



Death

of a Christian
Nation



Deborah Dewart



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Nation



What others are saying about *Death of a Christian Nation*:

“Here is a timely book that gives to Christians large amounts of useful biblical and legal wisdom as they face the growing attacks against expressions of biblical, social and cultural morality in the public square in once ‘Christian’ America. The author’s command of the legal issues, her knowledge of many specific cases, and her wise application of biblical truth is an important contribution to a ‘defense of the faith’ as it is expressed in Christian civic rights, social freedoms and moral responsibilities in contemporary America.”

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“A sobering and thorough account of the attacks on our religious freedom and heritage. Dewart’s book is a valuable resource on these important topics for both attorneys and lay persons.”

Alliance Defense Fund



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Deborah J. Dewart
ATTORNEY AT LAW

Death of a Christian Nation

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In loving memory of

H. CLAY REAVIS, JR.

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Foreword

To keep a civilization alive is no small task. A nation is born, often from turbulence, but always with promise of a better life for those persons who desire something better than what they experienced previously. But it is common that great nations of the past arose and fell within a few hundred years, the decay being so incremental that most of its citizens did not recognize the impending doom. The American experiment in liberty has gone down the same road. Those who came to the American shores sought for freedom under God. They wanted to escape persecution from those who wanted to dictate specific ways to think about and worship God. They wanted to be able to question political leaders without fear of punishment. In order to accomplish these goals they ventured out on a hazardous journey across the ocean and settled in places like Plymouth, Massachusetts and Jamestown, Virginia. But none of these travelers were attempting a government that had no religious foundation. They saw Christianity as the bulwark upon which to rest freedom. The recognition of the Supreme Deity was a necessary element in securing freedom for human beings, for without an absolute standard against which to measure human ideas and actions, there was no way to limit human despotism.

Freedom under God was the only way to assure freedom from statism in its various forms, whether it be the rule of a tyrannical king, rule by a class of elitists, or an overbearing president. By the

time America was two hundred years old, the descendants of the Puritans and Pilgrims had established a government with limited powers. They accomplished this by dividing powers between states under a federal rather than a national government. Powers that were not specifically delegated to the federal government were reserved to the states or to the people. Obviously, these attempts to curb the insatiable appetites of politicians have been reversed over the last hundred years, with the people and states maintaining less power and a bloated federal government seeking national power over everything, albeit in the name of ministering to the general welfare of the people.

A truly free and democratic society must understand why it has become that way; freedom is no accident. A truly democratic system provides so much more than the ability to cast a vote, which some people believe to be the quintessential exercise of liberty. Saddam Hussein had voting in Iraq, even as President Mubarak has done in Egypt, with foregone conclusions, due either to government pressure or to the limited choice provided. The ballot has little value when those who vote have limited options for whom to vote, or they have little idea for what they are voting. The “liberty tree” in a constitutional republic includes the fruits of free speech, religion, and association, and that governmental leaders should derive their powers from the people. Yet these basic freedoms are being undercut in the United States. The general electorate has become uninformed about the nature of the proper limits of the federal government under our Constitution so that they don’t even understand nor recognize the decay that is eating the foundation from under us.*

The tree of liberty has begun to rot at the roots, with license in the name of liberty, intolerance in the name of tolerance, rejection of *e pluribus unum* (out of many, one) in the name of diversity, repression of legitimate verbal disagreement in the name of “hate” speech, the exclusion of religion from the public square in the name

*“Many more Americans remember that Michael Jackson sang ‘Beat It’ than know that the Bill of Rights is part of the Constitution.” (<http://www.jeffersontoday.org/2009/12/04/83-percent-of-us-adults-fail-test-on-nations-founding/>)

of separation of church and state. Our founders would not recognize the current tree from the one that they planted. Though our currency reads “In God We Trust”—a slogan found in the Supreme Court building and court rooms throughout the country—we trust little in the God worshipped by our founders, who gave us both life and liberty (Thomas Jefferson, *Summary of the Rights of British America*, July 1774).

There is considerable confusion in the minds of the people of the United States, and its leaders, in believing that rights may be given by the government for every desire and whim of the people. If a special interest group wants to do something contrary to the public good or public virtue as understood historically in human cultures or western jurisprudence (the basis of our law), ostensibly it has a right to do so and it should be protected by law. This civil right protection is not only to protect the behavior of a group, and as individuals, but prohibiting those who want to criticize such immoral behavior. This, however, may shut down political discourse within the public arena, as well as violate the ethical conscience of citizens. What happens in such cases is that guaranteed rights under the Bill of Rights of the U. S. Constitution lose their force in lieu of a supposed new right. Some of the misunderstanding comes from wrongly reading the Declaration where we are granted life, liberty, and the pursuit of happiness. What is usually not stated, however, is that these rights articulated by the Declaration are built upon the truth that we are under the laws of nature and the laws of nature’s God and not civil rights merely given by the government. There is an objective and absolute standard. The equality that we are to experience under the law relates not to some superficial and forced equality contrary to nature but to the fact that God created us with rights. The Creator has given an inalienable right to life and yet abortion reigns in our land under a humanly created right of “privacy.” The Creator has provided for liberty, and yet the government denies liberty of actions and conscience for persons who do not want to allow immoral acts in their own places of residence or business, or the lawful use of their personal and real property. Moreover, the Creator has given us the right to pursue happiness, but in the days of the Founders this referred to pursuing

“blessedness” or bringing fulfillment to our lives in view of what God has given to us.

Progressives of today, unlike liberals of the eighteenth century, want to promote humanistic values contrary to the righteous virtues assumed, though not consistently practiced, in the founding of our nation, of moral responsibility and public virtue that reflected the Judeo-Christian worldview. Any civil or governmental rights were to be founded on human rights given by the Creator as stated in Declaration and articulated in the Constitution. The Declaration was in fact the theological foundation of the U. S. Constitution.

Deborah Dewart, in her book, *Death of a Christian Nation*, understands what I have said to this point. She recognizes that when civil law promotes immoral actions and anti-religious discrimination, the death of a nation is at hand. She correctly perceives that a righteous nation must be built on righteous laws and that in turn on the unchanging character of a righteous Creator. In the name of liberty and rights, America is becoming enslaved to puerile and ignoble “rights” that eat at the roots of the liberty tree and are a rejection of the principles that gave life to this great country. For a “mess of portage” we are selling our birthright as a people. I recommend her book as a *cure* for wrong thinking and correction to put us back on the right path envisioned by our Founders.

H. Wayne House, Th.D., J.D.

Introduction

My people are destroyed for lack of knowledge (HOSEA 4:6 ESV).

American Christianity is under attack. From shore to shore, cases are legion. Believers need knowledge. They need to know how fellow Christians are suffering for their faith right here in America. They need to know how current laws impact their ability to apply biblical principles in the workplace. They need to know their Bibles. They need to know where to turn for help. Without this knowledge, our “Christian” nation will die.

Some believers object to political action. After all, the church’s mission is to preach the gospel, and we tread on dangerous ground when we perceive non-Christians as *the enemy* rather than persons who need Christ. We cannot idly stand by while fellow believers suffer serious legal consequences for practicing their faith. Moreover, our freedom to preach the gospel is rapidly diminishing, and preservation of that freedom is vital to the church and its mission. We must never forget our primary mission by becoming entangled in political warfare and neither can we hide our heads in the proverbial sand.

This text was inspired by my writing of an amicus brief¹ in a case decided by the California Supreme Court, where a homosexual

woman sued two Christian medical doctors and a clinic for their refusal to perform a fertilization procedure enabling her to become pregnant with a child she planned to raise with her female partner. California has a broad sweeping civil rights law, the *Unruh Act*, that protects against all sorts of discrimination, including sexual orientation. This anti-discrimination law, covering every imaginable business establishment, is in some circumstances a frontal assault on the religious liberties of Christians who peacefully apply biblical principles in their businesses. Stiff legal penalties await a Christian contractor who refuses to build a temple for a cult or a Christian photographer who declines to take pictures for a same-sex wedding ceremony. A Christian lawyer could face a lawsuit and/or professional discipline for refusing to handle an adoption for a same-sex couple.

The lesbian plaintiff in California gave birth to a baby boy in 2001 after the Christian doctors referred her to another physician and even offered to pay her additional costs. Yet the case continued to wind its way through the courts until the final decision seven years later. Activists pursued the matter, setting dangerous precedent that threatens to crush the religious liberties on which America was founded. Under the guise of discrimination and access to public accommodations, homosexual activists attempt to force their opponents not only to tolerate but also to actively promote their morally objectionable agenda. This is a subtle form of slavery, compelling individuals to act against their deeply held religious convictions or face steep legal penalties. Such penalties include oppressive fines, professional displacement, or even shutting down a business. Battles rage on related fronts, as homosexuals demand the right to marry, adopt children together, divorce, and indoctrinate public school students. The homosexual agenda is setting the legal stage for persecution in our country unless we act wisely and swiftly to turn the tide.

But the homosexual agenda, dangerous as it is, is not the only threat. Christians are sometimes denied the right to speak on public streets about the moral issues of our day. Public schools muzzle our young children when they bring their faith into the classroom. College and graduate students risk their academic standing when

they mix faith with “academic freedom.” Nurses and pharmacists are demoted or even fired for refusing to participate in abortion or dispense the morning after pill. The public square erases religious expression as activists challenge prayer, nativity scenes, Ten Commandments displays, the Pledge of Allegiance, and even the simple inscription, *In God We Trust* on our coins. Newly minted civil rights, including sexual deviation and infanticide, dominate the American legal scene while religious wrongs are perpetrated on Christians who believe the First Amendment still protects their right to peacefully speak and practice their faith. There are multitudes of challenges, and we can only skim the surface in one book. However, skim it we must, because it’s imperative that concerned Christians be equipped with both biblical and legal wisdom to face the challenges of our day.

Part One

Sliding Down Slippery Slopes

One

Whatever Happened to “Christian” America?

And if it is evil in your eyes to serve the Lord, choose this day whom you will serve . . . but as for me and my house, we will serve the Lord (JOSHUA 24:15 ESV).

Blessed is the nation whose God is the Lord (PSALM 33:12 ESV).

On October 10, 2004, eleven Christians were arrested in Philadelphia for quoting the Bible at the annual Philly Pride homosexual “Outfest.” Charges were ultimately dropped, and these believers sued the city officials who violated their free speech rights. Sadly, the Third Circuit Court of Appeals dismissed their case.¹

*I*n the beginning, God blessed America. Christianity was the bedrock of this country. People found a safe refuge when they came to our shores to escape religious tyranny abroad. The right to freely worship God was guaranteed with the drafting of our Constitution and the Bill of Rights. The biblical principle of morality is the basis of our laws. America is not a theocracy like ancient Israel.

Early Americans chose to serve the Lord and establish a nation where citizens could freely worship God according to conscience and practice biblical principles without fear of state retribution. A nation whose God is the Lord.

Our founders repeatedly affirmed their reliance on the God of the Bible. Thomas Jefferson, who first penned the often-quoted phrase *separation of church and state*, cautioned against discarding our religious roots:

And can the liberties of a nation be thought secure when we have removed their only firm basis—a conviction in the minds of the people that these liberties are the gift of God? That they are not to be violated but with His wrath? Indeed I tremble for my country when I reflect that God is just: that His justice cannot sleep forever.²

Benjamin Franklin, citing Scripture, issued a similar warning to early Americans: “If a sparrow cannot fall to the ground without His notice, is it probable that an empire can rise without His aid? We’ve been assured in the sacred writing that, ‘Except the Lord build the house, they labor in vain that build it.’”³

John Adams, our second President, would be accused by today’s liberals of violating the sacred wall of church-state separation when he said that: “We have no government armed with power capable of contending with human passions unbridled by morality and religion. . . . Our constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other.”⁴

For decades, courts at all levels presupposed that America was a Christian nation. An early Pennsylvania case resulted in a man’s blasphemy conviction for speaking against Christianity and calling the Holy Scriptures a mere fable. The ACLU would have loved to litigate this one.

Christianity—all-inclusive Christianity—is, and always has been a part of the common law of Pennsylvania; This Christianity is without the spiritual artillery of European countries, for this Christianity was one of the considerations of the royal charter. The very basis of what William Penn founded was not Christianity based on any particular religious tenets, nor Christianity with an

established church, and tithes, and spiritual courts; but, Christianity with liberty of conscience to all men.⁵ A case that reached the U.S. Supreme Court in 1892 based its decision on America’s Christian foundation after citing extensive evidence. A church was charged with violating a federal law that prohibited employers from hiring foreign laborers after the church contracted with a pastor from England. They were charged with violating a federal law that prohibited employers from hiring foreign laborers. The Court found the law inapplicable to the church because of the overwhelming evidence that America was a *Christian nation*, and therefore, Congress would never have intended to charge a church with a misdemeanor for hiring a foreign pastor:

. . . no purpose of action against religion can be imputed to any legislation, state or national, because this is a religious people. This is historically true. From the discovery of this continent to the present hour, there is a single voice making this affirmation.⁶

These [numerous state court cases, the Declaration of Independence, the Mayflower Compact of 1620, and other sources], and many other matters which might be noticed, add a volume of unofficial declarations to the mass of organic utterances that this is a Christian nation.⁷

Even into the twentieth century, courts continued to confirm the Christian character of this country:

When he speaks of putting his allegiance to the will of God above his allegiance to the government, it is evident, in the light of his entire statement, that he means to make *his own interpretation* of the will of God the decisive test which shall conclude the government and stay its hand. We are a Christian people (Holy Trinity Church v. United States, 143 U.S. 457, 470–471), according to one another the equal right of religious freedom, and acknowledging with reverence the duty of obedience to the will of God. *But, also, we are a Nation with the duty to survive; a Nation whose Constitution contemplates war as well as peace; whose government must go forward upon the assumption, and safely can proceed upon no other, that*

*unqualified allegiance to the Nation and submission and obedience to the laws of the land, as well those made for war as those made for peace, are not inconsistent with the will of God.*⁸

This case that involved the naturalization of a Canadian, was later overruled as to the requirements for U.S. citizenship, but it stands as a testimony to the judicial affirmation that America is—or at least was—a Christian nation.

These early cases, affirming Christianity and its moral values, did not require non-Christians to engage in behavior contrary to their own consciences nor to actively endorse, practice, or otherwise facilitate the Christian religion. Citizens holding divergent religious viewpoints tolerated and lived at peace among one another. Times have radically changed, and now some aggressive non-Christians demand far more than peaceful coexistence. Under the guise of tolerance and diversity, Christians are being silenced in the expression of their faith and even compelled by law to actively facilitate political agendas repugnant to their deeply held religious convictions. If modern liberal activists have their way, the phrase *God Bless America* will ring hollow because our *Christian nation* will be dead. God will no longer bless a nation that has so thoroughly cast aside even the most basic tenets of His moral law.

Two

Lemon and Sherbert: Rebuilding the Wall of Separation

First of all, then, I urge that supplications, prayers, intercessions, and thanksgivings be made for all people, for kings and all who are in high positions, that we may lead a peaceful and quiet life, godly and dignified in every way (1 TIMOTHY 2:1–2 ESV).

When a Christian librarian in Kansas City, Missouri asked to have Sundays off because of her religious convictions, she was fired for insubordination. It took an action in federal district court to vindicate this Christian employee's rights under the Federal Civil Rights Act.¹ How could this happen in America—a nation under God founded on biblical principles with liberty and justice for all?

*F*or decades, Americans enjoyed the right to worship God according to conscience without fear of government intrusion. They were free to lead quiet godly lives—to worship God and spread His gospel. The original church-state wall of separation protected reli-

gious belief and practice, but recent court decisions have created a different wall that protects unbelievers from unwelcome exposure to religious expression. This new freedom *from* religion is rapidly replacing our freedom *of* religion. *Of* and *from* may be small words, but the difference is huge, because freedom *from* religion implies the right to inhibit the religious liberty rights *of* other people. That is what is happening in many American courts today. In fact, atheist legal activists in Madison, Wisconsin, actually formed an organization called the *Freedom From Religion Foundation*. This group claims to be an educational organization formed “to promote the constitutional principle of separation of state and church, and to educate the public on matters relating to nontheism.”² Similar organizations include the *American Civil Liberties Union*,³ *Americans United for the Separation of Church and State*,⁴ and *People for the American Way*.⁵

In order to understand the current legal climate, Christians need to trace the legal history, including the *Lemon* and *Sherbert* decisions along with other key decisions of the U.S. Supreme Court. The phrase—*wall of separation*—is found **nowhere** in the Constitution. This wearisome metaphor has generated mountains of confusion and litigation, leading Americans astray from the intent of those who drafted the First Amendment.

The two Religion Clauses of the First Amendment are contained in *one* phrase that seamlessly protects religious freedom:

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The Establishment Clause and the Free Exercise Clause are two complementary sides of the same coin: the first guards against improper state coercion and the second guards against unwarranted interference with religious exercise. They work together to guard religious freedom. The state may neither force a citizen *to* attend or support a church nor prevent a citizen *from* supporting or attending a church. Government may neither compel nor prohibit religious exercise.

Thomas Jefferson's "Wall"

The term—wall of separation—was coined by then President Thomas Jefferson in a letter to the Danbury Baptists in 1801. The Baptists were gravely concerned about the preservation of religious liberty. They feared that the new constitution did not clearly acknowledge religious freedom as an inalienable, God-given right rather than a privilege granted by the state that could someday be regulated or removed. Here is what Jefferson said in response to their concerns:

Believing with you that religion is a matter which lies solely between man and his God; that he owes account to none other for his faith or his worship; that the legislative powers of government reach actions only and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should “make no law respecting an establishment of religion or prohibiting the free exercise thereof,” *thus building a wall of separation between Church and State.*⁶ (author’s italics)

Jefferson recognized religious freedom as an inalienable, non-negotiable right that must be zealously guarded. The intention of the term—*wall*—was to protect the inalienable right to worship God, free from state interference. Unlike modern courts that cite the *wall* only when deciding Establishment Clause cases, Jefferson’s letter to the Baptists also encompasses the *Free Exercise Clause*. Today’s wall of separation, protecting unbelievers *from* religion, is *not the wall* erected by the founders to protect the right of believers *to* worship. The original wall has been demolished and a *counterfeit* now stands in its place.

This reconstruction project began when Jefferson’s wall of separation language was yanked away from its context. That first occurred in the *Reynolds* judgment, an 1878 decision rejecting the notion that religious liberty extended to the Mormon practice of polygamy. The Supreme Court cited Jefferson’s wall of separation language and stated that: “Coming as this does from an acknowledged leader of the advocates of the measure [the First

Amendment], it may be accepted almost as an authoritative declaration of the scope and effect of the amendment thus secured.”⁷

This one phrase extracted from Jefferson’s personal letter to a particular group of his political supporters has resulted in years of jurisprudence being built upon it.

The First Brick is Laid

A squabble over school bus money in 1947 hit the U.S. Supreme Court and began to revolutionize the way courts were to interpret the First Amendment.⁸ The Court considered a New Jersey law that reimbursed parents as discriminatory, because funds for bus fare were being provided to send children to either a public or private accredited school. This providing of funds was viewed as a violation of religious freedom because certain families were *excluded* who chose to send their children to private religious schools. The court reached the reasonable, unremarkable conclusion that the state law was constitutional.

The *Everson* decision includes considerable history about religious freedom in America. Early settlers came to our shores from Europe to escape the tyranny of laws that forced them to attend and financially support government-controlled churches. However, charters granted by the English Crown authorized religious establishments in America that compelled believers and unbelievers alike to support and attend churches in the new colonies. The same pattern of persecution developed. People were thrown in jail, fined, tortured, and even killed as believers of different faiths began to torment one another and force compliance with government-run religion. Legal penalties were enforced for all sorts of religious offenses: failure to attend church, failure to pay taxes and tithes to support state-established churches, and even expressions of disagreement with religious doctrines. Protestant sects, Catholics, Quakers, Baptists, and Jews were all impacted. Those who belonged to a minority faith had to endure persecution for worshipping God according to conscience.

This had to stop. Early Americans soon realized that religious liberty was best achieved and maintained under a government stripped of the power to either coerce or interfere with religion.

The “Virginia Bill for Religious Liberty,” originally written by Thomas Jefferson, says that, “Almighty God hath created the mind free. . . . [T]o compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical.”⁹

The *Everson* court reached a reasonable decision with considerable background about the true meaning and purpose of the Religion Clauses. But one short statement has been ripped out of context to justify a legion of litigation designed to erase our religious heritage and purge the public square of religious expression: “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.”¹⁰

Construction Continues

Following *Everson*, a pair of cases considered programs that allowed public school students to spend part of their classroom time in religion classes. In the 1948 *McCollum* case, the Supreme Court ruled against a “released time” plan where Jewish, Catholic, and Protestant teachers entered public schools at specified times each week, during regular school hours, to teach their particular religion course. Participation was strictly voluntary, and students who chose not to attend remained in their classrooms to study secular subjects. The Court concluded that the Establishment Clause was being violated. Why? Because public funds were being used to spread religious faith on tax-supported property during compulsory school hours. Even so, the Court acknowledged that: “Devotion to the great principle of religious liberty should not lead us into a rigid interpretation of the constitutional guarantee that conflicts with the accepted habits of our people.”¹¹

Four years later, the Court considered a challenge to a New York law that allowed public school children, with parental permission, to attend religious classes *off campus* during school hours. This time, the Court upheld the program because there was no coercion and no religious instruction occurred on public property or at public expense. The Court explained that:

The First Amendment does not say that in every and all respects there shall be a separation of Church and State. . . . Otherwise the state and religion would be aliens to each other—hostile, suspicious, and even unfriendly.¹²

Although *Zorach* was a favorable decision for religious liberty, an ominous separation had begun. Religion was being slowly squeezed out of public schools and public life. School children could only be exposed to religious faith outside the doors of the classrooms, yet it was in these classrooms where they spent most of their waking hours during the week.

A Firmer Foundation: Your Tax Dollars at Work

The Court can only decide a constitutional law case that is brought by a person who has standing to pursue it. “Standing” requires the plaintiff to have personally suffered an injury that will be remedied by a favorable court ruling. Mere disagreement is not enough.

But one important case in 1968 opened the floodgates to Establishment Clause litigation.¹³ Seven taxpayers sued, alleging that the First Amendment was violated when federal funds were used to finance instruction and educational materials in religious schools. Their sole interest in the litigation was the manner in which their tax dollars were used. Many of us might object to the government’s use of tax funds. Yet this 1968 case has multiplied the opportunities for activists to use their status as taxpayers to challenge every sort of government expenditure that might happen to benefit religious groups.

Lemon and Its Sour Seeds: The Bricks Pile Up

Salary supplements in Rhode Island and educational services in Pennsylvania converged at the steps of the U.S. Supreme Court in 1971.¹⁴ Rhode Island, being concerned about the quality of education in private schools, passed the Rhode Island 1969 Salary Supplement Act to authorize a 15% salary supplement to private