America: Christian Origins, Secular Future©

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Much is written about America's secular government, its history, verity and scope, but most treatments are overly complex and rife with questionable perspectives or self-serving, easily contradicted anecdotes. Americans should avoid these biased discussions and embrace a simple, irrefutable historical argument, whose evidence is available to everyone over the internet. Briefly, colonial leaders felt religious matters were better left to the states, so they created a secular federal government. The Christian majority was content with this because state governments already patronized them, but they successfully argued for the 1st Amendment's added protection, ensuring that this new, national body was prohibited from meddling in religious affairs. Thus, the simple statements contained in the Religion Clauses translated to rigid secularization and applied only to the federal government. The Civil War exposed the evils of states' rights and ushered in the 14th Amendment, which forced state governments to abide by the Bill of Rights. To the chagrin of many Christians, this included the 1st Amendment's secular mandate. Today, only a Constitutional amendment can reverse America's freely chosen path, which requires all levels of government to be perfectly secular.

Colonial America was obviously Christian, so the relevant history begins when America evolved from colonies to states with constitutions, whose governments then ratified the U.S. Constitution and Bill of Rights. Except Virginia and New York, all states at this time were still virtually Christian theocracies, as shown by the constitutions in effect until well after they ratified the U.S. Constitution.[1] For instance, South Carolina's 1787 constitution stated, "The Christian Protestant religion . . . is . . . declared to be the established religion of this State." Maryland's constitution afforded "equal protection" only to those "professing the Christian religion." Massachusetts and New Hampshire required all localities to pay for "Protestant teachers." Georgia, Pennsylvania, Delaware and North Carolina required all public officials to be Protestant.

Thus, states were Christian bastions and the federal government was to be given only enumerated powers, none of which dealt with religion, so there was no need for delegates to discuss the subject in the Constitutional Convention of 1787.[2] More is made of religion in state ratification debates, but only in two contexts: The respective Constitutional Convention delegates defended their silence by explaining the concept of enumerated powers, or state delegates passionately argued for more protection against federal encroachment.[3] The result of these state debates was the overwhelming demand for a Bill of Rights. The common theme is perhaps best illustrated by Charles Pinckney, a South Carolina Constitutional Convention delegate. During the state's ratification debate, he replied to a complaint that the proposed Constitution contained no provision for freedom of the press (which later joined the Religion Clauses in the 1st Amendment), saying, "That invaluable blessing . . . is secured by all our state constitutions; and to have mentioned it in our general Constitution would perhaps furnish an argument, hereafter, that the general government had a right to exercise powers not expressly delegated to it. For the same reason, we had no bill of rights inserted in our [federal] Constitution; for, as we might perhaps have omitted the enumeration of some of our rights, it might hereafter be said we had delegated to the general government a power to take away such of our rights as we had not enumerated: but by delegating express powers, we certainly reserve to ourselves every power and right not mentioned in the Constitution. Another reason weighed particularly, with the members from this state, against the insertion of a bill of rights. Such bills generally begin with declaring that all men are by nature born free. Now, we should make that declaration with a very bad grace, when a large part of our property consists in men who are actually born slaves."

So, Christian theocracies—states—formed an absolutely secular national government and defined this mandate through the Religion Clauses, which, of course, did not apply to the states. Most Americans recalling this era (correctly) see a Christian heritage and character—despite the 1st Amendment—leading them to conclude the Religion Clauses did not intend secularization. This mistaken impression is a consequence of thinking the Bill of Rights always applied to the states, governments that promoted Christianity. But as noted in the Supreme Court decision, Barron v. Baltimore, 32 U.S. 243 (1833), "These amendments [the Bill of Rights] contain no expression indicating an intention to apply them to the state governments. This court cannot so apply them."

Former Supreme Court Justice Joseph Story's acclaimed 1833 history, Commentaries on the Constitution,[4] provides an important summary to this point in American history. His book (and the

Federalist Papers[5]) are the definitive sources for Constitutional interpretation because of Story's stature and his contemporary place. Christian fundamentalists often (correctly) cite this Story passage: "Probably at the time of the adoption of . . . the [1st] Amendment . . . the general, if not the universal, sentiment in America was, that Christianity ought to receive encouragement from the state, so far as was not incompatible with the private rights of conscience, and the freedom of religious worship. An attempt to level all religions, and to make it a matter of state policy to hold all in utter indifference, would have created universal disapprobation, if not universal indignation."

However, the Story view that should be impressed upon Americans is not this popular, state-level sentiment—it was recorded prior to the 14th Amendment—but what he said about the federal government. Commenting on Article VI, section 3 of the U.S. Constitution, Story writes, "The . . . clause declares, that 'no religious test shall ever be required, as a qualification to any office or public trust, under the United States.' This clause had a higher object; to cut off for ever every pretence of any alliance between church and state in the national government. The framers of the constitution were fully sensible of the dangers from this source, marked out in the history of other ages and countries; and not wholly unknown to our own. They knew that bigotry was unceasingly vigilant . . . and that intolerance was ever ready to arm itself with all the terrors of the civil power to exterminate those, who doubted its dogmas, or resisted its infallibility."

Indisputably, America was a Christian nation composed of state theocracies cooperating within a secular federal government and naively approaching Civil War, but some men saw the potential dangers. In Constitutional Convention debate on June 8, 1787 and in an October 24, 1787 letter to Thomas Jefferson, James Madison (father of the Constitution) warned, "A small proportion of the Community, in a compact situation, acting on the defensive, and at one of its extremities might at any time bid defiance to the National authority. Any Government for the United States formed on the supposed practicability of using force against the unconstitutional proceedings of the States, would prove . . . visionary and fallacious . . . . The negative [power of the National authority] would render the use of force unnecessary. The States could of themselves then pass no operative act, any more than one branch of a Legislature where there are two branches, can proceed without the other. This prerogative of the General Government is the great pervading principle that must control the centrifugal tendency of the States; which, without it, will continually fly out of their proper orbits and destroy the order and harmony of the political System."[6] To Jefferson, he added, "[I suppose] the judicial authority, under our new system, will keep the States within their proper limits, and supply the place of a negative on their laws. [But] . . . it is more convenient to prevent the passage of a law than to declare it void after it is passed; that this will be particularly the case where the law aggrieves individuals, who may be unable to support an appeal against a State to the Supreme Judiciary; that a State which would violate the Legislative rights of the Union would not be very ready to obey a Judicial decree in support of them; and that a recurrence to force, which, in the event of disobedience, would be necessary, is an evil which the new Constitution meant to exclude as far as possible. [I favored an] indefinite power of Legislation in the Congress, with a negative on the laws of the States, [but my position was] rejected by a bare majority."[7]

During the 19th Century, America's population surged, scattered westward and grew culturally and religiously diverse, forcing change in government institutions, laws, regulations and social customs. Improved transportation, communication and the industrial revolution accelerated this change, effectively shrinking America and forcing communities to intermingle, to lose the homogeneous nature that up until this time had served to keep religious discrimination a quiet topic (some states did change their onerous, "Christian only" constitutions). The nation had matured and parochialism no longer worked... except in the South, whose agrarian economy competed with the industrialized North for Congressional favoritism. In the Southern states, a slave-owning, religiously zealous aristocracy controlled society and government, holding dear to states' rights. The doctrine of states' rights and Southern-style Protestant piety were stained with the blood of slavery. In the words of one defender of states rights', "The . . . edict of God Almighty is stamped against . . . social equality between the black race and the white."[8] The Civil War was fought to eliminate this odious, state-sanctioned view.

When the Civil War ended, the 38th Congress codified Lincoln's emancipation proclamation and enacted the 13th Amendment, ending slavery. But the rebellion's leaders still controlled Southern states and promptly violated the Constitution by

passing laws effectively maintaining slavery (collectively known as "Black Codes"). They also denied free speech, press and assembly to anyone who spoke against them or defended Blacks. On April 9, 1866 Congress met their challenge and passed the Civil Rights Act (over Johnson's veto), but they were uncertain of their enforcement power. James Madison believed "the judicial authority . . . will keep the States within their proper limits," but his Constitutional interpretation was doubtful. The federal government needed more authority and the 14th Amendment provided it, thereby forcing the states to abide by the Bill of Rights.

Much has been written about the 14th Amendment's intent, most of it legally and historically entertaining diversions, whereas the essential facts are indisputable and begin with unquestionable, definitive Congressional testimony. Ohio's Representative Bingham, one of the 14th Amendment's principle authors, made this unequivocal statement about it on the floor of Congress: "The proposition pending before the House is simply a proposition to arm the Congress of the United States, with the power to enforce the bill of rights as it stands in the Constitution today."[9]

Senator Howard, a Michigan Republican and co-author of the Amendment, made these unambiguous remarks: "Such is the character of the privileges and immunities spoken of in the second section of the fourth article of the Constitution. To these privileges and immunities . . . should be added the personal rights guaranteed and secured by the first eight amendments of the Constitution . . . . Now, sir, there is no power given in the Constitution to enforce and to carry out any of these guarantees. They are not powers granted by the Constitution to Congress . . . but they stand simply as a bill of rights in the Constitution, without power on the part of Congress to give them full effect; while at the same time the States are not restrained from violating the principles embraced in them except by their own local constitutions, which may be altered from year to year. The great object of the first section of this amendment is, therefore, to restrain the power of the States and compel them at all times to respect these great fundamental guarantees."[10]

Even the minority's voice—the losing argument—was straightforward and absolute. Representative Robert Hale, a New York Republican and one of three dissenting members on the Joint Committee that drafted the 14th Amendment, said this: "Now, what are these amendments to the Constitution, numbered from one to ten . . . ? They constitute the bill of rights, a bill of rights for the protection of the citizen, and defining and limiting the power of Federal and State legislation. They are not matters upon which legislation can be based. I insist the American people have not yet found that their State governments are insufficient to protect the rights and liberties of the citizen." [Other Congressional testimony, though, cited a litany of state actions denying citizens—white and Black—free speech, press and freedom of religion.] Representative Hale later made these comments: "The tenor and effect of the amendment proposed here . . . is to bring about a more radical change in the system of this Government, to institute a wider departure from the theory upon which our father formed it than ever before was proposed in any legislative or constitutional assembly. It is in effect a provision under which all State legislation . . . affecting the individual citizen, may be overridden, may be repealed or abolished, and the law of Congress established instead. It is an utter departure from every principle ever dreamed of by the men who framed our Constitution. We all know it is true that probably every State in this Union fails to give equal protection to all persons within its borders in the rights of life, liberty, and property. It may be a fault in the States that they do not do it [but] reforms of this character should come from the States, and not be forced upon them by the centralized power of the Federal Government."[11] Representative Hale clearly understood the major change being offered by the 14th Amendment.

The 14th Amendment passed in Congress but was not ratified by the requisite number of states. Congress was forced to either impose its will concerning the terms of post-War reunion (including ratification of the 14th Amendment) or succumb to the will of legislatures in the rebellious states, who wanted to send former insurrectionists—those declared unqualified—to Congress. On March 2, 1867, Congress passed a reconstruction bill, putting southern states under military rule with instructions to enfranchise Blacks, hold conventions and then, under new state constitutions and legislatures, ratify the 14th Amendment (it also fixed the problem presented by emancipation, which would have immediately increased the South's Congressional representation). Only Virginia, Mississippi and Texas refused ratification, so the 14th Amendment became a part of the Constitution on July 28, 1868, thus applying

the Bill of Rights to the states, including the mandate that state governments be as perfectly secular as the federal government ("oops," now say many Christians whose majority at the time had insisted on the 1st Amendment's secularizing Religion Clauses).

The essential and indisputable facts also show that beginning in 1878 the Supreme Court repeatedly and unequivocally affirmed that the 14th Amendment's due process clause applies the Bill of Rights to the states. But the religious right (including some in Congress) persist in accusing "rogue judges" of denying Constitutionally-protected states' rights. They point to the absence of the words "Bill of Rights" in the Amendment, omitting evidence that "privileges, immunities and liberties" (used in the Amendment) have long been synonymous with freedoms encompassed in the Bill of Rights.

States continued violating the Religion Clauses until 1940, when the Supreme Court decided Cantwell v. Connecticut, 310 U.S. 296.[12] (Some Constitutional mandates are only slowly enforced, like dramatically limiting states' rights regarding establishment of religion, religious freedom… or the freedom of African-Americans). The Court said, "The First Amendment declares Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws."

Today, all Americans enjoy unprecedented religious freedom, but Christian fundamentalists, regretting their Constitutional-era agreement for a secular federal government, refuse to employ the amendment process, which our Founding Fathers relied upon for minority protection. For instance, passing an amendment to "de-link" the 14th Amendment from the Bill of Rights could return us to state theocracies. (Much like was done in first enacting prohibition and then passing another amendment to end it.) The Founding Fathers believed in majority rule, but also believed Constitutional change should require a "super majority," hence the cumbersome amendment process. Instead of seeking an amendment, though, self-proclaimed Christian moralists urge a general insurrection, exhorting Congress and the Executive to pass legislation and impose regulations (e.g. President Bush's "faith-based initiative") with the specific purpose of thwarting history's secular mandate. They fear failure using the amendment process (with good reason, as the recent defeat of the "Marriage Amendment" shows) and hope their cries will bring legions of citizens to join their ecclesiastic revolt.

Americans should avoid historical miscellany or deceptions like "America was not founded as a Christian nation," and spread the simple, powerful truth. An America composed of Christian states demanded a perfectly secular federal government, whose nature in this regard was defined by the 1st Amendment's Religion Clauses. Civil War exposed the evils of states' rights and the resulting 14th Amendment applied the Bill of Rights to the states. Now, only a Constitutional amendment can redefine the secular mandate given all levels of government.

The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no election.— Supreme Court Justice Jackson, West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943)

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1 For state constitutions, see http://www.yale.edu/lawweb/avalon/states. For Massachusetts, see http://www.state.ma.us/legis/const.htm.

2 For debates in the Constitutional Convention, in which there was no discussion of religion because delegates assumed agreement on a secular federal government, see http://www.yale.edu/lawweb/avalon/debates/914.htm.

3 For state ratification debates (and in particular the South Carolina session referenced below), see "Elliot's Debates," http://constitution.org/elliot.htm.

4 Story, Joseph, LL. D., Commentaries on the Constitution of the Unites States, Boston: Hilliard, Gray and Company, 1833, which can be accessed at http://www.constitution.org/js/js_005.htm (table of contents). The first citation comes from Chapter XLIV, Freedom of Religion, and the second from Chapter XLII, Oaths of Office-Religious Test-Ratification of the Constitution.

5 These are arguably the most important documents in Constitutional history, and are comprised of a series of newspaper articles written in late 1787 by Alexander Hamilton, James Madison and John Jay (under pseudonyms), which influenced New York's ratification debate. See http://odur.let.rug.nl/%7Eusa/D/1776-1800/federalist/fedxx.htm.

6 Madison Debates, June 8, http://www.constitution.org/dfc/dfc_0608.htm.

7 James Madison: His Legacy, James Madison Explains the Constitution to Thomas Jefferson, http://www.jmu.edu/madison/gpos225-madison2/madexpcontojeff.htm.

8 The Library of Congress, Congressional Globe, 39th Congress, 1st Session, Senate and House Debates, Page 2538, found at http://lcweb2.loc.gove/ammem/amlaw/lwcglink.html#anchor39 (the browse directory).

9 Ibid, Congressional Globe, Page 1088.

10 Ibid, Page 2765 to 2766.

11 Ibid, Pages 1062 and 1063.

12 The full text of all Supreme Court decisions can be found at FindLaw® for Legal Professionals, http://caselaw.lp.findlaw.com/casecode/supreme.html, where you enter the case citation.