

WITH LIBERTY AND APOLOGETICS FOR ALL: JAMES MADISON, HUMAN NATURE, AND THE PRESERVATION OF RELIGIOUS FREEDOM

Introduction

“Our freedoms didn’t simply happen; they were the result of deliberate precautions and provisos, acts of statecraft which it behooves us to study and remember.” Thus exhorts M. Stanton Evans, in his book *The Theme is Freedom: Religion, Politics, and the American Tradition*.¹ To the degree that we currently enjoy religious liberty in America, we owe it not to accident or happenstance but to “deliberate precautions and provisos.” The Supreme Court has played a major role in the deliberations over religious liberty, particularly in the last sixty-plus years. In so doing, the Court has often looked to the wisdom of James Madison and his views of religious liberty. As Bernard Bailyn has observed, however, the Court has largely ignored some of Madison’s most important philosophical contributions, those found in the *Federalist Papers*.² Notwithstanding the plethora of Supreme Court references to the contrary, it is not primarily in the *Memorial and Remonstrance* and related writings, but in the *Federalist Papers* that Madison articulated the fundamental truths to which the hopes of an enduring liberty in the young republic were to be bound. Accordingly, the primary aims of this paper will be a) to prove that Madison’s view of human nature was the first principle of his political philosophy and a fundamental truth to which his proposed security for religious liberty was bound; b) to show that while the sources

¹ M. Stanton Evans, *The Theme is Freedom: Religion, Politics, and the American Tradition* (Washington, D.C.: Regnery Publishing, Inc., 1994), 9.

² Bernard Bailyn, *To Begin the World Anew: The Genius and Ambiguities of the American Founders* (New York: Vintage Books, 2003), 126-130.

of Madison's philosophy were varied, in the end, his view of human nature was biblical in nature; and c) to explain why Madison's anthropology is still relevant to religious liberty today and why, strict separationism notwithstanding, a Christian anthropology must be defended in the public square.

Madison's Anthropology: The Soft Bigotry of Low Expectations

It is difficult to overstate the importance of James Madison to the design of our Constitution, and, hence, the security of our civil and religious liberties. Madison biographer Ralph Ketcham writes, "For better or worse, as we consider 'the framers' intent,' we are, preeminently, examining *Madison's* intent."³ Garrett Ward Sheldon gives five reasons why our fourth president is referred to as the "Father of the Constitution."⁴ Madison was one of the most involved members of the Constitutional Convention; he contributed substantially to the compromises that helped to eventually form unanimity and passage; he was an effective advocate for the Constitution in the Federalist Papers; he helped to greatly simplify 189 proposed amendments that eventually became the Bill of Rights; and finally, he was the leading advocate for ratification in Virginia.⁵ In addition to his role in the Constitution, he was one of the leading advocates for the disestablishment of the Episcopal Church in Virginia just prior to the Constitutional Convention, and thus played a first-hand and practical role in the struggle for

³ Ralph Ketcham, *James Madison: A Biography* (Charlottesville, VA: University of Virginia Press, 1990), ix. Hereafter *James Madison*.

⁴ Whether this appellation truly applies is a matter of some scholarly debate. One author opposes the commonly-held view, claiming that though Madison supplied the original blueprint for the Constitution, in reality he was overruled time and time again in the Convention such that the final draft cannot be considered to be influenced by Madison to the degree often assumed. See Richard B. Morris, *Witnesses at the Creation: Hamilton, Madison, Jay, and the Constitution* (New York: Henry Holt and Company, 1985), 19. Most scholars, however, for better or worse, seem to find the title reasonable to apply.

⁵ Garrett Ward Sheldon, *The Political Philosophy of James Madison* (Baltimore: The Johns Hopkins University Press, 2001), 1.

religious freedom. Given these credentials, it is little wonder the Supreme Court has relied so heavily on this Founder for guidance in its First Amendment jurisprudence.

Defending the proposed Constitution against the anti-Federalists, Madison contended that “in a free government, the security for civil rights must be the same as that for religious rights.”⁶ This was his argument before there was such a thing as a Bill of Rights or a First Amendment.⁷ Therefore, the security that Madison envisioned for religious liberty antedated the Bill of Rights, and hence, was not ultimately to be found there.⁸ Rather, the security was a built-in measure, a “mechanism” embedded in the very nature of the government’s design, captured in the following syllogism:

1. Liberty (religious or civil) is the opposite of tyranny
2. Tyranny results from an untoward accumulation of powers
3. The accumulation of powers is prevented by the rivalry of factions
4. The rivalry of factions is necessary because of realism concerning human nature
5. Therefore, realism concerning human nature is a necessary condition for preserving religious liberty

Liberty is the opposite of tyranny. Liberty is the absence of coercion, or, as Mortimer Adler puts it, liberty is “the circumstantial freedom of the individual to do as he pleases without let or hindrance.”⁹ Lloyd Billingsley writes: “Although I do not consider freedom the highest value (if it were, a prison would be the greatest evil), it is what makes any meaningful activity in life possible. It allows us to exercise our beliefs, our conscience, to choose between good and

⁶ James Madison, “Federalist 51.” Reprinted in Bruce Frohnen, ed., *The American Republic: Primary Sources* (Indianapolis: Liberty Fund, 2002). All *Federalist* quotations, unless otherwise noted, are from this source.

⁷ Federalist 51 was written February 6, 1788. The debate over the First Amendment took place over one year later.

⁸ See Robert H. Bork, *The Tempting of America: The Political Seduction of the Law* (New York: Touchstone, 1991), 4; and Kevin A. Ring, ed., *Scalia Dissents: Writings of the Supreme Court’s Wittiest, Most Outspoken Justice* (Washington, D.C.: Regnery Publishing, 2004), 44. Ring comments: “Scalia believes the rigid separation of powers set forth in the Constitution is the most important bulwark against government tyranny, even more important than the Bill of Rights. For support, Scalia points to the fact that many foreign nations, including the former Soviet Union, established bills of rights patterned after and even more extensive than ours, but did not have a proper structure of government in place to protect them.”

⁹ Mortimer Adler, *Six Great Ideas* (New York: Collier Books, 1981), 229.

evil, to select our associations. Far from being a mere philosophical concept, it is the very foundation of civilized society.”¹⁰ But, as Adler maintains, true freedom obtains only “so long as the exercise of such liberty does not turn into license by violating laws that prohibit injury to others or to the community as a whole.”¹¹ Evans puts it this way: “Liberty to act on one’s behalf must be fenced off by the equal liberty of others, so that freedom for one individual doesn’t become oppression for a second. Freedom in this sense must be mutual, so as not to contradict the basic premise.”¹² That the American republic to date has been a successful experiment in this sense of ordered liberty is the firm conclusion that historian Paul Johnson draws: “The great American republican experiment is still the cynosure of the world’s eyes. It is still the first, best hope for the human race. Looking back on its past, and forward to its future, the auguries are that it will not disappoint an expectant humanity.”¹³

There are, of course, notorious examples in American history of the “cruel and unjust use of power,”¹⁴ by either the government itself or overbearing majorities. But such tyranny, quite obviously, is not the norm in America: immigrants continue to flock to our borders by the millions, and not because they long to exchange freedom for bondage.¹⁵ Moreover, even when oppression and bigotry have momentarily triumphed, the social reformer has been able to point to principles of freedom ingrained within the American conscience itself to appeal for the change

¹⁰ Lloyd Billingsley, *The Absence of Tyranny: Recovering Freedom in our Time* (Portland, OR: Multnomah Press, 1986), 17.

¹¹ Adler, 229.

¹² Evans, 24.

¹³ Paul Johnson, *A History of the American People* (New York: HarperCollins, 1997), 976.

¹⁴ “Tyranny,” in Webster’s New World Dictionary

¹⁵ See Dinesh D’Souza, *What’s So Great About America* (New York: Penguin Books, 2002), 76-77, 95. D’Souza writes: “In America, the immigrant immediately recognizes, things are different. The newcomer who sees America for the first time typically experiences emotions that alternate between wonder and delight.” Moreover, “Clearly the immigrant seeks something that is available here and not in his homeland. That something, I have suggested, is the opportunity to have a good life, but more important, the chance to make his own life.” D’Souza is speaking in this context about economic opportunity, and it is not being denied here that, historically speaking, a significant percentage of immigrants have come to America merely so they could make more money. But it goes without saying that millions have also come to escape despotism and tyranny. It is a one-way “street” between the U. S. and Cuba.

that he seeks. In other words, the social reformer can say of injustice, “It’s un-American.” So whereas oppression exists quite naturally within some political structures, in America it does so only in contradiction to our basic constitutional principles. Only the hard-core ideologue bothers with the notion that the “freedom” of the American republic is really a facade to mask what is truly a systematically oppressive despotism.¹⁶ Tyranny can take many forms political and ecclesiastical, but at its root is the use of force to curtail or eliminate “the ability of human beings to act in voluntary fashion,”¹⁷ whether that ability is sought in a civil or a religious act. The record of history demonstrates that the Constitution has largely succeeded in securing our fundamental liberties against such an unjust use of force.

Tyranny results from the untoward accumulation of powers. Thomas Jefferson wrote in the Declaration of Independence: “The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States.”¹⁸ Eleven years later, some of the provisions of the newly-proposed Constitution elicited similar fears. One adversary objected to the Constitution because of “its supposed violation of the political maxim, that the legislative, executive, and judiciary departments, ought to be separate and distinct.”¹⁹ James Madison, incidentally, agreed with the basis of the objection: “No political truth is certainly of greater intrinsic value, or is stamped with the authority of more enlightened patrons of liberty, than that on which the objection is founded. The accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny.”²⁰ Thus, in Madison’s view, it was indisputable that the “cruel and unjust use of power” inevitably results where the powers of

¹⁶ See Billingsley, 67-84.

¹⁷ Evans, 23.

¹⁸ Reprinted in Frohnen, 189-191.

¹⁹ Federalist 47.

²⁰ Ibid.

government are accumulated in too few hands. In fact, the accumulation of all government powers *is* tyranny.²¹

*The accumulation of powers is prevented by allowing the rivalry of factions.*²² Madison responded to the adversary's objection, however, that if the proposed constitution were "really chargeable with this accumulation of power, or with a mixture of powers, having a dangerous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system."²³ But the reality was that, borrowing in part from Montesquieu, "the oracle who is always consulted and cited on this subject," Madison had proposed a constitutional design that provided for overlapping but separated powers, thereby "contriving the interior structure of the government, as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places."²⁴ In other words, the constitution was designed such that tyranny would be prevented by the very structure of the government. The "mutual relations" of the separated powers would provide a system of checks and balances to mitigate the usurpation and accumulation of power.

Basic to Madison's check and balance philosophy was the realization that there exists an inevitable by-product of liberty: religious and political factions. A faction is "a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community."²⁵ Moreover, factions consist in "a zeal

²¹ It is not being suggested here that monarchy or similar political arrangements are inherently evil or universally tyrannical. But while monarchy or a similar type of government is not a sufficient condition for tyranny, it is a necessary condition. If power is radically diffused, tyranny can never result.

²² Madison is not arguing from a proto-Marxist, class warfare type of rivalry, which was the interpretation promoted by Charles Beard in the early twentieth-century. See Douglass Adair, "The Tenth Federalist Revisited," in Trevor Colbourn, ed., *Fame and the Founding Fathers* (New York: Norton, 1974), 75-92.

²³ Federalist 47.

²⁴ Federalist 51.

²⁵ Federalist 10.

for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders, ambitiously contending for pre-eminence and power.”²⁶ Factions, thus, are rivaling groups, generally political or religious, that are adverse to the rights of others and the community in general.

According to Madison there are only two ways to address the problem of factions: either remove their causes, or control their effects. Likewise, there are just two methods of removing the causes, but both are inimical to liberty and therefore contrary to republicanism. With any attempt to remove the cause, the cure becomes worse than the remedy. Because “liberty is to faction, what air is to fire, an aliment, without which it instantly expires,”²⁷ any attempt to eliminate the cause of factions would have to involve tyranny itself. The simple fact is that, absent a brutal, governmental control of the conscience, factions will exist in a free society: “As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed.”²⁸ Thus, a solution to factions consistent with republicanism must be found, not in eliminating the cause of factions, but in allowing factions to rival one another such that the effects of factions would be controlled, thereby preventing any dangerous accumulation of power.

The rivalry of factions is necessary because of realism concerning human nature. In advocating a “well constructed union,” Madison argued that a primary benefit to his constitutional design was “its tendency to break and control the violence of faction.”²⁹ George W. Carey explains that the Madisonian system mitigated against the violence of two types of

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

factions: the tyranny of the majority, and the tyranny of the government.³⁰ Simply by allowing factions to flourish, thereby fostering a natural and mutual check on rivaling powers, the tyranny of the majority would likely be held in check.³¹ No one faction would be allowed to get the upper hand – not just because the government would circumscribe its power, but because rival factions would also provide a check.³² Moreover, through the institutional separation of powers, what Madison referred to as ‘the interior structure of the government,’ the excessive accumulation of political power would be avoided.³³

Madison believed that at the root of both types of tyranny, whether majoritarian (private) or political (public), lay one ultimate and immutable cause: the depravity of man.³⁴ Nowhere did Madison express this anthropological realism better than in his famous *Federalist 51*: “It may be a reflection on human nature, that such devices [as the separation of powers] should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature?”³⁵ If it was not for the depravity of man, government would be

³⁰ George W. Carey, “Separation of Powers and the Madisonian Model: A Reply to the Critics,” *The American Political Science Review* 72, no. 1 (1978): 151-164. In *Federalist 51*, Madison wrote: It is of great importance in a republic, not only to guard the society against the oppression of its rulers; but to guard one part of the society against the injustice of the other part.”

³¹ This, of course, is not always the reality and thus, the government has the responsibility to protect the rights of minorities that are not respected by the majority. The issue here is that it is not *just* the government that helps to prevent tyranny; rival, private factions offer a type of “free-enterprise” check and balance. Justice Clark in the *Abington* case alluded to this: “Madison suggested in the Fifty-first *Federalist* that the religious diversity which existed at the time of the Constitutional Convention constituted a source of strength for religious freedom, much as the multiplicity of economic and political interests enhanced the security of other civil rights.” 374 U.S. 203 (1963)

³² “If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. . . . When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed.” See *Federalist 10*.

³³ *Federalist 51*.

³⁴ Madison wrote in *Federalist 10*: “But the most common and durable source of factions, has been the various and unequal distribution of property.” He does not mean, however that *property* is the ultimate cause of factions. Rather, the unequal distribution of property and the factions that naturally result (“Those who hold and those who are without property have ever formed distinct interests in society”) have at their root a more fundamental principle, the nature of man.

³⁵ *Federalist 51*.

entirely different, if necessary at all: “If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.”³⁶ But because of the depravity of man, not only was government necessary, but “deliberate precautions and provisos” were needed to secure an enduring liberty: “In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.”³⁷ The first principle of Madisonian constitutionalism, therefore, was realism concerning the nature of man. Apart from this fundamental truth, there remains no real justification for the elaborate (and infamously inefficient) system of checks and balances inherent in the constitutional system he helped to design. J. Budziszewski adds that “balanced government is complicated government. The more complicated the government, the more difficult to know whom to blame when something goes wrong.”³⁸ That Madison would defend such an inefficient and complicated system is no surprise, however, once his anthropology is taken into consideration. As Ketcham puts it, “once a philosopher has divulged what sort of creature he takes man to be, both in fact and in potentiality, his arguments in other fields of inquiry are often readily anticipated.”³⁹

Therefore, realism concerning human nature is a necessary condition for religious liberty. Factions, whether public or private, pose a great and perpetual danger to the good of religious liberty. But factions cannot be eliminated without also eliminating liberty itself.

³⁶ Ibid.

³⁷ Ibid.

³⁸ J. Budziszewski, *The Revenge of Conscience: Politics and the Fall of Man* (Dallas: Spence Publishing Company, 1999), 64.

³⁹ Ralph Ketcham, “James Madison and the Nature of Man,” *Journal of the History of Ideas* 19, no. 1 (1958): 62. Hereafter “Nature of Man.”

Therefore, factions must be allowed to exist if society is to be genuinely free. But the political system in which factions are allowed to exist must have the capability of blunting the force of factions, thereby preventing any one of them from gaining an ascendancy which would threaten the liberty of others. In a nutshell, Madison's constitutional system was not an attempt to eliminate human depravity, but to withstand it.⁴⁰ Or, as Thomas Ascik put it: "The U. S. Constitution is the ultimate street-wise scheme."⁴¹ And by withstanding human depravity and the attendant ambition to power evident in factions, the mechanism of the system is *the* safeguard against tyranny, whether political or religious. Such realism about human nature, however, is not a *sufficient* condition for religious liberty, for the realist view does not by itself secure any liberties. But it is clearly a *necessary* condition for the constitutional plan to circumscribe the effect of factions, and therefore, it is a necessary condition for the preservation of religious liberty.

Madison's Anthropology: The Sources

Madison was not wholly negative concerning human nature, though he certainly considered depravity to be universal: "Had every Athenian citizen been a Socrates; every Athenian assembly would still have been a mob."⁴² But in addition to his observations about human depravity, he clearly saw something about which to be optimistic as well: "As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust: So there are other qualities in human nature, which justify a certain portion of esteem and

⁴⁰ See Ketcham, *James Madison*, 297. Ketcham observes: "Unlike some Enlightenment thinkers, who emphasized human goodness to the point of blaming all evil on social conditions, Madison sought always to recognize and take into account the limitations of human nature."

⁴¹ Thomas Ascik, "In Republican Government, the Legislative Authority Necessarily Predominates," in *Restoring the Constitution 1787-1987: Essays in Celebration of the Bicentennial*, ed. H. Wayne House (Dallas: Probe Books, 1987), 59.

⁴² James Madison, "Federalist 55." Reprinted in Bernard Bailyn, ed., *The Debate on the Constitution: Part Two* (New York: The Library of America, 1993), 204.

confidence. Republican government presupposes the existence of these qualities in a higher degree than any other form.”⁴³ According to Ralph Ketcham, “late in life [Madison] wrote that the Republican and Federalist Parties ‘had its origin in the confidence of the former in the capacity of mankind for self-government, and in the distrust of it by the other... and is the key to many of the phenomena presented by our political history.’”⁴⁴ Again, Ketcham observes: “That mankind ought to be free, and indeed *had* to be free if life was to be human rather than brutish, was an unquestionable axiom to Madison.”⁴⁵ These observations lead to an important point: While Madison designed a constitutional scheme that could survive the *depravity* of human nature, at the same time he explicitly trusted man’s ability to self-govern owing to his belief in the *dignity* of human nature.⁴⁶ Madison was a realist, but he was no cynic. Thus, by acknowledging both the depravity and the dignity of human nature, Madison thereby embraced an anthropology that was thoroughly consistent with the anthropology revealed in Scripture. This view is shared by Mark Noll, Nathan Hatch, and George Marsden: “Madison’s Tenth Federalist and much of his other work possesses the same mingled opinion of humanity that Scripture does, of humankind as both sinner and potential servant of God.”⁴⁷

Stephen Carter writes that while it is unlikely that Americans at the dawn of the twenty-first century “would vote for an avowed atheist as President, few voters seem to want a president

⁴³ Ibid.

⁴⁴ James Madison, Letter to William Eustis, May 22, 1823, quoted in Ketcham, “Nature of Man,” 62-63.

⁴⁵ Ketcham, “Nature of Man,” 62.

⁴⁶ No attempt is made here to engage the political ramifications of the mortality or immortality of the soul. As Montesquieu noted, there have been good political systems that wrongly denied the immortality of the soul, and very poor systems that rightly affirmed it. Though the dignity and depravity of man certainly entails a particular view of the soul, the immortality question is beyond the scope of this paper and, while certainly important for a comprehensive political philosophy, is not central to this thesis. See Charles de Secondat Montesquieu, *The Spirit of Laws*, Translated and edited by Anne M. Cohler, Basia Carolyn Miller, and Harold Samuel Stone (New York: Cambridge University Press, 1995), 472-73.

⁴⁷ Mark A. Noll, Nathan O. Hatch, and George M. Marsden, *The Search for Christian America* (Westchester, IL: Crossway Books, 1983), 87.

whose belief in God actually matters.”⁴⁸ In much of today’s political discourse, says Carter, religion has been trivialized to the point that we hardly expect, or want for that matter, the personally-held beliefs of a public official to make any difference in the way that he legislates, governs, or judges. It is, of course, quite impractical to expect a public official to perfectly cordon off his private judgments in the course of his public service. Even beyond the mere impracticality, however, it is in reality either a) impossible to actually do; or at least b) impossible to detect exactly when it is being done. Even so, the eighteenth-century America in which Madison developed and defended his political theory did not seem to share our present paranoia of religious belief. And it seems fair to conclude that Madison viewed religion not as a disease to be quarantined but as a positive influence vital to public life. But the key is this: Madison was no mere legislator, no mere governor, and no mere judge. If he truly was “the father of the Constitution,” and if his view of human nature was the first principle of his constitutional philosophy, then we are left with this conclusion: his “checks and balances” government, that system which purportedly provided *the* security for religious liberty, was predicated upon what one might plausibly describe as a “national anthropology.”⁴⁹

So what might be said about the source(s) of Madison’s anthropology?⁵⁰ And how is it germane to today’s discussions concerning religious liberty in America? As for the former question, the answer is bound up in a controversy over Madison’s religious/philosophical

⁴⁸ Stephen L. Carter, *God’s Name in Vain: The Wrongs and Rights of Religion in Politics* (New York: Basic Books, 2000), 63.

⁴⁹ Incidentally, Article IV, Section 4 of the Constitution mandates that all new states also have a republican form of government. This is further evidence of how unequivocal the Framers were about their view of human nature.

⁵⁰ In the end, the overall argument of this paper does not depend on locating the source of Madison’s views. Accepting or refuting one’s ideas because of where he got them is a form of *ad hominem* called “the genetic fallacy,” which consists in ‘refuting’ an idea by showing some suspicious *psychological origin* of it.” [see Peter Kreeft, *Socratic Logic* (South Bend, IN: St. Augustine’s Press, 2004, 81)]. Regardless of what sources may or may not have influenced the anthropology of James Madison, the end result was a view of human nature that is consistent with Scripture. Therefore, arguments to the contrary that portray Madison as an infidel who thoroughly imbibed the radical enlightenment spirit have no direct force against the present argument concerning the nature of Madison’s anthropology, the impact it had on his constitutional design, and the subsequent safeguards provided for religious liberty. What does matter, however, is whether Madison’s anthropology is *true*.

outlook that is not likely to be satisfactorily resolved soon, if ever, and certainly not in this paper.⁵¹ Some scholars, like Thomas Lindsay, regard Madison as not just hostile to religious establishments, but to religion itself.⁵² Another view, expressed by John M. Murrin, is that Madison and many of his founding brothers were self-deceived about their religious disposition: “Jefferson and Madison along with George Washington, John Adams, Benjamin Franklin, and nearly all the Founding Fathers claimed to be Christians; but, by virtually any standard of doctrinal orthodoxy, hardly any of them was.”⁵³

A rather different conclusion is reached by Garrett Ward Sheldon, who unequivocally attributes Madison’s constitutional philosophy to his Christian worldview.⁵⁴ In Sheldon’s view, the Calvinism that Madison imbibed in his early and collegiate education was especially critical to the formation of his political theory in that it “provided a vision of human nature and political society as volatile and imperfect, always in need of balancing and moderation.”⁵⁵ Sheldon argues that Madison’s anthropology is the product of a robust Calvinist worldview, one which was solidified under the tutelage of the Reverend John Witherspoon during Madison’s years at Princeton.⁵⁶ Taking a bit more moderated viewpoint, Ralph Ketcham nevertheless agrees with Sheldon’s basic thesis: “Though much of the Christian aspect of Madison’s schooling was relatively perfunctory and he seems never to have been an ardent believer himself, he nonetheless year after year undertook his studies from a Christian viewpoint. Furthermore, he never took an antireligious or even an anti-Christian stance, and he retained the respect and

⁵¹ See also Derek H. Davis, *Religion and the Continental Congress 1774-1789: Contributions to Original Intent* (New York: Oxford University Press, 2000), 61-64.

⁵² Thomas Lindsay, “James Madison on Religion and Politics: Rhetoric and Reality,” *The American Political Science Review* 85, no. 4 (1991): 1321.

⁵³ John M. Murrin, “Religion and Politics in America from the First Settlements to the Civil War,” in *Religion and American Politics: From the Colonial Period to the 1980s*, ed., Mark A. Noll (New York: Oxford University Press, 1990), 29.

⁵⁴ Sheldon, xii.

⁵⁵ *Ibid.*, xi.

⁵⁶ *Ibid.*, 13-14.

admiration of the devoutly orthodox young men with whom he studied at Princeton. It seems clear he neither embraced fervently nor rejected utterly the Christian base of his education. He accepted its tenets generally and formed his outlook on life within its worldview.”⁵⁷

Thus, for the present purposes, we might draw the minimalist conclusion that Madison was no Jonathan Edwards, but neither was he the American equivalent of a French *philosophe*. Joseph Loconte summarizes this idea: “Madison almost certainly was not the devout Christian that some conservatives make him out to be. Yet neither was he the Enlightenment skeptic of liberal imagination, determined to quarantine religion’s influence from public life.”⁵⁸ But, along with Loconte, we could probably even go one step further: “According to some scholars, Madison’s politics can’t be adequately understood without reference to his early religious experiences.”⁵⁹ And: “At the same time, Madison would have been instructed in a robustly biblical view of human nature: capable of virtue, yet deeply and completely fallen.”⁶⁰ Thus, it is reasonable to conclude that a) Madison clearly had influences in his life beyond orthodox Christianity; yet b) his general outlook on life, and therefore his outlook on human nature was consistent with Scripture and religious in nature.⁶¹

Some light is shed upon the apparent disparity among influences on Madison if we consider with Ketcham that, “in many respects, some of [John] Witherspoon’s classes must have been a kind of running debate between the orthodox Presbyterian’s view and the noxious and

⁵⁷ Ketcham, *James Madison*, 46-47.

⁵⁸ Joseph Loconte, “Faith and the Founding: The Influence of Religion on the Politics of James Madison,” *Journal of Church and State* 45, no. 4 (2003): 700.

⁵⁹ *Ibid.*, 701.

⁶⁰ *Ibid.*, 704.

⁶¹ A helpful insight is offered by Loconte, 705: “Most biographers regard Enlightenment texts, not the text of the Bible, as supremely important for Madison in this regard. . . . One weakness with this view is that it assumes no continuity between Christianity and the Enlightenment. Yet Locke and numerous thinkers that followed displayed a profound respect for Jesus and the moral authority of Scripture. Another difficulty is that America’s political class in the eighteenth century did not follow the radical deists in Britain and France. In America, the new emphasis on reason was seen as compatible with traditional Christian theism.”

nettlesome ideas of [skeptical philosopher David Hume].”⁶² That is, Madison was clearly exposed to Hume’s skepticism through the tutelage of Witherspoon. But being exposed to, or even influenced by a particular philosophy does not entail acceptance of that philosophy. It might simply mean that Madison was educated in the philosophical currents of the day, some of which were not necessarily inimical to Christian faith but instead bred an optimism that reason could be used to corroborate the claims of Scripture. This possibility is explored by Henry May: “In religion the rising view in the middle or late eighteenth century was what Conrad Wright has so fruitfully described as supernatural rationalism: the belief that intuition, experience, and reason will all prove to complement and confirm, rather than displace, the Christian revelation.”⁶³ In other words, and this is no surprise, not all of the orthodox in Madison’s day were fideists, nor were all the unorthodox strident rationalists. Rather, many, perhaps most, held that there was a harmony between faith and reason.⁶⁴ It seems fair to suppose that Madison attributed more power to naked reason than some “more conservative” Christians of his day would have. But it also seems fair to say along with Ketcham that while Madison may not have “long continue[d] to express [Christian essentials] in the same way as his teachers,” he never departed from his biblical roots.⁶⁵

Assuming the foregoing is correct, we can now ask: What does all this matter to our current deliberations over religious liberty? Importing the conclusion drawn from the syllogism above and the conclusions drawn thus far in this section, the following argument emerges:

⁶² Ketcham, “Nature of Man,” 73.

⁶³ Henry F. May, “The Problem of the American Enlightenment,” *New Literary History* 1, no. 2 (1976): 208.

⁶⁴ For an excellent overview of the relationship between faith and reason, see generally Etienne Gilson, *Reason and Revelation in the Middle Ages* (New York: Charles Scribner’s Sons, 1950).

⁶⁵ Ketcham, *James Madison*, 48.

1. In Madison's view, realism concerning human nature was a necessary condition for preserving religious liberty
2. Madison's realism concerning human nature was biblical in outlook
3. Therefore, a necessary condition for the preservation of religious liberty is a view of human nature that is biblical in outlook.

The point might seem rather trivial: *So what* if an anthropology consistent with Scripture is necessary for preserving religious liberty? It seems in general that Americans, indeed most if not all societies, take for granted that man has a good side and a bad side.⁶⁶ But while it is true that at first glance the claim seems rather pedestrian, it is worth repeating that our objective as a free people should be to *understand* the truths that have secured our liberties. Taking those truths for granted will do nothing to ensure the security of those freedoms for the next generation. Moreover, while at first glance it seems inconsequential that our Constitutional freedoms arose in part because of the Framers' general belief in the biblical view of man, the Supreme Court rendered it consequential by erecting a "high an impregnable wall" to interrupt the "type of interdependence between religion and state which the First Amendment was designed to prevent."⁶⁷ Though that wall has been scaled to some degree in the last twenty years, it still stands as an imposing barrier to (even implicit) religious truth within the public square. One is tempted to speculate that if James Madison were alive and designing the Constitution today, his religiously-informed anthropology would be by many *a priori* ruled out of bounds. His Christian education under Witherspoon would likely be considered more of a disqualification than a benefit. Had strict separationism been the norm two hundred years ago, it is conceivable that we

⁶⁶ That this reality is quite baffling to the cultural elites was made quite evident in the generally-bewildered reactions within the media to the good and bad extremes of human responses in the aftermath of Hurricane Katrina.

⁶⁷ Justice Brennan, *Abington*, concurring opinion. [374 U.S. 203, 236]

would not now have our present Constitution, and with it the religious freedoms that it guarantees by way of its anthropological realism.⁶⁸

The fact is that Madison's Christian view of human nature, to whatever extent it was *informed by Christianity*, clearly was well countenanced by his contemporaries. Barry Alan Shain writes that "not all of America's true elite who otherwise accepted that humans were innately flawed also adhered to the Christian dogma of this account. . . . [But] even these men held that the source of evil was internal, not external."⁶⁹ Moreover, "Americans were unified in their view of humans as creatures divided between two natures. . . . American rationalists should not therefore be confused with 18th-century French skeptics or latter-day atheists bereft of faith in a morally ordered and purposeful universe."⁷⁰ Thus, as it relates to the American constitutional system and the necessity of checks and balances, we might consider the Christian worldview as formative, but not normative. That is, not everyone had to believe it, but the fact that most did was a substantial factor in shaping the form of government. The question remains whether the Christian view of man could ever be abandoned entirely without resulting in great harm to our constitutional system. The answer seems to be an unequivocal "No." As Shain observes, "If humans are innately deformed and radically selfish (even if not 'evil'), the liberating social changes sought by progressive thinkers cannot rationally be sustained."⁷¹ According to George Carey, much of the "progressive" thinking of today includes calls for the modification or

⁶⁸ See Francis J. Beckwith, "Gimme That Ol' Time Separation: A Review Essay," *Chapman Law Review* 8, no. 1 (2005): 313-314. Beckwith writes: "According to this view, *the United States of America is a constitutional republic whose institutions presuppose and entail beliefs that are nonnegotiable and necessary to maintain the continuity and purpose of the nation*, including the rights of its people and the powers of its governments (both state and federal). The philosophical infrastructure of the American Republic consists of a cluster of ideals, beliefs, practices, and institutions that are best sustained by a people who see this cluster as grounded in certain unchanging moral truths that are religious in nature." (emphasis added)

⁶⁹ Barry Alan Shain, *The Myth of American Individualism: The Protestant Origins of American Political Thought* (Princeton: NJ: Princeton University Press, 1994), 228.

⁷⁰ *Ibid.*, 228-29.

⁷¹ *Ibid.*, 228.

elimination of the separation of powers.⁷² It seems unquestionable, thus, that the constitutional system goes hand-in-hand with the anthropology that necessitated many of its provisions. George Washington, on the eve of his exit from public service, had much different advice for his successors than some of the progressives would have for us today. Prudence calls for deference to our first President:

“The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create whatever the form of government, a real despotism. A just estimate of that love of power, and proneness to abuse it, which predominates in the human heart is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks in the exercise of political power . . . has been evinced by experiments ancient and modern; some of them in our country and under our own eyes. *To preserve them must be as necessary as to institute them.*”⁷³

The High and Impregnable Wall: Jefferson’s Bricks, Madison’s Mortar

“In republican government, the legislative authority necessarily predominates.”⁷⁴ This, Madison asserted, was due to the legislature being the power most accountable to the people, and therefore the least insulated from the danger of losing that power in the political process. Madison certainly recognized that all the powers of government could just as easily be accumulated by the legislative branch as by any other, and therefore the legislature required an internal check against its own power. Thus, Madison advocated a system of bi-cameralism “to divide the legislature into different branches; and to render them, by different modes of election, and different principles of action, as little connected with each other, as the nature of their common functions, and their common dependence on the society, will admit.”⁷⁵ In his retirement, however, Madison wrote to Jefferson about a different concern: “I am not unaware that the Judiciary career has not corresponded with what was anticipated. At one period the

⁷² See Carey, 151.

⁷³ George Washington, “Farewell Address,” Reprinted in Frohnen, 76. See also Bork, 139-141.

⁷⁴ Federalist 51.

⁷⁵ Ibid.

Judges perverted the Bench of Justice into a rostrum for partizan [sic] harangues. And latterly the Court, by some of its decisions, still more by extrajudicial reasonings & dicta, has manifested a propensity to enlarge the general authority in derogation of the local, and to amplify its own jurisdiction, which has justly incurred the public censure.”⁷⁶

The excessive accumulation of governmental powers within *any* branch is a breach of trust which should justifiably “incur the public censure.”⁷⁷ Many believe the Supreme Court has exercised just such an illegitimate accumulation over the last two or three generations.⁷⁸ Mark Levin writes that in general, “the Supreme Court in particular now sits in final judgment of essentially all policy issues, disregarding its constitutional limitations, the legitimate roles of Congress and the president, and the broad authority conferred upon the states and the people. The Court has broken through the firewalls constructed by the framers to limit federal and, especially, judicial power.”⁷⁹ Specifically addressing the Supreme Court’s First Amendment jurisprudence, Robert L. Cord writes: “In 1785, the desired relationship between government and religion was forged in the heat of the political process. Now, two centuries later, that relationship is primarily molded in the judicial process; unlike the citizens of 1785, we have become increasingly accustomed to government by judiciary.”⁸⁰ This “government by judiciary” has been an ever-increasing fear for many, especially since the *Everson* case of 1947, when “the wall” between church and state was officially built. While the Court employed Jefferson’s

⁷⁶ “James Madison to Thomas Jefferson,” 27 June 1823. Reprinted in Philip B. Kurland and Ralph Lerner, eds., *The Founder’s Constitution*, vol. 4 (Chicago: University of Chicago Press, 1987), 341.

⁷⁷ No mention is made here of the Executive Branch simply because of space limitations, not because there is not an equal danger of a power accumulation in that branch.

⁷⁸ See Bork, 1-129.

⁷⁹ Mark Levin, *Men in Black: How the Supreme Court is Destroying America* (Washington, DC: Regnery Publishing, 2005), 12.

⁸⁰ Robert L. Cord, “Church-State Separation: Restoring the ‘No Preference’ Doctrine of the First Amendment.” In House, 296.

metaphor, their apology primarily employed Madison's reasons. A brief survey of some of the major cases from *Everson* to the present is sufficient to illustrate.⁸¹

Everson v. Board of Education 1947.⁸² In the landmark *Everson* case, Justice Hugo Black codified the separationist viewpoint, pontificating that "the First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach."⁸³ Black defended his separationist doctrine with a history lesson rooted in the struggle for religious freedom on American soil, which "reached its dramatic climax in Virginia in 1785-86 when the Virginia legislative body was about to renew Virginia's tax levy for the support of the established church. Thomas Jefferson and James Madison led the fight against this tax. Madison wrote his great Memorial and Remonstrance against the law."⁸⁴

Yet, while Black presented a strong separationist argument, he nonetheless held that the New Jersey statute allowing taxpayer support for parochial school transportation did not violate the Establishment Clause. This seeming inconsistency prompted Justice Rutledge to argue in his dissent that Black, by allowing taxpayer support of religion, essentially betrayed his own principle. In defending an even more rigorous and strict separation than Black, Rutledge, like Black, turned to Madison and his authoritative role in Virginia's struggle for religious liberty and the passage of the First Amendment. Rutledge also placed particular emphasis on the Remonstrance, calling it "Madison's complete, though not his only, interpretation of religious liberty."⁸⁵ Rutledge interpreted the Remonstrance to mean also that "there cannot be freedom of

⁸¹ For a rebuttal to the excessive reliance on Madison's *Remonstrance*, see Cord, "Church-State," 318ff.

⁸² *Rosenberger v. University of Virginia* (1995) and *Locke v. Davey* (2004), though both decisions involve abundant references to Madison, have intentionally been passed over because they specifically deal with taxpayer support of religion, a subject beyond the scope of this paper. *Everson* is included because of its obvious significance beyond the single issue of taxation.

⁸³ 330 U.S. 1 (1947) at 18. See also John Witte Jr., *Religion and the American Constitutional Experiment*, 2nd ed (Boulder, CO: Westview Press, 2005), 190.

⁸⁴ 330 U.S. 1 (1947) at 12.

⁸⁵ *Ibid.*, at 37.

religion, safeguarded by the state, and intervention by the church or its agencies in the state's domain or dependency on its largesse."⁸⁶ His conclusion stated succinctly his interpretation of the First Amendment as seen through the eyes of Madison: "Now as in Madison's day it is one of principle, to keep separate the separate spheres as the First Amendment drew them."⁸⁷

Abington v. Schempp 1963. In *Abington*, rather than arguing a separationist interpretation, the Court forged a "wholesome neutrality" paradigm.⁸⁸ Justice Clark, writing for the majority, notes that "the views of Madison and Jefferson . . . came to be incorporated not only in the Federal Constitution but likewise in those of most of our States."⁸⁹ The views to which Clark refers are those expressed by Madison and Jefferson in the struggle for religious liberty in Virginia. Like Black and Rutledge in *Everson*, especially noted in Clark's opinion is Madison's *Remonstrance*. Justice Brennan's argument in this case was somewhat unique in that, by referring to it in a footnote, he at least gave Federalist 51 an honorable mention.⁹⁰

Wallace v. Jaffree 1985. Justice Rehnquist authored a dissenting opinion in this "moment of silence case" in which he argued that when one looks at Madison's contributions to the First Amendment, "we see a far different picture of [their] purpose than the highly simplified 'wall of separation between church and State.'"⁹¹ Building a case for an accommodationist paradigm,⁹² Rehnquist relied upon the very same historical record that gave us the separationist and neutrality paradigms, but instead concluded that Madison would not approve of any interpretation of the First Amendment "requiring neutrality on the part of government between religion and

⁸⁶ *Ibid.*, at 53.

⁸⁷ *Ibid.*, at 63.

⁸⁸ Witte, 193.

⁸⁹ 374 U.S. 203 (1963) at 214.

⁹⁰ *Ibid.*, footnote 8.

⁹¹ 472 U.S. 38 (1985) at 92.

⁹² Witte, 191-92.

irreligion.”⁹³ Rehnquist rebutted the conclusion from *Abington* that “the views of Madison and Jefferson . . . came to be incorporated . . . in the Federal Constitution”⁹⁴ Nevertheless, the future Chief Justice insisted that “the true meaning of the Establishment Clause can only be seen in its history. As drafters of our Bill of Rights, the Framers inscribed the principles that control today.”⁹⁵ In sum, as has been done by the Court numerous times since *Everson*, Rehnquist appealed solely to Madison’s role in the passage of the First Amendment to derive the principles by which we can correctly interpret the prescribed relationship between church and state.⁹⁶

Lee v. Weisman 1992. The *Lee* Court once again called upon Madison to defend its interpretation of the First Amendment. Justice Kennedy,⁹⁷ writing for the majority, argued from the *Remonstrance* that “James Madison, the principal author of the Bill of Rights, did not rest his opposition to a religious establishment on the sole ground of its effect on the minority. A principal ground for his view was: [E]xperience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation.”⁹⁸ Justice Blackmun also turned to the *Remonstrance* for support of his concurring opinion: “Madison warned that government officials who would use religious authority to pursue secular ends ‘exceed the commission from which they derive their authority, and are Tyrants. The People who submit to it are governed by laws made neither by themselves nor by an authority derived from them, and are slaves.’”⁹⁹ Justice Souter,¹⁰⁰ also concurring, argued largely on the

⁹³ 472 U.S. 38 (1985) at 98.

⁹⁴ *Ibid.*, at 99.

⁹⁵ *Ibid.*, at 113

⁹⁶ Rehnquist’s appeal to history went well beyond Madison, but his references to Madison did not include any of the constitutional principles defended in the *Federalist Papers* but focused solely on Madison’s role in the First Amendment.

⁹⁷ Advocating the “coercion” test. See Witte, 197-98.

⁹⁸ 505 U.S. 577 (1992) at 590.

⁹⁹ *Ibid.*, at 608.

strength of Madison's influence on the making of the First Amendment and his applications of it as president. Justice Scalia, joined by Justices Rehnquist, White, and Thomas in his dissent, mentioned Madison only in so far as our fourth President acknowledged the young nation's dependence upon God in his inaugural address.¹⁰¹

Perry v. Van Orden 2005 and *McCreary County v. ACLU 2005*.¹⁰² Among the numerous appeals to Madison in these two cases, a couple of noteworthy references stand out. Justice Stevens read Madison's letter to Edward Livingston in 1822 as proof positive that Madison was a separationist like him and not an accommodationist like Rehnquist. Justice Souter, dissenting in *Perry*, pointed to the Remonstrance to once again advocate a doctrine of neutrality. In *McCreary*, Souter conceded on the basis of Madison's correspondence with the Reverend Adams that "a sensible standard [of neutrality] . . . cannot possibly lay every issue to rest, or tell us what issues on the margins are substantial enough for constitutional significance, a point that has been clear from the Founding era to modern times." Please note carefully, however, this portion of Scalia's dissent in *McCreary*:

Justice Stevens' writing is largely devoted to an attack upon a straw man. . . . But I have not relied upon (as he and the Court in this case do) mere "proclamations and statements" of the Founders. I have relied primarily upon official acts and official proclamations of the United States or of the component branches of its Government The Court and Justice Stevens, by contrast, appeal to no official or even quasi-official action in support of their view of the Establishment Clause--only James Madison's Memorial and Remonstrance Against Religious Assessments, written before the federal Constitution had even been proposed, two letters written by Madison long after he was President. . . .

Scalia's critique was intended as a return volley to Stevens' dissent in *Perry*. The irony, however, is that the same criticism could be made about the entire SCOTUS since 1947,

¹⁰⁰ Defending the "neutrality" test. See Witte, 198-99. Souter's treatment of Madison at least goes beyond the *Remonstrance* to include the "Detached Memoranda," and the letter to E. Livingston, but still lack any argument based on the constitutional principles found in the Federalist papers

¹⁰¹ 505 U.S. 577 (1992) at 634.

¹⁰² Pagination not available.

including Scalia himself. While Madison unquestionably played a lead role in Virginia's struggle for religious liberty, and while he was without dispute a primary contributor to the passage of the First Amendment, of far greater significance to Madison's contribution to religious liberty was the constitutional principles he defended in the Federalist papers. And these, despite the near obsession with Madison over the last half century of church-state jurisprudence, have been almost completely ignored by the Supreme Court.

Liberty and Apologetics: Scaling the Wall of Strict Separationism

The Court has declared: "We are a religious people whose institutions presuppose a Supreme Being."¹⁰³ As we have seen, however, our institutions also, and perhaps even more immediately, presuppose a biblical anthropology.¹⁰⁴ This the Court has seemingly ignored. But is Madison's view of human nature a view that must prevail in order for our constitutional guarantees of religious liberty to prevail? In other words, is the question of religious liberty unanswerable without reference to the question of human nature? And if so, who gets to decide how the question of human nature is answered today? If the biblical view of man is indeed the necessary condition of American constitutionalism, then the "impregnable wall" must necessarily be scaled at least at the point where the question of human nature is concerned. Continued rational support for the constitutional system of checks and balances necessitates that there be *some* interdependence between church and state. After all, it was at least in part the anthropology of the church that gave the American state its particular structure and character.

¹⁰³ Justice Douglas, *Zorach v. Clauson*, 343 U.S. 306 (1952), delivering the opinion of the Court.

¹⁰⁴ This is not to suggest that what a society thinks about man is more important than what it thinks about God. The assertion here is simply that Madison's view of human nature is more *immediately* relevant to the present argument. Ralph Ketcham summarizes that the political views that Madison learned from Witherspoon "had at the foundation... a supreme emphasis on the *ends*, not the *means*, of government." See Ketcham, *James Madison*, 43. That is, to Madison (via Witherspoon) good government had as its final cause the ability to restrain the wickedness of man. Thus, while a Christian view of God was certainly presupposed in Madison's worldview, the immediate constitutional concern was realism concerning human nature.

John Courtney Murray laments that “American culture, as it exists... would seem to be erected on the triple denial that has corrupted Western culture at its roots, the denial of metaphysical reality, of the primacy of the spiritual over the material, of the social over the individual.”¹⁰⁵ It is the denial of metaphysical reality that is of primary importance here. The question of human nature, despite the “profound materialism”¹⁰⁶ of American culture, cannot be adequately addressed by either the hard sciences or the social sciences. The question of human nature is not merely a biological, zoological, sociological, or psychological inquiry, but more fundamentally it seeks to know: *What is man?* The “what” involves the question of essence or nature: *What is the nature of man?* The “is” involves the question of being, or existence: *How can man’s existence be explained?* In other words, the question of human nature is a philosophical question that necessarily involves metaphysics, the philosophy of being. As George P. Klubertanz and Maurice R. Holloway explain, the philosophy of being answers questions that no other discipline can address, like “What is it to be real? Why do we call a thing a being? . . . What is an individual? A person? Is there a cause of the various beings which we experience? Is this cause God?”¹⁰⁷ As the authors point out about these types of inquiries, “no other organized knowledge asks or answers them and . . . no collection or summary of other knowledges [sic] touches on them.”¹⁰⁸ In addition to the metaphysical question, the nature of man also consists of a cluster of questions that are fundamentally religious. Does man have intrinsic dignity? If so, does man derive his dignity from God, or from some other source? What is the source of man’s errors and transgressions? Is man the measure of all things? Does man

¹⁰⁵ John Courtney Murray, “The Construction of a Christian Culture,” in ed., J. Leon Hooper, S.J., *Bridging the Sacred and the Secular: Selected Writings of John Courtney Murray, S.J.*, (Washington, D.C.: Georgetown University Press, 1994), 102.

¹⁰⁶ Ibid.

¹⁰⁷ George P. Klubertanz and Maurice R. Holloway, *Being and God: An Introduction to the Philosophy of Being and to Natural Theology* (St. Louis: Saint Louis University, 1963), 12.

¹⁰⁸ Ibid.

have a purpose that transcends the state? In sum, metaphysics and religion both address questions about human nature to which healthy democracies must seek answers if they are to remain healthy. The very issues of man's alleged ability to self-govern and the supposed restrictions that must necessarily be in place can only be adequately answered if as a culture we are willing to transcend a materialist worldview. In the end, the question of "How should man be governed?" cannot be answered unless we first ask, "What is man?"

Russell Kirk warned that "If a culture is to survive and flourish, it must not be severed from the religious vision out of which it arose."¹⁰⁹ America's religious vision at the founding was unquestionably Christian in nature. As Murray writes: "At the basis of our culture is a spiritual idea, a religious truth that has been impoverished and deformed. The truth, I mean, that man is a person, sacred, inviolable, gifted with the divine prerogative of freedom and charged with all the responsibilities of that gift, that reach horizontally out to the farthest confines of human life and vertically up into the heart of eternity. The world owes that truth to Christianity; it did not exist before Christ; it came to earth in him."¹¹⁰ Jacques Maritain similarly observed: "The Founding Fathers were neither metaphysicians nor theologians, but their philosophy of life, and their political philosophy, their notion of natural law and of human rights, were permeated with concepts worked out by Christian reason and backed up by an unshakeable religious feeling."¹¹¹

Murray's thesis was that "the traditional theology of the Incarnation must be the first creative principle of our Christian culture."¹¹² The present argument is not quite as ambitious, but merely submits that any "high and impregnable wall" that aims to sever the culture or the state,

¹⁰⁹ Russell Kirk, "Civilization Without Religion." Available at <http://orthodoxytoday.org/articles/KirkCivilization.php>, last accessed October 20, 2005.

¹¹⁰ Murray, 105.

¹¹¹ Jacques Maritain, "Reflections on America, III," accessed online October 19, 2005 at the Jacques Maritain Center of Notre Dame University, <http://www.nd.edu/Departments/Maritain/etext/reflect3.html>.

¹¹² Murray, 113.

in Kirk's words, "from the religious vision out of which it arose," is ultimately a threat against the continued health of that culture. Our constitutional system, a specific form of government that has served as the basic protection for religious liberty in this country, is predicated on a specific view of human nature, and makes little sense apart from that viewpoint. That specific anthropology arose out of a worldview largely inspired by a particular religious perspective. Given the exhortations from our forebears that to "preserve [the checks and balances] must be as necessary as to institute them," and from our contemporaries that our liberties "were the result of deliberate precautions and provisos, acts of statecraft which it behooves us to study and remember," it follows that every generation is therefore charged with the task of re-articulating and robustly defending the basic principle of our constitutional system to the end that we might preserve the fundamental safeguards that protect our religious liberty. The call, therefore, is for a vigorous and rational defense of the Christian view of man. Or, as Kirk put it: "The high necessity of reflective men and women, then, is to labor for the restoration of religious teachings as a credible body of doctrine."¹¹³ Restoring Christian doctrine as a credible body of doctrine is the task of apologetics. In this overall scenario, therefore, a classical Christian apologetic approach, one that finds common ground with non-Christians in general revelation and the natural law, becomes a key ingredient to preserving the system of checks and balances, and therefore, preserving essential liberties. J. Budziszewski exhorts: "The charge before us is to find ways to stir and arouse the same knowledge and memory [of general and special revelation] in the public square. . . . We are called to a public apologetics that connects the dots of our nation's fragmented moral consciousness, and reminds people of what they know already."¹¹⁴

¹¹³ Kirk, "Civilization Without Religion."

¹¹⁴ Budziszewski, 144.

While biblical anthropology is at the root of our constitutional protections for religious liberty, the Supreme Court has been subversive of that principle in two specific ways. First, while it has labored to prove that its First Amendment jurisprudence is in keeping with Madison's intentions, it has at the same time failed to carefully exegete the basic principles of Madison's constitutional design. It is that very constitutional design, with its sober realism about human nature, that provides a far better, and more enduring protection for religious liberty than, as Steven Smith puts it, "the dubious ability of nine Justices... to get things just right."¹¹⁵ Second, even as one of its own Justices admits, the Court now wields far more power than the Framers ever intended: "The Imperial Judiciary lives. It is instructive to compare this Nietzschean vision of us unelected, life-tenured judges – leading a Volk who will be 'tested by following,' and whose very 'belief in themselves' is mystically bound up in their 'understanding' of a Court that 'speak[s] before all others for their constitutional ideals' – with the somewhat more modest role envisioned for these lawyers by the Founders."¹¹⁶ Only at great peril to its own liberties does the public regard the Court merely as a disinterested, objective arbiter to the rivaling factions of a democratic republic. If Madison is to be believed, the Supreme Court is itself one of the many factions vying for power.¹¹⁷ It is worth repeating that while the Founders considered the Court to have a crucial role in the balance of power, they never envisioned the judiciary as *the* guardian of our liberties. Neither should we.

¹¹⁵ Steven D. Smith, *Getting Over Equality: A Critical Diagnosis of Religious Freedom in America* (New York: New York University Press, 2001), 68.

¹¹⁶ Antonin Scalia, dissenting in *Planned Parenthood v. Casey* (1992), reprinted in Ring, 129-30. See also Alexander Hamilton, "Federalist 78."

¹¹⁷ See Federalist 51: "But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of the others. The provision for defence must in this, as in all other cases, be made commensurate to the danger of attack. *Ambition must be made to counteract ambition.*" (emphasis added)

In the final analysis, the best hope for an enduring religious liberty is for some more of the bricks to be removed from the Court's "high and impregnable wall,"¹¹⁸ such that the state is no longer cut off from the worldview-source that helped give to it the basic structure by which it is supposed to operate. Rather than cordoning off church and state like they are intractable enemies, a more fair-minded approach is one that allows for a more symbiotic relationship. The "high and impregnable wall" not only wrongly presumes that the entities on either side of the wall belong to two different realities but also grants a strong presumption in favor of the state. The state has erected the wall, and reserves to itself the privilege of policing its boundaries.¹¹⁹

Since at the root of Madisonian constitutionalism was a metaphysically and religiously-informed anthropology, religious persons who continue to defend a view akin to Madison's must not be isolated from the political process simply because "they are religious" or because "they have religious motives." One might object that the government cannot or should not be in the business of adjudicating the divergent metaphysical claims of various religious groups. But this is a naïve objection. In reality, not only is the very structure of the government *itself* the product of a very specific metaphysical claim, but by not adjudicating claims within this most crucial subject, the state, in effect, would more or less take either relativism or agnosticism as a default position. The state, however, cannot accept that all views of human nature are equally valid without at the same time being in the unenviable position of defending an implicit denial of the law of non-contradiction. For while views in opposition to one another may both or all be false, they cannot both or all be true. Neither can the state claim neutrality by saying that no one really knows the truth about human nature. For how could the state know that no one knows the truth unless it presumed to know the truth itself? One cannot know "not-true" unless he knows

¹¹⁸ This paper is not advocating a union of church and state or anything close to it. An institutional separation is justified on many grounds.

¹¹⁹ See Carter, 77.

“true.”¹²⁰ Simply put, it is undeniable that truth about reality is knowable¹²¹ – and the biblical view of human nature, adopted by Madison and embedded within our Constitution, is a truth claim about reality.¹²² The biblical view may be true or it may be false. But because our very form of government is based upon it, it can never be considered irrelevant. That being said, it is simple prudence to not leave these questions to happenstance, or worse, to blatant untruths.

If the Madisonian anthropology is indeed the true one, then any anthropology opposed to it is false and would ultimately be destructive of our Constitutional system if imbibed by the state. For instance, an anthropology that denied the ability of man to self-govern would be, quite obviously, inimical to republicanism. Moreover, as this paper has labored to demonstrate, an anthropology which denied that the source of man’s evil is internal would rightly call into question the rationale for the elaborate system of checks and balances. And an anthropology that denied that man has a purpose that transcends the state makes the state the source of our liberties, not the security for them.¹²³ Very simply, if the Madisonian viewpoint is true, then the very best arguments in its defense must be welcomed in the public square, even if those arguments are metaphysical or biblical in nature. There is no effort here to “establish a national religion.” There is no effort to tell people what to believe or how to discharge their duty to God. But if a biblical view of man is in part what gave the American state its structure, then the state should be able to embrace all who give a rigorous defense of that view. In the long run, our continued freedom to publicly offer such arguments could very well depend upon such a political apologetic.

¹²⁰ Norman Geisler, *Christian Apologetics* (Grand Rapids: Baker Book House, 1976), 20.

¹²¹ *Ibid.*, 133-136.

¹²² It is not being suggested here that the state has the responsibility for articulating an anthropology. It is simply being suggested that the state cannot help but assume one. Madison did not articulate one either; but he certainly embedded a *very particular one* into the very structure of the Constitution.

¹²³ In this regard, Jacques Maritain believed that one of his tasks was “to teach all men, whatever their religion or philosophy, the meaning of a limited state composed of human beings with a meaning and purpose beyond politics.” See James V. Schall, *Jacques Maritain: The Philosopher in Society* (New York: Rowman & Littlefield Publishers, 1998), 100.

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