The Anti-Madalyn Majority:
Secular Left, Religious Right, and the Rise of Reagan’s America

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Abstract

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Benjamin Eric Sasse
2004

In the 1960s and ‘70s, millions of Americans credited Madalyn Murray O’Hair with masterminding a plot to criminalize school prayer, and thereby to drive God from the land. This analysis was wrong on multiple counts, starting with the fact that her supposedly unprecedented suit against Baltimore was only the third most important church-state case of 1962-63. But the factual errors of those outraged by the school prayer decisions are less consequential than the realities for which the “myth of Madalyn” stood as a place-holder: Public institutions did de-Protestantize in the middle third of the century; the ACLU and other actors did scheme to facilitate this shift; and many constitutional experts did share popular doubts about the evolving interpretation of the establishment clause and the consequent legal secularization.

Grassroots Americans cried out against their nation’s “hijacking” at a nearly unparalleled volume, immediately inundating both the Supreme Court and Congress in mail. The House of Representatives evaluated an unprecedented 145 proposed constitutional amendments in 1964 to reestablish school prayer by changing the First Amendment, followed up by scores more proposals in 1966 and 1970. Polls showed that nearly 85% of citizens supported a pro-public religion alteration of the Constitution. O’Hair quickly became, to quote a Life headline, “the Most Hated Woman in America” — a role she relished.
This dissertation is not about Madalyn, but about the culture-warring entrepreneurs who ascended partly by inflating her importance so they could denounce her cause and build their empires. It is also about Republican pollsters and politicians who stumbled across the widespread discontent about the apparent willingness of many Democrats to tolerate atheists. Most of all, though, by examining lay correspondence to elected officials during a series of related controversies over religion in public life, this project is about the vast middle of America sitting between the aggressive secularizers and the professional anti-secularizers. There may never have been a moral majority, but Cold War America surely contained an overwhelming anti-Madalyn majority concerned about the national soul.
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Ben Sasse  
March 6, 2004  
Washington, DC
Preface

On March 15, 2001, FBI agents confirmed to ABC and CNN that they had found the remains of atheist leader Madalyn Murray O’Hair in a shallow grave on a remote West Texas ranch. O’Hair, who became famous in connection with the 1962-63 Supreme Court decisions that ruled unconstitutional organized prayer and devotional Bible reading in public schools, had returned briefly to the national limelight as a consequence of her bizarre 1995 disappearance. Seventy-six years of age when last seen alive, O’Hair was still the head of America’s most recognizable set of atheist organizations and publishing houses. Already under investigation by the IRS, O’Hair and her forty-year-old son and thirty-year-old granddaughter had allegedly long been funneling contributions from lay unbelievers in this country to bank accounts in New Zealand. One August morning in 1995, with an additional five hundred thousand dollars of gold coins in their possession, the first family of atheism left their mansion with a half-eaten breakfast on the table.¹

Observers debate whether the Murray-O’Hair clan made this mid-meal move voluntarily, but all agree that their entire scheme soon went horribly awry. For although the trio made a series of contradictory calls back to friends claiming everything was fine for many weeks, they soon ran into very real judgment this side of eternity. The bodies of O’Hair and kin were found charred and dismembered. Three colleagues from her American Atheists organization were suspected in the murders, but authorities said they

did not plan to pursue formal prosecutions, as one of the three had likewise turned up dead, and the other two had already been sentenced to at least sixty years on other charges.  

Major news organizations followed the story of O’Hair’s disappearance partly for the intrinsic intrigue of an atheist “religious” leader running off with the funds of the faithless. More often, though, journalists seized upon O’Hair’s demise merely as an excuse to review the juiciest provocations she had uttered during her 1960s rise to fame and infamy. Phil Donahue, for instance, who had interviewed O’Hair during his first television program at the outset of his career, hired private investigators soon after her vanishing, hoping to bring her back for his retirement program to bookend his career. *Time* and other national weeklies reported on what many initially considered her final publicity stunt, simultaneously walking readers down memory lane, recounting all of the chins she had caused to drop over the decades. Whether the interviewer was Johnny Carson or David Frost, the editor of a small town Kentucky newspaper or a writer for *Playboy*, producers and publishers could count on O’Hair to provide something titillating, such as her oft-repeated: “The ‘Virgin’ Mary should get a posthumous medal for telling the biggest goddamn lie that was ever told....I’m sure she played around as much as I have, and certainly was capable of an orgasm.”

She was nearly as effective on the other side of the table, having hosted her own television talk show, and seen her radio program air at one point on over 150 stations.

With a public record that included service as chief speechwriter for pornographer Larry

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2 Danny Fry was found dead; David Waters is serving a sixty-year term for stealing $54,000 from Madalyn’s organizations; and Gary Paul Karr is serving a life-sentence for extortion (ABC News, March 15, 2001). *Nightline* drew significant attention to the missing persons case with its June 1, 1998 story, “The Most Hated Woman in America”; ABC News Nightline 1998-06-01, Motion Picture/TV Reading Room, Madison Building, Library of Congress, Washington, DC.

Flynt’s 1984 presidential bid, aggravated assault on multiple Baltimore policemen, and frequent announcements about the sort of man that might be able to satisfy her, O’Hair’s prowess at getting publicity was well established. Journalists understood that she was using them for free media exposure—and thereby direct mail financial success as America’s spokeswoman for progressive thinking—but they didn’t mind, given that they too profited from the arrangement. For stories on Madalyn always sold magazines.4

Historians and legal scholars join the publishers in judging O’Hair’s significance as little more than commercial success and a few laughs. She parlayed her fifteen minutes on the media stage into a lifelong role as national court jester, but in reality, the series of lawsuits by which she initially attracted the public eye were, almost without exception, legally irrelevant. In 1962, the Supreme Court had ruled in Engel v. Vitale that the prevalent New York schools’ practice of invoking God’s blessing each morning violated the First Amendment’s establishment clause. In the summer of 1963, in Abington School District v. Schempp, the Court merely extended this decision from prayer to include the scholastic reading of the Lord’s Prayer or other parts of the Bible for devotional purposes as well. Ms. O’Hair’s suit against the Baltimore schools, Murray v. Curlett, was joined to the Abington case, but it had no independent legal significance. O’Hair became the face on these high court decisions only because she rushed to the microphones and cameras faster than did the reserved Pennsylvania Unitarian, Edward Schempp. Similarly, her O’Hair v. Hill, challenging an unenforced law that required belief in a Supreme Being as a condition for holding Texas office was little more than a publicity stunt, as the Supreme Court had

already held such state and local oath requirements unconstitutional in the precedent-setting *Torcaso v. Watkins* (1961). Her multiple attempts to have churches taxed, and her 1979 quest to keep the pope from holding a mass on the Washington Mall were all dismissed.

The determination that O’Hair was legally irrelevant to the public de-Christianization of America in the middle third of the twentieth century, however, should not lead historians to the erroneous conclusion that she was also culturally irrelevant. Clearly the Court’s application of the First Amendment to the states would have led to the banishment of organized prayer and Bible reading from public schools even if O’Hair had never lived, and even if the relatively more important Edward Schempp had failed to enlist the support of the ACLU in his litigation. Nonetheless, to millions of Americans, O’Hair was and remains the face on that pivotal event, a development which they have understood not as the dispassionate outworking of legal logic, but as purposeful action by irreligion elites to minimize the place of religion in public life.

The secularizers would not stop at the schools, of course. In the eyes of a vast subculture, the oppressor elites in the judiciary, the academy, and various federal bureaucracies intended also to eliminate theistic tests for public office-holding, and to exclude theological conservatives from the chaplaincy, the space program, and the broadcast airwaves. The atheists supposedly aspired to shatter the familial bliss of traditional households, to amalgamate races which God had created distinct, to corrupt the young with sex and drugs, and ultimately to eliminate freedom altogether through top-down collectivism. In this alternative reading of secularization, decisions such as the
1962-63 rulings on religion in the schools aimed not to prevent the coercion of creedal minorities by the Protestant majority, but instead to prevent the transmission of religious faith altogether. The powers in Washington, New York, and Hollywood were not thwarting the establishment of particular religious beliefs, but were instead establishing unbelief.

In dissenting from progressive legal ideas, millions of Americans—many of them non-Protestants and a large portion of them not institutionally religious at all—reasoned that America’s founders did not erect the First Amendment to prohibit the public acknowledgment of a benevolent, nonsectarian deity. Instead, they subscribed the widely held nineteenth century view that the Establishment Clause aimed to keep this generally religious country from sectarian infighting about whether to prefer Presbyterian over Methodist doctrine, or Anglican over Baptist worship styles. In this understanding of history, the American founding was not a product of the enlightenment, with secular ideals toward which the country under the leadership of a benevolent Supreme Court, had been gradually progressing. Instead, America was a Christian nation, although not a coercive one, which is why the Murray children were not forced to believe but only to remain quiet during the Bible reading.

The social and legal conservatives aiming to “take back America” in the 1960s and 1970s did not see themselves as innovators trying to establish a theocracy—a point often missed in both journalistic and academic treatments of the religious right. They aimed merely to stop what they saw as the hijacking of America by the Court and related liberal elites. It was their opponents who were the radicals, trying to drive God out of America altogether. The fruits of this impious desacralization of public institutions, conservatives
insisted, were readily apparent in rising crime, abortion, divorce, and out-of-wedlock birth rates, as well as in the palpably evident national moral decline. Social scientists explained these same cultural statistics as functions of increasing transience, economic dislocation, and the anonymity of urban life, but for a more sizable portion of America, these developments followed directly from the shrinking pool of shared religio-moral assumptions. And this common American faith was evaporating in the post-War period not because of impersonal forces such as cultural pluralization, but because of the intentional actions of conscious actors in the country’s most influential institutions. The secularization of what many regarded as God’s chosen nation was not occurring accidentally; there was a deliberate plot.

Although O’Hair did not lack co-conspirators, she did occupy a unique position in the story as told by the most quotable of the mythmakers. For where many of the humanists were faceless bureaucrats, she was obsessed with the camera. Where many of the evil ones were men who might look like the fathers children should respect, she was an overweight, divorced woman who had conceived her children by different men, and both outside of marriage. Most importantly, where legions of the civil religious conservatives’ opponents either were silent about their ultimate intentions or falsely espoused tolerance and pluralism when in fact they were the intolerant aiming to purge America of all religion except their own unbelief, O’Hair was vocal and honest. She despised the Christian God, she thought believers were fools, and she desired nothing more than the eradication of all theism in the land.\textsuperscript{5} She would begin with the Bible in the schools, but she aimed ultimately for the exclusion of holiday religious services from public spaces, for the taxation of churches, for the silencing of preachers on the airwaves, for an end to prayer

before congressional sessions, and so on. Because she was at least honest, her opponents loved her—or, more accurately, they loved to hate her. She quickly became not only America’s best-known atheist, but also—as a 1964 *Life* headline rightly noted—“the most hated woman in America.”

Even if few of the anti-O’Hair party regarded her as individually responsible for “driving God from the America,” she personified secularization. She popped up, Forrest Gump-like, at virtually every major civil religious controversy, and she served as a placeholder for all cultural and political developments they disliked in the 1960s and ’70s. She was crass and immoral, she talked openly of female sexual appetite, she defended homosexuality, she supported desegregation, and rumors persisted about her “un-American activities” (even though it was not widely known at the time that she had twice applied unsuccessfully for permission to immigrate to Moscow). The “silent majority” thus had little difficulty assuming her involvement in every wicked scheme—and, in situations where they lacked evidence of her role, they had little difficulty inventing some. O’Hair’s name quickly began to surface not only in the millions of letters Americans wrote to government officials in support of a constitutional amendment for school prayer, but also as an antagonist in correspondence about developments in which she had no part.

In 1975, for instance, an inaccurate rumor that O’Hair had petitioned the Federal Communications Commission (FCC) to ban all religious broadcasting stimulated Americans to begin what might be the largest letter-writing campaign in human history. The deluge at the FCC, which over two decades amounted to more letters than the total votes Barry Goldwater received in the 1964 presidential election (approximately thirty-one

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million letters to twenty-seven million votes), ultimately forced the communications
bureaucracy to go to Congress for supplemental appropriations for extra mail room staff.
Surprising though such an outcry appears, many Americans regarded a decision by
Washington bureaucrats to allow Madalyn to "drive God from the airwaves" as no less
plausible than the previous decision by other Washington elites to allow Madalyn to "drive
God from the schools." The Internal Revenue Service heard a similar, though smaller,
outcry in 1978 when it proposed an alteration to the procedures by which religious schools
demonstrated to the regulator that they qualified for tax exemption. Likewise, NASA
received over one million complaints in 1975 when it was inaccurately reported that
O'Hair was trying to keep astronauts from being able to pray during an American-Soviet
joint space mission.7

This project is not actually about Madalyn at all, as either the atheist or the entrepreneur. It
is instead about Madalyn the symbol as understood by her opponents, those critics of state
secularization who made her America's most hated. Yet it is not only about those who
actively opposed her either. For although literally millions of average Americans cried out
to public officials in opposition to her plots—and though such correspondence and outcry
provide much of the source-base for this project—the actual letter-writers are merely a
subset of a larger portion of the citizenry that shared the general belief that the nation had
long been blessed because of its spirituality, and was moving ever closer to judgment
because of its collective rejection of God and his plans for the civic order.

7 See chapter 8 for more extensive treatment of the FCC rumor and subsequent correspondence. Most of the
other controversies are discussed and cited in chapter 6.
It is only a mild exaggeration to say that mainstream historians know nothing about this American worldview—even though nearly half of all voters appear to subscribe to it to one degree or another. In a certain sense, of course, scholars’ circumspection about treating lamentations about secularization or “national moral decline” too seriously is understandable and even somewhat laudable, for the jeremiad has been a theme of public life among European descendants in this land since the mid-seventeenth century—and yet the sky seems never finally to fall. In another sense, though, the failure of the historiography to take seriously the explicitly expressed concerns of so many citizens about the declining significance of religion in public institutions since the early 1960s is tantamount to throwing away an analytic key that may unlock much of the mystery of surging conservatism in party politics in recent decades.

Alan Brinkley has rightly chided historians for understudying modern conservatism, and especially the ideas animating populist conservative worldviews. This is not to say that conservative thought has been completely disregarded, for there have been comprehensive treatments of libertarianism, neoconservatism, and the mountain

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of moral traditionalist tomes. But few attempts have been made to show how and if these cautiously articulated ideas reached the masses. Conversely, a handful of important studies of the “radical right,” especially in expressly anti-communist organizations, have provided instructive glimpses into the grassroots conservative mind, though it is usually difficult to determine how far into the middle of the political spectrum the extreme sentiments reached. Fortunately, merely psychological explanations of enthusiastic cultural conservatism satisfy few scholars today the way essays such as Richard Hofstader’s influential The Paranoid Style in American Politics contented consensus historians forty years ago. Still, some scholars remain so dogmatically committed to conceiving of the political spectrum as determined by class that they are almost


constrained to view Americans of modest means who have ended up in the Republican Party for cultural or intellectual reasons as so odd as to be nearly inexplicable.

In seeking to identify the non-economic factors that contributed to the migration of millions of working and lower-middle class Americans to the party of Nixon and Reagan, historians regularly argue as if only sub-rational impulses, rather than any deliberately embraced ideas, provided the propulsion: backlash against the Civil Rights movement, emotional reaction against the sexual revolution and the transformation of gender roles, and the successive waves of anti-communist fervor. Clearly each of these factors was incredibly important. Clearly many actors were motivated by racism pure and simple. Likewise, some citizens joined conservative causes simply as a consequence of changed sexual mores and the 1973 Roe v. Wade decision. And indisputably, the visceral, and occasionally violent, responses of many to the anti-war movement deserve sustained attention. The problem then is not that these stories did not contribute to the conservative cultural and political turns, but rather that they are insufficient and are never finally integrated with one another in the scholarly explanations.

On the ground, as opposed to in the history books, lament over top-down secularization frequently provided the rhetorical framework through which various stripes of cultural conservatives talked to one another. Religious apathy and national moral decline were flexible enough stories to accommodate racists and non-racists, opponents of all contraception and those merely concerned about the stability of urban families, unqualified hawks and those worried only that immediate withdrawal from Vietnam could irreparably harm American prestige around the world. To millions of subscribers to a

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15 Chapter 8 looks more deliberately at how historians have attempted to explain the migration of populist conservatives toward the Republican Party during the Cold War.
secularization-as-decline understanding of 1960s America, any unsettling development in
public life—from interracial marriage to no-fault divorce, from God-is-dead theology
disseminated in college classes to the long-haired boys and short-haired girls skipping
those classes—was susceptible to being interpreted not as an isolated phenomenon, but as
a symptom of a deeper national movement away from God and the traditional American
way of life.

To understand the rise of the religious right and the transformation of the Republican
colition that finally became fully apparent on the eve of Ronald Reagan’s election, it is
necessary to begin not in the late 1970s, not even in the late 1960s, but in the 1950s. For in
the crucible of the early Cold War, Eisenhower’s party increasingly emphasized the
spiritual aspects of America as a contrast with the godlessness of Soviet communism. And
so Congress added “under God” to the Pledge of Allegiance in 1954, permanently
enshrined “In God We Trust” on coins in 1955, and pronounced the latter phrase the
national motto in 1956. But it is important to remember that Eisenhower, rather than
representing the right end of the political spectrum, was very much a man of the middle,
and could even conceivably have been nominated by the Democrats. Not surprisingly
then, 1950s civil religious symbols and rituals—while more likely to engender frustration
on the far left than the far right—were not easily marginalized as merely Republican acts.
There was broad consensus about the spiritual nature of America, and thus the religious
patriotism evident in the Pledge, on the coins, and in the motto was not in any meaningful
sense interpreted as the emergence of a religious right. The religious/irreligious line fell
between Americans and communists, not between Republicans and Democrats.
But in the 1960s, especially with the school prayer decisions and the growing prominence of Jewish groups on the left, all this began to change. Many in the Democratic Party developed cold feet about public religiosity. Because Democrats then controlled every branch of the federal government, many grassroots Americans developed their own cold feet about the will and the ability of national politicians, Democrats in particular, to shepherd the national soul. People struggled over the question of whether they and their friends were a small persecuted remnant in a country where Madalyn Murray O’Hair might now be more at home than they were, or whether they were in fact part of the “moral majority” which was simply being silenced and/or ignored by the powerful secularist minority in the media, in the academy, and in the federal judiciary and bureaucracies.

Different groups were more or less likely to subscribe to hard-core conspiracy theories about the machinations of this secularist elite, and perhaps it is most useful to conceive of concentric circles emanating out from those who expected a cataclysmic end to the world soon, to those who merely believed that the de-Christianizing elites were incredibly naïve about the ability of a republic to maintain public morals without a body of widely affirmed communal religious beliefs.\(^\text{16}\)

Opinion polls in the years following the 1962-63 school prayer decisions consistently showed 65-85% of America opposed to this and other instances of public secularization. Urban sophisticates tended to pass glibly over such data, certain that such

“retrograde” sentiment would soon fade. But it did not. Catholics in the Northeast and anti-Brown, anti-Court portions of the South responded the most angrily to the anti-democratic appearance of such a consequential change in custom being mandated by unelected judges, but the outcry was not limited to a few regions or to a small number of creedal groups.

Large percentages of the enraged did not follow a tight trail from a supposedly anti-democratic edict to speculation about a grand anti-religious conspiracy behind the scenes. But it is also important not to underestimate the number of people who did—and do—subscribe to such conspiracy theories, and who kept their eyes peeled for the coming Apocalypse from on high. Tim LaHaye, for instance, who was then one of Jerry Falwell’s staffers at Moral Majority and has now become America’s single best-selling author, argued during the end of the Carter administration that approximately 284,000 identifiable liberals were plotting to establish “secular humanism” as the official American religion. Despite his shocking influence, most coastal intellectuals seem not to know of LaHaye.

Similarly, few scholars have any idea that Hal Lindsey’s The Late, Great Planet Earth, a zealous introduction to apocalyptic, dispensational eschatology (the branch of theology dealing with the end of time), outsold every other book in the country excluding the Bible in the 1970s. Yet without understanding the theology popular on Main Street, it is impossible to understand not just the far right, but indeed mainstream America.

While this project takes popular theology seriously, it also aims to avoid the trap, evident in too many studies of the religious right, of simply assuming that the thinking of

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17 LaHaye’s estimates on the secular humanist count often alternated between 275,000 and 284,000. Jerry Falwell, for whom LaHaye once worked, typically cited LaHaye’s figures. See, e.g., Mike Yaconelli, “Interview with Tim LaHaye” (June, 1980), The Door Interviews (Grand Rapids: Zondervan, 1989), 178.
the self-proclaimed leaders of grassroots religious America was replicated without modification in the minds of their followers. It is probably more helpful to conceive of the best-known revivalists and televangelists of the 1960s and '70s as having tapped into a constituency than as having created one. In the final analysis, conservative vote-seekers and parachurch institutions seem to have prospered and stumbled upon sympathetic new constituencies in this period chiefly by harnessing and giving voice to discontent that people already felt. When they offered particular constructive programs for the future, they generally failed on a grand scale, as in Pat Robertson's 1988 presidential bid. But when they connected the dots between specific cultural developments such as the sexual revolution and the explosion of abortion rates with the more general abandonment of the nation's public religious heritage, they thrived. The anti-feminist Beverly LaHaye, for instance, established Concerned Women for America in the late 1970s, and quickly found herself running the nation's largest women's political action group, one that would become arguably the central obstacle to the passage of the ERA.

Following the best recent historiography of American religion, this project seeks to move beyond the pulpits to explore the theological beliefs of ordinary folks—not just women and men in the pew, but also people at home on sofas with remote controls. For while over half of Americans lacked substantive ecclesiastical connections, that did not preclude many of them from holding passionately to an ad hoc theology centered on the nation-state.

In much the same fashion as journalists managed to overlook Richard Nixon and Spiro Agnew's "silent majority" for years, in spite of the fact that it was rarely silent,

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19 Obviously the televangelists' sexual and financial scandals of 1987-88 also hurt Pat Robertson's campaign.
academic historians have managed to overlook the anti-secularization component of America. Once Ronald Reagan was elected, it became impossible any longer to deny the power of this voting bloc, but the literati have nonetheless typically proceeded as if this God-and-country constituency barely existed until secular journalists and academic observers noticed it on the eve of 1980. Yet the fact is that more than a decade before candidate Reagan winked to a large assembly of the nation’s religious broadcasters “I know you can’t endorse me but I endorse you,” Richard Nixon was already ably courting populist America with the message that the Republican Party was the true home of all believers in a national soul and in a heavenly king who might turn his back on the nation that forgot its special covenant relationship with and obligations to him.

Republicans did not attract the God-and-country masses in 1980 so much as Democrats repelled them in the 1960s. Reagan did not create the religious right; Nixon inherited it. And the true cause of the movement was not the godliness of any specific conservative policy, but what so many citizens saw as the godlessness of liberals. Affirming secularism and affirming the secular state are entirely different matters, but when aggressive secularizers like Madalyn Murray O’Hair seized the national spotlight, no Democratic Party leaders stepped up to draw this distinction effectively. Large segments of the country thus heard opposition to a religious state as simply opposition to a religious populace, and possibly even opposition to God himself.
Chapter I
Baltimore’s Neutral Religion

A case can be made that in the mid-1950s the traveling stripper Blaze Starr was the best known Baltimorean—in more than a biblical sense. H. L. Mencken, whose sarcastic wit had put the city at the top of the Chesapeake on the literary map for decades, had just died and Maryland’s cultural capital—always fretting that outsiders perceived it as merely a train station between the world’s political and financial capitals—faced a dearth of compelling, clothed personalities. Fortunately for those concerned with the city’s image, unheralded rookie Johnny Unitas came out of nowhere in 1958 to quarterback the upstart Colts to the Super Bowl title. The young and uncorrupted number 19 sprang “forth full-grown from the brow of Zeus,” to quote one partisan writer, to lead Baltimore if not all the way to respectability, at least a long way away from an identity so closely connected with public depravity.¹

Johnny U. hardly qualified as the messiah but by late October of 1960, after two consecutive NFL championships, the pillars of Maryland society had forgotten somewhat their earlier anxiety about Baltimore’s possible irrelevance. With less than two weeks remaining until the Kennedy/Nixon election, local officials, like the leaders of all cities with sizable Catholic constituencies, had developed a new obsession—this time with staying off of the national radar. The particular concern causing them to hold their collective breath was that some major anti-Catholic incident would bring them unwanted national notice.² None of the city promoters predicted that their past hopes for a new famous resident and their present fears about a controversy over public religion might soon be jointly fulfilled.

² The Baltimore Sun carried reports of Republican concerns that a major anti-Catholic statement on the right might ensure a high and pro-Kennedy turn-out; e.g., October 30, 1960, 32. Nixon did everything possible to avoid sounding anti-Catholic, making explicit statements about unbelief rather than Catholicism being the internal danger in America. See ongoing atheistic/agnostic frustration at these comments, Saturday Evening Post, February 10, 1962, 10-12.
October 27, local politicians awoke to a provocative though seemingly innocuous *Sun* headline: “Boy, 14, Balks at Bible Reading.”^3^ There were probably one or two small sighs of relief among politicians reading the piece that today looked to be yet another slow news day. Little did they expect that this apparently unimportant story would soon be the source of both a new most famous figure and a good deal of unwanted national attention. And being filled as they were with fears of an article about Vice President Nixon’s Protestant supporters raising questions about Senator Kennedy’s commitment to America, even less did they expect that this story would ultimately unite, not divide, Protestants and Catholics on the question of how to define a true patriot.

The article explained that William J. Murray, son of a single-parent atheist mother, had recently dropped out of Baltimore’s Woodburne Junior High School to protest the requirement that he remain in class during the five minute opening exercises where his teacher, like all teachers in the system, led students in a brief reading from the Bible followed by the recitation of the Lord’s Prayer and the Pledge of Allegiance. According to the ninth grader, this type of coercive religious instruction violated the Constitution’s principle of the separation of church and state. He wanted to be excused from the exercises but his mother’s correspondence with school officials on the subject had not been warmly received, so he had gone on “strike” from school until the dispute could be resolved.^4^

With a good dose of bombast, the boy’s mother, Madalyn Murray, made clear immediately—to the barely concealed delight of a reporter seeking good copy and provocative subheadings—that she did not expect a simple, amicable solution. She did not feel that her desire for William to be dismissed from the exercises had been taken seriously by the school system, so she would use this initial *Sun* article to inform all relevant powers that she was fully prepared to fight. Jumping the gun somewhat, she announced at the outset that she would take this battle all the way to the Supreme Court if necessary. And city officials would be well-advised not to attempt to jail her for violating truancy laws by

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^3^ The article was on the back page, which basically served as the “front page” for local news.

allowing William to stay home while the matter was negotiated. Because if they did, she had already resolved to undertake a hunger strike to publicize the injustice of imprisoning a conscientious objector.\(^5\) She would not be going quietly. Nor would her son be going to school.

Stephen E. Nordlinger, the lead Sun reporter on the story, had done some digging and claimed this was the first protest, shrill or otherwise, against the Baltimore morning exercises since the school board had standardized them back in 1905.\(^6\) Morning prayers had been practiced for much longer, but city officials had not bothered to formalize the ritual until the beginning of this century, about the time that the second-term Teddy Roosevelt startled voters by expressing his displeasure with government funding of congressional chaplains and certain other forms of public religiosity. Believing civil religion trite, Roosevelt also removed “In God We Trust” from U. S. coins—a motto Lincoln had had added in efforts to reunite the nation at the conclusion of the Civil War. Congress “overruled” Roosevelt in 1908, “making the motto mandatory.”\(^7\)

Similar school prayer challenges were currently before Pennsylvania and Florida courts, but Nordlinger included enough flavor to ensure that his story would read like more than a local imitation case. For starters, William—whose lanky frame was photographed lying amid stacks of serious books—was presented not only as bright and motivated, but also as suspiciously interested in Soviet government. On at least one occasion, classmates had noticed his appreciation for communist economics, and some of the boys had taken it upon themselves to defend the nation by roughing up the lad.\(^8\)

Nordlinger’s article got the traction he sought and the day’s dominoes were set in motion. Television stations from Baltimore and beyond jumped on the story and dispatched camera crews to the Murray residence by mid-day. The American Civil Liberties Union,

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\(^5\) The Maryland Code provided for a $5 fine and a 30-day jail term for the parent for each case (i.e., each day) of his or her child’s truancy.

\(^6\) *Baltimore Sun*, October 27, 1960, 38, 26.


which had previously ignored Ms. Murray because it was already litigating a nearly identical religion-in-the-schools test case a few hours away in Pennsylvania, now saw the potential for substantial media coverage here and offered to come to the Murrays’ defense—or to their “offense” as the case was framed both legally and in the eyes of the public.9 Dr. George B. Brain, superintendent of schools in Baltimore, told the press that the school board’s rules made no provision for dissenters to skip school; principals could not coerce theistic belief, but they could and did require at least respectful silence from those choosing not to participate.10 That prompted Fred E. Weisgal, a local ACLU lawyer, to advise Ms. Murray that the truancy violations could well undermine their case and that William must be in school to be able to claim an abridgment of his liberty.11 The editors of the Sun drafted a non-committal editorial on the matter to appear the following day which noted that the Pennsylvania legislature was attempting to eradicate its state from parallel lawsuits simply by allowing students to be excused from the exercises on the request of their parents.12 Thomas G. Pullen, Jr., superintendent of schools for the entire state of Maryland, sent a letter to the state attorney general asking for advice. And the problems for local school officials multiplied when a student teacher in the district told one of the reporters milling around that she worried her unwillingness to participate energetically in the prayers might prevent her from receiving a permanent employment offer in this religious city.13

The following morning, with writers and cameramen in tow and neighbors peering out kitchen windows, William set off on his two-mile pilgrimage back to school. He would end what his mother had labeled his “strike” against the system. Though William was

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9 On the ACLU’s involvement with the Murray case, see O’Hair, *An Atheist Epic*, 40, 51, 62–63, 129, 211.
10 Madalyn claimed in a 1970 fund-raising piece that Dr. Vernon Vavrina, assistant superintendent for secondary schools, told William that he would need to move his lips as if he were praying, even if he didn’t believe it and even if no sound came out. Given public statements by Dr. Vavrina at the time, this seems unlikely. The school argued that some students did not believe in the content of the prayers, but that the tradition of starting the day with the common experience of prayer had long served as an orderly starting point to the day.
12 *Baltimore Sun*, October 28, 1960, 12. Less than a week before, the Supreme Court had announced that it would not now hear the Schempp case in light of the Pennsylvania amendment allowing children to be excused from the exercises on their parents’ request. Instead, the court remanded the case for reconsideration. New York Times, October 25, 1960, 42.
greeted with a few taunts of "Commie lover!" as he approached the school grounds, Ms. Murray's request for police protection seemed more publicity stunt than genuine concern for the boy's safety. The family planned, according to statements the night before to journalists assembled at the little row house Madalyn and William shared with her parents, for William to enter his homeroom on time, notify his teacher of his presence in the school so that he could not be counted absent or tardy, and then leave the room until exercises had concluded.

The school system, for its part, surprised by nationwide television coverage the previous evening, hoped to keep William from entering the classroom at all. That way, he would not be able to defy them, which would force them either to discipline him—thereby provoking a legal challenge—or to tolerate his visible challenge to their authority. The administration planned for teachers to intercept the boy in the hallway, delaying him from getting to homeroom on time, and urging him instead to go to the office to speak with principals about his concerns. If he did make it to the homeroom, he would hopefully be arriving late enough because of the teachers' blocking tactics that the exercises would already be underway behind a locked classroom door. The school would keep no record of his having missed homeroom, charging him neither with an absence nor a tardy so long as he arrived at his next class. School officials aimed chiefly at buying time while they deliberated, hoping to avoid drawing any additional attention to this already very public challenge of their traditional customs.

The school's strategy worked for a few mornings, by which point some reporters and photographers had been driven away by the daily disappointment. The following week, however, William managed to sneak into the junior high through a back door, evade all blockers, and arrive in class on time. He took his seat under the gawking gaze of his peers

17 There is some dispute on the date that William first walked out of the morning exercises, and well as the timing of his suspension. In his 1992 autobiography, he claims he was not able to defy his homeroom teaching until November 2 (*My Life Without God*, 73). The *New York Times* was reporting as early as November 1,
and quietly waited for the exercises to begin, at which point he stood boldly to proclaim: "This is ridiculous!" Triumphant, he strode from the classroom to meet those similarly excited reporters who had persistently assembled each morning in the school offices.

In his autobiographical My Life Without God twenty years later, William would reflect on the thoughts racing through his mind during that defiant exit from the morning exercises: He had accomplished his mission, right? With the officials from the superintendent's office having been quoted in the press for days that the rule stood, that dissenters were still required to be present, and that truants would be punished, he was certain he would be suspended or expelled. His atheistic conscious was clear and his controversy-relishing mother—who he would later claim forced him into much more of this protest than the reporters at the time had understood—would be delighted. Not least significantly to a fourteen year old, he would now be able to devote his mornings and afternoons to the science fiction books he actually preferred to all the scholarly monographs the journalists had been claiming occupied his free time.  

Unfortunately for William's literary appetites, the Maryland attorney general, C. Ferdinand Sybert, understood both the size of the audience following the story and the likelihood that prompt action could serve him well politically. Gunning for a judicial appointment (he would be appointed to the state supreme court within the year), Sybert received the school district's request for counsel and wasted no time coming forward with a photogenic demonstration of his Solomonic wisdom. In only a matters of days, he made a two-part announcement to the press corps. First, the opening exercises did not violate the Constitution and should continue. Second, though, Baltimore school officials should alter their policy to enable students who object to the exercises to absent themselves from them. No minority should be compelled to participate against their beliefs. But neither should the

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though, that Dr. Brain believed William had already violated the rule. The school, however, apparently did not plan to suspend him—as the rule required—until they heard back from state attorney general. See New York Times, November 1, 1960, 43. See also O'Hair, An Atheist Epic, 107.

18 William Murray, My Life Without God, 75.
majority be forced to abandon the communal expression of theirs. All parties could live in harmony.

Acting with similar speed, the school system evaluated and accepted Sybert's counsel, amending the 1905 “Opening Exercises” rule. Effective November 17, dissenting parents could authorize the absence of their children from the five-minute custom. Madalyn Murray, whose name was already being muttered at dinner tables across the nation, had won. Only three weeks after the story had come to the public's attention, and only five weeks after she had first allowed William to skip school, the matter appeared to be resolved. Partly through her savvy handling of the media, she had accomplished exactly what her original letter of objection to school officials in early October had failed to do: guarantee the freedom of the irreligious not to participate in the civil religious ceremonies of the Baltimore public schools.

Religious Baltimore would struggle a bit with the idea of a student being free to refuse to acknowledge the most basic, lowest common denominator belief that the blessings of America resulted from the benevolence of providence. But such struggles were commonplace at Thanksgiving meals that year, as many Protestant households spent the time that Johnny Unitas huddled the Colts to talk about their ongoing discomfort with accepting a Roman Catholic president-elect. But Baltimoreans were loyal and they were law-keepers. Kennedy was their president, and the atheist Murray boy would be tolerated in the city schools, with homeroom his to take or leave.

On December 7, Ms. Murray and her attorney, Leonard J. Kerpelman—the ACLU had dropped out after the state agreed to respect the rights of dissenters—filed a petition for a writ of mandamus requesting that the Superior Court of Baltimore order the schools to discontinue the morning exercises altogether. The good people of Maryland were more than a little confused.

19 The ACLU first began to articulate its concerns over school prayer in 1957. On the ACLU's involvement with the Murray case, see O'Hair, An Atheist Epic, 40, 51, 62-63, 129, 211.
Murray, who had some legal training (whether she ever passed the bar exam would be a matter of dispute with her opponents for decades),\textsuperscript{20} announced that the “sectarian” opening exercises were a straight-forward violation of her religious freedom under both the First and the Fourteenth Amendments. Her petition claimed that the current practice—the right to leave the room notwithstanding—“threatens [atheists’] religious liberty by placing a premium on belief as against nonbelief and subjects their freedom of conscience to the rule of the majority...”\textsuperscript{21} To the close observer of the increasingly contested church/state battleground, this argument sounded similar to a claim made by the anti-school prayer plaintiffs in a Florida case the month before, where psychologists had testified that making morning exercises voluntary was an insufficient solution given that children might be “psychologically compelled” to participate by peer pressure. (Judge A. Fritz Gordon of the Dade County Circuit Court ultimately concluded that the Constitution never intended to protect dissenters from the “embarrassment caused by non-conformity.”\textsuperscript{22}) But given how zealously Murray had sought out cameras and reporters in William’s case up to this point, it seemed farfetched to conclude that the desire to shield her son from publicity because of his unorthodox beliefs now moved her.

The question of what did actually drive this lawsuit, and indeed Ms. Murray’s entire life from this moment forward, does not lend itself to simple analysis. Friends and foes of her legal quest quickly projected perfectly pure or completely sinister motives, seeing her either as a self-sacrificing servant of those oppressed by majoritarian religionists, or as an adulteress oppressively seeking to separate Americans from their God. In reality, which was much messier than contemporary observers’ tidy theories, multiple factors conspired to push her into action. Her particular lust for money, fame, and a grand cause would later be revealed as darker gray at their core than the yearnings of many other public crusaders who secured themselves a national stage, but hers were nonetheless fairly universal human

\textsuperscript{20} The arguments over Madalyn’s educational background—as well as over her background and resume more generally—will be explored in chapter 6.
\textsuperscript{21} \textit{Baltimore Sun}, December 8, 1960, 28.
\textsuperscript{22} \textit{New York Times}, November 1, 1960, 43.
impulses. The attempt of an unknown and often unemployed mother of two children born out of wedlock to parlay her role in a well-publicized controversy into a longer term public identity and a paycheck hardly seems surprising from the vantage point of half a century.

Even if one sets aside consideration of her private motives, though, the picture remains cloudy because her public statements about her purposes also shifted over time. On many occasions, she insisted that, as a strict constitutionalist, she aimed merely to exclude religion from the state sphere. Religion itself, she implied, was not her target so long as religionists retreated in the steps they had taken toward theocracy in the century and a half following the founders’ adoption of a religionless Constitution. More often, however, she attempted to use the publicity generated by her lawsuit to offer unabashedly anti-religious sermons to the journalists readily building her bully pulpit. Even in this initial December 1960 legal brief, Murray took a complaint against the state expressing religious preferences, and quickly transitioned to a complaint against religion itself.

She first urged the court to agree that the holding of morning exercises, even if officially voluntary, privileges believers over unbelievers, and tacitly “pronounces belief in God as the source of all moral and spiritual values, equating these values with religious values and thereby renders [unbelievers’ ideals]...sinister, alien and suspect.” The practice thus “tends to destroy the equality of the pupils which the Constitution seeks to establish and protect.” Rather than stop there, though, the brief proceeded, entirely extraneous to her legal purposes, to set out the superiority of atheism over traditional religion. She defined an atheist as an enlightened individual who “loves his fellow man instead of a God,” and who works for heaven “now, here, on earth” rather than excusing inaction because of some hope deferred beyond the horizon. Instead of groveling before a distant deity in prayer, the atheist courageously admits “that he must find in himself the inner conviction and the strength to meet life, to grapple with it, to subdue it, and to enjoy it.”

23 Baltimore Sun, December 8, 1960, 28.
In an autobiography written two decades later, after he had become estranged from his mother and converted to Christianity, William does not second-guess the sincerity of his mother’s hatred for religion or her genuine desire to purge the public square of all religious influence. He does suspect, however, personal as well as intellectual sources for this anti-religious animus. William’s father, a wealthy Roman Catholic, had allegedly cited papal teachings against divorce as his reason for not leaving his wife to marry the poor, pregnant Madalyn.24

Yet the most significant proximate cause of his mother’s lawsuit against the Baltimore schools in William’s judgment was not atheistic fervor of any sort; it was simple economics. During the initial, pre-litigation showdown with the school hierarchy, mail to the Murray home on Winford Road had apparently increased by a factor of ten, most of it coming from atheists and other opponents of America’s civil religious establishment. At the time, morning exercises including prayer and/or Bible reading were still practiced in at least thirty-seven states, so the Baltimore challenge evoked passions well beyond the bounds of the Woodburne Junior High School District.25 And unlike the hate mail and the evangelistic tracts—both of which were also streaming in—the envelopes from co-belligerents regularly included checks.26

According to William’s subsequent—and admittedly jaundiced—recollections, his mother quickly discerned the correlation between her public statements and the volume of this cashflow. For example, not long after they filed the writ of mandamus with the Superior Court in Baltimore, William suffered a beating at the hands of his classmates more vicious than their previous shakedowns of this local representative of “godless communism.” In the process, the vigilantes hit him with a webbed strap that papercarriers use to haul their morning supply of papers. The beating was apparently serious, and the metal brackets at the

24 William Murray, My Life Without God, 11; O’Hair, An Atheist Epic, 134.
25 As of June, 1963, the New York Times reported that thirty-seven states and the District of Columbia still permitted or required some form of morning exercises; June 18, 1963, 27. In the debate of the following two years, it would become clear that, even in the other thirteen states without explicit school prayer provisions, many individual classroom teachers still led exercises on their own.
26 William Murray, My Life Without God, 75.
ends of the strap tore his flesh. Still, when Ms. Murray summarized the event in fund-raising letters, she—according to William’s later recollections—altered key details to make the behavior of the local praying students even more outrageous. 27 For instance, the version for her major supporters reportedly had the torture tool miraculously transformed from a mundane newspaper strap into a more symbolically significant crucifix. 28

Madalyn’s editorial eye paid dividends as the postal service would soon be delivering mail to the house in canvas bags. A Kansas farmer, Carl Brown, sent a check for $5,000 (an amount higher than the average annual salary of a public school teacher at the time). Brown would later send much more, as well as an offer of 160 acres on which he hoped Ms. Murray would found the nation’s first joint atheist/nudist university. 29 Quickly the volume of mail outpaced their ability to reply by hand, and William’s relationship to the budding family business was formalized—complete with a sizable bump in allowance—as his mother sent him to evaluate mimeograph machines suitable for their newsletters. The publisher of the Free Humanist contacted Madalyn to discuss how his little magazine, which he was willing to turn over to her, might aid the cause. It would be July of 1962 before Madalyn’s first issue of that magazine, renamed the American Atheist, would be published but she was eager to put his mailing list to immediate use. 30

Leonard Kerpelman, an orthodox Jew, had volunteered his services to Ms. Murray simply because of his commitment to the cause. Though later rumored to be anti-Semitic, fearing the plots of New York bankers, she had little choice but to accept Kerpelman’s offer, given the ACLU’s decision to focus its efforts on the Unitarian Edward Schempp’s case in Abington, Pennsylvania, which had begun two years earlier and had already been remanded from the Supreme Court once. With Kerpelman working pro bono, fees associated with the

27 She also enjoyed referring to her and her sons’ victimizers as “ever-loving Christian neighbors”; O’Hair, An Atheist Epic, 248.
28 William Murray, My Life Without God, 77-78. By 1970, at least, Madalyn’s version again included the webbed strap; see O’Hair, An Atheist Epic, 240-42.
29 William Murray, My Life Without God, 89. There isn’t any evidence that Madalyn was a nudist, but the sympathetic Mr. Brown—joining many who were unsympathetic to Madalyn’s cause—seems to have made some connection between atheism and nudism.
30 William Murray, My Life Without God, 91-92.
case could not have presented a heavy burden. Nonetheless, Madalyn’s correspondence regularly trumpeted the need for outside support of the legal fees if this fight were to continue. In the broader press as well, she made a point of emphasizing her financial uncertainties.

Uncertainty was not a characteristic of the decision handed down by Judge J. Gilbert Pendergast that April. In a fiery opinion, he dismissed the Murrays’ complaint, commenting in unusually personal terms that it was “abundantly clear that petitioners’ real objective is to drive every concept of religion out of the public school system.” Particularly shocking to the court was Ms. Murray’s contention that the scholastic use of the Bible constituted a “sectarian” exercise. If this were so, the judge asked, then wouldn’t the Declaration of Independence and the Gettysburg Address, with their dogmatic insistence upon the hand of providence and the dictates of divine justice respectively, also need to be removed from classrooms as sectarian? No, he answered himself, these documents, like the Bible, were not narrowly sectarian but were instead broadly religious—much like the Baltimore community and the American people.

This distinction between institutional sectarianism and general religiosity, he suggested, had entirely escaped the plaintiffs. The general reading of the Bible “without comment,” as the schools in his city practiced it, did not favor any one party or sect, and the Baltimore practice of allowing the Douay version as well as the King James demonstrated the authorities’ commitment to ensuring that Protestant translations could not be favored over Catholic ones. Thus he found Ms. Murray’s “novel thought” of labeling the Bible itself sectarian almost laughable. Based on her logic, the judge wondered sarcastically if even

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31 By comparison, Newsweek reported that the ACLU spent a total of $6,000 on the Engel case; July 9, 1962, 43.
32 William Murray, My Life Without God, 90-91. As another example, see the hints of a financial shortage at the conclusion of O’Hair, An Atheist Epic, 309-10.
33 Baltimore Sun, December 8, 1960, 28. It is difficult to make an informed judgment about who she was or what exactly motivated her. As chapter 6 will explore, Madalyn offered so many different versions of her own biography for different occasions, one almost wonders if she herself came to believe that many incompatible episodes might have been reconcilable.
“United States currency” should be prohibited “in school cafeterias because every bill and coin contains the familiar inscription, IN GOD WE TRUST.”

Judge Pendergast did not deny that the current system favored religion in general. But this could not be avoided—even if one so desired—without choosing instead the opposite course of favoring irreligion. No neutral option exists between theism and atheism. “If God were moved from the classroom, there would remain only atheism. The word is derived from the Greek *atheos*, meaning ‘without a god.’ Thus the beliefs of virtually all the pupils would be subordinated to those of Madalyn Murray and her son.” Pendergast assumed without arguing the point that a failure to acknowledge God explicitly amounted to an implicit denial of God. He thus concluded that while “the present petitioners clamor for religious freedom, their ultimate objective is religious suppression.” If he were to command the Baltimore schools to suspend the exercises, then the Murrays, “as non-believers, would acquire a preference over the vast majority,” who as believers would be denied their right to the communal expression of traditional American belief.

Heading into the summer of ’61, many citizens outside courtrooms were as animated about public religion as Judge Pendergast was inside his. But in most contexts nothing as radical as theism/atheism defined the debate’s divide. As had been the case generally since the upsurge of eastern and southern European immigration at the end of the nineteenth century and acutely since Kennedy’s rise to national prominence, more philosophical conversation tended toward the more pedestrian topic of the degree to which the nation should remain Protestant, or conversely, the degree to which American identity needed to be stretched and pulled to embrace, as a widely read sociologist of the day put it, a “Protestant-Catholic-Jew” consciousness. After all, ordinary soldiers from every state no longer doubted Catholics’

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patriotism, having served and suffered alongside them in the battlefields of Europe and on the ships of the Pacific. And even in Congress, the nation’s 414 nominally Protestant legislators had been joined by 100 Catholics, twelve of them in the Senate.37

But not doubting the loyalty of particular Catholics, who Protestants frequently viewed as inconsistent in their willingness to offer complete allegiance to two this-worldly powers, differs from actively altering settled civil traditions to embrace American Catholics as Catholics.38 The presenting issue in America’s religious identity debate, even in spite of Kennedy’s outspoken opposition to it, continued to be the question of federal aid to parochial schools. An overwhelming majority of Catholics, under the vocal leadership of Francis Cardinal Spellman of New York, who probably inhabited the front page of newspapers in the 1960s more than any religious figure has since that decade, believed that genuine neutrality required the government to provide some subsidy to Catholic schools given Eisenhower and then Kennedy’s plan to use federal dollars to support a “public” education system which Catholics understood to be essentially Protestant in character.39 As taxpayers in a nation with compulsory education laws, Catholics were convinced of the manifest injustice of the “double taxation” they already endured, and which looked to become more expensive in the near future as concerns about national defense prompted increased public investment in science curricula.

Other influential voices, both overtly Protestant and essentially secular, countered—ultimately successfully in the legislative battles—that subsidizing parochial schools would fragment the common culture, extinguishing the flame beneath the central nurturing institution of the American melting pot. After all, Reinhold Niebuhr asked, once we start down that path, how far might it lead? Would there one day be a plural establishment where

37 Summary as of March, 1961. There were also twelve Jews (one in the Senate), five members who declined to give their creed, and a handful of vacancies. See the Congressional Record, August 3, 1962, Vol. 108, 5538.
38 Protestant writers had been speculating for years on what it would be like “If the U.S. Becomes 51% Catholic.” E.g., Christianity Today, October 27, 1958, 8-12.
39 One reason why Spellman was so newsworthy at least in 1962, of course, was because of the fall bombing of his New York City residence.
even Muslims could apply for public assistance.\(^{40}\) W. A. Criswell, pastor of First Baptist of Dallas, the nation’s largest church, pontificated that the “gift of America to civilization is the doctrine of the separation of Church and State. If the wall is breached separating Church and State, it will be done through the use of public tax moneys to support clerical institutions.\(^{41}\)

As one wholly comfortable with the religious ethos of the tax-supported schools in his city, it apparently didn’t cross Dr. Criswell’s mind that other Dallas residents were pained to see their tax payments fund an educational melting pot which suggested to students, often not very subtly, that what specifically needed to be melted down was their superstitious Catholicism.

With a good deal of self-congratulation, some national leaders reminded Catholics of their good fortune in being able to live in a country where the compulsory education laws were flexible enough to allow them to build their own schools at all. The back-slappers usually forgot that this institutional tolerance came only because the Supreme Court in the 1920s struck down the practice of states outlawing private religious schools as a means of forcibly Americanizing immigrant children, using these laws in tandem with truancy laws to separate Catholic youth from their families and their faith.\(^{42}\) Commentators rarely highlighted the fact that many groups claiming to work altruistically for the public good had actually been founded as specifically anti-Catholic organizations. Americans United for the Separation of Church and State, for instance, had not yet officially shortened its name from its original “Protestants and Other Americans United for the Separation of Church and State.”

Contrary to academic champions of status anxiety explanations, declining Protestant cultural hegemony preoccupied not only southerners and other rural folks, and not only the working and lower middle classes. Educated northeasterners struggled with the vexing


\(^{41}\) \textit{Time}, March 24, 1961, 15.

“Catholic problem” as well. The editors of the *Atlantic* began planning a special issue on the place of the Roman Catholic Church in America with twelve articles by such heavy-weights as Reinhold Niebuhr, Oscar Handlin, Barbara Ward, and Jaroslav Pelikan. The “Roman” in their title was not accidental, for Protestants since Luther have been unwilling to accept Rome’s claims of universality and the consequent suggestion that every other body is a mere sect. Adding the “Roman” instead of allowing the “Catholic” to stand alone thus simultaneously particularized the papal church as just another denomination and subtly raised again the foreign loyalty question, Kennedy’s approval ratings notwithstanding.⁴³

In perhaps the most insightful article of the issue, historian and political scientist D.W. Brogan of Cambridge University, billed by the editors as “the most distinguished interpreter of American life to British readers,” contributed an article on the awkward, ever-unsettled place of the Catholic politician in this land. Brogan opened his piece unambiguously:

> The United States is a Protestant country. This will seem to most Americans something so obvious as not to be worth stating. But it is worth stating because the official theory of the United States is one of complete religious neutrality. Yet in practice this official neutrality means that the United States has a religious bias, and that religious bias is toward some vague, undenominational Protestantism.⁴⁴

Because of this religious assumption at the heart of America, Brogan insisted, would-be Catholic politicians must always and forevermore undergo a loyalty examination which would never be administered to a Protestant. Stated simply, any “American who belongs to any of the Protestant denominations is accepted as being automatically a suitable candidate for high office. No Catholic is.” Quoting Arthur Schlesinger, Sr., and apparently having the Civil Rights struggle slip his mind entirely for the moment, the author announced that “anti-Catholicism is the oldest and most permanent of American prejudices.”⁴⁵

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⁴³ Niebuhr, for one, spent a good deal of ink exploring the question of whether and how Catholics could rebut the charge of being anti-democratic; *Atlantic Monthly*, August, 1962, 72-76. Kennedy’s supposedly “unprecedented” approval ratings hovered around 78% early in 1962; *Commonweal*, July 6, 1962, 367.
Editors of major newspapers and weeklies bristled at the assumption that opposition to the pluralization of the American educational establishment equaled anti-Catholicism. Rebutting the charge, many editorialists warned of the consequences of cultural fragmentation. The Denver Post worried aloud about the breadth of the diversity, "If this nation ever reaches the stage where the children of each of the 256 separate denominations attend 256 separate school systems financed by the Government, the danger to our national unity will be very great indeed."\(^{46}\) The Wall Street Journal covered the school aid debate much like it had tracked the religious component of the Nixon/Kennedy campaigns the year before, suggesting that America was not so much anti-Catholic as "anti-clerical."\(^{47}\) Smaller papers, like Maine’s Portland Press-Herald, also objected to charges of anti-Catholicism: "We stoutly defend the right of any church to teach its doctrine. But we cannot underwrite that doctrine." The St. Louis Post-Dispatch, passing over Catholic charges of a Protestant bias in the public schools, stated simply and somewhat ironically: "Taxing all the people to support the religion of some of the people would be both unconstitutional and undesirable."\(^{48}\)

Time quoted the rhetorically savvy Joseph Cardinal Ritter of St. Louis who suggested that his position fit well with the American mainstream: he did not support federal aid to parochial schools. Unpacking this, though, it became clear that he did not support federal aid to any schools, believing education funding should remain a local affair. If, however, his position did not carry the day and federal aid were approved, then he would be forced by egalitarian commitments to urge that "all the children should share in that benefit." With less parochial and more libertarian concerns, the Cleveland Plain Dealer staked out a similar thesis: "Our position has been consistently this: we oppose widespread federal aid for parochial schools. We oppose widespread federal aid for public schools." Despite Kennedy’s attempt to uncouple the Catholic question and the federal aid question, most

\(^{46}\) Cited in Time, March 24, 1961, 15.

\(^{47}\) E.g., Wall Street Journal, March 7, 1960, 8; April 8, 1960, 10. See also March 9, 1961, 2; March 29, 1961, 10; May 16, 1961, 32; May 29, 1961, 4.

\(^{48}\) All citations from excerpts in Time, March 24, 1961, 15.
legislative observers were beginning to think that the joint opposition to Kennedy’s particular education funding proposal would be impossible to defeat. In the judgment of Adam Clayton Powell, Chair of the House Education and Labor Committee, “It’s dead.”  

Establishment Protestantism nonetheless continued to worry, partly out of self-interest and partly out of a more general concern about cultural fragmentation and increased denominational bickering. Niebuhr, the leading opinion-shaper among mainline officials, simultaneously urged more tolerance of and genuine neighborly love for Catholics, and yet warned against Catholic attempts to drink at the public trough. For some Protestants, though, an analysis of the competing arguments led to careful soul-searching and the consequent admission that there may have been some merit to the Catholic complaints that the state in America favored not only religion in general but Protestantism in particular. Was this defensible?

Presbyterians had on paper long been as committed to the stark separation of church and state as Baptists—who, because of their oppression in England both New and Old, as well as because of the continental Anabaptist stream that joined the English-speaking Baptists descending from Puritanism, likely had the greatest effect of any tradition on the expansion of religious liberty in Western culture. In practice, though, Presbyterians liked to think of themselves as insiders, as the church of Lincoln and Eisenhower, and they rarely resisted an expansion of state power into the religious sphere, in either Scotland or the United States, when it worked to help consolidate influence in evangelical-Reformed hands. Thus it was noteworthy when the United Presbyterian Church (the “northern” Presbyterian church) voted at its 1960 General Assembly in Cleveland to form a special committee on church and state. The delegates tasked the committee with exploring many thorny issues such as whether the general state benefits they had been receiving—and now Catholics were

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49 All citations from Time, March 24, 1961, 15.
50 Jewish groups were initially less threatening than Catholics, not simply because of their smaller numbers, but also because Jews tended to favor public secularization over public funding of cultural pluralization.
asking to have parallelly expanded in their direction—were in fact theologically justified. Not surprisingly, they were to tackle the current religious practices of public schools and the requests for public aid to parochial schools, including not only new low-interest loans for baby boom construction but also the already common varieties of aid to parochial schools in the form of government lunches, busing, and textbooks for secular subjects. Much less likely was the UPC’s decision to wonder aloud whether religious property tax exemptions and special clergy IRS privileges should be continued. And what about religious holiday displays on public lands and theistic oaths for public offices? Venturing even further into traditional cultural practices, were Sunday closing requirements and the laws governing marriage, divorce, and adoption too narrowly shaped by religious concerns?²⁵¹

While few denominations followed the Presbyterians’ logic of moving from Catholic school aid opposition to a broader consideration of the de facto government assistance to generic Protestantism common in this country, both the high-brow and the popular press were increasing the amount of space devoted to a whole range of public religious practices as the 1960s arrived. The ongoing threat presented by the Soviet Union prompted much of the discussion. If communists are vicious atheists, and we are their antithesis, what then defines us but virtue-producing theistic belief? J. Edgar Hoover, not typically thought of in a didactic role, took to the pages of Christianity Today, the nation’s most influential evangelical magazine, six times in a four-year period to explain how the Cold War should be understood. Only the blind would frame the struggle in exclusively economic terms, as simply a competition between our free capitalist production and their centrally controlled arrangement. That, Hoover insisted, was only one battlefield in a larger war pitting our spiritual values against their merely material ones.²⁵² Eisenhower’s similar pronouncements

²⁵¹ Presbyterian Life published the committee’s major report; September 1, 1962, 23-34.
about defeating communism with "spiritual and moral values" are legendary.\textsuperscript{53} Less well known are Truman's formulations that "our religious faith gives us the answer to the false beliefs of Communism." Reckoning that God had made America great so that it could rid the world of godless communism, he insisted that "Democracy is, first and foremost, a spiritual force, it is built upon a spiritual basis—and on a belief in God and an observance of moral principles. And in the long run only the church can provide that basis. Our founders knew this truth—and we will neglect it at our peril."\textsuperscript{54}

If anti-communism and the parochial aid debates associated with Kennedy's proposed education budget stimulated much of the general interest in public religion, two widely-watched Supreme Court cases in 1961—coincidentally, both of them originating in Maryland and thus possibly influencing the vigor of Pendergast's opinion against the Murrays—served to attract a new batch of observers. First, in \textit{McGowan v. Maryland} and three allied cases, the Supreme Court held that Sunday closing laws do not constitute an establishment of religion, nor do they violate the free exercise clause of the First Amendment by forcing anyone to observe the Christian "Sabbath" or Lord's Day.\textsuperscript{55} A Jewish shopkeeper in one of the cases told the court that he could not be open on Saturday, and thus that the Sunday closing law exacted an atypically high economic cost from him. Christians Sabbatarians, by contrast, knew no such conflict between their conscience and secular law. The state thus preferred one religion to another.

While agreeing that many "blue laws" were originally intended, from the medieval period through to colonial New England, to encourage individual Christians and the larger community to observe a religious day of rest, Chief Justice Earl Warren noted that since the eighteenth century most legislatures had also offered secular reasons for establishing a

\textsuperscript{53} For an excellent treatment of the connection between Eisenhower's faith and his anti-communism, see the recent dissertation by William C. Inboden, \textit{The Soul of American Diplomacy: Religion and Foreign Policy, 1943-1960}, unpublished dissertation, Yale University, 2003; especially 374-446.

\textsuperscript{54} Quoted in Robert S. Alley, \textit{School Prayer: The Court, the Congress, and the First Amendment} (Buffalo: Prometheus, 1994), 99-100. The former quote was from 1951; the latter from 1952, after Eisenhower's election had made him a lame duck.

uniform day of rest. The court considered the laws justifiable solely on the basis of these "general welfare" objectives. The justices commended in passing the observant Jew's principled commitment to honor a religious tradition by abstaining from working on an otherwise popular workday, but insisted that the state has no position on a religious matter like the Sabbath. In the eyes of the government, all citizens, Christian and non-, are free to observe or not observe any Sabbath they choose. What they are not free to do is engage in commerce on a day that the state—for non-religious reasons—has rendered commerce-free for the common good. In the state's eyes, Sunday has been secularized. It has an exclusively cultural or traditional meaning; it is not at all religious. The fact that the particular day set aside by the state also has a uniquely religious meaning to some segment of the society is merely accidental and is not a concern for the courts. 56

Justice Potter Stewart, dissenting in part from the opinion of the court in these cases, expressed his frustration at the majority’s attempt to sanitize legal theory of the messy realities of historical context. In a brief opinion, he chastised his brethren, claiming that the government has passed a law which compels an Orthodox Jew to choose between his religious faith and his economic survival. That is a cruel choice. It is a choice which I think no State can constitutionally demand. For me this is not something that can be swept under the rug and forgotten in the interest of enforced Sunday togetherness. I think the impact of this law upon these appellants grossly violates their constitutional right to the free exercise of their religion. 57

Complicating matters, perhaps not for a supposedly apolitical Court, but surely for legislatures struggling with related concerns, was the fact that the major labor unions were at this time fighting for governments to set aside more time in the workweek as outside the economic sphere.

The second notable church-state ruling of 1961 presented the high court with fewer intellectual riddles, but attracted significantly more press, perhaps because the average

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56 For a helpful discussion of these cases, see Ronald B. Flowers, That Godless Court? Supreme Court Decisions on Church-State Relationships (Louisville: Westminster/John Knox, 1994), 104-07.
reader was more concerned about threats to public identity promoted by small minorities, than about public threats to small minorities such as Orthodox Jews. *Torcaso v. Watkins* concerned a Maryland man, Roy R. Torcaso, who had been prohibited from holding public office—albeit only as a notary, but it provided a ready test-case—because he refused to take an oath including an acknowledgement of God. The statute governing notaries complied with the Maryland Constitution, which stated that “No religious test ought ever to be required as a qualification to any office...other than a declaration of belief in the existence of God...” The Maryland courts had thus rejected Torcaso’s concern, explaining that toleration did not “encompass the ungodly.” Mr. Torcaso countered that the Maryland Constitution itself violated the U.S. Constitution’s Bill of Rights, and the Supreme Court unanimously supported him.

Amid the public outcry over the decision, editors across the country—probably bored with all of the articles, interviews, and pro/con columns they had printed on the parochial aid controversy the last few months—tried to give the public religion discussions a new flavor by arranging paper debates on the possible implications of *Torcaso*, popularly known as the court’s atheist ruling. Editor Robert Fuoss at *The Saturday Evening Post* solicited Billy Graham, America’s best-known evangelist, and the agnostic Robert Bendiner, former editor with the widely read liberal journal *The Nation*, to exchange barbs on the question of whether “we have the right to require belief.” If their efforts are representative of the disagreements being had around coffee machines across the land, quantity of argument should not be mistaken for quality.

Charles W. Woodson, a frustrated reader in Vallejo, California, vented that mock debates between public intellectuals rarely offer more than pat platitudes designed to satisfy each side’s already convinced supporters more than to persuade the unconvinced seeking

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58 Maryland Constitution, Article IV, Section 45; quoted in 223 Maryland 49, at 54.
59 223 Maryland 49, at 51, 59.
60 367 U.S. 488 (1961). As was typical in religion cases, Hugo Black wrote for the court.
some guidance on genuinely perplexing problems. Examples in Woodson’s favor included Bendiner’s facile observation that people tend to respect sincerity of either belief or unbelief over hypocrisy. Also worthy of citation was Graham’s revelation that most Americans were “thrilled” when Eisenhower opened his administration with a “little prayer.” Ultimately, Woodson lamented, “there is no disagreement,” for the interlocutors didn’t offer enough substance to arrive at anything as grand as a real disagreement.62

While Mr. Woodson’s hyperbole should not be dismissed altogether, the debaters did highlight two alternate approaches to resolving the inherent tension between the civil liberty concerns of the First Amendment and the challenge of instilling virtue in a self-governing people, even if they demonstrated the relative weaknesses more than the relative strengths of their divergent positions. Bendiner insisted that people should judge one another and their leaders solely on the basis of their public lives without any inquiry into their private beliefs. While he had a useful example at hand in the form of the president, who was extremely popular based on his official actions even though only a handful of months before many voters had wondered if his beliefs inclined him to secret foreign allegiance, Bendiner nonetheless failed to acknowledge that treason had long existed in human history and probably wasn’t going away. To imply that private beliefs—theological and otherwise—had no connection to public action, and thus that citizens should not inquire after them at all, struck most readers as naive in a Cold War context where fears of communist subversion, while often overblown, were not in themselves absurd.63

Graham thus asked if there were or weren’t beliefs behind Fidel Castro’s repeated delaying of promised elections, or in the Cuban leader’s disregarding of property laws—even if supposedly undertaken in the name of benevolent land reform. In Graham’s reading, freedom can be found only under law, and only leaders who believe in a divine law-giver and in ultimate judgment can be trusted to submit to the rule of law. Obviously theists

remain sinners in a fallen world and will often act corruptly. Nonetheless, Graham argued, those whose “first allegiance [is] to the kingdom of the spirit” are a much better bet to understand that the state is not primary and that it cannot—as totalitarians states both communist and fascist had recently done—encroach on the culturally free spheres of its people. The First Amendment thus rightly separates “church and state,” but we shouldn’t naively conclude that the founding fathers thereby implied any “separation of religion and state affairs.” They did not and indeed we should not. For a state ruled by the people must necessarily be concerned that the rulers—that is, the people themselves—are being nurtured in wisdom and self-restraint if that nation is to long endure.  

Agnostics like Bendiner and atheists like Murray obviously disputed Graham’s supposition that morality in general and self-restrained rule in particular find their source only in religious tradition, but Graham here at least put forth a coherent argument well within the historic American mainstream about the necessity of fostering a virtuous citizenry. Jeffersonian republicans would have countered that it was self-sufficient economic production, and specifically the cultivation of a piece of arable land, that actually inculcated the character essential for self-rule. But Graham was nevertheless raising concerns they shared.

More surprising than his traditional assumption that morality flows from religion was his passive equation of religion with Christianity. That he believes Jesus to be God is well understood, but at points, it seems not even to have occurred to him that a non-Christian religionist, perhaps a Jewish American, might disagree with him on Jesus’ divinity and yet agree that religion produces morality. In short, it seems unclear that the evangelist, even when here functioning as a public moralist, was committed to an understanding of America genuinely open to more than Christians.

Though ultimately unsatisfying, Bendiner and Graham’s debate generated a remarkable volume of letters to the editor, much of it revealing readers’ own unsettled

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senses of the meaning of America. In the struggle to fit Catholics, and to a lesser degree Jews, into civic life—for instance with the recent development of the phrase “Judeo-Christian tradition”—many religionists worried that any lessening of the Protestant character of public religious practices would open the door to more basic secularist challenges. Most people writing letters to The Saturday Evening Post and to other publications hosting these sorts of debates seem to have believed that evil existed, that evil nations with domestic sympathizers intended us ill, and that the citizens’ own moral resources mattered a great deal in this fight. Therefore, as Graham had argued, it would be nonsense to say that government does not have religious and spiritual concerns; it simply should not have ecclesiastical concerns. Thus a majority felt comfortable opposing federal aid to parochial schools and yet maintaining the generically religious ethos of the state schools and larger civic culture.

It simply didn’t occur to grassroots Americans that the distinction between the “religious” and the “ecclesiastical” that they were seeing regularly parsed in political debates would soon be rendered nearly irrelevant. For although newspaper editors across the country saw the rash of First Amendment cases in the higher courts as little more than proxies for how the Supreme Court would rule on a parochial aid case if it ever came to that, in judicial chambers across the northeast prominent judges were mulling the more elemental distinction between the “secular” and the “religious,” treating the difference between institutional and cultural religion as secondary at best.

As the Maryland Court of Appeals, the supreme court of the state, convened to hear the appeal of Madalyn and William Murray in January of 1962, on one matter the seven otherwise squabbling justices agreed unanimously: they would be painfully cautious with

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66 The editors noted receiving well over 700 letters on the debate in the first two weeks after the issue; Saturday Evening Post, March 24, 1962, 4.
67 Will Herberg persuasively argued that much of American Protestantism was merely cultural, bordering on the totemic. In the early 1950s, for instance, when the annual sale of Bibles neared 10,000,000 copies (an all-time record), over 80% of adults surveyed called the Bible the “revealed word of God” as opposed to merely “a great piece of literature.” Yet, simultaneously, 53% of them could not name even one of the “first four books of the New Testament” (i.e., the Gospels). See Herberg, Protestant-Catholic-Jew, 14.
this one. This case after all raised more important constitutional questions than *Torcaso v. Watkins*, last year’s public oath case where the U. S. Supreme Court had slapped the Maryland justices with a unanimous overrule. Wary of a second reprimand, the still stinging court in Annapolis demonstrated their conscientious jurisprudence by, after they had begun to deliberate, recalling the lawyers to reargue all of the constitutional questions involved.  

Still Ms. Murray had little basis on which to hope for a victory—after all, appeals court judges in Maryland were selected in a process in which the Catholic machine played a substantial role. But she was surely heartened to have her case heard, let alone twice. Pendergast, by contrast, hadn’t allowed any oral arguments before zealously dismissing her complaint. She found further encouragement in national reports February 2 that the federal court in Philadelphia had ruled the Pennsylvania Bible reading law unconstitutional, despite a 1959 amendment allowing dissenting students such as the Schempps to be excused on their parent’s written request. Perhaps she had a chance. Perhaps the extended delay, as winter thawed into spring, resulted from a decision by the Maryland judges to evaluate the opinion of their judicial brethren in Pennsylvania.  

On April 6, the court finally announced its ruling. Like a young quarterback in his first start, more concerned to avoid the big mistake than to actually win the game, Justice Horney’s majority opinion strives to reveal his homework more than to argue positively for his conclusion. The Maryland court knew that the U. S. Supreme Court had heard arguments—just the previous Wednesday—on a similar New York prayer case, and one senses that they wished they could simply stall to allow the justices in Washington to speak first on the matter. Of course they couldn’t, because they had already held this case nearly as long as the law allowed and the Supreme Court might not pronounce on its case before it broke for their summer recess, which typically lasts until October. But if Maryland had to act first, possibly to be upended soon thereafter by the higher court’s decision, the Maryland

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68 228 Maryland 239, at 243.
70 John H. Laubach provides a helpful analysis of the background and specific arguments of the various state cases; *School Prayers: Congress, the Courts, and the Public* (Washington, DC: Public Affairs Press, 1969).
justices preferred to be “wrong” in a small or technical way than by boldly offering an elaborate argument which could any day be declared 180 degrees mistaken.

The Maryland opinion therefore walks methodically through the Supreme Court cases on the separation of church and state that define the intellectual space in which the present Murray v. Curlett must be considered. “We think there is little doubt that a decision in this case lies somewhere between the decision in McCollum and that in Zorach,” the justices explained.\(^7\)\(^1\) To unpack what that meant, the court would need to back up a bit. For purposes here as well, Maryland’s contextualization provides a useful occasion to review the relevant history given that the religion clauses of the First Amendment, which had been the subject of almost no litigation in America’s first century and a half, had become an exciting legal specialty in the last two decades.

Though primarily a mid-twentieth century story, the historical review must begin in the immediate aftermath of the Civil War. For the Maryland justices, unlike some courts a few states further South, made clear their support of the modern interpretations and implications of the Thirteenth (prohibition of slavery), Fourteenth (all those born or naturalized in the United States are full citizens), and Fifteenth (voting rights for all races) Amendments.\(^7\)\(^2\) Lawmakers and ratifying citizens during Reconstruction obviously did not have church/state concerns forefront in their minds when they passed the amendments, and legal scholars and historians continue to debate the degree to which contemporaries envisioned these measures as impacting the legal standing of religion at all.\(^7\)\(^3\) Nevertheless,  

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\(^{71}\) 228 Maryland 239, at 247.  
\(^{72}\) 228 Maryland 239, at 244.  
\(^{73}\) While this concept of “incorporation” has been a given in courtrooms for decades, political and cultural historians have too readily assumed that Americans outside legal contexts have fully understood and accepted this idea. This is not the place to pursue a comprehensive discussion of Congress’s intent or observers’ understanding of the Fourteenth Amendment when it was adopted during Reconstruction except to say that there has never been an unambiguous popular understanding that the due process clause applied the First Amendment’s establishment clause to the states. Even if a supermajority of post-Civil War lawmakers intended to guarantee the entire Bill of Rights to individuals against not just the federal government but now also against their states—which is itself a more challenging argument to sustain than one might suspect (see Rodney K. Smith, Public Prayer and the Constitution: A Case Study in Constitutional Interpretation [Wilmington: Scholarly Resources, 1987])—the courts under President Ulysses S. Grant immediately and explicitly stated that the Amendment could not be interpreted this way. (See the Slaughter-House cases, 16 Wallace 36 [1872].) Moreover, even if post-Fourteenth Amendment citizens could have successfully claimed the rights of the first eight amendments versus state officials, many legal authorities drew a conceptual distinction between
early twentieth century jurisprudence gradually transformed the Bill of Rights by means of the Fourteenth Amendment’s “due process” clause. Thus, although the First Amendment itself states only that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...,” the Fourteenth Amendment came to be understood as essentially rewriting the First Amendment to say, “Neither Congress nor the States nor any local government shall make any law...”

At the end of the nineteenth century, though, no one was debating what the Fourteenth Amendment did to the First Amendment because the Fourteenth and Fifteenth Amendments were in jeopardy in even their narrowest constructions. For with the rise of Jim Crow, southern states drained these amendments of almost all of their meaning, and the Supreme Court did little to challenge state action. Finally, in the 1920s, quite apart from racial concerns, the Court began ever so slowly to outline general doctrine by which the Fourteenth Amendment might be understood to apply at least the free exercise clause of the First Amendment to the states.74

In 1940, the Supreme Court finally—for the first time in history—used the First Amendment to restrict state action regulating religion. A few years earlier, Newton Cantwell and his sons took to the streets of New Haven, Connecticut, to distribute Jehovah’s Witness literature. In a move that raises a few questions about the effectiveness of their

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these enumerated individual protections and the type of positive limitation of government action contained in the establishment clause. As Justice Stewart expressed it: “I too accept the proposition that the Fourteenth Amendment has somehow absorbed the Establishment Clause, although it is not without irony that a constitutional provision evidently designed to leave the States free to go their own way should now have become a restriction upon their autonomy.” (Abington v. Schenck, 374 U.S. 203, at 310.)

In short, even if the Fourteenth Amendment were read expansively enough to protect individuals from state violations of their rights to assembly, to speech, to the free exercise of religion, etc., that did not necessarily mean that states were now prohibited from maintaining the establishments of religion that they had always been allowed—even though all of them had officially ended the direct subsidy of state churches by 1833. Some lawmakers in the decade after the Civil War surely favored the curtailing of state forays into the religion business, but their lack of certainty over whether the Fourteenth Amendment (1868) accomplished this partially explains why they proposed the Blaine Amendment (1876). The latter measure—ultimately unsuccessful at the federal level—originated with Protestant fears about potential Catholic majorities in certain states. Its supporters therefore aimed to ensure explicitly, that, “No State shall make any law respecting an establishment of religion...” For a helpful discussion of some of the debate about the purposes of the Blaine Amendment, see Laubach, School Prayers, 34ff.

outreach, they also decided to appeal to Catholics by playing records ridicule the pope on sidewalks and in other public spaces. Surprisingly, the police managed to get to them before the locals had resolved the problem, and the Cantwells were charged with disturbing the peace as well as with failure to obtain a permit to distribute religious materials. New Haven, like many localities in the 1930s when Jehovah’s Witnesses were aggressively evangelizing, had apparently passed the latter ordinance for exactly this type of situation. The city wanted to dissuade outsiders from taking over parks and promoting religiously offensive ideas among the locals.\textsuperscript{75} The permit application process would give the authorities time to delay the distribution, likely driving the evangelists to another region, or possibly even to reject the request based on a dispute about which belief systems qualified as actual religions.\textsuperscript{76}

The Supreme Court held, in \textit{Cantwell v. Connecticut}, that New Haven had no jurisdiction over the boundary between legitimate and illegitimate religion, offensive and inoffensive theological ideas. Furthermore, disruptions of the peace required “clear and present danger” or “immediate threat,” not a mere unsettling of social and emotional harmony. The city could surely regulate its parks, for instance, and prohibit shouting and record-playing of all kinds if its citizens so desired.\textsuperscript{77} But it could not single out religious speech particularly for exclusion. In the process, the Court stated unambiguously for the first time that states are just as bound by the First Amendment as is the federal government.\textsuperscript{78}

At the time, \textit{Cantwell} and the evolving interpretation of the First Amendment upon which it rested did not provoke widespread public consternation, but after the 1954 \textit{Brown v. Board} demand for desegregation of the schools and the 1965 \textit{Griswold v. Connecticut}

\textsuperscript{75} Jill Watts explores other ways that local ordinances and regulations have been used to restrict religion; see her \textit{God, Harlem U.S.A.: The Father Divine Story} (Berkeley: University of California, 1992), 31-97.

\textsuperscript{76} Flowers, \textit{That Godless Court?}, 22-25.

\textsuperscript{77} Flowers, \textit{That Godless Court?}, 22-25.

\textsuperscript{78} \textit{Cantwell v. Connecticut}, 310 U. S. 296 (1940). It is worth noting that this case concerned only the free exercise clause of the First Amendment; the establishment clause had explicit no bearing. Thus, in spite of the Court’s clear pronouncement that the First Amendment now, by “incorporation,” applied to the states, legal scholars continued to wonder if only the matter of an individual right to free exercise, rather than a broader prohibition on state establishment, had here been settled.
discovery of a right to sexual privacy, it would become increasingly clear that the Supreme Court by 1940 had entered a new phase of judicial activism. While few today would question the desirability of the outcome in *Cantwell*, historians have paid too little attention to the longer-term cultural consequences of a legal process that eventually appeared to many citizens like mere judicial whim. When a revolutionary decision was founded on a new construction of a previously established constitutional clause, some Americans began to wonder if the Supreme Court knew any constraints at all, and even many non-extremists would begin to entertain elaborate theories about judicial tyranny. As would become clear by the mid-1960s, rulings that were unrelated on their face, nonetheless seem to have become connected in the social conservative mind, even if rarely stated so succinctly, as merely racial, sexual, and religious manifestations of the same underlying horrific possibility that, eighth grade civics textbooks notwithstanding, unelected judges could actually create new law as they saw fit.⁷⁹

The justices in Annapolis obviously entertained no such fears about judicial conspiracies and they had no particular objections to *Cantwell*. For them, the serious confusion began not in 1940 but in 1947, when the high court first encountered a case actually requiring the application to the states of not merely the free exercise clause but also the more vexing establishment clause. This potentiality had been implicit in *Cantwell*, but it wasn’t until 1947-52 that the court needed to work out its new constitutional interpretation in detail. In those five years, the justices decided three establishment cases—indeed, the first three in its history. These three decisions would ultimately provide the backdrop for not just the Maryland Court of Appeals’ decision in *Murray v. Curlett*, but indeed for all of the contentious 1960s church-state cases everywhere.

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⁷⁹ This debate raged in many academic and local contexts for decades before becoming a fully mainstream conversation upon President Reagan’s unsuccessful nomination of Robert H. Bork to the Supreme Court in 1987. For Bork’s articulation of the dangers of judicial activism, see *The Tempting of America: The Political Seduction of the Law* (New York: Free Press, 1990).
First, in *Everson v. Board of Education* (1947), a bitterly divided Court ruled 5 to 4 that Ewing Township, New Jersey, could constitutionally reimburse all parents in the district for the costs of busing their children to school, regardless of whether individual children got off at a public or private (usually Catholic) school. In a sense, it is surprising that the decision was this close, for the court had held back in 1930, with less ensuing controversy, that Louisiana could loan textbooks for secular subjects to all children in the state, regardless of whether they used these textbooks in public or parochial schools. In that case, the court’s opinion outlined a “child benefit theory” which asserted that Louisiana’s policy, in aim and effect, aided not Catholic schools but individual students without regard to their religious persuasion.\(^{80}\) The central difference between the Louisiana case and *Everson*, however, was that the 1930 court’s judgment depended exclusively on the Fourteenth Amendment rather than on both the Fourteenth and First Amendments.\(^ {81}\)

*Everson* continues to be widely cited in legal textbooks not because of its fairly unsurprising outcome, but because of the implications of the opinion, which would work in subsequent decisions to undermine rather than support state accommodation of citizens’ religious choices. Justice Hugo Black wrote for the majority with language so critical of any government engagement with religion that the reader is startled to find this doctrine paired with an outcome that ultimately did not condemn the New Jersey arrangement. The ever-witty Justice Robert Jackson, one of the four dissenters, commented that Black’s nuanced product reminded him of the Lord Byron poem where a young woman—while “whispering ‘I will ne’er consent,’”—consented.\(^ {82}\)

Black defended his reasoning by explaining that New Jersey had not crossed the line, so their practice was being allowed. But that did not prevent the court from taking this opportunity, as he had, to spell out exactly where the line was. Hence his opinion focused

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\(^{80}\) *Cochran v. Louisiana Board of Education*, 281 U.S. 370 (1930).

\(^{81}\) For a historical analysis of the “child-benefit theory,” see Flowers, *That Godless Court?*, 64-66.

\(^{82}\) *Everson v. Board of Education*, 330 U.S. 1 (1947), at 19.
on the ways states could conceivably—and illegally—transgress that line of church/state fraternization:

The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa.83

Citing Jefferson, Black insisted that "the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State.'"84

More than a few readers, especially at Catholic universities, did a double take at Black's strident separationism, written at a time when returning G.I.'s were cashing their educational benefit checks at every higher educational institution in the country—secular and parochial alike.85 And for Black to quote Jefferson on the matter, and especially to use his "wall of separation" metaphor which originated in a letter to separation absolutists (Baptists), suggested a radical future course for the court.86 For while the majority of the founders were, like Jefferson, deists rather than orthodox Christians, Jefferson was nonetheless thought by 1940s America to be relatively extreme within the group in his interpretation of—or better, hopes regarding—the First Amendment.87 Justice Black did not

85 For context on how widely accepted it was for government vouchers and funding to reach religious institutions, see Elizabeth A. Edmonson, "Without Comment or Controversy: The G.I. Bill and Catholic Colleges," Church History 71:4 (December 2002), 820-847. In the summer of 1962, after the Engel decision, Life magazine's editors would point back to 1947 and 1962 as being the time that Americans began to worry about the Supreme Court's "meddlesome" religious views; Life, July 13, 1962, 4.
86 Chief Justice Morrison Waite, writing for the court in Reynolds v. United States, the 1879 case where the court upheld laws against polygamy, had also cited Jefferson's "wall of separation." But that context differed significantly from Everson because the Mormons opposing the anti-polygamy statutes claimed free exercise of religion as the basis of their objection. The court, in rejecting their defense, was not directly using the "wall of separation" metaphor as an interpretation of the establishment clause in the same way that Justice Black here would.
back away from these implications: "The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach." The fact that the court concluded "New Jersey has not breached it here" should not lead anyone to think that the court would be shy going forward about reprimanding vigorously those states that did.

Just thirteen months later, Illinois received the promised rebuke. Since 1940, the schools of Champaign had sponsored a "released time" program for students in grades four and up where forty-five minutes each week were set aside for clergy from various traditions to provide sectarian instruction. A priest would be teaching in one room, a rabbi in another, some variety of Protestant minister in a third, and so on. Students were not compelled to attend any of the religion classes—in fact, they were not allowed to attend unless their parents explicitly requested it—but because the classes were held in the school building during the regular school day, all students were obligated by the compulsory education laws to be present at school, even if not in a religion class. Those individuals not availing themselves of a catechetical opportunity would participate in a study hall. Though relatively new in Champaign, such released time programs had grown rapidly in popularity since first being introduced in Gary, Indiana just before the First World War. By the end of the 1920s, such public/private religion classes enrolled approximately two million students, in over half of the states.

Vasti McCollum, the mother of a Champaign child, went to court claiming the arrangement, although pluralistic and not compulsory, violated the establishment clause.\(^8\) By a vote of 8 to 1, the Supreme Court in *McCollum v. Board of Education* (1948) agreed. The justices highlighted two primary problems with the Illinois arrangement. The first transgression centered on the timing of the program during the school day. Because compulsory education laws require the students to be receiving a secular education at that time, religious students, the court judged, were being "released in part from their legal duty"

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simply by virtue of being religious.\textsuperscript{89} Their second objection concerned the location of the program. Because clergy were allowed to teach in "the State's tax-supported public school buildings," this amounted "beyond all question [to the] utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith."\textsuperscript{90} Justice Hugo Black, again authoring the majority opinion, cited no precedents except the new First Amendment doctrine he had written himself the previous year in \textit{Everson}, reiterating the need to keep the "wall between Church and State... high and impregnable." Jefferson's letter to the New England Baptists, rather than any citations of case law, again served as the basis of Black's judgment.\textsuperscript{91}

Justice Felix Frankfurter occasionally worried that Hugo Black's views on the First Amendment were too radical, but in this case, he concluded that the Alabaman had gotten it about right.\textsuperscript{92} In fact, in his concurring opinion, Frankfurter added to Black's dependence on the Jeffersonian "wall" metaphor an exposition on the church/state theories of Jefferson's most faithful student, James Madison. He referred to Madison's vigorous campaign to prohibit the mixing of the civil and the religious in Virginia, especially in the area of state support for religious education.\textsuperscript{93} The "fact that this power has not been used to discriminate [in Illinois] is beside the point." The purpose of the establishment clause it to keep religion and government entirely separate, "not merely to treat them all equally." For while it is true that "a child [being] offered an alternative may reduce the constraint," this "does not eliminate the operation of influence by the school in matters sacred to conscience and outside the school's domain. The law of imitation operates, and non-conformity is not an

\textsuperscript{89} \textit{McCollum v. Board of Education}, 333 U.S. 203 (1948), at 209-10.
\textsuperscript{90} \textit{McCollum v. Board of Education}, 333 U.S. 203 (1948), at 210-12.
\textsuperscript{92} So concerned was Frankfurter about Black that in his diary he occasionally referred to him as part of the "Axis powers," and may even have been instrumental in persuading Roosevelt not to appoint Black chief justice upon Hughes' retirement in 1941. See Bernard Schwartz, \textit{Super Chief: Earl Warren and His Supreme Court: A Judicial Biography} (New York: NYU, 1983), 50-53; also 30-35. In addition, see James F. Simon, \textit{The Antagonists: Hugo Black, Felix Frankfurter, and Civil Liberties in Modern America} (New York: Simon and Schuster, 1990 [1989]).
\textsuperscript{93} \textit{McCollum v. Board of Education}, 333 U.S. 203 (1948), at 216. See also Laubach, \textit{School Prayers}, 33.
outstanding characteristic of children. The result is an obvious pressure upon children to attend." But let's not be naïve, he continued, even the quest for principled pluralism, for non-discrimination, however laudable an aim, will be ultimately illusive and indeed surely is in the practice of the Champaign schools. There are "more than two hundred and fifty sects" in this nation, and a policy such as this undoubtedly favors the larger ones. "The children belonging to [the] non-participating sects will...have inculcated in them a feeling of separatism," and this in an institution where the government should be "training" them "for habits of community."\textsuperscript{94} The school "is at once the symbol of our democracy and the most pervasive means for promoting our common destiny."\textsuperscript{95} In light of the state's aim to unite a diverse citizenry, Frankfurter confessed—at least hinting that religion might be a dangerous impediment to this goal—that he could not therefore see any place for a process that at all "sharpens the consciousness of religious differences."\textsuperscript{96}

Summarizing, the justices observed without qualification that "We are all agreed that the First and the Fourteenth Amendments have a secular reach far more penetrating in the conduct of Government than merely to forbid an "established church."\textsuperscript{97} The coming quarter century would reveal that the vast majority of the American people were not so agreed on this point. Frankfurter would likely respond that this was because the people, while generally affirming the free exercise of religion, had not had inculcated in them a similar appreciation for the establishment clause. And even if this clause never became popular, the entire purpose of the Bill of Rights is to protect collectively all of the liberties of minorities even though particular freedoms in that bundle may not individually impress the majority at every given moment.

Two more opinions in this 1948 case—one dissenting by Stanley Reed and one concurring by Robert Jackson—demonstrate how monumental \textit{McCulloch} would be in shaping the thinking of the judiciary generally and the Maryland court in the \textit{Murray} case.

\textsuperscript{94} \textit{McCulloch v. Board of Education}, 333 U.S. 203 (1948), at 227.
\textsuperscript{95} \textit{McCulloch v. Board of Education}, 333 U.S. 203 (1948), at 231.
\textsuperscript{96} \textit{McCulloch v. Board of Education}, 333 U.S. 203 (1948), at 228.
\textsuperscript{97} \textit{McCulloch v. Board of Education}, 333 U.S. 203 (1948), at 213.
particularly. Justice Reed, standing alone, questioned the wisdom of drawing "a rule of law" from "a figure of speech." The court, he suggested, was giving too much weight to a private opinion of Jefferson, expressed in so irrelevant a context as a letter to a small group in New Hampshire where he had no official role. This decision, Reed protested, required the Constitution to be "stretched" in novel ways "to forbid national customs." The Illinois practice was clearly within the bounds of long-established, "accepted habits of our people," and authors of neither the First nor the Fourteenth Amendment were in any way intending to uproot these types of traditions.99

Justice Jackson could not go as far as Justice Reed, for Jackson did judge the Illinois practice unconstitutional. The previous year, after all, he had argued that the New Jersey busing practice too should have been held unconstitutional. Nonetheless, he expressed concerns about the longer-term implications of this opinion, for he too did not believe the court should be in the business of aggressively uprooting settled traditions and remaking the culture in a more secular vein. Warning the court of how the state's involvement with education necessarily involved them in culture, and then of the fact that it is nearly impossible to find a cleavage within culture that cleanly segregates religion, he wrote:

Perhaps subjects such as mathematics, physics or chemistry are, or can be, completely secularized. But it would not seem practical to teach either practice or appreciation of the arts if we are to forbid exposure of youth to any religious influences. Music without sacred music, architecture minus the cathedral, or painting without the scriptural themes would be eccentric and incomplete, even from a secular point of view. Yet the inspirational appeal of religion in these guises is often stronger than in forthright sermon.... Certainly a course in English literature that omitted the Bible and other powerful uses of our mother tongue for religious ends would be pretty barren.... The fact is that, for good or for ill, nearly everything in our culture worth transmitting, everything which gives meaning to life, is saturated with religious influences derived from paganism, Judaism, Christianity—both Catholic and Protestant—and other faiths accepted by a large part of the world's peoples.100

School administrators and clergy around the country, worrying with Justice Jackson about the possible secularizing implications of the McCollum decision, quickly huddled to formulate programs with minor variations on the Champaign plan, hoping to avoid the reprimand of the high court.\textsuperscript{101} Strict separationists in many of these towns, usually with legal assistance from the ACLU and various Jewish groups, also sought further clarification from the courts, so they sued. In 1952 in Zorach \textit{v. Clauson}, the Supreme Court heard arguments about a New York City practice nearly identical to the rejected Illinois arrangement.\textsuperscript{102} The sole significant difference concerned the location of the instruction. Instead of a "released time" program within the school, New York was experimenting with a "dismissed time" program where participating students left the school grounds for their religion classes. 6 to 3, the court upheld the constitutionality of the new arrangement, noting that unlike \textit{McCollum}, the New York plan did not use any tax dollars to aid religious instruction.

But what about the timing of the program during the school day? Four years earlier, Justice Black (who dissented here) had complained about using compulsory education laws to help catechists corral their pupils. New York did not differ from Illinois on this count. Although the classes were held off school property, students were nonetheless required by law either to remain at school in study hall or they were "dismissed" to go study religion. There was no third alternative; there was no formal mechanism to be released from the compulsion of law for a non-religious reason. The clergy reported to the school each week who had attended their classes, and those students who had requested to be dismissed but not actually shown up at their religion class were disciplined by the school as truant.\textsuperscript{103} Labeling the distinction between released and dismissed time entirely trivial, the dissenting Justice Jackson suggested that the court's majority of six had shamefully caved to public pressure. "Today's judgment will be more interesting to students of psychology and of the judicial

\textsuperscript{103} Edwin S. Gaustad, \textit{Church and State in America} (New York: Oxford, 1999), 87.
process than to students of constitutional law." Contrary to the fears of many citizens, "It is possible to hold a faith with enough confidence to believe that what should be rendered to God does not need to be decided and collected by Caesar." His opinion, he insisted, rejected not godliness but only "compulsory godliness."  

Justice William O. Douglas, author of the official opinion, objected to these suggestions that the majority was tolerating coercion in matters of conscience. In one of the most quoted paragraphs in the history of Supreme Court pronouncements—reproduced in its entirety in the Maryland Court of Appeals' historical review—Douglas insisted that the dissenters were finding in the First Amendment a hostility toward religion that did not exist:

We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma. When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups. That would be preferring those who believe in no religion over those who do believe.

The debate centered on whether government can aid religion in general—since everyone already agreed that it cannot favor one sect over another. Douglas, here in a company of five additional justices, said that it can, and that the "accommodation" of public, governmental needs to the people's various religious needs "follows the best of our traditions." Continuing, he provocatively wrote that,

we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope  

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105 Given the subsequent trajectory of Douglas' thought, this opinion is extraordinary. Justice Jackson's seems like the opinion Douglas would have written at most other points in his career.
107 The magisterial Justice Story, probably the most widely read historian of the court, held "that the federal government was barred only from punishing or benefiting specific religions," and thus this view has been transmitted to generations of his readers. See John E. Nowak and Ronald D. Rotunda, Constitutional Law (Hornbook Series), Sixth Edition (St. Paul, MN: West Group, 2000), 1311ff.
of religious influence. The government must be neutral when it comes to
compétition between sects...[and it] may not coerce anyone to attend church, to
observe a religious holiday, or to take religious instruction. But it can close its doors
or suspend its operations as to those who want to repair to their religious sanctuary
for worship or instruction. No more than that is undertaken here. ¹⁰⁸

The minority, of course, believed that much more was being undertaken. If New
York City wanted to be truly neutral, why didn't they simply dismiss school altogether for
those forty-five minutes? Why use the threat of punishment for truancy to help coerce
attendance at religion classes—if not because many "free" children would have chosen
candy over catechism? To Justice Black, who led a party of eight (including Douglas) only
four years ago but now found himself with only two allies, the issue turned on how one
defines neutrality.

Every justice claimed the banner of neutrality. The majority said they were neutral
toward religion, while their opponents were hostile. Black rebutted that he was neutral,
while Douglas and company were seeking to aid religion. Douglas didn't directly deny this,
so long as everyone understood that this aid could only be to religion in general, and not to
any particular sect or sects. The only alternative to such "accommodation" to religion, in an
age where the state encroached on more and more cultural space, would be for the
government to take on a role—neither required nor desired—of trying to purge the culture of
its traditional religious nature. If the justice in question were anyone but Douglas, who
would pride himself over the course of his long career in standing alone both on the court
and in the face of public rebuke, one might question whether the 1948 to 1952 movement
away from strict separationism was partly influenced by the sea of anticommunism in which
the nation swam in the early 1950s. ¹⁰⁹

The Maryland justices in the Murray case judged a careful review of Everson and especially
McCollum and Zorach essential, but hardly sufficient. They were convinced that the answer

¹⁰⁹ The analysis of Everson, McCollum, and Zorach, depends not only on the Maryland Court of Appeals
exploration of these cases, but even more heavily on: Flowers, That Godless Court?; Alley, School Prayer;
and Laubach, School Prayers.
here would be found “somewhere between” McCollum and Zorach, but they didn’t think that the Supreme Court had yet given enough doctrine to determine “the constitutional questions posed by this appeal.”110 Tellingly, the Maryland court wrote that the “essential question” is whether Baltimore’s morning exercises violate “the ‘establishment of religion’ and ‘free exercise’ clause of the First Amendment” (italics added). The justices were referring to these two parts of the First Amendment as one clause—in the singular. Similar phrasing occurs elsewhere in the opinion.111 Such apparent nitpicking actually matters a great deal because their ultimate decision, 4 to 3 upholding current Baltimore practice, rested chiefly on the fact that students were no longer compelled to attend. No one’s liberty was violated.112

After an intentional consideration of the precedents, the majority’s decision to proceed as if compulsion were the determining question essentially assumed the answer without any direct treatment of the Everson and McCollum decisions’ insistence that an establishment violation need not necessarily include compulsion. Perhaps the Maryland court had finally sided with the public and decided not to be as cautious and deferential to the Supreme Court as they had previously planned once they were reminded of how weak they considered the thinking of McCollum to be. Or perhaps they saw the high court itself backtracking a bit from the potentially radical implications of McCollum in its later Zorach decision. It was difficult to tell.

What Justice Hornby, the author of the majority opinion, did say explicitly was that, although the practices in question were taking place inside school buildings (like the rejected McCollum rather than the tolerated Zorach), the time involved—and therefore the expenditure of state funds as well—was “negligible.” Therefore these exercises should be considered “in the same category as the opening prayer ceremonies in the Legislature of this State and in the Congress of the United States…and in the formal call of court sessions by

110 228 Maryland 239, at 245.
111 See, e.g., the highlighted “constitutional law” implications summary paragraph; 228 Maryland 239, at 239.
the crier in State and Federal courts.” By grouping this local practice with American
traditions long established, he attempted to shield his court from another Supreme Court
overrule. He also took the opportunity to demonstrate the he and his colleagues had read the
materials from the similar cases currently before the courts in New York, Pennsylvania, and
elsewhere. Most importantly for their purposes, he believed, was the Supreme Court’s
1960 decision to remand to Pennsylvania the Schempp case “after it was learned that the
Pennsylvania law had been so amended as to provide for the excusing of those students who
objected to participating in a school opening ceremony…” He passed lightly over the fact
that, by the time of his decision, the lower federal court in the case again found the
Pennsylvania arrangement unconstitutional, despite the excusal provision. Horney wrote
simply, “we do not find the decision on remand persuasive and decline to follow it.”

Chief Justice Brune wrote the minority opinion, likewise walking carefully through
Everson, McCollum, and Zorach, but ultimately concluding that this suit should be thought
of less like Zorach than McCollum, less like the permitted New York “dismissed time”
scenario off campus, and more like the prohibited Illinois “released time” scenario in the
school. Hence Ms. Murray’s concerns were valid. One of the most notable features of this
otherwise tightly argued opinion is Brune’s regular assumption, usually without argument,
that the Baltimore morning exercises advance a “sectarian” or “particular” religion. The
majority opinion had implied that while Baltimore may be slightly advancing religion in
general, because few public dollars were involved, it did not amount to an establishment.
Brune, by contrast, concerned himself less with how many dollars were involved, and stated
that establishment exists whenever the state’s power requires of its citizens “affirmative
action” (i.e., requesting to be excused) to avoid religious participation. This itself amounts
to a “general coercion.”

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113 Laubach provides the best summary of the details and arguments in the various state cases; School Prayers: 
114 228 Maryland 239, at 247-48.
115 228 Maryland 239, at 251.
116 228 Maryland 239, at 259.
Without ever saying so clearly, Brune and his fellow dissenters seemed to suggest that there is no distinction between "religion" and "sectarian religion." Because not everyone is religious, religion itself is sectarian, though there are of course sub-sects or denominations within the general category. Relying heavily on the Torcaso case where the Supreme Court had overruled his court (the majority opinion explicitly argued that Torcaso had no bearing here), Brune posits that the government is bound to neutrality not only between Protestants and Catholics, but also between religion and irreligion. It isn't simply that governments cannot aid this or that institutional manifestation of religion; perhaps they can't have a perspective on whether the presence of religion in the culture is a positive leavening influence at all. "Sect" made sense as a category in a Christian nation; it referred to the competing, institutional manifestations of Christianity. But in a post-Christian age—recall that most of the cases Brune and the Maryland justices were evaluating had been supported primarily by Jewish organizations—the utility of the sect concept declined precipitously for governments committed to neutrality.

Though technically defeated, Madalyn Murray and her supporters were anything but despairing. With the court this narrowly divided, it was reasonable to hope for a hearing in the highest court in the land. Any honest reading the opinions demonstrated that these matters were not nearly as clear-cut as many editors across the country—not to mention Judge Pendergast—had suggested. The following month, she would formally appeal the judgment. And the day after that, her supervisor at the government job she held would fire her—according to Madalyn, in retaliation for her attack on God.

Few people that May noticed either her appeal or her dismissal, for by this point, those parts of the public following the school prayer battles had long since turned their attention to the Supreme Court. Like the Maryland justices themselves—both the

117 228 Maryland 239, at 248.
118 228 Maryland 239, at 254, 257-61.
120 The *Baltimore Sun*, in its stories on the Murray case in Annapolis, also updated readers on the status of the U.S. Supreme Court's consideration of the New York case, e.g., April 7, 1962, 14.
majority and minority opinions closed in explicit anticipation of a soon-to-be-delivered Supreme Court opinion which might bring much needed clarity—most observers were hopeful about receiving a decision in the so-called “New York Regents’ Prayer” case before the justices closed up shop in muggy Washington and headed for the shore.
The Supreme Court is legendarily leak-proof. Nonetheless, by Memorial Day, journalists in bars all over the District were receiving and forwarding along rumors about an imminent decision in Engel v. Vitale, popularly known as the New York prayer case. The Florida Supreme Court had heightened the anticipation in early June by ruling that Dade County’s morning exercises were permissible but that many other types of religious programming in the schools, such as Christmas pageants, were not. Paul Blanshard, a former Congregational minister now turned Unitarian jack-of-all-trades (lawyer, editor at The Nation, State Department official, aid to New York mayor Fiorello La Guardia, bestselling author), had become the nation’s most important interpreter of the prayer cases as they became national news heading into the 1960s. Looking back later on that June of 1962, he would recall the persistent flow of hints about a decision that would “shake the religious foundations of the country.”

The strict separationist or anti-school prayer forces seem to have been hopeful, yet simultaneously doubtful. For although they believed they had a solid constitutional case, the American Jewish Congress and its sister organizations funding many of these cases in various states weren’t thrilled that the Supreme Court had selected the New York case as the battlefield for this war. For unlike the disputes in Pennsylvania and Florida—or even

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1 This is of course partly why Bob Woodward and Scott Armstrong’s behind-the-scenes look at the work and processes of the court, in The Brethren: Inside the Supreme Court (New York: Simon and Shuster, 1979), was so startling and so useful.
3 Blanshard’s influential American Freedom and Catholic Power (Boston: Beacon, 1949) was revised and reissued, again with significant sales, in 1958. Similarly, his 1960 God and Man in Washington (Beacon) brought the church/state debates to the general reading public. This project is heavily indebted to Blanshard’s 1963 Religion and the Schools: The Great Controversy (Boston: Beacon), for the background to the Engel case; see especially 27–42.
4 Blanshard, Religion and the Schools, 40.
5 As mentioned above, the dissertation version of this projected relies substantially on Paul Blanshard’s recollections and judgments about the litigation strategy of the key anti-school prayer players and organizations. In a revision of the project for publication, it would be useful to collaborate and challenge Blanshard’s memory and opinions with other records from the American Jewish Congress and the ACLU.
Madalyn Murray's more recent Maryland suit—the New York case did not involve either readings from the Bible or explicitly Christian references in prayer. Thus it would be more difficult to use this case to argue that the state privileged one religion over others. As even the lawyer for the dissenting New York parents tacitly admitted to the court, the prayer was so shallow, so vague, that it was difficult to be passionately offended by it. It read simply: "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country." That vacuous quality stemmed from being the product of a committee, and particularly a committee stumbling over itself to avoid controversy. A decade before, in 1951, with memories of German and Japanese imperialism and new nightmares of Soviet aggression competing for attention in their minds, the New York Board of Regents—which functioned as a less than fully authoritative state board of education—had drafted a "Statement on Moral and Spiritual Training in the Schools." Hoping to encourage love of God and love of family, the country's greatest hopes during these dark times, the regents wanted to draw on the nation's common religious heritage. But they also aimed to minimize any creedal divisions. Thus one portion of their document gently recommended that local boards of education and all other "men and women of good will" consider putting to use the innocuous new twenty-two word prayer they had drafted.

The regents were walking a tightrope, for they wanted to avoid antagonizing either Catholic or Jewish groups, both of which were frustrated with state school officials. Many Catholics, influenced by The Tablet, a widely circulated New York City newspaper, thought it sheer folly that even after facing a demonic global enemy like Nazism, Americans were

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6 It took William Butler the better part of an hour, in dialogue with Justices Frankfurter and Stewart, to come up with any aspect of the prayer that any of his clients might potentially regard as offensive. See Oral Argument Transcript, Engel v. Vitale, 8-20.
7 Engel v. Vitale, 370 U.S. 421, at 422-23. See also Time, March 9, 1959, 54.
8 The oral argument in Engel made it clear that the New York Board regularly functioned in merely an advisory capacity to local board of education. See Oral Argument Transcript, Engel v. Vitale, 4.
willing to continue educating their children in a moral vacuum.\footnote{The Tablet was published by the diocese of Brooklyn.} The education of the young involves more than learning the techniques of long division; it is primarily a moral enterprise, and America was desperately in need of a more “pro-religious type of public schooling.”\footnote{The Jesuit magazine America was particularly hard on what it considered to be America’s apathy toward God; see also Blanshard, Religion and the Schools, 34-41.} Jewish groups countered that it is exactly subjects like math that the schools should be focusing on. Religious instruction belongs in the home and in the synagogues and churches. Moreover, the very act of studying even a subject as mundane as math \textit{together}, instead of in ethnic and sectarian ghettos, already qualifies as a moral statement with profound long term effects on young minds. Organizations like B’nai B’rith thus took the lead in denouncing the increasingly common “invidious [attempts] to inject religion into the schools”—efforts they considered inherently discriminatory to non-Christian citizens.\footnote{Blanshard, Religion and the Schools, 33.}

Determined to “do something definite and constructive,” the Board of Regents ultimately did formulate a prayer, but pained themselves to ensure that it wasn’t explicitly Christian, and they left it to individual districts to decide unconstrained whether to use the prayer in their schools at all. The net result was moderately satisfied Catholics, moderately dissatisfied Jews, and hordes of Protestants—who controlled most local boards of education—not paying much attention. And thus in the end, few districts adopted the prayer. Experts estimated that only about ten percent of New York districts were using the prayer by the late 1950s, and the gigantic New York City district had not even gotten around to acting formally on the state’s recommendation. The Regents’ Prayer, as it came to be called, simply wasn’t a very big issue.

Merely symbolic issues can become substantive ones if employed as weapons in community conflicts. And this is exactly what happened between Catholics and Jews in New Hyde Park in 1958. A small but growing New York City suburb on Long Island, New Hyde Park was home to a sizable number of Catholics unexcited about all of their new, and
typically wealthier, Jewish neighbors. Schools frequently became the main flashpoint for larger ethnic and religious tensions. To generalize, Jewish groups in communities across New York favored more funding for and less religion in local schools, while Catholics sought the opposite on both counts. Catholics constituted a much larger portion of the taxpayers than of actual school consumers given that many in New Hyde Park, as everywhere else where the option existed, sent their children to parochial schools. They chaffed at local pressures to upgrade and modernize schools—"luxuries" they had to pay for, but from which Jewish families would disproportionately benefit. Not surprisingly, Catholic voters had proved decisive in defeating three consecutive school expansion bond proposals.¹³

The relationship between Catholics and the public schools in New Hyde Park, as in many places in the late 1950s and early 1960s, was complicated. On the one hand, the Catholic hierarchy expressed a strong preference for parochial schools. On the other hand, Catholic citizens were still affected by the public schools, both because parish schools typically could not accommodate all interested students, and because of the impact of state schools on the health of America more generally. William J. Vitale, Jr., school board chairman in New Hyde Park, serves as an instructive example. Though sending his own children to Catholic school, he put in long hours in service of the public schools, and was instrumental in New Hyde Park's July 1958 decision to adopt the Regents' Prayer. Having long been schooled by the Catholic teaching that all children need to be brought up in a religious environment, he had apparently been disappointed in a 1957 decision by state officials to prohibit local districts from posting the Ten Commandments in classrooms. The Regents' Prayer, while less substantive than one might wish, at least reminded students of their dependence upon God and about his hand in all of our blessings.¹⁴

¹³ Blanshard, Religion and the Schools, 27-33.
Lawrence Roth, a local citizen of Jewish descent who preferred to identify himself simply as an “unbeliever,” responded to the school board’s adoption of the new prayer with decisive action. He took out a newspaper ad asking other dissenting, taxpaying parents to join with him in a legal challenge.\textsuperscript{15} Two Jewish families, one Unitarian, and one member of the Society for Ethical Culture responded to his plea for plaintiffs. The ACLU, which had just become active in school prayer matters, agreed to provide legal services free of charge. The school district, which had not originally provided an avenue for creetal minorities to opt out of the daily prayer, formulated a policy allowing objectors to be dismissed from the exercises. Officials hoped that this would nullify charges of coercion and thereby quiet the critics. But Roth’s lawsuit proceeded.

The school board nonetheless appeared to be on solid legal ground. The anti-school prayer plaintiffs lost at the initial trial, were rejected unanimously at the appellate court level, and then were informed, 5-2, by New York’s highest state court that “belief and trust in a Creator has always been regarded as an integral and inseparable part of the fabric of our fundamental institutions.”\textsuperscript{16} Chief Justice Desmond, the practicing Catholic who wrote the court’s opinion, admitted—as had the lower court—that this prayer could be considered “an act of ‘religion’” under “the broadest possible dictionary definition” of that phrase. But these sorts of acts were not what the First Amendment sought to preclude. For “when the Founding Fathers prohibited an ‘establishment of religion’ they were referring to official adoption of, or favor to, one or more sects.”\textsuperscript{17} Surely the amendment proscribes coercion toward even religion in general, but the New Hyde Park officials’ current policy ensured that no one was here coerced. Students could arrive late or simply remain in the room but not participate in the prayer.\textsuperscript{18} The free exercise clause was thus not violated. And the justices


\textsuperscript{16} Blanshard, \textit{Religion and the Schools}, 35-36.

\textsuperscript{17} 218 \textit{N.Y.S. (New York Supplement)} 2d 659, at 661.

\textsuperscript{18} \textit{Engel v. Vitale}, 370 U.S. 421, at 423, footnote 2.
certainly could not find any violation on the question of establishment either, because that clause "could not have meant to prohibit mere professions of belief in God for, if that were so," then the framers "themselves in many ways were violating their rule when and after they adopted it."\(^{19}\)

Given the combination of no coercion and no overtly sectarian content in the prayer, church/state experts expressed great surprise when, in December of 1961, the Supreme Court accepted this case as its test. Having gotten very little traction in the lower courts, why did this New York case merit the esteemed justices' attention on review? Many observers assumed that the Court must be selecting a simple case with which to initially affirm public prayer in general. And then perhaps later, a more complicated case, probably with more explicitly Christian content, might be selected to highlight what a transgression of the sectarian line looked like. Such a strategy would mirror the court's pairing of *Everson* and *McCollum* in 1947 and 1948, where a legitimate practice was chosen first to announce the relevant doctrine, and then an unconstitutional practice was condemned the following year based on the prior doctrine.\(^{20}\) Such a strategy drew limits at the outset, defanging alarmists before they could scare the public about the supposed implications of a given ruling.

Both lead attorneys, William J. Butler for Stephen Engel, Lawrence Roth and the other dissenting parents, and Bertram B. Daiker for William Vitale and the rest of the New Hyde Park School Board, were Catholics. Mr. Butler, who often worked with the ACLU, was widely considered one of the finest litigators in the country. Mr. Daiker, though less well known, had also built an impressive resume as a leading spokesman for public aid to parochial schools.

\(^{19}\) 218 N.Y.S. (New York Supplement) 2d 659, at 661.  
\(^{20}\) For Blanshard's early 1960s speculation (and preferences) about the order of treating the cases, see *Religion and the Schools*, 37ff.
As they entered the court for oral arguments the morning of April 3, 1962, a strategic consideration linked the two men as well: both planned to pitch much of their case to the vocal Felix Frankfurter, considering him something of a bellwether thinker in this case. From Daiker’s perspective, Frankfurter’s legendary commitment to judicial restraint provided the best hope that the court would be reticent to become entangled in the minute and long-established details of local affairs. (Just eight days earlier, when the court had decided a controversial Tennessee case about legislative redistricting, an angry Frankfurter had chastised the majority for its “sorry” activism, for its foolish failure to acknowledge “that there is not under our Constitution a judicial remedy for every political mischief, for every undesirable exercise of legislative power.”21) Butler’s countervailing hope centered on Frankfurter’s tendency to abandon his own judicial restraint in church/state cases more than any other.22 The fact that Frankfurter would suffer what medical reporters described as a “strokelet” only two days later, and thus would not participate in the final decision, aptly symbolized much of how the day’s fragmented arguments would unfold.23 For more than usual, this morning’s two-plus hours of oral debate would be haphazard and unfocused. Both the participating lawyers and those lottery-winning reporters fortunate enough to be admitted for oral arguments would have little confidence, by the time they returned to the afternoon sunlight of Capitol Hill, in their judgments about which direction most justices were leaning or what they considered the critical issues.

Butler as petitioner went first, arguing that the New Hyde Park practice violated both religion clauses of the First Amendment. Most importantly, prayer during school hours, on school property, composed by school officials, led by school teachers, amounted to a state establishment of religion, even if most participants and observers judged the prayer itself

21 Baker v. Carr, 369 U.S. 186 (1962), at 270 (italics added). While the case had obvious racial implications, the specific matter concerned the undue representation rural districts received over growing urban areas.
22 Loren Beth, an expert on Frankfurter, says that he “was especially likely to forsake judicial modesty” in exactly these sorts of church/state cases. See Beth, “Mr. Justice Black and the First Amendment: Comments on the Dilemma of Constitutional Interpretation,” The Journal of Politics 41:4 (November 1979), 1116.
devoid of sectarian content. But secondarily, despite the fact that dissenters were now allowed to excuse themselves, the official encouragement of these prayers violated students’ freedom of religion because “non-conformity is not an outstanding characteristic of little children.” With this last phrase Butler was quoting Justice Frankfurter’s concurring opinion in *McCollum*, where the learned justice insisted that children could be considered coerced in practice even if means existed in theory for nonconformists to abstain from the majority’s activities. Peer pressure could constitute psychological compulsion even in the absence of physical compulsion. 

Frankfurter did not pause on Butler’s subtle *McCollum* reference, commenting instead that he failed to understand the nature of the suffering claimed by the parents. None of the families involved had even attempted to avail themselves of the new option to have their children leave the classroom, so it would be difficult to claim emotional damage or other suffering. “I’m trying to find out what is exactly the grievance of these plaintiffs below, and I’m having a hard time trying to find it.”

Sensing his free exercise grounds shifting beneath his feet a bit, Butler retreated temporarily to his more important claim, the violation of the establishment clause. The “illegal use of state property, state funds, state educational system, to aid all religions or to aid some religions,” he replied.

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24 Oral Argument Transcript, *Engel v. Vitale*, 7. (All transcriptions from the audio tapes of the oral arguments before the Supreme Court in *Engel v. Vitale* have been made by the author. To assist readers seeking to follow the debate, though, citations to the University Publications of America transcription are also included here. See Philip B. Kurland and Gerhard Casper, eds., *Landmark Briefs and Arguments of the Supreme Court of the United States: Constitutional Law*, Vol. 56 [Arlington, VA: University Publications of America, 1975], 1028-1077. The oral argument in the Kurland edition also includes transcription-specific page numbers; thus, all references to the transcription here are to “Oral Argument Transcript,” pages 1-50. The original tapes of the oral argument are available at the National Archives and Records Administration, College Park, Maryland; Motion Picture and Sound Division, row 21.)

25 333 U.S. 203 (1948), at 212-32. In his formidable dissent, Frankfurter argued in part: “That a child is offered an alternative may reduce the constraint; it does not eliminate the operation of influence by the school in matters sacred to conscience and outside the school’s domain. The law of imitation operates, and non-conformity is not an outstanding characteristic of children. The result is an obvious pressure upon children to attend.” 333 U.S. 203, at 227.


After a series of scattered comments by Butler and equally scattered questions by various justices—which was prompting which was not entirely clear—William Brennan tried to return to the answer Butler had offered Frankfurter. The “whole premise...of your argument is that this prayer is teaching, isn’t it?” Brennan inquired. Does your argument here “demonstrate that this is the teaching of religion?” Is the lawyer sure he has proved that this prayer qualifies as a religious activity?28

Butler was sure. “Yes, I think so, Mr. Justice Brennan, there is no dispute between me and my friend [Daiker] as to whether or not this is the purpose of saying this prayer.” The school officials merely attempt to justify, rather than deny, New York’s promotion of religion, by claiming that such promotion is in reality merely a means to the larger end of promoting love of country. “And there’s just no question as to whether or not this religious activity is designed to bring the children into a religious activity which, in the long run, will preserve the religious and even Christian heritage of society.”29

Butler’s clarity in summarizing his opponents’ position was quite good, perhaps too good. The question came to many listeners’ minds before the justice even uttered it: “Is that a bad thing?” Or, unpacked a bit: Do you, Mr. Butler, despise our religious heritage? Do you believe America would be better off with less religion? Do you deny the value of religion to a people?30

“No, your Honor,” shot back the lawyer, truncating the question only partly out of the justice’s mouth.

I want to make it absolutely clear, before this Court, that I come here not as an antagonist of religion. That my clients are deeply religious people. That we come here in the firm belief that the best safety of religion in the United States—and freedom of religion—is to keep religion out of our public life. And not to confound, as Roger Williams said, the civil with the religious.

I don’t take issue with the goodness or the badness of this prayer. I say prayer is good! My clients say prayer is good! But what we say here is that this is

29 Oral Argument Transcript, Engel v. Vitale, 11.
30 Oral Argument Transcript, Engel v. Vitale, 11.
the beginning of the end of religious freedom, when religious activity such as this is incorporated in the public school system of the United States.\textsuperscript{31}

His claims that the encouragement of all religion compromised the freedom of particular religions apparently confused at least some members of the court. Multiple justices attempted to press the matter, but many rabbit trails do not add up to one continuous path. Finally, Justice Stewart brought order to the barrage of “but, but, but’s…” hanging in the air by returning to Brennan’s—and before that, Frankfurter’s—line of questioning about identifying a concrete grievance. Butler had just referred to his clients as “religious people,” so what precisely, Stewart demanded, do they object to in this prayer?\textsuperscript{32}

Butler equivocated. Three of them believe in God but the other two aren’t sure, he finally offered.\textsuperscript{33}

Not sure that qualified as an answer to his question, the plain-spoken Ohioan grew frustrated. Alright, Stewart said, then let’s try to pursue the question by focusing on either the theistic or the agnostic families separately. He still wanted to be convinced that the theists had standing to sue. He reminded the counselor that this court does not consider theoretical lawsuits; the litigants must be claiming that they themselves have been injured in a defined way. Stewart grumbled impatiently: “It doesn’t talk about a Christian God! It doesn’t talk about…about a Methodist, or an Episcopalian, or Presbyterian God.” This is just “God.”\textsuperscript{34}

Casting about for a grievance, Butler appeared surprisingly unprepared for this set of questions. Well, he mumbled tentatively after a pause, the prayer “talks about a ‘he.’ It says ‘him.’” (In fact, it said neither.) Some Jews might take offense at that, he speculated. Since they believe that God the Messiah is still coming, they don’t think we know “what form that God is going to take…” “He” might not be a “he” at all.\textsuperscript{35}

\textsuperscript{31} Oral Argument Transcript, \textit{Engel v. Vitale}, 11.
\textsuperscript{34} Oral Argument Transcript, \textit{Engel v. Vitale}, 19.
Still not having heard a particular grievance troubling to these particular petitioners, Stewart remained flustered. The justice wondered if he should bother pursuing this further. But Butler did have a point that even this shallow prayer tacitly makes some theological assertions. “I suppose,” Stewart conceded, “there are some Christian religions [too] in which...believers might possibly take some technical offense at that [non-existent gender reference],” because “we believe in a Trinity.”

Stewart probably intended to use “we” as indirect speech, meaning something like “These other Christian religions say that ‘we Trinitarians don’t approve of this monistic prayer.’” But it sounded a bit like Stewart had taken off his robe to reveal his own Trinitarian commitments, and he quickly tried to abandon the point. “I didn’t want to launch into a theological discussion,” he backtracked. Still, he hadn’t yet heard a particular grievance, so he reconsidered again, coming back for one last attempt. “What is there in this prayer...without getting into a theological discussion—what is there in this prayer that people of the Jewish faith find objectionable?”

Being required to state a theological objection without being allowed to “get into a theological discussion” could be considered an unreasonable demand, but Butler had by now again found his footing. First, the lawyer wanted to reiterate his view that a lawsuit on establishment grounds does not in fact require a particular grievance. It is simply not the government’s business to promote religion and any citizen—especially a tax-paying one—has the right to complain if it does. In addition, though, Butler had now thought of a few grounds on which even theists might object to this particular prayer. Taking the Jewish example again, Butler noted that some religionists (though he doesn’t argue as if he speaks specifically for his clients here) might argue that true prayers can be said only in synagogue, and/or only in Hebrew, and/or only wearing a yarmulke.

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Again more like dorm room banter than an orderly debate among the country’s greatest legal minds, a handful of justices ignored Butler’s helpful comments here, attempting to jump back to previous questions. How would he distinguish between promoting religion proper and promoting love for a country which has always been religious? What about “the Pledge of Allegiance to the Flag” which “now included in its language the expression ‘One Nation under God.’” And what is to be done with the Bible? Must it be excluded from the schools?39

Earlier in the argument, Butler had been presented with a number of questions about the Bible, and he had struggled not to sound dismissive of its possible permissibility in a well-rounded curriculum. Mindful of limiting the defense to portray his position as extremist, he repeatedly distinguished between teaching religion and teaching about religion. “I wouldn’t bar from the public schools systems,” he clarified, “teaching about religion. But when it engages in religious activity, where the avowed purpose is to promote religion, one religion, all religions, then I think this is barred—this kind of activity—by the First Amendment.”40

The justices were unconvinced that this distinction of “teaching” versus “teaching about” was so clear cut. Some of them pointed to the fact that their own session that morning, and indeed every morning, opened with the crier’s shout, “God save the United States and this Honorable Court!” That surely isn’t teaching about religion, but neither would it qualify as teaching or promoting religion. Or would it? What sort of act is it? Did Butler believe it is also unconstitutional? The justices joked amongst themselves that perhaps a lawsuit was coming. Perhaps one of them was going to sue his own court over the crier’s constitutionality.41

Butler was unsure of where to go, so he tried to buy time with his own joke. If that case is on its way here, "your Honor, I'm glad I'm not bringing it." The aside delighted the laughing gallery, but Frankfurter was undeterred. "I don't see why you seek to escape it, why you seek to avoid it. It could be..." a legitimate question in light of the your case, could it not?  

Butler faced a dilemma. His private suspicions or desires about the long term implications of this case were one thing. What was prudent to say here, now, was quite another. Yet he did possess a host of quotes from a few founding fathers who were themselves uncomfortable with paid legislative chaplains and other late eighteenth century manifestations of public religion—that was, state Christianity, even if not state Episcopalianism or state Congregationalism. He offered a brief James Madison citation to this effect, but then paused briefly, as if to reconsider. What would this type of aggressive tactic possibly gain him here? Going for the jugular, hinting that he was a radical seeking to uproot all of civil religion would ratchet up the stakes greatly, and certainly also reduce his chances of victory.  

Backtracking, Butler took a cue from a justice who wondered if "the fact that [this case is] in the school makes it a distinctive problem..." Common sense requires that a distinction be drawn between young impressionable students in a compulsory educational institution, and the adult lawyers in a courtroom that doesn't exist to nurture them. "Here there are two distinct differences. One is, of course, that the public school system is compulsory, that every child is obligated to go to school. The second is, of course, teaching. The environment in which it's said is a teaching environment..."  

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42 Oral Argument Transcript, Engel v. Vitale, 15.  
43 Oral Argument Transcript, Engel v. Vitale, 15.  
45 Ronald Flowers explores the differences between court rulings on elementary/secondary school-age children and college age students; see That Godless Court? Supreme Court Decisions on Church-State Relationships (Louisville: Westminster/John Knox, 1994), 80.  
Relevant precedents here include not only *McCollum* where the state inappropriately employed its coercive powers to get catechumens to religion classes, but more provocatively, *Brown v. Board*. Butler admitted that the “right” decision here may not be popular, but that was only one of the ways where this case paralleled the landmark desegregation case. The court had agreed in *Brown* eight years before that the separation of the races left a permanent mark on minority children. In a parallel way, asking creedal minorities to separate themselves would leave a psychological impression on them. It highlights difference in a context aiming at civic unity. If the state suggests that a conscientious child needs to remove himself “solely because of a religious belief, because he doesn’t believe in the way the prayer is being said, or he believes he should pray in another way, or he believes he should wear a yarmulke, or he believes that he should take some other form of traditional prayer,” Butler inquired, “isn’t that an unfair separation which, in effect, could leave an indelible mark on his mind because of his religious beliefs?”

But again, aren’t there a host of other implications that follow from this line of argument? Wouldn’t this point also preclude the scholastic use of the Pledge of Allegiance, based on the atheists’ denial that this country is “under God”?

While possibly personally ambivalent again, Butler had little choice but to insist that a major distinction exists between prayer and the Pledge—even if, as Justice Stewart insisted, the latter also “presupposes and implies a dependence upon a Supreme Being by this entire nation.” Butler answered unambiguously: “No, I have no objection to [the Pledge], your Honor.” If he didn’t do this, he knew his opponents would be able to construe his argument as a subversive attack on hundreds of years of American practice rather than as merely the humble petition of parents objecting to an eleven-year-old “innovative” prayer. Acts of allegiance to a “political faith” must be distinguished from acts of allegiance to a “religious faith,” Butler insisted.

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The state may and should encourage love for the nation—a nation that may in fact be religious. But that doesn’t mean that the state should act to encourage directly the religious nature of the nation. He highlighted the parallels to and divergences from *State Board of Education v. Barnette*, the 1943 case where Jehovah’s Witnesses challenged West Virginia’s encouragement of the Pledge of Allegiance in schools. The Court determined that state promotion of the Pledge is legitimate, so long as there is no compulsion. In Butler’s reading, the Pledge is allowable because it is chiefly political; prayer is not because it “is solely religious.” The Constitution precludes the latter, though not the former.

Justice Brennan asked if Butler would object then to allowing students to begin the day with a cry something like, “God save the United States and this school.” The stumbling and equivocating Butler proved unable to offer a straight answer before his time was up.

The exchanges had been something like a large offering of intellectual appetizers—provocative and appetite-heightening, but not nearly as satisfying as a meal. Hardly a single issue has been tightly defined. With the exception of Potter Stewart, who came off as almost hostile to Butler’s argument, it was difficult to determine where any members of the court stood.

As Mr. Daiker rose for the defense, he informed the court that he would be splitting his time with Porter R. Chandler, who had been hired independently by concerned parents of many denominations—Christian and non—in the town. They worried, the lawyers explained, that their children would be deprived of the opportunity to participate in their “national heritage” if the plaintiffs prevailed. Daiker’s case also received substantial support from the attorneys general of nineteen other states who had filed *amicus* briefs urging the court to respect the American tradition of school prayer. (A handful of “friend of the court” briefs had also been

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submitted by Jewish groups in support of Mr. Butler’s assertion of school prayer’s unconstitutionality.)

Daiker took early aim at Butler’s “teaching religion” versus “teaching about religion” distinction. The Regents’ Prayer, he suggested, fit in neither box. Instead, like the Declaration of Independence and the constitutions of forty-nine of the fifty states, it is “preamble.” Arkansas’s Constitution, for instance, reads almost identically to the New York prayer, “We the people of the State of Arkansas, grateful to Almighty God for his blessings and acknowledging our dependence upon him…” Such utterances were simply the collective acknowledgement of God and his goodness toward us that the people already believed individually. These preambles defined the basis on which the people together assembled. It was civic liturgy.\(^{52}\)

Daiker argued that every party in all church-state lawsuits and debates believed that his or her position was properly “neutral,” so assertions of one’s own neutrality could not possible persuade anyone. The question for the day was what people mean by neutrality, and on this point the plaintiffs and the defense offered two very different courses. Daiker defined the debate as between those who think that state should accommodate the religious nature of the people where possible, and the strict separationists who expect people to act as if there is no god whenever they enter the public square. The latter position, he argued, has no history among us and no basis in the Constitution. The Constitution does indeed rightly “prevent and prohibit a state religion, but not…a religious state.” Our peoples, who adhere to many diverse and “varying faiths,” are not divided but rather united by acknowledging collectively that we share a “common denominator.” The state does not establish a particular religion when—favoring no specific sects and avoiding all compulsion—it acknowledges the Supreme Being as the source of our freedom. With this last reference,

Daiker referred to President Kennedy’s own request “for God’s blessing on the United States of America” less than three months earlier in his State of the Union address.\textsuperscript{53}

This exploration of what constitutes “teaching” religion, and the possibility of being generally religious or spiritual without being particularly sectarian or ecclesiastical, interested the eight men sitting in front of him. (The newly appointed Justice Byron White would not take his seat for two more weeks.) The court’s 1952 \textit{Zorach} decision, after all, had explicitly affirmed that Americans “are a religious people whose institutions presuppose a Supreme Being.”\textsuperscript{54} Frankfurter attempted to summarize where Daiker had been leading them: “Do I fairly understand the line of your position...[that] it isn’t \textit{teaching} religion to take for granted that which underlies our whole national life, as indicated in \textit{Zorach}? Is that your position?”\textsuperscript{55}

“That is my position, sir,” Daiker chirped, happy to hear his argument being articulated from the bench.\textsuperscript{56}

“You don’t promote [or teach] something [when] you take it for granted,” Frankfurter continued.

“No, sir.”

“You don’t \textit{promote} the air which you breathe.”

“That is correct, sir. This is an affirmation of all that we have learned since we were youngsters.”

So “is it a religious practice?” Frankfurter still inquired.\textsuperscript{57}

No more than any other civil ritual with a general religious reference, Daiker answered, such as “God save the Court!” These sorts of acts are everywhere in America’s past and present. How could it suddenly become illegal to affirm our common heritage?

Daiker labored to present scholastic prayer as simply one expression of this heritage, indistinguishable from any other expression. But the justices were not yet there; Frankfurter spoke for them:

Well, Mr. Daiker, as I understand Mr. Butler, neither he nor his clients object to any such prayers anywhere except in the public schools, where the children are compelled to come, and where they will be indoctrinated with the prayer as a matter of training, and where they will be held up to contempt or ridicule if they or their parents should want them excused, and pointed out as being different from the others.\(^{58}\)

Voices all along the bench joined Frankfurter in wondering aloud if a greater distinction needed to be drawn between the participation of those under eighteen and those over eighteen in such acts. Seeing this as an opportune time to enlist the spokesman of the parents of forty-one minors whose own “right” to participate was here in question, Daiker yielded the floor to Mr. Chandler.\(^{59}\)

Chandler sounded as if he had been itching to get to the microphone since the first minute of Butler’s argument. He vehemently objected, he began, to Butler’s characterization of this case as about “an attempt by the state to introduce religious practices into public schools.” No, Chandler said, the attack here was “from the other direction.” The plaintiffs, not the defendants, were the innovators, attempting “a compulsory rewriting of our history in the fashion of George Orwell’s ‘1984.’” This was about an attempt to “drive out...long-established, venerated” traditions and to “eliminate all reference to God from the whole fabric of our public life and of our public educational system.” This was about whether the state can or must sanitize life and education of the basic affirmations of God natural to all creatures. True “neutrality,” he said, would be neither promoting nor seeking to purge life of religion. The people should be allowed their beliefs and their traditions.\(^{60}\)

Chandler repeatedly affirmed his opposition to coercion of all types, but he was notably less dispassionate than Daiker had been in summarizing the plaintiff’s position and

\(^{60}\) Oral Argument Transcript, *Engel v. Vitale*, 42.
in insisting on the rights of the majority. He elicited critical comments from the bench after claiming that Butler wanted the word “God” eliminated from schools. After being corrected (since Butler was potentially open to the study of comparative religion), he retreated to the supposedly more modest claim that, if the plaintiffs prevailed, students would no longer be allowed to study the Declaration of Independence. It wasn’t clear how such bombast served his case when he could have more responsibly asked if the plaintiffs’ position would allow for school programs where students were given the opportunity not just to study but also to recite the declaration, with all of its providential assertions.\footnote{Oral Argument Transcript, \textit{Engel v. Vitale}, 48-49.}

Chandler stumbled into similar problems at various points when he heedlessly trumpeted the rights of the majority without qualifications. What then is the point of the Bill of Rights at all, if the majority can act unimpeded at any given moment? And would he be similarly comfortable with his position if some local community had a Muslim majority and chose “a Mohammedan prayer?” one justice demanded.\footnote{Oral Argument Transcript, \textit{Engel v. Vitale}, 49-50.}

The time was up, the case submitted. And no one knew where the justices stood, or where things were headed. In marked contrast to the black-and-white pro- and anti-school prayer forces of the coming decades, these oral arguments yielded nothing like unambiguous certainty. Different constituencies across the country tried to read the tea leaves, but the court was obviously going to be deliberating for a while. With all of the media anticipation and yet no real news to report, Superintendent Hansen of the D.C. public schools stepped into the spotlight. Morning exercises would continue, he announced, in the schools under his stewardship. As he saw it, compulsion appeared to be the court’s central concerns. The District allowed atheists and agnostics to opt out, so its practice would be fine.\footnote{\textit{New York Times}, April 20, 1962, 24.}

In the paneled chambers a few blocks away back at the Supreme Court, William Douglas continued to be deeply concerned about the case, but compulsion was not near the center of
his thought. The immediate source of his angst was the divergent ways the justices had been moved by Butler. All except Stewart had been impressed by the ACLU’s spokesman, and no disputed either that the state had written a prayer, or that prayer was a religious activity. In spite of these initial points of agreement, though, Douglas was in a sort of no man’s land. On what basis could this prayer be criticized and all other state prayer be tolerated? Chief Justice Warren tried to console him, reminding Douglas that no lawyers before a court are “compelled” the way children are before their teachers and classmates. To the Chief, the age of the parties in question was central.⁶⁴

Warren directed Hugo Black, sometime Unitarian, to take a crack at drafting an opinion. Black was already back in his office with his clerk George Sanders working through an exhaustive reading list of sixteenth and seventeenth century texts by members of religious communities who considered themselves persecuted by established English religion.⁶⁵ Black was probably the least religious member of the Court but also one of the most fascinated by the subject. Influenced by Paul Blanshard’s many popular anti-Catholic investigations, Black often thought of religion mainly as a tool of oppression.⁶⁶ Warren’s tapping of Black, an absolute separationist, spoke volumes. As the author of the 1947 Everson and 1948 McCollum opinions, he had written that laws not only cannot “aid” or “prefer one religion” over others, but also that they cannot seek to “aid all religions” equally.⁶⁷ Church/state scholars regarded Black as having the least sympathy of any of the

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⁶⁴ Schwartz, Super Chief, 440-41.
⁶⁶ American Freedom and Catholic Power (Boston: Beacon, 1949) and Communism, Democracy, and Catholic Power (Boston: Beacon, 1951) were probably the most widely read of Blanshard’s works. In My Catholic Critics (Boston: Beacon, 1952), Blanshard responds to charges that his writings are anti-Catholic. He claims, somewhat persuasively, that his position should be understood more narrowly—and more broadly—as anti-clerical, than as properly anti-Catholic. Blanshard, like many other Americans who thought they heard clerics asking for childlike faith as opposed to reflective questioning, worried that the Catholic demographic boom could lead to a situation where a sizable portion of the electorate believed it was religiously constrained to vote for particular candidates and support particular legislative measures. Those fears were heightened in the weeks before Kennedy’s election as the three Catholic bishops in Puerto Rico “had a pastoral letter read in all churches in Puerto Rico Sunday [preceding a major election] directing that Catholics not vote for the Popular Democratic party” (Baltimore Sun, October 28, 1960, 1).
justices for Daiker’s argument that the First Amendment condemned a “state religion,” but not a “religious state.”

This distinction, which placed a premium on how one defined “sect,” had made greater sense in an age without public atheists, an age when many were not “institutionally religious” but few would go so far as to publicly deny a more generic religiosity. To assert irreligion would have been heard by most ears as an assertion of one’s own immorality—hardly an attractive proposition. But with the court having admitted the previous year in Justice Black’s Torcaso decision that the Maryland man could indeed be a faithful notary even without the fear of an eternal Judge watching over him, the relationship between the state and its god had been permanently altered. Initial steps down this path had been taken four years earlier when the U.S. Court of Appeals in the District of Columbia, the second most important court in the land, had approved the tax exemption of the Washington Ethical Society as a “religious corporation,” even though the society was not explicitly theistic. The Court of Appeals claimed that it possessed no authority to determine whether theism is a necessary component of a definition of “religion.” By implication the decision suggested that the state could have no interest in whether religion in general, not simply some particular sect, was healthy.

By June 25, 1962, the final day of the court’s 1961-62 term, after lengthy drafts and many revisions, the seventy-six year old Black had finally secured the buy-in of enough of his colleagues to deliver the opinion of the court. As the most senior member in terms of experience—today marked the end of his twenty-fifth year—Black incarnated many of the high court’s and the nation’s defining twentieth century moments. An Alabaman who had been briefly involved in the Ku Klux Klan, he had served as a U.S. Senator before being appointed to the judiciary’s elite tribunal by the court-packing hopeful, Franklin D. Roosevelt. In many ways, Black’s stately disposition evoked images of an Old World aristocrat; yet, in the manner of a thoroughly modern politician, Black became the first Supreme Court justice to speak directly to the American people via electronic media. On
October 1, 1937, after journalists had discovered his KKK involvement—he had briefly maintained KKK membership in the mid-1920s, just before his run for the U.S. Senate—Black went on national radio to confront head-on the reality of his infelicitous past associations and his present inclinations toward equality, racial and otherwise.68

After weathering the storm of public controversy surrounding the revelations, Black had ultimately gained the stature to pen the most important First Amendment religion cases in the history of the court. Now, with voice trembling, he added to his magisterial bibliography by beginning to deliver the *Engel* decision.69 His wife, well aware of his near obsession with the tendency of dominant religions to lead ultimately to people having “their tongues cut or their eyes gouged out,” went to the courtroom to hear him on this special day. She would long recall the atypical passion of his reading that day, as if he were delivering a “sermon” back in Birmingham.70 *Engel* was not only the most widely referenced opinion Black would ever deliver; it had a significance in the broader court’s annals as well. In only a matter of days, it would provoke the largest quantity of mail ever sent to the court, before or since.71

In a 6-1 decision, the Supreme Court overruled the New York courts and did indeed “shake the religious foundations of the nation.”72 Justice Byron “Whizzer” White had been added to the court after oral arguments, and Justice Frankfurter had been on bed rest since, so both abstained. It was no surprise that Stewart judged the prayer constitutional; it was a surprise that he stood alone. Black wrote for five of the six justices urging reversal; Douglas wrote for himself.

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Drawing on his recent readings on persecution in early modern religious history, Black oddly devoted a sizable portion of his fifteen page opinion to recounting the disputes surrounding the Book of Common Prayer and the mischief caused by state sanction of religion. The court, Black said, agreed with the plaintiffs' contention "that the constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers." Not only are religious minorities likely to be marginalized by such practices, but vibrant religions will be distracted and "debased" by wasting their time trying to influence governments rather than influence and serve individuals.

Black's historical judgment is interesting and indeed largely persuasive—what besides voluntary competition accounts for the unique vibrancy of American religion among industrialized nations?—but it isn't a particularly legal argument. On these scores, Black spoke more densely but no less profoundly:

Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of the students is voluntary can serve to free it from the limitations of the Establishment Clause, as it might be from the Free Exercise Clause, of the First Amendment, both of which are operative against the States by virtue of the Fourteenth Amendment. Although these two clauses may in certain instances overlap, they forbid two quite different kinds of governmental encroachment upon religious freedom. The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate to coerce nonobserving individuals or not.

For Black, the New Hyde Park officials' claims that they were not coercing dissenters were beside the point, for the practice was unconstitutional apart from free exercise concerns.

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74 Of Black's twenty-two footnotes, eleven were to European and colonial religious history, six to James Madison and debates in Virginia, four to specific facts in this case, one clarifying comment (footnote 21), and none to precedents.
75 Harvard legal scholar Mark Howe quickly took Black and colleagues to task for broadly "historical" rather than precisely legal decisions: "I believe that in the matters at issue the Court has too often pretended that the dictates of the nation's history, rather than the mandates of its own will, compelled a particular decision. By superficial and purposive interpretations of the past, the Court has dishonored the arts of the historian and degraded the talents of the lawyer." See Howe, The Garden and the Wilderness (Chicago: University of Chicago, 1965), 4.
The New York authorities had written and instituted a prayer, and in so doing had established a religion. The fact that it was a shallow religion was irrelevant; government officials have no responsibility—and indeed no freedom—in the business of religion.\textsuperscript{77}

Perhaps the most notable feature of the court’s ruling is nothing in Black’s opinion proper, but rather the unexpected agreement of an odd cast of characters—Justice Stewart who asserted it went too far, Justice Douglas who surprised professional court-watchers by asserting that it didn’t go far enough, and the lead attorneys on both sides—in judging the majority opinion inconsistent. This is not to say, of course, that all were equally upset about the alleged deficiency. Butler had won and he wasn’t complaining. Still, Douglas’s concurring and Stewart’s dissenting opinions are instructive in that both conclude there is no basis on which to reject the Regents’ Prayer without also condemning a much broader array of American public religious practices. Black’s opinion nowhere suggests that all of this follows from the present ruling, but neither does he limit the \textit{Engel} decision with anything like an over eighteen/under eighteen age distinction that had been explored in oral arguments.\textsuperscript{78}

William Douglas, an atypically public justice who had turned down Harry Truman’s invitation to run with him as the vice presidential candidate in 1948, ducked adverse publicity and controversy less than any of his colleagues.\textsuperscript{79} Still, he struggled a good deal in writing his concurring opinion—and not simply because he was accusing his colleagues of stopping at a middle position in this case that, although less controversial, was also less legally justifiable than either of the “extreme” intellectual options (his and Stewart’s) that the majority sought to navigate between. More vexing personally to Douglas, with only two years less tenure than Black on the court, was the tacit back-tracking in the taking of his

\textsuperscript{78} In a footnote (#21 at 435), Black asserts that such inferences should not necessarily be drawn, but he does not explain why. Stewart, in his own footnote (#9 at 450), says he is “at a loss to understand the Court’s unsupported \textit{ipse dixit} that these official expressions of religious faith in and reliance upon a Supreme Being bear no true resemblance to the unquestioned religious exercise that the State of New York has sponsored in this instance.”
present position. It is possible with some intellectual gymnastics to reconcile his *Engel* opinion with the 1952 *Zorach* decision he had delivered for the court. But there was no way to harmonize his view here with the precedent-setting 1947 *Evron* case where Douglas served as the crucial swing vote in the 5-4 ruling that tolerated the public funding of busing to parochial schools. He of course wasn’t the first justice in history to have to humble himself and acknowledge a public error. Nonetheless, he agonized now over the crucial vote he had cast with Black fifteen years before. “The *Evron* case seems in retrospect to be out of line with the First Amendment.” He then proceeds, with no lack of irony, to praise the dissenting opinion of Justice Rutledge that he had previously rejected.  

The mild embarrassment notwithstanding, Douglas’ long string of opinions leave the historian little room to doubt that the justice was motivated more by zeal for the purity of his views than by image-management concerns. And David Fellman’s 1959 *The Limits of Freedom* had hit him hard. As the justice now saw it, this case turned neither on coercion (there was none) or on whether substantive religion was here being taught (he said it wasn’t). Instead, the issue of the day—the only real matter at issue—“is whether the Government can constitutionally *finance* a religious exercise.” It cannot.

He acknowledged the court’s tradition of deciding controversial constitutional questions such as this in their narrowest possible form, and that was clearly what Justice Black had been attempting. Nevertheless, to Douglas, intellectual honesty required the court to acknowledge that America’s current system, at both the federal and the state level, was “honeycombed with such financing,” and therefore it was also honeycombed with constitutional violations. His partial list of illegitimate undertakings included: government

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81 This is not to say that Douglas was not also political—and apparently often dishonest—in managing his image. See, e.g., Bruce Allen Murphy’s recent and devastating *Wild Bill: The Legend and Life of William O. Douglas* (New York: Random House, 2003). The argument here is simply that Douglas was willing to backtrack from his own previous opinions when he became genuinely persuaded of an alternative.
chaplains, compulsory chapel at the service academies, worship services in prisons and
government-run hospitals, presidential religious proclamations, public oaths with religious
references, government educational construction loans being extended to religiously
affiliated institutions, G.I. Bill beneficiaries being allowed to attend denominational schools,
references to God on coins and in the Pledge of Allegiance, tax-exempt status for churches
and other religious non-profit organizations, federal lunches being given to poor students at
religious schools, the tax deductibility of gifts to religious corporations, etc. Each instance,
Douglas said, amounts to a government establishment of religion and cannot be tolerated
under a modern reading of the First Amendment.

At the other end of the bench, Justice Stewart agreed whole-heartedly with Douglas
that the modern reading of the First Amendment would not allow Black’s current opinion.
The problem for Stewart, though, was that this modern reading had almost nothing in
common with the original intent or long-established interpretations of the “great” First
Amendment.84 With more than a little irony, Stewart quoted Douglas’s Zorach decision to
remind his brethren that Constitution tolerates—and the court had always tolerated—“the
deeply entrenched and highly cherished spiritual traditions of our Nation.”85 Hinting at the
joke the justices began during oral arguments, he pressed the point that the court was here
losing its historical sense, beginning his whirlwind recitation of America’s past and present
public “religious traditions” with a citation of the Court’s crier. “Since the days of John
Marshall” down to that very day’s opening, “one of our officials invokes the protection of
God” with the daily shout, “God save the United States and this Honorable Court.”86 None
of these traditions has ever been found to violate the establishment clause of the First
Amendment until today, when the court announced a new reading of the First Amendment
without any discussion whatsoever of how every previous court and government official—

including the founders themselves—could have overlooked the inconsistency of their constitutional commitments and their actual practices.

The "great principle" of the establishment clause was being sadly misapplied by the court today, Stewart concluded. "I cannot see how an 'official religion' is established by letting those who want to say a prayer say it." The endless repetition of "metaphors like the 'wall of separation,'" which is "nowhere to be found in the Constitution" does not responsibly aid the court in its important function. Instead such phrases mislead the court into conceiving of their task as the provocative separation of religious expression from the nation, rather than the passive maintenance of the separation of religious organizations from the state. "For we deal here [in Engel] not with the establishment of a state church, which would, of course, be constitutionally impermissible, but with whether school children who want to begin their day by joining in prayer must be prohibited from doing so" by a distant judicial body.  

Stewart's dissent impressed no one on the court (at least not enough to win him any subscribers), but it catapulted him to instant celebrity in the court of public opinion. For almost every citizen moved to shout about the decision—a Gallup Poll revealed that 80% of parents nationwide wanted school prayer to continue—cited Justice Stewart's dissent as a partial basis for his or her judgment. The long-anticipated decision, delivered on a Monday, immediately dominated news reporting. But by the middle of the week, the decision itself had been largely overshadowed by the perhaps more surprising screams of outrage as ordinary citizens recorded their dissents.

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88 An initial poll at 80% was released August 11, 1962. (Facts on File Yearbook, 1962, Volume 22 [New York: Facts on File, 1963], 293). An earlier poll, when the response was more visceral, had shown closer to 85% of Americans dissatisfied with school prayers coming to an end. Seven years later, students of American religion continued to estimate the portion of Americans opposing the Engel and Abington decisions at around 80%. E.g., Martin Marty, "Secularization in the American Public Order," in Donald A. Giannella, ed., Religion and the Public Order (Ithaca: Cornell, 1969), 18.
Mille Duelberg, a reporter in Houston looking for the response of grassroots America, button-holed twenty-eight consecutive pedestrians but couldn’t elicit a single neutral comment, let alone a pro-decision opinion.\textsuperscript{89} Two thousand people demonstrated in Tuckahoe, New York, demanding an amendment to the Constitution. Documents flowing from this and related events ultimately sought not only an altered First Amendment but also an altered court make-up.\textsuperscript{90} On porches across the country, neighbors signed petitions to impeach various members of the Supreme Court, especially Justice Black, who communist-hunters had long suspected of being a “Red.”\textsuperscript{91} A sign appeared outside a New England Episcopalian church reading, “Congratulations, Khrushchev.”\textsuperscript{92} In Los Angeles, Judge Ida May Adams, a thirty-one year veteran of the municipal bench, editorialized more than usual in the prayer she used to open her court session. She asked the Lord to “bless the Supreme Court and let it be shown the error of its ways.”\textsuperscript{93} A Knights of Columbus official in Lawrence, Massachusetts, declared that “the highest tribunal of American justice has fallen prey to the theories of communist-ruled countries where prayer is a sin against the state.”\textsuperscript{94}

Billboards along Carolina highways that had been urging the impeachment of the chief justice since the \textit{Brown v. Board} decision eight years earlier were altered to suggest that Warren’s removal was now necessary not only to save America but to “Save Prayer.”\textsuperscript{95} Mrs. Cornelius DeForest of Cincinnati tried her hand at article writing, stunned that “our Supreme Court Justices (with one notable exception), usually so adept in discerning legal technicalities, failed to make a distinction between Christianity and church-ianity, faith in the inclusive power of divine love and guidance versus denominationalism and factionalism. It is this common ground of mutual understanding which Emerson calls the Over Soul that

\textsuperscript{89} \textit{Newsweek}, July 9, 1962, 44.
\textsuperscript{92} \textit{The Nation}, July 14, 1962, 2.
\textsuperscript{93} \textit{Newsweek}, July 9, 1962, 44.
\textsuperscript{94} Blanshard, \textit{Religion and the Schools}, 61.
\textsuperscript{95} Blanshard, \textit{Religion and the Schools}, 53.
makes us one nation indivisible under God.”96 Marilyn Ast of Muncie, Indiana, echoed Mrs. DeForest’s fears about the “stifling vacuum” created at the soul of America. She confided to friends that, in dangerous times, her comfort in being an American had never been derived from the number of times our rockets could orbit the globe, but rather from the sense of a special relationship with God. Have we just ended that national covenant, she wondered.97 Many Americans reading the current issue of Reader’s Digest, which included an article with young astronaut/hero John Glenn praising God as the ultimate sustainer of the space program, shared Ms. Ast’s question about the covenant.

The New York Times tracked the “violence” of the outcry but the reporters didn’t mean it literally.98 Frances Roth, wife of the Engel case’s organizing litigant, was not so sure, as the number of angry phone calls—wishes of polio on her children and barks of “communist kike” were typical—increased at her home.99 In the towns surrounding Mrs. Roth’s home, superintendents of eight school districts publicly vowed to defy the court. Said one of them, “A school without prayer is not a school.”100

Civic groups without any direct connection to school governance nonetheless sensed a moral obligation to address the “deconsecration” of the nation. The Virginia Farm Bureau announced that this country cannot defeat communism if we, at this crucial moment, weaken our own Judeo-Christian moral stance.101 The General Federation of Women’s Clubs, holding their annual meeting in Washington, DC, voted decisively only three days after the decision to work for a constitutional amendment.102 American Legion branches passed similar resolutions.103 The Kiwanis Club of Elmira, New York, notified the government of its vigorous objections to the court action, while the city council of Minden, Louisiana, went

99 Newsweek, July 9, 1962, 44.
100 Newsweek, July 9, 1962, 45.
public to explain to voters the justices’ error in failing to recognize that the freedom to assemble secures for school children the right to this type of voluntary prayer.\textsuperscript{104} Eight thousand attendees and two hundred picketers at a Christian Anti-Communism Crusade rally at Madison Square Garden heard former FBI agent Herbert Philbrick explain how the hopes of the religiously oppressed around the world, who look to the United States for leadership, had just been dramatically reduced.\textsuperscript{105} Wealthy Connecticut residents explored ways to amend their wills to guarantee that local school systems could claim inheritances from their estates only if the schools continued scholastic prayer and Bible reading.\textsuperscript{106}

Local newspapers fanned the flames of popular passion. A political cartoon in the \textit{Journal-American} showed a black-robed man hammering the word “God” out of “In God We Trust” on a penny. The New York \textit{Mirror} asked if Hugo Black had perjured himself by saying “So help me God” in his oath of office, given that he was now attempting “to expel God from American life.”\textsuperscript{107} The \textit{Daily Times Leader} of West Point, Mississippi, suggested that the Declaration of Independence might now be unconstitutional.\textsuperscript{108} Down the road in Vicksburg, the \textit{Evening Post} ruminated on the “untold glee [the court brought] to the capitals of the godless communistic world.”\textsuperscript{109} From Long Beach to Buffalo, from the Chesapeake Bay to the Puget Sound, and even more at landlocked places in between, newspapers editorialized that the court’s logic and especially Justice Douglas’s concurring opinion guaranteed that the second shoe on church/state matters had yet to drop.\textsuperscript{110}

Among popular religious figures, New York’s Cardinal Spellman got to the microphone first, announcing only hours after the decision that he was “shocked and frightened” about our national future, given this radical departure from our traditional

\textsuperscript{104} \textit{Congressional Record}, July 11, 1962, 1962 Appendix, A5273, A5278.
\textsuperscript{105} \textit{New York Times}, June 29, 1962, 1, 5.
\textsuperscript{107} \textit{The Nation}, July 14, 1962, 2.
\textsuperscript{109} \textit{Congressional Record}, June 30, 1962, 1962 Appendix, A5036; see also \textit{The Nation}, July 14, 1962, 2.
commitments to religion. To Los Angeles’ Cardinal McIntyre, the judgment was “scandalizing.” A Dallas bishop called it tragic that America’s children would need to “bootleg” their religion into the learning environment. Boston’s Cardinal Cushing lamented the government’s attempt to “quarantine” God.111 “The only thing communism fears is religion, and religion is the only thing that can save the world from being dominated by the butchers and tyrants of the Communist world.”112 The Vatican too announced its disappointment at the “new course” of “indifferentism” being charted for the U.S. The church charged America in carefully measured terms to pay attention to what we now embraced to fill our newly created national spiritual “void.”113

Less cautious was the warning the Jesuit magazine America issued “To Our Jewish Friends” in its September 1 edition. The country’s most widely distributed Catholic publication, viewing the prayer cases primarily as a Jewish attack on Christian America, suggested that additional attempts to secularize public life could prompt an unnecessary anti-Semitic backlash. Before the issue had even arrived in homes, the New York Times learned of it and cried foul. Jewish organizations were joined by the Roman Catholic Commonweal, which began planning a special issue of the place of Jews in American society, in loudly rebuking America.114 “If a minority group [Jews] decides to wage a strong battle by legitimate legal and political means, then every other group has the minimal obligation to see that it is not deterred by extra-legal threats, warnings or social coercion,” Commonsweal wrote.115 America’s editors defended their comments, saying they were not trying to encourage anti-Semitism but instead to urge caution on both sides. Nonetheless,

111 Newsweek, July 9, 1962, 44-45.
112 Fremont Tribune, July 2, 1962, 96.
they invited Leo Pfeffer of the American Jewish Congress to write a reply to their editorial in the following issue.\textsuperscript{116}

Protestant spokespeople were not as monolithically united as Catholics in their opposition to the court. But neither were they as enthusiastically supportive as most of the Jewish community.\textsuperscript{117} While the mainline bureaucracies and denominational agencies tended toward strong agreement with the decision, the most visible individual Protestant leaders expressed disapproval as vigorously as did the Catholics. Billy Graham was exasperated: “This is another step toward the secularization of the United States.... The framers of our Constitution meant we were to have freedom of religion, not freedom from religion.”\textsuperscript{118} Reinhold Niebuhr, who had spearheaded Protestant criticism of Black’s \textit{McCoy} decision in 1948 again censured the court’s creative reading of “animosity toward religion” into the First Amendment. The justices insist on “using a meat ax for solving a delicate problem that requires a scalpel,” he charged. His influential \textit{Christianity and Crisis} went on to highlight the important distinction between state and society, and to reject any simplistic equation of the “public” in “public schools” exclusively with “state.”

Though public funding does indeed make the public school possible, such schools are not merely instruments of the government, but are more broadly expressions of the society, of the communal spirit. And “massive judicial flats from the Supreme Court” do in fact amount to “an infringement of religious liberty in its passive meaning [as opposed to its also important negative or protective meaning] for the vast majority of the American people.”\textsuperscript{119}

The official statements of the hierarchy of the Southern Baptist Convention emphatically affirmed the court’s ruling—with strict separation of church and state being the historical Baptist position—but it soon became evident that many individual Southern

\textsuperscript{116} \textit{New York Times}, August 27, 1962, 45; August 28, 15; August 30, 18; August 31, 18, 20; September 2, 39.
\textsuperscript{117} For a useful biographical sketch of Mr. Pfeffer and the broader charges of Jewish anti-Catholicism, see Joseph R. Preville, “Leo Pfeffer and the American Church-State Debate: A Confrontation with Catholicism,” \textit{Journal of Church and State} 33:1 (Winter 1991), 37-53.
\textsuperscript{118} There appears to have been more Jewish dissatisfaction with the court than Roman Catholic support for it.
\textsuperscript{119} \textit{Christianity and Crisis}, July 23, 1962, 125-26; August 6, 1962, 135-36.
Baptists were confused about who the denominational officials thought they spoke for. Rev. Louie Newton, past president of the SBC, summarized the public mood: “We just weren’t ready for six men to tell us that our fathers and mothers were all wrong about this business of acknowledging God as the supreme ruler of the universe.”120 Even the peddlers of positive thinking, Norman Vincent Peale and the upstart Robert Schuller were not feeling so good about the development. Both called on Congress to amend the Constitution to make the founders’ intent clear to the court.121

Using measures such as total stimulated legislative activity in Congress and volume of mail to the Supreme Court, many journalists at the time and church/state scholars since have judged the Engel decision the most unpopular judicial act of the twentieth century.122 While Engel may qualify as the most widely castigated judgment, it would be hard-pressed to match Brown v. Board in terms of the depth of anger provoked. And in many ways, the segregationist response to Brown paved the way for public attacks on the court in supposedly polite society for all future critics of Supreme Court decisions.

Not surprisingly, the anti-Warren Court white South provided the most fertile ground from which to ridicule the latest decision. Even though Catholics thought they had lost the most on June 25, concluding that this opinion doomed legislation granting federal aid to parochial schools, southern Protestant politicians tended to out-protest them in the first week after the decision. Rep. John Bell Williams proved the most quotable with his infamous quip that the justices “put the Negroes in the schools, and now they’ve driven God out.”123 Other members of the Mississippi congressional delegation joined him in discerning “a

120 Newsweek, July 9, 1962, 45.
123 U.S. News and World Report, July 9, 1962, 44. Bell would become governor of Mississippi by the late 1960s.
deliberate and carefully planned conspiracy to substitute materialism for spiritual values.”

The Alabama state legislature overwhelmingly passed a resolution condemning the decision. Carl Sanders, candidate for governor of Georgia, pledged “not only to go to jail but [to] give up my life” if necessary to defend continued prayers in his state’s schools. Rual Stephens, Deputy Superintendent of the Atlanta Public Schools, similarly consoled concerned parents, “We will not pay any attention to the Supreme Court rulings.” Given how southern schools were almost universally ignoring the court on segregation in the early 1960s, Dr. Stephens’ defiant rhetoric was not as courageous as it might sound. Anti-court grandstanding was a political winner with both prayer advocates and racists.

North Carolina representative Hugh Alexander renamed June 25 “Black Monday.” Democratic Congressman Robert Sikes told Florida constituents that “If the Supreme Court were openly in league with the cause of Communism, they could scarcely advance it more.” West Virginia’s Senator Robert Byrd, somewhat more discretely, suggested that “Somebody is tampering with America’s soul.” Mississippi’s Senator James Eastland said the court action reminds “every Christian family in the nation how far down the road the Supreme Court has gone toward judicial tyranny.” As chairman of the Judiciary Committee, Eastland also announced that he would begin holding investigatory hearings the following week. He was joined by dozens of members of Congress—both North and South of the Mason-Dixon line, in both houses, and representing both parties—in immediately proposing various constitutional amendments.

The unmatched volume of the protests by southern politicians and Catholic priests notwithstanding, the breadth of support in the coming weeks for amending the Constitution demonstrated unambiguously that commitment to school prayer was not confined to

124 Presbyterian Life, August 15, 1962, 15; Newsweek, July 9, 1962, 44.
126 Newsweek, July 9, 1962, 44-45.
128 U.S. News and World Report, July 9, 1962, 44.
129 Newsweek, July 9, 1962, 43.
southern or Catholic constituencies. In Illinois, where Pastor Darrell Harrison of Sunnyland Christian Church began selecting America’s founding documents as the texts for his “God and the Supreme Court” sermon series, Congressman Paul Dague decried the judiciary’s “usurpation” of the legislative function.\textsuperscript{131} Connecticut politician Horace Seely-Brown, Jr., pleased many southern colleagues by calling on judges to explain what had happened to the Ninth and Tenth Amendments, which retain rights for the states and the people, limiting federal jurisdiction to specifically enumerated powers.\textsuperscript{132} In the U.S. House, Pennsylvanians interpreted \textit{Engel} as an evaporation of the freedom of the American people, Wisconsiners demanded the removal of the communist-aiding judges, and New Yorkers warned “that the ruling could put the United States schools on the same basis as Russian schools.”\textsuperscript{133}

Spurred on by editorials appearing in all Hearst newspapers demanding and predicting an amendment, Capitol Hill by early July echoed with competing suggestions on how to revise the First Amendment.\textsuperscript{134} The most popular proposals left the free exercise clause untouched and merely expanded and clarified the establishment clause. Governments, federal and local, still would not be allowed to fraternize with denominations, but nonsectarian religious expression would be protected in public life—just as the founders intended, legislative sponsored explained. Representative Becker of New York, who would lead the pro-amendment forces in the new Congress after the November elections, raised his national profile by calling for an amendment the first day following the ruling, labeling the decision “the most tragic in the history of the United States.”\textsuperscript{135}

Some legislators worried that a narrow refinement of the First Amendment would be insufficient to restrain the conspiracies being hatched by the current Constitution-disregarding justices. Kansas’ Rep. Floyd Breeding tried to renew interest in a “Christian

\textsuperscript{134} The first editorial appeared in Hearst’s papers Friday, June 29; see \textit{Congressional Record}, July 9, 1962, 1962 Appendix, A5199.
Amendment” to the Constitution that he had introduced the year before. His proposal would reaffirm each individual’s freedom of religion according to his or her own conscience, but it would also recognize that America has historically been a Christian nation, under the “authority and law of Jesus Christ, Savior and Ruler of the nations,” through whom and from whom we receive our national blessings. He did not want to see an institutional establishment, but the general “Christianity” of the citizenry should be encouraged.\textsuperscript{136} Lawrence X. Cusack, a lawyer working for Cardinal Spellman, filed papers for a substantially similar amendment to come from the people themselves.\textsuperscript{137}

While waiting to see which amendment would prevail, school boards and administrators struggled to decide how to educate the youth in their care in light of Congressman Baring’s stirring speech, “Faith in God is America’s Secret Weapon.”\textsuperscript{138} In many northern school districts, where officials were less comfortable than were southerners with outright defiance of the court, teachers experimented with singing hymns and patriotic songs filled with religious references in place of prayer for their morning exercises. Some joked that if their students wanted a communal creedal confession to start their day, they could read in unison from the coins in their pockets, “In God We Trust.”\textsuperscript{139}

The nation’s governors, meeting in Hershey, Pennsylvania, at their annual meeting over the fourth of July, demanded an immediate amendment. Only Nelson Rockefeller, Republican governor of New York, failed to support the resolution. And even he, a \textit{New York Times} front page story noted, affirmed his on-going commitment to school prayer.\textsuperscript{140} He simply desired to “have the fullest possible study and discussion before the Governors offer an opinion.” Perhaps, he suggested, the high court’s decision could be read in such a manner as to permit the continuation of certain types of school prayer without having to

\textsuperscript{136} \textit{Congressional Record}, July 13, 1962, 1962 Appendix, A5369.
\textsuperscript{137} Blanshard, \textit{Religion and the Schools}, 56.
\textsuperscript{138} \textit{Congressional Record}, June 29, 1962, 1962 Appendix, A4944.
\textsuperscript{139} This suggestion would be made repeatedly in the House of Representatives’ hearings on a school prayer amendment in the spring of 1964; see chapter 5.
amend the Constitution. Editors of small Midwestern newspapers, who had spent the previous week reporting on all the “charges of atheism and giving aid to communism [being] hurled across Capitol Hill at the white marble building” were now hearing more trusted state officials closer to home offer similar assessments.

Senator Eugene McCarthy suggested to a Portland audience that the genuine belief of many ordinary citizens and elected officials that Engel had been “an incorrect decision” made it impossible to write off all of the pro-prayer posturing as either crypto-criticism of the desegregation decisions or crass political demagoguery. Yes, there was much of both, but men like McCarthy had encountered too many voters at town hall meetings, frightened about the alteration to long-standing civil religious custom, to view these concerns as merely epiphenomenal of other commitments. Neither did the editors of establishment newspapers like the New York Times and the Washington Post, both of which had supported the Engel ruling, doubt the sincerity of every anti-decision commentator.

Still, national journalists seemed to think Catholicism, racism, and vote-mongering explained the vast majority of the criticism of the court. The aptly-named Ned Calmer of CBS rightly noted that “demagoguery superseded discernment” in the first days after the ruling. But urban liberal observers nonetheless erred when they occasionally subtly suggested that other citizens could not honestly interpret the First Amendment in any manner other how they and the justices did. The New York Post was wise to point out that the Catholic hierarchy’s indignation was partly explained by “the potential impact of the

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142 Fremont Tribune, June 27, 1962, 1.
143 Alley, School Prayer, 108.
145 The Nation, July 14, 1962, 2.
decision on the aid-to-education battle.” Similarly, Paul Blanshard was right to publicize a Senate floor debate where Paul Douglas of Illinois got A. Willis Robertson of Virginia and Herman Talmadge of Georgia, two of the most vocal court detractors in the Senate, to admit that they did not, in fact, consider the Fourteenth Amendment to have been legally adopted.\textsuperscript{146} Nonetheless, neither of these factors adequately explains the widespread anger at the high court, which seems to have burned most brightly in those regions where the custom of school prayer was most frequently practiced, rather than simply in the South or in Catholic communities.

The vocal but “measured dissent” of former presidents Eisenhower and Hoover, neither of whom had upcoming elections, convinced some pro-court publications such as \textit{The Nation} to take the pro-school prayer sentiment a bit more seriously in spite of what it considered the more general “prayer hysteria.”\textsuperscript{147} Both men supported a prompt amendment. Hoover judged this moment “a disintegration of a sacred American heritage,” while Eisenhower reflected that America is indisputably based on certain “religious concepts” about individual rights flowing from a Creator. The Constitution, he insisted, cannot be read apart from the assumptions of the Declaration of Independence on which it is based.\textsuperscript{148}

The Catholic resident of the White House tried to avoid discussion of the decision, but the press wouldn’t let him rest. He was surely pleased that his headaches about public aid to parochial schools would likely now be disappearing, and without him having been the proximate cause of Catholic anger. But he did not want to rub salt in the wounds of his church or upset other American religionists by any outspoken support of the court. Finally, on Wednesday, Kennedy told the White House press corps that:

\textsuperscript{146} Blanshard, \textit{Religion and the Schools}, 55, 59.
\textsuperscript{147} \textit{The Nation}, July 14, 1962, 2.
The Supreme Court has made its judgment, and a good many people obviously will disagree with it. Others will agree with it. But I think that it is important for us if we are going to maintain our constitutional principle that we support the Supreme Court decisions even when we may not agree with them.

In addition we have in this case a very easy remedy, and that is to pray ourselves; and I would think that it would be a welcome reminder to every American family that we can pray a good deal more at home and attend our churches with a good deal more fidelity, and we can make the true meaning of prayer much more important to the lives of all our children. That power is very much open to us. I would hope that as a result of this decision that all American parents will intensify their efforts at home, and the rest of us will support the Constitution and the responsibility of the Supreme Court in interpreting it.¹⁴⁹

While the media frenzy continued, he was probably delighted to have commitments elsewhere as he and the first lady left for a trip to Mexico. Rev. Martin Luther King also made mildly supportive statements, aiming neither to provide cover for those who would ignore court rulings on any matter nor to appear out of step with black parents, who seem to have been at least as supportive of school prayer as white parents.¹⁵⁰

By Labor Day, most of the shouting had subsided. The passions of prayer partisans were not cooling so much as being rechanneled into explorations of amendment alternatives. The leaders of denominational Judaism and Protestantism, conversely, still shocked by the distance between their judgment and that being expressed by lay Protestants, explored options for "educating" the public.

The theologically serious in many traditions believed their co-religionists should share their wariness of state-sanctioned, nondenominational prayer for more reasons than the (also important) fact that even generic prayer could be civilly divisive. The public affairs officers of the various Baptist conventions invoked Roger Williams, that great crusader for religious liberty, to warn Americans that the slippery slope toward religious persecution

begins with seemingly innocuous government excursions into the religious sphere.\textsuperscript{151} Rabbi Philip Hiat, the Synagogue Council of America’s executive secretary, complained that the Regents’ Prayer is little more than “a Boy Scout oath....It’s a downgrading of prayer.” Dr. Franklin Fry, head of the 3.2 million member Lutheran Church in America, agreed: “When the positive content of faith has been bleached out of a prayer, I am not too concerned about retaining what is left.”\textsuperscript{152} The northern Presbyterian church, which joined a number of other major denominations in publishing pamphlets urging their members to more nuanced reflection, wrote: “There is no religion that is not sectarian....If you have faith-in-general, you have no faith to speak of. Faith has to be in something-in-particular. A nondenominational prayer is doomed to be limited and circumscribed. If prayer starts soaring, it starts to be controversial, which is one thing a nondenominational prayer dares not be.”\textsuperscript{153}

Even popular radio preacher Carl McIntire, an arch-fundamentalist who regarded the establishment Presbyterians as in league with the whore of Babylon, could agree with his former communion on this point. Particularity, and in fact angularity, is the heart of the faith and thus the loss of generic prayer would cause him to shed no tears. “The decision is sound...The prayer was offensive to Bible-believing Christians because it was not made in the name of Jesus Christ, the only Mediator between God and man...It is not tolerable that the State should presume to dictate an official prayer God satisfactory to all religions.”\textsuperscript{154}

Newspapers and magazines initiated their own education projects, convinced that much of the public rhetoric—from the letters to the editor they received to the congressional speeches on which they reported—revealed that most of the angriest had not actually read Black’s opinion. The \textit{Washington Evening Star}, though extremely critical of the court’s

\textsuperscript{151} When Justice Douglas spoke on the subject, he too would often cite Roger Williams as a great proponent of religious liberty, and therefore church/state separation; see, e.g., Douglas, \textit{The Bible and the Schools} (Boston: Little, Brown, 1966), 20-21.
\textsuperscript{152} \textit{Newsweek}, July 9, 1962, 45.
\textsuperscript{153} \textit{Presbyterian Life}, August 15, 1962, 15.
\textsuperscript{154} Quoted in Jacob M. Kik, \textit{The Supreme Court and Prayer in the Public Schools} (Philadelphia: Presbyterian and Reformed, 1963), 12.
action, nonetheless expressed concern at how many people seemed genuinely to believe that
the justices’ decision had been calculated to aid communism. Many editorialists praised
Nelson Rockefeller who, even while governing the state at the eye of the storm, urged
careful consideration of the opinion. He said his regents in the state educational system
were hopeful that the decision was not actually as anti-religious as many pundits asserted.
The Louisville Courier-Journal, in another region of the country disinclined to give the
court the benefit of the doubt, asked its readers to consider how they would be judging the
ruling if it had freed them from a sectarian prayer to which they objected. Other papers
were more specific: What if a Protestant were in a school that recited the rosary or a
Muslim prayer? The Nation lamented how few public speakers seemed to be aware that the
ACLU had funded the case—a point that the editors thought (probably inaccurately) would
lend legitimacy to the development in the eyes of the public. U. S. News and World
Report suggested that the hysterical should draw their conclusions at a slower pace, for we
simply wouldn’t know what the ruling really means or how far it goes until the court had the
opportunity to clarify its points in some of the related cases it would soon be hearing.

Journalistic concessions that things were confusing calmed few nerves. The New
York Times’ Anthony Lewis gently took the court to task for the ambiguity of Black’s
dictum, the main source of the public unrest. In some passages Black said that the state had
“no business to compose” official prayers. Is that all that the court had condemned—the
state’s role as composer? Lewis quoted some experts who thought so. But other legal
scholars pointed to other portions of Black’s product where he rejected governmental
activity in “writing or sanctioning prayers.” The Boston Globe conceded that the New
York practice may “indirectly coerce” dissenting students, but it didn’t think the court’s

A5051.
157 The Nation, July 14, 1962, 2.
work would be completed until it had explained this opinion in light of cases like its own court crier.\textsuperscript{160} The \textit{Buffalo Evening News} insisted the court couldn’t possibly stop here, but expressed uncertainty about what the full implications were.\textsuperscript{161} The \textit{Greenville Piedmont} asked the court to clarify if it was insisting that the nation be religiously dead.\textsuperscript{162}

Five weeks into the furor, Justice Tom Clark, the eldest member of the court not to have kindled the wrath of the public at himself personally by writing one of the anti-school prayer opinions, took the “almost unprecedented” step of coming forward to address public questions on the decision.\textsuperscript{163} Clark chose the Commonwealth Club of San Francisco as the context for his public comments the first week of August partly because Rev. James Pike, Episcopal Bishop of California and former Columbia law professor, had addressed the same assembly three weeks before to level one of the most detailed rebuttals of the court decision. Clark emphasized that the Constitution states that government may take no part in establishing a religion, and “No means no.” Nonetheless, he insisted, urging calm, the court had not said anything about any other manifestations of American civil religion. All of the speculative deductions were being projected onto the court by its enemies. The justices themselves, excepting Douglas, had not drawn any of these implications. The court had not ruled “that there could be no official recognition of a divine being or recognition on silver or currency of ‘In God We Trust’ or public acknowledgement that we are a religious nation.”\textsuperscript{164}

The media publicized Clark’s address widely, but what did it mean? Had the court not drawn these implications \textit{yet}, or had it specifically \textit{rejected} these implications? Clark was not exactly forthcoming. Was it just a matter of time until they heard the right set of cases to disestablish all of America’s religion? And if not—if this was only about school

\textsuperscript{162} \textit{Congressional Record}, June 29, 1962, 1962 Appendix, A4985.
\textsuperscript{163} Schwartz, \textit{Super Chief}, 442.
officials writing prayers—why hadn’t the decision spelled out these limits? Angered and frightened citizens were surely not comforted by the ambiguity.

Rumors began circulating that the court itself did not know what it meant or, in light of the outcry, what to do next. Had it been testing the waters? And if it now admitted that it had intended to uproot all public religious expression, might the judiciary’s credibility shrink further?\textsuperscript{165} Given the open defiance of \textit{Brown} all across the South, such an interpretation of the Court’s ambiguous statements seemed plausible. Journalists speculated about a deep division in the paneled chambers over these questions. In the coming months, the crowd favorite, Potter Stewart, followed Tom Clark’s unorthodox lead and went public. Appearing on the television show, “Youth Wants to Know,” he denied allegations of a conservative/liberal split on the bench. These matters “at the frontier of law,” Justice Stewart counseled, are too complicated to interpret through political lenses.\textsuperscript{166} Professor Paul A. Freund aimed to assist reporters trying to clarify these complexities. But again, admissions by constitutional scholars of intricate philosophical problems did little to calm those who wanted to hear in clear and straight-forward language that their country was not being forcibly secularized from above. “When one man insists that education cannot be divorced from the religious atmosphere, and another insists on strict separation, what is free exercise of religion to the one is a forbidden establishment to the other,” Professor Freund explained, complicating the question.\textsuperscript{167}

As September concluded, all parties in these disputes—about what the court had been saying and about the underlying substance as well—had realized that they were simply going to have to be patient until the court handed down another ruling. Court defenders hoped it would utilize its stature and the current spotlight trained upon it to educate the citizenry, persuading them of its interpretation of the First Amendment. School prayer proponents merely hoped the justices would be unambiguous. If they backed away from

Engel slightly, creating space for much of traditional American practice, great. And if they declared all civil religion unconstitutional, that would be fine as well because it would render their quest to amend the Constitution even easier. 168

Lawyers were already doing their part. There hadn’t been a major First Amendment establishment case from the founding of the Republic until the Everson busing case in 1947, but by late summer of 1962, every region of the country had federal and state courts scheduled to hear such a case. 169 The attorneys general and heads of state school boards offered interpretations of Engel in almost every state, and courts as far away as Frankfurt, Germany, banned school prayers based in part on the precedent set in Engel. 170

The justices on their recess were not getting much of a break. In addition to following the outrage over Engel, the members of the court were paying close attention to matters in Mississippi. For on June 25, the same day they had announced their prayer decision, a federal court in New Orleans had ordered Ole Miss to admit James Meredith as its first African-American student. The Alabaman Hugo Black, as the Supreme Court justice assigned oversight responsibility for the Fifth Circuit, had reiterated that admission order late in the summer, setting off a chain reaction that culminated in violent riots.

The justices recognized not only the public’s urgent desire for clarity on the public religion issue but also the widespread confusion among lower court judges attempting to apply Engel. 171 Thus upon returning to Washington in October, they wasted no time. As

168 As will be discussed in the next chapter, television news programs in late 1962 often framed the “next steps” this way. Politicians too tried to convince angry constituents that the court needed to act next, and then the required legislative actions would be clear. See, e.g., the transcript of the Theodore Grunik-hosted television special on the topic, Congressional Record, October 10, 1962, Volume 108, 22937ff.
169 The Christian Century was representative of religious periodicals in tracking the post-Engel upsurge of church/state cases, October 31, 1962, 1313.
170 John H. Laubach, School Prayers: Congress, the Courts, and the Public (Washington, DC: Public Affairs Press, 1969), 98, 134-35. Laubach is one of the best contemporary sources on the background and specific arguments of the various state cases. See also Frank Sorauf, The Wall of Separation: The Constitutional Politics of Church and State (Princeton: Princeton, 1976), which examines the more than sixty church/state cases heard by appellate courts in the 1950s and ’60s. The Frankfurt lawsuit was known as the “Hoffmann case.”
one of their first acts of business, they announced they would hear school prayer appeals from Pennsylvania and Maryland. In Pennsylvania, a three judge federal court had agreed with the Unitarian Edward Schempp that devotional Bible reading violated the Constitution, and the state appealed to the Supreme Court. In Maryland, the state’s high court had upheld the legitimacy of the traditional morning exercises, and Madalyn Murray wanted a bigger stage.

Soon lower court judges would learn how these two cases should be reconciled. And the people would have the opportunity to hear if they had misinterpreted the court in Engel, or more problematically, if they had long been misinterpreting the meaning of America.

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Journalists discovered the John Birch Society early in 1961 and the term “radical right” secured a lasting place in the American vernacular. The term itself had been coined nearly a decade earlier by political scientist Seymour Martin Lipset who had joined sociologist Daniel Bell and historian Richard Hofstadter, among others, to produce a collection of essays on the sources of popular support for Joseph McCarthy’s anti-communist muck-raking crusade. The timing of their 1955 *The New American Right* had not been entirely accidental, for the previous year, thanks in part to public denunciation by Edward R. Murrow and private denunciation by Dwight Eisenhower, the Senate had finally mustered the courage to neuter the regularly libelous Wisconsin bully.\(^1\) But McCarthy’s dethronement, while good for academic and other freedoms, did not necessarily stimulate book sales on the supposed psychosis of American anti-communism. For the communist-obsessed public understandably placed greater importance on revelations of “the brainwashing of Korean prisoners of war” and details of the consequent 1958 National Security Council directive that “military officers…enlighten their troops and the public on cold-war issues,” than on academic speculation about why some citizens took too seriously the subset of reports on communists atrocities that had been exaggerated and fabricated.\(^2\)

In 1961 and ’62, a sizable number of readers again added anxiety about anti-communist threats at home to their well-developed fear of communist threats from abroad.

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For in those years, journalists successfully trained their spotlights on Robert Welch and thereby demonstrated that McCarthyism lived on even though McCarthy had died—now actually as well as politically. Exposés of Welch, a “McCarthy-in-the-shadows” if you will, made great reading. The rich, retired candy magnate from Massachusetts founded the John Birch Society in 1958 in memory of a missionary of the Baptist faith and the American way murdered by Chinese communists in the late 1940s. Like the creators of many other anti-communist schools and educational outfits of the period, Welch intended to do his part to fulfill the NSC’s directive. With an ad-man’s sense of the pithy, he announced his vision and his pace, “Our enemy is the Communist—nobody else.”3 “Get to work or learn to talk Russian,” was classic Welch.4 Despite transparency of purpose, though, the Society—like the Liberty Lobby and other anti-communist groups in prior years—employed many of the sinister techniques it deplored in its opponents, such as infiltrating civic groups, founding front organizations, and subsidizing propagandistic publications.

The media cried foul both because of the methodological hypocrisy and because Gallup polls indicated that, among the fifty-six million Americans who knew of Welch’s work by February of 1962, an estimated “‘hard core’ of nine and a half million” apparently felt favorable toward it despite criticism of his means in the mainstream press.5 Assessing the relative threat of subversion by “right-wing extremists” and by the American Communist Party, liberals noted that membership in the latter group, “according to the FBI’s own estimates,” had shrunk from 80,000 in the early 1940s to “approximately 8,500—a figure

3 Whitfield, The Culture of the Cold War, 41-42.
that includes a large number of FBI informants." Richard Hofstadter, aghast at a culture where political leaders needed to spend time rebutting allegations of Eisenhower's secret communist sympathies, spoke for many when he agonized about "the projection of interests and concerns...essentially pathological" into the public arena. Others had their doubts about psychological explanations, though, wondering what would drive only certain segments of society to respond to challenges or "failures of foreign policy" with the invariable assessment that such missteps "were not due to misjudgment, contingency, ignorance, and error but to deliberate disloyalty." Daniel Bell and his contributors capitalized on the renewed public interest in cultural McCarthyism by reissuing their collection as *The Radical Right*, now named after Lipset's 1955 essay which had become the new shorthand for that bloc of citizens fearful of "not only Communism but 'modernity'" itself.

Those tracking the "resurgence of conservatism" became convinced that this subculture's discomfort with modernity included not only an uneasiness with new technologies and with scientific explanations, but more importantly, a resistance to modern conceptions of equality. Intellectuals thus attributed the latest wave of "super-patriotism" chiefly to *racial* conservatism, to "the 1954 Supreme Court decision on school desegregation, to which the South responded by organizing the White Citizens Councils." Birchers actively recruited racists, and the segregationists appealed for support to political

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8 This quote is taken from Stephen Whitfield's summary of "the paranoid world of Joe McCarthy," *The Culture of the Cold War*, 37.
decentralists of all stripes and from all regions. Both groups hated the U.N., loved the military, wanted “local control” restored and Earl Warren impeached—whether for the Brown desegregation decision he wrote or for the later 1950s set of cases where the court upheld the civil liberties of alleged communists. The fact that many segregationists remained general supporters of the New Deal’s regulatory and welfare policies, while Welch’s followers inclined toward economic libertarianism, did not destroy the rhetorical union. “Freedom!”—onto which individual citizens could project divergent meanings—remained an effective common rallying cry for all those suspicious of tax-supported bureaucrats in Washington’s marble halls.

Journalists both loved and worried about the new conventional wisdom of grouping the resisters of integration and the most zealous laissez faire proponents as a single “radical right” crusading to crush communism abroad and root out its traitorous sympathizers at home. After Kennedy’s first hundred days and the consequent partial diminution of public religion concerns when he didn’t appear to be seeking papal counsel on how to discharge his duties, two sets of issues had come to dominate the news: conflict with Soviet influence abroad and controversies over Civil Rights at home. (Government spending programs obviously mattered too, but with Democrats in the White House and in firm control of both the House and the Senate, a dramatic take on appropriation debates did not come easily.)

Newsweek during the six weeks leading up to the 1962 elections provides a representative snapshot of how cover story after cover story bounced back and forth between the

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12 On conservative populism, see David Plotke, “Transaction Introduction, 2002” in Bell, ed., The Radical Right, xxxv.

13 After the 1962 elections, Democrats held a 67-33 majority in the Senate, and a 258-176 edge in the House (with one vacancy).
geopolitical struggle and domestic political controversy: the increasingly influence of pollsters (October 1), followed by the contest for the “space age” (October 8); the bloody rioting over James Meredith at Ole Miss (October 15), followed by a profile of Castro (October 22); the varying visions of the country offered by Nixon and Brown in California (October 29), followed by a consideration of JFK’s handling of the Cuban missile crisis (November 5).

Social psychologists theorized about how the volume of “international crises [such] as the U-2 incident, the failure of summitry, and the problems in Cuba and Berlin” could drive “the paranoid” toward conspiratorial readings of history. And with video clips close at hand of Mississippi’s James Eastland thundering in the Senate about the federal courts having been “influenced and infiltrated by the Reds,” many producers found it too easy to pass up such explanations. Still, thoughtful writers such as the Atlantic’s Betty Chmaj recognized that those swelling the ranks of right-wing America could no longer simply be “dismissed as hatemongers, lunatics, and simpletons.” With recently retired U.S. Senator Herbert Lehman, the New York Times, and other credible sources citing numbers like “eight million” individuals maintaining formal ties with one of the “two thousand organizations” dedicated to eradicating the “internal Communist menace,” cultural commentators would have to work harder to understand this piece of America, both in the South and beyond.

Part of the investigation, Chmaj argued, would require elites to recognize that “racial intransigence and economic self-interest are not by themselves sufficient to account” for the widespread national support of rabid anti-communism or even for the expanding “strength

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14 Newsweek, October 1, 1962 through November 5, 1962. 
of the Southern rightist movement” particularly. The fact that the frequent tensions over economic policy between “the pro-segregationist and business interests” sides of the movement did not fracture the radical right’s common cause hinted that there must be a “third force” which “operates to obfuscate internal differences and effectively paralyze dissent.” This cohesive glue she identified as religious or “naïve conservatism”—defined “as a utopian longing to revive the simpler society of a bygone time; a dogmatic insistence upon the cleavage between good and evil, right and wrong, loyalty and treason; and a capacity to romanticize these dogmatisms with a glow of unreality and an air of innocence...” The politician appealing to this constituency, especially in the South, she explained, can simply announce “that he is fighting the Communist menace because he loves his children. Or because America is a Christian country.”

In short, as the size of the “radical right” grew, some of America’s most perceptive thinkers joined Betty Chmaj in growing less comfortable settling for interpretations that bordered on the clinical. Yet their search for interest-based explanations turned up only libertarian resistance to the New Deal and racism—the latter of which might again require a psychological explanation. And these two interests lacked obvious kinship. Amid this unsatisfying analysis, insightful observers started asking if “the demand for a return to the old-time religion, McGuffey’s Reader, and the political faith of our fathers [might be] as much a part of the right-wing movement as the demand to impeach Earl Warren, outlaw the N.A.A.C.P., or ‘Get the US out of the UN and the UN out of the US...’”

Journalists in 1962, and historians in the four decades since, attempted to explain the volume of the pro-school prayer outcry in the context of public discussions like these. The breadth of the dissatisfaction, often measured at upwards of three-quarters of the population, didn’t concern scholars much even though it suggested a much larger constituency than the one the Birchers tapped. Responding to an opinion poll is an exercise without costs, and saying that one dislikes something differs widely from actually acting or voting based on that discontent.\(^{18}\) Then as now, many students of political culture assumed that while even 80% of the populace may voice despair to a pollster over a symbolic decision like Engel, probably only a small “hard core” cared significantly about the issue. The rest supposedly simply used it as a rallying point around which to vent their frustrations about many other, deeper dissatisfactions in modern life.

In the fall of 1962, politicians too were unsure whether the public anger over the court’s prayer decision qualified as substantive or symbolic. But whatever the case, they were sure that opposing “the anti-God forces’ in the land” was every bit as much the political winner as decrying “the Communist Master Plan.”\(^{19}\) After all, these elected officials, like the overwhelming majority of their electors, simply loved their children. (Those legislators failing to attack the Warren Court over Engel often received constituent mail asking them, quite sincerely, why they “hate children.”)\(^{20}\) Minnesota Democratic Congressman Fred Marshall, who had a relatively free August recess planned because he would be retiring at the end of the current term, thus decided to invest part of his break contacting colleagues about an idea he had to have “In God We Trust” placed above the


\(^{19}\) Betty Chmaj, “Paranoid Patriotism,” *Atlantic*, November, 1962, 93.

\(^{20}\) U.S. House of Representatives, Committee on the Judiciary, 88th Congress (1963-64), Public Correspondence regarding proposed school prayer amendments, Box 246. National Archives and Record Administration, Washington, DC, Legislative Division.
Speaker's chair in the House chamber. On September 27, 1962, the House voted overwhelmingly to remove eleven of the fifteen decorative stars at the front of the chamber, replacing them with our national "statement of faith."21 "By this we speak out to the entire world that we are not an atheistic country or a godless Nation like our enemies behind the Iron Curtain," Congressman Randall of Missouri proudly declared. Within three weeks, the "national motto" had been successfully engraved and members in the cloakrooms were heard congratulating each another on having "given...our answer to the recent decision...banning the regents prayer..." "We [have] just reversed the decision" of the Supreme Court, one boasted.22

Citizens praised Congressman Marshall and his colleagues, but they would not be satisfied with a symbolic overrule. Publishers and producers grasped this and used the court's October announcement that it would hear additional religion in the schools cases as an occasion to explore further the substance of the Engel decision. Reader's Digest, which was running many stories on the public religion debate, joined with a non-profit called Freedom's Foundation to sponsor a national television special on the subject featuring four heavy hitters. Senator Jacob Javits, New York Republican, and William Butler, who had argued the case, appeared to defend the court. Senator Herman Talmadge, Georgia Democrat, and James Pike, Episcopal Bishop of California, were invited to outline their critique.23 Other networks ran similar debates, such as Gore Vidal versus William Buckley

22 Congressional Record, September 27, 1962, Volume 108, 21101-21102.
23 The complete transcript of the October 7 program was inserted into the Congressional Record on October 10, 1962, Volume 108, 22935-37. Unless otherwise noted, all quotations on this debate are taken from this transcription.
on whether the First Amendment could be properly summarized as an unequivocal prohibition on all government involvement “in the ‘religion business.”’

Butler had defeated Mr. Daiker before the Supreme Court but debating Rev. Pike before the masses presented a different challenge altogether. A tremendous orator and a church/state expert in his own right, having taught the subject at Columbia Law School, Pike had emerged in recent months as the court’s most formidable and nuanced public critic. Where many congresspeople had spent their summers name-calling, Pike had been augmenting his reputation as an effective public educator by moving from speaking engagement to speaking engagement methodically and accessibly laying out historical and constitutional problems with Engel. He knew which arguments worked with lay audiences and, as a member of the Supreme Court Bar himself, he could not be dismissed as a ranter.

After an introduction where the television audience heard a teacher leading her students in New York’s simple but now banned twenty-two word morning prayer, the host asked Mr. Butler to kick off the debate by explaining what the court had done and why. Assessing his audience and opposition, Butler put the narrowest possible construction on the decision by exaggerating the novelty of the New York regents’ action as “really the first time in the history of the United States that a state agency had undertaken directly a religious activity.” In an effort to insulate his cause against charges of atheistic subversion, he also labored to present his Long Island clients as committed religious folks.

25 Bishop Pike also stole the spotlight at the two days of hearings Chairman Eastland spontaneously scheduled before the August, 1962, to review the Engel decision. See U.S. Senate, Committee on the Judiciary, 87th Congress, 2nd Session (1962), Hearings on Prayers in Public Schools and Other Matters, July-August, 1962.
26 Pike had been a lawyer prior to entering the clergy, and he maintained an interest in law while ministering. Prior to Engel, though, he had been attending less to legal matters than previously. Nonetheless, as a testament to his ongoing legal reputation, the bishop had already been invited to deliver the prestigious Rosenthal Lectures for 1962 at Northwestern University Law School.
27 Congressional Record, October 10, 1962, Volume 108, 22935.
who simply objected to the governmental usurpation of their family and church/synagogue prerogatives. Who was "the State [to tell] their children how to pray, when to pray, and what to say[?]"²⁸

Bishop Pike, one of America's newest champions, liked his draw.²⁹ Butler had made a few mistakes already. It wouldn't be difficult to demonstrate in bite-sized bursts how many times the federal and state governments had been directly involved in religious activity. Butler potentially had a legal argument that a long record of violating the Constitution did not, simply by virtue of having become a tradition, legitimatize the violations. But because he had skipped the point, Butler must have understood that such an argument wouldn't work here. Pike knew that Butler wouldn't be prepared to tell a primetime television audience that George Washington violated the Constitution by having a minister pray at his inauguration, that the Star Spangled Banner needed revision, that naval chaplains should be boot off of ships at sea. In other words, Pike knew that Butler would have a difficult time using the anti-establishment clause in this context. The only other way to argue the "government shouldn't be involved in religion" point publicly (as opposed to legally), Pike concluded, would be for Butler to claim that the dissenters, who could abstain from the prayer if they wanted to, were suffering some great harm. That wouldn't be an easy sell. The ball was in Pike's court; he could work slowly. He could define the terms on which the establishment clause would be introduced.

²⁸ Congressional Record, October 10, 1962, Volume 108, 22935.
²⁹ Pike's exceedingly odd biography is still waiting to be written. He was a convert from Roman Catholicism to Episcopalianism, who wrote about the potential dangers of a Catholic president during the 1960 campaign: A Roman Catholic in the White House (New York: Doubleday, 1960). But then, upon the school prayer decisions, he became a champion of generic religiosity—only to again convert again in the mid-1960s. He first doubted the virgin birth and the Trinity, then renounced the church and founded the Foundation for Religious Transition. He wrote a book called The Other Side in 1967, and then went on a Middle Eastern pilgrimage, where he died in the desert.
Speaking extensively to popular audiences the last few months, Pike had refined an argument about the three possible solutions “to the problem of the relationship of the dominant religious tradition of a people to the public life of the State.” First, the most common historical practice was to link religion to the state organically. Under this theocratic model, institutional religion is subsidized, sins against religion are considered sins against the state, and vice versa. As a second extreme option, all of public life could be secularized, without any supernatural referent in the state sphere at all. This method prevailed in the French revolution and the modern communist states. Third, there was a middle way, a product of the American experiment, where no particular religious organization receives state privilege but where the state itself is nonetheless founded upon certain religious assumptions and seeks to accommodate the general religiosity of the people. No one is compelled and no church is established, but neither is public life systematically stripped of supernatural references.

To Pike’s mind, the third option was “not as clean cut or strictly logical as the other two choices,” but was nonetheless the most “workable [option] in our pluralistic society.” And more importantly for present purposes, regardless of what we intuitively think of the middle way, the Founding Fathers had regarded it as the right option for the pluralistic society in which they lived. A consideration of their context revealed, Pike insisted, that they were self-consciously rejecting both a federal Congregational establishment as in New England and an Episcopal establishment as in old England, but they had no thoughts of foisting upon the colonial peoples anything as radical as the French solution of absolute secularism or anti-religion.  

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30 This summary is taken from Bishop Pike’s July 13th address to the Commonwealth Club of California; reprinted in the Congressional Record, July 27, 1962, 1962 Appendix, A5806-07.
As a debating tactic, few maneuvers top laying out two extremes between which sits your reasonable position, and then forcing your opponent either to capitulate, to defend one of the extremes, or to attempt the laborious task of reframing the entire debate, which observers typically view as somehow disingenuous.\textsuperscript{31} Mr. Butler and Senator Javits found themselves with this type of problem as soon as Pike finished his opening statement. Javits, as a politician who knew popular audiences, had little interest in trying to reframe the whole question, though this solution tempted the more intellectual Butler. Given three undesirable options, Javits inclined toward capitulation. The justices probably objected only to the state's role as composer of the prayer, argued Javits, one of the Senate's two Jewish members. "I believe this is a narrow decision."\textsuperscript{32} They couldn't mean that religion and the state must be absolutely separate. But since they weren't clear, cautious citizens should give them time to clarify. Shouldn't "we allow the few other cases which erupt here—cases including, for example, this question of...Bible reading—shouldn't we allow those cases to be decided before we jump into...[writing] a change in the First Amendment?" he asked repeatedly. Perhaps after these new cases coming up, the court's critics would discover that a simple misunderstanding had prompted all of this anxiety.\textsuperscript{33}

Pike had won. In gentlemanly fashion, he could agree with the esteemed senator from New York, and since the southern, Baptist Senator Talmadge already agrees with him, Butler would now stand alone as an extremist unless he too is willing to admit the basic common sense of the American tradition of prohibited establishment but permitted general religiosity. Pike quickly echoed Javits that the people should move very slowly; there should be no rush to amend the Constitution. "I do agree with you. That's why I said \textit{in due time.}

\textsuperscript{31} William F. Buckley, another prolific court critic, regularly framed the issue the same way. See, e.g., "Take a Vote, Gentlemen," \textit{National Review}, September 11, 1962, 177.
\textsuperscript{32} Congression Records, October 10, 1962, Volume 108, 22937.
\textsuperscript{33} Congression Records, October 10, 1962, Volume 108, 22936.
time I would like to see consideration of a constitutional amendment.” Court critics would need to pursue that only if the court revealed that it was misinterpreting the First Amendment, that it was in fact trying to root out the public’s faith. Pike believed that sensible people knew that the establishment clause simply meant the state could not establish an official church. And hopefully “after all this discussion” of the matter by the public, the justices too would use their next opinion to move back toward the traditional position. Pike considered it very possible that the justices, being reasonable men, would use “these two cases coming up now...to clarify language and point out implications more fully than the present majority opinion did,” such that an amendment wouldn’t even be necessary.34

But if they don’t, the people would then need to amend the First Amendment to clarify its meaning. They would not be changing anything. It is the court that would be attempting to change things by a judicial rewriting of the amendment, and the people would then simply be responding to underline their commitment to the historical interpretation by rephrasing it.35 Where the Constitution now says “make no law respecting an establishment of religion,” the people would be more explicit, saying, “make no law respecting the establishment of any denomination, sect or other organized religious association...,” Pike reiterated.36

The program concluded with all five men, including host Theodore Granik, raising expectations about the next, clarifying court decision. “I have little doubt that the Supreme Court, when it sees what has happened, what it has done, will refine the decision in that way, and then we will find that as long as the implications are gone from this decision, it can be

34 Congressional Record, October 10, 1962, Volume 108, 22936, italics added.  
lived with,” Senator Javits reassured the viewing public. Bishop Pike had succeeded in implying that everyone, except possibly the extremist Butler, expected that the coming rulings would accomplish one of two things. Either the justices would defang the *Engel* decision by clearly explaining that they had meant to object only the state’s role as composer, or they would reveal for all the country to see their radical secularism and the consequent need for a constitutional amendment to restore the original meaning of the First Amendment. There were no other options. Grassroots America believed in the free exercise clause; compulsion in matters of conscious should not be allowed. And they were comfortable with the establishment clause as long as it could be interpreted narrowly. But they had little patience for elaborate arguments that concluded with, as Senator Ellender of Louisiana crudely put it, “eight silly old men” telling the sovereign people that, as they heard it, they could not acknowledge God in America. 

Over the next nine months until the court finally spoke again, this basic argument was played out in hundreds of contexts, local and national. Readers of *Harper’s or New Republic* perhaps occasionally had longer attention spans for discussing the establishment clause and greater reticence about possible constitutional amendments, but even in these contexts, seemingly insoluble arguments—about, for instance, which of Madison’s private writings should be read as footnotes to the First Amendment—were in the end simply deferred in the hopes that the court’s next rulings would tidy everything up. The justices who were listening, and they were all listening, understood well the public’s expectations of

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them: Draw some tight limits around your last decision, or we the people will act to restore the First Amendment as we have long understood it.

After a winter of jokes about which justices had been spotted sneaking onto which New England town greens to chop down municipal Christmas trees, the court finally assembled in February, 1963, for the oral arguments in Maryland’s *Murray v. Curlett* and Pennsylvania’s *School District of Abington Township v. Schempp*. The first five minutes of the questioning revealed to observers that the court was not likely to do as the public was demanding. These cases would not be the context for a backtracking from *Engel*. The court’s majority intended to clarify and extend *Engel*, and hopefully along the way to persuade a portion of the public of the propriety of its position.

The Murrays, who had driven down from Baltimore with their attorney and his wife, were ushered to seats right up front. Madalyn “scowled and shook her head in disgust” at 9:30 am when the crowd rose and the crier shouted his “Oyez, oyez...God save the United States and this Honorable Court!” Because the Maryland court had found in favor of the Baltimore schools, the Murrays remained the petitioners. Kerpelman would thus take his place in the pit in front of the justices to argue first. Though the court would ultimately decide the two cases jointly, they were argued separately: First the Murrays’ case in its entirety, then the Schempp’s.

40 A debate over a publicly funded Christmas tree in Boston initially prompted the humor. On that issue, William F. Buckley of the *National Review* revealed that at least some Catholics were willing to admit they had never actually been comfortable with the religious indifference of the First Amendment. Buckley conceded that an honest reading of the First Amendment probably permitted any minority of one to prohibit even a majority of 99% from any corporate public exercise of their religion. To him, at least on that occasion, the chief problem was the First Amendment itself, rather than misinterpretations of it. See, e.g., “Chop Down That Tree,” *National Review*, December 31, 1962, 504.

Kerpelman would get only 330 words into his summary of the issues involved before Justice Stewart signaled he would be taking center stage today—ultimately speaking not only more than any other justice but also basically as much as any of the lawyers. As far as Stewart was concerned, there was no point in spending hours establishing that in Baltimore and Abington governments had fraternized with the religious. No one could dispute that. If the court persisted in following Black’s radical interpretation of the First Amendment’s establishment clause as an absolute prohibition on any state accommodation of religious belief, then these cases—where the texts and prayers were clearly Christian rather than merely theistic—clearly presented a more flagrant constitutional violation than had New York’s. To Stewart then, the only point of hearing today’s cases at all was to reopen the question of conflicts between the establishment and the free exercise clauses—constitutional problems to which Engel’s absolutist reading of the establishment clause had turned a blind eye.

Kerpelman’s opening statement included an exhortation to the bench that the “wall of separation” between church and state “shall be maintained high and impregnable.” In his swiftly moving narrative, Kerpelman’s invocation of this Jeffersonian ideal almost sounded as if it were part of the Constitution’s language.

43 Oral Argument Transcript, Murray v. Curlett, 2. (All transcriptions from the audio tapes of the oral arguments before the Supreme Court in both Murray v. Curlett and Abington Township v. Schempp have been made by the author. To assist readers seeking to follow the debates, though, citations to the University Publications of America microfiche transcriptions are also included here. See Oral Arguments of the Supreme Court of the United States: The Warren Court, 1953 Term—1968 Term [Frederick, MD: University Publications of America, Microfiche Projects, 1984]; cited as “Oral Argument Transcript.” The original tapes of the oral argument are available at the National Archives and Records Administration, College Park, Maryland; Motion Picture and Sound Division, row 21.)
“I have read the First Amendment,” Stewart interrupted with understated irony. “I have never read that language in it. What’s it say?” he interrogated. “What’s the First Amendment say on this subject?”

Ms. Murray’s lawyer conceded the narrower constitutional prohibition on simply an establishment of religion, but maintained the propriety of the modern judicial consensus of interpreting the command in strict separationist fashion.

Prudent lawyers probably don’t insist on taking for granted what a justice is asking them to argue. Kerelman had no intention of riling Stewart, and he spoke in a clearly deferential tone. Nonetheless, he essentially told Stewart that his concern—about what the justice called an over-reliance on “a sterile metaphor which by its very nature may distort rather than illumine the problems involved”—was unimportant. The less than grateful justice seems to have silently resolved to work the brash petitioner over for most of the remaining time until lunch. He reminded Kerelman that the First Amendment contains “two separate, distinct provisions,” which often “collide with one another.” And “it’s a fallacy to lump all this together and say it all just stands for separation of church and state.” Pundits regularly summarize the First Amendment’s teaching on religion as separation pure and simple, but Stewart believed separation should be considered, at best, a summary of the establishment clause alone. For how does the language of “separation” take account of free exercise rights? If the court were to “strike down this provision,” which they agreed most Baltimore parents seemed to support, wouldn’t the court be “interfering with the free exercise of their religion?” Stewart demanded.

44 Oral Argument Transcript, Murray v. Curlett, 2.
Kerpelman admitted that different rights collide with one another from time to time. But he did not see that problem here. The freedom of speech must yield to the police power at the point at which speeches begin to instigate listeners to rioting. The freedom of assembly does not extend so far as to prohibit property owners’ rights to disallow assemblies on their lands. But was Stewart suggesting, Kerpelman inquired, some parallel whereby the right to be free from government-promoted religion ends anytime the majority desires such a promotion of an official creed?48

To Stewart, Kerpelman remained in a Platonic realm, blissfully obsessed with some abstraction called “separation,” and unaware of the realities of religious people on the ground. Concretizing Kerpelman’s theory, the justice demanded to know who, in these actual cases, was not entirely free from all of the exercises? “You’re free to walk away, and not participate in any way,” right? Stewart asked multiple times. Where then was there coercion?49

Kerpelman had a number of options. He could follow Justice Douglas’ line of thought from Engel, conceding that the coercion came not in the form of some prohibition on leaving the classroom if one wanted to leave, but rather in parents being taxed to pay for these exercises. But would this be walking into a Stewart trap? Would invoking Douglas’ financial argument be tantamount to suggesting the inadequacy of Black’s majority view? Kerpelman certainly did not want to start down a path where he would finally need to defend the rejection of all public religion in order to deny, more narrowly, the constitutionality of Baltimore’s prayer and Bible readings. So he chose instead to assert the

48 Oral Argument Transcript, Murray v. Curlett, 6, 9.
49 Oral Argument Transcript, Murray v. Curlett, 6.
illusory nature of a child’s freedom to walk away. “The injury is very real” when a child
dissents, Kerelman alleged.

When he walks away, he then becomes subject to whatever sanctions schoolboys
may impose...[and] were we put to the proof, we would prove that these acts of
coeption were very substantial. That this boy was spat upon, insulted, assaulted.
The criminal docket of the northeastern police station in Baltimore City will show
that certain persons were found guilty of assaulting him when this case gained
notoriety—and he’s an infant!

A whining commentary on the highlights—or lowlights—of William’s extracurriculars did
not impress the tall and athletic Justice Stewart: “I was assaulted when I was an infant at
school a good many times,” he responded stoically. “Weren’t you? I mean, there may be no
connection” whatsoever between William taking his lumps and the school allowing him to
leave a religious exercise if he so chooses.\textsuperscript{50}

Stewart regarded this discussion as neither interesting nor useful. Because
Pendergast had held no trial, there was no evidence on whether William’s difficulties after
school could be connected to the dismissal policy. (Stewart expressed his willingness to
remand the case to a lower court to take evidence on such questions if there were other votes
for such a move because Stewart, as free exercise champion, had some concerns about
whether the school’s excusal provisions might be too onerous.) Equally unprofitable would
be to move the discussion from physical to psychological damage, as last year’s New York
case had gone. Stewart had already asserted that the First Amendment does not guarantee
non-conformists a freedom from embarrassment or peer pressure. A Newsweek editorial
appreciated his argument, chastising the justices for weighing some child’s “fear of being

\textsuperscript{50} Oral Argument Transcript, Murray v. Curlett, 7.
called an ‘oddball’” as heavily as “intrinsic equity” concerns in their evaluations, but the point apparently did not move many of the brethren.51

In light of the limited time and the great number of minds he needed to change, Stewart focused on persuading his colleagues of the inadequacy of the analogy Kerpelman had chosen to illuminate the conflicting rights problem here. If a “sign says ‘keep off the grass,’” Stewart readily admitted, a citizen “can be prohibited from walking on the grass, even if he wants to walk on it to make a speech. But we’re not in that. This is not that kind of case at all....” The right to the free exercise of religion is not limited by the establishment clause in some parallel way to how the freedom of speech is limited by private property, Stewart insisted.52

A better model with which to start thinking about the competing rights of free religious exercise and freedom from establishment, Stewart attempted to suggest (albeit ineffectively because of the stop-and-start nature of a ten-person argument), is to take the case of military chaplains. On the face of it, “spending federal funds to employ” sectarian clergy to minister to soldiers is a flagrant violation of the establishment clause. Yet, if chaplains were not provided, all of those conscripted into the service, and probably even enlisted troops stationed on ships or bases without the local presence of their denominations, could conversely claim violation of their free exercise rights. A “lonely soldier stationed at some far-away outpost could surely complain that a government which did not provide him the opportunity for pastoral guidance was affirmatively prohibiting his free exercise...”53 Stewart suggested that the conflict between these two First Amendment clauses lends itself to no universal answer; trade-offs must be weighed. And thus “the ritualistic invocation of

51 Newsweek, July 1, 1963, 15.
52 Oral Argument Transcript, Murray v. Curlett, 9.
53 See Stewart’s dissent, Abington Township v. Schempp, 374 U.S. 203, at 309. Edwin Gaustad also makes this point well; see his Church and State in America (New York: Oxford, 1999), 77-78.
the nonconstitutional phrase ‘separation of church and state’ impressed him very little, for he could not see how it helped to answer the complicated questions.54

Constitutional law experts in the last four decades have come to speak of this problem as “the natural antagonism” which must necessarily exist “between a command not to establish and a command not to inhibit its practice.” Presented with such an intellectual problem and the consequent obligation “to choose between competing values in religion cases,” courts have tended to prefer free exercise rights over the more abstract prohibition on government involvement with religion.55 While trending toward strict separation in most public religion matters, the legal consensus has nonetheless been willing to accommodate citizens’ religious needs in cases where freedom of movement has been limited, as in the military or in prison.

To Stewart and a large cross-section of Americans, the situation of a child legally obligated to spend most of his or her day in a public school more closely parallels the case of a sailor drafted to serve on a public ship than the case of a protestor demanding to pontificate on a private citizen’s front lawn rather than contenting herself with the public square. After all, for many elementary students, school—a coercive institution employing guards known as truancy officers—consumes fully half of their waking hours. Could the state really require that this much of their lives, at such a formative stage, be spent in a religion-free environment?

Stewart said no, arguing that the government’s command that children be institutionally schooled also “laid upon government” two parallel obligations related to students’ free exercise of religion rights. First, governments cannot eliminate every

“opportunity for the voluntary expression of religious belief.” Local communities surely may not “support” particular religions, but because “the Constitution does not require extirpation of all expression of religious belief,” the “secular authorities” are not guilty of such support simply by “the withholding of state hostility” toward religion. As in these cases, accommodating or “making possible the free exercise of religion” does not necessarily constitute a violation. Second, though, where such expressions are allowed, school officials must refrain “from so structuring the school environment as to put any kind of pressure on a child to participate in those exercises.” But this is not the same as the demand from the critics of these exercises that the government must provide “an atmosphere in which children are kept scrupulously insulated from any awareness that some of their fellows may want to open the school day with prayer...” In Stewart’s judgment, that would probably be administratively impossible, and in effect to deny that religion is important. The fact is, of course, “that there exist in our pluralistic society differences of religious belief,” and the state has no particular burden to shield children from this reality.56

When extra-judicial critics of modern schooling drew analogies between the court’s and the communicants’ visions of the ideal educational arrangement, they were usually focused on the supposed intentional suppression of religion. The National Review, for instance, prophesied about trajectories when it reminded readers that the Soviets in 1918 had been the first to declare that, “Religion is a private matter and the State can take no cognizance of the religion of its citizens.”57 But other critics outlined more nuanced complaints like Stewart’s, less about the active suppression of religion than about its passive marginalization and privatization. Such arguments coincided with broader concerns in some

segments of society about the institutionalization and bureaucratization of youth. Thus the
"unschooling" movement of the proto-hippies came into dialogue with the percolating
home-schooling experiments of the evangelicals. For both groups wondered about the
healthiness of factory-model, "8 to 5" schooling that "devoured" all the time of the young.
Small groups of them were even beginning to shout at state institutions, for both religious
and more general pedagogical reasons, "Give Me Back My Child!"58

Due to the form of oral arguments, Justice Stewart would not succeed in spelling out
this argument completely today. Not until the conclusion of the Abington case the following
day would the court give fuller attention to the parallels between compulsory military
service and compulsory schooling. But all parties already understood where Stewart was
headed, and what he aimed to imply about the state's passive promotion of secularism
among children. If Judge Pendergast had been in attendance, he might ever have noticed
traces of his opinion's openness to parental concerns that a teaching environment with
enforced silence on the question of theism could in fact amount to a passive teaching of
atheism, at least as understood by the very young.

Despite multiple detours, Stewart pressed on with his monopolization of the question
period. Under the free exercise clause, he asked Kerpelman, do not all students, whether
they are part of the minority or the majority, "have a constitutional right to pray when and
where they want to, or not to pray if they don't want to?"59

58 On the "unschooling" movement, see especially the writings of John Holt and his associates. By and large,
mainstream publishers did not begin to distribute his books until the 1970s and '80s, but many of these works
and arguments had been privately distributed before they were publicly consumed. See, e.g., How Children
Fail (New York: Pitman, 1964); How Children Learn (New York: Pitman, 1967); The Underachieving
School (New York: Pitman, 1969); Freedom and Beyond (New York: E.P. Dutton, 1972); Escape From
Childhood (New York: E.P. Dutton, 1974); Growing Without Schooling (Boston: Holt and Associates, 1977);
and Selected Letters of John Holt (Columbus: Ohio State, 1990). For an evangelical argument against full-
time, institutionalized learning, see John Stuart, "Give Me Back My Child!" Christianity Today, August 30,
1963, 9-10.
59 Oral Argument Transcript, Murray v. Curlett, 8.
“Yes, Your Honor, they have,” Kerpelman was prepared to admit.

Hugo Black was not. Unimpressed both by Stewart’s point here as well as with his more general hijacking of the argument thus far, he interrupted Kerpelman’s submission to Stewart, demanding emphatically, “But is that correct?!"

Would somebody have a right to come in here, at this minute in this public institution, and interrupt our proceedings by saying they wanted to pray? And would that deprive them of their free exercise of religion, to say that they could pray on the outside, or somewhere else?

…I don’t think the Amendment says that a person’s got a right to go anywhere in the world he wants to at any time and intrude on other places where they’re set apart for something and dedicated to something, or to express any views of any kind openly, so that they interrupt people.60

Finally someone had said to Stewart in public what the justices had apparently been suggesting to him in private. Kerpelman thanked Justice Black for the help. He tried to revise his earlier agreement with Stewart to say that he had meant only to agree that everyone had a right to silent prayer at all times in all places. But that, of course, did not mean that public disruptions should be tolerated.61

Stewart considered such talk of disturbing the peace a red herring. Was the court’s own crier interrupting their proceedings? one might ask. Or was he a reflection of, a deliberately offered accommodation to, the overwhelming American consensus that most of life’s important goods, from education to justice, could not be pursued in a religious vacuum? The crier does not offer enough theological specificity to divide the country along any denominational lines, but his presence does serve as a general reminder that most Americans place their ultimate hope in something beyond the state. He is a placeholder for

60 Oral Argument Transcript, Murray v. Curlett, 8.
61 Oral Argument Transcript, Murray v. Curlett, 8-9, 13.
the transcendent, and different individuals and sub-groups within society can project their own, more precise theological formulations into that parenthesis.62

Justice Black eventually pushed back, wondering if there were any limits to such an argument. For the last eight months, he had been listening to doomsday prophecies about all of the supposed inferences flowing from Engel, and he now wanted to turn these arguments on their head. What would be the likely outcomes of a tolerated accommodation to this popular need for deference to religion? Why “only have five or ten minutes? If the majority want to have it for religious purposes, why not use the whole day?” Perhaps all secular subjects should be subordinated to the majority’s religious yearnings.63

Kerpelman quickly became fairly extraneous to this debate between Stewart and Black. Even young William Murray sitting in the audience would later express his surprise at the “modest free-for-all” with the justices peppering one another with questions.64 Stewart and Black tried to maintain Supreme Court convention by usually framing their statements to each other as rhetorical questions to Kerpelman, but they occasionally didn’t even let him attempt an answer before offering their next “question.” As some of the debate was already being reduced to side conversations and arguments among various justices, Chief Justice Warren broke up the fight by interrupting the rambling Kerpelman—it is no easy task to answer rhetorical questions that are not actually being directed at you—to call a lunch break.66

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62 On pages 14-15 of the Murray v. Curlett Oral Argument Transcript, Stewart asks Kerpelman to speculate on whether the court should allow 99% of the students to gather voluntarily before classes even formally begin to pray, if that prayer would occur inside the public school though without any personal sanction from a public school official.
63 Oral Argument Transcript, Murray v. Curlett, 17.
64 William Murray, My Life Without God, 103.
65 E.g., Oral Argument Transcript, Murray v. Curlett, 8-9, 16-17.
That afternoon Francis Burch, Baltimore City Solicitor, faced an even uglier challenge. For unlike Kerpelman, he lacked the occasional assistance from Black, but surprisingly, like opposing counsel, he stood before a moderately hostile Justice Stewart, who one would have expected to support the Baltimore schools and their expected defense of free exercise.

Burch had laid the groundwork for today’s problems with Stewart months before when he decided to look somewhere other than Stewart’s Engel dissent as the basis for his argument in this case. Burch had concluded, as would counsel for Pennsylvania in the next case as well, that last year’s nearly unanimous court probably had not decided to reexamine Engel so soon, public outcry or not. Siding with Stewart would secure one vote for him, but probably no more. Therefore, instead of leading with free exercise concerns and basically repeating the arguments of the New York school officials from last year, he had calculated that his only prayer was to find and argue for some major difference between that case and his own.

Burch needed to identify some major cleavage between the actual practice of his Baltimore schools and the court-repudiated practice of the Long Island schools. His gamble, already known to the justices from the submitted briefs, was to claim that Baltimore’s reading of the Bible and recitation of the Lord’s Prayer were, counter-intuitively, not religious activities at all. Or, more precisely, he insisted that the exercises were more than religious—they “transcend ‘religiousness’”—and that the schools’ interest in them had nothing whatsoever to do with their religious character. Unlike Long Island school officials, who were concerned about inculcating religion, the Baltimore administrators were supposedly committed to these for moral reasons and those alone.67

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67 Kerpelman enthusiastically rebutted these arguments from Burch’s briefs at the beginning of his statements to the court; Oral Argument Transcript, Murray v. Curlett, 5.
Burch was already in trouble by the time he spoke his first word. And even if he didn’t understand this, his one potential ally on the bench did. Stewart thus interrupted the school’s representative only 130 words into his argument, attempting to steer Burch back to the morning’s debate about the right of free exercise, where the justice believed he still had some chance. “William J. Murray, III…and his mother…both allege that they’re atheists; is that correct?” Stewart tried to redirect him. And they claim that “the rules of the Baltimore school system interfere with the exercise of their belief or disbelief?”

Burch answered Stewart’s questions as narrowly as possible, ignoring the hints. He had no intention of abandoning his bold argument that Baltimore’s practice actually did not run afoot of the establishment clause at all. “Our position is simply this: That the establishment clause of the First Amendment is a matter of degree,” he explained, and because the school system sees an extra-religious value in the exercises, the apparently religious character of those exercises ceases to matter. For while it “is true that the Lord’s Prayer [and] it is true that the Bible sounds [like] religion, has its roots in religion—this we do not deny”—the schools’ interest in them derives from “something in it other than religiousness itself.”

Burch’s innovative strategy required a reinterpretation and extension of McGowan and the other 1961 “blue law” cases. Sunday closing laws, the court had admitted two years earlier, were originally instituted primarily to encourage obedience to the Fourth Commandment (or the Third Commandment, if one numbers the Decalogue like Roman Catholics and Lutherans rather than like the early church and post-Calvin Protestants). But this original intent does not necessarily obligate governments to invalidate the laws.

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68 Oral Argument Transcript, Murray v. Curlett, 18.
69 Oral Argument Transcript, Murray v. Curlett, 18-19.
themselves. So long as the state has no ongoing intention of aiding religious observance by maintaining the laws, communities that identify secular benefits flowing from collectively-defined, regularly-occurring periods free from commercial activity are allowed to pick any particular days of leisure they desire, even if the chosen days coincidentally correspond to older religious days.\textsuperscript{71}

In the same way, Burch argued, the early nineteenth century religious purposes behind the establishment of Baltimore’s morning exercises did not necessarily preclude their ongoing constitutionality—so long as schools today defended them on other grounds. Those grounds for Baltimore, he announced, were moral rather than religious. Where the New York regents had instituted their prayer as part of an explicit program of “spiritual training,” Baltimore school officials, and especially Superintendent Brain, were prepared to defend their practices solely on the basis of the secular “salutary effect upon the children coming into the school….It puts them in a frame of mind [where] they can approach the school day with some sobriety.”\textsuperscript{72}

Attempting to ignore the comic interjection by one of the justices that “tranquilizers” might be even more effective toward this end than religious ritual, Burch pressed on with his reworking of the religious aspect of morning exercises as merely means rather than an end in the case before the bench.\textsuperscript{73} In his reading of \textit{McGowan}, governments had no positive obligation to alter settled cultural patterns, be they certain days of rest or scholastic prayers, as long as the government could claim that the pattern furthers a secular communal purpose. In this case, because Baltimore officials aimed to foster discipline and to instill respect for

\textsuperscript{71} For an instructive analysis of \textit{McGowan} and the blue law cases, see Barbara J. Redman, “Sabbatarian Accommodation in the Supreme Court,” \textit{Journal of Church and State} 33:3 (Summer 1991), 495-523.

\textsuperscript{72} Oral Argument Transcript, \textit{Murray v. Curlett}, 19, 22.

\textsuperscript{73} Oral Argument Transcript, \textit{Murray v. Curlett}, 22. While the tape is not clear, it was apparently Justice Stewart who made the tranquilizer comment.
authority, using the Bible only made sense given the widespread cultural deference accorded this book.\textsuperscript{74} By some seriously strained logic, Mr. Burch suggested that those disagreeing with his position might even be forced to rethink their support for laws criminalizing acts that are also prohibited by the Ten Commandments.\textsuperscript{75}

Justice Harlan could not believe how badly Burch had misunderstood the blue law cases. The court’s point in \textit{McGowan}, Chief Justice Warren similarly tutored, had been that although the Sunday closing laws had an original impulse in religion, they had over a period of many years “departed so far from religious purposes” that the state’s coincidental use of the same day for a different, non-religious purpose did not necessarily render the state’s selection unconstitutional. Almost as if he were asking if Burch could even read English, Warren inquired, “Didn’t we point out in there that [there] was evidence of having been a \textit{real departure} from the religious purposes that went back into the ages?” Justice Black was just as blunt, announcing dismissively that, as far as he was concerned, \textit{McGowan} had “nothing to do with this case.”\textsuperscript{76}

Burch found himself in no man’s land, unable to hope for help even from Justice Stewart with this line of argument, for Stewart had dissented in part from the court’s upholding of the blue laws.\textsuperscript{77} Though the Christian masses had fallen in love with Stewart since last summer, few really knew much about his actual voting record, which did not amount to anything like a general defense of “Christian America.” Students of the high court classified him as a vigorous proponent of free exercise rather than as naively pro-Christian. Thus in the blue law cases, he had dissented from Warren’s majority opinion, arguing that Sunday closing laws placed too great a burden on the religious expression of

\textsuperscript{74} Laubach, \textit{School Prayers}, 40.
\textsuperscript{75} Oral Argument Transcript, \textit{Murray v. Curlett}, 24.
\textsuperscript{76} Oral Argument Transcript, \textit{Murray v. Curlett}, 23-24, 26 (italics added).
Jews. As a result, even if Stewart hoped to hear a better argument offered on Baltimore’s behalf today, he had little choice now but to leave Burch twisting like a first year law student.

Burch had been beaten up badly by the time he yielded the floor to his co-counsel, George Baker. Baker immediately and prudently retreated from *McGowan*, running back to Stewart, the only apparent hope of school prayer proponents. A desperate moment is not entirely without virtue, for it at least removes timidity about the decisive pursuit of a risky strategy. Baker now knew with certainty he would need to persuade the majority of its error the previous year in ignoring Justice Stewart’s counsel that an absolutist reading of the establishment clause undercuts the free exercise clause.

Baker asked the court to recall the 1943 *Barnette* case, where West Virginia Jehovah’s Witnesses had objected to the required recitation of the Pledge of Allegiance in schools, and the 1961 *Torcaso* case, where a Maryland man had objected to the required recitation of a theistic oath to become a notary. “Now, this court didn’t strike down the oath of allegiance [in the former case]. All this court said was that under the free exercise clause he is entitled to be excused from participation. *Torcaso* was a similar thing. [In] *Torcaso*, this court didn’t say, ‘No, you can’t give an oath of office.’ But it did say, ‘No, you can’t require him to take an oath of office in order to be a notary public.’”

In both cases, the court agreed with dissenters that the state could not compel their participation and belief. But also in both cases, the court did nothing to condemn the acts themselves. Only the compulsion was condemned. The majority-approved acts themselves continued, but the rights of dissenters not to participate were publicly affirmed.

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It was a powerful argument, and Baker took the point a step further, gently tweaking Black and friends by recalling his own swearing in as a member of the bar of this Supreme Court, complete with a theistic oath. He testified to his certainty that the justices, being tolerant men, would have allowed him to skip or alter the oath had he been an atheist. Nonetheless, they hadn’t taken any steps, even since Torcaso, to edit the administration of their own oath. Surely some lawyer who requested to be excused from the oath might feel that he looks different, but, after all, he is different. But even if he were to be embarrassed by such a declaration of difference, like a Jehovah’s Witness during the Pledge of Allegiance in West Virginia’s school, “would he have the right to say that this court cannot have its [oath or its crier’s] invocation because it offends his delicate sensibilities? I think the answer to that is quite clear. As long as he has the right to be excused, free exercise is not violated.”

By the time this day was done, Baker likely found himself wishing he had pushed a bit harder of this point, forcing the justices to parse precisely the differences between these acts and the scholastic morning exercises. Given that the Pledge of Allegiance had included its own theistic declaration for nearly a decade, couldn’t it also be considered a religious exercise? Opponents could certainly respond that oaths and pledges were chiefly civic acts, while prayers and Bible reading were wholly religious acts, but there was at least some overlap and ambiguity Baker could exploit. Instead, he had soon started down a path of lecturing the justices on the ultimate implications if “the court fails to draw a line at this case.” The outcome of such a failure, he unimaginatively droned, would be that a “Pandora’s box of litigation will be opened, with inevitable confusion, with the ultimate

79 Oral Argument Transcript, Murray v. Curlett, 36.
result that the court will be required to remove every vestige of our religious traditions from public life.”  

Black, still in his role as Engel defender, had grown tired of this line of argument long ago. He demanded to know where any obvious limit could be drawn on the other side either. “What do you think would come after...the school ceremony” if your argument wins? “Is there any reason why, if you can have three minutes, you couldn’t have forty?” he asked, hinting at the duration of the clergy-led religion classes that the 1948 McCollum decision had forbidden. “Or any reason if you could have forty, why you couldn’t have six hours” or the entire school day?  

Baker hadn’t been humiliated like Burch, but neither had he made any real progress. Maryland’s next and final speaker, Thomas B. Finan, the new attorney general of Maryland now that Ferdinand Sybert had joined the state’s high court, did not heed the lessons of Baker’s demise. For he paid no attention to Black’s not so subtle suggestion that the lawyers stick to the case at hand rather than make predictions about how the justices’ actions would ultimately result in the establishment of “nontheism” as America’s new official religion. Emphasizing the fact that thirty-nine states encouraged similar exercises in their schools—as if that were likely to dissuade this intentionally undemocratic body—Finan unleashed his attack on the “fallacy” of the court’s “neutralism.” Forcing religious expression out of the schools was not neutral; it was anti-religious, favoring the irreligious over the religious.  

The justices were unimpressed and they let him know it. The attorney general may have secured some sound bites for future elections, but his grandstanding did not advance  

80 Oral Argument Transcript, Murray v. Curlett, 38.  
81 Oral Argument Transcript, Murray v. Curlett, 38.  
Baltimore’s case before this oligarchy. Perhaps he had intentionally chosen the public rather than the bench as his audience because he knew the bench had already made its decision.

Kerpelman, who had reserved the remainder of his time when Warren shut him off at lunch, understood well how far his star had soared while he had been sitting. He should have left well enough alone and waived the balance of his time. He had almost surely won the case. Instead, though, the unknown, small-time lawyer let his moment in the spotlight affect his judgment, and he began to lecture the American public. The legal situation was now well under control, he summed up, but what

I think...there is [now] more of a need for is a reevaluation of the ethical and democratic principles which these cases set forth. I think there is a more of a need for charity and love on the part of the people who are in the majority and who have, probably unknowing to themselves, been offending the minority. The democratic thing for them to do, the ethical thing to do, the religious thing for them to do, is clearly not to make such a bone of contention of this case. After all, they’re overlooking the fact—

“You’re getting somewhat outside the Constitution,” one of the sympathetic justices delicately interrupted. The tenderness of the rebuke notwithstanding, the audience erupted in laughter at the unlikelihood of that speech here. Finan too had assumed an unbecoming lecturing posture, but at least he had lectured the judges. Kerpelman was lecturing the world.

Kerpelman accepted the rebuke humbly, apologizing to the court and offering a personal comment on the challenge of being a religious dissenter—he was a practicing Jew—in Christian America. He expressed his great gratitude for the Warren Court’s willingness in Brown to address the psychological effects on children of being separated

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83 Oral Argument Transcript, Murray v. Curlett, 50.
84 Oral Argument Transcript, Murray v. Curlett, 50.
along dimensions such as race or religion that need not concern the state. His young
daughter had absorbed the belief in Maryland’s public schools that Jesus is the Son of God,
and it “so happens that I would prefer she did not have that belief.” Regardless of what one
thinks of William Murray, Kerpelman pleaded, all fair-minded citizens should see him not
merely as an atheist but as a representative of all dissenters from America’s dominant faith,
rendered civic outsiders by beliefs having nothing to do with their commitment to this great
nation. “And the majority likes to go along thinking that they’re only doing what’s best for
everybody. They overlook the fact that because they are the majority, the minority is
there—long-suffering and quiet.” 85

His touching testimony softened the justices’ convention of sticking exclusively to
the legal question at hand, as Justice Black concluded the Murray v. Curlett oral arguments
with a little sermonizing of his own. Had Mrs. Black been present, she might have again
wondered if they were back in Birmingham. Reviewing the context of the Lord’s Prayer in
the middle of Matthew’s account of the Sermon on the Mount, Black became the unlikely
exegete. Many people, even “earnest, devout, God-fearing Christians,” he explained,
“devoutly believe the admonition in that chapter that they should not pray in public…”

Because that chapter, three verses before the Lord’s Prayer begins, advises not to
pray as the hypocrites do, in public; go into your closet, there pray that God will hear
you in secret and will answer you in secret….I’ve found that this is a very strong
belief throughout the country the last year, that people should not be made to pray in
public, even some of the most earnest Christians. 86

Kerpelman again thanked Black for his assistance, and on that hortatory rather than statutory
note, the chief justice adjourned the case.

85 Oral Argument Transcript, Murray v. Curlett, 50-52.
The lawyers for the Pennsylvania schools, Philip Ward III and John Killian III (coincidentally, their opponent today in this establishment affair, Henry Sawyer, also bore the name of his father and grandfather), knew by the time their argument commenced that they had almost no chance. The questions in the just-argued *Murray v. Curlett* demonstrated that the court had not accepted these cases because it doubted its decision in *Engel* but because it intended to spell out for the public—and for itself—the implications and limitations of that decision. Still, what were the lawyers to do, simply give up? Many of their colleagues only dreamed of taking the floor in this august chamber; once-in-a-lifetime opportunities require a vigorous attempt, even if it amounts to a “Hail, Mary” pass.

They determined that the only option open to them then, unlikely though it was, would be to try to distinguish between the circumstances in their schools and those of New York—and even those of the obviously unsuccessful Baltimore. The government would argue first because it had lost in the lower court and was thus the appellant. Mr. Ward dove right in, immediately claiming that “this case is different from the [Maryland] case you have just heard because in Pennsylvania the Bible reading statute does not require that the Lord’s Prayer be said.” Though some homeroom teachers chose of their own accord to say the Lord’s Prayer, neither the state of Pennsylvania, which wrote the statute, nor the authorities in Abington, who merely executed the law, had anything to do with these teachers’ individual choices. Simply put, this case “has nothing to do with the Lord’s Prayer,” or any other prayer for that matter. Baltimore and Long Island presented the court with prayer cases; Pennsylvania did not. This case, they claimed, concerned only “the constitutionality of reading ten verses of the Bible, without comment, to the schoolchildren of Pennsylvania”
for moral instruction. It had nothing at all to do with prayer and nothing at all to do with religion.⁸⁷

To buttress his claim that the Bible functioned in Abington’s supposed morality classes no differently than any other book in any other secular class, Ward highlighted both the legislative history of Pennsylvania’s Bible reading law and the ordinary rather than sacred ethos of the homeroom environment. The relevant 1913 statute basically only codified older practices, but it also included a later amendment explicitly detailing the “purpose of the statute [as being] to bring lessons in morality to the school...” The typical student received this instruction in a context that it would be almost impossible to classify as “spiritual.” For the ten verses usually followed a very this-worldly “fact for the day. They pull something out of the World Almanac to gain the attention of the children—Mt. Everest is 29,000 feet high, something like that—to get them thinking,” Ward explained. Stewart got a big laugh by identifying the almanac as “a loss leader” of sorts for the more mundane matters of morality.⁸⁸

When Chief Justice Warren finally interrupted Ward to break for the day, though, Justice Stewart was hardly in a laughing mood at how little help he was receiving from the lawyers in these cases. Only once in its history before last year had the Supreme Court ever found that a state or local practice violated the establishment clause, and in that case (McCollum in 1948), Illinois had been subsidizing the clearly sectarian catechetical classes of particular denominations. The matters being considered in these cases were of a much more general religious nature, yet these lawyers were arguing as if Black’s innovations just last year were now unquestionable. The lawyers were receiving Engel—which did not

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⁸⁷ Oral Argument Transcript, Abington Township v. Schempp, 1. See also pages 18 and 23 for additional explicit disavowals.
claim a single precedent, not even *McCollum*—as if it represented two hundred years of consensus jurisprudence. 89 Stewart certainly had doubts of his own about the constitutionality of these Pennsylvania and Maryland practices, wondering if the exercises, unlike last year’s New York arrangements, were in fact too narrowly Christian. 90 But his basic impulse in such matters remained that the court should tread lightly before invoking that grandest of sticks, the declaration from on high of the unconstitutionality of a practice passed into law by the people and their elected representatives.

This court had authority neither to make law nor to declare unconstitutional statutes it found merely imprudent. Like his brethren, he didn’t like the narrowness of this Bible reading provision. But the court’s constitutional role allowed them only to pronounce on matters of clear constitutional transgression. In general, localities had the prerogative to express their communal consensuses, so long as flexibilities were incorporated for pluralistic contexts (allowing readings from both the King James and Douay versions, for instance, in contexts with both Protestants and Catholics), and provided that remaining dissenters could be excused. 91

Stewart again could not find anything in the First Amendment mandating that the court make childhood itself secular, yet such an effect necessarily followed, he thought, from the majority’s current logic. Obviously his brethren did not intend to establish a “religion of secularism,” but their purging of religion from the educational context left possibly the most influential and surely the most time-consuming arena of young children’s

89 Justice Clark, obviously drawing different conclusions about the transparency of the basis for *Engel*, also noted in his majority opinion in *Abington v. Schempp* that Justice Black had not cited a single case; *Abington Township v. Schempp*, 374 U.S. 203, at 220-21. Black had little reticence about opining without external footnotes. His 1948 *McCollum* opinion depended only on the 1947 *Evers* decision, which he also wrote.


91 He would expand upon these views in his dissenting opinion in these cases, *Abington Township v. Schempp*, 374 U.S. 203, at 311-13, 315-17.
life void of religion, against the will of the vast majority of their parents. In response, he knew that the ACLU and other school prayer opponents might reply "that parents who want their children exposed to religious influences can adequately fulfill that wish off school property and outside school time." For all "its surface persuasiveness, however, this argument seriously misconceives the basic constitutional justification for permitting the exercises at issue in these cases."

For a compulsory state educational system so structures a child's life that if religious exercises are held to be an impermissible activity in schools, religion is placed at an artificial and state-created disadvantage. Viewed in this light, permission of such exercises for those who want them is necessary if the schools are truly to be neutral in the matter of religion. And a refusal to permit religious exercises thus is seen, not as the realization of state neutrality, but rather as the establishment of a religion of secularism, or at the least, as government support of the beliefs of those who think that religious experiences should be conducted only in private.\(^2\)

Stewart found just as far from "neutral" the argument that parents who wanted their children to have religious influences in their young lives could choose to send them to parochial schools. Such obvious discrimination against the rights of the poor he found unconscionable. Quoting the court from another context, he retorted: "Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way."\(^3\)

Stewart genuinely saw himself as the champion of the "little guy," whether it be a Jewish shopkeeper or a poor Christian parent, black or white. And he took considerable offense at the repeated suggestion by school prayer opponents that liberating the educational context from all traces of religion simply extended the court's noble 1954 liberation of the educational context from racism. "These are not, it must be stressed, cases like Brown v. Board of Education."

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A segregated school system is not invalid because its operation is coercive; it is invalid simply because our Constitution presupposes that men are created equal, and that therefore racial differences cannot provide a valid basis for governmental action. Accommodation of religious differences on the part of the State, however, is not only permitted but required by that same Constitution.\(^4\)

None of these arguments about the problems with an expansive reading of the establishment clause, however, had received any serious, focused consideration in the courtroom. As Stewart reflected on it that evening, the lawyers had been not only deferential today, they had been almost cowardly in the way they tiptoed around a poor opinion with a pedigree of only eight months.

Much to Stewart’s chagrin, Ward picked up the next morning with the same “the Bible is secular” argument that hadn’t advanced either his or Maryland’s cause the previous afternoon. Multiple justices demanded to know why, if the Bible reading merely informed a secular morality class, the state needed to include an excusal provision at all. (The question was less benign than it may have sounded, given that the officials in Harrisburg had added the excusal provision only after running into difficulties with lower courts over the lack of protections for dissenters.) Did Pennsylvania make algebra optional as well? Why not every secular subject?

Well prepared, Ward answered this difficult challenge effectively, noting that morality—much like patriotism, as in the case of the Jehovah’s Witnesses in West Virginia—sits quite close to people’s religious identity. Therefore the chances of some parents objecting were higher than in math class, so it made sense of Pennsylvania to build excusal options formally into the program. But even math class would, in fact, become optional if a parent outlined a religious objection to it. After all, in “Pennsylvania, we also

excuse children, if they want to be, from a physical and dental examination—if they have any religious compunction about taking that.”

Hugo Black eventually almost questioned Ward’s integrity in pursuing this argument. Isn’t the reason that the Bible is used is that “the Bible is a religious book?” he demanded indignantly. “The prayers in it are religious prayers. Its writings have been accepted through the centuries as the great truths of religion. Isn’t that it? How can we escape that?”

“Mr. Justice Black, it is that and so much more!” Ward pleaded. The Bible is so much a part of the tradition of this country, of the morality of the country. It’s our sort—I mean, you can’t say that morals only spring from religion. The atheist can be a moral man; the agnostic is a moral man. Morals are—the morals in the Bible are not so deeply based on the Christian-Judaic concept that they can’t be separated. Certainly we can’t claim the morals that are in the Bible as our own particular document, that they’re only ours. We can teach morality, and we think that the best place to get morality for our system in Pennsylvania is to use a book that everyone’s familiar with. Everybody approves those morals.

It isn’t the state’s job to inquire why citizens defer to the Bible as authoritative, Ward argued. That they do is all that matters to government officials, given their goal of instilling and reinvigorating a moral compass in its students. In short, religion works.

Emphasizing a common theme of the last two days, a handful of justices joined Earl Warren in testing the sincerity of the pluralism claims Pennsylvania repeatedly offered. “Do you know,” the court inquired, “whether anyone’s ever suggested that they pass a law to read the Koran in the schools?” Would he advise Hawaii to institute Buddhist readings? Ward, like Burch before him, insisted on his own religio-moral pluralism and his openness to exploring Islamic and other texts in such a situation. But they ran into problems when

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presented with specific legislative provisions calling for the "Holy Bible" rather than simply "great historic texts." He had no specific answer and really no serious case as far as the justices were concerned. Justice Douglas perhaps returned to writing personal correspondence, the distraction he regularly used to pass the time once a case began to bore him.99

Mr. Sawyer, a private attorney arguing on behalf of Edward Schempp and his Unitarian children, could conceivably have picked up his briefcase and gone home the winner without uttering a word. But he had some thoughts about how the justices could maintain their Engel opinion, which he obviously affirmed, and yet draw some reasonable limits on its implications. Regardless of one's views on the position he represented, it would be difficult to listen to the tapes of Sawyer's performance that February 28 and not come away with a profound respect for his lawyering. Though not nearly as well known as the ACLU's Mr. Butler and though not the attorney general of any state, Mr. Sawyer clearly outclassed all other litigators in the three prayer cases to reach the high court.

More than the other lawyers, he helped his case by making fairly transparent from the outset the major issues he hoped to cover in his time. Without ignoring judicial queries, he nonetheless managed to continue making progress through his argument in an orderly fashion, rather than being blown off-course by every digression. He made four central points. First, claims by his opponents that the state was merely using religion, rather than actively seeking to advance it—even if correct—were insufficient to insulate the state from a constitutional violation. The strict separationist view, which critics ridiculed as anti-

religion, in fact required that the state respect religion much more than that. Second, Potter Stewart’s free exercise defense, while perhaps impressive on its face, could be answered head-on and he was prepared to do so. Third, the court’s current trajectory did not require it to weed out every historic manifestation of civil religion. The Anglo-American legal tradition includes a “de minimis” limitation, whereby a court can legitimately ignore certain matters if no one is genuinely harmed by the persistence of a practice. Fourth, Justice Stewart was right that there are at least two occasions where the First Amendment’s two religion clauses collide. There are not an infinite number of problems, but there are two and they are important. And he was prepared to address them.

First then, he asked the court to consider Pennsylvania’s repeated devaluation of religion as merely an instruction book for seventh graders, where moral principles could apparently be ripped out of their thick contexts in complicated, theologically-loaded, historical narratives. While making no claims of his own orthodoxy, he was not shy about asserting that he took religion more seriously than most of his opponents. The founders wrote the First Amendment, after all, not only to protect the state from organized religion but also to protect religious beliefs and religious people from any state attempts to use “religion as an engine of civil policy.”100 This sort of instrumental manipulation of revered texts for moralistic purposes, whether trite or substantive, should be offensive to anyone who takes their religious tradition seriously.

Moreover, only in well-explained and carefully qualified historical-theological context can many biblical stories be understood as moral even by adherents to the tradition. “A god of vengeance,” he quoted from Leviticus “who demands blood sacrifices”? And “if you don’t do them properly, then the punishment comes upon you and your children”? 

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What about the texts that suggest that any meat you have which may be contaminated should be fed first to those outside the covenant community?  

For the first time in the trial, the justices sat quietly, no one jumping in to interrupt. (One court-watcher speculated that the 239 interruptions in these two cases may have set a record on verbosity from the bench.) Sawyer carefully avoided attacking the Bible as such, repeatedly commenting that he had “no hesitation in saying that... to an adult or with teaching, [the difficult passages] can be explained.” But starting at “an eye for an eye,” he succeeded in problematizing the likelihood that any random selection of ten verses in this complicated book could possibly be put to immediate use to stop running in the halls. These matters were weighty, they were religious, and those who would label them merely moral were the most religiously callous of all parties in this dispute. To “dismiss these differences as mere quibbles, to say: ‘Well, it doesn’t make any difference,’” as the Pennsylvania Attorney General does before you, “is to fly in the face of hundreds of years of history and bloodshed.” Mr. Schempp did not want to have his children excused, fearing they would be considered “odd balls” or devotees of “atheistic communism,” but neither did he want them exposed to the doctrines of a literal reading of this Bible.

Those defending the Abington schools would have this court believe, Sawyer eloquently continued, that if theology does come through in an occasional reading, it is really only “a question of theism and nontheism.” This is nonsense, pure and simple. Lest his case be misrepresented as his own bigotry against majoritarian Christianity, Sawyer sagely appealed to theologically serious Protestants and Catholics that they too should be

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offended by the utilitarian manipulation of the Bible. His clients, Sawyer said, were Unitarians, but because they took Trinitarian claims seriously, they had been impressed by Christian teaching about the unrelenting, almost polemical, Trinitarian character of the entire Bible, even the Old Testament. “[From] the opening chapter of Genesis to the last chapter of Revelations [sic], it teaches. It teaches the way the world was created, and it teaches in a sectarian sense from the opening. From the very opening it says, ‘And lo the Spirit was upon the waters.’ Christian translators’ capitalization of this “Spirit” and their regular discovery of types and shadows of Jesus Christ in the prophets demonstrates again that the Bible cannot be read in any normative way without being religiously sectarian. To attempt to do so is to deny the text’s own claims to be the word of God, he alleged.106

Turning to Justice Stewart and his free exercise concerns, Mr. Sawyer prefaced his comments by insisting that the question has been poorly framed when people (he meant Stewart particularly) regularly discuss the “right to pray.” Of course, there is such a right. Believers can pray whenever and wherever they want—not always aloud—but no one, no state, can ever stop anyone from praying. That was not the question before this court. Instead, the “question is: Is it a constitutional right, under the free exercise clause, to have the state conduct the prayer, or ‘to pray,’ in other words, under the aegis of the state? And I think clearly not. Even if the overwhelming majority so feel, I think it probably has nothing to do with the question of majorities.” Children, like adults, have every right to pray, even corporately, maybe even in unused rooms before classes or during recess, “but they haven’t got a right to get the state to help them” secure the participation of others.107

Stewart wondered if even these statements about religion not being able to seek the state's "help" could properly be phrased in such absolute terms. "Isn't it true that states—every state—helps religion in a multitude of ways? It gives them fire protection, police protection...?"

Not exactly, Sawyer humbly yet forcefully rebutted. States offer such assistance only for the benefit of the larger community. Fire trucks rush to burning churches, for instance, because individual citizens may die or "because the barroom next door might catch on if the church burned."

Was Sawyer actually prepared to say these were the only reasons the state extinguished the evil that is a church fire? In a hypothetical situation where an obviously empty synagogue with no neighboring buildings caught fire, would Mr. Sawyer as mayor really order his fire chief to stand idly by? If so, doesn't this logic qualify as every bit as hostile to religion as public critics had been claiming? There was nothing "neutral" about such an assertion. Fortunately for the otherwise smooth lawyer, the nature of an oral argument worked to his advantage to extricate him from having to defend this point, as some comments about the basis of religious organizations' tax exemption led the justices in another direction.

On his third major subject, the question of whether the court had an obligation to move from these school cases to an aggressive secularization of all of public life, Sawyer insisted they did not. The Anglo-Saxon legal traditions of ad hoc cases, de minimis, and standing free the judiciary from having to become the police-force of a new orthodoxy of secularism. The court does not hand down decrees ex nihilo; they respond to particular

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cases. Those cases must originate with particular individuals, claiming precise grievances. And the court reserves the right not to hear or act in any given case based on a *de minimis* claim—that is, a judgment by the court that a particular violation of a law or the Constitution causes so little harm that it need not be remedied. In the case of “In God We Trust” on coins, for instance, who is harmed? The only possible grounds on which one could have standing before the court to sue on this matter is as a taxpayer (versus as a student, parent, Jewish shopkeeper, or prospective notary, as in the other recent cases), and the cost to the public coffers of including this motto on the coins is essentially nothing given that the molds have already been made. A taxpayer could conceivably sue to prevent the government from spending new money to add religious declarations to public productions, but, under Sawyer’s logic, there probably weren’t any grounds on which even taxpayers could appeal to the judiciary to remove extant religious engravings from public space.

As his fourth and final significant contribution to the court’s deliberation, Sawyer wanted to join Stewart in acknowledging two particular instances where the two constitutional religion clauses do indeed compete with each other. First, in the case of chaplains, which one could hardly write off as *de minimis*, “the State, by its own coercive legal power separates a man from his religious activity, his religious sources...,” and he would have every right to claim a free exercise grievance if the state failed to offer him a chaplain. Sawyer acknowledged that this wasn’t his case, and thus he would leave it to the justices to settle if and when the matter ever came to them. But as far as he was concerned—and here he clearly seemed to be seeking to calm Stewart and his gallery—it is

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more important to protect free exercise than to ensure the purity of the establishment prohibition. 112

Second, some might argue that the exemption from taxation religious organizations receive from the state amounts to an indirect subsidy of religion. Sawyer revealed less of his own view on this question, but he readily admitted that pro-exemption litigators would have at least one solidly respectable argument: If one begins that taxation rather than exemption is the state’s first act, then the state is not actively favoring religion by exempting it. Legislatures instead passively recognize religion as outside the state’s domain, as in some ontological sense prior to government, when they do not actively levy taxes against religious organizations.

Mr. Sawyer had a tremendous afternoon, never having had to “lower” himself to lawyering as if his case were actually in question. There was no hint of pleading in his time before the justices. He received a rare gift, the luxury of standing on that grand stage before an already decided bench. His elevated role that day had been to serve as advisor to the court, helping them define the limits of the case’s implications and thereby also to make their inevitable ruling more palatable to the American people. He had seized this calling and addressed head-on the bases on which much of American civil religion could endure untouched by this ruling. Unlike Mr. Butler’s performance last year, which occasionally partook of the self-satisfaction of a debunker, auditors probably did not suspect Mr. Sawyer of secretly hoping the radical Justice Douglas would invite him for a congratulatory drink on a successful diminution of religion itself.

A political cartoonist for the *Detroit News* could not figure out who all of these angry Americans were who kept appearing in opinion polls denouncing the *Engel* decision. White southern frustration with the court he could explain, even if considered it abhorrent. Catholic disappointment made sense to him as well; after all, he lived in Detroit. But the Jewish community, although small, overwhelmingly supported the court, and the vast majority of institutionalized Protestantism had hailed the decision. Even some big name fundamentalists had publicized their discontent with the school prayers as shallow—and many preachers among this group commanded massive radio followings (Carl McIntire’s program alone was heard on over 635 radio stations in the 1960s).\(^{113}\)

Yet the polls showed four out of five Americans upset. Clergy-supporting Catholics (JFK certainly didn’t count on this scope) and non-fundamentalist southerners couldn’t account for even half of this angry hoard. The math didn’t make sense. But he had an idea, at least enough of a suggestion to merit a cartoon.

Four fun-loving American men are trying to squeeze in an early morning eighteen holes, perhaps even before work. Conversation turns to the court’s decision as one of them is about to tee off. Red-faced and angry, perhaps partly because of the muscle tension of the backswing, but also partly because rustic athletes don’t like far-away, unelected intellectuals telling them what to do, he barks: “No court’s gonna interfere with my kid’s religion!” In the back of the frame across the course, the hymnody spilling from the windows of a local church suggests that it may actually be Sunday morning.\(^{114}\)

Political cartoonists were not alone among members of the media in having difficulty identifying the constituencies behind the pro-prayer movement. This type of market


segmentation wasn’t easy; beliefs are hard to see. But legal scholars and sociologists were beginning to notice the widespread defiance of the school secularization decisions—not only *Engel* but also the 1948 *McCollum* ruling against clergy-taught religion classes in schools. The current issue of the *Columbia Law Review* while the *Murray* and *Schempp* cases were being argued, for instance, asserted that the court’s 1948 prohibition on public school religion classes “has probably been as widely disobeyed as almost any holding the Court has ever handed down.”¹¹⁵ Law journal editors, who had been flooded with submissions on church/state topics for half a decade, were now finding their supposedly specialized publications being read by the larger community. An Emory law journal was receiving submissions from university ethicists and heads of teachers colleges, all wondering what truly secular public schools would look like and, as importantly, if it was going to happen at all, regardless of what courts mandated.¹¹⁶

President Kennedy and Rev. Martin Luther King had urged Americans to submit to the court’s judgment, but there were more voices like Rev. Wick Broomall’s urging defiance. The pastor of Westminster Presbyterian Church of Augusta, Georgia, Broomall told his congregants that one’s faith may occasionally require opposition to faithless decisions. It is inadequate simply to submit to judicial tyranny as the new “law of the land.”¹¹⁷ The Supreme Court is not infallible; the Bible is. *Life* publisher C. D. Jackson, a former Eisenhower speechwriter, stopped short of urging outright resistance of the court, but he understood well the sentiments of his subscriber base. The week after the February, 1963, cases were argued, *Life* ran a lead editorial judging the court’s actions more divisive than the practices it sought to correct. In “The Bible: Better in School Than in Court,” *Life*

called for a return to the American situation before the justices began to meddle in the settled civic traditions of local communities.

The court did not hand down its ruling in the second round of prayer cases for nearly four months, again waiting until its last day of work for the year. Students of the court struggled to understand exactly why. For though the television cameras on the sidewalk outside the Supreme Court back on February 28, with all the legal experts network executives had hired to serve as talking heads, tried to build suspense for the ruling, most who had heard the actual arguments quickly reported that Justice Stewart would likely be the lone dissenter again. The United Presbyterian Church, meeting in May in Des Moines for its annual General Assembly, voted to emphasize its dissatisfaction with scholastic religious observances and to publicize its support of the court—which had not even announced its decision yet. The National Council of Churches governing committee similarly voted (65 to 1) before the court’s final ruling to support an orderly removal of devotional exercises from the schools.

Depending on how much public relations savvy one attributes to the court, an argument could be made that every extra day they delayed the decision, the more they deflated the passions animating the public opposition. With all of the expectations on this ruling—which the court was not going to meet—a stable public order was advanced by allowing people to internalize slowly the rumors of an unfavorable outcome rather than having citizens wake up to another barrage of large-font headlines like the “Public School

118 Blanshard, Religion and the Schools, 112.
Prayer Outlawed" that the Washington Post had draped over its front page last June.\textsuperscript{120}

Internal court deliberations about how much to explicitly limit the implications of the ruling also contributed to the court's cautious pace.

On June 25, 1963, the justices, as expected, rejected the Lord's Prayer and the devotional Bible reading practices, 8-1. Also as expected, they worked harder than last year to write an opinion mindful of the likely objections of lay readers. Somewhat surprisingly, though, it took the majority over a hundred pages and four different opinions to outline the decision. The Presbyterian Tom Clark delivered the official court position. The lone Roman Catholic, William Brennan, offered a lengthy concurring opinion. The court's sole Jewish member, Arthur Goldberg, penned a third opinion for himself and Justice Harlan. The sixty-four year old William Douglas like last year concurred with the court's narrow ruling but drafted a finance-based explanation of why he believed the decision did not go far enough. While probably not done intentionally, the Protestant, Catholic, and Jewish primary opinions seem to target their co-religionists. For Brennan speaks sensitively to the concerns of those who believe that the nurture of the young is an inherently religious endeavor.\textsuperscript{121} Justice Goldberg takes a very different tone in warning those who would encourage "a brooding and persuasive devotion to the secular and a passive, or even active, hostility to the religious."\textsuperscript{122} Obviously his opinion is not the court-sanctioned version of the ruling for Jewish citizens, yet it seems more than coincidental that he would instinctively share Jesuit concerns about aggressive secularizers. The court was cognizant of its various publics.

In reading his twenty page official opinion, Justice Clark spoke slowly, "like a Texas uncle kindly explaining why he [was] doing something that may seem puzzling" or even

\textsuperscript{120} Washington Post, June 26, 1962, 1.
\textsuperscript{121} Abington Township v. Schempp, 374 U.S. 203, at 242.
\textsuperscript{122} Abington Township v. Schempp, 374 U.S. 203, at 306.
mean. He paid the obligatory respect to America’s religious past, but he also worked to emphasize the vigor of the country’s religious present. With “church” membership—which had generally come to mean institutional affiliation with any religious organization—hovering around two-thirds of the population, and with fully 97% of the public claiming identification with some religious tradition in surveys, Clark wrote that our exciting challenges as a people included not only how to pay proper respect to our past, but also how to peaceably and profitably coexist given our rich and vibrant religious diversity. Fortunately, he exhorted, Americans have long been committed not only to religion but also to a robust religious freedom. In an age where materialistic reductionism indeed presented a noteworthy threat, the properly “American” answer lay not in a passive deference to the government in religious affairs, but instead in a renewed commitment to this country’s tradition of religious competition—where the popular denominations can thrive “according to the zeal of [their adherents] and the appeal of [their] dogma,” as the court had put it so eloquently in the past.

Clark walked through every significant church/state challenge in the sixteen years since Everson, affirming Justice Black’s guidance each step of the way. Given the care with which the cases to date had been handled, and given the relevant facts in this case, quite simply, “the conclusion follows.” State devotional practices must be rejected as a “direct violation of the rights of the appellees and petitioners.” The only comment the court really needed to make about these cases concerned the silliness of “the contention that the Bible is

123 Newsweek, July 1, 1963, 48.
here used either as an instrument for nonreligious moral inspiration or as a reference for the teaching of secular subjects.”

To provide some guidance to legislatures about how to remain neutral toward religion when handling areas of life formerly heavily influenced by religious concerns, be it particular days of rest or questions of how to open the school day, the court devised two “tests” or filters through which to evaluate possible state action. First, what is the purpose of the law? Second, what is the primary effect of the law? “If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution.”

Clark explicitly denied the increasingly widespread suggestion that the court had “established in the schools...a ‘religion of secularism.’” Clearly the court cannot affirm those with no religion over those with religion, and they don’t here do any such thing. They do not even prohibit the use of the Bible in public schools in “comparative religion,” “history of religion,” or literature classes, provided the Bible is “presented objectively as part of a secular program of education.” Teaching either religion or irreligion is prohibited. Teaching about religion is not only allowed, but almost encouraged, for without it, “it might well be said that one’s education is not complete.”

Justices Brennan and Goldberg in their concurring opinions do not disagree specifically with anything in the majority opinion of their brethren. Their desire to limit even further the decision’s implications, and thereby to comfort the citizenry, best explains their choices to provide greater elaboration. Both opinions affirm religion, deny hostility toward it, legitimize government accommodation of the people’s religiosity, and, in general,
distance themselves from Douglas' and to a degree even Black's zealous separationism.\textsuperscript{130}

Both opinions labor to emphasize the propriety of eliminating the sectarian exercises here under consideration, and yet also the fact that the logic here employed need not ban all civil religion. Brennan wrote unambiguously:

While it is not, of course, appropriate for this Court to decide questions not presently before it, I venture to suggest that religious exercises in the public schools present a unique problem. For not every involvement of religion in public life violates the Establishment Clause. Our decision in these cases does not clearly forecast anything about the constitutionality of other types of interdependence between religious and other public institutions.\textsuperscript{131}

Goldberg is equally forthright: "[O]f course, today's decision does not mean that all incidents of government which import of the religious are therefore...banned by the strictures of the Establishment Clause."\textsuperscript{132}

After reviewing the contested history of Bible use in the schools, Brennan cited various educational authorities to diminish the hopes of those who expect to find a "common core" faith. "History is not encouraging to 'those who hope to fashion a 'common denominator of religion detached from its manifestations in any organized church.'" Most particular believers would ultimately conclude that they want "no such reduction" to a shallow "new sect—a public school sect—which would take its place alongside the existing faiths and compete with them."\textsuperscript{133} Nonetheless, in a noteworthy departure from the detached judicial tone he usually employed, Brennan suggested that perhaps "a moment of reverent silence" might satisfy the public's desire for a place-holder for the transcendent and yet skirt a constitutional violation.\textsuperscript{134}

\textsuperscript{130} See, e.g., Brennan, \textit{Abington Township v. Schempp}, 374 U.S. 203, at 295; and Goldberg, 374 U.S. 203, at 306.
\textsuperscript{131} \textit{Abington Township v. Schempp}, 374 U.S. 203, at 294.
\textsuperscript{132} \textit{Abington Township v. Schempp}, 374 U.S. 203, at 307.
\textsuperscript{133} \textit{Abington Township v. Schempp}, 374 U.S. 203, at 287.
\textsuperscript{134} \textit{Abington Township v. Schempp}, 374 U.S. 203, at 281.
Regarding the limits of the decision, he devoted nine pages to outlining six different categories of public religious activities not in any way constrained by this ruling.\(^{135}\) As he read the establishment clause, military and prison chaplains violate no rule. No one would have obvious standing to challenge the service of legislative chaplains or court clerks. Like Clark, he saw plenty of legal space for using the Bible in schools, providing the purposes were secular rather than devotional. The tax exemptions of religious institutions were not in doubt, for they already benefit “in spite of rather than because of their religious character.” Stated differently, religious organizations simply share in the exemption that the government makes available to most non-profit organizations. The government is not favoring religion as religion; it is simply not taxing organizations which exist to serve their communities—be they educational, charitable, whatever—without any eye to profit. The government isn’t really seeing religion at all in this case.\(^{136}\) Among the other public religious manifestations not in question were the declarations of public coins or buildings that “In God We Trust.” If grandstanding citizens planned to predict dreadful “next steps” following from the justices’ decision, Brennan wanted to ensure that the prophecies were in spite of rather than because of his judgment.

Goldberg and Harlan spoke more succinctly but no less clearly that they had no interest in promoting secularism. The teaching of spelling is a secular, or wholly this-worldly, task, much like building an aircraft carrier—and it is with these matters that sword-bearing and tax-collecting governments are concerned. But that shouldn’t lead anyone to conclude that religion is unimportant or must be marginalized. It simply has no connection to the coercive activities of levying taxes or imprisoning wrong-doers. In what appears to be


\(^{136}\) *Abington Township v. Schempp*, 374 U.S. 203, at 301.
a subtle criticism of Justices Black and Clark’s heavy dependence on James Madison and his zealous separationism—and the repeated citation of the Virginian’s warning that proponents of religious liberty should “take alarm at the first experiment with our liberties”\textsuperscript{137}—Goldberg offered his own warning against creating church/state problems that don’t actually exist. If some extant communal practice does not “by any realistic measure” cause any real harm or pose any real danger, prudence requires that it be left alone. He thus closed with this counsel: “It is of course true that great consequences can grow from small beginnings, but the measure of constitutional adjudication is the ability and willingness to distinguish between real threat and mere shadow.”\textsuperscript{138}

A Chicago high school responded to the court’s announcement by promptly expelling a praying mantis from its biology collection.\textsuperscript{139} But other than that, few Americans judged the decision humorous. Popular denunciations of the ruling as “another major triumph for the forces of secularism and atheism” and as part of an ongoing attempt to eliminate “God from all public American life” again came quickly. Nonetheless, the volume of the outcry was substantially reduced from the previous summer.\textsuperscript{140} Last year, the angry comments of North Carolina’s Senator Sam Ervin that “the Supreme Court has made God unconstitutional” had been commonplace; this year, the Congress seemed relatively unsurprised.\textsuperscript{141} In June 1962, the day after the \textit{Engel} ruling, the president of the American Bar Association, John C. Satterfield, had altered a planned speech in Cleveland to criticize the court, and famed

\textsuperscript{137} Black, e.g., concluded his \textit{Engel} opinion with this citation, 370 U.S. 421, at 436.
\textsuperscript{138} \textit{Abington Township v. Schempp}, 374 U.S. 203, at 308.
\textsuperscript{139} \textit{Newsweek}, July 1, 1963, 48.
\textsuperscript{140} \textit{New York Times}, June 18, 1963, 1, 27.
\textsuperscript{141} See Lawrence Wright, \textit{Saints and Sinners: Walker Railey, Jimmy Swaggert, Madalyn Murray O’Hair, Anton LaVey, Will Campbell, and Matthew Fox} (New York: Knopf, 1993), 102. The judgment about June 1963 is made based on scanning the \textit{Congressional Record} for the weeks following the \textit{Schempp} decision, June 25, 1963.

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Harvard law professor Mark DeWolfe Howe was photographed on the front page of the *Boston Globe* calling the *Engel* outcome "absurd." In June 1963, *Schenck* was indeed big news, but hardly earthshaking.

At least six major factors explain the differences between the 1962 and the 1963 outcries. First and most importantly, the element of shock was missing this time around; this outcome was largely expected. The *New York Times*, for instance, had been running stories for months on Jewish groups' fears about the public response to the inevitable decision. The Times had even run an editorial praising the National Council of Churches and the mainline Presbyterian Church for praising the court's decision—a decision which, of course, hadn't even yet been announced. Second, and closely related to this, the expected prayer decision understandably received less immediate media attention than some unexpected Civil Rights headlines. A week which began with Governor George Wallace's "schoolhouse door stand" ended with the finalization of plans for President Kennedy to speak at slain Civil Rights' leader Medgar Evers' funeral at Arlington Cemetery. There and before Congress, Kennedy demanded the farthest-reaching legislation to date. Third, the carefully qualified and limited judicial opinions, which were printed in full in major papers, may not have affected the anger of average citizens, but they likely led many editors to tone down the bombast in their headlines. Unlike last June, far fewer publications opened with shrill shouts such as "The Ban Against God!" Fourth, with legislation to amend the First Amendment already being considered in Congress, observers understood that the real drama surrounding school prayer was yet to come. Fifth, many local officials had already made it clear that they had no intention of following the ruling. Outright defiance of the court was

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143 *New York Times*, e.g., March 4, 1963, 16; April 1, 27; May 16, 28; May 22, 1; June 7, 13; June 17, 24.

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limited chiefly to the South, but attorneys general in most states somehow managed to find a
great deal of flexibility in the ruling—flexibility that typically allowed whatever their
particular state was practicing to continue with only minor modifications.144 Sixth and not
least significantly, many of the most vocal critics happened to be out of the country that
week. Cardinals Spellman (New York), Cushing (Boston), and McIntyre (Los Angeles)
were in Rome as part of the U.S. delegation to Vatican II, and Billy Graham was conducting
a revival crusade in Stuttgart, Germany. All of them expressed “shock” and issued
statements critical of “encouraging the communists” and “penalizing the 80%” of Americans
who want the exercises, but the effect of their irritation was limited by the lack of film
clips.145

The “back-up” religious leaders did a commendable job of capturing the mood of
public anger, but their quotes lacked the punch of the regular pontificators. Donald H. V.
Hallock, Episcopal Bishop of Milwaukee, called the decision “bad” but “inevitable,”
warning of the approaching day when “In God We Trust” would be declared
unconstitutional.146 Robert Cook, president of the National Association of Evangelicals,
whose membership had been somewhat sympathetic to the court’s view a year ago but had
grown increasingly critical since, denounced the ruling as “a sad departure from this nation’s
religious heritage under God” and “another step in creating an atmosphere of hostility to
religion.” If such an “interpretation of the First Amendment is allowed to stand,” he
prophesied, it will not “protect against the establishment of religion” but will instead open

146 Boles, The Bible, Religion, and the Public Schools, 265.
“the door for the full establishment of secularism as a negative form of religion.”

Pentecostal leaders called on all Christians to “stand up and be counted” lest America “become the pagan nation the Devil wants us to be.” Fred Pierce Corson, president of the mainline-sympathizing World Methodist Council distanced himself from the National Council of Churches, and predicted a joint Protestant/Catholic movement for parochial schools “simply to protect [our] children from a growing secularism which now seems to have invaded the courts.” Lutheran groups certainly hoped for such a movement, with the head Wisconsin Synod (one of the four major Lutheran bodies in the country) happily preparing his school administrators for an influx of public school students, and with a high-ranking Lutheran Church in America official lamenting the secularization of childhood as schools ate up more of kids’ days but squeezed the spiritual from their curricula: “The time may come when the Supreme Court may have to rule on how much of the time of the children and youth the schools can command.”

What ministers lacked in quotability, southern politicians supplied in abundance. The fact that the ACLU sued the Los Angeles schools only two days after the Abington decision to have the words “under God” removed from the Pledge of Allegiance certainly didn’t hurt the efforts of many southerners to secure themselves some press clippings. Virginia’s Senator A. Willis Robertson asked why “all the rights in this country” belong only to “the few atheists who deny God and the Bible.” South Carolina’s Senator Olin Johnston announced: “Despite the Supreme Court ruling, I am urging schoolteachers and

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schools to continue reading of the Bible and to continue praying in classrooms. There is no statutory provision to penalize the school officials for defying the Supreme Court.\textsuperscript{151} Jesse Anderson, State Superintendent in Johnston’s state, said he was happy to oblige: “South Carolina will continue to feel free to do in each school or classroom the normal thing the teacher feels should be done.”\textsuperscript{152} Florida’s legislature passed a resolution, with only one dissent, urging its sixty-seven counties to decide for themselves to continue Bible reading and prayer. That way, the bill’s sponsor explained, it would take sixty-seven separate lawsuits for the radicals to eliminate God from Florida’s schools.\textsuperscript{153} (The Florida Supreme Court the following year would decline to declare school prayer in that state unconstitutional.)\textsuperscript{154} Alabama’s solons followed suit. In a region where 71% of the schools held not only brief morning exercises but actual formal chapel services, Alabama decided to add religion classes to the curriculum as well to defy the court.\textsuperscript{155}

Governor George Wallace, though rarely ambiguous, went out of his way to ensure that both Alabamans and the court understood him on this matter. Religion would remain a part of the schools of his state, and if the court tried to outlaw the Bible in any particular Alabama suit: “I’m going to that school and read it myself.”\textsuperscript{156} Back in Washington, that was not what Attorney General Robert Kennedy wanted to hear. Solicitor General Archibald Cox, who identified the desegregation, school prayer, and legislative redistricting cases as the three issues that transformed the court under Warren into an activist branch, told

\begin{footnotes}
\item[151] Blanshard, Religion and the Schools, 116-17.
\item[153] Boles, The Bible, Religion, and the Public Schools, 290.
\item[156] Boles, The Bible, Religion, and the Public Schools, 290.
\end{footnotes}
a group of government officials that Kennedy had worried about whether he would need to send in federal marshals to stop Alabama’s brazen defiance of the court on school prayer.  

Alabama may have been more visible, but it certainly wasn’t unique. In Tennessee, the State Commissioner of Education advised local officials that Bible reading remained legal in their state, and an outside study of Tennessee practices conducted six years later revealed that, of 121 school districts, only one had “completely eliminated all Bible reading and devotional exercises.” Seventy had left their pre-1963 practices unchanged, and fifty had made some modification to their policy, typically by making nonparticipation by dissenters easier. Only about one percent of the schools reported ever even being “approached by an individual who objected to a continuation of the Bible reading and devotional exercises.” As one Tennessee housewife put it, “The decision of the Supreme Court seemed senseless and I could see no advantage in making changes” to comply with it.

Northern officials tried to cloak their defiance in alternate “interpretations” of the ruling, but defy many still did. Delaware’s attorney general explained, disingenuously, that he thought the Supreme Court’s ruling applied only to schools in Pennsylvania and Maryland. In Iowa, school officials said they had no control over what teachers chose to do behind closed classroom doors. Many states explored the possibility of substituting the

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fourth stanza of the hymn “America” for their morning prayers, as New York City schools
had done some years back:

Our fathers’ God, to Thee,
  Author of liberty,
To Thee we sing.
Long may our land be bright,
  with freedom’s holy light
Protect us by Thy might,
  great God our King.

Many northern states directed school officials to explore Justice Brennan’s suggestions
about instituting a moment of silence for meditation.¹⁶² UPI surveys demonstrated that few
states planned to discontinue their exercises outright.¹⁶³

At the time of the decision, thirty-seven states and the District of Columbia either
required or explicitly permitted morning exercises and/or devotional Bible reading (at least
seven more passively permitted them). But experts estimated that probably only slightly
more than half of local schools nationwide actually held religious ceremonies on a regular
basis (nearly 90% held them at least occasionally, such as a baccalaureate service).¹⁶⁴
Regions differed substantially, with 68% of northeastern and 77% of southern school
districts reporting regular exercises, versus only 18% of midwestern and 11% of western
districts.¹⁶⁵ The issue, though, had a symbolic power extending well beyond the affected
school districts. As one superintendent put it: “I am of the opinion that 99% of the people
in the United States feel as I do about the Supreme Court’s decision—that it was an outrage

¹⁶³ Boles, The Bible, Religion, and the Public Schools, 288-89.
¹⁶⁴ National Education Association Journal, September, 1963, 55-56; Dierenfield, Religion in American Public
  Schools, 64-66; Blanshard, Religion and the Schools, 97.
¹⁶⁵ Dierenfield, Religion in American Public Schools, 51-56; Laubach, School Prayers, 139.
and that Congress should have it amended. The remaining 1% do not belong in this free world.”

Congress was listening, mindful of that “99%”—or at least the 65-85% their pollsters kept telling them about. In the week after the 1963 ruling, a handful of congresspeople, including Arizona presidential hopeful, Senator Barry Goldwater, filled out the requisite paperwork to initiate a constitutional amendment, whereby the First Amendment would be changed to explicitly prohibit the establishment of particular denominations but not to prohibit governmental involvement in generic religious activities such as school prayer. If successful, this would be the first time in U.S. history that the Bill of Rights had been altered. Over the next year, 115 members of the U.S. House (64 Republicans, 51 Democrats; 72 northern, 43 southern or border state representatives) would propose 151 different bills to amend the Constitution—easily constituting record levels of legislative activity.

Letter-writers were setting records of their own. Having deluged the Supreme Court in an unprecedented volume of mail in 1962, American households turned their attention toward the building across the street in 1963. Congressional Quarterly tracked the “record amounts of mail...almost 100 percent of it” favoring a constitutional amendment. Justices Douglas and Black, still shocked by their in-boxes, had begun to reply to more of

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the correspondence than was their custom. The week his summer break began, Douglas sat down to respond to a typical frustrated citizen:

Dear Mrs. Whitesell:
...The First Amendment was added to the Constitution years ago—and one of its purposes was to prevent public institutions from serving sectarian ends. The reason was the history of religious conflicts that tore society apart.

The Court, in adhering to the First Amendment, promotes rather than retards the full spiritual development of the people. To hold as you think, we would have to rewrite the First Amendment. The people can do that, not the Court.

Mrs. Whitesell and her neighbors intended to do exactly that. Some of their representatives in Washington were ambivalent, but didn’t think they had much of a choice. As Montana’s Mike Mansfield, leader of the Senate Democrats, put it, somewhat cryptically: “The Supreme Court has its function and we have ours.”

170 Schwartz, Super Chief, 442.
Congressman Frank J. Becker, New York Republican, exhaled a sigh of relief when word of the Supreme Court's decision in the Schempp and Murray cases reached him on June 17, 1963. What he felt certainly wasn't pleasure, but his anger this year was at least tinged with a touch of vindication. The outcome proved he wasn't crazy and hadn't been alarmist in his reading of the previous year's Engel decision after all. Since last June, when the Catholic lawmaker had been one of the first members to propose legislation calling for clarification of the First Amendment, colleagues had been telling him not to overreact, to be patient, that he was making too much of a narrow ruling. Liberal journalists and modernist clergymen had of course been telling grassroots America the same thing, but Becker could write them off because of what he saw as their bias against traditional American values. When members he respected told him to calm down, though, there must have been some moments of mild self-doubt.¹

The New Yorker did not possess a great capacity for self-doubt. Some observers in Washington and back home on Long Island who didn't know him well concluded that he calculatingly played to the crowds. But they misread him. Becker spoke powerfully and effectively to popular angst about communist threats, internal and external, not because he rehearsed the rhetoric carefully, but because he fervently believed the message. His electoral success over two decades resulted primarily from his consistent vision of what made and maintained this country's greatness, and thus he did not have much incentive to nuance or

¹ See his testimony in U.S. Congress, House Committee on the Judiciary, Hearings on Proposed Amendments to the Constitution Relating to Prayers and Bible Reading in the Public Schools, April 22-June 3, 1964, 213.
complicate his view of the world. Still, his tenacious focus derived less from a studied assessment of his audience than from the heartfelt conviction that the hope of America lay in its special relationship with the Almighty, and in the nation’s resolve to doggedly oppose the most formidable system of atheistic imperialism the world had ever known.²

When Becker rode Eisenhower’s 1952 coattails from state politics into Congress, the first legislation he invested himself in heavily had been a resolution he authored calling on the new president to demand that the UN’s “General Assembly open each session with a prayer.” The State Department opposed the proposal as unnecessarily offensive to Soviet sensibilities, and many of Becker’s colleagues then too had urged him to quiet down. Yet he persisted, passionately insisting that when you “honestly and sincerely” believe you are right, you must continue “fighting with all your might to make your point of view prevail.” The question of whether or not God was supreme over politics was not an issue on which one may compromise; it was a matter of conscience.³

A decade later, in the 1962 Engel decision, Becker saw godless judges on these shores seeking to import the anti-God perspective and force it on America’s impressionable young. While even many of the most discontented members had been content to wait for the next Court ruling to determine if the legislature really needed to step in on the school prayer question, he had pushed for immediate action. And even after Schempp had been argued in February 1963, he was unwilling to wait for the announcement of the decision. On May 8, the bit player Becker had rushed onto the House floor when an opportunity presented itself to interrupt and confront the magisterial Emanuel Celler, demanding to know why hearings

² When South Carolina Democrat William Jennings Bryan Dorn eulogized him on the House floor in the fall of ’64 as a legislator whose political “philosophy was founded on the philosophy of the Man of Galilee,” he
had not yet been scheduled on the legislation Becker had introduced seeking to amend the
Constitution to restore school prayer.4

Celler, Brooklyn Democrat and second-most senior member of the House, had long
chaired the Judiciary Committee, which joins Appropriations and Ways and Means on
traditional lists of the three most powerful committees. With jurisdiction over proposed
constitutional amendments, the Jewish chairman, one of the few members of the House
known to peers to be unabashedly unsympathetic to a prayer amendment, had thus far been
able to fly below the public radar in his efforts to stall and outlast amendment proponents.
He had simply allowed the proposed legislation that had been delegated to his committee
nearly a year ago to sit on his desk—no votes, no hearings, nothing.5 This meant, of course,
that there was no spotlight for his opponents to grab. Now, however, Becker had interrupted
a floor speech on an entirely unrelated matter to call him on the tactic. Quick on his feet
rhetorically if not literally, the elderly Celler replied elliptically that “very shortly there will
be an announcement.” Whether he meant an announcement on the date of hearings or an
announcement from the Court that might render hearings less urgent was not at all clear.6

Becker understood well enough. Celler had no intention of giving him or the majority
of Americans a hearing. He had not interrupted the chairman on the floor because of
genuine confusion about the lack of hearings; he simply wanted to get Celler on record. He
had hoped to hear Celler either commit to scheduling the deliberations by some fixed date,

provided a fair snapshot of how Becker conceived of his calling in politics. Congressional Record, October 3,
1964, Vol. 110, 24305.
5 To be more precise, this was the second set of school prayer proposals upon which Celler had failed to act.
Because the House is a “non-continuing” legislative body, all of the resolutions he hadn’t acted upon last year
had expired with that Congress. Becker had thus been forced to start afresh with a new resolution, H. J. Res. 9,
on January 9, 1963, when the newly elected Congress was seated. Again, Celler did nothing.
or alternatively say something that would reveal the patrician legislator’s deep-seated, anti-
democratic impulses, his contentment with political machines and entrenched committee
chairmen trumping straight-forward majority rule. Becker had gotten nothing that day in
May, but when the Court in June again ruled against school prayer, Becker would be ready
to raise the stakes.

A discharge petition is a rarely used legislative maneuver by which a full assembly votes to
remove a committee’s jurisdiction over a particular piece of legislation, handing the proposal
back to the full body for immediate consideration. Though such a step requires the support
of only a simple majority of the House, it is extremely uncommon because it is perceived as
a charge of bad faith against the committee in question. Committees exist for good reasons:
to limit workloads (since the vast majority of proposed legislation fails, it makes sense to
divide up the work of considering and discarding ill-fated bills), to enable the development
of specialization among legislators in certain policy areas, and to slow and refine legislation
through progressive filters eliminating irrational passions. Discharge petitions undermine
these goods, demanding immediate collective consideration and implying along the way the
incompetence and/or malevolence of the specialists. Not surprisingly, congresspeople are
reticent to sponsor or support such brazen measures, offending their colleagues and opening
the door to having such tactics unleashed against their own committee fiefdoms.⁷

⁷ Since the discharge rule was instituted in 1935, it had been used only nineteen times to bring bills to the floor;
On June 19, 1963, without much fanfare, Rep. Becker pulled out this big gun. While lead stories in the days after the *Schempp* decision profiled Madalyn Murray (who secured extra publicity by announcing her plan to move from Maryland because of the threats she was receiving in Baltimore), tracked Pennsylvania's exploration of a new moment of scholastic "meditation," and sensationalized the new ACLU suit in California against "under God" in the Pledge of Allegiance, Becker quietly filed the papers with the clerk of the House to sponsor his first discharge petition. In his ten years in Congress and the previous eight in the New York state assembly, he had never liked nor supported such a maneuver, but he now felt constrained to cover every base in his spiritual quest to force Celler to act.

The broader public obviously did not understand these details, and with the 1963 prayer decision being received as less startling than last year’s precisely because of last year’s, and with Civil Rights crises providing more formidable competition for headlines in the summer of 1963 than had anything in 1962, few reporters took the time to analyze amendment legislation mechanics. Grassroots America had calmed down enough that even Supreme Court justices began to feel comfortable invoking school prayer for laughs in public appearances. Tom Clark, author of the *Schempp* opinion, still had to talk over the protests of picketers at speeches during the Court recess, but other justices were freer. The former pro football star turned reclusive justice, Byron White, refined a quip about the lack of Bibles around the Supreme Court nowadays. Presiding at the administration of the oath of office to a new senior Justice Department official, White looked around for the Holy

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Book and then said that he would need a moment to call Potter Stewart to see if they could borrow one. Gallup polls continued to show that at least seventy percent of Americans opposed the Court’s decision (Billy Graham was telling the eighty thousand at his Los Angeles crusade that the number was ninety percent), but sixty-one percent of editorials in major newspapers were now running in the other direction, supporting the Court rather than the masses.

By the start of Congress’ August recess, a handful of members had added their signatures to Becker’s discharge petition, but the more noticeable activity on the Hill surrounded the unprecedented number of representatives, and over a dozen senators as well, who had sponsored their own prayer amendments. Given that attacking the high court and defending the higher power has few political costs and many benefits, it was difficult to know how seriously to take many of these sponsors, especially those who weren’t supporting the discharge petition as much as they were touting their “leadership” on a pro-prayer bill to only partially engaged but nonetheless applauding constituents back in the district.

Serving as self-appointed whip on the issue, Becker decided to examine his colleagues to determine the level of commitment. Working with an ad hoc committee of six—three Republicans (two northern, one southern) and three Democrats (two southern, one northern)—Becker began planning a closed-door meeting where the sponsors of the scores of prayer proposals could iron out their differences to ensure they presented a united

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front to the rest of the House in their coming confrontation with Chairman Celler.\textsuperscript{14} By the start of the fall session in September, fifty sponsors had met and agreed on compromise language. On September 10, 1963, the public school-educated Becker, who considered himself a champion of religious Americans who couldn’t afford or didn’t live near parochial schools, introduced their joint product, H. J. Res. 693. \textit{Congressional Quarterly} reported on their meeting, “It was agreed that if the discharge petition succeeded in removing H. J. Res. 9 [Becker’s original bill] from the Judiciary Committee and bringing it to the floor, the language of H. J. Res. 693 [the new bill agreed to by the fifty co-sponsors] would be substituted immediately.”\textsuperscript{15} Instead of altering the First Amendment directly, as Becker had occasionally advocated, the consensus proposal suggested the less controversial path of adding a new constitutional amendment altogether. It read:

\begin{quote}
Nothing in this Constitution shall be deemed to prohibit the offering, reading from, or listening to prayers or Biblical Scriptures, if participation therein is on a voluntary basis, in any governmental or public school, institution or place.

Nothing in this Constitution shall be deemed to prohibit making reference to belief in, reliance upon, or invoking the aid of God or a Supreme Being in any governmental or public document, proceeding, activity, ceremony, school, institution, or place, or upon any coinage, currency, or obligation of the United States.

Nothing in this Article shall constitute an establishment of religion.
\end{quote}

From informal surveys, Becker became convinced, as did the \textit{Wall Street Journal}, that the proposal would easily garner the two-thirds vote on the floors of the House and Senate necessary to be sent to the states for ratification (three-fourths of the state legislatures must support an amendment by a simple majority for it to be enacted). The real challenge

\begin{footnotes}
\footnote{14 \textit{Congressional Record}, July 25, 1963, Vol. 109, 13343-44.}
\end{footnotes}
was moving it out of committee and to that public vote on the floor. Getting two-thirds of
the members to support the proposal in a highly visible vote was much easier than getting
half of them to go out of their way to sign a virtually invisible discharge petition that the
public didn’t understand, and that might set a dangerous precedent of undermining
committee prerogatives. Yet without a discharge petition, Celler might never take up the
resolution; the paper might just yellow on the recalcitrant chairman’s desk.

Becker suddenly grasped the new and improbable task before him: He would need to
educate average Americans on the mechanics of and need for a discharge petition, and get
them to pressure their own representatives from home. This little-known former insurance
salesman would need to become a national salesman in this crusade. It was a daunting task,
but not as implausible as it appeared at first glance, for one of the largest grassroots
constituencies in American history was already appearing in his train. Becker would
ultimately function less as the inspiration than as the incarnation of this spontaneously
emerging religious right.

While Becker went to the people, his compatriots needed something they could show angry
constituents now that would demonstrate their resolve to oppose the godless Court.
Congressman Ashmore of South Carolina took the lead in Becker’s absence, introducing a
resolution to have the motto “In God We Trust” inscribed above the bench in the Supreme
Court “in gold letters of sufficient size to make the words legible throughout the courtroom.”
A similar symbolic act over the speaker’s chair in the House had pleased Main Street last

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fall, so why not be even bolder this year by taking the national motto to the intransigent
Court?\textsuperscript{17}

The House handed the idea to the Committee on Public Works and to the architect of
the Capitol in particular, who solicited the input of the chief justice on the matter. In
October, Warren wrote back to the House, politely but firmly, that the members of the Court
had always determined the décor of their space themselves and that no changes were
necessary at this time, "regardless of the significance of the language or its relevance to
patriotic or religious sentiment." Then, the judge Eisenhower once referred to as the biggest
mistake of his presidency casually added that the original architects had ably decorated the
courtroom "with an eye to beauty and symmetry consistent with the purpose for which the
building was to be devoted."\textsuperscript{18}

Predictably, Ashmore and friends took to the floor to denounce the allegedly atheistic
implications of Warren’s letter. Seizing the chief’s comments about aesthetic sensibilities,
the gentleman from South Carolina demanded: If “we reach the point where we must choose
between "beauty and symmetry," and the simple recognition of God, then the choice must
inevitably be, God.” Reminding the pompous robbed men “of the fact that there is an
authority higher than that of the Supreme Court,” he insisted that irreligion could be justified
neither by a foolhardy pursuit “to appease atheists and superintellectuals,” nor by some
elevated claim “to worship architectural symmetry.” Would-be preachers among the House
membership urged their colleagues to draw a line in the sand, “The time has arrived to make

\textsuperscript{17} \textit{Congressional Record}, November 12, 1963, Vol. 109, 21614.
\textsuperscript{18} \textit{Congressional Record}, November 12, 1963, Vol. 109, 21614.
a decision: Shall we affirm our faith in God by inscribing this divine phrase above the bench of the Supreme Court, or shall we shun God aside?" 19

Editorialists followed suit, noting that Warren, as "proprietor of whatever estate he owns," could adorn his house however he saw fit, even with a "judicial trophy room" testifying to his own self-ascribed greatness. But the court building "belongs to the people of the United States," not to the chief and his elitist friends. Recalling Eisenhower's words when he signed the resolution adding "under God" to the Pledge of Allegiance in 1954, populist papers insisted, "In this way we [can reaffirm] the transcendence of religious faith in America's heritage and future; in this way we shall constantly strengthen those spiritual weapons which forever will be our country's most powerful resource in peace and war."

Writers challenged Congress to defy the Court, and noted that if "Chief Justice Warren just can't sit comfortably in a room desymmetrized that way, the exit isn't crowded; nor is the road back to California." 20

Becker's educational outreach campaign benefited from the skirmish with Warren, as well as from ongoing reports of the ACLU's anti-Pledge efforts in California and a new challenge initiated by the civil liberties organization in New Jersey questioning the constitutionality of the military chaplaincy. 21 With each new public religion debate to erupt, Becker became more of a "go-to" leader for reporters seeking a quote and a spin. And unlike simple Warren-hating southern politicians, Becker wasn't merely a critic; he was an actor, a man with a plan. Rather than only decrying declension, he offered reporters something to close their stories with—news of an emerging campaign for God. There was

20 Congressional Record, November 18, 1963, Vol. 109, 22046.
21 Congressional Record, September 18, 1963, 1963 Appendix, A5883.

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something almost Shakespearean about a man claiming to represent the great majority in
defense of the great tradition now having to depend on an arcane legislative procedure. With
each controversy, Becker had another teaching moment and another microphone. In
Congress and outside, he would recount some recent act of public desecration, frame it in the
context of the larger secularization conspiracy, and then conclude with a straight-forward
call to action: God-fearing countrymen “can stop that kind of godless attack by signing [or
going their representatives to sign] discharge petition No. 3, which [sits] on the desk of the
Clerk...I urge you to do it now.”

Frequently echoing the national pastor, Billy Graham, on the horror that “secularism
is the fastest growing religion in America,” Becker picked at the inconsistencies in the
national soul and demanded that more attention be paid to the contentious work of
untangling. When Kennedy in October 1963, near the one year anniversary of the Cuban
Missile Crisis and narrowly averted nuclear war, called for a national day of prayer, Becker
wondered loudly whether “public schoolchildren were permitted to observe” the day. He
assumed this would be illegal in light of the new “constitutional restriction decreed by the
Supreme Court.” With each such venture onto the public stage, the stature of the Long
Island Congressman soared in coffee shops throughout the heartland, and more local
organizers began to heed and echo his call to write members of Congress demanding the
promotion of his discharge petition.

In Long Beach, the city council suggested a petition campaign to citizens that fall of
’63 to get Washington’s attention. The parents of students at Horace Mann Nursery School
took the directive particularly seriously, going door to door each evening over a two-month

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22 Congressional Record, September 18, 1963, 1963 Appendix, A5883.
period attempting to secure the signature of every registered voter in their school district. The arrival of thousands of petitions in Washington from one region usually suggests to elected officials the coordination of the effort by experienced, outside organizers. In this case, however, that wasn’t so, as many of the petitions were pre-printed forms but others varied a bit here and there, using slightly different language and whatever paper happened to be at hand. This seems to have been a genuinely local PTA affair, the sort of spontaneous mobilization that frightens settled incumbents.24

Voters in Friend, Nebraska, and Lamesa, Texas, the Kiwanis Club of Clermont, Florida, and the faculty of Winchester High School in Massachusetts initiated even less efficient and more haphazard campaigns—exactly the type that catches the eyes of correspondence secretaries in Capitol Hill offices.25 Some of the disgruntled hand-wrote multiple long letters and then simply gave them off to friends in hopes they would sign and send them.26 Signatories to the Lamesa petition were shocked that Madalyn Murray’s wishes could be respected while all of theirs were ignored. They relayed a story they had recently heard about a small boy during a tornado over in Wichita Falls on Highway 82. As the class huddled under their desks hoping for deliverance, the terrified young student supposedly asked his teacher if it was still inappropriate for them to pray.27 Cherie Colet of

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25 The Kiwanis Club resolution used the Billy Graham formulation that the founders had intended “freedom of,” not “freedom from” religion; letter to Congress, July 23, 1963, box 364. For the Friend and Lamesa petitions, and the Winchester letter, also see box 364, House Judiciary Correspondence on School Prayer.
26 See letters from Marie E. Bennett, Nellie Lewis, and Mrs. Cleo C. Bell to Emanuel Celler, undated, box 271, House Judiciary Correspondence on School Prayer.
27 Petition from Lamesa citizens to the House Judiciary Committee, June 8, 1964, box 364, House Judiciary Correspondence on School Prayer. A brief note on the surviving constituent correspondence regarding Becker’s and other school prayer amendments proposals in 1963-64: Most of the correspondence sent directly to the House Judiciary Committee has been preserved at the National Archives. Unfortunately, correspondence
New York City wrote Congress to pass along a similar but urban account of life in the schools in the post-prayer era. A teacher Colet had heard about allegedly came "upon a group of pupils on their knees in a circle in the hall and asked what they were doing. One said they were just shooting dice. 'Oh, thank goodness,' the teacher exclaimed, 'I was afraid you might be praying!'"

Some of the writing campaigns were more coordinated, as when the "Ladies Auxiliary" of the Veteran's of Foreign Wars chapter in Pittsburgh received advice from the national organization on how to influence lawmakers. And in Collingswood, New Jersey—a return address long associated with right-wing anti-communist organizing—International Christian Youth, which would soon claim more than one million signatures in support of school prayer legislation, began distributing posters nationwide. The materials included the text of what was becoming known as the "Becker Amendment" and listed for praise the names of congresspeople who had sponsored prayer proposals or signed the discharge petition. The Committee of Christian Laymen of Woodland Hills, California, would soon be taking the converse but also effective step of publicizing in local congressional districts the names of those members who had not signed the discharge petition.

sent to individual members—which comprised the vast majority of the mail—has not been preserved except in those rare cases where the individual member forwarded a particular letter on to Chairman Celler, who then added it to the committee files. Thus, the available correspondence is disproportionately weighted toward 1964 mail, when more writers began to send their letters and petitions directly to the committee rather than to their district representative.

28 Letter from Cherie Colet to Emanuel Celler, April 18, 1964, box 246, House Judiciary Correspondence on School Prayer. A senator from North Carolina told another version of this story—in his account, it was craps rather than dice—in Congress in March; Congressional Record, March 11, 1964, Vol. 110, 5012.
29 Petitions to the committee, boxes 362-363, House Judiciary Correspondence on School Prayer.
30 Rep. John Slack of West Virginia forwarded one of the posters to Emanuel Celler, January 22, 1964, box 363, House Judiciary Correspondence on School Prayer.
More than most so-called “popular” outcries, however, this had all the makings of a genuinely “bottom-up” movement. It would be more than three months before members in the Congressional Dining Room were concurring with one another that America’s pro-Becker, pro-prayer citizenry had unleashed the largest flood of constituent mail they had ever seen—dwarfing even the pro and con mail on Civil Rights legislation being considered simultaneously—but from the beginning the campaign was judged by Capitol Hill insiders as spontaneous and “uniquely unorganized.” Congressional Quarterly noted that “the bulk of it seems to be individually inspired.”32 More than a thousand organizations contacted Becker directly for advice and encouragement, but most groups just jumped into action on their own.33 The “Senior Citizens” of Port Jefferson, New York, were typical, taking out a small ad in their local paper with a sample petition under the heading “Let’s put GOD back in the Schools!!”34 Seventy-three employees at the Ford plant in Indianapolis signed a letter to Congressman Celler, begging for hearings on the prayer amendment. “This nation did seem to have ‘a new birth of freedom’ after the Civil War,” they wrote, but things had gone wrong since 1933 when the U.S. officially “recognized the Soviet Union.” The Court “decree banning God from our public schools” had been the lowest moment yet, and collective repentance had better come quickly because no “nation can consort with Satan and live under God simultaneously.” In a representative letter, the autoworkers announced that

32 Congressional Quarterly Weekly Report, week ending May 1, 1964, 881. See also Boles, The Bible, Religion, and the Public Schools, 310, 318; New York Times, April 23, 1964, 14; May 17, 1964, IV.6. Rep. Herman Schneebel (R-PA) told the Harrisburg Evening News in February 1964 that he had received “four times as much mail on Bible reading” as on Civil Rights; included with a petition from residents of New Cumberland, Pennsylvania, in envelope postmarked February 29, 1964, box 364, House Judiciary Correspondence on School Prayer.
34 A copy of the Port Jefferson advertisement is included, without any letter, in box 363, House Judiciary Correspondence on School Prayer.
they could “not remain silent” but must now “make known our abhorrence of this nation’s past and present appeasement of Satanic Communism” before “God abandons this country completely.”

Many Catholics, though pro-prayer and anti-Court, did not champion the Becker Amendment—a fact that renders the quantity and vigor of the response from the rest of grassroots America that much more impressive. The influential Catholic publication *America*, which had gotten into trouble with anti-Semitic comments after the first prayer decision, explained the ambivalence of many Catholics toward Becker’s ambition. After having been accused for decades of never truly believing in the First Amendment, Catholics worried about being seen as champions of a change that might confirm their antagonists’ deepest fears about their patriotism. As recently as 1960, evangelical periodicals had been reproducing any anti-democratic quote they could locate, even from Catholic leaders abroad, to call into question the loyalty of Catholics at home. *Christianity Today*, for instance, had printed a statement from a Roman official more than a decade old, but that nonetheless reminded Protestants why their parents had been convinced that Catholics could not be trusted to hold power. *Civiltà Cattolica*, an Italian Jesuit periodical, had explicitly urged that Catholics not “blush” about their church’s intolerance of other faiths:

The Roman Catholic Church, convinced through its divine prerogatives, of being the only true church, must demand the right of freedom for herself alone, because such a right can only be possessed by truth, never by error. As for other religions, the Church will certainly never draw the sword, but she will require that by legitimate means they shall not be allowed to propagate false doctrine. Consequently, in a state where the majority of people are Catholic, the Church will require that legal existence be denied to error, and that if religious minorities actually exist, they shall have only a de facto existence without opportunity to spread their beliefs...In

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35 Letter from seventy-three workers at Ford’s Indianapolis plant to Emanuel Celler, December 10, 1963, box 363, House Judiciary Correspondence on School Prayer.
[Catholic minority] countries, Catholics will be obliged to ask full religious freedom for all, resigned at being forced to cohabitate where they alone should rightfully be allowed to live. But in doing this the Church does not renounce her thesis which remains the most imperative of her laws, but merely adapts herself to de facto conditions which must be taken into account in practical affairs.\(^\text{37}\)

With fresh memories of having to answer for passages like this, some Catholics were hesitant to associate with any movement to modify the 175-year-old American formula of religious freedom.\(^\text{38}\)

Amendment proponents, whether elected like Becker or ordinary like Laurence Ehrhardt, a letter-writer from Moline, Illinois, attempted to address patriotic Catholics’ fear by insisting that *they* weren’t changing the First Amendment at all. Their pro-God, pro-country side believed that “such an amendment should not be necessary.” But because the Supreme Court had altered the meaning of the First Amendment, a clarification was now necessary simply to restore the older arrangement.\(^\text{39}\) Writer after writer urging their representatives to support Becker’s efforts insisted that they “firmly believe in the separation of church and state.” But that need not mean the hostility of the state toward religion. An amendment appeared to be the only action that would persuade the justices of this fact. Most Catholics grasped and affirmed the point, but remained gun-shy. According to *America*, they did not want their neighbors to identify the pope’s followers as the leading agitators for an altered First Amendment.\(^\text{40}\)

With soaring name-recognition but still only a fraction of the 218 signatures he needed to force the resolution to the floor, Becker suddenly inherited, in the fall of ’63, a new and

\(^{37}\) *Christianty Today*, October 27, 1958, 9.

\(^{38}\) See also *Commonweal*, May 8, 1964, 188-89; July 3, 1964, 442.
much-needed Catholic ally from the most unlikely place—the Communist Party of the United States. Bella Dodd, a former professor at Hunter College in Manhattan now turned prominent lawyer, had been a major communist organizer in the 1930s and had risen to the top levels of the Party by the late 1940s. For reasons not entirely clear, sometime after 1950, Ms. Dodd converted from communism “back to God,” as she put it. In 1954, she had published the autobiographical *School of Darkness* which quickly became a cult classic in religious and anti-communist circles. But after that brief moment of populist acclaim, as well as a few high visibility appearances before the House Un-American Activities Committee where she verified Hoover’s claims of a communist plot to infiltrate the Protestant and Catholic clergy, she had focused on her legal practice. As one “who loves freedom—and God,” she wanted to labor to uphold rather than upend the Constitution, which she now judged to be “the only document of government...[in] 6,000 years of recorded history...to be based on the Law of God as defined in Natural Law, the Decalogue and Divine Revelation.”

*Engel* and *Schempp* shook her from her temporary satisfaction with the relatively quiet life of lawyering, compelling her back into the public eye. As a former “member of this anti-God crusade,” who better than she to explain to the average American the ultimate objective of the communists and secularists “to make America officially a godless nation”? Writing in the pages of *Guideposts*, a widely-circulated “monthly magazine of true inspirational stories” for people “of all religious faiths...overcoming the everyday problems of modern living,” she set out to answer in the affirmative the question in her title, “Is There

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a Conspiracy Against God?" Agreeing with Billy Graham that the alien "effort to remove God and moral teachings from our schools is a diabolical scheme," she warned of all the dominoes of secularization on the horizon. Chaplains, the Pledge, and mottos on coins may not yet be gone, she conceded, but New York's State Education Commissioner had just banished the fourth stanza of "America" from his schools and Sacramento County officials had recently barred first graders with cookies and milk from intoning "God is great. God is good. Let us thank him for our food."43

Decrying the brave new world emerging, Dodd urged good parents to "reclaim control of their school boards" instead of allowing anti-God doctrine to be "imposed from the top down." Didn't they realize that their children "between seven and twenty-one spend more waking hours at school and school activities than they do at home and church combined"? A scholastic environment neutral toward God increasingly meant the bulk of life free of God. Beyond the local context, what was needed was a swift kick in the pants for their congressional officials "now working on a Constitutional Amendment which would restate the First Amendment to the Constitution to allow prayer and Bible reading in schools on a voluntary, non-sectarian basis," thereby heading "off suits now pending to eliminate God" from additional spheres of national life.44

Dodd had picked the perfect venue for her jeremiad, given that _Guideposts_ in the early 1960s was effectively marshalling a subscription list of "spiritual" but not necessarily institutionally religious patriots. When G.K. Chesterton in the 1920s referred to the United States as "a nation with the soul of a church," he meant not only that Americans have tended

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41 Bella Dodd, _School of Darkness_ (New York: P. J. Kennedy, 1954).
to think of their nation, like ancient Israel, as having a soul and a collective relationship with God. Chesterton did mean that, but like so many foreign observers, he also noticed that Americans embraced a national creed which needed to be reaffirmed and promulgated if we were to fulfill our divine mandate in the world.

For many proponents of the American creed, the religious aspect of being an American meant there was no contradiction between affirming to pollsters the importance of religion in their lives, and yet possessing no meaningful affiliation with organized or ecclesiastical religion. Churches provided one outlet for religious instruction and service, but not the only one. In the eyes of more Americans than distinction-drawing conservative theologians wanted to admit, Lutherans, Pentecostals, and Catholics—and maybe even Jews—were less competitors with different visions of God and exclusive paths to redemption, than partners in a national quest to sacralize this soil. Many citizens conceived of the plurality of denominations much like they thought of the Lions Club, Kiwanis, the Jaycees, the Optimists, and the Knights of Columbus—organizations with different histories and emphases but with the same nation-supporting ends. Individuals could belong to this group or that group or no group, and still be faithfully religious and patriotic—which were not necessarily two different virtues. For the non-church-goers among this cohort, publications such as Guideposts supplied the spiritual input other Americans received in church. Religious broadcasting increasingly met the same need, whether it was the most recent televised Graham crusade or one of his local UHF imitators such as the young upstart Marion “Pat” Robertson, son of Virginia’s junior senator.

Dodd’s exposé on the anti-God conspiracy, which *Guideposts* immediately circularized (25 for $1, 100 for $3, or the bulk rate of $22 per thousand) illustrates well how the non-sectarian sermonizers could say a great deal about the plot against God without having to say anything specific about the “God” being marginalized. Dodd’s totemic deity stood as an intellectual and emotional placeholder on which individual readers could project anything they wanted. God was good, but good people did not need to trouble themselves with all the divisive debates about his attributes and revelation. Leaving doctrine to the theologians in their ivory steeples, Dodd was busy with the real work of the kingdom—enlisting foot soldiers for Becker’s march against the conspirators, few in number but powerfully placed, who would lead America away from its heavenly protector.

The Dodd circular, an eleven-inch sheet folded twice into a six-page brochure, sold like hotcakes and became a staple in the U.S. mail. Individuals sent it to family and friends, included it in their complaints to Washington, and quoted it in community forums. Members of Congress cited Dodd and inserted her revelations into the *Congressional Record*. Columnists at local newspapers wrote articles about her article. The *Lubbock Avalanche-Journal* ran a pensive piece on the state of “Anti-Religion” in America. The writer challenged Dodd’s assertion that recent developments qualified as a “conspiracy” in the technical sense, defined as “a plot, a combination for an evil purpose.” But the paper conceded that there was at least “an anti-God movement, designed to remove religion from our everyday life.” This was simply “too evident to be overlooked,” and unless we “seek to halt it” soon, this country could “suffer the fate other nations have suffered which forgot

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God.” According to religious authorities, the Lubbock journalist cautioned, “the worship of materialism” was progressing faster than most laity realized and the likelihood of the country becoming “officially a godless nation” looked great indeed. A Newsweek editorialist had recently made a similar point, noting that it was difficult to understand how the 1963 Schempp decision could quote and claim to affirm the assertion of the 1952 Zorach decision that “We are a religious people whose institutions presuppose a Supreme Being.” Didn’t the decision do exactly the opposite, prohibiting governmental institutions from presupposing a Supreme Being? Few commentators received as broad a circulation as Ms. Dodd, but ordinary citizens in every region of the country also wrote up their thoughts on the Court decision and secularization more generally and dispensed them generously in their social circles as tracts and chain letters. Rev. Culiver Gordon of the United Presbyterian Church in Paterson, New Jersey, distributed “Nine Reasons I Support This Proposed Amendment,” affirming both the historic separation between church and state, and “our common faith as citizens”—“Jewish, Catholic [and] Protestant.” A non-sectarian affirmation of God, Rev. Gordon insisted, offended none but “the very small minority who consciously and aggressively oppose all religion.”

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47 E.g., letters from Donald Gayman and other anonymous correspondents to Emanuel Celler, undated, box 246. Copies of the Dodd reprint were still coming in as the hearings were beginning; e.g., letter from C.M. Dickinson to Emanuel Celler, April 17, 1964, box 270, House Judiciary Correspondence on School Prayer.
49 A copy of the Lubbock Avalanche-Journal article was sent to the committee, without any apparent letter, box 364, House Judiciary Correspondence on School Prayer. First italics added, second italics in original.
50 Newsweek, July 1, 1963, 15; italics added.
51 Copy sent to Emanuel Celler, May 19, 1964, box 246, House Judiciary Correspondence on School Prayer.
Clay Cooper, a self-described “ordinary citizen” from Spokane, Washington, had his form letter professionally laid out and formatted as an “Appeal to the 88th Congress.” Under the title “America Minus God Is Goal,” Cooper warned friends and acquaintances of the new “Enemy Within.” Picking up the language of the Billy Graham sound bite the previous summer, he reminded readers that the Constitution aimed to protect “Freedom ‘Of’” not “Freedom ‘From’” religion, for all Christians surely know that this nation will be blessed only if it continues to seek the Lord (2 Chronicles 7:14). And for only “$2.50 per 100,” sympathetic Americans could buy copies of Cooper’s letter and send it on to their associates. 52

The American Legion chapter in Uniontown, Pennsylvania wasn’t as aggressive in marketing their new “G-O-D and THE UNITED STATES OF AMERICA” brochures. Nonetheless, the local leadership wanted everyone who passed through the club to know that the chapter believed unequivocally that the Holy Bible was the best means “to guard His children in our Public Schools against the degradation of Atheism and International Communism.” These veterans firmly believed it had been “a subversion of the Declaration of Independence, the National and State Constitutions, the National Motto, and the Pledge of Allegiance to the Flag, for an American to advocate the exclusion of God and His Holy Bible from our Public Schools.”53

Savvy public officials sought out ways to stay on the right side of this public frustration. The Rhode Island State Commissioner of Education announced in October that he did “not now or in the future intend to prostitute the office of the Commissioner...[to do

52 Copy included in letter from Clay Cooper to Emanuel Celler, May 6, 1964, box 246, House Judiciary Correspondence on School Prayer.
anything] to further the cause of the irreligious, the atheistic, the unreligious, or the agnostic." In Connecticut, "less than 20 of [the] 169 towns had acted to implement in some way the Court's [latest] decision." Delaware officials were so intransigent that the ACLU had to sue to prompt them to action. Senator Simpson of Wyoming called the attention of his colleagues to the insights of Ed Webster, a high school constituent of his from Cody. Webster, in a speech to fellow students, implored all faithful countrymen "to remember that when Adolf Hitler came to power in Germany, his first move toward world conquest was the expulsion of religion from the schools." Marian Berri (of the Hamptons, not DC's city hall) was one of many Americans offering similar history lessons to the legislators, writing to remind Congress that the Weimar Republic's "forgetfulness of God...was one factor that prejudiced a large part of the German middle class in favor of the Nazi Party..." "

Senator Robertson of Virginia introduced into the Congressional Record a 1905 address by a Supreme Court justice defending the proposition "The United States a Christian Nation," as well as a recent speech by Richard Gifford, a Lynchburg citizen, on the history of the separation of church and state. Like most of the pro-Becker forces, Gifford considered himself to be fighting to preserve, not change, the traditional view on the separation of church and state. The precise American genius was the balance the founders

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53 Rep. Thomas E. Morgan of Pennsylvania forwarded the brochure to other members on behalf of Anthony Cavalcante, a retired member of Congress from Pennsylvania, April 24, 1964, box 279, House Judiciary Correspondence on School Prayer.
In mid-November, the state attorney general attempted to speed compliance by encouraging towns to institute a morning time of silent meditation, New York Times, November 16, 1963, 29.
58 Letter from Marian Berri to Emanuel Celler, March 12, 1964, box 246, House Judiciary Correspondence on School Prayer.
achieved in separating institutional churches from the government, but not separating religious people and belief from daily life. Today, in “this most crucial battle for freedom,” Gifford urged good citizens to rise up against the new godlessness, lest “we would become just another state to rise and fall” for deserting “our Christian heritage.”

Over in West Virginia, Baptist minister E. H. Fisher also saw this as a make-or-break moment, with “time...running out” on America. “If we don’t act now as free men to defend our inherited way of life, we just may well be acted upon by ungodly men who will, in turn make us bonded slaves. If we turn our backs on God, He will surely turn His back on us...Psalm 128:1.” Rev. Fisher wasn’t yet certain whether Celler was part of this conspiracy of ungodly men, but he wrote him because “I understand that you are on a committee that will determine the future of America to keep her as a God-fearing Democracy or will turn her into an atheistic god-less America.” Given the “dangerous situation facing our nation today,” only bringing “this Becker Amendment out onto the floor” could ensure that “we are going to give our God the same honored place our forefathers gave Him. Our country was founded by faithful men who believed that a nation could only be great if they honored the Lord, our God.” Communists abroad were surely a threat, but our tendency to turn away from God at home constituted our greatest danger.

A North Dakota woman spoke for millions when she announced that it was time that “the Congress of the United States now choose to declare which side they take and whom

60 Congressional Record, February 17, 1964, Vol. 110, 2936-38.
61 Letter from E. H. Fisher to Emanuel Celler, undated, box 271, House Judiciary Correspondence on School Prayer.
they desire to serve... 'Choose you this day whom ye will serve' (Joshua 24:15). 'If the Lord be God follow Him' (I Kings 18:21).”

The simmering anger started to register more with elected officials once fall rolled around. Public sentiment on school prayer had obviously mattered to the politicians the previous spring before the Schempp decision came down, as well as during the summer as constituents stewed over the ruling's implications, but November of each odd-numbered year is that symbolic point on the calendar when members of the House, who serve for only two-year terms, pass the hump of being closer to their next election contest than their last election victory. In the shorthand sometimes employed by incumbents: odd-numbered years are for getting things done legislatively; even-numbered years for campaigning and grandstanding. Nelson Rockefeller’s November 7 announcement of his candidacy for president and the Senate Democrats’ increasingly vocal infighting over Mike Mansfield’s ineffective leadership both highlighted that 1964 would be not only an election year, but a presidential election year, with all of the increased voter turn-out that accompanies national races.

November also saw a noteworthy marker in Becker’s discharge petition campaign. Complacent congresspeople had been observing the effects of Becker’s public teaching

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63 Rockefeller, the only of the fifty governors not to support a resolution condemning the Supreme Court after the Engel ruling in 1962, now had moral as well as spiritual liabilities in the eyes of socially conservative voters. Some journalists, reflecting tongue-in-cheek on the problem that the New Yorker's recent divorce and remarriage created for him with traditional voters, suggested that the governor "turn a liability into an asset by reminding every married man that he would like nothing better than to take a new wife if he could afford it." 1964 Presidential Election Guide (New York: New York Herald Tribune, 1964), 182. President Ford would one day also be on the receiving end of the social conservatives' dissatisfaction because of his association with Rockefeller.
crusade on their swelling in-boxes all fall, but it still hadn’t been clear they would really be forced to action. Most still doubted that the “last angry Congressman,” as the McCarthy-like Becker was occasionally identified, could pull this off. Discharge petitions almost never succeeded and it appeared the timing of this one couldn’t have been worse for the New Yorker. With various Civil Rights bills currently stalled in segregationist-controlled committees, some Northern liberals had been trying to get traction on a discharge petition of their own. In response, many southerners, though largely Becker sympathizers on school prayer, had denounced the northern attempts and suggested their universal opposition to discharge petitions on principle.

The diminished pool of potential supporters notwithstanding, Becker was able to announce a major symbolic victory on November 26. He needed support from a majority of the House’s 435 members to remove the jurisdiction and stalling power of Chairman Celler. He had just gotten his 110th signature; he was past half way to his goal of 218. Non-signing members reading their mail were starting to feel greater heat, as even teenagers and others not known to follow the intricacies of the legislative process wrote to demand the promotion of “Discharge Petition No. 3.” The Congressional Quarterly would later summarize the unlikelihood of this deluge: “The mail campaign forced many Representatives who otherwise might not have supported such legislation to take an active

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64 See, e.g., Congressional Record, February 3, 1965, Vol. 111, 1873.
65 On the complicating factor of the Civil Rights bill sitting in the Rules Committee, see Beaney and Beiser, “Prayer and Politics: The Impact of Engel and Schempp on the Political Process,” 494.
66 For a copy of Becker’s form letter announcing the status, see attachment to letter from Rep. Don L. Short to Miss Kelsey, December 13, 1963, box 363, House Judiciary Correspondence on School Prayer.
interest in a ‘prayer amendment’ and to warn Celler that if his Committee failed to act, they would be forced to sign the discharge petition.”

Riding this public sea, a buoyant Becker took to the floor to enlighten his colleagues on why “an overwhelming majority of the American people...agree with Mr. Hoover and others that prayer and Bible reading must be returned to the public schools—that our public manifestations of our reliance upon Almighty God must be preserved.” Claiming that House members were coming to him “every day” to comment on the volume of their mail, with some already saying it was the most mail they had ever received on any subject (even though the real torrent wouldn’t begin until April 1964), Becker the teacher knew that he needed to put some human flesh on this story, on the suffering. Opinion polls and mail poundage would carry the debate only so far; he needed more anecdotes, more personal stories.

Elizabeth Hardy of Takoma Park, Maryland, had just sent him a homemade petition with 250 signatures. But her letter, which Becker read to colleagues, also included a mild apology that she hadn’t been able to do more. At eighty-seven years old, Ms. Hardy was too feeble to drive and too frightened to go out at night, she explained. Thus, even though she had missed most of the men and workingwomen in the neighborhood, she had secured signatures from basically everyone else. She reported that there was almost universal support for her cause—and the few “who did not sign said they sent their children to their own church schools, mostly Catholic, some Adventists.” In general, Marylanders “considered it a privilege” to sign, with some commenting “that the only religious training they got when they were young was from their teachers at school.” Ms. Hardy explained that

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she did “not believe that our Founding Fathers meant that there was to be no religion in the schools but that there was to be no established State faith as is the case in England.” And if she erred in her understanding, “Why should it be decided after all these years by the few men who are the Supreme Court?”69

With greater discretion than usual, Becker limited his words and let the pleading old lady speak for him. He added only one sentence to her letter as he walked from the floor, noting that he wasn’t her representative and that he had thus directed staffers to forward “her petition to her own Congressman.” In other words, Becker would not satiate but stoke this fire, informing citizens who wrote to encourage him that they could better direct their energies at specific recalcitrant members. Outside the House, men like FBI Director J. Edgar Hoover continued to feed the same populist fire, grouping the anti-school prayer forces and the communist sympathizers.70 Senator Strom Thurmond regularly told constituents that the “Two principal goals of communism are to destroy private property and to ‘dethrone God.’”71 A Pennsylvania congressman introduced legislation to add “under God” to the Constitution.72

Becker’s resolve to pressure colleagues to sign the petition did not stop at the relatively benign act of notifying correspondents to his office of non-signing members to whom they should instead write. There were also rumors (which would be confirmed in January) that Becker might retire at the end of the term so he could devote the fall not to his own reelection campaign, but instead to campaigning in God-and-country districts against incumbents who hadn’t supported a school prayer amendment. This wasn’t simply power


politics, trying to force members on the fence to support his measure now. That was surely part of his motivation, but as importantly, Becker the purist genuinely wanted to see Washington purged of those who didn’t want “to preserve the spiritual life of our nation.”

As the *New York Times* phrased it in his obituary two decades later, the fight over the “Constitutional amendment to allow organized prayer and Bible reading in public schools” led Mr. Becker to the belief that “it was his mission to save the nation from the ‘curse which has befallen all civilizations that forgot and disobeyed God Almighty.’”

Becker’s single-minded, almost obsessive, focus on school prayer, even before the *Schempp* decision had confirmed his eschatological fears about the meaning of *Engel*, led observers to speculate he might be becoming too unbalanced for voters to tolerate. Even the conservative *Newsday* predicted a week before the 1962 elections that the five-term congressman might be in trouble, despite holding a traditionally safe Republican seat. And this in a district where a debate between the candidates had produced only one question that wasn’t on either communism, school prayer, or state aid to religious schools.

Becker’s Democratic opponent, Frank Bear, a documentary filmmaker, had attempted to paint him as a member of the radical right’s “Birchite lunatic fringe,” but voters weren’t buying this story. They felt comfortable with Becker’s vigorous defense of American spirituality, and *Newsday*’s prediction missed the mark badly. The incumbent had carried New York’s Fifth

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72 *Congressional Record*, February 1, 1964, Vol. 110, 1671.
75 *Newsday*, November 1, 1962, 11c.
76 In the seven-question *Newsday* debate, four questions concerned communism and two focused on school prayer and aid to parochial schools. The final topic was health care for the elderly. *Newsday*, November 2, 1962, 46.
District again, with over fifty-seven percent of the vote. Becker understood the saliency of the communist fears; in the eyes of constituents at home at least, he wasn’t blowing anything about the twin communist and secularist threats out of proportion.

Justice Douglas sensed the winds of public sentiment and the increasing possibility of a constitutional amendment. Scheduled to address the Phi Beta Kappa Associates in New York City on November 22, 1963, he decided to speak on the school prayer row. Though the lecture was ultimately cancelled because of President Kennedy’s assassination that day, Douglas later published a version of his planned comments for that night as a short volume, *The Bible and the Schools.*

With characteristic bluntness, Douglas praised the separation of church and state as having protected our nation from having been “governed by a council of *mullahs*” for five hundred years, as had happened in Turkey. He asserted unapologetically that Turkey had “missed the entire Industrial Revolution” only because, “peering [too] intently into the Koran,” the Turkish people had allowed “Church and State” to be “subtly blended” and “the line between secular and sectarian authority…[to be] confused.” Cultural problems often popularly traced to ethnicity in fact derived from unhelpful religion. The Koran “contains nothing concerning penicillin, mathematics, the atom, or electric energy,” and it was only the ascension to power of the secularist Ataturk that finally brought Turkey “to her senses.”

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78 Many wrote the committee calling atheism “the ‘religion’ of the Communist world.” See, e.g., letter from Rev. Arnold Brink to Emanuel Celler, March 5, 1964, box 246, House Judiciary Correspondence on School Prayer.
Douglas offered a similar analysis of Vietnam, noting that present problems were
“sparked in part by bitter religious rivalry” between Catholics and Buddhists. And what
about the Protestant response to Alfred E. Smith candidacy in 1928 in this country? The
Bible might not be as frank as the Koran in urging the faithful to “kill [the enemies of true
religion] whenever you find them,” but Christians nonetheless share the universal religious
“idea...that one’s own religious group should be on top,” and the desire to brand “all other
creeds as ‘false.’”\(^{81}\) Did Americans, Douglas queried, really want to see school boards “torn
asunder by contests over whose prayer will be said in the public schools [and] whose
catechism will be read”? For remember, the justice counseled, “Religious contests over
secular power have been among the bloodiest in history...”\(^{82}\)

Editor Henry Luce, addressing the annual meeting of Time Life Incorporated the next
month, provided a different assessment of the dangers associated with the changing place of
religion in public life. And unlike a judge with a lifetime appointment, the journalist selling
magazines weekly had a pretty good sense of the national dis-ease with the shrinking reserve
of shared theological commitments. Referring to a “revolution in religion,” Luce worried
that the emerging “modern agreement that religion is a private affair—that has nothing to do
with the \textit{res publicae}—public affairs—or with the guidance of society” probably leaves
more collective question marks than we want to admit. “Are we taking this assumption for
granted too quickly and too lightly?” he asked shareholders of the media conglomerate—not
the first group one would expect to have been pondering such questions.\(^{83}\)

\(^{81}\) Douglas, \textit{The Bible and the Schools}, 40-41.
\(^{82}\) Douglas, \textit{The Bible and the Schools}, 48.
\(^{83}\) Quoted in Charles Wesley Lowry, “The Case for the Traditional American Middle Way in Church and
Ultimately, neither the pontifications of Douglas nor the ruminations of Luce mattered as much as the machinations of Celler as 1964 arrived, but the chairman still kept his own counsel. To date, Becker’s education campaign had enlightened many laypeople about how a discharge petition could speed along a bill, but few of these new students of the legislative process were advanced enough to understand that Chairman Celler had been acting as the sole impediment to their amendment dreams. Thus far, the entrenched chairman remained largely below the radar of public outrage, but he would not be able to conceal himself for long.\(^\text{84}\)

Born in 1888 and elected to the House of Representatives in 1922 as a wine salesman turned lawyer who ran on an anti-Prohibition platform, Celler personified both the grandeur and the intentional inefficiency of a seniority-driven committee system. In his obituary in 1981, the \textit{New York Times} would describe him as “grandfatherly” both for good and for ill; that is, in both distilled wisdom and cranky arrogance. His luminous career would include authorship of the 1957 and 1960 Civil Rights bills and such effective stewardship of the 1964 Civil Rights legislation that the House stood to applaud him personally on its 290-130 passage. Yet that same illustrious career in Washington, spanning fifty years and eight presidents, was finally ended in the 1972 Democratic primary by an unknown challenger to whom he had dismissively referred in the campaign as a woman as “irritating as a hangnail, which I am going to cut off.” He had long ago begun to take reelection for granted, and rarely corresponded with constituents.\(^\text{85}\)

\(^{84}\) After Becker’s discharge petition campaign reached the halfway point in November, some citizens had written Celler to inform him of their delight that the amendment proposal might soon be removed from his committee; see, e.g., letter from Mr. and Mrs. Clyde A. Stanley to Emanuel Celler, November 25, 1963, box 270, House Judiciary Correspondence on School Prayer.

By January 1964, Becker and his petition had surpassed the hangnail threshold for Celler. The *New Republic* would soon be describing the situation as a small man holding a great man “hostage.” The fighter from Brooklyn retained hope that public interest in this issue would fade, and with it Becker’s congressional allies, but the momentum in recent weeks didn’t offer him much encouragement on this front. Celler liked a complicated battle for its own sake—he was a lifelong politician, after all. But this contest amounted to more than mere politics; it was personal, even if he maintained a dispassionate public demeanor while ignoring calls to schedule hearings on the now one hundred-plus different prayer proposals referred to his committee.

In a widely read autobiography a decade earlier, *You Never Leave Brooklyn*, the normally circumspect Celler had offered a few glimpses into his soul. Identities based on religious and ethnic affiliation had fractured his family, and few things in life enraged him as much as the “paralysis of fear” resulting from the domestic crusades of communist hunters. Becker’s initiative brought together everything Celler hated, as it questioned the loyalty of those who didn’t want to see creedal fissures perpetuated through communal institutions like neighborhood schools. As a poor young wine salesman in Brooklyn, the Jewish Celler had taken classes to learn Italian largely to communicate more easily with his clients but also, he suggested, because he believed in breaking down barriers between different American peoples.

Celler’s family history provides poignant pictures of both the melting pot experience and the parochial segmentation so common in nineteenth century America. On his mother’s

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side, his grandfather was Catholic and his grandmother Jewish. Though the two as
adolescents were on the same ship from Bavaria to a new life in America, they never met,
which was surely fine with her parents. They had not braved a treacherous ocean for their
precious daughter to marry a poor Catholic. In New York harbor, though, the dilapidated
ship began to sink and Celler’s frightened grandmother—apparently well before such a
desperate move was necessary—leapt overboard. The man who would later become her
husband jumped in after her, rescued her, and almost immediately made known his desire to
marry her. 89

Modeling the persistence that his grandson, “Mannie,” would one day demonstrate
while attending Columbia and then Columbia Law School in the morning and peddling his
wine until dark, the Bavarian eventually wore her down. After he agreed to convert to
Judaism, she agreed to marry him. They had nine children. The six girls, including Celler’s
mother, all married Jews, and retained Jewish identities. The three boys all married
Catholics and followed their wives into the church. The two religious sides of the family
ceased talking, the split was permanent and, as Celler put it, questions “were just not
asked.” 90

The family in which Mannie was raised “practiced Reform Judaism” and assumed “a
naturalness about religion.” It was useful for children to believe that a “benign, personal
God watched over us and meted out rewards and punishments in accordance with conduct,”
an adult Celler would observe, but religion was best understood as “a communal rather than

88 Celler, You Never Leave Brooklyn, 34-35. Celler had been a vocal supporter of an “anti-McCarthyism”
plank in the Democratic platform in 1952, a reelection year for Sen. McCarthy; see Celler, 171.
89 Celler, You Never Leave Brooklyn, 26-27.
a metaphysical experience." The public Celler devoted himself to organizations like the American Jewish Congress and B’nai B’rith, but there is little evidence that he considered himself a religious man.

As an astute analyst of the American electorate, however, he understood that skeptics best not advertise their doubts. Thus when pro-prayer constituents would arrive in his office lamenting the public godlessness in the country—and naively assuming that Celler sympathized with their proposed remedies—he could employ language flexible enough to leave them believing that, despite the challenges of getting Congress “to agree on a prayer bill” in the past, “if enough support could be shown, there might be some hope.” Unlike historians who have often overlooked the school prayer outcry or assumed it was somehow merely an echo of the 1960s anti-Civil Rights backlash, Celler understood well that Americans worried about the changing public place of religion as a distinct issue. As reporters in the coming months would put it: “Although the newspapers have devoted more space to the long civil rights debate in the Senate, the volume of Congressional mail might lead one to believe that the school prayer issue is by far the most important matter being discussed on Capitol Hill…”

As citizens from New Mexico to New Hampshire began to understand that the next step in the amendment process should be committee hearings, but that hearings hadn’t been scheduled on bills introduced fully eighteen months ago simply because Chairman Celler hadn’t gotten around to scheduling them, more of the mail began to come to him personally. Some Americans judged the problem urgent enough to require a telegram. Many letters

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91 Celler, You Never Leave Brooklyn, 114.
evolved into small petitions as multiple friends and family members at meals and reunions added their signatures to someone else’s letter.94 Civic organizations in town after town passed local resolutions about the need for an amendment and forwarded them to Celler.95 Some groups tried their hands at drafting their own sample constitutional amendments.96 Many informed Celler of their fear that not only the Pledge but even the freedom to assemble for worship was at stake.97 Many Americans were angry but just as many were scared; they felt that the nation was being stolen and they feared that only tyranny could result from a willful rejection of God.

Individuals appealing to Celler as a man coram Deo, a creature in the sight of his Creator, tended to write the most interesting letters. Mrs. Titus Snader of Rhode Island sent a representative letter announcing simply that she prayed for the chairman regularly.98 It was often difficult to tell whether correspondents meant this as encouragement or a warning. Others forwarded tracts, a number focusing specifically on the need for Jews to embrace Jesus as their promised Messiah.99 A significant percentage of the letters were hand-written

94 E.g., letters from eighteen women in Zanesville, Ohio, to Emanuel Celler, October 9, 1963, box 364; from twenty-one folks in Knoxville, Pennsylvania, to Emanuel Celler, November 4, 1963, box 364; and from fifty-one people in Grand Island, Nebraska, to Rep. Dave Martin, November 4, 1963, box 364, House Judiciary Correspondence on School Prayer.
95 As examples, see the typical letters from Agnes Anderson for seventeen women in the Daughters of America, Port Clinton, Ohio, to Emanuel Celler, November 11, 1963, box 364; and from Mrs. Parke M. Dague for the Women’s Synodical Society of the Bible Presbyterian Church, Coatesville, Pennsylvania, to Emanuel Celler, November 5, 1963, box 364, House Judiciary Correspondence on School Prayer.
96 E.g., letter from twenty-four members of Ambrose Baptist Church of Fayerville, Ohio, to Emanuel Celler, July 14, 1963, box 364, House Judiciary Correspondence on School Prayer.
97 See letters from Mrs. B. H. Postell to Emanuel Celler, November 25, 1963, box 270; and letter from W. K. Browning to Emanuel Celler, April 1, 1964, box 246, House Judiciary Correspondence on School Prayer.
98 Letter from Mrs. Titus Snader to Emanuel Celler, June 2, 1964, box 271, House Judiciary Correspondence on School Prayer.
99 E.g., the letter from Mrs. Arthur Gluck to Emanuel Celler, April 14, 1964, included the tract, “A Search for the Atoning Blood: An Aged Hebrew’s Experience,” box 270. See also letters from Mrs. Bryan Stalcup to Emanuel Celler, April 14, 1964, box 270, and from Raymond Payne to Rep. Harold Donohue, undated, box 271, House Judiciary Correspondence on School Prayer.
and long, with more originating in the Northeast than any other region. Far more women than men wrote. Some were straight hate mail, such as the many letters from Elsie Fisher of Bothell, Washington. Among her more poetic comments were the question, “…which brain is Congress using this Year?” and the rhyme apparently offering an answer to her query, “Smells like Skunk brain to me, because it stinks to high heaven of Mammon Leaven.”

Humble, plaintive letters outnumbered ad hominem attacks, though both poured in. Sometimes the boldness of faith transformed even attempts at meekness into stark challenges, as when Norma Jean Burkholder, a high school junior from Chambersburg, Pennsylvania, prepared a long account of her conversion experience for the chairman. She thanked him, sincerely, for his service to the country, and outlined her prayers for him during the present legislative struggle. But she wanted him to understand how significant the school prayers had been in her journey thus far; she needed daily reminders of transcendence. For though we may often forget this reality, God is real, and there are ultimately only two places for us to stand—with him or against him.

In closing, I would like to suggest that if you do not act on these resolutions, that you change your name from “Emmanuel” (which means “God with us”) to something else; perhaps “Ichabod” (meaning “Apart from God”). I do not mean this as criticism but only that since, so far, you are not in favor of prayer and Bible reading, that the name is not fitting to you at all. Anyone can be proud of a fine Christian name such as yours.

On January 23, 1964, South Dakota became the thirty-eighth state to vote in favor of the anti-poll tax amendment, officially ratifying the Twenty-Fourth Amendment to the

100 Letters from Elsie Fisher to Emanuel Celler, April 30, May 8, May 9, May 10, May 15, and May 16, 1964, box 246, House Judiciary Correspondence on School Prayer.
101 Letter from Norma Jean Burkholder to Emanuel Celler, February 26, 1964, box 246. Other writers also touched on the significance of his name; see, e.g., letters from John H. Geiman to Emanuel Celler, March 25,
Constitution. Today, when it has been over three decades since the last successful amendment (the 1971 lowering of the voting age to eighteen), the process looks significantly more daunting than it did in the mid-1960s, when it seemed relatively commonplace. Even some of Celler’s friends began whispering to him that they might need to sign Becker’s petition if the Judiciary Committee didn’t soon take some action they could use to placate the public. The shouts were not diminishing.\textsuperscript{102} In fact, the outlines of new and odd alliances were appearing, as newspapers in southern fundamentalist towns were quoting editorials from publications such as the \textit{Catholic Free Press} of Worcester, Massachusetts, an illustration of political ecumenism largely unimaginable just four years earlier.\textsuperscript{103}

In mid-February 1964, as the centuries old scars between Protestants and Catholics continued to show smalls signs of healing, aided by the elixir of a common secularist enemy, other old battle lines also appeared to be shifting. Historians have applied the label “southern strategy” to the Republican attempt, especially in 1968, to pry the white South away from the Democratic Party by subtly aiding those resisting desegregation. To get a sense of Democratic dominance in the region, consider that in 1952, when Eisenhower began making inroads for his party in Dixie, there were no Republican governors, no Republican senators, and only six Republican members of the House (out of 122 total seats) in the eleven states of the old Confederacy plus Kentucky and Oklahoma.\textsuperscript{104} But the party of Lincoln, which had been anathema to southern whites for a century, had the “benefit” of


being the party out of power in the early 1960s when it became clear—to northerners in both parties—that the Justice Department would need to go into the South, almost as an invading army to enforce the desegregation orders. Just as the Democrats had gained the South because a Republican sat atop the executive branch during the federal occupation in the 1860s, some Republicans discerned that with Kennedys running the White House and the Justice Department in the 1960s, the South again became contested territory.

In November 1964, emphasizing the language of “states rights” versus “federal intrusion,” Barry Goldwater would be more popular in the deep South than anywhere else. It is worth noting, though, that historians have occasionally overstated the support Goldwater received for his “states rights” rhetoric. For he obtained fewer southern electoral votes in '64 than had Eisenhower in 1952 or 1956, or even Nixon in 1960. In 1968, though, Richard Nixon led his party to a full, brazen embrace of the southern strategy. As writers for the Atlanta Constitution chronicled, candidate Nixon sat in a motel room in Atlanta in the early spring of 1968 and made his political deal. Senator Strom Thurmond of South Carolina was there. There were others. The essential Nixon bargain was simply this: If I'm president of the United States, I'll find a way to ease up on the federal pressures forcing school desegregation—or any other kind of desegregation. Whatever the exact words or phrasing, this was how the Nixon commitment was understood by Thurmond and other Southern GOP strategists.

In 1968 Senator Thurmond, once the darling of the third-party Dixiecrat movement of two decades before, would campaign for Nixon in the Deep South, doing all he could to undercut the third-party movement of former Alabama Governor George Corley Wallace...

Scholars rightly identify this decision to lock arms with the segregationist South as a central building block in the Republicans’ ultimate presidential victories in the 1980s and

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105 Goldwater carried only six states—his home state of Arizona and the five states of the deep South.
congressional triumphs in the 1990s. But scholars have not sufficiently grasped the foundational importance of another Republican strategic choice in the 1960s. This maneuver might be called the “populist strategy,” especially on matters of public religion.

In one sense, the Republicans had long been identified with a populist religious strategy: anti-Catholicism. Nativist movements opposing immigration from southern and eastern Europe in the late nineteenth and early twentieth centuries found a more welcoming home in the Republican Party than in the Democratic Party seeking the votes of these immigrants. And the 1920s movement in many states to extend and reinterpret compulsory education laws in an attempt to drive Catholic schools out of business by requiring that all children attend public schools (with a Protestant ethos, of course) was closely connected to “WASP” Republican anti-Catholicism. But this early twentieth century demonstration of Protestant religiosity by the Republicans often masked and corresponded with simpler class conflicts between well-off Protestants and the poorer Catholics they viewed as unwashed masses in need of Protestant civilizing. ¹⁰⁸

On February 18, 1964, a date less noticed in American history texts than the moment eleven days earlier when the mop-headed Beatles landed on these shores for their first U.S. invasion, Republicans made a monumental decision. Traditionally the voice of the moneyed classes, the party tried to reposition itself as the voice of the masses, including Catholics, on social issues. Just the previous summer, the state chairman of the Wisconsin Republican Party had said school prayer was an irrelevant issue that respectable Republican constituents wouldn’t want the party to get anywhere near. To Paul Weyrich, who would become a key

¹⁰⁶ Hess and Broder, The Republican Establishment, 339-41.
1970s organizer of the religious right, this “elitist” response was typical of country club Republicans who did “not take kindly to association with the lower middle-class, and precisely those people who largely make up the body most concerned with family issues” and with the religious vitality of the nation.109

In a stunning about-face in February 1964, the House Republican Policy Committee, under the leadership of John Byrnes of Wisconsin, voted to commit the party leadership to seeking a constitutional amendment “declaring the right of individuals to participate in or to refrain from prayer and Bible reading in public institutions throughout the United States.” Almost out of nowhere, Becker’s position had become the Republican position.110 Until this point, there had been some partisan religious divides in American politics—with Jews and Catholics usually Democratic and northern Protestants usually Republican—but there had been no religious/irreligious partisan fault line. Though it would take two decades to come to fruition, Byrnes had just planted the seeds of change.

Emanuel Celler “expressed surprise” in the New York Times over the Republicans’ politicization of the issue and their demand that he “immediately schedule hearings” on the Becker Amendment.111 Other Democrats, though, immediately saw and began to worry about the coming problems their party faced in speaking to the public about this issue. Alec Olson, Democratic congressman from Minnesota, identified the new Republican position as a political maneuver based on “the large volume of mail running in favor of this amendment. In my case, I have received correspondence which is at least 200 to 1 in favor of such an

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108 For a Republican senator’s account of how 1920s Republican exclusivity differed from the broadly American religiosity of the 1960s, see Congressional Record, March 26, 1964, Vol. 110, 6389-90.
amendment.”\textsuperscript{112} And this was in Minnesota, where school prayers had been relatively uncommon even before the 1962-63 decisions.

President Kennedy had forged the path of Democratic ambivalence on school prayer questions in June 1962 when he answered critics of the Court by urging a renewed commitment to prayer in the home. But Americans did not want a privatization of faith. The Democrats faced a major obstacle in equaling the fervor of the Republicans in the prayer crusade because of the visibility of the alliance between the Democratic Party and the liberal Jewish groups so closely identified with the legal secularization movement.

Two weeks before the announcement of the Republican Party’s embrace of Becker’s populist cause, President Johnson, sitting at the head table at the National Prayer Breakfast with the odd couple of Earl Warren and Billy Graham, had struggled to walk the tightrope of simultaneously affirming the religious nature of this nation and yet not committing his party to school prayer or other public manifestations of that nature. Having been president for only seventy days at the time of this Mayflower Hotel event, he joined Graham in giving one of the two main addresses. Last year, holding the second office, his role had been limited to introducing the preacher, a man he christened not only a “great ambassador for the Lord, but also for the spirit and the ideals of America.” Graham had offered his standard call that, “at the crossroads of our national destiny,” America needed to choose, like Joshua, whether we would be on God’s side or against him. Graham hadn’t directly addressed school prayer, for doing so might have been interpreted as a rebuke of President Kennedy and his partial

\textsuperscript{111} New York Times, February 19, 1964, 21.
\textsuperscript{112} Beaney and Beiser, “Prayer and Politics: The Impact of Engel and Schempp on the Political Process,” 495.
defense of the Court, but Graham had strongly emphasized the importance of general public
affirmations of God such as on our coins.\textsuperscript{113}

Johnson’s speechwriters knew Graham well enough to expect that the North
Carolinian would this year again link the blessing of God to the collective spiritual vitality of
America. Last year, echoing a standard Protestant America refrain, Graham had asked his
audience how they might revitalize the country. “What is the formula?” he had inquired
rhetorically. It is to understand that 2 Chronicles 7:14 applies not only to ancient Israel but
also to America, a modern chosen nation: “If my people which are called by my name shall
humble themselves and pray..., then I will hear from Heaven and forgive their sin and heal
their land.”\textsuperscript{114} With religious journalists already suggesting that school prayer might be a
major issue in the upcoming presidential campaign, President Johnson’s aides wanted to
ensure that their chief executive, who would this year be following Graham, was not forced
to answer what was likely to be a passionate appeal for national repentance with a lukewarm
call for private but not public prayer.\textsuperscript{115} They needed to come up with something innovative
and exciting for the president to propose.

Therefore, when Johnson stood up after Graham’s expected demand for a “moral
revival” and a “spiritual awakening,” “the greatest need for America at this hour,” the
president first enthused about the prayer breakfast itself. He suggested that perhaps the
event’s “most useful purpose” was in “reminding and reassuring the people that those who

\textsuperscript{113} \textit{Congressional Record}, February 11, 1963, Vol. 109, 2099-2100. Evangelicals occasionally rebuked
Graham for failing to challenge presidents and other politicians more directly. Graham countered that he
occasionally did in private, but insisted that this aspect of his ministry could only be properly fulfilled outside
the public eye; see, e.g., \textit{Christianity Today}, November 6, 1970, 56-57.

\textsuperscript{114} \textit{Congressional Record}, February 11, 1963, Vol. 109, 2100.

\textsuperscript{115} \textit{Eternity}, May 1964, 8.
hold their trust are themselves godly and prayerful men..." He had a new proposal as well, though. The symbolic value of prayer now needed to be taken further. DC itself, the people's city, with all its monuments to great men, needed a monument to prayer.

This Federal city of Washington, in which we live and work, is much more than a place of residence. For the 190 million people that we serve, and for many millions in other lands, Washington is the symbol and the greater showcase of a great nation and a greater cause of human liberty on earth.

In this Capital City today, we have monuments to Lincoln, and to Jefferson, and to Washington, and to many statesmen and many soldiers. But, at this seat of government, there must be a fitting memorial to the God who made us all. This "living memorial," this "center of prayer," must not violate the separation of church and state which "has served our freedom well," so it should be funded by private contributions rather than the public purse. But such a testament in "the Capital of the free world" would show both friends and foes that this nation is a nation of "good and God-fearing people."

The president accomplished his mission, as the national press carried sympathetic accounts of his proposal for a "house of prayer" for people of all faiths. (Johnson would take his symbolic religious leadership a step farther late in 1965, when he decided to decree 1966 "the Year of the Bible"—a designation Reagan would repeat in 1983.) Those with good eyes might have been able to see on the horizon the outlines of Johnson's party becoming identified with secularism while the Republicans corralled the most conspicuously religious votes, but for now at least, the president himself remained personally acceptable as

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116 Congressional Record, February 17, 1964, Vol. 110, 2899.
117 Congressional Record, February 17, 1964, Vol. 110, 2899.
120 On January 19, 1966, President Johnson hosted a ceremony commemorating the significance of the Bible to Americans, while yet generally maintaining that the Bible should not be politicized in public life. See the Public Papers of the Presidents, January 19, 1966, available at www.americanpresidency.org.
a spokesman for the importance of nurturing the national soul. The "missteps" of Celler were not going to be imputed to the head of his party in November. 121

In New York City, those Becker called the "fraternity of secularists" deep inside the Democratic Party understood that they stood on the edge of an avalanche. 122 In the twenty months since the Engel decision, the anti-Court outcry had accomplished little more than getting "In God We Trust" engraved on the wall in the House chamber. A similar outpouring of public frustration after the 1948 McCollum decision barring catechism classes in public schools had also lasted for some time, but eventually faded away. American parents ultimately accepted having to take their children to the religious institutions for catechetical instruction, instead of expecting the public institutions to accommodate the classes. But while McCollum's critics had never become an organized force, things were looking different this time around.

Since February 18, the political equation had changed. Local Democrats in Chicago were now about to announce an agreement they had worked out where Catholic students would be allowed to go to public school for half of the day and parochial school for the other half. 123 In Washington, following the announcement of the House Republican Policy Committee, Chairman Celler had been forced to concede the holding of hearings. 124 He had been able to avoid committing to a specific date, but only by claiming that a Judiciary Committee staff study of the more than one hundred different amendment proposals was not

121 Johnson's reputation was also insulated somewhat from charges of being anti-religious because of his relative openness (compared to President Kennedy) on the question of public aid to parochial institutions, especially as evidenced in the 1964-65 college aid bill.
122 Laubach, School Prayers, 49.
yet quite ready for distribution to members of the committee. Celler insisted that it took
time to prepare for quality hearings on such a controversial topic with so many divergent
possible solutions, but he had now been forced to commit, in a public letter to Becker, that
hearings were definitely on the horizon. He had been pushed into action not by the official
policy position of the Republican leadership, but instead because that party announcement
had secured a few dozen additional signatures for the discharge petition. Becker now had
nearly 170 commitments, and it appeared to be only a matter of time before he secured his
218th.

At a secret meeting in Manhattan on St. Patrick’s Day 1964, Celler huddled with
representatives of a powerful coalition of anti-amendment organizations. Everyone
understood the stakes; if the resolution made it out of committee, there would be an
amendment to the Constitution. In theory, other hurdles to passage existed; in practice, all
of them were inconsequential. The last step—a simple majority in three-quarters of the
states—would be a cakewalk. Some states were already voting for hypothetical
amendments. A two-thirds majority on a recorded vote in the full House, where officials
stand for reelection every twenty-four months, would be almost as easy. In the Senate,
where some members in floor debate the previous week had expressed reticence about
tinkering with the almost sacred Bill of Rights, Senator Simpson of Wyoming and the other
leading public prayer proponents would need to work for their sixty-seven votes, but no one
really doubted the ultimate passage of some resolution to restore the pre-1962 prayer

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126 See, e.g., the actions of the Michigan Senate; New York Times, February 5, 1964, 32. See also Boles, The Bible, Religion, and the Public Schools, 324-25.
situation. The House Judiciary Committee and the expertise of its wily old chairman provided the only reasonable chance to kill the amendment—but even there, amendment opponents counting votes believed they were behind. While the Anti-Defamation League had been attempting to encourage an anti-Becker movement for months, it appears that Dean Kelley of the National Council of Churches organized this meeting. In conversations with various members of the Judiciary Committee in recent weeks, he sensed that many congresspeople were extremely ambivalent about an amendment, but each member somehow thought he was alone. Though the Republicans officially supported an amendment, the Democrats were not officially opposing it, and hence no one anywhere in Washington was deliberately coordinating the opposition. In this vacuum, where skeptics had remained quiet lest they be singled out and forever labeled anti-God and anti-country, the churchman resolved that he would serve as the members’ unofficial whip on the issue. Kelley became the anti-Becker, quietly marshalling liberals against the amendment while the fiery New Yorker took to television to move the masses.

The Jewish, mainline Protestant, and civil liberties groups devised a sophisticated three-part strategy, with each piece focusing not directly on the public but on the thirty-five members of the committee. What did each of them need in the way of public relations “cover” to be able to explain to their specific constituencies why they weren’t jumping to support a prayer amendment? Opponents wouldn’t necessarily need to cast a public committee vote against an amendment; they would simply withhold their support. If Kelley

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128 Boles, The Bible, Religion, and the Public Schools, 299; Alley, School Prayer, 151.
129 Beane and Beiser, “Prayer and Politics: The Impact of Engel and Schempp on the Political Process,” 498. See also Christian Century, July 1, 1964, 852.
130 Laubach, School Prayers, 48.
were effective, they might be able to keep it from ever coming to a vote at all. If enough
members—twenty would be better than the slim eighteen—opposed the resolution behind
the scenes, other members would be kept in the loop, Cellier would never actually call for a
vote after the testimony and debate, the anti-Becker forces would lack the numbers to
compel the vote, and the issue might drift away.

The first of the three keys to victory was getting enough visible religious leaders to
speak out against the Becker Amendment “to make it ‘respectable’ and ‘safe’ for
Congressmen” to withhold immediate support. Then, legal authorities would criticize the
amendment proposals as dangerous and likely to result in additional unintended, undesirable
consequences. Third, their side needed some small show of public support. They wouldn’t
be able to match Becker’s mail onslaught but they needed a surge at some point that they
could publicize.131

Rev. Kelley and company were convinced that a range of religious leaders had to be
employed to make the case that doubts about this amendment didn’t equal doubts about God
or the positive influence of religion in American history and national life. Politicians might
be dismissed as anti-religious if they were bold and outspoken in their anti-Becker
sentiments, but it would be harder for amendment backers to accuse anti-amendment clergy
of being anti-religious.132

Recent Senate debates had been instructive about how difficult it might be for elected
officials to take the lead in criticizing Becker’s proposal. Michigan’s Senator Hart, a
Catholic but also an amendment opponent, had tried to argue that Becker’s solution could

131 Beaney and Beiser, “Prayer and Politics: The Impact of Engel and Schempp on the Political Process,” 497-
98.
well lead to majority religionists in each locality instituting a prayer that excluded or even ostracized creedal minorities. He admitted that he would like his children to pray the “Ave Maria” in school, but he worried about coercing “non-Catholic students in the class.” Sure, he conceded, dissenters could leave the room, but it “does not fit my definition of ‘voluntary choice’” to say to a twelve year old that they must make such a public choice. Admitting it was politically risky to say “but...” to anything the mounting pro-prayer forces wanted, the senator nonetheless wondered aloud if “a period of silence” might be a better solution to the post-Engel challenges.\(^\text{133}\)

Hart raised important questions worthy of dispassionate consideration, but dispassionate consideration is difficult before any diverse crowd, let alone a large and angry one persuaded that “a vicious and dangerous minority” was conspiring “deliberately and maliciously to divide our people...and to eliminate religious influences and destroy our religious heritage.”\(^\text{134}\) Even in an assembly that prides itself on being “the greatest deliberative body” on earth, Hart’s concerns received little hearing. Half a dozen senators retorted that a little awkwardness around religion wasn’t nearly as big a problem as the current religious vacuum dragging the nation into a moral cesspool. Senator Lausche of Ohio spoke for most of his colleagues:

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\text{I should like to observe that for practically 170 years no one found any distress in prayers to God which have been spoken in various ways at public functions and in schools. But because one individual [Madalyn Murray] filed a case in court, the Supreme Court has swept aside 170 years of tranquil life. It has no difficulty in suggesting the idea, as Bishop Sheen has said, “Thou shalt not pray.” In my opinion, that is the issue. In effect, the Court has said to every American, “Thou shalt not pray.”}
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\(^\text{134}\) Congressional Record, March 26, 1964, Vol. 110, 6391.
The issue is of far greater importance to me, so far as the future life of our country is concerned, than some other problems that face our people. For 170 years, public prayers created no trouble of any kind whatsoever. I may say to the Senator from Michigan that the amendment proposed by the Senator from Wyoming may require refinement. But we cannot wait. Something must be done.\textsuperscript{135}

Senators that day also quoted recent public statements by Madalyn Murray, describing the Bible as “nauseating, historically inaccurate, replete with the ravings of madmen,” and calling God “sadistic, brutal, and a representation of hatred [and] vengeance.”\textsuperscript{136} Combined with a warning that the Soviets also disallowed school prayer and a pledge that amendment proponents were tolerant men, believing there “are as many paths to the kingdom of heaven as there are people, and each one is holy,” the amendment proposal secured an additional co-sponsor before the day’s debate ended.\textsuperscript{137} Senator Hart’s doubts had only strengthened the advocates of amendment.

Kelley saw more clearly with each Capitol Hill debate that anti-amendment forces couldn’t rely on elected officials to have to make the argument alone; religious officials would need to give them cover if Becker was to be stopped. As such, it was important to secure clergy to testify against the amendment from each of the denominations of the Judiciary Committee members. Among the first 110 amendment sponsors in the House, there had been two dozen Presbyterians, two dozen Methodists, more than a dozen Baptists, and a dozen Catholics. Every tradition seemed to have at least one sponsor; there was even a Jewish supporter.\textsuperscript{138} More important to Kelley, though, was ensuring that he found co-religionist witnesses for each of the thirty-five members of the committee; the House as a whole would be irrelevant if they could win in Celler’s committee. In this smaller arena,

\textsuperscript{135} Congressional Record, March 11, 1964, Vol. 110, 5012.
\textsuperscript{136} Congressional Record, March 11, 1964, Vol. 110, 5010.

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there were nine Catholics, eight Methodists, six Presbyterians, four Baptists, three Jewish members, two Lutherans, and one Episcopalian, one Unitarian, and one member not known to have any religious affiliation.\textsuperscript{139} The churchman went to work lining up his witnesses.

On March 19, two days after the secret New York City planning meeting, the chairman announced that the staff had completed their preliminary report and hearings could begin April 22.\textsuperscript{140} Instead of expressing a sense of either accomplishment or gratitude, Becker was livid and he went to the floor to explain why. "Mr. Speaker," the crusader barked, "I am quite sure the chairman of the Judiciary Committee knows that the New York World’s Fair is scheduled to open on the 22nd of April..."\textsuperscript{141} In other words, key journalists were already scheduled to be away from DC that day, and television coverage on that night’s news would be tight.\textsuperscript{142}

Becker had secured his hearing and that had been a tremendous, unlikely achievement. But little did he know that that had been the easy part. Soon the people’s champion would realize that he was overmatched, for his opposition included not only a shrewd veteran chairman, but a well-organized machine already scripting the entire series of hearings.\textsuperscript{143}

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\textsuperscript{137} \textit{Congressional Record}, March 11, 1964, Vol. 110, 5011-13. Holland of Florida announced his sponsorship and Hickenlooper of Iowa implied he too would soon join.
\textsuperscript{138} \textit{Congressional Quarterly Weekly Report}, week ending May 1, 1964, 881.
\textsuperscript{139} \textit{Congressional Quarterly Weekly Report}, week ending May 1, 1964, 881-84.
\textsuperscript{140} Beaney and Beiser, "Prayer and Politics: The Impact of Engel and Schempp on the Political Process," 497-98.
\textsuperscript{141} \textit{Congressional Record}, March 23, 1964, Vol. 110, 5883.
\textsuperscript{142} See also \textit{New York World-Telegram and Sun}, March 24, 1964, 24.
\textsuperscript{143} Even the staff report put together by Celler’s committee aides suggested to Becker that this would not be a deliberative hearing, but rather a choreographed affair. See U.S. Congress, House Committee on the Judiciary, \textit{A Staff Study [on] Proposed Amendments to the Constitution Relating to School Prayers, Bible Reading, Etc.}, March 24, 1964.
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Like appetizers before a primetime gladiator contest, early April saw a series of skirmishes in cultural politics set the stage for the April 22 opening of Becker-Celler public war. Madalyn Murray got back in the national news by demanding that the Baltimore schools drop “under God” from the Pledge of Allegiance in their morning exercises.\(^1\) An organization called Project Prayer counterpunched, sponsoring the first in a series of pro-Becker rallies in Los Angeles, enlisting entertainers Rhonda Fleming, Ronald Reagan, John Wayne, Pat Boone, and Roy and Dale Rogers as spokespeople.\(^2\)

Even without citation in the *New York Times* in the first few months of 1964, Ms. Murray had not slipped the minds of Americans. A small pro-prayer amendment organization in Seattle had been distributing a pamphlet called “A National Emergency,” and on February 14 had received in return something less than a Valentine’s greeting from an employee of one of Murray’s atheist organizations.

Gentlemen:

One of our members sent us a tract that your organization is passing out titled A NATIONAL EMERGENCY!

Buddy, you ain’t seen nothing yet! This is more than an emergency for you superstitious Neanderthals.

You are absolutely correct, we fully intend to destroy superstition in the United States of America for once and for all.

We threw superstition out of the schools, next we will throw the chaplains off the battleships, and we will teach American children that Tyrannosaurus was not on Noah’s ark! The exploitation of sex by the church is another era that has passed!

Defiantly,

Garry DeYoung, Vice-President

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\(^1\) *New York Times*, April 7, 1964, 9; April 10, 1964, 16; April 13, 1964, 19. Such events were also cited in constituent correspondence to the committee; see, e.g., the letter from Edna Edwards to Emanuel Celler, June 14, 1964, box 246, U.S. Congress, 88th Congress, House Committee on the Judiciary, Correspondence Regarding School Prayer, National Archives, Washington, DC, Legislative Research Division, Second Floor. (Hereafter, “House Judiciary Correspondence on School Prayer.”)

\(^2\) *Eternity*, May 1964, 9.
Inc.
The Freethought Society of America, Baltimore, Maryland

Roy Johnson, the director of the Seattle outfit, sent duplicates of the Murray letter to other Christian groups and made copies available to interested laypeople—"50 for $1."\textsuperscript{3} Mimeographs were quickly circling the country and almost certainly being quoted in sermons. It would eventually make it into Becker's testimony before Celler's committee, and other members would insert the outrageous letter into the \textit{Congressional Record} as proof of the long-term objectives of the "fraternity of cynics who campaign against tribute to God."\textsuperscript{4} Even anti-amendment members felt the need to denounce Madalyn Murray and to make clear their conviction that America would triumph over communism precisely because of our religiosity, even if civil harmony would be better advanced by keeping particular manifestations of this religiosity out of official public courses of study.\textsuperscript{5}

Murray's \textit{American Atheist} magazine had been exacerbating the rhetorical challenge faced by pro-religion but anti-school prayer spokespeople by printing rhymes ridiculing the piety of the patriotic. Again copies circulated faster among her opponents than among her supporters, as when copies of an \textit{American Atheist} piece about national reliance on God appeared in the irate letters of religious Americans to their representatives:

"In God We Trust?"
To fool little children it is a must.
But if we had no men to fight,
No Army, Navy, airplane might,

\begin{itemize}
  \item \textsuperscript{3} Letter from Gary DeYoung, vice president of the Freethought Society of America, to Roy Johnson, February 14, 1964; copy included in letter from Isaac J. Leonard to Emanuel Celler, May 4, 1964, box 246, House Judiciary Correspondence on School Prayer. The Freethought Society published O'Hair's \textit{American Atheist} magazine. Additional copies of this letter were inserted into the \textit{Congressional Record}, on April 28, 1964, Vol. 110, 9417; and into U.S. Congress, 88\textsuperscript{th} Congress, House Committee on the Judiciary, \textit{Hearings on Proposed Amendments to the Constitution Relating to Prayers and Bible Reading in the Public Schools}, April 22-June 3, 1964, three volumes, 224. (Hereafter, "House Judiciary Hearings on School Prayer.")
  \item \textsuperscript{4} House Judiciary Hearings on School Prayer, 223-24; \textit{Congressional Record}, April 28, 1964, Vol. 110, 9415-17.
  \item \textsuperscript{5} \textit{Congressional Record}, April 10, 1964, 1964 Appendix, A1775.
\end{itemize}
We'd trust old Jehovah and Mary hail
As far as we could throw a bull by the tail.  

Of course, believers would not allow unbelievers to outdo them in anything, including the composition of trite poetry, as demonstrated by “Prayer on the Q.T.” which local newspapers were reprinting:

Now I sit me down to school
Where praying is against the rule.
For this great nation under God
Finds public mention of him odd.

Any prayer a class recites
Now violates the Bill of Right.
Any time my head I bow
Becomes a Federal matter now.

Teach us of stars, or pole and equator,
But make no mention of their Creator.
Tell of exports in Denmark and Sweden,
But not a word of what Eve did in Eden.

The law is specific, the law is precise;
Praying out loud is no longer nice.
Praying out loud in a public hall
Upsets believers in nothing at all.  

Maureen Barthlow, a correspondent to Chairman Celler from Promeroy,

Washington, couldn't understand why schools in her area were expanding their curricular offerings to include judo and tumbling but were now required to “leave out the most important teaching—morality, honesty, unselfishness, etc.”  

Roger Storms, a teacher from Maine, applauded Celler's record on issues like civil rights, but wondered why his civil right

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6 Congressional Record, April 28, 1964, Vol. 110, 9417.

7 The poem was cut out of a local newspaper (The County Leader) and sent to the committee, box 246, House Judiciary Correspondence on School Prayer. Again, members also submitted copies they received of this poem in their personal offices into the Congressional Record as well; see March 5, 1964, Vol. 110, 4525-26.

Boston's Ralph Jones represented another category of Americans whose poetic utterances on the secularization debates tried to have some fun with the controversy: “Betwixt God and Mrs. Murray/ A battle royal rages./ It isn't fair, considering/ The difference in their ages!" Saturday Evening Post, August 8-August 15, 1964, 4.

8 Letter from Maurine M. Bartlow to Emanuel Celler, March 6, 1964, box 246, House Judiciary Correspondence on School Prayer.
to lead voluntary prayer was now being taken away. Margueritte Beck, who taught second
grade in Dallastown, Pennsylvania, wrote expressing a similar grievance that the justices
were trying to prohibit her from reading the Bible at story time. These teachers concurred
with the decision of women’s groups around the country to print up various versions of the
postal stickers, “America Keep God, God Will Keep America.”

While Atlanta officials were divining public sentiment and designating a “Return the
Bible to Our Schools Day,” the year’s presidential hopefuls were speculating about the
possible impact of another increasingly common slogan in the mails, “This Campaign
Year...Let’s Put GOD back in the Schools!” Prayer politics joined racial politics in
highlighting cleavages within the Republican Party. Lodge, Scranton, and Rockefeller,
competing for the nod from establishment Republicanism, were all shaky on school prayer,
while the only real challenge to Sen. Goldwater’s claims of being the presidential candidate
most sympathetic to school prayer came from Gov. Wallace outside the party. Correspondents to Celler’s committee spoke for much of America when expressing their
lamentations over the moral slide they sensed, and the “eggheaded” liberal Republicans had

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9 Letter from Roger C. Storms to Emanuel Celler, March 8, 1964, box 246, House Judiciary Correspondence on School Prayer.
10 Letter from Margueritte Beck to Emanuel Celler, March 2, 1964, box 246, House Judiciary Correspondence on School Prayer.
11 Letter from Mrs. Mervin Phillips to Emanuel Celler, undated, box 246, House Judiciary Correspondence on School Prayer.
12 Postcard from James Timmons to Emanuel Celler, undated, box 246. See hundreds more of this preprinted postcard, most of them from New York, in boxes 248 and 271, House Judiciary Correspondence on School Prayer.
13 A related complex of issues was dooming Attorney General Robert Kennedy’s hopes of becoming Johnson’s running mate for November. With Goldwater and Wallace campaigning against Washington, the White House couldn’t see what Kennedy, who was sending in federal troops and speaking out against the Becker Amendment, could bring in the quest for undecided voters. For perspectives on how RFK’s stock fell as Wallace surged, see U.S. News and World Report, June 1, 1964, 19, and June 8, 1964, 24. See also John Herbert Laubach, School Prayers: Congress, the Courts, and the Public (Washington, DC: Public Affairs Press, 1969), 85.
little to offer by way of explanation on that score.\textsuperscript{14} Seen as more commonsensical and less eggheaded, FBI Director J. Edgar Hoover was on a speaking tour denouncing the public’s “insensitivity to the difference between right and wrong,” the “coddling of criminals,” the “so-what” attitude of some parents, and the tolerance of communism by many politicians. While America abandoned its young religiously, the Communist Party was, Hoover warned, currently launching a new, outreach-oriented “youth organization.”\textsuperscript{15}

Billy Graham, at a press conference in Chicago on April 7, emphasized his efforts “to raise public opinion” in support of the Becker Amendment.

We are reaping a whirlwind in delinquency. Young people do not know what is right or wrong any more. Our young people are not being taught moral values; they are at sea morally.

We have removed moral law from the young people. The Ten Commandments could be read and said every day in our schools. Protestants, Catholics, and Jews all agree on the Ten Commandments...I back the Becker Amendment.\textsuperscript{16}

Graham felt little conflict in simultaneously preaching a particular brand of Christianity as the only hope for personal salvation, and promoting a more generic Judeo-Christian religiosity for the inculcation of universal values and thereby the maintenance of social order. He moved easily between these roles of fundamentalist evangelist and national moralist. In the latter office, he warned America that there might well be “a movement by a small minority to remove the idea of God completely from our national life.” Graham suggested the Becker Amendment as an antidote to the long list of national ills that were the


\textsuperscript{15} For a representative write-up, see New York Herald Tribune, May 10, 1964, 10.

\textsuperscript{16} “Graham Here, Backs School-Prayer Bill,” Chicago Sun-Times, April 8, 1964, quoted in House Judiciary Hearings on School Prayer, 229.
logical outcome of following the Supreme Court’s mandate and raising our children in a public moral vacuum.  

Historians’ heads usually swim when they attempt to understand how modern conservatives link in one breath the school prayer decisions, rising crime rates, communism, racial discord, the growth of the federal government, the sexual revolution, rock music, the ACLU, the end of the world, and more. And indeed, watching the news on a Christian cable channel helps explain why consensus historians once casually dismissed the populist right with a one-size-fits-all “paranoid” label. Nonetheless, Alan Brinkley has rightly critiqued scholars’ neglect and oversimplification of the right, challenging historians that they will not understand conservatism until they begin to take more seriously and dissect more carefully the ideas that have moved conservatives. Nativist passions and racist status anxiety surely comprise part of the story, but not the whole of it.

Conceding that ideas—libertarian, moral-traditional, neoconservative, dispensational, and more—motivated individual conservatives does not necessitate affirming that one central, ideologically coherent spine undergirds the body of conservative thought. Like distant kin at a Thanksgiving dinner jointly complaining about “politicians,” the many constituencies of modern conservatism are united less by a shared constructive program for

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17 “Graham Here, Backs School-Prayer Bill,” Chicago Sun-Times, April 8, 1964, quoted in House Judiciary Hearings on School Prayer, 229.
America than by a shared critique of a package of rapid cultural changes. This shouldn’t be surprising, given that “conservatism” has traditionally meant the basic conviction, as much a disposition as a principle, that social change always brings unintended consequences and thus that the long-term and unpredictable costs of altered folkways often outweigh the prophesied benefits.

Perhaps historians’ greatest error in failing to comprehend populist conservative worldviews lies in an unwillingness to acknowledge the magnitude of twentieth century cultural changes that understandably distressed so many citizens. The correspondents to Capitol Hill sensing an up-tick of crime in the mid-1960s were not hallucinating. In Washington, DC, for instance, serious crime was up over thirty percent annually, and smaller crimes were increasing much more rapidly; car theft, for instance, was up 108% year over year.20 Social scientists offer better proximate explanations than the preachers for these statistics, pointing to baby boom demographics, increasing transience, economic dislocation, and the anonymity of urban life.21 Yet it is important also to acknowledge the reasonableness of the laity’s discontent with such changes and the naturalness of trying to comprehend why cultural indicators were buzzing.22

Similarly, one need not be paranoid to recognize that the centers of decision-making and execution became ever more distant in the twentieth century from where the average woman or man actually lived. Business historian Alfred Chandler has noted that while only

20 U.S. News and World Report, June 1, 1964, 10.
22 The Republican Party grasped the magnitude of the change in the crime statistics, and by 1968 issued talking points on the numbers to candidates emphasizing law and order issues. In addition to the hard data, the GOP highlighted specific stories such as the DC cab drivers now refusing to drive at night, the 13,000 female secretaries at the Pentagon who needed escorts to their cars in the parking lots, the horror that Charles Porter, a World War II veteran, had his artificial feet stolen while he slept. See U.S. Senate Republican Policy Committee, Bourke Hickenlooper, Chair, Eight Years of It (Washington, DC: Public Affairs Press, 1968).
68,000 civilians were employed by the government in Washington in 1929, one million civilians received federal paychecks by 1940, and three million by 1970. Feeling powerless against the increasing, and often undesired, role of a distant government in daily life, it is understandable that some citizens found credible conspiracy theories then circulating about the totalitarian objectives of the United Nations and other international organizations. Many Americans were unsympathetic to unelected and unaccountable federal judges, and they identified with homespun spokesmen like Pat Robertson, who called it as the laity, both church and unchurched, saw it. To the young Virginia broadcaster, the “basic problem in politics is: either God is God, or government is God. Now if government is the court of last resort, if government is womb to tomb...we’re going to have all-encompassing medical protection, all-encompassing work laws, and so forth.” By “all-encompassing,” grassroots white America knew what Robertson meant—statist, tyrannical, anti-tradition, anti-parent, anti-God.

With these fears brewing in many corners of the country, grandstanding localists were often understood as more than simply segregationists, by their supporters both in and beyond the South. Arkansas’ racist governor Orval Faubus, for instance, won national fans by personally aiding an anti-vaccine family. The New York Times and the mainstream media painted him as almost humorously backwoods. To educated northern liberals, he was first a segregationist and, second, just plain quirky. To many ordinary citizens,

25 Interview with Pat Robertson, Sojourners, September 1979, 20-22.
however, his racial and his anti-vaccine efforts were easier to reconcile, as both positions championed the prerogatives of local (white) citizens against “intruding” authorities.

The first week of April 1964, the Arkansas Supreme Court had taken children away from a couple who resisted vaccinating them for admission to school. As the head of the executive branch, Faubus collected the kids from state officials and took them into his own home.\textsuperscript{27} Like a bad sitcom where the omniscient man of world affairs discovers his inability to watch the children and manage the household, less than three days passed before the governor needed the youngsters out of his space. But he defiantly delivered them directly to their parents, to the cheers of state-fearing parents across the land.\textsuperscript{28} Scholars debate whether the populist President Jackson ever really said, “John Marshall has made his decision, now let him enforce it.”\textsuperscript{29} But even if he never uttered it, many popular politicians have been guided by the Jacksonian intuition that there is resentment deep in the American soul against decrees of radical change to traditional American customs by distant, upper class, unelected judges.

On April 22, Frank J. Becker awoke expecting to secure his new position as popular hero, ridiculer of robed men, and defender of God. Along the way, he partially forgot that the Judiciary Committee stage did not belong to him; he was but an extra in a performance featuring a different New York member. The microphone that mattered belonged to the chairman, and Becker would speak only within a context controlled by Celler.

The fireworks began immediately. As the committee’s first witness, Becker loudly announced that his

\textsuperscript{27} \textit{New York Times}, April 7, 1964, 18; April 8, 1964, 27; April 11, 1964, 12.
\textsuperscript{28} \textit{New York Times}, April 8, 1964, 27; April 11, 1964, 12.
interest in this sacred matter is intensified by the fact that the same forces which
initiated the campaign to outlaw devotions in schools are now determined to
eliminate the words “under God” from the Pledge of Allegiance and the words “In
God We Trust” from our coins and currency.

This fraternity of secularists, if given further leeway, will remove chaplains
from our armed services, our legislative assemblies, both State and National, and
create in the minds of our children and young people the feeling that a tribute to God
in relation to the affairs of our Nation is a misdemeanor, if not a crime.

My resolution (H.J. Res. 693) is designed to make it constitutional to refer to
and rely upon Almighty God in all matters related to our existence as a nation. Such
a constitutional amendment would preserve inviolate the right to sing in a
schoolhouse every stanza of our national anthem. Who could have dreamed that the
day would come in our Nation when a stanza from the “Star-Spangled Banner”
would be vetoed by people in positions of authority over our children?  

Celler had agreed to at least two weeks of hearings, but he doubted he could stomach
two more minutes. “There is no decision of the Supreme Court or any court which bans the
singing of the ‘Star-Spangled Banner,’” he interrupted. He then quoted extensively from
Justice Clark’s Schenck decision to insist that “nothing in this decision…is inconsistent
with the fact that school children and others are officially encouraged to express love for our
country by reciting historical documents such as the Declaration of Independence…”

Perturbed that his soaring flourish had been grounded, Becker notified the chairman
that he spoke here not properly of the Court’s decision but of the understanding of the
decision by local officials. In his congressional district, for instance, schools attempting to
use the Star-Spangled Banner’s fourth verse as a new morning prayer had been rebuked. As
Becker saw it, “nothing could be more important” than correcting these Court-caused
misunderstandings, reaffirming the original meaning of the Constitution by means of a
clarifying amendment, and again encouraging the “dependence upon Almighty God” which


30 House Judiciary Hearings on School Prayer, 211-12.
31 House Judiciary Hearings on School Prayer, 212.
has "made us great" historically and will determine "the entire future of our beloved America."  

Quoting Protestant, Catholic, and Jew on the religious identity of the nation and the necessity of shared piety, Becker sought to mainstream his position against all who would marginalize him. For his Jewish support, Becker inserted into the record a 1962 pro-school prayer sermon by Bernard Zlotowitz, rabbi of Union Reform Temple in Freeport, New York.  

Celler again wanted to ensure that no one concluded, least of all Becker, that the crusader owned the committee room. This time Celler did not speak directly but allowed Stuart Johnson, committee counsel, to interrupt Becker. "I have a copy of a letter from Rabbi Zlotowitz," he began. He could just as easily have shouted, "Gotcha!"

Becker knew exactly what was happening. "I did not imply that the rabbi was endorsing the constitutional amendment or supporting it," he speedily retreated. "I thought [the 1962 sermon] was so good for this argument I presented his argument here. Despite the fact that he agreed to come here, he later changed his mind...I did not imply in my statement here that he was supporting a constitutional amendment."

With Johnson as his attack dog, Celler could appear to stand above the fray. The chairman, acting almost unaware of the existence of Rabbi Zlotowitz's recent letter backing away from his earlier support for school prayer, humbly requested that counsel read the document into the record. Zlotowitz's letter explained how he had come to believe an amendment was not the best solution to the civil religious riddles.

32 House Judiciary Hearings on School Prayer, 212-14.
34 For an indication that even sympathetic members viewed Becker as a crusader, see Congressional Record, February 3, 1965, Vol. 111, 1873-1874.
Johnson had more counter-intelligence up his sleeve: “Mr. Becker, you also referred to Cardinal Gibbons?”

“Yes.”

“In a statement which was delivered in 1922?” the lawyer asked.

“That is right,” Becker replied, probably beginning to wonder if he was again in trouble.

“I am advised that Cardinal Gibbons died in 1921,” a jubilant Johnson began.

I also understand that the statement you quoted was in response to a request by a Protestant clergyman, Dr. Wilbur Fisk Crafts, to comment on a book by him called “The Bible in the School Plans of Many Lands,” published in 1914 as part of Crafts’ Bible Stories. The cardinal is quoted by Dr. Crafts as declaring as you quoted him, but subsequently in a letter to Rabbi Rosenau, Cardinal Gibbons told him:

“I would say that last September, Mr. Wilbur F. Crafts wrote me concerning a book, ‘Bible Stories,’ asking for a friendly letter relative to the same. I replied in a spirit of friendship, approving as I have always done, the reading of the Holy Scripture, but no mention was made, nor was anything said to give the impression, that I intended this letter to be an endorsement of the reading of the Bible in public schools.

“As things stand I am opposed to this as it gives a teacher the opportunity to make such selections and comments as may offend the religious beliefs of the scholars. It is an entering wedge that might lead to great abuse.”37

Political hacks on Capitol Hill have long referred to the opposing party as “the evil party,” and to their own as “the stupid party.” The logic is that when things go awry, the cause must be twofold: “We,” fighting for the good, were underprepared, and “they,” though laboring for a wicked cause, had nonetheless thwarted justice by crafty gamesmanship. We pursue a noble end, but they have mastered the means. That Wednesday afternoon, prayer proponents in Washington were surely cringing at Becker’s simple-mindedness and Celler’s worldly ways. While Becker had spent the spring on television and on the circuit talking to everyone who would listen, his opponents had quietly

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37 House Judiciary Hearings on School Prayer, 220, italics added.
and diligently been transcribing and dissecting the various versions of his stump speech.

Even if Becker hadn’t been playing fast and loose with quotes and facts (which it appears he was), it wouldn’t have been difficult to construct at least a few effective rebuttals to his many assertions simply because he talked so much.

Rep. Basil Whitener, North Carolina Democrat and a Becker ally on the committee, knew his champion was in trouble. After over twenty months of campaigning to get these hearings, and with a room full of media, Becker was delivering a film of lowlights. “Mr. Chairman…question,” Whitener interrupted. “Is it going to be the procedure of the committee that counsel will engage in cross-examining witnesses?” For Johnson to rebut a member like this was atypical, and Whitener wanted some answers. “If we are going to go into cross-examination, then I would like to do a little cross-examining. I do not think we ought to have absent witnesses who are trying to write letters at the request of the chairman or anyone else to try to build a case for their side of the picture.”

Celler countered that counsel had only introduced a letter Becker had already received. Whitener insisted that the current grilling deviated from committee standards. Asking Becker clarifying questions about his own view was one matter, but expecting him to track and elucidate the shifting opinions of citizens not present was quite another. “I do not know Rabbi Zlotowitz from Cassius Clay, and I do not know that I would want Clay to write a letter here with his new-found religion and use it as a basis for examining a Member of Congress or any other witness,” the congressman protested.

Whitener hadn’t undone the damage inflicted on Becker’s cause by Celler’s adroit demonstration that even people Becker quoted and admired could simultaneously be pro-

38 House Judiciary Hearings on School Prayer, 220.
God and anti-amendment. But he had stopped the bleeding. A number of members, even those opposed to Becker’s amendment, followed the North Carolinian’s lead and spoke up to defend the dignity and prerogatives of another member. On the procedural question of whether committee members should be permitted to interrupt an official statement by a non-committee member testifying before the panel, there was debate. But basically everyone agreed it was inappropriate for committee staff to interrupt (they meant “humiliate”) a member. The troops were issuing a gentle rebuke not only to Johnson but also to his boss.40

On his heels, Celler backtracked, “I asked counsel to ask a question. I could have asked it myself. If Mr. Becker wishes not to be interrupted by questions, that is his privilege.”41

Patrick Martin, California Republican, not yet satisfied, said he hadn’t even met the staff lawyer now dressing down Congressman Becker. Clearly annoyed, and losing control of the storyline, Celler made the introductions and then came as close as the towering Brooklyner could get to humbling himself to apologize, “The gentleman is correct. I could have asked the questions myself but I asked counsel to do it for me. The procedure is always to allow the members of the committee to interrogate first and counsel last...Will you proceed, Mr. Becker, please?”42

Becker again had the floor, but not before serious damage had been inflicted on him. Would he be able to regain the momentum? His prepared thirty-one-page statement, like his standard speech in support of the discharge petition, had little time for nuance; this was not exactly good versus evil, but close. “I do not question the sincerity of [the small number of] good people opposed to this amendment, but I think if they would make a deeper survey of

40 House Judiciary Hearings on School Prayer, 222-23.
41 House Judiciary Hearings on School Prayer, 222.
42 House Judiciary Hearings on School Prayer, 223.
the question they might be shocked to find what strange and obnoxious company they are keeping," he began.43

Counsel Johnson’s precise citations from Cardinal Gibbon, Rabbi Zlotowitz, and Justice Clark still echoed in the air, casting doubt over Becker’s sweeping narrative. Most national journalists didn’t need much convincing that the questions were more complicated than Becker liked to admit. That very morning, for instance, the Washington Post had run an editorial, “The Lesson of History,” arguing unequivocally against “the Becker Amendment...[and] the fearful peril it presents.”44 But Becker’s debacle at the hearings would make it easier for editors to move their anti-amendment logic from the opinion pages to the national news pages.45

Later in the day, when the discontent with Celler’s opening hour tactics and the sympathy/pity for Becker had dissipated somewhat, the chairman and his supporters were able to unveil additional letters contradicting Becker’s implied truism that every thoughtful person who loved God unreservedly supported this legislation. Erwin Griswold, the dean of the Harvard Law School who would later serve as solicitor general under Presidents Johnson and Nixon, had been a severe critic of the Court’s prayer decisions and had thereby become a household name and hero to many, including Becker. A February 1963 denunciation of Engel by Griswold during a lecture at the University of Utah Law School became so well known in God-and-country circles that one might have thought the Utah Law Review was a

43 House Judiciary Hearings on School Prayer, 224.
44 Washington Post, April 22, 1964, A18. The Post would run another lead anti-Becker editorial the following Monday, April 27, 1964, A16.
45 See, e.g., New York Times, April 23, 1964, 14. In some ways, the Times had been less than bashful about sprinkling its editorial slant against amendment proposals into supposedly objective articles on Becker’s crusade for months. On March 19, for instance, the editors printed a sidebar article outlining Paul Blanshard’s “Warning” about the dangers of a prayer amendment. How this qualified as news rather than simply a summary of an individual’s (and the Times’ editors) opinion wasn’t clear. Needless to say, there was no corresponding sidebar by amendment proponents outlining their beliefs about the dangers of failing to pass an amendment; March 16, 1964, 63.
widely circulated periodical. Nonetheless, Celler produced a letter dated just the week before the hearings in which Griswold, calling the Bill of Rights "the most distinctively American contribution to the art and science of self-government," expressed his hope that the Supreme Court's great error (a "sheer invention...clearly contrary to the common understanding at the time the first amendment was adopted, and to a century and a half of practice") would not be compounded by the bad idea of a new amendment. Celler quoted Griswold's letter as speculating that the Becker Amendment or any of the alternatives "would, in the long run, do far more harm than good."[47]

Celler also introduced a freshly written letter from Reinhold Niebuhr, another former Becker ally in critiquing the Court's rejection of simple "religious rites in the public schools." In spite of Niebuhr's continuing hope that individual "cities and states would experiment with religious practices" which might be found tolerable to judges, the theologian advised the committee that it would be a danger to our "pluralistic society...to enshrine any of these ad hoc adjustments...into the Constitution" in any precise way.[48]

Faced with the public defection of those he considered generals in his war, Becker struggled to regain his balance. He resorted to simply castigating the "fraternity of cynics, atheists and unbelievers who would" have us "believe that the way to promote unity among our people is to outlaw God, step on God, ridicule God, and deny God in our public institutions in a land where we owe this same God a debt of gratitude for the abundance

[46] Pro-amendment members regularly cited Griswold's frustration with the Court in support of their amendments; see, e.g., House Judiciary Hearings on School Prayer, 319, 594-95, 1017-32. See also Utah Law Review 8:3 (December 1963), 167-82; America, March 16, 1963, 374-75. Griswold was also well known to the justices. During William Douglas' more than a quarter century on the Court (1939-75), for instance, Griswold argued the fourth most cases of any lawyer before the high court; see Bob Woodward and Scott Armstrong, The Brethren: Inside the Supreme Court (New York: Simon and Shuster, 1979), 178.
[47] House Judiciary Hearings on School Prayer, 256-57. For one of Griswold's more famous speeches critiquing the Court's judgment on the public religion cases, see Utah Law Review 8:3 (December 1963), 176.
which has been bestowed on us.”

Certain that the American people would not “submit to a nine-man oligarchy,” Becker inflexibly refused to acknowledge even the possibility that greater cultural pluralism might make the public expression of a common faith more complicated in twentieth century America than in eighteenth century America. Implausibly, this modern but less eloquent William Jennings Bryan claimed that “pre-June 25, 1962,” civil-religious strife had been basically unknown in this land until the Supreme Court created “almost the first disunity among our people.”

Highlighting both the fact that love of God is a nonpartisan issue and his consequent efforts to enlist Republicans and Democrats, northerners and southerners, Christians and Jews, in this cause, he closed his lengthy statement with a small revelation: “I am old-fashioned enough to believe,” he prophesied, “that a special blessing will come to the Congress of the United States and to the individual Members of this Congress who cooperate in the fulfillment of a formula which, in my judgment and the judgment of most of our Congressmen, represent the warm, passionate, inspired desires of a God-fearing people.”

To the sober listening to unqualified assertions of how simply complicated church-state matters could supposedly be resolved, it wasn’t clear what would prevent a fifty-one percent majority religious community in any locality from devoting the bulk of the day to their sacred texts and thereby effectively transforming a public school into a parochial one. What would stop a Colorado town with a population seventy percent Mormon from dedicating every afternoon to a religious service and readings by and about Joseph Smith?

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49 House Judiciary Hearings on School Prayer, 223, 227.
50 House Judiciary Hearings on School Prayer, 227, 230.
51 House Judiciary Hearings on School Prayer, 233-34.
Martin Marty, of *Christian Century* and the University of Chicago, would in a few weeks tell the committee that history teaches that the basic tendency of public religion in the West—with the only major exception to this rule being the United States since 1833 (when Massachusetts became the last state to disestablish)—is toward exactly this type of government suppression of minority faiths. Answering objections to his bold assertions, Marty insisted that the nation “cannot by any means ‘go back’ by way of these amendments to the situation as it was before June 1962 and 1963,” because the types of public prayer prevalent from the early nineteenth century through 1962 remained fairly innocuous only because their “dubious constitutionality” kept each potential majoritarian tyrant from the temptation “to ‘press his luck’ and engage in excesses.”⁵² Amending the Constitution would not return us to a pre-1962 situation with generic prayers, but to a pre-1833 situation where minority faiths could be marginalized in each locality. Local religionists would in fact be encouraged by such an amendment to press for control.

Thoughtful people could reasonably dispute many particulars in Marty’s argument, but members taking their responsibilities seriously could not simply dismiss the problems he predicted out of hand. Yet Becker stood before the committee, comprised almost entirely of lawyers trained to make fine distinctions, seemingly oblivious to the existence of any principled objections to his proposal at all.⁵³ Some colleagues tried to push him, but he regularly responded as if the burden of proof rested exclusively on amendment proponents, and as if no one could plausibly doubt that this provision, or some variant of it, would return the religious harmony the nation had known two years earlier. Becker believed the *Wall

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⁵² House Judiciary Hearings on School Prayer, 1750-51.
⁵³ In coming weeks, witnesses would point to May 6 as the 120th anniversary of the Philadelphia anti-Catholic riots, where seven people were killed and over two dozen structures burned down, to refute Becker’s simplistic assertions of age-old religious harmony in this land. See, e.g., House Judiciary Hearings on School Prayer, 2565-66.
Street Journal had accurately captured the reality that “what the Supreme Court has done, in the name of protecting us from the establishment of religion by the State, is to establish secularization—atheism, if you would have it bluntly—as the one belief to which the State’s power will extend its protection.” Becker now aimed only to disestablish this secularism. It was that simple.

Of course a middle position existed between the Becker party supporting speedy amendment and the “absolute separatists” they attacked on the Court. Yet Becker failed miserably to speak to the concerns of this cautious camp. His dreadful performance as lead witness ultimately resulted less from an arrogant commitment to grandstanding than from a genuine naïveté about this thicket. Moderate members were taking their lead from Harvard’s Dean Griswold that the Court had not had any obligation to take this case, and should not have, but that did not necessarily mean the legislature should now imprudently amend sacred founding documents in response to the judiciary’s prior imprudence. This would constitute an over-correction to the first error.

Cultural history is messier than legal history and changes to the law, whether originating with the legislative or the judicial branch, are better at purging complexity than at reintroducing it. In the judgment of many members, the pre-1962 practices now condemned by law could not simply be restored by passing another law. The pre-1962 toleration of mild public religiosity hadn’t been a perfect solution to every riddle, but it had balanced rather effectively the competing “goods” of keeping powerful denominations from becoming coercive, and yet also freeing the government from any positive obligation to strip bare the public square by searching for and rooting out every long-standing cultural custom.

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with a divine referent.\textsuperscript{56} Thus even some who took exception to Becker’s claims that the Supreme Court had now “established unbelief” could partially agree that the “years 1962 and 1963 will appear to posterity as years of revolution in the relations of church and state, religion and government in the United States....”\textsuperscript{57} But counter-revolutions usually do not undo revolutions; they create third regimes. Becker missed this point entirely, naively assuming that all members who opposed the Court’s decision therefore also favored an amendment.

Some elected officials resigned themselves to the possibility that Becker may be correct that the march of secularization could now be heard advancing toward the chaplaincy and the tax-exempt status of churches. But many still concluded that this didn’t mean an amendment opening the door to local establishments was the preferable solution. The uprooting of devotional phrases and acts from public ceremonies and thereby the increasing privatization of religion had indeed been a woeful development, but the potential shrinking of religious freedom, along the lines of what Martin Marty predicted, would be much

\textsuperscript{56} Laubach, School Prayers, 57-58, 66.
\textsuperscript{57} Citation is from a David Lawrence article in the New York Herald Tribune, which one correspondent photocopied and submitted to the committee in an unsigned letter, box 246. Gertrude Sueschen included a similar article by David Lawrence in a letter to Emanuel Celler, March 24, 1964, box 246, House Judiciary Correspondence on School Prayer. See also the testimony of Charles Wesley Lowry, House Judiciary Hearings on School Prayer, 1126. And, in Lowry’s To Pray Or Not to Pray: A Handbook for Study of Recent Supreme Court Decisions and American Church-State Doctrine (Washington, DC: University Press, 1963), 113-15, see the letter to the editor of the New York Times from Henry P. Van Dusen, president of the liberal Union Theological Seminary in New York: “A consistent application of [the Supreme Court’s] policy would involve a revolution in the nation’s habitual practice in the matter of religion, established by the Founding Fathers, faithfully followed by their successors, and prevalingly prevalent at this hour.”

Southerners in particular were willing to employ revolutionary language. The eighty-one-year-old Howard Smith, powerful Virginia Democrat, had long ago lost his energy for that; he just wanted to see something happen before he died. Believing America was “reaching the end of the road” with its religious heritage, he pledged to “support almost anything that will tell the Supreme Court to keep its nose out of religion.” U.S. News and World Report, May 4, 1964, 19. See also his testimony in House Judiciary Hearings on School Prayer, 366-69.
worse. Yet these committee members found almost nothing in Becker’s opening statement to comfort them that he took seriously the need to guard against this greater evil.

Rep. Rogers of Colorado gave Becker opportunities to demonstrate that he had considered the risks, and that the planning meetings where Becker and his allies drafted the proposal had been somber occasions. Did you and your co-sponsors “discuss the question of what form the prayer should be?...Did you discuss the question of what Biblical Scripture should be read?...And if it is in a Mormon community, then [could they] read from the Mormon Bible?”

Rep. Libonati conceded that Becker’s “amendment is presented in honesty and in good faith.” Nonetheless, he worried about Becker’s possible recklessness.

[We] are not theologians and we are not students of theology, and as long as different religions have different ways of worshipping God, don’t you think that if there is one student who takes exception and feels that a controversial point exists in this so-called voluntary prayer or other Biblical presentments...[other] youth of sensitive mind and impressionable attitudes would think that anyone who didn’t join the prayer was irreligious?

Did Becker concern himself with the delicate consciences of the most scrupulous kids?

Labonati wanted to know.

Rep. Cahill of New Jersey expressed his perplexity as to why Becker hadn’t included more limiting modifiers: “In your opinion, should the resolution be worded ‘nondenominational’ or should it be left the way it is without the descriptive word prior to ‘prayer’?”

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58 Laubach, School Prayers, 64-65, 70.  
59 House Judiciary Hearings on School Prayer, 234-35.  
60 House Judiciary Hearings on School Prayer, 238-40.  
61 House Judiciary Hearings on School Prayer, 240; see also Newsday, April 23, 1964, 11.
Becker finally conceded that “nondenominational” probably should be added, only then to have another member challenge him to define it. “Mr. Becker, what do you mean by a nondenominational prayer?”

After Becker offered an answer proposing that multiple religious traditions would need to agree on any proposed prayer, Rep. Gilbert pressed again: “Mr. Becker, from what I gather, you are saying a nondenominational prayer is a prayer which two or three religious groups may determine to the exclusion of other religious groups. I am not saying they do this by intent and design. This is in practice actually what happens. So you really don’t have a nondenominational prayer.” Similar examination by other members further highlighted Becker’s unreflective tendency to assume that if Jewish and Christian groups agreed on a prayer, it qualified as a neutral or nondenominational exercise to which no one could reasonably take offense.

Reps. Celler and Lindsay of New York asked a series of questions to determine if prayers addressed to Allah as the “only God” would be permitted under the Becker plan. The answer wasn’t clear. Other voices inquired about the definition of “voluntary,” about which government agencies the people could and couldn’t authorize to compose prayers for them, about the contexts Becker considered public and therefore likely to be affected by this amendment, and about how other clauses of the First Amendment might need to be reinterpreted after this alteration. Some of the questions were rhetorical roadblocks intentionally erected by committed Becker opponents, but many were genuine conundrums offered by perplexed members.

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62 House Judiciary Hearings on School Prayer, 579.
63 House Judiciary Hearings on School Prayer, 578-79.
Again and again, members posed complicated constitutional questions for which Becker had no answers. Perhaps embarrassed for him, some opponents gently tried to shield him from the sharpest edges of their questions by explaining they didn’t expect Becker, as a non-lawyer, to be able to answer every challenge the committee posed. But he at least needed to concede the technical difficulties his proposal faced from their perspectives, given that all Judiciary Committee members were lawyers.66 Other members simply insulted him, for he had surely misjudged his task today, failing to distinguish between the preparation required for speaking before this august assembly and the speech one would script to energize a popular audience.67

Becker appeared to be dazed by what was transpiring. It wasn’t supposed to happen like this. His question was simply whether America was for or against God.

The crusader did not return to finish his testimony after the lunch break. One aide told Chairman Celler that Becker had become ill; another staffer massaged the announcement of Becker’s absence, “He’s had so many radio and television shows lately” that he simply lost his voice.68 Observers speculated that the people’s champion possessed greater political savvy than was commonly assumed and, still annoyed that the opening day of the hearings coincided with the opening of the World’s Fair, he might have skipped the afternoon session in an attempt to secure greater coverage for the remainder of his testimony.69 More likely, the emotion of performing poorly at the moment he had designated the culmination of his

67 E.g., House Judiciary Hearings on School Prayer, 231-32, 592-93.
life's work had overwhelmed him. Before the lunch recess, he had spoken to the committee about this cause as the purpose of his life, and his consequent intention to retire at the end of this grand battle.\textsuperscript{70}

Becker lived on biologically for seventeen years after retiring at the end of 1964, but the spiritual Becker seemed to be dying at these hearings. One is reminded of the tragic demise four decades earlier of one of Becker's spiritual forerunners, three-time Democratic presidential candidate William Jennings Bryan. As the lawyer for the creationists in the 1925 Scopes “monkey trial,” Bryan had faced the greatest trial attorney of his generation, ACLU-affiliated Clarence Darrow. It marked the pinnacle of Bryan's illustrious career as national spokesman for those disenfranchised by modernism in economics, science, and theology. But Darrow so humiliated Bryan—in the court of elite opinion even if not in the eyes of the Tennessee jury and the local crowds—that Bryan died of exhaustion and heartbreak within a week. Journalist H. L. Mencken, covering the trial for urbanites, could hardly conceal his glee at the demise of the fundamentalists he despised. He offered eastern readers two not necessarily competing theories of Bryan's collapse: either "God aimed at Darrow, missed, and hit Bryan instead," or more this-worldly, "We killed the son-of-a-bitch!"\textsuperscript{71} Observers at the Judiciary Committee's afternoon session on April 22, 1964, could almost hear a little Mencken in Celler's announcement that Becker would not be returning.

Celler and friends had struck a huge blow in this day one skirmish, but the war would be long. With the committee likely the last line of defense against passage of an amendment, anti-amendment forces had no margin for error. And by the National Council of Churches' Dean Kelley's vote-count, the pro-amendment movement had possessed a

\textsuperscript{70} House Judiciary Hearings on School Prayer, 211-12, 231-34.
slight majority among Judiciary Committee members on the eve of the hearings. As in Tennessee forty years earlier, though, the ACLU was marching, and the simple defenders of God appeared to be in retreat.

With Becker temporarily incapacitated, amendment agnostics and outright opponents—now able to identify one another because of Kelley’s behind-the-scenes matchmaking—joined forces to reframe the debate by defanging all ranters. Rep. Sikes of Florida got away with claiming that, though on its surface the conflict might appear to be about only one “mother in Baltimore,” communists were ultimately behind this “deadly attempt by a small minority to make our America officially a godless nation.” But Sikes’ diatribe proved to be the exception rather than the rule. In general, after Celler’s humbling of Becker, the liberal members of the committee resolved to challenge all rhetoric implying amendment opponents were motivated by “un-American” concerns.

Rep. Charlotte Reid of Illinois, for instance, who regularly homilized about “the soul of America,” found herself soundly rebuked when she declared that a young student “cannot avoid the impression that his government” aims to encourage atheism and agnosticism. Republican John Lindsay of New York joined a Democratic colleague in lecturing Reid that witnesses must “address themselves strictly to the constitutional questions we face. We should not permit this to become mixed up with morality and emotionalism. We must be

72 Alley, School Prayer, 151.
75 House Judiciary Hearings on School Prayer, 266.
76 House Judiciary Hearings on School Prayer, 263-65.
constructive. We are not anti-anything, as has been indicated in testimony." Given that some congresspeople after the original rulings had blustered on the floor that the House should explore requiring psychiatric exams of the justices, it was understandable why committee members wanted to lay down the law that their proceedings would be devoted to constructive deliberation rather than theatrical denunciation. A formidable coalition of senior Democratic and Republican liberals committed to interrupt all witnesses, members of Congress and non, who would grandstand in their testimony.

These ground rules did not keep reasonable politicians supporting the Becker Amendment from forcefully criticizing the post-Engel and Schempp reality, but they learned to measure their words. Future presidential candidate Rep. John Anderson of Illinois, for instance, explicitly affirmed his belief that “our pluralistic society” must make room “for the Madeline [sic] Murrays who believe that the influence of Holy Writ or of reference to a Supreme Being will have a noxious effect on their offspring.” Still, he asked, didn’t the Congress have an obligation to deal explicitly with the possible outcome of the Court’s current church-state position of absolute secularism? Taking the current ACLU case in Long Beach as an example, Anderson politely challenged: “Do you know what practice they found objectionable? It was the recitation by 4-year-old youngsters in a nursery school of the following lines prior to their partaking of their midmorning graham crackers and milk: ‘God is good, God is great: and we thank Him for what is on our plate. Amen.’” Were amendment opponents on the committee really sure this case would be tossed out?


78 Beaney and Beiser, “Prayer and Politics: The Impact of Engel and Schempp on the Political Process,” quote a Wisconsin representative suggesting mental tests for federal judges, 492.

79 House Judiciary Hearings on School Prayer, 320.
Farris Bryant, governor of Florida, raised similar issues, but in a similarly deferential tone. Though the Supreme Court of his state was currently defying the U.S. Supreme Court by publicly refusing to apply Schempp in the sunshine state, Bryant muted his most vitriolic criticism of the Warren Court. Still he wondered how leaders could sleep knowing that their inaction legally obligated most young children who couldn’t afford private school to live the majority of their waking hours—against their will—in an environment “neutral” toward God. President Kennedy, Gov. Bryant reminded the committee, had responded to the Engel decision by urging more religious and moral training in churches and homes. “I agree,” Bryant insisted, “but when?” Children must go to school, even as the draftee must go into the Army. In Florida, attendance is required by law. If it were not so, still they must go to participate, or even to survive, in America. By what right can they be required by the Federal Government, or any government, to live most of their waking hours during most of their youth in an environment from which an acknowledgment of or prayer to God is artificially restricted?

School consumes most of a child’s time and energies. The parent by law is required to relinquish this time to the State. Neither the parent nor the child has any choice, any more than a draftee has a choice. By governmental action we have deprived them of the time and opportunity to give and receive religious and moral guidance in the home. Justice demands that the same Government which, by law, takes the child from the religious home and places him in a regulated environment has a duty to provide for him an opportunity to receive the moral and religious guidance he has been deprived of by his compulsory attendance.

Rep. Gerald Ford of Michigan felt obligated to advise the committee of the wishes of his constituents, because the legislature back home had in February already passed a strong resolution calling on Congress to act. Still, Ford, though a bitter critic of Justice Douglas (in 1970, Ford would lead a congressional attempt to impeach Douglas for financial impropriety), went out of his way to abide by the Judiciary Committee’s unwritten no grand-

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82 House Judiciary Hearings on School Prayer, 2090-91.
standing rule. He forcefully emphasized his respect for the Supreme Court as an institution. But the trajectory of the Court suggested further secularization and, at the very least, it "is obvious that the [establishment] clause needs clarification."83 Even if some members were willing to tolerate the removal of the national motto from the coins and the abolition of the chaplaincy, were they really satisfied with what local officials thought the justices were requiring of them in regard to the Pledge? In parts of Ohio, for example, schools were banning the Pledge, believing they would be violating the law if students said "under God" in their classrooms.84 (This wasn't a problem for one Pennsylvania high school student who advised the committee he had already barred himself from the Pledge, concluding he could no longer faithfully offer allegiance to a nation in open revolt against God.85)

The New Republic used a comment on Ford's testimony as an occasion to remind readers of the mountains of mail still being generated by the school prayer decisions. "For the House shakes with reverential terror; the Becker amendment seems to arouse noticeably more passion than the civil rights bill."86

Celler and Kelley's strategy of incessantly challenging the bombastic pronouncements of amendment proponents effectively deprived their opponents of a forum for delivering sound-bite-laden speeches. But success would obviously require a plan broader than this. More significant was their scheduling strategy for the hearings. By custom, every member desiring to address the committee would be allowed. And with nearly 150 members personally sponsoring amendment proposals, it was as sure that Becker would have nearly

83 House Judiciary Hearings on School Prayer, 383.
84 Congressional Record, April 30, 1964, Vol. 110, 9635.
85 Letter from Gary Richard Freyberger to the committee, May 30, 1964, box 246, House Judiciary Correspondence on School Prayer.

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infinite congressional verbiage on his side as is was difficult to find more than a handful of members willing to testify publicly against what newspapers had taken to calling the "God amendment."

Celler's first move then had been to imply that the committee would likely hold only two weeks of hearings. Counting on Becker's certainty that he would have enough supportive witnesses from the House membership, Celler managed to limit the number of non-congressional witnesses Becker suggested the committee invite. Plus, the thought of speedy hearings delighted Becker, suggesting that the matter would be quickly voted upon—no small matter, given that the tactic by which committee chairpeople had traditionally torpedoed popular legislation they personally disliked was by holding endless hearings. In spite of Celler's hints of two weeks, though, he was privately plotting six weeks of hearings, to be extended basically one day at a time, ensuring that the bulk of non-congressional witnesses would be anti-amendment spokespeople the chair selected.87

Celler's next stroke of crafty genius concerned the grouping and sequencing of different categories of witnesses. In broad outline, the three-part universe of witnesses included congresspeople and other public officials such as governors and superintendents, religious figures and denominational bureaucrats, and legal experts. There were also private citizens, political interest groups, and frontline educators on the witness list, but Celler's public relations plan depended on excluding most of these groups from the hearings (he invited them to submit written statements for the record instead), so that the progress of the hearings themselves would tell a simple three-point story.88

87 Congressional Quarterly Weekly Report, week ending May 1, 1964, 885.
88 For Becker's complaints about Celler's unfairness in scheduling as he began to understand the chairman's strategy, see Congressional Record, May 26, 1964, Vol. 110, 11971-72.
89 By the week of May 16, all of the major newsmagazines, Time, Newsweek, and U.S. News and World Report, would appear to be reading from Celler's script.
Because the pro-prayer congressional bloc amounted to a sizable army—of the 197
witnesses the committee would ultimately hear, over half were members of Congress (with
only half a dozen opposing amendment)—Celler wanted to take their big hit right up front.
He diminished their impact significantly by scheduling most members back-to-back-to-back
in the first week of hearings. The cumulative effect of all of the nearly identical testimony
was mainly numbness. It would have changed almost nothing if Becker had only fifty or a
full two hundred members instead of the one hundred allies he produced. By the end of the
week, bored observers, both on the committee and in the press corps, were begging for
another perspective on the question, to liven things up if for no other reason. And there sat
Celler with a full roster of clergymen (who would be heard for approximately three weeks)
and law professors (the final two weeks), most of them opposing amendment, to complicate
the picture.

The first step would be to make it religiously respectable to oppose amendment.90
The Jewish chairman had no intention of telling Christian America that God is trivialized
when he is dressed up as a mere national mascot. He would have a carefully selected team
of Christian leaders deliver that provocative message.91

The committee’s agenda on April 29, the first day when non-congresspeople were invited to
comment, looked like a “who’s who” of mainline Protestantism, and these heads of diverse
denominations spoke with united voice against Rep. Becker’s proposal. Edwin Tuller,
general secretary of the American Baptist Church, kicked off the assault by warning against
“tampering” with the First Amendment, lest America’s delicate cultural harmony

90 Congressional Quarterly Weekly Report, week ending May 1, 1964, 884.
inadvertently be unsettled. Here he sounded strikingly familiar to committee members, because mainline bureaucrats had been urging pastors in recent weeks to oppose any "tampering" with the First Amendment, which had served the cause of religious freedom well for so long. Next came Charles Tuttle, general counsel of the National Council of Churches, echoing Tuller's reassurance that the Court's actual opinion—frequently misunderstood by the masses because of sensationalistic press reports—was reasonable. "Tampering" was unnecessary because the Court's ruling was not likely to lead to further public secularization. Recall, after all, that the majority had not supported Justice Douglas' radical views. Dean Kelley, Tuller's colleague at the NCC, elected not to testify publicly, remaining largely in the shadows, but he did send a letter in support of Tuller and Tuttle's position. Attempting to mainstream the Court's judgment as something other than anti-God, Kelley noted that the denominations comprising the NCC's membership had voted 65-1 in support of the school prayer ban.

The same afternoon, Eugene Carson Blake, stated clerk of the United Presbyterian Church, and William Morrison, general secretary of the UPC's Board of Christian Education, filled in more of the logic behind the opposition of the mainline Protestant leadership. Criticizing Christians who responded "emotionally" rather than "thoughtfully," Blake insisted not only that an amendment would be dangerous culturally,

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92 House Judiciary Hearings on School Prayer, 654-98.
93 Laubach, School Prayers, 89-90.
94 House Judiciary Hearings on School Prayer, 699-728; also 679.
95 Kelley was also preparing a more elaborate explanation of his position for the June 15 issue of Concern, a Methodist publication. For this statement, see House Judiciary Hearings on School Prayer, 2550-57. See also Christian Century, July 1, 1964, 852.
96 House Judiciary Hearings on School Prayer, 685.
97 House Judiciary Hearings on School Prayer, 729, 778.
but also that the old school devotions had been dangerous theologically. 98 "If you get the idea that religion and Americanism are the same thing, all of us are scared to death, because we think that religion transcends any State, even though we believe religion is the foundation of true patriotism."99 Rev. Morrison likewise ridiculed "this 'common core' concept of religious belief or practice acceptable to all faiths" as "a theological caricature at best or a theological monstrosity at worst."100

[As] a Christian minister I must...be highly critical of the method suggested to correct the lack of moral and religious training of young people. By definition, the civil government or any of its agencies simply cannot accomplish the task of inculcating moral and theological commitment to the God whom thousands of Americans believe has disclosed himself uniquely in the Holy Bible. In fact, to attempt to do so under the limitations of a pluralistic society would, from the biblical point of view, impose upon future generations of Americans an idolatry far more serious, regardless of its good intentions, than the present biblical illiteracy that affects so many young people.101

The true "knowledge, worship, and obedience of the God of Abraham, Isaac, and Jacob, whom the Christians know as the God and Father of our Lord Jesus Christ," Morrison argued, could be properly instilled only by the church, the "community of faith. The only god who can be taught within and under the sponsorship of the civil community inevitably turns out to be one of several attractive idols or pseudogods, against whom the whole testimony of Old and New Testament witness must be directed."102

Arthur Barnhart, an Episcopal official testifying later in the week, expressed the same concern about the devaluing of religion inherent in all government encouragement of religion. "We see nothing in the Supreme Court decisions which prevent a youngster

99 House Judiciary Hearings on School Prayer, 774; see also Laubach, School Prayers, 79.
100 House Judiciary Hearings on School Prayer, 778; Laubach, School Prayers, 78.
101 House Judiciary Hearings on School Prayer, 779.
102 House Judiciary Hearings on School Prayer, 779.
praying—before school, in school, after school, in his home, or in his church or synagogue—as long as it is not part of a school exercise. We see nothing in the decisions which prevent schools from studying the Bible or of the role of religion as part of our cultural heritage.” Conversely, encouraging government to carry out a specifically religious task tends to displace religious institutions, he insisted, and thereby actually undermines America’s cultural heritage of respecting the independent standing of religion. For when “we confuse religion and patriotism we do a disservice to both and inculcate a ‘culture religion.’ If we do not want to separate our children from God, don’t let the agencies of Government assume the competence of the households of faith. Place the responsibility of religious nurture unequivocally where it rightly belongs.”

Barnhart argued aggressively that scholastic religion “clouds” free exercise, not only for the atheist, but especially for the principled believer. “Religion under Government auspices is secularized,” he proclaimed.

Though few Catholics were testifying to this effect, the editors of Commonweal were finalizing plans to run in their next issue a sympathetic article called “The Beast from the Sea: Religiosity Is the Opiate of the People,” making essentially the same point that lowest-common-denominator religion is inherently idolatrous. Catholics, the editors suggested, ought to be embarrassed by Becker’s fight to preserve the sub-Christian school exercises.

The early Christians went to the lions as “atheists” because they would not agree that the cult of the emperor was the common denominator of religion in which every good Roman could concur, because the handful of incense that was a patriotic gesture to the average reasonable Roman was to these unreasonable people the worship of the beast. [Nineteenth century] Catholics in this country followed in their footsteps—not to the lions but to the courts—when they joined in “secularizing” the public schools by securing the removal from them of Protestant prayers and the reading of the King James Bible. They reacted then against the assumption that a comfortable, basic Protestantism was synonymous with Americanism. They should be reacting now against the assumption that this religion has been replaced by

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103 House Judiciary Hearings on School Prayer, 962-63.
104 House Judiciary Hearings on School Prayer, 962-63, italics added.
another which is neither Catholic nor Protestant nor Jewish, a religion, however, with its own prayers and God and moral values. This is idolatry, pure and simple.  

Theologian and church historian Martin Marty of the University of Chicago would soon be making the same basic point from a Lutheran perspective. "Years of experience have shown that 'nonsectarian' religion does not exist," Marty told the committee, for "all attempts to devise inoffensive common core curriculums' have shown good reasons why State-prescribed liturgies will also be unwelcome and attempts to write them will be unproductive." Fredrik Schiotz, president of another Lutheran denomination, extended Marty's point that many minority, particularistic traditions were extremely frightened of any unifying "national folk religion."

What do [Lutherans] want for our growing, impressionable children? Religion in general, served in an atmosphere devoid of convictions? Israel's neighbors in the Old Testament period were not irreligious people, but the prophets warned against religion that did not recognize Jehovah. Today, in a society that is saturated with the view that all truths are relative, the Christian church affirms the authority of Jesus Christ...

There is [also] an important international dimension in the proposals that are before Congress. Through much contact with peoples of Africa and Asia I know that their eyes are continually focused on what happens in the United States. If we, through further amendment of the Constitution, should vitiate the strong protection which the first amendment provides for all religions, without preference to any, we may find that the new nations in Africa and Asia will imitate our actions. And should this happen, the preference may not be for the Christian faith—I do not want to support an action that may carry the potential of seriously crippling the proclamation of minority Christian churches in other parts of the world.

Schiotz concluded with his heartfelt "hope that Congress may allow the Constitution to remain as it is."  

106 House Judiciary Hearings on School Prayer, 1749.  
Though the testimony of the major mainline religious figures was not all confined to
Wednesday, April 29, Celler had lined up enough big names for that day and these clergy
delivered a consistent message forcefully enough to generate the first substantial headlines
of the hearings. The New York Times, for example, which had been reporting daily on
Celler’s committee hearings, for the first time moved the story to the front page, above the
fold. In a celebratory piece that did little to hide the editors’ hope that Becker’s crusade
would ultimately founder, the Times quoted Tuller, Tuttle, and Blake extensively to
underline the point that the “leadership of the major Protestant churches...are not convinced,
by and large, that God desires an attenuated and conventional worship administered in
public school classrooms by the state.”

Grassroots America unleashed a new flood of mail at the Capitol, with writer after
writer declaring that mainline bureaucrats did not speak for his or her household. Bruce
Baker, a doctor in Spokane, Washington, wrote the committee to declare that even though he
served as a Presbyterian elder, “In recent years the National Council [of Churches] has
increasingly taken stands with which I cannot agree. Their school-religion-Supreme Court-
Constitution stand is certainly one of them. I know of no one in our congregation who
supports” the NCC position.

A Baptist woman from New York City made the same
point: “I notice that some Baptist Group has come out against prayer in school saying they
represent so many Baptists. Well, they don’t represent me and I am a Baptist...”

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109 Letter from A. Bruce Baker to Emanuel Celler, May 19, 1964, box 246, House Judiciary Correspondence on
School Prayer.
110 Letter from Cherie Colet to Emanuel Celler, April 18, 1964, box 246, House Judiciary Correspondence on
School Prayer.
partner in Hollywood felt compelled to inform the committee that though he remained committed to his local Methodist congregation, he increasingly thought of himself as only a “captive member” of the larger National Council of Churches. Western Union made a killing in the next week as laity all across the country turned to telegrams to rebut as urgently as possible any suggestion that NCC-affiliated denominational officials spoke for the laity in the pews. Letters to the editor all across the country also suggested that the NCC, in light of the current testimony of its leadership, must be being manipulated by the communists.

Some “‘elite’ opponents of the amendment proposals [occupying] most positions of influence in the mainline denominations”—as those testifying on Capitol Hill identified themselves—admitted “the problem that the majority of the people in [our] denominations do not agree with their pastors, seminarians, and leadership. There is an attempt being tried to bring them closer together.” Whether this attempt to “educate” the laity had any chance of success or not, Dean Kelley and Chairman Celler were nonetheless accomplishing what they needed to by hearing from lockstep mainline clergy. As long as their allies in the media kept reporting that most church leaders opposed the Becker Amendment, Kelley believed it would be possible for members to withhold their support without much fear of being labeled atheistic.

Behind closed doors, some members such as McCormack of Massachusetts, speaker of the House, ribbingly referred to these mainline witnesses as “generals without armies”

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111 Letter Ray B. Cumming to Emanuel Celler, May 6, 1964, box 246, House Judiciary Correspondence on School Prayer.
112 E.g., letter to the editor by Margaret Horden of Columbus, Ohio; copy included in unsigned letter to the committee, box 246, House Judiciary Correspondence on School Prayer.
113 House Judiciary Hearings on School Prayer, 1748-51.
since they "obviously do not speak for their own people." Rep. Goodling, an amendment proponent who genuinely feared that the judiciary intended to hijack the country, had no desire to keep this little joke so secret. The Pennsylvania congressman could barely stand to listen to New York-based mainline clergy claim to "speak for 40 million church members" in every hamlet across the land. He wrote to Dr. Espey, a senior NCC official—in a letter he introduced into the proceedings of the Hearings—undiplomatically arguing:

You simply don’t know what you are talking about. Let me suggest you come from your exalted position and mingle with the 40 million rank and file as I do constantly. You will discover beyond any shadow of doubt the chiefs and Indians are in violent disagreement. If you question that statement, this is my personal invitation to visit this office, examine the more than 5,000 communications that have been received this week with more coming daily. Mine is not an isolated case. Practically every colleague with whom I have discussed this matter has had a similar experience.

To Goodling and most of his constituents, "This issue has far more implications than Bible reading and prayer in schools. Simply stated, it is whether or not this Nation may continue to officially honor and respect a Supreme Being." Then, invoking the standard litany, he insisted that if the justices’ judgment were allowed to stand, the "very, very small minority" would soon also "remove 'God' from the Pledge of Allegiance, dismiss chaplains from our armed services, prohibit prayer in the Congress, remove 'In God We Trust,'" etc. Finally, with a charge that must have made Director Hoover proud, Goodling remarked that if "ever any organization aided, abetted, and gave comfort and encouragement to atheists," surely the National Council of Churches "would head that list."

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115 House Judiciary Hearings on School Prayer, 519.
116 House Judiciary Hearings on School Prayer, 520.
117 House Judiciary Hearings on School Prayer, 520.
With the NCC taking a stand so unpopular with its rank and file, the time had come for some soul-searching at the “anti-NCC,” the NAE. The National Association of Evangelicals had been founded in the 1940s as an evangelical challenge to the largely theologically liberal NCC. A large percentage of American Protestants, belonging to independent congregations, had never had any institutional connection to the NCC, but many other Protestants had fled mainline-affiliated denominations in the second quarter of the twentieth century following the old-line churches’ progressive embrace of theological modernism. The organizers of the NAE—based primarily at Park Street Church in Boston, Wheaton College in suburban Chicago, Fuller Seminary in Pasadena, and the Billy Graham-molded magazine, *Christianity Today*—had founded the NAE in an attempt to bring together these many sojourners who still affirmed the historicity of Jesus’ death and resurrection, the authority of Scripture, and the necessity of conversion. Together the high-profile evangelicals would police the boundaries of churchly and parachurchly orthodoxy, and offer an alternative voice to the NCC in claiming to speak for Protestant America, both in Washington and on the mission field.118

The aftermath of the school prayer decisions presented the ideal occasion to seize the national microphone from the mainliners, for this controversy shone a bright spotlight on the divide between mainline clergy and their parishioners. Ambitious northern evangelicals faced a sizable hurdle, though, because many of them actually shared the mainline leadership’s ambivalence about school prayers. After all, many of them and their spiritual ancestors had left the mainline precisely because they took theological particularity seriously. The divinity and exclusivity of Christ were essential matters, and prayers to a

generic God could indeed be idolatrous. Though they were surprised to hear it now articulated by mainline spokesmen who had spent the better part of the last century emphasizing the socially unifying virtues of the brotherhood of Christ and the fatherhood of God, the Gospel does, the evangelicals concurred, have otherworldly purposes which often sow this-worldly divisions. There is indeed a cleavage between the saved and the unrepentant, and that sheep/goat line separates not only families but also countrymen. To those evangelicals who viewed America, like all nations, as a mission field, the shallow prayers of a sub-Christian civic religion could well serve as a dangerous false comfort to those who hadn’t accepted Jesus as their personal Savior. Being an American did not make one a Christian, and evangelical leaders worried about any rituals that might wrongly suggest inclusion in the covenant of redemption to those merely participating in the formal national exercises.119

Yet press releases do not lend themselves to Christological distinctions, and the seductive opportunity to assume the leadership of the “religious” masses against the supposedly irreligious elites compounded the problem. The NAE wrestled with what appeared to be a choice between being small yet faithful to their theology, and potentially significant but at great creedal cost. In June of 1962, before they knew how long the public anger at the prayer decisions would persist, and how tempting that God-and-America constituency would come to appear, the directors of the NAE, like their NCC counterparts, had basically affirmed the Engel ruling. While the organization expressed doubt about whether the New York prayer amounted to a real “establishment of religion,” the NAE nevertheless issued a statement supporting the Court: “We do not take issue with the point

119 For a very helpful analysis of many evangelical leaders’ ambivalence about the school prayer debate, see Steven K. Green, “Evangelicals and the Becker Amendment: A Lesson in Church-State Moderation,” Journal of Church and State 33:3 (Summer 1991), 541-67.
of law on which the majority of the Justices ruled...Indeed, if [the ruling] has served to uphold the constitutional stipulation that church and state must be kept separate we commend the Court for its sensitivities to the dangers involved in even the most minute intrusion upon religious freedom by any agency of the government."120 Similarly, Christianity Today, which had become to the NAE what Christian Century had long been to the NCC, drew sympathetic attention to much of Justice Stewart's dissent, yet ultimately advised its readers that the official opinion "can be defended, and commended, as compatible both with a proper Christian attitude toward governmental stipulation of religious exercises, and with a sound philosophical view of freedom."121

By the next summer's Schempp decision and heading into Rep. Becker's 1963-64 amendment campaign, northern evangelical leaders were second-guessing their tentative commitment to a basically secular state framework defining a free cultural space in which particular religions might compete. In some evangelical circles, concerns for theological precision were losing ground to concerns about the general "obligation to inculcate in rising generations the belief that religion, morality, and knowledge are essential to good government and the happiness of its citizens."122 Dr. Robert A. Cook, immediate past president of the NAE, appeared before Cellar's committee on behalf of the NAE and scores of Pentecostal and Wesleyan groups to reiterate the point that school prayer had "provided a stabilizing influence greater than many realize." Congress must adopt Becker's legislation, Cook urged, "to halt the trend toward the establishment of a religion of secularism."

Insisting that evangelicals had no interest in action "to change or alter the first amendment,"

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Washington needed “to simply clarify” the original meaning of that amendment lest these “same forces” attacking “under God” in the Pledge also succeed in striking “In God We Trust” from our coins” and removing “chaplains from our Armed Forces and forbid[ding] all reference to God in public places.”

The chairman interrupted, perhaps surprised by the evangelical Cook’s support for religion-in-general immediately on the heels of so many liberal Protestants asserting the prerogatives of specific and unpopular communities of belief. Might people not disagree about which books were the “Biblical Scriptures”? And “would it be necessary for a Jewish child to listen to Christian teachers read from either the Douay version of the Bible or King James version of the Bible? Would a Protestant child be taught papal infallibility? Would a Catholic boy or girl be required to listen to a divine instruction from the Torah? Might Mohammedian parents insist” on their version? Celler kept pressing: You would mean your “Holy Bible,” right? And the version approved by your tradition or denomination, right?

Cook announced his flexibility on such questions, “We have no objection, really. There is not that much difference in the various—you mentioned the Douay, for instance. I can get as much blessing out of the Douay version as I can out of the King James version. Catholic scholars are very good scholars.”

Representatives of some the largest denominations in fellowship with the NAE were shocked by Cook’s support for generic religion and his down-playing of Protestant/Catholic differences, for from a traditional evangelical perspective, the Douay had been judged a malignantly bad translation, obscuring the Pauline doctrines of grace. Within a decade, it

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123 House Judiciary Hearings on School Prayer, 968-69.
124 House Judiciary Hearings on School Prayer, 975.
125 House Judiciary Hearings on School Prayer, 975.
would seem like the NAE had always supported generic public religion and school prayer, but in 1964, this debate constituted a real identity crisis in some fundamentalist and evangelical circles.¹²⁶

Feeling a small kinship with the Jewish chairman as an outsider on the American religious scene, Norman Temme, representing the Lutheran Church—Missouri Synod, declared the “vigorous” opposition of his communion to all these proposals as a “destructive” move against “our American tradition of the separation of church and state” and as a state encouragement of lowest-common-denominator religion. Affirming the LCMS’s “long-held view that the practice and teaching of religion is the responsibility of the home and the church, not of the public school,” Temme worried that local majorities might constrain consciences and abridge “freedom of religious worship.”¹²⁷

The hierarchy of the Southern Baptist Convention concurred. Dr. Emanuel Carlson, executive director of the Baptist Joint Committee on Public Affairs in DC, was currently engaged in a speaking and writing campaign against the Becker Amendment. When asked if the prayer decisions didn’t amount to an American renunciation of its dependence on God, Carlson answered: “‘Dependence upon God’ is experienced by ‘the humble and contrite heart.’ This experience is not transmitted by law or by force of government authority. Rather, this decision announces that our governments do not pretend to such competence.”¹²⁸ James Cole, an influential Southern Baptist editor from Louisiana, appeared before the committee to deliver the same message of Baptists’ principal objection to governmental action in the religious sphere—not to mention the civil discord sown by

¹²⁶ By the 1971 incarnation of the constitutional prayer amendment, it was expected that the NAE would labor alongside grassroots Catholic groups for generic religiosity. On the 1971 bill, see Christianity Today, August 27, 1971, 37.
¹²⁷ House Judiciary Hearings on School Prayer, 1533.
¹²⁸ Eternity, May, 1964, 11.
leaving “the door open for prayers and Bible reading to be determined by the predominant religion in a given locale.”  

Theological spokesmen for the Seventh Day Adventists and the Christian Reformed Church (Dutch Reformed) extended the evangelical critique of tighter church/state interaction. Sacrificing religious liberty or establishing any particular religion in any locality would surely be dreadful outcomes, but even more dangerous is the increasingly prevalent “uncritical adulation of religion-in-general.” As one observer summarized the presentation of a Christian Reformed official’s presentation to the NAE, where he urged his brethren against embracing the school prayer crusade: Evangelicals need to be “warned against reading too much piety into the Founding Fathers’ intentions...Using the name of God in public, [the Dutch Reformed professor] pointed out, is no proof of righteousness; it may in fact be a pious cover for hypocrisy.” 

*Christianity Today,* which closely followed the 1962 to 1964 “U-turn” of many leading evangelicals from supporting the Court to supporting an amendment, ultimately, after much cautious deliberation, came out where the LCMS, the SBC, and much of the CRC were—opposing the Becker Amendment. In an editorial composed during the Judiciary Committee hearings, Carl Henry’s *Christianity Today* concluded that the Becker Amendment “does not merit support.” The editors conceded that evangelicals ought also to oppose the “secular naturalism in public education [which regularly] infringes upon the free-exercise clause,” but reminded their readers that, contrary to the “simplistic slogans” of amendment proponents, “the Court did not banish God from the schools nor sanction atheism.” In the final analysis, while many “thoughtful, patriotic, and godly Americans

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131 *Christian Century,* April 10, 1963, 455.
differ,” and while we “recognize that other evangelicals [also] feel differently, nothing in the present [committee] debate has changed our position respecting the unconstitutionality of state-prescribed devotions in public schools...”132

Perhaps the initial ambivalence and ultimate opposition of CT to Becker’s quest sheds some light on the odd stance Billy Graham took toward the prayer amendment. (Graham’s father-in-law, Nelson Bell, chaired CT’s board, and Graham himself served as a CT contributing editor.) In his seemingly endless crusade for national and international revival—his official biographical blurb in the early 1960s began by noting that he “has spoken to more people around the world than any other person”133—Graham had regularly pointed to the Supreme Court’s prayer decisions on the stump as Exhibit Number One in support of his allegations of a belligerent secularist movement, a conspiratorial “anti-God colossus of materialism at home and of Communism abroad.”134

Graham had gone on record in public addresses as specifically supporting Becker’s proposal, yet the revivalist quietly declined Becker’s invitation to testify before the committee—hearings at which he would have been the main event. Why? An exchange between Graham and a reporter in May 1964 at a press conference at the triennial convention where all major Baptist groups—Southern, American (northern), and National (African-American)—met together in Atlantic City provides a clue. The reporter, Robert Alley, representing Baptist publications opposed to school prayer, challenged Graham

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132 Christianity Today also referred readers back to its July 20, 1962, and August 30, 1963, editorials unwilling to endorse a constitutional amendment allowing school prayer. June 19, 1964, 882-84.
133 Christianity Today, December 21, 1962, 266.
134 Christianity Today, December 21, 1962, 266-67
regarding the revivalist’s support for “nonsectarian” prayer, which Graham affirmed as an important moral influence on the young.\(^{135}\)

But, Alley pressed on, didn’t Graham “believe that only through the ‘God in Christ’ could one be assured of eternal salvation?”

Graham readily agreed, and Alley sought further clarification. So “Jews had to believe in God as defined in the Christian faith in order to obtain salvation?”

Less enthusiastically, Graham again agreed. This was of course part of orthodox Christian teaching, but not the sort of thing many public figures would want to parse at a press conference.

“How then can you speak of nonsectarian prayer when you affirm there is only one God and that deity can only be known in Jesus Christ?” Alley inquired. “What God, as you define God, would be equally acceptable to Jew and Christian alike?”

Graham answered with his own question, “Do you mean the God up there or the God in Christ?”

The reporter asked if the question implied there are two gods. Rather than answer, Graham decided the reporter’s time was up.\(^{136}\)

Alley made a fair point, one that committee members might have put to Graham as well if he appeared to testify. Didn’t the revivalist want it both ways—with one all-inclusive god around which to rally the nation, and another demanding god, from whom and to whom individual sinners must flee for salvation?\(^{137}\) Perhaps Graham didn’t testify simply

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\(^{137}\) Interestingly, at the 1964 World’s Fair in New York, opening the same time as Celler’s hearings, Graham’s evangelistic association chose to locate its exhibit (a building on the order of what national governments and major corporations built) in the international rather than the domestic area. While historians have often asked important questions about Graham’s involvement in American politics, it is impossible to understand him without first recognizing that evangelistic concerns about individuals repenting from sin and turning to Jesus
because he saw such lobbying as transgressing too close to partisan politics for a supposedly apolitical preacher. Or perhaps he didn’t testify because he worried that Becker might fail and he didn’t want to be the poster boy of an aborted movement. But just as likely, Graham deferred because he sensed—or because his close advisors at CT counseled—that there were some inconsistencies in having evangelicals, who affirmed particular and divisive truths (“He who is not for me [Jesus] is against me”) fighting so hard for generic religion, for “nonsectarian” exercises.

With the mainliners and almost all Jewish groups staunchly opposing amendment, and with even the evangelical leadership unwilling to speak with one voice for the people and against the Court, the hearings were proceeding better than Celler and Kelley had scripted. The absence of Graham particularly was a stroke of luck they hadn’t anticipated. But there were other religious figures yet to hear from, men more than willing to rush out in front of the God-and-country masses even if institutional evangelicalism by and large passed by the opportunity.

On April 30, the day after the mainliners pummeled Becker’s proposal, an exceedingly odd couple huddled together outside the committee room preparing to defend it. It surprised no one that both Gov. George Wallace of Alabama and broadcast personality Bishop Fulton Sheen of New York would want some public exposure before the committee.


138 Though Graham’s relationships with Eisenhower and Nixon had been especially close, he had nonetheless ministered to Democrats Truman, Kennedy, and Johnson in a manner that ensured for a time his reputation for being trans-partisan, if not fully apolitical. After Watergate, though, the preacher’s reputation for being above the fray was substantially diminished, as pundits began to refer to him as having “lost his way” and having become overly enamored with this-worldly power. Esquire, for instance, put him on the cover in a prayerful posture before the seven presidents he had served, suggesting that his petitions had been not only for them, but also partially to them. April 10, 1979, cover.

139 For a good example of the typical Jewish argument against Becker’s proposal, see the Anti-Defamation League statement, House Judiciary Hearings on School Prayer, 1267ff.
to rebuke the justices. But the ironic sight of the two of them together, foreshadowing a new kind of alliance in American politics, still struck observers as newsworthy. Both *Time* and *Newsweek* carried photos of the two men talking and joking. *Newsweek*, calling them a “Pair for Prayer,” captioned its photo, “For Governor Wallace and Bishop Sheen, the same thought of school.” *Time*’s caption read, “Governor Wallace and Bishop Sheen: In God they trust.”

Celler called on Sheen to open the day’s hearings, and the bishop surprised many by suggesting not only that he didn’t want to see the First Amendment changed—par for the course among Becker’s supporters who insisted they were only restoring the real meaning—but also that Sheen wasn’t sure the situation required any amendment. As he saw it, the Court had attacked a myth, the straw man that somebody somewhere aimed to establish a state church. He asked for Court supporters to name a church anywhere, Protestant or Catholic, that aimed at that. The New York regents, Sheen insisted, intended merely to give children the opportunity to affirm their faith in God and assert the priority of heavenly matters over the state, much like Congress had done in 1954 by adding “under God” to the Pledge. The regents erred only in how they wrote the new prayer.

Sheen had an easy answer: “I would suggest that the prayer to be said in all of the schools of this country be the prayer that every Member of Congress is already carrying with him in his pocket. ‘In God We Trust.’” He dared the Court to reject this “national motto” as an unconstitutional “establishment” of religion. Unlike Becker, Sheen admitted that the reality of creedal diversity would make any Scripture reading controversial. Yet since the people properly want their children to affirm God, “I would be satisfied with this [four-word

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140 *Newsweek*, May 11, 1964, 54.
141 *Time*, May 8, 1964, 64.
142 House Judiciary Hearings on School Prayer, 829.

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statement]...I think that this prayer is sufficient and the answer to the problem of pluralism.”

Many pro-prayer members of the committee congratulated Sheen on his winsome comments, but they appeared initially to miss the accidental challenge to their position his testimony presented. It seems unlikely that Celler or Becker was so naïve. Inadvertently, Sheen’s flexibility had partially transformed him into a witness hostile to Becker’s goals. For if the Congress could, by mere statutory action of some sort, encourage localities to greater experimentation with less controversial scholastic prayer, then nothing as momentous as “tampering” with the sacred First Amendment was yet necessary. Unintentionally, Sheen’s statement added credibility to amendment opponents’ insistence that prudence required going slowly.

Gov. Wallace, testifying soon after the bishop, threw no such curve balls at Becker, and would emerge from the hearings as the single greatest champion of the people’s God. The governor had no interest in subtle distinctions and no intention of respecting the committee’s conventional decorum. He immediately called the “decree” by the Court—its attack on the people’s “right” to a “simple invocation”—“as deadly as any ever issued by any dictatorial power on the face of this earth.” Continuing a diatribe he began after Brown a decade earlier, he identified the current decision as

...part and parcel of the judicial philosophy that has transformed limitations of power upon the Federal Government into grants of power to be exercised by the nonelected branch of the Federal Government. It is the bitter fruit of the liberal dogma that worships human intelligence and scorns the concept of divinity.

It is part of the philosophy of socialism elevated to the dignity of law by decisions of the court in which the concept of private property is under continuous

143 House Judiciary Hearings on School Prayer, 829.
144 House Judiciary Hearings on School Prayer, 832.
145 House Judiciary Hearings on School Prayer, 840-42.
146 House Judiciary Hearings on School Prayer, 845.
attack. It is a part of the deliberate design to subordinate the American people, their faith, their customs, and their religious traditions to a godless state.

The Federal judiciary has made a hollow mockery of the guarantees of the Bill of Rights. It has sounded the death knell to the democratic institution of local schools controlled by local elected school officials.

It is an ironic paradox that the trustees of our liberties should become the oppressors of the people. When the crimes against humanity are finally cataloged, this monstrous breach of faith by the nonelected branch of the Federal Government must stand out as one of history's greatest infamies.\textsuperscript{147}

Shocked at how the public schools—which he preferred to call parents' "neighborhood schools"—had been taken over by "an autocratic Central Government," Wallace urged individual citizens to rise up, lest the courts reduce them to mere "cogs in a gigantic socialistic" revolution.\textsuperscript{148}

Chairman Celler could not endure even three minutes of Wallace's sermonizing. He interrupted Wallace's account of judicial tyranny. "Governor," in your statement, "you say, 'The responsibility for this disgraceful situation must be shared by those Members of the U.S. Congress who have failed to rise to the dignity of their station by acting to check the headlong rush—' and so on. Don't you agree that there might be honest differences of opinion on this matter?"\textsuperscript{149}

"Mr. Chairman," Wallace defended himself, "I certainly don't mean to impugn the motives of any Members...in that statement. In fact, [compared to] some of the things that have been said about me by Members of Congress I thought that I had some—that I had used some executive restraint; if we compare the things said about me by Members of the Congress from what I have said today, this is so mild."\textsuperscript{150}

Returning to his whirlwind tour of American history, Wallace recited an almost endless list of generic religious declarations by the nation's political leaders from every era.

\textsuperscript{147} House Judiciary Hearings on School Prayer, 845.
\textsuperscript{148} House Judiciary Hearings on School Prayer, 845-46.
\textsuperscript{149} House Judiciary Hearings on School Prayer, 846.
\textsuperscript{150} House Judiciary Hearings on School Prayer, 846.
Alabama entered the union on December 14, 1819, he said, with the full assurance that the Tenth Amendment was real, and that Alabamians were therefore not sacrificing their rights to worship when and where they pleased. The platform of the Communist Party demanded an end to religious instruction; the U.S. Constitution did not.\textsuperscript{151} He admitted his problems with the Fourteenth Amendment generally and with the doctrine of incorporation specifically, but asserted that all he aimed at here was a restoration of the school prayer situation that prevailed before June 1962.\textsuperscript{152}

It is insufficient to read Gov. Wallace as popular only because of his racist positions. His appeal was broader, and as his surprising showings in elections as far away as Wisconsin demonstrate, grassroots America did not see him merely as a southerner standing up to "the feds" on desegregation, but also as a simple defender of ordinary people fighting against privileged Washingtonians angling for ever more control of local life. In the coming summer's presidential campaign, he would regularly raise the school prayer issue, and shout to cheering crowds that Americans again wanted to be a "God-fearing" rather than a "government-fearing" people.\textsuperscript{153}

To congresspeople who tried to entice him into debate over particular problems with religious expression in pluralistic contexts, he shrewdly and repeatedly insisted on his confidence in ordinary citizens and local officials to work through the complications that would undoubtedly arise. That is what self-government means—that "local people" and not simply national elites, can struggle with problems and make some decisions. Pointing to the nation's war dead, he called it "a shame and disgrace" that an amendment to restore

\textsuperscript{151} House Judiciary Hearings on School Prayer, 848-49.
\textsuperscript{152} House Judiciary Hearings on School Prayer, 852, 855.
freedoms the Constitution obviously gave to state and local governments should even be required.  

Following Sheen, Wallace joked about the irony that the National Council of Churches and liberal congresspeople should sit above Catholics and Protestants, telling them they couldn’t get along, as the two groups joined together at the popular level to demand that Washington stay out of it. The Baptist Wallace and the Catholic Sheen could get along just fine; it was the un-American elites who had trouble stomaching the wishes of the American people. Wallace said he expected the committee would ultimately do the right thing but he noted somewhat ominously that he and the people “come to you not as suppliants seeking alms. We come as Americans demanding our rights under the Constitution…” Finally, again echoing the bishop, he warned that if Congress chooses instead to ratify the justices’ illegal 1962-63 attempt to amend the Constitution by judicial fiat, “the House and Senate the following year would have an entirely new membership.”

The following month, which also marked the ten year anniversary of the Warren Court so feared by many Americans on religious and anti-communist as well as segregationist grounds, Wallace got 43% of the vote in the Maryland Democratic primary—and a substantially higher percentage of the white vote. Wallace had just been the star pro-prayer witness in the Congressional hearings, and grassroots America had just recently learned—via an April revelation by Solicitor General Archibald Cox—that Attorney General Robert Kennedy the previous year had discussed sending federal marshals into

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154 House Judiciary Hearings on School Prayer, 851.
155 Evangelical publications praised the Catholic Becker like he was one of their own; see, e.g., Adolph Bedsole, The Supreme Court Decision on Bible Reading and Prayer: America’s Black Letter Day (Grand Rapids: Baker, 1964), 1.
156 House Judiciary Hearings on School Prayer, 841; Newsweek, May 11, 1964, 54.
Alabama to stop the ongoing school prayers.\textsuperscript{158} If Wallace had been so fortunate, he might have been elected president in 1964.

Unimpressed by Becker’s new “Congressional Church,” the \textit{New Republic} used the occasion of Wallace’s testimony to reflect on the increasing politicization of religion. Perhaps, the editors suggested, Congress could abandon the 147 prayer amendment proposals and instead “draft the simple sentence which covers our ever current need and circumstance: ‘The People and the Congress henceforth declare void the doctrine that God is not mocked.’\textsuperscript{159}

Indeed the politicians who increasingly presented themselves as religious leaders in the absence of well-known clergy to direct the school prayer crusade often presented a remarkably trite, instrumental view of religion.\textsuperscript{160} One member from New Hampshire, for instance, insisted states should be allowed to demand a theistic affirmation of those applying for a driver’s license. The government has an even greater interest in adolescents than in adults, for it is “desirable that the child be exposed to the concept of a Supreme Being, whether it is rational or logical, because this helps him to develop a conscience and to keep him from being a Communist or a non-believer.” But lest he be accused of sectarianism, the congressman quickly added, “It does not make the slightest difference so long as the Supreme Being is acknowledged in some form, whether it is Buddha, Allah, or God.”\textsuperscript{161} Becker too regularly talked about “God” in impersonal and instrumental terms, as a “vehicle,” a “force,” the “ultimate weapon for peace,” our tool for “the defeat of

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\item \textsuperscript{158} \textit{New York Times}, April 16, 1964, 27.
\item \textsuperscript{159} \textit{New Republic}, May 16, 1964, 13-14; Galatians 6:7.
\item \textsuperscript{160} For one member’s proposal for a ridiculously moralistic “Thought for the Day” in the schools, see \textit{Congressional Record}, February 18, 1964, Vol. 110, 3055-56.
\item \textsuperscript{161} \textit{New Republic}, May 16, 1964, 14.
\end{itemize}
communism.” Even before the prayer decisions, Becker had often lectured Congress on American secularization being the greatest threat to success in the Cold War. 162

The New Republic highlighted the irony that the politicians seemingly the least interested in the peculiar content of actual religions claimed for themselves the mantle of defenders of religion in the abstract. In response to a California member who presented to his colleagues a petition for school prayer with over 170,000 names, which he said stretched to over 670 feet, the editors wryly commented that his documents, end-to-end, outdistanced even the Tower of Babel. Most perplexing to liberals was the posturing of the Alabama governor as the “running-mate of God.” For as everyone knew, the writer observed with dripping sarcasm, Mr. Wallace had always shown himself to be concerned chiefly with the needs and “sacredness of little children at prayer,” especially at Birmingham and Montgomery.163

For nearly two years, left-of-center members—such as Rep. B. F. Sisk of California, the first congressperson to testify against the amendment—had been hinting that the preschool prayer movement was secretly orchestrated by the “radical right” and its racist fellow-travelers. Conservative members conversely suggested, though sometimes less polemically than Wallace at the hearings, that anti-amendment members had closet communist sympathies. But these smears were largely kept to a minimum during the first two weeks of the hearings. 164 The partial cease-fire ended abruptly the second week of May.

A little-known church historian from Chicago named Frank Littell proved to be the unlikely explosive witness. On May 8, Littell surprised the committee by turning the charge

162 See, e.g., his “The Ultimate Weapon: God,” which he also mailed to all his constituents, Congressional Record, May 16, 1962, Vol. 108, 8579.
164 For an exception to this general course, see House Judiciary Hearings on School Prayer, 533; Congressional Record, April 27, 1964, Vol. 110, 9189.
of "communist sympathizer" against amendment proponents. In the last 500 years, the professor explained in a grand narrative on church and state in Europe and America, totalitarian threats against Christianity have almost never emerged from state silence about religion, but rather from state encouragement of shallow religion. Pointing particularly to Germany, Littell insisted that fascism rose by claiming "to be a defense of religion and morality against the threat" of atheism. The National-Socialists infiltrated and subverted Christian symbols and slogans; they did not suppress them. Quoting the Barmen Declaration, a statement by orthodox Christian theologians who opposed the Nazis in the 1930s, Littell accepted the Nazi claim that there was more "spirituality" under Hitler then there had been for decades in the country. But such "nonsectarian religion" had not interested serious Christians, Littell argued.

To the actual practitioner, prayer and other religious observances cannot be divorced from real communities of faith and actual historical commitments. Religion in general is offensive to any believing person, be he Jew or Catholic or Protestant. Nor is the watering down of the several faiths to create a new common core for the public liturgy as harmless, indeed banal, as it at first seems: It is part and parcel of the rebellion and apostasy of this age, of the very widespread effort to misuse the outward forms of religion for other than truly consecrated ends.

The transcript of Littell's testimony runs twenty-eight pages, and he pulls no punches in his rebuttal of "the big lie" motivating the prayer amendment: "that our constitutional tradition of separation of the two covenants is "secularistic," "anti-religious," or even "communistic." The almost direct parallel to the combination of low-grade spiritual forces which helped bring nazism to power in Germany is most striking." Littell didn't sufficiently address the risk that states could conceivably seek to extinguish religion by

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165 House Judiciary Hearings on School Prayer, 1363.
166 House Judiciary Hearings on School Prayer, 1363-65.
167 House Judiciary Hearings on School Prayer, 1364. Christian Century would make this argument repeatedly in the coming years; see, e.g., March 30, 1966, 387-88.
168 House Judiciary Hearings on School Prayer, 1373.
preventing religious assemblies, publications, etc., but he did make a persuasive historical
case that state encouragement of a generic “public cultus” tends—as even Hugo Black, no
friend of orthodox theology, had argued in Engel—to “degrade” religion and to marginalize
the actual, particular, historical communities of faith which might otherwise occasionally
challenge the legitimacy of state actions.169

In some ways, Littell’s remarks simply built on the foundation of other NCC
officials (he too had an NCC position in addition to his seminary post). But Littell went
further than his colleagues in the insistence that state religiosity wasn’t simply shallower
than church- or synagogue-based religion, but that it inevitably becomes an alternative and a
challenger to these deeper, non-state, ultimately “uncivil” religions. In this, he said, the pro-
amendment forces act not only like early twentieth century German fascists but also—
ironically—like present-day communists, for while communists dislike most religion, they
still have a special place for state-serving, public morality-producing, instrumental
religion.170 “The Communists—if you take the whole religious program for the D.D.R., in
Poland—the Progressive Christians, so-called, what are they? They are champions of
nonsectarian religion who are trying to undercut real churches and real communities of
faith.”171

Where most of Littell’s NCC colleagues had based their arguments against Becker
on the First Amendment, his major contribution centered on his warning to all sincere
believers, “Catholics, Jews, or Protestants,” that history offers no examples of “political or
religious gain” resulting from religious people watering down their beliefs to make them

169 House Judiciary Hearings on School Prayer, 1364-66.
170 In 1963, the communist central committees of many eastern bloc nations had begun to conclude that direct
oppression of religious communities was not an effective means of minimizing their influence. Christian
171 Littell, as cited in Laubach, School Prayers, 80.
more palatable and useful to the state. On the contrary, religious people were most useful to their secular communities precisely in those cases where, having been steeped in genuinely religious traditions, they were able to call the state to account for its transgressions of its own highest ideals. Separation of church and state was not only best for the church; it also, paradoxically, increased the church’s useful influence on the state.  

Two days later, on May 10, in a widely cited lead editorial, the *New York Herald-Tribune* embraced Littell’s logic, opining: “It’s Not a Vote Against God.” Believing that both religion and state are better served by keeping the two spheres distinct simply cannot be dismissed as an anti-religious position, the editors urged. Instead, it may well be the most religious position.

Simultaneously, reporters were beginning to explore the suggestions of Rep. Sisk, still the only member to testify against the Becker Amendment, that the pro-Becker mail floods had their source in dubious radical right organizations. They didn’t discover enough evidence to support the charge of a grand coordinated letter-writing campaign (Sisk had attacked the popular radio preacher Carl McIntire as the “rightwing radical” behind the movement, but McIntire in fact partially concurred with *Engel* and only mildly supported the Becker Amendment). But as reporters began digging into the pro-prayer coalition,
they did uncover some other unseemly conservative allies, such as the John Birch Society, Billy Hargis, and Gerald L. K. Smith.176

Many laity had suspected the National Council of Churches since J. Edgar Hoover started talking about the communist infiltration of the churches more than a decade before. But having borderline megalomaniacs like Rev. Billy James Hargis repeatedly deliver this charge tended to undermine its believability in the eyes of mainstream reporters and legislators. Hargis, who founded an anti-communist organization called Christian Crusade with a strong base of support in Oklahoma and the Southwest in the 1950s, saw explosive growth in his coast-to-coast rallies in the year after the Engel decision. His radio broadcasts were soon heard on over 600 stations (only to be brought down by a Time story in 1976 that Hargis, who preached particularly against sexual immorality, had been having sex with both female and male students at the college he founded).177 Hargis intentionally cultivated an “outcast” status, teaching “that a communist conspiracy has gained virtual control of traditional sources of information in the United States.” Such claims reduced his credibility with outsiders, but worked well for securing donations from his most loyal followers.178 Reports of Hargis’ charges that even Southern Baptists who questioned the prudence of a prayer amendment were aiding the communists certainly hurt Becker’s cause.179

The revelation that Becker had secured an opportunity to testify before the committee for Charles Winegarner, nephew of Gerald L. K. Smith, damaged his reputation

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176 For the best introduction to Smith, see Leo Ribuffo, The Old Christian Right: The Protestant Far Right from the Great Depression to the Cold War (Philadelphia: Temple, 1983). See also House Judiciary Hearings on School Prayer, 1319; and Glen Jeansonne, Gerald L. K. Smith: Minister of Hate (New Haven: Yale, 1988).
as well. It seems that Becker did not know that Winegarner, legislative secretary of a pro-
prayer group called the “Citizens Congressional Committee,” was affiliated with Smith, but
that did not stop Evans and Novak from writing in a national story on Tuesday, May 12, that
“Smith’s backstage maneuvering is the best evidence to date that neo-Fascist hate groups
have infiltrated the high-pressure campaign to change the Bill of Rights for the first time in
history…” A notorious anti-Semite, Smith’s magazine at that time, The Cross and the
Flag, was regularly publishing pieces on “the Jew” (Celler) who was “determined that the
Congress shall not be given an opportunity to vote in defense of our Christian faith and our
right to honor God in our public schools.” (Other articles in the same issue of The Cross
and the Flag connected “the Jew” with current geopolitical problems, racial challenges,
Vatican II, the Ford Foundation, Ford Motor Company, the coming “bureaucratic
dictatorship,” the Democratic Party, and the whole state of Minnesota.)

As journalists began shining spotlights on some of these pro-prayer amendment
groups that had previously flown below the radar, suddenly even mainstream pro-prayer
columnists were admitting that “Nothing is as simple as it once seemed.” In less than a
week, a startling reversal had occurred: it now appeared as dangerous politically to be
associated with the amendment proponents as with its opponents. By the following Sunday,
the New York Times would be dismissively referring to Becker, not only in editorials but in
news pieces, as “highly volatile.” Only two weeks before, it had appeared as if Becker

180 For a telling sign that Celler knew of Winegarner’s connections, and wanted allies to publicize them, note
his odd and uncommented upon insertions into the record on May 1, House Judiciary Hearings on School
Prayer, 1058; also 1319.
182 The Cross and the Flag, May 1964, 11-12.
183 Newsweek, May 25, 1964, 36.
might well succeed in his great quest; now, commentators referred to him as if he were not altogether sane.\textsuperscript{184} The suddenness of the prayer crusade’s disintegration was breathtaking.

Like falling dominoes, it now seemed that every noteworthy development since Becker’s opening day debacle had gone the chairman’s way. Then again, what appears to be luck is often the product of practice and systematic work, even if unseen. Becker maintained mass support on every Main Street outside of Washington, but on the Hill, he was still just a single man raging against a machine.

Like a veteran prosecutor with knowledge that a defendant has decided to testify against his buddies, Celler opened the hearings on Wednesday, May 20, with a glow. Rep. Robert Leggett of California, co-sponsor of a prayer amendment bill, would be testifying that morning to announce he had reversed his position and now opposed amendment.\textsuperscript{185} A number of committee members clearly disapproved of the Becker Amendment, but in the month of hearings to date, only one member of the entire House had explicitly testified against the bill. Today Leggett would become the second member, and the fact that he was a convert, a former amendment sponsor, made the effect remarkably greater, appearing to reflect a tide turning against the proposals.\textsuperscript{186}

A liberal Catholic, Leggett told the committee of his discomfort in finding “people like Gerald L. K. Smith” on his side of an issue. Although he still wished that the Court had not addressed this issue at all, he could no longer see how altering the Bill of Rights could

\textsuperscript{186} Boles, The Bible, Religion, and the Public Schools, 328-29.
be understood as anything but compounding the error.\(^{187}\) The *Los Angeles Times*’ that Monday had argued the same point in an editorial, “Keep the Bill of Rights Intact”:

An error does not cancel out another error.
We still believe, as we did in June 1962, that the U.S. Supreme Court acted with faulty judgment when it ruled that a short New York public school prayer invoking the blessing of Almighty God violated the first amendment of the Constitution.
But the movement to nullify the Supreme Court’s decisions (there was a second related one last year) seems to be quite as mischievous in the other direction.\(^{188}\)

Upon reflection, Leggett had concluded that California hadn’t become an atheistic stronghold, even though the state had ended school devotions in 1903.\(^{189}\) (His seventh grade daughter admitted to him, though, that the teachers did still occasionally lead students in prayer in spite of the law.) Perhaps most importantly, he now believed that the supposedly “nonsectarian” exercises would usually be “Christian,” and would necessarily tend to marginalize the “5 or 10 million Jewish people in the United States.”\(^{190}\)

Celler, perhaps buoyed by his good fortune of late, perhaps simply wanting to strike while the iron was hot, had become atypically visible on the issue the previous week and a half, appearing on television numerous times to comment on the hearings.\(^{191}\) As the chairman, he maintained something of a dispassionate posture, but attentive viewers understood he was hardly neutral on the question.\(^{192}\) His public comments, though, worked mainly to heighten citizens’ sense of the complexity of the riddle and the unlikelihood of

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\(^{187}\) House Judiciary Hearings on School Prayer, 1770-71.
\(^{188}\) *Los Angeles Times*, May 18, 1964, reprinted in House Judiciary Hearings on School Prayer, 1777.
\(^{189}\) House Judiciary Hearings on School Prayer, 1771.
\(^{191}\) Laubach, *School Prayers*, 89.
\(^{192}\) After Rep. Sisk became the first member to testify against the Becker Amendment, Celler had referred to his appearance as a breath of fresh air. America was not pleased at the comment. Mr. and Mrs. G. E. Hunter of Santa Ana, California, wrote Celler to ask, “Where was the air coming from Manny—Moscow way?” Undated letter, box 271, House Judiciary Correspondence on School Prayer.

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any quick resolution either way. "Trouble is," he told one national audience, "when you have 35 lawyers [on the committee] working on something, you sometimes have 40 opinions." (Witnesses occasionally offered arithmetic just as witty, as when historian Martin Marty, reflecting on the dangers of local majoritarianism in the South, told the committee: "I am tempted to say that in some places, there are more Baptists than people.")

Celler’s public appearances in May, combined with denominationally-encouraged preaching against the amendment in mainline pulpits, helped generate the first mild surge of mail against the proposed amendment. According to observers close to Capitol Hill staffers, the new anti-amendment correspondence tended overwhelmingly to arrive on "business and official stationary," confirming suspicions of a class divide on the issue. Correspondents echoed the mainline testimony that the Bill of Rights should be considered "untamperable." For at the end of the day there "is no such thing as 'voluntary participation' within a compulsory framework of public education. The ordinary child cannot and will not be able to understand the fine points of 'voluntary participation.'" Other writers reiterated these constitutional concerns, but insisted also that "there are so many other factors besides these"—chief among them the fact that required repetition of religious activity inevitably makes "a mockery of what is supposedly reverence..."

On Friday, May 22, on the basis of this encouraging mail, allegations of a right-wing conspiracy to push through the amendment, and the conversion of Rep. Leggett to the anti-amendment ranks, Celler declared to reporters that the "tide has turned." Less than three

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194 House Judiciary Hearings on School Prayer, 1750.
195 Laubach, School Prayers, 91, 93.
196 See, for example, the representative letters from Norman A. Ross to the committee, June 2, 1964, box 246, and from Joyce F. Baylen to Emanuel Celler, April 14, 1964, box 271, House Judiciary Correspondence on School Prayer.
weeks earlier, a meeting of Western governors had again voted twelve to one to demand that Congress send them a constitutional amendment allowing school prayer (even though a number of Western states' own constitutions didn't permit school prayer). But now Celler could publicly announce his expectation of a victory.\textsuperscript{197} As the \textit{Wall Street Journal}, itself sympathetic to a prayer amendment, would later reflect back, the combination of the appearance of links to the radical right and the unified opposition of church leaders to "state-sponsored 'homogenized' religion" had been insurmountable.\textsuperscript{198}

One Floridian wrote the chairman to complain about his prediction: "Seen you on T.V. and said you decided against bible reading in schools. You know you just wasted time and money since you already had your mind made up before the hearings took place. It is a shame a person as old rejects the idea of a supreme being. You may rot in hell but why condemn the school children that don't normally attend church?"\textsuperscript{199} A Jewish woman from Winston-Salem would write him the coming fall to explain that she had been educated in a Protestant girls' school in England and it hadn't hurt her any; why couldn't he just go along with the will of the majority?\textsuperscript{200} But such mail no longer worried amendment opponents on the committee as much; they believed they were over the hump.

Having been slowly deflating the balloon of American expectations for over a month, Kelley and Celler didn't necessarily need a knock-out punch. They got one nonetheless on June 8 when 223 constitutional law professors, fifty-five of them deans of the nation's most distinguished law schools, issued "Our Most Precious Heritage," a statement petitioning the

\textsuperscript{197} Laubach, \textit{School Prayers}, 87.
\textsuperscript{198} \textit{Wall Street Journal}, June 16, 1964, 3.
\textsuperscript{199} Laubach, \textit{School Prayers}, 89.
\textsuperscript{200} Letter from Mrs. Raymond Caudill to Emanuel Celler, November 9, 1964, box 246, House Judiciary Correspondence on School Prayer.
committee to leave the Bill of Rights untouched.\textsuperscript{201} To date, though many legal experts had testified against the proposed amendments, the losing lawyers from the \textit{Engel} and \textit{Murray} cases—Bertram Daiker, Thomas Finan, and Francis Burch, now of the Constitutional Prayer Foundation—had provided the most noticed legal commentary before the committee. They had all obviously supported amendment, believing that Becker’s reading of the First Amendment was not only historically accurate, but also vindicated the cases they had argued.\textsuperscript{202} Now, in a major headline-producing statement, the legal community spoke with essentially one voice against Becker. Many legal scholars, echoing Harvard’s dean, still disagreed with the Court, wishing it had passed over the contentious cases, but agreed with colleagues that Becker’s solution only compounded the obstacles for the country’s diverse communities of belief.\textsuperscript{203}

Celler’s stage-management, his adept deference to mainstream sensibilities, had been so brilliant that he angered the fringe.\textsuperscript{204} Ken Klinkert, a Wisconsin atheist, interrupted the hearings to protest that Celler hadn’t allowed any “nonbelievers” to testify.\textsuperscript{205} Hoping to avoid any appearance that a committee with a Jewish chairman was siding with godless judges and atheists against Christian American, Celler had wanted Protestant theologians to do most of the heavy lifting of criticizing governmentally-sanctioned prayer.\textsuperscript{206} Other

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\item \textsuperscript{201} House Judiciary Hearings on School Prayer, 2483; also 956, 2410.
\item \textsuperscript{202} House Judiciary Hearings on School Prayer, 1388-1404, 1209-39. Another interesting legal debate took place at a heated 1964 Episcopal convention where Thurgood Marshall, appellate judge and an active Episcopal layman, took on a strong pro-amendment contingent; Boles, \textit{The Bible, Religion, and the Public Schools}, 303.
\item \textsuperscript{203} House Judiciary Hearings on School Prayer, 256, 1017.
\item \textsuperscript{204} Boles, \textit{The Bible, Religion, and the Public Schools}, 309.
\item \textsuperscript{205} \textit{New York Times}, June 4, 1964, 41; House Judiciary Hearings on School Prayer, 2355-56, 2509.
\item \textsuperscript{206} See also \textit{Congressional Record}, June 18, 1964, 1964 Appendix, A3362-64, for additional atheist complaints that they were being systematically discriminated against in 1964 legislative deliberations.
\end{itemize}
organizations grasped the strategy, as the ACLU’s disproportionately Jewish national leadership enlisted an Episcopal clergyman to testify on the organizations’ behalf.\textsuperscript{207}

Celler’s public relations campaign benefited immeasurably from a stroke of luck regarding which Roman Catholics were available to comment on the committee’s work.  

*America*, which had been widely charged with anti-Semitism for the vigor of its reaction against the Court’s *Engel* decision, concluded it did not want to lead a charge to change the First Amendment, and came out opposed to any alterations which might weaken America’s tradition of free exercise.\textsuperscript{208} And the nation’s cardinals, overwhelmingly supportive of amendment, were all away in Rome at Vatican II and thus enable to testify.\textsuperscript{209}

After the law professors’ statement in early June, Celler quietly refrained from scheduling any more hearings. He didn’t exactly announce an end to the committee’s work, even though it was clear to those with Dean Kelley’s ear that there were no longer eighteen committee votes to report Becker’s proposal to the full House.\textsuperscript{210} Celler didn’t want to trigger another flood of mail by actually recording an official vote against amendment, so he attempted to have the issue simply fade away. When questioned about “next steps,” the chairman ambiguously claimed that members were comparing calendars to find dates for upcoming closed discussion sessions.\textsuperscript{211} Such stalling served many purposes as it allowed the weight of anti-amendment witness testimony to sink in, allowed reporters to turn their attention to the upcoming Republican and Democratic national conventions, and virtually ensured that—if by some miracle, the prayer movement reenergized its discharge petition—

\textsuperscript{207} House Judiciary Hearings on School Prayer, 1569.
\textsuperscript{208} For a review of the surprising Catholic periodical comment against amendment, see *Commonweal*, July 3, 1964, 442; also May 8, 1964, 188-89.
\textsuperscript{209} The *New York Times* was able to use the absence of the cardinals to claim, probably inaccurately, that Catholic leaders were fairly divided on the question; May 17, 1964, IV.6.
\textsuperscript{210} *Wall Street Journal*, June 16, 1964, 3.
\textsuperscript{211} The last day of the public hearings was June 3.
there wouldn’t be time for the other branch to consider House legislation before the end of the term. (The Senate was currently singularly focused on the historic Civil Rights bill, which it would ultimately pass on June 19, on a surprisingly strong 73-27 vote.)

Celler, as able a legislative maneuverer as Congress would know in the twentieth century, had mapped for himself one final, ultimately unnecessary, escape path. In the event that Becker’s forces somehow regrouped, Celler earlier in May had quietly gone on record suggesting that Congress could pass a resolution, “without force of law, declaring [its sense] that voluntary non-denominational prayers should be permitted in public schools.” He said he hadn’t yet decided whether he would personally endorse such a resolution, but wanted to float it as a trial balloon nonetheless. This type of maneuver would provide further cover, if necessary, for members personally uncomfortable with an amendment but politically needing to demonstrate to constituents their disapproval of the Court’s rulings. In the next session of Congress, 1965-66, Birch Bayh, Democrat of Indiana, would employ this exact tactic to successfully derail a prayer amendment proposal by Everett Dirksen, Republican of Illinois, which had looked likely to pass the Senate.

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213 Rep. Cornelius Gallagher, New Jersey Democrat, also transformed his support for an amendment into support for a generic resolution favoring a moment of silence in schools; Boles, The Bible, Religion, and the Public Schools, 329-30, 503.


Becker continued to fight, challenging as unfair the manner in which Celler conducted the hearings and weighted the witness list against the proposals. But having already announced his retirement, and with attention turning to the Goldwater/Rockefeller race and to President Johnson’s VP sweepstakes, Becker had become an irrelevant old man. Celler ignored him, and magazines such as the Christian Century mocked his “Never Say Die!” resolve. Still claiming that this amendment provided the only means to defend God, Becker pledged to revive the discharge petition to remove the jurisdiction of the Judiciary Committee. But vote-counters revealed that perhaps two dozen members who had previously signed Becker’s petition were now privately prepared to remove their signatures if he neared the needed 218.

The issue was dead for that congressional session, but that didn’t mean the topic was dead politically. Many localities simply did what the bulk of their citizens wanted, ignoring the Court’s ruling. One 1965 study would show that at least 49% of southern schools still read the Bible devotionally, compared with 77% on the eve of the Engel decision. And such practices were not confined to the South, as some northern and western schools that initially complied with the Court later reintroduced classroom religion in response to parental pressure. When the Supreme Court issued a stern rebuke to the Florida Supreme

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218 Christian Century, July 1, 1964, 852.
219 Congressional Record, June 16, 1964, Vol. 110, 13738-39; also Beane and Beiser, “Prayer and Politics: The Impact of Engel and Schempp on the Political Process,” 502. Becker disputed that the discharge petition was dead; see Bedsole, The Supreme Court Decision on Bible Reading and Prayer: America’s Black Letter Day, 1.
220 Laubach, School Prayers, 139.
Court in June 1964, for failing to enforce *Engel* and *Schempp*, America barely noticed, for disregard of the justices on this point was common.  

Going forward, the chief school prayer fallout would be found on the campaign trail rather than on Capitol Hill. The 1964 Republican Convention opened July 13 in San Francisco under the leadership of Party Chair Melvin Laird, with Becker campaigning vigorously for a pro-school prayer plank. He was successful there, and the new fault line that had emerged in partisan politics in February when the Republican Policy Committee first embraced school prayer was made permanent on August 25 in Atlantic City, as the Democrats declined to include support for school prayer in their platform. Barry Goldwater and George Wallace would regularly remind voters of this in the coming months. Goldwater also helped frame the issue for future campaigns by tightly linking the decline in public morals with the Court’s 1962-63 decisions, and Wallace furthered confusion about the actual ruling by telling crowds that students in public schools could no longer sing any song that “has the word God in it.”

One young congressman, Republican Donald Rumsfeld, delicately labored to distance himself from his party’s newfound religious fervor. In a newsletter to constituents, the Illinois congressman praised voters for their interest in America’s spiritual health, explaining that he had received more mail on this subject than any other during his time in Congress. Yet he also thought the citizenry needed to understand that nothing in the

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222 *Wall Street Journal*, June 2, 1964, 1; see also *U.S. News and World Report*, May 18, 1964, 63-64.  
223 *Congressional Record*, August 14, 1964, Vol. 110, 19722; Beaney and Beiser, “Prayer and Politics: The Impact of *Engel* and *Schempp* on the Political Process,” 503.  
Supreme Court's majority rulings even hints at any future "moves to eliminate the phrase 'under God' from the Pledge of Allegiance, the words 'In God We Trust' from currency, singing of the 'Star Spangled Banner,' or invocations or oaths at public meetings." These civic expressions he would fight to defend, but he didn't believe it prudent to begin "tampering with the first amendment," given "the dangers inherent in some of the pending amendments." He gently criticized "watered-down prayer or [exercises] so general and innocuous as to be meaningless," but lest he be heard as attacking school prayer directly, he covered his bases. He clearly aimed to educate constituents a little but hedged his bets by noting that, ultimately, he did not need to take a firm position on these proposed amendments because "the Supreme Court decisions do not...directly affect the Illinois school system." Using states' rights in a slightly different way, Rumsfeld reminded voters that the Illinois Constitution had not allowed prayers in that state's public schools since 1910, so the Supreme Court's rulings really did not apply to them.\textsuperscript{227}

\textsuperscript{227} Congressional Record, June 18, 1964, Vol. 110, 14374.

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The valuable improvements made by the American Constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarranted partiality, to contend that they have as effectually obviated the danger on this side as was wished and expected. Complaints are everywhere heard...that the public good is disregarded in the conflicts of rival parties; and that measures are too often decided, not according to the rules of justice, and the rights of the minor party; but by the superior force of an interested and overbearing majority...

When a majority is included in a faction, the form of popular government...enables it to sacrifice to its ruling passion or interest, both the public good and the rights of other citizens. To secure the public good, and private rights, against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed: ...

[The] majority, having such coexistent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression.

—Federalist #10

When James Madison ranked the considerable risks threatening this young nation, nothing trumped the danger of a faction commanding the support of a majority. The true genius of the architects of the American experiment, in the eyes of the fourth president, was the fashioning of a government characterized by gridlock, deliberately introduced structural inefficiency. The new form could still properly be designated democratic, because legitimacy derived ultimately from the consent of the governed, the people, the “demos.” But this government was not simply democratic, for the founders put in place plentiful processes to constrain the excesses of democracy, and particularly the tendency of all popular governments to degenerate into mere mob rule. Thus this “democratic republic” would be marked by separation of powers, checks and balances, unenumerated powers retained by local governments, and elected representatives and appointed officials governing not according to personal whim but according to dispassionate law.
To most professional observers of American politics in the 1960s, Madison’s solution, which had only matured with the century-plus growth of congressional committees, worked brilliantly in gradually cooling public passions after Engel. The final triumph of this system had been to kill the Becker Amendment, which, in such a telling, would have allowed local majorities to curtail the freedoms of creetal minorities. As William Beaney and Edward Beiser, legal scholars writing about the prayer movement in the mid-1960s, interpreted the failure of all proposed school prayer amendments, the founding generation would have been exceedingly proud of Celler’s skilled application of the republican brakes on pure democratic action. His piloting of the Judiciary Committee, Beaney and Beiser concluded, was “clearly consistent with the spirit of the legislative ‘filter’ of which Madison spoke” so glowingly.¹

Needless to say, Becker supporters read developments differently. In Arizona, citizens designed postcards featuring a new billboard on the state’s highways: “Christians Arise! Unite for God and Country.”² In New Jersey, Gates Flag and Banner Company couldn’t keep up with orders for building pennants demanding the return of prayer to school and of the nation to God. Many of Gates’ customers were local officials buying the banners to drape outside of their municipal buildings and public schools—the very structures inside which organized prayer was now illegal.³ In other towns, American Legion posts donated book covers printed with nondenominational prayers to grateful local school districts.⁴ In

⁴ See, e.g., New York Times, January 16, 1965, 17. In 1969, in Tinker v. Des Moines Independent Community School District, 393 U.S. 503, the Supreme Court would be called on to decide the legality of students and other private individuals and groups distributing religious literature through schools.
these precincts, the thwarting of the will of four out of five voters did not count as prudent republicanism. No, this nightmare amounted to nothing other than a failure of the democratic process. And if this diabolical outcome was orchestrated by a privileged few, working in secret—as Main Street suspected—then the development qualified, even more ominously, as an anti-democratic conspiracy to secularize America. An unjust objective, a coordinating clique, and an air of secrecy—these are the three essential characteristics of a conspiracy.

Madalyn Murray’s role in this supposedly secret plot defies easy categorization, as she had little interest in concealing her objectives. She led a very public secularization crusade and quickly became the favorite witness of those opposing her cause. As the Becker Amendment failed in June of 1964, Life christened her “The Most Hated Woman in America,” a moniker she would enthusiastically embrace for decades, inaugurating a cycle where all future profiles of and interviews with her would repeat and thereby authenticate the designation. Americans loved to hate Madalyn for one reason: she was honest. She straightforwardly acknowledged her intentions regarding religion. Ordinary folks judged her to be a crass liar in most matters—all vices flowed naturally from godlessness—but on one issue she told the truth: she aspired, without qualification, to make this nation atheistic. She hated God, admitted it, and regularly boasted into available microphones, “I guess fighting God and God’s spokesmen is sort of the ultimate, isn’t it?”

The loudest voices of an emerging religious right assumed the mantle “God’s spokesmen” as zealously as Madalyn accepted “most hated.” In this contingent’s

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assessment of the situation, the legal establishment, federal bureaucrats, and the coastal media sat in Murray's corner quietly aiding her cause, but unlike her, the conspiratorial cowards would not admit their goals and their complicity. Just like in the summer of 1962 after the *Engel* ruling, when countless pundits had insisted that the Court had no intention to outlaw school prayer but only *state-composed* school prayers, these irreligious elites always equivocated, patronizing the Christian masses to simply be patient. Supposedly they would soon understand that current changes were not actually that radical. More room needed to be made for unbelievers, but the meaning of America would remain virtually unchanged as a product of these minor modifications to the civil religion.\(^8\)

Madalyn was different. She became the face of legal secularization because there were no other willing candidates. Countless preachers aspired to be Billy Graham, the national spokesman for religion, but no one else stood up claiming to be the "anti-Billy Graham," the incarnation of irreligion. Madalyn neither cloaked her ends nor minimized the magnitude of the fight she'd already won. Soon referring to herself as "the leading proponent, educator and spokesperson for Atheism in the World," she advised reporters, "If people want to go to church and be crazy fools, that's their business. But I don't want them praying in ball parks, legislatures, courts and schools..." Private beliefs, which she called "superstition," she could overlook, but she wanted an entirely naked public square. "They can believe in their virgin birth and the rest of their mumbo jumbo...[but] I want to be able to walk down any street in America and not see a cross or any other sign of religion."\(^9\)

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\(^8\) *The National Review* sounded the alarm warning its readers not to believe such claims; December 26, 1967, 1426-28.

\(^9\) *Saturday Evening Post*, July 11-18, 1964, 83-84. See also Wright, *Saints and Sinners*, 89, 91.
For tens of millions of people seeking to make sense of public religious change, Ms. Murray was, paradoxically, a godsend. In a handful of national exposés the summer and fall of 1964, she unabashedly claimed to be and to seek exactly what they feared she was and wanted. To the journalists amplifying her innumerable outlandish statements—"I believe that the Virgin Mary probably played around as much as I did and certainly was capable of an orgasm"—she was mainly a sideshow, a terrific interview, a quintessentially American way of being an unbeliever. But many of those reading the articles on her in Life, Fact, Esquire, Playboy, Saturday Evening Post, etc., took her revelations seriously.

Why shouldn’t they? Whether she was personally important to the outcome of the prayer cases or not, her side had won and she now offered a preview of their next targets. The aggressive secularizers, who she claimed counted the Supreme Court justices among their number, would not stop until they “wipe out every manifestation of Godliness in American life.” She would focus first on government fraternization with religion, because the First Amendment constituted her best tool, but their sights were not limited to public religion alone. They aimed more generally to rid the country of the entire “curse” of religion—all religion everywhere. “I don’t want to die before I have made a revolution in America,” she happily admitted.

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10 Joann Cecil of Yakima, Washington, wrote a typical letter to the editor, thanking Mrs. Murray for “waking Christians out of their long sleep,” Saturday Evening Post, August 8-August 15, 1964, 4.
11 Fact, March-April 1964, 12.
12 Interest in her was not limited to American publications. Der Speigel, Poland, and the Russian magazine Izvestia also profiled her during this period; see Madalyn Murray O’Hair, An Atheist Epic: Bill Murray, The Bible and the Baltimore Board of Education (Austin, TX: American Atheist Press, 1970), vii.
13 Saturday Evening Post, July 11-18, 1964, 84, 86.
14 Esquire, October 1964, 111.
15 Fact, March-April 1964, 14.
It is difficult to know how much Madalyn calculated in that first year after her rise to stardom, how purposefully she parlayed each interview into an invitation by a competitor publication eager to secure its own titillating tag line for its next cover. On the one hand, she played her role brilliantly, concocting the perfect mix of provocative insults, personal lawlessness, and real lawsuits about various manifestations of public religion, to ensure she remained in the headlines. If her identity had been only coarse jokes and occasionally flights from police, she would likely have fallen from the national news fairly quickly. Conversely, if her significance had been limited to the plausible suits she filed, the fact that she couldn’t keep up with the teams of ACLU lawyers litigating First Amendment cases all across the country would have become obvious to all interested parties.16

On the other hand, Madalyn didn’t perform nearly as convincingly as she might have had she actually been working according to a preconceived publicity plan. The historian looking back on Madalyn has the benefit of laying her many 1960s interviews, speeches, and writings side-by-side. The central realization that emerges from such a perspective is the gullibility of, and embarrassing lack of homework completed by, the dozens of journalists who helped introduce her to America in 1964 and ’65. Her standard stump speech about the ills of religion remained steady, but her answers to biographical questions constantly shifted. Yet reporters typically recorded her claims as verified facts: her family history mirroring America’s by arriving in Puritan Massachusetts in the early seventeenth century; her father’s rags-to-riches-to-rags story as one of sixteen children who built himself into a major Pittsburgh steel magnate only to be brought down again by the great depression to dirt-floor cabin living; Madalyn’s own feminist Horatio Alger story of rising to service on

16 One strong data point in support of William’s argument that his mother pursued attention, partly for financial reasons, is her highly provocative letter to the editor of Life even before the Supreme Court had ruled in her and the Schempp case; April 12, 1963, 63.
Eisenhower’s staff during World War II; her law and many other degrees; the face-saving details romanticizing her illegitimate offspring; and most importantly, the eureka moment at age thirteen when she arrived independently at enlightenment.  

We were living in Akron and I wasn’t able to get to the library, so I had two things to read at home: a dictionary and a Bible. Well, I picked up the Bible and read it from cover to cover one weekend—just as if it were a novel—very rapidly, and I’ve never gotten over the shock of it. The miracles, the inconsistencies, the improbabilities, the impossibilities, the wretched history, the sordid sex, the sadism in it—the whole thing shocked me profoundly...Later, when I started going to church, my first memories are of the minister getting up and accusing us of being full of sin, though he didn’t say why; then they would pass the collection plate, and I got it in my mind that this had to do with purification of the soul, that we were being invited to buy expiation from our sins. So I gave it all up. It was too nonsensical...But I can’t deny that I was an intellectual prostitute along the way many, many times. I can remember one examination [in college] where they said, “Describe the Devil,” and in order to get 12 points on that question one had to say that the Devil was red and had a forked tail and cloven hoofs and fangs and horns on his head. So I merrily wrote this answer down and got my 12 points. I always got straight hundreds in Bible study.  

In each major section, the story had a great deal of flexibility, and she effortlessly discerned which biographical chapter would pique the interest of the reporter of the moment, guaranteeing herself a longer interview. Perhaps more of a Daddy Warbucks upbringing: “the chauffeur of our Rolls-Royce was black and shiny.” Perhaps a longer list of degrees: a “Master’s thesis on ‘The History of Intellectual Thought,’” then an additional law degree, then the embarrassed confession, “I’m a genius; I hate to say this, but I am” with my “alphabet of degrees—B.A., M.A., LL.B., M.P.S.W., Ph.D., J.D.” Perhaps a more diverse vocational background: “I’ve been a model...a waitress...a stenographer...a lawyer...an aerodynamics engineer...a social worker...an advertising manager...a WAC [servicewoman

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17 Most of this version comes from *Saturday Evening Post*, July 11-18, 1964, 83-87.
18 *Playboy*, October 1965, 62.
in the War].”\textsuperscript{21} Perhaps a longer list of psychotic death threats from superstitious “Christian neighbors”: “You will repent, and damn soon a .30-30 [rifle bullet] will fix you nuts. You will have bad luck forever. You atheist, you mongrel, you rat, you good for nothing shit, you damn gutter rat. Jesus will fix you, you filthy scum.”\textsuperscript{22} Perhaps more fully orbed senses and sensibilities: “I want a big man physically as well as intellectually. I want a man with the thigh muscles to give me a good frolic in the sack, the kind who’ll tear hell out of a thick steak, and yet who can go to the ballet with me and discuss Hegelian dialectic.”\textsuperscript{23}

The various tellings of her background were rich though not reconcilable. In the end, it is difficult to know if any particular details were true. She lied incessantly, but most fabrications successfully served her purpose of securing additional interviews. More publicity not only gratified her obvious cravings for attention, but also brought more checks, and more importantly in the long run, won her inclusion in the wills of a few more atheists across the country who had no churches to which to leave estates.\textsuperscript{24} One might speculate that a credible, consistent narrative of her conversion to unbelief, her fights for liberty, and her subsequent suffering could have served her financial purposes better than an unbelievable, ever-shifting tale. Given her choice for myth-making instead, one might be tempted to conclude she was simply having fun, except for the fact that former colleagues almost without exception, theistic and atheistic, describe her as miserably sad, as anything but satisfied.\textsuperscript{25}

In any event, because of journalistic sloppiness and simple infatuation with a woman who seemed intellectually accomplished and yet willing to shout that the pope “should be

\textsuperscript{21} Playboy, October 1965, 74.
\textsuperscript{22} Time, May 15, 1964, 53; Madalyn Murray O’Hair, \textit{An Atheist Epic}, 248; Saturday Evening Post, July 11-18, 1964, 86.
\textsuperscript{23} Playboy, October 1965, 74.
\textsuperscript{24} Fact, March-April 1964, 11-14.
\textsuperscript{25} Wright, \textit{Saints and Sinners}, 114-15, 119.
put in a cage... for crimes against humanity—just for the fact that he goes out and tells women to breed indiscriminately, to be fruitful and multiply, to get one in the oven tonight," it wasn’t until the 1980s that the mainstream reporters who promoted her ever analyzed and highlighted her conflicting claims.\textsuperscript{26} The debunking began when her then-estranged son, William, converted to Christianity in the spring of 1980 and became a traveling evangelist. In an odd yet apt snapshot of the new conservatism of which he would become a poster boy, William’s first two books and his main fund-raising efforts were devoted to the seemingly unrelated causes of restoring prayer to U.S. public schools and aiding the anticommunist fight in Nicaragua.\textsuperscript{27} William on the stump disputed most of the details of Madalyn’s biography, though observers rightly recognized that he hardly qualified as a disinterested outsider.

Where her interests in a dramatic conversion were served by crafting a heritage of puritanical religiosity, her son’s were furthered by descending from a debauched, almost demonic, line. In his telling, his mother’s father was not a Presbyterian industrialist, but a moonshine-runner and a pimp, who employed his young daughter as a decoy to confuse police.\textsuperscript{28} Where Madalyn downplayed her 1950s communist affiliations lest she scare off potential atheistic but nonetheless patriotic American donors (hence the choice of the organizational name \textit{“American Atheists”}), William tried to court his base by playing up her two unsuccessful 1950s attempts to immigrate to the Soviet Union.\textsuperscript{29}

In the 1980s, Lawrence Wright, award-winning writer for \textit{Texas Monthly} and \textit{The New Yorker}, became the first uninvolved party to document carefully the many impossible

\textsuperscript{26} Wright, \textit{Saints and Sinners}, 95.
\textsuperscript{28} William Murray, \textit{My Life Without God}, 7.
\textsuperscript{29} William Murray, \textit{My Life Without God}, 30-51.
assertions of "the first lady of atheism." Lest he be written off as merely a religious zealot seeking to debunk her due to disdain for her cause, Wright carefully outlined his intellectual gratitude to her prior to exposing her habitual dishonesty. "When I was finally able to face my doubt, and then forced myself to imagine life as Madalyn sees it, as a brief and difficult journey to oblivion, I understood what an escapist fantasy religion had been for me...My reaction to spiritual hopelessness was not despair but gratitude." Believing his own story to be intimately bound up with her battles, he sincerely acknowledged the "debt of gratitude for being set free from orthodoxy" that "millions like me" owe her for her "assault on religion." She had mapped for him "the intellectual atmosphere and [helpfully] released a flood of private doubts. It became possible to discuss the troubling details of religious belief without feeling that skepticism was heresy."  

Speaking as an unbeliever, Wright asserted what so many on the other end of America’s religious spectrum believed about this "loudmouthed Baltimore housewife" who had "jumped out of the front pages with one outrageous statement after another." As Wright surveyed post-War America, he concluded that "the era of dissent in the sixties really began with Madalyn Murray." Her fights had become markers in his biography. "As with most Americans my age, my life had already been given a good shaking by Madalyn Murray O’Hair," years before he met her personally.

For the first ten years of my schooling, I had listened to prayers and Scriptures every morning following the announcements on the PA system. Sometimes I myself had had the honor of choosing and reading the morning devotional. I don’t recall ever questioning the propriety of such action or wondering what my Jewish classmates, for instance, might think about hearing Christian prayers in public schools, or my Catholic classmates about listening to verses from the King James rather than the Douay version of the Bible. But in the fateful fall of 1963 we began classes amid the enormous hubbub that followed the Supreme Court decision. The absence of

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30 Wright, Saints and Sinners, 108-09.
morning prayers was widely seen as a prelude to the fall of the West. [This "loudmouthed Baltimore housewife"] had toppled civilization.\footnote{Wright, \textit{Saints and Sinners}, 91-92.}

"Atheism forced me to focus on the life I was actually living. Never before had I savored the sweetness of existence so intensely, and that surprised me, because I had always associated that sense of joyousness and serenity with profound religious faith." More than any other individual, "the most hated woman in America" had propelled him to honesty. "I felt comforted by the thought that I was living the truth and not flirting with possibilities."\footnote{Wright, \textit{Saints and Sinners}, 109.}

Having established his respect and appreciation for Madalyn, Wright proceeded to document her exaggerations and outright fabrications. "Dr." O’Hair is not one; her "Ph.D. in divinity" was purchased from a "diploma mill called the Minnesota Institute of Philosophy." Except "for the 1952 law degree from South Texas—an L.L.B. that was later automatically converted to a Juris Doctor when the terminology changed—most of the other degrees appear to be imaginary..." She apparently did take the bar, but not successfully, as "she has never been admitted to the practice of law." On various occasions, she claimed twenty-three different schools and eleven colleges.\footnote{Wright, \textit{Saints and Sinners}, 96.}

The dates and places of her familial origins varied regularly, as did the brands of cars and pianos, the size of diamonds and oriental rugs. Military records indicate she wasn’t on General Eisenhower’s staff in Italy or North Africa. Madalyn Mays married a Mr. Roths, but appears to have conceived a child by William J. Murray, a wealthy Long Islander she met in Europe during the war. She soon began referring to herself as Madalyn "Murray," although the married Catholic Mr. Murray never married her.\footnote{William Murray, \textit{My Life Without God}, 9-10.} She repeatedly told a story about bribing a guard while working for Eisenhower in Rome to gain middle-of-the-night...
access to St. Peter’s Basilica. Heavily intoxicated, she and group of friends supposedly
removed “the three-tiered crown used in papal coronations” from a display case and acted
out a mock ceremony making Madalyn “the first female pope.” Needless to say, the crown
in question does not actually sit in a glass case in the middle of the sanctuary. She claimed
that any doubts she ever entertained about atheism were fully resolved by the time of her
pregnancy with William, yet both of her sons were baptized as infants. Her supposedly
unassisted role in her many lawsuits, some of which were threatened but never formally
pursued, was almost always exaggerated. Wright’s list went on. 35

In an odd way, the truth about where Murray really care from, and which cases she
officially filed, did not matter much as the myth of Madalyn was taking shape. Her meaning
in the 1960s popular mind resulted from news and stories that citizens heard which
corresponded with and clarified their fears about the direction of the country. Whether these
new reports were wholly true, entirely false, or Madalyn-embellished versions of genuine
events, mattered less than that they provided flesh to complete the skeletal theories many
citizens far removed from the centers of power were developing to explain the undeniable
changes, from school prayer to booming crime statistics, that were impacting their daily
lives but which they were powerless to change. 36 Madalyn’s gradually growing infamy
seems to have delighted her enemies, who almost ached for the details to be true, given that
the granularity provided talking points for their lamentations about cultural decline.

To paraphrase philosopher Fredric Jameson, who calls conspiracy theorizing the
“poor person’s cognitive mapping,” we should not be surprised to discover the widespread

35 Wright, Saints and Sinners, 96-100. See also Le Beau, The Atheist, 265-66.
36 William Martin effectively summarizes how cultural conservatives at the time of the 1962-63 decisions
predicted that these changes would usher in a new era of “rampant drug use, sexual promiscuity, high crime
rates, disrespect for authority,” etc. William C. Martin, With God on our Side: The Rise of the Religious Right
in America (New York: Broadway, 1996), 192.
belief that a small set of hidden causes explain many complex social and economic effects. Indeed, in an age of rapid societal change, with an oversupply of information, much of it irreconcilable, it only makes sense that humans, who seem hardwired to try to make sense of experience, would “cobble together” ad hoc, working sociological frameworks through which to process events as they live life. Conspiracy theories are more comforting than contingency theories because at least someone—even if she is wicked—has control over events, and perhaps that person and thereby the seemingly capricious events can one day be set aright.\(^{37}\) Madalyn became one of the keys to answering hard questions.\(^{38}\) And, as Mississippi congressman John Bell Williams put it, the most important questions of the day surrounded the “deliberate and carefully planned conspiracy to substitute materialism for spiritual values” in this country.\(^{39}\)

The ease with which Madalyn’s opponents could demonize her also contributed measurably to the flood of publicity which helped her capture the national imagination. As a libidinous female—some claimed that only Ayn Rand preceded her as a public woman unapologetically offering “freewheeling, raunchy descriptions” of her sexual desires and exploits—Murray confirmed the age-old stereotype that women unleashed from God willingly become enslaved to immorality, especially of a sexual nature. These daughters of Eve thereby pose a threat not only to themselves but to a well-ordered civic life.\(^{40}\)

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\(^{37}\) See also Peter Knight, ed., *Conspiracy Nation: The Politics of Paranoia in Postwar America* (New York: NYU, 2002).

\(^{38}\) Because of the fact that Madalyn’s public significance is tied more to rumors surrounding her fights with religion than to the reality of who she actually was or what she accomplished, the remainder of this chapter will emphasize those myths and fights, rather than explicitly highlight the multiple occasions when her real contributions fell far short of her supposed contributions.


Murray admitted to *Fact* magazine her belief that each problem on earth, from racial injustice to poverty to political corruption, is just a different branch of the tree of "Authority." As the *Fact* interviewer summarized her position: "Church and State are just two nets in which scoundrels trap fools. Obedience to Authority is the single principle that explains every evil in human history." Ultimately, as one committed equally to "anarchism and atheism," Murray's "chief quarrel with supernatural religion is not just that she finds its claims unbelievable, but that it teaches men to distrust themselves and to submit to the orders and judgment of others."\(^{41}\) *The New Yorker*'s Wright accurately summarized the public understanding of the meaning of her anti-authoritarianism: "She personified the Christian stereotype of an atheist. Rude, impertinent, blasphemous, a destroyer not only of beliefs but of esteemed values—especially sexual values—she popped off like a chain of fireworks in a sanctuary, merrily detonating everything we held dear." With her apparent sexual obsessions, her disrespect for all in authority, and her constant swearing, Madalyn intentionally constructed an image not simply as an atheist. No, she boasted, "I am, in fact, *the* atheist."\(^{42}\)

Religious Americans understood atheists not only as intellectual threats seducing individuals, but as threats to the moral order. Because of their lack of a transcendent standard for action, they were assumed to be "drunkards, dope fiends, serial killers, and communists." Articles on Murray confirmed this grassroots expectation that without "faith, the moral fabric dissolved; one lived only for the senses; gradually one became a slave of sensation." Madalyn's questioning of all authority and her crude language were enough to frighten many. But it was her repeated acts of lawlessness that ultimately secured her place

\(^{41}\) *Fact*, March-April 1964, 14.
as a cautionary tale incarnate about the direction of an American devoid of theistic influence. As Wright noted, Americans believed that religious "conviction was not only the sole route to salvation; it was also the knot that kept one's character from unraveling. It was what saved a man from being overwhelmed by the beast inside..." Religion provided the moral glue that kept nations from descending into chaos.43

Mainstream media provided the basic data of Madalyn's post-Schempp whereabouts and activity, but preachers and other networks of oral communication supplied the interpretation. "Did you hear that Madalyn Murray beat a police officer?" fires the rumor mill in a way that the gossip, "Did you hear that Madalyn Murray affirmed anarchism?" never could. Her missteps became the stuff of legend in ways her words never could. And in June 1964, the atheist thus satisfied the masses by not merely denouncing but physically trouncing the Baltimore authorities.44

The background to Madalyn's police brawl began in late 1963, just months after her Supreme Court triumph. While America began to embrace Frank Becker, a hero indirectly created by William Murray, the boy was embracing a very different figure: the seventeen-year-old Susan Abramovitz, a friend from Model U.N. conferences in Baltimore.45 Her parents had less affection than she for the infamous Bill Murray, believing their Orthodox Jewish daughter should not date a Gentile. In late March, when Susan's arguments with her anesthesiologist father over the matter finally came to a head, she packed two suitcases and

43 Wright, Saints and Sinners, 106.
44 Assaulting police officers seemed a particularly fitting offense given all of the attention then being given to the problem of attacks on law enforcement. By the late 1960s, twelve out of every 100 police officers were being assaulted annually; see U.S. Senate Republican Policy Committee, Bourke Hickenlooper, Chair, Eight Years of It (Washington, DC: Public Affairs Press, 1968).
45 William Murray, My Life Without God, 111.
arrived at the Murray residence uninvited. Bill didn’t conceive of teenage marriage as such a good idea, but Madalyn, always looking for a little spice, told Susan she could move in.46

On May 25, 1964, Bill’s eighteenth birthday, he awoke not to an article in the morning paper about Celler’s committee but rather to a story reporting that Leonard Abramovitz had filed a criminal complaint against him, charging Murray “with improperly enticing Susan to leave home and abandon the Jewish religion for atheism.”47 By the time the Baltimore Criminal Court heard the complaint the following week, and found in favor of Dr. and Mrs. Abramovitz, Madalyn had gone public with sinister counter-charges that the Abramovitz’s had “mistreated” their daughter in various ways.48 Susan and the Murrays did not show up in court, and when they learned in the paper on June 3 that Judge James Cullen had granted temporary custody of Susan to her aunt and uncle, Madalyn devised a plan. (In good soap opera fashion, it is also worth noting that Susan announced to William on the same day as the newspaper report of the court ruling that she was pregnant.)49

On Thursday, June 4, William went to a pawnshop to buy gold band, and the fugitive family found a judge in another Maryland county who hadn’t yet learned of Judge Cullen’s Tuesday ruling. Madalyn signed a consent form for the underage marriage, Bill and Susan were married, and they immediately fled to New York for a few weeks, hoping the court order would be rendered obsolete by the new status of their relationship. The Baltimore judge saw it differently and after reading news accounts of the shotgun wedding and flight, cited the couple, as well as the abetting Madalyn, for contempt of court.50

46 William Murray, My Life Without God, 115-17.
47 Time, July 3, 1964, 74; William Murray, My Life Without God, 120.
48 Esquire, October 1964, 170.
49 William Murray, My Life Without God, 122.
50 Playboy, October 1965, 65; William Murray, My Life Without God, 122-23.
In this real life, made-for-TV frenzy, when the newlyweds arrived back at the Murray residence Saturday afternoon, June 20, at least five police cars arrived behind and in front of the house within minutes—apparently alerted by the “Christian neighbors” who Madalyn delighted in telling reporters regularly slashed her tires, threw bricks through her windows, and presented her with feces-covered newspaper photos of herself.\textsuperscript{51} While the size of the show of force does seem bizarre, the police appear to have come primarily to return the seventeen-year-old girl to her family, rather than to arrest Madalyn and Bill.\textsuperscript{52} The lawyerly matriarch urged Susan to stay inside while she inquired if the officers had a permit. Learning they did not, she informed them that they would then by leaving empty-handed.

The police proceeded to enter the house anyway, at which point Madalyn—according to police, reporters, and civilian witness accounts—apparently began to brandish a tear-gas gun and to kick and swing at various policemen. Ultimately, William and Madalyn’s seventy-three-year-old mother also joined in the melee, with the grandmother being knocked unconscious.\textsuperscript{53} At various points, fighting evidently occurred in the front yard, the front porch, the back porch, and inside the house, with \textit{Time} reporting that onlooking neighbors cheered the police with chants of “Kill them! Hit ‘em harder! Get that bitch!”\textsuperscript{54} \textit{Esquire} reported that by the time more officers arrived and the “circus finally adjourned to the police station—there [being] more policemen in Baltimore than there are Murrays”—the event had amounted to “one of the biggest brawls northeast Baltimore has ever seen.”\textsuperscript{55}

\textsuperscript{52} William Murray, \textit{My Life Without God}, 126.
\textsuperscript{53} \textit{Esquire}, October 1964, 170.
\textsuperscript{54} \textit{Time}, July 3, 1964, 74.
\textsuperscript{55} \textit{Esquire}, October 1964, 170.
Whether police actually beat Bill in a prison cell is an open question. He did hysterically panic in court that he could not go back to the cell, but a medical examination revealed no traces of a new beating. Regardless, such claims of additional violence kept the Murrays in the papers. When they finally appeared in court to face the thirteen charges of contempt and assault, six officers needed to restrain the eighteen-year-old William while he unleashed a verbal assault on Judge Joseph Finnerty. Coming up with the harshest condemnation a young atheist could muster, William barked: “You Christian! You Catholic!"56

Temporarily released on bail of $8,750, the three Murray fighters, joined by Susan, William’s younger brother, and Madalyn’s factory worker brother, decided they would flee godly Maryland. Madalyn would later be quoted in the press as saying that they, as unbelievers, “have as much chance in Baltimore courts as a Negro has in Mississippi against the Klu Klux Klan” (sic).57 In forty-eight hours, under assumed names, the fugitive party left Washington’s Dulles airport for Hawaii, abandoning their cars and most of their earthly possessions.58 One fortunate reporter stumbled across Madalyn at Dulles and secured some juicy comments, such as that they expected more sympathy in the islands because “Eighty percent of the Hawaiians are Buddhist, and Buddhists are absolute atheists.” The quotes reached Hawaii as quickly as the Murrays, and neither the Buddhist community (amounting to less than a third of the state and generally affirming a “higher power”) nor John Burns, the Roman Catholic governor, were overjoyed.59

56 Time, July 3, 1964, 74.
59 Esquire, October 1964, 171; William Murray, My Life Without God, 134.
The *Washington Post* reported that upon arriving in Hawaii, Mrs. Murray promptly called journalists offering to be interviewed.\(^{60}\) Who could resist? Various state officials from Maryland then treated the nation to a series of back-and-forth articles speculating on whether it would be a good use of public funds to seek her extradition.\(^{61}\) The attorney general thought it would be a waste of time—Maryland was glad to be done with her antics—but other authorities differed, and ultimately the state did seek the assistance of the FBI in pursuing her.\(^{62}\) Hawaii promptly announced it would honor warrants signed by Gov. Tawes of Maryland, and the Murrays' attorney counter-announced that he would appeal extradition all the way to the Supreme Court, given that his clients could not possibly get a fair trial in Maryland where they had so long been persecuted for their religion.\(^{63}\) As one indicator of the harassment they had received in Baltimore, Rev. Irving Murray, an unrelated Unitarian minister who just happened to share their surname, supposedly received so many misdirected threatening phone calls calling him a communist that he had to get an unlisted number.\(^{64}\)

While the extradition battle continued, Madalyn and William were convicted *in absentia*, with the mother receiving a one-year prison term, and the son six months.\(^{65}\)

It is tempting to conclude that this sordid tale amounted merely to entertaining psychodrama. Remember that Phil Donahue would create a new television genre in 1967 by

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\(^{60}\) *Washington Post*, June 25, 1964, D18, in O'Hair FOIA/FBI File.

\(^{61}\) *Time*, July 3, 1964, 74.

\(^{62}\) *Baltimore Sun*, June 27, 1964, 1, in O'Hair FOIA/FBI File; *News American*, June 28, 1964, C1, in O'Hair FOIA/FBI File; *Washington Post*, July 1, 1964, D16, in O'Hair FOIA/FBI File.


\(^{64}\) *Fact*, March-April 1964, 12.

beginning his three-decade daytime program with a Madalyn Murray interview (followed later in his opening week by the first ever televised birth). But such a conclusion would overlook the symbolic value of Madalyn to citizens contemplating the meaning of America.

Madalyn herself might have only been, as a correspondent to Life put it, a “comical yet pathetic exhibitionist,” or, as an atheist colleague put it, a “petty, jealous little ex-bureaucrat who once shouted loud enough to gain attention and has continued shouting for lack of imagination to do anything else—and because it pays.” Nonetheless, the almost-daily reports of her lawless acts—exactly as Dean Kelley and Emanuel Celler were succeeding in moving further consideration of the Becker Amendment into “private hearings”—confirmed grassroots America’s fears about the new spiritual trajectory of the nation. Back in February, Baltimore readers had seen a story and a photo about Madalyn defacing a billboard owned by the pro-Becker Constitutional Prayer Foundation, an organization counting former president Eisenhower among its public supporters. (Madalyn had added “U” and “N” to the sign to make it now read “UN-Constiutional Prayer Foundation.”) But by summer, all of America was getting a glimpse of atheistic disregard for the law as she fled from Maryland to Hawaii and, twelve months later when it became clear that Hawaii would honor Maryland’s extradition request, from Hawaii to Mexico.

Americans were struggling to make sense of “the skyrocketing rise in crimes of violence, crimes against property, suicide, drug use, and divorce,” and more than a few of God’s spokesmen were preaching that people “were safer, institutions more revered, families more cohesive, prisons less crowded when the blanket of religious conformity was

66 Wright, Saints and Sinners, 93.
68 Baltimore Sun, February 14, 1964, B24, in O’Hair FOIA/FBI File; Wright, Saints and Sinners, 169.
stretched across the land."\textsuperscript{70} Whether Madalyn fled Baltimore because she was genuinely persecuted, because she was clinically paranoid (other atheist leaders were suggesting as much), or because she accurately calculated that it would further elevate her notoriety, the fact remains that few observers could see her as anything but completely corrupt.\textsuperscript{71} She denied the Baltimore charges against her, yet she would elsewhere prove her toughness by claiming to have assaulted not five cops, but ten, fourteen, twenty-two, or twenty-six.\textsuperscript{72}

The newspapers in 1964-65 during her year in Hawaii carried accounts of lawsuits between different atheists back in Maryland fighting for the various “atheism businesses” (Other Americans and the Freethought Society) she had deserted. And they carried accounts of a lawsuit among Madalyn, William, and other family members in Hawaii as they too tussled over the mailing lists (and thereby direct future mail revenue) that they had managed to take with them when they fled Baltimore.\textsuperscript{73} DC papers tracked William’s allegations that his mother had become an “extremist,” as she now expressed her sympathy for legalized prostitution. And reporters showed up again as Madalyn rebutted her sons charges by revealed that he had been “under psychiatric care” during their time in Hawaii.\textsuperscript{74}

In most quarters of America, particular facts didn’t need to be verified. If any details someone had heard were inaccurate, there were probably others about this family even more horrific which simply hadn’t yet been discovered. Most God-fearers had been certain since before the \textit{Engel} decision in 1962 that this was the logical outcome of a people who denied God, who shamelessly turned their back on religion. As Sally Duncan of Maumee, Ohio,

\textsuperscript{70} Wright, \textit{Saints and Sinners}, 108.
\textsuperscript{72} Wright, \textit{Saints and Sinners}, 92.
\textsuperscript{74} \textit{Washington Daily News}, October 22, 1964, page number missing, in O’Hair FOIA/FBI File. See also \textit{News American}, October 3, 1964, in O’Hair FOIA/FBI File.
wrote to the *Saturday Evening Post*—which editorialized about the atypical volume of mail their story on Madalyn generated—"Christians! Don’t pick on ‘Mad Murray.’ Can’t you see this woman needs help? She may end up killing someone, but, to be sure, it won’t be God.” More than one letter-writer offered to contribute to a ticket to send her to Russia, both to satisfy her yearning to live in a “Godless country” and to preserve this land for the godly.\(^75\)

Even before Madalyn’s flight to Mexico—where authorities would deport her back to Texas within months, reportedly in connection with a campus drug scandal—her various address changes had been causing her difficulty not only with criminal courts but, more importantly, with civil courts.\(^76\) Her church/state separation cases depended on civil litigation against various manifestations of public religion. Without a set domicile, however, judges could dismiss her cases against authorities on the grounds that she lacked standing to sue in the jurisdiction of the state official being sued. Oddly, then, even as she told reporters she could never return to Maryland because her life would be in danger by doing so, she was having her attorneys file papers in civil court claiming she and her family were only “temporarily vacationing in Honolulu.”\(^77\)

In the two years following her 1963 triumph, Murray had sent up half a dozen legal trial balloons looking for a worthy sequel to school prayer. When Maryland attempted to convert its morning exercises into a period of “silent meditation,” along the lines of a

\(^{75}\) *Saturday Evening Post*, August 8-15, 1964, 4.


\(^{77}\) *Baltimore Evening Sun*, August 1, 1964, 18, in O’Hair FOIA/FBI File; *Honolulu Advertiser*, August 18, 1964, A4, in O’Hair FOIA/FBI File. See other undated *Honolulu Advertiser* clippings in O’Hair FOIA/FBI File.
suggestion in Justice Brennan’s concurring opinion in *Abington v. Schempp*, Murray had sued. In Hawaii, she filed suit against the principal of her nine-year-old son’s school as well as the state superintendent to stop the recitation of the Pledge of Allegiance because of its “under God” phrase. She had filed the same suit unsuccessfully in Baltimore in April, and was rebuffed in Hawaii as well. (In November 1964, the Supreme Court refused to hear her or any other challenges to the constitutionality of the “under God” phrase, but as this dissertation is being completed in 2003, it appears the high court will soon by hearing a variant of this case on appeal from the Ninth Circuit.)

Madalyn was also denied in a Hawaii complaint claiming that fifteen radio stations in Oahu which devoted some time each week to religious programming were obligated, under Federal Communications Commission rules on “controversial issues of public importance,” to grant equal time to her irreligious sect as well. By demanding equal treatment for “unbelief” essentially as a “religion,” Murray again gratified religious America, which had been arguing since at least the 1961 *Torcaso* ruling that unbelief was not “neutral” but was rather another competitor in the marketplace of religious ideas. Popular Methodist preacher Charles Lowry had been insisting on the itinerant circuits since the early 1950s that communism needed to be understood as a new type of atheistic religion. In the mid-1970s, an unrelated dispute over religion at the FCC would recall this Murray challenge to the minds of many, producing over thirty million letters protesting

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78 *Baltimore Sun*, June 27, 1964, 1, in O’Hair FOIA/FBI File.
“Madalyn’s attempt to ban God from the airwaves” in the same way she had supposedly had him banned from the schools. Though Murray had nothing to do with the actual 1975 petition, and though the FCC immediately dismissed it, the association of her name with the rumor helped produce what might be the largest correspondence campaign in human history.\footnote{This 1975 FCC incident and the mail response will be discussed in further detail in chapter 7.}

Back in Maryland in 1965, Murray’s secularization team conceived of a way to turn her assault conviction into a church/state opportunity. Being held by Texas authorities, who arrested her upon arrival in San Antonio after her deportation from Mexico, Murray had her attorneys demand that Maryland charges against her be dismissed “on the grounds the indictments were made by a grand jury whose members professed their belief in God.”\footnote{\textit{Baltimore Evening Sun}, October 20, 1965, C36, in O’Hair FOIA/FBI File; \textit{Washington Evening Star}, September 26, 1965, page number missing, in O’Hair FOIA/FBI File. See also \textit{Honolulu Advertiser}, August 18, 1964, A4, in O’Hair FOIA/FBI File.}

ACLU branches in Texas were pleading with Gov. John Connally not to honor Maryland’s extradition request, while ACLU officials in Maryland continued to argue that Murray hadn’t received a fair trial before a “jury of her peers” in Maryland given that all jurors had sworn their theism with the “so help me God” clause at the end of their oaths.\footnote{\textit{Washington Post}, September 27, 1965, A11, in O’Hair FOIA/FBI File; \textit{Honolulu Advertiser}, October 6, 1965, A3, in O’Hair FOIA/FBI File; \textit{Baltimore Evening Sun}, October 20, 1965, C36, in O’Hair FOIA/FBI File.}

Ultimately, William returned to Maryland to turn himself in to authorities, where he was allowed to serve only thirty days and pay a small fine. The state eventually abandoned attempts to have his mother returned.\footnote{\textit{News America}, August 25, 1965, C1, in O’Hair FOIA/FBI File; \textit{Honolulu Advertiser}, September 2, 1965, B1, in O’Hair FOIA/FBI File; \textit{News America}, October 20, 1965, B2, C36, in O’Hair FOIA/FBI File; \textit{Time}, July 3, 1964, 74.}
As 1964 wound down, the major media reported as if the elections and civil rights debates were the only political issues commanding the attention of Americans, but in reality, millions of dining room conversations across the land still focused on the national religious crisis. Sales of Bibles rose 42% between 1963 and 1964.\(^{88}\) Ministers railed against the ACLU's on-going attack on the constitutionality of the chaplaincy. Robert White, a Catholic official and a retired officer with the Military Chaplains Association told *Newsweek* that civil liberties organizations had evidently decided to join "with the forces of atheism, naturalism, and anarchism to abolish this singular and valuable protection of America's youth." Typically, Rev. White traced the aggressive secularizers' new boldness to the *Engel* and *Schempp* decisions: "They are lying in wait and tasting blood because of their victories in abolishing school prayers."\(^{89}\)

Madalyn Murray tried to stay close to these headlines by launching a suit challenging the constitutionality of tax exemptions for churches and other religious organizations. This would become her most important case for the next three years. When *Time* had first gotten word of the suit in May, it had introduced its short piece on the subject under the heading "The Woman Who Hates Churches"—implying the magazine was devoting space to the story more because of the Madalyn connection than due to the case's intrinsic merits.\(^{90}\) In reality, though, just as in the school prayer cases, controversy over religious tax exemptions had been brewing for some time before Murray appropriated the issue.

\(^{88}\) *Look*, July 27, 1965, 17. Part of the explanation for the increased sales may have been that the New American Standard Bible, as a theologically conservative alternative to the allegedly liberal Revised Standard Version, became available in 1963. For more on the Bible translation wars and the culture wars, see Peter J. Thuesen, *In Discordance with Scripture: American Protestant Battles Over Translating the Bible* (New York: Oxford, 1999).

\(^{89}\) *Newsweek*, June 1, 1964, 82.

\(^{90}\) *Time*, May 15, 1964, 53-54.
For the last few years, the Wall Street Journal had been following tax court battles on clergy retirement and housing allowances, donations to traveling evangelists, and the taxation of churches’ business subsidiaries. In response to church/state study committee reports by major mainline denominations, some local congregations, most of them Presbyterian, had begun to pay real estate taxes voluntarily, at least sufficient to cover “the cost to the city of maintaining the congregation’s share of the cost of streets, public safety and sanitation.” Central Presbyterian Church in Des Moines, for instance, though tax-exempt, decided to begin “donating” $4,000 per year to the city, an amount roughly equal to its portion of police, fire, street, and sewage expenses. (If it had been taxed as a regular business, and thus been forced to contribute to school expenditures as well, the amount would have jumped to $17,000.) Across the Missouri River, revenue shortfalls in Nebraska were leading county tax boards to review the tax-exempt status of all non-profit organizations, including churches and other religious bodies. The status of actual houses of worship was ultimately left untouched, but most “parsonages, rectories, convents and other residential property…returned to the tax rolls.” Most significantly, the Supreme Court had refused to hear cases arguing that exemption violated the establishment clause twice since 1956, but a handful of new Pennsylvania cases against subsidiaries of the Catholic Church were promising to press that argument again.

In spite of all this prior and contemporary activity, it was Madalyn who brought mobs of mainstream media to the church/state questions surrounding exemption. While some on law school faculties and denominational commissions had been deliberating quietly

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91 E.g., Wall Street Journal, September 19, 1962, 1; January 16, 1963, 1; July 31, 1963, 1; August 21, 1963, 1; October 29, 1963, 1; March 18, 1964, 1.
93 America, August 22, 1964, 185-87.
94 Time, July 1, 1966, 45; October 21, 1966, 56.
about the thorny questions for some time, Madalyn stumbled onto the issue and immediately brought out her bullhorn. Telling *Time* that churches are “leeches on society,” she resolved, “If no other American has enough guts to fight them, then I will.” Her first suit would be in Baltimore, but she planned to find sympathetic atheists to file similar suits in at least ten other states. If she could obtain contradictory rulings from any two federal circuits, she believed the Supreme Court would be obligated to hear an appeal seeking clarification of the constitutional issues involved.95

No one had good data on how large the sums involved were, but *Time* estimated that, on the real estate tax exemptions alone, the numbers were very big. “One study shows that church groups own 14% of all taxable property in Pennsylvania, 17% in Maryland, 18% in New Jersey.” Whether or not that was true, this was clearly more than a nuisance case. “Archbishop Lawrence J. Shehan of Baltimore, the Episcopal Diocese of Maryland, [and] the Maryland Synod of the Lutheran Church in America,” among others, joined the case as co-defendants, and prominent Catholic lawyers were quoted as saying, “As a person, Mrs. Murray is not important. But what she is trying to do is important.”96

Church taxation provided a perfect issue for Murray. Extant tax law was ambiguous enough that technical legal problems virtually guaranteed the case would go forward in some form, thereby guaranteeing Murray a continuing spotlight in which to decry other more philosophical aspects of tax exemption that weren’t likely to be actually at issue in the legal analysis. The narrow issues weren’t her real concerns, but they were the little crank that turned a big wheel. Her goal was the complete taxation of religion—real estate,

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95 *Time*, May 15, 1964, 53-54.
income, deductibility of individual donations—just as if religious organizations were for-
profit entities for the benefit of the clergy, which is roughly how she viewed them.

Oh, they love to point to their hospitals and orphanages—most of which are
restricted, by the way. But what do these "good works" amount to? They’re nothing
but a sop to the clerical conscience, a crumb thrown to the populace, alleviating
some of the miseries which the Church itself—particularly the Catholic Church—has
helped to instigate and perpetuate. I can’t pinpoint a period in history or a place in
the universe where religion has actually helped the welfare of man. On the contrary,
the history of the Church has been a history of divisiveness, repression and reaction.
For almost 2000 years, Christianity has held mankind back in politics, in economics,
in industry, in science... 97

Few individual Americans agreed with this analysis, but Murray nonetheless claimed
some special-interest allies in her challenge of current exemption practice because of what
had become known as the "lease-back" loophole. 98 Under various state tax law revisions in
the early post-War period, a situation had emerged, largely unintentionally, that allowed
churches and other non-profits to buy a business, or the land under a business, and then lease
back the enterprise to the current owners. Because the religious organization was not
required to pay taxes on its earnings, an arrangement could be worked out whereby both the
business and the religious organization would be much better off than before the
transaction. 99 In hyperbolic accounts of what this might ultimately mean, opponents of
church exemption warned, "It is not unreasonable to prophesy that with prudent
management, the churches ought to be able to control the whole economy of the nation
within the predictable future." 100

Exaggerations notwithstanding, many businesses had good reason to be frustrated
when forced to compete on an unequal playing field with church-owned businesses exempt

97 Playboy, October 1965, 63.
98 There were of course exceptions, as some ordinary individuals expressed their agreement with Murray that
"moneychangers from the temples" did not deserve tax exemption. See letters from Nora Moxley and
Elizabeth Roberts, Saturday Evening Post, August 8-August 15, 1964, 4.
from taxation. In Dayton, for instance, the president of Technology, Inc. complained that his firm lost a $500,000 Air Force contract because it was underbid on the project by $10,000 by the Roman Catholic, tax-exempt University of Dayton. As the executive explained to Harper's, if the university had been forced to pay taxes on its earnings from the project, its bid would have gone up by much more than the $10,000 difference. Similarly, the head of a local television station in New Orleans lamented that the CBS affiliate in town, owned by Loyola University, had an illegitimate tax advantage in the for-profit arena.

“When I pay talent or buy feature film, I’ve got to use after-tax dollars. They use before-tax dollars. The university and its station are good citizens in our community, but I can’t believe this is a fair thing.” A group of churches in Bloomington, Illinois, got together to buy a hotel from Hilton because the tax incentives were too good to pass up. The Knights of Columbus, a Catholic fraternal organization, bought the land underneath Yankee Stadium, thereby removing it and its rental revenue from the tax rolls. The Cathedral of Tomorrow in Akron acquired the Real Form Girdle Company, prompting trade publications to chortle, “Rock of Ages on Firm Foundation.” Publishers such as Prentice-Hall even began printing brochures like, “Have You Put a Price on Your Business? You May Be Able to Double it by Selling to a Charity.”

These egregious cases led many analysts to conclude the courts would be forced to step in, and Murray exploited this opportunity to raise the larger issue of not only why taxpaying businesses had to face tax-exempt competition, but also why taxpaying individuals were forced to, as she saw it, “subsidize” religious organizations. She argued that the property tax exemption the state provided to religious organizations required her and her mother, a joint litigant, to pay higher taxes, “in direct conflict with the First

Amendment’s prohibition against laws ‘respecting an establishment of religion.’” Murray sued both the City of Baltimore and the Comptroller of the Treasury of the State of Maryland, demanding that they “collect taxes on church property” and thereby reduce the “unfairly large portion of taxes” ($353) the government was collecting from her to make up for the churches’ lack of contribution to the public benefits they received. By her reckoning, the economic effects of tax exemption, an indirect subsidy, were identical to an outright state grant, which no one would dispute violated the establishment clause. She may not have passed the bar exam, but she had many members of the legal community intrigued.

Wilson Barnes, Baltimore Circuit Judge, was not among them. On December 17, 1964, without directly addressing the dispute about Ms. Murray’s current residence (every major article on her continued to emphasize that she was living in Hawaii to avoid prosecution on the Maryland assault and contempt charges), Judge Barnes dismissed the suit. He noted that Maryland law granted exemption “to 56 other categories of groups besides churches—including hospitals, charitable institutions, fraternal organizations, veterans’ organizations, historical societies, the Boy Scouts,” etc. He insisted not only that these real estate tax exemptions did not privilege religion, but actually that failing to exempt religious non-profits while at the same time exempting secular non-profits “would indeed be an act of ‘hostility toward the religious’ and would represent ‘a brooding devotion to the secular’ prohibited by the First Amendment.”

102 Time, May 15, 1964, 53-54.
103 Ginzburg and Borison, eds., The Best of Fact, 385.
104 On the residency dispute, see Baltimore Evening Sun, August 1, 1964, 18.
105 America, January 30, 1965, 154. See also Life’s exchange with Francis Burch, attorney for the City of Baltimore, July 10, 1964, 21.
Invoking one of her favorite mantras, Murray defiantly announced that she would appeal all the way to the Supreme Court. The next step, though, was the state high court, the Maryland Court of Appeals. Fourteen months later, in February 1966, that body affirmed the lower court ruling against Murray, who of course couldn’t personally attend any of her court proceedings, as she would have been arrested had she stepped into Maryland. In a unanimous opinion, Judge Reuben Oppenheimer agreed with Attorney General Thomas Finan, who was simultaneously involved in seeking Murray’s extradition to Maryland, that the exemptions were just so long as the “Legislature does not exempt some houses of public worship and tax others.”

Because Maryland law exempted organizations professing “any philosophical system regardless of whether that philosophical system includes a belief in a Supreme Being,” thereby already including the Ethical Culture Society, many Buddhist groups, and the Philosophical College of Occult Science, no class of believers or nonbelievers could claim discrimination. The court “also found that [under Maryland practice] the real property of churches not used for houses of worship and parsonages…is subject to real estate taxation to the same extent as similar property held by private persons.” Thus the larger national problem of the “lease-back” loophole wasn’t really an issue in his state.

Somewhat surprisingly, Judge Oppenheimer conceded Murray’s central point that, “economically,” religious organizations receiving tax exemptions “are in the same position as though they paid taxes to the city and state and then received back the amounts paid in the form of direct grants.” Furthermore, “members of the general public [do, as the plaintiff-appellants allege] pay higher taxes than they would if the exemptions were not in effect; the

same amount of revenue must be raised and, by reason of the exemption, the rate paid by non-exempt taxpayers is higher." Nevertheless, this argument, while "logically...strong" is not sufficient. Instead, "as this Court has said before, logic is the minion of the law, not its master. The question before us involves the power of a state to legislate for the general welfare..."\(^{108}\)

A state cannot pass a law to aid one religion or all religions, but state action to promote the general welfare of society, apart from any religious considerations, is valid, even though religious interests may be indirectly benefited. If the primary purpose of the state action is to promote religion, that action is in violation of the Amendment, but if a statute furthers both secular and religious ends, an examination of the means used is necessary to determine whether the state could reasonably have attained the secular end by means which do not further the promotion of religion.\(^{109}\)

Having already been overruled once by the Supreme Court in a case involving "the most hated woman in America," the Maryland judges chose their words carefully. Explicitly affirming that the "First Amendment was designed to erect 'a wall of separation between church and State,'" the Court of Appeals also highlighted the "secular purpose test" from Justice Clark's opinion in the *Schempp* and *Murray* rulings.\(^{110}\)

Unlike Murray, the Court did not conclude that religious organizations were unable to do any secular good. "It is not disputed that today religious organizations, as a major part of their functions, carry on activities secular in nature, of substantial benefit to the community, such as aid to the poor and aged, day nurseries, care of the sick and efforts to eliminate racial inequalities." Because of this private initiative, which the state seeks to encourage, whether by secular or religious groups, the community as a whole is relieved of some of the "expense of providing the same services." The legislature is therefore justified

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in exempting such organizations from taxation, as it doesn’t want to do anything to retard such initiative.\textsuperscript{111}

Not all activities of religious organizations are of a secular nature and according to the Maryland high court, one might reasonably argue that tax exemption should apply only to that portion of church buildings and efforts dedicated to secular service, while the remainder might conceivably be subject to taxation. Yet, because “the practical administrative difficulties in such an apportionment are apparent,” it is ultimately legislative rather than judicial prerogative to decide if “the expense and inconvenience involved [would or] would not be disproportionate to the revenue obtained.”\textsuperscript{112} Moreover, in light of the current practice of urban and suburban developers giving land to churches “as part of the efforts to attract purchasers,” one might also reasonably conclude that religious organizations “attract persons to communities and [thereby] increase the general tax assessment base” of a community in spite of their own tax exemptions. In the final analysis, because all religious organizations are treated equitably, because religious organizations are simply treated like their secular non-profit counterparts, and because there is no evidence of “a governmental motive...connected with the support or establishment of religion,” the Maryland practice does not violate the First Amendment.\textsuperscript{113}

The Court also acknowledged in passing the argument of defendants, particularly the Catholic, Episcopal, and Lutheran churches which had entered the case as co-defendants, that “any taxation of church owned property [dedicated to exclusively religious use] would contravene the ‘free exercise’ clause...” Until this point, the argument had focused on whether exempting religious groups from taxation violated the establishment clause, but the

\textsuperscript{111} Murray v. Comptroller, 241 Maryland 383 (1966), at 401; see also Time, February 25, 1966, 45.
\textsuperscript{112} Murray v. Comptroller, 241 Maryland 383 (1966), at 401-02.
\textsuperscript{113} Murray v. Comptroller, 241 Maryland 383 (1966), at 402-03.
Court now admitted that the “legislative motive” not to transgress the “free exercise” clause would provide “at least sufficient weight” against seeking to levy a tax on part of a church’s property. Ultimately, though, the Court concluded that it did not need to “reach the question of whether, absent the tax exemption here involved, the taxation of church owned property would violate the ‘free exercise’ clause of the First Amendment.” Because there was no transgression of the establishment clause, there was simply no need for the Court even to treat that question.114

For the time being at least, the Supreme Court seemed satisfied with this reasoning. Madalyn immediately appealed to William Douglas and the other justices who she hoped would be more sympathetic to her cause, but they, in October 1966, refused to grant a writ of certiorari. (Certiorari votes are kept secret, but failing to grant a writ means that not even four justices were yet convinced the appellants’ case was persuasive enough to merit a hearing.) All was not lost from Madalyn’s point of view, though, as additional denominations were moved by the public debate to appoint committees on church taxation. National weeklies reported that New York’s Episcopal diocese, for example, convened a “blue-ribbon panel of lawyers” to advise it on the question.115 More individual congregations began to consent to compensating local governments “for services rendered,” and the most important mainline periodical, the Christian Century, came out encouraging such voluntary payments.116 Perhaps most importantly, the lack of resolution to the dispute secured Madalyn additional interviews, debates, and fundraising opportunities. And with all of the ongoing outcry from “professional secularists”—as Time labeled Murray—it seemed

115 Time, July 1, 1966, 45.
only a matter of time before the Supreme Court would be forced to hear a religious
exemption case in some form.\textsuperscript{117}

Madalyn hadn’t yet reached the provocative levels to which she would eventually go in the
1970s for headlines by turning over bingo tables at Catholic churches and getting arrested
for disrupting opening prayers at city council meetings, but she nonetheless ably turned
public lectures on the church taxation question into media events.\textsuperscript{118} At Howard University,
for instance, she sped through a bizarre list of alleged church investments, ranging from
Jesuit interests in the Bank of America, Mormon holdings in Union Pacific, and a twenty-
two-story office building in Chicago that supposedly avoided taxes by harboring a small
chapel on its top floor. She would provide documentation for all of these startling claims,
she promised, in an upcoming publication called “Let Us Prey.”\textsuperscript{119} Murray also informed
mildly amused audiences that her critics had misinterpreted her as insisting there should be
no religion in schools. In fact, she was all in favor of studying “the psychopathology of
religion” so that “any kid will reject it out-of-hand by age 12,” the point at which she
allegedly confirmed her own atheism.\textsuperscript{120}

The most reported religion issue of 1965 and ’66, the “God is Dead” movement in
academic theology, was not directly connected to Madalyn at all. But that did not mean she
couldn’t find ways to garner attention from the development and, more importantly, it did
not mean that American laity didn’t associate her with the movement. More than any other

\textsuperscript{117} Time, July 1, 1966, 45; Christianity Today, January 19, 1968, 36; March 1, 1968, 43; June 6, 1969, 48.
\textsuperscript{118} Austin American-Statesman, October 27, 1977, 1, A11, D15; Austin American-Statesman, October 30,
1977, 1, A8; Austin American-Statesman, November 3, 1977, D14; Wright, Saints and Sinners, 92, 117.
\textsuperscript{119} Washington Post, April 6, 1966, B5. In the early 1970s, Madalyn realized that there were many ways to
attack churches as financial predators without necessarily focusing exclusively on the exemption question; see
Madalyn Murray O’Hair, Freedom Under Siege: The Impact of Organized Religion on Your Liberty and Your
\textsuperscript{120} Washington Post, April 11, 1966, A7.
magazine, *Time* introduced the men and women in the pews to what theologians at Emory, Temple, Harvard, and the Southern California School of Theology were thinking about “God.” Beginning in May 1965, a *Time* headline announced that “God Is Changing.” By October, still confined to the religion pages, the editors had moved from a consideration of “process theology” to the more provocative “Christian atheism,” with a headline suggesting God was not only changing, but decaying, perhaps even dead.

By April 1966, atheism had become downright popular, moving to *Time*’s lead story, with the editors deciding for the first time in the magazine’s forty-three year history to include no cover image—just a black background with the red-lettered question, “Is God Dead?” The choice was consistent with the decorum of a funeral, which seemed to be what the journalists sought. In a more tongue-in-cheek attempt at the same suggestion, seminarians the previous fall had run an obituary for God in the Methodist periodical *motive*:

ATLANTA, Ga., Nov. 9—God, creator the universe, principal deity of the world’s Jews, ultimate reality of Christians, and most eminent of all divinities, died late yesterday during major surgery undertaken to correct a massive diminishing influence.

Reaction from the world’s great and from the man in the street was uniformly incredulous...From Independence, Mo., former President Harry S. Truman, who received the news in his Kansas City barbershop, said “I’m always sorry to hear somebody is dead. It’s a damn shame.”

*Time*’s publisher Bernhard Auer wrote readers to assure them his magazine was not being tritely sensationalistic. Instead, while deliberating about this cover story “for nearly a year,” the magazine’s leadership had devoted unprecedented resources to the article: a writer, a senior editor, a full-time philosophy researcher, and over 300 interviews by thirty-two

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123 *Time*, April 8, 1966, cover, 21.
124 *Time*, April 8, 1966, 82.
correspondents. Ultimately, they finally had to run the story because of “the visibly growing concern among theologians about [the relationship between] God and the secularized world...”

Perhaps *Time* should have spent less time interviewing and more time actually writing and editing, because the feature did not make entirely clear why an academic fashion merited sustained national attention. But at the least, the article argued that, in the age of science, an increasing percentage of the citizens of the industrialized world—and especially American divinity professors—were able to live as if God did not. According to recent polls by Lou Harris, 97% of Americans still claimed belief in God, but only 27% considered themselves very religious. One theologian called this “the atheism of distraction”; another labeled most churchgoers “practical atheists” from Monday through Saturday. And outside this country, the authors pointed out, nearly one out of every two people on earth lived under governments condemning religion.

Even in nations such as the U.S. that reject communism, both the economic and the political system can function just fine without God. Capitalism had “freed economics from church control and made it subject only to marketplace supply and demand.” And Enlightenment political theorists touting democracy “proved that law and government were not institutions handed down from on high, but things that men had created.” Neither the Copernican revolution nor Darwinian evolution had much need of God, theologians opined in their interviews. Princeton’s Paul Ramsey observed that “ours is the first attempt in recorded history to build a culture upon the premise that God is dead.”

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126 The *New Yorker* offered a more substantive introduction to the movement in a series of three articles spanning well over a hundred pages in November 1965.
127 *Time*, April 8, 1966, 82-83.
128 *Time*, April 8, 1966, 82-84.
Pointing to the great prophet of what they termed the new “secular rebellion,” the *Time* writers fawned over Harvey Cox of the Harvard Divinity School, whose new book, *The Secular City*, was then winning wide acclaim. (More than a quarter-century later, in *Fire From Heaven*, a study of the stunning growth of Pentecostalism in America and abroad, Cox would partially repent of his association with the God-is-dead movement and its naïve errors, reflecting on the appearance in the 1990s that “it is secularity, not spirituality, that may be headed for extinction.”)\(^{129}\) In the mid-1960s, Cox identified “secularization” as the great movement of the day, a concept he defined as “the loosing of the world from religious and quasi-religious understandings of itself, the dispelling of all closed world views, the breaking of all supernatural myths and sacred symbols.”\(^{130}\)

Emory a-theologian Thomas J. J. Altizer explained that, instead of resisting these developments, “the Christian should welcome the total secularization of the modern world.” Given all the suffering in the world, it is now impossible to affirm that a transcendent, all-powerful God acted in human history on behalf of man; instead, Americans should embrace the process of becoming, without deferring our hope to the action of some Supreme Being out there.\(^{131}\) Needless to say, few laity welcomed his invitation. And not many more even considered the challenge to their theism. Most preferred the old bumper sticker rejoinder to philosophical doubters:

> “God Is Dead!” (signed) Nietzsche.
> “Nietzsche is dead.” (signed) God.\(^{132}\)

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\(^{129}\) Harvey Cox, *Fire From Heaven: The Rise of Pentecostal Spirituality and the Reshaping of Religion in the Twenty-first Century* (Reading, MA: Addison-Wesley, 1995), xv-xvi. In a parallel development, Thomas Altizer quit teaching theology and became an English professor, “because my theory has always been that theology can only be realized in our time in a secular context.” See *Newsweek*, December 1, 1975, 22.

\(^{130}\) *Time*, April 8, 1966, 82-84. For Cox’s helpful distinction between secularism and secularization, see his “Facing the Secular,” *Commonweal*, February 21, 1964, 619-22.

\(^{131}\) *Time*, October 22, 1965, 61.

\(^{132}\) *Time*, October 22, 1965, 62.
Many of those starting to pay attention—and *Time*'s decision was indicative of the consideration the movement was already meriting in higher-brow publications—connected the dots between these academic atheistic movements claiming life could now be lived without reference to God, and the legal cases suggesting that political institutions should now function without reference to God. Madalyn had no real connection with the Thomas Altizers and the William Hamiltons of the ivory towers, but once they started attracting significant attention, she found ways to profit from their movement, primarily by defending the theses "God is dead" and "Atheism is the religion of the future" in her various debates and public lectures.

By this point, Madalyn was becoming "popular" not only with fundamentalists, but also at places like Harvard and MIT, where student groups invited her to lecture. In many of these contexts, she intentionally provoked her audiences by cheering God's demise. In a Chicago event, for instance, she squared off against John Warwick Montgomery, a history professor and prominent evangelical intellectual well known for his debates with and writings about the "God is dead" thinkers. A highly competent technical debater who demanded that terms be defined and the bases of accepting or rejecting historical data be explicitly stated, Montgomery ran circles around Murray and quickly had her resorting to *ad hominem* attacks. Repeatedly suggesting that anyone who believed in Jesus' resurrection

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133 Again, see the *New Yorker* series, November 13, November 20, and November 27, 1965. *Christianity Today* would soon be arguing that the secular move of academic theology needed to be labeled "Non-Christian" rather than "Post-Christian"; see October 13, 1967, cover, 3-5.


135 Even William Murray was able to secure speaking engagements easily. On his last-minute appearance on the Canadian Broadcasting Company, for instance, see William Murray, *My Life Without God*, 213.

was insane, she argued, even more sweepingly, that anyone who thinks there is “absolute, positive proof that there is a God is crazy as hell, and they should be put in a nuthouse.”

Montgomery responded that he was willing to discuss any evidence for or against theism or atheism. But he insisted that he was offering the historical accounts of the resurrection as one piece of evidence for theism, while his opponent was merely asserting, without offering either evidence or argument, that there was no God.

While unwilling to accept the label “agnostic,” Murray claimed that her position, more intellectually honest than Montgomery’s, did not assert either that there is or is not a God. Murray and her followers instead insisted merely that no theist had supplied enough evidence to persuade an atheist to submit to or live in light of any higher power. “We will order our lives as if there is no God. We will order our lives as if there is no hereafter. We will order our lives as if we cannot supplicate any Supreme Being to intervene into our lives and to change” our circumstances, she explained.

“Sounds very creedal to me,” Montgomery teased in response.

Madalyn, who had already begun to abandon any pretense of a serious debate, now grew so frustrated that she simply interrupted at will. Montgomery was occasionally precisionist enough to annoy, but at least attempted to follow a consistent line of thought. During one of his many multi-layered distinctions, she interjected randomly: “Well, I’ve often claimed to be the Virgin Mary in her seventeenth resurrection!”

“Well, there’s a show-stopper,” the moderator conceded to the radio audience.

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138 Montgomery and O’Hair Recording, side IA.

139 Montgomery and O’Hair Recording, side IA.

140 Montgomery and O’Hair Recording, side IB.
Debating by sound-bites, Madalyn used such breaks in the flow to offer grand assertions. At one point, employing her standard point that the effect of religion in human history had been, on net, overwhelming negative, she pointed to the Inquisition and the Crusades as supporting data.\(^1\)

Montgomery again resorted to logical clarifications, tutoring her on various categories of fallacious argument. Just because a “commie brushes his teeth,” he quipped, “I’m not going to knock mine out.” Various assertions of “guilt by association,” he explained, were not a helpful path to religious or philosophical truth. Both theists and atheists had committed many wicked acts, and simply pointing to such acts did not necessarily implicate the theological or atheological beliefs themselves as the root of the deed in question.\(^2\)

Madalyn tried to get to questions about the government encouragement of religion, her forte, but it was difficult since Montgomery agreed with her on church/state separation. He expressed his strong dislike for shallow public school prayers, and even chastised a Christian questioner in the debate who told Madalyn that atheists should sit quietly through school prayers, given that the Christian questioner would be content to sit quietly through Muslim prayers in a Muslim context. Montgomery informed the woman that as a Christian she should not be content with idolatrous prayer, and she ought further to support Madalyn’s proper objections to state-run prayer and state intolerance of creedal minorities.\(^3\)

The would-be lawyer Madalyn clearly wanted a different debate partner than the exceedingly lawyerly nonlawyer Montgomery, and she largely ignored him in her quest to provoke the audience by picking civil religious fights. She never corrected the moderator as

\(^{141}\) Montgomery and O’Hair Recording, side 1B.
\(^{142}\) Montgomery and O’Hair Recording, side 1B.
\(^{143}\) Montgomery and O’Hair Recording, side 1B.

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he repeatedly referred to her “current” legal battle against religious tax exemption, though, in fact, the Supreme Court had already rejected her appeal by the time this debate occurred. She identified the new axis of evil in American life as the Roman Catholics and the fundamentalists who had joined forces both against her and in support of the Becker Amendment—which, in its new 1966-67 incarnation, was now known as the “Dirksen Bill” after the Illinois senator. Gloatting that the school prayer amendment looked likely to fail again, she hypothesized, “If God was on their side, surely he would intervene and help them.” By this syllogism, the failure of the prayer amendment proved the death of God. Pleased with the rhetorical winner, she sat back and reflected, “I’m quite quotable.”

Quotable she certainly was, but she was also over-matched. Serious debates are not the best venue for someone who prefers ranting. Madalyn would be better served in the 1970s when she staged a series of show debates across the Bible belt with “the Chaplain of Bourbon Street,” evangelist Bob Harrington of New Orleans. In more than a dozen appearances on television and in 3,000-seat auditoriums in places like Huntsville, Chattanooga, and Peoria, the unlikely pair simultaneously provoked and delighted audiences with what they billed as a “fight to the finish.” Newsweek covered the event as if it were indeed “a heavyweight prizefight.”

Entering on the right, decked out in a purple-, red- and white-checked dress, is Madalyn Murray O’Hair, America’s No. 1 atheist. From the left, carrying a red Bible, comes “Big Bob” Harrington, the flamboyant fundamentalist. ...“People are seeing someone who’s not afraid to stand up to one of these goddam evangelists,” says the tart-tongued atheist. “If nobody else will tell them they’re nuts, I will.”

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144 The Chicago debate, one of the few Murray debates for which a recording is available, occurred in 1967.
145 Montgomery and O’Hair Recording, side 1B.
146 Newsweek, September 19, 1977, 72.
Traveling in a refurbished bus owned by pornographer Larry Flynt, the production opened with “foot-stomping, hand-clapping” gospel music by “Little Richie Jarvis and Our Brother’s Keeper,” and culminated in the “Madalyn and Bob” showdown, occasionally moderated by Harry Thornton, a professional wrestling referee. Harrington would work local Christian channels in the days before each debate, trying to stimulate attendance. “If God’s people don’t wake up,” he would warn potential attendees, “America-one-nation-under-God will become America-one-nation-under-atheism. I want people to see how dedicated this demon-directed damsel is. Then they’ll want to help me stop her.”

Madalyn’s son William would later reveal that the two performers split the take from Bob’s offering plate after each show. The mock debate, advertised as a “history-making event,” complete with T-shirts and an LP version of the a previous city’s recording sold at the exits, attempted to titillate Christian audiences by having Madalyn accidentally backslide from her unbelief by screaming “Oh My God!” at various points in the debate. Bob and Madalyn also regularly included a segment where the two physically struggled over the microphone as Madalyn tried to prevent Bob from leading the believing patriots in a supposedly spontaneous recitation of the Pledge of Allegiance to this nation “under God.”

The worldly-wise Christianity Today cautioned evangelicals against taking these events too seriously, noting that Harrington had not attended services at his Baptist congregation in Louisiana in over a year, and was recently spotted drinking and fraternizing with a woman not his wife on a flight to Dallas. Soon after these revelations, Harrington transitioned to

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what he called a “more secular-oriented ‘ministry’” himself, and the debating pair
abandoned their plans for a nationally televised “Superbowl of the Soul.”

Back in the 1960s, though, when the mainstream media still took Madalyn relatively
seriously, she engaged in many real debates, such as a two-part event with fundamentalist
leader Carl McIntire and a series on Boston television stations with Rita Warren, the
organizer of a grassroots campaign that eventually passed a “moment of silence” law in
Massachusetts. In such contexts, as well as on the national weekly atheist radio program
she started in 1968 (it evolved into a television show in 1980), Madalyn successfully
associated herself with and thereby partially incarnated every movement that prompted the
laity to doubt religious verities. From the “death of God” theology and the search for the
historical Jesus, to the sexual revolution and the Supreme Court’s 1968 rejection of laws
prohibiting the teaching of evolution, Madalyn seized as her own those cultural and
intellectual trends Americans judged anti-religious. Press conference by press
conference, she solidified her place as the human face on secularization.

In an age when religiously conservative white Americans had only recently
comprehended the need to worry about such matters—not to mention the experiential
changes wrought by racial change, increasing crime, and the liturgical liberalization of

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The Supreme Court did not rule on such moment of silence laws until 1985, in the Alabama case Wallace v.
Jaffree.
151 For a flavor of her radio shows, see Madalyn Murray O’Hair, All About Atheists [American Atheist Radio,
Programs 105-56] (Austin, TX: American Atheist Press, 1988); Madalyn Murray O’Hair, The Atheist World
152 In Epperson v. Arkansas, 393 U.S. 97 (1968), the Court ruled that prohibiting the teaching of evolution
violated the establishment clause. In the early 1980s, the justices would also strike down a Louisiana law
requiring the “balanced treatment” of creation and evolution; Ronald B. Flowers, That Godless Court?
153 By the time of her disappearance in the 1990s, almost all media accounts would remember her as the litigant
who brought the case that drove prayer out of school. Even the rare article that remembered the Schepp
family alongside Murray still often forgot the Engel case of the previous year which set the real precedent.
See, e.g., Time, February 10, 1997, 56-60; also Newsweek, December 1, 1975, 22.
Vatican II—Madalyn outlined a new irreligious trajectory for the nation that was indeed terrifying. But it was also, paradoxically, intellectually satisfying. For she provided a coherent explanation for all of this disparate change: America was turning its back on God.

Atheism may not have been compelling to the American masses, but Madalyn’s side—peopled with thousands of elites secretly carrying ACLU membership cards—nonetheless seemed to be winning all the important institutional battles. Polls showed that 82% of the populace still supported school prayer, but what impact had they had in the half-decade since the school prayer decisions?154 Religious patriots in debates at the time over revisions to the New York and North Carolina state constitutions seemed unable even to secure support for comments in their foundational documents acknowledging that America was generally a Christian nation.155 In the emerging worldview of the discontented, America seemed to be on a brave new secular path, and Madalyn, crude though she was, a new sort of prophet.156 A conspiracy theory provided comfort because it synthesized and explained the data of a changing experience.

On Christmas Eve, 1968, the three astronauts of the Apollo 8 completed the first-ever manned orbit of the moon. As they circled, with a global television audience looking on in wonder, Col. Frank Borman read from the book of Genesis: “In the beginning God created the heavens and the earth. Now the earth was formless and empty, darkness was over the

154 James E. Wood, Jr., “Religion and Education in American Church-State Relations,” Religion, the State, and Education (Waco: Baylor, 1984), 69; also, 25-48.
156 Rousas J. Rushdoony is a more complicated figure than most of the evangelicals writing in reaction to the radical religious changes taking place in American schooling, but the title of his major work on the subject nonetheless captures well the urgency of much of the educational literature flowing from the religious presses beginning in 1963: The Messianic Character of American Education (Philadelphia: Presbyterian and Reformed, 1963).
surface of the deep, and the Spirit of God was hovering over the waters. And God said, "Let there be light," and there was light..."

Predictably, Madalyn had little interest in letting this slide, believing that these astronauts, employees of the United States government, had manipulated their "captive audience for the proselytizing of the religious convictions of the sectarian minor world religion of Christianity." So besides screaming to journalists about the reading of the Hebrew creation story, she filed suit in U.S. district court. Promising "to pursue this all the way to the Supreme Court," she demanded that NASA halt all religious activity "in relation to future space-flight activity." Though the mainstream press initially paid little attention to the case (which the Supreme Court rejected in 1971), NASA reported receiving approximately four million letters related to the lawsuit, all generally "supporting Bible reading in space." NASA administrators, who complained that they had nothing to do with the lawsuit but were nonetheless being forced to hire extra staff to sort the flood of mail, reported that letter-writing campaigns were organized by "churches, Boy Scouts, Knights of Columbus, [and other] fraternal organizations."  

In early 1969, while the ACLU continued to challenge school Christmas pageants and successfully compelled the Pentagon to remove all theistic references and "religious connotations" from its compulsory "Character Guidance Program" for enlisted personnel, the newly sworn-in president sought to align himself with the silent majority by projecting what Newsweek called "an image of the U.S. as one harmonious family bowed in prayer." Therefore, on Sunday mornings, rather than attending church, Nixon would typically host a thirty-minute ecumenical service for about 300 staffers and guests in the East Room of the

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157 Dallas Morning News, August 7, 1969, 17A.
White House. In keeping with the chief executive’s upbringing, the format was low-church Protestant, but the ever-changing roster of preachers included not only Billy Graham and Norman Vincent Peale, but also Louis Finkelstein of Jewish Theological Seminary and Terence Cardinal Cooke. There were many reasons to object. Theologians complained that the “prophetic edges” of particular religions are “dulled in this patriotic worship. God Himself, presumably, is not an American.” The Washington Post editorial page questioned the propriety of holding religious services “in the politically charged atmosphere of the residence of a President.”160 But as usual, Madalyn went further, filing suit against Nixon’s “establishment” of religion.

She won neither her case against NASA nor her suit about Nixon’s use of the White House as personal chapel, but the bald-faced character of her attempts mattered more to many frightened citizens than her unsuccessful outcomes. The fact that courts even had to consider such cases seemed a harbinger of things to come—“where there is smoke, there’s fire.” The same logic provoked widespread consternation in God-and-country circles when the Supreme Court decided to accept a church taxation case in June 1969.161

In the three years since the justices refused to hear Madalyn’s Maryland appeal on religious exemptions, an increasing stream of books by law and divinity school professors had been flowing from northeastern presses asking why religion should be exempt.162 Most people saw it the other way, agreeing about three to one with Dallas’ W. A. Criswell,

160 Newsweek, July 14, 1969, 57.
president of the Southern Baptist Convention, that "There are some things you just don't tax," for doing so would imply state supremacy over the church and "would throw our nation into anarchy." As the old adage has it, the power to tax is the power to destroy.

Where the justices would come out was anyone's guess. There seemed to be a broad consensus among church officials, businesspeople, and lawyers that the exemption from taxation of religious organizations' "unrelated business income," which provided an embarrassing "parade of horrible examples" of tax evasion via "leaseback" arrangements, needed to be reformed. (In fact, Congress changed the laws governing this unrelated income before the Supreme Court's ruling was finally handed down). But the case the high court heard in November 1969 was much broader and provided a potential avenue for requiring the complete taxation of churches.

Frederick Walz, a reclusive, elderly lawyer from the Bronx, bought a nearly worthless twenty-two by twenty-nine-foot piece of land (0.0146 acres) near a Staten Island junkyard. He paid his $5.24 in property taxes on the plot and then promptly filed suit "against the New York City Tax Commission, contending that New York State laws exempting church properties from taxation increased his own tax and forced him indirectly to support churches in violation of his constitutional rights to freedom of religion." While claiming to be a Christian, Walz also explained in a brief that he eschewed religious membership, judging religious organizations as "hostile." It was thus unjust that any of his tax payments should subsidize churches or synagogues. He had no interest in the currently popular distinction between property actually used for worship and religious

163 Newsweek, July 14, 1969, 57-58; Good Housekeeping, August 1970, 12-16.
166 Newsweek, July 14, 1969, 57; Time, May 18, 1970, 44.
owned but revenue-generating property such as Manhattan parking lots and Brooklyn
electronics factories. He wanted it all taxed, whether devoted to secular or sacred
pursuits.

Madalyn filed a widely noted *amicus* brief in support of Walz, but with his case
having been accepted where hers had been rebuffed and with the ACLU arguing the case for
the aging Walz, there wouldn’t be much room for her in this spotlight. She then
conceived of another, even more titillating publicity stunt: She would found her own
“church” and secure for herself the tax exemption. Even the progressive *Christian Century,*
which had previously scolded religious Americans for “practicing the code of colonial
Salem” by initiating a “Twentieth Century Witch Hunt” against Ms. Murray, was at a loss as
to whether it could continue to defend her “vigilante” church-state antics.

Journalists interpreted Madalyn’s incorporation of Poor Richard’s Universal Life
church, the “church for atheists,” and her application for tax-exempt status as a ploy to force
exemption defenders into either defending her antireligious religion as well, or conceding
that current legal arrangements illegally preferred believers over unbelievers. Madalyn
delighted in the ironies of her new role as religious leader. Ordaining herself “bishop” and
occasionally wearing a clerical collar, she claimed that 30,000 American families had
converted to atheism in the 1960s. Her new husband, Richard O’Hair—an artist and former
FBI informant she had met during her exile in Mexico—was “divinely inspired,” she

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170 Wright, *Saints and Sinners,* 104; *Christian Century,* February 11, 1970, 166. Though Madalyn wasn’t
immediately successful in her quest for exemption for Poor Richard’s, she did secure exemption for other of
her enterprises, and it wasn’t exactly clear to the public whether Poor Richard’s was among the exempt group
or not; see *Newsweek,* December 1, 1975, 22. The dramatic growth of L. Ron Hubbard new religion,
“Scientology,” provoked similar angst among religious Americans; see *Christianity Today,* November 7, 1969,
6-8.
pontificated, and would be their "prophet." (All was apparently not well at home, though, as violence between the two occasionally led to restraining orders; and in a few years, newspapers would be reporting Madalyn's fears that Richard was still working for the FBI as an informant on her.)\footnote{William Murray, \textit{My Life Without God}, 236, 247, 259-64, 271-73, 283-84; Wright, \textit{Saints and Sinners}, 103-04; untitled newspaper clipping, May 20, 1975, in O'Hair FOIA/FBI File. See also \textit{Mexico City Times}, September 24, 1965, 1ff, in O'Hair FOIA/FBI File; \textit{The News} [of Mexico City], September 30, 1965, 32A, in O'Hair FOIA/FBI File; untitled newspaper clippings, September 26-27, 1965, in O'Hair FOIA/FBI File; \textit{Christianity Today}, March 13, 1970, 42-43.}

"Anything can be a religion," she educated \textit{Time}, "even gurus or belly-button contemplators." The pair attempted to promote "Winter Solstice" as an alternative holiday to Christmas, and named Mark Twain the church's first saint, the "saint of human laughter."\footnote{\textit{Time}, February 9, 1970, 44; \textit{Christian Century}, February 11, 1970, 166. See also William Murray, \textit{My Life Without God}, 84, 266.} In conjunction with American Atheists, the Society of Separationists, and her various other entities, Madalyn in 1970 began holding annual conventions just like the major denominations (and in one bizarre incident, she announced she was "excommunicating" certain members). Poor Richard's Church would often hold press conferences to offer official responses to any papal announcements. Before long she would reveal Thursday as the atheist Sabbath and threaten lawsuits demanding workplace recognition in accord with what Jews and Seventh Day Adventists received for Saturday and most Christians for Sunday.\footnote{For helpful elaboration on Poor Richard's Church as well as Richard O'Hair, see Le Beau, \textit{The Atheist}, 148-50. On the "excommunications," see \textit{Time}, February 10, 1997, 58.}

Citizens following public religious developments in the spring of 1970 were paying less attention to Madalyn's newfound religion than to the now-boiling controversy over compulsory chapel at the service academies in West Point, Annapolis, and Colorado Springs. Various litigants were suing the Department of Defense to eliminate the
requirement, and some religious groups were also urging the Nixon administration to change the policy, lest the case reach the Supreme Court where Justice Douglas might persuade his colleagues to use the occasion to end the military chaplaincy altogether. Bishop Madalyn’s proclamations contributed to America’s uncertainty as *Time* reported her claim that “a Governor, six mayors…and several U.S. Senators and numerous Congressmen” were now numbered among the donors to her “church” of “the militant atheist.” Madalyn delighted in informing interviewers that Jesus had spoken of her directly in Matthew 12 and Luke 11, prophetically warning: “The queen of the south [i.e., Austin] shall rise up in the judgment with this generation, and shall condemn it.”

Anxiety grew as the Court, which had been expected to decide on *Walz* by January or February of 1970, still hadn’t moved by the end of April. Finally, on May 4, the new chief justice, Warren Burger, announced a decision that unambiguously revealed that his Court would not be unsettling history in the manner of his predecessor. By a 7-1 majority, the justices upheld the constitutionality of religious tax exemptions and backtracked markedly from the strict church/state separationism the Court had begun to embrace in 1947, and that grassroots America had first grasped in 1962-63. (In an ironic foreshadowing of the new era into which the country was heading, the *Christian Century* had recently

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175 *Time*, February 9, 1970, 44.

176 *Wright, Saints and Sinners*, 104.


reported—mistakenly—that John Scopes, the evolution-teaching Tennessee science instructor made famous by William Jennings Bryan and Clarence Darrow’s 1925 courthouse battle, was dead.\textsuperscript{179} In line with tradition, Burger never expressly stated that the Court was changing its course on church/state matters, but there can be little doubt that he regarded past, logically rigorous attempts at strict separation as unhelpfully simplistic, and probably as government malevolence toward religion. He wrote of how the “Court has struggled to find a neutral course between the two Religion Clauses...[which] tend to clash” with each other.\textsuperscript{180} He referred to the “considerable internal inconsistency” of past opinions, and of an imprudent willingness to offer judgments that were “too sweeping.”\textsuperscript{181} He admitted that the founders carefully “calculated” the “absolute prohibitions” of both the free exercise and the establishment clauses. Nonetheless, Burger counseled, justices had too often naively treated these absolutes as if one could “write a statute” by them, rather than cautiously recognizing that the “sweep” of such language intended “to state an objective” rather than to offer precise guidance in the complicated cases arising from real world situations.\textsuperscript{182} He suggested that Everson illustrated the “hazards of placing too much weight on a few words or phrases,” he praised occasions where “the Court declined to construe the Religion Clauses with a literalness that would undermine” the balance of the First Amendment, and he reminded all members of the bench of Oliver Wendell Holmes’ insight that “a page of

history is worth a volume of logic.”183 The chief justice insisted that “No perfect or absolute separation is really possible…” Thus, ultimately, the general principle deducible from the First Amendment and all that has been said by the Court is this: that we will not tolerate either governmentally established religion or governmental interference with religion. Short of those expressly proscribed governmental acts there is room for play in the joints productive of a benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference.184

When the judgment came down, Time ran a photo of the pensive Burger, hands folded behind his back, with the caption, “Benevolent neutrality.”185 The Catholic America, jubilant about the new “fresh air...[in] church-state discussions,” praised Burger for his “candor” about problems in past religion rulings and for his courage “to rewrite the basic approach of the Supreme Court to church-state questions.” It featured a bold-faced quote box highlighting Burger’s new metaphor: “With this tax exemption decision, the Supreme Court has shifted from the ‘wall’ of separation to the ‘tightrope’ of benevolent neutrality.”186 The Christian Century, more sympathetic to the ACLU’s position, wondered if it might be a time “to grieve.”187

Burger conceded, as had the high court in Murray’s 1966 religious exemption challenge, that tax exemption did provide a benefit to religious organizations that did not differ economically from an outright government grant.188 But, he qualified, this fact alone proves nothing. The central question concerns the motivation of the legislature in establishing the exemption. He spends more than a third of his fifteen-page opinion insisting that the heart of the First Amendment’s religious clauses is to ensure that

185 Time, May 18, 1970, 44.
governments seek "neither the advancement nor the inhibition of religion...neither
sponsorship nor hostility."\textsuperscript{189} \textit{Time} referred to this doctrine as Burger's "Middle Course."\textsuperscript{190}

The decision against Mr. Walz—with only Douglas dissenting, though only four
justices joined completely in Burger's rationale—rested on three points. First, exemptions
were as old as America and there is no indication in the historical record that the proponents
of the establishment clause ever regarded this practice as in violation of the First
Amendment. And, contra Douglas and his "foot in the door" or "nose of the camel in the
tent" arguments, as Burger summarized those concerns, nothing in American experience
suggests a likely "slide" down the "slope" from exemption to outright subsidization.

"Nothing in...two centuries of uninterrupted freedom from taxation has given the remotest
sign of leading to an established church or religion..."\textsuperscript{191}

Second and more importantly, the Court explicated what has become identified as the
"charitable class argument." The New York legislature

has not singled out one particular church or religious group or even churches as such;
rather, it has granted exemption to all houses of worship within a broad class of
property owned by nonprofit, quasi-public corporations which include hospitals,
libraries, playgrounds, scientific, professional, historical, and patriotic groups. The
State has an affirmative policy that considers these groups as beneficial and
stabilizing influences in community life and finds this classification useful, desirable,
and in the public interest.\textsuperscript{192}

To exempt most non-profit organizations from taxation but to tax religious ones would be to
single out churches and synagogues for "special, negative treatment."\textsuperscript{193} As Burger saw it,
the law in question sought not to aid religion but only to treat it like other non-profit
engagements. Exemption was not an active but a passive act; it is taxation that is active.

\textsuperscript{190} \textit{Time}, May 18, 1970, 44.

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"We cannot read New York's statute as attempting to establish religion; it is simply sparing the exercise of religion from the burden of property [and income] taxation levied on private profit institutions." \(^{194}\)

Some observers—not to mention a perturbed Justice Douglas—questioned this logic. While hospitals and libraries quite obviously labor for the common good, it is less clear that sectarian organizations necessarily serve the common good. If a particular denomination teaches, for instance, that those outside its membership are destined to hell, in what way does their continued existence as a collective advance the general welfare? Ultimately, though, having the state attempt to parse either which creedal groups aim to benefit the whole, or which portions of particular communities' activities are sacred and which are secular or eleemosynary in nature would be far too contentious. \(^{195}\)

Consideration of this complexity led to the third and most creative of Burger's arguments: that exemption from taxation, in the final analysis, involved less government "entanglement" in religion than would the act of taxing such groups.

Determining that the legislative purpose of tax exemption is not aimed at establishing, sponsoring, or supporting religion does not end the inquiry, however. We must also be sure that the end result—the effect—is not an excessive government entanglement with religion. The test is inescapably one of degree. Either course, taxation of churches or exemption, occasions some degree of involvement with religion. Elimination of exemption would tend to expand the involvement of government by giving rise to tax valuation of church property, tax liens, tax foreclosures, and the direct confrontations and conflicts that follow in the train of those legal processes. \(^{196}\)

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The danger of entanglement had long been a theme in religion cases before the high court, but Burger elevated the issue to a new level, making it into what some observers called a "constitutional touchstone." \(^{197}\)

The following year, in *Lemon v. Kurtzman*, a public aid to parochial schools case, the Court would codify this new doctrine, later to be known in constitutional law circles as "the Lemon test." \(^{198}\) In combination with the "secular purpose" and "primary effect" guidance Tom Clark outlined in *Abington v. Schempp*, lower court judges now had a summary statement of "the three main evils against which the Establishment Clause was intended to afford protection: 'sponsorship, financial support, and active involvement of the sovereign in religious activity.'" \(^{199}\)

Every analysis in this area must begin with consideration of the cumulative criteria developed by the Court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster "an excessive government entanglement with religion." \(^{200}\)

In total, by bringing together the argument from history, the fact that religious organizations were being treated only as one species of the larger non-profit genus, and the prudent desire to avoid the unseemliness of government foreclosures on church property with back taxes due in poor neighborhoods, Burger constructed a compelling opinion. The surprise of having Hugo Black, the modern father of strict separationism, join the opinion further underlined Burger's effectiveness.

Yet the reality remained that the "tone and approach," in the words of one legal expert, differed so "unmistakably" from the trajectory of three decades of cases that *Walz* amounted to nothing less than "the tombstone of the type of No Establishment reasoning

\(^{197}\) *America*, May 16, 1970, 519.
used by the court [since] the *Everson* case of 1947."\(^{201}\) No matter how much weight one gave to Burger's qualifications about not aiding or affirming religion, classifying religious institutions as merely one type of the larger class of nonprofit institutions that serve as "beneficial and stabilizing influences in community life" indisputably communicates that government judges religion a salutary contribution to social life.\(^{202}\) But in the school prayer cases particularly, the Court had implied that government could not have a position on whether religion was a good at all. In his concurring opinion in *Walz*, Justice Brennan argued a slightly modified point that the "pluralism of American society" and "the diversity of association[s]" were the actual goods, and religious groups were judged positive by government only as they contributed to that larger "societal mosaic." Still, the point remained that the Court was pronouncing its blessing on religion.\(^{203}\)

Whatever else one might make of Douglas' dissent, he was surely correct that the Court expressed considerably more sympathy toward religion in *Walz* in 1970 than it had in *Engel* or *Schempp* less than a decade earlier.

[There] is a major difference between churches on the one hand and the rest of the nonprofit organizations on the other. Government could provide or finance operas, hospitals, historical societies, and all the rest because they represent social welfare programs within the reach of the police power. In contrast, government may not provide or finance worship because of the Establishment Clause any more than it may single out "atheistic" or "agnostic" centers or groups and create or finance them.\(^{204}\)

In 1962, colleagues had judged Douglas overly precisionist in his separationism, but he had also been heard as a voice to be reckoned with, and possibly even as the voice of the future on church/state rulings. With *Walz*, however, the Burger majority relegated him to a footnote, an aging reminder of a dogmatic old absolutism (Douglas had now entered his

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\(^{201}\) *America*, May 16, 1970, 519.


fourth decade on the Court and was that very month facing the prospect of impeachment for financial impropriety at the hands of his conservative opponents in the House). The chief wrote off such dogmatism as giving “too little weight to the fact that it is an essential part of adjudication to draw distinctions, including fine ones, in the process of interpreting the Constitution.” To Burger’s mind, distinguishing between which government actions did or did not actually “establish” religion was not very different from distinguishing which searches and seizures were “reasonable” and which were not.205 He had inaugurated a new era in church-state reasoning; strict separationism had been replaced by “benevolent neutrality.”

The Christian Century rightly observed that those who had been lamenting the increasing height of the wall of separation over the last twenty-three years had “reason to rejoice” at the Walz outcome.206 So why did so few?

The simplest answer may be that complaint is a more natural posture than gratitude for the human animal. Additionally, the judicial decisions against released time in the 1940s and school prayer in the 1960s had helped form and confirm a new worldview, which included a basic belief that conspiratorial forces had begun to lead the nation down a secular path from which nothing short of explicit repentance in the halls of power could redeem us. The elimination of school prayer served as a marker in grassroots America that would not be knocked down by a subtle, partial repudiation of the legal logic on which the earlier decisions were based. For the genuine fears of a secularization conspiracy to be diminished,

Peoria would need to see a national revival and the full restoration of school prayer. Perhaps Madalyn herself, the devil’s bishop, would need to convert.

Though retired, Justice Tom Clark stewed on about the ongoing public reaction to the *Schenck/Murray* decision he had written.\(^{207}\) Justice Black’s 1962 opinion combined with Justice Douglas’ extreme concurrence, especially as obscured by sensationalists in the media, understandably confused some citizens. But Clark’s reasonable 1963 opinion explicitly clarifying that previous ruling could not, as he saw it, have prompted any fair-minded reader to such hyperbolic outcry. “Anyone who says that the Supreme Court kicked God out of the front door and let Communism in the back of the school just has never read the opinions of the Supreme Court,” he continued to assert in 1970.\(^ {208}\) This was a man who, as attorney general under Truman, hunted communists with a vengeance, publishing the first Justice Department list of suspected subversion organizations.

Allegations that the prayer decisions sparked the 1960s crime wave and the breakdown of public order on campuses and in city centers angered the law-and-order Presbyterian almost as much. This was a Texas jurist, after all, known to give speeches rebuking parents for failing to sufficiently “bring back the woodshed technique” which would be the best tool in curbing our rampant “juvenile delinquency.”\(^ {209}\) To Clark, as to most scholars since, the 1962-63 decisions were chiefly about coercion, not religion. The Court aimed primarily not to attack religion, but to protect dissenting citizens from any state pressure to believe or practice this or that or even no religion.

\(^{207}\) Justice Clark stepped down from the Court in 1967, to avoid a conflict of interest when President Johnson appointed his son, Ramsey, as attorney general. Ramsey Clark’s trip to Hanoi during the Nixon administration, which the White House saw as aiding and abetting the enemy, did little to dissuade conspiracy theorists who saw personal connections between communism and the lawyers making the school prayer decisions.


Clark failed to grasp, however, that most citizens were not listening to his or other elites' narrow explanations of what these cases meant. They were mesmerized instead by Madalyn's—and her preacher-opponents'—broader explanations of what the cases implied about the future of American life. "Secularization" can be defined two different ways, and though they need not point in the same direction—toward a marginalization of religion in a culture—popular usage tends to collapse the two meanings. In a narrow, sociological sense, secularization is the process by which institutions are differentiated, and a particular structure is transferred from the control of religious officials. In a broader, more philosophical sense, secularization connotes the displacement of religious belief by secularism. The second phenomenon usually brings with it many instances of the first, but instances of the first need not imply that the second is occurring on a grand scale.

For example, if a particular urban church building is converted into condominiums, the structure has been secularized; it has been transferred from a religious to a secular use. But one does not yet know if the conversion occurs because religion in general has become less important in that neighborhood—that is, religious believers are being won over to secularism and thus no longer meet for worship—or because the religion is growing so rapidly that the congregation has decided to construct a larger building and is thus selling off its old facility. Similarly, if generic religious exercises are eliminated from a school, it does not necessarily mean that religious belief has become less important to a community. It may signify that, but it could conversely mean that religious belief is being taken more seriously, and that the plural faiths of the community are each being given more respect and space in which to freely exercise.

The drawing of such a distinction between legal or institutional secularization on the one hand, and a broader cultural secularization on the other hand, became impossible with
Madalyn around. By simultaneously suing to secularize compulsory schooling and ranting about the death of God and the obsolescence of belief, she convinced many Americans that a secular governmental sphere and a secularized citizenry necessarily went hand-in-hand.
The evening of May 4, 1970, scarcely a soul was thinking about Justice Burger’s *Walz* opinion, which had been released earlier that day. Minds across the country turned instead almost exclusively to the gunfire that noon on the Kent State campus which had left four students dead. Television cameras brought the horrifying scene to every dinner table, capturing young bodies laid out in pools of blood as peers wept over corpses in ghastly disbelief. American soldiers had been deployed to an academic setting and had killed their own citizens.

Eyewitnesses disagreed about much of what occurred, but some facts were widely accepted. A three-day demonstration against the Nixon administration’s decision to extend bombing campaigns to communist strongholds in ostensibly neutral Cambodia had turned violent, with students breaking windows, smashing cars, and burning down the ROTC building on campus. Members of the overworked Ohio National Guard had been called in from an assignment maintaining order at a nearby Teamsters strike. They had slept as little as three hours in the previous forty-eight. The seventeen-to-twenty-year-olds who comprised the bulk of the guardsmen had received far too little training in how to handle live ammunition in a mass context—especially one where they were likely to be attacked as agents of a supposedly repressive regime. After a stand-off, guardsmen for some reason opened fire, apparently haphazardly, as the dead included William Schroeder, an uninvolved ROTC student just passing by.¹

¹ The major newsmagazines were filled with reporting and analysis on Kent State and related campus disruptions for the entire month of May.
Beyond these details, politicians and pundits disagreed bitterly about what had happened in the heartland and why. Dr. Benjamin Spock, the best-selling child development expert who had coaxed post-War parents to abandon the practice of spanking, implied the tragedy resulted from a premeditated decision emblematic of an authoritarian establishment that would rather kill dissenters than hear their voices.\(^2\) At an emergency meeting on May 5, the Kent State Faculty Senate concurred, passing a resolution laying primary blame at the feet of Governor James Rhodes and National Guard General Sylvester Del Corso, “whose inflammatory indoctrination produced these results.”\(^3\) Many commentators reflected nervously on the words of Senator Edward Kennedy, who had drawn the similarity of the scene at Kent and the just-reported horrors of My Lai. Half a world away, American soldiers had been accused of massacring unarmed Vietnamese civilians.\(^4\)

Most Ohio officials saw it quite differently. U. S. Senator William Saxbe—who Nixon would name attorney general three years later—articulated the dominant view in his home state when he reported to Washington colleagues that the most radical elements of the antiwar movement had been planning major violence at Kent State for some time. There had been vandalism at Ohio State the week before, students in Santa Barbara had recently burned down a bank, five demonstrators at Kent State the previous spring had been arrested for beating police officers, and this year’s demonstrators in Kent had already damaged many cars.\(^5\) Should the state simply stand back and allow people’s property to be destroyed?

Local reports revealed that townspeople thought the university administration had long been

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\(^2\) Spock’s observations were transmitted by wire services on May 5; see *U. S. News and World Report*, May 18, 1970, 94-95.


far too permissive of lawless behavior there, and a front-page editorial published in Kent’s *Record-Courier* the day of the shootings praised the governor—who had visited the campus to observe the rioting the previous day—for proposing new laws that would make “it a felony to throw a projectile at a police officer.” Other proposed legislation would require the suspension of any of “these violence-prone toughs” (the editors’ label) convicted of “any crime arising out of campus violence.”

As a former National Guard commander, Senator Saxbe conceded the risk of arming such young men in such a tense situation. But what was the alternative? Saxbe was incredulous at the suggestion of Senator Pell of Rhode Island that the soldiers should have been sent in with empty guns. Suppose “that they are given no ammunition, and...everyone knows they have no ammunition, and the next thing their helmet is knocked off, their gun is taken away from them, they are publicly humiliated and defenseless,” and likely beaten, Saxbe hypothesized. Did Pell think police should also be sent into violent cities “without any means of violence?”

The Ohio senator grieved for the families of the dead, but believed the demonstrators rather than the National Guard bore the bulk of the blame. He offered his understanding of the run-up to the catastrophe: After days of violence and arson, police declared the end of the demonstration and demanded by bullhorns that students disperse. The assembly had become unlawful. When the demonstrators—now apparently numbering well over a thousand—did not leave, a few dozen guardsmen advanced upon them in a formal line, firing teargas. This at first appeared to work as students retreated, but then “a group of

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6 *Record-Courier* [of Ravenna and Kent, Ohio], May 4, 1970, 1; reprinted in Scott L. Bills, editor, *Kent State, May 4: Echoes Through a Decade* (Kent, Ohio: Kent State Press, 1982), 19; see also 22.
8 While it is unclear if all of the guardsmen present were involved in this advance, later inquiries revealed that probably 113 guardsmen were present—significantly more than Saxbe’s suggestion of a few dozen. See Bills, *Kent State, May 4*, 16.
spectators and other demonstrators moved in behind the Guardsmen, in such a way that they felt it endangered their position," and they panicked. Their discomfort was understandable given reports that they had already been hit by rocks and bricks. Wheeling around, the guardsmen attempted to clear out the crowd filling in behind them from the direction they had come, at which point the initial group of students ceased its retreat and "started filtering back behind the Guardsmen again, hurling objects and giving abuse."

Then something happened—which usually happens in this kind of thing, unfortunately. Someone thought he was fired upon, or someone thought he was in danger of his life, and the first shot was fired.

Some say it was a sniper. I have no proof of that, and I doubt it. But whatever it was, this man felt that his life was endangered, because here were 30 guardsmen surrounded by over a thousand rioters, or people who were adding to the crowd, and they felt endangered, and the first shot was fired. Then 7 or 8 men fired their pieces... 9

Months into the investigation, journalists and officials still could not determine what had caused that initial, loud "crack" sound, but it did become clear that in response to it, sixty-one rounds were fired over a thirteen-second period. Fourteen students were hit, four of them fatally. 10

Saxbe told the senators of a meeting he had after the tragedy with some students who had been there. Still in shock, they allegedly admitted to him, "Well, if they had told us that we might get hurt, this would not have happened." Did these naive students really think it was free speech rather than libertinism to hit police and soldiers with rocks? Did they truly believe, the senator puzzled, that none of those being attacked would ever "strike back?"

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Did the students' definition of "nonviolence" somehow tolerate their own violence upon others?\textsuperscript{11}

The White House expressed similar sentiments somewhat more callously. The president, who days earlier had referred to campus agitators as "bums" in a widely reported Pentagon talk, allegedly chalked up the development to simple self-defense. Nixon remarked stoically that the shootings should "remind us once again that when dissent turns to violence it invites tragedy."\textsuperscript{12} The vice president called it "inevitable," a logical outcome of the "rebellion," the disrespect for law and order being "spawned" on the campuses. Just a week before, he too had made a speech declaring that the "criminal left belongs not in a dormitory but in a penitentiary. The criminal left is not a problem to be solved by the department of philosophy or the department of English; it is a problem for the Department of Justice. Black or white, the criminal left is interested in power...it is interested in promoting those collisions and conflict that tear democracy apart." Make no mistake, Agnew proclaimed, breaking a window or setting a building on fire "is no less a crime because it is committed in an ivy hall in the name of academic freedom."\textsuperscript{13}

Students across the country sympathetic to the dead were incredulous, especially when reports circulated that the command to disperse might not have been audible to most demonstrators.\textsuperscript{14} The faculty resolution captured the widespread sense in the antiwar movement that "the use of massive military force against unarmed students [is] inappropriate in itself, but [additionally] because it symbolizes the rule of force in our

\textsuperscript{11} Congressional Record, May 5, 1970, Volume 116, 14150-51. National Guardsmen interviewed later were just as incredulous that the students hadn't taken the guns seriously; see Bills, Kent State, May 4, 24. Related questions had been on mainstream America's mind for some time; see, for instance, the headline "Government by Torch"—Pacifist Style," U. S. News and World Report, October 7, 1968, 12.


\textsuperscript{14} Bills, Kent State, May 4, 16.
society and international life.” The ACLU initiated lawsuits, campus memorial services were held spontaneously across the nation, and the Urban Research Corporation reported that students at various colleges called roughly “100 strikes per day for four days”—amounting to a disruption of academic life “unprecedented in our history.”

Despite student anger at the government (a London paper reported that the killings had occurred at an “Anti-Nixon Rally”), the immediate reaction off campus in Kent provides a more accurate snapshot of the overall national response. So sure were locals that the students must have been the aggressors that early radio reports and even the first edition of the afternoon newspaper had students killing the soldiers, rather than the other way around. Arriving at the morgue, county prosecutor Charles Kirkwood was shocked to find the body of a dead girl where he expected to see a military man.

Even when it became clear who had pulled the trigger, rumors circulated among townsmen that communists had “dressed in National Guard uniforms [to shoot] the four students in order to create a controversy.” Other citizens told reporters that authorities “should have shot more of them.” (One of the university deans was so outraged at the town’s judgment that KSU students had been the “menace” that he drafted a letter to the editor suggesting that the campus should actually leave Kent and be annexed by Brimfield Township, the next municipality to the south.) The Kent Area Chamber of Commerce distributed a statement, just seventy-two hours after the deaths, lamenting the “deep scar” on the community and especially the suffering that the “people of Kent” had been subjected to

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15 Casale and Paskoff, The Kent Affair, 26, italics added.
16 Casale and Paskoff, The Kent Affair, 24; also 22. Hundreds more schools were shut down by their administrations, who feared student boycotts or violence.
17 Bills, Kent State, May 4, 18-20. The distance between town and gown was great all across the country that spring. The New York Times reported on surveys demonstrating that college students described themselves as liberal over conservative on social and cultural issues by a ratio of two-to-one, while off-campus, the rest of the nation was defining itself as conservative over liberal by nearly as large a margin; May 31, 1970, 56.
for months, including not only property destruction and verbal taunts on the sidewalks but also the repeated "witnessing of abuse to the American flag."¹⁸

Main Street wasn’t the only place worried about whether the cultural scar would heal. In the U.S. Capitol on May 5, the legislators certainly had no time to read and digest the previous day’s Walz ruling. For regardless of a congressperson’s perspective on religious tax exemption, everyone on Capitol Hill agreed there was a more pressing matter at hand. Republicans and Democrats, hawks and doves, critics of the “agitators” and critics of “heavy-handed policing” all voiced the same dire prophecy that America’s struggles would soon yield more bloodshed at home to add to the still-climbing death tolls in Vietnam. (They would be proved correct on May 15, when Mississippi police killed two men at an event at Jackson State College.)

South Dakota’s Senator George McGovern concluded that we “have reached one of the most dangerous and explosive crisis stages in the life of the United States.” Iowa’s Harold Hughes wondered if societal wounds had been opened which were “beyond healing.” Utah’s Frank Moss cautioned that southern politicians’ lecturing of the students had polarized the nation already and was likely to lead to “more deaths.” A Senate colleague didn’t think that even restraint by politicians and other government officials could make any difference any longer, resigning himself to the reality that “we have a situation now that is going to spread, I’m afraid.”¹⁹

Nixon requested that all fifty governors come to Washington within a week for an emergency meeting on how to handle campus and urban violence. Governor Reagan, who

¹⁸ Bills, Kent State, May 4, 18-20.
had been elected in 1966 partly by criticizing the Berkeley uprising of 1964, feared bloodshed now and decided to close the 121-campus California state college system for the week.\textsuperscript{20} Two-thirds of the colleges in New England also shut down.\textsuperscript{21} At institutions in the South and Midwest, officials wanted to ensure there was no Kent State-like confusion in the minds of their students about the use of force, so they made unambiguous announcements that police and guardsmen sent in to quell violence would certainly be armed. Michigan’s governor William Milliken “declared a state of emergency in Ypsilanti,” home of Eastern Michigan University.\textsuperscript{22} Ohio’s legislature reacted to popular opinion and began work on a version of Governor Rhodes’ proposed legislation increasing the penalties for anyone disrupting the functioning of a university. The bill cleared all hurdles and passed overwhelmingly the next month.\textsuperscript{23}

Pollsters and other journalists heard many echoes of the judgment of a Maryland gas station attendant that, “What they should do is close up all the colleges where there is violent protest, draft the eligible men and let the others go to work. These hell-raising students are not contributing anything but trouble.”\textsuperscript{24} Because of the baby boom, teenagers then comprised the largest segment of the population, and with forty percent of those college age currently enrolled in college (triple the percentage of their parents generation), the

\textsuperscript{20} Matthew Dallek, \textit{The Right Moment: Reagan’s First Victory and the Decisive Turning Point in American Politics} (New York: Free Press, 2000), 189-96; on the larger context, see 81-102. Also Thurzal Q. Terry, \textit{The Silent Majority} (New York: Exposition, 1970), provides over one hundred pages of useful background on the start of the campus demonstrations at Berkeley in the mid-1960s.

\textsuperscript{21} A study the following fall would reveal that 21\% of the nation’s colleges and universities had been shut down following the Kent State and Jackson State killings; \textit{New York Times}, October 3, 1970, 35.


\textsuperscript{23} Casale and Paskoff, \textit{The Kent Affair}, 24.

demonstrators looked a lot like freeloaders to those working nine-to-five jobs.\textsuperscript{25} "If it was up to me," a second-generation Italian immigrant told \textit{Newsweek}, "I'd throw all those kids in jail."\textsuperscript{26}

The disaster had occurred on a Monday, and by Friday, approximately 100,000 collegians from up and down the eastern seaboard were in route to DC for an event to publicize what they dubbed "The Kent Massacre." Others student organizers, involved with the New Mobilization Committee to End the War in Vietnam, were strategizing about how to encourage antiwar sentiment among GI's on Armed Forces Day at twenty-two military bases the following week.\textsuperscript{27} The most significant development of the weekend, though, came on Friday afternoon, May 8, when yet another group of the students Vice President Agnew considered cultural dynamite migrated to Manhattan and assembled on Wall Street to denounce U. S. policy abroad and at home.

Highlighting how short the national fuse remained at week's end, construction workers from around the city began gathering at the edges of the demonstration, angry that students they considered draft-dodgers were again so publicly "attacking" the country while the laborers' brothers, both biological and union, were off dying for it. Things ultimately turned violent, as a few hundred of the workers descended on the demonstration and beat at least seventy of the peace activists. Reports claimed that some of the blue-collar men wrapped American flags around the lead pipes they employed as their weapon of choice. City police looking on apparently did nothing to stop them.\textsuperscript{28}

\textsuperscript{26} \textit{Newsweek}, November 17, 1969, 42. A winter of 1967-68 poll had revealed that 70% of Americans believed antiwar demonstrators were fundamentally disloyal; see Gary B. Nash, \textit{American Odyssey: The United States in the Twentieth Century}, (Glencoe, NY: McGraw-Hill, 1999), 791.
Newsmagazines referred to this outburst, as well as a less violent “God and country” union rally that attracted 100,000 more flag-waving laborers a fortnight later, as the beginning of the “Workers’ Woodstock.” The union members chanted “God bless America,” carried signs reading “We Support Nixon and Agnew,” and voiced their demands that Mayor John Lindsay be impeached. Six years earlier, many New Yorkers had questioned the patriotism of then-Representative Lindsay because of his outspoken opposition to Becker’s school prayer amendment while serving on Celler’s Judiciary Committee, but this day he was unpopular primarily because he had lowered flags to half-mast in memory of the Kent State dead. 

Photo spreads of an agonized America appeared in the major periodicals almost every week from the Cambodian invasion in April to the Kent State fall-out in May and heading on into the summer. It would be two decades before “culture war” became a household term, but the underlying reality was already evident in the pitched battles being fought across the land in 1970. The dividing line that spring wasn’t chiefly between political left and political right, or even between hawks and doves. The most important cleavage was almost sub-rational: When confronted with pictures of a violent demonstration, with whom did one side? The basic cultural divide was between those who saw a police presence in a fracas as comforting, and those who viewed it as a sign of state oppression. A sign carried by one of the Manhattan workers spoke for most of the country: “God bless the establishment.”

Few Americans had actually been in favor of continuing military engagement in Southeast Asia since the first months of 1968, when the North Vietnamese’s robust Tet

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offensive, which hastened the collapse of the Johnson administration, had demonstrated that the U.S. was unlikely to win a war of attrition against the more invested Vietcong. And thus many people seemed willing, albeit uneasily, to abide peaceful demonstrations against the war. But whenever any violence appeared, popular opinion swung rapidly and unambiguously against the unrest or toward a desire for order.\(^\text{31}\) Even on the supposedly radical Kent State campus, for instance, where a Students for a Democratic Society (SDS) demonstration against ROTC and a law-enforcement-training school had turned violent in the spring of 1969, a survey revealed that eighty-one percent of students supported the decision to call in the state police against the demonstrators.\(^\text{32}\) Beyond Kent State, surveys told a similar story, as only a small percentage of students were ever involved in the demonstrations—let alone the violence—that had been held on roughly half of the nation’s four-year colleges in the previous year.\(^\text{33}\)

Polls showed that citizens off campus, regardless of whether they believed Nixon was getting the troops out of Vietnam quickly enough, had even less patience for disorderly conduct than did the students. A gaping generation gap separated those who fought in World Wars I and II from those who now burned their draft cards for the cameras. But the anger directed at antiwar collegians was greatest of all from the younger working-class men who disproportionately fought, died, and lost loved ones in Southeast Asia. To one Detroit laborer, who personally disapproved of Nixon’s Cambodian action, the thought of “just

\(^{31}\) See surveys, *U. S. News and World Report*, June 8, 1970, 34-38. The Carnegie Commission on Higher Education study found that 80% of Americans thought the antiwar demonstrations were conducted in a manner that limited rather than advanced free speech; and 75% thought those participating in disruptive demonstrations should be expelled; *New York Times*, April 23, 1970, 1. By the following fall, 79% of the public would be saying additionally that federal aid should be denied to universities that failed to expel all students connected to any rioting; *New York Times*, November 3, 1970, 39.


\(^{33}\) A Gallup poll found that seventy-two percent of students had never participated in a demonstration, and a *Fortune* poll reported that less than thirteen percent of undergraduates held views which could be classified as either “revolutionary” or “radically dissident”; Manchester, *The Glory and the Dream*, 1344.
pulling out” now, “after all those American boys have been killed,” was ludicrous. Were we content to say they died for nothing?34

The students’ antiwar rallies and the (less common) workers’ anti-antiwar outbursts bore important similarities. Both included some violence, and both burned their opponents in effigy. Students regularly burned Nixon puppets at such events, and the workers at their New York counter-demonstration had burned a representation of antiwar mayor John Lindsay, who signs branded a communist.35 Both types of events also included singing and chanting.

Despite these similarities, photographs of the students’ and the workers’ assemblies conveyed entirely different messages. Antiwar demonstrations regularly featured teargas, animal blood (to depict the bloodshed in Vietnam), fights with police, the forcible eviction of professors and university presidents, trespassing, climbing onto monuments, swimming in fountains, nudity and hints of free love.36 These events may not always have included flag-burning, but on television, images of campus demonstrations were occasionally preceded or followed by anti-U.S. demonstrations abroad where the flag was set aflame even more frequently than at home. To many viewers, these apparently anti-God and anti-country gatherings did indeed seem to be simple celebrations of “acid, amnesty, and abortion”—as the Nixon campaign would repeatedly characterize the concerns of McGovern supporters in 1972.37

35 Time, June 1, 1970, 12.
36 E.g., Time, May 18, 1970, 6, 8-9, 22.
37 Robert Novak reported in 1972 that a Democratic Senator was privately referring to McGovern’s politics as “acid, amnesty, and abortion.” Democratic insiders disputed the claim, but the tag line stuck in the public mind—thanks in no small part to the commitment of Nixon supporters to repeating it.
At their events, by contrast, the hardhat-wearing workers praised police, venerated the flag, and waved “God bless America” banners. To a middle America horrified at creeping permissiveness and the possibility of widespread social disorder, there was little doubt which of these spectacles looked uplifting and which looked frighteningly destructive of traditional values. And to the large segment of the nation concerned to keep blacks “in their place,” there was even less doubt about which of these scenes represented the American ideal. Photos of the student gatherings often captured black spokespeople, interracial dating, and even armed Nation of Islam supporters. Photos of union pep rallies, conversely, showed either no black faces at all or only a handful of dutiful and orderly hardhat-wearing black Americans taking their place alongside the mass of white Americans, collectively celebrating the greatness of God’s country—“with gleeful patriotism and muscular pride,” as a *Time* caption had it.\(^{38}\)

Peoria’s fears were not unfounded. Nor was the widespread tendency to group campus and urban violence into one movement inexplicable. FBI director J. Edgar Hoover had recently testified before Congress that arson and/or bombings had occurred at campus demonstrations at least thirty times in the first five months of the 1969-70 academic year. And Kent State had not marked the first time students had been killed on campus. That ignominious distinction belonged to the historically black South Carolina State where five students had died when a gunfight broke out between Guardsman and students protesting a bowling alley which would not admit blacks.\(^{39}\)

\(^{38}\) A quick survey of the photographs in the major newsmagazines from 1968 through 1970 reveals hundreds and hundreds of images of angry students at events that it would be difficult for most of Main Street to interpret as anything other than frightening.

\(^{39}\) *U. S. News and World Report*, May 18, 1970, p. 29-30. The event provoked nothing like the outcry generated by Kent State, probably partly because of race, but also partly because the students fired first at South Carolina State.
Campuses had been somewhat calmer in early 1970 before the announcement about Cambodia, but Hoover had continued to feed angst about urban violence by claiming that "800 or 900 hard-core guerrilla-type members" of the Black Panthers "with many thousands of supporters in the major urban areas of the nation...mean business—revolutionary business." He insisted they opposed all authority, and that police, both black and white, "have been lured into ambush by Panthers carrying out cold-blooded assassination plots." U.S. News, which was already reporting that soaring crime was "Turning Streets Into Jungles," asked in the weeks after Kent State: "Are weapons being stockpiled in black ghettos?" \(^{40}\)

Two years earlier, when the battle in the streets between peace activists and Mayor Daley's officers of the peace overshadowed any of the drama Hubert Humphrey could produce inside the 1968 Democratic National Convention, Chicago had appeared to TV viewers as merely the culmination of a long, hot summer of urban warfare. In all, widespread looting that year, most of it touched off by Martin Luther King’s assassination in April, affected 168 cities—with millions of dollars of homes and offices burned and over 21,000 were injured. Ultimately, 55,000 soldiers were required to restore order. Detroit's terrible riots had occurred in the summer of 1967, but were still vivid in everyone’s minds, as so many miles of buildings had been razed that aerial photos of the Motor City looked like Berlin in 1945. \(^{41}\) Not only Detroit but also Minneapolis would soon elect policemen as mayors to calm their fears of further unrest. \(^{42}\)

\(^{41}\) Manchester, The Glory and the Dream, 1324, 1382-83. Republicans also labored to maintain the association in voters' minds between the chaos in Chicago and the Democratic Party, utilizing the images in later television advertisements.
Much of the popular discontent with the seemingly endless protest, both on campus and in cities, was bound up with outright racist sentiment as well as more comprehensible racial fear. The protests at Kent State had begun eighteen months before the shootings as a joint SDS and Black United Students complaint against police recruitment on campus. The demonstrators rejected even the presence of a law-enforcement investigative laboratory on university property. Guns had first appeared conspicuously at campus demonstrations in the spring of 1969 when 150 students in the Afro-American Society at Cornell took over an administration building.\textsuperscript{43} White students at Yale now regularly offered black power salutes for the cameras, and Black Panther demonstrations on behalf of prisoners they believed wrongly convicted frequently intersected with antiwar events. At NYU, students with bombs seized a six-million-dollar computer belonging to the Atomic Energy Commission, demanding a $100,000 ransom with which they planned to post bail for an imprisoned Black Panther leader.\textsuperscript{44} Student riots and race riots—a Georgia flare-up over the treatment of black prisoners would leave six dead in the week after Kent State—converged in the public mind. To grassroots America, it was madness. Harsh authority would always be preferable to anarchy.\textsuperscript{45}

\textsuperscript{45} Various U.S. senators concluded that the defeat of state referenda to lower the voting age was caused by "adult backlash" against the youth rebellions. And even in the fall of 1970, after the campuses at least had had a summer to calm back down, 71% of Americans believed that university administrators had been far too lenient with demonstrators the previous school year; see, e.g., \textit{New York Times}, February 17, 1970, 21; September 27, 1970, 66. The \textit{Newsweek} cover story on May 5, 1969, "Universities Under the Gun," about militants at Cornell, pictured a number of black students with machine guns. Reflecting another kind of fear, William L. Van Debarg explains well the concern of many in the black power movement in the late 1960s that nonviolence couldn't actually change the system; see Van Debarg, \textit{New Day in Babylon: The Black Power Movement and American Culture, 1965-75} (Chicago: University of Chicago, 1992), 43-45.
In June, Nixon appointed a Presidential Commission on Campus Unrest, a nine-member panel to be headed by William Scranton, former governor of Pennsylvania. After extensive investigations and public hearings in five cities, the Scranton Commission released a 537-page report in September. Distinguishing first between “disorderly protest” and “unrest” (the latter being a broader term which includes desirable activities such as the intellectual questioning central to the academic enterprise), the report then cautiously sought to assign blame for the precipitous spike in violent—even “terroristic”—protest in the late 1960s.46

Many parties bore partial responsibility, the commissioners believed, and no fair-minded observer could deny that some “politically extreme students and faculty members” were indeed “bent on destruction of the university through violence in order to gain their own political ends.” But more startlingly—given that the study had been commissioned by the president—the “Recommendations” section often seemed to be suggesting, albeit delicately, that rhetoric flowing from the White House itself had been a major factor in poisoning the well of public discourse. The report noted that the “words of some political leaders have helped to inflame” student anger, and urged the president to reject “divisive and insulting rhetoric” as “dangerous.” Nixon was warned against playing “irresponsible politics with the issue of ‘campus unrest,’” and was called to “bring us together before more lives are lost and more property destroyed” by pledging to “articulate and emphasize those values all Americans hold in common.”47

For its part, the White House believed it already had been articulating the values that most Americans affirmed and all Americans should hold in common. But it was unwilling to concede that the increasingly confrontational rhetoric it had intentionally employed since

46 President’s Commission on Campus Unrest, The Report of the President’s Commission on Campus Unrest; Including Special Reports: the Killings at Jackson State, the Kent State Tragedy (New York: Arno, 1970), x.
47 The Report of the President’s Commission on Campus Unrest, 7-10.
the fall of 1969 was a liability. On the contrary, because they perceived the fundamental national principle of the rule of law to be under attack, Nixon and especially Agnew—who increasingly spoke for the administration in the same fashion that Nixon as vice president had occasionally played the role of “attack dog” for an above-the-fray Eisenhower—believed that their aggressive style actually advanced the common good. For the tasks of leadership include not only championing the American way, but also opposing those enemies who would who denigrate the nation and its core values.48

History books tend to remember Agnew as gruff and unpopular, with all of his ridicule of antiwar students—an “effete corps of impudent slobs who characterize themselves as intellectuals.” But surveys at the time found America strongly behind the outspoken vice president, even if many thought he could show “better judgment.” Said one Houston secretary, “No one likes to be told they are stupid even if they are.” Overall, patriots concluded that “the way Agnew speaks out is good for the country. You need guts and Agnew has them.” Criticizing not only student demonstrators but also a media he viewed as far more liberal than the populace, Agnew quickly became one of the most sought-after public speakers in the country, measurably more popular than any other Republican, including his boss. Senator McGovern chastised the vice president for “speaking out like Senator Joe McCarthy in the 1950s,” but McGovern misread the nation. Letters poured into *Time* and the other major weeklies, praising Agnew for “defending and propagating American ideals in a world of violence and Communist conspiracy.” Other

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48 Herb Klein, the White House director of communications, explained that Agnew had been specifically assigned to articulate administration values and policies “in a missionary way.” See *Newsweek*, November 17, 1969, 38. *Time’s* cover called it the “Counterattack on Dissent” on November 21, 1969.
correspondents, feeling that someone finally spoke for them, emoted about their euphoric
"sense of self-discovery."  

In 1968, on the eve of Nixon picking the Maryland governor as his running mate at
the Republican Convention in Miami, television journalists had asked people on the street
what the two words "Spiro Agnew" meant. No one knew. One Atlantan answered, "It's
some kind of egg." Another citizen disagreed, suggesting it was "some kind of disease."  
Now, less than two years later, Agnew was a fixture on the covers of the major magazines as
the voice of the (white) voiceless, with political insiders touting him as a future presidential
contender. The son of an immigrant who had pulled himself up by his own bootstraps,
putting himself through night school by working in a supermarket, Agnew had risen from
young lawyer to PTA president to vice president in just over a decade. In an age where
armed vigilante patrols were commonplace in urban neighborhoods because of ridiculous
crime rates, Agnew became something of a hero in contexts where hopes for a better future
blended nicely with selective respect for the past. His standard gripes focused on the liberal
Supreme Court and the licentious culture which have "sparked the wave of lawlessness and
permissiveness that [have] brought the U. S. to the verge of civil disorder." "The man who
believes in God and country, hard work and honest opportunity," he told a Vermont group,
"is denounced for his archaic views." In a year when the Reader's Guide to Periodical
Literature needed to add a designated category of "juvenile delinquents—girls" to its

49 Time, November 28, 1969, 9; Newsweek, November 17, 1969, 38.
50 Manchester, The Glory and the Dream, 1399.
51 Time, November 14, 1969, cover; November 21, 1969, cover; Newsweek, November 17, 1969, cover, 38-42;
general category on troubled and criminal youth, the younger generation surely had much to learn from its elders, Agnew counseled warmly receptive crowds.53

Believing that nearly a year of this rhetoric—journalists called it the “politics of polarization”—contributed to the tragedy in Kent, the Scranton Commission urged Nixon and Agnew, along with all Americans, to eschew treating anyone as a mere “symbol” or “stereotype.”54 The stump speeches of the White House’s current occupants had indeed been flippantly dividing the nation into patriots and traitors, but the administration claimed that its goal was not so much to stigmatize or stereotype America’s detractors as to recover from them the wholesome symbols of national unity, chief among them the flag. When reporters tried to understand what was motivating the so-called “rising of the hardhats,” they found that $8-an-hour sheet metal workers in New York City as well as union leaders such as AFL-CIO

President George Meany in Washington spontaneously agreed on one thing: They would rally to the president, regardless of his position on labor issues, whenever they perceived him to be under attack for standing for a strong America. “The flag—it’s like a priest or the pledge of allegiance,” said one. “It’s like the flag is the roof, and under it are all” the other “rooms” standing for our other differences; national unity precedes disputes over policy. Wallace Buterhoff, a forty-three-year-old who participated in beating some of the students on May 8 explained, “They were waving Viet Cong flags. Some of them spit on our flag. It was just a spontaneous reaction on our part.”55

Pictures of the polarization—be it the student versus union fighting in Manhattan on May 8 or when African-Americans battled prison guards in Augusta, Georgia, on May 11—

54 The Report of the President’s Commission on Campus Unrest, 6.
highlighted more than a divided America. It also represented the fracture within the Democratic Party, just as had the bloody skirmishes between Democratic police and Democratic students in Chicago and other cities in the summer of 1968. With Robert Kennedy and Martin Luther King both having been murdered, it was difficult to find a great figure with the eloquence necessary to pull FDR’s various legacy constituencies together. The New Left and the unions seemed to have too little in common to inhabit the same party. They had no great disagreement over economic policy (unless one classifies affirmative action an economic as well as a social policy), but the country was entering a new phase in which cultural rather than economic views would best define the political spectrum. And the unions, demographically still arguably the most important Democratic voting bloc, remained largely conservative on sexual mores, racial amelioration, patriotism, and public religion.\footnote{For an able summary of the Democrats’ internal disarray in this period, see Jonathan Rieder, “The Rise of the Silent Majority,” in Steve Fraser and Gary Gerstle, editors, The Rise and Fall of the New Deal Order, 1930-1980 (Princeton: Princeton, 1989), 258-63. See also Kari A. Frederickson, The Dixiecrat Revolt and the End of the Solid South, 1932-68 (Chapel Hill: North Carolina, 2001).}

In the fall of 1968, when the Democratic fissures were so apparent, candidate Nixon did not need to expend much effort highlighting them. He thus ran a campaign focused not only on ending the war in Vietnam, for which he claimed to have a “secret plan,” but also on the general theme of “Forward Together.” A little girl in Deshler, Ohio, had held up a hand-painted sign asking candidate Nixon to “Bring Us Together,” and he had made it his mantra before the crowds.\footnote{Nation, September 21, 1970, 234.} But once in office and unable to bring the war to a quick resolution, the voices of dissent had grown louder. Worried about the appearance of grave unpopularity, Nixon advisors resolved to “strike back” against an opposition which, though loud, was
judged by the administration to comprise only a small minority, regardless of how much amplification it received from a mainstream media unsympathetic to the White House.

It is easy to forget what a stunning communicator Nixon could be. After all, not only did he end his career in disgrace, he never seemed to have been liked even by his closest political allies. Dwight Eisenhower in 1960 had seemed callously indifferent to his vice president’s campaign against Kennedy, and Henry Kissinger, who as national security advisor and then secretary of state had been one of the secretive president’s most intimate confidants, confessed to interviewers that he never really liked or even knew his boss. Yet regardless of how disagreeable one might judge Nixon as a dinner guest, the fact remains that he spoke effectively to and for the small-town values still prized by most of the country, even if—and probably because—they were increasingly remote from the lives more voters were living in the expanding suburbs.

Nixon’s track-record of rhetorical effectiveness began with his rise to fame as an anticommunist orator in the House of Representatives in the late 1940s, and improved further with his “Checkers” speech as Eisenhower’s running mate in the 1952 campaign. In the latter speech, Nixon denied what turned out to be spurious charges that he had accepted bribes by pointing to his wife’s modest wardrobe and noting that he prized her inner beauty even though they lacked the resources to outfit her less drably. So many families of similarly humble means heard therein an articulation of their own judgments on things
material as desirable but not essential, and therefore contacted the campaign to voice their support that Eisenhower was forced to abandon thoughts of dropping him from the ticket.  

The pinnacle of Nixon’s direct communication with the people came on November 3, 1969, when the president addressed those he defined as the “silent majority” in a prime-time speech. He obviously wasn’t unique in noticing the large demographic middle of America which felt it was being paid too little attention in current political debates. This was, after all, the same constituency the vice president had been attempting to rally for two months by that point. To the surprise of official Washington, though, Agnew had been vocally “refusing to ‘cool it’” when editorialists had begun to focus attention to his somewhat overheated, Manichean rhetoric. As if inviting the scorn of the commentariat, he publicly resolved to press on on behalf of the supporters of God and country, noting that there were too few advocates for their traditional values of hard work, patriotism, family, and religion. “One reason the silent majority is so silent is this,” he told one group, “They’re too busy working to make a lot of noise.” He would thus make noise for them. Calling outspoken students “malcontents, radicals, incendiaries, and civil and uncivil disobedients,” Agnew informed another delighted crowd that he would gladly “swap the whole damn zoo [of students] for a single platoon of the kind of Americans I saw in Vietnam.”

Partly because of Agnew, journalists and other non-politicians had also begun to pay attention to the “forgotten Americans” in the weeks before Nixon’s big speech. The major weeklies that fall devoted extensive coverage to special reports on the cultural views of the

58 During his presidency, he attempted to solidify support from this crowd with his Summons to Greatness: A Collage of Inspirational Thought and Practical Ideas from the Messages and Addresses of Richard Nixon, Thirty-Seventh President of the United States (Washington: Friends of Richard Nixon, 1972).
60 Manchester, The Glory and the Dream, 1344.
middle three quintiles of whites (that is, all but the top and bottom fifths in terms of income). Whether referred to as “the Troubled American” (Newsweek), “the Middle Americans” (Time), or “the Quiet Majority” contemplating a common man’s “Revolt” (U.S. News), armchair demographers everywhere were sizing up the same “silent majority” to whom Nixon aimed to endear himself.61 And even before Agnew’s 1969 revival tour, columnist Joseph Kraft had tagged “Middle Americans” as the sleeping constituency whose inevitable awakening would echo through politics.

Billy Graham had offered similar predictions throughout 1968, praising the overlooked mass of the citizenry for its patient forbearance yet also its ultimate intolerance of the increasingly prevalent lawlessness springing from some quarters:

A big segment of the population is very committed and aware. They are not out there carrying placards and demonstrating. They are not vocal radicals. They don’t believe in taking what they want by violence. But they’re out there across the country...a great unheard-from group somewhere, both black and white, who are probably going to be heard from loudly at the polls [in November 1968].

The evangelist somewhat discreetly disclosed his service that this cohort was “swinging slightly to the right,” that is, toward his friend Richard Nixon.62 Worried about the crisis of “law and order,” Graham elsewhere called 1968 “the most important election in American history,” and hinted that—though he did not endorse candidates—the Democrats were probably too divided to bring the needed stability. In the months after the election, the New York Times would presciently note that Graham and Nixon seemed to share the same constituency—“two slices of the same apple pie”—even though Graham was of course a Democrat.63

This year-plus ancestry of the “silent majority” notwithstanding, the president himself must be credited with identifying the demographic behemoth in a lasting way in the fall of 1969. For in the address that the White House called the “Address to the Nation on the War in Vietnam” but which has come to be known as his “Silent Majority” speech, Richard Nixon remade the political landscape, revealing in outline political whiz Kevin Phillips’ plan for making the Republicans the majority party. More than any other single day, November 3, 1969 marks the occasion that the Southern and other populist constituents George Wallace had culled from the Democratic Party—taking thirteen percent of the 1968 vote and costing the Republicans five southern states they longed to secure for 1972—were added to the mass of Republican presidential voters. This new, more overt attempt to reach out to the patriotic, pro-school prayer, anti-campus demonstrations segment of America contributed significantly to a re-segmentation of the American political spectrum along increasingly cultural and decreasingly economic lines.

Nixon well understood that the inability to extricate the country from Vietnam had been the single greatest factor in Johnson’s early 1968 downfall. Nixon further grasped that after having been elected himself twelve months earlier on a promise of ending the war quickly, his “secret plan” had not yet yielded sufficient fruit. He had reduced troop levels in Vietnam ten percent in 1969—no mean feat, given that American deployments had

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65 The shooting of George Wallace might have been as significant, except that he was running as a Democrat. In 1968, 46% of the electorate had identified themselves as Democrats, compared to only 27% Republicans; the remaining 27% said they were independents. See Time, July 12, 1968, 17.

66 Class obviously remained important, as a key demographic segment for which the two major parties were competing—working class white males, especially in the South—was concerned not only with moral and cultural questions but also with the increasing competition for jobs they faced from black Americans in the workplace.
increased every year since 1961—but that was little consolation for a nation ever more restless for a final resolution. The frequency and volume of student protests was increasing. In late October 1969, antiwar organizers staged a major demonstration in Washington, demanding an immediate end to U.S. participation in Vietnam. The president, who claimed to agonize over the question of how a democratically-elected decision-maker should respond to popular protest, was particularly affected by this event. After nearly two weeks of consideration, he decided to address the nation with his thoughts on the question.67

Nixon often contributed substantially to the drafting of his addresses, but this speech was unique.68 He drafted and repeatedly edited it on his famous yellow legal pads in the middle of the night at Camp David in the immediately preceding days, telling almost no one about its shape. Then on November 3, he addressed one of the largest television audience ever assembled to date for a political speech, seventy million Americans. And because no members of the media had advance copies, the often defensive president spoke in a confident and comfortable manner, conceiving of it as simply a leader and his people, with no intermediaries waiting in the wings to provide their spin.69

For thirty-two minutes, he addressed the nation’s “great silent majority,” asking for their support as he struggled to exit Vietnam with honor. He sympathized with peace activists who did not want to see any further bloodshed; neither did he. Yet a “nation cannot remain great if it betrays its allies and lets down its friends,” and thus the United States could not simply withdraw immediately and unilaterally, as a screaming few urged in the streets. For such precipitous action would likely ensure the “collapse not only of South Vietnam, but Southeast Asia” as well. He cared about the views of all citizens, he explained, but it would

69 Newsweek, November 17, 1969, 35-37.
be inappropriate for a president to pay heed to the vocal minority while ignoring the “silent majority.” And the vast majority of the nation, he speculated, supported the military abroad and law and order at home.\(^70\)

Nixon readily conceded that mistakes had been made (primarily by the Johnson administration, he did not hesitate to point out), in “Americanizing” the war. Greater caution should have been shown in distinguishing between U. S. willingness to aid anti-communist governments and a U. S. commitment actually to fight their wars for them. Moreover, closer attention must be paid in the future to the distinction between countries whose stability actually affects American security directly and other countries where our national interests were real but not absolute. The implication was that Vietnam might have fallen into the latter camp, at least in the early 1960s.\(^71\) But by 1969, when half a million American troops were propping up South Vietnam, it was not an option simply to leave. Nixon admitted that it might politically expedient, not least for a president who had inherited this war not only from another administration but from another party.\(^72\) But it would be immoral, and it would mean that our boys had died in vain.\(^73\)

The public quickly testified that his assessment had been brilliant. Opinion polls conducted in the days and weeks after the speech showed a previously unpopular Nixon suddenly praised by over two-thirds of Americans. He had concluded the speech by telling his majority that he was personally “sustained by your prayers.” The grassroots now decided to encourage him also by this-worldly communication, as tens of thousands called,

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\(^{72}\) Troop levels in Vietnam had climbed from 16,000 at the time of Kennedy’s assassination to a high point of 543,000 at the end of the Johnson administration. Nixon would reduce the levels by 70,000 in his first year, and another 85,000 in his second year—but these reductions were a very far cry from what he had promised in his campaign. See New York Times Index 1970 (New York: New York Times, 1971), 2216.

telegraphed, and wrote the White House to tell him they were behind the country and to thank him for speaking out on behalf of those who had been too exhausted to disagree endlessly with those Agnew labeled the "passionate parasites." "America," which Oregon’s governor noted was "fed up to their eardrums and eyeballs" with protest, praised Nixon for his call to be simultaneously "united for peace" and "united against defeat." Analysts both then and long after identified it as "the most important speech of his presidency," and Peoria, the object of Nixon’s frequently theorizing, immediately expressed great gratitude for the president’s assurance that foreign policy would not be determined by who yelled the loudest. Gallup reported that only six percent disapproved of the speech. In just half an hour, Nixon brought to light the shocking lack of support behind the demonstrators claiming to speak for the masses.

Journalists and scholars immediately began debating whether the amorphous "silent majority" label designated a real constituency in the electorate or whether White House speechwriters William Safire and Pat Buchanan had simply helped Nixon tap into many shifting constituencies with a range of different fears. Politically, the elasticity of the term was a tremendous asset, as those exercised chiefly about national security threats, as well as their neighbors worried more about a host of cultural issues, such as desegregation, pluralization, secularization, and the sexual revolution, could all hear the president as talking about their concerns. Anything against which there might be "backlash"—antiwar demonstrators, black militants, increased protections for accused criminals, atheists—was an

issue on which the disgruntled could be made to feel that they had an advocate in a president who would speak up on behalf of the great silent majority.\textsuperscript{77}

The editors of \textit{Time} named “The Middle Americans” their 1969 Man and Woman of the Year just two months after Nixon’s speech, correctly concluding that the motivation driving the silent majority was “above all...a state of mind, a morality, a construct of values and prejudices and a complex of fears. The Man and Woman of the Year represent a vast, unorganized fraternity bound together by a roughly similar way of seeing things.” Put another way, members of the silent majority held a common worldview more than they shared any particular political or economic interests. And while the antiwar demonstrations may have been the presenting issue in the increasingly visible culture war at home, debates about Southeast Asia could never be a lasting issue for grassroots America in the way that debates on the nation’s spiritual identity and moral values had already become.\textsuperscript{78}

Historians recounting the Nixon administration’s southern strategy have typically missed the facts that this geographic outreach was but a subset of a larger populist strategy, and that religion was a major tool in the strategists’ arsenal. Neither the politicians executing the plans nor the contemporary journalists dissecting them made this latter mistake of overlooking the administration’s manipulation of religion. Historians rightly emphasize grassroots citizens’ patriotism even as they wanted out of the war, their discomfort with campus radicalism and sexual revolution, their longings for an age (both real and fantasized) with less crime and more social respect, and their resistance to desegregation, particularly when it meant having their own children bused away from the neighborhood school. But the


\textsuperscript{78} \textit{Time}, January 5, 1970, 10-17.
story of backlash and the conservative turn in late 1960s and early 1970s public life is insufficient to the degree it neglects either the widespread discontent with what so many thought to be a secularizing impulse emanating from the extreme left, or Nixon and Agnew’s efforts to play to these fears. Indeed this angst about secularization, more than any other complaint, provided a lens through which Americans could see all other social problems as sharing a common root, a liberal root.

*Time*’s diagnosis of 1969 as “The Year of the Middle Americans” quickly discussed the silent majority’s heartfelt singing of the national anthem at high school football games and the new laws state legislatures were then passing “absolving police in advance of guilt in any riot deaths.” But before patriotism and local community, before law and order, the article began by capturing the populist sense that this nation, with “square” heroes like Neil Armstrong, was uniquely blessed because it refused to allow material abundance to erode its spiritual commitments. After a cover collage including flag and church, the cover story’s first sentence pointed to one of Middle America’s still-central rituals: “The Supreme Court had forbidden it, but they prayed defiantly in a school in Netcong, N.J., reading the morning invocation from the *Congressional Record.*” Such analysis of civil religion in a Henry Luce publication did at times border on the celebratory, but *The Nation*, hardly a cheerleader for establishment values, made essentially the same point a few months later, noting that one simply cannot understand “American Virtues”—from “God and the flag [to] Coke and Campbell’s Soup”—without understanding something of revivalistic religion.

Indeed just the week before the January 5, 1970, special edition on “Middle America,” *Time*’s editors devoted their final issue of the 1960s to a reconsideration of their

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80 *Nation*, September 21, 1970, 233-34.
1966 "Is God Dead?" cover story—likely their most talked-about issue of the decade—by asking: "Is God Coming Back to Life?" Everywhere the authors looked, contrary to what they thought they had seen only four years earlier, religion now seemed to be making a comeback. From storefront churches and Christian rock festivals to the then-increasing profile of Rev. Jesse Jackson and his "Operation Breadbasket" on the South side of Chicago, "spirituality" was exploding. The piece rightly noted that much religious expression was changing "forms"—Gallup numbers suggested that national attendance at traditional weekly services had dropped from 49% to 43% over the decade (though disaggregating the numbers reveals that the downward trend was probably more narrowly Catholic than population-wide).  

But even if attachments to institutional religion were loosening somewhat, there was no sense that Americans conceived of themselves as any less a nation of believers. The "silent" majority itself was difficult not to hear on many freeways, as a late 1969 bumper-sticker outbreak answered "Make Love Not War" with "Honor America" and "Spiro is My Hero," and calls of "Give peace a chance!" elicited the response "Not peace—Victory!" Americans did not abandon God in the mid-1960s only to rededicate themselves at decade's end, so much as disproportionately secular writers and intellectuals forgot about the godly masses in 1966 only to rediscover them in 1969. From the vantagepoint of more than thirty years, it is clear that Time's editors in the mid-1960s had mistakenly taken fashions at places like university divinity schools as proxies for widespread "American" doubt. The journalists' rediscovery of the widespread religiosity of America (which historians of the Vietnam era have not yet sufficiently learned from) was, to a large extent, the result of Richard Nixon and Spiro Agnew leading them by the hand. Starting during the

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81 *Time*, December 26, 1969, cover, 40-45.
presidential transition and then vividly at his 1969 inaugural, Nixon’s staff—obviously convinced there was a large support base for a pious president—went out of their way to send religious signals, to reach out to religious constituencies, to elevate the religious aspect of public ceremonies, and to highlight a generic religious/irreligious cleavage. As Will Herberg, author of the 1955 sociology of religion classic Protestant Catholic Jew, put it later in the administration’s first term, “There were anticipations of this in the Eisenhower era, but Nixon is the first president to make this religious ambiguity explicit.”

Cultivating a religious image devoid of particularity wasn’t new for Nixon upon becoming president-elect. Though he never became thoroughly comfortable employing personal, “born-again” language about his relationship with God, the regular discipline of family Bible reading over breakfast and the centrality of the Friends’ meeting house in his Whittier, California, upbringing were emphasized whenever possible. During his 1962 gubernatorial campaign, Nixon had written in Billy Graham’s Decision magazine (with a circulation of over three million, many of them in California) about his conversion experience at a crusade by Paul Rader, the Chicago fundamentalist.

As a representative, senator, vice president, and then Wall Street lawyer, Nixon regularly attended church on Sundays, but he tended to float among almost every brand of Protestant denomination. In California, he remained a Quaker, but on the East Coast, he was

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83 This study makes few judgments about and has little interest in whether Richard Nixon’s beliefs were sincerely held. Instead, this section is interested chiefly in what, and how, he signaled religiously to mainstream America, regardless of whether he may have been partly genuinely or entirely cynically motivated. He successfully used religious themes and issues to marshal much of grassroots white religious America, regardless of what was “in his heart”—something to which the historian has little access.


85 New York Times Magazine, June 8, 1969, 112. In 1969 as well, Decision magazine publicized Nixon’s faith with a cover story highlighting his inaugural address as well as his February comments at the National Prayer Breakfast. In a pull-quote on the front page, over a photo of Nixon taking the oath of office, Decision’s editors enthused about the “sacred act symbolic of America’s reliance upon the Book of books,” Decision, April 1969, cover, 1.
not frequently seen at Friends’ meetings. (Liberal writers reasonably speculated that this was because DC Quaker meeting on Florida Avenue—unlike the less pacifistic East Whittier Friends—loudly voiced their opposition to involvement in Vietnam.) In the capital, he and Mrs. Nixon first attended Westmoreland Congregational Church (it was in the neighborhood) and later moved to Metropolitan Memorial Methodist (because it sponsored their daughters’ Brownie troop). At his Key Biscayne, Florida, retreat, he was a regular at the Presbyterian Church, though whenever traveling with his friend Billy Graham, the local Baptist congregation naturally drew them. Living in New York in the mid-1960s, Norman Vincent Peale’s Marble Collegiate Church (independent) was his predominant place of worship, though members of St. Thomas Episcopal also often spotted him among their number. In whichever tradition he found himself, he inevitably spoke of the connection between faith and nation—religion being “the true fountainhead of America’s strength.”

The 1969 inaugural showcased religion in an unprecedented way, amounting in the eyes of critics to “a full-scale, ecumenical worship service.” The religious shape of the day began well before guests arrived on the steps of the Capitol, as Washingtonians and visitors to the city discovered 10,000 specially printed posters with hands folded in an posture of prayer placed in store windows that morning. Besides carrying Nixon’s campaign slogan, “Forward Together,” the posters read simply: “Thanksgiving, Blessing, Rededication, Guidance.” At the event itself, multiple clergymen prayed and organizers devoted a three-minute period to silent prayer for the nation.

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Billy Graham, a staple at inaugurations since 1952, offered the featured prayer, which one national correspondent judged so long that it “practically amounted to an inaugural address of his own.”\(^8\) With his stately voice, the North Carolinian ranged from George Washington’s view that “morality and faith are the pillars” of society, and the ways that materialism corrodes a nation, to how recent “permissiveness” had spawned the current “whirlwind of crime, division, and rebellion.” He touched on themes individual and corporate, calling on all citizens to be born again, yet also reciting the favorite evangelical passage on national theology, 2 Chronicles 7:14: “If my people...shall humble themselves, and pray, and seek my face, and turn from their wicked ways, then I will...heal their land.”\(^9\) For his part, Nixon preached that in order to deal with the present “crisis of the spirit, we need an answer of the spirit.” And as was his practice, he connected America’s greatness with its spiritual goodness, reflecting on the Apollo astronauts’ flight the previous month and our nation’s delight at hearing them “across the lunar distance...invoke God’s blessing.”\(^1\) (As discussed in the last chapter, Madalyn responded to the Apollo astronauts’ reading of the Genesis creation story by filing a federal lawsuit, which would in turn prompt four million Americans to write NASA expressing their support for the prayer.)\(^2\)

At his crusades, Rev. Graham regularly warned that “true believers,” by which he meant those who have made a genuine decision for Christ, “are always a minority.” But on civil religious occasions like Nixon’s inaugural, the evangelist found himself in a different sort of majority, while those critical of the assuming divine benediction upon national affairs assumed the minority position. Theologian (and outspoken Humphrey supporter) Reinhold

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\(^1\) *Nation*, September 21, 1970, 233-35.
Niebuhr wrote against the “Nixon-Graham doctrine of the relation of religion to public morality and policy.” He complained that simply asserting “the importance of religion” fails to appreciate the weighty “distinction between conventional religion—which throws the aura of sanctity on contemporary public policy, whether morally inferior or outrageously unjust—and radical religious protest, which subjects all historical reality…to the ‘word of the Lord,’ i.e., absolute standards of justice.”\(^{93}\) But in an age when so many citizens perceived religion itself to be under attack, such a distinction between prophetically critical religion and domesticated establishment religion was of secondary importance to the preponderance of believers.

Six days into office, the new president experimented with state religion in even more innovative fashion, hosting his first “Sunday Worship Service” in the East Room. Nixon would later write, “[O]n that Sunday I was attempting to inaugurate what I hoped would become a White House institution.” Predictably, schedulers slotted Billy Graham to preach on that initial occasion, and two to three hundred guests who “Mrs. Nixon and I thought might enjoy ‘going to church’ with their families in a new and different setting” were invited to participate. The attendance roster constituted a “who’s who” of Washington—Supreme Court justices, new cabinet officials, diplomats, senators, senior White House staffers past and present, and on the list went. But lest the event be judged merely an elitist affair, Nixon wanted the entire country to know that “symbolically…I have regarded our White House services as a standing invitation to all men and women of good will to participate—in their

own place and their own way—in the ‘answer of the spirit’ [from his inaugural address] which this nation so urgently needs.”

The idea of generic public worship had occurred to Nixon just after his November victory and he had spent considerable energies during the transition ruminating on it and consulting clergy from various traditions to seek their input. In contrast to his childhood where religion had been such “an important ingredient,” Nixon worried that many in modern life were too busy to make time for God, and that some even sought intentionally to minimize the public place of religion. He thus “decided that I wanted to do something to encourage attendance at services and to emphasize this country’s basic faith in a Supreme Being.” Ultimately he determined that the best “way of achieving this was to set a good example. What better example could there be than to bring the worship service, with all its solemn meaning, right into the White House?” Reporters caught wind of the plan in early January, and a receptive public, rather than dismissing the affair as exclusive, seems to have warmed immediately to the idea of society’s decision-makers together at prayer. Said the wife of a Long Island undertaker: “It’s nice to see so much of Middle America in one place.”

The composition of the “congregation” raises a variety of interesting questions beyond the virtual prerequisite that attendees be powerful. First, because of the Nixon’s travel schedule, services were not held every week, occurring only slightly more than once per month during 1969 and 1970. But the very fact that Nixon would need to be

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97 There were twenty-six services in the first twenty-three months of the administration; see Nixon, “Introduction” to Hibbs, White House Sermons, viii.
personally present for the “church” to meet communicates much. The structured event would typically begin with a welcome from the president, who would offer a few off-the-cuff remarks on how the president came to know the preacher from whom they would be hearing that morning. Frequent attendees noted that, in keeping with the traditions of early twentieth century “muscular Christianity,” Nixon as emcee would regularly recount an athletic detail from the preacher’s past or state of origin. This was not difficult with men like Bobby Richardson, the former New York Yankee great turned Fellowship of Christian Athletes’ national spokesman serving as representative preachers. Supreme Court justices and cabinet officials held standing invitations, but most invitees were blessed only one time each. Administration aides concurred with the judgment of Washington journalists that Sunday morning at the White House was by far the hottest ticket in town. Lucy Winchester, White House social secretary, told the New York Times, “It’s the most popular thing we have. Americans are basically religious, and this seems to speak to a fundamental American ethic. People don’t identify very well with state dinners, but they are familiar with prayer.”

Between the opening presidential welcome and a presidential “receiving line” at its conclusion, the services contained three recurring elements: the sermon, ministerial prayer, and special music by a visiting choir. This meant there was essentially no congregational involvement whatsoever—and indeed attendees did increasingly come to be called an “audience,” reflecting more accurately their status as observers rather than as participants.

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101 The programs of the events seem to distinguish between general hymns and “anthems” by the guest choirs, but one religion writer who studied many of the events reported that the audience did not participate in the singing of the hymns; see New York Times Magazine, August 8, 1971, 20. On what attendees were called: Nixon originally referred to them as a “congregation” (see intro essay, v), but even a sympathetic Billy Graham
Guest clergy occasionally confessed discomfort at leading religion-as-performance, and one Episcopalian, feeling awkward "standing there in full vestments in a quite unliturgical setting," spontaneously added a corporate recitation of the Lord's Prayer out of "a desire to do something about the lack of congregational participation."\(^{102}\)

In much of Christian tradition, the worship service is conceived of as a dialogue or meeting between God and his people. He calls them out of the world to worship; they respond by confessing their sinfulness and unworthiness. God forgives them because of Jesus' sacrifice; they respond with songs of praise and thanksgiving. His word is proclaimed and sacraments administered; they respond with offerings and prayers. His benediction is pronounced, and they depart back into the world to serve him and his creatures out of gratitude. In more liturgical traditions, the minister—as in some senses both a member of the congregation and a spokesman for God—even turns forward and back to illustrate when he speaks with the people and when for God. In Nixon's services, by contrast, all dramatic dialogue was lost, and indeed even God seemed absent. In a scourging complaint, a university chaplain at Princeton charged that such events lacked a "transcendent deity" and that the president instead "made patriotism his religion, the American dream his deity." This Presbyterian critic acknowledged that "American civil religion" had included many such idolatrous elements in seminal form for generations, but insisted that Nixon's innovations further deified not only national "confidence and vitality but also...our arrogance and pride." The essential transaction of the event seemed to occur not between God and his people (with an onlooking world also likely to benefit from the transformed worshippers), but instead between an inspirational preacher and a worshipper-

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in-chief—with a sovereign voting block assumed to benefit by peaking in on the “symbolic”
piety.  

As expected, church/state denunciations followed, with Madalyn filing suit to stop
the services on government property. But ecumenists, at least among the big three
American traditions, could not express grievances about sectarianism in a traditional sense.
Dissenters had warrant to continue their complaint that exponents of unsettling prophetic
religion were never asked to fill the pulpit—Niebuhr, for example, pondered whether Martin
Luther King would have been “invited to that famous ecumenical congregation in the White
House” had he survived into the Nixon administration. But Judaism, Catholicism, and
Protestantism in its many forms, all had representatives beckoned to what liberal theologians
had begun sneeringly to call “the King’s Chapel.” Pledging his allegiance to “the
ecumenical principle,” Nixon testified to his hope that the theological variety—for instance,
the White House “purposely avoided” having choirs from a specific denomination perform
at “services conducted by a person representing their own faith”—would “contribute to the
broadening of religious thinking and practice in this beloved America of ours.”
Presbyterians and Baptists preached the most frequently, though in the final analysis, the
denominational background of a given day’s speaker seems to have made little difference.
Sermons followed a predictable outline, with a few jokes and then about twenty minutes of

103 Nation, September 21, 1970, 235-36. See also Nixon, Summons to Greatness.
104 Niebuhr, “The King’s Chapel and the King’s Court,” in Rose, Sermons Not Preached in the White House,
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105 Niebuhr, “The King’s Chapel and the King’s Court,” in Rose, Sermons Not Preached in the White House,
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controversy-free reflection on a topic such as "Are God’s Laws Relevant Today?"—the title of Congressman Walter Judd’s 1970 homily.\footnote{Sermon by Walter H. Judd, September 13, 1970, in Hibbs, \textit{White House Sermons}, 179-90. This had long been a standard theme for Judd, who wrote a cover story for Billy Graham’s \textit{Decision} magazine on the same topic in August 1968.}

On the Sunday after the Kent State shootings, an Ohio minister mounting the East Room pulpit steered clear of the week’s happenings, as convention dictated. He stuck to prepared remarks on the virtues of American mothers. It was Mothers’ Day—a highpoint not marked on traditional church calendars but sanctified in American popular religion nonetheless—and he selected as his text the uncontroversial Proverbs 31:28: “Her children will rise up and call her blessed.”\footnote{See sermon by Rev. Stephen T. Szilagyi, May 10, 1970, in Hibbs, \textit{White House Sermons}, 167ff.}

Given the creedal commitment of Nixonian religion to unifying and uplifting themes, one might wonder how the administration reconciled the consensus approach in the White House on Sundays with the polemical tone of Agnew touring the country mid-week. The dual role of the executive branch chief in the U.S. system as simultaneously head of state and head of government provides some insight into the answer, for Nixon seems to have conceived of the presidency partly as the embodiment of a united national soul, and partly as a yet-engaged political advocate needing to rebuff the faulty ideas of those on the extreme left promoting destructive policies.

A closer look at the contexts surrounding the vice president’s speeches reveals that the distinction between the two roles of unifying national representative and aggressive national purifier should not be too rigidly maintained. For when Agnew went to the people to champion the American dream and to reaffirm national values, his was not a story without tempters, demons even. Agnew events, not only in the older Republican context of country
clubs but also increasingly in union halls as well, always featured in tight pairing both “the flag and the prayers to Almighty God.” And though one might envision the beginning of the official speech as marking some abrupt transition between supposedly transcendent, unifying ritual and the coming of mundane, divisive rhetoric, contemporaries at these events reported no such jolt. For the vice president’s charge to affirm aggressively the two great symbols of the flag and prayer apparently brought with it the obligation to energetically endorse specific policy revisions necessary to protect the symbols from their unpatriotic and ungodly detractors. The law and order themes thus seem to have flowed from, rather than depart from, the religio-patriotic flavor of the rallies.109

On some occasions, Agnew himself didn’t even need to make the transition between hailing American values and denouncing their detractors, because hecklers would interrupt his comments and ridicule the silent majority’s dearest symbols. A Newsweek columnist traveling with the vice president to a Grand Rapids event, for instance, reported being challenged to a duel by one of the “militants from local campuses who had come to wave dubious imitations of the Viet Cong flag and shout obscenities at the Vice President.” The columnist, who wasn’t altogether sympathetic to the mainstream desire to “teach those spoiled brats a lesson,” nonetheless reflected much of the working world’s befuddlement about how to engage mobs of students who would naively nod in approval when one from their number shouted at a politician on his way into a dinner that when the “coming revolution” succeeded, we “have to tear the whole structure down, so that we can build a new society, in which there will be no wars, no racism, and people will love each other,

instead of hating each other.”\textsuperscript{110} It worked as lyrics to a folk song, but as Senator Saxbe asked, were they sincerely suggesting that police carry flowers instead of guns into an urban riot?

“If you are a gentleman,” another of the apparently high Grand Rapids “longhairs” announced to the cornered columnist, “you will accept my challenge to a duel...[and given that] I am the challenger...the choice of weapon is yours.” As the writer pondered weapon options, yet “another young man interrupted. ‘How would you like it,’ he shouted, ‘if I put a knife in the stomach of a Vietnamese baby and left the body on your bedroom floor?’” The journalist responded that he “wouldn’t like it at all, and [the potential assailant] nodded wisely, in the manner of one who has scored an important debating point.”\textsuperscript{111} Such confrontational encounters were obviously not everyday happenings for the silent majority as a whole, but attendees at events like an Agnew speech often reported such experiences, and these tales spread like wildfire through grassroots conservative America. Thus, to adequately contextualize how a sitting national figure could have gotten away with sliding seamlessly between an acerbic address and a corporate prayer, it is helpful to consider as well the combative alternative culture attendees passed through on their way into such events.\textsuperscript{112}

Those who sympathized with the students’ concerns, even if not their methods, bitterly chastised the vice president for cloaking himself in religion, and for bearing “false witness” against those with “the movement spirit.” Agnew had, for instance, recently promulgated his “Ten Commandments for Dissenters” in a speech. In response, Stephen Rose, a World Council of Churches staffer, condemned the vice president for his “cavalier

\textsuperscript{110} Newsweek, October 12, 1970, 132.
\textsuperscript{111} Newsweek, October 12, 1970, 132.
use of the Ten Commandments,” and for helping “the Silent Majority (whoever they are) [be] elevated to a position of virtual divinity, despite the fact that democracy is based not on silence but on the willingness of people to be vocal advocates of the public good.” In his *Sermons Not Preached at the White House* (1970), Rose raised the stakes even higher, claiming that “there is a temptation here, now” not unlike the situation “in the Germany of the 1930s.” The solution, he insisted, is not to challenge Agnew “on the political level where he is astute in playing on popular fears, but on the religious level where he stands guilty of arrogating to himself the trappings of the Judge of History, God the Liberator.” Rose captured the views of the editors of *Christianity and Crisis*, a influential liberal theological journal, when he wrote,

> If America does nothing to break the bonds of the oppressed, if in the name of a Silent Majority she tramples the rights of people, if the Government appeals to patriotism, “law and order” and the sanctity of present property arrangements while evading the will of God, we are in violation of the Second Commandment. We must rise and cry out, “No graven images, Spiro Agnew! No graven images!”

Historians struggling to comprehend the fears and moral concerns of both sides in the emerging culture war—and, of course, there were not really two but hundreds of “sides” in such debates—risk many pitfalls. For men like Agnew and Rose, willing to condemn each other so publicly, understood each other so little that both of them would likely regard a dispassionate and sympathetic attempt to understand their opponent as an apology for him. Yet, while most Americans probably disagreed with ranters and polemicists on both sides of the great cultural divide, in living room conversation most citizens felt obligated to express at least a mild preference for one or the other. And there seems little doubt that most voters sided with Agnew’s generic celebratory civil religion and his simple defense of the

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113 Stephen C. Rose, “A Jeremiad For the Vice President,” in his *Sermons Not Preached in the White House*, 146-55.
American way, over theologically liberal spokesmen such as Rose who urged their
countrymen to "admit our national guilt" and "shatter the present repressive structures" of
government.114

If the White House in the spring of 1970 had effectively convinced much of the country of
its standing on the side of the angels, it nonetheless still had a major cultural problem:
Neither Agnew nor Nixon could set foot on a college campus. What citizens would long
regard as able leaders a pair of top constitutional officials who simply were not welcome at a
growing list of major national institutions? Garry Wills, writing in Esquire, summed up the
scene this way: "America, student radicals claim, is all a war zone—with one exception.
The war, they say, is over on the campus and the students have won it. The enemy may not
enter this liberated territory."115

Even before the skirmish at Kent State, the president hadn't been on a campus—
excepting military academies—in over a year. Agnew, hardly bashful, had conceded in an
October 1969 interview that he would no longer even try. Gallup numbers showed that
seventy-two percent of college students had never participated in a demonstration, but the
vice president considered it impossible that he could be heard over the shouting of an
energized liberal base in any academic setting.116 The first lady, who made volunteerism
one of her pet issues, wanted to highlight college-age volunteers as one important segment
of the national community service movement during a March 1970 trip. In the end, though,
she was forced to settle for an entirely scripted tour—"Sanitized," headlines described it—
because of the visceral reaction in all such environments against the administration with

114 Rose, Sermons Not Preached in the White House, 154.
which she was associated. Where Lady Bird Johnson’s “advance team” had consisted of
two young press staffers, Mrs. Nixon on campus visits in Michigan, Kentucky, and Colorado
required an advance contingent of eighteen, five of them Secret Service agents—and this
number did not include the “four aides, four agents and a White House physician” who
personally accompanied her.117 Perhaps most tellingly, two months later, in the aftermath of
Kent State, her daughter at Smith College and her son-in-law, David Eisenhower, at
Amherst were both unable to attend even their own graduations.118

In early 1970, with the president’s job approval numbers falling as rapidly as the
grim economic outlook, White House strategists determined that the widespread conception
of Nixon’s isolation needed to be addressed.119 He would have to make a campus
appearance. Billy Graham—now widely considered, as the New York Times’ religion editor
had tagged him, “The Closest Thing to a White House Chaplain”—had an idea, a possible
solution: the president could speak at one of his revivals in a college football stadium.120
Graham’s invitation wasn’t just to any arena; it was to the gigantic Neyland Stadium at the
University of Tennessee—itself the largest campus in the South. (In the previous month,
since the Senate’s rejection of a second consecutive Nixon Supreme Court nominee from
Dixie, the president had stepped up his rhetorical outreach to the white South a few notches,
charging certain northern senators with anti-southern bigotry.121) To professional political
observers reflecting on the unorthodox invitation, the revival context was perfect for Nixon,

117 Charlotte Observer, March 4, 1970, 3B. Less than half of the Cabinet officials agreed to do any
119 In April 1970, a Lou Harris poll had Nixon’s popularity falling to 52%, “one of the lowest of his
presidency” to date. The previous month, the unemployment rate had reached the highest point since he took
office; see Time, April 20, 1970, 9-10.
121 In April 1970, the Senate rejected Nixon’s nomination of George Harrold Carswell to fill the Supreme
Court seat recently vacated by Abe Fortas. The Carswell defeat dealt a stunning blow to the administration,
which had already seen its first choice for the open seat, Clement Haynsworth, Jr., rejected the previous
November. See also Time, April 20, 1970, 8-9.
providing him with a special escort onto campus, "a sheltering presence of 100,000 hot-gospelers out of the hills, a whole stadium of bodyguards."\textsuperscript{122}

The Graham crusade in Knoxville lasted nearly a fortnight, but the backdrop for Nixon would be the specially designated "youth night," Thursday, May 28.\textsuperscript{123} Some members of the media disputed crusade press claims that the night's crowd included a large percentage of the UT student body, and that eighty percent of the 100,000 attendees were under age 25, but the public relations angle was obvious: Nixon was not only on campus but speaking comfortably before throngs of kids. On both the news highlights as well as on the later primetime rebroadcast of the crusade, there was the evangelist welcoming the president not to a revival meeting, but quite intentionally "to the campus of the University of Tennessee." Nixon was on the same page, answering, "It is a great privilege to be on the campus of the largest university in the South."\textsuperscript{124}

A small number of attendees cursed the president, which actually served the administration's political purposes even better than a unanimously positive response. For the imagery was perfect, with a polite and sympathetic majority being rudely interrupted by a vocal minority. Local police publicized statute TCA 39-1204, a 1932 Tennessee law prohibiting the disruption of religious services, and were thereby able to hold down the turnout of protestors and to confiscate the signs of those who did attend. Still, a few hundred dissenters (different reporters put the number anywhere between 200 and 1,000) managed to

\textsuperscript{122} \textit{Esquire}, September 1970, 122.

\textsuperscript{123} Based on a series of personal experiences and news stories in the early 1970s, Graham began to believe that perhaps the youth might be "turning to Jesus." See, e.g., "Rap Session: Billy Graham and Students Rap on Questions of Today's Youth," Nonmusic Sound Recording, Recorded Sound Reference Center, KYB-2755, Library of Congress. In an attempt to engage and stimulate this movement, he would soon write \textit{The Jesus Generation} (Grand Rapids: Zondervan, 1971).

\textsuperscript{124} \textit{Esquire}, September 1970, 122.
find their way into what *Time* dubbed the Neyland Stadium "neo-tent meeting."\textsuperscript{125} UT football players from the local Fellowship of Christian Athletes' chapter were enlisted to guard the speakers' platform at the twenty yard line. Police arrested nine protesters at the event, and in the following days, warrants were issued for fifty-seven more trouble-makers who had been identified.\textsuperscript{126}

The *New Republic* astutely observed that the disruptive students who were not arrested "served the President" even better than those hauled away by the authorities. The editors further speculated that Graham had helped orchestrate the events to provide exactly these newscaps and sound bites for his friend the president. Demands for "Peace Now!" and declarations that "Thou Shalt Not Kill" were to be expected from the antiwar contingent. The unexpected pay-out for the president's political team was when the vocal minority screamed "Fuck Richard Nixon!" and interrupted the president's testimonial with repeated chants of "Bullshit! Bullshit!" Students also interrupted Billy Graham at one point when he said something complimentary about his friend's leadership at such a challenging moment in our national history, by chanting "Politics! Politics!" Their point about the questionable legitimacy of using the anti-disruption statute to protect this event, which was clearly part political rally, was fair enough. (The president invited to accompany him at the revival Republican Senator Howard Baker—then the Senate's primary prayer amendment sponsor—as well as William E. Brock, the influential religious conservative who in the fall would upset Tennessee's other incumbent senator, Albert Gore.\textsuperscript{127}) Nevertheless, no radical

\textsuperscript{125} *Time*, June 8, 1970, 13.
\textsuperscript{127} *New Republic*, June 13, 1970, 11-12.

Senate Minority Leader Dirksen, who had been the prayer amendment champion since Becker's retirement, had died in late 1969. But amendment opponents who expected the school prayer issue to expire with him were sadly mistaken. A housewife from Ohio, Mrs. Ben Ruhlin, continued to hound the lawmakers
movement is likely to make headway with median voters by heckling an esteemed preacher and chanting profanity at an event that most regarded as a religious service. The Tennesseans became even more pro-Nixon when faced with disruptive protestors, the crowd finally drowning out antiwar chants with applause for the president.\footnote{Time, June 8, 1970, 13.}

When the Charlotte Chamber of Commerce hosted a similar rally to honor Billy Graham the following year, confidential memos among White House staffers reveal an administration delighted at the prospect of having Nixon ridiculed while standing alongside Graham. The impression that the president was suffering for the cause of righteousness was not easy to miss. Billy Graham Day in Charlotte was a classic civil religious event for which all public schools and municipal courts were closed. Nixon praised North Carolina's native son—who in his youth had been the state's unrivaled Fuller Brush salesman—as not for allowing the nation to drift from its spiritual moorings, finally persuading a pair of Ohio Republican House members to reintroduce amendment legislation. On the Senate side, Dirksen's son-in-law, Tennessee Republican Howard Baker, Jr., proposed a similar resolution. Ruhlin, spontaneously and apparently without the assistance of any professional lobbyists, came up with $6,000 to place coupon-like advertisements in most of the country's major newspapers, urging citizens to write their representatives.

Parents had surely become accustomed to less frequent prayer in their children's classrooms, but the issue retained great symbolic power, with support for school prayer legislation continuing to poll at nearly eighty percent. A veteran House member told \textit{Congressional Quarterly}, "It's just very difficult to explain a vote against prayer. If you are voting strictly on political considerations, you vote for it." In the Senate, Baker appeared to secure a 50-20 vote in favor of a prayer amendment, but because he had (for a complicated set of legislative reasons) attached this resolution to a women's equal rights amendment, the final approval of neither was completed before Congress adjourned for the November 1970 elections.

In the House, Reps. William Ayres and Chalmers Wylie, both of Ohio, introduced amendment legislation in both the 90th (1967-1968) and 91st (1969-1970) Congresses, which was referred to the Judiciary Committee—where Celler predictably ignored it. In early 1971, Wylie reintroduced the legislation, with claims swirling that Celler had lied to amendment proponents about scheduling hearings. A discharge petition was introduced, and this time the National Association of Evangelicals coordinated the pro-school prayer forces while the National Council of Churches again organized a campaign against "tampering" with a First Amendment. The discharge petition succeeded (with 107 Democrats joining 111 Republicans), but a newly formed Congressional Committee to Preserve Religious Freedom (59 of its 67 members were Democrats) managed to hold the proposal twenty-eight votes short of the two-thirds majority necessary for passage by the full House.

only “the top preacher in the world” and “one of the greatest leaders of our time,” but also as
the man who would likely surpass all the scientists and secular leaders as the one who
history would remember from this age as having completed “the most important works.”
And, of course, the protestors arrived in standard form, with their own declaration: “One,
two, three, four—We don’t want your fucking war!”

Nixon’s address at the Knoxville crusade was unremarkable, echoing the themes
from his inaugural and his National Prayer Breakfast speeches about how material progress
alone could bankrupt the nation morally, forcing us to settle for a spiritually “sterile life.”
We must continue to “turn to those great spiritual sources that have made America the great
country that it is.” Gesturing toward Graham, the president said, “What he will say to you
is what America and the world needs to hear.” His regular recitation of such themes had
paid dividends the previous week when Religious Heritage of America (RHA), an
ecumenical group based in DC, had named Nixon its 1970 “Churchman of the Year.” The
RHA, chaired by Holiday Inn executive Wallace E. Johnson, praised the religious president
for “creating an atmosphere for a return to the spiritual, moral, and ethical values of the
Founding Fathers.” Somewhat in line with Lyndon Johnson’s call at the 1964 National
Prayer Breakfast, the RHA was currently spearheading an initial three million dollar capital
campaign to construct a “national museum of religion,” with three different sections—“a
Protestant wing, a ‘Star of David’ wing, and an ‘Immaculate Conception’ wing.” An RHA

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spokesman said that the group believed its labors would “come nearer to putting the brakes on the hippies and dope addicts than anything else around.”

President Nixon had a very good day—“one of the great occasions of my life,” he told colleagues on Air Force One leaving Knoxville for San Clemente for the Memorial Day weekend. The crowd in Neyland Stadium had sung “Blessed Assurance” that night, and he was now feeling it. This had been his first public appearance since the start of bombing in Cambodia, yet tonight a black minister had prayed “for our beloved President,” and the crowd had gone crazy. A black football player had taken the microphone and similarly argued for the possibility of racial peace based on religious unity in the nation. “I’d be the most militant man in the country today if I hadn’t found Jesus,” he explained to the overwhelmingly white crowd. Another football player, an All-American even—who had previously threatened “to beat up any radical who dared touch the flag”—had responded to Billy’s call that night, kneeling down “on the stadium turf to accept Jesus.” Even the secular vote-counters on the presidential plane were feeling strangely warmed, for images would soon be broadcast to the nation vividly dramatizing, as one journalist wrote, “the gulf that Mr. Nixon was so fond of talking about between [the cursing hecklers] and the majority of Americans.”

Too little attention has been paid to the overlap between Graham’s followers and Nixon’s constituents. Since 1980, when columnists have tried to understand how the Republicans managed to attract so many lower- and working-class white Americans to their party, two of

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the most oft repeated explanations have been racist opposition to the Civil Rights movement and backlash against the sexual revolution in general and the legalization of abortion in particular. But Billy Graham’s subtle campaign, well before Roe v. Wade, to influence his followers for Nixon is an instructive demonstration of how these scholarly and journalistic explanations are insufficient. For Graham’s movement to the Right, even if not a trigger of the broader conservative tide, does seem to be representative of at least part of that rightward sea change. Yet the evangelist was clearly not motivated by racial concerns and his increasing embrace of the Republicans started well before the sexual revolution.

Graham’s infatuation with Nixon began even before the latter became Eisenhower’s vice president—and therein lies a major clue: For Graham, like so many of those gravitating rightward, needs to be seen against the backdrop of a Cold War which he interpreted as a struggle between religious America and the irreligious or secularized Soviet Union.

Five weeks after Nixon’s triumph in Knoxville, Graham’s organization and the White House teamed up yet again for a media event to reinforce the message that religious glue holds America together. On the Fourth of July, Billy Graham would officiate at a special “Honor America Day” service at the Lincoln Memorial to celebrate both God and country—“a combination revival meeting and national birthday party,” Rice sociologist William Martin aptly defined it. The prelude to the service actually began early in the day as a team of marathon runners departed from Philadelphia for DC carrying a flag and arriving at the memorial just in time to signal the opening of the worship service.137 And in another sense, the event began a full two weeks earlier as Graham had been conducting a crusade at New York’s Shea Stadium prior to coming down to DC, with overhead skywriters

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137 Martin, A Prophet With Honor, 370.
delighting revival attendees by etching “a pair of American flags against the bright blue heavens” each night over Gotham.\textsuperscript{138} Graham staffs joined H. R. Haldeman, Charles Colson, and other White House aides on an ad hoc planning committee that also included Bob Hope, Walt Disney, and J. Willard Marriott, the Mormon hotel magnate. Cliff Barrows of the Billy Graham Evangelistic Association planned the music, which was performed by the Southern Baptist Male Chorus and the U. S. Army Band. Jewish, Catholic, and mainline Protestant clergy also participated, with Graham selecting the black evangelical E. V. Hill of Los Angeles to emcee the event.\textsuperscript{139} Graham, who \textit{Newsweek} labeled “the evangelist of national unity,” was obviously to serve as the headline preacher, for as Willard Marriott informed the press, the North Carolinian was really the only man for the national pulpit: “Billy Graham is sort of an itinerant preacher who represents all religions…. He’s the leading religious man of our time—and he is noncontroversial.”\textsuperscript{140} The White House was pleased with the television coverage of the event, although the crowd was smaller than expected. \textit{Reader’s Digest} reprinted Graham’s sermon, and Nixon staffer Pat Buchanan ensured that photos of Graham before the Lincoln Memorial were sent to “all publications” and to many influential ministers.\textsuperscript{141} Nixon and Graham being frequent correspondents, the president personally called and wrote the evangelist to thank him for the service, which Nixon believed moved millions of godly Americans. The president also confided that “the Honor America Day ceremonies reinforced my own conviction that it is time to strike back—not in anger, and not in a mean spirit, but in affirmation of those enduring values that have proved themselves in crisis and trouble, generation after generation.”

\textsuperscript{138} \textit{Christianity Today}, July 17, 1970, 30.
\textsuperscript{139} \textit{Newsweek}, July 20, 1970, 50, 55.
\textsuperscript{140} \textit{Newsweek}, July 20, 1970, 50; see also Martin, \textit{A Prophet With Honor}, 370.
\textsuperscript{141} Martin, \textit{A Prophet With Honor}, 370-71.
generation, and given our nation its greatness." Nixon was referring to the themes of Graham’s “Honor America” sermon, where he had emphasized the twin needs of returning to first principles and shunning extremism. He tasked the country with honoring our fundamental institutions. “And as you move to do it,” he commanded his hearers, “never give in! Never give in! Never! Never! Never! Never!” Extremists, radicals, and secularizers must be resisted.

Months later, Graham would send the president his own enthusiastic note, “My expectations were high when you took office nearly two years ago but you have exceeded [them] in every way! You have given moral and spiritual leadership to the nation at a time when we desperately need it—in addition to courageous political leadership! Thank you!”

Graham has claimed that he labored to remain nonpartisan throughout his entire ministry. Yet the publication of this and similar correspondence in William Martin’s exhaustively detailed biography of Graham makes it difficult to believe this claim. The thesis is further complicated by how the revivalist in 1968, although citing his long-standing habit of refusing to “endorse” political candidates, announced to the press from a Dallas crusade just five days before the election that he had voted absentee for Nixon—a declaration that came in time for Nixon’s southern organizers to get it into television spots that ran in the days leading up to the election.

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142 Martin, A Prophet With Honor, 371.
143 Christianity Today, July 17, 1970, 32.
144 Newsweek, July 20, 1970, 50.
145 Martin, A Prophet With Honor, 371. Graham’s writings reveal his concern that material abundance might overwhelm genuine spirituality in this age; see, e.g., his “Our Rock” sermon, in Billy Graham and Associates, Give This Man Place (Minneapolis: World Wide Publications, 1973), which had been reprinted almost every year since 1961, pages 18-24.
146 Martin, A Prophet With Honor, 351-54, 380.
There is of course a distinction between being “political” and being “partisan,” and it is important to reflect on this difference before dismissing Graham’s claim of nonpartisanship. Indeed, this distinction provides a major clue into how a “religious right,” not only polemically Protestant but also ecumenically “Judeo-Christian,” was transformed from a latent political powerhouse into an increasingly reliable Republican constituency in the last two decades of the Cold War. As a minister, Graham thought he was called to be above party disputes, but that did not mean he was free to be indifferent to political concerns. A minister could neither fully embrace nor fully reject either party in the way he could champion more general American values of freedom, especially amidst this nation’s battle with atheistic communism. And thus Graham saw no tension between his stated nonpartisanship and his consistent exhortations that Christians needed to be involved in the process and, at the very least, to vote.  

A long-time Democrat—his party in North Carolina had approached him about running for the U. S. Senate in the 1950s—Graham conceived of himself as a moderate and maintained intimate relations with elected officials on both sides of the aisle.  

The night before he participated in Nixon’s first inaugural, for instance, he had spent the night in the White House with the Johnsons, a relationship he held dear. And he would continue to call on the former first family at the Texas ranch just as he had when they occupied 1600 Pennsylvania Avenue. He had even had invited LBJ to join him at a revival once while still in office, though significantly, Johnson, unlike Nixon in Knoxville, had not functioned in an official capacity as a crusade speaker.  

As a leader of prayer at the 1968 Republican convention in Miami (at that time, Graham still prayed at Democratic conventions as well),

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149 Martin, A Prophet With Honor, 368.
he had participated in the private discussions about who should run on the ticket with Nixon.
Graham argued for Senator Mark Hatfield because “he’s a great Christian leader...almost a 
clergyman,” but also because Hatfield had “been an educator and has taken a more liberal 
stand on most issues than you, and I think the ticket needs that kind of a balance."150 (As a 
liberal Republican from Oregon, Hatfield had one of the most pacific records in the Senate 
on racial and military matters, voting against, for instance, most Pentagon appropriations 
during his years in the Senate. But his credentials on civil religion were not in question, for 
Graham well remembered that Hatfield as governor had been one of the nation’s earliest 
proponents of a constitutional amendment to allow school prayer.151) In a major televised 
interview with David Frost in London in December 1970, Frost tried to draw Graham out on 
his political views, but the answer he repeatedly elicited from the preacher was only that 
Graham had genuine fears about both the “extreme right and the extreme left,” which he 
fretted “are almost irreconcilable.”152

Yet being moderate, or even being a ticket-splitter, is not the same as being 
nonpartisan. Graham’s responses to Frost illustrated a great deal. The answers, though not 
systematized, seemed to have a regularly repeated, two-part core: first, condemning extreme 
groups “not interested in reason...not interested in dialogue,” only “interested in disruption, 
in violence, in destruction, to bring down the system”; and then second, refusing personally 
to stake flags of policy preference in that vast reasonable middle between the revolutionary 
extremes.153 Graham did not deny his fascination with politics, confiding to reporters (as if

150 Martin, A Prophet With Honor, 352; also David Frost, Billy Graham Talks with David Frost (Philadelphia: 
152 Billy Graham Talks with David Frost, 36.
153 Billy Graham Talks with David Frost, 36. In a much less reflective way, Graham seems to have shared 
many of the political theoretical beliefs and sentiments of influential Dutch theologian Abraham Kuyper, 
founder of the Anti-Revolutionary Party and prime minister from 1901 to 1905. On Kuyper’s thought and
it weren’t being broadcast to millions) that if he had had another life, he might have been a politician. ¹⁵⁴ But he believed he had a higher calling, one worth too much to alienate any potential religious seekers over something as eternally inconsequential as a policy difference. Such a stance likely carried its own risks, and Graham surely alienated some of the 2,200,000 Goldwater supporters who supposedly telegraphed him in 1964 urging him to endorse the movement conservative. To this correspondence, Graham paternally responded by telling reporters that the money people spent on the telegram campaign “might have been better spent for evangelism.”¹⁵⁵

Graham’s attempts to remain above the fray elicited stronger criticism of him on the issue of race than on any other matter over the course of his career. Though he seems to have come to the conviction that desegregation was morally wrong as a young man (and thus insisting that all of his crusades be integrated starting in 1953-54), he refused to make civil rights a central component of his personal mission. Many black and mainline Protestant leaders consequently resented and partly distrusted his success, perhaps remembering Dante’s speculation that “the hottest places in hell are reserved for those who, in times of great moral crisis, maintain their neutrality.” Of course, it is completely inaccurate to call Graham neutral on racism, when he regularly and unambiguously called it a sin. This is a man who has, with some justification, been cited as a key actor in setting in motion the dominoes that ultimately doomed South Africa apartheid.¹⁵⁶ What he wouldn’t

¹⁵⁴ More often, though, Graham labored to explain his commitment to being apolitical on topics about which faithful Christians could reasonably differ. He did not want his personal political views to stand in the way of people accepting his Savior; see, e.g., Billy Graham Talks with David Frost, 66-72.

¹⁵⁵ Martin, A Prophet With Honor, 301-02; New York Times Magazine, June 8, 1969, 116. The Western Union reportedly had to hire extra operators at its Charlotte office to handle all of the pro-Goldwater telegrams sent to Graham.

¹⁵⁶ Martin, A Prophet With Honor, 409-13, 167-72. Graham also appears to have worried that American failures on race would make parts of the developing world more receptive to communism; see 262-63.
do, though, and what his liberal critics had such a hard time forgiving him for, was to make political protest about racism a part of his ministry. In response, Graham expressed frustration at what he saw as a disproportionate focus on means over ends: “I’m already holding [integrated] demonstrations in the biggest stadiums and halls in the world, but because they are nonviolent, people think that’s not a demonstration. It is a demonstration,” he would insist angrily.157

More than methodological divergence drove Graham’s ambivalence about a formalized anti-racism movement. His emotional reserve flowed also from anthropological judgments which seem to have been, at root, theological. In his travels around the world, he praised American civil rights legislation as “the finest...in the history of the human race,” yet he retained a basic belief that external rules cannot change the heart, which is the root of all evil.158 “For the letter [of the law] kills, but [only] the Spirit gives life,” as Paul taught the Corinthians. It is important not to interpret the revivalist’s unwillingness to spend more of his time on civil rights as racism. He seems simply to have concluded that social sins, like all other sins, can be overcome only by changing individuals.159 The state can restrain sinners’ law-breaking, and thereby protect victims from the aggression of victimizers— racist and otherwise—but states can never change someone’s fundamental Adamic nature. Only Jesus can do this, Graham insisted, and in that “higher calling” he believed he had been called to labor. While “I’m greatly concerned with [social and racial amelioration] as a

158 Martin, A Prophet With Honor, 412.
human being,” he would tell interviewers, “the thing that will really count a hundred years
from now is whether [any individual] man really found Christ.”160

Mainline theologians were not merely disappointed with this position; they were
genuinely frightened—regarding Graham as naïve, and even possibly a confirmation of the
old adage that believers can be so heavenly-minded that they are of no earthly good. To
Rev. Robert Edgar in 1970, a Presbyterian minister in New York City who would later go on
to become a Democratic member of the U. S. House and still later the head of the National
Council of Churches, Graham’s theology was “escapist,” destructively so. Graham had long
been in hot water with theological conservatives for cooperating with mainline Protestants
and even Roman Catholics in his crusades, but Edgar was one mainliner wishing Graham
would listen to the voices on the right and just stay away.161 “Any intelligent person who
might be about to become involved in the church will be driven away for good if he takes
Graham seriously.”162 Such critics could point to some of Graham’s quietistic and
pessimistic comments on the insolubility of social sins as even giving comfort to
segregationists: “We should work for peace, but all we can really do is patch things up,
because the real war is in man’s own heart. Only when Christ comes again will the lion lie
down with the lamb and the little white children of Alabama walk hand in hand with the
little black children.”163

160 New York Times Magazine, June 8, 1969, 110. See also Graham’s Man in the Fifth Dimension, written for
the 1964 World’s Fair (Minneapolis: World Wide Publications, 1964); and Peace with God (Garden City, NY:
161 On examples of critiques from the theological right, see Edgar C. Bundy, editor, Billy Graham: Performer?
Politician? Preacher? Prophet? (Wheaton, IL: Church League of America, 1979); and Ian R. K. Paisley,
Billy Graham and the Church of Rome (Greenville, SC: Bob Jones University, 1970).
163 Newsweek, July 20, 1970, 52.
It isn’t too strong to say that in this view, the preservation of law and order is a religious calling of sorts, the divinely mandated thrust of the governmental mission in the time between Adam’s fall and the restoration of creation at Jesus’ second coming. Graham and his followers did not hold an exclusively negative conception of the purpose of government. Yet even if restraining the effects of evil was not the only purpose of the state, it was undoubtedly the first calling.\(^{164}\)

Chapter thirteen of Romans, the Pauline mandate that Christians must submit to whatever authorities they find ruling over them (the vigorous invocation of which has gotten Martin Luther in such trouble with half a millennium of historians shocked at the brutality with which sixteenth century rulers put down peasants’ uprisings with Luther’s blessing), was a central passage for Graham. In a representative 1969 talk before law enforcement officials at the Waldorf-Astoria Hotel, for instance, he paraphrased the thirteenth chapter of Romans, and effortlessly substituted for the term “authorities” the word “policeman.”

The Bible teaches that the policeman is an agent and servant of God, and the authority that he has is given to him not only by the city and the state but is given to him by Almighty God. So you have a tremendous responsibility at this hour of revolution and anarchy and rebellion against all authority that is sweeping across our nation.\(^{165}\)

Sharing a 1970 platform with Nixon, he counseled audience members wondering about the endless killing in Vietnam, “I’m for change—but the Bible teaches us to obey authority.”\(^{166}\) And lest one conclude that Graham’s doctrine of submission corresponded only with right-wing causes, he produced five 1970 public service announcements for southern television stations urging parents to obey authorities on matters related to integration. He expressed

\(^{164}\) Graham believed that lawlessness would increase at the end of the world, and he regularly wondered if American culture at least was at its end; see his *The World Aflame*, 26-29, 216-21, 230-31.

\(^{165}\) *New York Times Magazine*, June 8, 1969, 111.

some personal discomfort with the idea of “long bus trips” for children, but counseled that God-fearing Americans must simply “obey the law.”  

One might debate how much Graham ever influenced his hearers toward lawful obedience and how much he merely reflected and articulated a long-entrenched American affirmation of law and order, but in either event, there existed in late 1960s and early 1970s America a gigantic market for the part of his message proclaiming social stability.\(^{168}\) \textit{Time} was undoubtedly right in arguing in their “Man of the Year” piece on the Middle Americans that this country was chockfull of people who heard disorderly and violent calls for radical change as an attack on the Constitution—the most fundamental authority in a nation of laws.\(^{169}\) “Never give in!” to extremist change, Graham had exhorted his national Fourth of July flock from his Lincoln Memorial pulpit.

Historian George Marsden, reflecting on the seemingly insoluble definitional debates over the meanings of the term “evangelical,” once quipped that “the simplest... definition of an evangelical in the broad sense [is] ‘anyone who likes Billy Graham.’”\(^{170}\) As a corollary, it is perhaps accurate to observe that membership of the silent majority during the Vietnam War could be reduced to appreciating Graham’s minimalist political theory emphasizing chiefly America’s mission to the world and sharing his dispositionally conservative commitment to


\(^{168}\) One might further debate the degree to which both Graham and his followers affirmed stability instinctively or because of a generations-long saturation in a worldview where Romans 13 had been important. Both clearly mattered, but in a Jeffersonian nation where upwards of two-thirds of families owned their own home, and an overwhelming majority of citizens conceived of themselves as middle class, the order-seeking impulses flowing from being a member of the landed should not be underestimated.

\(^{169}\) \textit{Time}, January 5, 1970, 14-17.

only gradual change.\textsuperscript{171} For while the number of subscribers to his conversionistic theology numbered in the tens of millions, the subscriber base for his political theology of law and order was vastly larger. Evangelical leaders like to cite the public's fondness for Graham as a demonstration of the size of their flock—for instance, Graham has appeared on Gallup's list of the "Top Ten Most Admired People" more times than any other individual in the last half-century, and almost as many times as Ronald Reagan and Pope John Paul II, the second and third most popular figures, combined. But popular support for Graham probably says less about Americans' precise creedal commitments than it reveals about the public's enthusiastic embrace of a free enterprise system where a fairly typical country preacher with a bit of passion could rise to become the symbolic embodiment of a generically religious nation.

The three decades since the American withdrawal from Vietnam have seen repeated flare-ups about the size, demography, and motivations of the religious right among coastally educated urban writers who tend to mistake their own social circles for America at large. Perhaps the most notable skirmish occurred in January 1993, as Bill Clinton, in essentially his first official act as president, instituted the "don't ask, don't tell" policy, effectively lifting the ban on gays in the military. Grassroots America was outraged, as much by the symbolism of the new president making this his first widely visible act as by the actual substance of the executive order. Michael Weisskopf, writing on the front page of the \textit{Washington Post} about what he interpreted as a shocking outcry (calls to Congress were running "100 to 1 against ending the ban"), casually attributed the public response to the apparently mindless, hypnotic influence of televangelists over their audiences. "Unlike other powerful interests," Weisskopf wrote, the religious right "does not lavish campaign

\textsuperscript{171} Graham, \textit{Man in the Fifth Dimension}, 27.
funds on candidates for Congress nor does it entertain them. The strength of fundamentalist leaders lies in their flocks. Corporations pay public relations firms millions of dollars to contrive the kind of grassroots response that Falwell or Pat Robertson can galvanize in a televised sermon. Their followers are largely poor, uneducated and easy to command.”

The furor over Weisskopf’s piece was nearly deafening, and the Post’s retraction capitulating completely, noting that there was simply “no factual basis for this statement.”

Yet one can assume that the editors who first read the story did not regard Weisskopf’s apparently self-evident statement of “fact” as controversial, even though he marginalized as backwater what was clearly the majority position among voters. The cultural distance between Eastern pressrooms and Main Street living rooms could hardly have been greater.

Weisskopf’s editors would have been well served to have remembered the journalistic confusion about American religious demographics six presidential terms earlier as Richard Nixon took office. After Nixon’s inaugural, and as Graham assumed a more overtly political public role, many elites discovered, apparently for the first time, America’s revivalistic subculture—or perhaps America’s dominant culture. Writers puzzled aloud over who attended Graham’s and other evangelists’ revivals. A New Republic correspondent at a Graham event professed shock at the “inexplicable” fact that anyone would respond to Graham’s “crisp clichés” and his somehow “effective call to Christ and eternal life.”

An extensive Newsweek profile trying comprehend Graham’s appeal, dissecting even his “body English,” reflected on his superlative resume: regularly best-selling author, publisher of the largest independent religious magazine in the world, weekly broadcast host on 975 stations, recipient of 25,000 letters per week, “Mr. Nixon’s chaplain-at-large.” (And this was before

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172 Washington Post, February 1, 1993, A1, italics added; February 6, A21, D1. In archived online editions, the February 2 correction is now also highlighted and reprinted before the February 1 front-page story.

Graham added the most impressive entry to his c.v.: the fact that he has spoken to more people in person than any other individual in world history). Some religion scholars consulted for *Newsweek*’s piece suggested that he appealed primarily to people who want “to be reassured that the South of their childhood...is still to be believed in.” Other analysts argued he appealed “largely to social outcasts.” But most serious observers recognized the inadequacy of dismissing a following that large as simply “the dispossessed.”

Wealthy executives, whom Graham had attracted in abundance since William Randolph Hearst first became stricken with the thirty-one-year-old at a 1949 Los Angeles rally, present the most glaring counter-point to the thesis that Graham’s revivals drew mainly those seeking escape from economically disappointing lives. Even if one brackets questions about the theological appeal of Graham’s message, the fact remains that many prospective crusade attendees had genuine this-worldly concerns about social discord and shifting national identity in addition to—and perhaps prior to—worries about their material status. Secular writers analyzing the revival phenomenon in the Nixon years commonly concluded that “nostalgia for simpler days and ways is the overriding feeling generated by a Graham crusade.” And while that was partly true, such presentist determinations, if accepted uncritically, can lead to the larger and woefully inadequate assumption so many scholars have made that this movement was broadly anti-modern. On the question of embracing new technologies, especially media technologies, for instance, there has scarcely been a more modern segment of the populace than religious conservatives. *Time* was right

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175 For an example of the tidiness of Graham’s system and view of history, see, e.g., his *The Challenge*.

in its January 1970 profile of the “Middle Americans” that most people preferred talking about the space program to talking about race because they believed that all problems arising at NASA were soluble with American ingenuity. Nixon astutely paired this impulse with public religious sentiment, regularly exuding about the astronauts’ December 1968 space prayer.\textsuperscript{177} It is thus perhaps more useful to speak of Graham’s adherents as motivated—at least as far as their this-worldly seeking is concerned—not by nostalgia, but by a desire for simplicity and clarity, about the order of society, about the purpose of government, about the power of pure resolve to retard individual sinfulness, and even about the possibility that social injustice may be insoluble in this age.\textsuperscript{178} Even the names of his magazine and television program—“Decision” and “Hour of Decision”—suggested how simple change could be. Social overhaul might not be, but salvation and personal moral renewal were at hand with a simple choice.\textsuperscript{179}

A non-churchgoing investment banker heading into a 1969 Graham event at Madison Square Garden said he attended partly just to observe the evangelist’s showmanship. But more than that, the comforting coherence of the worldview, the simple elegance of the system, drew him:

He’s talking about a part of America that doesn’t exist any more and probably never did. But it’s a part of America that people want to relate to—the old-time-religion-Little-Brown-Church-in-the-Vale sort of thing. And let’s face it, it’s nice to get away from all of the problems of the cities and the universities for an hour and listen to someone who sees everything in such simple terms. Instead of smoking pot, you go hear Billy Graham.\textsuperscript{180}

\textsuperscript{177} Nixon has written that Graham accused him of being “a little excessive” when the president would talk of exploits in space as the most significant events in history “since the Creation”; see The Memoirs of Richard Nixon, 429-430.
\textsuperscript{178} On the similarities of Nixon’s view of this question to Graham’s, see Richard Nixon, Seize the Moment: America’s Challenge in a One-Superpower World (New York: Simon and Shuster, 1992), 296-98.
\textsuperscript{179} E.g., see Graham, The World Aflame, 179-88, 259-61.
\textsuperscript{180} New York Times Magazine, June 8, 1969, 110.
Knowledge of Graham’s sexual and financial integrity compounded his attraction. He traveled with men from the crusade choir and ensured that all money from the fourteen million dollar annual budget (1969) went through a Minneapolis office controlled by others while he prepared his sermons from only the “pure theology of the Bible” in a simple North Carolina mountain home.\(^{181}\)

The yearning for social cohesion and measured change would not seem to sit well with the widespread affirmation of dispensational eschatology, the belief that Jesus will soon return to “rapture” all true Christians to heaven, leaving the remainder of humanity to suffer through a series of cataclysms and plagues prior to the end of the world.\(^{182}\) Dispensationalism has been incredibly influential throughout twentieth century America—even if little noticed by secular observers until the 1990s when Tim LaHaye and Jerry Jenkins’ “Left Behind” series sold more than fifty million copies, most of them in mainstream venues such as Barnes and Noble—but contrary to the expectations of non-adherents, it has not driven its subscribers to abandon the public square wholesale, as if public efforts amounted merely to shuffling deck chairs on the Titanic. The need to influence policy toward Israel, the site of Jesus’ return and eventual kingdom, obviously motivated some of this. But the more basic reality is simply that many believers seem to have a working, if unreflected upon, theory of the division of labor, whereby God will come again on his timing, and one of believers’ many responsibilities until that time is to attend to the affairs of this world, including politics, although without any illusions that such labors are on a par with the salvation of individual souls.


Sometimes this continuing belief in the utility (albeit limited) of politics alongside an anticipatory looking for Jesus in the clouds can yield seemingly paradoxical pictures to the watching world. In 1971, as an example, many Christian politicians were reading Hal Lindsey’s blockbuster *The Late, Great Planet Earth*. Lindsey’s book, a fairly technical introduction to dispensational eschatology, would be not only the nonfiction bestseller of 1970, but the best-selling book in the entire decade of the 1970s. (In 1972, *Thief in the Night*, a movie about the Rapture which circulated among friends and churches rather than in mainstream theaters, started a similar run that would ultimately make it one of the country’s most watched films.)\(^{183}\) One of Lindsey’s readers was the California governor, who had become a student of dispensationalism under the tutelage of Graham. To millions of Americans who thought an unelected minority was conspiratorially secularizing their country, predictions of the imminent return of Christ to free believers from the consequences of the debacle did not sound so bad. Lindsey didn’t completely foreclose the possibility of a return to the faith of our fathers—“The only chance of slowing up this decline in America is a widespread spiritual awakening,” he wrote.\(^{184}\) But the governor did not have much expectation of that, concluding that the End, “the day of Armageddon isn’t far off.” And so, after a leftist coup in 1971 in Libya, Reagan told a Sacramento assembly, “Everything is falling into place. It can’t be long now. Ezekiel says that fire and brimstone will be rained upon the enemies of God’s people. That must mean that they’ll be destroyed by nuclear weapons.”\(^{185}\)

\(^{183}\) Paul Boyer also notes the popularity of the film *The Road to Armageddon* in youth groups and evangelical churches; *When Time Shall Be No More: Prophecy Belief in Modern American Culture* (Cambridge: Harvard, 1992), 5-7.

\(^{184}\) Hal Lindsey, *The Late, Great Planet Earth* (Grand Rapids: Zondervan, 1970), 184.

\(^{185}\) Boyer, *When Time Shall Be No More*, 142.
Liberals complained that Graham was not only a passive but even an active participant in Nixon's southern strategy, and the historical record does not support the evangelist's defense that he was bipartisan or that he spoke out only against those positions that were categorically incompatible with a Christian theory of politics, such as the encouragement of violence and lawlessness or the toleration of atheistic communism. In fact, in addition to his loudly announced vote for, even if not official "endorsement" of Nixon in 1968, he hosted the Nixon daughters at crusades and made other visible calls on the family during the fall campaign, clearly signaling his preference. At some level, this tacit campaigning seems to have been influenced by his affectionate relationship with Nixon, as well as by regrets that his failure to have endorsed him during the 1960 campaign may have cost his friend that election—a conjecture which may well be accurate.\(^{186}\) (This regret about the outcome was surely partly driven by the religious affiliation of the two 1960 candidates, though Graham seems to have been much less anguished over having a Catholic in the White House than was his outspoken father-in-law Nelson Bell, a key leader of the southern Presbyterian church.\(^{187}\) For Graham, relationships were again key, and he and John Kennedy, though cordial, were never close.)

More than being prompted by relational ties, Graham's occasional articulation of particular policy prescriptions and his tendency to unofficially anoint conservative candidates as the choice of Providence seems to reflect a failure to execute in a disciplined enough manner the distinction he drew between his private views and his nonpartisan public office as an evangelist.\(^{188}\) When called on these tendencies, he seems to have often

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\(^{187}\) Nelson Bell was an early publisher of *Christianity Today*.

\(^{188}\) *Christianity Today*, November 6, 1970, 56, 58; Martin, *A Prophet With Honor*, 423. Graham insisted he wasn't merely a tool of the establishment, but that when he had something to say to a politician, either by way of rebuke or some private opinion, he always said it in private.
conceded his error, admitted he had overstepped his sphere, rather than attempting to justify one of the policy prescriptions as somehow part of the core set of political assumptions necessary for all Christians to hold. He publicly repented, for instance, after telling a press conference that the scourge of rape should be remedied by forcible castration of those convicted of the heinous crime. He later admitted that this declaration had been beyond his expertise; he could say merely that rape is sin, and the state should punish it.\footnote{Martin, \textit{A Prophet With Honor}, 412.}

He scrupulously avoided comment on tax policy, but an impatience with government regulation seems to have regularly tempted him to voice a view. The primary explanation here is that his background as a farmer turned successful salesman in his late teens, combined with his many relationships with triumphant executives, led him accidentally to mistake his personal view for \textit{the} one true Christian view. Yet it also seems likely that his distrust of social engineering in the moral arena led to a somewhat knee-jerk reaction against government programs more generally. And so, sharing the stage with Nixon in Charlotte in 1971, he let slip:

\begin{quote}
In our home, we also wrestled with poverty, if you go by today's standards, except we didn't know we were poor. We did not have sociologists, educators, and newscasters constantly reminding us of how poor we were. We also had the problem of rats. The only difference between then and now is we did not call upon the government to kill them. We killed our own!\footnote{Martin, \textit{A Prophet With Honor}, 386.}
\end{quote}

He was no libertarian, yet like so many religious conservatives during the Cold War, the experience of laboring alongside libertarians in opposition to communist theology had the effect of habituating him also into a rhetoric of freedom that occasionally implied that government action itself bordered on the socialistically authoritarian.
Even if restraining the effects of individuals’ evil acts ranked as the run-away number one daily task of government, Graham and his fellow travelers did not conceive of the purpose of the polity as only negative. Instead, in a divergence which foreshadowed the economic/cultural fault line in the coming decades’ Republican coalition, Graham differed from the burgeoning libertarian movement by conceiving of national governance as, at its root, a spiritual enterprise. Governments exist not simply to punish the wicked and build the roads, but also to serve in a limited role as moral governor, embodying for and recommending to the people the reality of a universe ordered by moral laws.191 With delegated authority from heaven, good politicians remind the governed of God’s ongoing sovereignty in spite of the lawlessness of the human heart. Graham never suggested that this knowledge of moral reality facilitated by the privilege of living in a properly ordered state saved anyone eternally, but citizens benefited from the political tutorial nonetheless, because it restrained to some degree the sinner’s proclivity to sear the conscience and become a law unto oneself. And not least importantly, a stable society humbly acknowledging God’s providential rule created a context of religious liberty in which the evangelist might freely preach to them the one path to ultimate salvation.192

Neither salvific nor wholly secular, the Christian or “Judeo-Christian” country was to teach its young about the existence of God and his laws, and about the truth that happiness could be found, for both individual and nation, only in conformity with his will.193 Graham never ventured a systematic theology, but a perusal of his occasional writings and countless sermons communicated the necessity of American political leaders affirming religious truths in their public roles. He regularly sent Nixon suggested Bible verses to cite

191 Graham, Man in the Fifth Dimension, 27.
193 Graham, Man in the Fifth Dimension, 27.
in various contexts, for instance. Yet he did not conceive of such state affirmation of
religious truth as in any way a mixing of “church” and state. Like so many religious
Americans, Graham affirmed the First Amendment’s religion clauses—properly qualified—and he even complimented JFK for having “turned out to be a Baptist president,” by which he meant having kept institutional religion from acquiring any direct political power. Yet the First Amendment was surely not, he believed, inconsistent with the generic public acknowledgement of God. And he thus continued to rail against the Engel and Schempp prayer rulings, finding it “very interesting” that these decisions have just preceded “the disturbances in our schools.” Qualifying as a student of comparative government based simply on the breadth of his travels, he continually opined: “God honors a nation that honors God. The Supreme Court has misinterpreted our forefathers’ intentions...Personally, I think that the few atheists who object to Bible reading in schools should be overruled by the majority.”

During Nixon’s quest for a second term, Graham came closer than at any other time to overt politicking. Motivated partly by his fundamental trust in his friend—his noticeable backing away from politics starting in 1974 was inaugurated by his experience vomiting upon reading the Watergate transcripts and realizing how naïve he had been about Nixon—he had in 1972 considered organizing conservative clergy to speak out in support of the

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194 Frady, Billy Graham, 446.
196 Frady, Billy Graham, 438. See also Graham, Man in the Fifth Dimension, 27.
197 In a telling picture of the post-Watergate change in Graham, he would retreat from this-worldly politics, writing a book on angels, which Publishers’ Weekly pronounced the best-selling book in America in 1975—even though religious books were then systematically undercounted (because of the types and locations of the bookstores surveyed); see Angels: God’s Secret Agents (Garden City, NY: Doubleday, 1975). On the larger point of Graham minimizing social corruption in comparison to personal corruption: He seems to have been as disturbed by Nixon’s crude language revealed on the White House tapes as by the actual betrayal of public trust; see Martin, A Prophet With Honor, 431.
president. His central concern was that George McGovern, as the son of the Methodist minister and himself a former professor at a Wesleyan university, might mislead religious Americans into concluding that there was no substantial difference between one party affirming propriety in public life and another party increasingly tolerant of cultural recklessness. Later released White House memos reveal that aides such as Charles Colson and H. R. Haldeman had outlined a strategy to “use Graham’s organization,” worried as they were that the silent majority, though uncomfortable with McGovern’s antiwar stance, might like the idea of “a pastor” occupying the Oval Office.¹⁹⁸ (McGovern had been a seminarian in Evanston prior to settling into a history Ph.D. program at Northwestern in the late 1940s.)

For Graham, the motivation may have been more precisely theological as well, with the apostasy of the Democratic Party nationally in some sense mirrored by McGovern’s own trajectory from the frontier, prohibitionist, muscular Christianity of this father (a former professional baseball player turned preacher) to the Social Gospel of Walter Rauschenbusch that McGovern had embraced in college.¹⁹⁹ For Graham, worse even than the notion of a “permissive” president might have been the thought of a self-consciously heterodox religious man as national leader.²⁰⁰

The Committee to Re-elect the President declined Graham’s hesitant offer to spearhead a movement of conservative clergy to counteract a Methodist-led group of 200 ministers for McGovern. One committee member explained that it was not “in the interest of the public good to organize clergy, by reason of their clerical profession, to participate in partisan political activity.” The Committee likely also deduced that Graham’s public

¹⁹⁸ Martin, A Prophet With Honor, 395.
²⁰⁰ Oddly, Nixon even claimed that Graham delivered advice from Lyndon Johnson on how to defeat McGovern; Nixon, The Memoirs of Richard Nixon, 674.
appearances with the president and his seemingly off-the-cuff "quasi-endorsements," combined with his private introductions of the president to televangelists like Oral Roberts and mailing list powerhouses like Campus Crusade's Bill Bright, might produce a more salutary benefit than by having Graham sacrifice the huge store of nonpartisan credibility he'd accumulated by associations with every president since Truman. Not unimportantly, an overtly partisan Graham had drawn fire from Roman Catholic officials—at exactly the time both Nixon and Graham were making great gains with Catholic laity. "Billy, at all costs, you stay out of politics," Nixon is alleged to have told Graham repeatedly, even if not sincerely.

Nixon's stunning victory over McGovern in November 1972, arguably the largest landslide in presidential election history, obviously resulted from a combination of factors, many of them—such as a mildly improving economy, McGovern's waffling in the Eagleton affair, Nixon's amazing although illegal fund-raising successes, the realization that the war really would end, and the prospects of better relations with China—entirely unrelated to religio-cultural concerns. Still, a major segment of the electorate conceived of their 1972 choice as one between a president who shared their values about the religious foundation of the country, and a candidate of the far left concerned chiefly with "acid,

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201 Martin, A Prophet With Honor, 394-97.
202 Billy Graham Talks with David Frost, 66.
203 Nixon's 60.3% of the popular vote was just twenty-six hundredths of a point less than FDR received in his otherwise unparalleled 1936 trouncing of the unknown Republican candidate, Kansas governor Alfred Landon—even though Nixon in 1972 didn't have anything like the partisan organizational advantage Roosevelt possessed in 1936. On the deficiencies of Nixon's party organization compared to FDR's machine, consider the still nascent state of Republican infrastructure in the South at this point. And in terms of party affiliation nationwide, well under thirty percent of the population (27%) considered themselves Republican in the early Nixon years.

Warren Harding in 1920 and Lyndon Johnson in 1964, the only two other candidates ever to break 60% of the popular vote, cannot be considered as overwhelming in their victories as were FDR and Nixon, given that both failed to dominate every geographic section of the country (both lost huge swaths of the South). FDR in 1936 and Nixon in 1972, by contrast, carried every region unchallenged, each losing only two "states" in the Electoral College. FDR lost Vermont and Maine; Nixon lost Massachusetts and the District of Columbia. Reagan in 1984, who will be discussed in the next chapter, also lost only Minnesota and DC, but he captured only 58.8% of the popular vote.
amnesty, and abortion.\textsuperscript{204} And so Nixon, supposedly of the country club party, pulled not only the “hardhats” but also the evangelicals, the latter group by a count of probably thirteen million to three million nationwide.\textsuperscript{205} Perhaps most importantly—even if far too little noticed by political historians since—Nixon in 1972 became the first national Republican candidate to command the support of a majority of Catholic voters. More in line with prior Republican history, he had received the support of only thirty-three percent of Catholics in 1968.\textsuperscript{206} Such remarkable Republican gains cannot be explained simply by Catholics’ improving socio-economic standing, especially given that no segment of the populace saw their economic fortunes improve much during the stagnant few years leading up to 1972.

A few caveats are in order about Nixon’s improbable popularity. First, in neither 1968 nor 1972 (nor even the 1970 mid-term elections which Nixon foolishly attempted to nationalize as a referendum on himself) did the president have any significant coattails to speak of in congressional elections. As Michael Barone has ably argued, the Nixon campaigns must be viewed as a watershed moment in the transformation of the twentieth century presidential campaigns from being primarily about economics to being primarily about culture, yet Nixon’s blistering attacks on northern Democrats as the party of permissiveness, so effective in his own elections, were an abject failure in individual congressional races where local Democratic incumbents, attuned to regional concerns, could not all be painted with the same broad brush charge of being in bed with the vocal minority.

\textsuperscript{204} As discussed earlier, conservative columnist Robert Novak publicized an alleged comment by a Democratic Senator rejecting McGovern’s policy interests as merely “acid, amnesty, and abortion.” For statistics on the increasing control of avowed secularists inside the Democratic Party beginning in 1972, see Geoffrey Layman, \textit{The Great Divide: Religious and Cultural Conflict in American Party Politics} (New York: Columbia, 2001); also Louis Bolce and Gerald De Maio, “Our Secularist Democratic Party,” \textit{The Public Interest} 149:2 (Fall 2002), 3-20.

\textsuperscript{205} \textit{Christianity Today}, June 18, 1976, 32-33.

\textsuperscript{206} \textit{Christian Century}, July 9-16, 1975, 659.
Thus even though Nixon in 1972 carried 376 of 435 individual districts, his party would hold House seats in only half of the districts he carried on the morning after his reelection.\textsuperscript{207}

Second, and more importantly, this argument does not mean to suggest that Nixon’s selling of himself as “the candidate of consensus” to culture warriors was exclusively about public religion. Certainly, backlash against busing to achieve racial integration in schools was a central factor in the decision of millions of Americans to support an administration whose attacks on bloated bureaucracies were rightly interpreted by segregationists as partly a tacit pledge that the Justice Department would be slow to enforce such judicial orders. Still, it is also undoubtedly true that backlash against legal secularization played a major role in the increasing comfort many voters felt with national Republicans over national Democrats—a point that, unlike resistance to desegregation and busing, has been entirely underappreciated by American historians to date. To voters worried about the Supreme Court’s influence—be it for desegregation, for expanding the rights of the accused, for increasing access of pornographers to the mails, or against school prayer—Richard Nixon seemed to stand for their Middle Americans values. The friends of Reinhold Niebuhr may have worried about “the Nixon-Graham doctrine” of linking “religion to public morality and policy,” but the friends of Frank Becker entertained no such concerns, all of their fears running in the opposite direction.\textsuperscript{208}

On Sunday, January 21, 1973, the day after Nixon’s second inaugural, he gathered key supporters—the “administration that prays together,” some were saying—for another White

\textsuperscript{207}Democratic representatives won half of Nixon’s districts, as well as 56 of the 59 districts McGovern carried; Michael Barone, \textit{Our Country: The Shaping of America from Roosevelt to Reagan} (New York: Free Press, 1990), 509-10.

\textsuperscript{208}Niebuhr, “The King’s Chapel and the King’s Court,” in Rose, \textit{Sermons Not Preached in the White House}, 14.
House worship service. In an extended format for that Sunday, Billy Graham would share the pulpit with “Rabbi Edgar F. Magnin, a Reform Jew from the Wilshire Boulevard Temple in Los Angeles [and] the Most Rev. Joseph L. Bernardin, Roman Catholic Archbishop of Cincinnati.” Standing in front of a “God is our strength” banner, Graham preached that the Ten Commandments, as something Jews and Christians jointly affirm, should be “read in every classroom in America every day so that students throughout the country will know there is a right and there is a wrong.”

After the service, journalists present asked one of the worshippers, Warren Burger, what he thought of Graham’s proposal. The chief justice conceded that there may be some constitutional problems, but he generally kept his remarks brief. It is fair to assume that Nixon appointee’s mind was somewhere else, for the next morning the Court would be handing down its Roe v. Wade ruling.

Investigative reporter Bob Woodward later uncovered that Roe’s long delay likely resulted from Burger’s stalling to ensure that the decision—sure to anger the behemoth silent majority—did not interrupt the reelection campaign of God and country. For Burger well understood, even if historians since Reagan’s presidency have occasionally forgotten, that the drift of cultural conservatives—Protestant, Catholic, and Jewish—into the Republican Party was well under way long before abortion became a major political issue. And Burger’s president even more than Ronald Reagan was the architect of the new Republican coalition.

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— Chapter VIII —
Reagan’s Revivalists

Across the country, “the Reagan Revolution,” or sometimes a slightly less bombastic “conservative turn,” is being erected in the minds of students as the most recent period-defining marker in U.S. political history. Survey courses in secondary schools and universities frequently wind down the spring semester with a series of lectures on 1980 and its aftermath in a way that defines the Reagan/Carter contest as a break with the past in a way qualitatively different than the elections of 1952, 1960, 1968, or 1976—the four previous cross-party transfers of presidential power since the Great Depression.¹

A determination of whether this moment merits such dramatic emphasis depends, of course, on what fits under the heading. If the “revolution” is defined as the partial rollback of the New Deal, as the movement to radically minimize the government’s role in the regulation of business and the redistribution of income, then this political economic transformation might well warrant the pride of place it receives alongside the Civil Rights movement in the dominant narrative of Cold War America. For in a way foreshadowed not by Eisenhower, not by Nixon, and surely not by any of the other presidents to be elected since Herbert Hoover (all Democrats), the former General Electric spokesman-turned-politician championed a shrinking of the federal role in public life in every major sector except military expenditures. In his libertarian sympathies—“Government is not the solution to our problem; government is the problem”—Reagan was prefigured on the

¹ It is admittedly difficult to quantify how a diverse set of scholars and teachers are currently defining the major “period-defining markers,” but George Mason University offers a useful tool toward this end: The website http://chnm.gmu.edu/tools/syllabi/ enables one to search thousands of syllabi from colleges and universities across the country. Exploring U.S. history survey courses leads to the impressionistic conclusions about 1980 argued for here. On the voting habits of religionists since World War II, see Lyman A. Kellstedt and Mark A. Noll, “Religion, Voting for President, and Party Identification,” in Mark A. Noll, editor, Religion and American Politics: From the Colonial Period to the 1980s (New York: Oxford, 1990), 355-79.
twentieth century national stage really only by Barry Goldwater, a candidate who was utterly embarrassed at the polls, receiving fewer than half as many votes in 1964 as Reagan would secure twenty years later.²

Significantly, a perusal of the six best-selling high school U.S. history textbooks—which together hold approximately eighty percent share of the market—reveals a much broader Reagan Revolution, an event more cultural than economic.³ The magnitude of the changes to fiscal and tax policy initiated in 1980 is not denied, but such developments share the survey spotlight with a series of skirmishes in the culture war over abortion and related sexual policy, school prayer and broader public religion. The textbook authors are surely right in their tacit assumption that a huge number of voters did not make their ballot-box decision for the former California governor based on technical disputes about how long-term economic growth is spurred, and thus that historians must seek the sources of Reagan’s popular appeal in non-economic arenas as well. Undoubtedly, the powerful attraction many citizens felt to Reagan resulted less from his libertarian leanings than from his aggressive foreign policy to defeat the “Evil Empire,” his defense of traditional values, and even his personal charisma, especially on the heels of a president who had awkwardly chastised them for contributing to a “national malaise.”

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² Reagan in 1984 received 54,451,000 votes (58.8%) compared to Mondale’s 37,565,000 (40.5%). Goldwater in 1964 received 27,175,000 votes (38.5%) compared to Johnson’s 42,825,000 (60.6%).

Nevertheless, this need to dissect the Reagan constituency, though proper in itself, frequently seizes the central place in the discussion—in part simply because today’s students (like voters in 1980) are assumed to be not only unqualified to referee but fundamentally uninterested in theoretical economic debates. The primary deficiency of such a telling of the meaning of 1980 is that it inevitably, even if not deliberately, misleads hearers into transferring much of the “revolutionary” aspect of Reagan’s victory from the innovative economic theories and altered entitlement policies he championed (which is the real epic development) to the electoral coalition he mustered. But truth be told, this coalition had much greater continuity with recent prior history than is typically suggested. In hindsight, it is Carter and his constituents, rather than Nixon or Reagan and theirs, who look like the cultural outliers in a parade of presidential candidates and base supporters each party fielded in the elections prior to and following upon 1980.

Historians overstate the uniqueness of Reagan’s constituency partly because they consistently understate the size of the coalition Nixon assembled in late 1969 and held through his reelection contest. The difficulty the nation has in remembering the ultimately criminally unpopular Nixon as anything other than an accidental president is certainly understandable. This is a man who, after all, did not seem to be elected in 1968 so much as handed the presidency by Sirhan Bishara Sirhan and by Democratic infighting—and yet who, even under such circumstances, managed to garner only 43% of the vote (compared with Hubert Humphrey’s 42%). Combining the story of his unremarkable ascent with the remarkable shame he brought on the office by his fall—resigning with only 13% public approval, to then be pardoned by an unelected Gerald Ford, the only chief executive in U.S.

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4 See, e.g., Cayton’s Pathways, 800-04.
5 This telling of Nixon’s first election, though, does need to be qualified by the observation that without Wallace running on his right, he would likely have won easily in 1968 as well.
history to have never won election to any nationwide office—it is tempting to conceive of
the Nixon administration as merely an ill-fated parenthesis in two decades of Democratic
dominance in national politics from 1960 to 1980. And if one recalls the openness of the
Democrats to nominating the moderate General Eisenhower in 1948, it is possible to view
even the communist-preoccupied 1950s as not far out of keeping with a much longer run of
one-party rule.

Nixon's personal legacy will always be the Watergate break-in and his consequent
1974 fate, but this doesn't change the fact that the electorate's action at the 1972 polls
demands attention, and indeed provides a telling glimpse into the coming decades' national
political alignment. The migration of cultural conservatives toward the Republican Party
had begun prior to Nixon, and it would continue, especially in congressional races, for more
than two decades after him. But if one wants to identify the single most momentous marker
in the transformation of formerly Democratic white religious Americans into reliable
Republican voters in presidential contests, that moment is not 1980 or 1984, but 1972.
Regardless of the fact that impressionistic data suggests voters liked the grandfatherly
Reagan more than the combative Nixon, they did in fact vote for Nixon in 1972 more
overwhelmingly (over 60% of the popular vote) than they ever voted for Reagan (50.8% in

6 "Approval" is probably even too strong a term. A New York Times poll as Nixon resigned showed only 13% of
the public doubting this was the necessary step; 79% supported the decision. New York Times, August 11,
1974, 44. On Ford's status, recall that just after the Nixon/Agnew reelection, the vice president was forced to
resign on charges of tax evasion and accepting bribes during an earlier stint as governor of Maryland. This
prompted Nixon to nominate Michigan's Rep. Ford as the replacement in the number two slot, a choice
Congress confirmed.

7 Some might dispute the characterization of Eisenhower as a moderate, but much of the Democratic Party was
willing to drop Truman in favor of Eisenhower, and prototypical Republicans such as Robert Taft were
frustrated with Eisenhower's willingness to tolerate so many New Deal programs and his unwillingness to
reign in the federal bureaucracies Roosevelt had created.

8 Jeff Manza and Clem Brooks, Social Cleavages and Political Change: Voter Alignments and U.S. Party
Coalitions (New York: Oxford, 1999), 85-127; also Lyman A. Kellstedt, "Evangelicals and Political
Realignment," in Corwin E. Smidt, editor, Contemporary Evangelical Political Involvement: An Analysis and
Assessment (Lanham, MD: University Press of America, 1989), 99-115; and Jeff Manza and Clem Brooks,
1997), 38-81.
1980, 58.8% in 1984). Similarly, it was Nixon rather than Reagan who was the first Republican to capture a majority of the Catholic vote. It was Nixon rather than Reagan who solidified his party's standing in the South, including among the dominant denominational constituency there, the Southern Baptists. Finally, it is Nixon rather than Reagan who must be credited with conclusively peeling white evangelicals, in all regions, away from the Democratic Party—with white evangelical support of Humphrey and McGovern falling to less than one-third during the tumultuous years of the anti-war demonstrations.

Perhaps the most glaring misconception about 1980 that continues to obscure the significance of 1972 is the widespread but finally unsupportable belief that evangelicals won the election for Reagan by shifting from left to right in significant enough degree to provide his margin of victory. Since 1981, and with even greater consensus since the end of his first term, pollsters and political scientists have disputed the argument that born-again Protestants either turned out in surprisingly greater numbers in 1980, or that they voted for the Republican in ways meaningfully greater than the nation as a whole or than their own historic trends. Yet despite persistent journalistic claims to the contrary (and granting the difficulties of making meaningful comparisons across the many different definitions of "evangelicals," "fundamentalists," the "religious right," and "born-again" voters), the basic

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9 As a counter-point, as was suggested in the last chapter, Nixon certainly never had the coattails Reagan did. There were many reasons for this, but one of them was that Nixon in 1972—still surprised by his inability to help Republican Congressional candidates in the 1970 mid-term election—decided to appeal to Democrats in the South as Democrats. The attempt to persuade Democrats that they could remain Democrats and still support Nixon constrained the president not to campaign in support of individual Republicans in 1972; see Barone, *Our Country: The Shaping of America from Roosevelt to Reagan* (New York: Free Press, 1990), 509.


consensus among social scientists is that “nothing appears distinctive about the voting behavior of fundamentalists compared to other respondents” in November 1980.12

Two specific data points illustrate well the larger argument. First, though highly religious Protestants tended to express greater warmth in “feelings thermometer” polls toward both Reagan and Carter than did Americans as a whole (with both major candidates, as well as third party candidate John Anderson, describing themselves as “born again”), Carter in 1980 retained a higher proportion of white evangelicals—both in the South and elsewhere—than he did of his 1976 supporters as a whole. Conversely, “a slightly smaller percentage of born-again white Protestants (61 percent) than of other [non-born-again] white Protestants (63 percent) actually voted for Reagan.” Second, although the American evangelical community in 1980 was estimated at somewhere between thirty and sixty million (numbers which included black evangelicals), only six to ten percent were thought by political scientists to vote in ways that differed meaningfully from their larger denominational (defined here as simply Protestant, Catholic, Jewish, or other), ethnic, racial, and class demographic cohorts. Thus even if Reagan had not outpolled Carter with the sub-segment of white evangelicals whose born-again status influenced their voting, it would still not have affected the outcome of the election because that segment was simply too statistically insignificant.13

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The most important electoral divide in 1980 then was not, as zealous journalists had evangelized on the eve of the election, evangelical versus non-evangelical, but instead self-identification as “highly religious” versus “less religious.”\(^{14}\) The cultural conservatives went overwhelmingly for Reagan, and 62% of those who voted largely on cultural factors such as abortion conceived of themselves as highly religious, whereas only 6% of this group said religion had little importance to them. In an article published just four months after Reagan’s victory over Carter, but which has stood the test of many subsequent, more detailed studies, political scientists Seymour Martin Lipset and Earl Raab took contemporary journalists and political analysts to task for exaggerating the significance of groups like the Moral Majority and attempting to quarantine the Republican’s religio-cultural appeal to specific “fringe” denominational groups. In fact, the country’s “conservative political swing” was apparent “among all groups—and [even] more...among non-evangelicals than among born-again,” they wrote. Liberal politicians and professional observers persistently held to the inaccurate supposition that traditional views on religious and cultural questions were found mainly only in a subset of the 59% of Americans then claiming church membership. In fact, although there are obviously important

...doctrinal differences between those who do and those who do not attend church, 76 percent of the unchurched reported that they pray to God and hold to traditional values. Nine out of ten, in both the churched and the unchurched groups, said they would welcome more traditional family ties than now exist. About the same percentage in both groups said they would also prefer greater respect for authority in society.\(^{15}\) Lipset and Raab’s two big observations—that the more religious a person considered herself, the more likely she was to support the Republican for president (excepting African-

\(^{14}\) Recent data suggests this trend has accelerated since 1980, as avowed secularists and Protestant liberals have been repelled by the Republican Party even more than conservatives religionists have been drawn to it; see Manza and Brooks, *Social Cleavages and Political Change*, 124-26.

Americans); as well as that many folks who were not institutionally religious still thought of themselves as religious—may have been news to scholars, but these were not new insights for conservative politicians. Reagan’s advisers obviously grasped it, but even better claimants at having first understood and helped widen this divide are Richard Nixon and his aide Kevin Phillips—or perhaps even Frank J. Becker and the House Republican Policy Committee a half-decade earlier.16

U.S. history survey courses and textbooks will likely continue to talk about the influence of evangelicals on Reagan’s win, in part because religion did matter in the election, but mostly because religion in general and the evangelical community in particular have usually been absent from overviews of American life for decades by the time 1980 rolls around. This is because history surveys, while purporting to be organized chronologically, in fact are not. There is simply too much material to treat every topic in every period, so what actually organizes introductory texts is an underlying skeleton of the major dates from political history, onto which a series of topical lectures is laid.17

Scanning the survey text version of U.S. history (again using the six best-selling high school U.S. history textbooks as a guide), one discovers that religion appears at least twice and as many as half a dozen times from the first World War to the present. In “jack-in-the-box” fashion, understandably lamented by religious historians, religion just “pops up” at

16 Frank Guliuzza’s “Religion and the Judiciary,” in Corwin E. Smidt, editor, In God We Trust? Religion and American Political Life (Grand Rapids: Baker, 2001), presents interesting data on what appears to be the growing secularism of the bench after Everson (1947); see especially 242-43. Journalists were found of talking about “two America’s” in economic terms, but conservative politicians rightly understood that personally irreligious federal judges and the religious masses resided in “two America’s” segmented in another way altogether.

17 James McPherson and Alan Brinkley’s Days of Destiny is a useful attempt to problematize the political timeline and to emphasize additional cultural, scientific, and pre-political developments. Unfortunately, June 25, 1962 didn’t make their list of overlooked dates. See McPherson and Brinkley, editors, Days of Destiny: Crossroads in American History: America’s Greatest Historians Examine Thirty-One Uncelebrated Days that Changed the Course of History (New York: DK, 2001).
certain moments in the narrative as if it has no past, and then just as quickly goes
subterranean again. The sense conveyed is that a sizable religious constituency probably
always existed, but that it has been so far removed from the important developments in
culture and politics that these people and their beliefs are worthy of attention only at those
moments where they fight against the main narrative. Religious communities are apparently
always backwater groups dissenting from progressive changes that temporarily proceeded at
too swift a clip. The clear implication is that religious America should be understood not as
mainstream, but as something that reacts against the main currents. 18

The first appearance of religion on the twentieth century scene, and the one never
bypassed by the surveys, is the Scopes trial of 1925, when the washed-up former
Democratic presidential candidate William Jennings Bryan futilely attempts to defend older
religious ideas about the origins of humanity against the brilliant Clarence Darrow, cast as
the champion of evolutionary theory, academic freedom, and by implication, an expansive
future. 19 While in the neighborhood (importantly, rural Tennessee rather than a coastal
city), 20 the survey author might also touch upon the ill-fated attempt to prohibit alcohol via
the Volstead Act, the on-going nativist/Protestant attacks on Catholic and Jewish
immigrants, and the KKK's campaigns against Alfred Smith in 1928, the first non-Protestant
presidential candidate. 21 These retrograde developments are used by some texts as an
obvious counter-point to all of improvements in American life prompted by the progressive
reformers in the century's first decades—of course with no mention made of the role of
religious motivations and organizations in such reforms.

18 Bragdon's History of a Free Nation is even worse, as religion is almost entirely absent.
19 All six textbooks cover it. Only in accounts of Reagan's supporters in 1980 does religion come close to
receiving such coverage again anywhere in the twentieth century.
20 H. L. Mencken and Sinclair Lewis characterized fundamentalists as "rustic bigots" when writing for their
urbane audiences; see Leo P. Ribuffo, "God and Contemporary Politics," 1517.
After this string of public humiliations in the 1920s, it is no surprise that “religion” hides from public view for a number of decades, usually not reemerging until the 1950s. Here it will function less antagonistically to the larger culture, but it still occupies an unmistakably bland office, helping shepherd the returning GI’s and their booming families as they adapt to the age of abundance, move to the suburbs, stare mindlessly at televised pap, and learn to conform to the deadening rhythms of mass culture. Reflecting on this survey story, it is easy to forget that this is the generation that won World War II, and accidentally to begin despising them for raising their children in such a shallowness (possibly even entertaining the thought that they were going to deserve whatever difficulties they received in turn from their kids when they became adolescents). Religion here becomes just another saccharine consumer good, as the Organization Man and his toaster-operating housewife pack into the gas-guzzling station wagon for trips to California, join the Rotary club, and/or attend Billy Graham crusades—all with the same uncomprehending smile. Sometimes, of course, the smiles evaporated, as when building a basement fall-out shelter or attending a McCarthyite anti-communist rally, but in either case, religion was there, if necessary, to ease the shock and lubricate local community.

In 1960, with a Roman Catholic running for president again, the history surveys have popular religion reappearing to split the difference between its reactionary side from the 1920s and its increasingly conformist, follow-the-culture side revealed in the 1950s. While some citizens opposed Kennedy because of religious prejudice, the privileged story—indeed one capped by Kennedy’s victory—is how America simultaneously pluralized and

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22 This wasn’t accurate; it is merely how historians have summarized the developments. Leo Ribuffo rightly notes that “the first Fundamentalist controversy had never ended; it had merely slipped beneath cosmopolitan notice.” See Ribuffo, “God and Contemporary Politics,” 1516.
23 Boorstin’s chapter on the 1950s, “Mobile People, Magic Machines,” makes religion appear to be primarily a tool to deal with modern technological alienation, 750-72.
24 For instance, the “Mood of the 1950s” section in Cayton’s Pathways, 614ff.
secularized, shedding much of its older, exclusively Protestant ethos and embracing a broader, softer "Protestant-Catholic-Jew" identity. At least since the battlefields of Europe and the aircraft carriers of the Pacific in the 1940s, patriots of all denominational backgrounds had supposedly been realizing the possibility of not only fighting alongside one another in wartime but also voting alongside one another in peacetime in the quest for a better, common America. When the 1962-63 Supreme Court decisions on school prayer are mentioned (and they usually are not), it is primarily to illustrate this larger trend away from divisively Protestant public religion and toward a more secular nation in which people of all creeds can feel at home.

After the early 1960s, survey text religion must be rushed quickly off the stage, for this decade's central storyline is about the Vietnam conflict abroad and conflict over Vietnam and Civil Rights at home. Because the 1960s are the stylized radical rebellion against the stylized conformist 1950s, religion of course cannot fit here. (And one must not miss the fact that powerful photographic images—which capture not only survey publishers' but also academic historians' minds—will always incline a narrative to privilege a 1968 antiwar demonstration with clenched fists and guitars over a 1962 second-grade classroom with folded hands at prayer.) The churchly backgrounds and motives of Martin Luther King and his supporters may be mentioned briefly (though rarely given as much attention as his study of Ghandi, for instance), but religion is otherwise invisible. The fact that the influence of revivalism became more pervasive than it was the 1950s is ignored.

25 Boyer's *The American Nation*, 832, and Danzer's *The Americans*, 831, both expand the story slightly by touching on John Kennedy's repeated articulations of support for the separation of church and state.
26 Four of the six leading survey texts pass over the 1962-63 decisions.
27 Boyer's *The American Nation* is better than this (see 881, 900-01, 919), but school prayer is still treated when candidate Reagan speaks out in favor of it 1980, rather than in the 1960s, when it was clearly a bigger issue, 928. Cayton's *Pathways to the Present* inadvertently distorts the issue in the same way, ignoring school prayer in 1962-63, but covering it briefly in 1980, 807.
Part of the motive of survey authors and lecturers in avoiding religion in this period may be to avoid controversy about the fact that racist opposition to desegregation (as well as more complicated opposition to busing) seems to have originated disproportionately in religious communities. Leaving religion out of the "backlash" against the main thrust of "the 1960s" thus avoids delicate questions about religious bigotry while still acknowledging that many Americans resisted racial equality and supported militarist foreign policy.\(^{28}\) The survey is thereby free to hint that the social conservatives stood on the wrong side of history—as is highlighted by the final revelation of the character deficiencies of the president who tried to appeal to the repressive elements of society—yet our historical tour guides have not necessarily taken any shots at religious communities, for they have simply been left out of the story.\(^{29}\)

Against this backdrop of a religion-free Nixon era, the arrival of Reagan with his religious legions cannot be interpreted as anything less than a revolution.\(^{30}\) Indeed the only real foreshadowing of Republican religionists in the survey texts after Vietnam begins and before Reagan gets the nomination is a brief account of Phyllis Schlafly, the influential


\(^{29}\) Nash’s *American Odyssey* is something of an outlier, capturing well the God-and-country aspect of the Nixon majority, 808-13.

\(^{30}\) Erling Jorstad’s *Holding Fast, Pressing On: Religion in America in the 1980s* (Westport, CT: Greenwood, 1990), highlights also how overstating the religious surge—and thereby raising expectations among grassroots activists—contributed to the appearance of a letdown later in that decade. The sexual and financial scandals of the televangelists in the late 1980s obviously also played an important part. For a state-by-state analysis of the Christian right in thirteen states over the last two decades, see John C. Green, Mark J. Rozell, and Clyde Wilcox, editors, *The Christian Right in American Politics: Marching to the Millennium* (Washington, DC: Georgetown, 2003).
opponent of the Equal Rights Amendment.\textsuperscript{31} Schlafly appears, occasionally photographed with her “Stop ERA” stop-sign-shaped placard, in the six best-selling textbooks frequently enough to make one suspect that she might be the second most important religious figure of the twentieth century, after Bryan in 1925.\textsuperscript{32} The texts tend to paint her as a reactionary, even as they awkwardly acknowledge that she tapped into widespread dissatisfaction among both men and women with much of feminist agenda.\textsuperscript{33} How she can simultaneously represent perhaps the dominant position on a set of massively important policy debates, and yet somehow parachute into the story in the late 1970s as if her constituents did not previously exist, is never adequately explained.

The deficiencies and distortions of this gloss on twentieth century American religion—from Scopes to suburban religion, then Kennedy to Schlafly, Falwell, and Reagan—should be apparent. Religion has been sometimes more important (even politically important) than in this telling, other times less important (chiefly 1980), but always more complicated and always more interesting. As just one example, the Civil Rights movement could almost as easily be told as a purely religious fight (treating black churches, segregationist Protestants, marching white Protestants, the Nation of Islam, Catholic parish boundaries, Jewish involvement in the NAACP, etc.), as it can be told in its current form as an almost entirely secular story. Neither of these two versions is accurate, but the point here is simply that religion is mistakenly marginalized in current tellings.

\textsuperscript{31} One might have assumed that the overstatement of the supposed swing of popular religious support to the Right in 1980 flowed in part from a corresponding overstatement of the importance of Carter’s born-again status in 1976. In fact, though, the surveys tend to ignore Carter’s religion.

\textsuperscript{32} E.g., Boorstin’s \textit{A History of the United States}, 858; Boyer’s \textit{The American Nation}, 922; Danzer’s \textit{The Americans}, 931-32.

Because of this backgrounding of religious actors and motives in the 1960s and ‘70s, when religion “returns” in 1979-80, it arrives too abruptly, too heavily. Televangelists like Jerry Falwell were plainly not as important as the “revolutionary arrival of the religious conservatives in 1980” story forces survey authors to portray them. And the increasing centrality of the South to conservative politics seems to have suddenly become sacred with Reagan, where just a decade earlier during backlash, the concerns of southerners seemed only profane, only about race. In reality, it was partly about both race and religion on both occasions, just as the southern Democrats who increasingly voted with or sometimes even switched party affiliation to the Republicans were motivated by identify factors of all sorts.\(^{34}\)

And what about the shifting party allegiances of many non-southerners, like Reagan himself? For he was not only a Truman Democrat and a leader of “Democrats for Eisenhower”; Reagan was also stumping in the South in the 1960s discussing “How the Democratic Party Left Us,” an account not chiefly about cultural concerns, but suggestive nonetheless of an apparently widespread concern that national Democrats had departed from their older commitment to “the American way”—a rhetorical appeal that, like so much of Reagan’s effective speech, worked well with both economic and religious conservatives.\(^{35}\)

Though somewhat cynically recounted here, each of these religious snapshots—from 1925, to the 1950s, to 1960, to 1980—does indeed capture a slice of the century’s story. The problem is that, taken together, they arguably present a less accurate picture of American public life and the place of religion in it, than would telling essentially the same

\(^{34}\) Kari A. Frederickson’s *The Dixiecrat Revolt and the End of the Solid South, 1932-68* (Chapel Hill: North Carolina, 2001) provides a telling example. The book is outstanding—yet incomplete, as it largely overlooks religious factors in its analysis of Republican positioning in the South in the 1960s presidential races, 217-38.\(^{35}\) Ronald Reagan, *The Creative Society: Some Comments on Problems Facing America* (New York: Devin-Adair, 1968), 135-38. Anticommunist rhetoric was of course effective with both economic and religious conservatives—a point ably unpacked by Cayton’s *Pathways*, which does helpfully anchor the new religious right in a 1950s anticommunist context, 798-800.
story with these religious vignettes deleted altogether. Individuals such as Schlafly and Falwell, like all three-dimensional people rather than two-dimensional symbols, surely have idiosyncratic histories and an odd collection of beliefs—and thus it makes some sense to present them as peripheral, almost odd characters in the national story. Yet the reason that history’s spotlight ever paused on them in the first place was not because of their leadership capabilities or because of any marginal experiences they had or views they held, but because of the degree to which they successfully tapped into main veins of American belief.

One is tempted to think that the dominant historical account is unhelpfully shaped by the life-experiences of a single generation of scholars—born in a paternalistic period after the War, rebelling or at least having their consciousness shaped by the culture of the campus in the 1960s, and then startled in their middle ages to discover the conservative mood of their neighbors in 1980. In the place of this widely swinging narrative, historians would do well to ponder the continuities in populist American thought about God and country going back to the earliest communist scares, as well as to reflect on the awareness of Democratic presidents Carter and Clinton that the New Left never came close to winning a national election. In this light, the election of 1980 looks less like a conservative revolution than the late 1960s and early 1970s look like an unsuccessful liberal surge—a surge that historians have overemphasized, thereby also underemphasizing the consistent conservatism of grassroots America throughout the Cold War.\(^{36}\)

Rejecting the story of a new, late 1970s religious revival which suddenly transformed political life is not to suggest, however, that major religious changes did not occur in

\(^{36}\) Boorstin’s *A History of the United States*, for instance, even while connecting the constituencies of Richard Nixon and Billy Graham, still manages to talk about these groups as if they are the last-vestiges of an outdated and expiring worldview, rather than seeing in this the seeds of Reagan’s America, 765.
America in the years leading up to 1980. For certainly they did. And preachers like Falwell do indeed deserve serious scholarly attention. But the developments in question were not primarily political as much as theological and ecclesiological—that is, the key changes concerned religious Americans’ understanding of the nature of the church as an institution. And, counter-intuitively, it is by understanding these pre-political theological developments that one begins to comprehend how fundamentalist preachers were “freed” from their parochial congregations to court—and thereby highlight the existence of—the large generically religious segment of the American populace.

Particularly new in 1979-80 was the coronation, long in coming, of a new type of Protestant leadership, a pan-denominational (perhaps anti-denominational) political/moral leadership.\(^{37}\) It wasn’t new that lay Americans thought of themselves as religious, and worried about the influence of an elite, godless minority in their nation. It wasn’t new for politicians, especially on the Right, to appeal to these beliefs and fears. It wasn’t new that lay Americans took cultural values in addition to economic interests into account when they cast their votes (though indeed Falwell did register a sizable number of new voters, even if much of this activity occurred after 1980).\(^{38}\) It wasn’t even new that Protestant laity were willing to compromise for a generic “God” in the place of a more particularistic, Reformational “Christ,” so that the God-and-country politicians courting them could appeal also to Roman Catholic and Jewish cultural conservatives. What was new was the

\(^{37}\) Regarding “long in coming”: Nathan O. Hatch has noticed it as early as 1800; see his *The Democratization of American Christianity* (New Haven: Yale, 1989).

\(^{38}\) Paul Weyrich, a key organizer of the new religious right around 1980, estimates that Falwell and friends, through programs such as their “Registration Sunday” at independent churches, probably did register just over two million new voters; see Weyrich’s contribution to Howard Phillips, *The New Right at Harvard* (Vienna, VA: Conservative Caucus, 1983), 23. Falwell at times claimed larger numbers, but—despite that fact that journalists at the time took his claims at face-value—there doesn’t seem to be much evidence for his assertions of “four million” by the fall of 1980, for instance; see *Newsweek’s* cover story on Falwell, September 15, 1980, 31.
widespread emergence of an ecumenical religious leadership in conservative Protestantism willing to aggressively mediate between their denominational flocks and the politicians peddling a lowest-common-denominator American god.

The name of Falwell’s organization alone tells nearly the whole story. The “Moral Majority” claimed the masses for his side in the political/cultural war, whereas the older fundamentalist theology spoke more of an immoral majority—that is, everyone except Jesus himself being a sinner or ultimate law-breaker and thus in need of the church’s message of forgiveness. But Falwell in the 1970s, seeing a huge untapped market for the more audience-friendly message of patriotic religion, chose increasingly to foreground this-worldly battles about civil righteousness, and conversely to minimize the older doctrinal precisionism of the salvation-focused fundamentalism through whose ranks he rose.39 As he explained to huge audiences both on television and in his travels: the organization’s name had been intentionally chosen to communicate that Catholics, evangelicals, conservative Jews, and others could all make common cause on the great issues of “family breakdown, and [the] general capitulation to evil and to foreign philosophies such as Marxism-Leninism.”40 In a Newsweek editorial months after Reagan took office, he explained that the Moral Majority did not limit itself to “Christians.” Its leaders wanted to unite all people of good will against the “external threat” afoot in the land. Falwell welcomed all people “tired

39 When America could still be seen as Protestant, there was more room for populist preachers to be doctrinally precise, and to mix church and state. But once it was clear that America was broader than their creed, they had to make a choice: Would they be doctrinally Protestant and proponents of a secular state sphere, or would they try to keep their church and state united—even if it meant shrinking the theological substance of their faith? Falwell for one seems have chosen the latter course. For a broader look at the pulpiteers’ accommodation to “American” faith, see David G. Buttrick, “Preaching to the ‘Faith’ of America,” in Leonard I. Sweet, editor, Communication and Change in American Religious History (Grand Rapids: Eerdmans, 1993), 301-19.
of being told that their values and beliefs don’t matter and that only those values held by
government bureaucrats and liberal preachers are worthy of adoption.”

Timothy LaHaye, who worked for Falwell at the Moral Majority in those early days (and who is currently the single best-selling author in America), explained even more clearly in a 1980 interview their reading of the cultural fault lines and consequently their formulation of a new mission broader than saving individuals from sin. They aimed to “take back” the culture in this age: “Look. Gallup says there are 60,000,000 born-again believers. There are another 60,000,000 who are what I call ‘pro-moralists’ (Catholics, Mormons, etc.). Then there are another 50,000,000 ‘idealistic moralists.’ That represents the 84 percent of the people in this country who still believe the Ten Commandments are valid.” Against this “moral majority,” LaHaye and company thought they could identify approximately 275,000 hard-core “humanists” (by which he meant secular humanists or atheists) who “control everything—the mass media, government, and...the Supreme Court.” As if reading from Agnew’s notes, LaHaye exhorted the silent majority to speak up, “The humanist overlords are determined to stamp out religious rights...We are in a war, but only one side is fighting.”

Winning this cosmic battle required marshalling all those concerned about the nation’s standing in the sight of God to vote for moral reform. As Robertson said in a 1979

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42 Tim LaHaye and Jerry’s Jenkins’ Left Behind series has already become (with only ten of the twelve volumes released to date) the “fastest-selling adult fiction series ever.” For a list of press reports, see www.leftbehind.com (as of December 28, 2003). On the influence of LaHaye, see Evangelical Studies Bulletin 17:4 (Winter 2001), 1-4.
interview, he was increasingly focused on taking back the culture. “If you put the Catholics
and the evangelicals together, it is a clear majority. It’s the silent majority.”

My commitment is that godly people, theistic-oriented people, should get involved in
the body politic in every level possible... I don’t think that people who are on the
take (and unfortunately there are too many of them), that people who are atheistic in
view or humanist, who desire to destroy certain of the cherished values of this
country, are doing us great service in Washington.44

The solution, Robertson explained, was to elect “officials who are theistic in their
orientation. That’s my primary purpose. Now whether they’re Jewish or Christian, I really
don’t care.”45

Religious entrepreneurs had spoken this way before, framing battles between a
religious majority and an irreligious minority. One needs to think only of Thomas
Jefferson’s presidential campaign and the charges of deistic idolatry it elicited from New
England pulpits. But most of these older American rhetorical campaigns of the moral many
against the corrupt few had moved through denominational channels, with Protestant
ministers, for instance, occasionally open to common crusading with the unchurched, but
only with unchurched activists who shared at least a cultural Protestantism. Put another
way, those Protestant “religious” campaigns around the turn of the twentieth century, that
were really about Victorian morality rather than anything precisely theological, still assumed
that non-Protestants, and particularly the Catholic immigrants then flooding into the country,
were outside the bounds of the moral.46 Of course, politicians like Frank Becker had long
appealed to religious Americans regardless of creed, but Falwell provides a unique marker

44 Interview with Pat Robertson, Sojourners, September 1979, 22; see also Newsweek, September 15, 1980, 31, 36.
45 Interview with Pat Robertson, Sojourners, September 1979, 22.
46 Contrast this early twentieth century nativist/Protestant sense of American identity with the fundamentalists’
“Judeo-Christian” retelling of American history, which came into clear view in the late 1970s; e.g., Peter
Marshall and David Manuel, The Light and the Glory (Old Tappan, NJ: Revell, 1977); John W. Whitehead,
The Second American Revolution (Elgin, IL: Cook, 1982); and John W. Whitehead, The Sealing of America
(Westchester, IL: Crossway, 1983).
of a generic, ecumenical public religious campaign from the cultural right being effectively launched by a fundamentalist clergyman.\textsuperscript{47}

Falwell’s campaign to “take back the country”—initiated with his “I Love America!” rallies which would take the energetic preacher to the steps of forty-four state capitals between 1976 and 1978—revealed an urgency about cultural transformation and a relative disinterest in the conversion of individuals that worried many of his old colleagues and would indeed seem to be at odds with the dispensational eschatology that he professed to share with older evangelicals like Graham.\textsuperscript{48} With Falwell, the culture war had become supreme even for those formerly known for their commitment to holding doctrinal precision paramount. The silent majority had become a community of faith, and certain men of the cloth were yearning to shepherd the silent majority.\textsuperscript{49}

In order to contextualize rightly the fundamentalist preachers zealously stumping for Reagan, historians need to understand a more basic but less publicized story about twentieth century Protestantism: the decade over decade growth in influence of the entrepreneurial model of organizing religious life. The gradually shifting office of the clergy does not

\textsuperscript{47} Catholics such as Huey Long had blazed a parallel trail with their early opposition to the supposed godlessness of the New Deal; see Leo P. Ribuffo, \textit{The Old Christian Right: The Protestant Far Right from the Great Depression to the Cold War} (Philadelphia: Temple, 1983).


sound immediately interesting, nor does it fit well in a survey text structure, but it is perhaps
the major cause underlying the dynamism of religion in America.

Survey authors are right to shine their spotlights on the triumph of modernism at the
start of the century, but they err in focusing only on the new legal toleration of teaching
 evolutionary theory, and overlooking the organizational consequences in the nonprofit
sector. The Scopes trial is indeed a delightfully engaging story—as is evidenced by Edward
Larson’s recent Pulitzer Prize retelling of those 1925 events. Yet privileging consideration
of the victory in the governmental sphere of progressive thinkers’ views on the origins of the
species (besides failing to account for the fact that only 28% of grassroots America believes
in evolution, even at the dawn of the twenty-first century) misses the larger import of the
march of modernism. It was the debates inside major denominations rather than debates in
courthouses that mattered most. For it was in these former contexts that lay Americans
began to wonder if their educated clergy had been drinking so deeply from the fonts of this-
worldly wisdom that they no longer believed in the simple truths of God breaking into time.
If the miraculous was lost, so too was the reliability of the Bible. If the Bible couldn’t be
trusted, how could one be sure Jesus rose from the dead? And without the resurrection of
Jesus, Paul had told the Galatians that there was nothing left of Christianity.

The laity’s creeping sense that mainline Protestant clergy had abandoned the
authority of Scripture and thus could not be trusted with safeguarding the faith obviously
does not fit well on a history timeline marked off by political dates. For this suspicion
probably began in the 1870s and may not have reached its high-water mark until the 1970s,
and indeed this worry never affected the outcome of an election. Still it is this amorphous

50 Edward J. Larson, *Summer for the Gods: The Scopes Trial and America’s Continuing Debate Over Science
cultural story, rather than the easier-to-tell story of the Scopes trial, that underlies so much of the change in American Protestantism and indeed American public religion over the last century. Even though active church-goers have always comprised a minority of the nation (49%, apparently the most ever, claimed to have attended in any given week in the mid-1950s), the gradual leakage of theologically conservative members from the liberal mainline beginning in the 1920s legitimized to a new degree the entrepreneurial activities of fundamentalist and other theologically conservative clergy outside the bounds of institutional churches.  

The stunning growth of parachurch structures, gathering together like-minded laity for common purposes such as evangelism and instruction, is arguably the most important development in twentieth century American religion. The parachurch form certainly was not born in that century, for it would be difficult to imagine the early national period without the “benevolent empire” of evangelical parachurch organizations that were stimulated by the states’ disestablishment of religion, and that rapidly transformed the culture especially of the frontier. But the proliferation of parachurch enterprises that followed the 1920s fundamentalist/modernist split, picking up speed in the 1930s and ‘40s, and then becoming conspicuous to observers by the 1950s, remade the experience of lived religion for countless lay Protestants.

In this marketplace of voluntary enterprises, business models of organization and marketing increasingly triumphed over older churchly models of ordered religious communities. Revivalism had always known its Billy Sunday-like salesmen—promising converts at just $2 per soul—but the most basic reality of evangelicalism had remained Sunday morning in the assembly of the saints. Over the course of the twentieth century,

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religious consumption became unbundled (to put it crassly), as more and more entrepreneurial providers competed to deliver different religious goods and experiences, and more and more laity—both churched and unchurched—partook of cafeteria-style religion less regulated by the local pastor and elders.\textsuperscript{53}

"Entrepreneur" is not a label to which most religious institution-builders would today take offense. Falwell's son, Jerry, Jr., has enthusiastically testified, "Fundamentalism appealed to my father because of the entrepreneurial nature of it. The idea is to build a big church, build a big school, start a TV ministry. Most religions are not like that." His father was clearly proficient at doing well by doing good, entering the ministry in the late 1950s by taking over a thirty-five-member Baptist congregation in Lynchburg, Virginia, which had just emerged from a split. He then grew it, partly by going door-to-door himself throughout the town, to 854 members within a year.\textsuperscript{54} In the early 1970s, he would reflect on his success: "Business is usually on the cutting edge of innovation and change because of its quest for finances. Therefore the church would be wise to look at business for a prediction of future innovation." And what did the kingdom of money have to teach the heavenly Kingdom?

The greatest innovation in the last twenty years is the development of the giant shopping centers. Here is the synergistic principle of placing at least two or more services at one location to attract the customers. A combination of services of two large companies with small supporting stores has been the secret of the success of shopping centers. The Thomas Road Baptist Church believes [in] the combined ministries of several agencies in one church....\textsuperscript{55}

\textsuperscript{53} The process historian Nathan Hatch has documented, by which the audience became increasingly "sovereign" over the message in the newly freed religious context of early nineteenth century America, reached full maturity by the late twentieth century. See his The Democratization of American Christianity (New Haven: Yale, 1989).
\textsuperscript{54} David Snowball, Continuity and Change in the Rhetoric of the Moral Majority (New York: Praeger, 1991), 46-47; italics added.
In modeling his congregation on the shopping mall in the 1960s, Falwell secured his place in any religious entrepreneurs' hall of fame, prefiguring the broader explosion of “megachurch” suburban Protestantism by more than a decade.

Down the road in Virginia Beach, Pat Robertson was innovating in a way that would transform late twentieth century religious practice even more than the non-denominational megachurch. In 1961, Robertson purchased WYAH, channel 27 in Portsmouth, Virginia, and converted it into the nation’s first exclusively Christian television station. In 1963, he created the dominant format for all future religious television, almost accidentally, by keeping the extra phone lines that had been temporarily installed for a short-term telethon. He invited viewers to call in with prayer requests, thereby adding telephone to television to create two-way communication. Prayer requests, along with the names and addresses of the callers, were fed into a data-base for use in future targeted fund-raising appeals, with proceeds reinvested in the organization’s efforts to acquire additional UHF stations across the country.56 With this skeletal network in place, Robertson was well-positioned to parlay his first-mover advantage in religious programming into a dominant position in American broadcasting when cable proliferated in the 1970s. Falwell occupied a much smaller place in the industry, nationally significant only as the host of The Old-Time Gospel Hour (rather than also as an owner of infrastructure like Robertson), but he too was reaching an estimated twenty-one million viewers per week by the end of the 1970s.57

The story of the rise of televangelism in the 1970s has been told often. So too has the story of the New Right’s courtship of these religious media kingpins, most memorably in the accounts of Reagan’s pilgrimage to Dallas in August 1980 to meet with the Religious

Roundtable, a newly organized standing meeting of the heads of fifty-six evangelical organizations, representing the key players in religious broadcasting. In addition to smaller meetings with these parachurch leaders, the Republican candidate spoke at a "National Affairs Briefing" they had organized for 17,000 of their supporters. "Over the last two or three decades, the federal government seems to have forgotten that old-time religion and that old-time constitution," Reagan fretted. It was high time the religious people came out and turned this country around. "I know you can't endorse me. But...I want you to know that I endorse you."

Conservative politicians seeking to woo the religious was neither new nor surprising. Gerald Ford had attempted the same thing during the 1976 campaign, when he claimed his own "born again" experience to match pious declarations of Jimmy Carter, traveled to address the annual meeting of the National Religious Broadcasters, and became the first president to speak to the Southern Baptist Convention—one of the most important constituencies in the nation. What was new was not the politicians' grandstanding participation in religious meetings, but rather the evangelical leaders' willingness to be courted in quite such a partisan a manner quite so publicly. Unlike even Graham about his ties with Nixon, the younger revivalists had no pretense of reticence and made virtually no effort to claim that their relationships with Reagan were nonpartisan.

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59 New York Times Magazine, August 1, 1976, 9. On 1976 as the "year of the evangelicals" more generally, see e.g., Newsweek, October 25, 1976, cover, 68ff.
60 One could plausibly counter that the previous chapter rebuts claims of the younger revivalists', and particularly Falwell's, exceptionalism, because Graham before him—and even the combined leadership of the National Association of Evangelicals by the end of the Becker Amendment campaign—promoted the idea of a lowest-common-denominator Judeo-Christian religious core around which the nation should unite. There is much to recommend this point, and indeed many polemics in the tradition from which Falwell has emerged—those who were so critical of Billy Graham for his ecumenical partnerships with Catholics and liberal Protestants starting in New York in 1957—would surely echo the reality of a continuum from Graham to Reagan's religious right. Yet there are meaningful differences between Graham in 1970 and Falwell in
The careers of men like Graham do, of course, provide some important context for the decision of their ministerial offspring to pursue the God-and-America market well beyond the bounds of the particular denominational traditions. In Graham, there is also a foreshadowing of strategic outreach centered on anticommunist and cultural values, rather than by straightforwardly preaching sin and individual salvation. Ironically, though, while Falwell always served as a full-time local pastor and Graham the itinerant only briefly did, Falwell became best known for his extra-churchly ministry as a broadcaster, while Graham’s ministry pointed finally to the local church. Graham may have seemed placeless, and his events were typically broadcast, but at root each crusade depended on a committee of local congregations to plan logistics and then disciple the converts. Falwell’s work, by contrast, seemed local—he was most frequently viewed on television preaching from his home.

1980, besides the fact that Graham after Watergate disavowed much of his earlier temptation toward state religion (even if not his engagement with broader public religion) and explicitly urged other Protestant leaders such as Campus Crusade’s Bill Bright not to get too close to that fire. See, e.g., Christianity Today, September 6, 1976, 49, 51.

The most significant place where Falwell departs from the Graham template of how a minister functions in a national context—and indeed this difference reflects what may well be the largest development in twentieth century conservative Protestantism—concerns the sense hearers have about where his primary allegiance lies. Graham undoubtedly preached about national revival and wanted to promote a generic public religion, but he repeatedly distinguished between these social goals and what he called his “higher calling,” which centered on bringing individuals into the church. To those (presumably from both the left and the right) who thought he did not speak out enough on social and political issues, the following 1970 comments reflect Graham’s oft-repeated argument: “You greatly misunderstand my ministry. I do not represent the U.S. government. I represent the Kingdom of God…My flag is the flag of Christ. Why did Jesus Christ not lead a demonstration against the tyranny of Rome? Why did Paul not lead a demonstration? Because they represented a different Kingdom. I cannot defend the United States, any more than [German Christians] can defend what went on in the ‘30s and ‘40s in Germany.”

Graham of course was not implying a moral equivalency between contemporary America and Nazi Germany, but he did suggest that both nations, like all countries after the fall, were morally unjust in an absolute sense, and therefore under the judgment of God. (For more context on these Graham comments before a group of German ministers resistant to him holding a 1970 crusade there; see William Martin, A Prophet With Honor: The Billy Graham Story [New York: William Morrow, 1991], 380.) He believed that some citizens, even some Christians, were called to labor primarily for the minimization of this-worldly injustice. But because he was a minister, he did not conceive of this as his chief calling.

It is difficult to imagine Falwell deemphasizing his this-worldly citizenship quite this way. Both men would clearly affirm some sense of the “two kingdoms” doctrine that they were both Americans and churchmen, but ultimately, Graham was viewed by the public primarily as calling Americans (and citizens of all nations) into the church, while the post-1979 Falwell was heard primarily as calling Americans, whether church members or not, to take back the nation from the godless few. See, e.g., his Listen, America!: The Conservative Blueprint for America’s Moral Rebirth (New York: Bantam, 1980).
pulpit—but in fact his most important supporters were television viewers linked to his
various nonprofit legal entities through mailing lists and telephones. In the final analysis,
Graham's were local events rooted in and feeding seekers into particular churches, while
Falwell's real presence was in an electronic pulpit, even if employing a local congregation
as the television set. Freed from, or no longer accountable to, local congregations of
believers wed to particular traditions, televangelists found a freedom to market their
message to any audience they chose, where Graham had always been constrained by the
confessional boundaries, however flexible, of the local congregations coordinating his
crusades.

Where theological liberals had attempted to advance ecumenism through churchly
means and dialogue, the theological "conservatives" paradoxically moved the ecumenical
ball forward even faster through the less reflective but more transformational means of
market-based, non-churchly outreach. Observers of the religious right have too often
focused on the personal backgrounds of Falwell and other visible ministers, and projected
from the men in the spotlights onto their harder-to-see followers.61 But unlike Falwell and
his peers, the foot-soldiers of the religious right did not swing suddenly from a separatist
view of life to a willingness to fight to take back America. Instead, the story of Falwell's
rise—as is verified by the fact that Moral Majority from its earliest years received about
thirty percent of its contributions from Roman Catholics—is less about some sudden
transformation of popular religious and political thought in America than it is about the

61 In fact, many in the evangelical tradition, as is evidenced for instance by the cautious editorial positions of
Christianity Today, the most influential publication in Protestant revivalism, remained suspicious of linking
faith communities too directly to partisan politics. Consider, for example, Christianity Today's arms-length
commentary in the midst of the 1976 election: March 12, 1976, 43-44; June 18, 1976, 20; July 2, 1976, 10-12;
September 24, 1976, 20-22; October 22, 1976, 37-39; December 3, 1976, 12-13. See also Carl F. H. Henry,
"Making Political Decisions: An Evangelical Perspective," in Richard John Neuhaus and Michael Cromartie,
editors, Piety and Politics: Evangelicals and Fundamentalists Confront the World (Lanham, MD: University
discovery by Protestant leaders of this market for a generic civic theology and their subsequent willingness to run out in front of the masses claiming to be their leaders.\textsuperscript{62}

Religious historians still have work to do unpacking the theological and personal negotiations individual fundamentalist broadcasters conducted as they transcended their parochial communities in the 1970s and attempted to mold the nation’s theists into their congregation. But in another sense, the individual fundamentalists of the 1970s don’t matter all that much. For as televangelism was born, and the urge to be on more stations almost inevitably turned the gaze of producers to untapped donor constituencies, it was natural that some inhabitant of an electronic pulpit would craft his message to appeal to the broad God-and-country audience. If not this preacher, then another. Someone was eventually going to say what the market was demanding. Not surprisingly, one of the fundamentalist broadcasters’ initial points of contact with the generic religious concerns of the silent majority was as close at hand as their shared memories of Madalyn and their common fears that her atheistic co-conspirators in the secret corridors of power still sought to marginalize the place of believers in America.

In 1975, the formerly sleepy mailroom at the Federal Communications Commission (FCC) was suddenly flooded with letters and petitions from angry Americans demanding that the FCC not outlaw religious radio and television. The correspondents somehow believed that Madalyn, who had supposedly driven God from the schools, was now working to drive him from the airwaves as well. Because the executive branch, unlike Congress, was not then required to archive public correspondence, none of the original letters have been

saved. Nonetheless, unlike the hand-written and spontaneous mail to the Judiciary Committee in support of the Becker Amendment in 1963 and '64, many of those who wrote to the FCC in the 1970s seem to have been prompted to action by a chain letter with a draft form for them to send on to Washington:

PLEASE HELP!!! WE CANNOT ALLOW THIS TO HAPPEN TO OUR COUNTRY!!!

Madeline [sic] Marray [sic] O'Hare [sic], an atheist, whose efforts successfully eliminated the use of Bible reading and prayer from public schools fifteen years ago, has now been granted a federal hearing in Washington D.C., on the same subject, by the Federal Communications Commission (FCC).

Her petition, No. 2493, would ultimately pave the way to stop any reading of the Gospel of our Lord and Savior, Jesus Christ, on the airwaves of America. She took her petition with 287,000 signatures to back her stand. If her attempt is successful, all Sunday Worship services being broadcast, either by radio or television, will stop! Ms. O'Hare is also campaigning to remove all CHRISTMAS PROGRAMS, CHRISTMAS SONGS AND CHRISTMAS CAROLS from Public Schools.

You can help this time! We need 1,000,000 (one million) signed letters. This would defeat Ms. O'Hare and show that there are many CHRISTIANS ALIVE, WELL AND CONCERNED FOR OUR COUNTRY. This petition is #2493.

Cut off, sign and mail the form. Please do not sign jointly as Mr. & Mrs. EACH PERSON SHOULD SIGN ONE SEPARATELY AND MAIL IT IN A SEPARATE ENVELOPE!!!! (Helps us get 1,000,000 faster). Be sure to put Petition #2493 on the outside of the envelope before mailing the letter.

CHRISTIANS MUST UNITE ON THIS! PLEASE DO NOT TAKE THIS LIGHTLY; WE DID ONCE AND LOST PRAYER IN SCHOOLS AND IN OFFICES ACROSS THE NATION!!!

The only way for EVIL to flourish is for GOOD men to do NOTHING!!

Federal Communications Commission
RE: Petition #3492
Washington, D.C. 20054

63 The FCC systematically destroyed the letters. Different rules exist today, under current provisions of the Freedom of Information Act (FOIA), but in the mid-1970s, government agencies had no obligation to retain public correspondence, especially in what were then called “campaign write-ins.”

64 A copy of the most common version of the letter can be downloaded at http://urbanlegends.about.com/library/weekly/aa050599.htm (as of January 31, 2003).
The FCC initially paid little attention to the letter-writing campaign, because it was considering no such proposal, and in any event, had no authority to prohibit religious programming. The FCC did consider a petition numbered "RM-2493," filed in late 1974, but it concerned only the efforts of two secular California broadcasters to obtain a "freeze" on new "applications by religious groups for educational television and FM radio licenses," not the outlawing of religious programming generally. More important than the fact that Madalyn had no connection with the petition was the fact that the FCC had rejected the actual petition RM-2493 in only eight months—that is, "with uncharacteristic swiftness," in the judgment of the communications industry journalists.\(^6^5\) The FCC maintained that "educational" licenses could continue to be awarded to both religious and secular programmers.\(^6^6\) The FCC's official ruling noted the "vast amount of letters" the petition had stimulated and thanked the public for its concern with the Commission's work, but lamented that there was such serious public confusion about the question at hand, especially given that Madalyn Murray O'Hair had no involvement whatsoever in the matter being considered.\(^6^7\)

By the time of the FCC's formal rejection of the petition in August 1975, it had already received 700,000 letters from worried citizens—no small feat, yet still a paltry sum

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\(^6^5\) *Channels of Communication* 4:3 (September/October 1984), 10-12, italics added. (*Channels* is a trade publication for media owners and outlet managers.)

\(^6^6\) "The FM and TV channels which have been reserved for noncommercial educational use have been made only to educational institutions and organizations. Under existing Commission policies, a religious organization which qualifies as educational because it operates a school or university is eligible to operate a broadcast station on a channel reserved for noncommercial educational use in the community where it operates the school. *Keswick Foundation, Inc.*, 26 F.C.C. 2d 1025 (1970); *Pensacola Christian School, Inc.*, 41 F.C.C. 2d 74 (1973); see also *Christ Church Foundation*, FCC68-732 (1968). In observing the principles of neutrality, we treat religious organizations and secular organizations alike in determining eligibility for operation on a reserved channel. Specifically, where an organization's central and primary purpose is religious it is held to be ineligible for a reserved channel, except as noted above, although its eligibility to operate on an unreserved channel is not proscribed. *Bible Moravian Church, Inc.*, 28 F.C.C. 2d 1 (1971)." Official FCC statement on the RM-2493 "rumor," Paragraph 22, available at http://www.fcc.gov/mmb/aud/doc/letter/1975-08-13--religious.html (as of October 2, 2001).

\(^6^7\) See FCC statement on RM-2493, Paragraph 2. The only known contact O'Hair ever had with the FCC was her unsuccessful 1964 attempt, based on the FCC's "Fairness Doctrine," to force religious stations in Hawaii to give atheists free airtime; *Christianity Today*, February 18, 1972, 58.
in comparison to the four million NASA had received in the previous seven years (1968-1975) from "churches, Boy Scouts, Knights of Columbus, fraternal organizations" begging it not to grant Madalyn's wish that the agency prohibit astronauts from praying in space. (In early 1971, the Supreme Court had rejected an O'Hair suit—with which NASA had no sympathy—that astronauts never again be allowed to read from the Book of Genesis on television, as they had while circling the moon in December 1968.) Even the Supreme Court had a more interesting Madalyn-related correspondence story in the early 1970s than did the FCC. When the Roe v. Wade decision was handed down, over a thousand Americans, just assuming that the author of the "monstrous" Engel must also have been the author of Roe, immediately wrote to Hugo Black at the Court to express their outrage. Justice Black had been dead for sixteen months by the time of the Roe decision. The FCC had no idea that it would soon be in for what might be the largest letter-writing campaign in history—"the granddaddy of them all," as the "Petition Against God" has come to be known in folklore and urban legend circles. The pace of the mail somehow quickened after the petition was rejected, ramping up from about 4,000 letters per day and climbing to 15,000 per day by early 1979—an annual rate of over four million pieces. Virtually unable to find its regular actionable mail among the daily loads of religious protest, the FCC in 1979 went to the Hill requesting additional funding for mailroom staff and supplies. Congress appropriated $250,000, part of it to fund an outreach campaign to 30,000

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69 Bob Woodward and Scott Armstrong, The Brethren: Inside the Supreme Court (New York: Simon and Schuster, 1979, 239. Jerry Falwell, in his autobiography, uses this point to demonstrate the need for evangelicals to become more systematic in their political engagement, and for preachers' to become more intentional in their shepherding of their flocks' activism; see Falwell, Strength for the Journey: An Autobiography (New York: Simon and Schuster, 1987), 339.
70 See www.family.org/cforum/hotissues/A0007214.html (as of January 31, 2003); and urbanlegends.com/library/weekly/as050599b.htm (as of January 31, 2003).
clergy, explaining to them the details of the rejected petition and the nature of the FCC’s work.  

Mainstream and mainline periodicals, alerted to the power of the rumors by virtue of the Congressional action, laughed at the gullibility of the religious grassroots and their fear that “Satan’s handmaiden,” no matter how “belligerent” her personal “advocacy of atheism,” could accomplish something so patently “unconstitutional.” The Christian Century wrote, “Logic would seem to inform most Americans that if the FCC were considering a ban on all religious programming it would be a clear violation of religious liberty and thus a major news story.” The United Methodist News Service expressed its exasperation that although the (mainline) “religious press has been telling people for five years that [the FCC rumor] isn’t so,…they still believe it when it comes from some other source.” Perhaps as surprising as the fact that twelve million letter-writers (by the start of 1980) thought the FCC could be considering a motion to eliminate religious broadcasting without any public debate, is the fact that mainline agencies thought that all of America, even after the school prayer decisions, would trust Washington officials and watchdog secular journalists to guard the widespread lay understanding that religious liberty guaranteed the right of the majority to participate in voluntary theistic public ceremonies.

The FCC’s utilization of ministerial communication networks, not only mainline but also evangelical, did have some effect, as the daily flow of letters slowed from 15,000 to less than 700 in the last quarter of 1979. According to FCC lawyer Jonathan David, agency employees even predicted the eventual death of the rumor when the agency received only

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71 Christian Century, February 27, 1980, 221-22. Key details were also verified by the author in a phone interview with Mr. Bill Klein, FCC Reference Information Center, Federal Communications Commission, Washington, DC, October 2, 2001.

72 Christian Century, February 27, 1980, 221-22.
9,000 letters during the entire month of January 1980. But then the O’Hair story was miraculously born again. Soon the pace was back up to 15,000 per week, with 1.8 million letters boxed up for systematic destruction during calendar year 1983 alone. FCC spokesperson Zora Kramer put the total letter count at twenty-five million in 1986—though that was possibly six to seven million too high, given that another FCC official had placed the RM-2493-related correspondence total at just sixteen million only two years earlier. At the time of O’Hair’s disappearance in the mid-1990s, the annual flow remained constant at about one and half million letters.

In the late-1990s, the rumor morphed, updating its understanding of O’Hair’s intended target: “CBS will be forced to discontinue Touched By an Angel for using the word ‘God’ in every program,” mass emails warned. Alarmèd chain letters continued to refer to “Petition Number 2493” and held fast in advising religious Americans that it might require “a million letters” to get the FCC to reconsider its intention to grant O’Hair’s request. But the frantic alerts, even if referring to late-1990s programming, also often revealed their own mid-1970s origins, with many letters lamented that “Madeline [Madalyn] Murray O’Hare [O’Hair]” who about “15 years ago” [1962-63] got God kicked out of school might now get him kicked off the airwaves. Government declarations of the discovery of O’Hair’s dismembered body in March 2001 likely drove a final nail in the rumor’s coffin, as the Washington Post reported, in “Fighting a Myth of Biblical

73 Channels of Communication 4:3 (September/October 1984), 10, 14.
74 Channels of Communication 4:3 (September/October 1984), 10, 14.
75 Channels of Communication 4:3 (September/October 1984), 10, and Dallas Morning News, January 25, 1986, 38A.
76 See story by conservative group Focus on the Family attempting to debunk the myth, at www.family.org/cforum/hotissues/A0007214.html (as of January 31, 2003).
Proportions,” that the FCC was receiving fewer than two hundred letters per month as 2001 came to a close.78

Assuming no major revival, most urban legend debunking websites put the final letter tally to the FCC—not counting correspondence to Congress or parallel letters to other executive branch agencies—at just over thirty million. Put another way, millions more Americans took the time to write or forward letters over a two and a half decade period about a nonexistent change in government regulation of religion in the public square, than voted for Barry Goldwater in 1964—which is often cited as the birth of the modern conservative movement.

In 1984, a trade journal for the broadcasting industry attempted to uncover the earliest roots of the rumor. It discovered that Tulsa evangelist and long-time anticommunist crusader Billy James Hargis had run a front-page article in his newsletter, Christian Crusade, in June 1975, that “Madelyn Murray O’Hair, the well-known atheist, was campaigning in favor of RM-2493. The newspaper said O’Hair was headed for Washington to appear before an FCC hearing.” Upon learning of its error, Christian Crusade printed a correction the following month and identified the National Religious Broadcasters (NRB) as the source of its story. When contacted about the claim, NRB executive director Ben Armstrong claimed that his organization had nothing to do with inaccurately connecting O’Hair’s name to the petition, which clearly prompted what NRB acknowledged was mass “hysteria.” That falsehood must have been born “somewhere out there in the hinterland.” Nevertheless, Armstrong did concede that a letter had been sent from the NRB headquarters to its 679 member television and radio stations in early 1975 warning them about the

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"genuine threat" that it perceived RM-2493 to be. The letter urged the electronic preachers to "join together in opposing the forces that would put an end to gospel broadcasting."79

One NRB official in the mid-1980s confessed that he was undecided over whether the whole affair had ultimately been harmful or helpful for religious broadcasting, whether the ongoing river of letters to Washington damages that community's credibility or "continually reminds [government officials] of the potential clout of religious broadcasters."80 While both of those factors are significant, almost surely the largest effect of having the rumor repeated by religious broadcasting outlets was the conversion (to donors if not all the way to believers) of additional viewers and the growth of organizational mailing lists as many called in to learn more and to receive their sample petitions. For as religious broadcasting grew explosively during the mid-1970s, little could have comforted certain segments of the religious-but-not-necessarily-evangelical population more than having a host articulate publicly the fears that they had long held privately that O'Hair and those like her were plotting with faceless Washington officials to make the religious aliens in their own land.

To those who tune in almost exclusively to CBS or TBS, and only once a year stumble onto CBN or TBN (Christian Broadcasting Network and Trinity Broadcasting Network), it is nearly incomprehensible how a static message of imminent cultural decline could have remained credible for three decades without any explanation of why what is now predicted for next year did not occur in 1976 as was predicted in 1975. Part of the explanation for the staying power of the story is that apocalyptic systems of belief, like all other belief systems,

80 Channels of Communication 4:3 (September/October 1984), 12.
are so complicated that concession of a particular miscalculation or narrow misjudgment at any one point, no matter how small, can explain away the failure of widespread prophecies to have been fulfilled.\textsuperscript{81} Thomas Kuhn made some similar points about scholarly systems in \textit{The Structure of Scientific Revolutions}.\textsuperscript{82} Stated more crudely, there is a lot of wiggle room in almost every worldview.

Another reason that televangelists can appear fresh even while seeming to tell the same stories over and over again is that, as in reporting about Hollywood stars, for instance, an endless procession of new individuals with widely varied human experiences take on the seemingly unchanging roles in the dramas. In any decade, there are many cultural developments that work to the benefit of religious Americans and other developments that work to their detriment. The broadcast preachers may appear to focus only on the disastrous—but they punctuate the tale of collective decay with many selective individual conversions. In the mid-1970s, on the heels of the 1968-70 urban riots and 1972-74 the Watergate cover-up, the trophy converts to Evangelicalism included Black Panthers leader Eldridge Cleaver and Nixon administration felon Charles Colson, whose \textit{Born Again} religious Americans made an instant best-seller in 1976.\textsuperscript{83}

Rumors once circulated that Madalyn herself had converted, but when she never appeared on the religious talk show circuit, it became evident that she had kept her older, rarer role as temptress of a nation into folly. In 1977, her initiation of lawsuits against Texas state officials for allowing nativity scenes on public grounds (she said she wouldn’t have minded as much if they were “displayed on Ground Hog Day” as opposed to the date of “the

\textsuperscript{82} Thomas S. Kuhn, \textit{The Structure of Scientific Revolutions} (Chicago: University of Chicago, 1962).
purported birth of Jesus”) foreshadowed what would become the crèche lawsuits which finally reached the Supreme Court in 1984.\textsuperscript{84} And in her 1995 death, of course, by being murdered by her fellow secularizers while involved in a plot to run off with the funds of the faithless, she provided the ultimate object lesson about the final outcome of moral history with good triumphing over evil, even if the powers of this age happen to side with her in her secularization crusade until that End.

In 1980, the televangelists were able to point to a monumental symbolic victory, perhaps as great as if O’Hair herself had been won over: Her son had been reborn on the side of the angels. In a classic conversion story, William Murray, the boy who had supposedly gotten the Bible thrown out of school, turned to God after a failed marriage, an army desertion, a string of lost jobs, the abandonment of his daughter (to Madalyn), the realization that he was an alcoholic, and some time behind bars for various convictions including shooting at police officers attempting to serve him a warrant. In May 1980, Murray sent a letter to the editor of the \textit{Baltimore Sun}, apologizing for the central role he had played as a teenager in what he now regarded as a national tragedy. “It is only with a return to our traditional values and our faith in God that we will be able to survive as a people. If it were within my personal power to help to return this nation to its rightful place by placing God back in the classroom I would do so.”\textsuperscript{85}

Critics, including the mother from whom he had become estranged, charged that his change of heart was little more than entrepreneurial ploy. Her American Atheist Center issued a formal statement, “We are happy when any atheist gets some of that Christian scam

money.” Ms. O’Hair’s cynicism notwithstanding, her suggestion cannot be dismissed out of hand, because William had unsuccessfully attempted to found an atheist organization to compete with hers in the years just before announcing his public repentance from godlessness. Atheist spokespersons suggested that William simply recognized there was more money to be made from the religious. At a time when she was inventively coming up with yet another new money-making venture—crossing “In God We Trust” off of two-dollar bills, autographing them, and then selling them at well over two dollars apiece—she suggested that the apple had not fallen far from the tree. There’s “nobody who can convince me William J. Murray is anything other than an atheist,” she told one reporter.

Murray told journalists that he was not sure he was a “Christian,” but that he had been persuaded of a generic theism, apparently through his experiences with Alcoholics Anonymous. And he was now sure of his—and the nation’s—need for religion in general. “The part I played as a teenager in removing prayer from public schools was criminal,” his letter to the people of Baltimore confessed. Though not a church member, Murray immediately began receiving scores of invitations from churches for testimonials, special interviews, and guest sermons. “One of my mother’s great heroes was a man named Joseph Stalin,” he told the congregation of a Kentucky megachurch in typical talk in the early 1980s, “He massacred 21 million people in the Soviet Union because of their religious beliefs.”

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86 People, June 2, 1980, 22.
87 Wall Street Journal, May 1, 1984, 1.
90 People, June 2, 1980, 22, 25.
91 Wall Street Journal, May 1, 1984, 1.
Like many pastors, God-and-country politicians had little time to scrutinize the substance or authenticity of William’s newfound faith. Senator Jesse Helms, Rev. Jerry Falwell, and Congressman Phil Crane, an Illinois Republican closely associated with the new right strategists, appeared at a press conference with Mr. Murray in late May 1980, less than a month after his public conversion, to announce yet another attempt to amend the Constitution to enable school prayer. Murray’s first book, the autobiographical *My Life Without God*, flew off the shelves of bookstores across the land. He then advanced his God-and-country credentials by editing a volume on America’s sacred text, a special bicentennial edition of *The Complete Constitution of the United States*, and wrote a book on Latin American anticommunism, *Nicaragua: Portrait of a Tragedy*—a publication which secured him a spot on the same Middle American speakers’ circuits as Colonel Oliver North in the late 1980s.92

In spite of his apparent personal success, the sideshow quality of William Murray’s ministry compared to his mother’s larger-than-life infamy illustrates in a small way how grand symbolic issues are diminished when they become more narrowly partisan. For by the 1990s, when William Morrow and Company published Murray’s *Let Us Pray: A Plea for Prayer in Our Schools*—complete with a dust jacket endorsement from the new speaker of the House, Newt Gingrich—there remained little discernible support for a long and expensive fight to change the First Amendment to tolerate school prayer.93 The question of whether there is a spiritual component to national identity continued to matter to most citizens, but school prayer itself seemed to have lost the place it once held in the minds of

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92 In the “About the Author” blurb in *The Church Is Not for Perfect People* (Eugene, OR: Harvest House, 1987), Murray identifies himself as president of William J. Murray Evangelistic Association of Texas, and founder of “Freedom’s Friends,” an organization addressing the “medical and spiritual needs of refugees from Communist countries.”

grassroots America as the defining symbol in that emotional debate. Although Republicans' support for school prayer had been a factor in their party's inheritance of many of the culturally conservative refugees from the Democratic Party over decades, the Republicans' repeated politicization of the issue seems to have gradually diminished not only the apparent transcendence but even the partisan utility of that particular symbol. An angry Pat Buchanan preaching about the "religious war" for the "soul of America" in 1992 in a way that sounded as if the entire Democratic Party had declared an alliance with the devil could never have sounded as trans-political as Frank Becker's 1964 stumping against all the secret fellow travelers with the godless Supreme Court. At a time when the top-down imposition of atheistic communism seemed a plausible fear to many, allegations that the irreligious were a threat to the nation carried a gravitas that could not be sustained in an age when the nation was without serious competitors on the global stage.

Not long after September 11, 2001, I was in New York with some family. Motivated partly by a desire to pay our respects and partly by an unspoken need to dispel two months of television images with something real, we decided to walk down to the site where three thousand of our fellow citizens had recently been buried alive. We were still a long block from where the workers had for weeks been digging for remains and struggling to put out the still-smoldering wreckage when the police line stopped us. Rarely are thousands of people as quiet as when confronted with death in a context where it is usually ignored—a context like a world financial district. It was a sunny weekend afternoon, and the crowd large, yet hardly a soul uttered a word.

When people would finish their viewing, a small but still silent dance would ensue as they attempted to move unobtrusively back through the human sea. A boy of maybe
nineteen stood near one of the major outlets, distributing religious tracts. His hand was extended offering his beliefs, but he said nothing and impeded no one’s path. Judging his efforts inappropriate, a middle-aged woman shouted that he had “no right to be doing *that* here!” Regardless of what one thinks of evangelizing strangers, it is hard to imagine a more appropriate place for the particular task of suggesting ultimate answers about life and death, evil and meaning, than an occasion where wide eyes so obviously asked exactly those questions. Here at least no one was distracted.

A very old man ambling along just in front of me, clearly startled by the woman having pierced the solemn silence, leaned toward the boy and sympathized, “You’re okay. *She* must be with that Madalyn O’Hair.” He then shuffled away—but without accepting a tract.

This project is not about the screaming woman, nor is it about the leading screaming woman, Madalyn Murray O’Hair. But in a general sense, it is about that octogenarian, and the threat he likely thinks Madalyn poses to his country. For more than any other, she incarnated secularization in the minds of a generation of Americans. She was the symbolic face on myriad attempts to suppress and marginalize the place of religion in the public square.

More narrowly, the project concerns also the boy’s realization that the man, even if he has little interest in the substance of the tracts, would side with the young missionary against all apparently anti-religious actors. If each American were forced into one of these three roles, there may finally be as many people offended by evangelism at gravesites as people willing to evangelize there. But the real story is with neither of these small minorities, but with the overwhelming majority of Americans who sympathize with the evangelists against those who desire to see public spaces purged of religious voices.
For much of nineteenth and twentieth century history, the central cultural fault lines in the United States fell between adherents of different theological traditions, both intra-Protestant and especially Protestant versus Catholic. But as the population continued to pluralize demographically, and particularly as Jews and atheists became less bashful about their beliefs in the early post-War period, the culturally Christian nation found itself at a crossroads. Different communities and governmental institutions disagreed about how to respond to the diversity. Elected politicians, at least outside the South, seemed generally willing to pull and stretch the civic religion into a “Judeo-Christian” tradition, just as Protestant America had in recent decades gradually become comfortable with a wider Christian America.

Other segments of the population, represented visibly by the ACLU, the Northeastern legal establishment, and most Jewish groups, insisted that the secularization of state ceremonies, rather than pluralization or what might be called the “genericization,” was the proper response. Because of the important offices they held, the secularizers were able to actualize their vision of an increasingly religion-free legal sphere without having to engage in a broad campaign of public persuasion. Unlike Madalyn, they cannot be charged with crassly economic or publicity-seeking motives, but because of their lack of public debate with the most common reading of the First Amendment’s establishment clause (i.e., that it prohibited established churches but not public theism), they were susceptible to allegations of having changed the Constitution not by a visible process but instead by elite fiat. They might not conceive of Madalyn as their representative, but many other Americans, not understanding Hugo Black’s position, did indeed see him and Madalyn as one and the same.
Frank Becker best represents the simple belief that “genericization” rather than secularization would have answered the problem of creedal diversity in a manner more in keeping with the widespread sense of American identity being essentially religious. To Becker and his legions, “nonsectarian” religion need not exclude any Americans—except those who, by virtue of their explicit unbelief in God, might thereby disclose also their covert unbelief in the very idea of America.

Religious historians have long written about the figurative evangelistic boy at the World Trade Center site—and by implication, about all of the professional religious and self-consciously serious laity they represent. Political historians have listened in briefly to the debates about how large a slice of America the boy represents. But they usually return quietly to their old belief that most political developments (excepting 1980) can be understood without any attention to American religion, for while there may be some religious zealots, the story of American life is with the man. And the man clearly isn’t like the boy; he didn’t even take the tract. Religion must not matter much, and when people add a religious veneer to their arguments, it must be just that—veneer—something that conceals the underlying substance which actually drives them. Millions attend pro wrestling matches and read their horoscopes, just as millions go to church and read dispensational thrillers—and historians as a whole seem unconvinced that the latter practices have affected political life any more than the former in the long run.

Insisting on the political importance of the boy, and organized religion more generally, may be inadequate. But so too is dismissing the political significance of religious beliefs simply because one judges the boy insignificant. For though the man may not organize his vocation around religion and though he may not share the boy’s zeal, he does seem to hold some consequential religious beliefs. He may not know what the Bible says,
but he thinks nonetheless that it represents his country’s spiritual core, and he will fight to
protect this symbol just as he’ll fight to keep protesters from burning the flag. He would
have little to do with the boy if the woman hadn’t started screaming.

The coupling of Madalyn superficially and strict separationism substantively,
especially as revealed to the masses in the 1962-63 rulings, propelled many voters
rightward. The right won these new belligerents less than it simply inherited them, because
political conservatism at least had a place for an American God in its system. Many
politicians on the left also continued to think of the nation in religious terms, but the nature
of their coalition increasingly prevented most of them—except for African-Americans—
from speaking in these terms. And thus it is more accurate to conceive of much of
grassroots white America as being repelled by a secular left, than as attracted by the
particular policy visions of the religious right. Religiously motivated anti-communists have
been largely overlooked by scholars partly because their immense popularity did not
immediately translate into major legislative victories, and partly because those looking for
the roots of Reagan’s newly-energized religious constituents have dug almost exclusively in
the aftermath of Roe v. Wade, or if before 1973, generally only in the shadows of racial
backlash. In reality, though, while the legalization of abortion was an important catalytic
event, especially for increasingly conservative Roman Catholics, and while there are many
important connections between the racial right and the religious right, the modern
manifestation of the religious right is better understood first as a consequence of fears about
top-down communism—and about the evaporation of a religious understanding of the
nation—than as simply a product of resistance to the sexual revolution or desegregation.

The wildly successful evangelical institution-builders of the 1960s and ‘70s came to
realize that there was a broader market for a general American God than for the particular,
angular Diety of their sectarian traditions, and they gradually shifted their emphasis from promoting the exclusive message of fundamentalist tracts to opposing the supposedly un-American forces seeking the privatization of religion in general. Not surprisingly, vote-seekers actively courted the movement the political preachers mobilized and the unexpectedly large patch of middle American sentiment they uncovered. Fear of Madalyn will likely die with the old man, for she was always the symbol and never really the substance of the threat. Yet she was an important catalyst in the formation of a particular incarnation of a worldview, with a long pedigree in American history, that godless elites were stealing the nation from godly masses. Jerry Falwell and Tim LaHaye, along with much of the media that covered them, overestimated their personal influence, but they astutely judged that about “84%” of America would side with aggressive evangelists over aggressive secularizers. There may never have been a moral majority, but there was surely an anti-Madalyn majority in Nixon and Reagan’s America.
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