

## TWO CRISES OF FAITH: CHURCH AND COUNTRY

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Two recent books by constitutional scholars were surprising. Akhil Reed Amar's, *America's Unwritten Constitution: The Precedents and Principles We Live By*, is on the inadequacy of the written Constitution. Louis Michael Seidman book's is *On Constitutional Disobedience*. These books are comparable to two Christian biblical scholars announcing that Christians should not base their lives on the New Testament.

The comparison to Christian belief is quite exact. In the United States, the Constitution (along with the Declaration of Independence) is treated as sacred scripture. Thousands of interpreters spend their lives trying to tease out the hidden nuances of the text. Nothing can be done by the government that is declared "un-Constitutional." The search is endless for what the authors of the founding documents *really* meant. Seidman said he had been teaching constitutional law for forty years and suddenly discovered that trying to live in obedience to an eighteenth-century document makes no sense.

The two authors have made a dangerous admission. The United States has been held together by a fiction. If people stop believing, the country could unravel. The fictional basis of authority is that answers to today's questions are found in the Constitution of the United States and the Bill of Rights. This fundamentalism prevents the country from doing some sensible things to improve people's lives; it also gives support to insane policies that destroy peoples' lives.

The Supreme Court had the power to decide whether the affordable health care act was constitutional. Eight justices voted as they were expected to vote when they peered into the text of the Constitution with their political biases. The ninth justice would decide whether millions of people could get health care coverage. Chief Justice Roberts, who apparently worried that the Supreme Court was getting a bad reputation for its obstructionism, decided to save the law by his vote.

Roberts did, however, stick with his "conservative" colleagues who are still fighting against Franklin Roosevelt's use of "interstate commerce" as the fiction to justify what had to be done by the government. Roberts was forced to invent a new fiction, that the mandate requiring health insurance coverage was a form of taxation. If Roberts actually believed his own argument he was one of the few people who did. But at least the Court did not obstruct doing something about the scandalous condition of health care in the United States.

On December 14, 2012 the country had one of its worst mass murders in Newtown Connecticut. The country went into its compassion mode lockdown. The television reporters rushed to the scene for a great story. Who wouldn't pay attention to six year olds getting as many as eleven bullets pumped into them? The National Rifle Association was quiet for a few days instead of making its usual statement on such occasions that "this is a time for mourning not for political arguments." After a week the NRA head, Wayne LaPierre, came out from hiding with both barrels blazing. Instead of being even

slightly apologetic or acknowledging the need to do *something*, the NRA unloaded their new mantra: The only way to stop a bad guy with a gun is by a good guy with a gun. The statement drew ridicule in many quarters but LaPierre was cleverly applying the principle of U.S. foreign policy. We're always the good guy with a gun (lots of big guns) who stops the bad guy with a gun (Hitler and everyone said to be a new Hitler).

The gun lobby has been untouchable because of "second amendment rights." If the only question is what the words in the second amendment mean, the gun lobby wins. There is little doubt that the authors of the amendment were saying that every man (women and children not so clear) has a right to possess a firearm. That was the only way to have a state militia that could protect the citizens against possible federal tyranny. An armed militia was the alternative to a standing army although in time an army somehow slipped through the text.

In the debates about guns that followed there were almost no deniers of "second amendment rights," despite paranoia on the right that they were being attacked. Ross Douthat wrote an outrageous column in the *Times* describing LaPierre and Mayor Michael Bloomberg as having the extreme views on the issue; Bloomberg may have made mistakes as mayor but keeping New York the safest big city in the country by his enforcing the control of guns is not one of them.

People who wanted something to be done argued from a Supreme Court ruling in 2008 that the right to bear arms still allows for regulations and restrictions. A common comparison that was made in arguing for regulations was driving an automobile. The rejoinder was that carrying a gun is a right, while driving a car is a privilege. In a fundamentalist world, that contrast of right and privilege may be relevant. But in a world of assault weapons, sanity suggests that the ability to kill as many people in the shortest time possible is what calls for greater control.

These cases are not unusual in U.S. history. Both of the constitutional lawyers list examples of scandalous court rulings in which some horrible practice is constitutional or in which the government is stymied because some needed action was ruled unconstitutional. Recent discussions of Abraham Lincoln have brought out his struggle with the constitutionality of freeing the slaves. Chief Justice Roger Taney in 1857 ruled that a slave named Dred Scott was not a citizen and had no rights; furthermore, Taney said, the government has no constitutional right to interfere with property (the ownership of human beings) in the territories. Lincoln said in the 1860 campaign that he had neither the desire nor the (constitutional) power to interfere in southern slavery. He was finally pushed to issue an emancipation proclamation based on the dubious claim of a temporary power that a president has during wartime as "commander in chief" (a power that in recent decades seems to have become a permanent feature of the U.S. presidency).

Throughout the twentieth century and into the twenty-first century the gap could only widen between what the U.S. Constitution allows and what has to be done for the health and welfare of the country and the rest of the world. But the open acknowledgment that the government is built on a fiction is a dangerous step. The two constitutional lawyers

may not grasp how shaky a situation is created by no longer treating the text as if it were sacred scripture. They seem rather blasé in assuming that business can proceed as usual with some increased flexibility. That is not the way that fundamentalist systems work; no degree of doubt or novelty is allowed.

The country needs an alternative to fundamentalist legal theory but it probably won't come from constitutional specialists. It is too much to expect that people who study the Constitution would also know how to reform the country. The United States might learn from the struggles of the Christian religion to find a basis of authority more convincing than what an ancient text says. Expecting biblical scholars to figure out the basis of church authority is burdening the wrong group. Protestant Christianity has struggled with the problem for at least a century and a half. The Roman Catholic Church is experiencing the problem in a telescoped fashion that began with the Second Vatican Council. When Martin Luther announced the principle of "sola scriptura," he assumed at the same time the continuance of church tradition. And in fact the Protestant Reformation and the Catholic Counter-reformation seemed to stabilize things. Not even skeptics were much inclined to attack the bible.

The big change occurred in the nineteenth century when the bible was attacked from all sides by historians, archeologists, anthropologists and other scientists. Instead of rethinking the relation between the bible and the tradition in which it was embedded, the Christian churches split into fundamentalists who insisted that every statement in the bible is true and people who thought that the church could put the bible on the back shelf and continue business as usual. The Catholics combined a fundamentalism of doctrines and a selective fundamentalism of the bible. Fundamentalist Protestantism, which the intellectual class had declared dead in the 1920s, roared back in the 1970s and, in partnership with constitutional fundamentalism, exercises a powerful influence in the country.

The Roman Catholic Church finally faced up to the fact that there was a huge gap which was separating it from dialogue with the rest of the world. The Second Vatican Council was a great first step in reform. The people who wrote the documents should not be faulted; they did about as well as was possible from where they began. However, on the last day of the Council they should have burned the documents, gone home, and continued the reformation locally. Instead, the documents became part of the selective fundamentalism.

Catholics are told to accept whatever selection of texts from the bible and pronouncements of the pope and bishops that are declared to be "God's revealed word." At the time of the Council there was praise of a "*sensus fidelium*," meaning that the whole community is the basis of church teaching. The pope recently said that there is no "sense of the faithful" unless it agrees with the bishops' teachings. The whole point of the doctrine was that the bishops might have to listen to the "faithful" to discover what "the church teaches." The U. S. bishops actually did that when they wrote their 1983 Letter on Peace, thereby catching up to the church. However, they failed dismally to

listen when it came to church teachings on sexual morality, an area where the bishops are lacking in experience.

The main failing of Vatican II is found in its first document that received lavish praise. The document is usually referred to as "Revelation" but that is not what it is about. Its Latin title is *Dei Verbum* from its first words: "Hearing the Word of God." That opening phrase suggests what is to follow, namely, a sermon. "Word of God" is a treasured metaphor in Christianity but in a document on the basis of the Christian Church, the metaphors have to be examined not assumed. The initial version of the document was written by the Vatican bureaucrats who surround the pope. It was a restatement of what the Catholic church had said in the sixteenth century with a little dressing from the nineteenth. When that version was rejected as hopelessly inadequate, the job of rewrite was given to biblical scholars.

The result was beautiful and pious rhetoric that avoided facing the crisis of authority that was about to tear apart the Catholic church. The document is a fundamentalist restatement with more emphasis on the bible; it is the kind of enlightened fundamentalism that biblical scholars can produce but it does not begin to explore how to connect a first century document and peoples' lives today. After a first chapter on "revelation itself"(which consists of statements from the bible), the second chapter is on "the transmission of divine revelation." It affirms that what God said a long time ago has been transmitted by a line of bishops to today's "faithful." The document encouraged the pope and bishops to continue acting as they previously had, that is, telling the faithful what God revealed a long time ago.

The fault was not with biblical scholars. Just as constitutional scholars cannot restore the authority of the U.S. government, it is wrong to ask biblical scholars to describe how the church's authority is to be established. The life and teaching of Jesus have never been more relevant. The gospels are great literature deserving of study. The three synoptic gospels continue to offer a great challenge to persons and nations. The fourth gospel is beautiful but dangerous.

The Letters of Paul are still provocative of discussion even though they were addressed to one group at one time in one situation. Paul's views have moral weight even though some of his views are wrong, such as his advice on how to be a good slave. That teaching, in cahoots with the U.S Constitution, had disastrous results in U.S. history. Paul could not condemn homosexuality; he had no knowledge of it. But his "men committing shameless acts with men" is still used as a stick to beat up gay men. After a hundred and fifty years of biblical criticism one is still not allowed to admit the bible's shortcomings for delivering answers today.

Fifty years ago the Roman Catholic Church, inspired by Pope John XXIII and a small band of loyal believers, took the courageous step of trying to reform an unimaginably complex organization. There were some admirable set pieces of reform even though they lacked a firm foundation. Protestant and Orthodox Christians were willing to give support to this venture. Even Jews saw the possibility of a new opening with revolutionary

implications for one of the world's longest standing enmities. But five years after the Council ended, the movement came to a halt or went into reverse.

The result is that the Roman Catholic Church instead of playing a vigorous ecumenical role, especially with Muslims, is turned in on itself and trying to cover up its collapsing structure. It is difficult to see how reform can happen but there are still some positive and helpful elements of the church and its history that cannot be counted out. The people who call themselves conservative are usually defending either sixteenth-century doctrines or nineteenth-century morality. Fifty years ago, "liberal" meant escaping from an overbearing church structure; that is no more. People with a religious and historical sense who are involved in today's struggle against injustice will be the creators of something new even if it is unclear what it is and how they can get there. But they cannot create the new without a knowledge of the whole tradition.

The United States has to re-establish a national authority in which a flawed eighteenth-century document, together with the rulings in history that serve the best ideals of the country, are looked at in the light of today's best knowledge. Similarly, the Catholic church has to re-situate authority with documents from thousands of years ago, together with interpretations throughout history that best serve the ideals held out in Jesus' preaching, that are looked at in the light of today's experience and knowledge.