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The Second Great Awakening: A Christian Nation?

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THE SECOND GREAT AWAKENING: A CHRISTIAN NATION?

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Last year, I delivered a lecture at U.C.L.A. entitled "The World of the Framers: A Christian Nation?"[1] The essential thesis of that lecture, which was published in the *U.C.L.A. Law Review*, was that our nation "was conceived 'not in an Age of Faith . . . but in an Age of Reason.'"[2] As members of a Revolutionary generation steeped in the Enlightenment, the Framers of the American Constitution "viewed 'issues of religion and politics through a prism' that was highly critical of what they saw as Christianity's historical excesses and superstitions."[3]

Indeed, many of our founding fathers, including Thomas Paine, Thomas Jefferson, Benjamin Franklin, John Adams, and George Washington, were full or partial deists, who questioned all religious beliefs they could not reconcile with reason. Although they accepted the idea of a Supreme Being, the deist God was not the Judeo-Christian God who intervenes in human history and listens to personal prayers, but a more distant being, who had created the universe, including the laws of nature, and given man the capacity to understand those laws through the exercise of reason.[4]

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1. Geoffrey R. Stone, *The World of the Framers: A Christian Nation?*, 56 UCLA L. REV. 1, 4 (2008).

2. *Id.* at 4 (quoting FRANK LAMBERT, THE FOUNDING FATHERS AND THE PLACE OF RELIGION IN AMERICA 161 (2003)).

3. *Id.* (quoting LAMBERT, *supra* note 2, at 161).

4. *See* KERRY WALTERS, RATIONAL INFIDELS: THE AMERICAN DEISTS, at ix–x (1992).

Most deists did not accept the divinity of Jesus, the truth of miracles or revelation, or the doctrines of original sin or predestination. They rejected such concepts as "antithetical to the dictates of reason" and believed they had "kept mankind in the shackles of superstition and ignorance."[5] For the most part, the founding generation viewed religion, and particularly religion's relation to government, through an Enlightenment lens that was deeply skeptical of orthodox Christianity.[6]

At the same time, the founders believed that religion could play a positive role in helping to shape both the "people's moral conduct" and their "ideas about justice, decency, duty, and responsibility."[7] Religion, they believed, could be a source of republican virtue. But by religion, the framers did not mean traditional Christianity, with all of its complex dogmas and tenets. Rather, as John Adams wrote to Thomas Jefferson, the essence of sound religious belief on which public morality should be based was captured in the phrase, "*[b]e just and good.*"[8] And, as Jefferson replied, "What all agree in is probably right."[9]

Thus, the Framers drew a sharp distinction in their understanding of the proper relation between religion and law in a free society. They valued religion, but given their knowledge of the religious strife that had plagued man's history and their appreciation of the importance of both freedom of and freedom from religion, "they saw the wisdom of distinguishing between private and public religion." In churches, temples, and homes, "anyone could believe and practice" what he wished. But in the "public business of the nation," it was essential for the government to speak of religion "in a way that was unifying, not

5. *Id.* at x.

6. *See generally id.* at ix–x.

7. JON MEACHAM, AMERICAN GOSPEL: GOD, THE FOUNDING FATHERS, AND THE MAKING OF A NATION 27 (2006).

8. THE ADAMS-JEFFERSON LETTERS: THE COMPLETE CORRESPONDENCE BETWEEN THOMAS JEFFERSON AND ABIGAIL AND JOHN ADAMS 499 (Lester J. Cappon ed., 1959).

9. *Id.* at 506.

divisive."[10] For the founding generation, the United States was not and was not intended to be "a Christian nation."[11]

All this began to change a decade after the adoption of the Constitution with the coming of the Second Great Awakening, which is the subject of my talk this afternoon.

THE SECOND GREAT AWAKENING

In the decades following independence, the United States experienced profound changes in commerce, politics, culture and religion. Among the most important of these transformations was the Second Great Awakening, which lasted from roughly the 1790s to the 1840s. The Second Great Awakening marked a reemergence of religious enthusiasm, as millions of Americans were "born again" in emotionally-charged revival meetings.

Although mainstream Protestants tended to dismiss these spectacles as mass hysteria dressed up as religion, the Second Great Awakening triggered a nationwide campaign to transform American law and politics through the lens of evangelical Christianity. It was in this era that the claim that the United States is a "Christian nation" first seriously took root.

The Second Great Awakening posed fundamental questions about the appropriate role of religion in American politics. Both the Framers and the nineteenth-century evangelicals believed that a sense of public morality was necessary for self-governance. But the Framers and the evangelicals differed sharply in their understanding of the proper relationship between Christianity and public morality.

Whereas the Framers believed that the principles of public morality could be discovered through the exercise of reason, the evangelicals insisted that it must be grounded in Christian revelation; and whereas the Framers maintained that public morality must be founded on the civic obligation to "do good to one's fellow man," the evangelicals declared that true public morality must be premised on

10. MEACHAM, *supra* note 7, at 23.
11. *Id.*

obedience to God.[12] Indeed, the nineteenth-century evangelicals preached that only obedience to the Bible, not only in private life but in public law, could save America from sin and desolation.[13]

Many factors contributed to the Second Great Awakening. In part, it was a response to the secularization of the late eighteenth century, the violence of the French Revolution, and the often bitter social and political divisions that emerged in the United States in the 1790s.

As early as 1798, a disillusioned Benjamin Rush predicted "nothing but suffering to the human race" as long as the world continued to embrace "paganism, deism, and atheism."[14] By 1800, many religious leaders had come to fear the advance of deism and the prospect that the violence of the French Revolution might "sweep the United States into its fiery storm."[15]

With the election of Thomas Jefferson as president in 1800, many religious leaders warned that the nation was at risk of an imminent "descent into atheism" and "a spiritual deterioration hardly to be equaled in the darkest chapters of Christian history."[16]

The Second Great Awakening was also fueled by general feelings of personal anxiety, cultural confusion, and class conflict generated by the tumult of the early nineteenth century. The radical transformation of agriculture and industry, rapid geographic expansion and urbanization, and the explosive democratization of Jacksonian politics combined to cause traditional social restraints to collapse.

In the face of unsettling change, many individuals were desperate for a clearer sense of community, and the rebirth of religious passion helped satisfy the need for a sense of "order" and "common purpose"

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12. JOHN G. WEST, JR., THE POLITICS OF REVELATION AND REASON: RELIGION AND CIVIC LIFE IN THE NEW NATION 119–20 (1996).

13. *Id.* at 120–21.

14. Letter from Benjamin Rush to Noah Webster (July 20, 1798), *in* II LETTERS OF BENJAMIN RUSH 799 (Lyman Henry Butterfield ed., 1951); ROBERT H. ABZUG, COSMOS CRUMBLING: AMERICAN REFORM AND THE RELIGIOUS IMAGINATION 27 (1994).

15. PERRY MILLER, THE LIFE OF THE MIND IN AMERICA: FROM THE REVOLUTION TO THE CIVIL WAR 4 (1965).

16. MILLER, *supra* note 15, at 3–4; *see* WEST, *supra* note 12, at 9.

in a nation of increasingly "rootless individuals."[17] By appealing to the anxieties of the common man, the charismatic preachers of the Second Great Awakening excited a new era of mass religious passion.[18]

Later, I will examine several hot-button issues that bitterly divided the nation as early nineteenth-century evangelicals sought to enlist the power of the state in their effort to Christianize American law. These included such matters as Sabbath-breaking, blasphemy, temperance, slavery, and sex. Before getting to the specifics, however, we need to know a bit more about the style and substance of the Second Great Awakening.

Although the Second Great Awakening first found expression in the small towns of New England in the 1790s, the most "cataclysmic" explosions of religious passion took place in the West at the turn of the century.[19] The meeting that dominated the American vision of evangelical revivalism began in Cane Ridge Kentucky on August 6, 1801.[20] A crowd estimated at between ten and twenty-five thousand attended, as scores of preachers held forth simultaneously in all corners of the site.[21]

As one historian has described the scene, there were huge "crowds of hardened frontier farmers, tobacco-chewing, tough-spoken, notoriously profane," surrounded by "their scarcely demure wives and large broods of children."[22] The "rough clearing" was filled with "rows of wagons and crude improvised tents with horses staked out behind."[23] Wildly gesticulating preachers held forth from rude platforms or fallen trees.[24] "At night, when the forest's edge was

17. PAUL E. JOHNSON, A SHOPKEEPER'S MILLENNIUM: SOCIETY AND REVIVALS IN ROCHESTER, NEW YORK, 1815–1837, at 9 (1978). *See generally* ABZUG, *supra* note 14, at 5–6; SYDNEY E. AHLSTROM, A RELIGIOUS HISTORY OF THE AMERICAN PEOPLE 474–75 (1972).

18. *See* MILLER, *supra* note 15, at 6.

19. AHLSTROM, *supra* note 17, at 387.

20. *Id.* at 416.

21. *Id.* at 433.

22. *Id.*

23. *Id.*

24. *Id.*

limned by the flickering light of many campfires, the effect of apparent miracles" was sharply heightened.[25]

Cane Ridge created a "spasm" among those in attendance, a violent outburst of emotions. Those seeking salvation "fell in droves" as they shrieked, laughed, barked, yelped incantations, and ran in circles. According to one observer, people "affected with the jerks" often uttered "piercing" screams and suddenly fell like logs onto "the floor, earth, or mud, and appear as dead."[26]

With Cane Ridge, the revival meeting soon became the central mode of evangelical salvation, and as enthusiastic reports about Cane Ridge spread across America, the nation witnessed an extraordinary growth in the number evangelical Christians.[27]

Central to the Second Great Awakening was a renewed belief in millennialism—the view that the Second Coming of Christ was near at hand. The spread of democracy and the growth of material and commercial progress reinforced the belief that "history was moving in the right direction." The evangelicals maintained that America had a unique role to play in the spread of Christianity and in the coming of the millennium. The evangelical movement identified the United States as "God's new Israel."[28] A central goal of the Second Great Awakening was "to make America the world's greatest example" of a truly Christian nation.[29]

If there was a single moment that marked the beginning of the Second Great Awakening, it was the appointment of Timothy Dwight as the president of Yale in 1795.[30] A distinguished poet, essayist, and theologian, Dwight believed that a conspiracy of infidels and deists

25. AHLSTROM, *supra* note 17, at 387, 433–34.

26. MILLER, *supra* note 15, at 7; Barton Warren Stone, *A Short History of the Life of Barton W. Stone Written by Himself, in* VOICES FROM CANE RIDGE 68, 69–72 (Rhodes Thompson ed., 1954), *quoted in* AHLSTROM, *supra* note 17, at 434–35.

27. AHLSTROM, *supra* note 17, at 435.

28. *See* DANIEL WALKER HOWE, WHAT HATH GOD WROUGHT: THE TRANSFORMATION OF AMERICA, 1815–1848 (2007); FRANCIS WAYLAND, THE DUTIES OF AN AMERICAN CITIZEN: TWO DISCOURSES, DELIVERED IN THE FIRST BAPTIST MEETING HOUSE IN BOSTON, ON THURSDAY, APRIL 7, 1825, THE DAY OF PUBLIC FAST 19, 34, 44 (Boston, James Loring 1825).

29. AHLSTROM, *supra* note 17, at 387.

30. ABZUG, *supra* note 14, at 35.

threatened the very existence of the American nation.[31] He attacked what he saw as "rampant unbelief and dangerous mimicry of the French Enlightenment and Revolution."[32] Dwight was the seminal figure in the "broad reworking of the relation between humankind, America, and millennial history."[33]

Within a few short years, membership in the student Moral Society at Yale rose to unprecedented numbers.[34] Students who would become leaders of the evangelical movement were moved by Dwight's "fusion of belief in a powerful Calvinistic God" with his more modern conceptions of sin and free will. Dwight insisted that the "old faith" of the Puritans had to change to absorb both the lessons of the Enlightenment and the values of Republicanism. He taught that human beings are "'moral agents' possessed of free will." The Puritans had preached that man was weak and pitiful; Dwight insisted that free will was not inconsistent with an acknowledgement of God's power. Christianity, he maintained, should foster not only faith, but also "benevolent action."[35]

No one better exemplifies the spirit of the moral campaign launched by the early nineteenth century evangelicals than Dwight's student and protégée, Lyman Beecher.[36] Building on Dwight's teachings, Beecher became his generation's most powerful advocate of moral reform. He "decried the moral decay of society and warned that if reformation did not occur, the nation's doom was assured."[37] Beecher took as his mission not only the winning of individual souls, but the wholesale "transformation of society."[38]

In 1803, Beecher preached a sermon in which he argued that Christians must "act in concert against evil."[39] He called for the

31. *Id.*
32. *Id.*
33. ABZUG, *supra* note 14, at 35–36.
34. AHLSTROM, *supra* note 17, at 416.
35. *Id.*; ABZUG, *supra* note 14, at 35.
36. WEST, *supra* note 12, at 86.
37. *Id.*
38. HOWE, *supra* note 28, at 166.
39. ABZUG, *supra* note 14, at 40.

creation of moral societies to "shape public opinion" and to bring public life into line with the sacred order.[40]

Beecher reasoned that in order for morality to flourish, society must preserve the sacred order in public life. It is unacceptable, he declared, that "the name of God is blasphemed; the bible is denounced; the Sabbath is profaned; the public worship of God is neglected."[41] Noting that the Puritans had built their societies on religion, Beecher preached that religion remains the essential "corner stone; remove it, and the building falls."[42] Now that the United States had become a republic, the role of religion, he argued, was as central as ever, for "in proportion as the fear of God is effaced, crimes will abound." Failure to maintain the faith, he warned, "would end in tyranny."[43]

By 1812, Beecher had come to the conclusion that moral reformation was critical to the very salvation of the nation.[44] Because public officials had abdicated their responsibility to enforce laws against immorality, the signs of "national desolation" were everywhere.[45] The nation was at war, the economy was in a shambles, and the rise of the party system had "shaken our institutions in their foundations" and "debased our morals."[46]

Beecher renewed his call for the creation of a multitude of reform societies to act as a sort of "moral militia."[47] These associations, he proclaimed, must "awaken the public attention," spread "moral instruction," and correct "the public opinion."[48] He encouraged the vigorous enforcement of laws against Sabbath-breaking, blasphemy, intemperance, and other forms of "immorality," and called for an

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40. *Id.*; LYMAN BEECHER, *The Practicality of Suppressing Vice by Means of Societies Instituted for That Purpose*, *in* LYMON BEECHER AND THE REFORM OF SOCIETY: FOUR SERMONS 1804–1828, at 12 (1972), *quoted in* WEST, *supra* note 12, at 87; *id.* at 17–18, *quoted in* ABZUG, *supra* note 14, at 40.

41. BEECHER, *supra* note 40, at 19.

42. *Id.* at 20.

43. BEECHER, *supra* note 40, at 19–20, *quoted in* ABZUG, *supra* note 14, at 41.

44. *See* ABZUG, *supra* note 14, at 44–45.

45. *Id.*

46. BEECHER, *supra* note 40, at 17–19; LYMAN BEECHER, *A Reformation of Morals Practicable and Indispensable*, *in* 2 WORKS OF LYMAN BEECHER 77–80, 93–95 (Boston, John P. Jewett & Co. 1852) (1814), *quoted in* WEST, *supra* note 12, at 97–99.

47. BEECHER, *supra* note 40, at 18, *quoted in* ABZUG, *supra* note 14, at 45.

48. *Id.*

orchestrated national campaign "to devise ways and means of suppressing vice and guarding the public morals."[49] The morality of the Gospel, Beecher declared, would soon be "the governing rule of all mankind."[50]

By the late 1820s, western New York was the area in which the evangelical revivals had achieved their greatest intensity. The dominant figure was Charles Grandison Finney. Born again in 1821, Finney saw himself as restoring Christianity from the "corruptions that had been foisted upon it."[51] At the very core of his theology was the "burden" of personal responsibility.[52] Every individual, he insisted, has the capacity and the responsibility not to sin.[53]

Finney journeyed from town to town, holding revival meetings that typically lasted several days. Upon arriving in a new town, he would identify promising candidates for conversion. He would seat them visibly in the front rows of the church, in what he called "the anxious bench." The idea was that as they experienced conversion, their experience would in turn influence others.

Finney was masterful in the pulpit. A former lawyer, his preaching style "demonstrated formidable courtroom skills." His prayer meetings were carefully orchestrated. He made sure that every seat was filled and actively discouraged participation by "scoffers, cranks, and the merely curious." Individual conversions, during which sinners often broke into tears, "became grand public spectacles."[54] Although traditional Protestants criticized Finney for his "excessive emotionalism," he made "new hearts in hundreds of thousands of middle class men and women," setting them off on an emotional

49. *Id.* at 45–46; *id.* at 19, *quoted in* ABZUG, *supra* note 14, at 45–46; BEECHER, *supra* note 46, at 77–80, 93–95, *quoted in* WEST, *supra* note 12, at 97–99.

50. LYMAN BEECHER, *Resources of the Adversary and Means of Their Destruction, in* SERMONS DELIVERED ON VARIOUS OCCASIONS 269 (Boston, T.R. Marvin 1828), *quoted in* ABZUG, *supra* note 14, at 53.

51. MILLER, *supra* note 15, at 32.

52. *Id.*

53. *See* HOWE, *supra* note 28, at 172; MILLER, *supra* note 15, at 32.

54. JOHNSON, supra note 17, at 100-02.

"crusade to remake society in God's name."[55] The ultimate goal of these revivals was, in short, "the Christianization of the world."[56]

SUNDAY MAIL DELIVERY: "TO RESTORE GODLY ORDER"

From 1800 through the 1840s, evangelical Christians converged on American politics "en masse." Evangelical ministers politicked for Sunday closing laws, blasphemy prosecutions, temperance legislation, and a host of other morals-based programs. As Beecher's call for the creation of Christian reform associations took hold, cooperation among evangelicals flourished.

The central premise of the evangelical political movement was that morality is necessary for republican government and that Christianity is necessary for morality.[57] It therefore followed that Christianity is necessary for republican government.[58] The evangelicals believed that the "only sure foundation" for morality was the Bible, and that only the Bible could show Americans "how to live their lives."[59] As one historian has observed, the evangelicals of this era "edged perilously close" to declaring that only evangelical Christians could be "good citizens."[60]

Reflecting the growing concerns of many Americans, Georgia Congressman Wilson Lumpkin denounced what he characterized as the "Christian party in politics."[61] Fearful that the evangelicals were attempting to "sacrilize the world," critics sharply attacked their campaign as "dangerous to free government."[62] Frances Wright, one of the most outspoken opponents of the evangelical movement, warned packed houses that the evangelicals were promoting "a system of error" that would fill the nation with "discord" and deepen

55. HOWE, *supra* note 28, at 172; *see* JOHNSON, *supra* note 17, at 95.
56. JOHNSON, *supra* note 17, at 98, 109–11.
57. WEST, *supra* note 12, at 117.
58. *Id.*
59. *Id.* at 121.
60. *Id.* at 126.
61. ABZUG, *supra* note 14, at 8, 3; WEST, *supra* note 12, at 133.
62. ABZUG, *supra* note 14, at 8, 3; WEST, *supra* note 12, at 134.

"its ignorance."[63] Wright mocked the idea that evangelical theology was necessary for public morality.[64] She charged that, rather than fostering true morality, the evangelicals more often "subverted the principles of freedom by suppressing the truth and free inquiry."[65]

For Lyman Beecher and his followers, the sins that most directly threatened the nation were "public violations of the sacred—breaking the Sabbath, taking the Lord's name in vain, neglecting worship." The United States would be destroyed, he warned, if Americans failed to preserve "a Godly order."[66] This view led the evangelicals to demand that government honor the Sabbath. Men like Beecher saw Sabbath-breaking as a major cause of disorder in public life.

Interestingly, Sabbath observance had not played a central role in traditional Christian theology. It was the Puritans who elevated it to an essential part of God's covenant and declared Sabbath-breaking a crime, punishable by a fine, a whipping, or a turn in the stocks. As American society became more tolerant and pluralistic in the eighteenth century, however, the enforcement of laws against Sabbath-breaking gradually waned. The laws remained on the books, but by the 1750s Americans had come to view such legislation as incompatible with their growing commitment to religious diversity and the separation of church and state.

In the early years of the nineteenth century, however, the evangelicals reignited this issue in what became a bitter dispute over Sunday mail delivery. In the first decades of our nation's history, the United States Post Office delivered mail on the Sabbath, and in 1810, Congress expressly ratified this practice by enacting legislation specifically requiring postmasters to deliver the mail "on every day of the week."[67]

In 1827, however, Lyman Beecher declared that if Sabbath-breaking were not forbidden, irreligion would "prevail" and the

63. FRANCES WRIGHT D'ARUSMONT, *Lecture, in* LIFE, LETTERS, AND LECTURES 1834–1844, at 65–66 (1972); WEST, *supra* note 12, at 134.

64. *Id.*

65. *Id.*

66. ABZUG, *supra* note 14, at 41.

67. Act Regulating the Post-Office Establishment, ch. 37, § 9, 2 Stat. 592 (1810) (repealed 1825).

nation would be infected with "immorality" that would corrode republican institutions.[68] The following year, a group of evangelicals founded the General Union for Promoting the Observance of the Christian Sabbath with the express goal of reestablishing the preservation of the Sabbath in order to reassert Christian values and "restore Godly order to a fallen community."[69]

The evangelicals filed hundreds of petitions with Congress demanding the abolition of Sunday mail delivery. Their most direct argument was straightforwardly religious: the Sabbath had "been instituted by God; therefore, it must be respected."[70] Many petitions warned that "any nation that disregards the Sabbath will bring on itself divine retribution."[71] The petitions also offered less overtly religious justifications. They asserted, for example, that a day of rest is necessary to promote morality, because it affords individuals an opportunity to "reflect on their timeless duties."[72]

The arguments in favor of Sunday mail delivery emphasized both the economic interests of the nation and the concern that if Congress acceded to the evangelicals' petitions it would effectively be enacting a law "respecting the establishment of religion" and "injecting itself into a religious controversy over what day constitutes the Sabbath."[73] The proponents of Sunday mail-delivery characterized the evangelical position as the "first step" in a nationwide campaign to inject "religion into politics" and to "subvert republican government."[74]

The most vigorous opponent of ending Sunday mail service was Congressman Richard Johnson of Kentucky who would later serve as Martin van Buren's vice-president. Johnson wrote two influential congressional committee reports on the controversy. Noting that

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68. LYMAN BEECHER, THE MEMORY OF OUR FATHERS: A SERMON DELIVERED AT PLYMOUTH 26–27 (Boston, T.R. Marvin 1828), *quoted in* ABZUG, *supra* note 14, at 111.

69. ABZUG, *supra* note 14, at 114.

70. WEST, *supra* note 12, at 141.

71. *Id.*

72. *Id.* at 142.

73. *Id.* at 148.

74. *Id.* at 150; Petition of Inhabitants of Hanover, Pennsylvania (rec. Mar. 1, 1830), *quoted in* WEST, *supra* note 12, at 150.

"religious combinations to effect a political object are . . . dangerous," he reasoned that a law forbidding Sunday mail delivery would threaten "the spirit of the Constitution."[75]

Johnson insisted that the very fact that those opposing Sunday mail delivery argued that Sabbath breaking violated "divine law" was itself a sufficient constitutional ground to reject their position. He cautioned that if the evangelicals had their way on this issue, they eventually would seek legislation forbidding "people from writing letters on the Sabbath" and compelling their "attendance at public worship."[76]

Some evangelicals responded to Johnson by declaring flat-out that America is a Christian nation in which Sabbath-breaking and Sunday mail delivery must be prohibited.[77] For several years, the evangelical campaign to end Sunday mail service "engulfed the nation" in an often furious controversy.[78]

Many Americans feared that this campaign posed a serious threat "by evangelicals to impose their religious beliefs" on the nation.[79] At heated public meetings, speakers denounced the leaders of the evangelical movement as "religious zealots" who were attempting "to undermine America's republican government."[80]

In the end, Johnson's position carried the day, and the evangelicals' demand that the government cease Sunday mail service was defeated. This resolution held until 1912, when an alliance of ministers and postal clerks finally succeeded in getting Congress to end Sunday mail delivery.

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75. SENATE COMM., 20TH CONG., SENATE REPORT ON SUNDAY MAILS, COMMUNICATED TO THE SENATE, JANUARY 19, 1829, *reprinted in* AMERICAN STATE PAPERS BEARING ON SUNDAY LEGISLATION (Willard Allen Colcord ed., Religious Liberty Ass'n 1911) (1890), *quoted in* WEST, *supra* note 12, at 154–55.

76. 21ST CONG., NO. 87, SUNDAY MAILS, COMMUNICATED TO THE HOUSE OF REPRESENTATIVES, MARCH 4–5, 1830, *in* AMERICAN STATE PAPERS, LEGISLATIVE AND EXECUTIVE, OF THE CONGRESS OF THE UNITED STATES 230–231 (1834), *quoted in* WEST, *supra* note 12, at 159.

77. WEST, *supra* note 12, at 159.

78. *Id.*

79. *Id.* at 140.

80. *Id.* at 157.

BLASPHEMY: "A GROSS VIOLATION OF DECENCY"

Because the evangelicals believed that the United States was a Christian nation, they insisted that the government prosecute blasphemy. From the fifth century through the Reformation, persecution for blasphemy was commonplace in Christian societies. During the Middle Ages, the penalty for blasphemy included death, cutting off the lips, and burning or tearing out the tongue. Thomas Aquinas argued that blasphemy was a worse sin than murder, for blasphemy "is a sin committed directly against God," whereas murder is merely "a sin against one's neighbor."[81]

In the American colonies, the Puritans took blasphemy quite seriously. Invoking *Leviticus*, which commands that "He who blasphemes the name of the Lord shall be put to death,"[82] the early Puritan codes declared blasphemy a capital offense. From the 1660s through the 1680s, the Puritans initiated approximately twenty blasphemy prosecutions. In one case, the defendant was prosecuted for calling God a bastard; in another, for stating that the devil was as merciful as God. Although the Puritans never executed anyone for blasphemy, they whipped, pilloried and mutilated those found guilty of the offense.

In the rest of the American colonies, however, prosecutions for blasphemy were rare, and by the eighteenth century such prosecutions had disappeared almost entirely, even in Puritan New England. By the time of the American Revolution, the idea that the government could legitimately punish an individual for disparaging Christianity had come to be regarded as a "relic of a dead age."[83]

With the Second Great Awakening, however, the demand for blasphemy prosecutions reemerged. In 1811, New York prosecuted Ruggles for stating in a local tavern that "Jesus Christ was a bastard,

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81. ST. THOMAS AQUINAS, 9 SUMMA THEOLOGICA 168–69 (Fathers of the English Dominican Province trans. 1912), *quoted in* LEONARD W. LEVY, BLASPHEMY: VERBAL OFFENSE AGAINST THE SACRED, FROM MOSES TO SALMAN RUSHDIE 52 (1993).

82. *Leviticus* 24:16 (King James).

83. LEVY, *supra* note 81, at 400.

and his mother must be a whore."[84] Ruggles was convicted and sentenced to three months in prison.

Speaking for the New York court, Chancellor James Kent, a conservative jurist who viewed religion as the bulwark of the social order, upheld the conviction. Kent reasoned that blasphemy must be a crime because it "tends to corrupt the morals of the people." Christianity, he argued, was an integral part of the law of the land, and blasphemy that "insulted and defamed" Christianity was therefore "a gross violation of decency and good order."[85]

On the other hand, Kent explained that denigration of the beliefs of other religions, such as Judaism, Islam and Hinduism, were not punishable as blasphemy, because "we are a Christian people, and the morality of the country is deeply ingrafted upon Christianity, and not upon" those other faiths, which he dismissed as mere "imposters" and "superstitions."[86] The courts of several other states soon followed New York's lead.[87]

As the historian Perry Miller has observed, "the lawyers who wrote the Constitution would have been astounded could they have been brought back to hear lawyers saying that in the Common Law were reflected 'the principles of Divine Law, as promulgated by Moses, and as expounded by Christ."[88] Indeed, in the 1820s, both John Adams and Thomas Jefferson vigorously condemned this view.

Adams lamented that there were any blasphemy prosecutions at all in the United States, writing Jefferson that laws against blasphemy were "a great embarrassment."[89] He called for the repeal of all such laws.[90] Jefferson wrote a celebrated attack on the claim that Christianity was a part and parcel of the law of the United States, concluding that the assertion was a sheer fabrication.[91]

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84. People v. Ruggles, 8 Johns. 290 (N.Y. Sup. Ct. 1811).

85. *Id.*

86. *Id.*

87. *See, e.g.*, State v. Chandler, 1 Del. (2 Harr.) 553, 554–72 (Del. 1837); Udegraph v. Commonwealth, 11 Serg. & Rawle 394 (Pa. 1824).

88. MILLER, *supra* note 15, at 206.

89. THE ADAMS-JEFFERSON LETTERS, *supra* note 8, at 608.

90. *Id.* at 607–08.

91. Letter from Thomas Jefferson to John Cartwright (June 5, 1824), *in* 15 THE WRITINGS OF THOMAS JEFFERSON 48–51 (Albert Ellery Bergh ed., 1907).

The union of Christianity and the law was asserted most forcefully by Chief Justice Lemuel Shaw of Massachusetts, in the era's most notorious blasphemy prosecution. The case involved Abner Kneeland, a cantankerous, outspoken former minister who was widely-known for his radical views on politics, religion, abolition, and birth control. Kneeland was prosecuted for publishing an article in 1833 in which he declared that "the whole story concerning" Christ was "as much a fable and fiction as that of the god Prometheus" and that the miracles of the Bible were nothing more than "trick and imposture."[92]

Kneeland was dragged through a succession of trials (most of which ended in a hung jury) until the authorities finally secured a conviction in their fifth try. He was sentenced to sixty days in jail.[93] In an opinion by Chief Justice Shaw, the Supreme Judicial Court of Massachusetts upheld Kneeland's conviction.[94] Shaw reasoned that the conviction was consistent with the Massachusetts Declaration of Rights, because the guarantees of freedom of speech[95] and of religion did not protect individuals who "disparage the Supreme Being."[96]

These convictions reflected the values of the Second Great Awakening. But even in this era of evangelical furor, prosecutions for blasphemy were largely "aberrational,"[97] and as the force of the Second Great Awakening waned, the demand for such prosecutions gradually dissipated.

Since 1838, there has been only a smattering of blasphemy prosecutions in the United States, and a broad consensus has emerged that Jefferson and Adams had it right. In 1952, the Supreme Court of the United States finally put the matter to rest, holding in a unanimous decision that "it is not the business of government in our nation to suppress real or imagined attacks upon a particular religious

92. JOHN DAVIDSON LAWSON, 13 AMERICAN STATE TRIALS: A COLLECTION OF THE IMPORTANT AND INTERESTING CRIMINAL TRIALS WHICH HAVE TAKEN PLACE IN THE UNITED STATES FROM THE BEGINNING OF OUR GOVERNMENT TO THE PRESENT DAY 536–37 (1921).

93. *Id.*

94. Commonwealth v. Kneeland, 37 Mass. 206 (1838).

95. *Id.* at 206.

96. *Id.* at 220.

97. LEVY, *supra* note 81, at 413.

doctrine" or to protect "any or all religions from views which are distasteful to them."[98] The Court held that the First Amendment rendered any such action unconstitutional.[99]

THE TEMPERANCE MOVEMENT

The first truly national crusade of the Second Great Awakening concerned the issue of alcohol. In the early nineteenth century, Americans consumed alcohol with little sense that such behavior might be immoral. The Puritans had never been abstemious, and traditional Christianity had never discouraged drinking. Most early nineteenth-century Americans regarded alcohol as an ordinary part of everyday life. Indeed, most people considered alcohol to be more healthful than the drinking water then commonly available.

Until 1812, there was no organized moral call for temperance. In that year, however, Timothy Dwight characterized drinking as a sin and called for total abstinence.[100] Lyman Beecher later embraced the cause and infused the temperance movement with his own evangelical spirit. In 1826, he described intemperance as "the sin of our land" and warned that the "indolence," "sickness," "quarrels"[101] and other consequences of alcohol eventually would destroy the nation.[102] He insisted that calls for voluntary abstinence could not address the danger, and that the only solution was "the banishment of ardent spirits from the list of lawful articles of commerce."[103]

By 1828, more than 400 temperance societies had sprung up across the nation. Within a decade, these societies had established more than 5,000 chapters. The early temperance organizations sought to educate the public about the dangers of drink, pressure retailers to forego the

98. Burstyn v. Wilson, 343 U.S. 495, 505 (1952).

99. *Id.* On the evolution of the law of blasphemy in the United States after 1838, see generally LEVY, *supra* note 81, at 506–33.

100. LYMAN BEECHER, *Six Sermons on the Nature, Occasions, Signs, Evils, and Remedy of Intemperance* (1828), *in* LYMAN BEECHER AND THE REFORM OF SOCIETY: FOUR SERMONS 1804–1828, *supra* note 40, at 10.

101. *Id.* at 53

102. *Id.* at 49.

103. BEECHER, *supra* note 100, at 64.

sale of alcoholic beverages, and encourage members to take the "pledge" to abstain. Although more than a million Americans took the pledge, it soon became clear, as Beecher had warned, that voluntary abstention would not save the nation.[104]

In 1836, the American Temperance Movement was formed on the platform of total prohibition. The evangelical vision of the temperance issue closely tracked its larger understanding of America. Along with Sabbath-breaking and blasphemy, drink "became an important symbol of sin."[105]

Maine passed the first statewide alcohol ban in 1846, followed by Vermont, Rhode Island, Michigan, and eight other states over the course of the next decade. The temperance movement finally achieved victory in 1919, when the 18th Amendment enacted prohibition nationwide.

SLAVERY: "THE BLOOD OF SOULS"

The issue of slavery sharply divided nineteenth-century evangelicals. During the Revolutionary era, some churches condemned slavery as immoral and inconsistent with the word of God. But once the idealism of the Revolution had played itself out, the nation turned its attention to economic and commercial expansion. By the turn of the nineteenth century, slavery had become so central to the Southern economy that all but its staunchest opponents came to regard it as a necessary, if regrettable, part of the economic life of the nation.

Churches that once had called for abolition now settled for "condemning slavery in theory," but treating its continued existence as a "political matter separate from the sphere of the church." They called not for abolition, "but for the Christian treatment of slaves and for their conversion to Christianity."[106] There were a few exceptions, but they were few and far between.

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104. Those who signed the temperance pledge were invited to put a T after their names if willing to pledge total abstinence, which led to the word "teetotaler." *See* HOWE, *supra* note 28, at 167–68.

105. ABZUG, *supra* note 14, at 83.

106. ABZUG, *supra* note 14, at 131–32, 135.

William Lloyd Garrison was the nation's most eloquent proponent of abolition. Inspired by Lyman Beecher, Garrison embraced Beecher's vision of evangelical reform, but his advocacy of emancipation soon alienated him from Beecher and from most evangelicals.

Garrison merged the evangelical belief that America stood "on a great precipice, ready to plunge into darkness" with his own charge that slavery was at the very root of the American dilemma. He accused his fellow evangelicals of neglecting their moral responsibilities. The "blood of souls," he declared, is upon the church.[107] He declared slavery "the bell weather of America's fidelity to its covenant with God."[108]

By the early 1830s, Garrison's religious conviction had been deeply shaken by the evangelicals' rejection of his position. Ironically, although Garrison's call for abolition was greeted with hostility by most evangelicals, it won the enthusiastic support of many of those whose religious views he himself had "once condemned as irreligious," including the Quakers, Unitarians and Freethinkers.

On one occasion, Garrison searched in vain for a church or hall in Boston in which to speak. Even Lyman Beecher refused to assist him, dismissing Garrison's call for abolition as "misguided."[109] It was Abner Kneeland, who was soon to be charged with blasphemy, who came to Garrison's defense and sponsored his speech under the auspices of the Society of Free Enquirers.

Invocations of the Bible played a central role in the debate over slavery. Abolitionists invoked St. Paul's speech in Athens, in which he pronounced that God "hath made of one blood all nations of men for to dwell on all the face of the earth."[110] But defenders of slavery also invoked the Bible, quoting, for example, Noah's declaration in

107. GEORGE M. FREDRICKSON, WILLIAM LLOYD GARRISON 15 (1968).
108. *Id.* at 14–15; ABZUG, *supra* note 14, at 129, 135–136, 143.
109. *Id.* at 151–52.
110. *Acts* 17:26 (King James).

Genesis: "Cursed be Canaan; a servant of servants shall he be unto his brethren."[111]

Indeed, some of the most ardent supporters of slavery, such as the Baptist clergyman Theodore Dwight Weld, enthusiastically cited biblical passages, such as *Exodus* 21,[112] to prove that "God's Chosen People practiced chattel slavery and that God, far from issuing a blanket condemnation of the institution, prescribed legal rules for it." By the 1830s, Southern clergymen and politicians were frequently invoking the Bible in defense of slavery.[113] At the time, each side thought it had the better of the argument.[114]

SEX: "AROUSED LUST"

The Second Great Awakening also had a substantial impact on social and legal attitudes about sex. Although the early Puritans had a relatively strict view of sexual behavior, by the late eighteenth century most Americans had embraced a more relaxed approach, and the states had pretty much ceased enforcing their criminal laws against consensual, adult sex. Revolution-era Americans simply did not consider such conduct worthy of serious legal concern.

The Framers were not libertines, but they were men of their age, and their age—the age of Henry Fielding's *Tom Jones* and John Cleland's *Memoirs of a Woman of Pleasure*—was not shy about

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111. *Genesis* 9:25 (King James).

112. Theodore Dwight Weld, *The Bible Against Slavery*, *in* A HOUSE DIVIDED 93 (Mason I. Lowance, Jr. ed., 2003).

113. Senator John C. Calhoun invoked biblical sources to extol the "positive good" of slavery. Calhoun declared: "I hold that in the present state of civilization, where two races of different origin, and distinguished by color, and other physical differences, as well as intellectual, are brought together, the relation now existing in the slaveholding States between the two, is instead of an evil, a good—a positive good." JOHN C. CALHOUN, *Speeches of John C. Calhoun*, *in* 2 THE WORKS OF JOHN C. CALHOUN 631 (Richard K. Carlle ed., New York, D. Appleton & Co. 1888).

114. HOWE, *supra* note 28, at 475–78; *see* DREW FAUST, SOUTHERN STORIES: SLAVEHOLDERS IN PEACE AND WAR 72–87 (Univ. of Mo. Press 1984) (1992); Jan Lewis, *The Problem of Slavery in Southern Political Discourse*, *in* DEVISING LIBERTY: PRESERVING AND CREATING FREEDOM IN THE NEW AMERICAN REPUBLIC 265–97 (David Thomas Konig ed., 1995); MASON LOWANCE JR., A HOUSE DIVIDED: THE ANTEBELLUM SLAVERY DEBATES IN AMERICA, 1776–1865, at 63–67, 92–96 (2003). During the twentieth-century civil rights struggle, segregationists as well as integrationists invoked biblical authority. *See* Jane Dailey, *Sex, Segregation, and the Sacred After* Brown, 91 J. AMER. HIST. 119, 121–22 (2004).

sexual pleasure. For the most part, they regarded sex as natural, human, and private. Before the Second Great Awakening, there had never been any legal effort to censor sexual expression in either the colonies or the United States. To the contrary, there was a free-wheeling market for erotic literature in eighteenth-century America.

This attitude changed during the Second Great Awakening, as a new "ethic of sexual restraint took hold."[115] Evangelical Christians, whose "religious moralism condemned all public sexual expression" as sinful,[116] declared war against the "sins of the flesh."[117]

The first obscenity prosecution in the United States was initiated in 1815, when Jesse Sharpless was convicted for exhibiting for money an image of a man in an "indecent posture with a woman."[118] In upholding the conviction, the Pennsylvania Supreme Court explained that the state could lawfully regulate the exhibition of "lascivious pictures" because they tended to "excite lust" and inflame the "passions" of youth.[119]

In the 1820s, the evangelicals aggressively promoted strict sexual standards and condemned sexual desire as "sinful lust." They viewed information about birth control as particularly dangerous, because birth control "removed the fear of pregnancy," which they thought "necessary for the protection of female virginity." The aroused female, they preached, could not be trusted, for following the example of Eve, she would inevitably be driven "to satisfy her lusts."[120]

Freethinkers of the era, like Fanny Wright, insisted that "sexual feeling was a vital part of life, necessary to human happiness."[121] She boldly described sexual desire as "the noblest of the human

115. PATRICIA CLINE COHEN, TIMOTHY J. GILFOYLE & HELEN LEFKOWITZ HOROWITZ, THE FLASH PRESS: SPORTING MALE WEEKLIES IN 1840S NEW YORK 9 (2008).

116. *Id.* at 109.

117. HELEN LEFKOWITZ HOROWITZ, REREADING SEX: BATTLES OVER SEXUAL KNOWLEDGE AND SUPPRESSION IN NINETEENTH-CENTURY AMERICA 5–6 (2002).

118. Commonwealth v. Sharpless, 2 Serg. & Rawle 91 (Pa. 1815), *quoted in* EDWARD DEGRAZIA, CENSORSHIP LANDMARKS 36–37 (1969).

119. *Sharpless*, 2 Serg. & Rawle 91, *quoted in* HOROWITZ, *supra* note 117, at 39.

120. HOROWITZ, *supra* note 117, at 48–49, 67–68.

121. Fanny Wright, *Nashoba, Explanatory Notes & Continued*, NEW-HARMONY GAZETTE, Feb. 6, 1828, at 132, *quoted in* HOROWITZ, *supra* note 117, at 54.

passions," and an important and natural "source of human happiness."[122] Another Freethinker, Robert Owen, taught that sexual desire gives "social intercourse much of its charm and zest."[123] Owen rejected the evangelicals' claim that any effort to interfere with conception was unnatural, arguing that "nature, giving sexual passion to humankind, gives also the power to control its effects."[124]

Evangelical preachers condemned Wright and Owen as agents of "the Antichrist."[125] In 1830, Lyman Beecher described their teachings as "poisonous"[126] and accused them of attempting to supplant Christian marriage with "the rage of lust."[127] To the evangelicals, sex for any purpose other than to produce offspring was licentious and sinful.

In 1831, Charles Knowlton, a young Massachusetts physician, published *Fruits of Philosophy*, a "pathbreaking work" that "attempted to apply science to sexual relations."[128] Knowlton argued that sex and sexuality must move out of the realm of morality and into that of medicine.[129] He specifically recommended several methods women could use to prevent conception.[130] Knowlton was prosecuted repeatedly and sentenced to hard labor.[131] Taking the evangelical line, the state officially declared books discussing contraception, even written in a medical manner, "obscene."[132]

This concern with sexual expression was closely bound up with anxiety about masturbation. Critics of erotic literature warned that such material incited youths "to practice what the age called the

122. *Id.*, *quoted in* HOROWITZ, *supra* note 117, at 54–55; *see* CELIA MORRIS ECKHARDT, FANNY WRIGHT: REBEL IN AMERICA 156–58 (1984).

123. ROBERT DALE OWEN, MORAL PHYSIOLOGY: A BRIEF AND PLAIN TREATISE ON THE POPULATION QUESTION 13 (Kessinger Publ'g 2008) (1870), *quoted in* HOROWITZ, *supra* note 117, at 58.

124. HOROWITZ, *supra* note 117, at 60; *see* OWEN, *supra* note 123, at 61–67.

125. HOROWITZ, *supra* note 117, at 61.

126. *Id.* at 62.

127. LYMAN BEECHER, LECTURES ON POLITICAL ATHEISM AND KINDRED SUBJECTS 92, 97–99 (General Books 2009) (1852), *quoted in* HOROWITZ, *supra* note 117, at 63.

128. HOROWITZ, *supra* note 117, at 75; *see* JANET FARRELL BRODIE, CONTRACEPTION AND ABORTION IN NINETEENTH CENTURY AMERICA 97–104 (1994); NORMAN E. HIMES, MEDICAL HISTORY OF CONTRACEPTION 226–30 (1963).

129. HOROWITZ, *supra* note 117, at 75.

130. *Id.* at 76.

131. *Id.* at 72.

132. *Id.* at 77.

'secret vice.'"[133] In the 1830s, Sylvester Graham, the son and grandson of Connecticut clergymen, was the most prominent champion of this view. Graham insisted that "by abusing his organs, and depraving his instinctive appetites," man becomes "a living volcano of unclean propensities and passions."[134]

Graham taught that self-pollution endangered the entire body, because the "convulsive paroxysms attending" sexual activity "cause the most powerful agitation to the whole system, that it is ever subject to."[135] According to Graham, the "body should undergo such excitement only a few times in its lifetime." Graham expressly condemned erotic literature, because it stimulated "lascivious thoughts" which in turn would lead ultimately to debility, insanity and even death.[136]

According to Graham, masturbation was the worst form of sexual indulgence, because it had no justification in reproduction and was therefore "wholly unnatural."[137] Graham regarded nutrition as the key to good health and he developed a new whole-grain food, marketed today as the Graham cracker, which he touted as the most effective means of dampening the sexual passions.[138]

Those who feared the effects of masturbation "saw danger lurking everywhere."[139] Luther Bell, the superintendant of an asylum in Boston, lamented that "every library, . . . every printshop, has something, prose, poetry, or picture, which can be perverted . . . to the base use of exciting the passions, and which is impressed into the service of pollution.'"[140] Opponents of masturbation warned that those who fell victim to the practice would be "reduced to a state of

133. *Id.* at 86.

134. SYLVESTER GRAHAM, A LECTURE TO YOUNG MEN 14 (Providence, Weeden & Cory 1834), *quoted in* HOROWITZ, *supra* note 117, at 95.

135. *Id.* at 20, *quoted in* HOROWITZ, *supra* note 117, at 96.

136. *Id.* at 16, *quoted in* HOROWITZ, *supra* note 117, at 96.

137. *Id.*, *quoted in* HOROWITZ, *supra* note 117, at 97–98.

138. HOROWITZ, *supra* note 117, at 96.

139. *Id.* at 102.

140. LUTHER V. BELL, AN HOUR'S CONFERENCE WITH FATHERS AND SONS, IN RELATION TO A COMMON AND FATAL INDULGENCE OF YOUTH 26–27 (Boston, Whipple & Damrell 1840), *quoted in* HOROWITZ, *supra* note 117, at 102.

utter degradation."[141] Parents were cautioned to be on the lookout for early signs of self-abuse in their children. If they were not attentive, their sons would face lives of failure, debility, violence, and confinement in an asylum, and their daughters would suffer terrible illness, rampant fornication, and ultimately a life of prostitution.

It was these fears, fed by the evangelical view of sex, that led to the first federal legislation prohibiting the importation of "indecent and obscene" materials in the Tariff Act of 1842 and, eventually, to the explosion of state and federal anti-obscenity laws during the age of Anthony Comstock in the years after the Civil War.[142] In this sense, the consequences of the Second Great Awakening are still with us today.

THE END OF THE SECOND GREAT AWAKENING

The Second Great Awakening put religious practice in the United States on a long-term upward path. By the middle of the nineteenth century, as many as one-third of all Americans were affiliated with a Christian church, a substantial increase from the Revolutionary era.[143] And it was in this era that the campaign to characterize the United States as a "Christian nation" first took hold.[144]

By 1840, however, the Second Great Awakening began to wane. The more radical elements of the evangelical movement contributed significantly to the movement's demise. Their rabid anti-Catholicism and political nativism often "verged on hysteria" and scared off many moderates. The demands of radical evangelicals that Christians vote only for "true" Christians, that public education be infused with Christian values, and that the Constitution be amended "to recognize the authority of Christ" all undermined the movement's credibility with mainstream Americans. By 1840, political contests at both the

141. HOROWITZ, *supra* note 117, at 103.

142. *See* COHEN, GILFOYLE & HOROWITZ, *supra* note 115, at 90–91.

143. JOHNSON, *supra* note 17, at 4–5.

144. *See* HOWE, *supra* note 28, at 172–73, 186, 190–91; MILLER, *supra* note 15, at 38. *See generally* MILLER, *supra* note 15, at 3–95; NANCY F. COTT, THE BONDS OF WOMANHOOD 141 (1977); JOHNSON, *supra* note 17, at 5; WEST, *supra* note 12, at 207–08.

local and national levels increasingly found radical evangelicals "on one side and nearly everyone else on the other." Within a few years, the impulse for evangelical reform had ground to a halt.[145]

Among the legacies of the Second Great Awakening were important political and constitutional lessons. Perhaps most significantly, the practical need to find at least some common ground in political discourse often led more moderate evangelicals to offer secular rather than purely theological justifications for their positions. Thus, the evangelicals learned to defend Sunday-closing laws, blasphemy prosecutions, temperance legislation, laws prohibiting Sunday mail delivery, and laws restricting sexual expression and behavior not only by invocations of the Bible, but also by arguments couched more neutrally in terms of promoting days of rest, preserving the public peace, encouraging good work habits, and promoting family stability.

By framing their positions in secular terms, the moderate evangelicals often managed to avoid more direct confrontations between their desire to impose their religious beliefs on others and the principle of separation of church and state.

Of course, whether this re-framing was sincere or merely pretextual varied from issue to issue and among the evangelicals themselves, and whether this strategy succeeded in any given situation turned both on how broadly non-evangelicals shared the asserted secular concerns and how skeptical they were about the motives of the evangelicals.

In the Sunday mail delivery controversy, for example, Congressman Johnson successfully advanced what we would today regard as the extreme position that if a religious group advocates a legal change that clearly furthers its religious beliefs, then the government should not acquiesce, even if there is a plausible secular

145. WEST, *supra* note 12, at 207–08, 210; *see* HOWE, *supra* note 28, at 448–49 (anti-Catholicism); GLYNDON G. VAN DUSEN, THE JACKSONIAN ERA, 1828–1848, at 16–17 (Henry Steele Commager et al. eds., 1959) (nativism); ANSON PHELPS STOKES, 2 CHURCH AND STATE IN THE UNITED STATES 47–72 (1950) (public education); LEO PFEFFER, CHURCH, STATE, AND FREEDOM 241–42 (rev. ed. 1967) (effort to amend Constitution).

justification for the change, if it is to preserve the principle of separation of church and state.

These same issues continue to affect our contemporary public discourse and law. They arise most often today in our debates over such matters as abortion, sex education in the public schools, censorship of sexual expression, faith-based initiatives, stem-cell research, and same-sex marriage.

Consider, for example, California's Proposition 8, which overturned a California Supreme Court decision holding the state's denial of same-sex marriage unconstitutional under state law.[146] Presumably, Proposition 8 would violate the Establishment Clause if it had expressly stated that same-sex marriage is banned because "homosexuality is sinful and same-sex marriage in not sanctioned by God." But, of course, Proposition 8 said no such thing.

As in the nineteenth-century disputes over Sunday mail delivery, temperance, blasphemy prosecutions, and sexually-oriented expression, the proponents of Proposition 8 invoked a variety of non-religious justifications for the prohibition of same-sex marriage. But despite those invocations of tradition, morality, and family values, it is hard to blink the reality that the primary explanation for Proposition 8 was religion.

This is evident not only from the extraordinary efforts undertaken by religious groups to promote Proposition 8, but also from the striking voting patterns revealed in the exit polls. Proposition 8 was enacted by a razor-thin vote of 52% to 48%. Those identifying themselves as evangelicals, however, supported Proposition 8 by a margin of 81% to 19%, and those who claim to attend church weekly supported Proposition 8 by a vote of 84% to 16%. Non-Christians, on the other hand, opposed Proposition 8 by a margin of 85% to 15% and those who do not attend church regularly opposed Proposition 8 by a vote of 83% to 17%.[147]

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146. *In re* Marriage Cases, 183 P.3d 384 (Cal. 2008).

147. *See* SACRAMENTO BEE, CALIFORNIA GENERAL EXIT POLL (2008), *available at* http://media.sacbee.com/smedia/2008/11/05/18/prop8.source.prod_affiliate.4.pdf (reporting religious affiliation of voters in exit polling).

What this tells us, quite strikingly, is that Proposition 8 was, in large part and in practical effect, a successful effort by persons holding a very specific religious belief to use the authority of the law to impose that belief on their fellow citizens.

In my view, this represents a serious threat to the separation of church and state. But from a strictly legal perspective, it is exceedingly difficult for courts to enforce the First Amendment in the context of laws like Proposition 8.

When a law does not directly restrict religious activity or expressly endorse or promote religious expression, it is awkward at best for courts to sort out the "real" purpose of the law. As a consequence, courts are reluctant to invalidate laws on the ground that they surreptitiously enact a particular religious faith.

This reluctance was evident in the Supreme Court's most direct encounter with this sort of Establishment Clause claim. In *McGowan v. Maryland*, the Court considered the constitutionality of a state's Sunday Closing Law which, with a few exceptions, proscribed all labor, business and other commercial activities on Sunday. Although conceding that the law was originally "motivated by religious forces," the Court nonetheless argued that "secular justifications" had more recently been "advanced for making Sunday a day of rest, a day when people may recover from the labors of the week just passed and may physically and mentally prepare for the week's work to come." Thus, the "proponents of Sunday closing legislation," the Court noted, "are no longer exclusively representatives of religious interests."[148]

The Court emphasized that the Establishment Clause does not ban the "regulation of conduct" merely because the regulation "happens to coincide . . . with the tenets" of the dominant religion, for "in many instances" the "general welfare . . . demands such regulation" without regard to "religious considerations." As an example, the Court pointed out that murder can be made unlawful "for temporal

148. McGowan v. Maryland, 366 U.S. 420, 431, 434–35 (1961).

purposes," even though the prohibition accords "with the dictates of the Judeo-Christian religions."[149]

In the context of the Sunday closing law, the Court reasoned that because it would be "unrealistic" for the state "to choose a common day of rest other than that which most persons would select," there was "a sufficiently secular basis" for the law to withstand constitutional challenge. In closing, however, the Court emphasized that a Sunday closing law, or any other legislation, would violate the Establishment Clause if its purpose was "to use the State's . . . power to aid religion."[150]

Thus, *McGowan* evidenced both the principle that a law intended "to use the State's . . . power to aid religion" is unconstitutional and the difficulty of applying that principle when secular purposes are advanced in defense of the law. The problem of ferreting out impermissible motive is common in constitutional law. It occurs not only in the context of the Establishment Clause, but also in dealing with laws that might have been motivated by impermissible racial, religious, political or gender prejudice. Addressing that challenge is beyond the scope of this lecture. But I want to make a related observation.

That courts may have difficulty ascertaining and candidly naming a constitutionally impermissible purpose does not mean that that purpose is legitimate. We know that, as responsible citizens, we should not support laws because they advance our discriminatory biases about race, religion, politics or gender, even if we could succeed in doing so. We know that, as good and moral citizens, we should strive to be tolerant, self-critical and introspective about our own values, beliefs and motives, and to strive faithfully to honor our highest national aspirations.

The separation of church and state is one of those aspirations. Regardless of whether courts can effectively intervene in this context, it is just as inappropriate for us to violate the separation of church and state by insidiously using the power of the state to impose our

149. *Id.* at 442.
150. *Id.* at 452–53.

religious beliefs on others as it is for us insidiously to use the power of the state to implement our discriminatory prejudices about race, religion, politics or gender.

This is the fundamental issue posed by the Second Great Awakening, and it remains a fundamental issue today. As citizens, advocates of Sunday closing laws, temperance legislation, the abolition of slavery, anti-abortion laws, prohibitions of stem-cell research, and law forbidding same-sex marriage are free to support such policies because they honestly believe they serve constitutionally legitimate ends; and they are also free to urge others to embrace and abide by their religious beliefs. But what they are not free to do, what they must strive not to do if they want to be good citizens, is to use the law disingenuously to impose their own religious beliefs on others.

It is, to be sure, difficult for individuals to separate in their own minds the difference between sound public policy and public morality, on the one hand, and their personal religious beliefs, on the other. But just as we would expect a predominantly Muslim community in the United States to strive to know the difference between their religious beliefs about alcohol and legitimate concerns about public policy and public morality, so too should we expect such self-scrutiny and respect for the law by predominantly Christian communities.

This challenge remains with us as a central legacy of the Second Great Awakening.