

CHAPTER FIVE

THE AMERICAN COMMONWEALTH

It has not been uncommon for historians to view America as an experimental laboratory in political theory and practice in which the American character is represented as a triumph of common sense over ideology. The title of one recent book, Inventing America, and the subtitle of another, How Europe Imagined and America Realized the Enlightenment, together reflect a long fascination with the Yankee ingenuity of a nation of tinkerers.¹

The history books often neglect to acknowledge the religious wellsprings of this spirit of practicality which gave substance to the desire for religious and political liberty. It may be true, as Sanford Cobb claimed, that "pure Religious Liberty . . . may be confidently reckoned as of distinctly American origin."² But this liberty did not spring fully armored, like Athena, from the head of Zeus. Earlier Americans, including our major historians, generally regarded the settlement and development of our country less as a testimony to frontier inventiveness than as an indication of God's providential blessings. Franklin Littell offered the following synopsis of this motif:

For many of our forefathers, at least, the planting of America represented a major break from past history and a radical advance into a new age. God had hidden America until such a time as the Reformation could guarantee that the religion planted on these shores would be pure and evangelical. Certain writers linked three great events by which God's Providence prepared the coming of the

New Age: (1) the invention of printing, whereby the Bible was made available to all; (2) the Reformation, whereby cult and confession were purified; (3) the discovery of America. Even such relatively sober men as Cotton Mather and Jonathan Edwards linked the discovery of America with the coming triumph of the eternal gospel.³

This once commonly held conviction that God providentially directs the historical paths of men and nations is a missing note in contemporary scholarship. So thoroughly secularized have our academic and popular histories become that any mention of Providence sounds quaint, insincere, or irrelevant.⁴ Evocations of a distinctly Christian viewpoint on public occasions are rare today even compared with just forty years ago when Judge Learned Hand said the following in his famous "Spirit of Liberty" speech:

What then is the spirit of liberty? I cannot define it; I can only tell you my own faith. The spirit of liberty is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the minds of other men and women; the spirit of liberty is the spirit which waives their interest alongside its own without bias; the spirit of liberty remembers that not even a sparrow falls to earth unheeded; the spirit of liberty is the spirit of Him who, near 2000 years ago, taught mankind that lesson it has never learned, but never quite forgotten; that there may be a kingdom where the least shall be heard and considered side by side with the greatest.⁵

To be sure, the civil religiosity of 1944 vintage may sound anemic in comparison with the robust, sanguine expressions of public devotion that had stirred Americans only a century earlier. But neither was it the open skepticism that already pervaded universities once dedicated to the training of ministers.⁶ Carl Becker's 1931 series of lectures at Yale amply testifies to the change of intellectual fashion:

No serious scholar would now postulate the existence and goodness of God as a point of departure for explaining the quantum theory or the French Revolution. If I should venture, as certain historians once did, to expound the thought of the eighteenth century as having been foreordained by God for the punishment of a perverse

and stiff-necked generation, you would shift uneasily in your chairs, you would "register" embarrassment, and even blush a little to think that a trusted colleague should exhibit such bad taste. The fact is that we have no first premise. Since Whirl is king, we must start with the whirl, the mess of things as presented in experience. We start with the irreducible brute fact. . . . Our supreme object⁷ is to measure and master the world rather than to understand it.

But "brute factuality" has proven an elusive quarry. Even with this emphasis on mastery rather than understanding, a strong case can be made that the sciences have fallen far short of what might once have seemed the more modest goal. As Gary North has pointed out, "secular scientists have defined science to exclude all forms of final, teleological causation."⁸ So mastery, which is itself an expression of purpose, is likewise excluded by definition and confounded in practice. Ideas have consequences. Even the most brutal power is founded on belief, whether that belief excludes the possibility of a first premise--a final cause--or whether it starts with creation and providence. Yet it is this latter kind of faith that a serious scholar must understand and even appreciate in order to make sense out of a way of life that gave birth to our American political institutions. Samuel Eliot Morison confessed his own change of sympathy toward the Puritans and the beliefs that energized them:

These ideals, real and imaginary, of early Massachusetts, were attacked by historians of Massachusetts long before 'debunking' became an accepted biographical mode; for it is always easier to condemn an alien way of life than to understand it. My attitude toward seventeenth-century puritanism has passed through scorn and boredom to a warm interest and respect. The ways of the puritans are not my ways, and their faith is not my faith; nevertheless they appear to me a courageous, humane, brave, and significant people.⁹

In many respects, Americans remain an essentially puritan people, even though the confessional tradition has largely vanished from public

life.¹⁰ It was the children and grandchildren of English and Scottish Calvinists--Puritans by culture if not by confession--who established what has since been interpreted as the first modern secular state. If we are to understand the relationship between church and state that our Constitution presupposes, we must understand the role of the church in the life of society and what Holmes called the "life of the law."¹¹

A careful examination of the record shows that American political and religious liberty were closely related developments that can neither be divorced from each other nor understood apart from the struggle between church and state that wracked early modern Europe.

The Pilgrims and the Puritans

Religious dissent figures prominently among the motives that led successive companies of colonists to emigrate from England to America. The Pilgrims who settled Plymouth Plantation in 1620 belonged to a congregation of Separatists who had pulled out of the Church of England around the turn of the century, moved to Leyden where they lived amidst considerable hardships for twelve years, and finally joined a company of settlers bound for northern Virginia. Their ship, the Mayflower, reached Cape Cod in November of 1620, far north of any existing jurisdiction. So, upon landing, the Pilgrims and the strangers aboard ship covenanted among themselves to form a civil body politic. Opening with the words "In ye name of God, Amen," the Mayflower Compact set a constitutional pattern that was to be frequently repeated up through the Constitution of 1787.¹²

Nine years after the Mayflower landed, a much larger group of

settlers--"nonseparating congregationalists" or presbyterians who were members of the Church of England--left England during the persecutions by Archbishop Laud and sailed to the new world with the vision of establishing a community of "visible saints." These Puritans established a colony at Massachusetts Bay. From there, numerous new congregations and colonies soon began to radiate throughout New England. The Puritans practiced what is known as covenant or federal theology, which emphasized the continuity of the Old and New Testaments, local self-governing congregations within a national church, and covenanted church membership. The tradition of written constitutions is an outgrowth of the Puritan church polity and its emphasis on rule of law. Concerning the church covenant, Charles A. Barker has written:

While nonseparating congregationalists remained at home, still members of their Church of England parishes, the most they could do was recognize about themselves their common belief and hope; where bishops ruled they could not create their own congregation, decide on the doctrinal terms of admission, and elect their own officers. All these things they felt obliged to do, once they reached the New World. Where the other covenants they believed in had the quality of being immaterial--the national covenant being their phrase for God's favor to the people He chose, and the covenant of grace being actually not of this world--the church covenant was a thing realized in paper and ink. "Natural covenantry and confederation of the saints in the partnership of the faith according to the Gospel is that which gives constitution and being to a visible Church," summarized Thomas Hooker.¹³

The sense of mission that figured in the founding of the New England colonies was not entirely absent even in the case of colonies like Virginia that were dominated by a commercial purpose. Among the merchant adventurers, Protestant influences--though not so overt--were still given direct expression and colonial self-government was practiced. The first charter of the Virginia Company of 1606 established the Church of England and the third charter of 1613 repeated

as one of its main purposes "the propagation of Christian religion, and reclaiming of people barbarous to civility and humanity. . . ." ¹⁴ In 1611, Sir Thomas Dale took over the failing colony as its governor and ordained a set of "Lawes Divine, Moral and Martial." While these laws were later repealed by the company because of their unusual severity, the moral regulations did set a pattern of Erastianism that continued up to the disestablishment of the Church of England, which took place between 1776 and 1785.

The New England pattern, which persisted until the 1680s, may be more aptly termed "theocratic." Charles Barker states the case well:

By definition, theocracy means either ruled under God or rule by God. In this principle the Puritans believed. In modern usage the word usually connotes rule by a priesthood--the absolute power in one or a few individuals, as in the history of the papal states and, in America, of the Mormons. The Puritans did not have such autocracy. Yet when their own understanding of church membership is taken at face value, the essential meaning of theocracy does apply. For where the government was not set over the church or church over government but "visible Saints" were made the source of authority in both church and government, the ideal of rule by God was met as fully as it can be. ¹⁵

Behind the principle of the covenant lay the idea that the people--freemen and strangers alike--must agree beforehand to abide by the laws and submit to the authority of elected magistrates who were ordained of God. Although the magistrates did claim wide discretionary latitude, this was in part due to their obligation to rule with reference to biblical standards of justice, which often lacked specific penalties for infractions. But by 1635, Gov. Winthrop and the General Court began taking steps toward a codification of law in order to head off criticism and possible outside interference. ¹⁶

New England Theocracies

New England politics and law drew on diverse sources from the beginning. It is most important to note, however, that the colonists enjoyed a high degree of self-government--unlike their Spanish and French counterparts--because of the British policy of "salutary neglect."¹⁷ As a result, American law was not set in a single mold, but became highly experimental and drew on various Christian sources of influence. In New England, the Bible was commonly used as a major sourcebook for legal precedent, a practice that was followed wherever Reformation principles were allowed to take firm root. As early as 1550, Martin Bucer--a Reformer from Strassbourg who taught at Cambridge for a time--addressed his treatise on social ethics, De Regno Christi, to Edward VI in order to win acceptance for the establishment of a Christian commonwealth and the application of biblical law within this framework.¹⁸ Other Protestant centers, especially those in Switzerland, Holland, and Scotland, pursued similar programs with some degree of success. But New England, which suffered little of the religious strife that disrupted European politics, proved better suited for such political experimentation. Its lack of longstanding traditions, rigid social divisions, large landed estates, and ancient institutions proved advantageous as long as it was able to keep itself free from outside entanglements.

Ministers of the gospel, such as John Cotton and Nathaniel Ward, served on the committees called to draft legislation for the Bay Colony. Cotton proposed a legal code in 1636 that came to be known as "Moses his judicials." While it was not adopted, probably out of concern that it

might be rejected back in England, Cotton's draft did influence the subsequent course the codification took. Ward, who had studied the common law, later authored the biblically-based "Body of Liberties," which was adopted in 1641.¹⁹ That same year, Cotton published his "Abstract of the Laws of New England," which was filled with scriptural references, especially in the sections dealing with magistrates and crimes.

Demands for greater formalization in the civil government inspired codification movement that produced "The Lawes and Liberties of Massachusetts" early in 1648. This code became the basis for statutory law throughout most of the rest of the century. Its internal consistency is what impressed one later commentator, George Haskins:

Here was no mere compilation of English common-law rules or of established local custom, no haphazard syncretization of popular equity and biblical precepts, no mechanical piling of new legislation upon old; it was a fresh and considered effort to establish new provisions and revise former ones which were suitable to the conditions of a new civilization and which would also provide starting points for future development in the community. . . . Comprehensive as the Code was intended²⁰ to be, perfection did not, even to its framers, seem possible.

Haskins claimed the code reflected "the Puritan view that the path of the law was one of logic as well as experience" and its realism about the corruption of human nature set the tone of later constitutional developments.²¹

The Cambridge Platform of Church Discipline, adopted the same year by the synod of Massachusetts churches, complemented the Code of 1648 through its clear affirmation that the jurisdictions of church and state must be kept distinct. The Cambridge Platform made it "unlawful for Church-Officers to meddle with the Sword of the Magistrates" and

unlawful for magistrates to "compel their subjects to become church members."²²

The Puritans of Massachusetts set a pattern of local self-government that was a natural extension of their congregational church politics, a pattern that was imitated throughout New England even by those who--like Roger Williams in Rhode Island--dissented from the prominent religious role played by civil officers. One Massachusetts Puritan, Rev. Thomas Hooker, helped found a new colony at Hartford, then assisted in the drafting and adoption of the Fundamental Orders of Connecticut in 1639. According to John Fiske, who wrote in 1889:

It was the first written constitution known to history, that created a government, and it marked the beginnings of American democracy, of which Thomas Hooker deserves more than any other man to be called the father. The government of the United States to-day is in lineal descent more nearly related to that of Connecticut than to that of any of the other thirteen colonies. The most noteworthy feature of the Connecticut republic was that it was a federation of independent towns, and that all attributes of sovereignty not expressly granted²³ to the General Court remained, as of original right, in the towns.

But external circumstances still dictated political choices to a large extent and restricted the natural development of these principles. On the one hand, the colonies were brought into closer cooperation when political turmoil in England and the threat of an Indian war led to the creation of the New England Confederation in 1643 to further their common aim, "namely, to advance the Kingdome of our Lord Jesus Christ, and to enjoy the liberties of the Gospel, in purity with peace. . . ."²⁴ On the other hand, the restoration of the Stuart monarchy in 1660 presented an immediate threat to the comparative independence enjoyed by the congregationalists during the English Civil War and the Protectorate

of the Cromwells (1649-1659). Charles II (1660-1685) regarded the Confederation as an unfriendly alliance and punished the theocracy at New Haven by depriving it of its charter and causing it to be annexed by the more liberal government of Connecticut. By 1664, the Confederation had diminished in its effectiveness despite the open resistance of Massachusetts to the new attitude of the crown.²⁵

But the growing autonomy of church and state from each other also weakened the theocratic governments. Puritan institutions were meant to be separate and mutually limiting spheres of government, according to a principle known subsequently as "sphere sovereignty." In the eyes of older Puritans, a growing formality in religion, which cultivated novel distinctions between sacred and secular concerns, signaled a serious spiritual declension. Terrill Elniff attributed the weakening of the theocracies to a weakening of the unity of Puritan thought and a decline in the piety of Puritan life:

The transformation from the "pleasing of God" to the "happiness of the people" as the end of the state is certainly an example of the developing autonomous outlook, but the more significant development is the acceptance of the division of the commonwealth, the acceptance of the idea that the interests of church and state were mutually exclusive, divided and distinct, and that the more important concerns of the people were bound up with the state rather than the church.²⁶

The decline of the old Puritanism was capped by an English court decision in 1684 that annulled the charter of Massachusetts. It was not long afterwards that Edmund Andros was installed as governor of the short-lived Dominion of New England that consolidated the colonies north and east of Pennsylvania. But fears of religious and political tyranny by England provoked widespread resistance with the result that lines of communication were opened between the northern and southern colonies.

In Boston, a King's Chapel was established and episcopal services were held in the Old South Meeting-House. Among those who protested the "tyranny of Andros," Rev. John Wise rose to prominence as an early contributor to a new colonial political literature that helped pave the road to independence.²⁷

Transition

The Glorious Revolution of 1688 overthrew the last Stuart monarch, James II (1685-1689), and brought down the Andros regime. But the theocracy was never restored. Massachusetts was given a new charter three years later and became a crown colony, making it less independent but still self-governing. Already the religious atmosphere was changing in subtle yet irreversible ways through the influence of Parliament's Act of Toleration of 1689 and John Locke's political philosophy. The congregational establishment persisted in a weakened form but was no longer able to call on the magistrates to enforce the theocratic laws. Efforts to maintain interchurch discipline through synods largely failed.

It was about this time that Solomon Stoddard, pastor of the Northampton congregation in western Massachusetts, introduced the concept of the voluntary church and adopted open communion.²⁸ Open competition between congregations began; a generation later, the evangelical movement reached the first of a series of crests in a revival known as the Great Awakening.²⁹

The Awakening marked a turning point in the development of an identifiable American religious and political tradition. Led by

itinerant preachers like George Whitefield of England, the Awakening spread throughout the colonies in the 1730s and 1740s, injecting new life into the churches in an effort to reverse a slide into religious liberalism. Not only were the colonies brought into closer communication but diverse regional traditions were brought into the cultural melting pot. Various dissenting sects--such as Baptists and Presbyterians--grew in influence. Controversies over doctrine and church government brought issues of political and religious liberty to a high level of public consciousness.

Defenders of established but allegedly lukewarm churches, known as Old Lights or Old Sides, were arrayed against the revivalists, known as the the New Lights. The most influential New Light leader was Jonathan Edwards, who was Solomon Stoddard's grandson and successor at Northampton. The controversy over religious reform and revivalism helped set the stage for a deepening debate over and commitment to the principles of constitutional government, as Alice Baldwin illustrated in her study of the New England clergy:

The years from 1743 to 1763 were prolific in sermons, pamphlets, and petitions in which constitution rights, civil and religious liberty, the right to resistance, etc., were more clearly defined and more positively asserted than ever before. Laymen as well as clergy, poor and unlearned as well as those of higher estate, expressed their conviction in no uncertain terms, and again the Bible, natural law, the rights of Englishmen, covenants, charters, and statutes were drawn upon for arguments. . . . The phrase "unalienable right" grew more common and the references to Locke, Sydney, and other radical theorists more frequent.³⁰

Once again, diverse traditions and strands of political, legal, and religious thought--among them the Geneva Bible of 1560, the Westminster Confession of 1646, and Sir Edward Coke's commentaries on the common law--were worked into a new synthesis. This time they were reshaped and

tested through the controversies that climaxed in a break with Great Britain.

The Struggle for Liberty

One of the genuine dilemmas of Christian doctrine and practice is how to strike a proper balance in the relationship between church and state. In the Old and New Testaments of the Bible, church and state were separated as to their offices and functions. Yet, as Greg Bahnsen indicates, this separation was relative, not absolute:

Scripture does not view the magistrate as autonomous even though it does view the state as separate from the cult or church. The church and state, though separate from each other, are united under the authority of god.

Therefore, state leaders are just as obligated to follow Christ's direction³¹ as the church elders are required to obey the Head of the Church.

In practice, the relationship of state to church in America varied from colony to colony and from time to time. The jurisdictional issue was complicated by the involvement of so many competing interests: the Crown, the English Parliament, the king's colonial magistrates, the established churches, and the religious dissenters. The theoretical and practical dimensions of religious liberty took shape during a prolonged struggle to secure American political liberty. Eventually, common bonds of political sympathy grew and matured.

The extremes were represented by Rhode Island and Virginia. No attempt was made to create a church establishment in Rhode Island, which was founded by Roger Williams in 1636 to serve as a haven for religious dissenters of all sorts. Following the Stuart Restoration, Charles II granted it a charter which guaranteed that

noe person within the sayd colonye, at any tyme hereafter, shall bee any wise molested, punished, disquieted, or called in question, for any differences in opinione in matters of religion, and doe not actually disturb the civill peace of our sayd colony. . . .³²

This "livelie experiment" enjoyed special favor from the Crown. In fact, its 1663 charter was kept as the state constitution until 1842.

Virginia, on the other hand, reinforced its Anglican establishment after the Restoration by passing stringent laws against non-conformists. But the episcopal clergy were held in such low regard by the public and even by the civil authorities that the House of Burgesses took special notice of clerical violations when laws against infidelity, blasphemy, swearing, sabbath-breaking, and adultery were drafted. As in New England, parish dues were required of all taxpayers even after the Act of Toleration of 1689. Although a few denominations were exempted from these "church rates," discrimination against dissenters persisted.³³ Yet, even here, a measure of decentralization prevailed.

Immigration hastened the leavening process in many colonies. Pennsylvania, for example, advertised widely for new settlers. Soon it was characterized by great religious diversity. After 1705, however, Catholics, Jews, and Unitarians were denied the right to hold office.

A generation later, the Great Awakening inspired a Presbyterian movement in Virginia. These Presbyterians eventually won a protracted conflict with state authorities--who harassed dissenters by denying licenses to their ministers and houses of worship--when the English attorney general held in 1753 that the Act of Toleration had the force of law in all British dominions.³⁴

At about this time, several controversies involving churches were

helping create a climate favorable to religious liberty. After a failure of the tobacco crop in Virginia, clerical salaries--which were paid in tobacco--were cut by the Two Penny Act of 1758. The king later vetoed the law. But when a minister attempted to recover his wages in court, the jury expressed its displeasure with the clergy by awarding one penny damages in the Parson's Cause. Patrick Henry won instant fame for his stinging attack on the king and the church hierarchy. In Massachusetts, the erection of an Anglican mission near the campus of Harvard raised the specter of an American episcopate and sparked the famous debate between Jonathan Mayhew--long renowned for his political sermons--and East Apthorp in 1763.³⁵

Two issues that brought political and religious dissent into sharpest focus before 1774 were the establishment of King's College --later Columbia University--in New York and the persistent rumor that the Church of England was preparing to send bishops to America. Since the turn of the century, the Church of England had become aggressive in its missionary efforts throughout the colonies. Its Society for the Propagation of the Gospel in Foreign Parts (S.P.G.), which was founded in 1699, had long been eyed suspiciously as an instrument for sending bishops to America. By 1718, the S.P.G. had succeeded in starting Anglican churches in every colony except Connecticut.³⁶

The desire of the Anglican hierarchy to send bishops to America was understandable. Certainly the absence of bishops had a demoralizing effect on the episcopal churches in America because of its effect on the conduct of regular church affairs. Bishops were required for the ordination and discipline of the clergy. But memories of Anglican

interference were still fresh in the minds of dissenters despite the new policy of toleration. Anglican pledges not to meddle with the colonial establishments and not to harass dissenting churches were of no avail. When Thomas Secker--who was the son of a dissenter--was elevated as Archbishop of Canterbury in 1758, efforts to send bishops to America were renewed, provoking fear among dissenters that political and religious tyranny was his design. This fear was compounded by the passage of the Stamp Act in 1765. Carl Bridenbaugh has concluded it was the confluence of "long-standing religious grievances" with "fresh civil ones," like the Stamp Act, that spawned the maelstrom of armed conflict.³⁷

That a sinister Episcopalian influence was felt throughout the land, the Dissenters sincerely believed. They detected in it the rush of Anglican placemen to America and the news that the Church of England needed outlets for a surplus of young curates; they detected it in lay and clerical intrigues against the charter governments of New England; they detected it in the prelatical opposition to dissenting efforts to Christianize and educate the Indians; they detected it in the encouragement of Roman Catholicism in Canada; they detected it in the renewal of the old game of proselyting; they detected it in the curt denial of the legitimate requests of the New York Lutherans and Presbyterians for incorporation. In the London and American press they found confirmations, often lurid, always interesting, of their worst fears; and some of them fought hard with their pens in the spectacular pamphlet war.³⁸

Years later, John Adams similarly recalled this conjunction of religious and political issues that portended revolution: "If Parliament could tax us, they could establish the Church of England, with all its creeds, articles, tests, ceremonies, and tithes, and prohibit all other churches, as conventicles and schism shops."³⁹

Pulpit and Press

The pulpit and the independent press proved to be the most effective instruments for spreading republican political ideas during this period. While the relative influence of American Puritan traditions in comparison with Whig political ideology is still a debated point among historians, Mark Noll has recently acknowledged the seminal role played by Puritanism:

Yet without the fertile soil of the American religious tradition, without particularly Puritan preoccupations with original sin, the ongoing battle against Satan, and the "liberty wherewith Christ hath made us free," Whig ideology would not have exerted such a powerful sway in leading the thought and guiding the actions of the Patriots. Similarities between the view of life in the world developed by American Christianity and Real Whig conceptions of political reality imported from England were responsible for the sense of cosmic importance and the fervent religiosity that permeated the Whig expressions of many Christians.⁴⁰

The influence worked both ways. It was perhaps natural that the churches helped spread Whig ideas because the liberalism of the Whig pamphleteers drew on Puritan and other dissenting sources from the Cromwell era.⁴¹ The New England clergy, in particular, owed their high degree of political sophistication and influence to a long-established tradition of public preaching. Election sermons, artillery election sermons, and thanksgiving sermons served as customary vehicles for teaching--in the manner prescribed in the Mosaic law--the principles of individual and corporate self-government, including the duties of magistrates and soldiers, as well as for commenting on important public concerns. Many of these sermons were published and widely circulated, joining the growing political literature circulated by the colonial press. According to John Wingate Thornton:

Protestantism exchanged the altar for the pulpit, the missal for the Bible; the "priest" gave way to the "preacher," and the gospel was "preached." The ministers were now to instruct the people, to reason before them and with them, to appeal to them; and so, by their very position and relation, the people were constituted the judges. They were called upon to decide; they also reasoned; and in this way--as the conflicts in the church respected polity rather than doctrine--the Puritans, and especially the New Englanders, had, from the very beginning, been educated in the consideration of its elementary principles. In this we discover how it was, as Governor Hutchinson remarked, that "men took sides in New England upon mere speculative points in government, when there was nothing in practice which could give any grounds for forming parties."⁴²

The political influence of the pulpit was so strong even outside New England as to lead another commentator, J. T. Headley, to conclude that "if the clergy of New England had from the outset taken the decided and determined stand against the cause of the colonies, which they did for it, the result would have been totally different."⁴³

The Intolerable Acts

Matters finally came to a head in 1774 when Parliament passed the Boston Port Act and the Quebec Act, giving impetus to calls for independence. Ministers were accused of preaching rebellion in their churches. Presbyterians, in particular, were blamed for trouble in the middle and southern colonies.⁴⁴

The British were aware of the tremendous influence the clergy wielded in the Colonies, and saw with alarm that it was thrown on the side of rebellion. Indeed they were accused of being at the bottom of it. In 1774, the Governor of Massachusetts refused the request of the Assembly to appoint a fast: "for," said he, "the request was only to give an opportunity for sedition to flow from the pulpit."⁴⁵

After the port at Boston was closed by the British, Massachusetts issued a call for what became the First Continental Congress. Dozens of resolutions conveying colonial grievances were sent ahead by counties

throughout the land. In Virginia, the Fairfax County General Meeting of July 18, 1774 was chaired by George Washington. The delegates proposed to raise a subscription to assist the inhabitants of Boston and sardonically resolved "that this Colony and Dominion of Virginia cannot be considered as a conquered country, and, if it was, that the present inhabitants are the descendants, not of the conquered, but of the conquerors. . . ." ⁴⁶ That same week, the Provincial Meeting of Deputies in Philadelphia attacked the concept of parliamentary sovereignty:

From what source can Great Britain derive a single reason to support her claim to such an enormous power? That it is consistent with the laws of nature, no reasonable man will pretend. That it contradicts the precepts of Christianity, is evident. For she strives to force upon us terms, which she would judge to be intolerably severe and cruel, if imposed on herself. "Virtual representation" is too ridiculous to be regarded. The necessity of a supreme sovereign Legislature, internally superintending the whole Empire, is a notion equally unjust and ridiculous. ⁴⁷

The Quebec Act compounded the injury by establishing the Catholic Church in the western territories, including areas claimed by three of the colonies. This was taken as further proof of Parliament's tyrannical intent and helped keep the issue of religious interference at the center of the public debate. ⁴⁸

As the war approached, the colonies were beginning to speak a common political and religious language. The spread of the Puritan influence through migrations and the Great Awakening favored the growth of a consensus that shaped the course of the public debate over establishments, religious tests for office, parish dues, foreign domination of hierarchical churches, and related issues. The journals of the Continental Congress are filled with religious references intermingled with regular political business. Occasional controversies

over prayer and the appointment of chaplains were recorded. While these disputes were amicably resolved, they could scarcely be described as secular in purpose.

On June 12, 1775, Congress issued a call for "a day of publick humiliation, fasting, and prayer" that was couched in the familiar language of covenant theology. Perry Miller observed that,

in effect, Congress added the other nine colonies (about whose status New Englanders had hitherto been dubious) to New England's covenant. Still, for most of the population in these nine, no novelty was being imposed. The federal theology, in general terms, was an integral part of the Westminster Confession and so had long figured in the rhetoric of Presbyterians of New Jersey and Pennsylvania. The covenant doctrine, including that of the society as well as of the individual, had been preached in the founding of Virginia, and still informed the phraseology of ordinary Anglican sermonizing. The Baptists, even into Georgia, were aware of the concept of the church covenant, for theirs were essentially "congregational" polities; they could easily rise from that philosophy to the analogous one of the state. Therefore the people had little difficulty reacting to the Congressional appeal.⁴⁹

By then, war was a reality. Six months later, the "Political Bands" connecting the colonies with Britain were effectively dissolved when Parliament passed the Prohibitory Act, removing the colonists from the king's protection and treating them as foreign enemies.⁵⁰

The Perfect Law of Liberty

The conservative nature and limited objectives of the War for Independence reflected the religious sentiments of Americans in a way that is difficult to appreciate apart from an understanding of the essentially biblical world-view of the colonists. The Bible was from the start a primary source of colonial ideas about law and liberty. In his study of colonial education, Lawrence Cremin stated that the Bible was "the single most important cultural influence in the lives of

Anglo-Americans" throughout the first century of settlement.⁵¹

Though the Bible had been richly valued for generations, it was not until the seventeenth century that it was widely read and studied. The message of Protestantism was that men could find in Scripture the means to salvation, the keys to good and evil, the rules by which to live, and the standards against which to measure the conduct of prince and pastor. And so men turned to the Bible with reverence and restless curiosity, finding there, not an abstruse exposition of high-flown principles, but an imaginative portrayal of the life of a historic people, contending in their families and communities with day-to-day problems⁵² of belief and conduct, freedom and authority, virtue and depravity.

The Bible was particularly valued as a source of law and government.

Its historical illustrations provided a practical foundation for government during the long period prior to independence when the colonies enjoyed relative peace and a high degree of self-government.

The colonists shared the Reformation belief that the basis of civil government is a covenant binding the ruler and the people. The Scottish Presbyterian, Rev. Samuel Rutherford, whose ideas about resistance to tyranny were part of a tradition that linked Locke and Mayhew back to Calvin and Knox, provides an example of this belief:

the covenant betwixt the king and the people is clearly differenced from the king's covenant with the Lord, 2 Kings xi.17. . . . There was no necessity that this covenant should be made publicly before the people, if the king did not in the covenant tie and oblige himself to the people; nor⁵³ needed to be made solemnly before the Lord in the house of God.

The colonists further believed that just as authority is subject to the rule of God's law, so is liberty. The Apostle James described the Scripture as "the perfect law of liberty" (Jas. 1:25) and the Apostle Paul counseled: "Stand fast therefore in the liberty wherewith Christ hath made us free. . . ." (Gal. 5:1). The Westminster Confession provided a model for religious liberty--or liberty of conscience--in section two of the twentieth chapter:

God alone is lord of the conscience, and hath left it free from the doctrines and commandments of men which are in any thing contrary to his word, or beside it, in matters of faith or worship. So that to believe such doctrines, or to obey such commandments out of conscience, is to betray true liberty of conscience: and the requiring of an implicit faith, and an absolute and blind obedience, is to destroy liberty of conscience, and reason also.⁵⁴

Finally, the early Calvinists and Puritans emphasized that various degrees of resistance to tyranny are permitted where life is endangered or impiety decreed. In his Institutes, John Calvin was led to write: "We are subject to the men who rule over us, but subject only in the Lord. If they command anything against Him let us not pay the least regard to it. . . ."⁵⁵ The Huguenot tract Vindiciae contra tyrannos further developed Calvin's suggestion of resisting tyranny through lesser magistrates. In this, it anticipated the later American practise of using elected magistrates and official committees of correspondence to register colonial grievances as well as to discuss possible courses of action.⁵⁶ The concern for procedure generally shown by the colonial resistance illustrates Rutherford's recommendation that the proper sequence of steps to follow is supplication before flight, and flight before violence. Only where supplication fails and flight is out of the question is violent resistance lawful.⁵⁷ In fact, Rutherford advanced the idea of resistance as an assertion of law when the law of the land has been violated by the ruler:

The covenant giveth to the believer a sort of action of law, and jus quoddam, to plead with God in respect of his fidelity to stand to that covenant that bindeth him by reason of his fidelity, Psa. xliii. 26; lxiii. 16; Dan. ix. 4,5; and far more a covenant giveth ground of a civil action and claim to a people and the free estates against a king, seduced by wicked counsel to make war against the land, whereas he did swear by the most high God, that he should be a father and protector of the church of God.⁵⁸

Here is the ideological basis for John Locke's famous "appeal to heaven."⁵⁹ In fact, both Locke and the American colonists were heirs of a Puritan tradition that worshiped God as the author of law. Various secular, rationalist influences to the contrary notwithstanding, the Christian religion provided a basis for a "government of law, not men."⁶⁰

Archie Jones has summarized the connection between early American political thought and biblical doctrine as follows:

What were the teachings of this New England theo-political philosophy? Its starting premise was the Puritan concept of God as sovereign of the universe, who made man a rational creature, put "Law into the very Frame and Constitution of his Soul," and deals with men on the basis of conditional and obligatory compacts or covenants. This sovereign God is the Lawgiver, who has established perfectly wise, just, and good laws, founded upon the nature and relation of things, which are of universal obligation. This fixed and fundamental law is threefold, including the law of nature, the law of the Old Testament, and the law of Christ. The law of nature is not distinct from the law of God. Rather, it is as legally binding as any other part of the divine law, and gains greater force as a part of God's law, especially since it is clarified by the binding portion of Old and New Testament law. Since God's government is founded and limited by law, all human governments must be so founded and limited.⁶¹

It is the ministry of civil officers to enforce this law and the ministries of the church and family to teach it (I Pet. 2:13-14; Matt. 28:19-20; Deut. 6:6-7). The final responsibility, however, rests with the individual, who is expected to walk by faith: that is, by the inward desire to obey God. As R. J. Rushdoony comments:

Law is good, proper, and essential in its place, but law can save no man, nor can law remake man and society. The basic function of law is to restrain (Rom. 13:1-4), not to regenerate, and when the function of law is changed from the restraint of evil to the regeneration and reformation of man and society, then law itself breaks down, because an impossible burden is being placed upon it. Today, because too much is expected from law, we get less and less results from law, because law is put to improper uses.⁶²

These are some of the presuppositions that undergird the American system of government and upon which political and religious liberty was declared. They converge in a concept of limited government that begins with the self-governing individual and leads to the formation of social institutions based on voluntary union. The reverse side of this concept may be described as separation of powers, multiple jurisdictions, or sphere sovereignty. Both aspects are inherent in the biblical covenant and the federal theology of the Puritans. Together they form the basis of what Verna Hall calls "Christian self-government with union."⁶³

The Founding Documents

Consistent with its rhetorical purpose, the Declaration of Independence displays a close affinity with the principles of "the New England theo-political philosophy," as Archie Jones indicates, along with an attitude of lawful resistance to abuses of power:

In form, the Declaration is a plea at law against the king in Parliament, charging him with failure to uphold his contractual obligations as feudal lord over the colonies. As such, it is a powerful assertion that rulers are under law, that their powers, even though they be a popular or quasi-popular assembly, are limited by fundamental law, and that both George III and Parliament are unjustified⁶⁴ in attempting to assert their supposed right to absolute rule.

The principle of limited government pronounced by the Declaration firmly places this document within the higher law tradition of English constitutionalism. The exigencies of frontier life favored a revival of the ancient English custom of local self-government. The relative freedom of the colonists from direct oversight enabled them to put their theology into practice experimentally, although some of their adaptations technically violated their charters, as when the Pilgrims of

Plymouth Plantation abandoned communal farming in favor of private ownership.

Furthermore, decentralized political institutions required the existence of healthy social institutions, which included voluntary associations.⁶⁵ The mainstays of society in Plymouth Colony were, first, the family, then the church and the state in supporting roles. As John Demos points out, the family combined the attributes of a business, school, vocational institute, church, house of correction, and welfare institution.⁶⁶ And so it was to remain for some time after the War for Independence.⁶⁷

It is this combination of ingredients that lends a peculiarly libertarian quality to American social institutions. The civil government was regarded as a constituent, not a constitutive, element. By 1781, a "perpetual union" was in operation under the Articles of Confederation. The Constitution of 1787 formed "a more perfect union" rather than an entirely new system of government.⁶⁸ The supremacy clause of Article VI is best understood in the context of an already mature constitutional tradition within which the new federal structure was fitted to work cooperatively with existing governments and not force-fitted like a Procrustean bed.⁶⁹ It does not simply replace an earlier parliamentary or state sovereignty with another of its own. R. J. Rushdoony emphasizes this distinction:

The Constitution established neither a confederation nor a national state but a federal union. Its conception of power was Christian: power is ministerial, not legislative, i.e., powers in any area, church, state, school or family, are not endowed with ability to create laws apart from the higher law but only to administer fundamental law as man is able to grasp and approximate it. Civil government is thus an administrator rather than a creator of law; it is not sovereign over law but is under law.⁷⁰

The representation of the Constitution as "the supreme law of the land," like the phrase "law of the land" in the Magna Carta, refers to more than the document itself. It is unnecessary to speculate about the exact intent of the founders when the very language of the constitution attests to its continuity with and even incorporation of higher law concepts. Indeed, this understanding was affirmed by the founders themselves and has been periodically reaffirmed by members of the judiciary.⁷¹ As Edward S. Corwin contended:

The attribution of supremacy to the Constitution on the ground solely of its rootage in popular will represents, however, a comparatively late outgrowth of American constitutional theory. Earlier the supremacy accorded to constitutions was ascribed less to their putative source than to their supposed content, to their embodiment of an essential and unchanging justice. . . . There are, it is predicated, certain principles of right and justice which are entitled to prevail of their own intrinsic excellence, all together regardless of the attitude of those who wield the physical resources of the community.⁷²

The principles of higher law jurisprudence may be traced to the earliest period of modern western law. In the twelfth century, for example, Gratian wrote: "'Enactments (constitutiones), whether ecclesiastical or secular, if they are proved to be contrary to natural law, must be totally excluded.'"⁷³

The new federal union was, in effect, given the authority to coordinate the political system but not to dominate it. Its overall success assumes the continued good health of the various social institutions, such as families and churches, that also exercise powers of a governmental nature. The safeguards built into the constitutional system ultimately depend on the consensus and self-restraint of its component parts. This is a key to properly understanding the relationship between church and state as it was originally envisioned.

As James Madison remarked during the ratification debates in Virginia:

"There is not a shadow of a right in the general government to intermeddle with religion. Its least interference with it would be a most flagrant usurpation."⁷⁴

Like the Declaration, the Constitution is based on the premise that the primary purpose of civil government is essentially negative rather than positive: that is, protective, prohibitory, and punitive. Since its power is coercive by nature rather than persuasive, the founders believed that civil authority must be constitutionally restrained. James Madison declared that an accumulation of powers in the same hands "may justly be pronounced the very definition of tyranny."⁷⁵ Alexander Hamilton similarly urged that the original grant of powers to Congress was a limited one:

The plan of the convention declares that the power of Congress, or, in other words, of the national legislature, shall extend to certain enumerated cases. This specification of particulars evidently excludes all pretension to a general legislative authority, because an affirmative grant of special powers would be absurd, as well as useless, if a general authority was intended.⁷⁶

Likewise, in his Farewell Address, George Washington cautioned against the tendency of governments to usurp power:

If, in the opinion of the People, the distribution or modification of the Constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the constitution designates.--But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed.--The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield.--

Of all the dispositions and habits, which lead to political prosperity, Religion, and Morality are indispensable supports.--In vain would that man claim the tribute of Patriotism, who should labor to subvert these great pillars of human happiness, these firmest props of the duties of Men and Citizens.

But this warning has been largely ignored because the focus of American politics is more generally on the means rather than on commonly conceded ends. Chief Justice John Marshall helped set the stage--and the tone--for many subsequent controversies by adopting a sweeping view of proper constitutional means in McCulloch v. Maryland, 4 Wheat. 316, 421 (1819):

Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.

One of the great challenges to constitutional liberty has come through a gradual shift of emphasis from prohibition to regulation, from a protective to a beneficent or philanthropic conception of civil power.⁷⁸ What Alexis de Tocqueville subsequently wrote about the regulation of manufacturing associations might be applied with equal validity to the regulation of religious activity:

If once the sovereign had a general right of authorizing associations of all kinds upon certain conditions, he would not be long without claiming the right of superintending and managing them, in order to prevent them from departing from the rules laid down by himself. In this manner the state, after having reduced all who are desirous of forming associations into dependence, would proceed to reduce into the same condition all who belong to associations already formed; that is to say, almost all the men who are now in existence.⁷⁹

The success of the struggle for political liberty was soon followed by a growth of religious liberty and the collapse of denominational establishments. But, for a time, centralizing tendencies were held in check.

The Idea of a Christian Republic

A century after the Constitution was ratified, church historian Philip Schaff reviewed the development of religious liberty in America and detected a close connection between the American political and religious traditions.

If we speak of a Christian nation we must take the word in the qualified sense of the prevailing religious sentiment and profession; for in any nation and under any relation of church and state, there are multitudes of unbelievers, misbelievers, and hypocrites. . . .

With this understanding, we may boldly assert that the American nation is as religious and as Christian as any nation on earth, and in some respects even more so, for the very reason that the profession and support of religion are left entirely free. State-churchism is apt to breed hypocrisy and infidelity, while free-churchism favors the growth of religion.⁸⁰

Schaff regarded as distinctively American the easy cooperation between religious and civil institutions, characterized by "a free church in a free state, or a self-supporting and self-governing Christianity in independent but friendly relation to the civil government."⁸¹ He concluded that the American system of law could not have originated from any other religious soil, adding that "we may say that our laws are all the more Christian because they protect the Jew and the infidel, as well as the Christian of whatever creed, in the enjoyment of the common rights of men and of citizens."⁸²

The nature of the difference between the state church and free church viewpoints may be seen in the different versions of the Westminster Confession of Faith, the most influential of Protestant doctrinal statements used in America. Originally, the twenty-third chapter of the Confession--entitled "Of the Civil Magistrate"--reflected

the "national church" concept accepted in England and Scotland, where---even in 1647---was somewhat at variance with the congregational establishments of New England. The third section of the original chapter reads:

The civil magistrate may not assume to himself the administration of the word and sacraments, or the power of the keys of the kingdom of heaven: yet he hath authority, and it is his duty, to take order, that unity and peace be preserved in the church, that the truth of God be kept pure and entire, that all blasphemies and heresies be suppressed, all corruptions and abuses in worship and discipline prevented or reformed, and all the ordinances of God duly settled, administered, and observed. For the better effecting whereof, he hath power to call synods, to be present at them, and to provide that whatsoever is transacted in them be according to the mind of God.⁸³

Despite a marked break with the pure Erastian view that the church is subject to the state, the assumption of a national establishment that underlay the Confession did not square with either the decentralized establishments of seventeenth century New England or the later voluntary church concept.⁸⁴ As early as 1729, the Presbyterian synod of Philadelphia adopted the Westminster standards with modifications. The wording in three of the chapters was formally changed in 1788. The commonly accepted American revision of chapter 23, section three reflects a conception of religious liberty which strongly resembles that of the First Amendment, even though it predated the Amendment by a year:

Civil magistrates may not assume to themselves the administration of the word and sacraments; or the power of the keys of the kingdom of heaven; or, in the least, interfere in matters of faith. Yet, as nursing fathers, it is the duty of civil magistrates to protect the church of our common Lord, without giving the preference to any denomination of Christians above the rest, in such a manner that all ecclesiastical persons whatever shall enjoy the full, free, and unquestioned liberty of discharging every part of their sacred functions, without violence or danger. And, as Jesus Christ hath appointed a regular government and discipline in his church, no law

of any commonwealth should interfere with, let, or hinder, the due exercise thereof, among the voluntary members of any denomination of Christians, according to their own profession and belief. It is the duty of civil magistrates to protect the person and good name of all their people, in such an effectual manner as that no person be suffered, either upon pretense of religion or infidelity, to offer any indignity, violence, abuse, or injury to any other person whatsoever: and to take order, that all religious and ecclesiastical⁸⁵ assemblies be held without molestation or disturbance.

But the problems of jurisdiction and sovereignty are not suddenly resolved by the simple expedient of substituting a "neutral state" for a "confessional state."⁸⁶ In fact, this concept of neutrality or disinterestedness has--by its lack of definition--introduced a genuine ambiguity into the relationship between church and state that very likely encouraged not only the proliferation of antagonistic sects but also the creation of public agencies that have duplicated--and sometimes replaced--various church ministries.

For the most part, the Christian character of the social order was taken for granted. But it may not have been simply the blithe indifference of churches to the hazards of Erastianism that led them to support a greater role by the state in public education and welfare. Robert Handy explains that "the overtones of religious establishment implicit in much of what they did then was not clear to them, because as they developed new ways they did not realize how much of the old patterns they carried over the wall of separation into their new vision of Christian civilization."⁸⁷ Well into the present century, historian Edward Humphrey could still write:

The American conception allows for national characteristics that are independent of the state. So we are a Christian nation even though Christianity is not a feature of the American state. The adoption of the American concept of the limited state resulted in the ideal of a free church in a free nation, the present American

ideal of religious freedom. As a corollary to this, we have the ideal of a state freed from ecclesiastical control.⁸⁸

These words echo the sentiments of earlier and even later commentators, including judges and legal scholars like James Kent, Joseph Story, Thomas Cooley, David Brewer, and William O. Douglas.⁸⁹ Yet the general respect for Christianity did little to prevent the now commonly accepted compartmentalization of spiritual and temporal concerns. The divorce of religion from practical life appears to be the result of a dualistic attitude that regards the state as "worldly" and the church as "otherworldly," diminishing the reputation of both. In this, it resembles the tendency of innumerable church heresies throughout history.⁹⁰ Thus religion as a private concern of individuals is separated from politics as the public concern of communities.⁹¹

The struggle for religious liberty during the last half of the eighteenth century succeeded in discrediting any remaining pretense that the kingdom of God could be established through coercion rather than conversion. John Locke's view that a church "is a free and voluntary Society" soon prevailed.⁹² But with public opinion divided on the nature and extent of this new religious liberty, any consideration of the positive responsibilities of the state with respect to religion was obliged to take a back seat to the fight for disestablishment. As a result, important issues were not fully addressed. If, according to the Westminster standards, civil magistrates are to be regarded as "nursing fathers" (Isa. 49:22-23), in what way are they obliged to promote the welfare of the church? In what sense is the magistrate "the minister of God" (Rom. 13:4)? Who is responsible to set and uphold the moral standards of the community? Even if the prophetic calling of the church

to proclaim the word of God or the ministerial calling of the magistrate to enforce it were not at issue, some manner of involvement by civil officers in religious affairs and by church leaders in civil affairs would be unavoidable. The church does not operate in a political vacuum. Neither does the state operate in a religious vacuum. Indeed, it is a basic premise of Christianity--despite periodic neglect of this principle--that both church and state are ministries under the direct authority of God and must govern their affairs within the framework of God's revealed law, the Bible. The practical issue is, as it always has been, to harmonize their respective activities.

Notes

¹Garry Wills, Inventing America: Jefferson's Declaration of Independence (Garden City, N.Y.: Doubleday and Company, 1978); Henry Steele Commager, The Empire of Reason: How Europe Imagined and America Realized the Enlightenment (Garden City, N.Y.: Doubleday and Company, 1977).

²Sanford H. Cobb, The Rise of Religious Liberty in America: A History (New York: The Macmillan Company, 1902; Burt Franklin, 1970), p. 36.

³Franklin H. Littell, "The Churches and the Body Politic," in Religion in America, ed. William G. McLoughlin and Robert N. Bellah (Boston: Houghton Mifflin Company, 1968), pp. 25-26.

⁴This is not to say that the idea of Providence has disappeared from the secular mind. It simply assumes new guises. Herbert Schlossberg, Idols for Destruction: Christian Faith and Its Confrontation with American Society (Nashville: Thomas Nelson Publishers, 1983), p. 6, makes a similar point: "Western society, in turnings away from Christian faith, has turned to other things. This process is commonly called secularization, but that conveys only the negative aspect. The word connotes the turning away from the worship of God while ignoring the fact that something is being turned to in its place." Walter Lippmann, for instance, suggested that when a totalitarian regime like the Soviet Union describes its vision of a "socialist commonwealth embracing the whole world . . .," it ascribes to it the attributes of God: perfect authority and justice, miracles, omnipotence, and omniscience. "It is to believe not in human government but in a Providential State." Walter Lippmann, The Good Society (New York: Grosset & Dunlap, 1936; 1943), pp. 70-71.

⁵Learned Hand, The Spirit of Liberty: Papers and Addresses, ed. Irving Dilliard (New York: Alfred A. Knopf, 1952), p. 190.

⁶" . . . Dr. Henry P. Van Dusen says that of the 207 colleges established before the Civil War, 180 were denominationally sponsored, 21 were state universities, 6 were under public or semi-public control but not under religious auspices." Renwick Harper Martin, The Fourth R in American Education (Pittsburgh: the author, 1957), p. 4. But following passage of the Morrill Act of 1863, state-controlled institutions multiplied at a much greater rate.

⁷Carl L. Becker, The Heavenly City of the Eighteenth-Century Philosophers (New Haven: Yale University Press, 1932), p. 16.

⁸Gary North, The Dominion Covenant: Genesis (Tyler, Tex.: The Institute for Christian Economics, 1982), p. 262.

⁹Samuel Eliot Morison, Builders of the Bay Colony, rev. ed. (Boston: Houghton Mifflin Company, 1958), p. vi.

¹⁰Sydney Ahlstrom's conclusion that the Puritan era has been drawing to a close in the last two decades may be premature. Sydney E. Ahlstrom, A Religious History of the American People, vol. 2 (Garden City, N.Y.: Image Books, 1975), pp. 465-66.

¹¹But the distinction between law and morality Holmes attempted to draw--summed up in his memorable aphorism, "The life of the law has not been logic: it has been experience"--is expressive of a severance of common law from its religious roots. Eugen Rosenstock-Huessy, Out of Revolution: Autobiography of Western Man (New York: William Morrow and Company, 1938), pp. 269-85.

¹²William Bradford, Bradford's History "Of Plimoth Plantation." (Boston: Wright & Potter Printing Co., 1898), pp. 11-35, 109-110. The continuity of the constitutional tradition from 1620-1787 is the thesis of Willmoore Kendall and George W. Carey, The Basic Symbols of the American Political Tradition (Baton Rouge: Louisiana State University Press, 1970), pp. 30-31, 150-52. The pastor of the Pilgrim congregation, John Robinson, was kept from joining his flock later because of anti-Separatist nationalists among the Adventurers who continually troubled the colony. See Leonard Bacon, The Genesis of the New England Churches (New York: Harper and Brothers, 1874), pp. 390-423.

¹³Charles A. Barker, American Convictions: Cycles of Public Thought, 1600-1850 (Philadelphia: J. B. Lippincott Company, 1970), pp. 66-67. The term "nonseparating congregationalism," first used by Perry Miller, is not very satisfactory. See Verna M. Hall, comp., The Christian History of the Constitution of the United States of America: Christian Self-Government, American Revolution Bicentennial Edition, ed. Joseph Allan Montgomery (San Francisco: Foundation for American Christian Education, 1975), pp. 241-44. The Pilgrim example influenced the Puritans to adopt congregationalism. According to Charles Hodge, however, the Puritans preferred a presbyterian church polity. See Verna M. Hall, comp., The Christian History of the American Revolution: Consider and Ponder (San Francisco: Foundation for American Christian Education, 1976), pp. 106-10.

¹⁴Merrill Jensen, ed., English Historical Documents, vol. 9: American Colonial Documents to 1776 (London: Eyre & Spottiswoode, 1955), p. 65; Sanford H. Cobb, The Rise of Religious Liberty in America: A History (New York: The Macmillan Company, 1902; Burt Franklin, 1970), pp. 74-79.

¹⁵Barker, American Convictions, pp. 69-70.

¹⁶George Lee Haskins, Law and Authority in Early Massachusetts: A Study in Tradition and Design (New York: The Macmillan Company, 1960), p. 36.

¹⁷The phrase "salutary neglect" was coined by Edmund Burke. Russell Kirk, The Roots of the American Order (La Salle, Ill.: Open Court, 1974), pp. 302-03.

¹⁸Jack Sawyer, "Introduction to Bucer's De Regno Christi," The Journal of Christian Reconstruction, 5 (Winter 1978-79): 8-10. A major and somewhat variant aspect of the Lutheran Reformation, according to Harold Berman, was the secularization of law and the emergence of a Christian positivist theory of law. "Just as we cannot reject the contribution of Christian natural-law theory to the development of law, so we cannot reject the contribution of Christian positivism. But we must recognize that Luther's concept that the development of positive law is the task of the secular authorities, of the State, and not the task of the Church as such, could only be proclaimed after more than four centuries of history in which Church and State together had succeeded in Christianizing law to a remarkable extent. A Protestant positivism which separates law from morals and finds the ultimate sanction of law in political coercion assumes the existence of a Christian people and a Christian State, a State governed by Christian rulers." Harold J. Berman, "The Influence of Christianity Upon the Development of Law," Oklahoma Law Review, 12 (1959): 94-95. This is not to imply that natural law theory is above criticism, either from a legal or religious standpoint. It is part of an classical tradition revived by the medieval Schoolmen--particularly the nominalists--and lies at the foundation of modern Western law. But it represents only one side of the higher law tradition. The important differences between natural law theory, Lutheran positivism, and theonomic Calvinism--not to mention modern legal positivism--should not be minimized.

¹⁹Haskins, Law and Authority, pp. 124-32. See Hall, Constitution, pp. 257-61; James B. Jordan, "Calvinism and 'The Judicial Law of Moses,'" The Journal of Christian Reconstruction, 5 (Winter 1978-79): 17-48.

²⁰Ibid., pp. 137-38.

²¹Ibid., p. 140.

²²Ibid., p. 88. See J. Marcellus Kik, Church and State: The Story of Two Kingdoms (New York: Thomas Nelson and Sons, 1963), p. 109.

²³John Fiske, The Beginnings of New England, or The Puritan Theocracy in Its Relations to Civil and Religious Liberty (Boston: Houghton Mifflin Company, 1930), pp. 137, 140.

²⁴William MacDonald, ed., Documentary Source Book of American History, 3rd ed. (New York: The Macmillan Company, 1926), p. 46.

²⁵Fiske, New England, pp. 223-25; Hall, Constitution, pp. 283-87.

²⁶Terrell Irwin Elniff, The Guise of Every Graceless Heart: Human Autonomy in Puritan Thought and Experience (Vallecito, Cal.: Ross House Books, 1981), p. 109. As early as 1679, the Massachusetts synod under Increase Mather reported on the decline in civic health. See Perry Miller, Errand into the Wilderness (Cambridge: Harvard University Press, 1956; Harper Torchbooks, 1964), p. 7.

²⁷Barker, American Convictions, pp. 91-92, 101-02; Fiske, New England, pp. 294-307.

²⁸Ralph J. Coffman, Solomon Stoddard (Boston: Twayne Publishers, 1978), pp. 92-95. On open communion, see Robert Baird, Religion in the United States of America (Glasgow: Blackie and Son, 1844; reprint ed., New York: Arno Press, 1969), p. 635.

²⁹Barker, American Convictions, pp. 102-05. See Leo Pfeffer, Church, State, and Freedom, revised ed. (Boston: Beacon Press, 1967), p. 93.

³⁰Alice M. Baldwin, The England Clergy and the American Revolution (New York: Frederick Ungar Publishing Co., 1958), p. 65. On the debate between the allegedly "Calvinistic" New Lights and the "Arminian" Old Lights, see Alan Heimert, Religion and the American Mind: From the Great Awakening to the Revolution (Cambridge: Harvard University Press, 1966), pp. 1-5. This interpretation must be handled with caution, despite evidence of a growing theological liberalism among many of the established churches of this period. See the historical account by Charles Hodge, excerpted in Hall, American Revolution, pp. 116-42. On Jonathan Edwards, see Sydney E. Ahlstrom, A Religious History of the American People, vol. 1 (Garden City, N.Y.: Image Books, 1975), pp. 366-84. Thomas Cuming Hall minimizes continental theological influences and views American religion generally as a product of the individualistic dissenting tradition. Thomas Cuming Hall, The Religious Background of American Culture (Boston: Little, Brown, and Company, 1930), pp. 147-51.

³¹Greg L. Bahnsen, Theonomy in Christian Ethics (Nutley, N.J.: The Craig Press, 1979), pp. 432, 433.

³²MacDonald, Documentary Source Book, p. 69.

³³Cobb, Religious Liberty, pp. 92-95, 98, 106-07.

³⁴Ibid., pp. 104-06.

³⁵Bernard Bailyn, The Ideological Origins of the American Revolution (Cambridge: The Belknap Press of Harvard University Press, 1967), pp. 252-57. Mayhew's 1750 sermon entitled "Unlimited Submission and Nonresistance to the Higher Powers" is a classic statement of colonial political thought. The complete text is available in John

Wingate Thornton, The Pulpit of the American Revolution: or, The Political Sermons of the Period of 1776. (Boston: Gould and Lincoln, 1860), pp. 53-104.

³⁶Carl Bridenbaugh, Mitre and Sceptre: Transatlantic Faiths, Ideas, Personalities, and Politics, 1689-1775 (New York: Oxford University Press, 1962), pp. 25-28, 57-58.

³⁷Bridenbaugh, Mitre and Sceptre, p. 230. See also Roscoe Pound, The Development of Constitutional Guarantees of Liberty (New Haven: Yale University Press, 1957), pp. 78-81, on the response of colonial lawyers to oppressive measures; Hall, American Revolution, pp. 252-53.

³⁸Ibid., p. 258.

³⁹Quoted in Thornton, Pulpit, p. xxx, from John Adams, The Works of John Adams, Second President of the United States, vol. 10 (Boston: Charles C. Little and James Brown, 1851), p. 288. For a similar retelling by Adams, see Jedidiah Morse, Annals of the American Revolution; or a Record of the Causes and Events Which Produced, and Terminated in the Establishment of the American Republic. (Hartford: n.p., 1824), pp. 197-201.

⁴⁰Mark A. Noll, Christians in the American Revolution (Washington: Christian University Press, 1977), p. 150.

⁴¹Archie P. Jones, "The Christian Roots of the War for Independence," The Journal of Christian Reconstruction, 3 (Summer, 1976): 32-33. See also Bernard Bailyn, The Origins of American Politics (New York: Vintage Books, 1970), pp. 39-40, 52-57.

⁴²Thornton, Pulpit, pp. xxvi-xxvii. Thornton noted that Edmund Burke attributed this independent spirit of the Americans to their education and familiarity with law.

⁴³J. T. Headley, The Chaplains and Clergy of the Revolution (New York: Charles Scribner, 1864), pp. 14-15.

⁴⁴As a consequence, churches were singled out for reprisals during the war. H. Niles, Principles and Acts of the Revolution in America (Baltimore: William Ogden Niles, 1822), p. 361. See also Larry R. Gerlach, ed., The American Revolution: New York as a Case Study (Belmont, Cal.: Wadsworth Publishing Company, 1972), pp. 94-95; James H. Smylie, ed., "Presbyterians and the American Revolution: A Documentary Account," Journal of Presbyterian History, 52 (Winter 1974): 303-487; Morse, Annals, p. 274.

⁴⁵Headley, Chaplains, p. 59.

⁴⁶American Archives: Fourth Series: Containing a Documentary History of the English Colonies in North America, from the King's Message to Parliament, of March 7, 1774, to the Declaration of

Independence by the United States, vol. 1 (Washington: M. St. Clair Clarke and Peter Force, 1837), p. 597.

⁴⁷Ibid., pp. 578-79.

⁴⁸Ibid., p. 829; Bridenbaugh, Mitre, pp. 333-34. The letter dated London, October 8, 1774, that is contained in the Archives expresses a sympathetic British viewpoint and counsels the colonists to continue firm in the preservation of their liberties.

⁴⁹Perry Miller, "The Moral and Psychological Roots of American Resistance," in The Reinterpretation of the American Revolution, 1763-1789, ed. Jack P. Greene (New York: Harper & Row, 1968), pp. 254-55.

⁵⁰Gene Fisher and Glen Chambers, The Revolution Myth (Greenville, S.C.: Bob Jones University Press, 1981), pp. 37-44, 112-17. Henry Cabot Lodge believed the revolution came precisely because the Americans were so accustomed to being well-governed: "The abuses of aristocracy and monarchy in England were as nothing to what they were on the Continent. The subjects of George III were not ground down by taxes, were not sold into military service, were not trampled on by an aristocracy and crushed by their king, they were the freest, best-governed people on earth, faulty as their government no doubt was in many respects. Yet it was among the English-speaking people that we detect the first signs of the democratic movement, for, as they were the least oppressed, so they were the most sensitive to any abuse or to any infringement upon the liberties they both prized and understood." The key word is "understood." The concept of Christian liberty had come to inform family and community life. "America rebelled, not because the colonies were oppressed, but because their inhabitants were the freest people then in the world and did not mean to suffer oppression." Quoted in Rosenstock-Huessy, Revolution, pp. 653-54.

⁵¹Lawrence A. Cremin, American Education: The Colonial Experience, 1607-1783 (New York: Harper Torchbooks, 1970), p. 40.

⁵²Ibid., p. 40.

⁵³Samuel Rutherford, Lex, Rex, or the Law and the Prince; a Dispute for the Just Prerogative of King and People (London: John Field, 1644; reprint ed., Harrisonburg, Va.: Sprinkle Publications, 1982), p. 54.

⁵⁴The Confession of Faith; the Larger and Shorter Catechisms, with the Sum of Saving Knowledge (Inverness: The Publications Committee of the First Presbyterian Church of Scotland, 1976), pp. 86-87.

⁵⁵John Calvin, Institutes of the Christian Religion, trans. Henry Beveridge, vol. 2 (Grand Rapids: Wm. B. Eerdmans Publishing Company, 1979), p. 675, from Book 4, chapter 20, section 32.

⁵⁶William Ebenstein, Great Political Thinkers: Plato to the

Present, 4th ed. (Hinsdale, Ill.: Dryden Press, 1969), pp. 334-35. For selections from the committees of correspondence, see Verna M. Hall, comp., The Christian History of the Constitution of the United States of America: Christian Self-Government with Union, American Revolution Bicentennial Edition, ed. Joseph Allan Montgomery (San Francisco: Foundation for American Christian Education, 1979), pp. 478-527. This is a separate volume from the one cited at footnote 13 and is hereafter referred to as Self-Government with Union.

⁵⁷Rutherford, Lex, Rex, p. 160.

⁵⁸Ibid., p. 54.

⁵⁹John Locke, Two Treatises of Government, revised ed. (New York: Mentor, 1965), p. 477, paragraph 242 of the second treatise.

⁶⁰Jones, "Christian Roots," Journal, pp. 32-33. See Winthrop S. Hudson, "John Locke: Heir of Puritan Political Theorists," in Calvinism and the Political Order, ed. George L. Hart (Philadelphia: The Westminster Press, 1965), pp. 108-29; Harold J. Berman, "Religious Foundations of Law in the West: A Historical Perspective," Journal of Religion and Law, 1 (Summer 1983): 29 n36.

⁶¹Ibid., p. 35.

⁶²Rousas John Rushdoony, Law and Liberty (Fairfax, Va.: Thoburn Press, 1977), pp. 4-5.

⁶³Hall, Self-Government with Union, passim. Similarly, M. E. Bradford writes: "Christianity taught of the integrity of the individual soul. In England that translated into liberty under law, in community." M. E. Bradford, A Better Guide Than Reason: Studies in the American Revolution (La Salle, Ill.: Sherwood Sugden & Company, 1979), p. 210.

⁶⁴Jones, "Christian Roots," Journal, p. 43.

⁶⁵Peter F. Drucker, The Future of Industrial Man: A Conservative Approach (New York: The John Day Company, 1942; Mentor Executive Library, 1965), pp. 172-73. See Rousas John Rushdoony, The Nature of the American System (Fairfax, Va.: Thoburn Press, 1978), pp. 5-11, on localism.

⁶⁶John Demos, A Little Commonwealth: Family Life in Plymouth Colony (London: Oxford University Press, 1970), pp. 183-84. The cooperation of churches, families, and local authorities was also characteristic of later efforts to address social needs. See Robert H. Bremner, American Philanthropy (Chicago: The University of Chicago Press, 1960), pp. 5-19; Walter I. Trattner, From Poor Law to Welfare State: A History of Social Welfare in America (New York: The Free Press, 1974), pp. 25-27.

⁶⁷See Rousas John Rushdoony, Revolt Against Maturity: A Biblical Psychology of Man (Fairfax, Va.: Thoburn Press, 1977), pp. 216-24, on

Rev. Elias Cornelius and the Salem Society for the Moral and Religious Instruction of the Poor. See also Robert T. Handy, A Christian America: Protestant Hopes and Historical Realities (New York: Oxford University Press, 1971), pp. 42-54. Handy and Rushdoony, however, both note that nativist agitation helped bring discredit on evangelical organizations.

⁶⁸See the First Inaugural Address (1861) of Abraham Lincoln in The Harvard Classics, vol. 43: American Historical Documents, 1000-1904, ed. Charles W. Eliot (New York: P. F. Collier & Son, 1910), p. 337.

⁶⁹Roscoe Pound, The Development of Constitutional Guarantees of Liberty (New Haven: Yale University Press, 1957), pp. 96-97, 101-03, on the meaning of "supreme law of the land," including a citation of relevant cases. See also Willmoore Kendall and George W. Carey, The Basic Symbols of the American Political Tradition (Baton Rouge: Louisiana State University Press, 1970), pp. 115-18.

⁷⁰Rousas John Rushdoony, This Independent Republic: Studies in the Nature and Meaning of American History (Fairfax, Va.: Thoburn Press, 1978), p. 37.

⁷¹Edward S. Corwin, The "Higher Law" Background of American Constitutional Law (Ithaca, N.Y.: Cornell University Press, 1955), p. 89. See R. Kemp Morton, God in the Constitution (Nashville: Cokesbury Press, 1933), pp. 110-16. See also M. E. Bradford, "And God Defend the Right: The American Revolution and the Limits of Christian Obedience," Christianity and Civilization, 2 (Winter, 1983): 239: "According to the Old Whig view of the English Constitution, it was not a contract but a source of identity--with no author but the nation and its history, with God an implicit party to the process. As covenant qua law it grew out of the interaction of people and princes living out of the nation's genius, with God's blessing its confirmation. These assumptions undergird most of the early American political documents." Henry Steele Commager, "Constitutional History and the Higher Law," in The Constitution Reconsidered, ed. Conyers Read, revised ed. (New York: Harper Torchbooks, 1968), pp. 225-26, cited several affirmations of this sort as expressions of an early higher law tradition in early American jurisprudence. While Commager, who wrote this essay in 1938, claimed that the tradition's underlying philosophy had been repudiated three-quarters of a century earlier, he did acknowledge its importance in constitutional history: "Americans, having discovered the usefulness of natural law, elaborated it, and having justified its application by success, protected that success by transforming natural into constitutional law: the state and federal constitutions. And in so far as natural law had found refuge in written law, there was little reason to invoke it; it was automatically invoked whenever the constitution was invoked, and this was the logic of Marshall in the Marbury case." *Ibid.*, p. 228.

⁷²*Ibid.*, p. 4.

⁷³Harold J. Berman, "The Origins of Western Legal Science," Harvard

Law Review, 90 (1977): 925.

⁷⁴Jonathan Elliot, The Debates in the Several State Conventions, on the Adoption of the Federal Constitution, as Recommended by the General Convention at Philadelphia in 1787, 2nd ed., vol. 1 (Philadelphia: J. B. Lippincott & Co., 1863), p. 330.

⁷⁵Alexander Hamilton, John Jay, and James Madison, The Federalist: A Commentary on the Constitution of the United States, ed. Edward Mead Earle (New York: Modern Library, n.d.), p. 313, quoting Federalist, no. 47. See also Abraham Kuyper, Lectures on Calvinism (Grand Rapids: Wm. B. Eerdmans Publishing Company, 1931; 1978), pp. 96-99, on the practical implications of sphere sovereignty.

⁷⁶Ibid., p. 541, quoting Federalist, no. 83.

⁷⁷Harvard Classics, vol. 43, p. 260.

⁷⁸See Frederick Bastiat, The Law, trans. Dean Russell (Irvington-on-Hudson, N.Y.: The Foundation for Economic Education, Inc., 1950), pp. 21-29; H. L. "Bill" Richardson, What Makes You Think We Read the Bills? (Ottawa, Ill.: Caroline House Books, 1978), pp. 79-89; T. Robert Ingram, The Two Powers (Houston: St. Thomas Press, 1959), p. 15.

⁷⁹Alexis de Tocqueville, Democracy in America, vol. 2, trans. Henry Reeve, ed. Phillips Bradley, (New York: Vintage Books, 1945), pp. 330-31. Walter Lippmann regarded it as "an extraordinary paradox" that the intellectual leaders of the 1930's believed such detailed regulation to be necessary. As an illustration, he cited Lewis Mumford: "As industry advances in mechanization, a greater weight of political authority must develop outside than was necessary in the past." Lewis Mumford, Technics and Civilization (New York: Harcourt, Brace & World, 1934; Harbinger, 1963), p. 420. Regarding this kind of other-directedness, Lippmann commented: "Is it not truly extraordinary that in the latest phase of the machine technic we are advised that we must return to the political technic--that is, to the sumptuary laws and the forced labor which were the universal practice in the earlier phases of the machine technic? I realize that Mr. Mumford hopes and believes that the omnipotent sovereign power will now be as rational in its purposes and its measures as are the physicists and chemists who have invented alloys and harnessed electricity. But the fact remains that he believes the beneficent promise of modern science can be realized only through the political technology of the pre-scientific ages." Lippmann, Good Society, pp. 8-9.

⁸⁰Philip Schaff, Church and State in the United States: or The American Idea of Religious Liberty and Its Practical Effects, Papers of the American Historical Association, vol. 2, no. 4 (New York: G. P. Putnam's Sons, 1888), pp. 54, 55.

⁸¹Ibid., p. 9. Capitals deleted.

⁸²Ibid., p. 62.

⁸³Ibid., p. 50.

⁸⁴An attempt by Robert Child and others to petition Parliament to support a presbyterian establishment in New England and appoint a governor-general was successfully averted in 1647 by the General Court. Fiske, Beginnings, pp. 188-91; Morison, Builders, pp. 244-68.

⁸⁵Schaff, Church and State, p. 50. For an example of the new attitude, see Gardiner Spring, Obligations of the World to the Bible: A Series of Lectures to Young Men (New York: Taylor & Dodd, 1839), pp. 145-49.

⁸⁶The terms "neutrality of the state" and "state confessionality" are used in E. R. Norman, The Conscience of the State in North America (Cambridge: University Press, 1968).

⁸⁷Handy, Christian America, p. 40.

⁸⁸Edward Frank Humphrey, Nationalism and Religion in America, 1774-1789 (Boston: Chipman Law Publishing Company, 1924), p. 2.

⁸⁹See citations in Chapters Six and Seven.

⁹⁰Some of the antecedents of this dualism are examined in a chapter entitled "The Socialism of the Heresies" in Igor Shafarevich, The Socialist Phenomenon, trans. William Tjalsma (New York: Harper & Row, 1980), pp. 18-79.

⁹¹See Richard E. Morgan, The Politics of Religious Conflict: Church and State in America (New York: Pegasus, 1968), p. 22, who quoted Roger Williams to the effect that the church should be regarded as just another private association: ". . . like unto a Body or College of Physicians in a City; like unto a Corporation, Society or Company of East-Indie or Turkie-Merchants, or any other Society or Company in London; which Companies may hold their Courts, keep their Records; hold disputations; and in matters concerning their Society, may dissent, divide, break into Schisms and Factions, sue and implead each other at the Law, yea, wholly break up into pieces and nothing."

⁹²Hall, Self-Government with Union, p. 48, quoting Locke's "A Letter Concerning Toleration."