

BELIEVERS, THINKERS,  
A N D  
FOUNDERS

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HOW WE CAME TO BE  
ONE NATION UNDER GOD

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## NOTES

### Chapter One: Newdow's Conundrum

1. *Elk Grove Unified School District v. Newdow*, 542 U.S. 1 (2004).
2. *Ibid.*, official transcript of oral arguments, Oyez, [http://www.oyez.org/cases/2000-2009/2003/2003\\_02\\_1624](http://www.oyez.org/cases/2000-2009/2003/2003_02_1624).
3. T. S. Eliot, *Murder in the Cathedral* (Harcourt, Brace & World, 1963), p. 44.
4. "One Father, Back in Court, Indefatigable," *New York Times*, September 19, 2005.
5. Arthur E. Sutherland, "Book Reviews," *Indiana Law Journal* 40 no. 1 (1964), 83, 86 n. 7 (quoting, from memory, Rostow's unpublished 1962 Meiklejohn Lecture at Brown University). Sutherland was reviewing Walter G. Katz, *Religion and American Constitutions* (Evanston, IL: Northwestern University Press, 1963).
6. *Lynch v. Donnelly*, 465 U.S. 668, 716 (1984).
7. *Ibid.*, emphasis added, citations omitted.
8. *County of Allegheny v. ACLU*, 492 U.S. 573 (1989).

9. Davison M. Douglas, “Ceremonial Deism,” in *Encyclopedia of American Civil Liberties*, ed. Paul Finkelman (New York: Routledge, 2006), pp. 258–59.

## Chapter Two: The Pilgrims Pledge Their Allegiance . . .

1. The Gobitises’ surname was actually spelled Gobitas but changed in court opinions due to a clerical error. In a wild coincidence, the Barnetts’ surname was also misspelled in federal court records as Barnette. This chapter will use the Gobitis and Barnette spellings to avoid confusion.
2. Shawn Francis Peters, *Judging Jehovah’s Witnesses: Religious Persecution and the Dawn of the Rights Revolution* (Lawrence: University Press of Kansas, 2000), p. 27.
3. Billy Gobitis, *Letter to the Schoolboard* (November 5, 1935), in *The Right to Free Speech*, ed. Claudia Isner (New York: Rosen, 2001), p. 75.
4. Peters, *Judging Jehovah’s Witnesses*, pp. 36–38.
5. *Ibid.*, pp. 43–45.
6. *Minersville School District v. Gobitis*, 310 U.S. 586 (1940).
7. John Q. Barrett, “Recollections of West Virginia

- State Board of Education v. Barnette*,” *St. John’s Law Review* 81, no. 4 (Fall 2007), p. 761.
8. Peters, *Judging Jehovah’s Witnesses*, pp. 74–75.
  9. “The Courage to Put God First,” *Awake!* (July 22, 1993), p. 15. See also Peters, *Judging Jehovah’s Witnesses*, p. 79; see also “Members of Sect Beaten in Two Cities,” *New York Times* (September 21, 1948), describing attacks in Little Rock, Arkansas, and Klamath, Oregon.
  10. Peters, *Judging Jehovah’s Witnesses*, p. 245.
  11. *Ibid.*, pp. 90–92.
  12. Barrett, “Recollections of *West Virginia State Board of Education*,” pp. 770–71.
  13. “[W]e now believe [Gobitis] . . . was wrongly decided,” they wrote. “Certainly our democratic form of government . . . has a high responsibility to accommodate itself to the religious view of minorities however unpopular and unorthodox those views may be.” *Jones v. City of Opelika*, 316 U.S. 584, 623–24 (1942) (Murphy, J., dissenting).
  14. See *Ex Parte Quirin*, 317 U.S. 1 (1942), authorizing the military trials and executions of the saboteurs.
  15. Barrett, “Recollections of *West Virginia State Board of Education*,” p. 771.
  16. *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).

Chapter Three: . . . And the Park Rangers  
Pledge Theirs

1. Michael Newdow, speech upon presentation of “Freethinker of the Year,” before the 25th annual convention of the Freedom from Religion Foundation, Westin Horton Plaza Hotel, San Diego, CA, November 22, 2002.
2. Michael Newdow, interview, “Litigant Explains Why He Brought Pledge Suit,” *CNN Access*, June 26, 2002, <http://edition.cnn.com/2002/LAW/06/26/Newdow.cnn/>.
3. *Newdow et al. v. Congress of the United States et al.*, No. 05-cv-00017 (U.S. Court for the Eastern District of California, 2011), brief, <http://www.becketfund.org/wp-content/uploads/2011/06/06-01-06-Pledge-Opening-Brief-Final.pdf>.
4. *Newdow v. Rio Linda Union School District*, No. 05-17257 (9th Cir., 2010).
5. The dissent, by circuit judge Stephen Reinhardt, can best be described as apoplectic. It went on for more than 200 pages, arguing that “no judge familiar with the history of the Pledge could in good conscience believe . . . that the words under God were inserted into the Pledge for any purpose other than an explicitly and predominantly religious one.” *Ibid.*

Chapter Four: An Inescapable Question . . .

1. Blaise Pascal, *Pensées* (1669), Part 3, § 233.
2. The agnostic philosopher and former president of the Italian Senate Marcello Pera made a similar point: “To live as if God existed means to deny man that giddy feeling of omnipotence and absolute freedom which at first elates him and then depresses and degrades him. It means recognizing our finite condition and becoming aware of the ethical limitations of our actions.” See Marcello Pera, *Why We Must Call Ourselves Christians* (New York: Encounter, 2011), pp. 59–60.
3. *The Federalist Papers*, No. 84 (1788).
4. Alexander Hamilton, “The Farmer Refuted” (February 23, 1775), in *Papers of Alexander Hamilton*, ed. Harold C. Syrett et al. (New York: Columbia University Press, 1961–79), pp. 1:86–89, 121–22, 135–36.
5. John Adams, Inaugural Address, March 4, 1797, in *The Presidents Speak: The Inaugural Addresses of the American Presidents from George Washington to George Walker Bush*, ed. David Newton Lott (M. Hunter & H. Hunter, 2002), pp. 10–15.
6. William Henry Harrison, Inaugural Address, March 4, 1841, *ibid.*, pp. 81–82.

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7. John F. Kennedy, Inaugural Address, January 20, 1961, *ibid.*, p. 306.
8. Ronald Reagan, First Inaugural Address, January 20, 1981, *ibid.*, pp. 340–44.
9. Abraham Lincoln, Second Inaugural Address, March 5, 1864, *ibid.*, p. 102.
10. *McGowan v. Maryland*, 366 U.S. 420, 562 (1961).
11. *Zorach v. Clauson*, 343 U.S. 306, 313 (1952);  
*Lynch v. Donnelly*, 465 U.S. 668, 675 (1984);  
*Marsh v. Chambers*, 463 U.S. 783, 813 (1983);  
*Walz v. Tax Comm'n*, 397 U.S. 664, 672 (1970);  
*Abington Sch. Dist. v. Schempp*, 374 U.S. 203,  
213 (1963).
12. *McCreary County v. American Civil Liberties Union of Kentucky*, 545 U.S. 03-1693 (2005) (Scalia, A., dissenting).
13. Constitution of the State of New York, <http://www.dos.ny.gov/info/constitution.htm>.
14. G. K. Chesterton, *What I Saw in America* (1922; reprint ed. New York: Da Capo Press, 1968), p. 7.
15. *Ibid.*, p. 10.

Chapter Five: . . . With a Great Deal at Stake  
in the Answer

1. "Religion: Santayana's Testament," *Time*, March 25, 1946.
2. Paul Mariani, *Lost Puritan: A Life of Robert Lowell* (New York: Norton, 1994), p. 159.
3. Cormac McCarthy, *The Road* (New York: Vintage Books, 2007), p. 172.
4. Plato, *The Republic*, Book 3, 414e–415c.
5. U.S. Constitution, Article I, section 9, Clause 8:  
"No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state."
6. "Universal Declaration of Human Rights," General Assembly Res. 217A(III), U.N. Doc. A/810 (1948), 71. See also my "Religious Liberty and Human Dignity: A Tale of Two Declarations," *Harvard Journal of Law & Public Policy* 27 (September 22, 2003). As noted in the acknowledgments, this material previously appeared there.
7. *Ibid.* See also Mary Ann Glendon, "Reflections on the Universal Declaration on Human Rights," *First Things*, no. 82 (1998), p. 23: "Different



- understandings of the meanings of rights usually reflect divergent concepts of man and of society, which in turn cause those who hold those understandings to have different views of reality.”
8. Jacques Maritain, *Man and the State*, 4th ed. (Chicago: University of Chicago Press, 1956), p. 77.
  9. “Universal Declaration of Human Rights,” p. 71.
  10. *Ibid.*, p. 72.
  11. Glendon, “Reflections on the Universal Declaration,” p. 23.
  12. *Ibid.*, p. 24.
  13. “Universal Declaration of Human Rights,” p. 72.
  14. Mary Ann Glendon, “First of Freedoms?” *America: The National Catholic Review*, March 5, 2012, <http://americamagazine.org/issue/5131/article/first-freedoms>.
  15. Marcello Pera, *Why We Must Call Ourselves Christians* (New York: Encounter, 2011), pp. 125–26.

### Chapter Six: Thinking About Thinking About God

1. Rabbi Marc Soloway, “The God I Don’t Believe In First Day Rosh Hashanah 5771,” Berdichev Revival, [http://www.berdichev.org/the\\_god\\_i\\_dont\\_believe.html](http://www.berdichev.org/the_god_i_dont_believe.html).

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2. Aristotle, *Metaphysics*, Book 12, 1072b.
3. Aristotle, *Ethics*, Book 5, Chapter 7.
4. Leo Strauss, "The Origin of the Idea of Natural Right," in *Natural Right and History* (Chicago: University of Chicago Press, 1953), p. 89.
5. Thomas Aquinas, *Summa theologiae* (1264), Part 1, Question 2, Article 3.
6. "Professor Antony Flew," *Telegraph*, April 13, 2010, <http://www.telegraph.co.uk/news/obituaries/culture-obituaries/books-obituaries/7586929/Professor-Antony-Flew.html>.
7. Anselm of Canterbury, *Proslogion* (1078).
8. Aristotle, *Metaphysics*, Book I.
9. Tertullian, *On Prescription Against Heretics*, quoted in Étienne Gilson, *Reason and Revelation in the Middle Ages* (New York: Scribner's, 1968), p. 9.
10. Ronald W. Clark, *Einstein: The Life and Times* (New York: World, 1971), p. 414.
11. Quoted in Philip J. Davis, "A Brief Look at Mathematics and Theology," *Humanistic Mathematics Journal* (June 2002), [http://www2.hmc.edu/www\\_common/hmnj/davis2brieflook1and2.pdf](http://www2.hmc.edu/www_common/hmnj/davis2brieflook1and2.pdf).
12. C. S. Lewis, *Mere Christianity* (New York: Macmillan, 1952), p. 31.
13. *Ibid.*, p. 34.
14. *Ibid.*, p. 37.

15. Ibid., p. 38.
16. Avery Dulles, "The Deist Minimum," *First Things* (January 2005), p. 8.

### Chapter Seven: The Education of the Founders

1. James Walsh, *Education of the Founding Fathers of the Republic: Scholasticism in the Colonial Colleges* (New York: Fordham University Press, 1935), p. 9.
2. Frederick Rudolph, *Curriculum: A History of the American Undergraduate Course Study Since 1636* (San Francisco, CA: Jossey-Bass, 1993), pp. 26–27.
3. Theodor Hornberger, *Scientific Thought in the American Colleges, 1638–1800* (Austin: University of Texas Press, 1945), pp. 6–10.
4. Ibid., pp. 27–31.
5. Lawrence Cremlin, *American Education: The Colonial Experience* (New York: Harper, 1972), p. 512.
6. Walsh, *Education of the Founding Fathers*, p. 55.
7. Ibid., p. 8.
8. Ibid., p. 36.
9. Rudolph, *Curriculum*, p. 30.
10. George H. Nash, *Books and the Founding Fathers* (ISI Distributed Titles, 2008), p. 10.

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11. Hornberger, *Scientific Thought*, p. 24.
12. Cremlin, *American Education*, p. 512.
13. René Descartes, *Meditations on First Philosophy* (1641).
14. Gottfried Leibniz, *New Essays on Human Understanding* (1709).
15. Bernard Cohen, *Science and the Founding Fathers: Science in the Political Thought of Jefferson, Franklin, Adams, and Madison* (New York: Norton, 1997), p. 20.
16. Helmut Moritz, *Science, Mind, and the Universe: An Introduction to Natural Philosophy* (Heidelberg: Wichmann, 1995), p. ix.
17. Sara Gronim, *Everyday Nature: Knowledge of the Natural World in Colonial New York* (New Brunswick, NJ: Rutgers University Press, 2007), p. 142.
18. Baden Powell, *History of Natural Philosophy from the Earliest Periods to the Present Time, Chronology of Physical and Mathematical Science* (1834; reprinted General Books, 2012), pp. xi–xvi.
19. *Ibid.*, p. 20.
20. Nancy Pearcey and Charles Thaxton, *The Soul of Science: Christian Faith and Natural Philosophy* (Irvine, CA: Fieldstead Institute, 1994), pp. 71–72, 95.
21. Isaac Newton, *Principia: Mathematical Principles of Natural Philosophy* (1687).

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22. Cohen, *Science and Founding Fathers*, p. 20.
23. Ibid.
24. John Adams to Skelton Jones, March 11, 1809, quoted in Saul K. Padover, *World of the Founding Fathers* (Gazelle, 1977), pp. 73–75.
25. Cohen, *Science and Founding Fathers*, pp. 228–30.
26. Hornberger, *Scientific Thought*, p. 25.
27. Cremlin, *American Education*, p. 513.
28. Ibid., p. 515.
29. See generally Michael Novak and Jana Novak, *Washington's God: Religion, Liberty, and the Father of Our Country* (New York: Basic Books, 2007). Cohen, *Science and Founding Fathers*, pp. 68–72.
30. Rudolph, *Curriculum*, p. 25.
31. David Barton, *Education and the Founding Fathers* (Aledo, TX: WallBuilders Press, 1993), p. 33.
32. Ibid.
33. Nash, *Books and the Founding Fathers*, p. 10.
34. Hornberger, *Scientific Thought*, p. 7.
35. Rudolph, *Curriculum*, p. 35.

## Chapter Eight: Framing a Nation Under God

1. Seneca, *Deconsolationae ad Helviam* (C.E. 42), Book 8, 2–6.

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2. James Madison, in *National Gazette* (March 29, 1792), emphasis in original.
3. Cicero, *De republica* (54 B.C.E.), Book 3, xxii.
4. Much of what follows originally appeared in the Becket Fund brief, *The Freedom From Religion Foundation v. Hanover School District, New Hampshire*, No. 09-2473 (1st Cir. filed April 7, 2010), <http://www.becketfund.org/wp-content/uploads/2011/06/Cyrus-Response-Brief.pdf>.
5. Henry of Bracton, *De Legibus et Consuetudinibus Angliæ* (1235). A variation of this phrase is carved into the pediment of Langdell Library at Harvard Law School: “NON SVB HOMINE SED SVB DEO ET LEGE.”
6. Sir Edward Coke’s Reports, *Prohibitions del Roy* (1607) 63, 65, emphasis added.
7. *District of Columbia v. Heller*, 554 U.S. 570, 593-94 (2008), recognizing Blackstone’s work as “the preeminent authority on English law for the founding generation,” quoting *Alden v. Maine*, 527 U.S. 706, 715 (1999).
8. *Alden v. Maine*, 527 U.S. 706, 715 (1999); see also, e.g., *Blakely v. Washington*, 542 U.S. 296, 313-14 (2004); *Reid v. Covert*, 354 U.S. 1, 26 (1957).
9. William Blackstone, *Commentaries on the Law of England*, 5th ed. (1773), § 2, 38-39.
10. *Ibid.*, 41.

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11. Thomas Jefferson to Henry Lee, May 8, 1825, quoted in Carl Becker, *The Declaration of Independence* (New York: Harcourt, Brace, 1922), p. 402.
12. John Locke, *Two Treatises of Government* (1690; reprint ed. Rivington, 1824), p. 246, § 195.
13. *Ibid.* p. 247, § 196.
14. Algernon Sidney, *Discourses Concerning Government* (1750), p. 440.
15. Thomas Jefferson, *Notes on the State of Virginia* XVIII (1781), Query XVIII.
16. George Washington, "General Orders," July 2, 1776, <http://memory.loc.gov/cgi-bin/ampage?collId=mgw3&fileName=mgw3g/gwpage001.db&recNum=301>, emphasis added.
17. George Washington, "General Orders," July 9, 1776, <http://memory.loc.gov/cgi-bin/ampage?collId=mgw3&fileName=mgw3g/gwpage001.db&recNum=308>, emphasis added.
18. James Madison, *The Debates in the Several State Conventions, on the Adoption of the Federal Constitution, as Recommended by the General Convention at Philadelphia, in 1787*, ed. Jonathan Elliot (1836), vol. 1.
19. James Madison, "Memorial and Remonstrance" (1785).
20. Thomas Jefferson, *A Bill for Establishing Religious Freedom*, June 18, 1779.

Chapter Nine: You Say Deist, I Say Theist

1. Lord Herbert of Cherbury, *De religione gentilium*, cited in John Orr, *English Deism: Its Roots and Its Fruits* (Grand Rapids, MI: Eerdmans, 1934), p. 62. See also Avery Dulles, “The Deist Minimum,” *First Things* (January 2005), p. 9.
2. *Ibid.*, p. 12.
3. *Ibid.*, p. 13.
4. *Ibid.*
5. Benjamin Franklin, *The Autobiography of Benjamin Franklin* (1791), p. 1:45.
6. *Ibid.*
7. Quoted by James Madison, *Notes of Debates in the Federal Convention of 1787* (New York: Norton, 1987), pp. 209–10; emphasis in the original.
8. Letter to John Adams, April 11, 1823, in Thomas Jefferson and John Adams, *The Adams-Jefferson Letters*, Vol. 2, ed. Lester Cappon (North Carolina: University of North Carolina Press, 1959), p. 594.
9. Michael Novak and Jana Novak, *Washington’s God: Religion, Liberty, and the Father of Our Country* (New York: Basic Books, 2007). See generally Michael Novak’s pathbreaking study, *On Two Wings: Humble Faith and Common Sense at*



*the American Founding*, expanded ed. (New York: Encounter, 2003).

**Chapter Ten: The Later Life of  
a Nation Under God**

1. Stephen Hawking and Leonard Mlodinow, *The Grand Design* (New York: Bantam, 2010), p. 180.
2. Ron Chernow, *Alexander Hamilton* (New York: Penguin, 2005), p. 214.
3. *Jones v. Van Zandt*, 2 McLean 597 (Ohio Cir. Ct., 1843), “Argument for the Defendant.”
4. See generally Ted Widmer, “The Other Gettysburg Address,” *New York Times*, November 19, 2013.
5. Abraham Lincoln, Gettysburg Address, November 19, 1863.
6. “How the Words ‘Under God’ Came to Be Added to the Pledge of Allegiance to the Flag,” Knights of Columbus, <http://www.kofc.org/un/en/resources/communications/pledgeAllegiance.pdf>.
7. George M. Docherty, “One Nation Under God,” February 7, 1954, 6–7, in New York Presbyterian Church Sermon Archive, [http://www.nyapc.org/congregation/sermon\\_archives/text/1954/undergod-sermon.pdf](http://www.nyapc.org/congregation/sermon_archives/text/1954/undergod-sermon.pdf) emphasis in the original.
8. *The Pledge of Allegiance—How the Words “Under*

- God” *Came to Be Added to the Pledge of Allegiance to the Flag*, <http://www.kofc.org/un/en/resources/communications/pledgeallegiance.pdf>.
9. Dwight D. Eisenhower to Luke E. Hart, Supreme Knight of the Knights of Columbus, August 17, 1954, in “‘Under God’ Under Attack,” in *Columbia* (September 2002), p. 9.
  10. H.R. Rep. No. 83-1693 (1954), 1–2; see also S. Rep. No. 83-1287 (1954), 2.
  11. H.R. Rep. No. 83-1693 (1954), 2; see also 100 Cong. Rec. 7333 (statement of Rep. Oakman [quoting William Penn]).
  12. H.R. Rep. 83-1693 (1954), 2; see also 100 Cong. Rec. 7333 (statement of Rep. Oakman [quoting George Mason]).
  13. Georg Brunner, “Civil Rights,” in *Encyclopedia of Soviet Law*, ed. Ferdinand Joseph Maria Feldbrugge, Gerard Pieter van den Berg, and William B. Simons, 2d ed. (Dordrecht: Martinus Nijhoff, 1985), pp. 124–25.
  14. 100 Cong. Rec. 7336 (1954) (statement of Rep. O’Hara).
  15. *Ibid.*, 7332 (statement of Rep. Bolton).
  16. *Ibid.*, 7333 (statement of Rep. Rabaut).
  17. *Ibid.*, 7338 (statement of Rep. Bolton).
  18. *Ibid.*, 5750 (statement of Rep. Rabaut).
  19. As noted in the Acknowledgments, much of this

- material previously appeared in our legal briefs in the Pledge of Allegiance cases. See, e.g., *The Freedom From Religion Foundation v. Hanover School District, New Hampshire*, No. 09-2473 (1st Cir., filed April 7, 2010), Brief of Defendants-Appellees Muriel Cyrus et al. of The Becket Fund.
20. *Newdow v. Rio Linda Union School District*, No. 05-17257 (9th Cir., 2010), 12.
21. *Ibid.*, 15.

### Chapter Eleven: A Nation Under God

1. U.S. Constitution, Article II, section 2, Clause 2; emphasis added.
2. *Ibid.*, Article I, section 7, Clauses 2 and 3 also known as the Presentment Clause.
3. Thomas Jefferson himself used *separation of church and state* as shorthand. In his famous letter to the Danbury Baptist Association he said, “Believing with you that religion is a matter which lies solely between man & his god, that he owes account to none other for his faith or his worship, that the legitimate 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.” Jefferson to Nehemiah Dodge et al., January 1, 1802, <http://www.loc.gov/loc/lcib/9806/danpre.html>.

4. *Permoli v. Municipality no. 1 of the City of New Orleans*, 44 U.S. 589, 609 (1845). In 1833, the Supreme Court had decided *Barron v. Baltimore* in which the plaintiff, Barron, was suing the city of Baltimore, alleging that the city owed him “just compensation” under the Fifth Amendment’s takings clause for having harmed his property. Chief Justice John Marshall rejected this view, arguing that the restrictions on government power contained in the Bill of Rights applied only to the federal government. “The Constitution,” he wrote, “was ordained and established by the people of the United States for themselves, for their government and not for the government of the individual States,” and therefore “the Fifth Amendment must be understood as restraining the power of the general government, not as applicable to the States.” *Barron v. Mayor and City Council of Baltimore*, 32 U.S. 243 (1833).
5. Massachusetts Constitution (1780): “The legislature shall, from time to time, authorize and require,

the several towns, parishes, precincts, and other bodies politic, or religious societies, to make suitable provision, at their own expense, for the institution of the public worship of God, and for the support and maintenance of public Protestant teachers of piety, religion and morality, in all cases where such provision shall not be made voluntary.”

6. Vermont Frame of Government (1777), Section 9.
7. “A Bill for Establishing Religious Freedom,” in *Thomas Jefferson: Writings*, ed. Merrill D. Peterson (New York: Library of America, 1984), pp. 347–48.
8. *Myers v. Loudoun County*, 418 F. 3d 395 (4th Cir., 2005), emphasis in original.
9. Jefferson to Madison, March 15, 1789, in *Writings*, ed. Peterson, p. 94.
10. James Madison, “Detached Memoranda” (ca. 1817), doc. 64 in Philip B. Kurland and Ralph Lerner, *The Founders’ Constitution* (Chicago: University of Chicago Press, 1986).
11. See Kevin Hasson, “The Myth: Is There Religious Liberty in America?” *American Spectator* (February 2008). As noted in the Acknowledgments, this material previously appeared there.