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THE ORIGINAL INTENT OF THE FOUNDERS

Now the Lord is the Spirit; and where the Spirit of the Lord is, there is liberty.

—2 Corinthians 3:17

Before anyone can understand the beliefs and values that are woven into the fabric of American jurisprudence, it's important to know the history of the American people and how they came by their ideas. Had the founders been widely divided in their views, the Constitution would have been many times its size; they would have needed volumes to explain all the principles enumerated so succinctly in that remarkable document. But the founders were not divided.

It's true that a majority of Americans were hesitant to consider the prospect of separating from Great Britain, which they saw as their lifeline and connection to the rest of the world. Initially, the move toward independence was a source of contention. But the colonists were not divided on matters of conscience and conviction.

In their view of honor, truth, justice, and law, the founders were of one mind: they had a biblical world-view. To better understand how that came to be, let's look back briefly and remember the circumstances of America's birth.

Starting a new nation, by any standard, is a genuinely radical idea, and it was certainly not something that most of the original settlers of New England had contemplated in coming to this new land. Even in the face of frequent humiliations and abuses by their rulers, the colonists were naturally inclined to remain steadfast subjects of the British Crown. They had come to America voluntarily. They made their own choices, and for a considerable period of time they were content to leave matters as they were.

For more than one hundred years, colonial Americans pursued their livelihoods with dignity and discipline. Even when troubles over taxation and the quartering of British troops stretched the colonists' loyalty and resolve to the breaking point, they were nevertheless inclined to remain loyal to the English king. As Thomas Jefferson phrased it, "all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed."

During the seventeenth and eighteenth centuries, England was the most powerful nation on earth, with the most fearsome military in Europe and the most dynamic impact on world events of any nation. The colonists knew that even casual threats to British sovereignty could provoke fierce reprisals; and King George, who saw the New World primarily as a means of increasing his wealth and power, certainly would not hesitate to clamp down at the slightest hint of insurrection.

Accordingly, the majority of colonial Americans saw the benefits of their status as subjects of the British Empire as being of greater value than the risks of any foolhardy endeavor to gain independence. On the other hand, they were also self-assured, industrious, and

pious people, and as the provocations from London and the intimidation by the king's governors and administrators increased over the years—accompanied by more and more egregious offenses against the dignity and will of the people—an atmosphere of defiance began to develop.

A Heritage of Faith

Matters of conscience were very important to the colonists. After all, it was religious intolerance that had brought the first settlers to these shores. From England, Scotland, Holland, and other parts of Europe, entire families left behind their homes and customs, sacrificing everything to cross a hostile ocean and conquer a savage wilderness. Why? For the right to think and believe as they wished.

On April 26, 1607, after four long months at sea, 104 English colonists led by Captain Christopher Newport stepped ashore on the south coast of Virginia, making camp on a sandy point of land near what is now Virginia Beach. They had been sent by the Virginia Company of London to establish a new colony, and what they discovered, as George Percy, a member of the ship's company, described, was "fair meadows and goodly tall trees, with such fresh waters running through the woods as I was almost ravished at the first sight thereof."

Percy's journal also reports, "The nine and twentieth day we set up a cross at Chesupioc Bay, and named the place Cape Henry." They called their settlement Jamestown, in honor of the English king, James I, and then kneeled to dedicate the new land to Jesus Christ. Their chaplain, Rev. Robert Hunt, led the settlers in prayer that day, and he continued to conduct daily prayers and religious services until his death, just over a year later. When Captain John Smith described these services, he wrote, "When I first went to Virginia, I well remember we did hang an awning . . . to three or four trees to shadow us from the sun. Our walls were rails of wood,

our seats unhewn trees till we cut planks, our pulpit a bar of wood nailed to two neighboring trees." From the very first hours of this nation, prayer, Bible reading, and religious observance were essential features of American daily life.

The Mayflower Compact, which was written and signed aboard ship prior to the landing at Plymouth in 1620, has been called the birth certificate of America. Having sailed up the Hudson and anchored at Provincetown on November 21, 1620, at the northern tip of Cape Cod, forty-one men of the ship's company signed an accord modeled after a Separatist church covenant, in which they agreed mutually to establish a "Civil Body Politic" and to be bound by its laws. In their unanimous confession, they said:

> In the name of God, Amen. We, whose names are underwritten, the Loyal Subjects of our dread Sovereign Lord, King James, by the Grace of God, of England, France and Ireland, King, Defender of the Faith, e&.
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> Having undertaken for the Glory of God, and Advancement of the Christian Faith, and the Honour of our King and Country, a voyage to plant the first colony in the northern parts of Virginia; do by these presents, solemnly and mutually in the Presence of God and one of another, covenant and combine ourselves together into a civil Body Politick, for our better Ordering and Preservation, and Furtherance of the Ends aforesaid; And by Virtue hereof to enact, constitute, and frame, such just and equal Laws, Ordinances, Acts, Constitutions and Offices, from time to time, as shall be thought most meet and convenient for the General good of the Colony; unto which we promise all due submission and obedience.
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> In Witness whereof we have hereunto subscribed our names at Cape Cod the eleventh of November, in the Reign of our Sovereign Lord, King James of England, France and Ireland, the eighteenth, and of Scotland the fifty-fourth, Anno Domini, 1620.

Among those who made the arduous journey to the New World were Congregationalists, Separatists, Quakers, Baptists, Presbyterians, Lutherans, Anglicans, and many other Christians of an independent mind. For these people, the proper function of government was to preserve and protect individual liberty. As expressed later by John Locke and certain Enlightenment figures, the essential rights of "life, liberty, and property" were God-given and "unalienable." Samuel Rutherford's remarkable treatise, *Lex Rex* [Law is King], was published in 1644 and offered a stirring rebuttal to the idea of the divine right of kings.

In *Lex Rex,* Rutherford expressed two cardinal points. First, there must be a codified statement of the laws and covenants to bind a ruler to his people. In other words, a constitution is essential. His second point was a statement of the universal equality of men. Since all men are sinners, Rutherford said, no man can claim to be superior to another. By compelling logic, drawing upon Christian teachings about individual liberty and man's accountability before God, Rutherford identified the principles of liberty and equality that would be popularized later in Locke's essays.

Throughout the drafting of the colonial covenants, the founders held to the idea that government authority comes from the "consent of the governed." They expressed this sense of autonomy in each of the charters and accords that were enacted. Yes, they were prepared to suffer certain hardships under colonial rule, and they did; but they made it known that there were limits to the indignities they would willingly endure. This sense of justice was not born of pride but of faith. The founders' understanding of the dignity of man and the sanctity of human life came straight from the pages of Scripture.

Public life in America had, from the first, a distinctly religious character. The New England Confederation Constitution of 1643 states that the aim of the colonists was "to advance the Kingdom of our Lord Jesus Christ, and to enjoy the liberties of the Gospel

thereof in purities and peace." The communities they established were of utilitarian design; and while the settlers were hardworking and practical people, they nevertheless took religious life very seriously, with a sense that they were building "the New Jerusalem" on the shores of the New World.

When French statesman Alexis de Tocqueville visited this country two hundred years later, in 1831, he was struck by the fact that faith and devotion remained so strong among the Americans. After traveling across this country for the better part of a year, de Tocqueville wrote in his book *Democracy in America,* "I do not know if all Americans have faith in their religion—for who can read the secrets of the heart?—but I am sure that they think it necessary to the maintenance of republican institutions. That is not the view of one class or party among the citizens, but of the whole nation; it is found in all ranks."[1]

By the early nineteenth century, Europe had already begun a long, disastrous flight from its heritage of faith. The Age of Reason and the European Enlightenment had spawned revolutionary ideas about the "rights of man" that left little room for traditional ideas of reverence and worship. Outward symbols of Christianity remained, but inwardly the people were changing. The influence of philosophers such as Rousseau, Voltaire, and Diderot in France, and Hume, Locke, and Bentham in England, helped to breed a secular spirit and a radical skepticism that would have a disabling effect on religion and life in Europe.

Enlightenment rationalism taught Europeans to distrust the church, but in America the Christian religion was still widespread and strong. Alexis de Tocqueville could see the benefits of the American way, not only in the high level of prosperity among the people but in their cheery nature and sense of common purpose. America, he wrote to his European audience, is "the place where the Christian religion has kept the greatest real power over men's souls; and nothing better demonstrates how useful and natural it is to man,

since the country where it now has the widest sway is both the most enlightened and the freest."[2]

Rumblings of Discontent

Christianity reinforced the habits and character of the American people, and it taught them the value of independence and self-reliance. Ultimately, it was this sense of intrinsic personal value, combined with an understanding of the Bible's teachings about liberty, that made the people begin to question the abuses they were being forced to endure. Jesus, reading from the words of the prophet Isaiah, announced that He had come "to proclaim liberty to the captives and . . . to set at liberty those who are oppressed" (Luke 4:18). The colonists, who were beginning to feel less like respected citizens and more like captives every day, took those words to heart. Furthermore, they recalled the words of the apostle Paul, who said, "the Lord is the Spirit; and where the Spirit of the Lord is, there is liberty" (2 Corinthians 3:17). As they were beginning to chafe under the English yoke, these settlers longed to be free.

History rightly recalls that it was the Stamp Act, the Townshend Acts, the Sugar Act, and other similar provocations that stirred the citizens to revolt. The Boston Port Act that barricaded Boston Harbor in order to punish the colonists for the Boston Tea Party led, in turn, to other acts of sedition. Altogether, the efforts of the English Crown to intimidate and punish Americans came to be known by the colonists as the Intolerable Acts. Members of the English Parliament had enacted these insults primarily to prevent disorder in Massachusetts, they said. But each new outrage only served to fan the flames of rebellion.

Because the church was such a central feature of colonial life, much of the information about the state of affairs in those revolutionary times came from the pulpits of New England. It has been estimated that as much as 80 percent of the political literature of

that era was published first in the form of pamphlets and tracts based on popular sermons of the day. Thanks to bustling commerce among printers such as Benjamin Franklin and John Campbell, who was the publisher of the first successful newspaper in America, a rousing sermon could be set in type, pushed through the presses, and passed into the hands of thousands of patriots within hours of its delivery.

Among the men who fired the imagination of the patriots, perhaps the best known is Rev. Jonathan Mayhew, who was a graduate of the seminary at Harvard and pastor of Boston's historic West Church. Mayhew is considered by many to be one of the prophets of the American Revolution. Then, as now, there were many people in the churches who resisted such practical theology. Rather than facing up to the political realities of their situation, these sedentary churchgoers called for modest homilies, pleasant hymns, and readings from the Psalms; they had little patience with sermons that confronted the issues of the day. Jonathan Mayhew was scolded by some of his congregants and told to stick to his preaching, but the young man would not be dissuaded.

Reprints of Mayhew's sermons found their way, along with various other documents, to the Court of King George, where they were read studiously by members of Parliament. Rather than acknowledging the concerns of the colonists, the monarch and his subjects were enraged. In response to the growing discontent abroad, Parliament voted in 1762 to garrison ten thousand British troops in America. On arrival, English commanders informed the citizens they had come to bring added protection for the colonies. But it was no secret they had come to enforce the trade laws and to punish anyone who spoke out against the king.

The crowning blow, however, was news from Canterbury that the archbishop had issued a formal recommendation to the king to begin appointing colonial bishops, in order to stifle the independent spirit being spread by men like Mayhew. From that moment,

American pulpits were ablaze with indignation, accusing the English clergy of "establishing tyrannies over the bodies and souls of men." In his most famous sermon, called "A Discourse Concerning Unlimited Submission,"[3] Reverend Mayhew responded to those who had recited from Romans 13, in which Paul instructs Christians to be subject to the governing authority. Passive submission to tyranny, Mayhew exclaimed, is not a principle of Scripture. Rather, he said:

> Rulers have no authority from God to do mischief. . . . It is blasphemy to call tyrants and oppressors God's ministers. . . . No rulers are properly God's ministers but such as are "just, ruling in the fear of God." When once magistrates act contrary to their office, and the end of their institution—when they rob and ruin the public, instead of being guardians of its peace and welfare—they immediately cease to be the ordinance and ministers of God, and no more deserve that glorious character than common pirates and highwaymen.[4]

The principle of justice was Mayhew's and the colonists' real concern. Furthermore, to those who had questioned his right to speak of politics from the pulpit, Mayhew quoted 2 Timothy 3:16: "All Scripture is given by inspiration of God, and is profitable for doctrine, for reproof, for correction, for instruction in righteousness." And if this be so, "then should not those parts of Scripture which relate to civil government be examined and explained from the desk? . . . Civil tyranny is usually small in its beginning, like 'the drop of a bucket,' till at length, like a mighty torrent, or the raging waves of the sea, it bears down on all before it, and deluges whole countries and empires." Some would say later that this sermon was the first volley of the American Revolution, setting forth the intellectual and scriptural justification for rebellion against the Crown.[5]

Fanning the Flames

Samuel Adams, a strict Calvinist who was a second cousin of John Adams and founder of the Sons of Liberty, was one of the first public-spirited citizens of Boston to recognize that a break with Britain was inevitable. His inspired talks and harangues to his fellow patriots grew more frequent and more impassioned with each passing day. A member of the Caucus Club, Adams spoke to all who would listen and worked tirelessly to push the people of Boston to action. As the most influential member of the Massachusetts legislature, he drafted protest documents, such as the Circular Letter of 1768, that denounced the Townshend Acts. He also wrote pamphlets and inflammatory newspaper editorials defending the rights of colonists.

Adams, who was the son of a prominent businessman and brewer, understood the power of theater to rouse people into action. He helped stage the Boston Tea Party and organized public demonstrations, including hanging in effigy the British governor and the colonial tax collector at the Liberty Tree, which was an ancient elm tree on the Boston Common.

Meanwhile, far from those pivotal events in Boston and other parts of New England, Patrick Henry was a member of the oldest legislature in the country, the Virginia House of Burgesses, which had been dissolved abruptly by English governor Lord Dunmore in 1774. The atmosphere in Virginia was very different from that in Boston or Philadelphia, but British demands were no less onerous there, and it was apparent that matters were coming to a head in Virginia too.

By March 23, 1775, when members of the assembly gathered privately to discuss the growing rumors of war and rebellion, a number of distinguished citizens spoke at length about the need for caution and humility. Patrick Henry listened in silence for some time. At last, when he could listen no more, he motioned to the president of the assembly for the right to speak, then he rose to his feet.

It is difficult to abbreviate his magnificent speech—it is so eloquent and powerful—but nothing better illustrates the original intent of the founders or the passion of their plea for justice than these historic words. Patrick Henry said:

> Mr. President, it is natural to man to indulge in the illusions of hope. We are apt to shut our eyes against a painful truth, and listen to the song of that siren till she transforms us into beasts. Is this the part of wise men, engaged in a great and arduous struggle for liberty? Are we disposed to be of the number of those who, having eyes, see not, and, having ears, hear not, the things which so nearly concern their temporal salvation? . . .
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> If we wish to be free—if we mean to preserve inviolate those inestimable privileges for which we have been so long contending—if we mean not basely to abandon the noble struggle in which we have been so long engaged, and which we have pledged ourselves never to abandon until the glorious object of our contest shall be obtained—we must fight! I repeat it, sir, we must fight! An appeal to arms and to the God of hosts is all that is left us! They tell us, sir, that we are weak; unable to cope with so formidable an adversary. But when shall we be stronger? Will it be the next week, or the next year? Will it be when we are totally disarmed, and when a British guard shall be stationed in every house? Shall we gather strength by irresolution and inaction?
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> Shall we acquire the means of effectual resistance by lying supinely on our backs and hugging the delusive phantom of hope, until our enemies shall have bound us hand and foot? Sir, we are not weak if we make a proper use of those means which the God of nature hath placed in our power. The millions of people, armed in the holy cause of liberty, and in such a country as that which we possess, are invincible by any force which our enemy can send against us. Besides, sir, we shall not fight our battles alone. There is a just God who presides over the destinies of nations, and who will

> raise up friends to fight our battles for us. The battle, sir, is not to the strong alone; it is to the vigilant, the active, the brave. . . .
>
> Gentlemen may cry, Peace, Peace—but there is no peace. The war is actually begun! The next gale that sweeps from the north will bring to our ears the clash of resounding arms! Our brethren are already in the field! Why stand we here idle? What is it that gentlemen wish? What would they have? Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God!
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> I know not what course others may take but as for me: Give me liberty or give me death.

It is reported that when Patrick Henry returned to his seat, a stunned silence hung over the room for several minutes. Then, slowly, one by one, the members of the house rose to their feet with the cry, "To arms! To arms!" on every lip. From that moment, there could be no denying that the American Revolution had finally and irrevocably come.

In order to deal with the growing restlessness, it was decided that each colony would dispatch delegates to Philadelphia to examine the issues in greater depth and try to bring closure to the issue. The first meeting of the Continental Congress ended inconclusively, as did the second. Each colony's wishes were seemingly different, but one thing was apparent: there was no way to avoid conflict with Great Britain. Once that fact was allowed, on June 10, 1776, a committee was chosen to write a summary of grievances—a document outlining in brief the reasons for separating from England. Five men were selected for the task: Benjamin Franklin of Pennsylvania, John Adams of Massachusetts, Thomas Jefferson of Virginia, Roger Sherman of Connecticut, and Robert Livingston of New York. Each provided input for the initial draft, but in the end it was agreed that Jefferson would compose the final version of the document.

Jefferson labored for two weeks on the declaration, but his first draft made no mention of the deeply held religious motivations of

the colonists, and Adams insisted that this be added. Jefferson had said that the Americans were subject to "the laws of Nature and of Nature's God," but the committee felt this statement to be insufficient. Jefferson's sense of pride was wounded by what he perceived as heavy-handed editing of his work; but he was mollified, and eventually the draft was revised to include one of the most memorable paragraphs in the literature of freedom:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.

In subsequent deliberations, other members of the Continental Congress proposed adding further recognition of the religious dimensions of their undertaking. Thus they documented that they were "appealing to the Supreme Judge of the World for the rectitude of our intentions" and acting in "firm reliance on the protection of divine Providence."

Jefferson had also drawn on the Virginia Declaration of Rights, which was written by his friend George Mason and distributed in the first week of June 1776. In that document, Mason had said that "all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety." Jefferson's draft was more poetic and persuasive, but Mason had given him the inspiration.[6]

Eventually, and only after a series of colorful exchanges between Jefferson and Adams, the final draft of the Declaration of Independence was approved by all but Livingston, who decided he

didn't want to be a part of the proceedings and returned to his family estate in New York. Members of the Congress debated the document, arguing over every item, particularly Jefferson's remarks about the evils of slavery. Southerners would not support those remarks, so further revisions were made. Then, on July 2, 1776, delegates of all the states except New York approved the new Declaration of Independence. John Adams wrote home to his wife, Abigail, saying that the second day of July would be forever remembered as the day America's liberty was gained. As it turned out, of course, the Declaration was actually approved and signed two days later.

The Road to Freedom

The road to freedom and independence, however, would be a perilous and unpredictable adventure for the patriots for years to come, and we cannot help but feel the passion and anxiety of that monumental predicament in the language of Jefferson's declaration. Separating from the mother country was difficult in itself, but how would the colonists explain this urge for freedom and independence? How would they present their case to the court of public opinion, to posterity, to future generations who would certainly look back and wonder what strange madness had overcome the colonists? This is the spirit that animates Jefferson's powerful words: a sense of their accountability to the eyes of history. To reply to King George and to those peering eyes, Jefferson writes:

> When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal status to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

Just reading these words gives us a sense of the emotion that motivated our ancestors so many years ago. Yet the question hangs in the air: by what authority have you done this? By what right? Jefferson's answer to those haunting questions turns to the language of Samuel Rutherford and John Locke as he asserts that the rights of "life, liberty, and the pursuit of happiness" are, in fact, God-given and "unalienable."

In his statement of grievances, Jefferson rehearses "a long train of abuses and usurpations," describing the manner in which the colonists have suffered patiently in hopes that relief might come from the king. One by one, Jefferson lists twenty-eight grievances, solemnly, deliberately, and fully, emphasizing by sheer repetition and insistence that every effort to make peace had been rebuffed by the Crown and followed by insult and injury. Coming to his summation, Jefferson declares, "A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people."

From this comes the actual declaration that "these United Colonies are, and of right ought to be Free and Independent States; and that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved." As a summary of the authority and guarantee of liberty on which they make such a declaration, the document says that "with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor."

Surely King George could not have failed to feel the force of those words. Nothing could prevent him, of course, from sending his armies and navies to crush the rebels. But no one could have read those words without being moved, and the king must have sensed that this would be no easy victory. Today, in newly liberated countries around the world, and in many other lands still under the iron heel of dictators and tyrants of many creeds, the United States Declaration of Independence is revered as a sacred text. All across

Eastern Europe during the 1980s and '90s, men and women longing to breathe free carried copies of our Declaration in their pockets and purses as a silent witness to their aspirations and hopes.

In his essay "What I Saw in America," English author and broadcaster G. K. Chesterton observes, "America is the only nation in the world that is founded on a creed. That creed is set forth with dogmatic and even theological lucidity in the Declaration of Independence." No one reading the words of that august document can miss it: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness." Merely pausing to consider the long odds against the colonists in their confrontation with the mightiest army on earth, it's impossible to imagine that they could have won that contest were it not for the fact that God was on their side.

In his tracts *The Rights of the Colonists,* Samuel Adams wrote, "The right of freedom being a gift of God Almighty. . . . The rights of the colonists as Christians . . . may be best understood by reading and carefully studying the institutes of the Great Law Giver . . . which are to be found clearly written and promulgated in the New Testament." The colonists had placed their trust in that great hope, and God saw fit to miraculously grant their petitions. Later, John Quincy Adams, son of John Adams and the sixth president of the United States, would offer an apt assessment. He said, "The highest glory of the American Revolution was this: it connected in one indissoluble bond the principles of civil government with the principles of Christianity."

THE HIGHER LAW

It's important to know that the allegiance of the founders was not to king or congress or courts of law but to the one eternal God, who judges men and nations and sets at liberty the captives. The reason they were emboldened to cut their ties to Great Britain was that by

a "train of usurpations" the Crown had violated the "laws of Nature and of Nature's God." The colonists certainly knew the term: they had read it in *Blackstone's Commentaries on the Law.* That book, published in 1765, sold more copies on this side of the Atlantic than the other, and Blackstone had defined the "law of nature" as "the will of God."

Had they not believed in a law that established God's justice among men, the signers of the Declaration would have risked their lives, fortunes, and sacred honor in vain. They paid a high price for their actions. Of the fifty-seven signers of the Declaration, nine were killed, two lost sons, five were taken prisoner by the British, twelve had their homes sacked or destroyed, and at least seventeen lost everything they owned and were branded as outlaws and traitors. Many who had been among the most prosperous in America were reduced to poverty because they dared to stand on principle. They willingly made the sacrifice and sustained their faith in the glorious cause of liberty, because they knew there was a "higher law."

The founders also understood the concept of original sin, that men do wrong because they are predisposed by nature to do so. Gouverneur Morris of New York, a signer of the Constitution, offered this assessment:

> The reflection and experience of many years have led me to consider the holy writings not only as the most authentic and instructive in themselves, but as the clue to all other history. They tell us what man is, and they alone tell us why he is what he is: a contradictory creature that seeing and approving of what is good, pursues and performs what is evil. All of private and of public life is there displayed. . . . From the same pure fountain of wisdom we learn that vice destroys freedom; that arbitrary power is founded on public immorality.

Morris and his colleagues deplored evil, but they were not shocked by it because they knew there is a higher law instituted by God that offers men a way of redemption. And, in any case, the

courts had been instituted to keep the peace and preserve public order.

The belief in a higher law that compels even kings to obey goes still further back, having entered the Common Law at Runnymede in the twelfth century, when King John was forced to sign England's first declaration of liberties, the Magna Carta. That great charter proclaims, "The King himself ought not to be under a man but under God and under the law, because the law makes the king for there is no king where will governs and not law." In the charter's sixty-three clauses we read, "Know ye that we, in the presence of God, and for the salvation of our souls, and the souls of all our ancestors and heirs, and unto the honor of God and the advancement of Holy Church . . . have in the first place granted to God, and by this our present charter confirmed for us and our heirs forever." Here again was the recognition that God's authority is over all.

Decades after the Revolution, at a time when America stood on the brink of another great war, William Henry Seward, a member of Congress and later secretary of state under Lincoln, offered an eloquent tribute to this higher law. In one of his most eloquent speeches before Congress, Seward said, "There is a higher law than the Constitution, which regulates our authority over the domain, and devotes it to the same noble purposes. The territory is a part, no inconsiderable part, of the common heritage of mankind, bestowed upon them by the Creator of the universe. We are his stewards, and must so discharge our trust as to secure in the highest attainable degree their happiness."

Sadly, other philosophies and theories have crept into the public discourse over time, and the once-high ideals of the founders have been all but lost. As early as 1907, we could see signs of this erosion of ideals when Justice Charles Evans Hughes declared that "the Constitution is what the judges say it is." In his view, the Court of nine unelected judges was able to establish justice, ensure domestic tranquility, provide for the common defense, and promote the

general welfare all on their own, and by any means necessary. Those who hold comparable views today apparently see themselves as a higher law than the codified laws of the land.

The liberal media play a big part in the undoing of justice as well. As columnist Thomas Sowell writes, "One of the reasons judicial activists get away with ignoring the law and imposing their own pet notions instead is that much of the mainstream media treat the actions of judges as automatically legitimate and all criticism of them as undermining the rule of law." He goes on to say, "The time is long overdue to stop regarding judges as little tin gods who can do no wrong. An independent judiciary does not mean a judiciary independent of the law. If it does, then we can forget about being a free and democratic nation. We are just the serfs of whoever happens to be on the bench."[7]

Disorder in the Court

Nowhere are the distortions of America's modern justice system more apparent than in the statements of those, like former justices William Brennan and Thurgood Marshall, who preferred to ignore the beliefs of the founders and the sacrifices they made. In 1963, Brennan said, "A too literal quest for the advice of the founding fathers seems to me futile and misdirected." And Marshall said in 1987, "I do not believe that the meaning of the Constitution was forever fixed at the Philadelphia convention. Nor do I find the wisdom, foresight and sense of justice exhibited by the framers particularly profound. To the contrary, the government they devised was defective from the start." One has to wonder how men who held such contempt for American traditions and values ever arrived at the High Court.

We need to thank God that this nation was founded at a time when there was still a consensus among people about what is good and just and true. Sadly, that consensus no longer exists on a broad

scale, and we often feel helpless in the face of the tyranny that now passes for justice. What we recognize today as the clash of cultures—the culture wars in America—is actually a pitched battle between those who still believe that God is the Source of truth and justice, and those who believe that man is all the god we need.[8] It is a struggle, as the apostle Paul phrased it, "against principalities, against powers, against the rulers of the darkness of this age, against spiritual hosts of wickedness in the heavenly places" (Ephesians 6:12).

The First Amendment to the Constitution, written by James Madison as a safeguard of essential liberties, has become a club in the hands of today's judges used to silence religious expression. Throughout the last century, liberals on the High Court took Jefferson's phrase "a wall of separation between church and state" and consciously erected a fortress against the free exercise of religion. Before we acquiesce to this act of bad faith, we ought to pause to consider what Jefferson actually said in his letter to the Danbury Baptists. He wrote:

> Believing with you that religion is a matter which lies solely between man and his God; that he owes account to none other for his faith or his worship; that the legitimate powers of the government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thus building a wall of separation between church and state.

Jefferson then concluded his letter with the words, "I reciprocate your kind prayers for the protection and blessings of the common Father and Creator of man, and tender you for yourselves and your religious association, assurances of my high respect and esteem."

Clearly, these are not the words of a man who meant to shove religious observance out of public places. The clear implication of

Jefferson's statement is that the federal government may not create a national church, as in England. This letter was his assurance, as president, to Baptist believers that their right of independence would be respected. Subsequently, in a letter to a Presbyterian clergyman, Jefferson said, "Certainly, no power to prescribe any religious exercise or to assume authority and religious discipline has been delegated to the general government. It must then rest with the states as far as it can be in any human authority."

Jefferson was certainly not neutral in the matter of religion. After all, he used federal monies to hold religious services, to build Christian churches, and to support missions to the Indians. The only limitation on government was prescribing a particular denomination or hampering the unfettered proclamation of the gospel. One of the first acts of the first Congress was to appoint Rev. William Linn as chaplain of the House of Representatives. Linn was paid a salary of five hundred dollars out of federal funds. James Madison, the principal author of the Constitution and the First Amendment, served on the committee that hired Linn. Immediately after adoption of the First Amendment, Congress called for a "national day of prayer and thanksgiving" to honor the Author of liberty.

A Spiritual Challenge

Many years later, in a commemorative service at Plymouth Rock, on December 22, 1820, the great orator Daniel Webster challenged his fellow citizens not to forget the religious nature of our nation's origins. He said, "Our fathers were brought hither by their high veneration for the Christian religion. They journeyed by its light and labored in its hope. They sought to incorporate its principles with the elements of their society and to diffuse its influence through all their institutions, civil, political, or literary. Let us cherish these sentiments, and extend this influence still more widely, in

the full conviction that that is the happiest society which partakes in the highest degree of the mild and peaceful spirit of Christianity."

That challenge still stands. But how will America respond? Are we still capable of recognizing our debt to those principles? Are we capable of renewing our great heritage and extending its influence in society? English jurist Lord Devlin said, "History shows that the loosening of moral bonds is the first stage of disintegration." Others, from Edward Gibbon to Francis Schaeffer, have said much the same, and there's no doubt they're right.

As we review in these pages the many corruptions that are eating away at American society in this first decade of the twenty-first century, we can hardly deny that signs of disintegration are all around us: the assault on marriage and family, the deregulation of pornography and the celebration of homosexuality, the assault on religious expression in every public place, as well as the attempt to take God out of the Pledge of Allegiance and to scrub His name and the Ten Commandments from our public buildings and monuments. And this is all being done in the name of liberty and law?

In light of all these warning signs, we can only come to one conclusion: we are engaged in a struggle of enormous spiritual proportions. The spiritual nature of America's founding is only too apparent. The hand of providence was on the founders at every step. No ordinary army could have conquered the British legions unless providence had intervened. George Washington, the hero of Yorktown, surely believed that, and he said as much.

But today we are engaged in a contest of wills and a struggle for survival of even greater consequence, and the outcome of this clash is very uncertain. Toward the end of the eighteenth century, Ezra Stiles, one of the great former presidents of my alma mater, Yale University, made this charge: "The United States are under peculiar obligations to become a holy people unto the Lord our God." Stiles knew what he was talking about. Whether this nation can restore justice, overcome its enemies, and continue to prosper in the years

to come will depend on whether we are willing to accept Dr. Stiles's challenge.

I believe this with all my heart. If we are able to restore the foundations of liberty and law in America and return to the bedrock of devotion our forefathers enjoyed, then nothing can harm us. But if we merely surrender to lawlessness and to the godless moral deregulation that has made a mockery of everything the founders stood for, then we cannot hope to survive. The original intent of the founders can be read on every page of the history they gave us. They left us a clear prescription for national success. But do we still have the courage and the discipline to make their principles our own?

Posterity will judge our answer.