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Can Religion Tolerate Democracy?
(and Vice Versa?)

Stephen L. Carter[*]

Not everything is science. Not everything is art. Not everything is politics. So much of life is faith. Against all predictions, against all odds, faith abides. Just about a hundred years ago, a prominent Pennsylvania pastor named George Ferris, preaching on the theory of evolution, insisted that scientific progress left Christian morality undisturbed:

> "It may be that back in the mists somewhere the greatest of our grandfathers was just a shapeless jelly-like bit of digestive incoherence. For this reason must we lose our reverence for the moral grandeur of a Paul ...? It may be that our arms and hands are merely the evolution of wiggling antennae on the surface of a moving sponge. Does this fact remove the grandeur and beauty from the pen of a Whittier or the brush of a Raphael? And yet, there have been multitudes who have allowed a secret scorn of religion to creep into their souls, while reading evidence to prove that it originated in ancestor-worship, or in the dread of some mighty Caliban who rattles in the thunder, or shouts in the surge of the sea."[i]

[i] *Evolution and Religion: Sermon Preached by Rev. George H. Ferris, D.D., in the First Baptist Church in Philadelphia on Sunday, February 28, 1909* (unpaginated, undated).

Ah, the secret scorn of religion! So long has it characterized Western thought. And sometimes the scorn is not so secret. One is reminded of Voltaire's dream of strangling the last king with the intestines of the last priest. Or of Jefferson's dismissal of traditional Judaism as "fumes of the most disordered imaginations" – and of traditional Christian teachings about Jesus as "the follies, the falsehoods, and the charlatanisms which His biographers father on him."[ii] A few historians go so far as to suggest that concern about the anti-Catholicism rampant in the colonies during the eighteenth century was one reason for Canada's refusal to join the American revolution. In short, many a democratic hero has been villainous in attitude toward religion.

And what about religion's attitude toward democracy? Nearly every religion on earth could fairly be described as compatible with democratic institutions,[iii] but one will search very hard to find a religious tradition that takes the view that democracy is ontologically entailed. True, all through the nation's history, there have been Christian preachers who have argued that *America* is ontologically entailed, that it is the New Jerusalem, the light to lead the nations to righteousness, a history to which we will shortly return. But to claim for your nation a special status in God's eyes is no new thing, and many religious people have done it over the ages, and some do it today; indeed, the identification of a "people" according to their faith and

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[ii] Thomas Jefferson to William Short, Aug. 4, 1820, in William B. Parker, ed., *Letters and Addresses of Thomas Jefferson* (Buffalo, New York: National Jefferson Society, 1903).

[iii] See, for example, some of the papers in Peter L. Berger, ed., *The Desecularization of the World: Resurgent Religion and World Politics* (Washington, D.C.: Ethics and Public Policy Center, 1999).

the guidance and protection of their god is evidently far older than the identification of a "people" as residents, subjects, or citizens of a particular nation-state.

We must therefore be careful not to make the mistake of thinking that theologians or preachers who see the United States itself as specially favored of the Lord are also necessarily contending that democracy is specially favored of the Lord. Heaven, after all, is no democracy.

We also must avoid a parallel mistake: supposing that democrats who proclaim themselves in favor of religious freedom are therefore in favor of religion. One might carve out a space for people to indulge their primitive superstitions while, at the same time, hoping that they will one day grow out of them.

In both cases, the most we can reasonably conclude is that people go with what they've got. A democracy must deal with religion because it has within its borders religious citizens. A religion must deal with democracy if that is the form of government within which its followers reside.

I begin this way because I think it useless to think about the relationship between religion and democracy in theoretical terms, but useful to consider it in practical terms. Most contemporary theorists of democracy would probably conclude that democratic politics and democratic life could proceed just fine if, tomorrow, no one in America woke up believing in God. Most believers who happen to live in America would probably insist that they would believe in the same God, in the same way, were they to awaken tomorrow in a land in which nobody believed in democracy.

In this sense, we might say that democracy, in the abstract, probably would find religion dispensable; and that religion, in the abstract, probably would find democracy dispensable; and the fact that some of us would describe ourselves as committed deeply to both democracy and our faith does not change the fact that neither commitment entails the other.

If both religion and democracy likely could exist without the other (or think they could), it is scarcely surprising that each works constantly to press the other into a mold it finds useful. After all, from the point of view of democratic theory, religion possesses no independent importance. From the point of view of religion, democracy possesses no independent importance either. Theorists of democracy nowadays complain bitterly about illiberal religions, and some of them have written about how to try to tame those religions they like least, usually through the education of the children of the parents whose beliefs are objectionable.[iv]

Similarly, many religious believers level accusations against a culture that is, they insist, unfriendly to religion; or, at least, unfriendly to those religious believers who are sufficiently sincere about their faith to place allegiance to God before allegiance to the state. Many have pushed for changes in law or practice to move the nation in a direction more sympathetic to the world they want to build.

[iv] See, for example, the discussions in Stephen Macedo, *Diversity and Distrust: Civic Education in a Multicultural Democracy* (Cambridge, Mass.: Harvard University Press, 2000), and Amy Gutmann, *Democratic Education* (Princeton, N.J.: Princeton University Press, 1987). Although the concern over parents teaching children illiberal values is commendable, seeking to solve the problem through coercive authority raises democratic questions that I discuss below. See also Ira C. Lupu, "Home Education, Religious Liberty, and the Separation of Powers," *Boston University Law Review* 67 (1987): 971.

This tension is natural and, I would suggest, quite healthy. Democracy and religion should never quite be happy with each other. Thus, a polemicist like Edmund Burke led the rest of us down a dangerous road when he lauded religion because, he claimed, it trained people to be good. Like contemporary "defenders" of religion who insist that faith is good because it molds better citizens, he conceptualized religion as a servant of the needs of the state.

Religion and democracy need not be at war, but they cannot quite be at peace. If they manage to live as though at peace, the reason should be that they have found a modus vivendi, not that one has triumphed: for the triumph of one will likely be the destruction of the other. And here, again, we see the tension itself. The committed democrat, forced to choose, will say it is better for faith to die and democracy survive; the committed believer, forced to the same choice, will say it is better for democracy to die and faith to survive.

In the United States, we like to say we have worked out a uniquely American solution we call the separation of church and state. We talk a lot about the "principle" of separation of church and state, or the "constitutionally mandated" separation of church and state. But, when we talk that way, we talk unrealistically, and dangerously.

The separation of church and state is not a principle. It is not a rule of constitutional law. It is not an abstract theory of an ideal relationship and is, emphatically, not the precious invention of the wise Founders of the republic.

It is, for lack of a better way to put the matter, a contract ... or, in what might be a better metaphor, a treaty. A peace treaty.

The separation of church and state certainly has a normative dimension, but its normativity stems entirely from its origins. We tend to miss this point, and thus place on the back of separationism weight it cannot bear. One learned article after another proclaims the separation of church and state to be an indispensable constitutional protection for religious minorities. It is not any protection at all. Religious minorities lose out in America all the time, and neither courts not legislature do very much to help. Neither more separation of church and state nor less would do religious minorities any good, because the separationist tradition has nothing to do with the problem. Similarly, one learned article after another proclaims the separation of church and state to be a fundamental principle of liberal democracy, but few other liberal democracies have seen any compelling reason to copy the American design. Nor is there any reason that they should, because the separation of church and state, for all of its glories, is *our* peace treaty, not someone else's; it is an American solution, deeply Protestant in character, linked to our history, and, thus, not necessarily an approach that would appeal to another culture with a history of its own.

II

The legal scholar Michael McConnell has recently put the point this way: "Separation of church and state was a reality long before it was an

idea."[v] His reference is to the experience of the early Christian church, which learned the hard way, and more than once, about what happens when the state becomes dominant over the church. Early Christians, existing in a decidedly inferior position, had no particular reason, other than faith, to thrust themselves forward. To be known as a Christian often meant imprisonment, torture and death. In 1868, Bishop J. B. Lightfoot of the Church of England wrote of the leadership of the early church: "Ambition of office in a society where prominence of rank involved prominence of risk was at least no vulgar and selfish passion."[vi]

The European church of the Middle Ages had a rather different view, and it sought to build what the historian Paul Johnson has labeled "a total Christian society" – a culture in which every aspect of every life was governed by the teaching of the church. Whatever the theology of this effort, history has not been kind to it on practical grounds: human beings seem wired to aspire to more than being told what to do, whether the one doing the telling is benign or malign in intent, and efforts to build total societies, whether inspired by love of God or love of a political idea, have always ended in oppression and murder.

What is striking about American-style separationism, however, is that it owes a good deal less than is commonly thought to some supposed dread of religious warfare. The Founders of the Republic did not believe

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[v] Michael McConnell, "Religion and Constitutional Rights: Why is Religious Liberty the 'First Freedom'?", *Cardozo Law Review* 21 (2000): 1243, 1245.

[vi] J. B. Lightfoot, *The Christian Ministry*, ed. Philip Edgecumbe Hughes (Wilton, Connecticut: Morehouse-Barlow, Inc., 1983) (originally published 1868), p. 82.

that religious warfare was a very big risk. The last European religious war of which they would have been aware ended in 1648, and the continent suffered wars aplenty, none of them religious, in the century and a quarter that followed.

The separation of church and state is not, in any interesting sense, a product of the enlightenment. Neither Hobbes nor Rousseau believed in it. Each wrote, unambiguously, of the need to subordinate the church to the state, so that the first loyalty of every individual was not to Divine command, but to the will of the sovereign. They wanted, in effect, to build the total society of the medieval church, but without the church.

James Madison's famous *Memorial and Remonstrance*, drafted in 1785 in a successful effort to oppose a mandatory assessment in Virginia for the support of the clergy of the established Anglican church, is cited as a crucial document in understanding the separation of church and state. I am among those scholars who believe that the Supreme Court's heavy reliance on the elitist Madison to explain the First Amendment is a bit of a stretch, but even Madison offered what amount to Christian reasons against the tax:

> "Whilst we assert for ourselves a freedom to embrace, to profess and to observe the Religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence that has convinced us. If this freedom be abused, it is an offense against God, not against man."[vii]

[vii] James Madison, "Memorial and Remonstrance Against Religious Assessments" (1785), reprinted in Arlin M. Adams and Charles J. Emmerich, *A Nation Devoted to Religious Liberty* (Philadelphia: University

This was the common view of the Founders. Even if, as most historians believe, Madison was more influenced by the Enlightenment than by Christianity, few of his fellow citizens were likely of the same mindset. As the historian Harry V. Jaffa has recently reminded us, if Americans from very early on accepted, with enthusiasm, the separation of church and state, "it was because they were persuaded that the true teaching of the Gospel required that, as in the ministry of Jesus, no political rewards or punishments influence the soul in its contemplation of the requirements of eternal salvation."[viii]

One simply cannot make the case, historically, that the nation wanted to limit the church to a small and harmless sphere while exalting the power of the state. No, American-style separationism owes its origins to a sense, not of the dangers of religion, but of its importance. The Protestant tradition, especially as brought across the ocean by the Puritans, taught of the two great powers that God ordained on earth, the church and the state. Separate they were, but not because religion was a power to be pent up. They were separated because their tasks, although quite important, were also quite different, and the mixing of the two had a tendency to corrupt the true faith. The church had the role of preparing men and women for salvation; the state of keeping order while the church did its work. Neither church nor state should dominate the other, but both were subservient to

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of Pennsylvania Press, 1990), p. 104.

[viii] See Harry V. Jaffa, *A New Birth of Freedom: Abraham Lincoln and the Coming of the Civil War* (Lanham, Maryland: Rowman and Littlefield, 2000), p. 141.

the same God.

The particular metaphor of a wall of separation between church and state we owe, of course, to Roger Williams, who, having fled what he considered the oppressions of Puritan New England, strove to create the proper Christian state instead in Rhode Island. For Roger Williams, all the earth was either garden or wilderness, and a high hedge wall separated the two. The garden was the place of the people of faith, who nurtured one another in their understanding of what the Lord demanded of them; the wilderness was the un-evangelized world, a place of danger and temptation to the faithful. The wall did not protect the wilderness from the garden; it protected the garden from the wilderness. The risk, for Williams, was that the un-evangelized wilderness might interfere with the work of the people of the garden. That was the reason for the wall.[ix]

The wall emphatically did not exist in order to keep the people of the garden out of the wilderness. On the contrary, Williams believed that it was the obligation of the believers, responding to Divine call, to go out into the garden to preach and teach. The wall of separation was, for Williams, the peace treaty. It confined the different authorities to their different tasks but did not interfere with God's plan, which involved, ultimately, the evangelization of the entire wilderness.

[ix] For a recent and very interesting treatment of Williams, see Timothy L. Hall, *Separating Church and State: Roger Williams and Religious Liberty* (Urbana, Ill.: University of Illinois Press, 1998). The classic "resurrection" of Williams, still delightfully readable although marked with some historical flaws, is Mark De Wolfe Howe, *The Garden and the Wilderness: Religion and Government in American Constitutional History* (Chicago: University of Chicago Press, 1965).

III

Now, before we go any further, we have reached an interesting place to stop and take stock. If the wall of separation, in its American usage, began as a metaphor for the protection of the church, which would then go out and try to change the world, then what possible protection would it ever provide for the religious dissenter? How does the minority religion benefit from the separation of church and state? What about the atheist, or the agnostic, or the individual who, for whatever reason, would rather just not be bothered?

The answer Williams would have given, I think, is that the protection is of a particular kind, and none other: because the wilderness is not to impinge upon the garden, the religious dissenter can set up any religion he wishes, with no interference from the state. The state cannot impose on him a requirement to join any faith or profess any creed.

But what about one of our contemporary bugaboos, the provision of tax dollars to, say, religious schools? Here Williams has a further bit of teaching. He did not believe it proper for the state to coerce individuals to act contrary to their consciences, or to pay for what they, in conscience, believed they should not. The sole exception he drew was for the funding of those things needed to enable the state to survive.

It was for this purpose that Williams deployed his famous metaphor of the "ship of state." The ship, Williams wrote, carried many different people, of many different views. None could force the others to do anything that the others, in conscience, refused to do; except that everyone, even

dissenters, could be required to perform those tasks, or pay for those things, that were essential in order to keep the ship afloat.

One might reasonably argue, then, that tax dollars for religious schools would be prohibited under Williams' vision of separationism: how, after all, can religious schools be essential to keeping the ship afloat? But it is important to remember how broad the metaphor is. Williams' concern was for conscience. He did not say that nobody should be forced to support *anything religious* to which he or she had a conscientious objection; he said that nobody should be forced to support *anything* to which he or she had a conscientious objection. Thus, if Citizen A could object to the use of his tax dollars for religious schools, because conscience intervened, then Citizen B could object to the use of her tax dollars for abortion services, because conscience intervened. Williams' metaphor provides no basis for distinguishing between the two.

It is striking, at this late date, that just about every industrialized nation other than ours has in place a program of public support for at least some forms of religious education, even states, like France and India, which have in their constitutions enshrined principles of separation of church and state. Even as the world embraces, with astonishing rapidity, fundamental principles of democracy, we have not succeeded in persuading the world that our vision on the question of religious education is the right one, and we do not even try very hard. So far, no American presidential administration has sought to cut off aid to regimes that engage in the putatively undemocratic practice of using tax dollars to fund religious

schools – a wise choice, as it would cost us nearly every ally we have in the world. Perhaps this wisdom supports the proposition that the separation of church and state, as we have come to understand it on these shores, is less a fundamental democratic principle than a distinctly Protestant, or perhaps Puritan, artifact of our peculiar history.

I do believe, however – even though I am sure that Williams himself would not – that the original separation metaphor provides a firm ground for opposing organized classroom prayer in public schools. Why? Because, in the public schools, the state, largely run from the wilderness, is seeking to mold the youth, many of whom are from various gardens. By teaching them how to pray, the state does precisely the work that the garden has reserved for itself, and thus impermissibly breaches the wall of separation of church and state. I am constrained to add, however, that *any* effort in the public schools to teach morality is properly subject to the same objection, whether the curriculum is for the purpose of enhancing tolerance or inculcating the values of the free market. Teaching right and wrong is the task of the garden; protecting that teaching is the purpose of the high hedge wall.

Consequently, when religious parents – or, for that matter, non-religious parents – object to a feature of the school curriculum on the ground that they wish to teach their children something different, they are not being intolerant. They are simply demanding that the state remain on its side of the wall. How we should handle such objections when they arise is a nice problem, and one on which the courts, struggling to make sense of

a nearly unreadable set of constitutional rules on church and state, so far have messed up horribly; but that is a subject much picked over in the scholarship, and one that need not detain us here.[x]

Let it suffice here to emphasize that in the terms of Williams' original metaphor, the development of conscience – that is, the teaching of morality – is the task of the garden, not the wilderness. Thus, one might reasonably argue that when the state, acting through it schools, seeks to teach morality, it breaches the high hedge wall between church and state. And if, as I have suggested, American-style separationism is best understood, not as a rule of law, but as a peace treaty, or a contract, the state is in breach. And we are seeing in our politics, in the still-rising tide of activism among religious conservatives, a significant subset of the American population that seems to think that the state has indeed broken the contract, and that the church, as a result, is no longer bound.

(One would of course exclude the religion or denomination that finds separationism theologically compelling. But, even then, as we shall see, the state has arguably broken the bargain; and, certainly, a theological compulsion is not, under the contract, one the state should ever be able to enforce.)

It is easy to see why the state would want to breach the wall that Roger Williams built. The state would prefer to behave as though there is no wall for the same reason that many religions would like to do the same

[x] See, for example, Nomi Maya Stolzenberg, "'He Drew a Circle that Shut Me Out': Assimilation, Indoctrination, and the Paradox of Liberal Education," *Harvard Law Review* 106 (1993): 581.

thing. There is a sense in which the state and the religions are in competition to explain to their people the meaning of the world.[xi] When the meanings provided by the one differ from the meanings provided by the other, it is natural that neither will quite be content with the peace treaty. The treaty might make both sides feel like losers: the state upset with those dissenting, mischievous religionists who refuse to give up their illiberal ways, the religionists refusing to accept a state that teaches a meaning they consider ungodly. Feeling like a loser, each might do what it can to become a winner. Often, especially in today's mass produced world, characterized by the intrusion into every household of the materialist interpretation of reality, religions are just overwhelmed, which leads some of them to change and many of them to die.[xii]

But more subtle tools are available in the assault on religious meaning.[xiii] All through history, the state has tried to domesticate religion, sometimes by force, simply eliminating dissenting faiths; sometimes through the device of creating an official, "established" church, which then

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[xi] For an argument that the free exercise clause of the First Amendment should be explicitly understood to foster a plurality of meanings, in order to avoid state hegemony, see Bette Novit Evans, *Interpreting the Free Exercise of Religion: The Constitution and American Pluralism* (Chapel Hill, N.C.: University of North Carolina Press, 1997).

[xii] For two quite different accounts of the process of that change, see Harold Bloom, *The American Religion*, and Nathan O. Hatch, *The Democratization of American Christianity* (New Haven: Yale University Press, 1989). Bloom argues that all religions in America eventually (perhaps inevitably) become gnostic, personal, mysterious. Hatch insists that they tend to lose the hierarchical structures characteristic of many European traditions. I hope Bloom is wrong; I am fairly sure Hatch is right.

[xiii] I readily acknowledge that my discussion of the competition between religion and the state to explain the meaning of the world is greatly influenced by the work of the sociologist Peter L. Berger, especially *The Sacred Canopy: Elements of a Sociological Theory of Religion* (New York: Doubleday, 1967).

places reliance for its continued survival in the state instead of its vision of the Divine; and sometimes -- as in the twentieth-century American experience -- through the device of reducing the role of religion by confining its freedom within a state-granted, state-defined, and state-controlled structure of constitutional rights.[xiv]

Religion, however, is no idle bystander. If the state tries to domesticate religion, its most powerful competitor in the creation of meaning, authentic religion tries simultaneously to subvert the state. Democracy often seems to see this tendency as one of religion's dangers. Actually it is one of religion's virtues. A great gift that religion gives to democracy is dissent, especially moral dissent, and the gift has been given, repeatedly, all through the nation's history. There have of course been many moral dissenters who would not think themselves not religious, and many of them, like many of the religious, have delivered as their particular gifts to the nation great sacrifices in the cause of principle. It has been a sad characteristic of democracy, as of every other system of governance, to try to force the dissenters into a non-dissenting mold.[xv] In the United States, for example, we condition the receipt of tax-deductible status for churches on the agreement of their pastors not to endorse candidates for office from the pulpit. If you think about this widely accepted rule, you

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[xiv] I discuss the problem of domestication through the granting of rights in greater detail in Stephen Carter, "Religious Freedom as if Religion Matters: A Tribute to Justice Brennan," *California Law Review* (1999).

[xv] I explore this proposition in detail in Stephen L. Carter, *The Dissent of the Governed: A Mediation on Law, Religion, and Loyalty* (Cambridge, Mass.: Harvard University Press, 1998).

begin, I hope, to see the problem: the state is reaching into the garden to try to limit what religious leaders may talk about.

The wall of separation between church and state, one might think, exists precisely to prevent that result. The state should not be pressing a religion to change its ways. The state should not be using the tax code or the zoning laws or any other device to pressure the people of the garden to interpret Divine command in a particular way. Of course, as the church and the state are in competition to provide meaning, we should not be surprised when the state behaves as though the wall does not exist; we should simply be equally unsurprised when the religions do the same thing.

IV

Very well: Let us return to the peculiarly American experience of the separation of church and state. We sometimes talk and write as though it has long been an American understanding that the separation of church and state means that openly religious argument has no place in our political debates. We might say that intolerance of religion is the homage that the state pays to the wall of separation: so much do we love religion that we will turn Roger Williams' hedge into a barbed-wire escarpment, with the barbs facing inward, lest those pesky religionists manage to climb over.

Actually, American democracy has never embraced that model, which is a fortunate thing for our democracy. Democracy needs its dissenters, for it is courageous acts of dissent that spark the dialogue through which, in a truly democratic polity, we are most likely to advance.

The dissenter needs courage because he or she is a resister, insisting that the meanings prevailing in a given day are not necessarily the right ones, even when the state supports those meanings with the rather persuasive arguments of attack dogs and shotguns and prison cells.

Religion, at its best, is a vital source of dissent. "The religions," writes the theologian David Tracy, "live by resisting."[xvi] Religion, to be sure, has often in history been simply a defender of the status quo, especially when successfully domesticated. Informal establishment may be enough: in the late years of the nineteenth century and the early years of the twentieth, we saw, in America, the informal establishment of the Protestant mainline as the nation's quasi-official church, and the predictable result was that church and state tended to act as one. The notable exceptions, such as prohibition, tended to be populist movements, a point of some importance.

Prohibition was supported almost entirely by evangelical Christians; the mainline churches mostly opposed it. I mention evangelicals explicitly for a reason – and not simply because I am one. Given recent political history, it is terribly easy to forget that a powerful strain in evangelical thought has long counseled avoidance of the contagion of politics. Like the preachers of the First Great Awakening back in the eighteenth century, many evangelical leaders of the twentieth urged their followers to ignore elections and instead use their energies preparing for salvation. As late as the 1960s, millions of Christians of traditional views did not even bother to

[xvi] See David Tracy, *Plurality and Ambiguity: Hermeneutics, Religion, Hope* (San Francisco: Harper & Row, 1987).

use their votes, and America, in its traditional reciprocity, did not even bother to care. Among the evangelical clergy urging followers to stay away from the polling place was the pastor of the Thomas Road Baptist Church in Virginia, a man by the name of Jerry Falwell.

There was even an unspoken, but very satisfactory, peace treaty between the evangelicals and the mainline, subsidiary to the treaty we have already discussed, a treaty going all the way back to the original battle between the Fundamentalist and the Modernist Protestants at the end of the nineteenth century and the early years of the twentieth: “We’ll leave you alone if you’ll leave us alone.” The 1908 sermon by George Ferris that I quoted to open the lecture occurred toward the end of this battle: Ferris contended that Christians had nothing to lose by embracing modernity. Fundamentalists believed that they had a great deal to lose: in particular, their souls.

That was the era in which what have come to be known as the mainline Protestant churches, fired by the ideology of Progressivism, began chipping away at the authority of the Bible and other traditions that seemed to them not to fit the needs of a modern, more professional society. As the historian Nathan Hatch has pointed out, even the fight over biblical interpretation mirrored the battle between Populists and Progressives. The Progressives believed in expertise, and so, naturally, understanding the Bible became the province of wise theologians with advanced university training. The Populists believed in the masses, and so, naturally, understanding the Bible was equally the province of everybody (they

usually said “every man”) who happened to own one.

As the century swept on, the alliance of Progressivism and the mainline churches won major legal battles, which was not a surprise, as the same belief in professional expertise is reflected in the legal system, where constitutional interpretation is ultimately the province of wise judges with professional training – in other words, an elite -- rather than of the people as a body.

The battle over evolution, a battle not yet ended, features precisely these battle lines. On the one side are the devotees of expertise; on the other, the celebrants of populism. The experts say, first, that the theory of evolution is the best account of the origin of humanity, and, second, that the Bible, understood properly, is not inconsistent with the theory. The populists reply, first, that the Creation account in Genesis is the best account of the origin of humanity, and, second, that the theory of evolution is hopelessly inconsistent with Genesis because the Genesis account is literally true.

We tend to treat this battle as possessing constitutional magnitude, and the Supreme Court has weighed in twice. But the real struggle is less legal than epistemological. Creationists, as the populists in this argument have come to be called, do not insist on their vision because they want the state to advance their religion. They insist on their vision because they believe it to be true. By their lights, the state, by teaching evolution in its public schools, is doing two bad things, at least one of them forbidden by the church-state peace treaty. The first bad thing is teaching their children

lies. The second bad thing – the one that violates the wall of separation, in their view – is teaching particular lies that will wean the children from their parents' religion. One need not share the theology of Creationist parents to see why they would think it is the state that has broken the pact; and why efforts to gain "equal treatment" for creationism, or even to ban evolution from the classroom, are seen by the parents as simply a response to the attack.

Of course, the most profound of the battles was probably the elimination of organized classroom prayer in the public schools, which was won by the elite, not by the people, a majority of whom, according to public opinion polls, remain unhappy with the result to this day. The end of organized classroom prayer (alongside, it must be conceded, the integration of the public schools, which white evangelicals largely opposed) hastened what had been a more gradual evangelical retreat, not only from politics, but even from contact with the larger secular society. The rise of the Christian school – the evangelical alternative to both public and Catholic schools – dates largely from this era. More and more evangelicals decided that what they wanted most from America was the opportunity to live their own lives, build their own communities, and raise their own children in their own way as they waited on the Second Coming.

Through this retreat, the evangelicals built their own wall of separation between church and state, theologically and culturally, struggling to banish from the lives of their families the changes they hated in the country they loved. They were no more successful than King

Canute, and the utlimate recognition of their failure, particularly in the wake of the Supreme Court's 1973 abortion decision, *Roe v. Wade*,[xvii] helped reverse the separatist trend. In 1976, the votes of hundreds of thousands, possibly millions, of evangelical voters, many of whom had never before been inside a polling place, helped to elect Jimmy Carter. Four years later, of course, white evangelicals largely deserted the Democratic Party, largely because of the so-called "social issues," and, ever since, have been a solidly Republican constituency, (although there is some debate among experts over just how solidly).[xviii]

Similarly, we find the organizations of what is sometimes called the Religious Right rising – and sometimes falling – around the same set of events. Moral Majority was founded by the Reverend Jerry Falwell in 1980, and folded up about a decade later. The Christian Coalition was founded in 1989 by the Reverend Pat Robertson and is still in existence, although most experts think it is struggling, and it has probably fallen far short of its stated goal of training 10 political activists in each of America's 175,000 electoral districts by the year 2000. But the trend for conservative religious organizations is not necessarily downward, for other groups, such as The Eagle Forum, Excellence in Education, and, especially, Focus on the Family, remain quite dynamic. Their profiles are lower, and they have little interest in electoral politics, and there, perhaps, is the secret of their

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[xvii] See *Roe v. Wade*, 410 U.S. 113 (1973).

[xviii] I discuss these data in Stephen L. Carter, *God's Name in Vain: The Wrongs and Rights of Religion in Politics* (New York: Basic Books, 2000).

survival. For one thing that history teaches us is that when religious organizations get into electoral politics, they tend to lose their focus on the Divine, muting or even altering certain aspects of their teachings in order to further the fortunes of the candidates or parties they happen to support.[xix] The conservative religious groups that have ignored this wisdom have usually come to grief.

It is a commonplace in public dialogue to describe such organizations as these as involved in an assault on basic freedoms or our democratic heritage – everybody in this room knows the words by rote. But, on most issues, the groups are in retreat, fighting at best a holding action. More important, from the point of view of Christian conservatives, the first shot – the shot that ended the peace treaty – came from the wilderness, not from the garden. One does not have to agree with many or any of their positions to see how, from their point of view, today's breach in the wall of separation is not of their making.

V

In what we like to think of as the modern age, democratic governments have grown increasingly scientistic – that is, the production of policy has more and more become an instrumental exercise, in which governments seem less interested in seeming wise than in seeming well

[xix] I discuss a small part of this history in Carter, *God's Name in Vain*. For a similar argument by conservative evangelicals who have been involved in electoral politics but now counsel staying away, see Cal Thomas and Ed Dobson, *Blinded by Might: Can the "Religious Right" Save America?* (Grand Rapids, Mich.: Zondervan, 1999).

informed. Policy is ideally guided, in this technocratic era, not only by expertise, but by expertise that is, or at least sounds, scientific in nature. Regulations that cannot plausibly be cast as resting on the latest expert learning begin to look somewhere between stuffy and malign.

Religious believers who have clambered over the wall into the realm of the wilderness, even if they have been drawn by what they consider the need for self-defense, have been infected by this scientistic disease. That is why evangelical parents who believe the Genesis story to be literally true describe their worldview as *scientific* creationism. That is why religionists who believe abortion to be murder search out medical evidence on the beginning of human life. And why supporters of vouchers feel compelled to present data purporting to show that students in religious schools perform at least as well on tests as do public school students. As policy advocates, religionists perhaps can do no other. But scientistic religion, as the legal scholar Steven Goldberg has pointed out in a recent book, is rarely a showcase for religion at its best.[xx]

Revealed religion is not necessarily inconsistent with modern science, but also must not make the mistake of supposing that scientific truth is all the truth there is. In the Western tradition, the Creator-God who made and rules the universe has created moral facts as well as scientific ones. The religionist who is true to the tradition does not exalt the material over the spiritual, and thus cannot exalt science over morality. In other

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[xx] See Steven Goldberg, *Seduced by Science: How American Religion Has Lost Its Way* (New York: New York University Press, 1999).

words, if it can be “true” that the earth goes around the sun, it can also be “true” that sex outside of marriage is wrong. A scientistic approach to governance can accept the first but must leave the second to the free choice of individuals, as there is no technological means for testing its truth. The traditional religionist who believes in the Creator-God cannot concede that epistemological point, because material revelation is not all the revelation there is. In fact, the revelation of the observed world is, in the Western tradition, inferior to – less important than – the revealed Word as passed on from God and through the generations.

This might be another good reason for the people of the garden to stay out of the wilderness: some deep truths of the garden are inexpressible in a wilderness grown so scientistic that it risks becoming morally illiterate. On the other hand, we do not show our love of our neighbors by denying them access to the great truths of the universe. The same impulse that makes the secularist want to teach modern science to the children of the religionist might make the religionist want to teach traditional morality to the children of the secularist. The necessary epistemological neutrality of the wall of separation between the garden and the wilderness means that our great peace treaty can offer no basis for preferring one set of teachings to the other. All the wall can tell us is that either side would understandably view the other’s victory as a breach.

My suggestion is not that either side’s epistemological vision is “truer” than the other, only that the peace treaty manifested in the wall of separation tells us not to prefer one in a way that harms the ability of the

faithful (the faithful of science or the faithful of religion) to pursue the other. Science will never accept that revealed religion is as useful a source of truths as observation and experiment in the material realm; but revealed religion will never accept that science is as useful as the Word.

The social theorist Isaiah Berlin argued long ago that the most dangerous enemy of the Enlightenment was not religion but the skeptical tradition that stretches back to the ancients. If we view scientism as the unexpected inheritor of Enlightenment liberalism, then skepticism is the cynical uncle who thought he should have had the family fortune. All day long he craps and criticizes. Nothing the heir does is ever good enough, simply because the heir was undeserving in the first place.

It is striking that religion more and more sides with the heir instead of the uncle. Striking, but not surprising, because if skepticism is the enemy of liberal rationality, it is even more the enemy of revealed religion. The skeptical tradition, if thinks of, say, Voltaire or Hume, may be said to have cut its eye teeth in the struggle against the organized church. It is that tradition that we honor (if that is the word) when, in our own era, we meet the truth claims of the faithful with a sullen *Sez who?* The notion that my truth is every bit as good as yours (and that it is intolerant of you to suggest otherwise) degrades not only religion, but Enlightenment liberalism as well. Democracy need not rest on a skepticism about moral truth, although we sometimes pretend that it does; but it must rest on a willingness to permit others to organize moral life within communities that demonstrate diversity in epistemology.

There is a tendency toward imperialism in the way the faithful on either side of the wall look at the truth-claims of the others; all of us seem to want to educate those with differing worldviews into our own. Small wonder that we battle so hard over school curriculum, for what is at stake in the education of children is often a dream of conquest, a taming of the wildness on the other side of the wall. Yet the faithful on either side of the wall continue to profess astonishment when the objects of their dreams prefer to stay wild.

VI

But we have been speaking of dissent as a vehicle to change, and it is here, perhaps, that we can both illustrate the working of the separation of church and state as originally understood, and get a sense of the manner in which religion and democracy, with their competing claims of meaning, might continue to co-exist, in a relationship less mutually tolerant than mutually respectful.

American history is of course full of important episodes of religious activism as a vehicle for change. The evangelical, almost fundamentalist, Christianity of an activist like Fannie Lou Hamer was not the whole of the Civil Rights Movement, but the movement is unimaginable without her, without the Reverend Dr. Martin Luther King, without the religious leadership that believed itself to be on a religious crusade to change for the better the world that the Lord created and his creatures so sullied. Their faith gave them the strength to sacrifice, to stand up for their beliefs when

something was at stake, and it was the power of their sacrifices, as much as the power of their arguments, that finally moved a nation.[xxi]

Or we might consider the labor movement. Much of what we have long come to accept as fundaments of fair labor-management relations – collective bargaining, reasonable wages, protective legislation for children, higher levels of safety in the workplace – maps precisely onto the platform of the Men and Religion Forward movement that fought for labor rights during the early years of the twentieth century.[xxii] Pope Leo XII, in his 1891 encyclical *Rerum Novarum*, caught the separationist nuance perfectly. He warned that "greedy" employers had a responsibility to pay their workers wages adequate to support families, lest they be tempted into sin.[xxiii] All power, he argued, was God-given, and must therefore be used according to God's ordinances. Thus, those who ran both the country and the factories should not create conditions in which it would be harder for workers to lead Christian lives. The traditional Catholic position on church-state relations was more complex than the Williams model we have been discussing, but the encyclical did not violate the separation of church and

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[xxi] For a commentary on the relationship of the civil rights movement to the separation of church an state, see Anthony E. Cook, *The Least of These: Race, Law and Religion in American Culture* (New York: Routledge, 1997).

[xxii] See Harry Lefever, "The Involvement of the Men and Religion Forward Movement in the Cause of Labor Justice," *Labor History* 14 (1973): 522. The effort by the Men and Religion Forward movement to present the values of trade unionism as central to the work of the church aroused "considerable enthusiasm." Ken Fones-Wolf, "Religion and Trade Union Politics in the United States, 1880-1920," *International Labor and Working Class History* 34 (1988): 39. It must be noted, however, that the movement generally discouraged strikes and other forms of direct action.

[xxiii] Pope Leo XIII, *Rerum Novarum – Encyclical Letter on the Condition of Labor* (authorized translation) (Washington, D.C.: National Catholic Welfare Conference, 1942) (originally issued in 1891).

state even as understood by Protestants, because the Pope was simply calling upon the people of the wilderness to stop interfering – in this case, through conditions in the factories – with the work of the garden.

Imagine for a moment the America of the late nineteenth and early twentieth centuries, the swift transition, over a period of perhaps thirty years, from a nation in which nearly everybody worked the land in one way or the other to a nation in which the defining form of labor was working for a wage in the factory. Small communities that had preserved their values for centuries were shattered as the young began to wander to find work. The great industrial cities were built around the great factories, and suddenly, for the first time in American history, great masses of strangers lived crowded together in tenements. Many were immigrants from the farms, many more were immigrants from abroad. Women and children worked as well, often for pennies a day. In the tenements, there was neither decent sanitation nor running water. In the factories, there was dangerous work under oppressive conditions, but whenever the workers tried to organize unions, the police, private detectives, even the armed forces, were called out to put a stop to the attempt.

The churches could hardly have stayed silent if they wanted to. And, although there were many preachers on behalf of the status quo, the situation of the workers inspired many others to challenge, publicly, the policies of both business and government. And they were hardly alone. The nineteenth century flowed into the twentieth on the cusp of the Progressive Era, during which – at least according to popular history – the

states and, later, the federal government adopted a number of statutes and regulations aimed at curbing what were viewed as the abuses of an unfettered laissez faire economy.[xxiv] Whatever the softness of the popular history, nobody denies that the reformers in the pulpit were prominent and provocative players in the political drama of the age.

Consider the contemporary complaint that the late years of the twentieth century saw the government abandon most efforts to rein in business excess, as long as prosperity reigned for most Americans. The complaint turns out to be as old as preaching – the great biblical prophets regularly issued injunctions against the rich who despised the poor – and it is certainly as old as America. Thus, the rector of a Philadelphia church lamented on All Saints Day in November of 1914: "Our leading business men value tariff laws more highly than the Sermon on the Mount."[xxv] American business, he argued, preferred to make the Gospel "just the kind suitable for American business conditions." He added: "Wall Street has

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[xxiv] The text describes only the popular history. Like the regulatory triumphs of the twentieth century, the free market of the nineteenth tends to be overstated. The innovative regulatory forms of the Progressive Era were frequently cloaks for cartelization. Licensing statutes for the professions provide the usual example: described as laws to protect the public, they had the effect (and still do) of limiting entry to a field, thus enabling those in the profession to raise their prices. Moreover, these new regulatory forms were quickly subjected to another innovation known as regulatory capture – the tendency of regulators to become advocates for rather than watchdogs of the industries they regulate – has been studied by economists for decades. The classic economic argument was presented in George Stigler, "The Theory of Economic Regulation," *Bell Journal of Economic Regulation* 2: (1971): 3. For an early analysis of how licensing statutes can serve as a form of capture, see Edmund W. Kitch, Marc Isaacson, and Daniel Kasper, "The Regulation of Taxicabs in Chicago," *Journal of Law and Economics* 14 (1971): 285. But it has never been any secret to serious historians either. An early work is Gabriel Kolko, *Railroad and Regulation, 1877-1916* (Princeton, N.J.: Princeton University Press, 1965).

[xxv] (Rev.) George Chalmers Richmond, *The Open Altar: The Sermon Preached Sunday Morning, November 1, 1914* (Philadelphia: [The Vestry], 1915), p. 7.

always kept tight hold of the Church, so the Church would not let Christ do any damage among stocks and bonds. Christianity, if allowed full swing anywhere, will, at times, close the stock exchange."[xxvi]

Bishop Charles D. Williams of Michigan argued in 1917 that the Gospel required the development of a new social conscience. Altering the course of law to enable it, he insisted, was a Christian obligation, a part of the Great Commission to evangelize the world (Matthew 28:16-20). Poverty and inequality of wealth, according to Williams, were the enemies of the Gospel:

> "There are everywhere in our modern world economic, industrial and social conditions which make the Christian life practically impossible. Is it not the business of religion to deal directly with those conditions and try to make the environment at least more favourable to the regenerate life? Our concern is with the soil as well as with the seed in our sowing of the Word."[xxvii]

In other words, if the conditions of the workers were not improved, there would be no rich soil in which the Word could take root.

The more radical of the preachers, not content to worry about the salvation of the souls of the workers, challenged industrial capitalism itself. One vehemently anti-capitalist preacher, David C. Reid of the Congregational Church in Stockbridge, Massachusetts, published a book in 1910 entitled *Effective Industrial Reform*. Living and working in the

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[xxvi] Richmond, p. 17.

[xxvii] Williams, p. 31.

Berkshires, he saw around him the hovels of the working class and the grand villas of the wealthy. It was not only the patent inequalities that disturbed him, but the effect of the economic system on the family, and thus on the faith. (One of his examples was that the wage-labor system forced women into the workforce and children into day care, where they could not receive proper moral instruction.[xxviii] Reid, p. 256. His solution was to "release these wives and mothers from work in the factory," so that they might "go where their hearts are, and where they of right ought to be – *into their own homes* with their own children; and all these evil conditions will be changed." Reid, p. 257.) Christians, Reid argued, were obliged to pursue "Christ's ultimate aim" which was "to transform human society itself." Jesus, Reid insisted, envisioned "not only regenerated men and woman, but also perfected institutions and laws."[xxix] He was prepared to fight for constitutional amendments, if necessary, to accomplish his plan.[xxx] And Reid, like Williams, saw socialism (although, he emphasized, not Marxism) as the only available system that would offer these "perfected institutions and laws."

As with the conservative Christian movements that are with us today, it does not matter whether one agrees with any part of the message of the

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[xxviii] Here is what Reid wrote on the subject of women in the workforce:

> "It means the destruction of the home among the lower one-third or one-half of human society. It means the creation of a soil in which human character cannot grow. It means the growing up of children on the streets, with no mother's care or uplifting influence surrounding them ..."

[xxix] David C. Reid, *Effective Industrial Reform* (Stockbridge, Massachusettes, 1910: David C. Reid, Publisher), p. 247.

[xxx] Reid, p. 221.

anti-capitalist and pro-labor preachers of a hundred years ago. The point is that, from their point of view, silence was impossible. The conditions in which the workers were required to live raised fundamental questions about the justice of the world that created those conditions. The world was the wilderness, and it was breaching the wall, for the moral teachings of its economic structures were bound to affect the consciences of the people of the garden. Thus, there was no real choice for the people of the garden but to fight back. They did not cause the breach in the wall (or the contract, or the treaty – pick the metaphor that pleases you). But, once the breach occurred, it was hardly the place of the world to tell the people of the garden that what was happening was none of their business.

VII

Let me pause here and say a word about the *title* of today's lecture. I ask in the title whether religion can tolerate democracy, and vice versa. When I use the word "tolerance," I have in mind its traditional sense. We also have a casual, sloppy, modern sense of the word that drains it of interesting moral content: the sense in which, if you criticize my behavior or my ideas, you are said to be intolerant of me. In the old days, this was called disagreement, and that is all we should call it today.

Tolerance in the traditional sense – let us say the Lockean sense – was morally robust, on both sides of the matter. When Locke wrote of the need to tolerate religions other than officially recognized Protestant Christianity, he had in mind a vision of tolerance almost like what we would

now think of us as the tolerance of the body for disease, the ability to include within the community a thing the community finds unpleasant. His vision of tolerance did not in any sense place the thing tolerated beyond criticism. Here is why his vision is more morally robust than ours: the larger society, required to tolerate, does not lose the moral faculty of judgment; and the small dissenter, faced with criticism, develops the backbone to stand for unpopular ideas. Thus neither side yields on its principles, and, for just that reason, we can envision the possibility of a productive dialogue somewhere down the democratic road.

Thus, when I ask whether religion can tolerate democracy, and whether democracy can tolerate religion, I am not in the least concerned over whether either one criticizes the other, even harshly. Criticism is not intolerance – not in any morally significant sense. I am interested, rather, in the way they actually live together, whether as symbiotes, as parasites, as diffident neighbors, as friends, or even as enemies ... enemies who might perhaps require a treaty of peace. But we have to be crystal clear about the terms.

Today, we often hear the wall of separation described as though it is, in reality, a kind of moral soundproofing, the purpose of which is to make the voices of the nation's religious traditions impossible to hear outside the garden, at least when those voices are raised in dissent. Williams' bold metaphor is used as a conversation-stopper, a command to the church to shut up and go away.

The separation of church and state as we nowadays too often

envision it has an eerie echo in perhaps the most important era of religious activism in the nation's history: the campaign to abolish slavery. That campaign, largely led by clergy (at least within white America) was, by its own lights, carried on quite within the bounds of the separation of church and state.

Let us begin by considering an important legacy of the wall of separation as traditionally understood: the Christian duty of obedience to constituted authority. A prominent North Carolina clergyman, not long before the Civil War began in 1861, warned his flock:

> "The general sentiment of our country, and I believe of christendom is, that politics are not a proper subject for the pulpit, and the exhibitions made by those who act on the opposite view, are not such as to recommend either their practice or their principles. Loyalty to government, respect for existing institutions, these are christian graces, earnestly inculcated in the New Testament; but what is the best kind of government, and which the most rightful and expedient institutions, are matters as to which it is profoundly silent."[xxxi]

The preacher, that is, should stay away from the business of governance, and stick to the business of tending souls. In the words of the pastor of the Presbyterian Church of Norfolk, the extent to which slavery should be allowed "is a purely political question," meaning that "the discussion of it, in the pulpit and on the Sabbath, is as much a desecration of holy place and

[xxxi] [The Right Reverend] Thomas Atkinson, *On the Cause of Our National Troubles: A Sermon Delivered in St. James' Church, Wilmington, N.C.* (Wilmington: [no publisher given], 1861), p. 6.

holy time, as would be a discussion of the 'tariff question' or 'the distribution of public land.'" A clergyman, he added, does not give up the role of citizen, and may, in that role, discuss whatever he wishes. But do hold forth on a political issue from the pulpit on Sunday is "a profanation of the holy Sabbath."[xxxii]

The anti-slavery side in part agreed with this proposition, but gave it an importantly different spin. Wrote a commentator on Mark's Gospel in 1859:

> "[I]t is the binding duty of every Christian, and every good citizen, to render by act, and by word, and by every other lawful influence, respect and obedience to the constitutional laws of the land, so long as the laws remain unrepealed, and we recognize our allegiance to the Government that ordains them."[xxxiii]

To this statist sentiment (which would no doubt have warmed the heart of the current Supreme Court) the commentator added that every Christian shared nevertheless in the obligation "to use his utmost endeavors, to heal, purify, and preserve in its integrity this great Nation, that, united and harmonious, is so soon to give laws to the whole earth."[xxxiv]

This is the forgotten piece of the separationist sentiment. The reason the believer can respect the wall of separation, in the traditional

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[xxxii] George D. Armstrong, D.D., *Politics and the Pulpit: A Discourse* (Norfolk, Va.: J. D. Ghiselin, 1856), pp. 33-35.

[xxxiii] James Lyon, *A Lecture on Christianity and the Civil Laws* (?, 1859), p. 18.

[xxxiv] Id., p. 22.

understanding of the Protestant theology that produced it, is that church and state are both ordained by God. Both fall under divine law. When the state varies from God's law, it is the responsibility of the believer to try to alter the laws of the state until, once more, the two abide in harmony. Only then can the believer rest.

In the middle of the nineteenth century, the notion of obligation to improve the fallen world was tied in the minds of American Protestants to a sense of the United States as the New Jerusalem, which would lead the world toward righteousness. This sentiment made the Civil War possible. The Reverend James Lyon, whose commentary on the relationship of the church to the civil laws we have been following, concludes with the proposition that "this united, homogeneous, christian [sic] Government" must be "the great Evangelizer which is to give, not only law, but the Gospel to the world!" Therefore, he asks: "How can we regard the enemies of the Union in any other light than as the enemies of God, the enemies of a pure church, and the enemies of the human race!"[xxxv]

And there we have the separation of church and state, as understood by Protestants for much of the nation's history. Far from defeating the ideal of a Christian nation, separationism, in the American understanding, was deeply tied to the idea of a Christian nation. Were the state less Christian, less pure, the hoped-for separation would not be possible; not, at least, until the believer worked to get the state's laws back to where they should be.

[xxxv] Id., p. 29.

That is why the religiously inspired abolitionist Salmon P. Chase could, at the same time, articulate the view that the United States was a Protestant Republic, and proclaim himself a strong supporter of the separation of church and state. Chase, who would go on to serve as Secretary of the Treasury and Chief Justice of the Supreme Court, saw no inconsistency. It was Chase who first had the legend "In God We Trust" embossed on the nation's coins, lest a future generation, excavating the ruins of ours, should imagine that we were a "heathen" people; and it was Chase, too, who insisted time and again that church and state were forever separate. The separation did not, for Chase, mean that the state was not under God's guidance. On the contrary: the state was ordained by God and required to follow God's laws. If it failed to do so, then it was in breach of the peace treaty.

The abolitionist preachers were explicit on this point. It was right to fight for freedom for the slave, because the nation that held them captive could not be the New Jerusalem, the light of the world, and therefore was, in a sense, not *deserving* of the separation of church and state.

The New York abolitionist preacher Seth Williston – who, like many nineteenth century American Protestants, saw the United States as the New Jerusalem – called for an end of slavery, but not at the cost of warfare: "If it has war, it should be from invasion, not from her own citizens. We are required to pray for the peace of Jerusalem, accompanied with an assurance that they shall prosper who love her."[xxxvi] On the other hand, the

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[xxxvi] Williston, p. 24.

abolitionist Henry Darling suggested that the war was God's way of purifying a nation that had sinned mightily, and in many different ways. But, once the war began, Darling argued, there was no choice but to fight it to a conclusion, for the war, if won, would make the New Jerusalem what it ought to be. Thus, in response to efforts to negotiate an end to the war that would allow slavery to continue, he offered withering contempt:

> "Are other demons to be exorcised from our body politic, and this one to remain? Is God bringing us through this terrible baptism of blood, to cleanse the white robe of our national purity from a few of its minor impurities, but yet to permit this deepest, darkest stain to remain? That would be a strange teleology, indeed, that would lead any to such a conclusion."[xxxvii]

Even the abolitionist preachers who eschewed the violence of Turner and others, embraced activism in the cause of making God's will a reality out in the un-evangelized wilderness. They did not believe that their advocacy of the abolitionist cause breached a barrier that should remain pristine. An 1859 sermon by Nathaniel Hall was explicit:

> "I undertake to say that there was never a more senseless assumption put forth in all Christiandom, – one more to be resisted, if need were, to the very death, – than that the pulpit, standing as the visible exponent of God's truth and law, should have nothing to say in reference to the fact that millions of human beings, in the nation in which it stands, are forcefully deprived of their natural rights, and

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[xxxvii] Reverend Henry Darling, *Slavery and the War* ([Boston?]: Lippincott & Co., 1863), p. 4.

crushed beneath the heel of lawless oppression ...."[xxxviii]

Like the famous abolitionist Theodore Parker, Hall came close to calling for violent warfare:

> "[W]ith the North should be the unalterable decision, We will no longer be partners in the upholding and cherishing of this accursed barbarism. We will no longer be tied up to a complicity in this intolerable outrage and affront to Christianity and the age."[xxxix]

And, lest his audience think he was simply speaking of ending the union, Hall ended his sermon with a telling biblical quote: "'Wherefore, put on the whole armor of God, that ye may be able to stand in the evil day, and, having done all, to stand.'"[xl] (It is worth noting that this sermon followed Hall's sermon of the previous week, occasioned by the execution of John Brown, in which he lauded Brown, despite his violence, for sacrificing to battle a violent institution. Hall implied, although he did not actually say, that "aggressive force," as he called it, was appropriate in ending oppression, and pointed out that Americans of his day [like those of our own] tended to applaud the use of force in causes with which they agreed – at least when the violence succeeded.[xli])

Other abolitionists managed, rather cleverly, to hide a call for violent

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[xxxviii] Nathaniel Hall, *The Iniquity, A Sermon Preached in the First Church, Dorchester, on Sunday, Dec. 11, 1859* (Boston: John Wilson & Son, 1859), p. 8.

[xxxix] Hall, pp. 17-18.

[xl] Hall, p. 19.

[xli] *The Man, – The Deed, – The Event: A Sermon Preached in the First Church, Dorchester, on Sunday, Dec. 4, 1859* (Boston: John Wilson & Son, 1859), p. 31 and passim.

warfare inside a call for peace. One, the Reverend Charles E. Hodges, in a tract entitled *Disunion Our Wisdom and Our Duty*, conceded the claim of the pro-slavery forces that the Constitution itself protected the institution. Therefore, Hodges explained, Christians were required to view the Constitution as immoral and, because "it is wrong to sustain sin," to work for the end of the Union – a result, as everybody knew but Hodges failed to mention, that could hardly be brought about peacefully. "[C]an you do otherwise," he demanded, "than commit yourself to this cause ...?"[xlii] It is unlikely that Hodge had to point out to his readers that a commitment to the cause of abolishing slavery by abolishing the Constitution was, in the politics of the time, little different from a call for civil war.

The abolitionist preachers did not think it possible to confine their vision of justice to a narrow, walled-off region called "church"; they considered action in the world not only justified but imperative. Reverend Ezra Gannett explained that the survival of the institution of slavery "is not purely a political question." Why not? Because "it has its moral side, and religion and Christianity are entitled to examine it as entering within their domain."[xliii] That which touches morality, in other words, is precisely that which religion is "entitled" to examine; no argument about separation of church and state can prevent the church from protecting its own side of the wall. One might reasonably ask, of course, what falls on the church's side

[xlii] Reverend Charles E. Hodges, *Disunion Our Wisdom and Our Duty* (New York: American Anti-Slavery Society, [undated, but internal evidence suggests c. 1860s]), p. 12.

[xliii] Ezra S. Gannett, *Relation of the North to Slavery: A Discourse Preached in the Federal Street Meetinghouse in Boston on Sunday, June 11, 1854* (Boston: Crosby, Nichols & Co., 1854), p. 6.

of the wall -- what aspects of life religion is entitled to "examine" -- but Gannett, like other abolitionists, seemed quite sure that the question of the size of religion's sphere was one for religion, not the state, to decide. And, having made its decision, said Gannett, religion had to act in the world. Those who oppose slavery on religious grounds, he argued, "may take all constitutional and lawful methods for securing an abrogation of those enactments, and of those provisions of the fundamental law [he meant the Constitution], which offend our moral convictions."[xliv]

This is, indeed, the very point of the change in the American Protestant understanding of the believer's obligation during the early nineteenth century. The Christian, many and perhaps most pastors were by this time preaching, was to work for the betterment of God's creation – especially in a nation that was, in the minds of many Protestants, a nation specially favored by God to lead the world to truth and justice. That special land, the preachers believed, had to be made fit to live in.

Many abolitionists believed the land would be more fit when it was more Christian, and supported abolition largely as a tool for evangelizing. It was imperative to convert the slaves to Christianity, as it was imperative under the Great Commission to convert everybody, but the effort to evangelize the slaves was that much harder, wrote one abolitionist preacher, because of "the heathenism of oppression" created by enslavement.[xlv]

[xliv] Gannett, p. 16.

[xlv] Seth Williston, *Slavery: Not a Scriptural Ground of Division in Efforts for the Salvation of the Heathen* (New York: M. W. Dodd, 1844), p. 12 and passim.

Of course, not every preacher was persuaded of the unfitness of the New Jersualem in the first place. Public preaching on the question of slavery was by no means limited to those who opposed it. On the contrary: there is no reason to suppose, especially during the first half of the nineteenth century, that anywhere near a majority of the American public opposed slavery. Even among those who did not happen to like it, few were, so early, willing to see young men fight and die in order to end it. And then there were many people, including many clergy, who believed that slavery – in particular, African slavery – was simply the will of God.

The historian Jon Butler has shown how an entire theology of authority and obedience was worked out in the colonies (especially in Anglican Virginia) in order to justify and reinforce the dominance of master over slave.[xlvi] Although many Southerners, as the historian Don Fehrenbacher puts it, went through the motions of complaining of the unfortunate necessity of slavery, the truth was that it was defended, from an early moment, with all the available arguments, secular and religious, that the slave-owners and their tame clergy could muster.[xlvii] During the eighteenth century, as American slavery grew progressively more violent, and thus less like slavery in most of the rest of the world, slave revolts (often led by Christian slaves) grew more frequent.[xlviii] In response, the

[xlvi] See Jon Butler, *Awash in a Sea of Faith: Christianizing the American People* (Cambridge, Mass.: Harvard University Press, 1990), pp. 130-151.

[xlvii] See Don E. Fehrenbacher, *Slavery, Law, and Politics: The Dred Scott Case in Historical Perspective* (Oxford: Oxford University Press, 1981), pp. 55-57.

[xlviii] See, for example, the discussion in Albert J. Raboteau, *Slave Religion: The "Invisible Institution" in the Antebellum South* (New York: Oxford University Press, 1978).

defense of the practice on Christian grounds grew ever more didactic: accepting the Gospel truth might make men free, but that freedom, argued the pro-slavery clergy, was only spiritual, not political.[xlix]

Again and again the pro-slavery preachers accused their abolitionists foes of breaching the wall of separation, but the accusation was wrong. Perhaps, as Thomas Jefferson believed, the wall of separation meant the President of the United States could not proclaim a national day of prayer (although he did, as governor, proclaim statewide days of prayer). But the metaphor has never meant, and could not sensibly be made to mean, that the people of the garden are in breach when they try to repair the wilderness.

VIII

The point of this extended history is that the separation of church and state did not mean, either to those who developed the metaphor or to those who, over the first century and a half of the nation's life, had to breathe life into it, that the people of the garden were uniquely disabled, among all the many competing factions in the American democracy, from pressing their views in politics, and even beyond. On the contrary: the separation of

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[xlix] As the historian Edmund S. Morgan has shown, prior to the 1660s, it was common for slaves in Virginia to convert to Christianity in order to take advantage of laws prohibiting (or at least making difficult) the holding of Christians as slaves rather than indentured servants; and they were often set free as a result of the conversion. See Edmund S. Morgan, *American Slavery American Freedom: The Ordeal of Colonial Virginia* (New York: W. W. Norton & Co., 1975), pp. 329-332. See also Butler, especially p. 138. The question of Christianity and slavery was also debated on the floor of Congress. See the discussion in Quoted in William Lee Miller, *Arguing About Slavery: The Great Battle in the United States Congress* (New York: Alfred A. Knopf, 1996).

church and state was the tool that enabled them the freedom to build conscience without the interference of the state, so that they could go out into the wilderness and try to work a change.

Many people have worked to change America, of course, and not all of them have acted – at least as far as they knew – from religious inspiration. But the activism of the religious often brings into our public life what activism of a more explicitly secular sort might not. What makes religious voices in public life objectionable to some observers is exactly what makes them attractive to so many others: their tendency to focus on transcendence, on our obligations to a higher calling than the everyday striving for advantage that characterizes so much of American life.

Political theory has not in recent years been kind to religious voices in public life, proposing that the proper democratic project is to develop a kind of common language in which we can discuss whatever needs discussing, without reference to truths that seem inaccessible or principles not widely shared. One could offer an empirical response: much of the language of religion is far more widely shared than some of the admirable principles on which theorists seem to think our dialogues should rest. One could also offer thoughtful theoretical responses, as a large literature of admittedly inconsistent quality has tried to do. But my response is historical, practical, and, perhaps, theological.

If, as I have argued, the separation of church and state represents a kind of treaty that neither side is supposed to breach, then it will do us no good to talk about the needs of liberal democracy as though those needs

self-evidently trump the claims of religionists. The metaphor's history does not support an interpretation that keeps religion out of public life, although it does support an interpretation that keeps the state's nose out of religion. Had we followed, in the nation's stormy past, the dialogic rules so many theorists set for us now, our public conversation would have been impoverished, not enriched.

I think we have little option, in public life, but to do what we have been doing for more than two centuries, to throw the gates of dialogue open to any person who wants to argue. If it happens that the argument proceeds from premises I find inaccessible – either because I do not share the religion of the speaker or because I do not share her philosophy – then the likelihood is that she will fail to persuade me. But that likelihood does not justify a rule against allowing her to speak out in the first place.

It is often asserted, quite grandly, that the nation is more religiously diverse today than it was, say, during the abolitionist era, and that this diversity itself is an argument against religious voices in public life. There are reasons to doubt the underlying claim – the nation might well have been more religiously diverse at the dawn of the nineteenth century than it is at the dawn of the twentieth. But there is a richer response. Let us take it as given that we find ourselves in the midst of a gloriously diverse conversation, in which, very often, disputants or even allies will, literally, not speak the same language.

Why is this a problem? Let all who wish to come, come, and let all who wish to speak, speak, and if we are generous and charitable in our

dealings with others, then we will have a conversation across our differences; and if we are mean-spirited and arrogant in our dealings with others, then no rules sketched to govern dialogue will enable us to do much more than call our opponents nasty names and assure our friends that they can get away with anything as long as they stay on the right side of the issues.

IX

If religious voices are to be as welcome in public life as other voices, the metaphorical separation of church and state provides the tool for ensuring that they are nurtured and preserved. If we return to the image of the garden, we can see how religious difference is created: within a place that is shielded, at least to some extent, from outside forces.[1]

The shielding is of course incomplete. The historian Nathan Hatch has documented, for example, how the very ideology of democracy has come to predominate in every Christian denomination after its arrival on these shores. The same is true for many non-Christian traditions. Even traditions that are, elsewhere in the world, hierarchical in nature, come to reflect, in America, an individualist commitment, in which the believer can state, quite seriously, that he is firmly committed to the faith, and yet feels

[1] I have said little in my text about the protection of the garden as a matter of constitutional law, not least because I am skeptical that the world of secular courts will ever show very much interest in protecting it. (It hasn't so far.) Perhaps the wall might be better understood by the judges in the wilderness if they came to view the people of the garden as groups rather than as individuals – that is, if they saw the element of "groupness" in religion as an additional reason for protection. For an argument in favor of religious liberty as a group or communitarian right, see Frederick Mark Gedicks's his very fine book *The Rhetoric of Church and State: A Critical Analysis of Religion Clause Jurisprudence* (Durham, N.C.: Duke University Press, 1995).

free to make up his own mind about what the faith means. Moreover, if traditional leaders ignore the calls of the faithful to alter the content of doctrine, they are said, even by many of their own followers, to be out of step with the era.

Culture has many ways of slipping past the wall of the garden. One need not be a follower of, say, Adorno to see how rapidly changing technologies of communication make it ever-easier for cultural messages to slip past the earnest guard of protective families, so that adults and children alike begin to see the world as different from the world as the tradition might teach it.

Nevertheless, many religious families understandably try to strengthen the wall of separation, to preserve the garden from the incursions of the wilderness. To the extent that we value diversity and dissent, we should exalt the efforts of families and even communities to nurture children independent of the world's influence. Those children might well be tomorrow's religious dissenters, who go out to try to improve God's creation, and win or lose in the effort, but, either way, provide the nation with much-needed alternatives to the dominant meanings of the day.

The temptation of power is always to shut down dissent; in particular, to shut down dissent about fundamental questions of meaning. That is why my late colleague Robert Cover was absolutely right in arguing for the preservation of nomic communities – communities of sense and value – even if we find what they believe in abhorrent. Power wielders must resist the temptation to decide that they are so utterly inerrant that they should be

building the “total society” that eluded the medieval church, which pursued the same goal: the society in which every institution reflects a commitment to the same unshakeable set of values.

Democracy in particular must resist the temptation to totalize, precisely because most of its ideas are so attractive. Thus it makes sense to entertain as a serious proposition, rather than an occasion for sloganeering, the possibility of providing public funds to assist poor and working class parents who prefer to send their children to religious schools. Religious education (which the nation funded for most of its history but has also occasionally tried to destroy) can be a vital element in the efforts of the people of the garden to preserve their dissenting tradition against the incursions of the wilderness.

Private education to one side, we might also rethink certain aspects of public education. The more we believe in separation of church and state, the less we should want explicit moral teaching of any kind in the public schools, for, as we have seen, the state is otherwise in breach. Moreover, parents who raise objection to aspects of the curriculum should perhaps have a very strong right to keep their own children shielded from what they do not like, in order to preserve, even within public education, some semblance of the garden.

Perhaps you do not believe parents should have a right of the sort I have just described. One can oppose it for a thousand reasons, from a concern that parents have too much influence over their children to a fear that the nation will wind up without the well-educated workforce it needs. I

do not find these reasons compelling; you might. If you do, however, simply bear in mind that you are supporting another breach in the peace treaty, a rejection of the wall of separation between church and state. You are allowing the state to enter what was, when the treaty was laid down, widely understood to be the sphere of the church. You might respond that "we" no longer view matters that way, but the suggestion that this changing interpretation matters is nevertheless a proposal to tear down the wall.

The point is really quite simple: If the state decides to break the treaty, because of its own understanding of what the future requires, nobody should be surprised if the church decides that it, too, is no longer bound.

X

I have suggested, thus far, that the separation of church and state serves democracy by creating communities of dissenting meaning that will tilt against the culture, bringing about a healthy democratic tension. But suppose you happen to disagree with the religion that is out there trying to alter the shape of the wilderness to fit its picture of what God wants? Let us put aside the previously discussed problem of the use of tax dollars to support this or that. Let us think instead of the problem of a religious believer, coming out of the garden into the wilderness, calling for a new law, say, that will, she believes, create a world closer to what God intends it to be. And let us further hypothesize a dissenter who is not a follower of her religion, and who objects to what she is trying to accomplish. Does the

peace treaty between church and state help us resolve this problem?

The answer is yes, although not in the way that popular misunderstanding of the separationist metaphor often suggests. There is not, nor is it clear how there could be, any sort of right of one citizen to be free of another's religious motivation. In other words, if you and I both come before the bar of politics to argue, you may earnestly believe that my argument, because it rests in whole or in part on my religious beliefs, is entitled to less weight than yours, but your belief is only that – a belief – and politics will have to provide the resolution of our conflict. Separation of church and state has nothing to say on the matter, not unless we want to place upon it, once more, weight that it cannot bear: a principle established in order to protect the garden in its work of nurturing the religious conscience is not readily transformable into a principle that protects the wilderness instead.

Does this mean that the dissenter who rejects the believer's faith is stuck, without recourse? Of course not. The fact that the separation of church and state offers no guidelines does not mean that no guidelines exist. Once we recognize that no citizen's rights are violated by the religious motivation of another citizen, we see the shape of a solution: in order to defeat the proposal the religionist is pressing, we must look at its substance rather than the reason for it.

This is a distinction that matters. Consider, once more, the case of public school classroom prayer. There are social science data (although they are far from undisputed) suggesting that people who pray regularly

lead healthier lives than those who do not, are less likely to commit crimes, rarely use drugs, and tend to have happier marriages. All of these are goals that a secular state might pursue. Thus, we might plausibly imagine a state legislature that decides for these secular reasons to require, or at least encourage, students to pray. The legislative motivation would not be religious at all: the representatives might just want youngsters to lead happier, healthier lives. Yet the installation of classroom prayer would still be objectionable, for it would still represent an incursion by the wilderness into the garden. Nothing in the metaphor turns on why the breach has occurred.

A proper understanding of the separation of church and state does not enhance the power of the state, and therefore is unlikely to threaten the rights of dissenters. It limits the influence the state is able to exercise over the garden, which is a very good thing. It does not change the way our democracy does its business, for religious voices have always been present in the public square, and are not about to disappear – unless, of course, the garden itself disappears.

Now, having said all this, I must add that I do not believe that the voices of the people of the garden, simply because they happen to be religious, are therefore voices we obviously should follow. Nothing in history teaches us that those who claim to speak to God are frequently correct in their claim. Great good has been done in the name of religion; so has great evil. That does not distinguish religion from ideology or nationalism or a simple belief in one's own rightness: all of these have been

forces for good and ill, and their interplay will continue to characterize our society, I hope, for a very long time. Meanwhile, there are urgent issues facing us to which religious voices might draw attention in a way that secular voices have failed to do. The plague of poverty has all but vanished from our electoral politics: neither Democrats nor Republicans seem to think it an issue of first importance. Nor the resurrection of our cities. Nor the plague of consumerism, the ethic of “me,” that characterizes everything from the way we advertise products to the way we drive cars. The call of faith is the call of transcendence, the call to move beyond everyday striving. At its best it can move us to do great things, often providing language and inspiration that less passionate, more abstract forms of argument do not. Democracy without it would be a dreary and vulgar thing.

Yet faith without democracy can, in this sad, broken world, be a dreary and vulgar thing as well. The tension that democracy provides, the tension that the ideal of the two kingdoms, the two powers, the two sides of the wall tries to mediate, is a healthy one for religion. Because religion, like any other force, is also prone to all the temptations of power. It is so hard to inspire people to do what is right; it is so tempting to force them instead. In times of emergency, all of us yield to the temptation to coerce, as perhaps we should. What all of us, secular and religious and whatever lies between the two, must resist is the smooth, seductive voice of the little devil sitting on our shoulders, whispering to us that all of our beliefs are emergencies.

Let me close, then, by repairing once more to the words of the Reverend George Ferris, with whose sermon I began this lecture. Said Ferris:

> "Whatever our idea as to how things came to be, or whether a certain transaction did or did not happen, many years ago, we cannot speak of the Force that keeps us from burrowing like worms in the soil of selfishness and greed, that holds us back from making prey of the wounded like a pack of wolves on the plains of Siberia, without calling it 'Divine.'"[li]

Sometimes, in our religious and secular selves, the choices we confront are that stark: we can be the worms who think only of our own needs, we can be the wolves, we can make prey of the wounded. Or we can march off to struggle sacrificially for what is the truest and the best. The peace treaty that keeps church and state separate cannot determine for us what is truest and best. It can, if we nurture it, help create the space in which to decide when to march.

END

[li] *Evolution and Religion: Sermon Preached by Rev. George H. Ferris, D.D., in the First Baptist Church in Philadelphia on Sunday, February 28, 1909* (unpaginated, undated).

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* William Nelson Cromwell Professor of Law, Yale University.