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## Putting God Back in the Public Square

Roy S. Moore  
Circuit Judge, 16th Judicial District

**S**ince 1992, Roy S. Moore has been a circuit judge for the 16th Judicial District in Etowah County, Alabama. A former deputy district attorney, he is also a Vietnam veteran who served as a captain in the military police corps, a company commander, and a battalion staff officer. He graduated from the U.S. Military Academy at West Point in 1969 and the University of Alabama School of Law in 1977.



For his achievements in the community and on the bench, Judge Moore has received awards from several prominent national organizations, including the Center for Christian Statesmanship, the Family Research Council, the American Family Association, the Declaration of Independence Foundation, the African American Family Association, and the Valley Forge Foundation. Judge Moore's seven-year battle to preserve religious freedom of expression in the courtroom and in the public arena has earned him national media attention. ▲

*Twice in recent years the Honorable Roy S. Moore has been sued for displaying the Ten Commandments in his courtroom. He discussed his case in a student-sponsored lecture on the Hillsdale campus in early 1999.*

*Judge Moore's remarks are based in part on his article that appears in the Summer 1999 issue of the Cumberland Law Review.*

**I**n his first official act, President George Washington did something that would be unthinkable today. He prayed in public! Specifically, during his inaugural address he made

fervent supplications to that Almighty Being who rules over the universe, who presides in the councils of nations, and whose providential aids can supply every human defect, that His benediction may consecrate to the liberties and happiness of the people of the United States a Government instituted by themselves for these essential purposes.... No people can be bound to acknowledge and adore the Invisible Hand which conducts the affairs of men more than the people of the United States. Every step by which they have advanced to the character of an independent nation seems to have been distinguished by some token of providential agency.

If that were not enough, Washington added, “We ought to be no less persuaded that the propitious smiles of Heaven can never be expected on a nation that disregards the eternal rules of order and right which Heaven itself has ordained.”

Two hundred years later, few government officials are bold enough to make earnest professions of faith. It seems that politicians can do just about anything in public but pray, unless it is obligatory (during, say, an annual prayer breakfast at the White House). They can survive scandal and immoral conduct, but they suffer ostracism and worse once they are labeled members of the “Religious Right.”

Even the American justice system, which is firmly rooted in the Judeo-Christian tradition, has developed a bias against public worship and the public acknowledgment of God that ought to give the most militant atheist cause for concern. If judges can deny Christians and Jews the right to express their beliefs in the public square, they can surely deny secular humanists (devout believers of a different sort) the same right.

In California, creches and crosses have been removed from downtown Christmas and Easter displays.

In Kansas, city hall monuments featuring religious symbols have been torn down.

In Rhode Island, high school graduation invocations and benedictions have been banned.

In Alabama, students have been prohibited by federal court order from praying, from distributing religious materials, and from even discussing anything of a devotional or inspirational nature with their classmates and teachers.

And in Ohio, an appellate court has overturned the sentence of a man convicted of raping an eight-year-old child ten times. Why? Because the judge who pronounced the sentence quoted from the 18th chapter of Matthew: “But whoso shall offend one of these little ones which believe in me, it were better for him that a millstone were hanged about his neck, and that he were drowned in the depth of the sea.”

In the courtroom in which I preside, the public display of the Ten Commandments and voluntary clergy-led prayer prior to jury organizational sessions have sparked not only a national controversy but also an epic legal battle. In 1995, I was sued in federal court by the ACLU and the Alabama Freethought Association. Just prior to that case being dismissed for lack of standing (the ACLU and

Alabama Freethought Association failed to show that they had been or were about to be injured), a

separate lawsuit was filed in Alabama state court requesting a ruling on whether the First Amendment to the United States Constitution prohibits the display of the Ten Commandments and voluntary prayer in the courtroom. A state circuit court judge presiding in Montgomery County, Alabama, held that the practices in Etowah County were unconstitutional

under the First Amendment’s “Establishment Clause,” which reads, “Congress shall make no law respecting an establishment of religion....” It would appear that the circuit court judge and others were not impressed when the members of the U.S. House of Representatives and the U.S. Senate passed a resolution stating that

(1) the Ten Commandments are a declaration of fundamental principles that are the cornerstones of a fair and just society; and

(2) the public display, including display in government offices and courthouses, of the Ten Commandments should be permitted.

The state circuit court’s ruling was appealed to the Alabama Supreme Court and, appropriately, was set aside by the Alabama Supreme Court in 1998. Nevertheless, federal constitutional issues regarding public worship and the public acknowledgment of God remain unresolved.

## Church and State

**I**n a 1997 law review article, Brian T. Collidge expressed the opinion of many in the legal profession when he claimed that the mere display of the Ten Commandments in the courtroom is a “dangerous” practice. Although Collidge concedes that the Commandments reflect universal teachings that are beneficial to a civil society, they make explicit references to God, and, in his view, this is an unconstitutional breach of the “wall of separation between church and state.”

This now famous “wall of separation” phrase does not appear in the Constitution, the Declaration of Independence, the Articles of Confederation, or any other official American document, yet millions of Americans have been led to

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believe that it does and that, in the words found in a 1947 Supreme Court decision, “[t]he wall must be kept high and impregnable.”

The phrase is actually mentioned for the first time in a letter President Thomas Jefferson wrote in 1802 in reply to an inquiry from the Danbury Baptist Association. Jefferson said,

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 the 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.

But did Jefferson mean that the government should in no way support religion? To find the answer we must go back more than one hundred years before he wrote to the Danbury Baptist Association. Jefferson was strongly influenced by John Locke, a well-known English philosopher, who published “A Letter Concerning Toleration” in 1689 in which he clearly defined the proper church-state relationship. Locke stated that “[t]he magistrate has no power to enforce by law, either in his own Church, or much less in another, the use of any rites or forms of worship by the force of his laws.”

Herein lies the true meaning of separation between church and state as the concept was understood by Jefferson and the other founding fathers: Government may never dictate one’s form of worship or articles of faith. Not all public worship of God must be halted; on the contrary, freedom to engage in such worship was the very reason for creating a doctrine of separation between church and state.

Two days after he wrote to the Danbury Baptist Association, Jefferson attended a church service conducted by John Leland, a prominent Baptist minister, in the halls of the House of Representatives. Throughout his presidency, he attended similar services, which were often held in the north wing of the Capitol. From 1807 to 1857 church services

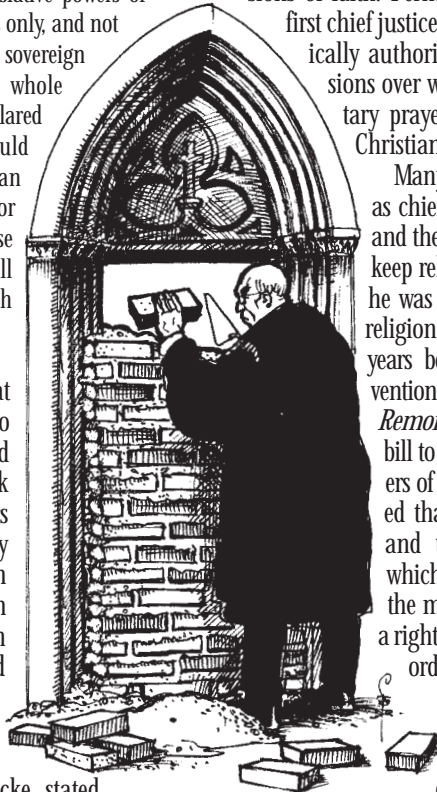
were held in a variety of government buildings where Congress, the Supreme Court, the War Office, and the Treasury were headquartered.

Obviously neither Jefferson nor any other officials in the early Republic understood separation between church and state to mean that the federal government was precluded from recognizing the necessity of public worship or from permitting active support of opportunities for such worship. Indeed, they plainly recognized that the duty of civil government was to encourage public professions of faith. Perhaps this is why John Jay, the first chief justice of the Supreme Court, specifically authorized the opening of jury sessions over which he presided with voluntary prayer led by local clergy of the Christian faith.

Many believe that James Madison, as chief architect of the Constitution and the Bill of Rights, led the fight to keep religion out of politics. In truth, he was more interested in protecting religion from politics. In 1785, two years before the Constitutional Convention, he wrote a *Memorial and Remonstrance* opposing a Virginia bill to establish a provision for teachers of the Christian religion. He stated that man’s first duty is to God, and that “religion, or the duty which we owe to our Creator, and the manner of discharging it,” was a right and a duty “precedent both in order of time and degree of obligation, to the claims of a civil society. Before any man can be considered as a member of civil society, he must be considered as a subject of the Governor of the Universe.”

Madison championed the First Amendment’s Establishment Clause with one overriding purpose: to keep one sect from gaining an advantage over another through political patronage. This is a far cry from denying public worship or the public acknowledgment of God. Madison also made sure that the Establishment Clause was followed by the “Free Exercise Clause,” so that the First Amendment would read, in relevant part, “Congress shall make no law respecting an establishment of religion, or *prohibiting the free exercise thereof...*”

Both Jefferson and Madison would have agreed with United States Supreme Court Justice Joseph Story’s definitive *Commentaries on the Constitution of the United States* (1833) in which



he posed the question of whether any free government could endure if it failed to provide for public worship. They would have concluded, as did Justice Story, that it could not. Justice Story explained that

[t]he promulgation of the great doctrines of religion, the being, and attributes, and providence of one Almighty God; the responsibility to him for all our actions, founded on moral freedom and accountability; a future state of rewards and punishments; the cultivation of all the personal, social, and benevolent virtues; these never can be a matter of indifference in any well ordered community. It is, indeed, difficult to conceive, how any civilized society can well exist without them.

## Historical Precedent

**W**hen the federal legislature met in 1789, one of its first actions was to appoint chaplains in both houses of Congress. (Congress still recognizes God by appointing and paying chaplains who open each session with a prayer—even the recent session devoted to the impeachment proceedings against President Clinton.)

On the very day that Congress approved the wording of the First Amendment, its members resolved to request of President Washington a day of public thanksgiving and prayer for the peaceful manner in which the Constitution was formed.

A month earlier, Congress passed the Northwest Ordinance, one of the most important documents in our history. Article III of the Ordinance declared, “Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.”

Every president of the United States (with only one possible exception) has been administered the oath of office with his hand on the Bible, ending with the words “so help me God.”

The Supreme Court begins every proceeding with the ringing proclamation, “God save the United States and this Honorable Court.”

Throughout our history, the executive and legislative branches have decreed national days of fasting and prayer.

Public offices and public schools close in observance of religious holidays.

United States currency bears our national motto, “In God We Trust.”

Also by law, the Pledge of Allegiance to the Flag affirms that we are “one nation under God.” Congress would not even allow a comma to be

placed after the word “nation” in order to reflect the basic idea that ours is a “nation founded on a belief in God.”

It is ludicrous and illogical to believe that it is constitutionally permissible for all three branches of the federal government to acknowledge God openly and publicly on a regular basis, and yet at the same time accept the notion that the federal government can strictly prohibit the states from doing the very same thing. Have we become so ignorant of our nation’s history that we have forgotten the reason for the adoption of the Bill of Rights? It was meant to restrict the federal government’s power over the states, not to restrict the states from doing what the federal government can do.

It is no wonder that our present Supreme Court Chief Justice William Rehnquist observed in a 1985 dissenting opinion that “the wall of separation between church and state is a metaphor based upon bad history, a metaphor which has proved useless as a guide to judging. It should be frankly and explicitly abandoned.”

Rehnquist added that “the greatest injury of the ‘wall’ notion is its mischievous diversion of judges from the actual intention of the drafters of the Bill of Rights.” He is right. The doctrine of separation between church and state has been abused, twisted, and taken out of context in recent court decisions in order to prevent the public worship and acknowledgment of God.

## False Neutrality

**T**he Pharisees demanded of Jesus, “Is it lawful to give tribute unto Caesar, or not?” He asked them to produce a coin and tell him whose image was inscribed on its face. When they replied, “Caesar’s,” Jesus gave his answer: “Render therefore unto Caesar the things that are Caesar’s, and unto God the things that are God’s.”

We have to render an awful lot to Caesar these days, but we do not and should not surrender our freedom of conscience. The state can’t tell us how we ought to think or what we ought to believe. As Jefferson testified, “Almighty God hath created the mind free.”

But in the latter half of the 20th century the state is trying to take by force the unalienable rights freely given to us by God, declared in the Declaration of Independence to be “self evident.” Caesar is trying to tell us when, where, and how we can profess our faith.

In 1962 the Supreme Court outlawed a simple, 22-word, nondenominational prayer devised by the New York Board of Regents and used in the New



York public schools: “Almighty God, we acknowledge our dependence upon thee, and we beg thy blessings upon us, our parents, our teachers, and our country.”

A year later the Court issued another ruling declaring that reading the Bible and reciting the Lord’s Prayer in Pennsylvania and Maryland public schools was unconstitutional, thus outlawing “without the citation of a single case” practices that had existed in American schools for over 170 years. Writing for the majority, Justice Tom C. Clark asserted, “In the relationship between man and religion, the state is firmly committed to a position of neutrality.” Justice Potter Stewart pointed out in his lone dissent that this was false neutrality indeed, designed to stifle public professions of faith. Justice Stewart also noted, “We err in the first place if we do not recognize, as a matter of history and a matter of the imperatives of our free society, that religion and government must necessarily interact in countless ways.”

Both decisions represented a major turning point in our history. Judges were no longer interested in the “original intent” of the founders or in legal precedents (which they unapologetically and arrogantly failed to cite). They were eager to embrace the new doctrine of “judicial activism,” which would allow them the opportunity to use their power to reshape society according to the attitudes and whims of the changing times.

Since the 1960s judicial activists have made a concerted effort to banish God from the public square. They have done this by deliberately destroying the distinction between “religion” and “religious activity.” These terms may sound similar, but in fact they are very different. Religious activities may include many actions that would not themselves constitute religion. For example, prayer and Bible reading might be characterized as religious activities, but they do not constitute religion, and they are not limited to any specific sect or even to religious people. One may read the New Testament to gain wisdom, and school students may pray before a big exam. Neither activity was intended to be, is, or should be proscribed by the First Amendment, even if practiced in public.

Sadly, however, it seems that the judicial activists are winning the war. Consider the 1997 case in Dekalb County, Alabama. There, a federal district court determined that a student’s brief

prayer during a high school graduation ceremony was a violation of the First Amendment because it allegedly coerced unwilling citizens to participate in religious activity. We have evidently forgotten that nothing in the Constitution guarantees that an individual won’t have to see and hear things that are disagreeable or offensive to him. We have also failed to realize that peer pressure and public opinion are not the types of coercion against which the framers were seeking to safeguard.

No student should ever be forced by law to participate in prayer or in other religious activity. But to outlaw the public acknowledgment of God simply because another student might have to witness it is as illogical as abandoning a school mascot or motto because it might not be every student’s favorite or because some might not believe in “school spirit.”

In this context, Justice Joseph Story is again worth quoting. He said: “[T]he duty of supporting religion, and especially the Christian religion, is very different from the right to force the consciences of other men, or to punish them for worshipping God in the manner, which, they believe their accountability to him requires.” Even more to the point, one of the most famous Supreme Court justices, William O. Douglas, once wrote that forbidding public worship discriminates in favor of “those who believe in no religion over those who do believe.”

## The Supreme Court starts every proceeding with the ringing proclamation, “God save the United States and this Honorable Court.”

## Disastrous Consequences

October 1997–Pearl, Mississippi; December 1997–Paducah, Kentucky; March 1998–Jonesboro, Arkansas; April 1998–Edinborough, Pennsylvania; May 1998–Fayetteville, Tennessee; April 1999–Littleton, Colorado. These dates and places—these outbreaks of mass violence and needless loss of young lives—serve as a cruel reminder of something gone wrong, desperately wrong, in a nation founded upon faith in God and a respect for His eternal commandments.

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Liberal commentators in the media, academe, and the justice system deride the notion that restoring prayer and posting the Ten Commandments can help stem the tide of violence and bloodshed. They prefer secular solutions, especially ones that involve more federal spending and regulation. In effect, they favor more concertina wire, metal detectors, and armed security guards instead of the simple and effective teaching of moral absolutes.

Yes, teaching moral absolutes is out of the question. *"We don't want to trample on the civil rights of students."* *"We don't want to teach that one creed or one code of conduct or one lifestyle is better than another."*

When will they understand that secular solutions will never solve spiritual problems?

Tragically, as in the days of the Roman Empire, we too have become accustomed to "bread and circuses." With our stomachs full and our minds preoccupied with the pleasures of this world, we fail to seriously ponder the reason for the tragedies that are regularly occurring before our very eyes. We don't contemplate the significance of the judiciary's usurpation of power and suppres-

sion of religious liberty. When and if we do, we are too often afraid to take a stand—ashamed of our faith in God, afraid to hazard the notion of putting God back into the public square.

We must not wait for more violence, for a total breakdown of our schools and our communities. We must not be silent while every vestige of God is removed from our public life and while every public display of faith is annihilated. The time has come to recover the valiant courage of our forefathers, who understood that faith and freedom are inseparable and that they are worth fighting for.

In the words of that great Christian and patriot, Patrick Henry,

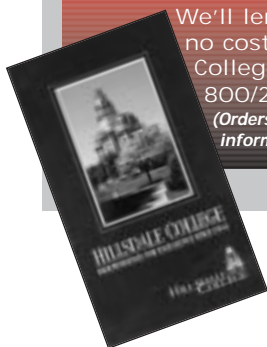
We must fight! I repeat it, sir, we must fight!! An appeal to arms and to the God of Hosts is all that is left us! . . . Why stand we here idle? What is it that the gentlemen wish? What would they have? Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take; but as for me, give me liberty or give me death!" ♣

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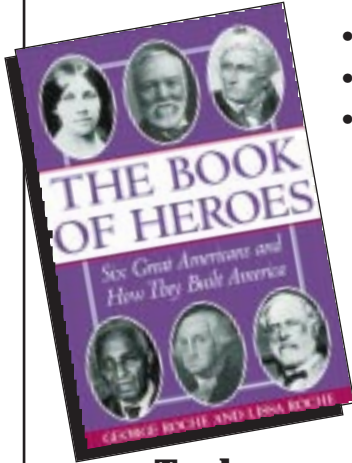
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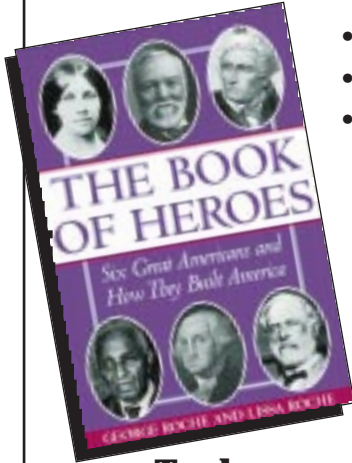
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