting ROBERT BAILLIE, 2 LETTERS AND JOURNALS OF ROBERT BAILLIE 190 (1882)); *see also id.* at 287 (identifying Baillie as “a member of the Westminster Assembly and a close observer of London politics”).

279. There were actually two separate charters for New Jersey, the second being a charter for West New Jersey, granted in 1677. Both included this language. GAUSTAD, *supra* note 156, at 194–94.

280. *Id.* at 195–96.

281. *Id.* (quoting W.K. Jordan).

282. BARRY, *supra* note 155, at 320.

283. TIMOTHY L. HALL, SEPARATING CHURCH AND STATE: ROGER WILLIAMS AND RELIGIOUS LIBERTY 118 (1998).

but with the people.²⁸⁴ A government, he said, could have “no more power” nor last “for a longer time” than the people “consenting and agreeing shall betrust with them.”²⁸⁵ As Teresa M. Bejan observes in this Symposium, both Williams and Locke said that while membership in civil society is involuntary and comes with both rights and responsibilities, membership in religious organizations must be absolutely voluntary.²⁸⁶

Both Williams and Locke wanted to extend full freedom of conscience widely, and beyond the bounds of Christianity to Jews, Muslims, and even pagans. “[T]here is absolutely no such thing, under the Gospel, as a Christian Commonwealth,” wrote Locke.²⁸⁷ Locke, however, drew the line at atheists, who he believed were bereft of any moral code, and at Catholics, who he said were in “service of another prince.”²⁸⁸ Williams drew no lines whatsoever—welcoming everyone who was willing to assume responsibilities to civil society, even Quakers, the group he most abhorred.

One scholar suggested that because Williams was a rigorous thinker but, unlike Locke, not a good writer, “Locke’s major contribution may have been to reduce the rambling, lengthy, incoherent exposition of [Williams] to orderly, abbreviated, and coherent form.”²⁸⁹ The American Founders absorbed Locke in college and were profoundly influenced by his ideas.²⁹⁰

At least two books that were published in America either just before or during the American Revolution reprinted a letter that Roger Williams had written in answer to critics who warned that

284. GAUSTAD, *supra* note 156, at 83.

285. *Id.*

286. TERESA M. BEJAN, *In Search of an Established Church*, 26 ROGER WILLIAMS U. L. REV. 148, 182–83 (2021).

287. *Id.*

288. BARRY, *supra* note 155, at 392–93.

289. *Id.* at 392 (quoting Winthrop Hudson, *John Locke: Heir of Puritan Political Theorists*, in CALVIN AND THE POLITICAL ORDER 117–18 (George Hunt ed., 1965)).

290. See, e.g., KETCHAM, *supra* note 38, at 38, 43, 293–94 (regarding Madison and Locke); MCCULLOUGH, *supra* note 64, at 121, 245 (regarding Adams and Locke); JON MEACHAM, THOMAS JEFFERSON: THE ART OF POWER 18, 104, 113, 123, 260, 448 (regarding Jefferson and Locke); ISAACSON, *supra* note 79, at 46, 59 (regarding Franklin and Locke); *Id.* at 333 (noting that Jefferson read *Locke’s Second Treatise on Government* at least three times).

liberty of conscience would lead to anarchy. In a letter he wrote to the Town of Providence in 1655, Williams explained the separate spheres this way:

There goes many a ship to sea, with many hundred souls in one ship, whose weal and woe is common, and is a true picture of a commonwealth, or a human combination or society. It hath fallen out sometimes, that both papists and protestants, Jews and Turks, may be embarked in one ship; upon which supposal I affirm, that all the liberty of conscience, that ever I pleaded for, turns upon these two hinges—that none of the papists, protestants, Jews, or Turks, be forced to come to the ship's prayers of worship, nor compelled from their own particular prayers or worship, if they practice any. [If, however,] any of the seamen refuse to perform their services, or passengers to pay their freight; if any refuse to help, in person or purse, towards the common charges or defence; if any refuse to obey the common laws and orders of the ship, concerning their common peace or preservation. . . . the commander or commanders may judge, resist, compel and punish such transgressors, according to their deserts and merits.²⁹¹

One of those books was by Stephen Hopkins, a signer of the Declaration of Independence and, by turns, the Governor and Chief Justice of Rhode Island. The other book, by Isaac Backus, was probably the more influential because it was widely read at the time. Backus was a prominent champion of religious liberty; among other things, he represented a group of twenty-one Baptist churches before the Continental Congress in their argument that Massachusetts could not grant tax exemptions to some religious denominations and not others.²⁹²

Williams' ship-at-sea theory has profound implications for contemporary debates. There are today many instances when individuals and organizations argue that their religious liberty is

291. Letter from Roger Williams to the Town of Providence (Jan. 1655), in PERRY MILLER, *ROGER WILLIAMS: HIS CONTRIBUTION TO AMERICA* 225, 225–26 (1953).

292. BARRY, *supra* note 155, at 391–92; see also Derek H. Davis, *Isaac Backus*, <https://www.mtsu.edu/first-amendment/article/1158/isaac-backus> [perma.cc/Z863-X2WT].

violated because they must comply with civic responsibilities that are imposed on all citizens but which offend their religious beliefs. For example, a for-profit business²⁹³ and an eleemosynary religious order²⁹⁴ objected to being required to include contraceptive coverage in health insurance provided to its employees; a bakery objected to being required to comply with a law that prohibited discrimination on the basis of a customer's sexual preference;²⁹⁵ a pharmacy objected to being required to carry certain medications.²⁹⁶ There is, however, a fundamental difference between these cases and the desire to protect freedom of conscience that the Founders wrestled with when, for example they pondered whether pacifist Quakers should be exempted from military service.²⁹⁷ Drafting conscientious objectors to serve in the military forces them to violate, by their own hand, a cherished belief. It places them in a position in which they may well be forced themselves to kill human beings. In the other cases just cited, an organization is seeking to be exempted from a regulation that is designed to protect another individual's freedom of choice, i.e., the freedom to use contraceptives, to purchase a wedding cake, etc. Those regulations do not require any first-hand violation of conscience; no one is being forced to use contraception or marry someone of the same gender. The argument has to be that the regulations are forcing organizations to participate indirectly in an activity that offends their religious beliefs by, in effect, making them enablers of those activities. That is akin to a pacifist Quaker refusing to pay taxes that finance the military, something Roger Williams, the Founders, and longstanding American jurisprudence finds unacceptable.²⁹⁸ I am not here arguing how such cases ought

293. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

294. *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020).

295. *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719 (2018).

296. *Stormans, Inc. v. Wiesman*, 794 F.3d 1064 (9th Cir. 2015), *cert. denied*, 136 S. Ct. 2433 (2016).

297. See Charles J. Reid, Jr., *John T. Noonan, Jr., On the Catholic Conscience and War: Negre v. Larsen*, 76 NOTRE DAME L. REV. 881, 891–92 (2001).

298. See Marjorie E. Kornhauser, *For God and Country: Taxing Conscience*, 1999 WIS. L. REV. 939, 940–41 (discussing distinction in modern jurisprudence between refusing to serve in the military and refusing to pay taxes to support the military).

to be decided, nor am I dismissing the difficulties they pose. However, those who portray issues involving these kinds of clashes between secular civic responsibilities and religious beliefs as a deliberate assault on religious liberty—as Justice Samuel Alito recently did in a speech to the Federalist Society²⁹⁹—might do well to reflect on Roger Williams’ ship at sea letter.

There can be no doubt that Roger Williams had a profound influence on the American Founders, even though much of his influence flowed through intermediaries such as John Locke. Thomas Jefferson adopted Roger Williams’s wall metaphor when he advocated “building a wall of separation between Church & State.”³⁰⁰ Even if Jefferson did not himself read Williams or realize his influence, Jefferson echoed Williams’s thinking in saying the wall was necessary to protect freedom of conscience.³⁰¹

James Madison also repeatedly echoed Roger Williams by tying religious freedom to “an unalienable right” to follow the dictates of one’s own conscience.³⁰² Madison was an absolutist when it came to separating church and state; he argued that religion should be “wholly exempt from the cognizance of” the civil government.³⁰³ Madison also followed Roger Williams in believing that a total separation protected religion from the corrupting influence of the state, and protected the commonwealth from coercion by the church.³⁰⁴ He argued that neither religion generally nor

299. Justice Alito cited these cases as evidence that “religious liberty is fast becoming a disfavored, right.” Josh Blackman, *Video and Transcript of Justice Alito’s Keynote Address to the Federalist Society*, REASON (Nov. 12, 2020), <https://reason.com/volokh/2020/11/12/video-and-transcript-of-justice-alitos-keynote-address-to-the-federalist-society> [perma.cc/NSG4-GKXD]. I am not alone in criticizing Justice Alito for his hyperbolic remarks. *E.g.*, Ruth Marcus, *Why so sour, Justice Alito? Your side in the Supreme Court is winning*, WASH. POST (Nov. 13, 2020, 5:35 PM), https://www.washingtonpost.com/opinions/why-so-sour-justice-alito-your-side-in-the-supreme-court-is-winning/2020/11/13/19e099bc-25ed-11eb-8672-c281c7a2c96e_story.html [perma.cc/M5Y4-BLDE]; Adam Liptak, *In Unusually Political Speech, Alito Says Liberals Pose Threat to Liberties*, N.Y. TIMES (Nov. 13, 2020), <https://www.nytimes.com/2020/11/13/us/samuel-alito-religious-liberty-free-speech.html> [perma.cc/46EQ-QHBE].

300. Letter from Thomas Jefferson to the Danbury Baptists (Jan. 1, 1802), <https://www.loc.gov/loc/lcib/9806/danpre.html> [perma.cc/3ULB-FK6B].

301. GAUSTAD, *supra* note 156, at 207.

302. KETCHAM, *supra* note 38, 163–64.

303. *Id.* at 164.

304. *Id.* at 165.

Christianity specifically had anything to fear from total separation. On the contrary, Madison argued that the American experience had shown that “the devotion of the people ha[s] been manifestly increased by the total separation of the Church from the State.”³⁰⁵ Madison, however, made it clear that freedom of religion necessarily implied the right to be entirely free of religion, and thus like Roger Williams, Madison would protect atheists.

What made Roger Williams and the Rhode Island experience so powerful was that religious tolerance and complete separation of church and state were not merely philosophical ideas; they were principles that were adopted, practiced, and proved workable by a functioning government. While John Locke more eloquently expressed these ideas, Roger Williams made them realities. The Founders examined these principles with the benefit of a century’s worth of American experience.

Roger Williams has an important lesson for the Larry Liddles of the world: not only secularists favor an absolute separation of church and state. As Timothy L. Hall put it, Roger Williams “was an apostle of religious freedom to the religiously devout.”³⁰⁶ Roger Williams’s primary concern, after all, was protecting religion from government. And the first colony without an established religion did not become a godless state. Not only did religious outcasts such as Quakers, Catholics, Jews, and even a few Muslims flock to Rhode Island, so did Anglicans and Baptists.³⁰⁷ In time, other states also discovered that separating church and state helped religion flourish. Fearful that religion might wither without governmental support, some states continued to have established churches even after ratifying the Constitution. But when in the early eighteenth century those states finally disestablished their churches, Protestant “churches rebounded in the most astonishing and energetic ways.”³⁰⁸

305. *Id.* at 167 (quoting Letter from James Madison to Robert Walsh (Mar. 2, 1819), in 7 *THE WRITINGS OF JAMES MADISON* 430, 430–32 (Gaillard Hunt ed., 1908)).

306. HALL, *supra* note 283, at 147.

307. GAUSTAD, *supra* note 156, at 16, 21.

308. *Id.* at 99. Gaustad refers to these as evangelical churches but defines them as the Baptist, Congregational/Presbyterian, Episcopal, Lutheran, and Methodist denominations. *Id.* at 98.

Really, Larry, moving that crèche to the church lawn may turn out to be a good thing.

CONCLUSION

Our Symposium “Is This a Christian Nation?” comes at a time when some Americans, including some occupying the highest political and judicial positions in the land, suggest that maintaining a wall of separation between church and state is incompatible with religious liberty. That view would have astounded Roger Williams. Meanwhile, others—and I do not hesitate to say that I am one—fear that degrading the wall of separation will lead, perhaps slowly yet inexorably, toward theocracy, for as both Roger Williams and the American Founders understood, religion has as much an imperative to control the state as the state has to control religion. This is a debate of fundamental importance to America.

We are grateful to the Freedom From Religion Foundation for providing a generous grant that allowed us to recruit some of the most distinguished scholars and thinkers on this subject. It needs to be noted that we made no attempt to create a balanced symposium. That is, we made no effort to seek out scholars who we thought would answer yes to the question our Symposium poses. We did that because we believe that opposite viewpoint—that America should not consider itself a Christian nation—is underrepresented in the current debate. However, the contributors were entirely free to speak and write as they so desired. In no fashion, were they encouraged to take or discouraged from taking any position. You will find their contributions in the pages that follow well worth your consideration.