THE AMERICAN MORAL ESTABLISHMENT: RELIGION AND LIBERALISM IN THE NINETEENTH CENTURY

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ABSTRACT

DAVID SEHAT: The American Moral Establishment: Religion and Liberalism in the Nineteenth Century
(Under the direction of John F. Kasson)

The relationship of religion to political governance is one of the most vexed questions in the modern world, but it is a central tenet of the American myth that the United States has solved the problem with the advent of modern religious liberty. In fact the United States maintained an established or state-supported religion through much of its history. The moral establishment moved through the proxy of laws designed, in the explanation of its proponents, to uphold public morals and good order. But the moral establishment often upheld a religiously derived morality, so although the establishment was not forthrightly a religious establishment, religious ideals still possessed the coercive power of law. Law in the nineteenth century became a way of advancing a regulatory regime that held a relative view of individual rights, rigidly subordinated to what courts thought was the good of the whole, and it was the moral establishment that prescribed the duties that citizens owed to one another and to the state. Part of that prescribed moral obligation entailed the limitation, the situational qualification, or even the flat denial of individual rights to women, Afro-Americans, and religious minorities including Catholics, Mormons, and free thinkers. Yet the paradox of the moral establishment was that as it increased its reach and attained a more-fully elaborated symbolic repertory and a finer-grained articulation of the limits of moral behavior, its proponents felt increasingly uneasy. Its growing intermediate range,

neither forthrightly supporting Christianity nor effecting a complete separation of religion and government, left some proponents worried that it was a house built on sand, whose uncertain stability resulted from a lack of clear connection to what they took to be the rock bed of Christianity. Historians have typically taken religious rhetoric on face value, assuming that the decline in religious power was real, but ultimately the religious rhetoric of decline served to further consolidate the establishment's support. By the end of the nineteenth century the moral establishment was more firmly entrenched than it had been at the beginning, and religious hold on the levers of public life was tighter than ever.

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INTRODUCTION: RELIGION AND THE AMERICAN MYTH

In 1834 the great American historian George Bancroft published the first volume of his magisterial series, *History of the United States*. Bancroft's work would establish the major themes of American history that have come down to the present, emphasizing the genius of the American political system, the austere intellectual rigor of the nation's Founders, and the virtue and promise of the American people. The United States, Bancroft explained, occupied a unique position in the history of the world due to its peerless political system. The American form of government was "necessarily identified with the interests of the people," because the principle of freedom was its guiding light. So strong was that principle that even enemies of the state had "liberty to express their opinions undisturbed." Instead of silencing opponents American political thought enshrined "reason" and mutual discourse so that political enemies could be "safely tolerated." Most importantly, in a world in which religion and the state were often tightly connected so that political and religious enemies were one and the same, Bancroft touted the principle of religious freedom that existed in the United States where religion was "neither persecuted nor paid by the state." He was quick to suggest that the lack of public funding did not mean that religion was unimportant. "The regard for public morals and the convictions of an enlightened faith" maintained a land of vigorous belief and order, he claimed, and the American arrangement created a system of laws that made the United

States a beacon of liberty to the world, offering "an asylum to the virtuous, the unfortunate, and the oppressed of every nation."[1]

Bancroft's account established the essential myth of the United States, a myth that is hard to reconcile with many parts of the American past. Consider, for example, the story of Charles B. Reynolds. In New Jersey in 1886, Reynolds, a one-time Methodist minister turned freethinker, began holding freethought meetings in a tent. On the first day of the meeting in Boonton a mob entered the tent while Reynolds was speaking, accosting him with rotten eggs and vegetables before cutting the guy-ropes and slashing the canvas. Reynolds fled from Boonton to Morristown with the intention of distributing freethought pamphlets there, but the group from Boonton followed him, demanding that he be indicted. The local authorities responded swiftly, and Reynolds was indicted on two counts of blasphemy, for his activities in both Morristown and Boonton, and placed in jail. The solution to the controversy was both orderly and legal. He was tried before a jury, convicted on two counts of blasphemy, and released with a hefty fine. Shortly after Reynolds's conviction, the *New York Times* went on record in support of the decision. "It is well that there should be some means of suppressing a noisy and offensive blackguard like Reynolds," declared the paper, "and whether he was suppressed as a blasphemer or merely as a blackguard is a matter of minor consequence."[2]

Reynolds's trial, which took place not fifty, or seventy, but one hundred and ten years after the American Revolution, runs counter to the myth of American religious liberty, a narrative deeply marked by congratulatory self-celebration and nationalist self-

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[1] George Bancroft, *History of the United States* (Boston: Charles C. Little and James Brown, 1844), 1:2 (first through fourth quotations), 3 (fifth through seventh quotations).

[2] *New York Times*, May 21, 1887, 4. For the extended story of Charles B. Reynolds, see Orvin Larson, *American Infidel: Robert G. Ingersoll* (New York: The Citadel Press, 1962), 214-217.

promotion. Like many powerful myths, the American myth has its origins in a core of fact. Bancroft rightly claimed in 1834, when his book was first published, that American religious institutions were not paid by the state. This was an innovation. The idea that religion could be safely detached from the financial support of the state without risking ruinous social consequences entailed the broad acceptance of liberal political thought first put forward by John Locke. State after state following the Revolution disentangled religious institutions from state control by withdrawing financial support for churches. The removal of state support also corresponded with a radical proliferation of religious adherence and belief in the Second Great Awakening. The rapid expansion of church membership, growing steadily from 17 percent of the population in 1776 to 34 percent in 1850 and on to 62 percent in 2000, began in earnest after states stopped paying churches. That very startling expansion makes it fair to say, in support of Bancroft, that disentangling of religious institutions from state control, in the limited sense of requiring their financial independence, resulted in the promotion of religious liberty and religious heterogeneity. Financially separating church from state allowed for the proliferation of religious institutions to correspond to the many kinds of religious belief.[3]

[3] A flourishing literature has formed around this core idea. Sometimes designated as rational choice theory applied to religion or, alternately, the theory of religious economy, the argument suggests that after institutional disestablishment religious markets were free and unregulated, which resulted in a thriving religious marketplace as religious firms (churches) met consumer (parishioner) demands. For historical and sociological proponents of the theory, see R. Stephen Warner, *Church of Our Own: Disestablishment and Diversity in American Religion* (New Brunswick: Rutgers University Press, 2005); Roger Finke and Rodney Stark, *The Churching of America, 1776-2005: Winners and Losers in Our Religious Economy*, 2nd ed. (New Brunswick: Rutgers University Press, 2005); Frank Lambert, *The Founding Fathers and the Place of Religion in America* (Princeton: Princeton University Press, 2003); Ted Jelen, *Sacred Markets, Sacred Canopies: Essays on Religious Markets and Religious Pluralism* (New York: Rowman and Littlefield, 2002); Rodney Stark and Roger Finke, *Acts of Faith: Explaining the Human Side of Religion* (Berkeley: University of California Press, 2000); Darren E. Sherkat and Christopher G. Ellison, "Recent Developments and Current Controversies in the Sociology of Religion," *Annual Review of Sociology* 25, no. 1 (1999): 363-394; Lawrence A. Young, ed., *Rational Choice Theory and Religion: Summary and Assessment* (New York: Routledge, 1997); Laurence R. Iannaccone, "Why Strict Churches are Strong," *American Journal of Sociology* 99 (March 1994): 1180-1211; Laurence R. Iannaccone, "Religious Practice:

But it is equally important to see the limits, which were profound. The overwhelming scholarly focus on religious disestablishment—the removal of financial support from churches—has supported a general myth that the removal of state-financial support established a secular state, in which religion remained separate from law and governance to maintain a society of extravagantly free religious expression. Peter Berger, one of the sociological architects of the theory of secularization, explained the role of religion in the United States that succinctly demonstrates the jump from church disestablishment to the creation of secular governing structures, while simultaneously gesturing to the exceptional quality of the American arrangement. "If India is the most religious country in the world," Berger claimed, "and Sweden the least, then the United States is a nation of Indians ruled by Swedes." Yet as Reynolds's blasphemy trial manifestly shows, the United States was not merely a religious nation ("a country of Indians") governed in an entirely secular manner ("ruled by Swedes"), and even a cursory look at the American past demonstrates the very tight historical connection between religion, laws, and political governance. That connection destabilizes the narrative of religious freedom put forward by Bancroft—in which the removal of state financial support created a society of untrammeled liberty—and requires a new narrative based not on the themes liberty and heterogeneity (though they retain a core of truth), but rather on the connection of religious groups to the institutions of power and the resulting structures of coercion by law. Assuming that Reynolds's blasphemy trial was not aberrant—which it was not, at least in its stated rationale of maintaining high moral order—then we need a new narrative in which his trial makes sense. Sketching the thematic concepts and the

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A Human Capital Approach," *Journal for the Scientific Study of Religion* 29 (September 1990): 297-314. For a critique, see Steve Bruce, *Choice and Religion: A Critique of Rational Choice* (New York: Oxford University Press, 2000).

historiographical challenges of that new narrative is the goal of this dissertation, and that goal requires substantial rethinking of the American myth and what many have taken to be core components of the American church-state arrangement.[4]

Put simply, the United States had a state-supported or established religion for much of its history. Many historians have missed this religious establishment because their concept of a state-supported religion is too narrow. The religious establishment in the United States was three-fold: institutional, ceremonial, and moral. The *institutional establishment*, which consisted of state monetary support for institutional churches, came to an end, as Bancroft claimed, over the fifty-year period following the American Revolution. Yet the end of institutional establishment did not mean that the state simply separated itself from religion, because the withdrawal of monetary support, or institutional disestablishment, left in place the other two components of state-support. The *ceremonial establishment*, or the public recognition of God as a ritualized aspect of national services, remains in place to this day, so that the United States Congress has a chaplain, oaths of office often end with "So help me God," U.S. presidents and state governors occasionally call for days of prayer and fasting, and it is customary, though not obligatory, to take the oath of office on a Christian Bible. The ceremonial establishment is more symbolic than coercive. More importantly, institutional disestablishment either left in place or added a *moral establishment* that upheld the moral ideals of Christianity while professing concern for the public good, which was the essential rationale for Reynolds's blasphemy trial. The moral establishment moved through the proxy of laws designed to uphold, in the explanation of its proponents, public morals and the public

[4] Berger quoted by Stephen Prothero, "A Nation of Religious Illiterates," *Christian Science Monitor*, January 20, 2005.

order. Many states prior to the Civil War, for example, had constitutional provisions that required elected officials to believe in both God and the existence of an afterlife or affirmed that religion was necessary for the maintenance of morality. To pick one instance among many, the New Hampshire Constitution of 1784 contained the declaration: "Morality and piety, rightly grounded on evangelical principles, will give the . . . best security to the government, and will lay in the hearts of men the strongest obligations to due subjection." This clause remained in the New Hampshire Constitution after the state terminated its institutional establishment. Likewise in the South, the Mississippi Constitution of 1817, which never had an institutional establishment, promised the "exercise and enjoyment of religious profession and worship," but simultaneously proclaimed, "Religion, morality, and knowledge being necessary to good government . . . shall forever be encouraged in this State." As one religious partisan explained in 1838, everyone granted that there was no legitimate connection between "*ecclesiastical* Christianity" and the state, in other words, no legitimate foundation for an institutional establishment. But by contrast "*ethical* Christianity" and "the *moral* aspect of the gospel" was so important to the preservation of the state that, in the writer's estimation, Christian morality was rightly connected to "the concurrent agency of statesmen and politicians."[5]

[5] New Hampshire Constitution of 1784, part I, art. I, sec. 6; Mississippi Constitution of 1817, art. I, secs. 3 and 16; *An Inquiry into the Moral and Religious Character of the American Government* (New York: Wiley & Putnam, 1838), 198 (fourth and fifth quotations), 185 (sixth and seventh quotations). The three-fold categories of the institutional, ceremonial, and moral establishment come from John Witte, Jr., although he applies them only to the Massachusetts Constitution of 1780. See John Witte, Jr., "'A Most Mild and Equitable Establishment of Religion.' John Adams and the Massachusetts Experiment," in *Religion in the New Republic: Faith in the Founding of America*, ed. James Hutson (Lanham, MD: Rowman and Littlefield, 2000), 19. On the use of religious language in public life, which I am calling the ceremonial establishment, see Richard K. Fenn, *Liturgies and Trials: The Secularization of Religious Language* (New York: Pilgrim Press, 1982). Several readers have wondered the relationship is between the moral establishment and Robert N. Bellah's concept of civil religion, but because the concept has such

Alongside the formal, legal establishment, many historical commentators on American religious life took note of the informal mechanisms and extra-legal coercions that resulted from religiously derived moral ideals, which the late-nineteenth century woman's rights reformer Victoria Woodhull called "society-despotism." Foreign observers of the United States, in particular, were keen to point out that a religiously derived, moral coercion seemed an endemic part of American society. Alexis de

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indeterminate meaning, it is hard to say. In Bellah's original 1967 essay, the term functioned analogously to John Dewey's ideal of a common faith, Walter Lippmann's concept of a shared public philosophy, and Arthur M. Schlesinger Jr.'s notion of the vital center: a call to reaffirm common American values. Subsequent commentators took the concept in multiple directions, much to Bellah's dismay. Following his 1980 book with Phillip E. Hammond, *Varieties of Civil Religion*, which sought to introduce some clarity into what Bellah complained was an often "sterile" debate over the term's meaning, he apparently concluded that the term was no longer worthwhile and ceased using it. In 1992, twenty-five years after the original 1967 essay in which he proposed the idea, Bellah admitting that the idea was compromised from the beginning because it was not an analytic concept but rather a call to arms to combat what he saw as the contemporary drift of late-60s liberalism. Still the term continues to circulate in often wildly contradictory ways. Bellah has complained in particular of the tendency to use the term as a synonym for "the idolatrous worship of the state," which is exactly how Harry S. Stout uses the term in his recent book, *Upon the Altar of the Nation*. Others have gone in the opposite direction. The sociologist of religion John Murray Cuddihy in *No Offense: Civil Religion and Protestant Taste* looks at the corrosive effects of diversity and modernity on religious certitude and coherent religious identities. Civil religion, in his reading, is tamed religion—religion that has learned to be civil. But it has nothing to do with the state except insofar as civil religion is made possible by the state leaving religion alone, and it has nothing much to do with a common societal inheritance that Bellah was promoting. More recently Jon Meacham has construed civil religion as "public religion," claiming that, "the Founders came to believe that religion, for all its faults, was an essential foundation for a people's moral conduct and for American ideas about justice, decency, duty, and responsibility." At turns, Meacham identifies civil religion and public religion with what I am calling the ceremonial establishment, and at other times he seems to use civil religion or public religion to identify what I would call the moral establishment. Likewise Richard John Neuhaus references civil religion in support of his idea of "political religion" and "public religion," in which he claims that religion and religious ideals form, or ought to form, a sacred canopy over the public square. Neuhaus reveals the advocacy quality of the term, claiming that he is, like Bellah, "politically devoted to what used to be, and may be again, the 'vital center' of liberal democracy." Because the term is so imprecise and so tightly connected to advocacy rather than analysis, I prefer the twin concepts of a ceremonial and moral establishment, leaving it up to the reader to match those terms with his or her definition of civil religion. Robert N. Bellah and Phillip E. Hammond, *Varieties of Civil Religion* (San Francisco: Harper & Row, 1980), vii (first quotation); Robert N. Bellah, *The Broken Covenant: American Civil Religion in Time of Trial*, 2nd ed. (Chicago: University of Chicago Press, 1992), ix (second quotation); Harry S. Stout, *Upon the Altar of the Nation: A Moral History of the American Civil War* (New York: Viking, 2006); John Murray Cuddihy, *No Offense: Civil Religion and Protestant Taste* (New York: Seabury Press, 1978); Jon Meacham, *American Gospel: God, the Founding Fathers, and the Making of a Nation* (New York: Random House, 2006), 27 (third and fourth quotations); Richard John Neuhaus, *The Naked Public Square: Religion and Democracy in America* (Grand Rapids: Eerdman's, 1984), viii (fifth and sixth quotations), 20 (seventh quotation). Bellah's original essay is: Robert N. Bellah, "Civil Religion in America," in *Beyond Belief: Essays on Religion in a Post-Traditional World* (New York: Harper & Row, 1970), 168-192. For his admission that the civil religion was not a properly analytic concept, and was even sectarian in its major thrust, see Bellah, *The Broken Covenant*, x-xiii.

Tocqueville, the distinguished French visitor and a contemporary of Bancroft, claimed that religious coercion was fundamental to the structure of American government. The very idea of majority rule implied a kind of social tyranny, because "the moral empire of the majority" operated with an "irresistible force" upon individuals. In Tocqueville's analysis, religion was an essential part of the empire of the majority, and although he thought that it remained outside of formal politics, Tocqueville claimed that religion nonetheless sought to direct morals, which eventually worked "to regulate the state." The American morality-minded "public" then existed as a sort of quasi-mind that did not persuade but instead imposed beliefs on individuals "by a sort of immense pressure of the minds of all on the intellect of each. In the United States, the majority takes charge of furnishing individuals with a host of ready-made opinions, and it thus relieves them of the obligation to form their own." As a result, Tocqueville claimed, an intellectual insipidness presided over the United States, in which the doctrines and moral ideals of Christianity exercised a controlling influence over individuals who lacked any particular religious autonomy. Likewise John Stuart Mill, the British philosopher and liberal theorist, claimed of the United States that "in no country does there exist less independence of thought." Mill was puzzled by the seeming contradiction of the United States, where "the rejection of authority, and the assertion of the right of private judgment" were central aspects of what he took to be the American national character, but personal autonomy and intellectual independence did not extend to "the fundamental doctrines of Christianity and Christian ethics."[6]

[6] Victoria C. Woodhull, *A Speech on the Principles of Social Freedom* (New York: Woodhull, Claflin & Co, 1871), facsimile reproduction in Victoria Woodhull, *The Victoria Woodhull Reader*, ed. Madeleine Stern (Weston, Mass.: M & S Press, 1974), 3; Alexis de Tocqueville, *Democracy in America*, trans. Harvey C. Mansfield and Delba Winthrop (Chicago: The University of Chicago Press, 2000), 236 (first quotation),

Tocqueville's claim that religion worked first to regulate morals and thereby the state was particularly acute. Proponents of the moral establishment claimed that religion was necessary in order to shore up the moral fabric of the people, which was in turn necessary for the health and preservation of the state. But in practice it was never religion in general that was charged with upholding the health of the state, and New Hampshire's specification of "evangelical principles" as the correct grounding for "morality and piety" was the de facto norm, even if it was not usually spelled out quite so baldly. Religion usually meant Protestant Christianity, with Catholics, Jews, and freethinkers facing an often-active legal and social discrimination. Because public morality came from private, religious norms, the conflating of public and private in the hands of religious proponents worked to ensure both the continued prominence of Christianity in American life and the suppression of those who challenged that dominance. Because select religious proponents set the social, political, and cultural parameters of public discourse for much of the nation's history, the oft-heralded innovation of religious freedom in American political theory has obscured that, in actual practice, Christian moral and religious ideas pervaded American law and society to form critical boundaries to that freedom. The point is not that religion formed a consensual basis for American society, though the proponents of the moral establishment certainly thought so, viewing the nation as a moral community to be protected through law. American society was not structured completely by religious standards, though partisans did use religious norms to gird laws governing public morality, which were supposed to

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241 (second quotation), 278 (third quotation), 409 (fourth and fifth quotations); John Stuart Mill, "De Tocqueville on Democracy in America [I]," *London Review* 1 (October 1835), 85-129, reprinted in John Stuart Mill, *The Collected Works of John Stuart Mill*, ed. J.M. Robson (Toronto: University of Toronto Press, 1977), 18:178 (all three quotations).

uphold the common good. Instead, on an ongoing basis religious partisans assumed control of law and governance to coerce dissenters based on their religiously derived moral convictions. This is a persistent phenomenon in American religious and political history.[7]

To talk in this way about the American religious past can strike many people as peculiar, if not perverse. It runs against the grain of so many conceptions of the United States as a land of liberty born with religious freedom as its stated goal. That response underscores the tenacity of the American myth, and the stakes for the preservation of the myth are very high at the moment. Given the polarized religious and political conflict of the last forty years, it is difficult to claim that any conclusion about the public role of religion in the American past reflects only the determinations of disinterested scholarship. Simply raising the issue in this contentious political climate invites condemnation from all sides, and Tocqueville's rumination on the difficulties of writing on democracy in the shadow of the French Revolution remain true of religion and public life today. As Tocqueville confessed to his reader (and I confess now), "I know that here I am walking on ground that is afire. Each word of this chapter must offend on some points the different parties that divide my country."[8]

It is not my intention to contribute to the shrill partisanship that has dominated the debate about religion in public life, but instead to point out the way that politicized

[7] I am indebted to D.G. Hart for this point about the conflation of public morality and private norms.

[8] Tocqueville, *Democracy in America*, 187. Jon Butler originally made this point about the problem of religious scholarship in a polarized political context. See Jon Butler, "Why Revolutionary America Wasn't a Christian Nation," in *Religion and the New Republic: Faith in the Founding of America*, ed. James Hutson (Lanham, MD: Rowman and Littlefield, 2000), 188-189.

scholarship has left us unable to understand the politics of the present and tacitly beholden to a liberal narrative that has been politicized by all sides. The sources of politicization are many. They begin with the penchant for originalism in American jurisprudence that looks to the past to explain the logic of the American legal apparatus created by the Constitutional framers, which is then applicable today. Within the legal debate, there are (broadly speaking) two schools of thought. Non-preferentialists argue that the doctrine of religious liberty created by the Constitution and at work in the American past did not create a strict disjunction between the church and state. The constitutional framers, in the estimation of non-preferentialists, designed religious freedom to prohibit any constricting interference by the state into religious communities. Because the doctrine of religious liberty was supposed to promote rather than inhibit religious expression and belief, the federal constitution then allows and possibly even encourages the state to provide monetary, legal, or other accommodation for religion on a non-preferential basis. Religion is protected from the state, according to non-preferentialists, but not the other way around. In contrast, strict separationists argue that the separation of church and state doctrine, originally formulated by Thomas Jefferson and James Madison, provided the essential rationale for religious disestablishment. The constitutional framers, according to strict separationists, created a high wall between church and state so that the state could not interfere in the life of religious communities and, conversely, religious communities could not, at least directly, interfere with or control the state.[9]

[9] For non-preferentialist arguments see Ellis Sandoz, *Republicanism, Religion, and the Soul of America* (Columbia, Mo.: University of Missouri Press, 2006); John Witte, Jr., *Religion and the American Constitutional Experiment*, 2nd ed. (Boulder: Westview Press, 2005); Ellis Sandoz, *A Government of Laws: Political Theory, Religion, and the American Founding* (Columbia, Mo.: University of Missouri Press,

As twin statements of a complicated legal debate, these two positions are polar opposites and fiercely defended, but both are inadequate conceptual frameworks in which to view the past. The strict separationists are often purposely selective in their descriptive historical analysis. In his book *The Establishment Clause,* which is in many ways a model work of legal scholarship, the legal historian with strict separationist inclinations Leonard W. Levy goes to great lengths to excavate the logic of the constitutional framers in order to refute the non-preferentialists' jurisprudence. But his analysis never touches the realm of actual practice. After spending one hundred and forty-five pages on the federal- and state-level debates at the time of the Founding, he jumps in three quick pages through the Fourteenth Amendment, the attempted Blaine Amendment in 1875, and then on to the 1940s. In the process Levy omits much of the historical material that would suggest that the mid-twentieth-century decisions of the U.S. Supreme Court—which operated from the Jeffersonian principle of church-state separation—were in any way a departure from the practice of the past (which they were).

2001); Stephen Presser, *Recapturing the Constitution: Race, Religion, and Abortion Reconsidered* (Washington D.C.: Regnery Publishing, Inc., 1994); Gerard Bradley, *Church-State Relationships in America* (New York: Greenwood Press, 1987); A. James Reichley, *Religion and American Public Life* (Washington: The Brookings Institute, 1985). For strict separationist arguments, see Mark Douglas McGarvie, *One Nation Under Law: America's Early National Struggle to Separate Church and State* (DeKalb: Northern Illinois University Press, 2004); Isaac Kramnick and R. Laurence Moore, *The Godless Constitution: The Case Against Religious Correctness* (New York: Norton, 1996); Thomas J. Curry, *First Freedoms: Church and State in America to the Passage of the First Amendment* (New York: Oxford University Press, 1986). Leonard W. Levy, who claims only sympathy with the strict separationists but does not want to be characterized as one, presents a basically separationist argument with certain accommodations for religion. See Leonard W. Levy, *The Establishment Clause: Religion and the First Amendment* (Chapel Hill: University of North Carolina Press, 1994), 112-148. Levy points to what might be called a third way of "accommodationism," in which church and state are generally separate, but the state makes certain accommodations for religious practitioners and institutions. See also Michael W. McConnell, "The Origins and Historical Understanding of the Free Exercise of Religion," *Harvard Law Review* 103 (May 1990): 1410-1517. The tendency to read the past in order to support normative positions in the present is a frequent failing of law schools histories to the long-standing annoyance of some legal historians. See Stanley N. Katz, "Forward," in Sandra F. VanBurkleo, Kermit L. Hall, and Robert J. Kaczorowski, eds., *Constitutionalism and American Culture: Writing the New Constitutional History* (Lawrence: University of Kansas Press, 2002), vii-xi; Paul L. Murphy, "Time to Reclaim: The Current Challenge of American Constitutional History," *American Historical Review* 69 (October 1963): 64-79.

So too many non-preferentialists perform elisions of their own, unwilling to acknowledge that the interaction between church and state did, in fact, provide preferential support to Christian proponents in a way that is not, and cannot be, reconciled with their professed normative position. In a curious sense the disagreement resembles that between Protestants and Roman Catholics, in which "Protestants" (that is, strict separationists) look back at the founding moment to decry the historical corruption of the Framers' intention and to claim that the mid-twentieth-century Supreme Court restored the country to the Framers' original vision of separation. The "Catholics" (that is, non-preferentialists) point to the actual historical development of jurisprudence from the founding moment in order to claim that the development through history is the strongest way to understand the Framers' purpose, which worked fine until a few malcontents in black robes subverted tradition. The result on both sides is a normative jurisprudence that raids different parts of the past to find support for the position of each, while simultaneously producing the usual sectarian bitterness.[10]

Sectarian bitterness is not limited to legal scholars either, because the friction between descriptive analysis and normative claims likewise affects cultural and political historians of the United States. By virtue of their pursuit of knowledge and professionalization into a community of inquiry, many historians are dedicated to the ideals of the Enlightenment. That commitment sometimes contains the Enlightenment's critique of religion, which, due to the strident efforts of Daniel C. Dennett, Sam Harris, Richard Dawkins, and others, has recently gained a lot of press exposure. To many

[10] Levy, *The Establishment Clause*, 147-149. Levy's elision is particularly striking, given his statement that "non-preferentialists seem to have no historical memory." Levy, *Establishment Clause*, 144. For an example of a non-preferentialist treatment that elides the state's historically preferential support for the Christian religion, see Bradley, *Church-State Relationships in America*.

knowledge workers, the desire that faith-based, anti-intellectual religion should decline with the expansion of education and knowledge has set up blinders when studying religion, because to acknowledge the very public role of religion in the American past would mean admitting the failure of a central component of the Enlightenment dream. On an anecdotal level, I have had many conversations with scholars who frankly confess their lack of interest in investigating religion even when it impinges upon the subject of their own study. They find religion distasteful, tedious, and off-putting. For that reason, though the study of American religion has flourished in the last thirty years as its own subdiscipline, it has yet to penetrate broad subdisciplines of American history, even in those areas where its influence was particularly profound. As a result, many religious historians acknowledge the prominent role of religion in American public life (though they often still maintain that it remains separate from the formal institutions of law and governance), while many historians that do not specialize in religion unwittingly (or perhaps wittingly) support the myth of religious liberty put forward by Bancroft by avoiding the subject of religion altogether.[11]

The real problem in writing about religion and public life is the all too common belief that the solution to present legal and political disputes lies in the past. By narrating the past to affirm or deny a specific role for religion, writing on the subject has often become an extension of the politics of the present. In such a context the power of history

[11] On the Enlightenment dream of the decline of religion, see Jose Casanova, *Public Religions in the Modern World* (Chicago: University of Chicago Press, 1994), 3-39. For contemporary expressions of the radical Enlightenment dream, see Victor J. Stenger, *God: The Failed Hypothesis: How Science Shows that God Does Not Exist* (New York: Prometheus Books, 2007); Daniel C. Dennett, *Breaking the Spell: Religion as a Natural Phenomenon* (New York: Viking, 2006); Richard Dawkins, *The God Delusion* (Boston: Houghton Mifflin, 2006); Sam Harris, *The End of Faith: Religion, Terror, and the Future of Reason* (New York: Norton, 2004); Victor J. Stenger, *Has Science Found God? The Latest Results in the Search for Purpose in the Universe* (New York: Prometheus Books, 2003).

to adjudicate this dispute remains limited, often arbitrarily, to the political categories of contemporary partisanship. It does have a certain role there. To acknowledge that the Christian religion maintained a controlling influence over the provisions of American law and society does undercut the claim that the politics of the last forty years is somehow aberrant and out of the step with American practice. Yet to concede that the proponents of the moral establishment used the institutions of law in order to coerce what they considered moral behavior out of dissenters *also* undercuts the claim of religious conservatives that they are simply defending their religious freedom or their prerogatives as the so-called moral majority from the secularizing efforts of a few malcontents. A sober look into the past tends to undermine both sides of a polarized debate.

Looked at through fresh lenses the remarkable characteristic of the current conflict is not its singularity but its regularity, its extreme repetitiveness. To read the writings of Timothy Dwight, the president of Yale immediately after the American Revolution; Lyman Beecher, the architect of American cultural campaigns in the early-nineteenth century; Josiah Strong, the late nineteenth-century social gospeler and early nativist; or Anthony Comstock, the powerful late nineteenth- and early twentieth-century vice-reformer, is to encounter language that is eerily familiar. It is the idiom of Robert Bork, the rejected U.S. Supreme Court nominee, in *Slouching toward Gomorrah* and *The Tempting of America*, along with William Bennett, the Secretary of Education under Reagan and the Drug Czar under the elder Bush, in his books *The De-Valuing of America* and *The Death of Outrage.* It is, in fact, the idiom of many in the contemporary Religious Right.[12]

[12] Timothy Dwight, *The Nature and Danger of Infidel Philosophy* (New Haven: George Bunce, 1798); Lyman Beecher, *A Reformation of Morals Practicable and Indispensable*, 2nd ed. (Utica: Merrell & Camp,

This historical continuity should give us pause. Those who consider themselves liberals (as I do) often have a tendency to dismiss this idiom as illegitimate and corrupting to the neutral operations of law, but as the philosopher Michael Walzer reminds us, the work of democratic citizenship requires the attempt to find some kind of workable cultural consensus or "moral minimalism." In Walzer's explanation, moral ideas are ordinarily embedded in thickly contextualized moral outlooks that remain tightly connected to a person or group's view of the world. A Christian might believe that sex outside of marriage is wrong based on his or her reading of the New Testament, but this maximal moral code is connected to an entire set of ideas about divine governance of human affairs, the status of Jesus Christ as the redeemer of the world, Jesus's authority to lay down moral precepts, and the formation of the body of writings through which Jesus's maxims come to us in a scriptural tradition that is now called the New Testament. Necessary though thick ideas are on a personal level, they cannot form an adequate moral framework for complex modern societies, because they are too fully elaborated, too maximally particular in their religious, political, and social perspectives. Yet minimal moral ideas, or moral ideas that have been separated from their particular context in order to converse with those not of that worldview, are absolutely necessary

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1813); Lyman Beecher, *Lectures on Scepticism* (Cincinnati: Corey & Fairbank, 1835); Josiah Strong, *Our Country: Its Possible Future and Present Crisis* (New York: American Missionary Association, 1885); Anthony Comstock, *Traps for the Young*, ed. Robert Bremner (1883; repr., Cambridge, Mass: The Belknap Press, 1967); Anthony Comstock, "The Suppression of Vice," *North American Review* 135 (November 1882): 484-489; Robert H. Bork, *Slouching towards Gomorrah: Modern Liberalism and American Decline* (New York: Regan Books, 1996); Robert H. Bork, *The Tempting of America: the Political Seduction of Law* (New York: Free Press, 1990); William J. Bennett, *The De-Valuing of America: The Fight for Our Culture and Our Children* (New York: Summit Books, 1992); William J. Bennett, *The Death of Outrage: Bill Clinton and the Assault on American Ideals* (New York: Free Press, 1998). See also William J. Bennett, *The Book of Virtues: A Treasury of Great Moral Stories* (New York: Simon and Schuster, 1993); William J. Bennett, *The Broken Hearth: Reversing the Moral Collapse of the American Family* (New York: Doubleday, 2001); William J. Bennett, *Why We Fight: Moral Clarity and the War on Terrorism* (New York: Doubleday, 2002); Gertrude Himmelfarb, *The De-Moralization of Society: From Victorian Virtues to Modern Values* (New York: Knopf, 1995).

for any functioning society, because those minimal ideas are the basic codes of conduct that we require of one another even when they are not in our group. Minimal moral ideas are what enable a Catholic Latino migrant laborer, an atheist professor of religion at an Ivy League University, and a Hindu engineer living in the suburbs, though they may have radically different maximal moralities, to live together in a complex society without it degenerating into anarchy. In that sense, the role of minimal moral ideas cannot be overemphasized. "'Minimalism,'" Walzer claims, "does not describe a morality that is substantively minor or emotionally shallow. The opposite is more likely true: this is morality close to the bone. . . . The minimal demands that we make on one another are, when denied, repeated with passionate insistence."[13]

The distinction between minimal morality (which is publicly affirmed, and therefore publicly regulated) and maximal morality (which is privately believed and thereby privately maintained) still leaves plenty of room for disagreement about what ought to be considered minimal and what ought to be considered maximal moral obligations. Those disagreements are the stuff of contemporary debate. What I am taking pains to argue is that the debate is not aberrant, nor the result of a few disgruntled characters, but one that both is fundamental to American law and has been taking place for a long time, so it cannot be solved by appealing to history. Instead, as the legal theorist Ronald Dworkin has argued, the fundamental ideas of American law, enshrined in the Bill of Rights and the Fourteenth Amendment, are above all abstract statements of moral principles. To talk about rights, or equality, or justice, or freedom is necessarily to employ moral language. When judges, lawyers, politicians, or citizens debate how

[13] Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame: University of Notre Dame Press, 1994), 2 (first quotation), 6 (second quotation).

abstract rights apply in concrete cases, they must call up, in Dworkin's phrase, "fresh moral judgments." Not to acknowledge that these core disputes are disagreements not so much over procedure or jurisprudence in the abstract, but over contrasting moral visions, is to beg a whole host of questions about the nature of law and the role of legal deliberation that obscures the very political and moral reasoning that is fundamental to our national life.[14]

Because history cannot provide a minimum morality for us, given this long-standing and fundamental pattern of disagreement, in raising the issue of the moral establishment I hope it is clear that I am not proposing it normatively in the present. The moral establishment as it existed during the blasphemy trial of Charles B. Reynolds has crumbled as a coherent system of laws, first following the end of Victorianism in the 1920s and then with the pluralization of ethical norms in the 1960s. The contemporary defenders of the moral establishment (the Religious Right) are both carrying on a long tradition, which is why the language of the past seems so familiar, and responding as the now-defunct establishment's disaffected heirs. Conservative religious proponents want a return to that establishment. Historical honesty requires an acknowledgment that it existed for a long time. It also requires an acknowledgment that the moral establishment was contested then as now. Both acknowledgments concede the long historical pedigree of the contemporary debate, and, in turn, the long pedigree makes clear the futility of seeking normative solutions from the past in order to solve present conflicts. The origin of the problem lies in the past, but the remediation of current disputes can only be found

[14] Ronald Dworkin, *Freedom's Law: The Moral Reading of the American Constitution* (Cambridge, Mass.: Harvard University Press, 1996), 3. See also his earlier work, Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1977).

in the present. Finding the dispute's origin and tracing its development might result in a clarified debate, but not the debate's solution.

What we need, then, is a new narrative that neither obscures nor promotes past arrangements in order to clarify and trace the origins of contemporary conflict. Before that new narrative can come into focus, the angle of vision needs a certain amount of modification. The first change is simply one of perspective (merely being a proponent or opponent of religion in public life will not do), while the second is a change in scope, broadening the field of vision to take in more than has been typically understood to be relevant to the subject of American religious history. These two are actually very much related. The story of American religious freedom, as I have said, is often centrally connected to the broader story of the American democratic experiment. The Whig characteristic of that narrative—in which the nation was founded in liberty and has come progressively over time to embody its fullest ideal—remains firmly in place. As the sociologists Roger Finke and Rodney Stark have complained, "[t]he history of American religious ideas always turns into an historical account of the march toward liberalism." In fact, the claim of religious liberty stands at the foundation of the Whig narrative. Having been freed from the entanglements with the state, so the argument goes, religion has flourished in the United States and become a central force for reform movements both in promoting the American project and, in the words of the religious scholars John H. Evans and Robert Wuthnow, "in strengthening and preserving civic life in America." The Whig narrative is such a tenet of American orthodoxy that even those who strongly disagree on specific points still tend to laud the American religio-political arrangement,

as each understands it. All claim a narrative of progress in asserting the triumph of religious liberty, in spite of the disagreement over its definition. All see the development of religious liberty as a cornerstone in the development of American political thought, though they disagree on how religious and political thought are related. All look to the American church-state arrangement to explain the powerful vitality of the American religious impulse, even if they disagree on the specifics of the model. A belief in "the vigor and vitality of the American story of religious freedom," in the words of the legal historian John Witte, Jr., remains true of nearly all parties.[15]

Tightly connected to the story of religious freedom is the idea of American liberalism. It is a historical commonplace to claim that the nineteenth century was the century devoted to equal and individual rights, characterized by rugged individualism, and defined by a laissez-faire economic arrangement that looked to the individual as the chief economic actor. Following the publication of Louis Hartz's *The Liberal Tradition in America* in 1954, historians have consistently, though not uniformly, portrayed classic liberalism as the reigning orthodoxy of nineteenth century political and legal thought, with common law protections giving way to statutory and equity law to enshrine the primacy of contract, the rights of citizenship expanding almost inevitably to include greater proportions of the people, and the American ethos triumphantly marching on with

[15] Finke and Stark, *The Churching of America*, 5; Robert Wuthnow and John H. Evans, eds., *The Quiet Hand of God: Faith Based Activism and the Public Role of Mainline Protestantism* (Berkeley: University of California Press, 2001), ix; Witte, *Religion and the American Constitutional Experiment*, xiii. For examples of the Whig connection between American religious freedom and the unfolding of American liberties, see Alan Heimert, *Religion and the American Mind: From the Great Awakening to the Revolution* (Cambridge, Mass.: Harvard University Press, 1966); Nathan Hatch, *The Democratization of American Christianity* (New Haven: Yale University Press, 1989); Edwin S. Gaustad, *Proclaim Liberty Throughout the Land: A History of Church and State in America* (New York: Oxford University Press, 2003); Arlin M. Adams and Charles J. Emmerich, *A Nation Dedicated to Religious Liberty: The Constitutional Heritage of the Religion Clauses* (Philadelphia: Temple University Press, 1990); William R. Estep, *Revolution Within the Revolution: The First Amendment in Historical Context, 1612-1789* (Grand Rapids: William B. Eerdmans, 1990); Curry, *First Freedoms*; Meacham, *American Gospel*.

its focus on personal independence, sunny optimism, and rational calculation. Although social historians have devoted the better part of the last forty years to revealing the many evasions, contradictions, and falsifications in that idea of liberal America, the history of the nineteenth century still remains an essentially progressive story, touched by moments of tragedy, but tending toward the general inclusion of all. To quote but one example of this liberal narrative, in his Pulitzer-prize winning book *The Radicalism of the American Revolution*, Gordon Wood portrays the revolutionary rhetoric of individual rights and the equality of all men as the foundation "for all reform movements of the nineteenth century, and indeed for all subsequent modern liberal thinking." The egalitarian ideological core of the American Revolution had such hold on the American psyche, he continues, that "once invoked the idea of equality could not be stopped, and it tore through American society and culture with awesome power."[16]

Because the broader American narrative maintains such a Whig cast, writing on the role of religion in preserving American civic life often takes on an emancipatory character as religious communities appeal to transcendent ideals to challenge unjust social orders. It is through religious movements, so the narrative goes, that American liberalism expands. This is especially true of writing on antebellum reform movements and the twentieth-century Civil Rights Movement. Yet because of the generally progressive narrative of American religious history, historians have tended to overvalue religious sources of reform, while simultaneously underestimating the extent to which

[16] Louis Hartz, *The Liberal Tradition in America* (New York: Harcourt, Brace & World, 1955); Gordon Wood, *The Radicalism of the American Revolution* (New York: Knopf, 1992), 218 (first quotation), 232 (second quotation). For other expressions of the dominance of liberalism in the nineteenth century, see Ralph Henry Gabriel, *The Course of American Democratic Thought: An Intellectual History Since 1815*, 3rd ed. (New York: Greenwood Press, 1986), 4-22; John Patrick Diggins, *The Lost Soul of American Politics: Virtue, Self-Interest, and the Foundations of Liberalism* (New York: Basic Books, 1984); Morton J. Horwitz, *The Transformation of American Law, 1780-1860* (Cambridge, Mass.: Harvard University Press, 1977).

religious sensibilities formed a critical part of the *opposition* to the reform impulse. The issue of reform is itself tricky, because many would agree that, particularly in the nineteenth century, almost everyone claimed to be some kind of reformer. Those who wanted to limit or eliminate the possibility for divorce in the 1880s called themselves divorce reformers, not to be confused with the other divorce reformers who wanted reform in the exact opposite direction by expanding divorce's permissible conditions.[17]

But the liberal story does have a certain factual foundation, in a limited sense. Individualism and its corresponding idea of individual rights were important keywords,

[17] Jon Butler originally made this point about the frequent historiographical connection of religion and reform. See Jon Butler, "Jack-in-the-Box Faith: The Religion Problem in Modern America," *Journal of American History* 90 (March 2004): 1357. For examples in the literature, see Michael P. Young, *Bearing Witness Against Sin: The Evangelical Birth of the American Social Movement* (Chicago: University of Chicago Press, 2006); David L. Chappell, *A Stone of Hope: Prophetic Religion and the Death of Jim Crow* (Chapel Hill: University of North Carolina Press, 2004); Frederick C. Harris, *Something Within: Religion in African-American Political Activism* (New York: Oxford University Press, 1999); Mary Pattillo-McCoy, "Church Culture as a Strategy of Action in the Black Community," *American Sociological Review* 63 (December 1998): 767-784; Christian Smith, *Disruptive Religion: The Force of Faith in Social Movement Activism* (New York: Routledge, 1996); Sidney Verba, Kay Lehman Schlozman, and Henry E. Brady, *Voice and Equality: Civic Voluntarism in American Politics* (Cambridge: Harvard University Press, 1995); Matthew C. Moen and Lowell S. Gustafson, eds., *The Religious Challenge to the State* (Philadelphia: Temple University Press, 1992); Lonnie D. Kliever, *The Terrible Meek: Essays on Religion and Revolution* (New York: Paragon, 1987); Reichley, *Religion and American Public Life*, 168-242. The two major exceptions to the literature's general overstatement of the transformative role of religion in reform is in the writing on white religion in the U.S. South, where religious belief buttressed racist sentiment and social structures, and in the literature on anti-Catholicism, anti-Mormonism, and anti-Masonry. For examples of the former see Randy J. Sparks, "Religion in the Pre-Civil War South," in *A Companion to the American South*, ed. John Boles (Malden, MA: Blackwell, 2002), 156-175; Donald Mathews, *Religion in the Old South* (Chicago: University of Chicago Press, 1977); John Patrick Daly, *When Slavery Was Called Freedom: Evangelicalism, Proslavery, and the Causes of the Civil War* (Lexington: University of Kentucky Press, 2002); Eugene Genovese, *The Consuming Fire: The Fall of the Confederacy in the Mind of the White Christian South* (Athens, GA: University of Georgia Press, 1998); Charles Reagan Wilson, *Baptized in Blood: The Religion of the Lost Cause, 1865-1920* (Athens, GA: University of Georgia Press, 1980); Paul Harvey, "Religion in the American South Since the Civil War," in Boles, ed., *A Companion to the American South*, 387-406. For examples of the latter see Kathleen Flake, *The Politics of American Religious Identity: the Seating of Senator Reed Smoot, Mormon Apostle* (Chapel Hill: University of North Carolina Press, 2004); Sarah Barringer Gordon, *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 2002); Jan Shipps, *Mormonism: The Story of a New Religious Tradition* (Urbana: University of Illinois Press, 1985); Jay P. Dolan, *In Search of an American Catholicism: A History of Religion and Culture in Tension* (Oxford: Oxford University Press, 2002); Jenny Franchot, *Roads to Rome: The Antebellum Protestant Encounter with Catholicism* (Berkeley: University of North Carolina Press, 1994); Paul Goodman, *Towards a Christian Republic: Antimasonry and the Great Transition in New England, 1826-1836* (New York: Oxford University Press, 1988).

circulating in the shared political vocabulary of the nineteenth century, but without shared definitions. Some religious partisans fully agreed that the individual was the important unit of government in the modern American nation, but it was a carefully circumscribed individualism. In 1885, Josiah Strong, pastor of the Vine Street Congregational Church of Cincinnati and the secretary of the Evangelical Alliance, published the bestseller, *Our Country*, with the American Missionary Association, which illustrated that the appeal to the individual did not always mean the kind of liberty that Wood and others have claimed. Warning of "seven perils" facing the nation (immigration, Romanism, Mormonism, intemperance, socialism, wealth, and the city), Strong inspected what he regarded as cracks in the moral foundation of the United States. His proposed corrective was a reformation of individual character, because democracy to him rested on the possibility of individual self-restraint. "Democracy," he later elaborated, "is the best form for those who have sufficient intelligence and moral character to be capable of self-government. Without such qualifications, for its enjoyment, liberty lapses into license and ends in anarchy." Strong readily conceded that the individual was the basic unit of government in a democratic society, but that individual needed to possess internalized moral sensibilities, sanctioned by the community, so that individual liberty did not threaten the whole.[18]

Other religious partisans simply rejected the idea that the individual—much less the autonomous, rights-bearing individual—was the foundation of American democratic

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[18] Strong, *Our Country*; Josiah Strong, *The Twentieth Century* (1899; repr., New York: Arno Press, 1970), 91 (quotation). Compare Strong's ideals to what the political scientist Michael Lienesch has called the "psychology of control" that the U.S. Constitutional framers put forth. Michael Lienesch, *New Order of the Ages: Time, the Constitution, and the Making of Modern American Political Thought* (Princeton: Princeton University Press, 1988), 174-183 (quotation on p. 174).

government. As the legal historian Rogers M. Smith has argued, "through most of U.S. history, lawmakers pervasively and unapologetically structured U.S. citizenship in terms of illiberal and undemocratic racial, ethnic, and gender hierarchies." Supporting those unequal hierarchies was, very often, the moral establishment. That foundation did not escape the notice of John Stuart Mill, oft-portrayed as the quintessential nineteenth-century political thinker, whose classical liberalism in the progressive narrative then becomes an expression of the reigning philosophy of the era. In his rousing 1859 tract *On Liberty*, Mill claimed simply, "the individual is sovereign." Yet he feared what he characterized as "the engines of moral repression" that he saw gearing up in modern society. In particular, "religion, the most powerful of the elements which have entered into the formation of moral feeling," still strove to gain "control over every department in human conduct" or at least to minimize "divergence from the reigning opinion." Citing the requirement in Britain (similar to the United States) for witnesses to swear belief in the existence of God and a future state of rewards and punishments, the increasing prevalence of temperance legislation, the expansion of Sabbath laws, and the crusade against Mormonism, Mill claimed that it was "not difficult to show, by abundant instances, that to extend the bounds of what may be called the moral police, until it encroaches on the . . . liberty of the individual, is one of the most universal of all human propensities" and one of the most dangerous in the modern world. In other words, though Mill was an absolutely devoted proponent of individual rights and a strong advocate of liberalism, his was the work not of someone who sat comfortably in a century that honored his social philosophy, but rather the work of someone critical of what he

saw as the nineteenth-century norm that downplayed the necessity of individual liberty to the obligations of the whole.[19]

Because so many have looked to Mill as expression of the reigning orthodoxy of nineteenth-century political thought instead of recognizing him as one of its most cogent critics, they have misunderstood the century's legal and political arrangement, particularly when it comes to religion. Legal historians have often claimed that although colonial law equated criminality with sin, American law dropped its moral concern after the Revolution, which, as the legal history Kermit L. Hall has claimed, "unleashed powerful forces of market capitalism and individualism." Those forces, in the standard legal narrative, shifted the focus of law away from the maintenance of moral communities and moved property protection and personal security to the forefront of criminal law. Law, in other words, becomes the mechanism to regulate autonomous individuals interacting in a free marketplace with a minimum level of interference. Religious historians, following the trajectory, have suggested that religious partisans accepted the de-moralization of law, both rejecting the coercion that law provided and looking instead to "moral suasion" as the means of promoting their social goals. The nineteenth-century social movement, then, born out of religious ideals, becomes the

[19] Rogers Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven: Yale University Press, 1997), 1; John Stuart Mill, *On Liberty* (1859), reprinted in Mill, *Collected Works*, 18:224 (first quotation), 226 (second, third, and fifth quotations), 226-227 (fourth quotation), 239-240, 284 (sixth quotation), 287-290. Others have questions whether exclusionary policies and practices are embedded in the ideal of liberalism itself, because throughout much of its history only certain people qualified as individuals. See Uday S. Mehta, "Liberal Strategies of Exclusion," in *Tensions of Empire: Colonial Cultures in a Bourgeois World*, eds. Frederick Cooper and Ann Laura Stoler (Berkeley: University of California Press, 1997), 59-86; Linda Kerber, "Can a Woman Be an Individual? The Discourse of Self-Reliance," in *Toward an Intellectual History of Women* (Chapel Hill: University of North Carolina Press, 1997), 200-223. On Mill's idea of individualism and individual liberty, see Kwame Anthony Appiah, "Liberalism, Individuality, and Identity," *Critical Inquiry* 27 (Winter 2001): 305-332.

ultimate means of moral suasion in the Whig narrative, whereby American liberalism expands to more perfectly include everyone and embody its own ideal.[20]

Instead, as the legal historian William Novak has shown in his exhaustive study of nineteenth-century legal regulation, law in the nineteenth century became a way of advancing a regulatory regime that held a relative view of individual rights, which were rigidly subordinated to what courts thought was the good of the whole. Fearing the liberty that might devolve into license and conclude with anarchy, to paraphrase Josiah Strong, what I am calling the American moral establishment prescribed mutual obligation, the duties that citizens owed to one another and to the state. Those duties were paramount over the rights of individuals, and part of that prescribed mutual obligation entailed the limitation, the situational qualification, or even the flat denial of individual rights to women, Afro-Americans, and religious minorities including Catholics, Mormons, and free thinkers. The determination of religious partisans to use law to enforce morality shows the extraordinary degree to which they were *not* committed solely to moral suasion, because, as Pierre Bourdieu has argued, the law is almost uniquely a text that produces its own effects. It is inherently efficacious. When a jurist declared that the United States was a Christian nation—a frequent utterance in the nineteenth century—his proclamation made it so. Though the effect of that utterance

[20] Kermit L. Hall, *The Magic Mirror: Law in American History* (New York: Oxford University Press, 1989), 169. For other examples of arguments that separate of morality and law after the American Revolution, see William E. Nelson, "Emerging Notions of Modern Criminal Law in the Revolutionary Era: An Historical Perspective," *New York University Law Review* 42 (May 1967): 450-483; William E. Nelson, *Americanization of the Common Law: The Impact of Legal Change on Massachusetts Society, 1760-1830* (Cambridge, Mass.: Harvard University Press, 1975); David H. Flaherty, "Law and the Enforcement of Morals in Early America," in *Law in American History*, eds. Donald Fleming and Bernard Bailyn (Boston: Little and Brown, 1971), 203-253. For an example of the frequent claim that after disestablishment religious reformers used "moral suasion," particularly prior to the Civil War, see Gaines M. Foster, *Moral Reconstruction: Christian Lobbyists and the Federal Legislation of Morality, 1865-1920* (Chapel Hill: University of North Carolina Press, 2002), 9-26. The classic claim that after disestablishment religious partisans rejected coercion in favor of persuasion comes from Sidney E. Mead, *The Lively Experiment: The Shaping of Christianity in America* (New York: Harper & Row, 1963), 16-37.

might be in dispute, and other judges in other jurisdictions might disagree, where that utterance was binding it created its own effect, with persuasion being unnecessary.[21]

Yet the paradox of the moral establishment was that as it increased its reach and attained a more-fully elaborated symbolic repertory and a finer-grained articulation of the limits of moral behavior, its proponents felt increasingly uneasy. Its growing intermediate range in the nineteenth century, neither forthrightly supporting Christianity nor effecting a complete separation of religion and government, left some proponents like Josiah Strong worried that it was a house built on sand, whose uncertain stability resulted from a lack of clear connection to what they took to be the rock bed of Christianity. But proponents were never able to make the connection more explicit, nor could opponents break the connection altogether. Although religious partisans fretted over what they worried was an increasingly diffuse cultural authority, resisters and dissenters harbored no illusions about the extent and tenacity of conservative religious control. Ultimately, the religious rhetoric of decline served to further consolidate the establishment's support. Historians have typically taken religious rhetoric on face value, assuming that the decline was real. But the moral establishment was more firmly entrenched at the end of the century than it was at the beginning, and religious hold on the levers of public life was tighter than ever. Throughout the nineteenth century where the claim of individual rights ran up against the maximal imperatives of the moral establishment, individual rights often gave way.

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[21] William J. Novak, *The People's Welfare: Law and Regulation in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1996), 1; Pierre Bourdieu, "The Force of Law: Toward a Sociology of the Juridical Field," *Hastings Law Journal* 38 (July 1987): 805-813. See also, Robert M. Cover, *Narrative, Violence, and the Law: The Essays of Robert Cover*, eds. Martha Minnow, et al. (Ann Arbor: University of Michigan Press, 1975).

This, then, is a counter-narrative. Rather than claiming the American genius in establishing religious liberty, I emphasize its many shortcomings, the frequent betrayal of principle, and the unstable ideas of religious freedom in American national life. This is a story of religious authority, coercion, and law. The moral establishment, advocated by religious partisans, acted as a proxy religious establishment. It formed a continuous, if ever shifting, context for reform. Religion figured centrally in prompting, resisting, and altering that reform impulse, sometimes at the same time. The result was a more or less continuous conflict over the scope, contour, substance, and foundation of the moral establishment, in which religious and secular proponents entered all sides of the debate to both reform or protect the status quo, empower or coerce dissenters, and assert or challenge religious authority in American public life.

These are fundamental tensions in American law and society that have existed since the American Revolution and borne particularly strange fruit in the last forty years. The central issue in these disputes was how to adjudicate between diverse constituencies with competing knowledge and ethical claims within a moral framework that is accepted by all sides. That issue goes vertiginously to the core of the present conflict. Then as now, there were deep cleavages in American cultural life—highly contested moral categories and disagreements about core mutual obligations—that the debates failed to solve. When moral conversation reached an impasse, all that remained was the legal and political struggle to coerce cultural conformity, the very phenomenon seen so often in the contemporary situation. Rejecting the American myth makes clear the convoluted relationship of intellectual, religious, and political thought in American life, and helps to clarify the nature of the dispute. Rather than a narrow quarrel over church and state, the

arguments turn on a pair of more profound questions that still remain to be answered: what minimal moral standards do we expect of one another and how do we maintain them in fairness to all?

CHAPTER ONE. THE BEGINNING OF THE MORAL ESTABLISHMENT

> It is the tendency then of political atheism to prostrate our republican institutions . . . to stimulate and augment the powers of evil, and to suspend the restraining action of the divine government, until self-government becomes impossible, and revolution and anarchy follow, and a despotic government closes the scene.
>
> –Lyman Beecher[1]

> The right of a society or government to interfere in matters of religion, will hardly be contested by any persons, who believe that piety, religion, and morality are intimately connected with the well being of the state, and indispensable to the administration of civil justice.
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> —Joseph Story, U.S. Supreme Court Justice[2]

The invocation of religious liberty as a hallmark of American democracy is one of the most frequent occurrences of American political talk. Raising the issue of religious liberty or using the language of liberty of conscience touches emotions, mobilizes political constituencies, and creates odd political alliances. Yet beneath the surface agreement about the place of religious liberty in the American political tradition lie the deep waters of often-fierce disagreement, which the apparent concord about religious liberty has obscured.

Those disagreements go back all the way to the birth of religious freedom in the United States. Following the passage of Pennsylvania's Constitution of 1776, Henry Muhlenberg, head of the German Lutherans of Pennsylvania, issued a call to arms to all Protestant congregations in order "to retain the priceless freedom of conscience," because the state constitution, which excluded Jews and freethinkers from public office, had

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[1] Beecher, *Lectures on Scepticism*, 77-78.

[2] Joseph Story, *A Familiar Exposition of the Constitution of the United States* (1840; repr., Lake Bluff, Ill.: Regnery Gateway, 1986), 314.

declined to endorse an official religion. Freedom of conscience to Muhlenberg seemed to mean the ability to create a Christian Commonwealth. He complained that after the passage of the Constitution, "you need believe in no Redeemer, no Spirit, no Word of God. If you only acknowledge a Superior Being with the mouth, you may assist in the government. . . . If such incarnate spirits of elevated taste should succeed, there would very soon arise such grand, politic, free republics as flourished before the Flood in Sodom, and before the destruction of Jerusalem." In the same vein, following the passage of the 1780 Massachusetts Constitution, Isaac Backus, the Reformed Baptist opposition leader to the Massachusetts establishment, still noted with approval, "No man can take a seat in our legislature till he solemnly declares, 'I believe the Christian religion and have a firm persuasion of its truth.'" The Constitution needed to go farther, in Backus's estimation, in order to provide "equal Christian liberty," but his telling phrase outlined the outer limits of the concept as far as he was concerned. By contrast, John Leland, the radical and iconoclastic Baptist leader from Massachusetts and Virginia, explained that the Massachusetts Constitution was "as good a performance as could be expected in a state where religious bigotry and enthusiasm have been so predominant." Leland wanted complete separation of church from the state so that "a Jew, a Turk, a Pagan, or a Christian of any denomination," who was in good standing "as a citizen," would have sufficient "confidence of the public" to permit him to hold office.[3]

[3] Henry Muhlenberg quoted by J. Paul Selsam, *The Pennsylvania Constitution: A Study in Revolutionary Democracy* (Philadelphia: University of Pennsylvania Press, 1936), 219. For similar complaints about the Pennsylvania Constitution of 1776, see Anne H. Wharton, "Thomas Wharton, Jr., First Governor of Pennsylvania Under the Constitution of '76," *Pennsylvania Magazine of History and Biography* 5, no. 4 (1881): 432-433. Isaac Backus, "A Door Opened for Christian Liberty" (1783), reprinted in Isaac Backus, *Isaac Backus on Church, State, and Calvinism: Pamphlets, 1754-1789*, ed. William G. McLoughlin (Cambridge, Mass.: Belknap Press, 1968), 436; John Leland, "A Yankee Spy," (1794), in John Leland, *The Writings of John Leland*, ed. L.F. Greene (1845; repr., New York: Arno Press, 1969).

As Muhlenberg, Backus, and Leland's comments show, the ideal of religious liberty became an early point of orthodoxy in American political thought, but the appeal to religious liberty did not grow out of any fixed connection to the revolutionaries' ideas of political freedom. Its status as a point of orthodoxy made it a debater's point, a key component of what the great political historian Richard Hofstadter called "the symbolic aspect of politics." All sides were eager to claim the symbolic high ground in the debate over religious liberty, so it became a rallying cry for those who wanted to create a Christian commonwealth, as equally for those who wanted to establish a secular state. But the invocation of religious liberty as a symbolic act should not be confused with the actual distribution of power and the formation of political institutions. Religious liberty simply had no agreed upon meaning. Because it suffered from an essential obscurity as an ideal, the appeal to religious liberty in the nation's originative texts produced essential contradictions in religious liberty's institutional forms. To read those texts—which include the early state constitutions, Jefferson's Bill for Establishing Religious Freedom, Madison's *Memorial and Remonstrance Against General Assessment*, the First Amendment of the U.S. Constitution, and the early state judicial decisions concerning church and state—is to encounter profound disagreement, ambivalence, and obfuscation that necessarily affected the political institutions that the documents helped create.[4]

Given the legal ambiguity and the often free-floating symbolism of religious liberty, Muhlenberg's mention of Sodom and Gomorrah raised what would become the

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[4] Richard Hofstadter, *The Paranoid Style in American Politics and Other Essays* (New York: Vintage Books, 1967), viii. The distinction between the symbolism of politics and the distribution of power and institutional formation also comes from Hofstadter. He was particularly interested in pointing out that "the symbolic and myth-making aspects of the human mind" have an inescapable place in politics and in historical writing about politics. Hofstadter, *The Paranoid Style in American Politics*, ix. In the case of the moral establishment, religious liberty as symbol and myth must first be understood as such, before the institutional forms and the contradictions of those forms can even be seen.

critical issue in the creation of the moral establishment. Though nearly everyone would, in time, agree that the state should not finance religious institutions, many would still maintain that religion needed some binding connection to the state in order to insure moral vitality, which was necessary, they claimed, for the preservation of any government. If moral vitality waned, then the mechanisms of the state would perish from internal decay or divine judgment. The symbolic affirmation of religious liberty then entailed a simultaneous two-fold governmental and legal development. The first was the dismantling of the institutional religious establishment—the withdrawal of state funds to support churches. But moving parallel to institutional disestablishment, if not in concert, was the erection and fortification of a moral establishment, which looked to Christianity, and more often Protestant Christianity, to maintain the moral ideals that religious partisans thought necessary for the preservation of the state. In other words, the legal ambiguity, rather than providing a clearly triumphant institutionalized form of religious liberty, permitted a legal framework in which religious partisans could use the levers of law and politics to create the moral establishment, while simultaneously claiming the mantle of religious freedom.

The Tangle of Religious Liberty

The American Revolution and the beginning of American constitutionalism go hand in hand. The peculiarity of the American desire to create constitutions, to declare fundamental law as an organic act of the people that would serve an architectonic function for the laws that follow it, is one of the more remarkable developments of the late-eighteenth century. It meant a conscious legal disputation, an extended conversation by many people throughout American society, about the shape, contours, and ultimate

source of fundamental law. Beginning in 1776, as statesmen gathered in statehouses across the thirteen colonies to draft new constitutions, the young nation was awash in political argument. Yet the result was not always coherent, particularly when it came to the relationship of religious belief and political and civic rights. Political theory, constitutionalism, and practical necessity combined in often unpredictable ways, and the constitutions that emerged from the state conventions were composite political documents, often bearing the visible marks of disagreement, debate, and compromise, if they were not outright self-contradicting. At the core of the confusion over religious liberty was whether or how religious belief supported political stability and rights. If they were connected, and nearly every state concluded that they were connected in some way, the question was how to support religious belief in order to promote social stability without violating religious liberty. Because so many definitions circulated throughout the conversation, the resulting constitutions embodied a predictable amount of disorder, many of which overtly discriminated against Jews, Catholics, freethinkers.[5]

The first issue facing states was whether or not to fund institutional churches. After 1776 five states—Maryland, Massachusetts, New Hampshire, South Carolina, and Vermont—had constitutional provisions to levy public money in support of institutional churches, and Connecticut, which declined to pass a Constitution for thirty-three years, had a provision by statute to do the same. The other states refused institutional establishments, but that did not mean that they left religion alone. Pennsylvania's 1776

[5] On American constitutionalism more generally, see VanBurkleo, Hall, and Kaczorowski, eds., *Constitutionalism and American Culture*; Sotirios A. Barber and Robert P. George, eds., *Constitutional Politics: Essays on Constitution Making, Maintenance, and Change* (Princeton: Princeton University Press, 2001); Donald S. Lutz, *The Origins of American Constitutionalism* (Baton Rouge: Louisiana State University Press, 1988); Michael Kammen, *Sovereignty and Liberty: Constitutional Discourse in American Culture* (Madison: University of Wisconsin Press, 1988).

Constitution, which received considerable scrutiny from other states because of its radical dedication to the newest democratic ideas, declared "[t]hat all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understanding." It solemnly proclaimed that the government was created for common protection, "not for the particular emolument or advantage of any single man, family, or sett [*sic*] of men." But it only promised civil rights to "any man, who acknowledges the being of a God." It also required that all office holders give the oath: "I do believe in one God, the creator and governor of the universe, the rewarder of the good and punisher of the wicked. And I do acknowledge the Scriptures of the Old and New Testament to be given by Divine inspiration." Similarly the North Carolina Constitution of 1776 forbade an "establishment of any one religious church or denomination in this State, in preference to any other." Yet immediately preceding the Constitution's disestablishment clause, the convention delegates inserted a provision that "no person, who shall deny the being of God or the truth of the Protestant religion, or the divine authority either of the Old or New Testaments, or who shall hold religious principles incompatible with the freedom and safety of the State, shall be capable of holding any office or place of trust or profit in the civil department within this State."[6]

Other states had variously similar arrangements, almost all of which levied civil liabilities on non-Protestants or, in some cases, non-Christians. New Jersey construed its

[6] Pennsylvania Constitution of 1776, Declaration of Rights, arts. II, V; Plan of Government, sec. 10. Benjamin Franklin, who had served as President of the Pennsylvania Constitutional Convention and unsuccessfully opposed the oath, consoled himself in a letter to the Unitarian Joseph Priestley that he had limited the damage, successfully adding the stipulation that "no further or other religious test shall ever be required of any civil officer or magistrate of this state." Benjamin Franklin to Joseph Priestley, August 21, 1784, in Benjamin Franklin, *The Writings of Benjamin Franklin*, ed. Albert H. Smyth (New York: Macmillan, 1907), 9:266-267. North Carolina Constitution of 1776, arts. XXXII, XXXIII. North Carolina's Protestant provisions were difficult to enforce, so enforcement was rarely attempted. See Stephen B. Weeks, *Church and State in North Carolina* (Baltimore: Johns Hopkins University Press, 1893), 263-267.

freedom of conscience clause as a guarantee "[t]hat no person shall ever, within this Colony, be deprived of the inestimable privilege of worshipping Almighty God." It also promised "that no Protestant inhabitant" shall be denied the enjoyment of a civil right and that only Protestants could hold to public office. Delaware promised freedom of conscience and the free exercise of religious worship, while simultaneously declaring only that "Persons professing the Christian Religion" would receive equal rights, and requiring office holders to swear, "I, A B, do profess faith in God the Father, and in Jesus Christ His only Son, and in the Holy Ghost, one God, blessed for evermore; and I do acknowledge the holy scriptures of the Old and New Testament to be given by divine inspiration." Maryland limited equal protection to "all persons, professing the Christian religion" and excluded Jews and atheists from office. Vermont's oath of office prohibited Jews, Catholics, and freethinkers. Georgia required legislators to be "of the Protestant religion." South Carolina, which maintained a broad establishment of "the Christian Protestant religion," limited toleration to "all persons and religious societies who acknowledge that there is one God, and a future state of rewards and punishments, and that God is publicly to be worshipped." It also forbade Jews, Catholics, and agnostics or atheists from holding office. New Hampshire, which also had a religious establishment, likewise forbade Jews, Catholics, and agnostics or atheists from holding office without recourse to an oath, while simultaneously proclaiming that "the RIGHTS OF CONSCIENCE" were "in their very nature unalienable, because no equivalent can be given or received for them." Connecticut, which did not ratify a full constitution for thirty-three years, passed various Acts of Toleration to supplement its 1776 Constitutional Ordinance, all of which excluded Jews. Rhode Island, the bastion of

religious liberty, still placed Jews under civil and political disability until its 1842 Constitution.[7]

In the ongoing uncertainty over the extent and meaning of religious liberty, the three most important states were Virginia, New York, and Massachusetts, distinguished by their large populations, long history, and the importance of the political leaders that each brought to the debate. On the surface they had radically different conceptions of religious liberty, with Virginia leading the way with the ideas that would culminate in the federal Constitution and the First Amendment's freedom of exercise clause. But they were actually more united in their ambivalence than the surface appearance might suggest. Virginia, under the influence of Thomas Jefferson, was on the liberal end of the spectrum. In section 16 of its Declaration of Rights, Virginia declared that because religion "can be directed only by reason and conviction, not by force or violence. . . all men are equally entitled to the free exercise of religion, according to the dictates of conscience." But the provision was not entirely secular, because it defined religion as "the duty which we owe to our Creator," and explained that all citizens still had "the mutual duty. . . to practise Christian forbearance, love, and charity towards each other." The juxtaposition of free religious exercise with the duty of Christian virtue testified to the multiple hands and multiple definitions of religious liberty. That ambivalence came to a head three years later when Jefferson tried to pass his Bill for Establishing Religious

[7] New Jersey Constitution of 1776, arts. XVIII, XVIX; Delaware Declaration of Rights and Fundamental Rules of 1776, arts. II, III; Delaware Constitution of 1776, art. XXII; Maryland Declaration of Rights of 1776, arts. XXXIII, XXXV; Maryland Constitution of 1776, art. LV; Vermont Constitution of 1777, ch. II, sec. IX; Georgia Constitution of 1777, art. VI; South Carolina Constitution of 1778, arts. III, XII, XIII, XXXVIII; New Hampshire Constitution of 1784, part I, art. IV; part II, "Senate," "House of Representatives," and "President." On the discrimination against Jews in Connecticut and Rhode Island, see Morton Borden, *Jews, Turks, and Infidels* (Chapel Hill: University of North Carolina Press, 1984), 13. New Jersey's limitation of office holding to Protestants may not have been enforced. See Charles R. Erdman, Jr., *The New Jersey Constitution of 1776* (Princeton: New Jersey, 1929), 54.

Freedom, which sought to completely separate religious belief from civil rights. Jefferson controlled the early drafting of the legislation while it was in committee, but before it could reach the entire Assembly he was elected Governor, which effectively pulled his persuasive powers from the debate. When the bill came before the full Assembly on June 12, 1779, its central provision was both succinct and sweeping. Because "our civil rights have no dependence on our religious opinions," the bill explained, "all men shall be free to profess, and by argument to maintain their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities." By separating civil rights and religious opinions, the bill struck at the heart of the ambivalent ideals of religious liberty that had produced such contradictory constitutional provisions in other states. It met with controversy accordingly. Before proponents could muster necessary support to pass the bill, the legislative session expired, and the Assembly postponed consideration of the bill until after the summer recess. In the interim, the battle of the broadsides heated up, so that when the legislators returned they found numerous petitions on religious freedom, all but two of which were opposed to Jefferson's bill. Simultaneously other legislators took up a measure to modify section 16 of the Declaration of Rights, eroding the freedom of conscience by limiting the civil rights of non-Christians and creating a broadly Christian establishment in Virginia. The Assembly, unable to come to a decision on either bill by the end of the session, eventually did nothing, letting the ambivalence lie.[8]

[8] Virginia Constitution of 1776, Declaration of Rights, sec. 16 (first through third quotations); Thomas Jefferson, Bill For Establishing Religious Freedom, reprinted in Thomas Jefferson, *The Papers of Thomas Jefferson*, ed. Julian P. Boyd (Princeton: Princeton University Press, 1950), 2:545 (fourth quotation), 546 (fifth quotation). On Jefferson's first attempt to pass his Bill, see Thomas E. Buckley, *Church and State in Revolutionary Virginia, 1776-1787* (Charlottesville: University Press of Virginia, 1977), 38-62.

New York's 1777 provision was seemingly much more straightforward, enacting what upon first blush might appear a complete separation. Because "the benevolent principles of rational liberty" required the framers "to guard against spiritual oppression and intolerance wherewith the bigotry and ambition of weak and wicked priests and princes have scourged mankind," the Constitution guaranteed that "the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed, within this State, to all mankind." It qualified its guarantee, though, with the proviso "[t]hat the liberty of conscience, hereby granted, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State," which revealed a determined battle over the extent of religious liberty. On the first reading of the Constitution, after it emerged from the drafting committee, John Jay, who would later co-author *The Federalist* and become the first Chief Justice of the U.S. Supreme Court, proposed that free religious exercise be limited with the provision "that nothing in this clause. . . shall be construed to extend the toleration of any sect or denomination of Christians, or others, by whatever name distinguished, who inculcate and hold for true doctrines, principles inconsistent with the safety of civil society." After a long debate, Jay withdrew his motion for a more specific limitation that revealed his real target. Free religious exercise was a right of all, Jay proposed,

> Except the professors of the religion of the church of Rome, who ought not to hold lands in, or be admitted to a participation of the civil rights enjoyed by the members of this State, until such time as the said professors shall appear in the supreme court of this State, and there most solemnly swear, that they verily believe in their consciences, that no pope, priest or foreign authority on earth, hath power to absolve the subjects of this State from their allegiance to the same. And further, that they renounce and believe to be false and wicked, the dangerous and damnable doctrine, that the pope, or any other earthly authority, have power to

> absolve men from sins, described in, and prohibited by the Holy Gospel of Jesus Christ; and particularly, that no pope, priest or foreign authority on earth, hath power to absolve them from the obligation of this oath.

After another lengthy battle, Jay's motion was defeated nineteen votes to ten. Finally, Jay proposed language very close to the final reading of the Constitution, which the convention passed and later modified to its final form with minimal controversy. Tellingly, Gouverneur Morris objected that Jay's final amendment was "the same in substance" as Jay's previous amendment that he had withdrawn, but the delegates overruled Morris's objection. When combined with the thinly veiled anti-Catholic assignation in the first part of the paragraph, which claimed that religious liberty was important to protect against the "spiritual oppression and intolerance wherewith the bigotry and ambition of weak and wicked priests and princes have scourged mankind," Jay's proviso insured that a Protestant sectarian definition infused New York's guarantee of religious liberty, in spite of its apparent separation.[9]

Given the controversies of Virginia and New York, the Massachusetts Constitution of 1780, which would become the *bête noire* of institutional establishment, was not so out of step from the rest. Led by John Adams, Massachusetts allowed that no person "shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his conscience, or for his religious profession or sentiments." It limited equal protection to "every denomination of Christians, demeaning themselves peaceably," required office holders to declare their belief in the Christian religion, but made room for Catholic

[9] New York Constitution of 1777, art. XXXVIII. For the debate and prior versions of the proviso, see *Journals of the Provincial Congress, Provincial Convention, Committee of Safety and Council of Safety of the State of New York 1775-1777* (Albany: Thurlow Weed, 1842), 1:844 (fifth and sixth quotations), 845 (seventh quotation).

officeholders, provided that they affirm, "no foreign prince, person, prelate, state, or potentate hath, or ought to have, any jurisdiction, superiority, preeminence, authority, dispensing or other power, in any matter, civil, ecclesiastical, or spiritual, within this commonwealth." The result was not quite the liberal arrangement of New York or Virginia, but not so far from what the minority wanted in even the most liberal state constitutional debates.[10]

The disagreement over the meaning of religious liberty testified to the very constrained regime of civil liberties that many non-Protestants labored under in the early national period. Added to the constitutional prohibitions, many states declined to enfranchise Jews, Unitarians, and agnostics. A person's demurral from swearing or affirming his belief in God could limit his ability to testify in court, which would inhibit, in turn, his capacity to seek legal redress. Law, with frequent prosecutions, enforced the Christian Sabbath. Religious organizations ran the schools, in which religious practice was a frequent part of instruction. Finally, non-theists could not hold or convey property in trust, and could not establish philanthropic organizations to propound their religious beliefs. Whatever religious liberty meant at the time of the Revolution, its limits were very clear. Straying from broadly Protestant or in some cases broadly Christian belief was a recipe for incurring civil disability of all kinds.[11]

The Relationship of Religion and Morals

In spite of the ambivalence, political thought was changing rapidly. Emerging within the disagreement was a core of consensus, but not quite the consensus that resulted

[10] Massachusetts Constitution of 1780, part the first, arts. II, III; part the second, ch. II, sec. 1, art. II; ch. II, sec. 2, art. I; ch. VI, art. I.

[11] Levy, *The Establishment Clause*, 77-78.

in an unambiguous triumph of religious liberty. Part of the mixed feelings about religious liberty came from widespread concern over the fate of public morality. To many state constitutional framers, the establishment of a well-governed political system based on popular consent made the maintenance of public morality an imperative. They worried that a warped public sensibility would result in unreliable representation, leading to destructively amoral governance and the downfall of the republic. According to the conventional line of thought, religion supported morality, which in turn laid at the foundation of the American representative system. In addition, religion was ostensibly useful in maintaining good order among the masses, functioning as a means of social control to contain social deviance and acting as a check against the worst excesses of democracy. Even the most radical deist often supported religious belief among the lower sort, worrying that the broad acceptance of the advanced ideas of deism might promote social disorder. Benjamin Franklin, who questioned sin, free will, personal immortality, and God's providence in his youth before retreating into respectable moderation, still spoke for many of the educated classes when warned, "talking against religion is unchaining a tiger; the beast let loose may worry his liberator." Religion provided for control of the masses (the beast of Franklin's quote), which needed the restraining force of religion to ensure social tranquility and good governance in a political system based on popular representation.[12]

[12] Franklin quoted by Merle Curtie, *The Growth of American Thought*, 3rd ed. (New York: Harper & Row, 1961), 104-108 (Franklin quotation on p. 107). For other accounts of the widespread belief that religion upheld morality, see Jack N. Rakove, "Once More Into the Breach: Reflections on Jefferson, Madison, and the Religion Problem," in *Making Good Citizens: Education and Civil Society*, eds. Diane Ravitch and Joseph P. Viteritti (New Haven: Yale University Press, 2001), 240-262; Diggins, *Lost Soul of American Politics*, 7-17; John G. West, Jr., *The Politics of Revelation and Reason: Religion and Civic Life in the New Nation* (Lawrence: University of Kansas Press, 1996), 74-78, 117-134; James Hutson, *Forgotten Features of the Founding: The Recovery of Religious Themes in the Early American Republic* (Lanham, MD: Lexington Books, 2003), 1-44. On the prevailing republican view that virtue was necessary to sustain the

As the struggle over religious liberty intensified—first in Virginia with the passage of Jefferson's Bill for Establishing Religious Freedom in 1786 and then in debate over the First Amendment to the U.S. Constitution in 1789—the issue increasingly turned on whether and how the state could withdraw its support for religion without endangering the nation's moral foundations. The 1780 Massachusetts Constitution had justified its institutional religious establishment with an appeal to moral standards. "[T]he happiness of a people and the good order and preservation of civil government," the constitution explained, "depend essentially upon piety, religion and morality." To that end the constitution provided monetary support for the maintenance of "bodies-politic or religious societies" that would, in turn, support the "public Protestant teachers of piety, religion and morality," which were essential for the preservation of the state. Massachusetts was not alone in its arrangement. In addition to state monetary support, religious bodies retained numerous privileges as a means of supporting public morality in many if not all states. Because religious organizations were the near-universal creators of charitable foundations, and because educational institutions likewise were almost universally maintained by religious societies, the law made no distinction between them. The entire arrangement relied on a tightly imbricated series of propositions, in which religion supported morality and simultaneously prompted the kind of public-mindedness and devotion to the social whole that girded the creation and perpetuation of charitable and educational institutions.[13]

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republic, see Gordon Wood, *The Creation of the American Republic, 1776-1789* (Chapel Hill: University of North Carolina Press, 1969), 51-53.

[13] Massachusetts Constitution of 1780, part the first, art. III.

To disrupt religion and remove its legal protections, in the estimation of many state constitutions, would be to remove the subjective and organizational commitment to public virtue that many state-constitutional framers considered necessary for the maintenance of a republican society. The tight connection of virtue, charity, and public-mindedness with religious and educational societies could be seen in Section 45 of "The Plan or Frame of Government" in Pennsylvania's 1776 Constitution:

> Laws for the encouragement of virtue, and prevention of vice and immorality, shall be made and constantly kept in force, and provision shall be made for their due execution; And all religious societies or bodies of men heretofore united or incorporated for the advancement of religion or learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities and estates which they are accustomed to enjoy, or could of right have enjoyed, under the laws and former constitution of this state.

The constitution blurred "religious societies and bodies of men," "the advancement of religion or learning," and "pious and charitable purposes," because they were, if not interchangeable, then interrelated. All tended, by implication, to promote "the encouragement of virtue." Vermont's 1777 Constitution followed Pennsylvania almost to the letter, but added a provision to integrate governance into the formula. "[N]o person, shall be capable of holding any civil office, in this State," the constitution stipulated, "except he has acquired, and maintains a good moral character." New Hampshire's 1784 Constitution put it all together. "Morality and piety. . . will give the best and greatest security to government," New Hampshire maintained, so much so that "knowledge of these [morality and piety], is most likely to be propagate through a society by the institution of public worship of the DEITY, and public instruction in morality and religion." To that end New Hampshire authorized "the several towns, parishes, bodies-corporate, or religious societies," again not distinguishing among them, "to make

adequate provision at their own expence, for the support and maintenance of public protestant teachers of piety, religion, and morality." In other words, both those states that had an institutional establishment, and those states that did not, still looked to religious societies and the educational and charitable institutions supported by them to maintain the moral standards of society, and they provided legal privileges and immunities to encourage religious proliferation so that they could do their work.[14]

Harnessing religion in the maintenance of public morality did have its problems, not least of which was that religion could also undermine established morality and be disruptive to the social order. When the masses succumbed to various enthusiasms that sometimes swept the people at the hands of what the educated classes considered religious demagogues, then the state needed protection from religious zealotry. Maryland's 1776 Declaration of Rights modified its freedom of conscience clause to exclude those cases in which "under colour of religion, any man shall disturb the good order, peace, or safety of the State, or shall infringe the laws of morality." Delaware (1776) allowed that all Christians would enjoy equal rights and privileges, "unless, under the Colour of Religion, any Man disturb the Peace, the Happiness or Safety of Society." Georgia (1777) granted freedom of religious exercise, "provided it be not repugnant to the peace and safety of the State." New Hampshire (1784) promised freedom of conscience to each person, "provided he doth not disturb the public peace, or disturb others, in their religious worship." New York then was merely following an established form when it qualified its freedom of conscience clause with the stipulation "[t]hat the

[14] Pennsylvania Constitution of 1776, sec. 45; Vermont Constitution of 1776, secs. 28, 41; New Hampshire Constitution of 1784, part I, art. VI. For the back history of this section and the role of Henry Muhlenberg, head of the German Lutherans in Pennsylvania, and other religious leaders in securing its passage, see Selsam, *The Pennsylvania Constitution*, 216-217.

liberty of conscience, hereby granted, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State."[15]

Religion, Morals and Disestablishment

Institutional disestablishment went forward only as states began looking to alternative ways to shore up moral ideals and behavior, and the ambivalence of state constitutions about the connection of religion and morality raised several questions that would become important in the creation of the moral establishment. Who was to decide when religion was properly supporting morality or when it turned disruptive, being used to justify "acts of licentiousness"? What standards were to be used in identifying an act of licentiousness? The state constitutional tensions highlighted that the state framers did not look to religion *in general* to support morality. Not all religions were to be equal. Religion supported morality up to a point, but ultimately the state determined which religions supported morality, which did not, and where the limits were. If religious partisans could gain control of the state political or judicial apparatus, they could set the moral standards to be enforceable by the state, thereby setting up a religious establishment under another name.

Jefferson seems to have been cognizant of this possibility, offering up his Bill for Establishing Religious Freedom as a means of reinforcing morality without the threat of coercion. One of the claims of Jefferson's bill was that if another way existed apart from an institutional establishment that would guarantee religious belief—so that religion could fulfill its role in maintaining the morals of the people apart from the operations of

[15] Maryland Declaration of Rights of 1776, art. XXXIII; Delaware Declaration of Rights of 1776, Rule 2; Georgia Constitution of 1777, art. LVI; New Hampshire Constitution of 1784, art. V; New York Constitution of 1777, art. XXXVIII.

the state—then the institutional establishment could be safely dropped with its goal still firmly in place. His solution was necessary, he claimed, because institutional religious establishments simply did not work. An institutional establishment "tends also to corrupt the principles of that very religion it is meant to encourage," the bill explained, "by bribing. . . those who will externally profess and conform to it" and creating hypocrisy rather than moral obedience. Removing the institutional establishment would grant the individual citizen "the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness," thereby ensuring a more perfectly articulated connection between the people and the agents of moral reformation, which would then preserve the state without the threat of coercion.[16]

The initial rejection of Jefferson's bill demonstrated how unpersuasive his argument was to the Virginia legislators. Its eventual passage in 1786 was a very important step in the symbolic endowment of religious liberty as a political ideal and a point of orthodoxy, which would then carry over into the First Amendment of the U.S. Constitution. But it did not result in an unambiguous institutional form. Many have looked to the Virginia debate in order to understand religious liberty, asserting that the presence and role of James Madison in passing the bill provided the normative meaning of American religious freedom. After the Virginia debates, Madison would become the architect of the U.S. Constitution and one of its chief defenders during ratification. The separation of different branches of government and the balance of their powers established by the Constitution largely followed the political ideas that Madison

[16] Jefferson, Bill for Establishing Religious Freedom, Jefferson, *Papers of Thomas Jefferson*, 2:546 (first quotation), 545 (second quotation).

presented to the U.S. Constitutional Convention in what he called the Virginia Plan. He was also substantially responsible for the Bill of Rights, especially the First Amendment. Looking at the Virginia debate about religious liberty and its continuation three years later during the drafting of the Bill of Rights does reveal the meaning or meanings of religious liberty and the institutional forms that resulted from them. But because those institutional forms were significantly less clear than many have claimed, it is worth going slowly to see that the arguments over religious liberty, first in Virginia and then in the construction of the First Amendment, which showcased many of the major claims that would recur in the repeated disputations over the moral establishment to come.

The realization that institutional disestablishment could go forward without endangering its moral counterpart did not come without a struggle. After the General Assembly rejected Jefferson's Bill for Establishing Religious Freedom in 1779, the concern of establishment partisans churned below the surface for a time. Established clergy and their lay supporters saw Jefferson's attempt to remove state monetary support as a blow to the cause of religion, which they believed would allow a wave of licentiousness to break upon Virginia. The Assembly had, for each year since 1776, suspended payments for the established clergy, without ever being able permanently to do away with the idea of an establishment. Without state monetary support some legislators worried that the cause of religion was suffering, and with it the cause of morals, which, according to the logic, would wreck ruin upon the state. In 1784 establishment proponents gained enough support for another attempt by arguing that publicly financed Christianity could provide a stopgap for what they predicted was going to be a rapid deterioration of virtue. Patrick Henry led the establishment faction by

calling for a general assessment on all property holders to support teachers of the Christian religion.[17]

Because the opposition was weak and unorganized, it initially appeared that the measure would pass. Jefferson was out of the country serving as the ambassador of the United States to France. Many of his one-time supporters had moved on or changed sides. Stepping into the leadership void was the young political theorist and wily parliamentary tactician, James Madison, but Madison initially did not take the bill as seriously as he should have. During the autumn of 1784 while the General Assembly was on recess, Madison traveled on the Potomac, taking his leisure and allowing the matter to lay fallow. When he returned he found a well-organized caucus in favor of the broad establishment, with the other side successfully wooing Madison's supporters. Richard Henry Lee, an intrepid liberal confidant who usually opposed Patrick Henry, thought Madison unreasonable in his opposition to the establishment, explaining that although "refiners may weave as fine a web as they please . . . the experience of all times shows Religion to be the guardian of morals—and he must be a very inattentive observer in our Country, who does not see that avarice is accomplishing the destruction of religion." Put on the defensive rather than conducting the carefully planned parliamentary attack that he was used to, Madison had to settle for oratory and a few parliamentary moves that allowed him to regroup. After sending the Bill through two readings, he used a

[17] For specifics on the bill, see James Madison to Thomas Jefferson, January 9, 1785, James Madison, *The Papers of James Madison*, eds. Robert A. Rutland et al. (Chicago: University of Chicago Press, 1973), 8: 299.

Christmas Eve vote to postpone the third reading until the next legislative session, which gave him the space to gather his supporters in order to launch a counterattack.[18]

The break was fortuitous, and Madison used the opportunity to take intellectual stock of the subject of religious liberty as a whole, crafting an anonymous petition to be delivered to the Assembly at the next legislative session. The result was his famous *Memorial and Remonstrance against Religious Assessments*, which has been frequently heralded as one of the two signal statements of religious liberty in the United States (the other being Jefferson's Bill for Establishing Religious Freedom). The *Memorial*'s central contention was, in fact, quite radical. Religion, Madison argued, formed a fundamental duty for humans that was logically and temporally prior to their membership in civil society. Because the legislature was the chief mechanism for regulating the affairs of civil society, it had no authority whatsoever to regulate an individual's religious life. Instead, religious adherence constituted an "unalienable right" because it had precedent in both "time and degree of obligation" to that of civil society. The General Assessment Bill had overstepped this inalienable right by looking to religion as "an Engine of Civil policy," which Madison characterized as "an unhallowed perversion of the means of salvation." Rather than falsely buttressing religious belief in order to shore up dilapidated civil authority, Madison suggested a reconfigured relationship between religion and the state. A "just Government," he explained, whose goal was to perpetuate

[18] Ibid., 8:149. On Madison's initial lack of concern about the General Assessment, see James Madison to James Madison, Sr., November 27, 1784, ibid., 8:155. On Madison's summer travels, see the editorial comment of Rutland et al., ibid., 8:196. On the various factions at the Assembly, including the opposition of Richard Henry Lee to Patrick Henry, see Buckley, *Church and State*, 71-74. For Madison's arguments to the Assembly, see "Madison's Notes for Debates on the General Assessment Bill," Madison, *Papers of James Madison*, 8:195-199. On Madison's parliamentary moves, see Buckley, *Church and State*, 108-112. For Madison's own account of the debates, see James Madison to Thomas Jefferson, January 9, 1785, Madison, *Papers of James Madison*, 8:228-229.

"public liberty," would "be best supported by protecting every Citizen in the enjoyment of his Religion."[19]

The significance of Madison's *Memorial and Remonstrance* went beyond the disestablishment battle in Virginia, because it signaled a watershed in political thought and established the conception of rights that many dissenters from the moral establishment would draw upon in their agitation. In much of the eighteenth-century when political theorists talked about the protection of rights, they usually referenced the rights of the people at large and sought to protect the people from the abuse of government. In practice, that meant the people as a whole had to have access to the machinery of governance, because the preservation of electoral mechanisms, when combined with a morally virtuous populace, would ensure that the government acted at the behest of the people. In arguing against establishment, Madison reconfigured not just the relationship of church and state, but also the relationship of rights and government. He saw through the establishment controversy that majorities could use their access to government, which was the end-goal of much eighteenth century political theory, in order to suppress and tyrannize minorities. To guard against majority tyranny, Madison contended that the rights of the minority had to be protected from the will of the majority—in essence, that the rights of minority had to be protected from the tyranny of the people—an idea that made no sense when rights were vested in the people at large. Madison shifted the locus of rights away from the people, abstractly conceived, to the individual citizen, arguing that the individual's religious belief was "wholly exempt" from consideration of civil authority because it was a natural and inalienable right,

[19] James Madison, *Memorial and Remonstrance Against Religious Assessments*, Madison, *Papers of James Madison*, 8:295-306 (first two quotations on p. 299, third and fourth quotations on p. 301, fifth through seventh quotations on p. 302).

irrespective of the rights of the people. Because the people, speaking through the majority, could not use the machinery of governance to transgress the inalienable right of even one person, the idea of an inalienable right cordoned off an individual's religion from the regulatory power of government completely. It was, if not the beginning, then one of the earliest and most important instances of modern American rights talk.[20]

The brilliance of this intellectual leap can obscure that the *Memorial* was also—even primarily—a political document, which Madison carefully calibrated to attract the widest number of signers, including many Virginia evangelicals who did not want a broad establishment but also did not want the complete separation that Madison envisioned. Throughout the *Memorial* Madison yoked two disparate arguments, claiming simultaneously that state support for religion violated an inalienable right and that it created a form of hypocritical Christianity displeasing to the Creator. The bill was "adverse to the diffusion of the light of Christianity," he claimed, because it "discourages those who are strangers to the light of revelation" from immigrating to where they might come under Christianity's influence. To appeal to the widest possible audience the *Memorial* also contained a number of evasions, avoiding in particular the issue of religion's role in supporting morality. Though Madison seemed to support the idea that the health of religion was important for state preservation, he did not address what would happen if someone's religious views (or lack thereof) prompted a moral position that others thought dangerous to the state. Madison's own view was very much outside the

[20] Madison, *Memorial and Remonstrance*, Ibid., 299. On the eighteenth century conception of rights, see Bernard Bailyn, *Ideological Origins of the American Revolution* (Cambridge, Mass.: Belknap Press, 1967), 184-197, esp. 196-197. On the idea of the sovereignty of the people as a central component in protecting rights, see Wood, *The Creation of the American Republic*, 307-389. On Madison's view of rights and the difference between procedural and inalienable rights, see Jack N. Rakove, *Original Meanings: Political Ideas and the Making of the Constitution* (New York: Knopf, 1996), 310-316; Jack N. Rakove, *Declaring Rights: A Brief History with Documents* (Boston: Bedford Books, 1998), 17-31, 99-107.

mainstream. The historian Irving Brant notes that when Madison described the establishment debate in public, he opposed "establishment" to "toleration," claiming that religious establishments bred intolerance. When Madison described his own views in private, by contrast, he consistently opposed "establishment" to "the rights of conscience," which suggested his desire for radical personal freedom, capacious individual right, and extreme pluralism in matters of religion. He seemed to cast a rather sardonic eye on the claim that religion propped up morals. In his celebrated *Federalist* no. 10, penned three years later to defend the Constitution, Madison dismissed both "moral" and "religious motives" as an "adequate control" against the factional management of government, suggesting instead that the greater the variety of parties, interests, and factions, the more likely opposing viewpoints would counter-balance one another, thereby preventing any one group from gaining majority to suppress the minority. To say it another way, he was unconcerned with whether or not religion promoted morality, looking instead to radical religious heterogeneity to produce sufficient conflict that the excessively narrow ideals supported by different parties would cancel out one another.[21]

Given his cynical view of religion and morality, it would be a mistake to claim that all the signers of his Memorial shared his vision of stark separation. The legal historian Philip Hamburger has recently shown that in debates over religious

[21] Madison, *Memorial and Remonstrance*, Madison, *Papers of James Madison*, 303; Irving Brant, "Madison: On the Separation of Church and State," *William and Mary Quarterly* 3rd Series, vol. 8 (January 1951): 5; Alexander Hamilton, James Madison, and John Jay, *The Federalist: A Commentary on the Constitution of the United States*, ed. Robert Scigliano (1788; repr., New York: Modern Library, 2000), 54-61 (quotation on p. 58). For other assessments that Madison and Jefferson's religious view were out of step with the general legislative opinion of the time, see Rakove, "Once More Into the Breach," 235; Hutson, *Forgotten Features of the Founding*, 155-185. For a more detailed explication of *Federalist* no. 10 and its relation to Madison's political philosophy as a whole, see Stanley Elkins and Eric McKitrick, *The Age of Federalism* (New York: Oxford University Press, 1993), 82-92. On the evangelical opposition to the General Assessment Bill, see Buckley, *Church and State*, 173-184.

establishment, supporters of an institutional establishment often accused their opponents of trying to separate church and state, which invariably produced a sharp disavowal of strict separation from people who still sought to remove state financial support for churches. Isaac Backus, for example, the Reformed Baptist opponent of the Massachusetts establishment, condemned the radical idea of individual rights and the radical separation of church and state that Madison had articulated, though not necessarily referring specifically to Madison. "Those who now speak great *swelling words* about *liberty*, while they *despise government*," Backus complained, "are themselves *servants of corruption*. What a dangerous error, yea, what a root of all evil then must it be, for men to imagine that there is anything in the nature of true government that interferes with true and full liberty!" Evangelicals like Backus could give their assent to the idea that removing state financial support for religion allowed it to flourish in order to preserve the state, but they drew a line at the issue of complete separation precisely because they thought the individual must always consider, or be made to consider, the social whole in his actions. "The importance of religion to civil society and government is great indeed," Backus would later claim, even while he was pressing hard for an end to Massachusetts's institutional establishment, "as it keeps alive the best sense of moral obligation." More than simply revealing the nuances of his support for institutional disestablishment, Backus's argument showed that evangelicals who supported the institutional disestablishment actually shared a basic agreement with the old-line proponents of state-financing for churches, because both claimed that the state could not be totally separate from religion, particularly in its morality defining mission. This more basic agreement would, in time, reassert itself, while Madison's (and

Jefferson's) view of religious liberty would encounter the difficulties of a minority opinion.[22]

Despite their differences, in the short term the Madisonian-evangelical cooperation proved a very effective political alliance. When the 1785 legislative session opened, as Madison reported to Jefferson, "the table was loaded with petitions & remonstrances from all parts against the interposition of the Legislature in matters of Religion." Faced with an organized and vocal opposition, the proponents of a general assessment retreated, allowing the bill to go down in defeat. Madison, sensing that the victory had "produced all the effect that could have been wished," put forward Jefferson's long neglected Bill for Establishing Religious Freedom, but the debate over Jefferson's bill caused the differences between Madison and evangelicals to emerge. Evangelicals switched sides to agree with the supporters of establishment, opposing the idea that the state could take no cognizance of religion. The switch in allegiance meant that after mustering overwhelming support to reject assessment, Madison did not have enough votes to pass Jefferson's bill and had to compromise by allowing several critical emendations, watering down the bill's original intent. Religious opposition focused on the preamble, in particular the Bill's claim that "the opinions and belief of men depend not on their own will, but follow involuntarily the evidence proposed to their minds," which might have sounded too rationalistic. After several attempts to change the preamble to include section 16 of the Virginia Declaration of Rights—with its assertion that citizens have "the mutual duty. . . to practise Christian forbearance, love, and charity

[22] Isaac Backus, *An Appeal to the Public for Religious Liberty* (1773) and Isaac Backus, *Government and Liberty Described* (1778), in Backus, *Church, State, and Calvinism*, 309 (first and second quotations), 353 (third and fourth quotations). See also Philip Hamburger, *Separation of Church and State* (Cambridge, Mass.: Harvard University Press, 2002), 65-78.

towards each other"—they finally compromised by deleting most of the sentences. The Assembly also deleted Jefferson's declaration "that the opinions of men are not the object of civil government, nor under its jurisdiction," a deletion that not only repudiated complete separation but also kept open the possibility of state regulation of certain kinds of belief. Madison sought to minimize the changes in his account to Jefferson (who was still in France), explaining that the alterations "did not affect the substance" and that "the enacting clauses past [*sic*] without a single alteration." But the intellectual divide between Madison and his allies was showing.[23]

That divide would resurface three years later after the passage of the U.S. Constitution in the debates over its Bill of Rights. As Madison moved from the establishment battle in Virginia to the federal Constitutional Convention in 1787 and the fight over its subsequent amendments, his disagreement with his evangelical allies would further limit any clear provision for church and state on the federal level, even while it increased the symbolic import of religious liberty. Madison, the architect of the federal Constitution, supported its prohibition of any religious test for office on the federal level and its complete omission of the concept of God. But the omission of God was disturbing to many religious leaders, and at least part of the clamor for a Bill of Rights was a desire to guarantee religious liberty, as religious leaders understood it. Madison's view of factions, by contrast, made him wary of the idea of a Bill of Rights, which he described to Jefferson as mere "parchment barriers" whose efficacy had failed repeatedly in states where majorities simply disregarded them to do as they pleased. He was especially concerned that "the rights of Conscience in particular, if submitted to public

[23] James Madison to Thomas Jefferson, January 22, 1786, Madison, *Papers of James Madison*, 8:474. For the text of the original Bill and subsequent emendations, see Jefferson, *Papers of Thomas Jefferson*, 2:545-553. For an account of the legislative back and forth, see Buckley, *Church and State*, 157-165.

definition would be narrowed much more than they are likely ever to be by an assumed power." Noting that "[o]ne of the objections in New England" was that the Constitution's lack of religious tests for office "opened a door for Jews Turks & infidels [*sic*]," Madison explained that he preferred to leave the idea of religious liberty implied, rather than risk narrowing its scope in the legislative give-and-take with the religious partisans who were calling for the religious liberty amendment. His wariness would be confirmed in the course of debate, because the passage of the First Amendment, with its "laconic brevity and consequent vagueness," in the historian Sidney Mead's words, failed to fully institute Madison's vision, instead maintaining the disestablishment alliance at the expense of clarity.[24]

The amendment suffered from confused purpose and conception throughout. Madison's original form of the amendment, which he brought before the U.S. House of Representatives in the spring of 1789 and would have been inserted between the third and fourth clauses of article I, section 9 of the federal Constitution, was sweeping. It read: "The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed." But by the time the amendment had emerged from the select committee on amendments, it had already been trimmed, simply stating, "no religion shall be established by law, nor shall the equal rights of conscience be infringed." Even the more modest version provoked complaint. Peter Sylvester, representative from New York, fretted that some might misunderstand the point of the

[24] James Madison to Thomas Jefferson, October 17, 1788, James Madison, *The Papers of James Madison*, eds. Robert A. Rutland, et al. (Charlottesville: University of Virginia Press, 1977), 11:297; Mead, *The Lively Experiment*, 57. On the omission of God from the Constitution, see Kramnick and Moore, *The Godless Constitution*, 26-45.

amendment, reading it as an attempt "to abolish religion [from government?] altogether." Elbridge Gerry, the representative from Massachusetts who had declined to sign the U.S Constitution in part because it did not contain a Bill of Rights, followed on the heels of Sylvester, worrying that the amendment as it stood could prohibit the rights of states to maintain a state religion (as Massachusetts did until 1833). When Madison responded that he understood the words to prohibit Congress from establishing a "national religion," Benjamin Huntington of Connecticut, which also had a religious establishment, noted his agreement with Sylvester and feared that "the words might be taken in such a latitude as to be extremely hurtful to the cause of religion." He wanted the language changed so that it would "secure the rights of conscience, and a free exercise of the rights of religion," while not protecting "those who professed no religion at all." Huntington's objection most clearly expressed the religious view of both the old-line religious groups supporting state-level religious establishments and the newer dissenting groups like Baptists and Methodists that wanted the amendment to guarantee their religious freedom. Both agreed that the amendment should support religious expression but not add protection to the irreligious, which would tend to undermine social stability and the good order of government by removing the foundation for morality. To appease the objections of the factions, the House changed the wording to "Congress shall make no law establishing religion, or to prevent the free exercise thereof, or to infringe the rights of conscience," before sending the proposal to the Senate.[25]

Alongside his amendment to limit the power of Congress, Madison wanted another amendment inserted between the first and second clauses of article I, section 10,

[25] Joseph Gales, ed., *Annals of the Congress of the United States* (Washington: Gales and Seaton, 1834), 1:452 (first quotation), 783 (second and third quotations), 784 (fourth quotation).

to the effect that "No state shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases." This was a comprehensive plan to limit both the power of Congress and the power of the states to protect freedom of conscience and religious exercise. But Madison again met resistance. Thomas Tucker of South Carolina, which had an institutional establishment that Madison's amendment might have prohibited, complained that the amendment, instead of limiting federal power, actually seemed to offer only an "alteration of the constitutions of particular States." Tucker preferred instead that the Constitution "leave the State Governments to themselves." In response Madison invoked the idea of an inalienable right that he drew upon in the Virginia debates, objecting that this was "the most valuable amendment in the whole list. If there was any reason to restrain the Government of the United States from infringing upon these essential rights, it was equally necessary that they should be secured against the State Governments." State governments were more likely, in Madison's opinion, to abuse the rights of conscience, because majoritarian factions could more easily gain control in the smaller and more homogeneous state assemblies. Madison's defense on this occasion was successful, and the amendment went to the Senate substantially as he proposed it.[26]

Had these two amendments passed, even in their limited form, it might have provided a comprehensive protection on both the state and the federal level to religious dissenters of all kinds, but Madison's concerns about limiting religious liberty would prove especially prescient in the Senate debates. The Senate was not at all friendly to Madison's formulations, but because it met behind closed doors with no record of debate

[26] Ibid., 1:451 (first quotation), 757 (second quotation), 758 (third through seventh quotations), 796 (eighth quotation).

until 1794, it is difficult to say exactly what objections they had. When what would become the First Amendment emerged, it had been changed to "Congress shall make no laws establishing articles of faith, or a mode of worship, or prohibiting the free exercise of worship," which on a narrow reading seemed to prohibit Congress from prescribing doctrine or worship, but would still allow it to pass legislation to support religion or even to create a broad establishment of religion. The Senate also completely deleted Madison's amendment prohibiting states from violating the rights of conscience. Unhappy with the changes, Madison successfully persuaded his House and Senate colleagues to accept what would become the final version of the First Amendment's religion clauses: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." In doing so, he abandoned his desire for an explicit affirmation of "the full and equal rights of conscience" that was in his original version, which limited the overall effect just as he had feared. The final version also added ambiguity. The amendment that initially went to the Senate had simply prohibited Congress from passing a law "establishing religion." The new version prohibited Congress from making a law "respecting an establishment of religion." What did that mean? Was there a difference?[27]

Because the final version of the First Amendment was the result of contorted political compromise, it (and the entire Bill of Rights) had an uncertain meaning at best. "The indeterminacy of constitutional language," in the legal historian Jack Rakove's words, would allow plenty of room for debate about what specifically the Congress was permitted and not permitted to do. Part of the problem was the spareness of the language.

[27] Ibid., 1:948 (first and fourth quotations), 451 (second quotation), 796 (third quotation). For the Senate version of the amendment, see Rakove, *Declaring Rights*, 187. On the Senate's lack of a record of debate, see ibid., 186.

Unlike the Declarations of Rights found in many state constitutions, which appealed to natural law and first principles as an explanation of and justification for the rights that they enumerated, the federal Bill of Rights presumed, in Rakove's explanation, "that the people already knew what the moral purpose and ultimate sources of their rights were." Although the debate in crafting the First Amendment—along with its predecessor debate in the Virginia Assembly—had established the symbolic import of religious liberty, the ambiguity of its meaning created an uncertain institutional arrangement, which still left plenty of room for debate and maneuvering. Lost within that debate, or at least not sufficiently answered for the many religious partisans on both sides, was how to support religious liberty while simultaneously maintaining the moral foundation necessary to preserve the state. Once that was settled, institutional disestablishment could go forward, with the moral establishment firmly in place.[28]

The Creation of the Moral Establishment

In the short term, the most significant legislative decision was the Senate's rejection of Madison's amendment to impose limits on the states. That rejection set the stage for a proxy religious establishment on the state-level that used the police powers of the states—their ability to limit individual liberties to preserve the public good—in order

[28] Rakove, "Once More Into the Breach," 236 (first quotation); Rakove, *Declaring Rights*, 192 (second quotation). The utter ambiguity of the First Amendment is evident in the overwhelming number of articles trying to make sense of it. Between 2000 and 2005, scholars published nearly two thousand articles on religious liberty law. See Witte, *Religion and the American Constitutional Experiment*, xiv. The courts have had a difficult time with the indeterminacy, and the jurisprudence on the First Amendment has been a fly in the teeth of legal scholars, who complain of the inconsistency, the opacity, and the general unpredictability of legal opinions. One scholar, Jesse H. Choper, has even gone so far as to argue that the First Amendment's religion provisions are self-referentially incoherent. According to Choper, the court must define what religion means in order to protect free religious exercise, but to define religion is necessarily to choose among alternative conceptions of religion, which could then be said to establish that one conception over others, thereby violating the establishment clause. See Jesse H. Choper, "Defining 'Religion' in the First Amendment," *University of Illinois Law Review* 1982, no. 3: 579-613; Jesse H. Choper, "The Religion Clauses of the First Amendment: Reconciling the Conflict," *University of Pittsburgh Law Review* 41 (Summer 1979): 673-701.

to maintain a religiously derived, public morality. The creation of a moral establishment involved, like all issues related to religious liberty, a considerable amount of disagreement, intellectual evasion, and double-talk. It was very clear that some kind of intellectual break had occurred with the passage of the First Amendment, because although six states still had state-level establishments—and some would keep them for several decades—the general trend would be a rejection of state monetary support for religious institutions. Institutional disestablishment was an important development that required a significant legal disentanglement of religious institutions from the explicit protection and alliance with the state. Yet it did not entail the complete separation of religion from the state or the creation of a secular state, though that was probably the hope of Madison and his like-minded compatriots. In addition, although it is commonly acknowledged that the First Amendment created the space for what the historian R. Laurence Moore has called "the beginning of religious politics," politics was not the only arena in which the moral establishment operated. "Politics" suggests a struggle for power that operates within established political rules, but the moral establishment *created* the rules by defining the limits of dissent, the modes of religious expression that threatened the government, and the specific moral obligations—often quite maximal ones—that citizens owed to the state and to one another.[29]

Between 1789 and 1792, four states altered their constitutions to bring them more in line with the federal rule, and in the process began to show the basic contours of the moral establishment in their qualifications on religious freedom. Georgia (1789) and South Carolina (1790) removed all civil and political disabilities for religious belief,

[29] R. Laurence Moore, "The End of Religious Establishment and the Beginning of Religious Politics: Church and State in the United States," in *Belief in History: Innovative Approaches to European and American Religion*, ed. Thomas Kselman (Notre Dame: University of Notre Dame Press, 1991), 237-264.

though South Carolina added that the freedom of conscience did not "excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State." Pennsylvania's 1790 Constitution dropped its Christian oath of office and deleted its limitation of equal protection to theists, but still maintained that office holders must acknowledge "the being of a God and a future state of rewards and punishments." Delaware (1792) also dropped its requirement of a Trinitarian oath of office, but tellingly added a section to its free exercise and freedom of conscience clause that acknowledged that though citizens could not be coerced, it was still "the duty of all men frequently to assemble together for the public worship of the Author of the universe," because worship promoted the "piety and morality, on which the prosperity of communities depends."[30]

These changes formed the beginning of the move toward a moral establishment, a move that eventually caused the remaining states to drop their institutional establishments, although it took forty years to come to completion with important limits in each case. Vermont dropped both its institutional establishment and all civil disabilities for non-Protestants with its new constitution in 1793, but maintained the requirement of good moral character for holding public office. Maryland did away with its institutional establishment by amendment in 1810, but left its prohibition against Jewish and atheist office holding. In 1818 when Connecticut drafted a constitution—in part to remove its institutional establishment—the new constitution limited its lack of preference for religious groups only to "any Christian sect or mode of worship," and curtailed its promise of "equal powers, rights, and privileges" to "every society or denomination of Christians." New Hampshire's institutional disestablishment in 1819

[30] South Carolina Constitution of 1790, art. VIII, sec. 1; Pennsylvania Constitution of 1790, art. IX, sec. 4; Delaware Constitution of 1792, art. I, sec. 1.

left in place its declaration that "piety and morality, rightly grounded in evangelical principles" were essential to the security of government. That amendment also left in place the constitution's prohibitions against non-Protestants holding public office, which remained until 1877. Massachusetts accomplished its institutional disestablishment by amendment in two steps, first in 1821 by removing the Christian oath of office, and then in 1833 by removing any state mechanism for collecting or distributing money for churches. Crucially the amendment left in place the Constitution's original claim that "the public worship of God and instructions in piety, religion and morality, promote the happiness and prosperity of a people and the security of a republican government." Even North Carolina, which had done away with its institutional establishment in 1776, amended its constitution in 1835 to admit Catholics to office, but it still prohibited Jews and atheists.[31]

The sinewy and slippery quality of state constitutional provisions continued in other states. At the same time that old states were tortuously reconsidering their provisions for religious liberty, new states either copied provisions from the states from which the majority of the state's framers had migrated (so Tennessee followed North Carolina, Kentucky followed Virginia, and so on), or they cobbled together provisions from several states with often contradictory results. Ohio's new 1802 Constitution promised free religious exercise and freedom of conscience, but simultaneously maintained that because "religion, morality, and knowledge" were "essentially necessary to the good government and the happiness of mankind," the legislature would encourage schools and other means of instruction—again not distinguishing between religious and

[31] Vermont Constitution of 1793, ch. II, sec. 39; Maryland Constitution of 1776, art. XIII; Connecticut Constitution of 1818, art. I, sec. 4; art. VII, sec. 1; Massachusetts Constitution of 1780, art. XI; North Carolina Constitution of 1776, art. IV, sec. 2.

educational organizations—with the proviso that the encouragement be "not inconsistent with the rights of conscience." Mississippi's 1817 Constitution followed Ohio in proclaiming religion, morality, and knowledge necessary to good government, but simultaneously enacted what appeared a sweeping separation of civil rights and religious belief, proclaiming "[t]hat no person shall be molested for his opinions on any subject whatever, nor suffer any civil or political incapacity, or acquire any civil or political advantage." That provision did not stop Mississippi from requiring office holders to affirm "the being of God or a future state of rewards and punishments." In 1836, Arkansas followed North Carolina and Tennessee in promising that religion could not affect the "civil rights, privileges, or capacities of any citizen," but still prohibited any person "who denies the being of God" from holding office. It went one step farther, forbidding any non-theist from giving an oath in court, which could produce significant liability before the law. In short, aside from doing away with the idea that the state needed to provide religion with monetary support, much of the early disagreement about the extent of religious liberty and the institutional mechanisms for its protection and propagation persisted in the early antebellum constitutions.[32]

Parallel to the movement toward institutional disestablishment was the dizzying religious transformation now called the Second Great Awakening, which laid the demographic foundation for the informal moral establishment that Tocqueville and others noted in the 1830s. The historical sociologists Rodney Stark and Roger Finke report that in 1776 only 20 percent of people in New England had a religious affiliation. Despite laws against fornication, from 1761 to 1800 one-third of all first births came before

[32] Ohio Constitution of 1802, art. VIII, sec. 3; Mississippi Constitution of 1817, art. I, sec, 5; art VI, secs. 6, 16; Arkansas Constitution of 1836, art. II, sec. 4; art. VII, sec. 2. See the Appendix for a complete Chart of the State Constitutional Provisions Governing Religion.

couples had been married for nine months. The comparison of these two statistics leads Stark and Finke to the arresting conclusion that "New England[ers] during the colonial period were more likely to be sexually active than to belong to a church." Clear in Finke and Stark's statistics is the central fact of American religion at the time of the Revolution; very few people seemed to maintain any committed association with it. If church adherence was low in New England, the land of the Puritans, it was even worse in the South, where the African slaves that made up 42 percent of the population had overwhelming rejected the few feeble attempts to proselytize them before the nineteenth century. Scholars place colonial church adherence or attendance across the thirteen colonies at between 10 percent and 20 percent in 1776, meaning that at best 80 percent of all adults did not belonged to a church on the eve of the Revolution. By contrast, 62 percent of adults belonged to a church in 2000.[33]

That change would further swirl the confused conceptions of religious liberty, and the demographic changes would produce a broad cultural shift. Beginning in the 1790s, urban church construction exploded with the harbingers of a religious expansion, which intensified throughout the first half of the nineteenth century. Following the 1801 Great Revival at Cane Ridge, Kentucky, itinerant preachers and enthusiasts poured throughout Appalachia, the Southeastern seaboard, Pennsylvania, New York, and the Deep South of

[33] Finke and Stark, *The Churching of America*, 22-25 (quotation on p. 25). For concurring assessments, see Rodney Stark and Roger Finke, "American Religion in 1776: A Statistical Portrait," *Sociological Analysis* 49 (Spring 1988): 39-51; Jon Butler, *Awash in a Sea of Faith: Christianizing the American People* (Cambridge, Mass.: Harvard University Press, 1990); Butler, "Why Revolutionary America Wasn't a Christian Nation," 191; R. Laurence Moore, "Charting the Circuitous Route of Religious Liberty," *Modern Intellectual History* 2 (April 2005): 114. There is some disagreement over whether church membership was lower than church adherence, so that religious penetration was larger than church membership statistics might indicate. Compare Patricia U. Bonomi and Peter R. Eisenstadt, "Church Adherence in the Eighteenth-Century British American Colonies," *William and Mary Quarterly* 3rd series, vol. 39 (April 1982): 245-286; Finke and Stark, *The Churching of America*, 27-35. For the debate's outlier, see Hutson, *Forgotten Features of the Founding*, 111-132.

Alabama and Mississippi. They brought with them a new brand of Christianity that stressed individual conversion as a response to God, the importance of religious feeling as the hallmark of piety, and the strict attention to a tightened moral code that prohibited dancing, drinking, and gaming. Protestant evangelical expansion was rapid, broad, and generated intense social effects. The number of church members as a percentage of the population doubled from 17 percent in 1776 to 34 percent in 1850. The population itself grew from a little under 4 million people in 1790 to a little over 24 million people in 1850, so that the 2.6 million Methodists of 1850 were nearly equal to the entire population of the nation in 1790. Even more startling, according to Nathan O. Hatch between 1775 and 1845 the number of ministers grew at three times the rate of the population, which was itself six times larger in 1850 than it had been in 1790. Put simply, in 1850 there were many more churches, with many more church members, and many more ministers, and each made up a much larger percentage of the population than they had in 1790. Viewed from one angle, the revival impulse at the heart of Protestant expansion was an essentially schismatic one, creating innumerable religious organizations whose disagreement with one another relied on what to the outsider seem exceedingly arcane points of doctrine. Less appreciated is that beneath the dizzying array of theological controversy remained a fundamental core of agreement. The agreement is clear enough that even with all the division the groups that emerged from the revival shared a noticeable pattern of beliefs, worship style, and religious and moral ethos so that they fall, without much controversy, under the broad moniker of "evangelicals."[34]

[34] On the expansion of evangelical Protestantism (including the church expansion statistics), see Finke and Stark, *The Churching of America*, 23, 55-116 (Methodist statistic on p. 57); Butler, *Awash in a Sea of Faith*, 257-288 (church statistics on pp. 282-84); Christine Heyrman, *Southern Cross: the Beginnings of the Bible Belt* (New York: Knopf, 1997); Hatch, *The Democratization of American Christianity*; Mark A. Noll,

The broad evangelical consensus upholding the centrality of the Bible in life and worship, the importance of missionary expansion to the life of the religious community, and the public relevance of evangelical moral ideals created a powerful cultural force that worked against Madison's prediction in the *Federalist* no. 10. When Tocqueville visited the United States in the 1830s, he noted that in spite of innumerable sects all parties supported the peculiar conception of moral responsibilities and social mores that dominated American culture. In America, he concluded, "everything is certain and fixed in the moral world." Combined with the personal orientation of religious belief, the desire to project what could be called the evangelical ethos, with its coherent and highly stable moral system onto the larger society, prompted cultural, political, and legal campaigns that would become a hallmark of American life and culture for the next century. When evangelicals called for the public influence of religion, they were careful to point out that they were advocating the public relevance of nonsectarian belief—which was actually Protestantism, if not evangelical Protestantism, under another name—as fundamentally necessary to the propagation of a moral society. Led by evangelicals, the new organizational strength of the emergent mainline denominations in the nineteenth century—Congregationalists, Episcopalians, Presbyterians, Disciples of Christ, Lutherans, and the white branch of the Baptists and Methodists, known collectively as the

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America's God: From Jonathan Edwards to Abraham Lincoln (New York: Oxford University Press, 2002). On the growth of the population as a whole, see Herbert S. Klein, *A Population History of the United States* (New York: Cambridge University Press, 2004), 244. On the essentially ordered, rather than disordered, process of the revivals and the Awakening, see Moore, "The End of Religious Establishment," 237-264; Donald G. Mathews, "The Second Great Awakening as an Organizing Process, 1780-1830: An Hypothesis," *American Quarterly* 21 (Spring 1969): 22-43. On the shared general characteristics of the emergent Protestant denominations, see Robert T. Handy, *Undermined Establishment: Church-State Relations in America, 1880-1920* (Princeton: Princeton University Press, 1991), 8-12; D.G. Hart, *The Lost Soul of American Protestantism* (Lanham, MD: Rowman & Littlefield, 2002), xv-xxxiv. Hart objects to the term "evangelical," preferring instead the designation "pietist," but his argument still points to their essentially similar characteristics. For his objection to the term "evangelical" and the effect of the term on recent scholarship, see D.G. Hart, *Deconstructing Evangelicalism* (Grand Rapids: Baker, 2004).

Seven Sisters—further confirmed the ideal of nonsectarianism, because on moral issues the mainline denominations tended to agree. These denominations, along with the various voluntary associations and Protestant-controlled cultural and educational entities that they generated, formed a powerful interlocking network that mobilized majorities and provided the informal and formal structures of moral pressure and coercion.[35]

Protestant evangelical expansion also involved a rapprochement with the old-line proponents of an institutional establishment—a rapprochement necessary for the creation of the moral establishment—because both fundamentally agreed that religion supported morality, which was, in turn, necessary for the health of the state. Once it was apparent that the battle over institutional establishment was lost, in the words of the establishment-supporter-turned-peacemaker Lyman Beecher, "the occasion of animosity between us and the minor sects was removed, and infidels [Jefferson, Madison, and others] could no more make capital with them against us." Beecher would become an archetype of the new religious leader in the nineteenth century. He was from the next generation who had neither served during the Revolution nor drafted the U.S Constitution, and he focused on

[35] Tocqueville, *Democracy in America*, 279. On the emergent power of evangelicals in American cultural and political life, see Noll, *America's God*, 187-208. On the interlocking connection of Protestant social thought with the institutional structures of the Protestant establishment, see William R. Hutchison, *Religious Pluralism in America: The Contentious History of a Founding Ideal* (New Haven: Yale University Press, 2003), 69-83; William R. Hutchison, ed., *Between the Times: The Travail of the Protestant Establishment in America, 1900-1960* (New York: Cambridge University Press, 1989). On nonsectarianism, see Noah Feldman, *Divided By God: America's Church-State Problem-And What We Should Do About It* (New York: Farrar, Straus, Giroux, 2005), 61-71. On the expansion of voluntary societies to reform American society see Ronald G. Walters, *American Reformers, 1815-1860*, 2nd ed. (New York: Hill and Wang, 1997); Paul Boyer, *Urban Masses and Moral Order in America, 1820-1920* (Cambridge, Mass.: Harvard University Press, 1978), 22-55; Carroll Smith Rosenberg, *Religion and the Rise of the American City: The New York City Mission Movement, 1812-1870* (Ithaca: Cornell University Press, 1971); Clifford S. Griffin, *Their Brothers' Keepers: Moral Stewardship in the United States 1800-1865* (New Brunswick: Rutgers University Press, 1960); Charles I. Foster, *An Errand of Mercy: The Evangelical United Front, 1790-1837* (Chapel Hill: University of North Carolina Press, 1960); Edwin W. Rice, *The Sunday-School Movement and the American Sunday-School Union* (Philadelphia: American Sunday-School Union, 1917); Henry F. Cope, *The Evolution of the Sunday School* (Boston: Pilgrim Press, 1911); Rev. R.S. Duncan, *The History of the Sunday Schools* (Memphis: Southern Baptist Publication Society, 1876).

cultural reformation as much as the propagation of specifically religious tenets. His descendants, including Harriet Beecher Stowe, author of *Uncle Tom's Cabin,* Catharine Beecher, a conservative domestic reformer and woman's right advocate, and Henry Ward Beecher, the most famous preacher of the late-nineteenth century, followed his pattern of political and cultural reform. Among his non-familial intellectual descendants, Beecher found great support for his condemnation of what he variously called "political atheism" or "moral atheism," which he never explicitly identified with one figure but seemed to take in the liberal ideas of Thomas Jefferson and James Madison. In opposition to their formulations, Beecher maintained that because humans were "desperately wicked" they could not "be qualified for good membership in society without the influence of moral restraint." Government was not the result of the natural human tendency to cooperate for higher ends, as the early libertarian Thomas Paine had suggested, but was a necessary instrument "of self-defence against the violent evil propensities of man." Civil government joined a constellation of governing authorities that provided moral restraint to the individual, along with institutions of the family, the church, the practice of religious education, and the creation of voluntary societies, which insured cooperation among ministers and magistrates in the inculcation of a morally sound, social regime. Beecher's rejection of political atheism entailed a large-scale religious mobilization, common throughout evangelicalism, through newly formed societies like the American Bible Society, the American Sunday School Union, and the American Board of Foreign Missions. These national voluntary associations would act, Beecher predicted, as a "sort of disciplined moral militia" that would "repel every encroachment upon the liberties and morals of the state" and strengthen "the hand of the magistrate." As a result, voluntary

associations could uphold an evangelical biblical ethos that would pervade all aspects of society, though the formal institutions of church and state remained separate.[36]

"We have now, it seems a National Bible Society, to propagate King James's Bible, through all Nations," an aged John Adams reported to Jefferson in 1816. He observed with dismay the creation of voluntary organizations that Beecher and others touted, complaining that they were propagating what he considered the "Corruptions of Christianity. . . in Europe Asia, Africa, and America!" Jefferson, no less happy but more sanguine about the limits of Protestant evangelical influence in the United States, responded a month later that "[t]hese Incendiaries, finding the days of fire and faggot are over in the Atlantic hemisphere, are now preparing to put the torch to the Asiatic region. What would they say were the Pope to send annually to this country colonies of Jesuit priests with cargoes of their Missal and translations of their Vulgate, to be put gratis into the hands of every one who would accept them? And to act thus nationally on us as a nation?" Jefferson's observations on Catholicism displayed the ideal of non-sectarianism for the canard it was. Because non-sectarianism served, in R. Laurence Moore's explanation, as a "weasel word" that allowed Protestant control under a different name, the rhetoric did not match the reality, serving as a slight of hand to prevent Catholic and

[36] Beecher, *Lectures on Scepticism*, 59 (second quotation), 57 (third quotation); Beecher, *Reformation of Morals Practicable*, 15 (fourth and fifth quotations), 17 (sixth through eighth quotations). On the religious rapprochement between evangelicals and old-line religious groups, see Mead, *The Lively Experiment*, 52-54 (first Beecher quotation on p. 52). For Paine's libertarian view of national governments, see Thomas Paine, *Rights of Man* (1792), in Thomas Paine, *The Writings of Thomas Paine*, ed. Moncure Daniel Conway (London: Routledge/Thoemmes Press, 1996), 2:308, 406-407, 411. Compare Beecher's worries about a de-Christianized public sphere to those of Neuhaus, *The Naked Public Square*, 78-93. Compare Beecher's formulation of the church, the family, and voluntary associations as mediating structures to the thinking of conservative political theorists like Don Eberly and Ryan Streeter, *The Soul of Civil Society: Voluntary Associations and the Public Value of Moral Habits* (Lanham, MD: Lexington Books, 2002).

other minority influence but still promoting Protestant sectarian control on the state, the very thing that John Adams feared.[37]

While Protestants, led by evangelicals, were busy laying the foundation for the informal moral establishment, the courts were at work laying its formal basis that endorsed the persistence of a moral establishment in the place of an institutional one. State courts, in particular, tended to take the most conservative reading of state constitutions by elaborating Protestant social thought in all the issues that prompted nineteenth century church-state litigation: blasphemy trials, challenges to Sabbath laws, and the role of Christianity in public education. The fact that state courts decided many of the cases did not limit their significance or impact. At a time when the Supreme Court did not offer centralized guidance in American jurisprudence, state court judges had powerful influence on American law, and the opinions of the most important judges in the most important cases were widely received. One of the best-known state court judges, perhaps second only to John Marshall in the development of antebellum jurisprudence, was the Chief Justice of the New York Supreme Court, James Kent, whose

[37] John Adams to Thomas Jefferson, November 4, 1816, and Thomas Jefferson to John Adams, November 26, 1816, in John Adams, Thomas Jefferson, and Abigail Adams, *The Adams-Jefferson Letters: The Complete Correspondence between Thomas Jefferson and Abigail and John Adams*, ed. Lester J. Cappon (Chapel Hill: University of North Carolina Press, 1959), 1:493-494 (first quotation), 494 (second quotation), 496 (third quotation). On the decline of the Enlightenment perspective that Adams and Jefferson maintained with the expansion of Protestantism, see Henry F. May, *The Enlightenment in America* (New York: Oxford University Press, 1976), 307-362. On the role of the American Bible and Tract Societies in creating American mass media and laying the groundwork for mass movements, see Moore, "The End of Religious Establishment," 245; R. Laurence Moore, "Religion, Secularization, and the Shaping of the Culture Industry in Antebellum America," *American Quarterly* 41 (June 1989): 216-242. On the canard of nonsectarianism, see Moore, "Charting the Circuitous Route of Religious Liberty," 116 (third quotation); Feldman, *Divided by God*, 65-71. On the emergence of church-state separation predicated on nonsectarianism and Gregory XVI's condemnation of church-state separation that provoked the nonsectarian doctrine, see Hamburger, *Separation of Church and State*, 201-219, 230. On the mass arrival of Roman Catholics, see Finke and Stark, *The Churching of America*, 117-155.

Commentaries on the law, published between 1826 and 1830, established him as the first of the great law treatise writers of the nineteenth century.[38]

It was James Kent that provided the guiding principle in church-state law in the 1811 New York Supreme Court case, *People v. Ruggles.* When a man named Ruggles shouted in a public square, "Jesus Christ was a bastard and his mother must be a whore," he was immediately charged, convicted of blasphemy, and appealed his conviction to Kent's court. New York did not even have a blasphemy statute, so Ruggles argued that he could not be charged with having broken any law. Even if it did have a statute, he claimed, the charge of blasphemy impaired his free exercise rights and violated the declaration of the New York Constitution that the state should not display a preference when it came to religion. Kent, writing for a unanimous court composed of three Democrats and two Federalists, rejected all arguments completely. He held that irrespective of the no preference clause in the New York Constitution and the lack of a blasphemy law in the civil statutes, Christianity was still a part of the common law of the state, and as such, blasphemy was punishable by New York law. Christianity was a necessary part of the state's legal apparatus and social cohesion, because it provided "moral discipline" and "those principles of virtue, which help to bind society together." As for the defendant's free exercise argument, Kent regarded it as misconceived indeed. "The free, equal, and undisturbed enjoyment of religious opinion," Kent completely granted, but the abuse of that right, as in the case of blasphemy, "tends to corrupt the morals of the people, and to destroy good order. Such offenses have always been considered independent of any religious establishment or the rights of the Church. They

[38] On James Kent and the role of the state court judges in nineteenth century jurisprudence, see G. Edward White, *The American Judicial Tradition* (New York: Oxford University Press, 1976), 36-47.

are treated as affecting the essential interests of civil society." Although Kent conceded the no preference clause and the free exercise clause had established a regime of toleration, he was insistent that that toleration "never meant to withdraw religion in general, and with it the best sanctions of moral and social obligation from all consideration and notice of law," because, Kent explained, "we are a christian people."[39]

Kent's decision contained a social and political philosophy that other courts elaborated, mainly because of his appeal to common law. Common law was the evolving body of law, derived from England, based on custom, usage, and the decisions of legal courts and treatise writers, which held considerable sway among jurists in the early nineteenth century. Common law would eventually be codified by legislative statute, but statutory law would never completely do away with the idea of what is now called case law, the body of precedent established by a court system. Because the state Constitutions and the court systems were so new and because the common law had not been codified by the state legislatures, many of the early religious liberty cases were cases of first impression—meaning that such a case had never been heard before a court so there was no body of precedent—which then allowed *Ruggles* to offer a guide, though not one that was binding outside of New York.

It was a precedent that other courts eagerly received. In an indecency case four years after *People v. Ruggles*, the Pennsylvania Supreme Court began laying the basis for the moral establishment in that state. Pointing out the courts' crucial role as "guardians

[39] *People v. Ruggles*, 8 Johns. at 290 (first quotation), 294 (second, third, and fifth quotations), 295 (fourth and seventh quotations), 296 (sixth quotation) (1811). On the political composition of the court, see Leonard W. Levy, *Blasphemy: Verbal Offense Against the Sacred, From Moses to Salman Rusdie* (New York: Knopf, 1993), 402. For an excellent overview of the Christian nation maxim, see Steven Keith Green, "The Rhetoric and Reality of the 'Christian Nation' Maxim in American Law, 1810-1920" (Ph.D. Dissertation, University of North Carolina at Chapel Hill, 1997). See also Perry Miller, *The Life of the Mind in America: From the Revolution to the Civil War* (New York: Harcourt, Brace, & World, Inc., 1965), 66-72.

of public morals," the opinion argued that the preservation of morality was essential to state security. As a concurring opinion in the same case elaborated, "The destruction of morality renders the power of the government invalid, for government is no more than public order. It weakens the bands by which society is kept together." For that reason any offense that could be "destructive of morality in general" was "punishable at common law," even if it was an offense done in private, as it was in this case. Breaking down any distinction between public and private meant that the state maintained a maximal morality even behind closed doors. Two years later, the same court further enlarged its rationale in a Sabbath law case involving a Jew. Citing the legislature's prohibition of work on "the Lord's Day, commonly called Sunday," the Court pointed out that the Sabbath law was part of a larger section of laws created for "the prevention of vice and immorality," which could not be overturned on what it characterized as "technical niceties" affecting free religious exercise. Because the act construed the "breach of the sabbath as a crime injurious to society," the Court found the defendant's appeal to the free religious exercise and the freedom of conscience clause in the state constitution irrelevant to his conviction. The point of the ruling was not a defense of Christian prerogatives, the Court explained, but rather only the preservation of morals. Because "laws cannot be administered in any civilized government unless the people are taught to revere the sanctity of an oath, and look to a future state of rewards and punishments for the deeds of this life," the required observance of the Christian Sabbath permitted people to "be reminded of their religious duties at stated periods," which formed the basis of moral obedience. Seven years later in a blasphemy case, the Court completed the circle by acknowledging that their definition of morality came from

Christianity, citing Kent's *Ruggles* opinion among others. The defendant had claimed that the Christian Scriptures were "a mere fable," which the court characterized as an "invective" so "shocking and insulting" that no one in a Christian land should have to hear it. Christianity had always been part of the common law of Pennsylvania, but it was not Christianity, the Court was quick to assert, "founded on any particular religious tenets; not Christianity with an established church." Rather, it was nonsectarian Christianity that upheld public morals. For that reason blasphemy against Christianity was protected as "the highest offence *contra bonos mores* [against good morals]."[40]

What these cases showed was a labyrinthine, even contradictory legal rationale that protected Christianity and Christian prerogatives behind the veil of morality. By warning of the dissolution of society without a religiously enforced moral consensus, Kent and the Pennsylvania jurists invoked what has been called the "bad tendency" test put forward originally by the famous English jurist, William Blackstone. Specifically related to curtailing of free speech, Blackstone argued that speech could be punished if it tended to produce behavior prohibited by a statute or undermine general morals and the preservation of good order. The courts maintained that blasphemy, indecency, and Sabbath breaking, by variously offending or criticizing the religious mechanisms of moral obedience, threatened the destruction of good order and the corruption of morals. It was the bad tendency of blasphemy, Sabbath breaking, and indecency that allowed the suppression, not the protection of Christianity for its own sake.[41]

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[40] *Commonwealth v. Sharpless*, 2 Sergeant & Rawles at 102 (first quotation), 103 (second through fourth quotations) (1815); *Commonwealth v. Wolf*, 3 Sergeant & Rawles at 48 (first quotation), 49 (second through fourth quotations), 51 (fifth and sixth quotations) (1817); *Updegraph v. Commonwealth*, 11 Sergeant & Rawles at 394 (first quotation), 399 (second, third, and fifth quotations), 400 (fourth quotation) (1824).

Justice Kent would have to answer for his opinion at the 1821 New York Constitutional Convention, and tempting though it may be to dismiss his ruling as an ideologically marginal position, the course of debate would reveal that Kent actually occupied a *moderate* position in New York, the state with the most liberal provision on church and state. During the first reading of the new constitution, General Erastus Root, a freethinker who viewed Kent's *Ruggles* decision as an outrage against the 1777 New York Constitution's free religious exercise provisions, proposed additional language that "[t]he judiciary shall not declare any particular religion, to be the law of the land; nor exclude any witness on account of his religious faith." Professing a desire for true "freedom of conscience," Root explained his proposal along the lines of Madison's *Memorial*: that any attempt to falsely buttress religion through law would bring it "into abhorrence and contempt." Kent rose to quibble that he had not actually declared religion to be the law of the land in his *Ruggles* opinion, relying on the fine-grained distinction that he handed down the conviction "not because Christianity was established by law, but because Christianity was in fact the religion of this country, the rule of our faith and practice, and the basis of the public morals." "[T]he morals of the country," Kent explained again, "rested on Christianity as the foundation," so that Ruggles' criticism of Christianity threatened morals and had to be suppressed accordingly.[42]

Kent's response showed just how easily proponents of the moral establishment could defeat their critics. To better address the issues, Root split the provisions. His new

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[41] On the "bad tendency" test, see David M. Rabban, *Free Speech in Its Forgotten Years* (New York: Cambridge University Press, 1997), 131.

[42] Nathaniel H. Carter and William L. Stone, *Reports of the Proceedings and Debates of the Convention of 1821, Assembled for the Purpose of Amending the Constitution of the State of New York* (Albany: E. and E. Hosford, 1821), 462 (first quotation), 463 (second through fifth quotations).

amendment, which relied on the passive voice possibly to avoid offending the jurists at the convention, proclaimed, "It shall not be declared or adjudged that any particular religion is the law of the land." That amendment passed on a 62 to 26 vote, with Kent voting in favor. Kent explained the apparent inconsistency of his affirmative vote for the amendment and his defense of his *Ruggles* opinion with an almost Machiavellian complacency. Even had the newly passed provision been in effect when Ruggles stood before his court, Kent explained, his conviction of Ruggles for blasphemy would have been the same and would still have been in accordance with New York law, because by convicting Ruggles Kent did not thereby make Christianity the law of the land, which is what the new amendment forbade. The convention also soundly rejected Root's second amendment that "no witness shall be questioned as to his religious faith," in a vote of 94 to 8. Kent weighed in again, affirming the reasonableness of New York's requirement that witnesses swear belief in a supreme being and a future state of rewards and punishments. He even wondered what the evidence provided by an unbeliever could be worth and agreed with the statement of another delegate that "the testimony of the atheist and infidel" was rightly excluded at law.[43]

Even as he seemed to be maintaining his position before the other convention delegates, Kent was in an ambivalent and potentially unstable position, quick to argue that the United States had no established religion, but equally quick to suggest that the dominant religion of Christianity required certain legal protections and legal prerogatives. During a final reading two days later, the new Chief Justice of the New York Supreme Court, Ambrose Spencer—Kent had become Chancellor of the State Court of Chancery in 1814—reopened the debate on Root's successful provision, thereby clarifying the

[43] Ibid., 464 (first quotation), 465 (second and third quotations).

different factions in the fight. Chief Justice Spencer rose to reject flatly (though respectfully) Kent's casuistic distinction that Christianity was not the law of the land but that its people, and thereby its morality, were Christian and therefore enforceable by law. For sake of consistency, Spencer claimed instead that the United States and the State of New York rightly and actually protected Christianity as the law of the land for its own sake, which was the real rationale behind prosecuting for blasphemy. In response, Kent reiterated his middle position that Christianity could not be declared the legal religion of the state, "because that would be considering Christianity as the established religion, and make it a civil or political institution." Although he maintained that "the duties and the injunctions of the Christian religion" were "interwoven with the law of the land," as well as "a part and parcel of the common law," he insisted that Christianity was not thereby an establishment by law. Whatever the subtleties of their disagreement, both agreed that Root's amendment against making any particular religion the law of the land was undesirable. Kent's moderate position combined with Spencer's more explicitly partisan position to sway the convention, which then reversed its prior decision, rejecting Root's amendment 74 to 41.[44]

Three years later Jefferson got involved, having changed his mind about the power of religious partisans and decrying the attempt by state courts to enforce Christianity. In a long letter to John Cartwright that he subsequently published, Jefferson objected to "the judiciary usurpation of legislative powers" that had occurred through "their repeated decisions, [claiming] that Christianity is a part of the common law." Because the common law began while the English were pagans, before they had "heard the name of Christ pronounced," Jefferson claimed that the common law could not

[44] Ibid., 575 (first quotation), 576 (second through fourth quotations).

possibly include Christianity. "What a conspiracy this, between Church and State!" Jefferson exclaimed, "Sing Tantarara, rogues all, rogues all, Sing Tantarara, rogues all!" The rub was that Jefferson's reasoning was not generally accepted among jurists, even among people of rather different faith commitments and across the political spectrum. In Jefferson's own party, Joseph Story, a devout Unitarian, associate justice of the U.S. Supreme Court, professor of law at Harvard, and, along with Kent, one of the architects of antebellum jurisprudence, explained in a letter to Edward Everett that it appeared "inconceivable how any man can doubt, that Christianity is part of the Common Law of England." If Christianity was not a part of the common law, Story asked in a subsequent article, "[w]hat becomes of her whole ecclesiastical establishment, and the legal rights growing out of it on any other supposition?" Of course, the United States was not supposed to have an established religion, so the entire debate begged the question of how England's common law, with its established religion, could be relevant to the United States without it similarly having an establishment.[45]

As the legal opinions kept coming, the slippage between the proclamation of disestablishment and its continuation via another form became continuously clearer. In 1837 in Delaware, Thomas Chandler was convicted of blasphemy for his proclamation that "[t]he virgin Mary was a whore and Jesus Christ was a bastard." In Chandler's case the conviction was based not on common law but on Delaware's general criminal statutes of 1826, which provided penalties for blasphemy, murder, rape, perjury, sodomy, and

[45] Thomas Jefferson to John Cartwright, June 5, 1824, in Thomas Jefferson, *The Writings of Thomas Jefferson*, ed. Albert Ellery Bergh (Washington D.C.: Thomas Jefferson Memorial Association, 1904), 16:48 (first and second quotations), 51 (third through fifth quotations); Joseph Story to Edward Everett, Sept. 15, 1824, and Joseph Story, "Christianity Part of the Common Law" *American Jurist* 9 (1833), in Joseph Story, *The Life and Letters of Joseph Story*, ed. William W. Story (Boston: Little and Brown, 1851), 1:430 (first quotation), 433 (second quotation). Jefferson's last line was a loose quotation from a popular theatrical piece entitled, *Disappointment, or the Source of Credulity*. See Carolyn Rabson, "Disappointment Revisited: Unweaving the Tangled Web. Part II," *American Music* 2 (Spring 1984): 2.

treason. Chandler claimed that the law showed a preference for Christianity in violation of the Delaware Constitution, and tried to anticipate the objection that Christianity was part of the common law, quoting Jefferson's letter to John Cartwright in which he criticized the idea. In rejecting Chandler's claim Chief Justice John M. Clayton, writing for a unanimous court, provided a two-fold argument. First, he declared that it had "been long perfectly settled by the common law" that blasphemy was an indictable and punishable offense, extensively criticizing Jefferson's letter to John Cartwright and citing *People v. Ruggles* and *Updegraph v. Commonwealth* among others to prove his point. Secondly, he quoted the Delaware Constitution, especially its provision that although worship could not be coerced it was still a general duty of all men because "piety and morality, on which the prosperity of communities depends are thereby promoted." Reasoning from the wording of the Constitution, Justice Clayton claimed it was obvious that "the religion of the people of Delaware *is Christian*," although that did not mean that Christianity was the state religion. Instead, re-warming Kent's formula Clayton claimed, "[t]he distinction is a sound one between a religion preferred by law, and a religion preferred by the people, without the coercion of law." So long as this distinction was honored, the people themselves "may claim the protection of law guarantied to them by the constitution itself," in order to put down blasphemers against their beliefs. This was double-talk, pure and simple, but it was legally binding double-talk, which resulted in ten days of solitary confinement and a four hundred dollar fine for Chandler. In another famous blasphemy case in Massachusetts in 1838 (five years after Massachusetts's official disestablishment), the Massachusetts Supreme Court continued the evasion by convicting the prominent antebellum freethinker Abner Kneeland for blasphemy. A

central claim of the ruling was that Massachusetts's 1782 statutory blasphemy law was still in effect even after institutional disestablishment, because the law did not prevent "the simple and sincere avowal of a disbelief in the existence and attributes of a supreme, intelligent being, upon suitable and proper occasions." Kneeland, who had printed his credo in his freethought newspaper, claimed that the blasphemy conviction was contrary to the Massachusetts Constitution. The majority of the court actually seemed offended that Kneeland would call into question the validity of the blasphemy law, noting that it seemed "somewhat late to call in question the constitutionality of a law, which has been enacted more than half a century, which has been repeatedly enforced." The opinion recounted the constitutional provisions of New Hampshire, Vermont, Maine, and New York, pointing out the similar limitations on free speech and religious expression when they offended "good morals and manners of society" or consisted of "acts of licentiousness." Blasphemy, according to the Court, was "not intended to prevent or restrain the formation of any opinions or the profession of any religious sentiments whatever, but to restrain and punish acts which have a tendency to disturb the public peace." For that reason blasphemy laws were perfectly in accord with the Constitution's guarantee of free religious exercise, because, the Court argued, the Massachusetts Constitution coupled its provision that "no subject shall be hurt, molested, or restrained, in his person, liberty, or estate. . . for his religious profession or sentiments" with a proviso, similar to other states, that under the cover of religion no one could "disturb the public peace or obstruct others in their religious worship," which was all that blasphemy clause was attempted to accomplish. The Court upheld the conviction, and Kneeland served sixty days in prison.[46]

[46] *State v. Chandler*, 2 Harr. (Del.) at 553 (first quotation), 555 (second quotation), 564 (third quotation),

The very fact that courts could rely on such casuistic distinctions tended to reveal just how flimsy and limited the institutional disestablishment was. It was soon to reach the U.S. Supreme Court. In 1844, the high court further affirmed the opinions of the state courts, ruling in *Vidal* v. *Philadelphia* that Christianity was part of the common law of the state of Pennsylvania (and by implication every other state that had not specifically rejected it by legislative statute) in the sense that "its divine origin and truth are admitted, and therefore it is not to be maliciously and openly reviled and blasphemed against, to the annoyance of believers or the injury of the public." The case itself was very complicated, involving a dispute over the terms of a will created by Stephen Girard, who founded a school for orphans to be administered by the city but required that no cleric, missionary, or minister could hold any position at the school or even step on its grounds. His justification for their exclusion was that it would shield the young minds from theological disputes while teaching them the principles of morality, which was widely, and probably correctly, seen as an anticlerical position following Thomas Paine. The U.S. Supreme Court heard the case rather than the Pennsylvania Supreme Court because one of the parties was a French foreign national. The appellants, who consisted of several potential heirs that wanted the trust dissolved so that they could get the money, claimed that the

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567 (fourth through sixth quotations) (1837); *Commonwealth v. Kneeland*, 37 Massachusetts at 220 (first quotation), 217 (second quotation), 218 (third and fourth quotations), 219-220 (sixth quotation), 220 (seventh quotation), 221 (fifth quotation) (1838). Levy dismisses the blasphemy cases as "unlikely, inexplicable" and "aberrant," because "[t]he American temperament looked askance at prosecutions for bad opinions." Yet he simultaneously notes that trial records for blasphemy were rare in the United States and that, though appellate records exist, "appellate decisions on blasphemy occur infrequently." His characterization of blasphemy trials as aberrant, then, in absence of extensive records, relies on the American myth and gestures to "the American temperament." Levy, *Blasphemy*, 400 (first and second quotations), 401 (third through sixth quotations). By contrast, both sides of the contemporary argument agreed that blasphemy prosecution was not uncommon. Jefferson complained of the "repeated decisions" that Christianity was part of the common law, Delaware Chief Justice Chandler declared that it had "been long perfectly settled by the common law" that blasphemy was punishable, and Massachusetts Chief Justice Shaw claimed that blasphemy law had been "enacted more than a have century" and was "repeatedly enforced." Thomas Jefferson to John Cartwright, June 5, 1824, in Jefferson, *Writings of Thomas Jefferson*, 16:48; *State v. Chandler*, 2 Harr. (Del.) at 555 (1837); *Commonwealth v. Kneeland*, 37 Mass. at 217 (1838).

will was unchristian and therefore against the state's law. The defendants, consisting of the city of Philadelphia and some of Girard's nieces, were represented by Daniel Webster, who claimed that the very concept and motivation of charity came solely from Christianity, not being present in Judaism or among the pagans. As for Girard's desire for pure morality, Webster suggested that the purest principles of morality could only be found in the Bible, which was in perfect accord with Pennsylvania law. Writing for a unanimous court, Joseph Story acknowledged that had Girard established a school "for the propagation of Judaism, or Deism, or any other form of infidelity," Girard's will might have been against Pennsylvania law, though Story noted that he did not have to rule on the question because Christianity could still be taught to students at the school. Story's opinion shows just how easily the declaration of moral instruction bled into the defense of the Christian religion. Girard's command that pure morality be taught at his school suggested to Story that Christianity, qualified in nonsectarian terms, could be taught by laymen in the interests of cultivating morality, because, after all,

> [w]here can the purest principles of morality be learned so clearly or so perfectly as from the New Testament? Where are benevolence, the love of truth, sobriety, and industry, so powerfully and irresistibly inculcated as in the sacred volume? The testator has not said how these great principles are to be taught, or by whom, except it be by laymen, nor what books are to be used to explain or enforce them."[47]

In a final *coup de grace*, one year later the high court unanimously rejected any attempt to appeal to Bill of Rights for the protection of religious liberty against state law, explaining that the U.S. Constitution did not protect the citizens of states in their various liberties, which were established instead solely by state constitutional and statutory

[47] *Vidal et al. v. Philadelphia*, 43 U.S. at 198 (first and second quotations), 200 (third quotation) (1844). For a very good, concise assessment of how the U.S. Supreme Court has adjudicated church-state issues, see James Hitchcock, *The Supreme Court and Religion in American Life: The Odyssey of the Religion Clauses* (Princeton: Princeton University Press, 2004), 1:3-42.

provisions. Madison's failure to pass his amendment prohibiting states from infringing the rights of conscience now revealed its full importance. In many states the inability to swear belief in the existence of God and an afterlife prevented freethinkers from acting as witnesses in court. Religious societies were so closely connected to charitable foundations and educational organizations that the law often treated them as the same, and as the *Vidal* case showed, there was some question as to whether or not a charitable organization could be created independently of the Christian religion under Pennsylvania law (which resembled the law of many other states). Blasphemy laws constrained free speech and even freedom of the press. Mostly, as Chief Justice Spencer explained at the 1821 New York Constitutional Convention, non-Christians were "tolerated." Toleration is considerably more liberal than outright persecution, but it does not entirely comport with the usual laudatory narrative of American religious liberty. Rufus King, a long-time New York Senator, elaborated on Spencer's point to make clear the kind of toleration that was on offer in New York. "While all mankind are by our constitution tolerated, and free to enjoy religious profession and worship within this state," King explained, "yet the religious professions of the Pagan, Mahomedan, and the Christian, are not, in the eye of the law, of equal truth and excellence. . . . While the constitution tolerates the religious professions and worship of all men, it does more in behalf of the religion of the gospel."[48]

Put simply, the history of religious freedom is entangled tightly with the history of

[48] *Pervoli v. Municipality*, 44 U.S. 589 (1845). In *Pervoli* the Court reiterated in a more specific application its earlier decision, handed down for a unanimous court by John Marshall in *Barron v. Baltimore*, 32 U.S. 243 (1833), that the Bill of Rights was never intended to apply to the states. Carter and Stone, *Reports of the Proceedings and Debates*, 574 (first quotation), 575 (second and third quotations). On the requirement to swear belief in the existence of God and an afterlife, see Chester J. Antieau, Phillip M. Carroll, and Thomas C. Burke, *Religion Under State Constitutions* (Brooklyn: Central Book Co., 1965), 107. See also *State v. Chandler*, 2 Harr. (Del.) at 567 (1837); *Inquiry into the Moral and Religious Character*, 132; Carter and Stone, *Reports of the Proceedings and Debates*, 464.

religious control. Religious partisans freely granted that—on a national level following the First Amendment and on the state level after 1833—the United States had repudiated the idea that religious institutions could be financially supported by the state. That did not mean that they accepted that religion and the state, in the realm of law and politics, should remain separate. The distinction between what Delaware Chief Justice Clayton called a religion by law and a religion of the people—who could then appeal to the law for protection of their religious beliefs—laid the basis for the use of the law to suppress religious minorities. The expansion of evangelicalism, begun at the end of the eighteenth century and continuing up to the Civil War and beyond, curtailed Madison and Jefferson's vision of church and state, creating the basis for Protestant cultural control. While evangelical expansion Christianized American society, Lyman Beecher and other religious leaders codified the social and intellectual basis of the antebellum religious rapprochement, offering a set of themes that would characterize post-Revolutionary Protestant (evangelical) thought, including the importance of the Bible, the necessity of individual and social reformation, and a millennial optimism that reform would inaugurate the most enlightened, biblical, and moral civilization that the world had ever seen. Instantiating their thought, the emergent denominations, voluntary associations, and Protestant-controlled cultural and educational entities formed a powerful interlocking network that helped infuse much nineteenth-century American culture with a distinctive Protestant ethos. At the same time the emerging jurisprudence of Kent, Story, and others provided the antebellum religious propositions with the sanction of law. Even as the moral establishment expanded, the extent and meaning of religious freedom remained controversial, because it exposed deep disagreements about the nature of the American

experiment, the political and moral basis of the union, and what many took to be the genius and genesis of American ascendancy. But religious partisans won more than they lost. In that space between the establishment of Christianity by law and the unforced preference of the majority for Christianity—which in turn provided the moral standards to be enforceable by law—religious partisans found ample room for legal and political maneuvering. Religiously derived moral standards assumed legal sanction that was applicable to believers and unbelievers alike. The moral establishment was born.

CHAPTER TWO. WOMEN AND THE PROBLEM OF INDIVIDUALISM

> Woman, unperverted, the pattern of whatsoever things are pure and lovely, but herself corrupted, a paragon of deformity, a demon in human form.
>
> —Lyman Beecher[1]

> Where is this all to end? In the triumph of woman, in her individual sovereignty, in the grand march of progress, her turn has come.
>
> —Elizabeth Cady Stanton[2]

Because the moral establishment was a proxy religious establishment, the struggle over morals and mores often involved a de facto struggle over the role of religion in determining the moral standards enforceable by law. Nowhere was this struggle more pronounced than in the subject of women's rights and responsibilities. It was a struggle that began as evangelical expansion made its presence felt in public life. In 1818 Frances "Fanny" Wright set sail from Scotland with her sister to make a two-year visit to the United States. Her enthusiasm was so great that after publishing a compendium of her travel letters in 1821 entitled *Views of Society and Manners in America,* which brought her both international fame and friendship with the Revolutionary War hero, the Marquis de Lafayette, she followed Lafayette to the United States in 1824 and eventually became an U.S. national.[3]

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[1] Beecher, *Lectures on Scepticism*, 62.

[2] Elizabeth Cady Stanton, "'The Subjection of Woman': Speech" in Elizabeth Cady Stanton and Susan B. Anthony, *The Selected Papers of Elizabeth Cady Stanton and Susan B. Anthony*, ed. Ann D. Gordon (New Brunswick: Rutgers University Press, 1997-), 2:625.

[3] Frances Wright, *Views of Society and Manners in America* (1821; repr., Cambridge, Mass.: Belknap Press, 1963), ix-xvi.

Yet Wright would not be remembered for her initial enthusiasm for the American political system, but for her public commitment to a host of radical causes, her concerted plea for women's rights, and her devoted resistance to religious influence on American public life. In Wright's mind, her broad reform measures were all interconnected aspects of a singular problem. Wright wanted the reorganization of society in order to place knowledge on a scientific foundation and eradicate what she took to be the lingering connection of clerical authority and the state. Her first step was a complete reorientation of ethical and moral reasoning, so that people would acknowledge, contrary to the claims of the religious, that morals were merely "the ascertained consequences of human actions." Once morals were rightly understood, she claimed, the freedom of the individual became the central moral test, and justice consisted in enacting laws that encouraged "the free agency of every individual." Her most radical assertion was the inclusion of women under the category of the *individual*, and she consistently decried what she regarded as male attempts to reinforce the inequality of women, complaining of the "vulgar persuasion" that promoted "the ignorance of women" because it reinforced female "subordination" and "ensures their utility." To Wright the desire to subordinate women and the refusal to acknowledge women's individual autonomy not only smacked of despotism and aristocracy, but was exactly the kind of clerical obfuscation that kept the masses ignorant and society, politics, and law easily dominated by a clerical elite.[4]

Proponents of the moral establishment looked on Wright with revulsion, calling her, alternately, "the great Red Harlot of Infidelity," "the whore of Babylon," and "the Priestess of Beelzebub." If the moral establishment used the police power of the state to

[4] Frances Wright, *Reason, Religion, and Morals* (1834; repr., Amherst, NY: Humanity Books, 2004), 151 (first two quotations), 89 (third through sixth quotations).

defend a religiously derived morality, it also looked to the more subtle mediating institutions of the family, the church, and the voluntary association that Beecher had identified to maintain the moral ethos that religious partisans thought necessary for the maintenance of society. At the center of those mediating institutions were women, which is why proponents found Wright's reform measures so offensive. Lyman Beecher, along with almost all Protestants, saw women as fundamental to the cause of national Christianity, upholding the moral character of the nation by embodying pure religious sensibility through their work in the family. Women were by nature more attuned to virtue, so the thinking went, and their nurturing and dependent orientation existed in synergistic relation to the aggressive, governing force of men. As Beecher explained it, when fulfilling her proper role woman was the embodiment of "whatsoever things are pure and lovely." But should she stray from her God-mandated duty of guarding morals, she would cause destruction on such a scale that she should properly be regarded as "a paragon of deformity, a demon in human form." Beecher's daughter, Catharine Beecher, condemned Wright's reforms explicitly in a similar fashion, denouncing Wright's attacks on "the safeguards of all that is venerable and sacred in religion, all that is safe and wise in law, all that is pure and lovely in domestic virtue." "I cannot conceive any thing in the shape of a woman," Catharine Beecher concluded, "more intolerably offensive and disgusting."[5]

Because the moral establishment sought to uphold and protect communal standards and a mutually obligated social order by subordinating the idea of individual

[5] Beecher, *Lectures on Scepticism*, 62; Catharine E. Beecher, *Letters on the Difficulties of Religion* (Hartford: Belknap and Hammersley, 1836), 28. For the epithets directed against Wright, see the foreword by Susan S. Adams in Wright, *Reason, Religion, and Morals*, 14; Martin E. Marty, *The Infidel: Freethought and American Religion* (Cleveland: Meridian Books, 1961), 80-83.

rights to the good of the social whole, the emancipation of women—and the very idea that women needed emancipation—brought on apocalyptic visions of the destruction of society and the downfall of Christian moral authority. Proponents of the moral establishment demonstrated the claim, put forward by the political theorist Carole Pateman, that the social contract of modern democratic society presupposed a "sexual contract" in which women, not possessing the required characteristics of individuals, became relegated to the private sphere of the family and subordinated to the governing and public power of men. Women did have a crucial role in the moral establishment, its male and female proponents pointed out, but one that was supposed to remain in the private family life. Women were an integral part of social reproduction, responsible for raising children that carried the internal system of moral control, which was, in Josiah Strong's estimation, necessary for the perpetuation of American democratic society. In other words, paradoxically women's moral responsibility for national life entailed political exclusion, because, according to the logic of the moral establishment, it was precisely through political exclusion that women could be assured to take seriously their responsibility to the home as the moral standard-bearers of the nation. Because women's assertion of individual autonomy rejected the idea that the family, not the individual, was the fundamental governing unit in society, proponents of the moral establishment foresaw cultural dissolution in the claims of the woman's movement. As such, religious partisans aggressively countered the radical claim of woman's rights activists, attempting to strengthen laws and increase social pressure to maintain what they considered the vital component of moral reproduction that women provided. The nineteenth-century woman's movement did succeed in loosening "the bonds of womanhood" that the woman's

historian Nancy Cott has pointed out. But in the process it revealed the very live power of the moral establishment, and the century ended with the woman's movement tamed and the moral establishment still firmly in place.[6]

Legal Coverture and the Divine Subordination of Women

The woman's movement that Fanny Wright inaugurated was a response to women's position before the law in the early-nineteenth century. To a considerable extent the social and legal arrangements that governed women instantiated the patriarchy of the Christian Scriptures. Legally, the provisions of the common law placed women in the more or less absolute control of their husbands. When a woman married, she assumed the name of her husband and legally ceased to exist. As Blackstone explained it, because the husband and wife became one person under the law, "the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidating into that of the husband." In the legal doctrine of coverture, as it was called, the woman came under the protection or cover of the husband, in whose legal identity and name she "performs everything." Lacking a legal identity or individuality, the married woman, or *femme covert* (covered woman), accrued severe legal liabilities. She could not make contracts, except in his name and with his consent. All her property became his upon marriage, unless it had been placed in a trust, and she could not accrue any property within marriage. Any will she created prior to marriage was dissolved, because once married the property ceased to be hers. She could neither sue, nor be sued; her husband was liable for torts against her and, likewise, he had to bring suit for her in

[6] Carole Pateman, *The Sexual Contract* (Cambridge: Polity Press, 1988); Nancy F. Cott, *The Bonds of Womanhood*, 2nd ed. (New Haven: Yale University Press, 1997).

the case of wrong. He was even, in some instances, responsible for her criminal infractions.[7]

The rationale for the married woman's lack of standing came from the legal notion of marriage itself. Although treatise writers were careful to uphold marriage as a civil contract as opposed to a religious sacrament, they hedged the language of contract to make sure that it reinforced conservative religious ideals of the home. James Kent called marriage "an interesting contract," because the normal rules did not apply. Unlike other contracts, marriage had its foundation "in nature," was created by Providence as "the only lawful relation" for the perpetuation of the race, and maintained a "propitious influence on the moral improvement and happiness of mankind." Most importantly, marriage was "one of the chief foundations of the social order," which meant that it could not be dissolved at the whim of the parties. Likewise, Joseph Story excluded the marriage relation from contract law because it was clearly something more than "a mere contract." It was nothing less than "an institution of society," founded in the "the consent and contract" of the man and woman, but involving much larger interests than just their own. Because many of rights and duties arising out of marriage were "so important to the best interests of morality and good government," the parties have no control over them, and marital rights and duties were to be "regulated and enforced by the public law, which is imperative on all." But if marriage itself was a crucial bulwark for morality, wives were uniquely responsible for the perpetuation of social morals and public duties, and a husband's violation of the marriage did not necessarily abrogate the marital

[7] William Blackstone, *Commentaries on the Laws of England*, 9th ed. (1783; repr., New York: Garland Publishing, Inc., 1978), 442. See also, James Kent, *Commentaries on American Law*, 5th ed. (New York: James Kent, 1844), 2:128; Tapping Reeve, *The Law of Baron and Femme* (Burlington: Chauncey Goodrich, 1846), 49; Edward D. Mansfield, *The Legal Rights, Liabilities, and Duties of Women* (Salem: John P. Jewett, 1845).

contract as would the wife's. As Kent reported, some jurists regarded the adultery of the husband as beneath the notice of the court, or at least not "subject to the same animadversion as that of the wife; because it is not evidence of such entire depravity, not equally injurious in its effects upon the morals, and the happiness of domestic life." [8]

As the century wore on, many treatise writers were hasty to acknowledge that the married woman's loss of personality was a legal fiction, one that did not deny the actual personality of a married woman, but still conceptually emphasized the fundamental unity of interests that marriage was supposed to entail. Later writers like Mary Beard have also argued that actual practice did not coincide with theory, in which women exerted their public personality according to the individual dynamics of their own marriage in a variety of ways that did not strictly follow the law. But the law did impose real liability that would become especially apparent in the case of an unhappy marriage, when the husband's marital rights came into clear focus. Because the wife had no separate legal existence, should she wish to separate from her husband she would need some kind of property settlement from him, either an agreement that she could use the property she brought into the marriage or the husband's agreement that she could use her own earnings (both of which were legally his). Divorce was a difficult endeavor. Because the law did not condone and so made no provision for consensual divorce, a divorce suit was an adversarial lawsuit in which one spouse had to prove that the other had met specified grounds, which was often limited to adultery. Because divorce was a privilege for the innocent spouse, some states did not allow the guilty party to remarry. Absent divorce, if a husband and wife lived in separate domiciles but were not legally separated, she needed

[8] Kent, *Commentaries*, 2:74 (first through fifth quotations), 106 (eleventh quotation); Joseph Story, *Commentaries on the Conflict of Laws*, 2nd ed. (Boston: Little and Brown, 1841), 100 note 3 (sixth through eighth quotations), 102 (ninth and tenth quotations).

his agreement not to advertise her as a runaway, which would cut off her supply of credit from merchants and others. If she were to leave without his consent, the husband—normally responsible for all her debts—would not be chargeable "even for necessaries," as Kent explained, and "all persons supplying the food, lodging and raiment, of a married woman living separate from her husband," needed to make inquiries because they extended credit "at their peril." In short, given her surrender of rights upon marriage, a wife either had to prove a limited set of grounds for divorce, or she needed the ongoing consent of her husband to let her live alone.[9]

The limitations to divorce and the provisions governing marriage drew upon the normative ethical system of Protestant Christianity, but with a unique Anglo-American jurisprudential cast. The law of coverture was an expression of the Christian view that husband and wife, after marriage, became one flesh. But the unity of marriage consistently ran up against its own contradictions, especially when the common interest ideal became a façade in an unhappy marriage. At that point, marital unity became subordination, in which the wife's interests were manifestly different than the husband's, but still remained subordinated to his authority. The Anglo-American property scheme furthered the contradiction. Other forms of Christian jurisprudence, derived from continental law, translated the Christian ideal of marital unity into the notion of *community property*, in which both husband and wife jointly owned all real estate and

[9] Kent, *Commentaries*, 2:146 (all quotations); Mary Beard, *Woman as Force in History: A Study in Traditions and Realities* (New York: Collier Books, 1962), 87-132. On divorce as an adversarial lawsuit, see Lawrence Friedman, "Rights of Passage: Divorce Law in Historical Perspective," *Oregon Law Review* 63, no. 4 (1984): 653. On the difference between legal theory and reality, see also Norma Basch, *In the Eyes of the Law: Women, Marriage, and Property in Nineteenth-Century New York* (Ithaca: Cornell University Press, 1982), 16-112; Hendrik Hartog, *Man and Wife in America: A History* (Cambridge: Harvard University Press, 2000), 85. Perhaps acknowledging the delicacy of the legal fiction, other treatise writers dropped it all together, instead adopting the older organizing principle of *baron* and *femme* (lord and woman), which acknowledged the separate existence of the wife (though not her legal existence), while clearly subordinating her to her husband. See, for example, Reeve, *The Law of Baron and Femme*.

chattel. Yet as the legal historian Henrik Hartok has pointed out, in the Anglo-American world in which "title to property was the usual measure of public identity (and of the right to represent others)," English and American coverture meshed tightly with the idea that the husband alone, as the head of the wife, was entitled to property and, therefore, to governance.[10]

Religious commentators joined treatise writers in trying to put a positive gloss on the legal and social arrangements, usually invoking the idea that man and wife occupied equally important, but distinctively separate spheres. Jonathan Stearns, a Presbyterian minister in Massachusetts, explained, "the truth is, there is natural *difference*, in the mental as well as physical constitution of the two classes [men and women]—a difference which implies not *inferiority* on the one part, but only *adaptation to a different sphere*." That sphere was, of course, the home, which women assumed in order "to form the character of society, and give it a healthy tone." If God gave woman the home, according to Stearns, he gave man the world, and it was the role of men to protect and guard women in turbulent public sphere. As Thomas Dew, a professor at William and Mary College, explained, God charged man as "the shield of woman, destined by nature to guard and protect her. Her inferior strength and sedentary habits confine her within the domestic circle." That inferior strength did not imply personal inferiority, he was quick to assert, because the woman's "passive" character was "more emblematic of . . . divinity: it subdues without an effort, and almost creates by mere volition; whiles man must wind his way through the difficult and intricate mazes of philosophy." American denominations likewise spoke with an essentially uniform voice in upholding woman's

[10] On coverture as a distinctive Anglo-American legal expression of the Christian doctrine of "one flesh," see Hartog, *Man and Wife*, 119-120, quotation on p. 119. On the role of Protestant Christianity as the normative ethical system in American marriage and divorce law, see Friedman, "Rights of Passage," 668.

unique responsibility for national moral regeneration. Although the emergent evangelicalism had theoretical potential to overturn such strict gender prescriptions with its more egalitarian focus on the individual's encounter with God, in practice the egalitarian impulse surrendered to the existing strictures and the resulting orthodoxies formed an even stronger bulwark against change.[11]

Nowhere could the connections between the Anglo-American marriage provisions and Christian gender ideals be as clearly seen as in the work of Edward Mansfield. Mansfield directed his 1845 treatise, *The Legal Rights, Liabilities, and Duties of Woman*, toward women themselves, in order to instruct them in their legal rights and obligations. Because his treatise was part didaction and part apology, defending the existing legal structure from criticism while promoting the duties of women in their respective sphere, Mansfield articulated the connections between Anglo-American marriage law and Christian patriarchy more explicitly than other treatise writers. Men and women each had, Mansfield explained, different parts in "the development of that grand Moral Drama, whose Acts fill up all the course of time." Marriage was an essential part of that drama, nothing less than "an institution of God . . . . begun in the garden of Eden" and "perpetuated by the laws of nature, of religion and of civil society." Although he acknowledged that under Anglo-American law marriage was considered a civil contract, he insisted that "in Christian countries, and with Christian people, the revealed law of God, so far as it applies to the relations of society, is the only true foundation of human

[11] Jonathan Stearnes, *Female Influence, and the True Mode of Its Exercise* (Newburyport: John G. Tilton, 1837), 14 (first quotation), 10, (second quotation), italics in original; Thomas Dew, "Dissertation on the Characteristic Differences Between the Sexes" in Aileen S. Kraditor, ed., *Up From the Pedestal: Selected Writings in the History of American Feminism* (Chicago: Quadrangle Books, 1968), 46 (third through fifth quotations). On the egalitarian impulse in evangelicalism that succumbed to patriarchy, see Heyrman, *Southern Cross: the Beginnings of the Bible Belt*, 117-160.

laws." Although civil law might not specifically sanction the idea that marriage was anything more than a civil contract, it did not change the divine function and purpose of marriage, which operated in practice if not in explicit sanction in law. To that end, Mansfield recited "the leading principles of Scripture" in order to show how much American civil law conformed to divine law. Among the operative principles, which also clearly demonstrated the fundamental contradictions of Anglo-American marriage law, Scripture regarded the husband and wife "as one person" and taught that "men must govern their families, and women submit to their lawful requisitions."[12]

Equal Rights and the Question of Religious Authority

The emergent woman's rights movement inevitably responded to these legal realities, taking its impetus from the social and legal restraints imposed upon women. As the women's historian Ellen Carol DuBois has shown, in the 1820s and 1830s some women like Frances Wright began expressing what she calls a "caste consciousness" as a result of their legal subordination. Their discontent with their subordinate status and their exclusion from public life led, in time, to the formation of a political movement to address their concerns. As women began mobilizing to call for individual autonomy and individual rights, they consistently ran up against the moral establishment that limited women's autonomy in the interests of what religious partisans considered the requirements of moral reproduction. To change the laws governing women meant modifying a significant aspect of the moral establishment, so the debate about women's

[12] Mansfield, *The Legal Rights, Liabilities, and Duties of Women*, 20 (first quotation), 235 (second and third quotation), 261-262 (fourth quotation), 262 (fifth quotation), 263 (sixth and seventh quotation).

rights became, very often, a debate about the role of religion in American law and politics.[13]

That debate began with the inception of the movement by Frances Wright and continued even as less polarizing figures emerged into the public spotlight. In July 1837, for example, the Congregational General Association of Massachusetts sounded an alarm against an emergent wing of the abolition movement, which had sent Sarah and Angelina Grimké on a speaking tour. The Massachusetts Association thought the Grimkés' activities portended social anarchy and moral degradation, because, the Association claimed, they were undermining women's traditional roles. The problem, simply put, was that the Grimkés were violating "the appropriate duties and influence of woman," clearly stated in the New Testament, through their speaking tours to promote the abolitionist cause. Because women's primary duty, in the minds of the Association, was to wield moral influence that was "unobtrusive and private, but the source of mighty power," the Grimkés' appearance on a public platform subverted the moral economy between men and women when the sisters left the private sphere. In doing so they abandoned those arenas for which God had made them, and posed a threat to the moral character of the society for which they were responsible. For their own good and the good of those around them, the Association counseled the Grimkés to return to "those departments of life that form the character of individuals and of the nation."[14]

In responding to this kind of criticism, the woman's movement put forth a radical challenge to the legal principles of Kent, Story, and others. Its iconoclastic potential

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[13] Ellen Carol DuBois, *Woman Suffrage and Women's Rights* (New York: New York University Press, 1998), 55.

[14] "Pastoral Letter of the Massachusetts Congregational Clergy" in Kraditor, ed., *Up From the Pedestal*, 51 (all quotations).

stemmed in part from its ideological sources, most importantly Quakerism and the freethought movement. The Grimkés were originally of genteel stock from Charleston and daughters of a prominent slaveholding family. Led by Sarah, who was thirteen years older than Angelina, they rejected the Presbyterianism of their family, left the South, and came under the influence of a group of Hicksite Quakers in Philadelphia. That move was momentous, mainly because of the unique characteristics of Quaker belief. Quakers held that God communicated with each person by means of an Inner Light, which every person possessed. Because the Inner Light was present in every human being, Quakers posited a fundamental equality among human beings and enacted far more egalitarian sex roles than almost any other denomination. In the 1820s, a group of Quakers following Elias Hicks further refined Quaker theology to claim that Jesus was revealed not solely through the Bible but through the Inner Light, the Christ Within. That modification, in turn, shifted Quaker religious praxis away from bible reading and prayer and toward ongoing personal reformation through experience in the world. In other words, it reinforced Quaker social activism. Many of the most uncompromisingly radical activists in the early woman's movement had come into contact with Quaker theology in Quaker communities. When the Grimkés entered the Hicksite Quaker orbit, they found in Quaker theology a justification for rejecting slavery, their family's opprobrium, and even the disapproval of proponents of the moral establishment like the Massachusetts Association, who insisted that women should remain in the home. In opposition to those critics, God himself served as a supreme authority over any human institutions, laws, and customs, communicating to each individual through the Inner Light, so the individual person became the arbiter of moral obligations and religious praxis.[15]

[15] On the role of Quakerism in the woman's movement, see Judith Wellman, *The Road to Seneca Falls:*

Yet not all would agree with such a radical vision, and the woman's movement would be split in their response to the moral establishment, with others embracing the moral role of women as justification for their enlarged public presence. Perhaps most important among these more conservative women was Catharine Beecher, Lyman Beecher's eldest daughter. Catharine Beecher had partially moved away from her father's already modified Calvinism after her unconverted fiancé died in a shipwreck, which, according to her father's theology, doomed her fiancé to eternal perdition. Faced with his untimely death, Catharine found that she could not accept the stark conversionary requirement of salvation that was central to Lyman's theology. Her mourning resulted in a clarified moral sensibility that, in her mind, refashioned the role of women in society. But she did not believe in women's unqualified right to political and social equality based on their status as individual moral beings. Instead, Catharine argued that women's moral superiority required their enlarged public role, which would correct the imbalance of men in the public sphere by injecting the principle of virtue and motherly love into the broader world outside the home. In other words, Catharine Beecher projected woman's domestic responsibility for home onto the world at large.[16]

The differences between the two positions were stark, with the place and meaning of Christianity figuring centrally in their divergence. While Catharine Beecher gestured toward the innate difference of women, established by God, as a justification for an

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Elizabeth Cady Stanton and the First Woman's Rights Convention (Urbana and Chicago: University of Illinois Press, 2004), 100-102. For the history of the Grimké sisters, see Gerda Lerner, *The Grimké Sisters from South Carolina: Pioneers for Women's Rights and Abolition* (Chapel Hill: University of North Carolina Press, 2004), 1-99.

[16] On Catharine Beecher see, Kathryn Kish Sklar, *Catharine Beecher: A Study in American Domesticity* (New York: Norton, 1973); Robert H. Azbug, *Cosmos Crumbling: American Reform and the Religious Imagination* (New York: Oxford University Press, 1994), 190-193. On the political uses of the womanly ideal, see Barbara Leslie Epstein, *The Politics of Domesticity: Women, Evangelism, and Temperance in Nineteenth-Century America* (Middletown, Conn.: Wesleyan University Press, 1981).

enlarged social role, the Grimkés and their Quaker friends pointed to each human being's possession of God's Inner Light, which required, they maintained, nothing less than a remaking of society along egalitarian lines that acknowledged women as individuals. When Catharine Beecher criticized the Grimké faction by calling it anti-Christian, Angelina had a ready-made response. "Thou seemest to think. . . that Christianity is just such a weak, dependent, puerile creature as thou has described woman to be," she replied using the Quaker's antique manner of address. Because Quaker Christianity asserted that human beings were moral beings, they had rights, and because both men and women were *equal* moral beings, Angelina argued, they ought to have equal rights. Likewise, Sarah Grimké reached for Quaker principles to justify her appearance in public after the Massachusetts Congregational Association issued its congregational letter condemning her. Claiming that because women were equal moral agents they had just as much right and, indeed, responsibility to work for equal rights as men, Sarah went a step further by attacking clergy who, she explained, had used "the thralldom of superstition and 'traditions of men'" to colonize the minds of women, rather than allowing them to rely on their inner resources of conscience. Christianity itself, she claimed, required the reorientation of society and the revision of marriage laws so that women could manifest their divinely-mandated "independence and nobility of character."[17]

But as much as both sides claimed to be Christian, Catharine Beecher was partly correct in her charge that the Grimkés' activism could be non-Christian, if not anti-

[17] Angelina E. Grimké, *Letters to Catherine E. Beecher in Reply to An Essay on Slavery and Abolitionism* (1838; repr., New York: Arno Press, 1969), 30 (first quotation); Sarah Grimké, *Letters on the Equality of the Sexes and the Condition of Woman* (1838; repr., New York: Source Book Press, 1970), 82 (second quotation), 14 (third quotation). For another Quaker appeal for the revocation of existing marriage laws, see Lucretia Mott's speech in Elizabeth Cady Stanton, Susan B. Anthony, and Matilda Joslyn Gage, *The History of Woman Suffrage* (Rochester: Susan B. Anthony, 1881-1889), 1:368-375, especially p. 373.

Christian, because Quaker principles dovetailed nicely with the arguments of freethinkers for woman's rights. Robert Dale Owen, for example, the one-time collaborator with Frances Wright and the son of the British socialist Robert Owen, criticized marriage laws and the denial of woman's equal rights in almost the same manner as the Grimkés. He did so not by referencing Christianity but by denouncing the connection of religion and politics and promoting a purely secular political rationale for woman's rights. Prior to his marriage to Mary Robinson, he signed a non-binding covenant divesting himself of "the unjust rights . . . over the person and property of another." Although he could not actually do so legally, he considered their marriage—and wanted others to consider it as well—as a union of equal persons, each retaining individual rights, and operating outside of what he considered "the barbarous relics of a feudal, despotic system, soon destined, in the onward course of improvement, to be wholly swept away." Likewise the young Lucy Stone, a freethinker who would become a leader of the woman's rights movement, followed Wright in registering moral outrage at the legal subordination of women and joined the free religion movement, which sought the complete separation of church and state and the remaking of religion through their uncompromising dedication to the freedom of conscience. After reading Edward Mansfield's treatise, Stone pledged never to be married in order to maintain her independence, in spite of her intense desire for companionship. As she confessed to her friend and soon-to-be sister-in-law, Antoinette Blackwell Brown, "my heart aches to love somebody that shall be all its own," but she could not accept "what a mere thing, the law, makes a married woman."[18]

[18] "Marriage Documents: Robert Dale Owen and Mary Robinson," in Kraditor, ed., *Up From the Pedestal*, 149. Lucy Stone to Antoinette Blackwell Brown, August 1849, in Lucy Stone and Antoinette Blackwell Brown, *Friends and Sisters: Letters between Lucy Stone and Antoinette Blackwell Brown, 1846-1893*, eds. Carol Lasser and Marlene Deahl Merrill (Urbana: University of Illinois Press, 1987), 56. Although Stone

These separate justifications for woman's rights entailed divergent appeals to religious authority and ultimately divergent political goals, but at least initially their differences remained subordinated to the larger movement out of which the woman's movement emerged: abolition. It was through the abolitionist movement that woman's rights gained their most powerful advocate, Elizabeth Cady Stanton. In 1840 Stanton was the new bride of Henry Stanton, and the couple spent their honeymoon in London attending the meeting of the American and Foreign Anti-Slavery Societies. The meeting was eye-opening for Elizabeth Stanton on a number of levels. There she came under the influence of Lucretia Mott, a Quaker matriarch, and William Lloyd Garrison, the fiery leader of the radical branch of American abolition who, she later claimed, cut "the chains of my spiritual bondage." Because the English delegates had not been prepared for the appearance of abolitionist women, the first day the convention actually spent debating woman's rights, with the result that the convention denied the female delegates their seats so they had to watch the proceedings from the gallery. When Garrison arrived in London after the decision had been made, he was appalled and refused his own seat, sitting instead in the women's gallery in silent protest. The experience was a sad lesson, and showed Stanton and Mott that women needed a convention of their own to argue explicitly for woman's rights.[19]

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would eventually marry, it would be a tortuous negotiation and would result in similar marriage documents. See Lucy Stone and Henry B. Blackwell, *Loving Warriors: Selected Letters of Lucy Stone and Henry B. Blackwell, 1865 to 1893*, ed. Leslie Wheeler (New York: The Dial Press, 1981), 109-114; Kraditor, ed., *Up From the Pedestal*, 148. On the active participation of several prominent suffrage proponents including Lucy Stone in the free thought movement, see Stow Persons, *Free Religion: An American Faith* (New Haven: Yale University Press, 1947), 132-133.

[19] Stanton, "Address by ECS to the American Anti-Slavery Society," May 8, 1860, in Stanton and Anthony, *Selected Papers*, 411. See also Stanton, Anthony, and Gage, *History of Woman Suffrage*, 1:50-62; Elisabeth Griffith, *In Her Own Right: The Life of Elizabeth Cady Stanton* (New York: Oxford University Press, 1984), 33-37.

Although it would take eight years to materialize, the resulting Seneca Falls Convention of 1848 was a pivot in the history of individual rights in the United States. It was the most articulate expression of the radical wing of woman's rights since Sarah and Angelina Grimké first appeared on the public platform, and was essentially in line with their Quaker orientation. The Convention argued with the broad view of female reform, co-opting Blackstone's maxim that man was entitled to "pursue his own true and substantial happiness" by applying it equally to women. Laws that prohibited women from equal pursuit were, the Convention resolved, "contrary to the great precept of nature, and therefore of no force or authority." In addition, the attendees produced a document, modeled on the Declaration of Independence, that it called The Declaration of Sentiments. Listing the grievances of women just as Jefferson listed grievances of the colonists against the King, the Declaration maintained that women were "aggrieved, oppressed, and fraudulently deprived of their most sacred rights" and demanded "immediate admission to all the rights and privileges which belong to them as citizens of these United States." Yet there was some ambiguity. Although its support for woman's rights was unequivocal, the rationale for those rights remained obscure, and the resolutions of the convention could be read in support of both the radical wing for woman's rights as well as the Catharine Beecher branch. In places the resolutions seemed to gesture toward the prior example of Frances Wright. Wright revered the Declaration of Independence, considering it the supreme contribution of American political thought to the world. But in her estimation, when it got down to actual practice, American law, religion and education "are false, narrow, prejudiced, ignorant, and are the relic of dark ages—the gift and bequeathment of king-governed, priest-ridden nations. . .

whose example they [the American people] are still following." In similar fashion the Convention condemned "the circumscribed limits which corrupt customs and a perverted application of the Scriptures have marked out for her," and called for woman's mass movement into "the enlarged sphere which her great Creator has assigned her." But at the same time, the Convention gestured toward the maintenance and perfection of the moral establishment, claiming that it was "demonstrably the right and duty of woman, equally with man, to promote every righteous cause. . . . especially in regard to the great subjects of morals and religion."[20]

By leaving unresolved the exact purpose and rationale for woman's rights, as the movement developed the earlier divide between those who used the moral establishment to justify women's entrance into public life and those who rejected the religious authority inherent in the moral establishment threatened to break into the open. Four years later during the 1852 Woman's Rights Convention in Syracuse, debate finally erupted over the implicitly conflicting appeals to authority that women were using to justify individual rights. Antoinette Blackwell Brown, by that time an ordained minister, introduced a resolution that claimed that the Bible recognized the equality of woman with man in mutual subjection, so that the cause of woman's rights was in fact a biblical one. But her resolutions raised, in the words of the *History of Woman Suffrage* written some forty years later by Stanton, Susan B. Anthony, and Matilda Joslyn Gage, "the question of authority as against individual judgment." The resulting debate lasted intermittently for two days, with various factions claiming that the resolution was central for the future success of woman's rights, and others like Ernestine L. Rose, a radical freethinker in the

[20] "Woman's Rights Convention, Held at Seneca Falls," July 19-20, 1848, in Stanton and Anthony, *Selected Papers*, 1:76 (first quotation) 77 (second, sixth, seventh, and eighth quotations), 80 (third and fourth quotations); Wright, *Reason, Religion, and Morals*, 201 (fifth quotation).

line of Frances Wright, claiming "no need to appeal to any written authority, particularly when it is so obscure and indefinite as to admit of different interpretations." The debate only ended when Lucretia Mott surrendered her moderator's chair to argue that biblical discussions were generally wastes of time. Instead, she claimed, "self-evident truths needed no argument or outward authority." Her own authority persuaded the Convention to drop the subject, but the issue came up again just two years later in almost identical form. At that year's convention, William Lloyd Garrison was in attendance and joined Mott in shrugging off the Bible controversy, claiming simply, "We *know* that man and woman are equal in the sight of God." At the same time, he acknowledged the crux of the problem. Although their argument was self-evident to the members of the convention, "with the American people the case is different. The masses believe the Bible directly from God; that it decrees the inequality of the sexes; and that settles the question." If only the "incubus" of Protestant churches could be removed, he explained, the masses "would experience a change of views; they would be with us."[21]

But Garrison's explanation assumed too much unity among the delegates. Beneath the divergent appeals to authority lurked divergent visions about the role of religion in American public life. Stanton had conceded shortly after the Seneca Falls convention that her goal was complete social transformation, because no question more affected "the whole human family than that which is technically termed Woman's rights." Six months prior to the 1852 Convention, when the controversy first erupted, she explained to Susan B. Anthony, who had not been at Seneca Falls but would become her

[21] Stanton, Anthony, and Gage, *History of Woman Suffrage*, 1:526 (second quotation) 538 (first quotation), 540 (third quotation), 382 (fourth through seventh quotation). Italics in original. See also Stanton's letter to the 1852 Convention, read by Susan B. Anthony, which further fueled the debate: "Elizabeth Cady Stanton's Letter," September 6, 1852, ibid., 848-851.

closest confidant and co-leader of the movement, "It is in vain to look for the elevation of woman, so long as she is degraded in marriage. . . . the right idea of marriage is at the foundation of all reforms." What particularly offended her, as she explained two years later to the New York Legislature, was the view of marriage as a "half-human, half-divine institution, which you may build up but cannot regulate." Striking at the equivocation of jurists and treatise writers who acknowledged that marriage was a contract but something more than "a mere contract," in Story's words, Stanton wondered why it should not be subjected to the same laws as other contracts, dissolvable with the consent of both parties or upon the abrogation of the terms and conditions by one. To make that argument, she had to address the moral establishment, and, to the consternation of religious conservatives, over the next decade Stanton and Anthony together began moving closer and closer to what was known as the social question—the class of issues involved in women's unique role in moral reproduction. Writing to Lucy Stone, Anthony claimed, "Getting the right to hold property, to vote, to wear what dress we please, &c &c, are all good—but Social Freedom, after all, lies at the bottom of all—& until woman gets that, she must continue the slave of man in all things." What the radicals in the movement wanted was a broad social recognition, upheld by the modification of the law, that women possessed unique individuality and separate existence from men, their children, and the home. But social freedom was exactly what the moral establishment was designed to prevent, so Stanton and Anthony's radical vision would necessarily crash against the legal provisions and social mores that the moral establishment promoted.[22]

[22] Stanton, "Address by ECS on Woman's Rights," September 1848, in Stanton and Anthony, *Selected Papers*, 96 (first quotation); Stanton to Anthony, March 1, 1952, ibid., 194 (second quotation); Stanton, "Address by ECS to the Legislature of New York," February 14, 1854, ibid., 245 (third quotation);

Early on it looked as though radicals were in a position to accomplish their goals. Beginning in 1835, state legislatures all over the nation began enacting statutory reform to law of coverture, allowing women to keep estates that they brought with them into marriage and creating a more rationalized law in order to establish clear titular claims to land. From an economic standpoint, the common law arrangement could work fine in a society in which only the rich had land, and they sold it very infrequently. But in a society with ubiquitous land ownership and a strong real estate market, the common law stipulations that gave a third of the husband's estate to the wife for use until her death (dower), or allowed the husband to live on his wife's land, placed in trust, until his death (courtesy), caused a backlog in real estate transactions that inhibited a properly functioning land market. At the same time, because many people claimed land and personal possessions of value, the laws of coverture created havoc when people wanted a divorce. Social historians have noted the casual basis of marriage and divorce, the prevalence of co-habitation, and the frequency with which people moved among different partners when there was little wealth at stake, and in societies where wealth was not as evenly distributed marriage was important only to the upper end, as means of wealth consolidation and transmission. But with many people owning something of value in the United States, divorce law needed normalization and rationalization in order to establish clear titles to land and property when couples declined to remain together. The most significant change in divorce law was the elimination of legislative divorces, where couples had to petition the legislature for a divorce, to the creation of judicial divorces,

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Anthony to Stone, June 16, 1857, ibid., 345 (fifth quotation); Story, *Conflict of Laws*, 100 note 3 (fourth quotation).

where judges heard divorce suits and decided upon certain legislatively specified grounds.[23]

Many in the woman's rights movement looked to the statutory reform of coverture and divorce as a means of strengthening women's claim to individual rights by rejecting the provisions of the moral establishment. Stanton, in particular, was at the forefront in petitioning legislators to establish strong statutory reform, and used the annual conventions as a bully pulpit by introducing resolutions in favor of a new marriage and divorce law. But many of Stanton's arguments for rationalized divorce law cut too close to the sensitive area of the movement's divergent goals, and at the Tenth Woman's Rights Convention in 1860 the tension again exploded into the open. Ernestine Rose led the way in her address to the convention, which took moral establishmentarians to task for what she saw as their half-hearted attempt at reform, invoking the moral establishment as a reason for women's broader role in public life rather than rejecting the establishment all together. "Principle does not admit of compromise," Rose declared, "It asks all, or none." The woman's movement needed to maintain its call for complete social reformation to meet the ideal of social equality, Rose maintained, even if it could only be achieved in increments. Following Rose, Stanton expanded her claim that the logical end of the woman's movement was social transformation and individual freedom. From time immemorial, Stanton explained, the institutions of civil, political, moral, and social life all taught that the individual must be "sacrificed to the highest good of society." That thought rested on a fundamental error, she explained, claiming that it was possible to suppress the individual but uphold the highest social good. Instead, society

[23] Friedman, "Rights of Passage," 654-56; Richard H. Chused, "Married Women's Property Law, 1800-1850," *Georgetown Law Journal* 71 (June 1983): 1359-1426.

upheld the highest good precisely by acknowledging the sovereignty of the individual. In her mind the most urgent step to actualize the principle of individual sovereignty was the abolition of what she called, "the man marriage." Because men had the sole prerogative of regulation over marriage, speaking as they had through law and Scripture, the man marriage had exalted male power and authority and, according to Stanton, necessarily eviscerated female independence and self-determination.[24]

Stanton's resolutions created immediate and vigorous dissent. Antoinette Blackwell Brown strongly opposed Stanton's speech, upholding instead the Christian position that God intended marriage to be the union of one man and one woman for life. Rose, again following Brown, took the platform dismissing Brown's "sermon" and insisting that marriage was "a human institution, called out by the needs of social, affectional human nature, for human purposes." Because it was a human institution, it could be modified to meet human needs, irrespective of the claims of a deity. Wendell Phillips, who would eventually take over leadership of the abolition movement and support the conservative faction of woman's rights, objected to the whole discussion and moved that both Stanton and Brown's resolutions be withdrawn. But at that point Anthony got involved, rebuking Phillips and explaining, "By law, public sentiment, and religion, from the time of Moses down to the present day, woman has never been thought of other than as a piece of property . . . Therefore, in my opinion, this discussion of the marriage question is perfectly in order on this Woman's Rights platform." The combined

[24] *Proceedings of the Tenth National Woman's Rights Convention*, May 10 and 11, 1860 (Boston: Yerrington and Garrison, 1860), in Elizabeth Cady Stanton and Susan B. Anthony, *The Papers of Elizabeth Cady Stanton and Susan B. Anthony*, eds. Patricia G. Holland and Ann D. Gordon (Wilmington, Del.: Scholarly Resources, Inc., 1992), 9:618 (first quotation), 646 (second and third quotation), 649 (fourth quotation).

arguments of Stanton, Anthony, and Rose swayed the convention, and the resolutions stayed.[25]

Post-convention response was immediate. Martha Coffin Wright and Parker Pillsbury, both prominent abolitionist reformers and friends of the woman's rights movement, wrote to Stanton to offer their support. Pillsbury in particular seemed to relish the iconoclastic spirit in which the resolutions were made, claiming Stanton "must have learned in the school of a Wollstonecraft or a Sophie Arnaut." Conservatives thought so, too. Horace Greeley, editor of the *New York Tribune* and future presidential candidate, sarcastically wondered if the woman's rights platform "should not be altogether replanked, so as to cover all human relations." That was, of course, exactly Stanton's goal. As she mystically intoned in her letter to Martha Coffin Wright, for reform to be properly effected, "anything that is outward, all forms and ceremonies, faiths and symbols, policies and institutions, may be washed away, but that which is of the very being must stand forever."[26]

Yet Stanton's goal would be delayed, as the outbreak of the Civil War shelved the woman's suffrage movement for the next four years. It emerged transformed, and the emancipation of former slaves led many women's rights proponents to consider the fundamental affinity between freed slaves and women in their social marginalization and exclusion from the political process. Stanton, in particular, began testing a new argument that linked woman's rights and black rights in a joint call for universal suffrage. When

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[25] Ibid., 9:653 (first quotation), 655 (second quotation), 658 (third quotation).

[26] Martha Coffin Wright to Stanton, May 26, 1860, and Parker Pillsbury to Stanton, May? 1860, Stanton and Anthony, *Selected Papers*, 1: 432-433, quote on p. 433; Horace Greeley, *New York Daily Tribune*, May 14, 1860; Stanton to Martha Wright Coffin, July 12, 1860, in Stanton and Anthony, *Selected Papers*. For another conservative response to Stanton's resolutions, this one dismissive rather than sarcastic, see *New York Observer*, May 17, 1860.

the war ended, Stanton and Anthony called the Eleventh Woman's Rights Convention to put their new plan into action. Following Stanton's argument, the Convention declared their cause and the cause of the freedslaves as one, and broadened their appeal from woman's rights to human rights. The convention resolved "to bury the woman in the citizen," dissolving their organization into a new organization, the American Equal Rights Association, that was dedicated to all human rights called and would work for an expanded notion of citizenship that brought every individual into the body politic. From her platform Stanton declared her intention to pursue her radical political vision, because the question of human rights necessarily involved "every other question of trade, commerce, finance, political economy, jurisprudence, morals and religion."[27]

Unfortunately, their faith would be betrayed. After its creation, the Equal Rights Association began to work for the passage of a Fourteenth Amendment that would enact universal suffrage. Though Congressional support existed for an amendment to enfranchise freed black men, support for a universal suffrage amendment was uncertain. Some within the association, led by Wendell Phillips, Lucy Stone, and Henry Blackwell, deciding that it was better to get a partial victory than to risk not gaining any, agreed to support the amendment that emerged from Congress, which guaranteed suffrage to male citizens over the age of twenty-one but implicitly denied women the vote. In the successive fallout, Stanton and Anthony came to the conclusion that women alone could be trusted to work for their enfranchisement, and in 1869 left the Equal Rights Association to form the National Woman Suffrage Association (NWSA), which initially

[27] Proceedings of the Eleventh National Woman's Rights Convention, May 10, 1866 (New York: Robert J. Johnson Printer, 1866), in Stanton and Anthony, *Selected Papers*, 1:586 (first quotation), 587 (second quotation). For Stanton's early calls for universal suffrage, see Stanton, "Universal Suffrage," July 29, 1865, ibid., 1:550-551.

allowed only women to preside as officers. But if their faith was betrayed, they also did some betraying of their own, putting out frankly racist propaganda against the Fourteenth Amendment and complaining that, in Stanton's words, they were willing to press the cause of the black man as long as he was "lowest in the scale of being," but now that "the celestial gate to civil rights is slowly moving on its hinges, it becomes a serious question whether we had better stand aside and see 'Sambo' walk into the kingdom first." Turning back on their earlier commitment to equal rights, in 1867 Stanton and Anthony entered into a strategic coalition with the anti-negro, pro-woman's rights Democrat, George Francis Train, and having taken her position Stanton stuck to it, reiterating similar statements about Afro-Americans and immigrants into the 1890s. The common phenomenon of coercive regimes in which the excluded and marginalized turn on one another was, unfortunately, on display in Stanton's response. In the short term Lucy Stone and Henry Blackwell formed what would become a rival, more conservative association, the American Woman Suffrage Association (AWSA), and the rupture of the movement was complete.[28]

Individualism, Citizenship, and Social Freedom

Even with its racism, the radical wing of the woman's rights movement could not help but raise the question of the moral establishment, in particular its notions about the obligations of female citizenship implicit in the exclusion of women from political life. The rights of citizenship entailed specifically female duties of moral reproduction,

[28] Stanton to Terry Greene Phillips, May 1, 1867, quoted by Kathi Kern, *Mrs. Stanton's Bible* (Ithaca: Cornell University Press, 2001), 111. On Stanton and Anthony's racist turn, their alliance with George Francis Train, and the formation of the AWSA and NWSA, see Ellen Carol DuBois, *Feminism and Suffrage: The Emergence of an Independent Women's Movement in America 1848-1869* (Ithaca: Cornell University Press, 1978), 53-78, 93-99, 162-202.

because the moral establishment considered the family the fundamental social unit, not the individual. Equal rights, then, made no sense to conservatives, because in the rationale of the moral establishment men and women had separate duties corresponding to their different function in the family as the fundamental social unit. To acknowledge that women were individuals with equal rights and responsibilities to men meant the destruction of the familial political-economy that was the foundation of society. In the minds of religious partisans, the idea of female individualism courted cultural dissolution as individuals broke into innumerable atomistic units without the social obligations and duties that family life imposed. That struggle would intensify in the ten years following the Civil War.[29]

When woman's suffrage moved out from under the shadow of abolition, its new prominence attracted a series of rebuttals from various quarters, which made clear how challenging the notion of women as individuals and equal-rights bearers was to the moral establishment. Many said the same things they had always said. John Todd, a Presbyterian minister whose work, *Woman's Rights*, gained widespread attention, simply denied that women could be independent of men, and therefore did not require individual rights because God had not made them to be independent. They were created to complete man and to make the home, which was "the fountain of all that is good on earth." Likewise Orestes A. Brownson, a one-time Presbyterian, Unitarian, Universalist, and Transcendentalist, who finally turned to conservative Roman Catholicism, pointed to the

[29] Many scholars have written very helpfully about the contradictions of female citizenship. See, for example, Mary P. Ryan, *Mysteries of Sex: Tracing Women and Men through American History* (Chapel Hill: University of North Carolina Press, 2006), 147-198; Nancy F. Cott, "Marriage and Women's Citizenship in the United States, 1830-1934," *American Historical Review* 103 (December 1998): 1440-1474; Nancy Isenberg, *Sex and Citizenship in Antebellum America* (Chapel Hill: University of North Carolina Press, 1998); Linda K. Kerber, *No Constitutional Right to Be Ladies: Women and the Obligations of Citizenship* (New York: Hill and Wang, 1998), 3-46.

"creation" of woman as a wife and mother, and concluded that woman's enfranchisement worked against creation and would "break up and destroy the Christian family." Because the fundamental social unit of the nation was not the individual but the family, the death of the family was of dire concern to the nation, he claimed, and "when the family goes, the nation goes too, or ceases to be worth preserving."[30]

Some of the criticisms went beyond the standard formulas to draw out the conservative evangelical political theory that Beecher had earlier expressed. One of the most articulate proponents was Horace Bushnell, a widely known minister-theologian whose intellectual vivacity spurred the development of liberal theology, but whose conservative temperament formed the foundation of his intellectual thought. His response was noteworthy, because although he was part of a small class of emerging religious liberals that had an open view of theology, he displayed the common tendency of religious liberals to maintain conservative moral sensibilities and a familiar understanding of the relationship of those sensibilities to law. The idea of woman's rights was particularly anathema to Bushnell, because, as he explained, it went against the order of nature and was, in fact, unchristian. Bushnell argued that the impetus for woman's rights, and the rationales put forward by Stanton and others in support of it arose out of a naturalistic worldview, advanced first by Rousseau and Voltaire, that regarded the civil order as a social compact and acknowledged the citizen as its fundamental unit of government. Even Locke was taken in by this "infection," which passed to the constitutional framers, who used the rhetoric of liberty "more easily than was to be desired." The problem with the Rousseauean/Voltairean/Lockean view,

[30] John Todd, *Woman's Rights* (1867; repr., New York: Arno Press, 1972), 13; Brownson, "The Woman Question," in Kraditor, ed., *Up From the Pedestal*, 192. See also the rebuttal to Todd by Mary Dodge [Gail Hamilton], *Woman's Wrongs: A Counter Irritant* (1868; repr., New York Times: Arno Press, 1972).

according to Bushnell, was that it failed to acknowledge the divinely mandated structures of authority that were written into the creation itself. The creational structures of authority extended to the hierarchy of the sexes, so that in Bushnell's way of thinking, "masculinity carries, in the distribution of sex, the governmental function." It was in recognition of the masculine governing prerogative that a woman assumed the last name of her husband upon marriage, and she was placed, devoid of legal identity, under his protection and governance. Should women gain suffrage, or any other rights that would modify the divinely ordained sex relations, the result would be, Bushnell warned, so catastrophic that it could only be regarded as a "second fall." Other moral establishmentarians saw the woman's movement as but one part of a many-headed hydra that sought to undermine the creational structures of authority in order to promote moral anarchy. As the religious partisan John Ellis explained, it was all too obvious that "the mob of discontented women and men who call themselves the Woman-Suffrage Party," had joined hands with the Free Love party in a campaign to end Christian marriage. It would take "but a cursory glance" to show that "the Woman Suffrage party, the Free-Love party, the Spiritualist party, the Infidel party, are all one and the same organization. The triumph of one means the triumph of all."[31]

Of course, Stanton agreed with Ellis and other religious critics about the goal of woman's rights. From her new perch at the *Revolution*, a weekly magazine started with Anthony and bankrolled by George Francis Train, Stanton began responding to her critics. Bushnell, she argued, had merely made her case for her. Claiming that he had

[31] Horace Bushnell, *Women's Suffrage: The Reform against Nature* (New York: Charles Scribner's Sons, 1869), 34 (first quotation), 35 (second quotation), 52 (third quotation), 163 (fourth quotation); John B. Ellis, *Free Love and Its Votaries; or American Socialism Unmasked* (New York: United States Publishing Co., 1870), 492 (first quotation), 495 (second and third quotations).

presented the concept of headship as well as could be done, he still could not escape the obvious conclusion that male headship "must ever produce selfishness on one side and sacrifice on the other, or a never ending self assertion of equality, alike disorganizing and degrading both sexes." To talk about marriage as dignified or dignifying to women, she explained, was impossible until women had a separate political, social, and legal existence. Quoting Ralph Waldo Emerson, Stanton argued in a different article, "We cannot have unions, until we first have units." As the decade progressed, she waged war on two fronts—against moral establishment proponents within the woman's movement and against the proponents of the moral establishment outside of it—which had the effect of further radicalizing her statements. In May 1870, both Stanton and Anthony relinquished their leadership of the NWSA, and Stanton began lecturing on the lyceum tour, rehearsing her arguments about the need for liberalized divorce laws and the modification of creeds and civil codes to recognize the equality of women. At a meeting of a society of radical reformers in 1870 (or possibly 1871), Stanton laid down her most far-reaching pronouncement to date, criticizing both sets of her critics at once. In response to those who worried that woman's rights would undermine marriage, she acknowledged that marriage would necessarily "be abrogated in fine by the progress of reform." In particular, when the law looked upon marriage as a true contract and allowed free and easy divorce, the marriage relationship would organize itself according to "natural and free adjustments." Like Ellis, Stanton agreed that "all reforms and innovations stand logically affiliated with each other," so that the progression beyond woman's suffrage was "next social equality and next Freedom or in a word Free Love." In fact, for those who were merely dabbling in woman's suffrage without regard for its

ultimate outcome, Stanton offered the warning that "if they wish to get out of the boat they should for safety get out now, for delays are dangerous."[32]

With both the most radical women's reformers and the most entrenched conservatives claiming that woman's suffrage would lead to a host of more radical ends, the stage was nearly set for a concerted challenge to the religious morals and mores supported by law, but hidden in the shadows was an unsuspected bomb in the form of the newest and suddenly most prominent suffragist, Victoria Woodhull. Woodhull had only recently arrived on the East Coast, having grown up in Ohio, married Canning Woodhull, and moved to California where she became a spiritualist. By 1866 when she divorced Canning for his alcoholism, Victoria had become something of a celebrity on the West Coast, but relatively unknown in the East. Looking for larger arenas to exercise her spirit mediumship, she moved back to Ohio where she became Cornelius Vanderbilt's principal spiritual advisor (and possibly more). He found her assistance so invaluable that he gave her a large cash retainer, which she used to open a stockbrokerage firm with her sister, together becoming the first two female stockbrokers on Wall Street. To add to that fame, in 1871 she was elected the president of the American Association of Spiritualists and also publicly endorsed woman's suffrage. Apparently, Woodhull even developed the dominant Woman's Suffrage strategy after the collapse of the Equal Rights Association. Called the New Departure, it sought to press for woman's suffrage in the courts by

[32] Stanton, "Horace Bushnell," *The Revolution* 1 (July 8, 1869), 9, in Stanton and Anthony, *Papers*, 2:4 (first quotation); Stanton, "The Man Marriage," *The Revolution* 3 (April 19, 1869), ibid., 1:527 (second quotation); Stanton, "Speech by ECS on Free Love," in Stanton and Anthony, *Selected Papers*, 2:393 (third and fourth quotations), 396 (fifth through seventh quotations). For some of Stanton's other formulations, see Stanton, "Bible Marriage," *The Revolution* 1, April 2, 1868; and Stanton, "Marriage and Divorce," *The Revolution* 2 (October 22, 1868), in Stanton and Anthony, *Papers*, 1:100, 333-334.

arguing that the fourteenth and fifteenth amendments had already laid the legal foundation for female suffrage.[33]

Woodhull's entrance on the scene was momentous, because she became the catalyst in a five-year-long drama that both energized proponents of the moral establishment and threatened to derail the radical woman's rights argument that women were free individuals that should have equal rights with men. Almost as soon as she came into prominence rumors about a disreputable past began to surface. Although the details were still vague, in the spring of 1871 Isabella Beecher Hooker, one of Catharine Beecher's sisters and a leader in the NWSA, confronted Woodhull with a series of letters about her illicit past, and left copies of the letters for Stanton and Lucretia Mott's sister, Martha Coffin Wright. While rumors grew, Stanton rallied to Woodhull's defense, even gently rebuking the aged Lucretia Mott with the explanation that it was a "great impertinence" to pry into Woodhull's private affairs. Unlike others in the NWSA, Stanton remained unconcerned about any past moral lapses, and instead saw in the furor a darker conspiracy. The "sentimental, hypocritical, prating about purity," she complained, was "one of man's most effective engines, for our division, & subjugation."[34]

Meanwhile, a more profound revelation was brewing. Though the exact chronology is obscure, over the previous year an ecclesiastical melodrama had opened involving Henry Ward Beecher, another one of Lyman Beecher's progeny, and two of Henry Beecher's parishioners, Theodore Tilton, a prominent newspaper editor, and his

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[33] Johanna Johnston, *Mrs. Satan: The Incredible Saga of Victoria C. Woodhull* (New York: G.P. Putnam's Sons, 1967), 13-76. For Woodhull's argument that the fourteenth and fifteenth amendments granted suffrage to women, and her testimony before the U.S. House Judiciary Committee to that effect, see Stanton, Anthony, and Gage, *History of Woman Suffrage*, 2:443-448.

[34] Stanton to Lucretia Coffin Mott, 1 April 1871, in Stanton and Anthony, *Selected Papers*, 427 (first quotation), 428 (second quotation); Stanton, Anthony, and Gage, *History of Woman Suffrage*, 2:159 (third quotation).

wife, Elizabeth Tilton. Henry Ward Beecher was by 1870 the most famous preacher in the United States. He had made his name through his vigorous support of abolitionism, including a speaking tour through England in 1863 to drum up support for the Union cause and several occasions in which he auctioned slaves to freedom from the pulpit of his church. In confirmation of his unique prominence Abraham Lincoln tapped him to deliver the major address when the U.S. flag was raised again over Ft. Sumter toward the end of the Civil War. Shortly after the Civil War at the 1866 Woman's Rights Convention, the woman's suffrage movement had gained Beecher's personal endorsement, which cited women's equal participation in public affairs as "God's growing and least disclosed idea." He thought the central question in woman's suffrage was, "Who has a right to construct and administer law?" and his question cut to the heart of the moral justification that religious partisans used to explain their cultural and legal authority. Pointing to what he considered a natural development in which "the questions of politics are more and more moral questions," Beecher looked to "these who God made to be peculiarly conservators of things moral and spiritual [women] to come forward and help us in that work." Theodore Tilton introduced him. Before Beecher's speech Tilton offered some good-natured ribbing about what he considered Beecher's questionable orthodoxy and, after Beecher had handed his bible over to Tilton's safekeeping while he spoke, the fact that Beecher's bible contained a woman's name (not his wife's) on the inside cover. Their good-natured back and forth took on a different coloration when rumors began circulating that Elizabeth Tilton and Henry Beecher had formed a closer friendship than was normally permitted outside of marriage. The story was long and involved, and had been kept quiet by mutual agreement in order to protect everyone's

reputation. To insure accountability the papers documenting their agreement, including letters back and forth, apologies, admissions of guilt (though without specifics), and pledges of silence were entrusted to a disinterested third-party, Francis Moulton.[35]

About the time that rumors began circulating about Victoria Woodhull, rumors about the Beecher-Tilton affair emerged, possibly by way of Elizabeth Cady Stanton. Apparently upon learning of Elizabeth Tilton's infidelities Theodore had rushed to Stanton's house in distress, detailing his new knowledge. In addition, Elizabeth Tilton later confessed the affair to Anthony, though Anthony remained quiet. While the Beecher melodrama was unfolding in (partial) secret, Woodhull, who knew about the scandal, decided to confront her critics who had only been growing louder. Word had gotten out that not only had her second marriage never been formally documented, the Woodhull abode now housed, along with Woodhull, her second husband, Colonel James Blood, her ex-husband, Canning Woodhull, and the anarchist and notorious free love advocate, Stephen Pearl Andrews. To those charging the woman's movement with moral anarchy, the appearance was extremely unseemly, and as she began to sink under the weight of public contempt she grasped the slender reed that rumors of the Beecher affair offered. In early 1871, she began leveraging her knowledge to persuade Beecher to introduce her at that year's Spiritualist Association meeting. She later claimed that she was trying to get him to publicly proclaim his adherence to free love, but she may have

[35] Stanton, Anthony, and Gage, *History of Woman Suffrage*, 2: 159 (first and second quotations), 161 (third quotations). For the complete history of the Beecher-Tilton affair, see Richard Wightman Fox, *Trials of Intimacy: Love and Loss in the Beecher-Tilton Scandal* (Chicago: University of Chicago Press, 1999); Nicola Beisel, *Imperiled Innocents: Anthony Comstock and Family Reproduction in Victorian America* (Princeton: Princeton University Press, 1997), 76-86; Altina Waller, *Reverend Beecher and Mrs. Tilton: Sex and Class in Victorian America* (Amherst: University of Massachusetts Press, 1982); Charles F. Marshall, ed., *The True History of the Brooklyn Scandal* (Philadelphia: National Publishing Company, 1874).

been merely trying to forge a connection in the public mind between herself and Beecher. When Beecher refused, she had to find an alternate plan.[36]

But as she steadied herself in the face of her critics, Woodhull inaugurated an explosive spectacle that proponents of the moral establishment could invoke when claiming that woman's rights was already leading to moral dissolution, the break up of the family, and the general lowering of the tone of national life. After Beecher declined to introduce her speech, Woodhull enlisted the help of Theodore Tilton, who introduced her before she gave what immediately became an infamous address, entitled "The Principles of Social Freedom." It was her public proclamation, in defiance of her critics, of her adherence to Free Love. To a considerable extent, Woodhull's argument reflected the anarchism of her houseguest, Stephen Pearl Andrews. She saw self-government quite literally: all should be entrusted to govern themselves to act according to their own wishes in the pursuit of individual happiness. Because individual sovereignty was the guiding principle of social freedom, the individual became the basic unit of government. Woodhull put forward a radically libertarian position that sounded very much like a gloss on Thomas Paine and John Locke. She claimed that aggregates of individuals formed communities (not families), who enacted governments, in order to guard individual rights. Because the individual was the basic unit of government, society must safeguard individual rights even when its members disliked what the individual was doing.[37]

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[36] On Woodhull's growing disreputable reputation, see Waller, *Reverend Beecher and Mrs. Tilton*, 3-4. On her attempt to connect herself to Beecher, see Woodhull's "Complete and Detailed Version of the Beecher-Tilton Affair," facsimile reproduction in Woodhull, *The Victoria Woodhull Reader*, 10-12, and especially 15-18.

[37] Victoria Woodhull, "The Principles of Social Freedom," facsimile reproduction in Woodhull, *The Victoria Woodhull Reader*, 4-8.

Of course, Woodhull's argument for the sovereignty of the individual had no greater consequence than the reevaluation of marriage. Marriage law that was consistent with the idea of individual rights, she claimed, would recognize the marriage relation as a true contract, terminable under the same provisions governing other contracts. The lack of freedom in the marriage relation became for Woodhull an archetype of a more general lack of freedom in society created by religious partisans. Lack of marital freedom showed, she thought, the connection between religious, political, and social freedom. Although religious freedom existed to some extent, and political freedom operated in theory, in practice both were, in her estimation, severely limited by a "society-despotism." True religious and political freedom would yield social freedom, she claimed, and social freedom was, in two words, Free Love. In the face of numerous and repeated hisses from the crowd, Woodhull waxed prophetic at the coming future, claiming that the spiritualization of marriage was necessary for the transformation of all of society to accommodate the principles of social freedom. The "*spiritually constituted*" family would herald "the most wonderful transformation of human society," a transformation that was "even now at the very door." The result would be "a nobler manhood and a more glorified womanhood; as, indeed, the veritable gateway to a paradise regained." Although Theodore Tilton's presence at the convention kept her from announcing the Elizabeth Tilton-Henry Beecher affair, the material was controversial enough.[38]

In fact, the effect of Woodhull's speech was explosive. Even prior to the convention, Isabella Beecher Hooker, Henry Ward Beecher's sister, had expressed

[38] Ibid., 3 (first quotation), 42 (second through fifth quotations). Compare Woodhull's argument to Andrews's arguments in Stephen Pearl Andrews, Horace Greeley, and Henry James, *Love, Marriage and Divorce and the Sovereignty of the Individual* (1853; repr., New York: Source Book Press, 1972).

concern to Woodhull about Woodhull's extravagant utterances. In response, Woodhull adopted a messianic tone, explaining that she would not have chosen the cause for herself but could not resist her "mission." She possessed secret knowledge and could see "what is to come, though I cannot yet divulge it." But Woodhull did offer a glimmer of prophecy, proclaiming "the near approach of the grandest revelation the world has yet known, and for the part you shall play in it thousands will rise up and call you blessed." If that did not sound ominous to Hooker, it should have. After her social freedom speech, two of Beecher's other sisters, Catharine Beecher and Harriet Beecher Stowe, the author of *Uncle Tom's Cabin*, began attacking Woodhull in the pages of Henry Beecher's journal, the *Christian Union*, while simultaneously working to undermine her support through their large network of influential friends. By the end of 1871, Woodhull had concluded that persuasion would not bring Henry Beecher to her cause, and she resorted instead to blackmail. Noting the efforts of his two sisters to "assail my character and purposes," Woodhull warned Henry, "You doubtless know that it is in my power to strike back, and in ways more disastrous than anything that can come to me; but I do not desire to do this."[39]

Woodhull's already questionable reputation—made even more so after her speech—put the leaders of the NWSA in a quandary. The public outcry against Woodhull seemed to place the status of their reform in jeopardy, and some began wondering if they might not temper their call for a social revolution. It was a call echoed by Henry Ward Beecher, who was upset that his name had appeared in connection with an avowed free lover. In response to a concerned letter from his sister Isabella, Henry

[39] Victorian Woodhull to Isabella Beecher Hooker, August 8, 1871, in Marshall, ed., *The True History of the Brooklyn Scandal*, 334 (first three quotations); Victoria Woodhull to Henry Ward Beecher, Nov. 19, 1871, ibid., 358 (fourth and fifth quotations).

begged her not to make any stand in the coming year "*except upon suffrage*," effectively truncating her reform message to its most conservative and rejecting the idea of individual rights with its apparent corollary claim of free love. He also pleaded that though he could not explain why he would make the request, the most effective thing she could do for him was to maintain "*silence* and a silencing influence on all others. A day may come for converse. It is not now. Living or dead, my dear sister Belle, *love me*, and do not talk about me or suffer others to in your presence." Others, meanwhile, began pulling away from Woodhull. Susan B. Anthony, writing in her diary a month later, confessed that the day struck her as sad, because "[o]ur movement as such is so demoralized by the letting go the helm of ship to Woodhull—though we rescued it—it was as by a hair breadth escape."[40]

But Anthony may have spoken too soon, because two months later Woodhull was reaching a breaking point. Writing again to Beecher, she explained, "The social fight against me . . . is becoming rather hotter than I can well endure longer, standing unsupported and alone as I have until now. . . . Now, I want your assistance." When Beecher made no reply, Woodhull moved forward with her plan. In September 1872, she was re-elected president of the American Association of Spiritualists, and in her speech before the convention in Boston she unveiled her knowledge that the Reverend Henry Ward Beecher was a secret believer in the most advanced doctrines of free love, and had had an affair with any number of his parishioners, including Elizabeth Tilton, the wife of his close friend, Theodore. When Beecher's Boston allies suppressed most of her remarks in the newspapers following her speech, Woodhull reprinted her charges in her

[40] Henry Ward Beecher to Isabella Beecher Hooker, April 25, 1872, ibid., 334 (first and second quotations), his italics; "From the Diary of SBA," Sunday, May 12, 1872, Stanton and Anthony, *Selected Papers*, 2:494 (third quotation).

own newspaper, *Woodhull and Claflin's Weekly*. She wanted, she explained, the article to "burst like a bomb-shell into the ranks of the moralistic social camp. I am engaged in officering, and in some sense conducting, a social revolution on the marriage question." While the world trembled on the brink of revolution with men and women hesitating to acknowledge their true convictions, she claimed that "organized hypocrisy has become the tone of our modern society." The Beecher affair was but the most prominent example, so although she normally honored the privacy of individual above all things, Woodhull explained that she had been driven to this step by the rampant hypocrisy of all social institutions, offering Beecher's example not as the indictment of an individual, but of the social system. She hoped that exposing a man of Beecher's eminence would send an "inquisition through all the churches and what is termed conservative society," and she looked at the Beecher revelation as "the crack of doom to our old and worn out, and false and hypocritical social institutions." Because the age was "pregnant with great events," Woodhull confidently prophesied that after "the pious ejaculations of the sanctimonious shall have been expended," everyone would see the hypocrisy of the age, and the social revolution would come.[41]

Woodhull's disclosure roiled the NWSA, not least because she had publicly named two prominent reformers, Paulina Wright Davis and Elizabeth Cady Stanton, as two of her sources. As the situation rapidly careened out of any single person's control, religious partisans began to intervene. A month after she published her article, Anthony Comstock stepped into the fray and jailed both Woodhull and her sister on the charge of

[41] Victoria Woodhull to Henry Ward Beecher, June 3, 1872, in Marshall, ed., *The True History of the Brooklyn Scandal*, 363 (first quotation); "Victoria C. Woodhull's Complete and Detailed Version of the Beecher-Tilton Affair," facsimile reproduction in Woodhull, *The Victoria Woodhull Reader*, 3 (second and third quotations), 13 (fourth quotation), 19 (fifth, sixth, and seventh quotations).

obscenity (not libel) for publishing the Beecher issue of her magazine. Comstock was the embodiment of Lyman Beecher's vision, a young apostle of righteousness committed to using voluntary associations and the coercion of law to maintain the moral uprightness necessary for the sustenance of the nation. In 1872 he sent a letter to the Young Men's Christian Association (YMCA) warning of the "the hundreds of gambling hells, the defilement of evil reading, and the thousands of influences which threaten the morals of the young." After his letter caught the attention (and monetary support) of the industrialist Morris K. Jesup, a strong supporter of New York's YMCA, Comstock founded the New York Society for the Suppression of Vice and transferred his new-found caché into a remarkably successful lobbying effort of the U.S. Congress. The result, a mere year later, was the passage of the so-called Comstock Law of 1873, one of the most important tools of the late-nineteenth century moral establishment, which called for a five thousand dollar fine and up to five years in prison for distribution of what Comstock deemed obscene, lewd, or lascivious literature of any kind. Comstock's arrest of Woodhull was his first highly publicized vice reform effort and served to establish his authority when he lobbied Congress for passage of the Comstock Law the following year. He also seized Woodhull's presses, so that no more magazines could be republished to meet the almost insatiable demand for the Beecher issue. But Woodhull would not go away, and after her jail stay in January 1872, she delivered and subsequently published a lecture claiming that she had just emerged from "the American Bastile [*sic*], to which I was consigned by the cowardly servility of the age." With Woodhull further stoking press coverage of the affair, in March 1873 some of Beecher's most prominent parishioners, acting independently of their pastor, decided to drop Tilton from the roll of

the Plymouth Church for what they assumed was his role in spreading libelous rumors about their minister. To Tilton it seemed that he was being made a scapegoat, and their pact of secrecy began to crumble on all sides.[42]

Before it was over, reputations would be sacrificed all around, and the moral establishment would emerge strengthened. Following the Plymouth Church's discipline of Theodore Tilton, the moderator New York and Brooklyn Congregational Association council convened to address the affair blamed "the infamous women who have started this scandal," which certainly took in Woodhull and her sister, but possibly also Stanton, Anthony, and others. Tilton responded to his discipline by complaining to the council (in an open letter published in papers around the nation) that Beecher or his agents had decided "to sacrifice *my* good name for the maintenance of *his*." Concluding that the pact had ended, Tilton included in his letter excerpts of several documents entrusted to Francis Moulton that put Beecher in a damning light. Beecher responded to Tilton's letter by calling for an investigation to be led by several members of his church. Although the outcome of the investigation was largely predetermined (because Beecher picked the members of the investigating committee), the process created a media scandal and daily spectacle, with newspapers around the nation carrying transcripts of each session. In latter the half of 1874 the New York *Times* alone ran one hundred and five

[42] Comstock, "The Suppression of Vice," 488 (first quotation); Victoria Woodhull, "The Naked Truth; or, the Situation Reviewed!" facsimile reproduction in Woodhull, *The Victoria Woodhull Reader*, 1 (second quotation). On Comstock's involvement in the affair, see Beisel, *Imperiled Innocents*, 76- 86. On the Plymouth Church's discipline of Tilton, see Marshall, ed., *The True History of the Brooklyn Scandal*, 32-35. On Stanton and Davis as Woodhull's sources, see "Victoria C. Woodhull's Complete and Detailed Version of the Beecher-Tilton Affair," in Woodhull, *The Victoria Woodhull Reader*, 11. For examples of the flurry of letters among reformers to figure out how to address the situation, see Isabella Beecher Hooker to Henry Ward Beecher, November 1, 1872, Isabella Beecher Hooker to the Reverend Thomas K. Beecher, Nov. 3, 1872, the Reverend Thos. K. Beecher to Isabella Beecher Hooker, Nov. 5, 1872 , Susan B. Anthony to Isabella Beecher Hooker, Nov. 16, 1872, in Marshall, ed., *The True History of the Brooklyn Scandal*, 332, 333, 335, 525.

stories about the Beecher-Tilton affair and editorialized on the subject thirty-seven times. Accusations of free love went in all directions. Theodore Tilton, of course, portrayed Beecher and Elizabeth Tilton as free lovers. Beecher portrayed Theodore as a free lover, whose numerous sexual conquests after what he called a "marked change in his religious and social views" he did not even bother to conceal from the members of his own household. Elizabeth Tilton joined Beecher's side, characterizing Theodore's victim posture as "a lamentable satire upon the household where he himself, years before, laid the corner stone of Free Love, and desecrated its altars up to the time of my departure; so that the atmosphere was not only godless, but impure for my children."[43]

With religious partisans clamping down and Beecher's church members defending their pastor's morals, the radical thrust of the movement went into disarray. Beecher began distancing himself from all parties, and his criticism extended beyond Theodore Tilton to "one wing of the Female Suffrage party [that] had got hold of the story in a distorted and exaggerated form." The radical wing of the reform movement, Beecher claimed, sought to discredit by way of slander anyone who became noted as a reformer but resisted their revolutionary assertions. He was not above slander himself as it turned out. The Beecher team procured a former Tilton domestic servant to say that several female friends of Mr. Tilton, including Stanton, Anthony, Anna Dickinson, and, of course, Victoria Woodhull, were often at the Tilton house. Woodhull had stayed several months in the house, and, as the servant explained, Mr. Tilton "seemed to be very fond of her; he was with her a great deal; he used to caress her and kiss her; he was very

[43] Marshall, ed., *The True History of the Brooklyn Scandal*, 41 (first quotation), 54-55 (second quotation), 179 (third quotation), 184 (fourth quotation). For Tilton's letter and Beecher's response, see Marshall, ed., *The True History of the Brooklyn Scandal*, 43-65. On the number of times the story appeared in the New York *Times*, see Paul A. Carter, *The Spiritual Crisis of the Gilded Age* (DeKalb: Northern Illinois University Press, 1971), 115.

much taken with her in every way." When the chair of the committee prompted her about the other women, she responded that Tilton was not much interested in other women, except Stanton and Anthony.

> Q. How was it then?
> A. He seemed to think a great deal of Mrs. Stanton and Miss Anthony; I saw her sitting on his lap on one occasion when I was coming into the parlor, and she jumped up pretty quick.
> Q. Miss Anthony?
> A. Susan B. Anthony
> Q. What was his conduct with Mrs. Stanton?
> A. Well, I never saw him caressing her, but he used to be alone with her a great deal in his study; they used to play chess until two or three o'clock in the morning; frequently they were up until after the family had gone to bed—quite late."[44]

With the woman's movement suffering a great deal of tarnish, Woodhull continued her theatrics. After emerging from jail, legally vindicated but socially crushed, she had resumed her newspaper coverage of the trial and published a tract entitled "Tried as By Fire; or, The True and The False, Socially," which reiterated her resolve to conduct a "campaign against marriage." The entire incident had revealed to her just how much the United States needed social freedom. As she saw it, after her revelation about Beecher, "the American Pope," his allies, including "the United States authorities, urged on by the minions of the Church—the Y.M.C. Assassination Association—swooped down upon me and carried me off to jail, not for libel on the Pope, but for obscenity." Waiting in jail, she trusted that the public's moral outrage would secure her release. Sadly, she realized in the aftermath, "Beecher was bigger than a free press—of more

[44] Marshall, ed., *The True History of the Brooklyn Scandal*, 272 (first quotation), 394 (second quotation and third block quotation).

consequence than free speech. His danger cowed the whole country into silence; and the people sneaked after the trail of the popular preacher, in abject submission."[45]

After another year of trial and testimony, this time in a New York Court when Theodore Tilton filed a suit against Beecher for criminal conversation with his wife, Beecher's vindication was complete as a hung jury allowed him to go free. When Elizabeth Tilton abruptly changed her story (for a third time), claiming that she had in fact had an affair with Beecher, she was promptly excommunicated from the Plymouth Church, socially ostracized by everyone for the remainder of her life, and died lonely and blind in her daughter's Brooklyn apartment in 1897. Theodore Tilton, prevented from finding journalistic work by the numerous influential members of the Plymouth Church, emigrated to Paris where he lived in poverty, wrote poetry, and played chess until his death in 1907. Woodhull did not last more than two years after the trial's end. In 1877 when Cornelius Vanderbilt died, some of his squabbling heirs fretted that their father's consultation with spirit mediums might be grounds to challenge his sanity (and, therefore, the will) and paid Woodhull to leave the country. Because her stockbrokerage firm had been closed during her jail stay—and her life was increasingly beset with financial strain and social ostracism—she took the money and her daughter to England, where at one of her speeches on free love she met her very wealthy future husband (her third), having discarded her previous when she left the United States.[46]

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[45] Victoria Woodhull, "Tried as By Fire; or, The True and The False, Socially," facsimile reproduction in Woodhull, *The Victoria Woodhull Reader*, 5 (second quotation), 28 (third through fifth quotations).

[46] On both the Tiltons' post-trial fate, see Waller, *Reverend Beecher and Mrs. Tilton*, 11. For Woodhull's post-trial story, see Johnston, *Mrs. Satan*, 252-303.

Religious Standards and the Tightening of Family Law

As much as the Beecher-Tilton affair provided spectacular entertainment, it was more than just spectacle, because it served as a synecdoche for what religious conservatives regarded as the general atomization and cultural disintegration that threatened the American family in the wake of the woman's rights movement. E.L. Godkin, editor of the conservative weekly *The Nation*, editorialized that the scandal was "a symptomatic phenomenon. . . illustrative of the moral condition of American society generally." The principal figures in the scandal seemed to Godkin like people "who are living, not *more majorum* [according to the morals of the majority] . . . but like half-civilized people who have got hold of a code which they do not understand." Godkin extended the arena of culpability to that "large body of persons" who, being supremely confident in their own development, as he sarcastically construed it, "tackle all the problems of the day—men's, women's, and children's rights and duties, marriage, education, suffrage, life, death, and immortality—with supreme indifference to what anybody else things or has ever thought." Rather than a new age, Godkin claimed that these reformers heralded "a kind of mental and moral chaos, in which many of the fundamental rules of living. . . seem in imminent risk of disappearing totally."[47]

Others echoed Godkin's criticism, as a spate of religious leaders emerged in the latter half of the 1870s in opposition to woman's rights, an opposition that continued through the end of the century. Augustus H. Strong, the Baptist president of Rochester Theological Seminary, responded with a sermon, broadly disseminated, denouncing woman's rights as against the creation of God, whose subordination of woman was the

[47] E.L. Godkin, "Chromo-civilization," *The Nation*, September 24, 1874, pp. 201 (first and second quotations), 202 (third through fifth quotations).

result of Eve's role in the Fall. Several years later, Mark Hopkins, president of Williams College and widely read ethicist, rehearsed the doctrine of separate spheres and the headship of man in order to publicly reject woman's suffrage in his new ethics text, which was the work of choice in many college curricula. Likewise, Lyman Abbott, who assumed Henry Ward Beecher's pulpit and the editorship of his magazine after Beecher's death in 1887, criticized the "revived paganism which bases marriage on a civil contract, and makes it a form of partnership" as just as noxious as "that other analogous notion that government is founded on a 'social contract.'" Explaining that God had created certain structures of authority for both government and the family, he averred, "The normal, the divine order, is the order in which the husband is the head of the household, and the household is an autocracy." The familial disarray and the messy interpersonal relationships of the Beecher-Tilton affair displayed, according to proponents of the moral establishment, what happened when the constraints of law and moral pressure were removed.[48]

To combat that supposed atomization, beginning in the early 1870s judicial writers began to react, recodifying the common law of marriage, divorce, and domestic relations in light of the married women's property acts that had been passed in the two decades prior. The two most important post-property-act treatise writers were James Schouler and Joel Prentiss Bishop, and together they held enormous power to refashion jurisprudence and to strengthen the moral establishment. So great was their influence

[48] Mark Hopkins, *The Law of Love and Love as a Law; or, Christian Ethics*, Revised ed. (New York: Charles Scribner's Sons, 1889); Lyman Abbott, *Christianity and Social Problems* (Boston: Houghton, Mifflin, and Co., 1896), 145 (first and second quotations), 149 (third quotation). On Strong's sermon and its reception, see Matilda Joslyn Gage, *Women, Church and State: A Historical Account of the Status of Woman though the Christian Ages: With Reminiscences of the Matriarchate* (1893; repr., New York: Arno Press, 1972), 470.

that in the judicial confusion subsequent to the property acts' passage, many jurists decided cases with the phrase "according to Bishop. . ." or "according to Schouler. . ." But both were uniformly hostile to the property act provisions. Schouler complained that the current state of family law was in complete disarray, because the passage of women's property acts had established two separate legal systems, a common law scheme and a civil law scheme. The common law scheme began with the assumption of unity in marriage so that the wife's legal existence was suspended in the marriage state. Though he admitted that she sacrificed her property interests and was placed almost entirely in her husband's keeping, she also received or was entitled to his protection and support, in Schouler's estimation, which was enforceable by law and insured the general unity of family life. By contrast, the civil law scheme paid little attention to the unity of the pair, and instead acknowledged the personal independence and individuality of husband and wife, especially in their property rights. To Schouler the civil law scheme risked the very atomization and cultural dissolution that some read in the Beecher-Tilton affair. He warned that if the legislators continue to reinforce women's separate rights, the legislation would likely "weaken the ties of marriage, by forcing both sexes into an unnatural antagonism; teaching them to be independent of one another." Such a condition was "unnatural" not because it betrayed the human purposes of marriage but because "God's law points to family and the mutual intercourse of man and woman as among the strongest safeguards of human happiness."[49]

To strengthen the old common law scheme that was so important to the moral establishment, both Schouler and Bishop offered a set of interpretative principles that

[49] James Schouler, *A Treatise on the Law of Domestic Relations*, 2nd ed. (Boston: Little, Brown, and Company, 1874), 8-19, third through fifth quotations on p. 17. On the place of Schouler and Bishop in the post-bellum family law, see Hartog, *Man and Wife*, 16.

read the laws in their narrowest possible construction, thereby limiting their impact. Schouler, for example, acknowledged that woman's property rights were necessary because of past instances of abuse, but, because women's property rights were "contrary to rule," in cases of a dispute a married woman had to "rebut the presumption that whatever she acquires vests in the husband, and to establish a distinct ownership." Unless the woman specifically established clear and distinct ownership of property from the outset, the presumption remained that a woman's property vested in the husband upon marriage, and in that case the old common law rules remained in place. Schouler's limitation of the property law provisions became his repeated intellectual move, limiting the statutory intervention in order to claim that the rest of the common law stipulations of coverture continued in place as before.[50]

Bishop likewise began by emphasizing "how little of the old law has become obsolete among us," but unlike Schouler he took the opportunity to elaborate what he considered "a new branch of the law" that extracted "the true doctrine under the statutes . . . from the application of the old and familiar principles of the law to them." Elaborating a new branch of law allowed him to reformulate the doctrine that marriage was a civil contract, an idea that had always caused discomfort to jurists and had allowed Woodhull and Stanton the rhetorical space to declare that if it was a contract, it ought to be dissolvable on the consent of both parties. Bishop agreed that marriage originated in a contract, but it was a contract to marry, more commonly called an engagement, that was completed or performed upon marriage. Once he located the contract in the engagement, Bishop was able to claim that "at marriage. . . the contract ceases." Instead of a contract, Bishop proclaimed that marriage was a "civil status." Because it was a civil status, it

[50] Schouler, *Domestic Relations*, 16 (both quotations).

could not be dissolved at the whim to the parties, and following a circular logic, "because the parties cannot mutually dissolve it," marriage could not be a civil contract.[51]

Bishop also reformulated the rules governing divorce in an effort to ensure that the exits were more closely guarded. Because marriage was a foundational component in the perpetuation of a society, Bishop explained, the key point in divorce law was to remember that the public was the "third party" in a divorce suit, and that its interests needed to be protected on par with, or even above, those of the husband and wife. One way this could be done, Bishop noted, was already taking place in Kentucky, Indiana and "perhaps one or two other states" where it was the "duty of the public prosecuting officer to oppose *all* suits for divorce." In the states that did not have a public prosecutor to insure the interests of the public by opposing all divorce claims, the Court itself was to exercise "a constant watchfulness over the public interests in the cause." Whatever the mechanism, before a judge could grant a divorce the court needed to establish that the marriage did more harm than good *to the community*, thereby "satisfying the conscience of the court." Bishop's formulations were phenomenally successful, as the legal historian Michael Grossberg has pointed out, in part because of his willingness to spell out in exhaustive detail a judicial process whereby judges could maintain the provisions of the common law by fending off or limiting the effectiveness of statutory interventions that granted women a minimum level of autonomy.[52]

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[51] Joel Prentiss Bishop, *Commentaries on the Law of Married Women* (Boston: Little, Brown, and Company, 1873/1875), 1:iv (first quotation), 2:viii (second and third quotation); Joel Prentiss Bishop, *Commentaries on the Law of Marriage and Divorce* (Boston: Little, Brown, and Company, 1881), 1:2 (fourth and fifth quotations), 4 (sixth quotation). For a sympathetic evaluation of the relationship of status to expected social roles, see Milton C. Jr. Regan, *Family Law and the Pursuit of Intimacy* (New York: New York University Press, 1993), 9.

[52] Bishop, *Commentaries on the Law of Marriage and Divorce*, 2:205 (first four quotations), 207 (fifth quotation), italics added; Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth-*

While jurists buttressed the common law provisions of the moral establishment, alarmed legislators stepped back from the implicitly egalitarian impulse that underwrote the married woman's property acts and sought to reinforce prescribed social roles in the family and limit the burgeoning divorce rate. Leading the charge was Theodore Woolsey, the past-president of Yale and leading member of another evangelical voluntary organization, the Evangelical Alliance. In 1868, Woolsey sounded the initial alarm with his book, *Divorce and Divorce Legislation*, which claimed very simply, "the modern divorce legislation of nearly all Protestant countries is *unchristian*." In his preface, he noted all Christian denominations seemingly had taken a firm stand and were displaying an increasing resolve "to do what can be done in purifying and Christianizing the law of divorce in this part of the Union." Woolsey described his work as an effort to organize what was to be known about marriage and divorce laws so that denominations and voluntary associations could act concertedly to mitigate the number of divorces in the United States. The reason divorce so concerned him was that marriage "as the origin of the family and of organized society," naturally bore "close relations to religion, morality, and law." The history of nations themselves reinforced this ordering, in Woolsey's estimation, which required the strengthening of the moral establishment in opposition to the claim's of woman's rights advocates. Families preceded nations, in Woolsey's political theory, and government arose out of the patriarchal relations of extended families. Woolsey's thought again elaborated the essential rationale of the moral

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Century America (Chapel Hill: University of North Carolina Press, 1985), 192. Italics added. For examples of how the judiciary used Bishop and Schouler to limit the effectiveness of the women's rights property acts, see Basch, *In the Eyes of the Law*, 200-223. To see how completely later treatise writers adopted Bishop's formulations, consult Joseph Long, *A Treatise on the Law of Domestic Relations* (St. Paul: Keefe-Davidson Company, 1905), 6; Walter C. Tiffany, *Handbook on the Law of Persons and Domestic Relations* (St. Paul: West Publishing Co., 1896), 4-7.

establishment. From families, to clans, to nations, individuals were defined by their adherence to larger collectives and rights were subsumed to those larger collectives. [53]

Following the Beecher-Tilton affair, in 1881 Woolsey organized the New England Divorce Reform League, which included many prominent New Englanders on its rolls, in order to further coordinate the lobbying efforts of the religious denominations. In 1885, the League reorganized itself as the National Divorce Reform League (NDRL), and petitioned the United States Congress for a federal study of marriage and divorce laws, and the rising divorce rate. The status of the signatories—who in addition to Woolsey included Noah Porter, the then-current president of Yale, Samuel W. Dike, the nation's leading divorce statistician, Elisha Mulford, minister and professor at Episcopal Theological School in Cambridge, Massachusetts, Charles Comfort Tiffany, a prominent Baltimore clergyman, and Theodore William Dwight, professor of law at Columbia Law School and grandson of Yale's former president Timothy Dwight—caught the attention of Congress. The resulting "Bill Providing for the Collection of Statistics Touching Marriage and Divorce" led to a comprehensive statistical survey published two years later under the auspices of the U.S. Secretary of Labor, Carroll Wright. The resulting report detailed what, to moral establishmentarians, seemed a disturbing trend. Wright found that the majority of the states retained the language of "civil contract" in their laws, rather than Bishop's "more modern, and apparently more accurate" view of marriage as a civil status. At the same time, divorces had increased every year, growing nearly three-fold in absolute numbers from 1867 to 1886.[54]

[53] Theodore D. Woolsey, *Divorce and Divorce Legislation*, 2nd ed. (New York: Charles Scribner's Sons, 1882), iii (second quotation), 251 (third and fourth quotations), 262 (first quotation).

The problem facing the National Divorce Reform League was that marriage could not be regulated on a federal level, so initially partisans worked on a state-by-state basis. They did have some success, but what emerged out of the struggle was what James Huffman, quoting Max Rubenstein, has called the "dual law of divorce," or the law of the books and the law of action. Earlier in the century both Indiana (led by Robert Dale Owen as a state congressman) and Maine had enacted liberalized divorce laws that included judicial discretion as one of the grounds for divorce. In principle if a judge were so inclined, he could allow a divorce simply because the parties were unhappy, a provision that alarmed moral establishmentarians. Because the full faith and credit clause of the U.S. Constitution required states to acknowledge the "public acts, records, and judicial proceedings" of every other state, the presence of states with liberalized divorce laws led to the so-called migratory divorce. Indiana and Maine became divorce havens, to which people moved, established residence, received their divorce, and then moved back to their stricter state. The continued pressure of other states ultimately doomed the liberalized divorce laws of Maine and Indiana, so that before the century was up both had rolled back their divorce laws. But it was not an ultimate victory. When Indiana and Maine modified their laws, others stepped in, as first the Dakotas, and then Nevada became the divorce havens of choice. The resulting compromise created a way for couples that really wanted a divorce to get one, but the process was expensive and time

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[54] Carroll D. Wright, *A Report on Marriage and Divorce in the United States, 1867 to 1886* (Washington: Government Printing Office, 1889), 25 (second and third quotations). On the formation of the New England Divorce Reform League, its reorganization as the National Divorce Reform League, and the petition to Congress, see Lynne Carol Halem, *Divorce Reform: Changing Legal and Social Perspectives* (New York: The Free Press, 1980), 34-39. For a survey of press response to the report, see William L. O'Neill, *Divorce in the Progressive Era* (New Haven: Yale University Press, 1967), 57-88. For a sample of statements from the Methodist Episcopal denomination and the Reform Church in America, see Halem, *Divorce Reform*, 32-33.

consuming, which in the minds of religious partisans at least limited the potential for abuse.[55]

But the compromise between the law of books and the law of action never really satisfied proponents of the moral establishment, and to combat the presence of divorce havens the National Divorce Reform League began working for a federal amendment that would allow the Congress to regulate marriage, in order to establish uniform grounds for divorce. Although conservatives failed to garner the necessary support (even after Theodore Roosevelt endorsed their cause), it likely would have not have had the intended effect. The contraction of liberalized divorce laws ran up against the real desire of many couples for a divorce, and whole industries rose up to procure the (often fabricated) evidence of adultery or cruelty required in order to meet the established grounds for divorce in the strictest states. Collusion between the divorcing parties often included the courts, which either could not or would not challenge the obvious fraud that litigants perpetuated to make their case. The system created, as the legal scholar Lawrence Friedman has pointed out, "a regime of massive lying and deceit. . . . In almost every state, perjury or something close to it was a way of life in divorce court." In other words, in many important respects the efforts of religious partisans to strengthen the moral establishment verified Woodhull's claim that "an organized hypocrisy" had become the norm in late-nineteenth century American society. But organized hypocrisy or not, Stanton and Woodhull's attempts to liberalize divorce law had stalled. The resulting

[55] James Huffman, "From Legal History to Legal Theory: A Comment on the Work of Lawrence Friedman," *Oregon Law Review* 63, no. 4 (1984): 672. On the success of religious conservatives in tightening divorce law and its administration, see Halem, *Divorce Reform*, 34-40. On the rise of the migratory divorce, Nelson Manfred Blake, *The Road to Reno: A History of Divorce in the United States* (New York: The Macmillan Company, 1962), 116-243. For an early example of criticism used against Indiana and later Maine, see Horace Greeley and Robert Dale Owen, *Divorce, being a Correspondence between Horace Greeley and Robert Dale Owen* (1860; repr., New York: Source Book Press, 1972).

stand-off between religious partisans like Woolsey and the desire of individuals to get out of unhappy marriages remained until the 1970s.[56]

Woman's Rights and Women's Moral Responsibility

Faced with the hostile reactions of jurists, legislators, and religious lobbyists, the leaders of the woman's movement confronted the old dilemma of whether it ought to oppose the moral establishment in order to advance their agenda or whether the moral establishment itself provided the fundamental reason for women's enlarged public role. The dilemma was made more acute by the abrupt failure, just as the Beecher affair was coming to its sad conclusion, of the New Departure strategy, which looked to federal legal challenges to argue for suffrage. In 1875 the U.S. Supreme Court unanimously rejected the claim that the Fourteenth Amendment sustained woman's suffrage, with the simple statement, "The Constitution of the United States does not confer the right of suffrage upon anyone." With Schouler and Bishop insuring that women's rights in marriage hewed to common law rules that legally dissolved the public personae of the wife into her husband, and with legislators tightening the permissible reasons for divorce, the High Court now declared that the national citizenship promised in the Fourteenth Amendment did not offer women access to the political process that it gave to white males. Within that context the woman's movement localized its claim of equal rights to

[56] Friedman, "Rights of Passage," 662; Woodhull, "Victoria C. Woodhull's Complete and Detailed Version of the Beecher-Tilton Affair," facsimile reproduction in Woodhull, *The Victoria Woodhull Reader*, 3. On the National Divorce Reform League's attempt to muster a constitutional amendment, see Halem, *Divorce Reform*, 36-40. For examples of the rhetorical devices used in calling for an amendment to the federal constitution, see William E. Gladstone, J.P. Bradley, and J.N. Dolph, "Is Divorce Wrong?" *North American Review* 149 (December 1889): 650; Noah Davis, "Marriage and Divorce," *The North American Review* 139 (July 1884): 40.

suffrage alone, and marginalized critics like Stanton that sought to reject claims of the moral establishment altogether.[57]

It looked initially as if it could go the other way. Stanton emerged from the Beecher-Tilton affair even more radicalized. Taking up Woodhull's argument that social freedom required a revolution in the social system, she sought to incorporate woman's rights into the broader world of freethought in an effort to expunge the role of religion from the nation's law and politics in order to prepare the way for the emancipation of women. In a letter to Francis Abbot, a leader in the free religion movement and the editor of the freethought publication, the *Index*, Stanton claimed that because so many women were "held in bondage to-day by the complete perversion of the religious element in her being," there was not an "Orthodox" woman on their platform. To get the woman's rights movement "out of the ruts," Stanton explained that she thought they needed to identify "with the struggle you and a few others are now making for free religion, to avert the danger to our schools, our Constitution, in fact to freedom in all directions." She also began to draw closer to Robert Ingersoll, the late-nineteenth century's most (in)famous agnostic who toured the nation giving polemical lectures about the role of religion in national life. While planning for the 1877 Convention in Washington, Stanton wrote to Isabella Beecher Hooker that she wanted to find someone to show "how degraded woman has been under all forms of religion," and suggested Ingersoll be tapped to make the argument. Although he did not attend the convention, he had included as part of his rhetorical arsenal a speech entitled "Liberty of Man, Woman,

[57] *Minor v. Happersett*, 88 U.S. at 178 (1875).

and Child," which linked the subjection of women with the reign of the church, and the improper connection between church and state in laws governing women.[58]

Stanton seemed to have concluded that only by breaking the authority of Christianity in public life could women be freed from their legally prescribed obligation to the family and stand as individuals in the eyes of the law and in the political process. She did have some success in positioning woman's rights in opposition to the role of religion in public life. The high point came in 1878, three years after the end of the Beecher-Tilton affair, at the movement's Thirtieth Anniversary Celebration in Rochester, New York. Serving on the committee for resolutions that year were an array of Stanton allies: Matilda Gage, Lucy Colman, and Amy Post, all freethinkers who agreed with Stanton's claims that the improper union between church and state had created a regime of laws that insured women's subordination. Among the resolutions they proposed, three ignited fierce debate because they singled out the Christian church as uniquely responsible for the degradation of woman, having perverted her religious nature in order to stunt her individual development and keep her in subjection through "priestcraft and superstition." Amid the many objectors was Susan B. Anthony, who tried to strike the earlier rhetorical pose of Lucretia Mott by claiming that debates about the Bible were wastes of time. Anthony had been reticent during the entire course of Beecher-Tilton scandal, instead pressing forward a plan for voting rights by introducing her own constitutional challenge to women's exclusion and serving a jail sentence after trying to vote herself. Following the debacle of Woodhull's provocations, she turned shrewd and

[58] Stanton to the Editor [Francis Abbot], *Index*, in Stanton and Anthony, *Selected Papers*, 3:265 (first quotation), 266 (second through fourth quotations). Stanton to Isabella Beecher Hooker, Nov. 28, 1877, ibid., 342 (fifth quotation). On Francis Abbot and Free Religionists, see Persons, *Free Religion*. For Ingersoll's speech, see Ingersoll, "Liberty of Man, Woman and Child," in Robert G Ingersoll, *The Works of Robert G. Ingersoll*, ed. W.P. Ferrell (New York: Dresden Publishing Company, 1909), 1:329-398.

pragmatic, apparently concluding that the strength of the moral establishment was too great to resist and required a more intense pursuit of singular aims by creating coalitions in support of specific issues. As she complained to Isabella Beecher Hooker, a frequent go-between during the entire Beecher-Tilton affair, "Has Mrs Stanton come to that, that she would ask nothing of the tyrants but just what she expects them to grant?" The inability to think strategically and to recognize stark political realities, Anthony maintained, was detrimental to the movement as a whole. "But if the Women's Rights women were only alive to the one work of assertion & assumption of the Citizens right to vote," Anthony wrote, "we should soon walk into the kingdom en masse." Anthony's pragmatic turn aligned her, in opposition to Stanton, with the religious proponents for woman's rights who sought the right to vote in order to increase the moral and religious tone of public life.[59]

But in 1878 Stanton and her allies still possessed enough rhetorical and organizational strength, so the resolutions passed over conservative and pragmatic objections. Stanton then used the resolutions in a letter to Francis Abbot, published in the *Index*, to assuage the concerns of some in the freethought movement who worried that because women were often more religious than men, giving women the vote might further increase the role of religion in American public life. She explained, "I think our liberal friends will find those touching on the religious element of woman's nature sufficiently broad to assure them that these women, armed with ballots, will not prove the dangerous element so many fear on the side of priestcraft and superstition." In response, Abbot, who had organized so-called Liberal Leagues around the country as part of his

[59] "Third Decade Celebration at Rochester, New York," in Stanton and Anthony, *Selected Papers*, 3:386-399, first quotation on p. 393; Anthony to Isabella Beecher Hooker, July 14, 1873, in Stanton and Anthony, *Selected Papers*, 2:619 (second through fourth quotations). *Emphasis in original.*

effort to complete the separation of church and state, called upon Stanton to give speeches jointly sponsored by the Liberal League and NWSA, which she happily accepted.[60]

But the breaks within the movement were beginning to show as the proponents of the moral establishment began to reassert their power both in law and in the woman's movement itself. Many liberal leagues also offered to organize Anthony's lectures, but she was markedly less enthusiastic, noting that such sponsorship deterred "the religionists." Though Stanton had won a minor battle, she was to lose the war, and Anthony's response revealed the turning tide in the movement. The Thirtieth Anniversary Resolutions were the last ones that Stanton was able to pass, and just before the passage of those resolutions, Anthony read a letter from Wendell Phillips that would, as it turned out, perfectly express the new agenda. "If I might presume to advise," he counseled, "close up the ranks and write on our flag only one claim—the ballot."[61]

Because Anthony agreed with Phillips in her desire to emphasize suffrage as the singular goal of woman's rights, Anthony and her faction increasingly saw Stanton's radical claim that woman's rights entailed the rejection of the role of religion in American public life as a threat to the exclusive suffrage aim. Perhaps sensing the tide, Stanton began withdrawing from NWSA conventions, although Anthony did try to keep her involved. In 1880, Stanton warned Anthony not to let Stanton's name come up for consideration in NWSA officer selection, "as I positively decline. My work in

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[60] Stanton to the Editor, *Index*, July 22, 1878, in Stanton and Anthony, *Selected Papers*, 3:399. For Abbot's response, see the editorial comment by Ann D. Gordon in Stanton and Anthony, *Selected Papers*, 3:400.

[61] For Anthony's concern about deterring the "religionists," see Stanton and Anthony, *Selected Papers*, 3:400 note 2; Wendell Phillips to Anthony, June 30, 1878, in ibid., 3:391 (second quotation).

conventions is [a]t an end; they are distasteful to me." But she did not retire completely from the movement. In 1881, Stanton, Anthony, and Matilda Joslyn Gage published the first of what they originally conceived as a three-volume series entitled, *The History of Woman Suffrage.* It represented Stanton's attempt to influence the current direction of the movement by narrating its past. The text bore the unmistakable mark of Stanton's hand, often drawing lessons from past battles with the church to explain the error of truncating the reform effort. In Stanton's evaluation, that response simply capitulated to forces they had once overcome, and she described the early battles in the 1840s as a contest with the church, who "took alarm, knowing that with the freedom and education acquired in becoming a component part of the Government, woman would not only outgrow the power of the priesthood, and religious superstitions, but would also invade the pulpit." Although she acknowledged that in the past "the fear of a social revolution thus complicated the discussion," she predicted that women, armed with the ballot, would "interpret the Bible anew from her own stand-point, and claim an equal voice in all ecclesiastical councils." The book began with a portrait of Frances Wright on the frontispiece, visually making her critique of the religious influence in public life the font of the woman's movement. Perhaps most provocatively, the authors included an essay by Gage, entitled "Women, Church, and State," that continued Stanton's argument that the Christian religion was historically responsible for female subordination and that the improper connection of church and state in the United States continued the degradation.[62]

But such sentiments were less and less characteristic of the woman's movement of the 1880s, and Anthony and her lieutenants increasingly stultified Stanton's supporters

[62] Stanton to Anthony, May 21, 1880, ibid., 3: 537 (first quotation); Stanton, Anthony, and Gage, *History of Woman Suffrage*, 1:16 (second through fourth quotations); Gage, "Women, Church, and State," ibid., 753-800.

at the conventions. At the 1885 National Suffrage Convention, Clara Colby, a close Stanton ally, introduced two resolutions that called for a withdrawal of support from any organization that upheld the subordination of woman, calling in particular upon the Christian church and ministry to begin teaching that man and woman were both created equally in the image of God, with joint dominion over the world "but none over each other." The introduction of the resolutions created a vigorous discussion that went into the next day, with Stanton arguing that because every form of religion in the long history of the world had degraded women, it was an imperative component of the woman's rights program. Anthony took the opposite side, agreeing that everyone wanted "woman's perfect equality—in the Home, the Church, and the State," but she objected to Colby's resolutions, because wrangling over interpretations of the bible would "be anything but profitable." It was the same divide that had existed in 1878 (and, in fact, the same one that existed at the 1860 Convention with Anthony on Stanton's side), but the terrain had changed in the interim with the Stanton faction losing its power. As a result of Anthony's "determined efforts," in the words of the fourth volume of the *History of Woman Suffrage* (which Anthony co-wrote with Ida Hustead Harper after Stanton's death), the 1885 Convention declined to endorse the resolutions. At the following year's convention Anthony read a letter from Stanton, who was once again not in attendance, essentially reintroducing the contested resolutions. Her letter created another round of argument, which again carried into the next day, with the result that "Anthony read the letter without resolution."[63]

[63] Susan B. Anthony and Ida Husted Harper, *The History of Woman Suffrage* (Rochester, NY: Susan B. Anthony, 1902), 4:58 (first quotation), 59 (second and third quotations), 61 (fourth quotation), 77 (fifth quotation).

Stanton was about to force the issue. Three years earlier at the 1888 International Council for Women in Washington D.C., she had decided that it was time to move forward with a commentary on the Bible to expose the nefarious effect of Christianity on women. After the 1890 merger between the NWSA and the AWSA, which was filled with religious partisans such as the Woman's Christian Temperance Union president, Frances Willard, Stanton withdrew even more, instead focusing her energy on what would become her *Woman's Bible*, published in two parts in 1895 and 1898. Stanton's intention was to expose the patriarchy that ran throughout the Bible, in order to limit its influence and undercut the argument of evangelical suffragists such as Frances Willard. The book was (and remains) a remarkable document, part critical commentary, part cranky tirade. It was not, in spite of its title, a new version of the Bible, but a selection of passages that touched upon women, with commentary from a selected group of women that made up the so-called Revising Committee. Her strategy was, in part, to point out the Biblical contradictions affecting women, most fundamentally the two different creation stories in the first two chapters of Genesis. In the first, man and woman were created at the same moment, equally in the image of God, and jointly given dominion over all the earth. In the second, woman was created, in Stanton's words, as "a mere afterthought. The world [was] in good running order without her. The only reason for her advent being the solitude of man."[64]

Taken as a whole, the *Woman's Bible* sought to reject the concept of women's moral authority and their responsibility for perpetuating society's moral norms. But it

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[64] Elizabeth Cady Stanton, *The Woman's Bible* (1895/1898; repr., Boston: Northeastern University Press, 1993), Part I, p. 20. For the back history of the *Woman's Bible*, see Kern, *Mrs. Stanton's Bible*, 103-106, 135-171.

possessed a certain amount of multivocality, with religious establishmentarians included on the committee in order to help Stanton make her point more forcefully. As Stanton's critical edge became clearer, some members of the Revising Committee grew concerned that her tone did not more reverently acknowledge the "Word of God." Recording the controversy in the pages of the *Woman's Bible* itself, her response was unequivocal. Stanton asked, "Does anyone at this stage of civilization think the Bible was written by the finger of God, that the Old and New Testaments emanated from the highest divine thought in the universe?" She pointed out the extended process of mediation, in which the Bible was written over a long period of time by numerous people, edited by forgotten editors, copied by forgotten scribes, translated by committee, published in multiple forms, and subject to multiple commentaries, all of which demonstrated that the Bible was an ongoing conversation, not the ossified and complete version of truth. Stanton offered her commentary on the Bible as part of that conversation, not because she viewed it authoritatively but because others did. She wanted to divest it of authority in order release its hold on both the popular mind and the partisans within the woman's movement.[65]

The resulting furor upon publication went partially according to Stanton's plan. She had both expected and counted upon criticism from religious conservatives. Their criticism resulted in publicity, and publicity generated curiosity, and curiosity generated sales, with the paradoxical result, as she wryly observed, "bigots promote the sale." Once it was published everyone understood that the Bible was largely Stanton's product, and ignoring her protestations that it was the result of a committee, attacked the *Woman's Bible* as the work of a pernicious mind, a heretical sensibility, and the logical outcome of

[65] Stanton, *The Woman's Bible*, part I, p. 61 (all quotations).

the woman's rights movement. Because it *was* largely her product, she had to defend it herself, which she did with gusto. When a clergyman claimed that the *Woman's Bible* was "the work of women, and the devil," Stanton retorted, "This is a grave mistake. His Satanic Majesty was not invited to join the Revising Committee, which consists of women alone. Moreover, he has been so busy of late years attending Synods, General Assemblies and Conferences, to prevent the recognition of women delegates, that he has had no time to study the languages and 'higher criticism.'"[66]

What Stanton did not expect was censure from her own organization. The furor over Stanton's work worried the leaders of National-American Woman Suffrage Association, the new association created by the 1890 merger of the NWSA and the AWSA. NWSA delegates had formerly tolerated Stanton's pronouncements, robbed of official endorsement, out of respect for her place in their movement's past. But when Stanton's *Bible* was published it was immediately connected with the woman's movement in religious denunciation and in the public mind, and NAWSA leaders worried that their movement was falling into disrepute. It did not help that Stanton had used the *Woman's Bible* to address her opponents, calling their reluctance to provoke religious opposition "but another word for *cowardice*." Woman's complete emancipation could not occur, Stanton maintained, "without the broadest discussion of all the questions involving in her present degradation. . . . For so far-reaching and momentous a reform as her complete independence, an entire revolution in all existing institutions is inevitable."[67]

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[66] On the general response to the *Woman's Bible*, see Kern, *Mrs. Stanton's Bible*, 172-222, first quote on 173; Stanton, *The Woman's Bible*, Part II, pp. 7 (second quotation), 7-8 (third quotation).

[67] Stanton, *The Woman's Bible*, Part I, p. 11 (both quotations), italics in original.

But the National-American Woman's Suffrage Association was not looking for a revolution, especially not one that rejected the role of Christianity in American life, and the following convention would show just how out of step Stanton had become. As the 1896 Convention opened, someone whispered to Anthony, after she had started speaking, that the meeting had not been opened with prayer. Diffident to her young lieutenants, Anthony called upon Anna Howard Shaw, a religious conservative who would be one of the movement's future leaders, to offer an invocation. Perhaps missing the omen, Anthony offered another. After the prayer she praised Anna Shaw and Carrie Chapman Catt, who would succeed her as president, and noted her delight in seeing "these girls develop and outdo their elders." With Anthony apparently oblivious, the Convention buzzed on the floor with the controversy, which exploded into the open after Rachel Foster Avery read an annual report containing the resolution subsequently known as the Bible Resolution, which disclaimed any "official connection with the so-called 'Woman's Bible.'" It was widely, and correctly, viewed as a stinging rebuke to Stanton. Once Avery read the resolution, the public jockeying began, with Anthony's own lieutenants aligned in favor of its passage. Anthony herself maintained a conspicuous silence for most of the debate, which took several days. Finally, after prompting by Stanton's supporters, she rose from her chair to come to her friend's defense, belatedly invoking the principles of religious freedom that had long been a central tenet of the woman's movement. "I shall be pained beyond expression if the delegates here are so narrow and illiberal as to adopt this resolution," Anthony exclaimed, beseeching the convention not to embark on a path that stank of "censorship" and "inquisition." Anthony pled for "religious liberty" as a core principle that they ought to follow, and

tried to show the full magnitude of their act. Notwithstanding Anthony's impassioned argument, the resolution passed 53 to 41, and the National-American Woman's Suffrage Association censured its honorary president.[68]

Stanton, of course, was personally wounded, but the censure vote only solidified what had already occurred over the last decade—the contraction of the woman's movement to the acquisition of suffrage and the disavowal of any radical revisioning of religious power in public life or in the fundamental institutions of society. Stanton's rejection of religious authority became politically anathema to pragmatists like Anthony who, whatever their personal preferences, looked to the continued hold of the moral establishment as the strongest justification of female entrance into public life. That decision is very telling about the establishment's ongoing strength at the end of the nineteenth century. Pragmatists ultimately joined religious partisans in yoking woman's rights to their avowed goal of strengthening moral prescriptions in national life. The host of resolutions concerning Sabbath-breaking, temperance, and, in Frances Willard's phrase, "home protection" that would emerge from later conventions demonstrated the rejection of the individual rights philosophy that Stanton had advocated in favor of the communal social ideals of the moral establishment. Women were to act as ciphers of a publicly approved morality in their capacity as stewards of the home, and although the projection of that responsibility onto the world at large would require a greater public role, it entailed only an extension and intensification of the rationale for the moral

[68] Anthony and Harper, *History of Woman Suffrage*, 4:254 (first quotation), 263 (second quotation), 264 (third through sixth quotations).

establishment, not the fundamental challenge that Frances Wright, Victoria Woodhull, and Stanton had offered.[69]

In trying to advance her political philosophy, Stanton had to criticize religious authority, because the legal recognition of the rights of woman as an individual and as citizen could not occur without the modification or rejection of civil law that was, in Schouler and many others' estimation, girded by "God's law." But during Stanton's lifetime that challenge would not succeed. Instead, the same year that Stanton published the second volume of her *Woman's Bible*, she republished a speech, given originally before the U. S. Senate Committee on Woman's Suffrage in 1892, called "The Solitude of Self." It was her greatest rhetorical performance and captured perfectly both her life's argument and her position at the end of life. Rather than the passive submission to authority, women needed every opportunity to be fitted for independent action, she argued, because each woman constituted a unique human soul and bore the experience, common to all, of "the immeasurable solitude of self." Each comes into the world alone, unlike any that had come before, and each leaves the world "alone under circumstances peculiar to ourself." Because "[n]o mortal has ever been [and] no mortal ever will be like the soul just launched on the sea of life," Stanton pled for fullest possibilities of individual development, including the full autonomy and individual maturity of women. That individual maturation was necessary because in all the great moments of life, men could not protect women. Taking the unquestionable womanly act to prove her point, in each childbirth women went alone "to the gates of death" where "[n]o one can share her fears, no one can mitigate her pains." Even when the birth was successful, a time would

[69] Frances Willard, *Home Protection Manual: Containing an Argument for the Temperance Ballot for Women* (New York: Published at "The Independent" Office, 1879). On the organizational fallout of the censure, see Kern, *Mrs. Stanton's Bible*, 198-206.

come when women faced death as individuals, just as men, and the Angel of Death, who "makes no royal pathway" for women, would usher them beyond life's gates. In that moment of death, each soul became an individual, and whether society acknowledged it or not "[i]n that solemn solitude of self, that links us with the immeasurable and the eternal, each soul lives alone forever." Given the surpassing solemnity of each individual soul, Stanton wondered, "Who, I ask you, can take, dare take, on himself the rights, the duties, the responsibilities of another human soul?"[70]

For all its poetry and pathos, Stanton's speech merely begged the question that lay at the heart of the debate. If God had decreed a sphere of action for women as the moral arbiters of the nation's destiny, then unless Stanton could call into question that divine decree, all of Stanton's other arguments were for naught. The work of the woman's movement in the nineteenth century did significantly expand the role of women in public life. Stanton's appearance before the Senate committee, without the apocalyptic denunciations that greeted the Grimkés, represented a real advance over the preceding sixty years. Yet the emancipation of women, particularly when the appeal to rights was not instrumentally related to the advancement of moral norms, struck at the heart of the debated role of religion in American public life. The tawdry spectacle of the Beecher-Tilton affair, Victoria Woodhull's war against marriage, the exponential increase in the number of divorces, and what religious conservatives considered the diminished moral tone in the nation's life all provided religious partisans with a justification to maintain and extend the moral establishment. Stanton's appeal to individual rights, by contrast,

[70] Schouler, *Domestic Relations*, 17; Stanton, "The Solitude of Self," in Elizabeth Cady Stanton, *The Search for Self-Sovereignty: The Oratory of Elizabeth Cady Stanton*, ed. Beth Waggenspack (New York: Greenwood Press, 1989), 160 (third through fifth quotations), 164 (sixth and seventh quotations), 166 (eighth and ninth quotations), 167 (tenth quotation).

which followed Frances Wright, the Grimké sisters, and Victoria Woodhull in their call for social revolution, tended to call into question the entire series of propositions on which the moral establishment was based. The moral establishment looked to communal obligation, the maintenance of moral ideals rooted in private religious sensibilities, the role of the family, and women's legally prescribed role within the family, to provide mediating mechanisms between the outright coercion of law and the supposed anarchy of individuals in the maintenance of public moral norms. Stanton's radical rights claims that the individual was the fundamental social unit, not the family, consistently ran up against the contrary claims of the moral establishment. Within that asymmetrical struggle, the revisioning of society that was present in the most radical claims of woman's rights succumbed to what proponents of the moral establishment claimed was the good of the whole.

CHAPTER THREE. THE CIVILIZING MISSION AND CIVIL RIGHTS

> Morality and industry generally go together. Especially in the weak tropical races, idleness, like ignorance, breeds vice. The best sermons and schools amount to little when the hearers and pupils are thriftless.
>
> —General Samuel C. Armstrong[1]

> The blacks are religious. . . . But with such ignorance among priests and people, and with the diabolical training of slavery almost compelling theft, falsehood, and unchastity, it is little wonder that much of their piety is emotional and immoral.
>
> —The Reverend Michael E. Strieby[2]

In 1898, Jabez Lamar Monroe (J.L.M.) Curry, a former slaveholder, Confederate army veteran, and member of the Evangelical Alliance, wrote the black leader Booker T. Washington to provide advice on the latter's upcoming speaking tour. Curry, who had been associated with the Peabody Fund for Negro Education since 1881 and after 1890 the head of the John F. Slater Fund for Negro Education, was an important figure in southern black education and among the strongest proponents of the moral establishment in the South. But Curry's outlook, like many figures associated with post-Civil War southern philanthropy, was not inclined toward an unconditional view of rights for freed slaves. A white Baptist minister, he held contempt for black ministers in particular and black Christianity in general as a moral code and system of values. Afro-American Christianity, he explained to Washington, emanated from slavery. In fact, in Curry's evaluation "the Negro" had a whole host of "false ideas of freedom, of education, of religion, of civil rights, of the true means of progress," due to "habits, to traditions, to

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[1] Samuel Chapman Armstrong, "Lessons from the Hawaiian Islands," *The Journal of Christian Philosophy* 3 (January 1884): 213.

[2] Michael E. Strieby, ed., *The Nation Still in Danger or, Ten Years After the War* (New York: American Missionary Association, 1875), 6-7.

ignorance, to superstition, to prejudice, [and] to appetites" that characterized slavery. The greatest task in southern black education, according to Curry, was to rid southern Afro-Americans of their slavery-bred outlooks to avert the danger they presented to American democracy.[3]

Curry's attitude revealed the contradictions and dilemmas that black Christianity posed to supporters of the moral establishment. If the moral establishment limited women's inclusion as equal citizens, because their responsibility for the home overtook their claim to individuality and equal rights, the sudden emancipation of millions of one-time slaves posed an even greater problem to the logic of the moral establishment. During slavery, Christianity was necessarily caught up in the slave system as a malleable, but equivocal tool for both slaves and masters. After slavery, Afro-American Christianity—and in particular the connection of black Christianity to black morals and mores—remained suspect at best. Of course, many Northern evangelicals whole-heartedly supported abolition. But alongside that support was the belief, later articulated by Josiah Strong, that a functioning democracy required its citizens to "have sufficient intelligence and moral character to be capable of self-government. Without such qualifications. . . liberty lapses into license and ends in anarchy." To proponents of the moral establishment, self-government required an internalized moral standard (the conscience) that was necessarily rooted in religious belief. If the religion was defective then the conscience would also be defective, and those individuals could not be trusted as agents of self-government. The problem to moral establishmentarians was that Afro-American Christianity was a central element in the black community, firmly rooted and

[3] J.L.M. Curry, to Booker T. Washington, June 3, 1898, in Booker T. Washington, *The Booker T. Washington Papers*, eds. Louis Harlan, et al. (Urbana: University of Illinois Press, 1972-1989), 4:427 (all quotations).

fervently believed. The black church formed the fundamental institution by which black communities organized, and because it was the sole cultural institution under black control it served multiple cultural, social, and economic functions. Yet white Protestants in both North and South were never certain that black Christianity was, in fact, *Christian*. They looked upon Afro-American Christianity's surviving Africanisms, its apparent emotionalism, and, in many cases, its autonomy from white control with deep unease. Even more to the point, Afro-American Christianity seemed to offer an inadequate foundation for morality, lacking, in the estimation of religious partisans, the internal system of control that ought to characterize proper Christianity and by which individuals could be trusted to act according to communal moral standards without devolving into anarchy or licentiousness. Proponents of the moral establishment worried that the ignorance of freed slaves would act in combination with what they saw as slave immorality and licentiousness to undermine the moral foundations of the nation.[4]

In order to shore up the moral foundations of the nation, defenders of the moral establishment undertook what they saw as a civilizing mission among freed slaves of the South. Northern Christians took the lead, providing charitable services and moral instruction in an effort to remake black Christianity and thereby promote the self-governing capacity of individual freed slaves. Southern white Christians, who had argued that slavery was both biblical and an important component of the southern moral establishment, joined the game late, eventually arguing that black religion and black moral capacity required a system of segregation so that the southern moral establishment was not threatened by what they viewed as the rogue moral elements of black Christians. In both cases, white Christian perceptions of black Christianity and black moral capacity

[4] Strong, *The Twentieth Century*, 91.

offered a clarifying lens of what moral establishmentarians took to be the fundamental character of Christian America and the defining features of the moral establishment.

Slave Christianity and Slave Control

In one sense the dispute over black Christian belief was an old one, because Christianity had long figured in the struggle between black people and their-would be rulers, with the twin issues of power (or empowerment) and control fundamental to black religion. Slave Christianity, which in some instances could be traced back to Northern Africa and conversion by the Spanish and Portuguese, began on a large scale with the revivals of the Second Great Awakening. After the Great Revival begun at Cane Ridge, Kentucky in 1801, itinerant preachers and enthusiasts moved throughout the Southeast, actively seeking the chance to preach the evangelical gospel to Southern slaves. Because they often needed the permission of masters, slave evangelization and slave conversion entailed an elaborate set of calculations in the often-contested relationship between master and slave. Not all slaves responded positively to evangelicalism's so-called mission to them, but many, even the vast majority did convert, in part because the emotional appeal and free worship possibilities of evangelicalism offered an outlet for the expressive orality of slave culture and an emotional harbor from the brutalities of the slave system. Masters, who had initially resisted slave evangelization because they worried that it might prompt slave insurrection or claims of slave equality, in time changed their mind and viewed slave conversion as a useful tool to insure slave quiescence.[5]

[5] See Heyrman, *Southern Cross: the Beginnings of the Bible Belt*; Butler, *Awash in a Sea of Faith*; Cynthia Lynn Lyerly, *Methodism and the Southern Mind, 1770-1810* (New York: Oxford University Press, 1998);

Because slave desire for religious autonomy conflicted with the white desire for control, the content of theology itself often became a struggle, as the egalitarian tendencies of evangelical Christianity ran up against the equally prominent New Testament passages that called for slave obedience to masters. Of course, the evangelical Christianity that slaves adopted was not necessarily the Christianity of the white establishment. Rejecting the language of submission heard from white preachers, slave Christianity blended African and Anglo religious elements to create a distinct cultural form. One of the first components that they adapted was the concept of conversion. In evangelical theology, the convert responded to the work of the Holy Spirit, who convicted the individual of sin, leading to a response of faith in God. Afro-American conversion combined the Anglo-idea of conversion with the idea of Spirit possession, a central feature of African religions of the Bantu, Yoruba, and Fante-Ashanti tribes of West Africa, from which many American slaves had originated. Reinterpreted in Christian terms, after a period of seeking the Spirit took possession of the seeker, producing an ecstatic trance in conjunction with conviction of sin, and served as a corollary proof of conversion. So important was Spirit possession that slaves often regarded a claim to faith dubious unless it was accompanied by a period of possession. Slaves modified evangelical worship as well, and spirit possession commanded a central role there, too. In slave worship, the goal was what W.E.B. Du Bois famously called The Frenzy. Slaves would steal away, under the cover of night, to meet for a separate worship services that incorporated African and Anglo worship forms. A pot of some kind was turned upside down, because slaves believed that it would catch the sound and

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Sylvia R. Frey, *Come Shouting to Zion: African American Protestantism in the American South and British Caribbean to 1830* (Chapel Hill: University of North Carolina Press, 1998).

insure secrecy. The meeting itself consisted of prayer, singing, shouting, and when a preacher was present, exhortation, but did not conform to white forms. Perhaps most unusual (and problematic after emancipation) was the shout, or ring shout, which seemingly derived from African custom. Participants would gather in a circle and shuffle slowly around, accompanied by hand clasping, singing, and foot stomping. Distinguished from a dance, which some thought was sinful, a shout required all feet to remain on the floor without ever crossing. Also important was antiphonal singing and preaching, in which participants engaged one another in characteristic verbal forms, emphasizing call and response, polyrythm, and syncopation, which brought the whole group into the Spirit. When the goal was reached, in Du Bois's words, it "varied in expression from the silent rapt countenance or the low murmur and moan to the mad abandon of physical fervor,—the stamping, shrieking, and shouting, the rushing to and fro and wild waving of arms, the weeping and laughing, the vision and the trance." Ultimately, the frenzy was evidence of contact with the divine, and spiritually transported slaves from where they were into heaven. Because slave theology and worship did not conform to white standards, the slave practice of stealing away to meet without the supervision or knowledge of masters created an autonomous system of theology and religious expression that the Afro-American religious historian Albert Raboteau has called the invisible institution of slavery.[6]

[6] W.E.B. Du Bois, *The Souls of Black Folk*, eds. Henry Louis Gates, Jr. and Terri Hume Oliver (1903; repr., New York: Norton, 1999), 120 (quotation). On the overturned pot and the invisible institution of black religion more generally, see Albert J. Raboteau, *Slave Religion: The "Invisible Institution" in the Antebellum South*, Updated ed. (New York: Oxford University Press, 2004), reference to the pot on p. 215. On the ring shout and the significance of spirit possession in black Christianity, see Charles Joyner, "'Believer I Know': The Emergence of African-American Christianity," in *African-American Christianity: Essays in History*, ed. Paul E. Johnson (Berkeley: University of California Press, 1994), 29-30. On the oral expressiveness of slave culture, see Cornel West, "The Prophetic Tradition in Afro-America," in *African*

In tension with the autonomous, invisible black religion was the reality of white Christian institutions into which slaves moved when they converted. When slaves accepted Christianity it opened the door for masters to achieve a greater penetration into black culture than by any other means, and both surrounding and limiting the invisible institution of slave religion were the visible, institutional churches of the South. Masters and slaves usually worshipped together on Sunday, with slaves segregated on benches in the back, in the balcony, or in an adjacent lean-to where they could still hear the sermon. Slaves made up twenty to forty percent of Baptist churches, and were sometimes in the majority in individual congregations. Aside from free black congregations (which were rare in the South), white clergy and masters always retained control. Slave membership in white churches was usually voluntary (with some exceptions), and connoted some measure of acceptance and submission to the white spiritual authority. Because white clergy were in many ways dependent upon the goodwill of masters, if they did not own slaves themselves, very few sought to improve the conditions of bondage under which slaves lived, even if they were inclined. Instead they often offered moral prescriptions through their sermons, catechisms, and Sunday Schools, reminding slaves that it was their spiritual duty to obey, to be content, and not to steal, lie or run away. Slave acceptance of white instruction became a way of insuring, at least in the minds of slave owners, that slaves' moral standards, enforced by divine sanction, made them docile and quiescent workers.[7]

American Religious Thought: An Anthology, eds. Cornel West and Eddie S. Glaude, Jr. (Louisville: Westminster John Knox Press, 2003), 1043.

[7] On slave seating and membership in white-controlled churches, see John Boles, *Black Southerners, 1619-1869* (Louisville: University of Kentucky Press, 1983), 158. On slaves' relative freedom in joining a church, see Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: Vintage Books, 1972), 188-190. On the white clergy's admonition to slaves, see John Blassingame, *The Slave*

Between these two worlds—the visible world of the slave system and its Christianity and the invisible church of slave religion—stood the figure of the slave preacher. Achieving renown as a man of words, the preacher was both deeply connected to the other participants in slave religious life and acquired authority as the person at the center of the religious ritual. His authority came with certain privileges. Some preachers did not have to engage in hard manual labor and were relatively free to minister as they pleased. One former slave explained that the preacher on her plantation walked about "all dressed up" in a frock coat and "store bought shoes," conducting services as he wished and traveling to other places to hold prayer meetings. Privileges came with risk, though, as many preachers became the focal point of pressure from white masters to keep slave Christianity safely within the bounds of the slave system. Transgressing these bounds could mean working in the fields with the rest of the slaves and the loss of other privileges. Straddling these conflicts produced a share of rascals, whose call was primarily to status and privilege, and, as Raboteau has noted, possibly formed the basis for folktales about the so-called jackleg preacher.[8]

Because the preacher was a mediating figure, evaluations by both slaves and masters were often ambivalent, if not contradictory. Some former slaves criticized slave preachers as "the mouthpiece of masters," but many masters feared that, as one former slave put it, "preachers were ruining the colored people." Denominations sought to control preachers by a system of licensing, although underground, unlicensed preaching

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Community: Plantation Life in the Antebellum South, 2nd ed. (New York: Oxford University Press, 1979), 83-89.

[8] On the authority of the slave preacher, see Joyner, ""Believer I Know"," 26-27. On slave preachers' privileges and responsibilities, see Raboteau, *Slave Religion*, 233-237. The quote from the former slave is from Raboteau, *Slave Religion*, 233.

still seems to have flourished. When a white church founded a slave congregation, whites forbade slave ministers or church leaders from participating in denominational gatherings and required that white delegates represent them at association and state meetings. Slaves preachers had to work within this system without succumbing entirely to white control, and as a result of the precarious position, the slave preacher required great dexterity—moving at once with slaves and masters—reinforcing his ambivalent image. Though not specifically referring to the slave preacher, Du Bois again summarized the status of the black preacher best as "the most unique personality developed by the Negro on American soil. A leader, a politician, an orator, a 'boss,' an intriguer, and idealist,—all these he is, and ever, too, the centre of a group of men, now twenty, now a thousand in number."[9]

Precisely because the slave preacher lived at "the centre of a group of men," he was an important figure to both master and slave. The slave system incorporated almost every element of society, whose goal was the maintenance of the system itself. Pressure came from individual masters, churches, and denominational agencies on slave Christianity and the slave preacher, to keep it within the bounds of the slave system. Simultaneously, the slave preacher as a folk leader sought slave autonomy and control of religion expression within that system. In short, Christianity, and the slave preacher as the chief representative of slave Christianity, had a contested cultural significance for the system of slavery and figured centrally in slaves' ongoing struggle for self-determination and in masters' attempt at efficient slave management.

[9] Du Bois, *The Souls of Black Folk*, 120 (third quotation). For the conflicting evaluations of slave preachers and the practice of licensing, see Raboteau, *Slave Religion*, 134-36, 232, 238. On slave preachers' restricted participation in denominational life, see Blassingame, *The Slave Community*, 91-92.

There the tension stayed until emancipation, after which the uneasy compromises worked out in slavery had to be renegotiated under even more complicated conditions. The most immediate black response to emancipation was a desire for ecclesiastical separation, with former slaves leaving their white-controlled churches in droves in explicit rejection of what many masters thought was a desirable arrangement. Lucius Holsey, an early bishop in the Colored Methodist Episcopal (C.M.E.) denomination, formed in 1866 in response to slave desire to leave Southern Methodism, elaborated why separation was necessary. Although "the war had changed the ancient relation of master and servant," he explained, masters still carried "all the notions, feelings, and elements in his religious and social life that characterized his former years." Although many white, southern church spokesmen warned against a hasty departure by freedmen, the conditions the white establishment set for their stay largely predetermined the outcome. The Alabama Baptist Convention of 1865, for example, confidently proclaimed, "the changed political status of our late slaves does not necessitate any change in their relation to our churches." Freedmen were expected to sit, as before, in a segregated area and abide by the discipline of white churchmen and their former white masters. Black ministers in all denominations were kept to strict rules when governing their churches, and in some cases were still required to find white representatives at denominational gatherings. The continuation of the status quo did not appeal to freed people, of course, and black ministers led many into autonomous Baptist congregations where the minister and leaders had maximum control over church life.[10]

[10] Lucius Holsey, "The Colored Methodist Episcopal Church," in *Afro-American Religious History: A Documentary Witness*, ed. Milton C. Sernett (Durham: Duke University Press, 1985), 235 (first quotation), 235-236 (second quotation). On white conditions set for black stay in churches and the quote from

When it became apparent that freed people were leaving regardless of their proclamations, white church leaders swung to a hasty affirmation that perhaps racially segregated congregations were desirable after all. Once decided, Southern denominations embraced the idea of separation with a convert's zeal. Fear of social mixing began almost immediately after freedmen were out from under their control. In the Southern Baptist Convention, this shift happened amidst an overwrought debate in 1869 over the formation of a Freedmen's Department under the auspices of the Domestic Mission Board. Passionately denouncing the plan, critics reminded delegates that their erstwhile slaves were "easily puffed up," and warned that interracial churches and denominational support would move according to an inexorable logic, whose end would require white members "to admit them [former slaves] to your homes, to your tables, and lay them upon your beds." Given the aroused state of convention members, moderates could muster only a statement exhorting state associations and conventions "to pay special attention to the religious instruction and spiritual interests of the colored people," but could not create a department for freedman assistance.[11]

The sinister overtones of the convention's exhortation "to pay special attention" to freedpeople were probably not accidental. Southern white church leaders and parishioners, though they deplored the idea of social mixing, could only look with great unease at independent black churches, fearing that they were becoming havens for political organizing out of white control that would perpetuate the supposed moral

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Alabama Baptist Convention *Minutes*, see Kenneth Bailey, "The Post-Civil War Racial Separations in Southern Protestantism," *Church History* 46 (December 1977): 455-456, (third quotation on p. 455).

[11] For a full account of the 1869 Southern Baptist Convention controversy and the meager denomination aid given to freed people by southern whites, see Bailey, "The Post-Civil War Racial Separations in Southern Protestantism," 468-473 (first quotation on p. 469, second quotation on p. 470).

disorder that masters had long complained about slaves. The result was what the southern historian Paul Harvey has dubbed "a dialectic of paternalism and violence." White churches occasionally issued pious proclamations that they needed, out of Christian duty, to help freed slaves, but their actual financial contributions did not amount to much. Meanwhile, vigilante acts of violence insured that black churches remained on notice not to stray too far from what white churches saw as acceptable bounds.[12]

Reconstruction and the Civilizing Mission

Although southern white distrust of black churches would become an important consideration after Reconstruction, at least initially southern white attitudes were not the most important consideration in the post-War reconstruction of the southern moral establishment. Emancipation placed freed slaves in the midst of a messy political struggle, as black Christianity acquired even more importance as the stakes for controlling the so-called freedmen were upped on all sides. Freed people, of course, primarily wanted control over their lives, but as in slavery the control of the black church became an important consideration to all who wanted controlling interest in the Reconstructed South. In particular, the renewed mission to the slaves became a significant component of the larger northern evangelical goal of reinforcing their Christian Nation ideal and maintaining the moral establishment. The key issue to those pushing for a new moral establishment in the South, which included the many freedmen's aid societies sponsored by Christian churches working in close cooperation with the

[12] Paul Harvey, *Redeeming the South: Religious Cultures and Racial Identities among Southern Baptists, 1865-1925* (Chapel Hill: University of North Carolina Press, 1997), 52-60.

federal government, was whether or not black Christianity, born in the cultural milieu of the slave structure with its reliance on exterior rather than interior compulsion, could provide the internal moral guidance to enable freed people's success in the free labor system. It was, in fact, a commonplace, dating back to the Revolutionary era, to link industry and morality as twin and related objectives in the creation and maintenance of religious and educational societies that were necessary in the preservation of American freedom. The 1776 Pennsylvania Declaration of Rights, for example, claimed that "firm adherence to justice, moderation, temperance, industry, and frugality" were "absolutely necessary to preserve the blessings of liberty." In similar manner the 1836 Arkansas Constitution proclaimed it the duty of the legislature to pass laws guaranteeing the "rewards and immunities" of organizations that "countenance and encourage the principles of humanity, industry, and morality." The issue in both cases, and in many other examples that could be cited, was that participation in certain organizations—often religiously directed educational societies—provided individuals with the necessary moral temperaments to make them good and productive citizens. In the minds of northern proponents of the moral establishment, those moral temperaments gained their ground through religious commitment and ideals. Because they regarded Afro-American Christianity, with its connection to the slave system, as an inadequate ground for black morality, northern Christians undertook a civilizing mission as part of their vision of Reconstruction, in order to remake both black Christianity and black Christians into what they regarded as reliable moral individuals and productive citizens.[13]

[13] Pennsylvania Declaration of Rights of 1776, art. XIV; Arkansas Constitution of 1836, art. VII, sec. 1. See also the Massachusetts Constitution of 1780, part II, ch. V, sec. 2; New Hampshire Constitution of 1784, art. XXXVIII; Indiana Constitution of 1816, art. IX, sec. 1.

Slaves, of course, entered a world of precarious existence on emancipation day, lacking money, land, and, in many cases, the goodwill of their former white masters. Mere survival required effort and ingenuity. To meet the real needs that came of the war, an army of volunteers and agents from the benevolent societies of the North poured into the South with the advancing battlefront to effect, in the phrase of the historian Joe M. Richardson, a "Christian Reconstruction." At the head of the group in terms of size and dollars was the mammoth American Missionary Association (AMA). A league of abolitionist societies organized in 1846, the AMA dedicated itself to both the abolition of slavery and the establishment of a Protestant Christian America. In directing post–Civil War northern philanthropy and charting the course of the civilizing mission, the AMA wielded unparalleled influence. In the twenty-five years after the Civil War, the AMA began several institutions of higher education and countless normal schools to train teachers throughout the South. By 1888, of the estimated fifteen thousand black teachers in the South, nearly half had been trained in AMA schools. Its commanding position stemmed from its wealth. Made up of primarily wealthy Congregationalists and Unitarians, the AMA's operating budget, totaling almost seven million dollars between 1861 and 1889, was as large as all other benevolent societies combined. That amount constitutes nearly one-third of all northern benevolence for southern relief over the period. Given the relative scarcity of resources for post-emancipation support, the AMA's commanding financial position made it a dominant policy player before the inauguration of Jim Crow.[14]

[14] On the operating budget of the AMA compared to other benevolent societies, see Ralph Luker, *Social Gospel in Black and White: American Racial Reform, 1885-1912* (Chapel Hill: University of North Carolina Press, 1991), 13. For a general history of the AMA and its predominance in teacher training, see Joe M. Richardson, *Christian Reconstruction: The American Missionary Association and Southern Blacks,*

But the benevolence of the AMA and other missionary societies did not come without strings. In addition to being a vehicle for northern philanthropy, the AMA was a *missionary* society, committed to inculcating civilization in what it considered the backward races of the South as an accoutrement to its offer of tangible aid. Central to the AMA vision for the remaking of the South was the education and Christianization of former slaves. Although slaves had converted to Christianity in large numbers prior to the Civil War, the AMA looked upon the surviving Africanisms and distinctive worship forms of Afro-American Christianity with distrust, worrying in particular that slave religion was an expression of freed slaves' ignorance and supposed viciousness that would burgeon in the South with the high birthrates of African Americans. To effect a moral reconstruction the AMA sought continuously to keep what they considered the obligation of Northern Christians to Christianize and civilize the freed slaves before the public mind. In its 1875 pamphlet, "The Nation Still in Danger, or Ten Years after the War," AMA representatives warned, "the education and morality of the Negro is the only safety for the South and the Nation." The AMA's secretary, the Reverend Michael E. Strieby, further elaborated the logic by acknowledging that "[t]he blacks are religious," but he qualified his evaluation. Because he saw "such ignorance among priests and people, and with the diabolical training of slavery almost compelling theft, falsehood, and unchastity," Strieby argued that it was unsurprising that "much of their piety is emotional and immoral." In other words, following the conventional dictum that a rightly formed religion was the basis of a properly grounded morality, Strieby claimed that black religion did not offer the moral guidance necessary to restrain individual transgression

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1861-1890 (Athens, GA: University of Georgia Press, 1986), 119 (quotation). On the AMA's plan of operation and concern for the region, see Strieby, ed., *The Nation Still in Danger*.

and that the putative antisocial tendency of the freedpeople increased the risk of racial antagonism. So although Christians should "do more for the distant heathen," Strieby advised his readers that, for the good of the nation, foreign missions ought not to trump the great mission field of "the blacks at our doors." Theodore Woolsey, the ex-president of Yale University and a leader in the Evangelical Alliance, agreed with Strieby, confessing that he was "sorry to be obliged" to believe that as long as southern blacks and their leaders remained illiterate, "their own religion . . . will not save them and the country from the evils, which may grow out of collision of races." To save the nation, southern blacks needed to be taught a "sound religion and morality" that would make them "prudent, cautious of offense, kind to all, peaceable." Washington Gladden, another prominent minister who would later become the AMA president and whose name would be synonymous with the social gospel, made the civilizing mission explicit. The South required a moral reconstruction, because "[t]here will be no peace at the South till the South is civilized, and men are not civilized by edict."[15]

What was true Christianity to the AMA? Its answer derived from the profound economic changes already well underway in the North as a result of the industrial revolution. Many scholars have noted that the industrial transformation produced what Eric J. Hobsbawm has called the "conquering bourgeois," whose victory as a class proved, at least in their own eyes, the superiority of the system of values that enabled their eventual triumph. The bourgeois ideology, sometimes labeled the ideology of free labor, became the dominant view of northern sectionalism in the lead-up to the Civil War. Proponents of free labor viewed slave labor as morally inferior since wage earners could

[15] Strieby, ed., *The Nation Still in Danger*, 2 (second quotation), 6 (third and fourth quotations), 7 (fifth quotation), 8 (sixth and seventh quotations), 11 (eighth through eleventh quotations), 15 (twelfth quotation).

rise through their own thrift and industriousness to financial independence in a free labor system. The AMA thought that Protestant Christianity was integral to that system, because Christianity alone produced the virtues of discipline, moral sobriety, self-control, and seriousness of purpose necessary for economic success. In its most crass form, the success ethic of the AMA meant that those who prospered reaped the just reward for their inner virtue, which resulted in their upward social mobility. Conversely, the poor were poor because of their own thriftlessness, laziness, and self-indulgence.[16]

When they evaluated freed slaves, AMA leaders connected the bourgeois idea of free labor to what they viewed as the former slaves' racial degradation, and slave religion, in particular, became the quintessential expression of what they considered the former slaves' stunted racial development that made them unfit for work in a free labor system. In the minds of AMA leaders, African American religious ritual seemed to offer an emotional escapism detached from morality. The emotionalism of black Protestantism, in the AMA's estimation, encouraged idleness and dissolution because it promoted an otherworldly orientation among freed slaves, to the neglect of the present world. To prepare freed slaves for the new economic system, then, the AMA thought that black Christianity, with its surviving Africanisms and ostensibly otherworldly orientation, needed to give way to the liberal Christianity of the AMA as a first step in the acquisition of the virtues necessary for economic success in a free labor system.[17]

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[16] Eric J. Hobsbawm, *The Age of Revolution, 1789-1848* (1962; repr., New York: Vintage, 1996), 3 (quotation); Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War,* 2nd ed. (New York: Oxford University Press, 1995), 11-39.

[17] Many writers have noted the bourgeois character of nineteenth-century civilizing missions. See Frederick Cooper and Ann Laura Stoler, eds., *Tensions of Empire: Colonial Cultures in a Bourgeois World* (Berkeley: University of California Press, 1997), 2-4, 10-11, 18-33, 59-86, 167-72, 181-86, 352; John Comaroff, "Images of Empire, Contests of Conscience: Models of Colonial Domination in South Africa," in Cooper and Stoler, eds., *Tensions of Empire*; Thomas C. Holt, "'An Empire over the Mind':

The AMA's mission was also tightly connected to U.S. government policy. In July 1864, a convention of benevolent associations met in Indianapolis to discuss how best to cooperate on the religious reconstruction of the South. Declaring that the Civil War promised a grand opportunity for Christian benevolence and expressing disappointment that no bureau had yet been created for oversight of the freed slaves, the convention spent two days crafting a petition to President Lincoln. Several such petitions finally yielded a bill creating a Bureau of Refugees, Freedmen and Abandoned Lands, popularly known as the Freedman's Bureau, which was charged with "*control of all subjects relating to refugees and freedmen from rebel states.*" The purpose of the bureau was to offer "supervision and care" to all loyal freedmen in order to "enable them as speedily as practicable to become self-supporting citizens of the United States." Most significantly, the bill required that the commissioner of the Bureau "at all times coöperate

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Emancipation, Race, and Ideology in the British West Indies and the American South," in *Region, Race, and Reconstruction: Essays in Honor of C. Vann Woodward*, eds. J. Morgan Kousser and James M. McPherson (New York: Oxford University Press, 1982), 288-300; Alice Conklin, *A Mission to Civilize: The Republican Idea of Empire in France and West Africa, 1895-1930* (Stanford: Stanford University Press, 1997), 14-16, 214, 228, 236, 244; Philip D. Curtain, ed., *Imperialism* (New York: Walker and Company, 1971), 177-247. At the same time, scholars across the ideological spectrum have begun interrogating what in the 1970s had become conventional wisdom: that race and class constitute contradictory modes of analysis. As Barbara J. Fields explains, "Class and race are concepts of a different order; they do not occupy the same analytical space, and thus cannot constitute explanatory alternatives to each other." Barbara J. Fields, "Ideology and Race in American History," in Kousser and McPherson, eds., *Region, Race, and Reconstruction*, 150. Reflecting Fields's insight, a flourishing literature has begun to show the myriad ways in which race, class, and even gender intersect to form complex, imbricated fields of power, particularly in colonial contexts. See, for example, Douglas A. Lorimer, *Color, Class and the Victorians: English Attitudes to the Negro in the Mid-nineteenth Century* (New York: Holmes & Meier, 1978); Stuart Hall, "Race, Articulation, and Societies Structured in Dominance," in *Sociological Theories: Race and Colonialism* (Paris: UNESCO, 1980), 305-345, esp. p. 325; Paul Gilroy, *There Ain't No Black in the Union Jack: The Cultural Politics of Race and Nation* (London: Hutchison, 1987); Thomas C. Holt, *The Problem of Freedom: Race, Labor, and Politics in Jamaica and Britain, 1832-1938* (Baltimore: Johns Hopkins University Press, 1992), 308-09; John Solomos and Les Back, *Racism and Society* (New York: St. Martin's Press, 1996), 88-94; Ann Laura Stoler, "Rethinking Colonial Categories: European Communities and the Boundaries of Rule," *Comparative Studies in Society and History* 31 (January 1989): 134-161; Susan Thorne, "'The Conversion of Englishmen and the Conversion of the World Inseparable': Missionary Imperialism and the Language of Class in Early Industrial Britain," in Cooper and Stoler, *Tensions of* Empire, 238-262, esp. pp. 47-54; Ann Laura Stoler, *Race and the Education of Desire: Foucault's History of Sexuality and the Colonial Order of Things* (Durham: Duke University Press, 1995), 10-16; Kevin Gaines, *Uplifting the Race: Black Leadership, Politics, and Culture in the Twentieth Century* (Chapel Hill: University of North Carolina, 1996), xiii-xvi, 1-17.

with private benevolent associations of citizens in aid of freedmen, and with agents and teachers duly accredited and appointed by them." Cooperation, the bill went on to say, included providing buildings by lease or hire for purposes of education, so long as the association provided teachers and the other means of instruction. Because the AMA so dominated the field in providing educational services to the freed slaves, the Freedmen's Bureau worked with it as something like an equal partner.[18]

The eventual choice of Oliver Otis Howard to lead the Freedmen's Bureau further reinforced the general affinity between the two organizations. A Union General and devout evangelical Christian who found Christianity at an 1857 church meeting in Florida, Howard was endearingly called "the Christian General." Though he denied that he favored the AMA, Howard used his position to form a significant cooperation between the two organizations. In part, cooperation was natural because both organizations had similar views of supposed black degradation and moral laxity. Immediately after his appointment, Howard issued his first circular letter laying down initial policy instructions to Bureau agents. He wanted it made clear to each freedman that "on no account, if able to work, should he harbor the thought that the Government will support him in idleness." Four days later, Howard followed up with another circular instructing agents that in addition to removing the purported reluctance of some erstwhile masters against employing their former slaves, they needed to correct what he saw as the "false impressions sometimes entertained by the freedmen that they can live without labor" and to overcome the "singular false pride" that, in his estimation, allowed freedmen to live off contributions rather than work. He further reminded his agencies that rather than

[18] Oliver Otis Howard, *The Autobiography of Oliver Otis Howard, Major General, United States Army* (New York: Baker and Taylor, 1907), 2:584 (first and second quotation), 585 (third and fourth quotations), italics in original.

competing with the benevolent agencies already at work in the South, the goal was to "systematize and facilitate them" in their attention to the "education and moral condition" of freedmen. Howard's outlook shaped the organization, and his views were reproduced on the ground. In 1870, for example, a white superintendent of Louisiana schools reported that although many black students were religious, in the black community "the most heathenish vagaries and superstitions are encouraged and the grossest imoralities [s*ic*] tolerated." Because "their religion takes on gross forms and is not always followed by the virtue of morality," he continued, religious retraining provided a fundamental task for schooling, in order to inculcate a reliable, bourgeois character.[19]

The general ideological affinity between the two organizations soon blossomed into a tight administrative cooperation that began at the top and worked down. In 1865, the Bureau's superintendent of education, John W. Alvord, introduced Howard to George Whipple, the AMA executive, in part to allay Whipple's concerns that the AMA would be frozen out of Freedman's Bureau assistance. Whipple need not have worried. Alvord himself was an evangelical abolitionist with long ties to Whipple, and the AMA had considered employing him as corresponding secretary the previous year. Within a few months of their meeting, Howard and Whipple became good friends and often exchanged letters of advice. In 1866, Whipple sent Howard a letter explaining how the Bureau could best assist benevolent societies, and Howard's eventual policies on transportation, rations, and rental of land and equipment were very close to Whipple's suggestion. This

[19] Richardson, *Christian Reconstruction*, 76 (first quotation); Howard, *Autobiography*, 2:213 (second quotation), 220-221 (third quotation), 221 (fourth and fifth quotations); E.W. Mason, "'Superintendent's Revolt': Ninth Semi-Annual Report on Schools for Freedmen, January 1, 1870," in *Semi-Annual Reports on Schools for Freedmen, Numbers 1-10, January 1866-1870*, ed. John W. Alvord, *Freedmen's Schools and Textbooks Series* (New York: AMS Press, Inc., 1980). For Howard's account of his conversion to evangelicalism, see Howard, *Autobiography*, 1:82. I am indebted to David L. Davis for alerting me to the Alvord work in general and the Mason quotation in particular.

cooperation extended to personnel as well; each fired their subordinates if the other made the request. In addition, the AMA commissioned many Freedman's Bureau agents as AMA missionaries, in an elaborate system of dual appointments that blurred the organizational boundaries and increased the AMA's prominence in the attempt to reconstruct the Afro-American Christians.[20]

Nowhere was this elaborate cooperation more apparent than in the creation of freedmen's industrial school, Hampton Institute, started by another Christian General, Samuel C. Armstrong. Armstrong grew up in Hawaii under missionary parents and attended Williams College, where he came under the influence of its president, Mark Hopkins, a Congregationalist and leading member of the Evangelical Alliance. After working as the commander of a black regiment from Maryland during the Civil War, Armstrong moved into the Freedmen's Bureau in 1866 as the assistant superintendent for Virginia. Almost as soon as he assumed this new position, he began laying the foundation for what he called an industrial school. His first step was to publish a "Letter of Appeal" in early 1866 in the AMA's magazine, *American Missionary*, explaining his philosophy of industrial schools and urging their creation to uplift freed slaves in the South. Later that year, Armstrong met with northern philanthropists and businessmen, including Robert C. Ogden, a manager for the department store magnate John Wanamaker, to further explain the idea of industrial schooling and its place for the uplift of freedmen. Because George Whipple, head of the AMA, was slow to warm to the idea of industrial schooling, Armstrong enlisted Mark Hopkins, future-president James Garfield (who he

[20] For an extended account of Freedmen's Bureau and AMA cooperation, see Richardson, *Christian Reconstruction*, 75-84. On the practice of dual appointments, see E. Allen Richardson, "Architects of a Benevolent Empire: The Relationship between the American Missionary Association and the Freedmen's Bureau in Virginia, 1865-1872," in *The Freedmen's Bureau and Reconstruction: Reconsiderations*, eds. Paula A. Cimbala and Randall M. Miller (New York: Fordham University Press, 1999), 121.

knew from his days at Williams), and Edward P. Smith, AMA secretary and liaison to the Freedmen's Bureau, in choosing the site and lobbying Whipple. By July 1867, Armstrong had enlisted the support of Oliver Howard, the Freedman's Bureau Commissioner, and secured $44,000 for the plan. With a site chosen, money in hand, and the backing of Howard, Whipple conceded, and the plan went ahead. In November 1868 while he was still on staff at the Freedman's Bureau, the AMA commissioned Armstrong as a missionary in his work at Hampton, solidifying his connection with both organizations.[21]

Though he had initially had a hard time persuading Whipple to accept his idea of industrial schooling, if anything Armstrong's view of industrial education further demonstrated the connection of racial developmentalism and bourgeois values that dominated the AMA and the Freedmen's Bureau and revealed the moral establishmentarian ambitions of both. According to Armstrong, bondage had inculcated slaves with a weakened character, particularly in their desire for work. In part, their desire not to work was a racial trait of "weak tropical races," in which "idleness, like ignorance, breeds vice." To combat those alleged racial traits, Armstrong lifted his plan of industrial schooling directly from his father's missionary practices in the Hawaiian Islands, arguing that freed slaves and island natives both possessed "not mere ignorance, but deficiency of character." According to Armstrong, slavery had exacerbated the racial tendency of freed slaves and bequeathed to them "improvidence, low ideas of honor and

[21] On Armstrong's history in Hawaii, schooling under Hopkins, and early maneuvering to establish Hampton Institute, see Robert Francis Engs, *Educating the Disfranchised and Disinherited: Samuel Chapman Armstrong and Hampton Institute, 1839-1893* (Knoxville: University of Tennessee Press, 1999), 1-69. On the practice of dual AMA and Freedmen's Bureau appointments, the multiple personnel and ideological connections between the two organizations, and Armstrong's maneuvering and AMA commission, see Richardson, "Architects of a Benevolent Empire," 121, 133-36, 139. See also Richardson, *Christian Reconstruction,* 101-102.

morality, and a general lack of directive energy, judgment, and foresight." The problem, in Armstrong's estimation, was not a lack of skill or money, but "one of morals, industry, self-restraint; or power to organize society, to draw social lines between the decent and indecent, to form public sentiment that shall support pure morals." Afro-Americans did not possess true morality, in Armstrong's appraisal, because "they do not possess its conditions, which require self-control rather than pure devotional life."[22]

Following the plan he laid out in his appeal, Armstrong sought to create a school that taught freed slaves necessary skills for the New South and, perhaps most importantly, inculcated them with the *character* that, he concluded, if they ever had, had been lost or damaged by their time in slavery. The curriculum omitted all study of the classics. He required students to work, paying for half of their room and board in cash and half in labor. The trustees found benefactors to pay for student tuition, $70 a year per student in 1873–1874. Although on occasion Armstrong put forward the provision of work as a practical necessity so that poor black girls and boys (though many were actually adults) could attend, its economic function was secondary to its educational purpose. Admitting that "such an education must be in the outset expensive," Armstrong dismissed economic concerns because the goal of industrial schooling was not economic self-sufficiency. Instead, he saw manual labor as central to the educational process itself because "[c]haracter is the best outcome of the labor system. That makes it worth its cost many times over. It is not cheap, but it pays."[23]

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[22] Armstrong, "Lessons from the Hawaiian Islands," 213 (first through third quotation), 214 (sixth quotation); Samuel Chapman Armstrong, *Armstrong's Ideas on Education for Life*, ed. Francis Greenwood Peabody (Hampton, VA: Hampton Institute, 1926), 41 (fifth quotation), 44 (fourth quotation).

[23] For Hampton's curriculum, cost, and benefactors, see M.F. Armstrong and Helen Ludlow, *Hampton and Its Students* (New York: G.P. Putnam's Sons, 1874), 168-169. For Armstrong's views on the cost and

Behind Armstrong's concern for character was the belief that religion and morality were intimately connected. Armstrong affirmed that Christian evangelical conversion was "the starting-point of a better life," but added to conversion was labor, because "if man is to work out his own salvation, he must learn how to work." Summarizing his point, Armstrong declared that "morality and industry generally go together." In Armstrong's view, labor was a powerful moral agent that conferred upon the laborer diligence, honesty, and virtue, thereby offering reformers the perfect tool to reorient the ostensibly deleterious training suffered by the freed slaves under the slave system. Alongside labor, Armstrong was a strong believer in the co-education of males and females, because "if a race is to be saved it is by creating the unit of Christian civilization, the family." Women needed the benefit of labor just as much as men, and he claimed that the marriages of industrial school graduates furthered the Christian ideal. Because of the complex goals of the educational mode, industrial schooling was, as Armstrong fully admitted, "*parental*," with teachers acting as parents, foremen, and instructors to the students in a mission to remake freed slaves.[24]

As Armstrong's writing showed, the AMA's civilizing mission, operating with the full support of the Freedman's Bureau, was equal parts racist paternalism and classic liberal thought. In the free labor ideal of the nineteenth century, the AMA regarded all people as equal before the law, but the guarantee of equality was strictly formal. So long as the law did not actively discriminate between persons, any structural or substantive claim of inequality was outside the purview of the law, and though some individuals

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benefits of industrial education, see Armstrong, *Armstrong's Ideas on Education for Life*, 18 (first quotation), 23 (second quotation).

[24] Armstrong, "Lessons from the Hawaiian Islands," 213 (third quotation), 214 (first, second, and fifth quotation), 216 (fourth quotation).

might possess better opportunity, family resources, or bargaining positions that perpetuated or resulted in profound actual inequality, so long as anyone could adopt the necessary values for success in the free labor system, classical liberalism called the system fair. Of course, the civilizing mission had a dark side, and it is not hard to see it as an attempt to acquire cultural control rather than simply an expression of humanitarian concern. Many in the AMA thought that freedom required freed slaves to absorb a specific set of cultural values that would act as an *internal* system of control. If former slaves as a group failed to internalize those cultural values, the freedpeople posed a threat to the American democratic experiment. As the historian Thomas C. Holt has argued of the British civilizing mission in the Jamaican colonies (but with equal applicability to the United States), work-discipline became "both the source and test of internal control, and those who failed to demonstrate that discipline were fit only to be ruled by others." That contradiction would become the Achilles heel of the civilizing mission, allowing southern whites to invoke the very same premises when justifying segregation.[25]

Booker T. Washington: Colonized and Colonizer

With southern black Christians seeking autonomy, white southerners seeking racial control, and northern white Christians seeking moral reconstruction, the field was pretty much set. But an unexpected participant arrived in 1880s, who would try to control, massage, divert, and manipulate the various interests seeking to control Afro-Americans in the South by appealing to the moral establishment and the civilizing mission. Booker T. Washington's historical legacy has suffered from his role in

[25] Holt, *The Problem of Freedom*, 308-309. On the internal tensions of liberalism, see also Mehta, "Liberal Strategies of Exclusion."

perpetuating the civilizing mission, and it is an ongoing question how to understand him, as the civilizing mission's principal instrument or as its principal victim.

Washington came of age when the AMA still exerted a dominant influence on northern philanthropic work in the South, and he received his education at Hampton, where he internalized the values of the civilizing mission. Washington was Hampton's star pupil, and General Armstrong was so pleased with his protégé that in 1881, after the Alabama legislature created a school for African Americans called the Tuskegee Institute, he recommended Washington for the new position of principal. But when Washington arrived in Alabama, his school existed only in theory, with no buildings, no books, and no teachers. Because the legislature had already set state appropriations before Tuskegee was created, he had no state-funded operating budget for another full year. To get the school off the ground, Washington sought the advice of his Hampton mentors on a constant basis, stressing "the only way to make this a *permanent* and successful school is to get it on the labor system as soon as possible." Though he managed to scrape together enough money to buy land, build a school, and hire teachers, his first decade at Tuskegee was difficult, with more students always arriving, more buildings needing to be built, and never enough money. Eliciting funds to keep the school afloat was an almost overwhelming task, and Washington quickly settled into a money-raising role, spending up to six months of the year in the North passing the hat in churches and other venues.[26]

By far, most of Washington's money came from the abolitionist contingent of New England and friends of the American Missionary Association who had previously supported Hampton Institute, and his training at Hampton had well prepared him to

[26] Washington to James Fowle Baldwin Marshall, June 29, 1881, in Washington, *Papers*, 2:134 (quotation); Louis R. Harlan, *Booker T. Washington: The Making of a Black Leader, 1856-1901* (New York: Oxford University Press, 1972), 109-156.

collaborate with the AMA and push forward the cultural ideals of the civilizing mission. Seizing on the northern fear of black degradation, he promised his audiences that he would instruct southern African Americans in the moral, religious, and industrial standards that they and he held. Washington put particular emphasis on the issue of black ministers, stressing that because African American clergy were at the center of black religious life (with its ostensibly dubious character), they were among the most important subjects for the civilizing mission. Before a meeting of the National Education Association in Madison, Wisconsin, in 1884, for example, Washington disparaged the "so-called leaders" of African Americans, "who are as a rule ignorant, immoral preachers or selfish politicians," and decried that the average black man had "no standard by which to shape his character." Elaborating on the poor quality of black leaders, Washington rolled out a story that would thereafter become a staple, recounting a visit to a black church near Tuskegee that had two hundred members and nineteen preachers. Noting that the number of preachers was "legion," he alluded to the Biblical story of a man haunted by demons whose collective name was "legion," at once deferring to his audience's religious sensibilities and impugning those of the African American ministry. He also elaborated on Armstrong's connection of character to labor, portraying the movement of so many black men into the ministry as a calculated attempt to get out of manual labor, thereby causing them to miss out on its virtue-inducing properties. At a speech before the Women's New England Club in 1890, after repeating the story of the church near Tuskegee with two hundred members and nineteen preachers, he embellished it with a parable of a defunct man who might well have been a minstrel figure. Washington claimed the work ethic of most black preachers could be summed up by a

man in a cotton field at the end of a hot July day who stopped, looked up into heaven, and cried, "Lord, de work is so hard, de cotton is so grassy, and de Sun am so hot, dat I believe dis darkey am called to preach." His use of the vernacular was likewise calculated, stressing both his understanding of and separation from the poor black ministers he was trying to civilize.[27]

Washington never limited himself to criticizing ministers, but argued in AMA fashion that black ministers encouraged and relied upon moral degradation among their parishioners. In doing so, he assumed the moral establishment ambitions of the AMA, which viewed religion and morality as integrally related. Reasoning backward, if a person failed to demonstrate proper (bourgeois) character, which required discipline, emotional equilibrium, and conscious, rational control, that person had a defective religion. Washington never tired of pointing out that black Christianity fell very short of the standard, and he frequently derided what he saw as the emotionalism of black Christianity as evidence that many African Americans were not authentically Christian. In his 1890 speech before the Women's New England Club, for example, he conceded that many ministers were religious but argued that their religious sensibility consisted "largely in emotion." In "real practical Christianity," he claimed, they were very wanting. What was true of ministers was equally true of members. Washington warned that although the great majority of black people in the South belonged to a church, "a large proportion of these people" were as far from Christianity as "any people found in

[27] "A Speech before the National Educational Association," July 16, 1884, in Washington, *Papers*, 2:261 (first through fourth quotations); Mark 5: 9, 15; Luke 8: 30 (fifth quotation). On the place of linguistic appropriation and accommodation in colonial systems, see Albert Memmi, *The Colonizer and the Colonized*, trans. Howard Greenfield (London: Earthscan Publications, 1990), 173-174; Frantz Fanon, *Black Skin, White Masks*, trans. Charles Lam Markmann (New York: Grove Press, Inc., 1967), 17-40. On what he calls the "public transcript" that exists in systems of domination, a script that Washington largely followed and exploited in his public utterances, see James C. Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven: Yale University Press, 1990), 1-13 (quotation on p. 4).

Japan or Africa." Lest the audience members miss his point, he reminded them that "Christian heathen . . . demand as much missionary's effort as the heathen of foreign fields." With that, he quickly turned to a plea for money to educate the black people of the South to read.[28]

His rhetorical assault on black ministers and their parishioners got the attention of many in the AMA, and Lyman Abbott, who assumed Henry Ward Beecher's pulpit after the latter's death, asked Washington in 1890 to contribute an article on African American clergy to Abbott's journal, the *Christian Union*, which had been formerly edited by Beecher. By publishing his attack in the *Christian Union*, Washington could present his arsenal of effective critiques before a national audience, because supporters of the AMA mission (and readers of the *Christian Union*) had spread after the Civil War throughout the South as teachers and administrators in AMA schools. He jumped at the chance, repeating verbatim the story of the church with many ministers and the black man who received the call on a hot day in July. He also expanded his critique, layering statistics with anecdotal observations that resulted in large-scale generalizations, like his claim that "three-fourths of the Baptist ministers and two-thirds of the Methodists are unfit." He particularly highlighted what he saw as the self-serving nature of many African American ministers. Although "not one in twenty" ministers had any standing as businesspeople in their communities, Washington snidely (and somewhat hypocritically given his own fundraising efforts) claimed that much of a black religious service seemed "to revolve itself into an effort to get money." While he attacked ministers by charging ignorance and moral vice, he repeated his claim that black religious ritual, cultivated and supported

[28] "A Speech Delivered before the Women's New England Club," January 27, 1890, in Washington, *Papers*, 3:27.

by black ministers, was in fact an expression of their parishioners' ignorance and moral degradation. Because the standard for good preaching was the extent to which a preacher is "able to set the people in all parts of the congregation to groaning, uttering wild screams, and jumping, finally going into a trance," he argued, African American religion pandered to the lowest impulses of the congregation and proved many black parishioners to be "as ignorant of true Christianity . . . as any people in Africa or Japan."[29]

Washington's solution, which was in keeping with the usual nonsectarian ideals of the moral establishment that still connected religion and educational institutions, was the creation of a theological school that would reform black ministers. After noting that only a small proportion of black ministers had received theological education of any kind, he suggested that a school be established "at some central point in the South, on a thoroughly Christian but *strictly* undenominational basis, with a one or two years' course covering such branches as would fit a student to get a comprehensive idea of the Bible, to teach him how to prepare a sermon, how to read a hymn, how to study, and, most important, how to reach and help the people outside of the pulpit in an unselfish Christian way." He even went so far as to suggest that $1,500 or $2,500 would be enough to pay for teachers and operate the school, though where the facilities, books, and other teaching materials were to come from, he left to the readers' imagination.[30]

The article, published in August 1890, was already yielding fruit by September. That month a wealthy spinster from New York, Olivia Egleston Phelps Stokes, sent Washington a check for two thousand dollars "to help in the education of colored men of

[29] Washington, "The Colored Ministry: Its Defects and Needs," ibid., 3:72 (first quotation), 73 (second through fifth quotation).

[30] Washington, *Papers*, 3:74. Italics in original.

good moral character, particularly those who have the ministry in view." Seeking more, Washington reached out to one of Stokes's acquaintances, Alfred Haynes Porter, to pitch the idea of a Bible School at Tuskegee. Meanwhile, that November he wrote Stokes a letter (now lost) in New York apparently thanking her for her contribution and wondering what her concerns were for colored people in the South. She responded that in her experience of listening to black preachers, she "felt their lack of Bible knowledge in their sermons" and recognized a definite need of "practical Christian instruction." Coming to the point, she asked Washington if he knew "how and where" young colored men could "be best prepared for the Christian ministry?"[31]

Washington responded with characteristic circumspection. Earlier that year, even before the *Christian Union* article was published, he had already mentioned the possibility of a Bible School to Edgar James Penney, a black Congregationalist minister from Andover Theological Seminary. Tempering Penney's apparent excitement, Washington warned that it would "take at least one or two years to get it on foot." His attempt to woo Penney to Tuskegee was itself part of his method to obtain the school, because Penney, as a Congregationalist, had significant ties to the northeastern philanthropic community and had even requested that his call to Tuskegee be formal and definite so that he could use it to obtain funds from the AMA. In June Washington wrote him a formal offer of employment as campus pastor, while referencing an anonymous "friend in Brooklyn," most likely Alfred Haynes Porter, who was at work on "the other

[31] Olivia Egleston Phelps Stokes to Washington, September 20, 1890, ibid., 3:83 (first quotation); Olivia Egleston Phelps Stokes to Washington, November 5, 1891, ibid., 3:180 (second through fifth quotations).

project." Washington assured Penney that, should the plan fall into place, he would be able to slide into a position at the head of the Bible School. Penney accepted the offer.[32]

Holding Penney's acceptance letter and Stokes's inquiry, Washington swung into action, writing to Horace Bumstead, president of Atlanta University, A. N. McEwen, editor of the Montgomery *Baptist Leader*, and Francis J. Grimké, a mulatto minister and nephew of Sarah and Angelina Grimké, for endorsements. McEwen had the clearest idea of Washington's intent, wishing him well in his effort to find "some rich friend to help you in such a work," but all three were unanimous in their support. Having received their backing, Washington moved forward on one final front, announcing the creation of the Tuskegee Negro Conference, which invited "representatives of the masses—the bone and sinew of the race"—to Tuskegee in order to find out the "actual industrial, moral and educational condition of the masses." Predictably, one of the findings of the Negro Conference, which took place in February 1892, was a call to "our generous friends" for their financial contributions to produce "strong Christian leaders who will live among the masses as object lessons."[33]

Washington, a master of publicity at this stage in his career, carefully controlled the press coverage of the first conference. Because he wanted to be absolutely sure that all gave a favorable report, he put off another offer to publish the proceedings by William Torrey Harris, the Hegelian philosopher and U.S. Commissioner of Education. But Washington was more than willing to allow AMA representatives to report on the

[32] Washington to Edgar James Penney, April 30, 1890, ibid., 3:52–53 (first quotation on p. 52); Washington to Edgar James Penney, June 13, 1891, ibid., 3:156–57 (second and third quotations).

[33] A. N. McEwen to Washington, November 30, 1891, ibid., 3:198 (first quotation); Francis J. Grimké to Washington, November 28, 1891, ibid., 3:196–97; Horace Bumstead to Washington, November 29, 1891, ibid., 3:197; "A Circular Announcing the Tuskegee Negro Conference," January 1892, ibid., 3:209–10 (second and third quotations); "The Declarations of the First Tuskegee Negro Conference," February 23, 1892, ibid., 3:218 (fourth and fifth quotations).

conference in their northern newspapers. Writing to his mentor Samuel Armstrong, Washington expressed his gratification at "the great amount of interest shown by the American Missionary Association." He was keenly aware that the AMA's presence would bolster the legitimacy of the proceedings, noting that the organization had sent "three of its strongest men." Added to the official AMA delegation were reporters from several important northeastern abolitionist newspapers, including the *Independent*, the *Christian Union*, and the *Congregationalist*, which also insured positive coverage.[34]

Having hired a black Congregationalist minister to teach at Tuskegee, confirmed his evaluation of black ministers through the Negro Conference, obtained endorsements of his plan from prominent black leaders, and enlisted representatives of the AMA as (perhaps unwitting) propagandists, Washington moved forward to secure what he had wanted all along: cash to start a Bible School and a building to house it. Negotiations with Olivia Stokes and her sister, Caroline, went well, and they gave advice on all aspects of the school from the curriculum to the building. Olivia Stokes wanted the curriculum to be "simple, direct, and helpful," preparing men for rural ministry rather than training pretentious theological intellectuals. Of course, the central component of the curriculum was that would-be ministers had to engage in manual labor along with the rest of the students, thereby addressing any deficiencies of character. In keeping with their desire for simplicity, the sisters rejected the first building plan, claiming it was too elaborate for the plain surroundings of Tuskegee. But all parties agreed that the Bible School would do nothing but good, and by the time of the first Negro Conference or shortly thereafter, the Stokes sisters had agreed to give additional money to build what was eventually

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[34] Washington to Samuel Armstrong, February 26, 1892, ibid., 3:220 (first and second quotations); Washington to William Torrey Harris, May 4, 1892, ibid., 3:226.

called Phelps Hall, a chapel that would house Phelps Hall Bible School. Washington's strategic maneuvering had brought the deal to a successful conclusion.[35]

Although Washington got what he wanted, his pursuit of the civilizing mission and his characterization of southern black ministers and their parishioners distorted what was, in fact, a heterogeneous body of several million people. The numerous divisions among southern black congregations made Washington's characterization inaccurate, if not opportunistic. By 1890 Southern black religious life was divided among four different denominations: the African Methodist Episcopal (AME), the African Methodist Episcopal Zion (AME Zion), Colored Methodist Episcopal (CME), and numerous independent Baptist congregations, but an ideological distinction provided the more salient context for Washington's assault. Black elites fell along a continuum, both ends of which referenced the moral establishment. On the one hand was what has been called an emancipationist or prophetic tradition and, on the other, an acculturationist, middle-class position. The acculturationists—who included many urban ministers, black women's rights advocates, and members of the emerging black middle class—advocated an educated ministry who would train their parishioners in a restrained worship style and in the dominant bourgeois ideals advocated by the AMA. In other words, they supported the moral establishment and looked to conform black religious life to the dominant standards in a strategy of assimilation. The emancipationists, in contrast, sought the transformation of American society (and the place of black Americans in it) through black nationalism expressed in congregational and denominational governance, black communal self-help, pan-African socialism, and, in the twentieth century, the

[35] Stokes quoted in Harlan, *Booker T. Washington: The Making of a Black Leader*, 197. Also see "An Announcement of the Opening of Phelps Hall Bible School," November 1892, in Washington, *Papers*, 3:271.

international anti-imperialism expressed by Martin Luther King Jr. They rejected the moral establishment by proposing an alternate moral calculus for American life. The positions were fluid but distinct, and although individual black leaders might move back and forth between them or combine them in various ways, the two positions represented a dialectical impulse that provided a fundamental tension in African American thought.[36]

Washington's criticism of black ministers, then, was an assault on the emancipationist position in the name of acculturation. By impugning those who disagreed with him as either lazy or vicious, he effectively tightened his leadership and strengthened his emerging significance before white, northern philanthropists. Of course, many black ministers were incensed, viewing Washington's criticism as predatory, self-serving, and opportunist. Others, though, joined the Washington phalanx. Shortly after Washington published his article, Bishop Daniel A. Payne of the AME denomination came to Washington's defense after observing the "various animadversions from North, South, East and West" against Washington's statement. Payne's support was stunning. An acculturationist who avidly sought to stamp out what he saw as the heathen practices among southern black congregations, Payne had organized the AME church-planting initiative following the Civil War and personally ordained many of the leading

[36] On the struggle over acculturation in African American religious life, see Harvey, *Redeeming the South*, 107-136, 167-96; Evelyn Brooks Higginbotham, *Righteous Discontent: The Women's Movement in the Black Baptist Church, 1880-1920* (Cambridge: Harvard University Press, 1993), 185-229; Gaines, *Uplifting the Race*, 1-46; Deborah Gray White, *Too Heavy a Load: Black Women in Defense of Themselves, 1894-1994* (New York: W.W. Norton, 1999), 51-55; Reginald F. Hildebrand, *The Times Were Strange and Stirring: Methodist Preachers and the Crisis of Emancipation* (Durham: Duke University Press, 1995), 75-118; William E. Montgomery, *Under Their Own Vine and Fig Tree: The African-American Church in the South, 1865-1900* (Baton Rouge: Louisiana State University Press, 1993), 253-306. On the prophetic mode of African American religious thought, see Stephen W. Angell and Anthony B. Pinn, eds., *Social Protest Thought in the African Methodist Episcopal Church, 1862-1939* (Knoxville: The University of Tennessee Press, 2000), xiii-xxxi; West, "The Prophetic Tradition in Afro-America," 1037-50; Henry H. Mitchell, *Black Belief: Folk Beliefs of Blacks in American and West Africa* (New York: Harper & Row, 1975); Montgomery, *Under Their Own Vine and Fig Tree*, 191-252; Gayraud S. Wilmore, *Black Religion and Black Radicalism* (Garden City: Doubleday & Co., 1972), 103-186.

AME ministers in the South. In offering his support to Washington, Payne presented his claims in unequivocal terms, arguing "emphatically, in the presence of the great Head of the Church, that not more than one-third of the ministers, Baptist and Methodist, in the South are morally and intellectually qualified." In response to anticipated criticism, he promised to name "name[s], times and places" to substantiate his assertion.[37]

Washington used Payne's support to buttress his own position before other black leaders. After receiving Payne's letter, he wrote a rebuttal to his critics in the Indianapolis *Freeman*, a national black weekly that was sympathetic to Washington, and he appended Payne's letter to his own. The *Freeman* published both letters together, and the effect was a powerful one-two punch. Washington began his letter by coming directly to the point, assuring his detractors in the first sentence that "no resolutions or actions or words of individuals or organizations will have the least effect in preventing my saying just what I consider to be in the interest of the race and truth," and he defiantly stood by his earlier statements in the face of his critics. He could do so, in large part, because of Payne's influence. Coming to his conclusion, Washington pointed to Payne's letter and asked, "Will any one say that Right Rev. Daniel A. Payne, D.D., L.L.D., senior Bishop of the A.M.E. Church, does not know whereof he speaks?" Instead, portraying those who disagreed with him as complicit in what he saw as the moral failings of ministers, Washington referenced "friends all over the country in all denominations" who

[37] Daniel A. Payne to Washington, November 3, 1890, in Washington, *Papers*, 3:97-98 (first through fourth quotations. On Payne's desire to stamp out vestigial, African worship forms, see Harvey, *Redeeming the South*, 112; Montgomery, *Under Their Own Vine and Fig Tree*, 262.

stood ready to create a qualified colored ministry. "Our friends," he concluded, "will honor the race far more for being ready to expose corruption than for covering it up."[38]

The effect of Washington's maneuvers was powerful, and his critique worked on two different fronts. First, he presented himself as a trusted reformer before white, northeastern philanthropic circles dominated by the AMA, and, second, he used his standing with northeastern donors to tighten control over his black competitors. Multiple papers reprinted Washington's letter to the *Freeman*, along with Payne's letter of support, leading to a seemingly interminable debate in the black press over Washington's statements. Ida B. Wells, the black firebrand journalist from Memphis, read Washington's letter in the Detroit *Plaindealer* and felt compelled to commend him on his "manly criticism of our corrupt and ignorant ministry." Others were much less complimentary. The Reverend J. M. Henderson of Detroit complained about the brilliant rhetorical move that Washington had accomplished. "Every self respecting minister who inclines to remonstrate against this wholesale slander upon his class," he explained, is liable to the response, "'why do the worthy ministers seek to screen the unworthy?'" What most offended Henderson was Washington's "farcical heroism, with much vanity posing as a great reformer who is prosecuted and threatened on every hand." For Payne, Henderson had only contempt, calling him cynical, out of touch, and old. Others reversed the contempt. One anonymous minister wrote to the editor of the *Freeman*, "The colored ministry, as a whole, never thought enough of the attempt of the Professor

[38] Washington to the Editor of the Indianapolis *Freeman*, November 22, 1890, in Washington, *Papers*, 3:101 (first quotation), 102 (second quotation), 103 (third and fourth quotation).

[Washington] to gain notoriety to reply to him; but when such a person as Bishop Payne comes forward with such a statement, it is time for the Southern ministry to rise."[39]

A debate begun in one paper often spilled into another. Ida B. Wells, reading the *Plaindealer* in Memphis, reprinted Henderson's rejoinder in her paper, the Memphis *Free Speech*, and offered the not-entirely-candid editorial comment, "[I]t would seem to an impartial observer that the preachers who have protested against Prof. Washington and Bishop Payne's severe arraignment 'protest too much.'" In turn, the *Plaindealer* reprinted her editorial critiquing Henderson's letter, and Henderson offered his response, essentially reiterating his earlier objections. A week later, on January 2, 1891, the *Plaindealer* published an editorial summary of the nationwide remonstration against Washington, noting that "with only a few exceptions every writer on the subject has stooped to traduce Prof. Washington to accuse him of selling his opinions for ill-gotten gains, of slandering his race to curry favor with white men." For example, the *Southern Recorder* quoted a Bishop Gaines dismissing Washington as "a sycophant, selling out his race for money," and calling upon the Lord to "take charge of our children [at Tuskegee] . . . especially our girls." In an AME Zion paper, Bishop J. W. Hood, one of the earliest AME Zion bishops in the South and a staunch emancipationist, threw his own authority against Washington (while studiously ignoring Payne) in order to repudiate Washington's "wild, random, thoughtless, and as I fully believe, slanderous statement, respecting colored ministers."[40]

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[39] Ida B. Wells to Washington, November 30, 1890, Ibid., 3:108 (first quotation); J.M. Henderson, "Not Good Authority," *Detroit Plaindealer*, December 12, 1890, (second, third, and fourth quotations); "Doesn't Like Bishop Payne's Letter," *The Freeman*, December 13, 1890 p. 1 (fifth quotation).

[40] For Wells's editorial, see "Again the Ministry," *The Plaindealer*, December 26, 1890 (first quotation). For the *Plaindealer*'s summary and editorial, see *Detroit Plaindealer*, January 2, 1891, (second, third, and fourth quotations). Also see J.W. Hood, "Prof. Booker T. Washington's Statement Considered Carefully,"

The reason Washington struck such a raw nerve, as the *Plaindealer* perceptively explained, was the common belief that "the history of the church is the history of the race. Its progress is the race's progress." Because criticizing the progress of the church was the same as criticizing the race, Washington's detractors complained that criticizing the race in the face of white hostility was self-defeating. More incisively, because the black church was the only institution solely within black control, it offered an autonomous social space where African Americans, apart from the supervision of their would-be white rulers, could develop and practice what the anthropologist James C. Scott has called the "hidden transcript" that oppressed groups cultivate beneath the surface of public accommodation. Washington's criticism was an assault on the black church's status as an autonomous social space and, by extension, its dissident subculture. His comments threatened to subsume black religious communalism under the bourgeois individualism of industrial market culture. That threat provoked a harsh response from both emancipationists, who resisted the acculturating impulse, and some acculturationists, who had previously been in support of Washington but thought his charge was unfair or unwise. As one AME Zion minister complained, Washington's condemnation raised the question of "which one of the colors he belongs to, for the whites as a rule say better things than these about us as a race." More presciently, another reader in the *Plaindealer* objected that Washington's censure was too close to that of racists, whose complaints of "Negro immorality" and a lack of "Negro intelligence" were "the lying weapons used by our white enemies to prove our unfitness for the civil and social household." Even to

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Star of Zion, January 15, 1891 (fifth quotation); G.W. Clinton, "Prof. Booker T. Washington and Bishop Daniel A. Payne on the Colored Methodist and Baptist Ministry," *The AME Zion Church Quarterly* 1 (January 1891): 132-133. I am indebted to Matt Harper for alerting me to the *Star of Zion* and the *AME Zion Church Quarterly* contributions to the debate.

many supporters of racial uplift, Washington's criticism had crossed the line and too closely mirrored the criticism of racist whites.[41]

During the decade after his article was published, Washington did not change his critique but instead expanded his two-front operation (raising money and consolidating his leadership position before northern white philanthropists and among other black elites) by adding more anecdotes and criticism to his arsenal. Before a Birmingham audience in 1899 he told a story, repeated often thereafter, about an old black woman who wandered into an Episcopal worship service. Midway through the liturgy, after the rector had begun his sermon, she began to moan and clap in the back of the sanctuary. Her exhibition broke up the service, and a church officer went back to stop the commotion. Switching into the imaginary conversation, Washington parodied both parties: "'What's the matter with you, aunty, are you sick?' 'No, sir; I'se happy; I'se got religion. Yes, sir, I'se got religion.' 'Why, don't you know,' said the officer, without thinking, 'that this isn't the place to get religion?'" Although his story poked fun at both black and white, it also illustrated his often-repeated claim that African American religion was "a mere matter of form or emotionalism."[42]

Deepening his critique, Washington also began connecting the emotionalism of black religion with what he saw as the tendency "to live in the next world." Before the National Unitarian Association in 1894, he claimed that three-quarters of a Negro sermon

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[41] *Detroit Plaindealer*, January 23, 1891 (first quotation); Scott, *Domination and the Arts of Resistance*, 108-135 (second quotation on p. 120); Rev. W.J. Benjamin, "Can't Hold His Peace," *Star of Zion*, January 8, 1891 (third quotation); D.A. Straker, "Time to Call Halt," *The Plaindealer*, January 2, 1891 (fourth, fifth, and sixth quotations). On religion as a refuge for the oppressed, see Memmi, *The Colonizer and the Colonized*, 167. On the different standards of behavior in closed circles of the colonized and in social situations that include both colonizer and colonized, see Fanon, *Black Skin, White Masks*, 17.

[42] Washington, *Papers*, 5:67 note 2 (first quotation); "A Speech at the Institute of Arts and Sciences," September 30, 1896, ibid., 4:212 (second quotation).

in the South consisted of an imaginary description of heaven and pointed out the apparent contradiction that "our people like to talk about heavenly mansions, and at the same time are content to live in one-room cabins in this world. They like to talk about golden slippers, and too often go barefooted here." Washington implicitly invoked the success ethic of the AMA, claiming that the otherworldly orientation of African American theology inhibited black parishioners from advancement in this world. After quoting from the hymn "Give me Jesus," which was otherworldly in its lyrics, he explained that black parishioners needed to understand that to have Jesus "in a substantial way" was to "mix in some land, cotton and corn and a good bank account." The result, he proclaimed "by actual experience," was that "the man who has Jesus in this way has a religion that you can count on seven days in the week."[43]

But the implication of his praise for a religion "that you can count on" was his connection of African American religious emotionalism with shiftlessness and moral unreliability. Because he claimed that black religion looked to the future and not the present, he intimated that the rules of bourgeois society did not make much of an impression on many black Christians and their moral character was suspect at best. To the 1899 Birmingham audience, Washington reiterated one of his mentor's maxims, "it is mighty hard to make a good Christian out of a hungry man." In case they missed his point, he went on, simultaneously criticizing black religion and showing the menace to those around its adherents: "A negro goes home from church, where he has been shouting and praying, as a negro so loves to do, and if he finds nothing to eat at home, he very generally goes out and finds something to eat before morning." In other words, he at

[43] "A Speech before the National Unitarian Association," September 26, 1894, ibid., 3:477 (first and second quotations), 478 (third through seventh quotations).

once suggested that black religious worship and piety held a tenuous connection to the black moral code and also insinuated that white property was in peril because of it. If black clerical leaders were retrained to honor work, thrift, and honesty, Washington claimed, the ministers in turn would retrain their parishioners, which would lead to what he considered the increasing civilization of the race as a whole.[44]

Christianity, Segregation, and White Man's Burden

Washington's embrace of the civilizing mission would work only so long as northern philanthropists maintained substantial influence in the South, but in the post-Civil War South rulership was not stable. With the inauguration of Jim Crow the regime changed, and control flowed to southern politicians and northern businessmen who were less sanguine about the possibility of black acculturation. Unfortunately for Washington, his appeal to the civilizing mission played into the hands of southern segregationists, who began using the categories of the civilizing mission and the moral ideals enforceable by the moral establishment, as reason to impose segregation throughout the South. Caught in the transfer of power, Washington faced an altered context in which his support for the civilizing mission—with its clear similarity to the racist arguments of southern politicians and northern businessmen—had a different political valence than he had originally intended. Simultaneously, southern white and northern business response to Washington showed the beginnings of the twentieth century southern moral establishment, which would cite Afro-Americans putative moral incapacity as reason to exclude them from full citizenship.

[44] Ibid., 3:478 (first quotation); "Extracts from an Address before the Birmingham Lyceum," March 20, 1899, ibid., 6:66 (second and third quotations).

In 1895 Washington gave the speech at the Atlanta Expostion to a large crowd of white southerners and northern businessmen that served as a turning point in his prominence as a black leader and in the constituencies he was most concerned to manage. Later dubbed the "Atlanta Compromise" by W. E. B. Du Bois, it catapulted Washington onto the national stage as the preeminent African American leader in the country because he seemed to offer an exchange of black political and social rights for economic advancement. The speech itself was made against the backdrop of the southern embrace of segregation, enforced by law and lynching throughout the South. Washington's speech took its meaning in large part from the hardening southern racial policies, and he equivocated so that different members of the audience could hear what they wanted. Urging black southerners to "cast down your bucket where you are," Washington warned that the "greatest danger" in the leap out of slavery was that black laborers might forget that "we shall prosper in proportion as we learn to dignify and glorify common labour, and put brains and skills into the common occupations of life." To his southern white listeners, he urged beneficence and tolerance, while assuaging their concern for social mixing. He confessed that black southerners stood ready to interlace "industrial, commercial, civil, and religious life with yours in a way that shall make the interests of both races one," but he treaded a fine line, agreeing that "in all things that are purely social we can be as separate as the fingers, yet one as the hand in all things essential to mutual progress." Although he rejected "artificial forcing" on the social question, Washington confidently proclaimed that "no race that has anything to contribute to the markets of the world is long in any degree ostracized." Seemingly trading the political demand of equal rights for economic opportunity, he announced a plan of racial uplift in

terms that appealed to white southerners, northern businessmen, and, at least initially, prominent African Americans and that sealed his stature as the preeminent spokesman for black people in the United States.[45]

One of the most significant results of his speech was Washington's increased visibility to northern business philanthropists. The February before he gave the address, Washington met William Henry Baldwin Jr., then the second vice president of the Southern Railway. Baldwin had been born in Boston of abolitionist ancestors but became part of the rising business elite with broad connections within northern business philanthropy. Businessmen were some of the strongest supporters of the moral establishment, eschewing regulation in economic affairs but enthusiastic about the effort to impose Christian moral standards on the nation as a whole. Comstock's prodigious support from Morris K. Jesup was in that way not unusual, and Washington sought to replicate it in the South. Recognizing Baldwin's potential benefit to Tuskegee, Washington invited Baldwin to join the board of trustees, and Baldwin accepted after making a thorough inspection of the school. To appeal to the sensibility that Baldwin represented, Washington began retooling his speeches and his image to make him friendly to business interests of the North and South. In 1900 he began the National Negro Business League, an effort to promote black business that also advertised his business-friendliness to potential donors. Most importantly, he wrote his second autobiography, *Up from Slavery*, which told a (literally) rags-to-respectability story of self-help and self-reliance that appealed to the business elite. Washington presented himself as a leader who rose to the top by pluck, perseverance, and willingness to work,

[45] Du Bois, *The Souls of Black Folk*, 35 (first quotation); Washington, "The Standard Printed Version of the Atlanta Exposition Address," September 18, 1895, in Washington, *Papers*, 3:584 (second through fourth quotations), 585 (fifth and sixth quotations), 586 (seventh and eighth quotations).

and utilizing a trope of self-dependence and moral responsibility, he portrayed himself as one type of black man in contrast to others, confirming his superiority before business philanthropists as the paramount black leader.[46]

The comparison between his leadership and that of minister-politicians is one of the most striking themes of the work, and his rhetorical comparisons figured centrally in his support for the civilizing mission. Contrasting his own work ethic with theirs, Washington again accused black ministers of laziness, which lay behind ministerial ambition and, to some extent, defined ministerial theology. He told the story of a black minister, "one of the numerous local preachers," who tried to convince him that all work was sin because God had cursed labor after the Garden of Eden. The week that Washington found him, he explained, "he seemed . . . supremely happy, because he was living, as he expressed it, through one week that was free from sin." He also used the idea of a ministerial call to further undercut ministerial credibility, imputing ministers with manipulation as well as laziness. Though he reiterated his story of the man in the cotton field, he told another of a man in church, surrounded by the worshipping black community. When the call came, "[w]ithout warning the one called would fall upon the floor as if struck by a bullet, and would lie there for hours, speechless and motionless. Then the news would spread all through the neighbourhood that this individual had received a 'call.'" With barely concealed disapproval, Washington acknowledged that if the man were inclined against the divine summons, "he would fall or be made to fall a second or third time. In the end he always yielded to the call." Because almost everyone who received an education also received a call, Washington confessed that when he had

[46] See W. E. B. Du Bois to Washington, May 16, 1900, and Washington's opening and closing speeches before the National Negro Business League, in Washington, *Papers*, 5:526, 600-605.

earlier longed to read and write he feared that if successful he too "would receive one of these 'calls.'" Lest the reader miss the obvious contrast, Washington pointed out that "for some reason, my call never came."[47]

The biography was very successful, and appeal to the moral establishment's civilizing mission was about to pay off. In 1899 Baldwin began an endowment campaign "to relieve the principal, Booker T. Washington, somewhat of the constant daily strain of collecting the money for the daily life of the institution and give him time for the executive work of the school." Before the year was out, Washington held a fund-raising meeting in Madison Square Garden in New York City with the leading lights of business in attendance, many of whom were among the strongest supporters of the moral establishment, including John P. Morgan, Morris K. Jessup, Charles H. Parkhurst, John D. Rockefeller, and Collis P. Huntington. Washington began the meeting by reading a letter from Grover Cleveland expressing his regret that he could not attend and informing Washington that he had secured a matching donation from an unnamed woman in a western city for twenty-five thousand dollars. The sizable contribution encouraged others, and Washington began working over the next couple of years for an even larger amount. For that, Washington's autobiography had already begun to achieve results. After *Up from Slavery* came out, his publisher, Frank Doubleday, entertained the industrialist-turned-philanthropist Andrew Carnegie between golf shots by reading from Washington's work. Carnegie's interest was piqued, and he promised twenty thousand dollars for a new library at Tuskegee a little over a month after the Madison Square Garden event. Although the gift was fairly routine, since Carnegie gave sums all over the

[47] Washington, *Up From Slavery*, ibid., 1: 287 (first and second quotations), 257 (third through sixth quotations).

country to build so-called Carnegie libraries, Washington used it to gain more. After the library was built, Carnegie was so impressed by the two-story brick building's low cost of twenty thousand dollars that he began donating ten thousand dollars a year for Tuskegee's operating expenses.[48]

The signs looked promising, but Washington had no idea what Carnegie would do next. At a second Madison Square Garden fund-raiser in 1903, Washington made another stab at attracting a large donation. This time Grover Cleveland was in attendance, and Cleveland began the meeting with what he took to be a sympathetic address for Tuskegee's cause. Proclaiming that emancipation did not erase the "racial and slavery-bred imperfections and deficiencies" among Negroes, Cleveland explained that their chief problem was a lack of moral standards, most importantly, "a grievous amount of ignorance, a sad amount of viciousness, and a tremendous amount of laziness and thriftlessness." He proclaimed his full sympathy with the white South and averred that because nine-tenths of the black population lived in the South, white southerners were "entitled to our utmost consideration and sympathetic fellowship." It was "their material prosperity, their peace, and even the safety of their civilization interwoven with the negro problem." But precisely because "the solution of the negro problem must . . . bear the heat of the day and stagger under the weight of the white man's burden," he threw himself behind Tuskegee's goal of helping fit the Negro for "his place" and proclaimed himself a friend of the Negro. Cleveland was not alone in intertwining praise for Washington with racist and denigrating comments about black people. Edgar Gardner

[48] "An Endowment Campaign Pamphlet," ca. January 13, 1899, ibid., 5:8 (quotation); Grover Cleveland to Washington, December 3, 1899, ibid., 5:283-284. On Doubleday's reading to Carnegie and its effects, see Louis R. Harlan, *Booker T. Washington: The Wizard of Tuskegee, 1901-1915* (New York: Oxford University Press, 1983), 133-134.

Murphy, an Episcopal minister from Montgomery, Alabama, warned forebodingly that "the rotting body" of black ignorance and moral decay that was "polluting the atmosphere we breathe." Still he assured his audience, "amid all the bewildering and rasping nonsense of pro-negro sentimentality," Tuskegee stood apart "with incomparable dignity and sanity." Carnegie sat listening in Cleveland's box, and, whatever the philanthropist thought about the speakers' comments, three days later he gave Tuskegee $600,000 in U.S. Steel bonds, one quarter of which were for Washington himself. Calling him "[t]he modern Moses, who leads his race and lifts it through Education to even better and higher things than a land overflowing with milk and honey," Carnegie wanted Washington to be free of pecuniary worries so that he could go about his mission as he saw fit. Finally, Washington's financial worries were over.[49]

Yet as the insidiously racist comments of Cleveland showed, the logic of Washington's civilizing mission had begun to unravel. Of course, Grover Cleveland and others were not relying on Washington when they concluded that southern African Americans lacked a fully formed bourgeois morality, and Washington was not responsible for their criticism. From the antebellum period, southern whites had complained of the putative laziness, immorality, and general unreliability of their slaves, a criticism that continued after the Civil War. But Washington consciously advanced the civilizing mission with similar complaints. Although his criticism bore close resemblance to that of racists, it was always predicated upon the possibility of black progress outlined by the acculturationist program of the AMA, but when the AMA's

[49] "Grover Cleveland on the Negro Problem," *New York Times*, April 15, 1903 pp. 1 (first through fifth quotations), 2 (sixth quotation); Washington, *Papers*, 7:119 note 1 (seventh through tenth quotations); Andrew Carnegie to William Henry Baldwin Jr., April 17, 1903, ibid., 7:120 (eleventh quotation). For the extended behind-the-scenes maneuvering to convince Carnegie to change the original terms of his bequest, see the flurry of letters, ibid., 7:100-127.

influence in the South diminished, first with the end of Reconstruction and then with the advent of Jim Crow, Washington's civilizing mission acquired a different political valence than it had earlier possessed. Instead, in the words of the African American historian Kevin Gaines, "Within the repressive New South social and economic order of disfranchisement, political terror, debt slavery, and gerrymandering," the advocacy of racial uplift and the civilizing mission "constituted a measure of ideological collusion with discriminatory ideologies and practices."[50]

The charge of ideological collusion began at the inception of the Jim Crow regime and deepened as the systematic oppression expanded. As early as 1899, Washington received a rebuke from T. Thomas Fortune, the prominent black editor of the New York *Age* and, at the time, a strong Washington ally. Fortune had read an article in the New York *Evening Post* that quoted Washington claiming that he was, in Fortune's paraphrase, "more discouraged than ever in your life about your own race." He warned Washington that he could not afford to get discouraged, especially in print, because that would do more "*than anything else to discourage the friends of your work and to lessen the financial support of your work.*" Most importantly, Fortune continued, the *Post* article "knocks the props from under you by placing you in an attitude of doubt upon the *vital question* of the race's moral reliability." He admonished Washington that even if he had his doubts, he should have kept them to himself so as not to "give the whole case away."[51]

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[50]Kevin Gaines, "Black Americans' Racial Uplift Ideology as 'Civilizing Mission': Pauline E. Hopkins on Race and Imperialism," in *Cultures of United States Imperialism*, ed. Amy Kaplan and Donald E. Pease (Durham: Duke University Press, 1993), 440 (first quotation), 450 (second quotation).

[51] T. Thomas Fortune to Washington, September 16, 1899, in Washington, *Papers*, 5:208. Italics in original.

Instead of acknowledging the problem, Washington initially blamed the AMA, revealing a split that began with Washington's decision to court northern business philanthropy and southern political support. As Washington complained to Francis J. Grimké in 1898, AMA officers "do everything in a sly way to hinder the work at Tuskegee." In response to Fortune's complaint, Washington assumed that the statement had come from a joint press conference following his European trip that the AMA had subsidized, and he explained to Fortune that he was careful to have his secretary by his side in order to verify what was said. At issue, Washington thought, was that "the funds of the A.M.A. have been dropping off lately and they want to place me in the same bag with themselves." But the AMA's operating budget had begun a slow but steady incline over the prior decade, an incline that would continue into the first decade of the twentieth century even as its political influence diminished.[52]

In fact, the increasing division between Washington and the AMA was about more than money and bore directly on Fortune's criticism. Toward the end of the 1890s, the AMA began to lose confidence in the civilizing mission, which it had originally undertaken in the belief that inculcating freed slaves with a specific set of cultural characteristics would ensure black success in the free labor system. In the early imagination of the AMA, formal equality before the law—with just a minimal level of governmental and philanthropic intervention to retrain the moral character of freed slaves—would yield an upwardly mobile society in which opportunity was the norm. Yet the liberal narrative of progress on which the civilizing mission rested contained a

[52] Washington to T. Thomas Fortune, September 18, 1899, ibid., 5:209 (second quotation); Washington to Francis J. Grimké, May 8, 1898, in Francis J. Grimké, *The Works of Francis J. Grimké*, ed. Carter G. Woodson (Washington D.C.: The Associated Publishers, 1942), 4:51 (first quotation). On the increasing budgets of the freedmen's aid societies between 1890 and 1910, see Ronald C. White, Jr., *Liberty and Justice for All: Racial Reform and the Social Gospel (1877-1925)* (New York: Harper and Row, 1990), 63.

fundamental weakness. Faced with the intransigence of southern racism, which placed all African Americans, regardless of individual characteristics, behind the barrier of a racial caste, many initial supporters of the AMA mission began wondering if a formal definition of equality would ever produce the kind of upward social mobility envisioned by proponents of the civilizing mission. It seemed more likely that southern African Americans would form a laboring proletariat under the rule of their one-time masters who appealed to the supposed moral inadequacies of Afro-Americans as reasons for their political marginalization. Some in the AMA began to acknowledge the darker sides of their ideas of progress and racial development, especially when southern racists began using the slow pace of progress to justify segregation. When that happened, the AMA reconsidered its financial and intellectual support of the civilizing mission, as the Southern moral establishment locked into place.[53]

At no time was Washington's dilemma more apparent than June 1900, when John Roach Straton, a white, conservative, Southern Baptist minister, launched a salvo against Washington in the *North American Review*. The essay argued for segregation from the very premises that Washington used to validate his civilizing mission. Straton began by singling out Washington's educational model as the solution that most recognized the truncated extent of black capacity and the slow process of racial development. Among the white minister's many claims, Straton argued that racial development occurred over centuries, that blacks' immorality and criminality showed them far behind the Anglo-Saxon, and that in racial encounters the weaker race often faced destruction. With the abolition of slavery, Straton claimed, the Negro found himself in situations for which he

[53] On the limitations of classical liberalism in addressing racist inequality, see Gaines, *Uplifting the Race*, xi-xxi.

was not fit. Because post–Civil War social arrangements departed from the antebellum way of life, black racial development, he argued, had not yet progressed sufficiently to meet the new conditions, and the Negro was "weakening perceptibly in his physical manhood year after year," as well as "degenerating as regards thrift and industry." The proponents of black education were wrong to assume that it could solve the race problem, Straton insisted, because "the true civilizing process is not a sudden and artificial development from without, but a gradual and harmonious growth from within." Because racial contact in the South would prove disastrous to the weaker race, Straton suggested the "great responsibility" of white people "in the presence of this simple-minded, impressionable and imitative people" required a different social arrangement. To protect the Negro race and allow it to develop mentally and morally, Straton urged racial segregation and the large-scale deployment of Washington's educational plan.[54]

Faced with Straton's attack, which in too many ways resonated with his own views, Washington could only lamely respond, "We must not pass judgment on the negro too soon." He did not differ markedly with Straton's assumptions, only his conclusions, and Washington could not deny that his numerous comments criticizing the moral code of black people and the quality of their leaders tended to undermine whatever else he might say about black moral reliability. At the same time, the increasingly derogatory estimations of black potential and character—like Grover Cleveland's charge of ignorance, viciousness, laziness, and thriftlessness—placed Washington in a quandary in responding to Straton, because many of Washington's own white supporters had begun pointing to black immorality and criminality as a reason to deny civil rights to African

[54] John Roach Straton, "Will Education Solve the Race Problem?" *North American Review* 170 (June 1900): 785-801 (first quotation on p. 792, second and third quotations on p. 793, fourth and fifth quotations on p. 801).

Americans. His response, then, was very tempered. Washington agreed, "it requires centuries for the influence of home, school, church, and public contact to permeate the mass of millions of people, so that the upward tendency may be apparent." This did not mean that black people were not improving, he claimed, even if it took centuries to show the results. On the delicate subject of black morals, Washington offered no protest and instead conceded that African Americans had a problem, but he shifted the blame. Although he appreciated Straton's "special stress upon the moral weakness of the race," Washington held the system of slavery ultimately responsible. Granting that African American morals were lax, especially in "improper relations between the sexes," Washington explained that because slave owners encouraged lax sexual mores during slavery, "a custom that was fostered for three centuries cannot be blotted out in one generation." The salient point, according to Washington, was not "that the negro has not done better, but that he has done as well as he has." Instead of segregation, Washington counseled that his educational method, "a judicious system of industrial, mental and religious training," would, in time, "solve the race problem."[55]

While Washington puzzled over how to move forward, saber rattling began from other black leaders, who were growing concerned that Washington's continued embrace of the civilizing mission played into the southern white impulse to place all African Americans behind the barrier of race. In 1902 William Monroe Trotter, the radical Boston newspaperman and a future Du Bois ally, denounced what he called Washington's "race belittlement." With outrage and dripping sarcasm, Trotter protested

[55] Washington, "Education Will Solve the Race Problem: A Reply," *North American Review*, 171 (August 1900), 221–32, in Washington, *Papers*, 5:615 (first and second quotations), 614 (third quotation), 616 (fourth quotation), 616-617 (fifth quotation), 613 (sixth quotation), 624 (seventh quotation), 612 (eighth quotation).

Washington's methods of fund-raising "by his crocodile tears here in the North" in order to open "a little Jim-Crow 'Theological school,' at Tuskegee, to which he points, telling northern white men 'I teach the Negro an industrialized religion too.'" Because Washington knew that the black ministry wielded tremendous influence, Trotter thought that he hoped "to undermine this influence, by telling his followers that 'the minister who has not a bank account is not to be believed or trusted.'" Rising to his climax, Trotter addressed Washington directly in a series of not-entirely-rhetorical questions: "How long, O Booker, will you abuse our patience? How long do you think your scheming will escape us? To what end will your vaulting ambition hurl itself? Does not the fear of future hate and execration . . . in no wise move you?" A year later, W. E. B. Du Bois entered the fray with his *The Souls of Black Folk*. Although Du Bois to some extent shared Washington's distaste for the folk worship practices of rural African Americans, he complained repeatedly of "the distinct impression left by Mr. Washington's propaganda" and was particularly concerned that Washington seemed to think "that the South is justified in its present attitude toward the Negro because of the Negro's degradation." The next year Ida B. Wells-Barnett, having changed her mind about Washington, made the break as well. Complaining that Washington had "the ear of the American nation as no other Negro of our day" and was instrumental in "molding public sentiment and securing funds," she wondered why he was willing "to injure his race for the benefit of his school" by reinforcing the false conception of black moral unreliability.[56]

[56] [William Monroe Trotter], "Washington and the Ministers," *The Guardian*, September 13, 1902 (first through fifth quotations); Du Bois, *The Souls of Black Folk*, 44 (sixth and seventh quotations); Ida B. Wells-Barnett, "Booker T. Washington and His Critics," *World Today* 6 (April 1904): 521 (eighth through tenth quotations).

The AMA weighed in as well, observing Washington's pronouncements and turning instead toward his rivals. In large part, the AMA's shift was the result of its new president, Washington Gladden. Gladden had wholeheartedly embraced the civilizing mission at first, but as he noted the dramatic rise of lynching and southern racism, he concluded that the mission was inadequate to ensure black success, if not misguided entirely. After he was elected to head the AMA in 1901, Gladden began talking to other black leaders, and in 1903 he made a visit to Atlanta University, where he met W. E. B. Du Bois, who gave him a copy of his newly published book, *The Souls of Black Folk*. Gladden was so moved that he devoted most of his next Sunday's sermon to the book, asking his audience to "[i]magine yourself living in a civilization whose overwhelming sentiment puts you into a lower nature of being and means to keep you there." Although he acknowledged that Washington's emphasis on "economic efficiency" was a "great need," Gladden observed, "Mr. Washington emphasizes the argument that if the Negro will but succeed in a material way all doors will be open to him. But that is not quite certain. The history of the Jews is evidence that industry and thrift do not disarm race prejudice." In contrast, Gladden claimed that Du Bois's book refuted Washington, explaining to his audience that Du Bois had shown how African American "political degradation" was responsible for whatever "economic inefficiency" existed, not vice versa. Later that year during his AMA presidential address, Gladden expanded on his sermon and drove home the new mission of the AMA. "For this Association," he explained, "the way of duty is very clear. It finds itself now, at the beginning of this century, with a sacred charge to keep. . . . If ever there was need to hold up the standards of justice and to reaffirm the fact of human brotherhood, that need is now upon us."

Those standards of justice included a more substantive equality and different moral calculus than the kind that underwrote the civilizing mission, and the AMA dropped its earlier support. A year later Gladden aligned his organization with the emerging Du Bois faction when he invited Du Bois to address the 1904 AMA annual meeting.[57]

Faced with abandonment by the AMA, criticism from other black leaders, and the rather dim evaluations of black character from his own white supporters, once Washington achieved his financial independence in 1903 he began backpedaling. At a celebration of Lincoln's birthday in New York in February 1904, Washington assured his audience that "[f]rom both a moral and a religious point of view, what measure of education the Negro has received, has paid, and there has been no backward step in any state." Though not entirely a ringing endorsement of black moral and religious standards, he continued to fight Straton's assertion that the greater the education black people received, the greater the extent of their criminality. Instead, Washington warned that moral progress should not be judged by the man on the street and promised his listeners that "the moral lines are beginning to be as strictly drawn in my race as in yours, and it must not be forgotten that we are as proud of our race as you are of yours, and that the more progress we make in education, the more satisfaction do we find in our own homes and social circles."[58]

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[57] White, *Liberty and Justice For All*, 132-141 (first through sixth quotations on p. 138, seventh and eighth quotations on p. 139). The AMA's shifting positions paralleled similar movements among humanitarians and missionary enthusiasts in Great Britain, although not on precisely the same timeline. See, for example, Andrew Porter, "Trusteeship, Anti-Slavery, and Humanitarianism," and "Religion, Missionary Enthusiasm, and Empire," in Andrew Porter, ed., *The Nineteenth Century, Oxford History of the British Empire* (Oxford: Oxford University Press, 1999), 198-221, 222-246.

[58] "A Lincoln's Birthday Address in New York City," February 12, 1904, in Washington, *Papers*, 7: 432 (first quotation), 435 (second quotation).

Clearly still bothered by ongoing criticism and the increasingly bestial depictions of black people in the press, in July 1905 Washington contributed an article to the *North American Review* entitled "The Religious Life of the Negro." Washington warned that many people viewed black religious life as static and unchanging when, in fact, "the Negro people, in respect to their religious life, have been, almost since they landed in America, in a process of change and growth." Having laid the rationale for his change in public statements, Washington recounted the religious history of African Americans from Africa to the United States as a narrative of progress, though elements of his old statements remained. He claimed, for example, "It was natural and inevitable that the Negro Church, coming into existence as it did under slavery, should permit the religious life of the Negro to express itself in ways almost wholly detached from morality. There was little in slavery to encourage the sense of personal responsibility." But on the whole his assessment of contemporary black religion was positive, and he consoled his readers that "the leaders of the different denominations of the Negro Church are beginning to recognize the force of the criticism made against it."[59]

Later that year he continued his new direction in an article published in the *Independent*. Gone was any criticism of black religion or the black ministry. Instead, Washington again defended black improvement, this time gesturing toward "what the Negro himself has been doing during the past forty years . . . thru the religious organizations controlled by him." After explaining that more than two-thirds of black adults were members of a church, he moved through each major denomination, Baptist, AME, AME Zion, and Colored Methodist, providing detailed accounts of money spent

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[59] Washington, "The Religious Life of the Negro," *North American Review*, 181 (July 1905), 20–23, ibid., 8:333 (first quotation), 334 (second quotation), 335 (third quotation).

by each throughout the previous year. Concluding that in the last ten years, "the Negro in America has contributed at least $2,000,000 thru his churches toward his own education," Washington praised what he thought was "a pretty good record for a race of people which was in slavery forty years ago." With that, he tried to drop the issue and move back to more comfortable ground.[60]

Unfortunately, the ground was shifting under him. At no time was Washington's paradox, or his tragedy, more apparent than in 1906, Tuskegee's twenty-fifth anniversary. That May, Washington received near universal acclaim from the business community at a gala in Tuskegee, with Carnegie and others offering laudatory support. Judging by the gala, it would have been easy to conclude that Washington's civilizing mission had fulfilled its original hopes of integrating southern African Americans into the nation as full citizens, a conclusion that would have been disastrously false. Though people of the highest political and economic clout once again surrounded Washington, the threat of lynching and vigilante justice had only increased for many black southerners over the prior twenty years. Unfortunately, Tuskegee's twenty-fifth anniversary was not the reason that 1906 would be remembered. Instead, that year saw the five-day-long Atlanta race riot in late September, an orgy of violence prolonged by police disarmament of black residents and the decision to deputize two hundred aggressive whites. The riot vividly demonstrated the failure of Washington's strategy, and he made his way to the city two days afterward, completely at a loss for how to respond. After casting about for two weeks, he wrote a confidential letter to the founder of the Philadelphia *Tribune*, calling for "the leading classes of Southern white people to shoulder the responsibility of the

[60] Washington, "Negro Self-Help," *Independent,* 59 (November 23, 1905), 1207–8, ibid., 8: 445 (first quotation), 448 (second and third quotations).

protection of the Negro." Four weeks later he publicly elaborated his new formula at the Alabama State Fair. Trying to calm racial tension, he warned against imputing the laziness and immorality of a segment of black people onto the race as a whole, and he expressed concern that the estrangement of the races would lead to the perpetuation of such confusion, with possibly violent results. As a remedy, Washington encouraged a return "to the old days when there was a closer touch between the best element of negroes and the best element of white people" and urged black ministers to open their pulpits and encourage "the best white ministers and white leaders [to] talk to his people." He was confident of the future, he assured his audience, because he believed that the white people of the South were beginning to realize their duty "to enlighten and civilize" not just the heathens of Africa and Asia but also "the black man that lives right by their side." Washington's civilizing mission had become, in short, the white man's burden.[61]

After the Atlanta Riot, Washington lost all direction, and his civilizing mission reached its sad apotheosis in a talk given six years later. Addressing the Men and Religion Forward Movement, Washington proclaimed that no people should be more interested in Christianizing southern African Americans than "the captains of industry," because "nothing pays so well in producing efficient labor as Christianity. Religion increases the wants of the laborer." Since the man "with the spirit of Christ in his head and heart wants land, wants a good house, wants another house, wants decent furniture," Washington reasoned that people with money in North and South should be interested in

[61] Washington to Christopher James Perry, October 5, 1906, ibid., 9:86 (first quotation); "Excerpts from a Speech at the Alabama State Fair," October 27, 1906, ibid., 9:107 (second through fifth quotations). For a contemporary account of the twenty-fifth anniversary celebration, see "An Account of the Twenty-fifth Anniversary of Tuskegee Institute by Jesse Max Barber," May 1906, ibid., 9:15–24. On violence and the conflicted colonial consciousness, see Paolo Freire, *Pedagogy of the Oppressed*, trans. Myra Bergman Ramos (New York: Continuum, 2000), 55. On the rise of lynching, see W. Fitzhugh Brundage, *Lynching in the New South: Georgia and Virginia, 1880-1930* (Urbana: University of Illinois Press, 1993).

black Christianization, which would lead to the advancement of both the race and the economic prowess of the United States. Coming to his conclusion, Washington intoned, "Through the medium of religion let us continue to multiply the wants of the Negro, and they will render six days of honest labor in order to supply these increased wants, and thus become one of the most efficient class of laborers that the world has seen." It was a theme he would stick to for the remainder of his life, appealing to the moral establishment in a vain attempt to forestall violence, by promising that the civilizing mission offered a bright future of mutual enrichment.[62]

The central issue in Washington's pronouncements was the widely shared belief that productive citizenship required certain internal moral characteristics that Afro-Americans did not possess. Because black Christianity ostensibly remained detached from Afro-American morality, in the perspective of moral establishment proponents the millions of black Americans posed a threat to American democracy. As J.L.M. Curry wrote to Washington in 1898 complaining of American territorial ambition and what he considered "the stupid willingness to incorporate millions of untrained into our citizenship," American citizenship required training in self-control and self-government to perpetuate itself in liberty. The question in Curry's mind was "how we shall discharge the debt; social, civil, religious, [that] we owe to our Afro-American citizenship." Yet if citizenship required internalized moral values that, according to religious partisans, were grounded in religious belief and practice, then Afro-American citizenship, in so far as Afro-Americans rejected the religious ideals of the moral establishment, was always in question in the South. The call to civilizing benevolence that Washington frequently

[62] "Extracts of an Address before the Men and Religion Forward Movement," April 21, 1912, in Washington, *Papers*, 9:527.

sounded entailed a simultaneous acknowledgement that, according to the moral establishment, perhaps Afro-Americans did not possess the requisite moral characteristics for full citizenship. As the civilizing mission failed to yield the transformation that northern whites and Washington had anticipated, southern white proponents of segregation were able to point to black resistance to the civilizing mission as evidence that the southern Afro-Americans required segregation for the good of American democracy and the maintenance of the southern moral establishment. It was their vision of the southern moral establishment that emerged dominant at the end of the nineteenth century, in which the imperatives of social maintenance, in this case with a decidedly racial cast, overcame the black argument for individuals and equal rights.

CHAPTER FOUR. THE LIMITS OF RELIGIOUS LIBERTY

> Wherever the real power in a Government lies, there is the danger of oppression. In our Government the real power lies in the majority.
>
> —James Madison[1]

> In the United States religion not only regulates mores, but extends its empire over intelligence. Among the Anglo-Americans, some profess Christian dogmas because they believe them, other because they are afraid of not looking like they believe them. Christianity therefore reigns without obstacles, on the admission of all.
>
> —Alexis de Tocqueville[2]

In 1854, the Missouri Supreme Court handed down a ruling that, on first blush, did not seem very different from the many other antebellum Sabbath law cases. The opinion touched on familiar themes. It claimed, for example, that the organic law of a constitution took its meaning from "the people for whom it was ordained," and, because the Missouri state constitution appeared to have been made by "Christian men," Christianity was written upon the Constitution itself and protected as the law of the land. In response to the defendant's claim that the Sabbath law violated his free exercise right, the court asked, "Convert Sunday into a worldly day by law, and what becomes of Christianity? How can we reconcile the idea to our understanding, that a people professing Christianity would make a fundamental law by which they would convert Sunday into a worldly day?" Put succinctly, the court held that the Christian heritage of the United States, written into the Constitution, protected the religion of the people for whom it was written.[3]

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[1] James Madison to Thomas Jefferson, 17 October 1788, in Madison, *Papers of James Madison*, 11:298.

[2] Alexis de Tocqueville, *Democracy in America*, 279.

[3] *Missouri v. Ambs*, 20 Missouri at 216 (first and second quotations), 219 (third quotation) (1854).

Although the Christian nation rhetoric was more strident and thoroughgoing than ever, anxiety touched with outrage coursed through the opinion, signaling an unease not found in Justice Kent's *Ruggles* verdict. That outrage yielded a revealing aside that brought up the central issue facing the moral establishment. To argue that the free exercise clause would prohibit the official observance of the Christian Sabbath was to imagine, according to the court, that the constitution was "an instrument framed for a state composed of strangers collected from all quarters of the globe, each with a religion of his own, bound by no previous social ties, nor sympathizing in any common reminiscences of the past." The court tried to argue that the Christian Sabbath, and the whole system of American law, in fact relied on a fundamental consensus, a shared pattern of religious belief rather than a pattern of exclusion or coercion, that sustained American democracy. But by mid-century, the initial conflicts over the meaning of disestablishment had matured. Socially and intellectually the country was becoming a very different place, and much more religiously, ethnically, and culturally diverse than it had been when Jefferson, Madison, and Paine had lived. That complexity necessarily affected the moral establishment as changes in American societal organization challenged the traditional mechanisms of cultural reproduction. The increased presence of freethinkers who denied the public authority of Christianity alarmed Christian leaders. Moral establishmentarians fretted that the nation was losing its moral compass and religious foundation. Freethinkers, for their part, deplored the influence of the Protestant cultural authority, and provoked constant controversy by insisting that the United States could only live up to the promise of its founding by purging the remnants of an ecclesiastical establishment from its laws and politics. Joining freethinkers were a small

group of nascent religious liberals, who walked a tightrope between sometime deference to the conservative clerical establishment and simultaneous reinterpretation (or abandonment) of traditional Christian creeds.[4]

Although the conflict had not yet come into its fullness in 1854, the Missouri Court's opinion pointed to the fundamental question Christian leaders would face as the United States became an industrialized society. After what had seemed a promising beginning, the moral establishment was under attack. Religious partisans fretted that the nation was devolving into anarchy or despotism. They worried that the libertarian radicalism advocated by freethinkers would be unable to sustain the common bond or moral fiber to hold American society together. More than anything, they claimed that, by rejecting the idea of God and the threat of divine sanction in the life of individuals, freethinkers cut loose the major incentive to moral obligation, creating individuals whose appetites and vices would rage without control. In response, religious partisans mobilized to defend what they took to be the foundation and future of American culture. Freethinkers and their sympathizers met moral establishment proponents blow for blow, insisting that the official justification of the moral establishment, which gestured toward the cohesion and religious foundation of American society, was merely a pretense to mask their own desire for cultural and social power. The resulting conflict ultimately pitted the rights of the individual against the prerogatives of the majority, and clarified the essential limitations of individualism under the moral establishment.[5]

[4] Ibid., at 215.

[5] The phrase "libertarian radicalism" comes from Rabban, *Free Speech in Its Forgotten Years*, 23.

Challenges to the Moral Establishment

By 1854 when the Missouri court handed down its opinion, the urban-industrial transformation was already profoundly reordering the material bases of life in human society. Over the course of eighty years, from the turn of the century to the 1880s, the United States fundamentally changed from a predominantly agricultural nation, with many family farms, small-scale artisanal manufacturing, and a merchant sector based in seaport cities that exported raw goods and imported manufactured items, to become an industrial powerhouse that produced manufactured goods for the United States and abroad. It went, in short, from a relatively pastoral cluster of colonies to an expanding land empire dotted with cities on the order of Gotham. The emergence of industrial capitalism entailed large-scale social transformations, like a massive migration from the countryside to cities, so that, increasingly, many Americans lived in urban centers and worked for industrial wages. Transportation and communication networks consolidated the national economy, and the Civil War, though it briefly ruptured that financial system, actually provided the administrative networks and the accumulation of capital that prepped the northern industrial economy for take-off. In addition, and in contradiction to the Missouri court's argument, the increasingly robust industrial machine drew people from all over the globe to work as laborers in American factories, with immigration numbers surging from over a million and a half immigrants during the decade of the 1840s to close to nine million in the first decade of the twentieth century. Although the ultimate scale and result of the transformation was not apparent in 1854, the extent to which American society was changing was very apparent and, to proponents of the moral

establishment, a cause for great concern.[6]

Merely understanding the extraordinary social transformation posed a challenge, and the transformation necessarily had intellectual and political effects. Perhaps most fundamentally, the rapid social changes showed the malleability of the social order itself. Because Christian social philosophy tended to trade in axiomatic, almost platitudinous statements of immutable and universal rules, it had to come to terms with a rapidly changing social order in which past rules no longer made sense. Focusing on the stunning change, many social theorists came to the conclusion that a society was the product of its own history, and could not appeal to immutable laws or platitudinous axioms as a justification for social arrangements. In other words, the seemingly simple proposal that a society was the product of its own history pointed out the *contingency* of social arrangements. Charles Darwin's 1859 publication of *Origin of the Species* extended the idea of contingency to the natural order itself, arguing that even species were subject to change according to external stimulus and environmental context. The social and natural order, formerly fixed, came loose from their anchors, and social theorists, legal scholars, and ordinary people had to come to terms with a world lacking ultimate fixity. Trained to think in axioms, many felt what that keen observer of the industrial transformation, Karl Marx, expressed: "All that is solid melts into air, all that is

[6] On the urban-industrial transformation, see Sydney Ahlstrom, *A Religious History of the American People* (New Haven: Yale University Press, 1972), 749-750; Eric H. Monkkonen, *America Becomes Urban: The Development of U.S. Cities & Towns 1780-1980* (Berkeley: University of California Press, 1988), 69-110; Klein, *A Population History of the United States*, 107-144. On the social and intellectual effects of the industrial revolution, see Thomas L. Haskell, *The Emergence of Professional Social Science: The American Social Science Association and the Nineteenth-Century Crisis of Authority*, Second ed. (Baltimore: Johns Hopkins University Press, 2000), 1-47. On the integration of markets and the unstable emergence of industrial capitalism, see George Taylor, *The Transportation Revolution, 1815-1860* (New York: Rinehart and Co, 1958); Glenn Porter, *The Rise of Big Business* (Arlington Heights, Ill.: Harlan-Davidson, 1992).

holy is profaned."[7]

This profound revelation caused ripples both within Protestantism and outside it, challenging the prevailing legal framework and the somewhat complacent Protestant politico-moral assumptions. In part, the challenge came from the somewhat amorphous group of people, with murky connections to one another, called freethinkers. The freethought movement, to the extent that it could be called a movement, was a motley group composed of socialists, anarchists, spiritualists, agnostics, free love advocates, and a healthy dose of crackpots and eccentrics. What united them was their absolute opposition to the influence of Christianity in American public life. It was their initial forays into political debate the prompted Lyman Beecher, late in his life, to decry the reemergence of "infidelity of the Tom Paine school." Whom he had in mind in particular was the English socialist who had set up a utopian colony in the United States, Robert Owen. Owen irritated religious sensibility in 1826 when he published his "Declaration of Mental Independence" to coincide with the fiftieth-anniversary celebration of the United States. Freethought continued to grow throughout the first half of the nineteenth century, but, as mid-century social and intellectual development gained steam, changes began occurring within Protestantism itself. Religious liberals responded to the social transformation by reworking standard evangelical creeds, rejecting formerly central

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[7] Karl Marx, "The Communist Manifesto," in Karl Marx and Frederick Engels, *The Marx-Engels Reader*, ed. Robert C. Tucker, 2nd ed. (New York: W.W. Norton and Co., 1978), 276 (quotation). On the conservative struggle to understand the changing historical process, see Grant Wacker, "The Demise of Biblical Civilization," in *The Bible in America: Essays in Cultural History*, eds. Nathan O. Hatch and Mark A. Noll (New York: Oxford University Press, 1982), 125. On the general feeling of social disruption and anomie that the industrial transformation produced, see Marshall Berman, *All That Is Solid Melts Into Air: The Experience of Modernity* (New York: Simon and Schuster, 1982); T. J. Jackson Lears, *No Place of Grace: Antimodernism and the Transformation of American Culture 1880-1920* (New York: Pantheon Books, 1981), 32-48; Robert H. Wiebe, *The Search for Order, 1877-1920* (New York: Hill and Wang, 1967).

doctrines in an effort to accommodate the theology of the church with the changing society. Ironically, at the forefront of the nascent Protestant liberal movement was Lyman Beecher's son, Henry Ward Beecher. A large man of flowing hair, fashionable appearance, and amiable ideas, Henry Beecher was exquisitely attuned to the sensibilities of his upper-class parishioners, even after the debacle with Elizabeth Tilton. Looking at him, it is tempting to say that liberals could be separated from their conservative counterparts by a change of temperament as much as doctrine. Yet important doctrinal changes accompanied his geniality. Beecher, and other religious liberals, embraced the idea of a progressive unfolding of divine revelation as culture developed historically. As the historian Grant Wacker has argued, the liberal embrace of a historical understanding of culture is what, to a large extent, defined them as religious liberals. The contingency and mutability of the historical process offered hope, not anxiety, to religious liberals, who welcomed what they saw as the breakdown of narrow, old creeds as the church came in tune with the spirit of the age and the progressive unfolding of the knowledge of God. Beecher in particular saw the progress of history as the enlargement of the sphere of revelation, "adding to the Bible the revelation of Nature, and of man's reason and moral consciousness." When the sphere of revelation included reason and moral consciousness, humans necessarily began with "experience and observation" to unfold their theological understanding. The result was a theology that recognized "the God idealized from our best ascertainments," bringing human beings centrally into the development of theology as they responded to the historical unfolding of God.[8]

[8] Henry Ward Beecher, "Progress of Thought in the Church," *North American Review* 135 (August 1882): 106 (first quotation), 116 (second and third quotation). On the liberal embrace of a modern idea of history, see Wacker, "The Demise of Biblical America," 125-126. For a fuller account of liberal theology, see Kenneth Cauthen, *The Impact of American Religious Liberalism* (New York: Harper & Row, 1962), 27-36,

In the same way that he enlisted the historical process in his reformulation of theology, Beecher drew upon the doctrine of evolution, reconceived socially, to support his idea of the developmental enlargement of the knowledge of God. He saw in Darwinism a natural metaphor for growth and change in human societies, in which the stronger and more complete representations of God would in time overcome the simpler and out-of-date ideas enshrined in creeds. Putting it provocatively, Beecher claimed, "the unbelief of to-day is the faith of to-morrow. . . . The skepticism of honest men unfold the truth, and becomes the convictions of the aftertime." The evolutionary growth of the knowledge of God could be found in the Bible itself, he thought, as the cruder understanding of the Old Testament yielded to the fuller revelation of the New. It was this emphasis on evolutionary change that first drew Beecher to the most prominent American freethinker, Robert Ingersoll. In 1872, Beecher published an editorial in his weekly magazine, the *Christian Union*, satirizing the reaction of "some good people of Central Illinois" to Ingersoll's sarcastic claim (quoting Alexander Pope), "an honest God is the noblest work of man." Ingersoll charged orthodox Christians with bad faith, upholding a creed that offended contemporary moral sensibilities while self-righteously appointing themselves as guardians of the moral order. In place of their duplicity, Ingersoll urged them to refashion an "honest God." Beecher fully concurred, admitting, "Every man constructs his God out of the materials that are furnished him." What Beecher found curious was that orthodox Christians, and especially Calvinists, readily saw "the physical and moral deformity" of heathen gods, while they were unable or unwilling to see their own "soulless formularies and logical inferences" as "scarcely less

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209-227. On Beecher and his relation to the middle-class America, see William G. McLoughlin, *The Meaning of Henry Ward Beecher: An Essay on the Shifting Values of Mid-Victorian America, 1840-1870* (New York: Knopf, 1970); Carter, *The Spiritual Crisis of the Gilded Age*, 109-132.

repulsive." Beecher was confident that in time the development from heathen gods to the soulless formularies of Calvinism would continue to a more full-hearted representation of God in the nineteenth century.[9]

Because liberals were so concerned to purge the narrowness of the orthodox creed, they in turn embraced greater independence and self-control for the individual, which Beecher insisted was "the one paramount doctrine of the New Testament." Because God's revelation was still unfolding, liberals reasoned, the place for certainty, fixity, and rigid adherence to creed had passed, and any attempt to enforce theological orthodoxy merely ossified the on-going revelation of God. Accepting the contingency of theological thought, religious liberals were loath to declare that religious sentiment or conformity was a necessary characteristic for a stable social and moral order, though many remained with the conservatives in declaring that God was necessary to maintain moral standards and moral ideals. But the connection between religious sentiment and public morality was a tricky issue for liberals. As early as 1863 in his novel *Norwood*, Beecher described the "high moral tone of public sentiment" found in many New England towns. Although he conceded that such a moral tone could work to good effect, the "penetrating and almost inquisitorial character" of some towns, in which "good men are so thoroughly intent upon public morality that the private individual has scarcely any choice left," risked a war between different sectors of society, by which he meant a war, in the parlance of the nineteenth century, between the better classes and those below.[10]

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[9] Henry Ward Beecher, *Evolution and Religion* (New York: Fords, Howard & Hulbert, 1885), 8 (first quotation), 30-41, 68; Henry Ward Beecher, *The Christian Union*, May 15, 1872, 426 (second and third quotations). For an excellent overview of the impact of evolution on religion and social thought, see Paul F. Boller, *American Thought in Transition: The Impact of Evolutionary Naturalism, 1865-1900* (Chicago: Rand McNally, 1969), 22-69.

The risk of war, to the extent that it was manifest, played itself out in the courts, and the challenge that social change presented to theology also worked its way into the legal realm. Though the change was many-faceted, perhaps the most discernable legal development was in the nineteenth-century principles of jurisprudence. In eighteenth-century jurisprudence, law was conceived of as a fixed body of doctrine whose occasional codification through luminaries like Blackstone enabled a better application of relatively fixed principles. Justice Kent and his successors, who appealed to axiomatic maxims in antebellum church-state cases, were essentially in line with eighteenth century jurisprudence, at least in their conception of church and state. Over the course of the nineteenth century, judges reconceived American jurisprudence, particularly in the area of business and commerce, as a flexible instrument to promote variable social ends. Although it took some time, this shift eventually affected the legal consensus that grew up around Kent's *Ruggles* opinion.[11]

The first crack in the consensus appeared in an 1853 Ohio Supreme Court Sabbath law case that rejected the idea that Christianity was part of the common law of the state of Ohio. Citing the freedom of conscience clause in the Ohio constitution, the Court reasoned, "Neither Christianity, or any other system of religion, is a part of the law of this State." If the opinion ended there, it would have already been a significant shift in legal thought, but it continued to strike at the heart of the legal consensus advanced by Kent and Story, elaborating the ramifications of the shift. Fundamentally, the court argued, because Christianity and the state are completely separate, the freedom of

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[10] Henry Ward Beecher, *Norwood; or, Village Life in New England* (New York: Charles Scribner & Company, 1868), 4 (all quotations). See also Beecher, "Progress of Thought in the Church," 102, 104.

[11] For the shift in nineteenth century law, see Horwitz, *The Transformation of American Law, 1780-1860*. For the workings of this shift in the Christian nation maxim, see Green, "Rhetoric and Reality", 207-208.

conscience clause not *only* created a regime of toleration in which dissenters were free to believe what they wanted so long as they did not disturb the majority; it also, more robustly, guaranteed that a dissenter from the majority reposed "not upon the leniency of government, or the liberality of any class or sect of men, but upon his natural, indefeasible rights of conscience, which, in the language of the Constitution, are beyond the control or interference of any human authority." This was a foundational shift, echoing the logic of Thomas Paine by completely disavowing the prerogatives of the majority for the integrity of individual rights. Although the court went on to uphold the legality of the Sabbath law, claiming that a cessation of labor fell under the proper purview of legislative authority to achieve desired social ends, the damage was already done.[12]

Five years later, the California Supreme Court completed the legal rationale of the Ohio court by striking down a Sabbath law for the first (and only) time in the nineteenth century. But the issue was so contentious that the three justices produced three different opinions, with one in dissent. Chief Justice Terry followed the straightforward argument that a Sabbath law necessarily furthered the interests of the Christian religion, agreeing with the plaintiff, who was Jewish. He went on to address the argument of the state, namely that the California Constitution's free exercise clause "merely" guaranteed toleration. Instead, Terry argued that the republican form of government and the provisions of the Constitution guaranteed "religious liberty in the largest sense—a complete separation between Church and State, and a perfect equality without distinction between all religious sects." His view was the most consistently opposed to the influence of religion on public policy, arguing that everyone must obtain some benefit from a law

[12] *Bloom v. Richards*, 2 Ohio St. at 390 (first quotation), 391(second quotation) (1853).

so that all would equally submit, which left very little room for the unrestrained prerogatives of majorities.[13]

The concurring opinion by Justice Bennett put a sharper point on the issue of the rights of the individual by claiming that the Constitution required equal protection of all, not equal toleration of all, but it also allowed for some interaction between church and state. The point of the "no preference" clause, according to Bennett, was the protection of the individual, and "if there be but a single individual in the State who professes a particular faith, he is as much within the sacred protection of the Constitution as if he agreed with the great majority of his fellow-citizens." Bennett still conceded that insofar as legislature could extract principles from a religious system that were applicable to legitimate civil ends, then they could be passed as civil laws and enforced. But if "there is no ground or necessity upon which a principle can rest, but a religious one," then the no preference clause of the constitution stepped in and denied that principle the sanctity and enforcement of law. Because Bennett thought the Sabbath law could rest only on a religious principle, he concurred with Terry, though he was not entirely in agreement with the Chief Justice's strict separation.[14]

The dissenting opinion by Stephen J. Field proved to be the most illuminating. Whereas the two concurring justices focused on the issues of equal protection, the rights of the individual, and the no preference clause of the California Constitution, Field drew on the rationale advanced by the Ohio Supreme Court five years earlier, that a Sabbath law fell within the authority of the legislature as a civil regulation. Because the law

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[13] *Ex parte Newman*, 9 Cal. at 506 (both quotations) (1858)

[14] Ibid., at 514 (first quotation), 513 (second quotation).

solely regulated the ability to conduct business transactions on Sundays, Field claimed that it presumed only to enforce civil conduct and left religious profession and worship at the discretion of the individual citizen. His reasoning was an important concession, and represented the shift in nineteenth century jurisprudence. Instead of arguing, like Kent, that Christianity was a necessary part of the moral fabric of the nation and the foundation of its social cohesion, he argued that the Sabbath law was part of the legislature's prerogative to oversee "the preservation of health and the promotion of good morals." He did not entirely abandon the idea of Christian majority rights, though. Echoing Bennett's opinion that if a religious principle promoted a legitimate civil end it could be enshrined in law, Field went a step further to argue that if a legitimate civil end could find support in a religious principle, so much better for the legislation. It would result in a more wholehearted embrace of the principle of law, "not merely from the requirements of the law, but from conscientious or religious convictions of their obligation." It was Justice Field who had the last laugh when, three years later, a reorganized California Supreme Court, with Field now sitting as Chief Justice, reversed itself and approved the California legislature's most recent attempt at a Sunday law, citing Field's dissenting opinion as the basis of its ruling.[15]

As alarming as religious conservatives found the Ohio and California Sabbath law cases, the real nightmare came in 1872 when the Ohio Supreme Court went a step beyond its (in)famous 1854 decision to elaborate the most thoroughgoing view of church-state separation since James Madison and Thomas Jefferson. Although the issue before the court was whether the public schools of the state could read from the Bible and teach Christianity in class, the court permitted itself to address several points lying outside the

[15] Ibid., at 520 (first quotation), 522 (second quotation); *Ex parte Andrews*, 8 Cal. 678 (1861)

case proper because, it noted, the case touched upon "religious convictions and prejudices" that threatened "to disturb the harmonious workings of the state government." Although the court again denied that Christianity was part of the common law of the state, arguing instead that "all history shows us that the more widely and completely [religion and the state] are separated, the better it is for both," it went well beyond its prior ruling by suggesting that there was to be no connection between church and state whatsoever. Summing up its view, the court called its doctrine "hands off": "Let the state not only keep its own hands off, but let it also see to it that religious sects keep their hands off each other." The state's primary role in religion was to ensure that the minority received the protection of the Constitution because "the majority can protect itself." Yet lest it be accused of promoting a new doctrine, the court claimed that it was not new at all, quoting James Madison in support.[16]

It would be entirely possible to overstate the legal importance of these three cases, and, for the most part, conservatives did. The opinions did not advance secularism and did not appeal to science or any rival body of knowledge. In the most alarming court decision, the same Ohio judge who urged that the state keep its hands off religion, simultaneously affirmed that the United States was a "Christian country, and that its constitutions and laws are made by a Christian people." Yet the courts' move to liberalize church-state law, focusing on the rights of the individual versus the prerogative of majorities, meshed tightly with the attempts of religious liberals to free themselves from creedal restrictions in order to formulate a new theology. Given the profoundly unsettling pace of change and the dissent of liberals within Protestantism itself, the

[16] Board of Education v. Minor, 23 Ohio St. at 245 (first and second quotation), 248 (third quotation), 250 (fourth quotation), 250-251 (fifth quotation) (1872).

actions of the court only further increased the feeling among religious conservatives that the American social fabric was fraying and on verge of tearing apart. It was within that unstable context that the most reviled figure of all made his debut.[17]

The Specter of Robert G. Ingersoll

As alarming as moral establishment proponents found the burgeoning liberal movement and the isolated decisions of the courts, no single person embodied the challenges to the establishment more than Robert G. Ingersoll. The son of a revivalist Presbyterian minister and a staunchly abolitionist mother, Ingersoll had been a free soil Democrat before bolting the party to join the Republican cause. He saw combat in the Civil War, was taken prisoner at Shiloh, and returned home to honors with the promise of a bright legal and political career ahead of him. His impeccable credentials promised a bright future, but his respectable and conventional career was not to be. Something happened along the way to derail his political potential and turn him into a rabid critic of what he saw as religion's pervasive, and pernicious, hold on American public life.

That incident was the 1868 gubernatorial contest in his home state of Illinois. His heroism in the Civil War and his oratorical skills as a lawyer had brought a groundswell of support for his ascension into political office. As the support gained momentum, there was talk of a nomination for the governorship of Illinois during the 1868 campaign. Ingersoll's main competition was Major General John M. Palmer, founder of the Republican Party in Illinois and sixteen years Ingersoll's senior, who coyly gave signals that he was not a candidate while quietly building a following through back channels. A wire from Palmer to Ingersoll in April of 1868 promised that he would not

[17] Ibid., at 247.

accept if elected, and an elated Ingersoll wrote to his brother that Palmer had been "smoked out." "I don't think they can all beat me any way in the world," he exulted. But some problems lingered. Two years earlier, Ingersoll had given his first iconoclast lecture, in which he asserted that the church had enslaved the mind of humanity and retarded the progress of the human race. The majority of his would-be constituents did not share his religious sentiments, of course, and doubts about Ingersoll's political viability swirled beneath the surface. When Ingersoll became aware of Palmer's backroom movements, he wrote angrily to his brother, "It looks now as though Palmer really wants to be governor after all. He will likely beat me; but I am going to fight it out to the bitter end. If he allows himself to run, he will simply prove himself to be a dirty dog." When the convention rolled around, as if following a script, some delegates expressed concern about Ingersoll's heterodoxy, and Palmer, after being canvassed by the convention, acknowledged his "duty" to accept.[18]

The experience radicalized Ingersoll's religious heterodoxy—moving it from a personal religious perspective to a sense of political mission. Although he had vowed that if he lost he would give up his political aspirations and settle down to law, he still took the defeat hard. He was "heartily disgusted," he wrote to his brother, and complained that he had been "throwing pearls before swine—that my party has not the sense to understand me." Professing to be "sick of the whole thing," he considered "bidding a long farewell to all of my greatness" and settling down to a quiet life out of the public eye. Although he did devote himself to law, he did not remain out of public

[18] Ingersoll to Ebon Clark Ingersoll, April 9, 1868, in Robert G. Ingersoll, *The Letters of Robert G. Ingersoll*, ed. Eva Wakefield Ingersoll (New York: Philosophical Library, 1951), 148 (first and second quotations; Ingersoll to Ebon Clark Ingersoll, April 29, 1868, Ingersoll, *The Letters of Robert G. Ingersoll*, 149 (third quotation. For a good account of the back room political movements, see Larson, *American Infidel*, 76-80, 89-98.

view. After his initial iconoclast lecture in 1866 and his defeat at the nominating convention, he crafted a series of lectures with titles like, "The Gods," and "Individuality" and, perhaps most infuriating to conservatives, "Some Mistakes of Moses," which rankled clerical sensibilities and drew large, interested crowds. As he became more provocative, his reputation grew, and he became renowned as an arresting orator and a dangerous infidel.[19]

Part of the reason religious partisans reacted so strongly to him was that he played directly upon their cultural anxieties. Ingersoll's central theme was that the changing social order would bring about progress heretofore unknown in human society, liberating individuals from the oppressive structures that held them in the past. It was Ingersoll who best showed the connection between rapid social change and the emergent embrace of individual rights. Unlike religious conservatives, he looked upon the rapid social change of the nineteenth century with hope, seeing vast potential for human beings to control their own destiny without reference to God. In his mind, progress, liberalism, science, and optimism were all tightly bound together and peculiar characteristics of the age. As he explained in one of his earliest lectures, "The Gods," science promised not just knowledge of the world but also "knowledge of the laws of life; of the conditions of happiness; of the facts by which we are surrounded, and the relations we sustain to men and things." Knowledge of these laws, rather than relying on the inscrutable provision of God, promised to remake humanity's relation to the world, because man could subjugate nature and bend "the elemental powers to his will, making blind force the servant of his brain." Science reinforced liberal individualism, because a belief in divine providence

[19] Ingersoll to Ebon Clark, April 29, 1868, in Ingersoll, *The Letters of Robert G. Ingersoll*, 150 (first and second quotations); Ingersoll to Ebon Clark, May 14, 1868, ibid., 151 (third and fourth quotations).

not only limited investigation of the external world but "is inconsistent with personal effort." As Ingersoll saw it, the forward movement of science necessarily meant the secularization of the world and the reeducation of individuals to rely on themselves, rather than on an "aristocracy of the air." His most basic intellectual inclination was an absolute trust in the capacity of individuals. As he put it, "Every mind should be true to itself—should think, investigate and conclude for itself."[20]

Although all the currents of the age seemed to point to the liberation of mankind to harness the power of nature and empower individuals, he pointedly criticized the clergy for what he considered their superstition and fear mongering that acted as a drag on the freedom of the individual. According to Ingersoll, religious freedom was sadly lacking in a country that claimed to honor the freedom of individual conscience. He complained bitterly, "Society demands, either that you belong to some church, or that you suppress your opinions." More than just social conformity, the Protestant establishment wielded political power to preclude any openly non-Protestant of whatever stripe (with the exception of political machines run in big cities) from attaining political office, as Ingersoll himself found in his run for the governorship. Although Ingersoll eventually returned to politics in order to stump for political candidates, his activism was never rewarded with an appointment. After the election of Rutherford B. Hayes in 1876, rumors circulated about a diplomatic appointment to Berlin as thanks for his efforts on the campaign trail, but as Ingersoll wrote to his extended family, "You need place no confidence in what you hear about the Berlin mission.—I do not believe that Hayes dare appoint me. He is afraid of the religious world. I must be and I am perfectly willing to

[20] Ingersoll, *Works*, 1:64 (first three quotations), 75 (fourth quotation), 179 (fifth quotation).

pay for the privilege of saying what I think."[21]

To make way for the liberation of the individual (and himself), Ingersoll attacked Christianity and the power of the clergy, trying to create a series of walls between religious belief, political governance, and legal jurisprudence. Coercion, he thought, was a necessary development of the claim that the United States was a Christian nation, because it was inherent in the doctrines of Christianity itself. As he put it, "Allow me to ask here, why a Christian should have any hesitancy in burning a man a few minutes for heresy, when he worships a God who will burn the same man forever?" To undermine ministerial credibility and vitiate the power of the informal religious establishment, Ingersoll claimed over and over again, in different words, that American government was founded not "upon the rights of gods, but upon the rights of men. Our constitution was framed, not to declare and uphold the deity of Christ, but the sacredness of humanity."[22]

Given Ingersoll's belligerence, religious conservatives looked on in horror, when on October 30, 1880 a crowd gathered in the Academy of Music in Brooklyn to hear Henry Ward Beecher, Lyman Beecher's son and the most famous preacher in the United States, introduce Ingersoll at a Republican party rally. The upcoming election carried particular import for the Republican cause. Four years earlier a backroom compromise had stopped a Democratic insurgency and allowed Rutherford B. Hayes to ascend to the Presidency—but only with the promise to end Reconstruction in the South. Could the next election see the return of a Democratic President? The atmosphere was electric as

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[21] Ibid., 1:198-199 (first quotation); Ingersoll to "Folks" [?], Nov. 11, 1877, in Ingersoll, *The Letters of Robert G. Ingersoll*, 162 (second quotation).

[22] Ingersoll to G. Mewhirk, Aug. 4, 1879, ibid., 243 (first quotation); Ingersoll, "Individuality," in Ingersoll, *Works*, 1:199 (second quotation).

Beecher took to the podium and began, "I am not accustomed to preside at meetings like this; only the exigency of the time could induce me to do it . . . . I stand not as a minister, but as a man among men, pleading the cause of fellowship and equal rights."[23]

The upcoming election alone, of course, did not produce the electricity of that night. The sight of the most famous preacher in the nation introducing the most famous skeptic was without precedent, and many wondered, what would Beecher say? As he rose to his point, he exclaimed, "the gentleman who will speak tonight is in no conventicle or church . . . and I take the liberty of saying that I respect him as the man that for a full score and more of years has worked . . . for the cause of human rights. I consider it an honor to extend to him, as I do now, the warm, earnest, right hand of fellowship." Turning to face Ingersoll, the two effusively clasped hands near the podium as the house erupted in thunderous applause that only subsided when Beecher, indicating that he was not yet done, continued: "I now introduce to you a man who—and I say it not flatteringly—is the most brilliant speaker of the English tongue of all men of the globe." The building "trembled and vibrated" from the roar of approval, and Ingersoll, basking in applause, stepped up to the podium. For his part, Ingersoll exhilarated the crowd. At the end of his speech and another clasping of hands, Ingersoll requested three cheers for Beecher that the crowd warmly gave.[24]

Was this merely another case of strange bedfellows in politics or did the handshake between the infidel and the preacher signal a rapprochement between the two sides? Or, as the *New York Herald* queried, "Is the keen logic and broad humanity of Ingersoll converting the brain and heart of Christendom?" Although both would later

[23] Interview in *New York Herald*, Oct. 31, 1880, ibid., 8:40.

[24] Ibid.

acknowledge continuing differences alongside their profound mutual admiration, to religious conservatives the furor surrounding their handshake represented the absolute nadir of their authority and the fulfillment of the threat to the moral establishment. Ingersoll's complaint, growing louder and more eloquent as he got older, along with Beecher's apparent endorsement of Ingersoll's program, reinforced the urgency that religious partisans felt. After fifty years the moral establishment that Lyman Beecher had outlined was definitely under attack, and proponents mobilized to restore their eroding authority and what they saw as the foundation of American culture.

Conservative Religious Response: Between Persuasion and Coercion

Religious conservatives were not a uniform lot, and differences of temperament, doctrinal orientation, and degrees of toleration were evident throughout. Yet they shared a common response to the social changes of the industrial revolution, the migration of legal opinion toward the rights of the individual, and increasing belligerency of freethinkers like Ingersoll. They simply denied that the progress of history and the changing social order undercut their religious claims, responding that doctrine was not subject to the course of history, because Christian revelation in some sense existed outside of history, mediated by human beings to be sure, but without changing its divine, and therefore immutable, qualities. As for the mutability of the species, Princeton theologian Charles Hodge spoke for many conservatives in his judgment on Darwinism: it was simply another word for atheism. In short, although the social and intellectual changes of the nineteenth century alarmed many religious conservatives and revealed cracks in the foundation of the antebellum moral establishment, conservatives did not fundamentally alter their thought. As the historian Grant Wacker has noted, "the

conservative world was filled with people and issues drawn from the past, but it was, in the last analysis, a world without a modern sense of history." What the social and intellectual changes caused them to do was to re-evaluate the way in which they maintained their cultural authority. Their solutions fell along the continuum of a renewed attempt at persuasion to outright coercion.[25]

One of the first strategies was to silence or even defrock liberals within Protestantism. No matter how much religious liberals claimed that their thought was a valid development of historic Christianity, both religious conservatives and freethinkers denied a middle ground in the agonist struggle between belief and unbelief, and could only regard religious liberals as either confused or guilty of bad faith. Beecher came under attack even before the scandal with Tilton and the subsequent handshake with Ingersoll. Jonathan Blanchard, a conservative Congregational minister who took part in Beecher's ordination to ministry (and currently has a building named in his honor at the evangelical Wheaton College), charged Beecher with preaching Scripture "like Satan, and like Satan, defeating its practical intent." "When Henry Ward Beecher is about to assail some fundamental truth, held and suffered for by Puritans," Blanchard complained, "he always begins by proclaiming himself their descendant." Although he snidely confessed that Beecher was not "an intentional, conscious hypocrite," Blanchard could not shake his belief that Beecher had secretly joined the other side. Likewise, freethinker James Parton, the author of a biography on Voltaire that Ingersoll called "one of the best biographies every written," marveled at Beecher's ability to move back and forth between ancient Christian thought and modern scientific terminology. So comfortable

[25] Wacker, "The Demise of Biblical America," 127 (quotation); Charles Hodge, *What is Darwinism?* (New York: Scribner, Armstrong and Company, 1874), 173-177.

was Beecher in both worlds that Parton claimed, "nearly all that he says, when he is most himself, finds an approving response in the mind of every well-disposed person, whether orthodox or heterodox." It was Beecher's "exquisite tact" that allowed him to "hover on the confines of truth" while leaving the more uninviting landscape "veiled in midst and unexplored." In essence, Parton saw Beecher as conservative Christians did, as "a bridge" between two unreconcilable positions, although unlike conservatives Parton thought Beecher was a bridge not between orthodoxy and heterodoxy but "the creed-enslaved past [and] the perfect freedom of the future."[26]

By 1880, Beecher's handshake with Ingersoll offered confirmation of what many already thought, that Beecher had played the traitor, capitulating to the forces of science and secularism without fully acknowledging his unbelief. Following the uproar, the *New York Herald* surveyed mainstream clergy's response, and reported that many believed Beecher to be "in full sympathy and accord with Ingersoll's teachings" but did not want to risk the loss of his pastoral position by acknowledging it. Ingersoll's consistent praise for Beecher did not help. In one of his standard lectures, Ingersoll held up Beecher as the most enlightened of the clergy and an indication of the course of history, noting that, "the greatest man who to-day occupies the pulpit of one of the orthodox churches, Henry Ward Beecher, is a believer in the theories of Charles Darwin—a man of more genius than all the clergy of that entire church put together." In 1887, Ingersoll even presented a graveside oration at Beecher's funeral, which he used to goad religious conservatives. Claiming that Beecher had been born "in a Puritan penitentiary, of which his father was

[26] Jonathan Blanchard, "The Spirit of the Cynosure," *The Christian Cynosure*, July 11, 1872, 1-2 (first four quotations); Ingersoll to William H. Leff, September 1, 1887, in Ingersoll, *The Letters of Robert G. Ingersoll*, 409 (fifth quotation); James Parton, "Henry Ward Beecher's Church," *Atlantic Monthly* 19 (January 1867): 43 (sixth quotation), 44 (seventh through eleventh quotations).

one of the wardens," Ingersoll praised Beecher profusely while heaping scorn on Christianity, noting, for example, that Beecher's soul was sensitive to "the pathos of all human life," that he taught the church "to think and doubt," and finally, simply, that "he was a brave and generous man."[27]

During life, Beecher somewhat wearily insisted that his agreement with Ingersoll only went so far, though it never really seemed to convince anyone. At the end of an interview in which he praised Ingersoll and defended the handshake, Beecher was clear to say, "I do not wish to be understood as indorsing [*sic*] skepticism in any form," but he was never able to downplay what many saw as an unseemly, if not damning, connection to Ingersoll, even long after the fact. In 1920, years after both were dead, the industrialist Andrew Carnegie (who was himself religiously heterodox) related a story that again affirmed the connection between the two. He was traveling with the British literary critic, Matthew Arnold, on the latter's American tour, when Arnold requested a meeting with Henry Beecher. As it turned out, Ingersoll's daughter happened to be traveling with Carnegie and Arnold on that leg of the journey, and after presenting Arnold to Beecher, Carnegie had the pleasure of introducing Eva Ingersoll, explaining as he did so, "Mr. Beecher, this is the first time Miss Ingersoll has ever been in a Christian church." Without hesitation, Beecher took her proffered hand and replied, "Well, well, you are the most beautiful heathen I ever saw." Donning a tone of earnestness, Beecher inquired after Ingersoll, explaining as he did, "Many times he and I have stood together on the platform, and wasn't it lucky for me we were on the same side!" In the minds of

[27] Interview in *New York Herald*, November 7, 1880, Ingersoll, *The Letters of Robert G. Ingersoll*, 8:40 (first quotation), 2:358 (second quotation), 12:419 (third quotation), 423 (fourth quotation), 424 (fifth and sixth quotation).

religious conservatives, that was exactly the problem.[28]

Given the suspicions surrounding Beecher's relationship to Ingersoll, a mere two years after the handshake Beecher resigned from the New York and Brooklyn Congregational Association, in what could be viewed as either an act of intellectual independence or a preemptive move before he was forced out. Complaining of the "spiritual barbarism" and "infantine conceptions" that many Congregationalists still held, Beecher gave a full report of his belief by offering commentary on the Westminster Confession of Faith, outlining his agreements and disagreements as he read the doctrinal provisions. When he was done, he explained simply that he knew many Congregationalist ministers "would speak more than disapproval" of his credo, and that many would not want to "bear the burden of responsibility of being supposed to tolerate the views I have held and taught." Declaring himself "a man of honor and a Christian gentleman," Beecher refused to allow anyone to feel responsible for his views and resigned his membership.[29]

Although he was insulated from any lasting harm because of the support of his church, Beecher's situation was indicative of the ongoing power of religious conservatives in the last half of the nineteenth century, a power that extended beyond their denominations and into the wider cultural and political realms. Accordingly, conservatives sought to parlay their power to curb dissenters outside their denominations as well. At the more benign end of the spectrum, they followed the tradition of voluntary

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[28] Ibid., 8:40 (first quotation); Andrew Carnegie, *Autobiography of Andrew Carnegie* (Garden City: Doubleday, Doran & Company, Inc., 1933), 288-289 (second through fourth quotations).

[29] Henry Ward Beecher, *Henry Ward Beecher's Statement before the Congregational Association of New York and Brooklyn* (New York: Funk & Wagnalis, 1882), 1 (first and second quotations), 27 (third through fifth quotations). For other examples of contemporaneous, formal heresy trials, see George H. Shriver, ed., *American Religious Heretics: Formal and Informal Trials* (Nashville: Abingdon Press, 1966).

associations and formed the Evangelical Alliance in 1867. As one part of the worldwide evangelical movement, the Alliance sought to expand evangelicalism's cultural influence in United States in order to make it, and ultimately the world, fully Christian. But as the century progressed the Alliance began taking a hard look at the moral state of the nation and the place of Protestant cultural authority within it. Given the many non-Christian threats that assailed the nation, the Alliance's mood necessarily became more defensive as it pooled evangelical resources to shore up what its members saw as the eroding Christian foundation of the United States.[30]

Part of the defensive mood meant renewing the appeal to coercive power in defending what they considered American Christian character. In 1874 at the sixth General Conference, the Alliance devoted an entire day's discussion to the subject of evangelical advancement through governmental structures, trying to clarify the issues and perhaps arrive at a statement of principles, but confusion and difference of opinion prevailed throughout. On one end of the spectrum was Theodore Dwight Woolsey, then President of Yale, who conceded that the government was generally separate from religion. Because the federal Constitution limited the powers of the national government to support any form of religion, the federal state could hardly be called a Christian state. Nor could state-level government be considered Christian, though he acknowledged that several state constitutions withheld civil office from "atheists, from disbelievers in future rewards and punishments, and even from disbelievers in the Christian religion." Instead, a fuzzy but existent line separated the religion of the majority from legislative enactment,

[30] On the Alliance's mission and goals for a Christian America, see Robert T. Handy, *A Christian America: Protestant Hopes and Historical Realities*, 2nd ed. (New York: Oxford University Press, 1984), 60-69; Philip D. Jordan, *The Evangelical Alliance for the United States of America, 1847-1900: Ecumenicism, Identity and the Religion of the Republic* (New York: The Edwin Mellen Press, 1982), 99-142.

though Woolsey thought some interaction was both desirable and necessary, citing divorce law in particular. Likewise, J.L.M. Curry argued for a separation of church and state, but with the usual moral establishmentarian caveats: that liberty should not be a premise for "unrestrained license, nor social anarchy, nor to be used for a veil of wickedness." Farther along the spectrum toward forthright coercion was Mark Hopkins, President of Williams College, who argued using the language of moral science that "man has a right to whatever may be necessary to the attainment of his end as that end is indicated by his whole nature." Because the intellectual, physical, moral, and spiritual parts of humans were mutually complementary and mutually reinforcing, Hopkins assured his listeners that it was part of man's fundamental right to legislate toward physical, moral, and intellectual ends in order to benefit the spiritual needs of those who wish it. In other words, religious motivations could promote civil legislation for non-religious ends because the "whole nature" of man (including the religious nature) would benefit, even if it were not specifically acknowledged in law.[31]

As the Alliance discussed strategies that seemed to stop short of forthrightly acknowledged coercion, many conservatives grew concerned that perhaps persuasion alone would fail to maintain their level of cultural influence. Nothing better demonstrated the mood than the 1885 bestseller, *Our Country*, by Josiah Strong. Strong was the secretary of the Evangelical Alliance, and the book was published by the American Missionary Association. Warning of the multiple perils facing the nation, his book demonstrated the genuine fear that many religious partisans felt about the broad social changes challenging moral reproduction. The upshot, which resonated with the

[31] Philip Schaff and S. Irenaeus Prime, eds., *History, Essays, Orations, and Other Documents of the Sixth General Conference of the Evangelical Alliance* (New York: Harper & Brothers, 1874), 526 (first quotation), 544 (second quotation), 540 (third and fourth quotations).

millions who bought his book, was a dire warning that sinister forces held the moral character of the nation under siege. The question for conservatives was how to inculcate individuals with necessary moral character when urbanization and immigration made the socializing mechanisms that had worked so well in small towns obsolete.[32]

To answer that question, many looked to Anthony Comstock, who had sealed his fame by jailing Victoria Woodhull during the Beecher-Tilton affair. The passage of the Comstock law in 1873 increased his power, not merely to control obscenity but also freethought, because although the law's original intent was to combat indecency Comstock successfully expanded its application to include the dissemination (through the federal mail) of freethought literature as well. As his thinking went, freethought almost always went hand-in-hand with the degradation of morals. In 1876, Ingersoll gathered 50,000 signatures on a petition to Congress to repeal the law, claiming that it threatened free speech, freedom of the press, and individual and religious liberty. When Congress ignored the petition, other freethought groups went ahead with a court challenge in 1877, which they thoroughly lost. Writing for the U.S. Supreme Court in a unanimous opinion was none other than Stephen J. Field, the former California Supreme Court justice whose civil justification for Sunday laws was to become the norm. Against the claims of freethought groups that the law infringed upon their freedom of religion and their freedom of the press (since Comstock used the law to ban many freethought publications), Field simply denied that it had been the object of Congress to deny any "rights of the people." Rather, adopting Comstock's view completely, Field explained that the law's sole object, which was within legislative authority, was merely to limit "the

[32] Strong, *Our Country*.

distribution of matter deemed injurious to public morals."[33]

In 1883 Comstock elaborated his philosophy in his widely admired book, *Traps for the Young*, which decried the myriad of influences that seek to capture the hearts of children, turning them away from decency and righteousness and toward "all the foul doings of corrupt men and women." Among the many traps were free love traps, infidel traps, liberal traps, and so on, all designed to undermine parental authority. The worst, by far, were the liberals and infidels, who "come after the criminal and obscene, and in some respects are worse, in that while they pretend to be far above religion and laws, they undertake the defence of all the foregoing evils." Ingersoll, of course, "the great American blasphemer," led the way in destroying "the fastenings which are the only restraints of vice" by calling into question divine existence and, by extension, divine retribution.[34]

Although Comstock himself had no luck in catching Ingersoll using the Comstock law, the same coercive impulse prompted other conservatives to renew the enforcement of blasphemy laws. In that arena, Ingersoll came in for his share of legal intimidation, receiving fines for lecturing on Sunday, the last-minute closing of venues in accordance with a Sabbath law (though they were open other Sundays for other purposes), and the like. In 1881, not long after the handshake furor with Henry Beecher, moral

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[33] *Ex parte Jackson*, 96 U.S. at 736 (both quotations) (1877). Field's view was in keeping with many of the court rulings in the late nineteenth century. See Michael Les Benedict, "Victorian Moralism and Civil Liberty in the Nineteenth-Century United States," in *The Constitution, Law, and American Life: Critical Aspects of the Nineteenth-Century Experience*, ed. Donald G. Nieman (Athens: University of Georgia Press, 1992), 91-22; Mark Warren Bailey, *Guardians of the Moral Order: The Legal Philosophy of the Supreme Court, 1860-1910* (DeKalb: Northern Illinois University Press, 2004), 113-127. On Ingersoll's petition to Congress, see Foster, *Moral Reconstruction*, 53.

[34] Comstock, *Traps for the Young*, 13 (first quotation), 184 (second quotation), 197 (third quotation), 186 (fourth quotation).

establishmentarians in Delaware enlisted the support of Joseph P. Comegys, the Chief Justice of the Delaware Supreme Court, to shut down one of Ingersoll's planned lectures. Prior to Ingersoll's lecture a grand jury was convened and the Chief Justice urged it to indict Ingersoll under a 1740 blasphemy law, because his lectures, in Comegys's claim, "tended to breach the peace, to riot and bloodshed" by promoting a social philosophy that undermined public morals. The entire proceeding smacked of legal showmanship, especially after the grand jury declined to indict Ingersoll before he had even given his lecture. It did offer him the warning that if he carried out his proposed lecture, he would "be taught that in Delaware blasphemy is a crime, and as such will be punished by fine and imprisonment." When many liberal papers around that nation criticized the action, Ingersoll cancelled the lecture with the consolation that the press made his point for him. The threat of prosecution lingered again in 1884 in Philadelphia, this time from an 1860 law passed by the Pennsylvania Legislature promising fines and imprisonment for anyone who would "willfully, premeditatedly, and despitefully blaspheme or speak loosely and profanely of Almighty God, Christ Jesus, the Holy Spirit, or the Scriptures of Truth." Ingersoll had apparently had enough and went ahead with his lecture, labeling attempts to censor speech "in this day and generation" as "exceedingly foolish" and "idiotic." When asked what he would do if they attempted to arrest him, he replied, "Nothing, except to defend myself in court." The prospect of a court battle with Ingersoll, even if the law was on their side, dissuaded clergy, and nothing came of it.[35]

But smaller bucks were still fair game. It was in this context that Charles B. Reynolds was brought up on blasphemy charges after spreading freethought pamphlets in

[35] The Delaware Chief Justice and the Delaware Grand Jury are both quoted in Larson, *American Infidel*, 162. For several examples of legal intimidation used against Ingersoll, see the press accounts in Ingersoll, *Works*, 8:14, 75-75, 78, 202-204 (third through seventh quotations), 266.

Boonton and Morristown, New Jersey. Hearing of the controversy, Ingersoll immediately traveled to Morristown, posted bail for Reynolds, and decided to argue the case. In what turned out to be a several-hour speech before the jury, Ingersoll ranged widely over the rationale of the founding fathers, the hope of the American founding, and the recent intolerance that the present case seemed to betray. Pouring contempt upon the indictment, he tried to appeal to the jurors' own desire for freedom of speech and, rather uncharacteristically, plead for an acquittal in the name Christianity, which would "never reap any honor, will never reap any profit, from persecution." Although witnesses found Ingersoll's defense deeply moving, the jury found Reynolds guilty and levied a fine that Ingersoll paid.[36]

The appeal to law and coercion became formalized in a growing organization called the National Reform Association (NRA). The most conscious and coherent position on the conservative Christian side of the church-state debate, the NRA held simply that, because the United States was a Christian nation based on Christian ideals, the omission of an explicit Christian affirmation in the federal Constitution rendered the American union vulnerable to secular threat. Warning darkly that "the enemies of our national Christianity" were active and that the "Christian institutions of government" were at stake, the NRA called all patriots to soldier on "the field of moral conflict." It explicitly rejected what it called "the secular theory of government" or the idea that "civil government has nothing to do with religion but to let it alone," referencing both the Ohio and California Supreme Court decisions that had both argued the idea. Instead, the NRA claimed, somewhat opaquely, that it opposed "both secularism and the union of Church

[36] Larson, *American Infidel*, 214-217. For the text of his address, see Ingersoll, *Works*, 11:57-117 (quotation on p. 114).

and State," but it supported "Christianity in the State." In other words, it supported the moral establishment, which it regarded as under attack. To further buttress itself against the charge that it sought a union of church and state, it brandished the formula that Lyman Beecher had originally perfected. It was "a movement of citizens," not a movement of churches or sects, so its composition and purpose was merely to advance the nonsectarian Christian civil government that had been around since the early nineteenth century.[37]

Tempting though it is to dismiss the organization as a fringe movement on the extreme edge of evangelicalism, it actually brought together many prominent themes in evangelical political thought into a coherent and clear political philosophy. It elaborated, for example, the complex set of ideas that went into the claim that the nation had a moral character. The idea entailed that the nation was a "jural society," not merely a union of economic convenience. A jural society could be measured against moral standards, because law was an application of morals. If law was an application of morals, then the nation must have a corporate personality with a measurable corporate character, depending on the kind of laws that were enacted and enforced. Finally, because the nation had a corporate personality and a corporate character, it was accountable to God for its actions, and God could bring it down if its character was lacking. To support their assertions, proponents drew upon the jurisprudence of Justices Kent and Story, who both agreed that "the binding law of morality and community" imposed itself on the corporate as well as individual person. Because the nation was a moral person subject to the binding moral law, neutrality in religion and an absolute separation of religious influence

[37] David McAllister, T.H. Acheson, and William Parsons, *Christian Civil Government in America: The National Reform Movement, Its History and Principles*, 6th ed. (Pittsburgh: National Reform Association, 1927), 16 (first, second, and third quotations), 17 (fourth through seventh quotations), 25 (eight quotation).

from the state was impossible. The moral imperatives by which the state was to be judged took their meaning from religion itself.[38]

The question then was not whether religion and civil government should be connected but how. The NRA understood the connection to be a delicate balance between what it called the written and the unwritten constitutions. The written constitution established the essential principles and offered "authoritative sanction to the fundamental features of national life." The essential principles and authoritative sanction of the written constitution were drawn, so the reasoning went, from the unwritten or vital constitution of a people. In the American republic, the vital constitution "in reference to morals and religion" was always "unquestionably Christian." According the NRA, the constitution was not responsible for constituting the American people. Instead, it was but the written expression of the nation's vital constitution or character, buttressing it and providing legal sanction for its enforcement. For various reasons that the NRA declined to specify, the constitutional framers had decided to exclude an explicit affirmation of Christianity in the Constitution, which resulted in the unstable relationship of "a non-Christian written Constitution and an unwritten Christian Constitution." Only an amendment that acknowledged the vital Christian constitution of the nation would ensure that secularists did not exploit the instability in order to overturn the Christian character of American government and laws. To those who misguidedly touted the freedom of the individual, the Association responded in unapologetically majoritarian terms, pointing to "the right of society as against the so-called rights of the individual."[39]

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[38] Ibid., 120-131 (all quotations on p. 120)

Although the association never mustered enough support to modify the Constitution, it articulated the belief of moral establishment proponents that there needed to be a firm connection between religion, law, and civil government. From that standpoint, its greatest accomplishment was its codification of variously articulated strands of evangelical thought, which in turn influenced legislators and jurists. Perhaps its most important devotee was David Josiah Brewer, the nephew of Stephen Field who joined him on the U.S. Supreme Court in 1889. Justice Brewer, the son of Congregational missionary parents, was the celebrity of the Court from the very beginning of his appointment, as bar associations and religious groups actively courted him for speaking engagements around the nation. When he arrived on bench, he assumed the intellectual leadership of a voting bloc of justices that controlled the court in the latter part of the nineteenth century. Though he spoke and wrote on a wide variety of themes, the subject that occupied almost all of his utterances, whether explicitly or not, was the role of religion, and specifically Christianity, in the formation of the nation and its subsequent greatness.[40]

In an echo of Lyman Beecher, Brewer worried that the high calling of American citizenship, which recognized no restraint upon popular acts except what the people themselves imposed, would result in licentiousness and anarchy should the people as a whole decide to throw off that restraint. That danger, according to Brewer, was the reason for law, "to control the actions of individuals" without which "a state of anarchy

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[39] Ibid., 140-148 (first quotation on p. 143, second quotation on p. 144, third quotation on p. 145, fifth quotation on p. 148)

[40] For an excellent, concise overview of Brewer's life and work, consult Owen M. Fiss, "Brewer, David Josiah," in *The Oxford Companion to the Supreme Court of the United States*, ed. Kermit L. Hall (New York: Oxford University Press, 1992).

would exist, each man being a law unto himself." Therefore, obedience to law "ensures peace and order," and, indeed, honor itself required deference to "the decision of such majority" that enacted the law. What particularly worried Brewer and so many that sympathized with the National Reform Association, was that the licentiousness of the people, their loss of moral fiber, would undercut the real basis for American union. Echoing the NRA and Justices Kent and Story, Brewer held that the nation itself had a personality "standing over against the individual, an artificial entity separate and distinct from its citizens." The corporate aspect of national identity and national character obliged an individual citizen with "the duty of maintaining . . . a high, clean, moral character." Citizenship, in other words, relied upon and required an internalized moral standard that subsumed the autonomy of the individual to the good of the whole. Brewer even considered "the maintenance of good moral character" as "a primary obligation of every citizen." The nation itself could and should enact laws in order to protect its corporate character from individuals who would not voluntarily maintain the moral ideal. Although Brewer was quick to reject the idea "reforming men by statute," he nevertheless insisted that "society" might use statutes and ordinances to "guard itself against the temptations and evil influences" that might cause individuals to stumble. [41]

Christianity, then, was essential to the maintenance of a national moral character, not only because those who had internalized Christian ideals were more likely to maintain individual morality, but also because Christianity itself provided the moral

[41] David J. Brewer, *American Citizenship* (New York: Charles Scribner's Sons, 1902), 17-18 (first quotation), 19 (second quotation), 24 (third quotation), 25 (fifth quotation), 87 (fourth quotation); David J. Brewer, "Personal Character as a Responsibility of Citizenship," *Yale Law Journal* 10 (April 1901): 230 (sixth quotation), 231 (seventh quotation); David J. Brewer, *The Twentieth Century from Another Viewpoint* (New York: Fleming H. Revell Company, 1899), 49-50 (eighth quotation), 51 (ninth and tenth quotations).

standard that measured actions. Although Brewer conceded, "This is an iconoclastic and scientific age," he was quick to insist that "Christianity has been so wrought into the history of this republic, so identified with its growth and prosperity, has been and is so dear to the hearts of the great body of our citizens, that it ought not to be spoken of contemptuously or treated with ridicule." Having laid the foundation for blasphemy law, Brewer elaborated the positive duties of American citizens toward Christianity. Respecting Christianity implied respecting "its institutions and ordinances." Taking up the Sabbath in particular, he was explicit: "The American Christian is entitled to his quiet hour." Most broadly, reiterating the view of Story, Kent, Lyman Beecher, and the NRA, Brewer held that because Christianity had been "a potent and healthful factor in the development of our civilization," it was a positive duty of every citizen "to uphold it and extend its influence." Following his own principle, it was Brewer who wrote in 1892 for a unanimous U.S. Supreme Court that the wide variety of historical sources and the common law "add a volume of unofficial declarations to the mass of organic [state constitutional] utterances that this is a Christian nation."[42]

The Meaning of Robert Ingersoll

Proponents of the moral establishment desperately sought to check what they saw as the liberalizing movements of the nineteenth century by mobilizing against religious liberals, organizing to consolidate conservative religious authority, and utilizing the full possibilities of legal coercion through the Comstock law, blasphemy laws, a constitutional amendment, and the maintenance and rehabilitation of Justice Kent's

[42] David J. Brewer, *The United States a Christian Nation* (Philadelphia: John C. Winston Co., 1905), 48 (first quotation), 49 (second quotation), 54 (third quotation), 65 (fourth and fifth quotations); *Church of the Holy Trinity v. United States*, 143 U.S. at 471 (sixth quotation) (1892). On the Court's subsequent handling of the Brewer's Christian nation maxim, see Green, "Rhetoric and Reality", 417.

jurisprudence. Though they were ambivalent about the most effective or appropriate method of maintaining their cultural authority, they were united in their belief that the religious claims of what they considered orthodox (evangelical) Christianity were absolutely necessary for the preservation of the United States. That belief took on a razor's edge when confronted with Robert Ingersoll. Moral establishmentarians saw in Ingersoll the specter of complete moral dissolution, so that—quite apart from his secularism, his championing of science, and his attacks on religious leaders—he served as a symbol for a society that no longer acknowledged the mutual accountability and tacit submission to religious authority that the moral establishment sought to perpetuate.

Ingersoll's symbolic importance was perhaps most apparent in the furor over the Beecher-Ingersoll handshake. Responding to the criticism of his gesture, Beecher stated simply, "on the broad platform of human liberty and progress I was bound to give him the right hand of fellowship. I would do it a thousand times over." Similarly, Ingersoll cited their broad agreement, though he was careful to acknowledge their divergence.. "The difference between us," he explained, "is—he says God, I say Nature. The real agreement between us is—we both say—Liberty." But what Beecher and Ingersoll called liberty, the proponents of the moral establishment called licentiousness or anarchy. Where did liberty stop, and mutual obligation and social solidarity begin? If Ingersoll symbolized the breakdown of a mutually obligated social order sustained by the moral establishment, he also defined the limits of religious liberty by putting a fine point on an issue that religious partisans had, until that point, kept rather vague. Ingersoll demanded that the moral establishment withdraw the restraints from the individual so that people could realize the promise of the age through individual self-reliance. Religious

conservatives could not see how to do so without risking the dissolution of society into moral anarchy. That disagreement constituted an unbridgeable gap.[43]

Nowhere was the issue of religious liberty—and Ingersoll's importance as a symbol of moral dissolution—more evident than in the series of debates that swirled around him from 1881 to 1888. In early 1881, Ingersoll submitted a paper to the *North American Review* entitled, "Is All of the Bible Inspired?" The *North American Review* was one of the most respected monthly magazines in the nation, and it published a wide variety of highbrow articles on all the prevailing issues of the day. Although the editors sympathized with Ingersoll's position, the *Review* had received too much criticism for publishing skeptical articles about Christianity. The editors asked Ingersoll if they could turn his paper into a debate format in which Ingersoll would have the last word. After querying several potential respondents, they reeled in Judge Jeremiah S. Black, a former judge on the Pennsylvania Supreme Court, past-U.S. Attorney General, and one-time Secretary of State in James Buchanan's administration. The stage was set for a raucous contest.[44]

The initial exchange circled around several issues forming the touchstone of future discussion. Ingersoll led off with familiar claims: that the United States was not and had never been a Christian nation, that the record of the Bible was barbarous and offensive to civilized sentiment, and that the human race had proceeded beyond the cruelties of the Christian religion with enlarged sympathies and an expanded mental perspective. Black responded by rejecting the idea that the age had progressed past

[43] Ingersoll, *Works*, 8:41 (second quotation), 42 (first quotation).

[44] For the back history of the *North American Review* debates, see Larson, *American Infidel*, 167-70, 221-226.

orthodox Christianity, insisting that whatever progress had been made in the world came through the expansion of the Christian religion. Having dispensed with Ingersoll's argument, he went to the core of the issue as he saw it, complaining how difficult it was "reasoning about justice with a man who has no acknowledged standard of right and wrong." Because justice was that which accorded to law, and the basis of human law was the divine law, the will of God, Ingersoll could not logically hold to a standard of right and wrong if he denied God. The threat of atheism, then, was clear. "It is the misfortune of the atheistic theory," Black concluded, "that it makes the moral world an anarchy; it refers all ethical question to the confused tribunal where chaos sits as umpire and 'by decision more embroils the fray.'" Grimly he explained that the atheistic experiment had already been tried during the French Revolution, when the nation "formally renounced Christianity, denied the existence of the Supreme Being, and so satisfied the hunger of the infidel heart for a time. What followed? Universal depravity, garments rolled in blood, fantastic crimes unimagined before, which startled the earth with their sublime atrocity."[45]

Ingersoll, not surprisingly, was unimpressed, responding with characteristic contempt. He repeated his claim that the moral code of the Bible was barbaric, pointing out that its toleration of polygamy, slavery, and wars of exterminations was no longer in step with contemporary moral thought. Gaining steam as he wrote, Ingersoll vented, "Mr. Black, the Christian, the believer in God, upholds wars of extermination. . . . Yet I am told that I have no standard of right and wrong." Instead, the only true standard of right and wrong was the "happiness of mankind." Ingersoll's ethical claims were universalist and absolute, but rooted in a utilitarian standard: consequences determined

[45] Ingersoll, *Works*, 6:3-59 (first and second quotations on p. 38, third quotation on p. 59).

the ethical import of an action. He claimed, "The man who puts himself in the place of another, whose imagination has been cultivated to the point of feeling the agonies suffered by another, is the man of conscience." Conscience, in Ingersoll's estimation, was not a product of religion but the natural outgrowth of human sympathy, so "every human being necessarily has a standard of right and wrong; and where that standard has not been polluted by superstition, man abhors slavery, regards a war of extermination as murder, and looks upon religious persecution as a hideous crime." Advocating an almost Rousseau-like sense of natural goodness, Ingersoll imagined that if only the obfuscations and coercions of religion were removed, the moral conscience of humanity would emerge, guided by reason and an enlightened sentiment. But the issue of religious liberty was somehow lost in the fray.[46]

The conflict lay dormant for a few years until Dr. Henry W. Field, a Presbyterian minister and brother of U.S. Supreme Court Justice Stephen Field, published "An Open Letter to Robert G. Ingersoll" in an 1887 issue of the *North American Review*. Field returned directly to the issue of morality, asserting that by "let[ting] go the idea of God . . . you have let go the highest moral restraint. There is no Ruler above man; he is a law unto himself, a law which is as impotent to produce order, and to hold society together, as man is with his little hands to hold the stars together." Disagreeing with Ingersoll's sense of human nature, Field suggested that humans were weak, and that "virtue is not the spontaneous growth of childish innocence. Men do not become pure and good by instinct. . . . To let go of these restraints is a peril to public morality." Because humans were inclined towards mischief, not goodness, according to Field, morality and government provided the restraint to individuals as necessary means for the cohesion of

[46] Ibid., 6:60-117 (first three quotations on p. 96, fourth quotation on pp. 98-99).

society.[47]

But Ingersoll was interested in arguing about the basis of morality only for so long, and in his response he turned the issue back toward the subject of religious liberty and freedom of speech. He took issue immediately with the idea that Christianity offered moral restraint to society, because, as he reasoned, "Christianity has sold, and continues to sell, crime on a credit. It has taught, and still teaches, that there is forgiveness for all." To Ingersoll, the Christian doctrine of forgiveness encouraged not restraint but vice with the promise of exoneration. More importantly, contrary to the Christian claim that belief or non-belief has eternal consequences Ingersoll could not see how anyone could be held responsible for one's thoughts. The mind "thinks without asking our consent. We believe, or we disbelieve, without an effort of the will. Belief is the result." Since thought merely occurs, the question according to Ingersoll was not whether individuals have the right to think, but whether they have the right to act on their beliefs and to express their opinions freely. Coming to the heart of the question, he noted that Field had expressed his opinion—as was his right—but the key issue was, "have I the right to express mine?" Field's reply was somewhat unsatisfying, sliding around the issue of religious liberty while never directly addressing it, and the debate seemed to be coming to a close.[48]

While they traded a few final blows, though, William E. Gladstone, the four-time prime minister of England, followed the exchange across the Atlantic. Upon seeing Ingersoll's second reply to Field, Gladstone weighed in with his contribution, charging

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[47] Ibid., 6:121-142 (first quotation on p. 126, second quotation on p. 138).

[48] Ibid., 6:143-218 (first quotation on p. 173, second and third quotations on p. 147).

Ingersoll with focusing on matters of trivial import and ignoring the ethics of Jesus while picking at the morality of the Old Testament. Gladstone challenged Ingersoll's claim that the mind thinks without asking consent, though not to address the issue of religious liberty and free speech. He refused to concede that a person was not responsible for his religious belief because, he argued, "the enormous majority of human judgments are those into which the biassing [*sic*] power of likes and dislikes more or less largely enters." Even decisions between "conflicting [religious and ethical] systems" contained an element of morality, since moral and immoral causes go into the acceptance or rejection of belief. If a belief can be moral and immoral, Gladstone maintained, by implication so surely could a public statement of belief or unbelief. Again Ingersoll's contention about religious liberty remained unanswered.[49]

The central issues of these debates—religion and the basis of society, the source of moral restraint, the place and possibility of religious and intellectual liberty—were clear, but in spite of the high quality of the debaters, they seemed consistently to sail past one another. The religious defenders could not see how a nation, founded on Christian principles and sustained by its moral imperatives, could survive and maintain its greatness should those principles be eroded. Ingersoll, for his part, saw the nation as great precisely because religion was left out and argued for a system of radical individualism. The intractability of their debate formed the basis for one final attempt to find common ground. If they could agree on nothing else, could they agree that each had the right to disagree? In other words, in their deep differences, could they honor the right of difference itself? That implicit problem became explicit a year later, when Ingersoll proposed a roundtable discussion before the Nineteenth Century Club at the Metropolitan

[49] Ibid., 6:221-303 (first quotation on p. 250, second quotation on p. 252).

Opera House in New York.

The subject of the discussion, "The Limitations of Toleration," raised the issue of religious liberty directly. Ingersoll was the gadfly of the night, and he codified his many arguments into one succinct statement, claiming in his opening sentence, "I am here to-night for the purpose of defending your right to differ with me." Although he acknowledged that many among the religious community supported toleration, Ingersoll claimed that this attitude contained the seeds of persecution because, "when you say 'I tolerate,' you do not say you have no right to punish, no right to persecute. It is only a disclaimer for a few moments and for a few years, but you retain the right. I deny it." The cultural hegemony of the church allowed them to take a tolerant attitude, Ingersoll claimed, a form of condescension more than the recognition of individual right. Ingersoll, aware that his position was unpopular and in the minority, argued instead that his rights were written into the Constitution. The power of the individual to think for himself was an absolute right as well as a mere declaration of fact, the mind being "a country of one inhabitant," and Ingersoll insisted that because all can think on their own, the freedom of belief entailed the freedom of speech, a freedom that was absolute because all possessed the right equally.[50]

In response, his two interlocutors each conceded that Ingersoll possessed intellectual freedom, but neither could accept that this freedom allowed him to speak whatever he wanted. Frederic Rene Coudert, the Catholic representative in the discussion, was a prominent lawyer in New York City whose law firm represented, among its many important clients, several European governments, making it a significant

[50] Ibid., 6:217-324 (first and second quotations on p. 217, third quotation on p. 230, fourth quotation on p. 225).

player in the early development of international law. Coudert maintained that contrary to the elegant profanity uttered by Ingersoll, "who would undertake to say that our society could live with liberty of speech?" Speech, he claimed, was not merely a string of innocent words but an act with consequences upon society just as burglary or murder, and the reality underlying Ingersoll's call for free speech was "an eloquent apology for blasphemy." Citing the recent New Jersey blasphemy case in which Ingersoll had been involved, Coudert pressed the point that many states had such laws for good reason. "Our best men," he explained, "have insisted and maintained that the Christian faith was the ligament that kept our modern society together, and our laws have said, and the laws of most of our States say, to this day, 'Think what you like, but do not, like Samson, pull the pillars down upon us all.'" Because Christianity formed the ligament of the modern society, cutting it meant the dissolution and destruction of the state, in Coudert's estimation. "Wherever, and wheresoever, and whenever, liberty of speech is incompatible with the safety of the State," he emphatically concluded, "liberty of speech must fall back and give way, in order that the State may be preserved."[51]

His Protestant comrade in arms was only slightly less emphatic. Stewart Lynson Woodford was a one-time lieutenant governor of New York, congressman, federal district attorney, and, at the time of the discussion, minister of the United States to Spain. Awkwardly trying to find some separation from his Catholic counterpart, Woodford took issue with Ingersoll's claim that he was not responsible for belief, returning again to a central issue of the *North American Review* debates, but showing exactly why the point was important to denying the right of free speech. The moral responsibility of belief was

[51] Ibid., 6:235-246 (first quotation on p. 242, second quotation on p. 243, third quotation on p. 245, fourth quotation on p. 246).

supreme, according to Woodford, and not limited to the individual alone. The individual's responsibility extended out to others because, "I know that I am my neighbor's keeper, I know that as I touch your life, as you touch mine, I am responsible every moment, every hour, every day, for my influence upon you. I am either helping you up, or I am dragging you down." Backing away from Coudert's claims about the state, Woodford contended that the responsibility of individuals to one another granted freedom of thought but limited freedom of expression "by the condition that he shall not use that liberty so as to injure [his fellows]." Woodford left vague the mechanism that enforced his principle, but the fact remained that he could not conceive of a society in which people could openly disagree without injury to the society as a whole.[52]

All parties acknowledged that Ingersoll's provocations touched on core conflicts in American cultural and political life: the rights of the individual versus the prerogative of majorities, the basis of law and ethics, and the relationship between religion, morals and public life. But because disagreement was so entrenched, the core issues quickly expanded beyond the specific conflicts (substantive though they were) to whether or not a culture could remain cohesive with such profound disparity of opinion. The impasse could not be solved in an evening of conversation, but the issues were laid out directly. All three men thought the stakes of the conflict of utmost importance. Coudert foresaw the dissolution of society, should religion cease to function as its connective tissue. Woodford saw the breakdown of mutual responsibility and, by implication, the subsequent devolution of social cohesion should individuals forget their responsibility to one another and to God with their speech. Ingersoll, lastly, placed freedom of thought and speech above all other issues not only because it was necessary for the progress of

[52] Ibid., 6:247-252 (first quotation on pp. 249-50, second quotation on p. 252).

the human race, but also because "the enemies of free thought and free speech have covered this world with blood."[53]

Proponents of the moral establishment showed remarkable consistency in their arguments. They viewed the health of society delicately poised between two extremes. Pursuing only individual freedom would lead to anarchy; seeking only the maintenance of society would lead to despotism. Liberty could exist precisely because individuals had internalized moral restraint that held in check the centrifugal forces of individualism. Steering a course between the two meant allowing individuals freedom to believe, while providing checks on licentiousness and freedom of speech when it disturbed the public peace or promoted the degradation of morality. The church was an absolutely necessary influence both upon the government and individuals, mediating between them to preserve the moral fabric of the nation.

By contrast, Ingersoll (and other freethinkers) abhorred the continued influence of religion on the political and cultural life of the nation. He celebrated the breakdown of traditional mechanisms for inculcating internal restraint, arguing that religious partisans who sought to maintain them were working against the direction of history. To Ingersoll, the appeal to divine authority simply renounced individual responsibility and led the individual into intellectual slavery. Science had opened up the possibility for a world made by and for human beings, with God left out. Because science liberated humans from the dominion of God, the religious attempt to maintain cultural authority was merely a crass grab at cultural and social power, inadequately masked by the language of morality and national character. In place of the moral establishment maintained by

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[53] Ibid., 234.

religious partisans, Ingersoll suggested an alternative moral code based on individual liberty, mutual toleration, and enlightened moral sentiment.

Clarified though the issues were, the divide remained. What would absolute religious freedom entail? How could the principle of religious freedom be reconciled with the need, affirmed in many state constitutions, for a common religious identity to uphold public morals and to preserve the state? How were individual rights to be related to mutual responsibility? Those questions betrayed the disarray of liberal individualism at the beginning of the twentieth century. The appeal to the rights-bearing individual was never strong enough to insure civil rights, because the proponents of the moral establishment could always gesture to the imperatives of social maintenance, arguing that individuals could never be detached from, and indeed, to some extent assumed their individual meaning from, the larger collectives to which they belonged. To the claim of radical woman's rights proponents that the woman was primarily an individual, not a matron or a mother, religious partisans argued that the American moral regime was based on the structure of the family with the woman as its guardian, and that the so-called emancipation of woman would entail social degradation and moral dissolution. To those who argued for black civil rights, proponents of the southern moral establishment argued that the ostensible black moral degeneracy, partly the result of racial imperfection and partly the cultural legacy of their time in slavery, threatened the nation with corruption should they become full members in its body politic. In the place of civil rights, they claimed what was needed was a civilizing mission to teach Afro-Americans the virtues of work and the necessity of Christian, bourgeois character so that they could more easily live within the strictures of the moral establishment. When that civilizing mission failed

to live up to the hopes of its proponents, the way became clear for southern partisans to institute a regime of Jim Crow segregation as the central component of the early-twentieth century southern moral establishment. In the case of religious liberty and the freedom of speech, religious partisans pointed to the maintenance of an effective moral regime, which they thought provided an organizational center for American culture and provided the foundation for its greatness, in order to deny free speech and absolute religious liberty. Free speech ostensibly imperiled the maintenance of the American morality by eroding the religious foundation of American culture and society, sending individuals out into the world without an internalized moral compass necessary for the maintenance of American democracy. Ultimately religious rhetoric about the decline of the moral establishment provided a justification to further buttress its strength. The century closed not with an expansive sense of individual freedom, or the inevitable inclusion of individuals as full citizens, but with the moral establishment, which opponents regarded as an oppressive and individually stultifying regime, still firmly in place.

APPENDIX: STATE CONSTITUTIONS AND RELIGION

State constitutions offer a virtual palimpsest of American political thought. State constitutions, unlike the federal constitution, changed often, as new political ideals and different demographic and economic situations arose. To read chronologically through the constitutions of the various states is to watch American political thought change and develop. Yet scholars have not been attracted to state constitutionalism, in part because after the passage of the Fourteenth Amendment and centralizing of jurisprudence of the U.S. Supreme Court following the Civil War, federal constitutionalism seemed the more promising field of inquiry. That promise may hold true for many issues, particularly after 1920, but when it comes to the history of religious liberty an exclusive or even primary focus on the federal constitution and its interpretation misleads. John Marshall, writing for a unanimous U.S. Supreme Court, ruled in 1833 in *Barron v. Baltimore* that the Bill of Rights (including the First Amendment) did not apply to the states. For most of the history of the United States, religious liberty was defined, contested, and elaborated on the state level.[1]

Unfortunately, very few resources exist for those who wish to study state-level legal history when it comes to religion. The following chart offers an at-a-glance resource to see how state-level constitutional thought developed over time. The process of condensing over 200 years of state-level constitutionalism to a single chart is not without risk of over-simplification, yet states consulted one another's organic documents regularly so that recurrent patterns emerge with enough consistency that the chart-based summary remains useful. Sometimes the categories may overlap, and different principles of law may have different applicability in different situations. Because the courts can

[1] *Barron v. Baltimore*, 32 U.S. 243 (1833)

apply constitutional provisions in very different ways, the topics and subdivisions, though not arbitrary, reflect my sense of the best way to account for the complexity of the provisions, as well as to monitor the change over time. But for an in-depth study, nothing will replace looking at the documents themselves.

A few more words of explanation may be helpful. Because of constitutional revisions, many of the original section numbers have changed. For obsolete constitutions, I followed the original sections numbers in William F. Swindler, ed., *Sources and Documents*, while providing a note that lists the Article of Amendment and its date of adoption. For current constitutions, I have followed the section numbers in *Constitutions, National and State*, which lists the section numbers as they currently stand. The three exceptions to this rule are the still current constitutions of Massachusetts (1780), New Hampshire (1784), Vermont (1793), where I have used the original section numbering and noted the current section numbers and the intervening amendments in notes at the bottom of the chart. Sometimes there is a gap between the year of the Constitutional Convention and the year of the Constitution's ratification, and different authorities sometimes cite the same constitution using different years. I have followed the years listed in *Sources and Documents* and *Constitutions, National and State*. I have likewise followed Swindler in omitting some constitutions whose change from the previous constitution is so slight as to be not to be worth noting. The great majority of these are southern constitutions drafted as part of the secession movement preceding the Civil War, whose major change was to declare allegiance to the Confederate States of America.[2]

[2] William F. Swindler, ed., *Sources and Documents of United States Constitutions*. 11 vols. (Dobbs Ferry: Oceana, 1973-1988); *Constitutions, National and State*. 6 vols. (Dobbs Ferry: Oceana, 1985-).

In terms of the different categories, I followed a consistent set of rules. I noted the presence of a free exercise clause, a free speech clause, or a freedom of conscience clause only when the phrase or a very close cognate was used. In the no preference category, I noted when constitutions used the phrase "no preference," as well as when, as occurs in several early state constitutions, they used the more specific prohibition against the "subordination of any sect or denomination to one another." Under the category "acts of licentiousness proviso," I noted limitations on religious liberty that used the phrase "acts of licentiousness," referenced deviations from established "morality," or, in five cases (Idaho 1889, Montana 1889, Oklahoma 1907, Arizona 1910, and New Mexico 1910), specifically prohibited bigamy and polygamy, which I have also listed separately. The loosest category is the "prohibition against civil disability" because of religious belief. A prohibition could include specific language against all civil disability for religious belief, or it could guarantee a specific civic right like acting as a witness in court, acting as a juror, and voting. It might also do all the above. In general, if it gave any kind of guarantee of protection against civil disability, I listed under that category heading. The ban on religious test for office, though conceptually related to the ban on civil disability, was often listed as a separate article in the state constitutions, so I have listed it separately as well. Under the "disestablishment clause" category, I included those provisions that require that no person could "be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent," as well as those that explicitly excluded an "establishment." Under the category "exemption from taxation," I have listed all the provisions that exempt churches from taxation. Sometimes that exemption is implied, guaranteeing "privileges and immunities." Other times it

explicitly exempts churches from taxation. There are also two kinds of provisions for tax exemption: a self-executing provision, meaning that the exemption is enacted by the constitutional provision itself, and an authorizing provision, meaning that an exemption is permitted within certain parameters but requires an act of the legislature to fully enact the exemption. Because all of the states with authorizing provisions have corresponding legislative enactments, I have not drawn any distinction between self-executing and authorizing provisions in the chart. Finally, one last caveat. Just because no constitutional provision is listed does not mean that there was not a statutory provision to accomplish the same thing, or that courts have not found support for one category in another. This chart, in other words, does not show how courts subsequently applied the clauses. Yet the impulse to place a provision in the organic law can be suggestive of a change in the church-state arrangement, though the exact meaning and reason for the change would require more in-depth study into the constitutional history of each state.[3]

In the end, this chart makes visible the many and multifarious limitations on religious liberty, as states regulated religion in a variety of ways that changed over time. The change over time, and the ability to track that change over time in this chart, shows the shifting boundaries of dissent, the unstable meaning of religious liberty, and the implied and subtle forms of religious control that have been a hallmark of the American church-state arrangement.

[3] For the best one-volume treatment of religion and the various state laws, though it is now badly dated, see Antieau, Carroll, and Burke, *Religion Under State Constitutions*.

Legend

Symbol/Abbreviation	
✞	Catholics
✡	Jews
¶	Paragraph
§	Section
A	Atheists
AoA	Article of Amendment
Art.	Article
C1776	Constitution of 1776
CA	Constitution Article
Ch.	Chapter
DOR	Declaration of Rights
M	Ministers
PoG	Plan of Government
Prot.	Protestants
SHMG	“So help me God”
Xian	Christian

	State Constitution Year	CT[1] 1776	DE 1776	MD[4] 1776	NJ 1776	NC 1776	PA 1776	SC 1776	VA 1776
	Disestablishment Clause	—	2, CA 29	Art. XIII, added 1810	Art. XIX	CA XXXIII	DOR Art. II	—	—
individual	*No Preference Clause*	—	—	—	Art. XIX	CA XXXIII	—	—	—
individual	*Free Exercise Clause*	—	DOR Rule 2	—	—	CA XXXIII	DOR Art. II	—	DOR §16
individual	*Freedom of Conscience Clause*	—	DOR Rule 2	DOR Art. XXXIII	Art. XVIII	DOR Art. XIX	DOR Art. II	—	DOR §16
individual	*Free Speech Clause*	—	—	DOR Art. VIII	—	—	DOR Art. XII	—	—
corporate	*Invocation/Thanks to Deity in Preamble*	Yes	—	—	—	—	Yes	—	—
corporate	*Exemption from taxation*	—	—	—	—	—	PoG §45	—	—
corporate	*Acts of licentiousness modifier*	—	—	DOR Art. XXXIII	—	—	—	—	—
corporate	*Prohibition of Bigamy and Polygamy*	—	—	—	—	—	—	—	—
corporate	*Peace and safety of the State proviso*	—	DOR Rule 2	DOR Art. XXXIII	—	—	—	—	—
corporate	*Morality in Education a Function of the State*	—	—	—	—	—	PoG §45	—	—
corporate	*Prohibition of Sectarian Public Education*	—	—	—	—	—	—	—	—
governance	*Prohibition of Civil Disability*	—	DOR Rule 3 (lim. Xian)	DOR Art XXXII (lim. Xian)	Art. XIX (lim. Prot.)	—	DOR Art. II (lim. theist)	—	—
governance	*Prohibition of Office Holding*		✡ (CA 22), M (CA 29), A (CA 22)	✡ (DOR Art. XXXV; CA LV), M (CA XXXVII), A (DOR Art. XXXV, CA LV)	✡ (Art. XIX), ✟ (same), A (same)	✡ (CA XXXII), ✟ (CA XXXII)[6], M (CA XXXI), A (XXXII)	✡ (PoG §10), A (same)		M (C1776)
governance	*Ban on Religious Test for Office*	—	—	—	—	—	—	—	—
governance	*Oath of Office with religious component*	—	CA 22[2,3]	CA LV[5]	—	—	PoG §10[3,7]	Art. XXXIII (SHMG)	—

[1] Const. Ordinance
[2] trinitarian oath
[3] belief in divine inspiration in Old and New Testament
[4] Const. And DOR
[5] belief in the Christian Religion
[6] deleted in the 1835

State Constitution Year	GA 1777	NY 1777	VT 1777	SC 1778	MA 1780	NH 1784
Disestablishment Clause	Art. LVI	—	—	—	—	—
No Preference Clause	—	Art XXXVIII	—	—	—	Part. I, Art. VI
Free Exercise Clause	Art. LVI	Art. XXXVIII	Ch. 1, Art. III	—	—, AoA XLVI, added 1917	—
Freedom of Conscience Clause	—	Art XXXVIII	Ch. 1, Art. III	—	Part I, Art. II	Part. I, Art. IV, V
Free Speech Clause	—	—	Ch. 1, Art. XIV	—	—	—[12]
Invocation/Thanks to Deity in Preamble	—	—	Yes	—	Yes	—
Exemption from taxation	—	—	Ch. II, §41	—	Part II, Ch. 5, §2	Part II, Art. LXXXIII
Acts of licentiousness modifier	—	Art. XXXVIII	—	—	—	—
Prohibition of Bigamy and Polygamy	—	—	—	—	—	—
Peace and safety of the State proviso	Art. LVI	Art. XXXVIII	—	—	—	—
Morality in Education a Function of the State	—	—	Ch. II, §LXI	—	Part II, Ch. V §1, Art. I, Part II, Ch. V §2	Part II, Art. LXXXIII
Prohibition of Sectarian Public Education	—	—	—	—	AoA XVIII, (superceded by XLVI, XCVI, CIII)	—
Prohibition of Civil Disability	—	—	Ch. I, Art. III (lim. Prot)	Art. XXXVIII* (lim. Prot)	Part I, Art. III (lim. Prot.)[8]	Part I, Art. VI (lim. Xian)[11]
Prohibition of Office Holding	✡ (Art. VI), ✝ (Art. VI), M (Art. LXII), A (Art. VI)	M (Art. XXXIX)	✡ (Ch. II §IX), ✝ (same), A (same)	✡ (Art. III, XII, XIII), ✝ (Art. III, XII, XIII), M (Art. XXI), A (Art. III, XII, XIII)	✡ (Part II, Ch. VI, Art. I; Part II, Ch. II §1, Art. 2; Part II, Ch. II, §2, Art. 1, deleted 1822[10],A (same)	✡ (Part II. Art. XIV, XXIX, XLII, deleted 1877), ✝ (same), A (same)
Ban on Religious Test for Office	—	—	—	—	—	—
Oath of Office with religious component	Art. XXIV (SHMG)	—	Ch. II, §IX[3,7]	Art. XXXVI (SHMG)	Part II, Ch. VI, Art. I (belief in Xian religion)[9]	Part II, Art. LXXXIII (SHMG)

[7]belief in God
[8]amended 1821 to all denom (AoA XI)
[9]Modified by AoA VI in 1822 (SHMG)
[10]by AoA VI, VII

State Constitution Year	VT 1786	GA 1789	PA 1790	SC 1790	DE 1792	KY 1792	VT 1793	TN 1796	GA 1798	KY 1799
Disestablishment Clause	—	Art. IV, §5	Art. IX, §3	—	Art. I, §1	Art. XII	Ch. I, Art. III	Art. XI, §3	Art. IV, §10	Art. X, §3
No Preference Clause	—	—	Art. IX, §3	Art. VIII, §1	Art. I, §1	Art. XII	—	Art. XI, §3	Art. IV, §10	Art. X, §3
Free Exercise Clause	Ch. 1, Art. III	Art. IV, §5	—	Art. VIII, §1	Art. I, §1	—	Ch. 1, Art. III	—	—	—
Freedom of Conscience Clause	Ch. 1, Art. III	—	Art. IX, §3	Art. VIII, §1	Art. I, §1	Art. XII	Ch. 1, Art. III	Art. XI, §3	Art. IV, §10	Art.X, §3
Free Speech Clause	Ch. 1, Art. XV	—	Art. IX, §7	—	—	Art. XII	Ch. I, Art. XV (Pt. XIII[14])	Art. XI, §19	—	Art. X, §7
Invocation/Thanks to Deity in Preamble	Yes	—	—	—	Yes	—	—	—	—	—
Exemption from taxation	Ch. II, §38	—	Art. VII, §3	Art. VIII, §2	—	—	Ch. II, §41 (now §68)		—	—
Acts of licentiousness modifier	—	—	—	Art. VIII, §1	—	—	—	—	—	—
Prohibition of Bigamy and Polygamy	—	—	—	—	—	—	—	—	—	—
Peace and safety of the State proviso	—	—	—	Art. VIII, §1	—	—	—	—	—	—
Morality in Education a Function of the State	Ch. II, §XXXVIII	—	—	—	—	—	Ch. II, §41 (§68[14])	—	—	—
Prohibition of Sectarian Public Education	—	—	—	—	—	—	—	—	—	—
Prohibition of Civil Disability	Ch. I, Art. III (lim. Prot.)	—	—	—	—	Art. XII	Ch. I, Art. III	—	Art. IV, §10	Art. X, §4
Prohibition of Office Holding	✡ (Ch. II §XII), ✝ (same), A (same)	M (Art. I §18)	A (Art. IX §4)	M (Art. I §23)	M (Art. VIII §9)	M (Art. I)		A (Art. VIII §1), M (Art. VIII §2)		M (Art. II §26)
Ban on Religious Test for Office	—	—	Art. IX §4[13]	—	Art. I, §2	—	—	Art. XI, §4	—	—
Oath of Office with religious component	Ch. II, §XII[3,7]	—	—	—	—	Art. VIII	Ch. II §12 (optional SHMG)[14]	—	—	Art. VI, §7

[11]removed by Amdmt in 1968
[12]amended 1968 to include free speech
[13] limited to those who acknowledge "the being of God and future state"
[14]§16,17 as of 2004

State Constitution Year	OH 1802	LA 1812	IN 1816	MS 1817	CT 1818	IL 1818	AL 1819	ME 1819	MO 1820	NY 1821
Disestablishment Clause	Art. VIII, §3	—	Art. I, §3	—	Art. VII, §1	Art. VIII, §3	Art. I §3, 7	—	Art. XIII, §4	—
No Preference Clause	Art. VIII, §3	—	Art. I, §3	Art. I, §4	Art. I, §4[15]	Art. VIII, §3	Art. I, §7	Art. I, §3	Art. XIII, §5	Art. VII, §3
Free Exercise Clause	—	—	—	—	Art. I, §3	—	—	—	—	Art. VII, §3
Freedom of Conscience Clause	Art. VIII, §3	—	Art. I, §3	Art. I, §3	Art. VII, §1	Art. VIII, §3	Art. I §3, 4	Art. I, §3	Art. XIII, §4	Art. VII, §3
Free Speech Clause	Art. VIII, §6	Art VI, §21	Art. I, §9	Art. I, §6	Art. I, §5, 6	Art VIII, §22	Art. I, §8	Art. I, §3, 4	Art. XIII, §16	Art. VII, §8
Invocation/Thanks to Deity in Preamble	—	—	—	—	Yes	—	—	Yes	—	Yes
Exemption from taxation	Art. VIII, §3	—	Art. IX, §1	Art. VI, §16	—	—	—	—	—	—
Acts of licentiousness modifier	—	—	—	Art. I, §3	Art. I, §3	—	—	—	—	Art. VII, §3
Prohibition of Bigamy and Polygamy	—	—	—	—	—	—	—	—	—	—
Peace and safety of the State proviso	—	—	—	Art. I, §3	Art. I, §3	—	—	—	—	Art. VII, §3
Morality in Education a Function of the State	Art. VIII, §3	—	Art. IX. §1	Art. VI, §16	—	—	—	—	—	—
Prohibition of Sectarian Public Education	—	—	—	—	—	—	—	—	—	—
Prohibition of Civil Disability	—	—	—	Art. I, §5	—	—	Art. I, §5	Art. I, §3	—	—
Prohibition of Office Holding		M (Art. II §22; Art. III §6)		M (Art. VI §7), A (Art. VI §6)					M (Art. III §13)	M (Art. VII §4)
Ban on Religious Test for Office	Art. VIII, §3	—	Art. I, §3	—	—	Art. VIII, §4	—	Art. I, §3	Art. XIII, §5	—
Oath of Office with religious component	—	Art. VI, §1 (SHMG)	—	Art. VI, §1 (SHMG)	Art. X, §1 (SHMG)	—	Art. VI, §1 (SHMG)	Art. IX, §1 (SHMG)	—	—

[15]though limited to Christian sects

State Constitution Year	VA 1830	DE 1831	MS 1832	TN 1834	MI 1835	AR 1836	FL 1838	PA 1838	RI 1842	NJ 1844
Disestablishment Clause	Art. III. §11	Art. I, §1	—	Art. I, §3	Art. I §4	Art. II §3	Art. I §3	Art. IX, §3	Art. I, §3	Art. I, §3
No Preference Clause	—	Art. I, §1	Art. I, §4	Art. I, §3	—	Art. II, §3	Art. I, §3	Art. IX, §3	—	Art. I, §4
Free Exercise Clause	DOR §16	Art. I, §1	—	—	—	—	—	—	—	—
Freedom of Conscience Clause	DOR §16	Art. I, §1	Art. I, §3	Art. I, §3	Art. I, §4	Art. II, §3	Art. I, §3	Art. IX, §3	Art. I, §3	Art. I. §3
Free Speech Clause	Art. III, §11	—	Art. I, §6	Art. I, §19	Art. I, §7	Art. II, §7	Art. I, §5	Art. IX, §7	—	Art. I, §5
Invocation/Thanks to Deity in Preamble	—	Yes	—	—	—	—	—	—	Yes	Yes
Exemption from taxation	—	—	Art. VII		Art. X, §2	—	—	Art. VII, §3	—	—
Acts of licentiousness modifier	—	—	Art. I, §3	—	—	—	—	—	—	—
Prohibition of Bigamy and Polygamy	—	—	—	—	—	—	—	—	—	—
Peace and safety of the State proviso	—	—	Art. I, §3	—	—	—	—	—	—	—
Morality in Education a Function of the State	—	—	Art. VII, §14	Art. XI, §10[16]	—	Art. VII, Education, §1	—	—	—	—
Prohibition of Sectarian Public Education	—	—	—	—	Art. I, §5	—	—	—	—	—
Prohibition of Civil Disability	Art. III, §11	—	Art. I, §4	—	Art. I, §6	Art. II, §4	—	—	Art. I, §3	Art. I, §4
Prohibition of Office Holding	M (Art. III §7)	M (Art. VIII §9)	A (Art. VII §5)	M (Art. IX §1), A (Art. IX §2)		A (Art. VII, General Provisions §2)	M (Art. VI §10)	A (Art. IX §4)		
Ban on Religious Test for Office	Art. III, §11	Art. I, §2	—	Art. I, §4	—	—	—	Art. IX, §4[13]	Art. I, §3	Art. I, §4
Oath of Office with religious component	—	—	Art VII, §1 (SHMG)	—	—	—	—	—	Art. IX, §3 (SHMG opt)	—

[16]virtue, not morality

State Constitution Year	LA 1845	TX 1845	IA 1846	NY 1846	IL 1848	WI 1848	CA 1849	KY 1850	MI 1850
Disestablishment Clause	—	Art. I, §4	Art. I, §3	—	Art. XIII, §3	Art. I, §18	—	Art. XIII, §5	Art. IV, §39
No Preference Clause	—	Art. I, §4	—	Art. I, §3	Art XIII, §3	Art. I, §18	Art. I, §4	Art. XIII, §5	—
Free Exercise Clause	—	—	Art. I, §3	Art. I, §3	—	—	Art. I, §4	—	—
Freedom of Conscience Clause	—	Art. I, §4	—	Art. I. §3	Art XIII, §3	Art. I, §18	Art. I, §4	Art. XIII, §5	Art. IV, §39
Free Speech Clause	Art. VI, art. 110	Art. I, §5	Art. I, §7	Art. I, §8	Art. XIII, §23	Art. I, §3	Art. I, §9	Art. XIII, §9	Art. IV, §42
Invocation/Thanks to Deity in Preamble	—	Yes	Yes	Yes	Yes	Yes	Yes	—	—
Exemption from taxation	—	—	—	—	Art. IX, §3	—	—	—	Art. XIII, §11
Acts of licentiousness modifier	—	—	—	Art. I, §3	—	—	Art. I, §4	—	—
Prohibition of Bigamy and Polygamy	—	—	—	—	—	—	—	—	—
Peace and safety of the State proviso	—	—	—	Art. I, §3	—	—	Art. I, §4	—	—
Morality in Education a Function of the State	—	—	Art. IX, "School Funds and School Lands," §3	—	—	—	Art. IX, §2	—	—
Prohibition of Sectarian Public Education	—	—	—	—	—	Art. I, §18; Art. X, §3, 6	—	—	Art. IV, §40
Prohibition of Civil Disability	—	—	Art. I, §4	Art. I, §3	—	Art. I, §19	—	Art. XIII, §6	Art. IV, §41
Prohibition of Office Holding	M (Title II, Art. 29, Title III, Art. 42)	M (Art. III, §27)						M (Art. II §25)	
Ban on Religious Test for Office	—	Art. I. §3	Art. I., §4	—	Art. XIII, §4	Art.I, §19	—	—	—
Oath of Office with religious component	Title VI, art 89 (SHMG)	Art. VI, §1 (SHMG)	—	—	—	—	—	Art. VIII, §1, 7 (SHMG)	—

State Constitution Year	IN 1851	MD 1851	OH 1851	VA 1851	LA 1852	IA 1857	MN 1857	OR 1857
Disestablishment Clause	Art. I, §4	DOR Art. 33	Art. I, §7	Art. IV, §15	—	Art. I, §3	Art. I, §16	Art. I, §5
No Preference Clause	Art. I, §4	—	Art. I, §7	—	—	—	Art. I, §16	—
Free Exercise Clause	Art. I, §3	—	—	Bill of Rights, §XVI	—	Art. I, §3	—	Art. I, §3
Freedom of Conscience Clause	Art. I, §2, 3	DOR Art. 33	Art. I, §7	Bill of Rights, §XVI	—	—	Art. I, §16	Art. I, §2, 3
Free Speech Clause	Art. I, §9	DOR Art. 8	Art. I, §11	Art. IV, §15	Title VI, art. 106	Art. I. §7	Art. I, §3	Art. I, §8
Invocation/Thanks to Deity in Preamble	Yes	Yes	Yes	—	—	Yes	Yes	—
Exemption from taxation	Art. X, §1	—	Art. XII, §2	—	—	Art. IX, §3	Art. IX, §1	Art. IX, §1
Acts of licentiousness modifier	—	Art. 33	—	—	—	—	Art. I, §16	—
Prohibition of Bigamy and Polygamy	—	—	—	—	—	—	—	—
Peace and safety of the State proviso	—	Art. 33	—	—	—	—	Art. I, §16	—
Morality in Education a Function of the State	Art. VIII, §1	—	Art. I, §7	—	—	Art. IX, "School Funds and School Lands," §3	—	—
Prohibition of Sectarian Public Education	Art. I, §6	—	Art. VI, §2	—	—	—	—	—
Prohibition of Civil Disability	Art. I, §7	DOR Art. 33[17]	—	Art. IV, §15	—	Art. I, §4	Art. I, §17	Art. I, §6, 8
Prohibition of Office Holding		A (DOR Art. 34)		A (Art. IV §7)				
Ban on Religious Test for Office	Art. I, §5	DOR Art 33[17]	Art. I, §7	Art. IV, §15	—	Art. I, §4	Art. I, §17	Art. I, §4
Oath of Office with religious component	—	Art. 34[5]	—	—	Title VI, art. 90 (SHMG)	—	—	—

[17]though must believe in God and afterlife

State Constitution Year	KS 1859	AR 1861	GA 1861	WV 1861	AR 1864	LA 1864	MD 1864	NV 1864	VA 1864
Disestablishment Clause	—	Art. II, §3	Art. I, §7	Art. I, §9	Art. II, §3	—	DOR Art. 36	—	Art. IV, §15
No Preference Clause	Art. I, §7	Art. II, §3	—	—	Art. II, §3	—	—	Art I, §4	—
Free Exercise Clause	—	—	—	—	—	—	—	Art. I., §4	Bill of Rights, §XVI
Freedom of Conscience Clause	Art. I, §7	Art. II, §3	—	Art. II, §9	Art. II, §3	—	DOR Art. 36	Art. I, §4	Bill of Rights, §XVI
Free Speech Clause	Art. I, §11	Art. II, §7	Art. I, §8	Art. II, §4	Art. II, §7	Title VII, Art. 111	DOR Art. 40	Art. I, §9	Art. IV, §15
Invocation/Thanks to Deity in Preamble	Yes	—	—	—	—	—	Yes	Yes	—
Exemption from taxation	Art. XI, §1	—	—	Art. VIII, §1	—	Art. 124	—	Art. VIII, §2, Art. XI, §1	—
Acts of licentiousness modifier	—	—	—	—	—	—	Art. 36	Art. I, §4	—
Prohibition of Bigamy and Polygamy	—	—	—	—	—	—	—	—	—
Peace and safety of the State proviso	—	—	—	—	—	—	Art. 36	Art. I, §4	—
Morality in Education a Function of the State	—	Art. VII, Education, §1	—	Art. X, §4	Art. VIII, §1	—	—	Art. XI, §1	—
Prohibition of Sectarian Public Education	Art. VI, §8	—	—	—	—	—	—	Art. XI, §9	—
Prohibition of Civil Disability	Art. I, §7	Art. II, §4	Art. I, §7	Art. II, §9	Art. II, §4	—	DOR Art. 36[17]	Art. I, §4	Art. IV, §15
Prohibition of Office Holding		A (Art. VII, General Provisions §2)			A (Art. VIII §3)	M (Title III, Art. 36; Title IV, Art.	A (DOR Art. 39)		M (Art. IV §7)
Ban on Religious Test for Office	Art. I, §7	—	Art. I, §7	Art. II, §9	—	—	DOR Art. 37[17]	—	Art. IV, §15
Oath of Office with religious component	—	—	—	—	—	art. 90 (SHMG)	DOR Art. 39[7]	Art. XV, §2 (SHMG)	—

State Constitution Year	AL 1865	FL 1865	GA 1865	MO 1865	SC 1865	NE 1866	TX 1866	AL 1867
Disestablishment Clause	Art. I, §4	Art. I, §3	—	Art. I, §10	—	Art. I, §16	Art. I, §4	Art. I, § 5
No Preference Clause	Art. I, §4	Art. I, §3	—	Art. I, §11	Art. IX, §8	Art. I, §16	Art. I, §4	—
Free Exercise Clause	—	—	—	—	Art. IX, §8	—	—	—
Freedom of Conscience Clause	Art. I, §3	Art. I, §3	Art. I, §5	Art. I. §9	Art. IX, §8	Art. I, §16	Art. I, §4	Art. I, § 4
Free Speech Clause	Art. I, §5	Art. I, §5	Art. I, §6	Art. I, §27	—	Art. I, §3	Art. I, §5	Art. I, § 6
Invocation/Thanks to Deity in Preamble	Yes	—	Yes	Yes	—	Yes	Yes	Yes
Exemption from taxation	—	—	—	—	Art. IX, §9	Art. IX, §2	—	—
Acts of licentiousness modifier	—	—	—	Art. I, §9	Art. IX, §8	—	—	—
Prohibition of Bigamy and Polygamy	—	—	—	—	—	—	—	—
Peace and safety of the State proviso	—	—	—	Art. I, §9	Art. IX, §8	—	—	—
Morality in Education a Function of the State	—	—	—	—	—	Art. I, §16	—	—
Prohibition of Sectarian Public Education	—	—	—	—; Art. IX, §10 added 1870	—	Art. II, Education, §1	—	—
Prohibition of Civil Disability	Art. I, §1, 4	—	Art. I, §5	Art. I, §9	—	—	—	Art. I, § 2
Prohibition of Office Holding					M (Art. I §30)		M (Art. III §26)	
Ban on Religious Test for Office	Art. I, §4	—	Art. I, §5	Art. I, §9	—	Art. I, §16	Art. I, §3	—
Oath of Office with religious component	Art. VII, §6 (SHMG)	—	—	—	Art. V (SHMG)	—	Art. VII, §1 (SHMG)	Art. XV, § 1 (SHMG)

State Constitution Year	MD 1867	AR 1868	FL 1868	GA 1868	LA 1868	MS 1868	NC 1868	SC 1868	TX 1868
Disestablishment Clause	DOR Art. 36	—	—	—	—	—	—	Art. I, §10	Art. I, §4
No Preference Clause	—	—	—	—	—	Art. I, §23	—	—	Art. I, §4
Free Exercise Clause	—	—	Art. I, §5	—	—	—	—	—	—
Freedom of Conscience Clause	DOR Art. 36	—	Art. I, §5	Art. I, §6	Title I, Art. 12	—	Art. I, §26	Art. I, §9	Art. I, §4
Free Speech Clause	DOR Art. 40	Art. I, §2	Art. I, §10	Art. I, §9	Title I, Art. 4	Art. I, §4	—	Art. I, §7	Art. I, §5
Invocation/Thanks to Deity in Preamble	Yes	Yes	Yes	Yes	—	Yes	Yes	Yes	Yes
Exemption from taxation	—	Art. X, §2	Art. XVI, Secs. 1, 24	—	—	—	Art. V, §6, Art. IX, §1	Art. IX, §1	—
Acts of licentiousness modifier	Art. 36	—	Art. I, §5	Art. I, §6	—	Art. I, §23	—	Art. I, §9	—
Prohibition of Bigamy and Polygamy	—	—	—	—	—	—	—	—	—
Peace and safety of the State proviso	Art. 36	—	Art. I, §5	Art. I, §6	—	Art. I, §23	—	Art. I, §9	—
Morality in Education a Function of the State	—	Art. II, §23	—	—	—	Art. VIII, §1	Art. IX, §1	—	—
Prohibition of Sectarian Public Education	—	Art. IX, §1	—	—	—	Art. VIII, §9	—	—	—
Prohibition of Civil Disability	DOR Art. 36; Const. Part. I, Art. III (lim. Prot.)	Art. II, §21	—	Art. I, §12	—	—	—	Art. I, §12	—
Prohibition of Office Holding	A (DOR 37)					A (Art. XII §3)	A (Art. VI §5)	A (Art. III §3)	
Ban on Religious Test for Office	DOR Art. 37[18]	Art. II, §21	—	Art. I, §6	Title I, Art. 12	Art. I, §23	—	—	Art. I, §3
Oath of Office with religious component	—	Art. XV §17 (SHMG)	Art. XVII §10 (SHMG)	—	Title VI. Art. 100 (SHMG)	Art. XII, §26	Art. VI, §4 (SHMG)	Art. II, §30	—

[18]provided he believes in future state

State Constitution Year	IL 1870	TN 1870	TX 1870	VA 1870	WV 1870	AR 1874	PA 1874	AL 1875	MO 1875	NE 1875
Disestablishment Clause	Art. II, §3	Art. I, §3	Art. I, §6	Art. III, §14	Art. III, §15	Art. 2, §24	Art. I, §3	Art. I, §4	Art. II, §6	Art. I, §4
No Preference Clause	Art. II, §3	Art. I, §3	Art. I, §6	—	—	Art. 2, §24	Art. I, §3	Art. I, §4	Art. II, §7	Art. I, §4
Free Exercise Clause	Art. II, §3	—	—	Art. I., §18	—	—	—	—	—	—
Freedom of Conscience Clause	Art. II, §3	Art. I, §3	Art. I, §6	Art. I, §18	Art. III, §15	Art. 2, §24	Art. I, §3	—	Art. II, §5	Art. I, §4
Free Speech Clause	Art. II, §4	Art. I, §19	Art. I, §8	Art. I, §14; Art. III, §14	Art. III, §7	Art. 2, §6	Art. I, §7	Art. I, §5	Art. II, §14	Art. I, §5
Invocation/Thanks to Deity in Preamble	Yes	—	Yes	Yes	—	Yes	Yes	Yes	Yes	Yes
Exemption from taxation	Art. IX, §3	Art. II, §28	—	Art. IX, §3	Art. X, §1	Art. XVI, §5	Art. IX, §1	Art. X, §6	—	Art. VIII, §2
Acts of licentiousness modifier	Art. II, §3	—	—	—	—	—	—	—	Art. II, §5	—
Prohibition of Bigamy and Polygamy	—	—	—	—	—	—	—	—	—	—
Peace and safety of the State proviso	Art. II, §3	—	—	—	—	—	—	—	Art. II, §5	—
Morality in Education a Function of the State	—	Art. XI,§12[16, 19]	—	—	Art. XII, §12	Art. 14, §1	—	—	—	Art. I, §4
Prohibition of Sectarian Public Education	Art. VIII, §3	—	Art. I, §7, Art. VII, §5	—	—	—	Art. X, §2	Art. XII,§8	Art. XI, §11	Art. VIII, §11
Prohibition of Civil Disability	Art. II, §3	—	Art. I, §5[20]	Art. III, §14	Art. III, §15	Art. 2, §26	—	Art. I, §2	Art.II, §5	—
Prohibition of Office Holding		M (Art. IX §1), A (Art. IX §2)	A (Art. I §4)			A (Art. XIX §1)	A (Art. I §4)			
Ban on Religious Test for Office	—	Art. I, §4	Art. I, §4[21]	Art. III, §14	Art.III, §11	Art. 2, §26	Art. I, §4[13]	—	Art. II, §5	Art. I, §4
Oath of Office with religious component	—	—	Art. XVI, §1 (SHMG)	Art. III, §6, 7 (SHMG)	—	—	—	Art. XV, §1 (SHMG)	—	—

[19] deleted with abolition of segregation
[20] limited to testimony in court
[21] with exception of atheists

State Constitution Year	CO 1876	NC 1876	TX 1876	GA 1877	CA 1879	LA 1879	FL 1885	ID 1889	MT 1889	ND 1889
Disestablishment Clause	Art. II, §4	—	Art. I, §6	—	—	Art. 4	—	Art. I, §4	Art. III, §4	—
No Preference Clause	Art. II, §4	—	Art. I, §6	—	Art. I, §4	Art. 51	Art. I, §6	Art. I, §4	Art. III, §4	Art. 1, §4
Free Exercise Clause	Art. II., §4	—	—	—	Art. I, §4	Art. 4	Art. I, §5	Art. I, §4	Art. III, §4	Art. 1, §4
Freedom of Conscience Clause	Art. II, §4	Art. I, §26	Art. I, §6	Art. I, §I, ¶ XII, XIII	Art. I, §4	—	Art. I, §5	Art. I, §4	—	Art. 1, §4
Free Speech Clause	Art. I, §10	—	Art. I, §7	Art. I, §I, ¶ XV	Art. I, §9	Art. 4	Art. I, §13	Art. I, §9	Art. III, §10	Art. 1, §9
Invocation/Thanks to Deity in Preamble	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Exemption from taxation	Art. X, §5	Art. V, §6, Art. IX, §1	Art. VIII, §2	Art. VII, §2, ¶2	Art. XIII, §1 (added 1900)	Art. 207	Art. IX, §1, Art. XVI, §16	—	Art. XII, §2	Art. XI, §176
Acts of licentiousness modifier	Art. II, §4	—	—	Art, I, §1, ¶ XIII	Art. I, §4	—	Art. I, §5	Art. I, §4	Art. III, §4	Art. 1, §4
Prohibition of Bigamy and Polygamy	—	—	—	—	—	—	—	Art. I, §4	Art. III, §4	—
Peace and safety of the State proviso	Art. II, §4	—	—	Art. I, §1, ¶ XIII	Art. I, §4	—	Art. I, §5	Art. I, §4	Art. III, §4	Art 1, §4
Morality in Education a Function of the State	—	Art. IX, §1	—	—	Art. IX, §1	—	—	—	—	Art. 8, §147
Prohibition of Sectarian Public Education	Art. IX, §7	—	Art. I, §7, Art. VII, §5c	Art. I, §I, ¶ IV	Art. IX, §8	—	Art. I, §6	Art. 9, §5-6	Art. XII, §8 and 9	Art. 8, §147, 152
Prohibition of Civil Disability	Art. II, §4	—	Art. I, §3a	Art. I, §I, ¶ XIII	—	—	Art. I, §1	Art. I, §4	Art. III, §4	Art. 1, §4
Prohibition of Office Holding		A (Art. VI §5)								
Ban on Religious Test for Office	—	—	Art. I, §4[21]	Art. I, §I, ¶ XIII	—	—	—	—	Art. III,	—
Oath of Office with religious component	—	Art. VI, §4 (SHMG)	Art. XVI, §1 (SHMG)	—	—	Art. 149 (SHMG)	Art XVI, §2 (SHMG)	—	Art. XIX, §1 (SHMG)	§211 (SHMG)

State Constitution Year	SD 1889	WA 1889	WY 1889	KY 1890	MS 1890	SC 1895	UT 1895	DE 1897	NY 1897
Disestablishment Clause	Art. VI, §3	Art. I, §11	Art. I, §19	§5	—	Art. I, §2	Art. I, §4	Art. I, §1	—
No Preference Clause	Art. VI, §3	—	Art. I, §18	§5	Art. 3, §18	—	—	Art. I, §1	Art. I, §3
Free Exercise Clause	—	—	Art. I, §18	—	Art.3, §18	Art. I, §2	Art. I, §4	Art. I, §1	Art. I, §3
Freedom of Conscience Clause	Art. VI, §3	Art. I, §11; Art. XXVI, §1	Art. I, §18	§I, part second	—	—	Art. I, §4	Art. I, §1	Art. I, §3
Free Speech Clause	Art. VI, §5	Art. I, §5	Art. I, §20	§1, part fourth, §8	Art. 3, §13	Art. I, §4	Art. I, §15	—	Art. I, §8
Invocation/Thanks to Deity in Preamble	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Exemption from taxation	Art. XI, §6	—	Art. XV, §12	§170	—	Art. X, Secs. 1, 4	Art. XIII, §2	Art. VIII, §1	—
Acts of licentiousness modifier	Art. VI, §3	Art. I, §11	Art. I, §18	—	Art. I, §18	—	—	—	Art. I, §3
Prohibition of Bigamy and Polygamy	—	—	—	—	—	—	—	—	—
Peace and safety of the State proviso	Art. VI, §3	Art. I, sec, 11	Art. I, §18	—	Art. I, §18	—	—	—	Art. I, §3
Morality in Education a Function of the State	Art. VIII, §1	—	—	—	Art. 8, §201	—	—	—	—
Prohibition of Sectarian Public Education	Art. VI, §3; Art. VIII, §16	Art. IX, §4; Art. XXVI, §4	Art. I, §19; Art. VII, §8, 12	§189	Art. 8, §208	Art. XI, §4	Art. X, §1, 12, 13	Art. X, §3	Art. IX, §4
Prohibition of Civil Disability	Art. VI, §3	Art. I, §11	Art. I, §18	§5	—	—	Art. I, §4	—	Art. I, §3[22]
Prohibition of Office Holding					A (Art. 14 §265)	A (Art. XVII §4)			
Ban on Religious Test for Office	—	Art. I, §11	Art. I, §18	—	Art. 3, §18	—	Art. I, §4	Art. I, §2	—
Oath of Office with religious component	—	—	—	§228, 232 (SHMG)	§155, Art. 14, §268 (SHMG)	Art. III, §26 (SHMG)	—	—	—

[22] Witness allowance

State Constitution Year	LA 1898	AL 1901	VA 1902	OK 1907	MI 1908	AZ 1910	NM 1910	LA 1921	MO 1945	NY 1938
Disestablishment Clause	Art. 4, 53	Art. I, §3	Art. IV, §58	Art. II, §5	Art. II, §3	Art. II, §12	Art. II, §11	Art. I, §4; Art. IV, §8		—
No Preference Clause	Art. 53	Art. I, §3	—	—	—	—	Art II, §11	Art. I, §4; Art. IV, §8		Art. I, §3
Free Exercise Clause	—	—	Art. I, §16	—	—	—	—	Art. I., §4		Art. I, §3
Freedom of Conscience Clause	Art. 4	—	Art. I, §16	Art. I, §2	Art. II, §3	Art.II, §12	Art. II, §11	Art. I, §4		Art. I, §3
Free Speech Clause	Art. 3	Art. I, §4	Art. I, §12; Art. IV, §58	Art. II, §22	Art. II, §4	Art. II, §6	Art. II, §17	Art. I, §3		Art. I, §8
Invocation/Thanks to Deity in Preamble	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes
Exemption from taxation	Art. 230	Art. IV, §91	Art. QQQ, §183	Art. X, Secs. 6, 9	Art. XI, §1	Art. IX, §2	Art. X, §3	Art. X, §4	Art. XVI, §1	Art. X, §6
Acts of licentiousness modifier	—	—	—	—	—	Art. II, §12	—	—		Art. I, §3
Prohibition of Bigamy and Polygamy	—	—	—	Art. I, §2	—	Art. XX, §2	Art. XXI, §1	—		—
Peace and safety of the State proviso	—	—	—	—	—	Art. II, §12, Art. XI, §7	—	—		Art. I, §3
Morality in Education a Function of the State	—	—	—	—	Art. X, §1	—	—	—		—
Prohibition of Sectarian Public Education	—	Art. XIV, §263	Art. IV, §67; Art. IX, §141	Art. I, §5; Art. VI, §5	Art. II, §3	Art. XI, §7; Art. XX, §7	Art. II, §30, Art XII, §3	Art. XII, §13		Art. XI, §3
Prohibition of Civil Disability	—	Art. I, §3	Art. IV, §58	Art. I, §2	Art. II, §3, 17	Art. II, §12; Art. XX, §1	Art. VII, §3	—		Art. I, §3
Prohibition of Office Holding									M (Art. X §6)	
Ban on Religious Test for Office	—	Art. I, §3	Art. IV, §58	Art. I, §2	—	Art. II, §12	—	—		—
Oath of Office with religious component	Art. 160 (SHMG)	§279 (SHMG)	Art. II, §34 (SHMG)	—	—	—	—	Art. XIX, §1 (SHMG)		—

State Constitution Year	NJ 1947	CT 1955	AK 1956	HI 1959	MI 1963	CT 1965	FL 1968	IL 1970	VA 1971	MT 1972	NC 1972
Disestablishment Clause	Art. I, §3	Art. VII, §1	Art. I, §4	Art. I, §4	Art. I, §4	Art. VII	Art. I, §3	Art. I, §3	Art. I, §16;	Art. I, §4	—
No Preference Clause	Art. I, §4	Art. I, §3	—	—	—	Art. VII	—	Art. I, §3	—	—	—
Free Exercise Clause	—	Art. I, §3	Art. I, §4	Art.I, §4	—	Art. I, §3	Art. I, §3	Art. I, §3	Art. I, §16	Art. I, §5	—
Freedom of Conscience Clause	Art. I, §3	—	—	—	Art. I, §4	Art. VII	—	Art. I, §3	Art. I, §16	—	Art. I, §13
Free Speech Clause	Art. I, §6	Art. I, §5	Art. I, §5	Art. I, §4	Art. I, §5	Art. I, §4	Art. I, §4	Art. I, §4	Art. I, §12	Art. I, §7	Art. I, §14
Invocation/Thanks to Deity in Preamble	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	—	Yes	Yes
Exemption from taxation	Art. XIII, §1, ¶2	—	Art. IX, §4	—	Art. IX, §4	—	Art. VII, §3	Art. IX, §6	Art. X, §6, ¶6	Art. VIII, §5	Art. V., §2, ¶3
Acts of licentiousness modifier	—	Art. I, §3	—	—	—	Art. I, §3	Art. I, §3	Art, I, §3	—	—	—
Prohibition of Bigamy and Polygamy	—	—	—	—	—	—	—	—	—	—	—
Peace and safety of the State proviso	—	Art. I, §3	—	—	—	Art. I, §3	Art. I, §3	Art. I, §3	—	—	—
Morality in Education a Function of the State	—	—	—	—	Art. XIII, §1	—	—	—	—	—	Art. IX, §1
Prohibition of Sectarian Public Education	—	—	Art. I, §1	Art. X, §1, 12, 13	Art. I, §4; Art. VIII, §2	—	Art. I, §3	Art. X, §3	Art. VIII, §10	Art. X, §6, 7	—
Prohibition of Civil Disability	Art. I, §5	—	—	—	Art. I, §4, 18	—	—	Art. I, §3	Art. I, §16	Art. I, §4	—
Prohibition of Office Holding											A (Art. VI §8)
Ban on Religious Test for Office	Art. I, §4	—	—	—	—	—	—	—	Art. I, §16	—	—
Oath of Office with religious component	—	Art. X, §1 (SHMG)	—	—	—	Art. XI, §1 (SHMG)	—	—	(optional SHMG)	—	—

State Constitution Year	LA 1974	GA 1983	RI 1986	ME 1993
Disestablishment Clause	Art. I, §8	Art. I, ¶ 7	Art. I, §3	—
No Preference Clause	—	—	—	Art. I, §3
Free Exercise Clause	Art. I, §8	—	—	—
Freedom of Conscience Clause	—	Art. I, ¶ 3	Art. I, §3	Art. I, §3
Free Speech Clause	Art. I, §7	Art. I, ¶ 4	—	Art. I, §4
Invocation/Thanks to Deity in Preamble	Yes	Yes	Yes	Yes
Exemption from taxation	Art. VII, §21	Art. VII, §2, ¶4	—	—
Acts of licentiousness modifier	—	Art. I, ¶ 4	—	—
Prohibition of Bigamy and Polygamy	—	—	—	—
Peace and safety of the State proviso	—	Art. I, ¶ 4	—	—
Morality in Education a Function of the State	—	—	—	—
Prohibition of Sectarian Public Education	—	Art. I, ¶ 7	—	—
Prohibition of Civil Disability	—	Art. I, ¶ 4	Art. I, §3	Art. I, §3
Prohibition of Office Holding				
Ban on Religious Test for Office	—	Art. I, ¶ 4	Art. I, §3	Art. I, §3
Oath of Office with religious component	§30 (SHMG)	—	(SHMG optional)	§1 (SHMG)

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