
CHAPTER ONE

The ACLU: Against America from the Beginning

*I am for socialism, disarmament and ultimately for abolishing the state itself as an instrument of violence and compulsion. I seek social ownership of property, the abolition of the propertied class, and sole control by those who produce wealth. Communism is the goal.*¹

—ACLU founder Roger Baldwin

*The American Civil Liberties Union is Roger Baldwin.*²

—former ACLU counsel Arthur Garfield Hays

One of the great myths of the twentieth century and now the twenty-first century is that the ACLU started out as a good, pro-America, proliberty organization that somehow got off the track.

When we look closely at the ACLU's roots, the evidence shows something else. From the very start, the ACLU wanted to destroy from within the America our founders intended, with the use of lawyers and the courts as the chief weapons.

The ACLU was founded in 1920 by Roger Baldwin, an agnostic and socialist who demonstrated Communist leanings.^{3*} Baldwin described himself as an “affluent, Harvard-educated Bostonian” whose ancestors included Mayflower pilgrims.⁴ His grandfather, William Henry Baldwin, was described as an “iconoclastic and non-conformist anti-Christian crusader.”⁵ His aunt Ruth was a member of the So-

^{*}Eight months before his death, at the age of ninety-six in 1981, Baldwin was given the Medal of Freedom, the highest civilian honor of our country, by President Jimmy Carter.

cialist Party. Baldwin said of her, “My almost saintly Aunt Ruth was an endless source of comfort and inspiration to me. She was wise, selfless, and sensitive. She shared my radicalism, but in her own more respectable way.”⁶

Baldwin claimed that his grandfather and aunt played a major role in his upbringing and the shaping of his worldview.⁷ His family was mostly Unitarians, generally social liberals who rejected the deity of Christ.⁸ When asked late in life to give his definition of religion, Baldwin said, “It’s something you accept because you believe that somebody had a very close contact with the Deity. Moses revealed religion with the Ten Commandments. And Jesus was supposed to have had some connection with headquarters. God gave his only son to redeem us for our sins. And it’s possible that the Mormons who got their religion out of some brass plate left on a mountain by Mr. Smith—it’s possible they had some tie-in too with God. Anyway they said they had.”⁹

Baldwin was then asked, “Don’t they all say they have?” He replied, “That’s it, sure they do. That’s how they get followers. Otherwise, it wouldn’t be revealed, I guess.”¹⁰

In the book *Trial and Error: The American Civil Liberties Union and Its Impact on Your Family*, the author noted, “He [Baldwin] followed his grandfather into a life-long moralistic rebellion against the church.”¹¹ Baldwin discussed this contempt quite candidly, when he said, “We Unitarians knew we were very advanced people and that the other churches were backward.”¹²

Baldwin’s type of thought also fed the elitist mind-set that permeated much of the ACLU—the view that only a small group of intellectuals has the capability of understanding and dictating what everyone else should believe.¹³ Former ACLU president Norman Dorsen explained, “Baldwin thought of the ACLU as a group of elitists, of highly educated people, a few thousand at most throughout the country, who would be the vanguard of a movement to protect individual rights in this society.”¹⁴

This mind-set, that the ACLU knows what’s best for the great unwashed masses, drives the ACLU’s disdain for the will of the people. This mind-set also is behind its use of the judiciary, rather than the electorate, to implement its agenda. In addition, the promo-

tion of “individual rights” ultimately results in a society in which the rights of individuals drastically outweigh the collective responsibility individuals should have to society or the concept of a higher law or duty individuals are responsible to follow. The result is a modernistic, media-driven, self-centered society that has evolved to “all about me” instead of “all about us,” a nation that no longer, in too many instances, lives up to the challenge of our late President John F. Kennedy: “Ask not what your country can do for you, ask what you can do for your country.”¹⁵

Baldwin counted among his friends, Margaret Sanger,¹⁶ a eugenicist¹⁷ who founded Planned Parenthood, establishing the early link between the ACLU and abortionists.^{18*} Although abortion can be an extremely financially lucrative practice today, in its early days, it was primarily pushed by eugenicists, individuals who study and promote proposed ways of improving the human species through selective breeding. Eugenics was practiced by the Nazis in Germany in pursuit of their goal of a “master race” by suppressing the birthrate of “inferiors” such as the poor, the handicapped, and racial minorities.¹⁹ In fact, Adolf Hitler admired Sanger.²⁰ And Baldwin spoke almost glowingly of her: “She was a frail, beautiful, unassuming woman. She never thought of herself as important, even on the public platform, but she always had a quiet insistence on the rightness of what she was doing.”²¹ Sanger’s role in forming the foundations of the Baldwin–ACLU philosophy is unquestionable.

Another one of Baldwin’s early friends was the radical anarchist Emma Goldman, whom he considered a mentor.²² Goldman has been described as a consistent promoter of anarchism, radical education, free love, and birth control.²³ Her advocacy of these causes led to her nickname “Red Emma.”²⁴ She conspired to kill Henry Clay Frick of Carnegie Steel,²⁵ founded the anarchist *Mother Earth* magazine,²⁶ and was eventually deported to Russia in 1919.²⁷ According to the online exhibit of Goldman’s papers, her ideas led to the “founding of the American Civil Liberties Union,”²⁸ and her career served as an inspiration for Baldwin.²⁹

*Many resources document the ACLU–Planned Parenthood link. Both organizations often work together to strike down any legal restriction on abortion.

Baldwin said, “Emma was on tour around the country talking to her working-class followers in obscure halls. . . . I was quite overcome by the range and depth of her speech.”³⁰ Afterward, according to Peggy Lamson, Baldwin’s biographer, Baldwin approached Goldman and later arranged an opportunity to introduce her to his friends.

Baldwin recalled,

I gave quite a party for Emma—at the Planter Hotel. I remember very well where it was. I had the intellectual elite there to meet her—social workers, lawyers, editors—some twenty of them. She was a bit uneasy with such strange company, but she hit it off with charm, wit and such subdued good sense in answering their questions that the “Red Queen of Anarchy” [as Goldman was also called] was nowhere to be seen or heard. . . . Then I got my lady friends to hold an evening for her at the Wednesday Club, which was the swankiest women’s club in town. . . . Nowhere was there a word of violence and hardly a mention of revolution though it was implicit in everything she championed. From that first visit I became a friend for life.³¹

Goldman’s biographer Robert Drinnon wrote, “Baldwin made numerous acknowledgements of his great intellectual and moral debt to Emma Goldman. He wrote in one of his letters to her, for instance, ‘you always remain one of the chief inspirations of my life, for you aroused in me a sense of what freedom really means.’”³²

Baldwin added, “Emma Goldman opened up not only an entirely new literature to me but new people as well, some of whom called themselves anarchists, some libertarians, some freedom lovers, and some had no label—like me. They ranged far and wide in time and place, bound together by one principle—freedom from coercion. The State, since it was the supreme form of coercion, was their prime target philosophically. Most anarchists I read or knew accepted nonviolence; they were in fact and thought philosophical anarchists.”³³

Baldwin’s philosophy still permeates the ACLU today, as it advocates that people can do virtually anything at anytime and no individual, no religion or its God, and no government entity has the legitimate power to stop them (except they have no objection to using the power of the state – through agreeable activist judges to crush op-

position to their anti-“coercive” legal agendas.) Understanding this mind-set helps to make sense of some of the ACLU’s actions, such as supporting the efforts of the mayor of San Francisco when he directed the city and county clerk to defy state law and issue thousands of same-sex “marriage” licenses in the spring of 2004.*

Goldman’s friendship with Baldwin served as his introduction to her mentor—Prince Peter Alexeevich Kropotkin, a Russian revolutionary. Lamson wrote, “His [Kropotkin’s] espousal of anarchism was based on his belief that true cooperation between human beings would make government rule superfluous. His utopia would come into being, he believed, when neither private property nor the church nor the state exercised control over the individual spontaneity of men.” Lamson added, “It was natural, therefore, that as Roger came under Emma’s influence he tended to adopt the philosophy of her mentor.”³⁴

These statements from Baldwin, Drinnon, and Lamson are quite telling. What Baldwin also learned from Goldman was how to mask his true agenda and disguise it in a way to get the elites on his side. This would be a strategy Baldwin and the ACLU would use repeatedly to gain access to funding from the wealthy, while at the same time working to destroy many of the core values of the free enterprise system that led to the creation of their wealth. It also explains the ACLU’s continued advancement of a society in which anything goes, and individual “spontaneity,” advocated by Kropotkin, is paramount over individual responsibility.

In part, because of Goldman’s influence, Baldwin, along with the other ACLU founders, was a committed pacifist and conscientious objector to World War I.³⁵ The genesis of the ACLU dates to 1914 when Baldwin replaced the female pacifist Crystal Eastman as a committee member of the American Union against Militarism (AUAM) to oppose U.S. entry into the war.³⁶ When war did come, the AUAM became an avenue for those who wished to avoid the draft but did not have faith-based conscientious objector reasons to do so.³⁷

*For a current example, the goal of many ACLU allies is to abolish marriage entirely as a government-ordained institution, and to make marriage whatever any group of consenting adults (and perhaps beyond consenting adults to interspecies relationships) wants it to be. All current legal posturing and most litigation are couched in terms of “equality,” “fairness,” and “tolerance” for same-sex “marriages.”

When Baldwin was ordered to register for the draft in 1918, he wrote the following to the Selective Service, which administered the draft,

Gentlemen: In registering today under the Selective Service Act, I desire to make the following statement as to my attitude towards conscription. I am opposed to the use of force to accomplish any ends, however good. I am, therefore, opposed to participation to this, or any other war. My opposition is not only to direct military service, but to any service whatever designed to help the war. I am furthermore opposed to the principle of conscription in time of war and peace, for any purpose whatsoever. I will decline to perform any service under compulsion, regardless of its character. I am advising you of my views so that you may record my record with your board to show from the start where I stand.³⁸

When Baldwin refused to report for a physical examination, he was arrested for resisting the draft.³⁹ Eventually many of his colleagues were arrested too. After the trial, at which he was found guilty, Baldwin was sentenced to incarceration for one year. During his time in prison, Baldwin corresponded with the committed Communist Anna Louise Strong (to whom he was once engaged);⁴⁰ his then girlfriend and future wife, Madeleine Doty, a committed feminist with socialist leanings;⁴¹ and Scott Nearing, a prominent Socialist of the era.⁴²

When he left prison in 1919 after the war was over, Baldwin married Doty in an unconventional ceremony that vividly illustrated his (and the ACLU's future) contempt for the institution of marriage. There was no formal dress, bridal veil, and no ring. Both Doty and Baldwin shared during the ceremony what marriage meant to them. Here is what Baldwin read to Doty:

To us who passionately cherish the vision of a free human society, the present institution of marriage among us is a grim mockery of essential freedom. Here we have the most intimate, most sacred, the most creative relationship shackled in the deadening grip of private property and essentially holding the woman subservient to the man. . . .

We deny without reservation the moral right of state or church to bind by the force of law a relationship that cannot

be maintained by the power of love alone. We submit to the form of law only because it seems a matter of too little importance to resist or ignore. . . .

The highest relationship between a man and a woman is that which welcomes and understands each other's loves. Without a sense of possession there can be no exclusions, no jealousies. The creative life demands many friendships, many loves shared together openly, honestly, and joyously. . . . [polyamory]*

My primary interest and joy is the great revolutionary struggle for human freedom today, so intense, so full of promise. I regard our union only as contributing to that cause, making us both serve it more passionately, the more devotedly.⁴³

Later, as an elderly man, Baldwin dismissed these vows in an interview with Peggy Lamson as "pretentious and idealistic." He stated at the time he made the remarks he was "quite elevated."⁴⁴ Regardless of his later repudiation of these remarks, they reveal how Baldwin viewed marriage during the founding era of the ACLU. And that mind-set set the tone for the ACLU's policies toward and attempts to redefine marriage later.

When World War I ended, the organization that Baldwin and his colleagues had founded seemed to have lost its public sense of purpose. As someone noted, it was like a disease prevention charity frustrated that a cure was found for its cause, so the members discussed how they could perpetuate its existence. The result was its reinvention in 1920 as the American Civil Liberties Union.⁴⁵

Baldwin was clear about his goals and purposes. In his thirtieth-anniversary Harvard University classbook he wrote, "I am for Socialism, disarmament, and ultimately the abolishing of the state itself as an instrument of violence and compulsion. I seek social ownership of property, the abolition of the propertied class, and sole control by those who produce wealth. Communism is the goal."⁴⁶

*[Polyamory is a form of open marriage, in which several individuals (male and female) can be married to each other and openly and indiscriminately engage in sexual relations with their multiple partners.]

In 1920, Baldwin also created three other organizations, including the International Committee for Political Prisoners to aid deported aliens, which he would later describe as “a network of correspondents in the various countries, and we had contacts with the Communist movement and with the Socialist International in New York, plus a very strong committee.” When asked by his biographer Peggy Lamson if this committee included ACLU members, Baldwin replied, “Yes, a lot of the same crowd.”⁴⁷ Another organization, the Mutual Aid Society, was designed “to help radicals who were in trouble, who couldn’t get jobs, or who needed bail; or defense money and lawyers.” When asked about the Mutual Aid Society, he replied that the members were “leftist intellectuals, trade unionists, the radical fringe.”⁴⁸ This philosophy of the Left has continued to this day to find jobs for radicals in trouble.

In its first year, the ACLU also supported the Communist⁴⁹ Industrial Workers of the World movement.⁵⁰ In the very next year, 1921, the ACLU would call itself a “militant, central bureau in the labor movement for legal aid, defense strategy, information, and propaganda.” In addition, the ACLU asserted that it worked side by side with the International Workers of the World movement and the Communist Party to be a “center of resistance.”⁵¹ According to Earl Browder, general secretary of the American Communist Party, the ACLU served as a “transmission belt” for the party.⁵² Baldwin acknowledged this, stating to Lamson that he was a member of a number of “united front” groups, which were in his words, “recruiting centers [for the Communist Party where] lists could be taken, sympathizers spotted and enrolled and if the treasurer happened to be a party member, funds could be siphoned off for party purposes.” He added, “I joined. I don’t regret being a part of the Communist tactic which increased the effectiveness of a good cause. I knew what I was doing; I was not the innocent liberal. . . . I wanted what the Communists wanted and I traveled the United Front road—not the party road—to get it.”⁵³

Besides Baldwin, other early ACLU board members showed clear Communist sympathies. Robert W. Dunn, a board member and founder of the New England ACLU chapter, made two trips to the Soviet Union to assist Communists there.⁵⁴

In 1924, Baldwin, who organized and traveled with the International Committee for Political Prisoners to the Soviet Union, wrote, “Many of the members of the Committee for Political Prisoners as individuals regard the Russian Revolution as the greatest and most daring experiment yet undertaken to recreate society in terms of human values. . . . Many of them look upon Russia today as a great laboratory of social experiment of incalculable value to the development of the world.”⁵⁵

Many Americans have forgotten that during this period of Russian, and then Soviet, history, so admired by Baldwin, as many as two million people were relocated, had their property seized, or were killed as a result of Marxism and Communism.⁵⁶

William Donohue, president of the Catholic League for Religious and Civil Rights and an expert on ACLU history,* writes in his book *The Politics of the American Civil Liberties Union*:

Baldwin, the father of American civil liberties, not only failed to question the abuses of freedom in Russia but actually defended the repressive regime. In 1928 he published his glowing account of Russia in *Liberty under the Soviets*. In it he confessed that he held a favorable bias toward the Soviet Union, as the title of his work conveys. Economic freedom, i.e., the abolition of class privilege, was more important than civil liberties. Anticipating the charge that he was engaging in duplicity, Baldwin frankly acknowledged that “repressions in western democracies are violations of professed constitutional liberties, and I condemn them as such. Repressions in Soviet Russia are weapons of struggle in a transition period to socialism.”⁵⁷

The ACLU quickly found resistance to this radical message and knew it would need to soften its rhetoric and repackage its image to the American public if it was to succeed. In 1920, a joint committee of the New York State Legislature described the ACLU as “a supporter of all subversive movements; and its propaganda is detrimental to the interests of the state. It attempts not only to protect crime, but to encourage attacks upon our institutions in every form.”⁵⁸

*Donohue conducted extensive interviews with Baldwin before Baldwin's death in 1981.

Baldwin had already thought through how he would “sell” the ACLU to the American public. In a 1917 letter to one of his supporters (when he was heading the AAUM and before the ACLU was officially formed), he explained this dilemma and how the ACLU could solve its image problem and convince the American people they had no cause for alarm. He wrote, “Do steer away from making it [the organization] look like a Socialist enterprise. Too many people have gotten the idea that it is nine-tenths a Socialist movement. We want also to look like patriots in everything we do. We want to get a good lot of flags, talk a good deal about the Constitution and what our forefathers wanted to make of this country, and to show that we are really the folks that stand for the spirit of our institutions.” William Donohue wrote, “By wrapping themselves in the flag, then, civil libertarians could pursue their political objectives while feigning loyalty to the nation.”⁵⁹

The ACLU of today still carries out Baldwin’s marching orders. Until a recent redesign, its Web site (www.aclu.org) was draped in red, white, and blue, with the Statue of Liberty prominently displayed on most pages. The rhetoric claims fervent loyalty to America, certain Jeffersonian ideas (we will discuss in a later chapter), and the Constitution, ignoring, of course, the nation’s founders’ writings, ideals, and purposes. But from the very start, as we will see, the ACLU *was not* about America. At least not the America our nation’s founders envisioned as they stepped onto the *Speedwell* and *Mayflower* to cross the icy North Atlantic and later founded what became the Ivy League universities. These new Americans fought the most powerful nation on earth for liberty, and their leaders would gather in Philadelphia to write the Declaration of Independence, then the U.S. Constitution, and finally during the first session of Congress, the Bill of Rights. The ACLU was about the promotion of the ideas behind Socialism and Communism and reordering America to fit its agenda.

While presenting itself to be a “patriotic” organization, its definition of “patriotism” is also very different from that of the average American’s. Baldwin pushed an agenda that would systematically weaken America. Its policy was to say one thing, then do another. In the late 1920s, Baldwin laid out his agenda for the ACLU. It included opposition to the use

of military or naval forces of the United States, as he said it, to “control weaker nations as a violation of their civil liberties.”⁶⁰

In addition, Baldwin developed the strategy—still used today—to occasionally defend a conservative to illustrate it was nonpartisan. And, as in the early days, the ACLU has a few associates who not only espouse a broad support of free speech, but will actually take steps, in a few times and places, to defend speech they personally disagree with. Yet the ACLU’s infrequent, even rare, defense of conservatives or orthodox and traditional persons of faith is often just a tactic to advance its agenda for left-wing causes.* As Baldwin noted in 1934, “If I aid the reactionaries to get free speech now and then, if I go outside the class struggle to fight against censorship, it is only because those liberties help to create a more hospitable atmosphere for working class liberties.”⁶¹ William Donohue commented, “In other words, the occasional defense of right-wing extremists opens up the courts, thereby making it easier for the ACLU to defend its ideological kinfolk on the left.”⁶²

Throughout the 1920s and ’30s, the ACLU had prominent Communist Party members such as Harry F. Ward, Louis Budenz, Elizabeth Gurley Flynn, William Z. Foster, Robert W. Dunn, Anna Rochester, A. J. Isserman, and Mary Van Kleeck among its leadership.⁶³ William Donohue’s research disclosed that the ACLU loaned money and provided bail for many Communist Party members and Communist front organizations.⁶⁴ For example, in 1930, the ACLU provided bail for five Communist textile workers, who then immediately jumped bail and fled to the Soviet Union.⁶⁵

While Baldwin held Communist/Socialist sympathies to the end of his life, eventually, like many U.S. Communist sympathizers, he became disenchanted with the Soviet version of Communism only after the Nazi-Soviet NonAggression Pact of 1939,⁶⁶ which allowed Adolf Hitler and the Nazi Party to take over much of Eastern Europe. Later in life, he said, “Anti-communism was much more of a menace to civil liberties. Communism never affected our civil liber-

*An example of this is the ACLU of Virginia’s recent threat to sue the Fredericksburg–Stafford (Virginia) Park Authority for prohibiting baptisms by a local Baptist church in a river bordering the park. After the ACLU threat, the park authority backed down and allowed the baptisms. See “Following Threat of ACLU of Virginia Lawsuit, Officials to Agree Not to Ban Baptisms in Public Parks,” <http://www.aclu.org/news/NewsPrint.cfm?ID=15897&c=141>.

ties very much. And the Communist party in the United States was certainly never strong enough to be a menace at any time or in any way.* The only menace was the people who believed in a Communist dictatorship, which is a denial of civil liberties. They did not belong with us in a leadership position.”⁶⁷

Baldwin rid the ACLU board of overt Communists because of his anger about the Nazi-Soviet pact, establishing a policy that read, in part: “The Board of Directors and the National Committee of the American Civil Liberties Union . . . hold it inappropriate for any person to serve on the governing committees of the Union or its staff, who is a member of any political organization which supports totalitarian dictatorship in any country, or who by his public declarations indicates his support of such a principle.”⁶⁸

Baldwin gave this reason for purging those he perceived to be Soviet-style Communists from ACLU leadership: “The ACLU is a private organization. . . . And a private organization is like a church. You don’t take nonbelievers into the church. We are a church; we have a creed and only true believers should lead us.”⁶⁹ He claimed that privilege for the ACLU, but decades later in legal arguments, the ACLU would attempt to deny other private organizations, such as the Boy Scouts, the same privilege of exclusivity in defining a standard of conduct for their leaders. But as we will see in succeeding chapters, the ACLU has no problem with using, or others using, the courts to force other private organizations (and religious ministries such as Catholic Charities)⁷⁰ to accept individuals as leaders or adopt policies that violate the organizations’ core beliefs.

The Scopes Monkey Trial

One of the first targets of the ACLU in its effort to undermine the America our founders intended was organized religion—at least religious entities that believed in the inerrancy and authority of the Bible. This was consistent with Baldwin’s intellectual disdain for the church. In 1925, the ACLU advertised for a teacher who would be willing to challenge the state of Tennessee’s Butler Act, which pro-

*Much of the American Communist Party was directly funded from Moscow. See H. Klehr, J. E. Haynes, K. M. Anderson, eds., *The Soviet World of American Communism* (New Haven, CT, and London: Yale University Press, 1998).

hibited teaching the theory of evolution in state public schools and universities.⁷¹ This would be the first prominent example, of many, of how the ACLU would use events to advance its agenda.

Peggy Lamson wrote, “By all odds the most important ‘manipulated test case’ of the 1920’s was, of course, the Scopes Monkey Trial, which the ACLU literally originated by creating a confrontation between an individual and the state in which he lived. . . . The fact is that it was the Scopes case that largely won for the American Civil Liberties Union the national renown it has enjoyed ever since.”⁷²

The Butler Act had first come to the attention of ACLU member Lucille Milner, who saw a news item about it in the newspaper. She took the article to Baldwin, who in turn, brought it up at the ACLU board meeting. The board then authorized a special fund to finance the defense case of any teacher who would defy the law, with the goal to get the case before the U.S. Supreme Court.⁷³ The ACLU found John Thomas Scopes, a high school football coach and substitute science teacher in Rhea County, Tennessee. Recent scholarship shows that the regular science teacher at the school would have nothing to do with the scheme.⁷⁴

Scopes was brought to the attention of the ACLU by a man named G. W. Rappelyea, who had heard about the scheme. He sent a telegram: “J. T. Scopes, teacher of science, Rhea Central High School, Dayton, will be arrested, charged with teaching evolution . . . for test case to be defended by you. Wire me collect if you wish to cooperate and arrest will follow.”⁷⁵

Scopes defied the law and was subsequently arrested.⁷⁶ Baldwin immediately saw the trial as an opportunity to pursue his personal antireligion agenda, writing, “It was immediately apparent what kind of a trial it would be: the Good Book against Darwin, bigotry against science, or, as popularly put, God against the monkeys.”⁷⁷

The Scopes Monkey Trial has been written about endlessly and has been made into a play and the movie *Inherit the Wind*.^{*} Even though the foreward of the play denies it is the Scopes case in the story,

^{*}Alan served as legal counsel at a hearing conducted in the historic Rhea County courtroom where the Scopes trial took place. His opposing counsel was a descendent of one of the participants in the Scopes trial, who spent a few hours proudly telling Alan the oral history of his family’s role in the events surrounding the trial.

virtually every adult American who has read, seen, or heard the play knows of its parallel to Scopes. Our purpose here is not to discuss the creation-evolution debate or other events in the trial.* The importance of the Scopes trial was that it was an early use of the ACLU's tactics of intimidation, misinformation, and fear to advance its agenda.

Throughout the trial, Clarence Darrow, one of the attorneys defending Scopes, attempted to undermine the biblical account of creation and mocked the religious beliefs of William Jennings Bryan, former three-time Democratic candidate for U.S. president, who had joined the prosecution team.† He did this at the expense of focusing on the facts and the Tennessee statute at issue. In his relentless questioning of Bryan, and in his arguments, it was evident that the agenda of Darrow and the ACLU was not primarily to defend Scopes but to publicly discredit traditional religious beliefs. On that account, they succeeded.‡ Additionally, it was one of the first attempts by the ACLU to prove the superiority of its intellectual elitism over the ignorant faith of the masses.

The best example of this was Darrow's argument that the law was unconstitutional. Nowhere in this argument did he mention the law specifically or examine its text under constitutional requirements. Instead, he engaged in what would later become typical ACLU rhetoric to demonize its opponents, play upon human emotion, and evade the real issue at hand. Darrow asserted:

If today you can take a thing like evolution and make it a crime to teach it in the public school, tomorrow you can make it a crime to teach it in the private schools, and the next year you can make it a crime to teach it to the hustings or in the church. At the next session you may ban books and the newspapers. Soon you may set Catholic against Protestant and Protestant against Protestant, and try to foist your own

*The Tennessee Supreme Court would eventually dismiss the charges against Scopes, who was initially found guilty and fined \$100. The Tennessee Supreme Court also upheld the constitutionality of the statute.

†According to Lamson, there was a great deal of debate within ACLU circles whether or not to challenge the Butler Act on constitutional grounds or to turn the trial into an opportunity to discredit religious belief. When Bryan became part of the prosecution team, Clarence Darrow stepped forward for the opportunity to use the trial as a forum to debate Bryan's religious beliefs. With this development, the ACLU's strategy became clear.

‡The most comprehensive Web site to read the trial transcripts is <http://www.law.umkc.edu/faculty/projects/ftrials/scopes/scopes.htm>.

religion upon the minds of men. If you can do one you can do the other. Ignorance and fanaticism is ever busy and needs feeding. Always it is feeding and gloating for more. Today it is the public school teachers, tomorrow the private. The next day the preachers and the lectures, the magazines, the books, the newspapers. After awhile, your honor, it is the setting of man against man and creed against creed until with flying banners and beating drums we are marching backward to the glorious ages of the sixteenth century when bigots lighted fagots [pieces of wood] to burn the men who dared to bring any intelligence and enlightenment and culture to the human mind.⁷⁸

While Darrow was not the first choice of the ACLU board (which was split over who should serve as lead counsel), and Baldwin was ambivalent about his involvement,⁷⁹ Darrow's rhetoric was symbolic of the type of speech the ACLU has used for eighty years to accomplish its agenda. This rhetoric, disguised as legal arguments, deemphasizes or ignores the real constitutional or legal issues and facts of the case. Instead, the ACLU appeals to people's emotions and worst fears, while attacking religious believers and others who oppose its agenda.

The ACLU's Unlucky Thirteen

For the first several decades of its existence, the ACLU had some victories at various courts, including the U.S. Supreme Court level, but none that seemed to have a particularly significant impact on American society at large. However, while their early legal victories were sparse, they were actively laying the groundwork through their growing connections in academia, the media, and the judiciary to change America's understanding of the U.S. Constitution and religious freedom. The ACLU engaged in what some call "building precept on precept" (setting legal precedent) to eventually lead to a tidal wave of decisions in its favor. (ADF is utilizing a somewhat similar strategy to reclaim our nation's legal system from the years of damage inflicted by the ACLU.)

Starting in the late 1940s, the foundation the ACLU had been building for the previous two decades began to pay dividends. In what was seemingly the blink of an eye, the ACLU established a tremendous momentum of legal decisions that would be used to limit

religious freedom, to remove legal protections for the unborn and infirm, and to undermine marriage and the family.

To understand how the ACLU built legal precedent to advance its agenda, let's visit thirteen U.S. Supreme Court decisions the ACLU used to help reshape America. While the ACLU or its direct allies were not parties in every one of these cases, they served as building blocks for the ACLU's agenda.

Many of these and similar victories came about because most of those who opposed the ACLU's agenda essentially sat on the sidelines. Sometimes when the opposition did appear, it was often too underfunded or ill equipped to put up much of a struggle. These Supreme Court decisions, along with numerous others at all court levels, (combined with the relentless use of legal demand letters) have played a pivotal role in moving our society to where it is today.⁸⁰

- *Everson vs. Board of Education* (1947): This case involved a New Jersey law that allowed reimbursements of money to parents who sent their children to school on buses operated by the public transportation system. Children who attended Catholic schools also qualified for the transportation subsidy. While the Court held the specific law was not enacted in violation of the Constitution, Justice Hugo Black, a former Ku Klux Klan member who wrote the opinion for the court, stated, "First Amendment has erected a wall between church and state. That wall must be kept high and impregnable."⁸¹* Even though that wording is found *nowhere* in the U.S. Constitution or the First Amendment, this phrase, which was proposed to the court in the ACLU's friend-of-the-court brief filed in the case, would be used by the ACLU in many cases to whittle away our religious freedoms.[†]
- *Engel vs. Vitale* (1962): In this case the Supreme Court built on the church and state language from the *Everson* decision. The court held that public school teachers could not open

*Amazingly, Hugo Black tried to re-create history by suggesting that Thomas Jefferson played a leading role in drafting and adopting the First Amendment, even though Jefferson was serving as minister to France at the time. (See *Everson vs. Board of Education of Ewing Township*, 330 U.S. 1 (1947) at 15.

†We will discuss the ACLU's misuse of the term "separation of church and state" in depth in chapter 6.

class with a prayer, even when the prayer was nonsectarian and even if the schools did not compel a student to join in prayer over his, or his parents', objection.⁸² The whittling away of our religious freedom continued.

- *School District of Abington Township vs. Schempp* (1963): Just one year later, the *Engel* precedent was used to successfully support the Supreme Court's holding that the state could not require the recitation of the Lord's Prayer and the reading of Scripture in public school classrooms, even when students had the right to opt out from these activities.⁸³ The whittling continued.
- *Epperson vs. Arkansas* (1968): The Court once again relied on previous ACLU-supported legal precedents—this time applying them to prohibiting the teaching of evolution in public schools. The Court held that the prohibitions against teaching evolution were motivated by religious beliefs and therefore violated the First Amendment.⁸⁴ More whittling occurred.
- *Wallace vs. Jaffree* (1985): Not content with silencing public prayer, the ACLU even went after moments of silence for voluntary prayer or meditation at the beginning of public school classes. The Supreme Court again agreed with the ACLU and ruled that the statute was unconstitutional because it was intended “to convey a message of state approval of prayer activities in public schools”⁸⁵ The whittling away of the right to publicly express one's faith—even in silence—continued.
- *Lee vs. Weisman* (1992): Continuing its assault on the public expression of faith, the ACLU was successful in arguing that nonsectarian prayers delivered by ministers and rabbis at public high school graduation ceremonies violated the Establishment Clause of the First Amendment.⁸⁶

The ACLU has also used Supreme Court precedent to systematically remove legal protections for the unborn:

- *Griswold vs. Connecticut* (1965): The ACLU backed this case, which challenged a Connecticut statute that prohibited the use of contraceptives and forbade assisting or counseling individuals to use contraceptives. The Court used this case to craft a new constitutional “right of privacy” for married couples. The Court wrote, “The ‘right’ of privacy is based

on the Bill of Rights [which] have penumbras, formed by emanations from those guarantees that help give them life and substance.”⁸⁷

- *Eisenstadt vs. Baird* (1972): The Court once again relied on the right of privacy in holding that states could no longer prohibit the distribution of contraceptives to even unmarried persons. *Griswold* and *Eisenstadt* were just small tremors compared to the nation altering legal, cultural, and moral earthquake that would follow the next year.⁸⁸
- *Roe vs. Wade* (1973): *Griswold* and *Eisenstadt* set the stage for the ACLU and its allies’ big prize, *Roe vs. Wade*, which essentially “legalized” abortion up to the moment of birth.⁸⁹ The judicially crafted right of privacy was now extended to the killing of unborn children. The result of this decision is that over 46 million Americans—more than the entire population of California or the nation of Canada—have been legally killed since 1973.^{90*}
- *Planned Parenthood vs. Casey* (1992): Nineteen years later, pro-life groups thought they finally had the case (and the ideological makeup of the Court) to overturn *Roe vs. Wade*. In this case, Robert Casey, the pro-life Democratic governor of Pennsylvania, had been successful in getting the state legislature to place some reasonable restrictions on abortion. In spite of the courageous efforts of Casey and others, the ACLU, Planned Parenthood, and other groups were successful when the Court reaffirmed *Roe vs. Wade* and established a new test to evaluate abortion regulations. This new test prohibits regulations that place an “undue burden” on a woman’s “right” to get an abortion. Still, the Court did uphold some of Pennsylvania’s restrictions on abortion.⁹¹

The ACLU and its allies were also successful in getting the court to inject the “mystery” clause—language that reads: “Abortion is a 14th amendment right, not just an applied right of privacy, but a 14th amendment protected liberty—at

*The trimester-based analysis of *Roe*, on its face, left some room for states to regulate abortion but included the “health of the mother” provision which essentially “legalized” abortion up to the moment of live birth.

the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of life."⁹² This phrase would also be used in the Court's decision in *Lawrence vs. Texas*, which struck down state laws regulating the practice of same-sex sodomy. This statement—to define "one's own concept of existence"—now elevated to national policy, comes directly from the philosophies of Emma Goldman and Roger Baldwin.⁹³

The ACLU has also used Supreme Court precedent to support the distribution of pornography and obscene material, desensitize society, and undermine marriage and the family:

- *Jacobellis vs. Ohio* (1964): The ACLU participated in this case in which the Supreme Court overturned the conviction of a theater manager for violating a state obscenity law by showing a film. According to the Supreme Court, the film was not obscene, so it was protected by the First Amendment.^{94*} Fortunately, the ACLU has not gotten nearly all it has asked the Supreme Court to do. As early as 1982, in *New York vs. Ferber*, the ACLU asked the justices to decree that child pornography was protected by the Constitution. The Court rejected the argument.^{95†}
- *Romer vs. Evans* (1996): Working with advocates of homosexual behavior, the ACLU has relentlessly pushed the homosexual legal agenda through our nation's judicial system, bypassing the often very express will of the people to the contrary. The result has been the continued erosion of religious freedom, as any speech or action that mentions the spiritual, emotional, and physical destructiveness of homosexual behavior is increasingly restricted by courts or public officials cowered by what they fear courts would otherwise order them to do. When the voters of Colorado overwhelmingly passed an amendment to the Colorado Constitution in

*The Court applied a test that asked "whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to the prurient interest." *Jacobellis vs. Ohio*, 378 U.S. 184 (1964).

†In 2004, in *Ashcroft vs. ACLU*, the Supreme Court prevented the implementation of the Child Online Protection Act (COPA), which was designed to protect minors from obscene material on the Internet. The Court remanded (returned) the case to the lower court for further argument.

1993 to ensure that those who practice homosexual behavior would not receive special legal rights and privileges beyond that of ordinary citizens, the ACLU and homosexual activists sued the governor, state attorney general, and the state. The U.S. Supreme Court ruled that the Colorado amendment had violated the Equal Protection Clause of the Fourteenth Amendment. Justice Anthony Kennedy also took a jab at Colorado voters, stating that the amendment displayed “animus” (prejudiced ill will) for homosexuals when they adopted the initiative.⁹⁶ This decision further encouraged the ACLU and its allies who advocate for homosexual behavior to further bypass the will of the people time and again and to force their radical agenda through our nation’s judicial system.

- *Lawrence vs. Texas* (2003): *Romer vs. Evans* and *Planned Parenthood vs. Casey* were part of the groundwork for this decision, which was based in part on international law (and more creative twisting of the Constitution and the Fourteenth Amendment), extending the right of privacy to provide constitutional protections to homosexual sodomy.⁹⁷ This decision now serves as a major linchpin for the ACLU and its homosexual activist allies to press for legal recognition of same-sex marriages and other demands for special privileges and public funding for their cause and for pornographers to increase their profits.⁹⁸

The *Lawrence* decision had several alarming elements. First, it opened the door for radical homosexual activists—despite a contrary sentence in the decision—(and the ACLU) to further use the judicial system to try to force same-sex and polygamous “marriage” on America. Second, the Court’s reference to international law in its decision(see chap. 8 for further discussion about the ACLU’s advocacy of international law) may well undermine American sovereignty and many principles of our forefathers.

But there is good news on *Lawrence* so far. For now, ADF and its allies have been successful in holding back the demands of homosexual activists and the ACLU for judicially decreed marriage in many states, except Massachusetts. Courts have not yet shown a propensity to extend the *Lawrence* decision to create a new constitutional right

for such unions. In fact, the Indiana Court of Appeals and Arizona Supreme Court have both rejected *Lawrence* as a framework to grant marital rights to same-sex couples.

Through the ACLU's relentless legal campaign—in the courts and by activist judges—to conform America to its agenda, our nation has gone from one that affirmed the role of God and Judeo-Christian values to one now often hostile to God and those values.

The ACLU's Ultimate Agenda

The impact of all these ACLU victories is an America vastly different from what the Founding Fathers intended. To contrast the ACLU's vision for America with that of the Founding Fathers, consider the following words from John Quincy Adams, the sixth president of the United States:*

When the children of Israel, after forty years of wanderings in the wilderness, were about to enter the promised land, their leader, Moses . . . commanded that when the Lord their God should have brought them into the land, they should put the curse upon Mount Ebal, and the blessing upon Mount Gerizim. This injunction was faithfully fulfilled by his successor Joshua. Immediately after they had taken possession of the land, Joshua built an altar to the Lord, of whole stones, upon Mount Ebal. And there he wrote upon the stones a copy of the law of Moses, which he had written in the presence of the children of Israel. . . .

Fellow citizens, the ark of your covenant is the Declaration of Independence.

Your Mount Ebal, is the confederacy of separate state sovereignties, and your Mount Gerizim is the Constitution of the United States. . . .

Lay up these principles, then, in your hearts, and in your souls . . . teach them to your children . . . cling to them as to the issues of life—adhere to them as to the cords of your eter-

*John Quincy Adams, who served as a foreign minister and secretary of state, and was nominated for but declined appointment to the U.S. Supreme Court, was son of the second president John Adams, one of principal framers of the Declaration of Independence. Between the two men, they were involved in the formation and government of America for seventy-three years (1775–1848).

nal salvation. So may your children's children . . . [celebrate the] Constitution . . . in full enjoyment of all blessings recognized by you in the commemoration of this day, and of all the blessings promised to the children of Israel upon Mount Gerizim, as the reward of obedience to the law of God.⁹⁹

Adams knew America's future depended on how the succeeding generations adhered to what the founders intended, although the ACLU would probably argue that those intentions are irrelevant. Yet, in a short amount of time, the ACLU and its allies have twisted the Constitution and its First Amendment—meant to be a shield for people of faith—into a sword to be used against them. Courts that once dared not violate the laws of God—and enforced rules against blasphemy—now openly mock His name. Thanks to the ACLU's relentless attacks on religious expression, many courts, instead of allowing religion to flourish, help suppress and punish people and organizations of faith.

Through the ACLU's continued attacks on the sanctity of human life, *all* human life has been cheapened and the legal door has been opened to many aspects of social Darwinism, assisted suicide, cloning, and a general disregard for the welfare of our fellow human beings.

The ACLU's advocacy has led to the legal undermining of marriage and the family, including the weakening of parental authority. Marriage, an institution that civilizes society and promotes mutual respect between the sexes and the nurturing environment children need to develop and thrive, is now used to promote a social agenda that elevates self-gratification above mutual commitment.

For instance, the ACLU has constantly sought to redefine the First Amendment's protections of press and speech* to include the most foul and perverse hard core and child pornography imaginable. They have publicly cloaked their efforts to undermine any effort by the government to enforce obscenity laws, or by parents to protect their children from obscene material, as combating "censorship."

*The First Amendment to the U.S. Constitution reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people to peaceably assemble, and to petition the Government for a redress of grievances."

However, the First Amendment was *never* intended to protect obscene material. Obscenity is outside the scope of the First Amendment and is not considered to be “speech” as defined in the Constitution.¹⁰⁰ In fact, the First Amendment calls for self-restraint and for individuals to be held responsible for their actions.

Numerous states have echoed this theme and have put equivalent speech protections in their constitutions. For example, the Constitution of the State of Washington reads: “Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right.”¹⁰¹ Other states, such as Arizona, have similar language.¹⁰² From the beginning of our republic, and in every state, long before cameras, there were laws relating to and proscribing what is now called obscenity, including what is now commonly called hard core and child pornography.¹⁰³ Such material was no more considered “protected speech” by the authors of the U.S. Constitution than was defamation (libel and slander, excluding some public officials), criminal conspiracy, fighting words, incitement, and certain acts of espionage.

This is an important point to understand when the ACLU accuses concerned people of faith of “censorship” when they engage in educational campaigns, urge boycotts to oppose the sale of pornography in their community or insist on law enforcement efforts against pornographers who distribute obscene materials, or who violate zoning and other regulations relating to the time, place, and manner of distribution of even non-obscene material. Such law enforcement and private speech efforts to protect the community and children are not censorship, which, properly defined, is an act of a government agent selecting what materials or portions of materials can be published in advance.

These attempts to protect children (and communities) from obscene materials are radically different from the ACLU’s efforts to eliminate from the public square any public expression of religious faith. Religious communications—including prayer and proselytization are considered to be the essence of liberty by the drafters of the First Amendment, *not* hard core and/or child pornography. They considered the right to publicly express or exercise one’s faith to be

so important that they listed it first on the list of the limits imposed on the federal government in the amendment.

This also illustrates the ridiculousness of the ACLU's claim that a *voluntary* public prayer made by a high school valedictorian, selected on absolutely neutral grounds, or the posting of a Ten Commandments memorial by the American Legion with private funds on a public courthouse lawn, violates the Establishment Clause of the First Amendment.* By no stretch of the imagination are either of these actions, or numerous others, either done by Congress nor are such actions "laws" to establish religion. Because of the ACLU's misinterpretation of the Establishment Clause, no other section in the U.S. Constitution has faced more abuse in terms of its clear and original text being completely reconfigured and misapplied than these ten words.

Dennis Prager, a well-known columnist and radio host, perhaps best expressed the ACLU's worldview (and that of its allies) and its antagonism toward American values, when he wrote the following:

To understand the worldwide ideological battle—especially the one between America and Western Europe and within America itself—one must understand the vast differences between leftist and rightist worldviews and between secular and religious (specifically Judeo-Christian) values.

One of the most important of these differences is their attitudes toward law. Generally speaking, the Left and the secularists venerate, if not worship, law. They put their faith in law—both national and international. For most on the Left, "Is it legal?" is usually the question that determines whether an action is right or wrong. . . .

To the Left, legality matters most, while to the Right, legality matters far less than morality. To the Right and to the religious, the law, when it is doing its job, is only a vehicle to morality, never a moral end in itself. Even the Left has to acknowledge this. When Rosa Parks refused to give up her seat to a white man on a Montgomery, Alabama, bus

*The Establishment Clause states: "*Congress shall make no law respecting an establishment of religion.*"

in 1955, she violated the law. Therefore, anyone who thinks she did the right thing is acknowledging that law must be subservient to morality. . . .

And why is the Left so enamored of law?

First, the Left, which is largely secular, regards morality not as absolute, but as relative. This inevitability leads to moral confusion, and no one likes to be morally confused. So instead of moral absolutes, the Left holds legal absolutes. “Legal” for the Left is what “moral” is for the Right. The religious have a belief in a God-based moral law, and the Left believes in man-made law as the moral law.

Second, whereas they cannot change God’s laws, those on the Left can and do make many of society’s laws. In fact, the Left is intoxicated with law-making. It gives them the power to mold society just as Judeo-Christian values did in the past. Unless one understands that leftist ideals function as a religion, one cannot understand the Left.

Laws are the Left’s vehicles to earthly salvation. Virtually all human problems have a legal solution. Some men harass women? Pass laws banning virtually every flirtatious action a man might engage in vis-a-vis a woman. Flood legislatures with laws preventing the creation of a “hostile work environment.” Whereas the religious world has always worked to teach men how to act toward women, the secular world, lacking these religious values, passes laws to control men.

In fact, since it lacks the self-control apparatus that is a major part of religion, the Left passes more and more laws to control people. That is why there is a direct link between the decline in Judeo-Christian religion and the increase in governmental laws controlling human behavior.

Of course, the more laws that are passed, the less liberty society enjoys. But to the Left, which elevates any number of values above liberty—e.g. compassion, equality, fairness—this presents little problem.

All this helps to explain the Left’s preoccupation with controlling courts; passing laws; producing, enriching and

empowering lawyers; filing lawsuits; and naming judges.
Laws and the makers of laws will produce heaven on earth.

And that's one reason why the Left hates the America
... [that] says morality is higher than man-made law.¹⁰⁴

The ACLU's vision for America is radically different from that of most Americans—people who still believe man is subject to a higher law that comes from God and not to man's latest or most “enlightened” fad. The ACLU's vision is of an America that looks like much of modern-day Europe—secularized, with little or no public vestige left of religious faith and the traditional family. The ACLU's legal demands, as we will see in subsequent chapters, have already and will further affect the futures of our children and grandchildren. Gone unchecked, America will slide from “a shining city upon a hill” to a nation that sees all values as relative, with no moral absolutes. This type of thinking leads to totalitarian societies that the ACLU and its leftist allies say they oppose but Roger Baldwin admired during their “struggle in a transition period to Socialism.” When society exalts individual rights over collective responsibility, then speech or actions seen as interfering with the right of the individual must be silenced. When law, instead of God, is seen as the salvation of mankind, more and more restrictive laws are passed to ultimately limit freedom, rather than expand it.

Robert Bork has written:

Law is the key element of every Western nation's culture, particularly as we turn more to litigation than to moral consensus as the means of determining social control.

Activist judges are those who decide cases in ways that have no plausible connection to the law they purport to be applying, or who stretch or even contradict the meaning of that law. They arrive at results by announcing principles that were never contemplated by those who wrote and voted for the law.

Though judges rule in the name of a constitution and their authority is accepted as legitimate only because they are regarded as keepers of a sacred text in a civic religion, there is no guarantee that the results actually come from that constitution.¹⁰⁵

That is exactly what is happening. Through the ACLU's use of the law to shape mankind in its image, it is constantly restricting liberty, not enlarging it. They are censoring speech rather than protecting it. Public school officials are afraid to say, "Merry Christmas," to acknowledge our nation's faith history, or celebrate Christmas, for fear of an ACLU lawsuit. Many people are afraid to talk openly and publicly about their sincerely held religious beliefs in their workplaces because of fear of legal action against them. The list goes on and on.

Left unchallenged, the ACLU will create an America that is far from the country to which our ancestors fled so they might breathe the sweet air of freedom. Instead, it will become more and more like the countries they fled from.

But there is hope. In the past decade, with God's grace, ADF and its allies have been successful in slowing the advance or even turning the tide on numerous issues against the ACLU. On some legal fronts, there is clearly more religious liberty than there was a decade ago. We can still win, but it will take hard work, endurance, and perseverance if we are to do so. The ACLU has been slowly eroding American freedoms for more than eighty years. But those freedoms can be reclaimed, protected, and preserved for future generations if Americans stand together and say, "Enough!" to the ACLU's agenda. That is ADF's mission.