

A Critique of David Barton's Views on Church and State

Written by J. Brent Walker

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In 1995 I wrote a critique of "America's Godly Heritage," a video by David Barton. At that time, Barton's views were little-known beyond his native Texas. I prepared my critique in response to occasional inquiries from friends of the BJC who rightly questioned Barton's claim that America is "a Christian nation."

Since then Barton's reputation and influence have steadily grown. He has written several books, founded an organization to advance his ideas and become a central figure in some religious circles, as well as an operative of the Republican Party. He has served as the Vice Chair of the Texas GOP and was named one of the nation's "25 Most Influential Evangelicals" by Time magazine in 2005.

While the avenues for his message have multiplied, the themes of Barton's work are the same today as they were in 1995. Barton peddles the proposition that America is a Christian nation, legally and historically. He asserts that the principle of church-state separation, while not in the Constitution, has systematically been used to rule religion out of the public arena, particularly the public school system. His presentation has just enough ring of truth to make him credible to many people. His work, however, is laced with exaggerations, half-truths and misstatements of fact.

As more individuals, congregations and elected officials are influenced by Barton's claims, the threat of his campaign becomes more real. In an effort to counter Barton's misguided mission, and still using "America's Godly Heritage" as an outline, I have updated and revised my critique of some of Barton's most prominent and problematic claims.

J. Brent Walker, Executive Director

Baptist Joint Committee

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Barton claims that 52 of the 55 signers of the Constitution were "orthodox" Christians and many were "evangelical Christians."

Barton does not cite any authority to support this assertion. Indeed, the weight of scholarly opinion is to the contrary.

For example, Professor Clinton Rossiter has written:

"Although it had its share of strenuous Christians ... the gathering at Philadelphia was largely made up of men in whom the old fires were under control or had even flickered out. Most were nominally members of one of the traditional churches in their part of the country... and most were men who could take their religion or leave it alone. Although no one in this sober gathering would have dreamed of invoking the Goddess of Reason, neither would anyone have dared to proclaim his opinions had the support of the God of Abraham and Paul. The Convention of 1787 was highly rationalist and even secular in spirit." (Clinton Rossiter, 1787: The Grand Convention, pp. 147-148.)

Much has been made of Benjamin Franklin's suggestion that the Convention open its morning sessions with prayer. His motion was turned down, however, and not again taken up. Franklin himself noted that "with the exception of 3 or 4, most thought prayers unnecessary." (Ferrand, Records of the Federal Convention of 1787, rev. ed., Vol. 1, p.452.)

Similarly, Barton argues that the signers of the Declaration of Independence were Christian and so the U.S. was founded as a "Christian Nation."

Barton states that "24 of [the signers] of the Declaration of Independence held seminary degrees. These hardly sound like the atheistic Founders who our liberal elite claim wanted all religion separated from the public square!" (Quoted in "After Hoopla, Capitol Tour Goes On", Roll Call 50, no. 98, 4/13/05).

Despite the questionable truth of his statement out of context, the answer is "so what?" No doubt most of the signers were religious men. But the function and purpose of the Declaration of Independence was to declare the intent of American to separate itself from its relationship with Britain. The declaration was a separating document, not a foundational document. It did not in any way set up a legal form of government, Christian or not.

In sum, while there can be little doubt that Christian values shaped the thinking of the Founders, it is wrong to conclude that the Founders were almost all orthodox evangelicals Christians. Even though many of the Founders applauded religion for its utility- believing religion was good for the country- they also argued vigorously for voluntary religion and

complete religious freedom. Thus, even if Barton's points were true, they do not compel the conclusion that we should privilege Christianity in any legal or constitutional sense.

2

Barton quotes at length from George Washington's Farewell Address extolling the salutary effect that religion has on politics and civil government. Barton says we have ruled the study of Washington's Farewell Address out of the public schools.

Washington no doubt firmly believed that religion is good for government. And there is nothing wrong with studying his Farewell Address in the public school system. But other statements of Washington should also be studied to give a more complete picture of what Washington truly believed.

Washington wrote the following to Baptists in 1789:

"[I]f I could now conceive that the general government might ever be so administered as to render the liberty of conscience insecure, I beg you will be persuaded, that no one would be more zealous than myself to establish effectual barriers against the horrors of spiritual tyranny, and every species of religious persecution ... [E]very man, conducting himself as a good citizen, and being accountable to God alone for his religious opinions, ought to be protected in worshipping the Deity according to the dictates of his own conscience" (Forrest Church, *The Separation of Church and State*, p. 107).

Washington wrote other pieces with similar sentiments-to Methodists, Quakers, Presbyterians, Catholics and Jews. *Ibid*, 108-111.

Thus, while Washington may have recognized the benefits of religion for the state, he also believed persons' religious preferences were a matter of individual, voluntary choice in which the government should not interfere.

3

Barton makes much from a statement attributed to John Quincy Adams to the effect that the principles of Christianity and civil government form an "indissoluble bond."

John Quincy Adams as the source of this remark is less than certain. The lack of quotation marks around Adams' supposed statement in its secondary source rendering leads one to believe that the statement is not attributable to him. However, as one observer has noted, "even if Adams did say these words it wouldn't bolster Barton's case...Adams would simply be wrong to argue that the federal Constitution embodies the principles of Christianity. It

doesn't, and Adams' saying so doesn't prove a thing." (Jim Allison, Separation of Church and State Homepage, <http://members.tripod.com/~candst/tnppage/tnpidx.htm>)."

Nevertheless, as stated above, most of the Founders did believe that religion was good for the country. Martin Marty talks about how the Founders recognized the "utility" of religion much like other public utilities (waterworks, gasworks, etc.) (Martin E. Marty, "The Church in Tension," Speech to 20th National Religious Liberty Conference, Baptist Joint Committee, Oct. 7, 1986.) Even today public officials try to baptize their political aims in the waters of sacred approval. Of course, this ignores the fact that true Christianity serves as much a prophetic function as a pastoral one. Christianity does not exist just to prop up government or a particular regime but to critique it and call it to judgment.

In any case, one wonders whether Barton really wants to embrace John Quincy Adams. According to John McCollister, "some members of the organized church branded [Adams] an atheist" and there was no evidence that the Bible was used at the time he took the oath of office. His church attendance was irregular at times. He, like his father, was a Unitarian. (John McCollister, *So Help Me God*, pp. 41-43.)

4

Barton says that John Jay, the first Chief Justice of the United States, desired that we should "select and prefer Christians" for office.

There are many problems with trying to leverage this statement into something more than it really is. While voters can choose their candidates for any reason they deem fit, the Constitution explicitly disallows any official religious test for public office (Article VI). In fact, that prohibition on a religious test is the only place that the Constitution even mentions religion. George Washington himself, in a personal letter to a church in Baltimore, penned words which dispute Jay's ideas: "... a man's religious tenets will not forfeit the protection of the Laws, nor deprive him of the right of attaining and holding the highest offices that are known in the United States." (Anson Phelps Stokes, *Church and State in the United States*, Vol. I, p. 497.)

John Jay was Chief Justice for only six years and then left to be the governor of New York. Jay was an anti-Catholic bigot and, while governor, led an unsuccessful movement to banish Catholics from New York. (Thomas J. Curry, *The First Freedoms*, p. 162.) Apparently, Jay did not even believe in religious toleration, let alone full-blown religious freedom. Is this the kind of approach we want to take in our pluralistic society today? Can we really hold up Jay's notions of church-state relations as an ideal?

5

Barton cites the *Church of the Holy Trinity v. United States*, 143 U.S. 457 (1892), for the proposition that this is "emphatically a Christian nation." He says Justice Brewer cites 87 precedents to prove this point.

Holy Trinity involved the legality of a contract to hire a minister from England under an act of Congress limiting immigration. The statement about a "Christian nation" is dicta- that is, it is a gratuitous statement that is not essential to the Court's holding. The Court had already decided the issue before venturing its opinion as to the religious character of the country. The so-called "87 precedents" were not case decisions, but mainly examples taken from pre-Constitutional documents, historical practice, colonial charters and the like, which reveal our undisputed religious roots.

There can be no doubt that we are a "religious people." Even Justice William O. Douglas, a thoroughgoing separationist, recognized the fact. *Zorach v. Clauson*, 343 U.S. 306, 313 (1952). That is not, however, the same thing as declaring that Christianity has been legally privileged or established to the exclusion of other religions or to the exclusion of irreligion. The Constitution, which is our civil compact, is decidedly secular and mentions religion only to disallow religious tests for public office.

Brewer himself later clarified his position. In a book titled, *The United States: A Christian Nation* (1905), Brewer says that the U.S. is "Christian" in that many of its traditions are rooted in Christianity- not that Christianity should receive legal privileges. (Robert Boston, *Why the Religious Right is Wrong*, p. 84)

One can point to other documents to support the opposite argument. The Treaty of Tripoli, for example, negotiated under George Washington and ratified by the Senate under John Adams, declared: "The government of the United States of America is not, in any sense, founded on the Christian religion ..." Despite various revisions of this treaty that omitted this phrase, the disclaimer about a Christian Nation is clear.

6

Barton lambastes the concept of church-state separation.

A. Church-state separation is not in the Constitution.

Of course, neither the words "church-state separation" nor "wall of separation" appear in the Constitution. That does not mean Barton's position is correct. The Constitution does not specifically mention "separation of powers" or "the right to a fair trial" either, but who would

deny the constitutional status of those concepts? "Church-state separation" is a metaphor for what certainly was and is the spirit of the First Amendment's religion clauses - government is to be neutral toward religion to the end of ensuring religious liberty.

B. Barton quotes the First Amendment as saying "Congress shall make no law respecting the establishment of religion." He also goes on to talk about the amendments that were rejected primarily by the Senate which, on their face, would have allowed the government to support religion on a non-preferential basis. He says this shows the Founder's true intent behind the First Amendment.

Barton is absolutely wrong. First of all, the phrase is not "the" establishment of religion, but "an" establishment of religion. It is not sufficient for the government to avoid establishing one particular religion; it may not establish religion in general. Moreover, the Founders banned laws even "respecting" an establishment of religion, indicating a broader intention for the government's non-involvement in religion.

Barton's citing of the Senate amendments allowing non-preferential support of religion cuts against his argument, not in favor of it. Those amendments do show that the Founders considered adopting such non-preferential ideas into the Constitution. However, they then defeated those amendments and deliberately adopted the language we have now which calls for governmental neutrality toward religion, neither favoring a specific sect nor religion in general. According to Douglas Laycock, an argument such as Barton's "requires a premise that the Framers were extraordinarily bad drafters." (Laycock, "Nonpreferential Aid to Religion: A False Claim about Original Intent," 27 *Wm -Mary L. Rev.* 875 (1985-86)).

Unless we are willing to accept this ludicrous assertion -- that the Framers really intended the government to non-preferentially support religion, but then voted down amendments to that effect- we must conclude that the First Amendment says precisely what the Framers meant.

C. Barton mentions church-state separation as flowing from Thomas Jefferson's 1802 letter to the Danbury Connecticut Baptist Association. He asserts that later in the letter Jefferson made it clear that he wanted only a "one directional wall" to prevent the government from harming religion, not to prevent religion from capturing the government.

A reading of the entire letter belies any suggestion that Thomas Jefferson thought it was "one directional." There is absolutely nothing in the letter even to hint that that is the case. Indeed, to the degree that Jefferson's notion was one-directional, most scholars would argue that he was more concerned with the church harming the state than vice versa. (Laurence H. Tribe, *American Constitutional Law*, p. 1159.) Of course, Barton completely ignores Roger William's reference 150 years earlier to the "hedge or wall of separation between the garden

of church and the wilderness of the world." (Perry Miller, *Roger Williams: His Contribution to the American Tradition*, p. 89.) It is clear that Williams, a Baptist pioneer, saw the advantage to the church of a clear boundary erected between itself and the state. More than that, he thought this wall was mandated by the very principles of Christianity. To that end, he wrote:

"All civil states with officers of justice, in their respective constitutions and administrations, are ... essentially civil, and therefore not judges, governors, or defenders of Spiritual, or Christian, State and worship ... An enforced uniformity of religion throughout a nation or civil state confounds the civil and religious, denies the principles of Christianity and civility, and that Jesus Christ is come in the flesh." (Stokes, *supra*, p. 199.)

Thus, Williams and Jefferson understood the benefits to both the church and state of keeping those two entities separate and distinct.

D. Barton cites *Reynolds v. United States*, 98 U.S. 145 (1878), for the proposition that the Supreme Court has recognized Jefferson's "wall" as being "one-directional."

This is simply not the case. Reynolds quotes Jefferson and then proceeds to ensconce Jefferson's wall metaphor into American Jurisprudence. The court observes, "Coming as this does from an acknowledged leader of the advocates of the measure, it may be accepted almost as an authoritative declaration of the scope and effect of the amendment thus secured." *Id.* at 164. Again, if anything, Barton's citation to Reynolds disputes, rather than supports, his position.

E. Barton criticizes the Court's decision in *Everson v. Board of Education*, 330 U.S. 1 (1947), for adopting a separationist position without quoting the Founders and in disregard of what Barton thinks the Founders intended.

Justice Hugo Black, a Baptist who had taught Sunday school in Alabama, wrote the majority opinion. The case involved a challenge to the right of government to reimburse the parents of parochial school students for transportation costs. For all of the Court's strong separationist language, it voted (5-4) to allow New Jersey to fund the transportation costs under the so-called "student benefit" theory. However, the Court was unanimous in agreeing with Justice Black's statement of the law. Justice Black cited plenty of authority for his decision - the writings of James Madison (fn. 11), including his "Memorial and Remonstrance against Religious Assessments"; Jefferson's "Bill For Establishing Religious Liberty" (fn. 13); and *Reynolds v. United States*.

Barton criticizes *Engel v. Vitale*, 370 U.S. 421 (1962), where the Court struck down use of the New York Regent's prayer in public classrooms. He cannot understand why anyone would object to such a "bland" prayer. Barton is also critical of *Abington School District v. Schempp*, 374 U.S. 203 (1963), which ruled unconstitutional state-sponsored devotional Bible reading in classes.

First, one wonders why any person with serious Christian convictions would want the state - instead of the church or individual Christians - composing a prayer at all, particularly a "bland" prayer that offends no one and says very little. The *Engel* decision did not throw God out of the classroom or outlaw prayer. They puny god of civil religion may have been thrown out, but the Almighty God of the Universe has not. It is presumptuous to say that anyone has the power to exclude God from any realm of our existence. Furthermore, it is only state-sponsored prayer that is prohibited. Students are absolutely free - in the classroom, in the lunchroom, or on the playing field, - to pray to God whenever they see fit. Barton's opposition to the classroom prayer case shows how far on the radical fringe he really is. Many conservative Christian groups in the country today do not disagree with the *Engel* decision.

Criticism of the *Schempp* case is likewise unfounded. The court simply ruled out state-sponsored Bible reading. It did not prevent students from bringing their Bibles to class or even reading their Bibles during free periods. Bibles properly can be included in school libraries, and the study of the Bible as literature is certainly not prohibited. Indeed Justice Clark, in his majority opinion in *Schempp*, said:

"[I]t might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such a study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be affected consistently with the First Amendment. *Id.* at 225."

Thus, while state-sponsored religious exercises have been ruled out, there is nothing to prevent studying the Bible or teaching "about" religion across the board.

Barton claims that virtually all of our social ills over the past several decades were caused by the prayer and Bible-reading decisions in 1962-63. He lays at the feet of these decisions the increase in divorce, decline of SAT scores and rampant crime.

One wonders how the exclusion of routine - indeed, "bland" - prayers from schools could have such disastrous consequences. Of course, there is no connection between the elimination of state-sponsored religion in public schools and the described social ills. This is a classic "after this, therefore because of this" logical fallacy. Just because one event follows another in time sequence does not mean that the latter caused the former. Martin Marty, in a tongue-in-cheek critique of this kind of thinking, has said:

"Why did everything go wrong when everything went wrong?... I think that the divorce rate rose shortly after the invention of the electronic church. Check the coincidence of dates. When born-again celebrities started writing born-again autobiographies, teenage pregnancy increased; and when fundamentalists started writing sex manuals, the Vietnam War accelerated. Didn't you notice the cause-and-effect relation?" (Marty, "The Christian Century," September 10-17, 1980.)

The problems that we face as a society are due to a variety of complicated socioeconomic factors. To try to blame the lack of prayer in school is simplistic. For example, SAT scores have fallen but that decline is better explained by the fact that more students from a wider variety of socioeconomic backgrounds are taking the test than that the decline is in any way attributable to the elimination of state-sponsored religious exercises. Moreover, if one is going to engage in this kind of thinking, one also ought to point out some of the improvements that have been made since 1962. Life-expectancy has increased, as well as the average standard of living; great strides have been made in medical science, space travel and computer technology; the incidence of crime has fallen in many areas- to name a few.

Our country has many problems and many of our institutions must share some of the blame: government, churches, families and, yes, the public schools. But to attribute all the problems on the schools and the Court's prayer decisions thirty years ago is pure fantasy at best and base demagoguery at worst.

9

Barton concludes by calling upon his listeners to become involved in politics. He says that if Christians don't influence the government, someone else will. He also talks about being "robbed" by the atheists.

Much of what Barton says here is correct. Church-state separation does not require the segregation of religion from politics. Religious people have just as much right to engage in politics and to try to influence public policy by religious, even Christian values. However, any foray into politics with a decidedly sectarian agenda or a "God is on our side" mentality ought to be tempered with a healthy dose of humility. The Kingdom of God cannot be equated with any political party; religious people of good faith differ on a number of issues.

A certain dualism that effectively denies the ability of government to remain neutral in matters of religion pervades Barton's thinking. He seems to suggest that if government is not promoting his brand of religion, it is necessarily promoting the opposite. If Christians don't take over the schools, Barton implies, the Satanists will, and on and on.

Schools cannot teach the opposite of Christianity or actively debunk belief in God any more than they can promote religion. That, too, would be unconstitutional. But there is a middle ground of neutrality in which the schools legitimately can operate that neither promotes nor inhibits religion. To refuse to indoctrinate Christianity is not the same thing as promoting its opposite.

10

All else failing, Barton turns to a majoritarian argument to support his thesis of a Christian Nation.

"I would say if 88% (of Americans) call themselves 'Christians,' I would say, yeah, you probably have a fairly good basis to call it a Christian nation" (Barton on D. James Kennedy's radio show, "Truths that Transform," October 4, 2004). Barton laments that "judicial policy-makers are regularly out of step with modern society." As proof, he cites two statistics with vast majorities: 80 percent of the nation opposes flag desecration and 90 percent of the Federal Ninth Circuit supported keeping "under God" in the pledge of Allegiance (David Barton, "A Tale of Two Constitutions," <http://www.wallbuilders.com/resources/search/detail.php?ResourceID=118>).

Barton thus argues that since the majority of Americans are Christians, or at least religious people, they should be able to use the government to privilege their religious perspective. Those who disagree should, at best, be tolerated or, at worst, discriminated against.

This is not at all what our Founders intended or what our Constitution says. The religion clauses in the First Amendment to the Bill of Rights are, by definition, "counter-majoritarian." The Constitution ensures the will of the majority, but the Bill of Rights protects the rights of the minority. Justice Jackson said it well more than 60 years ago in *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 638 (1943):

"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

In fairness to Barton, he has conceded that the following quotations attributed to certain founders are either false or questionable.

(<http://www.wallbuilders.com/resources/search/detail.php?ResourceID=20>)

1. It cannot be emphasized too strongly or too often that this great nation was founded, not by religionists, but by Christians; not on religions, but on the gospel of Jesus Christ! -- Patrick Henry (questionable)
2. It is impossible to rightly govern the world without God and the Bible. -- George Washington (questionable)
3. Our laws and our institutions must necessarily be based upon and embody the teachings of the Redeemer of mankind. It is impossible that it should be otherwise. In this sense and to this extent, our civilizations and our institutions are emphatically Christian. -- Holy Trinity v. U.S. (false)
4. We have staked the whole future of American civilization, not upon the power of government, far from it. We have staked the future of all of our political institutions upon the capacity of each and all of us to govern ourselves ... according to the Ten Commandments of God. -- James Madison (false)
5. Religion...[is] the basis and foundation of government.-James Madison (inaccurate)
6. Whosoever shall introduce into the public affairs the principles of primitive Christianity will change the face of the world. -- Benjamin Franklin (questionable)
7. The principles of all genuine liberty, and of wise laws and administrations are to be drawn from the Bible and sustained by its authority. The man therefore who weakens or destroys the divine authority of that book may be assessor to all the public disorders which society is doomed to suffer. -- Noah Webster (questionable)
8. There are two powers only which are sufficient to control men, and secure the rights of individuals and a peaceable administration; these are the combined force of religion and law, and the force or fear of the bayonet. -- Noah Webster (questionable)
9. The only assurance of our nation's safety is to lay our foundation in morality and religion. -- Abe Lincoln (questionable)

10. The philosophy of the school room in one generation will be the philosophy of government in the next. -- Abe Lincoln (questionable)

11. I have always said and always will say that the studious perusal of the Sacred Volume will make us better citizens. -- Thomas Jefferson (questionable)

12

The following are just a few of the quotes of early Baptists and other founders that dispel the Christian nation thesis and demonstrate support for church-state separation as a means of ensuring religious liberty:

"An enforced uniformity of religion throughout a nation or civil state, confounds the civil and religious, denies the principles of Christianity and civility, and that Jesus Christ has come in the flesh."

Roger Williams (founder of First Baptist Church in America), *The Bloody Tenet of Persecution* (1640).

"Religious matters are to be separated from the jurisdiction of the state not because they are beneath the interests of the state but, quite to the contrary, because they are too high and holy and thus are beyond the competence of the state."

Isaac Backus, colonial Baptist from New England, *An Appeal to the Public for Religious Liberty* (1773).

"The notion of a Christian commonwealth should be exploded forever...Government should protect every man in thinking and speaking freely, and see that one does not abuse another. The liberty I contend for is more than toleration. The very idea of toleration is despicable; it supposes that some have a pre-eminence above the rest to grant indulgence, whereas all should be equally free, Jews, Turks, Pagans and Christians."

John Leland, "A Chronicle of His Time in Virginia," as cited in Forrest Church, *The Separation of Church and State*, p. 92.

"Experience...has informed us that the fondness of magistrates to foster Christianity has done it more harm than all the persecutions ever did."

John Leland, quoted in Gaustad, *A Disestablished Society: Origins of the First Amendment*, vol. 11, *A Journal of Church and State* (1969), 414.

"We should begin by setting conscience free. When all men of all religions...shall enjoy equal liberty, property, and an equal chance for honors and power...we may expect that improvements will be made in the human character and the state of society."

John Adams, Letter to Dr. Price, April 8, 1785.

"I contemplate with sovereign reverence the 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 & State."

Thomas Jefferson, 1802 letter to Danbury Connecticut Baptist Association.

"Whilst the number, the industry, and the morality of the Priesthood, & the devotion of the people have been manifestly increased by the total separation of the Church and the State."

James Madison, letter to Robert Walsh, 1819 in Gaillard Hunt, ed. The Writings of James Madison, v. VIII, 431-432.

"Religion flourishes in greater purity without than with the aid of government."

President James Madison, Letter to Edward Livingston, July 10, 1822.

"When religion is good, I conceive it will support itself; and when it does not support itself, and God does not take care to support it so that its professors are obliged to call for the help of the civil power, it is a sign, I apprehend, of its being a bad one."

Benjamin Franklin, cited in Anson Phelps Stokes, Church and State in the United States (New York: Harper, 1950), vol. I, 298.