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**A Crenelated Wall: The Rise and Fall of Southern Baptist
Institutions for the Separation of Church and State, 1936-1979**

By

John Timothy Ruckle Jr.

A dissertation submitted in partial satisfaction of the

requirements for the degree of

Doctor of Philosophy

in

History

in the

Graduate Division

of the

University of California, Berkeley

Committee in charge:

Professor David A. Hollinger, Chair

Professor Richard Cándida Smith

Professor Richard E. Hutson

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Abstract

A Crenelated Wall: The Rise and Fall of Southern Baptist Institutions for the Separation of Church and State, 1936-1979

by John Timothy Ruckle Jr.

Doctor of Philosophy in History

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This dissertation centers on the origins and projects of the Baptist Joint Committee (BJC), founded and funded in 1936 by the Southern Baptist Convention (SBC), and the Protestants and Other Americans United for the Separation of Church and State (POAU), founded in 1948 as the brainchild of Southern Baptist elites. I argue these organizations were primarily concerned with opposing American Catholic projects, especially those which sought public monies for parochial schools. Ironically, the structures and organizations which greatly aided this effort to expand religious tolerance and liberty in this period had their origins in concerns about the Catholic Church and American Catholicism held by many Baptists.

A crisis point for the BJC and the POAU occurred when, in 1963, in the *Schempp* case, the U.S. Supreme Court ruled that the devotional use of the Bible and prayer in public schools was unconstitutional. This decision was deeply unpopular with most evangelical politicians and lay people. Working against pressures and measures to amend the First Amendment “to put God back in the schools” in the post-*Schempp* U.S., evangelical elites of the BJC and POAU helped save it from emendation by vigorously, systematically, and publicly opposing the Becker Amendment and similar legislation. However, BJC and POAU support for *Schempp* and its de-Christianization of the public schools greatly alienated the broad evangelical support for these organizations. By the 1980s, after the SBC was captured by its right wing, Southern Baptist support was effectively withdrawn from the BJC and the POAU, and these organizations lost their evangelical underpinnings. The BJC and the POAU reinvented themselves and subsequently worked to oppose those projects of the Religious Right they deemed contrary to the separation of church and state—a Religious Right where, ironically, the SBC now played a large role.

To progress, not perfection

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Despite the collaborative nature of this project, my interpretations are my own, and therefore any mistakes in judgment are entirely my own.

Introduction

We know less about how the law of religion in education developed, and almost nothing about how local partisan religious battles contributed to the legal change, or visa versa.

--Sarah Barringer Gordon, 2007 ¹

On a sticky afternoon in June, 1962, the Supreme Court of the United States issued a ruling in the case of *Engle v Vitale*, stating that the government-written prayers promulgated in public schools by the state of New York were an unconstitutional violation of the Establishment Clause.² The public outcry was swift, loud, and almost wholly negative; letters of protest poured into newspapers, congressmen, the Court, and the President. The case sparked discussions in professional organizations such as the American Bar Association.³ Donald M. Collins Esq., an attorney from Media, Pennsylvania, fired off a letter to President John F. Kennedy complaining that, “the Supreme Court by the adoption of such an extreme extension of the anti-establishment concept may well have sundered from Christendom our once-beloved country...Yet you have refused to use the prestige of your office, your awareness of the power of which you have so recently shown, to speak out in the defense of our dearest and most fundamental tradition. As a Catholic I am ashamed, as a Democrat I am shaken and as a long-time Kennedy supporter I am betrayed.”⁴ Cardinal Spellman, Archbishop of New York, and the foremost spokesperson for the Catholic hierarchy in the U.S., lamented that he was “shocked and frightened that the Supreme Court has declared unconstitutional a simple and voluntary declaration of the belief in God by public school children.”⁵ The vehement reactions to *Schempp* prompted President Kennedy to urge calm, declaring that “We will have to abide by what the Supreme Court says. We have a very easy remedy, and that is to pray ourselves. We can pray a good deal more at home and attend our churches with fidelity and emphasize the true meaning of prayer in the lives of our children.”⁶

Catholic congressman Frank Becker (R-NY) called the *Engel* decision “the most tragic in the United States” and the next day introduced a House bill to overturn it with a constitutional amendment.⁷ Becker was not alone—115 Members of the House

¹ Sarah Gordon, “‘Free’ Religion and ‘Captive’ Schools: Protestants, Catholics, and Education, 1945-1965,” *DePaul Law Review* 56, no. 4 (June 1, 2007): 1.

² *Engel v. Vitale* (Syllabus), 370 U.S. 421 (U.S. Supreme Court 1962).

³ American Bar Association, *ABA Journal* (American Bar Association, 1962). **Volume 48, 1114**

⁴ Donald M. Collins, Esq., “Letter to President John F. Kennedy” June 28, 1962, Papers of John F. Kennedy Box No. 494 886 folder “RM 2/ED 1-20-61 – 7-13-62,” JFK Library, Boston, MA. There are dozens of such letters in the archive addressed to the President, the majority were opposed the Court’s decision and supported a constitutional amendment to overturn the decision. Ralph A Dungan, Special Assistant to the President, replied to each letter, thanking them for writing the President and assuring them that their “views will be given careful consideration.”

⁵ James W Fraser, *Between Church and State: Religion and Public Education in a Multicultural America* (New York: St. Martin’s Press, 1999), 175.

⁶ Kristin E. Heyer, Mark J. Rozell, and Michael A. Genovese, *Catholics and Politics: The Dynamic Tension Between Faith and Power* (Georgetown University Press, 2008), 165. Originally from Sherrow, 1992, p50

⁷ H.J. Res. 752, 88th Congress

introduced 151 similar bills. Letters to congress ran almost 100% in favor of such bills.⁸ Many Protestants also objected to *Engel*. Evangelist Billy Graham initially denounced the decision. Many politicians from the South, who loathed the Warren Court ever since its 1954 decision outlawing school segregation, were vocal in the opposition to the *Engel* ruling.⁹ Senator Strom Thurmond (D-SC) thundered against the decision and introduced his own bill to overturn it in the Senate. Florida Governor Ferris Bryant led a delegation to the hearings from his state and carried 10,000 signatures gathered by the Committee for the Preservation of Prayer and Bible Reading in the Public Schools.¹⁰ Some Southern governors and local politicians announced that they would not enforce it, and at least one lower court in the South declared that the Supreme Court lacked the authority to make the ruling!¹¹ A poll of the House indicated that the Becker Amendment (as it came to be called) had the necessary votes to pass, but the bill was stuck in committee by Congressman Celler (D-NY).

Celler opposed the amendments and held it in the House Judiciary Committee, which he chaired, hoping that the fervor over *Engel* would die down.¹² Then in 1963, the Supreme Court, in *Schempp*, forbade all devotional Bible reading and coercive prayer in public schools. This further energized opponents to church-state rulings, who then redoubled their effort to overturn both decisions. When it became clear that Becker had the votes to force the bill out of committee with a discharge petition, Celler arranged for Congressional hearings in the spring of 1964. Celler skillfully shepherded witnesses through a total of 14 days of exhaustive hearings, held from April 22nd to June 3rd, and opinions began to cool on the on various measures which proposed constitutional amendments to permit prayers and Bible reading in the public schools.¹³

⁸ *CBS Reports*, "Storm Over the Supreme Court," 13 March 1963, transcript pp. 66-67; 108 Cong. Rec. 11675 (1962). The piece on *CBS Reports* ran in three episodes, from February 1963, through June. Narrated by Eric Sevareid, the series received a Peabody Award. The ratings for those episodes appear not to have been tallied, though given its Wednesday 7:30pm EDT time-slot, the show was up against the highly-rated shows *The Virginian* on NBC and *Wagon Train* on ABC. In a rare move, CBS issued a bound version of the episodes: Eric Sevareid, Gene Deporis, and Fred W. Friendly, *CBS Reports Storm Over the Supreme Court*, First edition (Columbia Broadcasting System, 1963). Copies are difficult to attain but one is in the possession of the author.

⁹ There was overt resistance to *Brown*, including the "Massive Resistance" organized and championed by Senator Robert Byrd (D-VA), a Southern Baptist, in 1956. But for those who did not wish to declare themselves publicly for segregation, but nonetheless did not appreciate the Warren Court and its rulings, criticizing *Engel* and later *Schempp* allowed them to declare themselves as pro-Bible and pro-prayer and frame their adversaries as communists, atheists, and their sympathizers. This had a broader appeal than did public, self-declaration of pro-racism and pro-white supremacy.

¹⁰ *St. Petersburg Times*, St. Petersburg, Florida, April 18, 1964, 37

¹¹ The Florida Supreme court, in *Chamberlin v. Dade County*, refused to follow *Engel*. Governors in the West also opposed the ruling. After *Engel*, 12 of the 13 Western state governors endorsed the proposed constitutional amendments to permit prayers in public schools, with California Gov. Edmund G. Brown (D) casting the only dissenting vote at their annual Western Governors' Conference in San Francisco.

¹² When a bill is introduced it is sent to the appropriate committee for input, changes, etc. When and if the committee is satisfied with the bill's content, it may send it back to the House for debate. However, it is also possible for a bill never to make it out of committee to the full House—in other words to "die" in committee—which is what Celler had in mind for the Becker Amendment.

¹³ Even critics of the Court's decisions began to realize that the exact wording on how to change the First Amendment was going to be very problematic. The prayer, struck down by *Engel*, had been crafted by the state of New York with the input of Protestant, Catholic, and Jewish authorities, as an ecumenical "compromise" which would be offensive to no Judeo-Christian tradition. As became clear in the testimony at hearing, some believing Christian witnesses who were friendly to Christianity in the public

Key testimony was given from representatives from the Baptist Joint Committee (BJC) and the Protestants and Other Americans United for the Separation of Church and State (POAU), who supported *Schempp* and opposed the amendment. Both institutions had been founded and funded by Southern Baptists, and these evangelical witnesses demonstrated that conservative, believing Christians could and should be firm supporters of a separation of church and state. This provided a crucial counterweight to the frequently deployed argument that *Engel* and *Schempp* were only supported by a minority fringe of atheists, communists, and the ilk.¹⁴ Becker himself claimed that the only people who opposed his legislation were a “fraternity of cynics, atheists and unbelievers.”¹⁵ The officers and spokesmen of the BJC and POAU exploded this myth. Ultimately, the Judiciary Committee did not report any legislation on the subject to the House, and the First Amendment was in no immediate danger of being amended.¹⁶

Today the SBC is at the heart of the Religious Right, and the convention now calls for a constitutional amendment to put prayer back in schools; how was it that the BJC and the POAU, both founded and funded by these Southern Baptists, were firm supporters of both *Engel* and *Schempp* and opposed the Becker Amendment? This dissertation chronicles the history of those two institutions, and the elites which founded, funded, and managed them, from their inception in the 1930s through the 1970s.¹⁷ Both organizations were chartered to support the separation of church and

schools nonetheless did not wish their children repeating what they considered watered-down prayers. The coalition of congressmen who supported the Becker Amendment fractured during the hearings.

¹⁴ As noted, the Catholic hierarchy and many Catholics opposed the *Engel* and *Schempp* rulings. However, Bishop Sheen testified that while he opposed both *Engel* and *Schempp*, he was not in favor of amending the First Amendment—he seemed to imagine or hope for some middle ground where the Court could be made to realize its error and correct the mistake, without need of the amendment. The elites of the BJC and the POAU opposed the amendment, but Evangelicals in general and lay Southern Baptists in particular often supported it. In terms of the witnesses and letters in evidence at the hearings, Methodists were divided. Most Episcopal Church leaders were opposed to *Engel* and Bishop James G. Pike strongly opposed both decisions. The National Association of Evangelicals (NAE) and the International Council of Christian Churches (ICCC) were opposed to *Schempp* and supported the amendment. Contrariwise, there were other Christians who supported the decisions and opposed the amendment. The National Council of Churches (NCC) elites, representing more than 30 Protestant denominations, took a position strongly in favor of the Supreme Court decisions and strongly opposed the amendment. The executive council of the Lutheran Church supported the Court decision and the Seventh Day Adventists were also supportive. The Unitarian Fellowship for Social Justice took no stand on the Court’s decisions but opposed any amendment to the Constitution. Jewish groups who testified at the hearings supported the Court were opposed to the amendment. See “Congress Fails to Act on School Prayer Amendments.” In *CQ Almanac 1964*, 20th ed., 398-404. Washington, DC: Congressional Quarterly, 1965.

<http://library.cqpress.com/cqalmanac/cqal64-1304697> (Accessed December 12, 2012)

¹⁵ *Star-News*, Wilmington, North Carolina, April 23, 1964, p2

¹⁶ There were two serious subsequent attempts to alter the First Amendment after the Becker Amendment. Senator Everett Dirksen, Republican from Illinois, backed an amendment in 1966, which received with 49 affirmative votes in the Senate. In 1971, Rep. Chalmers P. Wylie, Republican from Ohio, introduced another amendment in the House. The vote was a mere 28 votes short of two-thirds necessary (240-162) to pass. The officers and spokesmen for the BJC and the POAU were publicly and fervently opposed to both amendments. Conservative congressmen continue to propose such amendments—H.J.Res.42 was introduced to the 113th Congress in 2013 by Representative Nick J. Rahall II, Democrat from West Virginia—but these are generally more political theater than serious threats to the First Amendment.

¹⁷ I understand this group as the primary discursive community of my study. These individuals left behind a rich library of archival documents—pamphlets, correspondence, meeting notes, press releases, and

state, especially with respect to thwarting Catholic projects such as public monies spent on parochial schools, diplomatic recognition of the Vatican, and other issues they feared would do violence to the First.¹⁸ Ironically, this battle against Catholicism ultimately weakened the Protestant Establishment and its hegemony, as the BJC and POAU supported the U.S. Supreme Court's de-Christianization of public schools in the *Engle* and *Schempp* rulings.¹⁹ This in turn alienated many conservative evangelical Christians, including their own base of Southern Baptist supporters. The right-wing capture of the SBC in 1979 ultimately and ironically led to the loss of Southern Baptist support for these institutions which they had created.

While the Southern Baptists who founded and funded the BJC and the POAU, and the other evangelicals who participated in these institutions, were passionate about their vision of a strong separation of church and state, they nonetheless never intended or envisioned a de-Christianized public square or a dethroned Protestant Establishment. POAU spokesmen and published materials often argued that democracy and Americanism itself sprang from Protestantism. Neither the BJC nor the POAU actively criticized or litigated against Protestant practices of the public schools, such as Bible reading or the recitation of the Lord's Prayer.²⁰ In the minds of many BJC and POAU elites, reading the Bible without comment was neither "sectarian" nor "religious" per se, and thus not at issue based on their understanding of the Establishment Clause.²¹ Their primary concern was that a rich, powerful, and monolithic Catholic Church was besieging the Republic, and that if Catholic projects such as public aid to parochial schools, or the diplomatic recognition of the Vatican, were accomplished, the Catholic Church in the U.S. would grow in power, the separation of church and state would be destroyed, and the dangerously illiberal policies of this Church would spell doom for American democracy.

The wall they envisioned was intended to protect America from the Catholic Church. However, their project had unintended consequences. The BJC and the POAU wished to build a solid bulwark against the existential threat to America they believed was posed by the Catholic Church, and deployed the rhetoric of the "separation of church and state" in this heated debate. The wall they imagined was between a "church" that was always the Catholic Church and a "state" which unproblematically included a Protestant Hegemony. The battlement they imagined more closely resembled a crenelated wall, where the Establishment Clause merlons provided protection from the slings and arrows of Catholic provocations, while Christian soldiers stood on the

institutional publications. In chapter two, I will examine correspondence and intercourse between BJC officers and those of the American Jewish Committee, which I argue shaped their rhetoric and informed their cosmopolitanism. Executive Director of the POAU Glenn Archer and others also wrote insider histories of these institutions, adding to what we know of the development of this community.

¹⁸ Often they argued the stakes were even higher, and the Catholic Church presented an existential threat to America itself.

¹⁹ The BJC and POAU elites did not intend for the de-Christianization of the public schools but once those rulings were *faits accomplis* they felt they had no choice but to accept them. They believed that a reversal of *Schempp* and the passage of the Becker Amendment would increase the likelihood that public monies could be legally spent on parochial schools, which they believed to be the greater peril.

²⁰ Note that the former was nearly always the Protestant King James Version of the Bible which was forbidden for Catholics and the latter was frequently the redacted, Protestant version of the Lord's Prayer.

²¹ This is the argument that the Abington Township school district would use in *Schempp*, though by 1963 the Supreme Court was not sympathetic to this reasoning.

parapet, which sheltered, rather than shut out, the Protestant Hegemony, and where BJC and POAU elites engaged their medieval adversaries below via the open crenels of litigation and public opinion.²² However by the early 1960s, the Supreme Court ruled that the edifice they had helped construct forbade any devotional practices, even Protestant ones, in the public schools. The BJC and the POAU elites faced a Hobson's choice—support for the Court would alienate their conservative evangelical base; however, they feared a retrenchment from a strict separation would allow an opening for Catholic parochial schools to receive public funds, which they ultimately viewed as the greater danger.

This dissertation endeavors to do for the Southern Baptists what David Hall does for the Puritans.²³ Hall challenges readers to discard long-standing stereotypes of the Puritans as authoritarian despots. While careful not to claim that Puritans were “liberal” or egalitarian in any contemporary sense, Hall demonstrates that the colonists insisted on aligning their social practices and institutions with practices consistent with their notions of liberty and equality. I argue that the Southern Baptist and evangelical elites of the BJC and the POAU occupied a nuanced political stance. They instituted legal practices and institutions to support a separation of church and state which was consistent with their notions of liberty and democracy. For them, this meant opposing Catholic projects that they felt were inimical to both. Ultimately, this trajectory led them to support both *Engel* and *Schempp*, which put them on the same side of the separationist debate as liberal institutions, such as the American Civil Liberties Union (ACLU) or the World Council of Churches (WCC). This position alienated them from many Southern Baptist lay people and especially from the right wing of the SBC. When the SBC was captured by its right wing in 1979, it soon cut ties with the BJC and the POAU, destabilizing the institutional supports for these organizations and their projects. This forced both organizations to reinvent themselves and find new constituencies to fund and staff the institutions. Unmoored from an evangelical base, and encountering a new right-leaning SBC which supported prayer in public schools, the BJC and the POAU found themselves confronting the Religious Right as its primary political adversary. Thus, the BJC and the POAU, while reactionary when it came to an emerging post-war American pluralism which included a politically active American Catholicism, and which never intended to de-Christianize the public schools, were nonetheless eventually (and ironically) progressive when it came to their vigorous defense of a strong separation of church and state. As such, the Southern Baptist versions of the BJC and the POAU institutions carried within themselves the seeds of their own destruction.²⁴

This dissertation intervenes in the periodization of the rise in political engagement of religious conservatives or what is often framed as the “rise of the Religious Right.” Some scholars continue to nominate the Supreme Court decision on abortion, *Roe v Wade* (1973), as an important motivation which spurred religious

²² Executive Director Glenn Archer frequently used martial imagery of battles, foes, ramparts, etc. when describing the church-state battles with American Catholicism, and the image he envisioned when he titled his insider history of the POAU was that of an *Embattled Wall*. See chapter three, p5.

²³ David D. Hall, *A Reforming People: Puritanism and the Transformation of Public Life in New England*, First Edition first Printing (Knopf, 2011).

²⁴ The BJC and the POAU, or AU as it is now called, exist to this day, though they represent a different constituency and confront different adversaries than did the institutions as originally constituted. Their existence as evangelical institutions which sought to counter Catholic projects is no more.

conservatives to reengage in American politics.²⁵ However, the idea that abortion was of great concern to most conservative Protestants has largely been debunked.²⁶ Another Supreme Court case considered as a catalyst for energizing religious conservatives was *Bob Jones University v Simon* (1974). In its decision the Court unanimously upheld a Treasury Department decision to revoke the charitable tax-exempt status of the evangelical Bob Jones University due to its practices of racial discrimination.²⁷ Randall Balmer dismantles the *Roe v Wade* hypothesis and argues that the Religious Right coalesced around a concern that the Carter Administration would revoke the tax-exempt status of other evangelical, and perhaps Catholic, institutions.²⁸ The standard narrative is that Protestant religious conservatives, or “fundamentalists,” retreated for from battles over schoolhouse religion after the 1925 *Scopes Trial* ended the fundamentalist-modernist controversy in public schools.²⁹ The narrative explains that these fundamentalists withdrew from politics into private associations and chose to build their own Christian schools and universities rather than contest issues in the public schools, only to reemerge as an important voice in politics towards the end of the twentieth century. This “rise” is associated especially with the landslide victory of Republican President Ronald Reagan in 1980. Some scholars hold that “fundamentalists” never truly retreated from the fundamentalist-modernists debates in the public school curriculum.³⁰ The political engagement of Southern Baptists over

²⁵ David Kuo, *Tempting Faith: An Inside Story of Political Seduction*, English Language edition (New York: Free Press, 2006), 24–35.

²⁶ As Balmer demonstrates, the “abortion myth quickly collapses under historical scrutiny.” See Randall Balmer, “The Real Origins of the Religious Right,” *POLITICO Magazine*, accessed April 17, 2015, <http://www.politico.com/magazine/story/2014/05/religious-right-real-origins-107133.html>.

²⁷ “Bob Jones Univ. v. Simon 416 U.S. 725 (1974),” *Justia Law*, accessed April 14, 2015, <https://supreme.justia.com/cases/federal/us/416/725/case.html>.

²⁸ Randall Balmer, *Thy Kingdom Come: How the Religious Right Distorts Faith and Threatens America*, Reprint edition (Basic Books, 2007), 1–34.

²⁹ *The State of Tennessee v. John Thomas Scopes*, sometimes referred to as the “Scopes Monkey Trial”, accused school teacher John Scopes of violating the Butler Act, which made it unlawful to teach human evolution in any state-funded school in Tennessee. Denominationally, the “fundamentalists” of Dayton, Tennessee would have been predominately Southern Baptists. Most Baptists, eschewing any written creed, would not have self-described as “fundamentalist” (or “evangelical”, for that matter, which they considered a Northern phenomenon). However, pastor William Bell Riley, founder and president of the World Christian Fundamentals Association, who was instrumental in getting William Jennings Bryan to act as that organization's counsel in the *Scopes* trial, was himself a Southern Baptist. Bryan was Presbyterian. Presbyterian layman, Lyman Stewart, in 1910, sponsored a series of pamphlets entitled *The Fundamentals: A Testimony to the Truth*, which likely coined the term “fundamentalist.” Harry Emerson Fosdick, a Baptist, given special permission to preach in First Presbyterian Church in New York City, famously delivered his sermon of 1922, “*Shall the Fundamentalists Win?*” which supported a more modernist position. In the 1930s, the fundamentalist-modernist crisis came to a head for Presbyterians, and the departure of denominational conservatives in 1936 left the Presbyterian Church in the USA a distinctly more modernist, liberal denomination. Significantly, the Southern Baptist Convention never experienced a fundamentalist-modernist split, and retained its right wing along with more progressive members and the “moderate” majority of the convention’s confederation. Had its right wing departed, they would not have been present for the take-over of the SBC in 1979, which ushered in a sea change for the denomination and its church-state separation position and had profound effects in American politics.

³⁰ See Adam Laats, *Fundamentalism and Education in the Scopes Era: God, Darwin, and the Roots of America’s Culture Wars* (New York: Palgrave Macmillan, 2012), 191. He argues that “Fundamentalists discovered through their 1920s schools campaigns that they could not unilaterally dictate educational policy and culture. They found that traditional Protestant belief no longer represented the accepted—if unofficial—curriculum of American

public school issues beginning in the 1930s might be viewed as evidence against such a retreat. Only in the case of the BJC and the POAU, the adversary was not modernism, but Catholicism.

Just a decade after the *Scopes Trial*, Southern Baptist elites, in unprecedented cooperation with Northern Baptists, ally to form a lobbying and political action institution (the BJC) in the nation's capital. Soon after, these same elites founded and funded the POAU, which was eager to litigate against and publicly confront this adversary. The headquarters of the SBC is in Nashville, Tennessee, not far from the location of the *Scopes Trial*. The townsfolk of Dayton would have mostly been Southern Baptists, like the founders of the BJC and the POAU. The formation of these institutions was not an indication of all-out retreat, but rather evidence of an increase in political engagement of evangelicals on the national stage through multi-conventional Baptist institution-building theretofore unseen.

Another historiographical intervention in the dissertation is with the narrative that tensions due to religious differences subsided after World War II, as they were subsumed within a common "Judeo-Christian" heritage, where pluralism was valorized and anti-Catholicism declined. The BJC and POAU lawsuits and rhetoric are evidence of a continued and vigorous post-war debate on the nature of Catholic projects and the place of the Catholic Church in American politics. Will Herberg's 1955 essay *Protestant-Catholic-Jew* argued that religion had more to do with traditional morality and group assimilation than it did with sacred values and spiritual activities.³¹ Yet the story of the BJC and the POAU belies any softening of anti-Catholic feelings, at least for Southern Baptists and Evangelicals, which was the fastest growing segment of American Protestantism. These evangelicals vigorously opposed the sort of pluralism imagined by American Catholics, and were deeply suspicious of the growing Catholic political clout. While not denying a softening of religious hostility between Protestants and Catholics in some quarters in the post-war era, the rhetoric between these evangelical institutions and Catholic partisans was severe, and their political battles could be fierce.³² The study of these tensions and debates, between the two largest Christian denominations in the United States, will aid our understanding of the denominational landscape and the religious ecology of the nation at that time.³³

schools. Fundamentalist activists realized to their surprise that their idea of appropriate education met with determined and sustained resistance from much of the new educational establishment. This discovery introduced a potent and long-lasting new interest group into American education...Fundamentalists fought for control of public schools with a new understanding of their role as aggrieved outsiders. Or, if convinced that they could not keep public schools safe for their own children, fundamentalists retreated to a new independent school system of their own."

³¹ Will Herberg, *Protestant - Catholic - Jew: An Essay in American Religious Sociology* (Doubleday, 1955). Additionally, though the ideas may be traced back to John Dewey ("Common Faith" 1934) and others, in 1967 Robert Bellah developed a sociological theory that the United States placed heavy emphasis on nondenominational religious themes which produced a nonsectarian quasi-religious faith as outlined in his "Civil Religion in America."

³² For instance, POAU spokesmen said that Catholicism was more dangerous than Communism, asserted that Catholic Cardinals were spies of a foreign Potentiate, and Catholic priests should be deported. Catholics, in turn, charged that the POAU was no different than the Klu Klux Klan and other Nativism organizations.

³³ While Mainline Protestant church membership dwindled during the post-war period, membership in evangelical Protestant denominations grew and Catholicism remained the largest Christian denomination in the U.S. By the end of our story, when the Southern Baptist Convention takes its rightward turn, theirs

In studying how the American religious ecology influenced the debate over church-state separation, the dissertation is less a review of how relevant case law, and more an examination of different constituencies debated and contested ideas about the nature of pluralism in the post-war United States. As Gordon states, we know little of how local partisan religious battles shaped the legal landscape of and changes to religion in education. Monographs concerning the history of the separation of church and state in the U.S. generally examine Supreme Court case law, but much of what happened with regard to religion in public schools in this period never made it to the Supreme Court, or perhaps to any court at all. Articles by Gordon and Schultz are welcome exceptions, and this dissertation endeavors to further illuminate the landscape of and changes to religion in public education.

With respect to an evolving American pluralism, Kevin Schultz argues that, “Understanding [Jews’ and Catholic’s] struggle for pluralism as a root cause of their contentiousness adds some much-needed context to the public school battles of this era, which have usually been interpreted as a simple quest to keep the state free from religion, and religion free from the state. The battles were instead a struggle about the exact dynamic of pluralism that would create civic peace in multicultural America.”³⁴ Schultz locates this challenge as the pivot for a shift from civic republicanism to rights-based liberalism, and argues that, “the procedural republic did not emerge out of the dislocation brought on by increased industrialism, but that it was shaped by post-World War II civil rights liberals seeking to delineate and create a pluralistic nation. Foremost in this collection of civil rights liberals were everyday Catholics and Jews working to establish a society that enabled them to be true to their unique characteristics while still granting them the latitude to be labeled Americans.”³⁵ Yet, the BJC and the POAU contested Catholic ideas about pluralism where they thought they impinged on the separation of church and state, especially when it came to Catholic arguments that it was fair and just to provide aid to parochial school children or their schools.

The arguments of the POAU were two-fold: the POAU felt that Catholic projects, such as public funding for parochial schools, were unconstitutional (i.e. they violated the Establishment Clause of the First Amendment of the U.S. Constitution) and additionally that the Catholic Church was itself a dangerously illiberal organization which was both hostile to republican democracy and willing to impose its policies on peoples wherever it had the power to do so.³⁶ The POAU warned that even the smallest accommodation, such as the “child benefit” theory which allowed public funds to be spent to bus children to parochial schools, was the tip of the spear in an all-out assault on the separation of church and state in the U.S. They further argued that public funding replaced parochial school expenditures, freed up resources that the Catholic Church could and would use to further its illiberal political agenda in the U.S. The POAU argued that this was not an

will be the largest Protestant denomination in the country, doubling their percentage from 1925 to 1975. See Roger Finke and Rodney Stark, eds., *The Churching Of America 1776-1990*, Reprint edition (New Brunswick, NJ: Rutgers University Press, 1992).

³⁴ Kevin M. Schultz, “‘Favoritism Cannot Be Tolerated’: Challenging Protestantism in America’s Public Schools and Promoting the Neutral State,” *American Quarterly* 59, no. 3 (September 1, 2007): 578.

³⁵ Schultz, “Favoritism Cannot Be Tolerated,” 569–570. Compare and contrast with the rights liberalism narrative in Alan Brinkley, *The End of Reform: New Deal Liberalism in Recession and War* (New York: Knopf, 1995)

³⁶ Ironically, the POAU and BJC warned evangelicals that they were in danger of having Catholic restrictions on birth control and abortion foisted upon them. Today, the SBC rhetoric and conservative Catholics seem to be of one mind on this issue.

indictment of Catholics qua Catholics, but rather speaking truth to the power of the Catholic hierarchy. For the BJC and the POAU, the intellectual debate over the place of Catholics and Catholicism in American culture and politics was alive and well in post-World War II U.S. These struggles continued well into the 1970s.

Initially, the BJC and the POAU never imagined nor supported a de-Christianization of the public schools. In fact, they frequently argued for the Protestant antecedents of republican democracy and religious freedom, as contrasted to an authoritarian Catholicism which accepted no other truth. Yet, Baptists had a tradition of religious tolerance and freedom, which was in tension with their concern about Catholicism. As Gjerde writes in the epilogue to *Catholicism and the Shaping of 19th Century America*, there was difficulty with the “Protestant effort to reconcile assumptions about the Protestant character of the American nation with their own commitment to religious freedom.”³⁷ In the twentieth century, the Supreme Court carved out a more capacious understanding of the Free Exercise and Establishment Clauses of the First Amendment which provided an “expanded juridical space for religious minorities to assert their rights.”³⁸ In fact, *Everson*, the very case which incorporated the First Amendment Establishment Clause (i.e. applied it to the states, via the Fourteenth Amendment, instead of the First only applying to the federal government) allowed public funding of school buses for transporting parochial school children, which in turn led to the creation of the POAU to combat any further public funds provided to parochial schoolchildren or schools. The expanded juridical space opened up by *Everson* allowed for the “increasing organization and political activism of religious minorities who possess resources to bring religious cases to the Court.”³⁹ The increased organization and political activism of American Catholicism was exactly what concerned the BJC and the POAU, and what they sought to counter.⁴⁰ Gjerde’s work aims to “demonstrate the ways in which the antebellum era dialectic between Protestants and Catholics created a framework for analogous debates from the late nineteenth century to the present.”⁴¹ A goal of the dissertation is to provide context for how that dialectic continued well into the twentieth century, especially with regards to institutions created or run by Southern Baptists and other evangelicals.

Additionally, the dissertation supports Sehat’s thesis, which posits a church-state separation narrative which moves beyond mere Establishment Clause case histories, and instead deploys a historical framework, which posits the moral (Protestant) establishment as the most important conception for understanding power and resistance in church-state issues. He argues there was no real federally enforced religious liberty on the ground prior to incorporation, and the Protestant Hegemony could and did protect its privileges and enforced the limits of what dissenters, free thinkers, and religious minorities were allowed to do and say. While analysis of the BJC and the POAU supports the thesis of the *Myth of Religious Freedom*, the dissertation

³⁷ Jon Gjerde and S. Deborah Kang, *Catholicism and the Shaping of 19th Century America* (Cambridge; New York: Cambridge University Press, 2012), 258.

³⁸ Gjerde and Kang, *Catholicism and the Shaping of 19th Century America*, 2012, 260.

³⁹ Gjerde and Kang, *Catholicism and the Shaping of 19th Century America*, 2012, 260 see footnote 16.

⁴⁰ Edwin S. Gaustad, *The Religious History of America: The Heart of the American Story from Colonial Times to Today*, Revised edition (San Francisco: HarperOne, 2004), 349–50.

⁴¹ Gjerde and Kang, *Catholicism and the Shaping of 19th Century America*, 2012, 257.

suggests that anti-Catholic arguments played a greater role in the construction of separationist rhetoric than is evidenced in Sehat's book.

In this dissertation I include Southern Baptists in the category of "evangelical." The term *evangelical* is problematic and disputed. As historian Molly Worthen notes, "The term *evangelical* has produced more debate than agreement. The word is so mired in adjectives and qualifiers, contaminated by politicization and stereotype, that many commentators have suggested that it has outlived its usefulness...Yet we are stuck with it. Believers and atheist scholars, politicians and pundits, all continue to use the word *evangelical*."⁴² Historian Mark Noll suggests a fluid definition where, "evangelicalism" has always been made up of shifting movements, temporary alliances, and the lengthened shadows of individuals."⁴³ So then, are Southern Baptists evangelicals? In 1976, Foy Valentine, Executive Director for the Southern Baptist Convention's Christian Life Commission (CLC) declared that "Southern Baptists are not evangelicals. That's a Yankee word."⁴⁴ Valentine meant that he felt "evangelical" was a polite term for a Northern fundamentalist.⁴⁵ Some Southern Baptists today do not identify as evangelicals, though perhaps fewer do now than objected in the 1970s. Historian George Marsden's often repeated bon mot is that "an evangelical is anyone who likes Billy Graham."⁴⁶ Historian David Bebbington constructed his "Bebbington quadrilateral" (i.e. biblicism, crucicentrism, conversionism, and activism) to define British evangelicals.⁴⁷ Worthen chooses a common history to unify and define evangelicals: a shared history of moral crusades, revivals, and an intellectual history which shares a "set of fundamental questions" concerning knowledge, salvation, and "how to resolve the tension between the demands of personal belief and the constraints of a secularized public square."⁴⁸ Any of these definitions would include Southern Baptists as evangelicals, but Worthen's common questions, especially the latter, are most germane to the Southern Baptist and evangelical projects of the BJC and the POAU.⁴⁹

A brief sketch of the history of public education in the U.S. may prove helpful. Though the dissertation is intended primarily as an intellectual and institutional history, it necessarily impinges on religious, legal, and educational histories as well. In as much as Puritan New England is viewed as part of the political genealogy leading to the United States, the history of public and compulsory education in the United States usually

⁴² Molly Worthen, *Apostles of Reason: The Crisis of Authority in American Evangelicalism* (New York, New York: Oxford University Press, 2013), 4.

⁴³ Mark A. Noll, *The Scandal of the Evangelical Mind* (Wm. B. Eerdmans Publishing, 1995), 8.

⁴⁴ David S. Dockery, *Christian Scripture: An Evangelical Perspective on Inspiration, Authority and Interpretation* (Wipf and Stock Publishers, 2004), 208.

⁴⁵ "Fundamentalist" is also a disputed term, which is sometimes conflated with Southern Baptist. See footnote 19

⁴⁶ George Marsden, *Understanding Fundamentalism and Evangelicalism* (Grand Rapids, Mich: Wm. B. Eerdmans Publishing Co., 1990), 6.

⁴⁷ David W. Bebbington, *Evangelicalism in Modern Britain: A History from the 1730s to the 1980s*, 1 edition (London u.a.: Routledge: Routledge, 1989).

⁴⁸ Worthen, *Apostles of Reason*, 4.

⁴⁹ There is a similar difficulty of definition when differentiating Southern Baptists across a political spectrum. I avoid the term "conservative" to describe Southern Baptists from the right wing of their convention, since most mainstream Southern Baptists self-identified as conservative theologically and denominationally. Thus, I describe the SBC as being captured by its "right wing" in 1979, rather than by "conservatives."

begins in 1642 with the Massachusetts Bay Colony and the Education Law which required parents to see that their children were educated. Or else with the subsequent *Old Deluder Satan Act* which required towns of fifty families or more to hire a schoolmaster to teach local children to read and write. Education was of special concern to New Englanders, but this enthusiasm was not shared everywhere.

Even after the United States was founded, education was not generally a national concern, and there existed a great deal of regional and local variation in public education.⁵⁰ New England had its town schools, and Thomas Jefferson and others in the Colonial period advocated free public schools. By 1800, most “grade school” education was conducted by private parties or sectarian religious groups, and most American children had little formal schooling. The “common school” period is generally associated with Horace Mann (sometimes referred to as the “Father of the Common School”) who became secretary of the newly established Massachusetts State Board of Education in 1837. Mann’s “nonsectarian” common school concept, which was open to all children of all social classes, was championed by reformers and had some popular support. However, “nonsectarian” in this context meant a hegemonic Pan-Protestantism, acceptable to the Mainline Christian denominations but which encouraged the proselytizing or denigrating of Catholics (and sometimes minority Protestant sects) with the goal of “assimilating” and Americanizing immigrants. Yankee reformer, Rev. George Cheever argued that only free public schools could combat “the dark and stolid infidelity and vicious radicalism of a large portion of the foreign immigrant population.”⁵¹

American Catholics resisted, and when they found they could not change the Protestant nature of the public school system, in locales where their numbers and resources allowed, they created an alternative parochial school system for Catholic children.⁵² The common schools had implemented the Prussian System of eight years or “grades” and few Americans attended high schools in the nineteenth century. Beginning in 1910 and lasting through World War II, the High School Movement saw a four-fold increase in high school attendance.⁵³ This increase in pupils, followed by the

⁵⁰ The lone exception being the Northwest Ordinance of 1787, which authorized public “land grant” universities as part of the settlement and expected statehood throughout Ohio Territory. Article III of the Act stated that, “Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.” These universities were not compulsory, of course. See <http://www.ourdocuments.gov/doc.php> (Accessed April 15, 2015)

⁵¹ George B. Cheever, *Right of the Bible in Our Public Schools...*, 1854, 112, <http://archive.org/details/rightofbibleinou00chee>.

⁵² Chapter One will sketch the resistance of Bishop Hughes of New York to the Protestant nature of the public schools. The Catholic narrative of this resistance invariably includes the “hero of the Eliot School Rebellion,” Thomas Whall. In Boston, 1859, ten-year-old Whall was beaten by the principal for refusing to read the King James Version of the Bible in his public school, which his father and priest had forbade him to do. Catholics resisted and asked to bring their own (Douay Bible) version of the Ten Commandments, but were forbidden from doing so. The school’s attorney argued that America could never be Catholic and the Judge agreed that reading the KJV of the Bible without comment was “no interference with religious liberty.” See Lawrence Arthur Cremin, *The American Common School: An Historic Conception* (Bureau of Publications, Teachers College, Columbia University, 1951), 7–11, 47.

⁵³ **Up to 73% of fifteen- to eighteen-year-olds attended.** See Goldin and L. F. Katz, “Human Capital and Social Capital: The Rise of Secondary Schooling in America, 1910 to 1940,” *Journal of Interdisciplinary History* XXIX 29 (1999): 683–723.

Post-World War II increases of the Baby Boom, created logistical and financial challenges to accommodate the significant increase in public and parochial school capacity. When American Catholics sought public monies to help ameliorate these costs, some Protestants viewed these projects with alarm. Southern Baptist elites responded by founding and funding the BJC and the POAU to combat these Catholic projects. These institutions would have significant and sometimes unintended consequences in the history of Bible reading in public schools, and their stories help us understand the complicated history of church-state separation in the United States. As Gordon notes, those church-state narratives which focus primarily on jurisprudence and the history of case law will “miss the opportunity to track the unfolding of a new constitutional regime at the ground level.”⁵⁴

Chapter one outlines the history of the formation of the Baptist Joint Committee (BJC), which was founded in 1936 by Southern Baptists in response to fears that the federal government of the United States was seeking diplomacy with the Vatican. The meeting between Cardinal Pacelli, soon to be Pope Pius XII, with President Franklin Roosevelt had greatly alarmed the elites of the SBC.⁵⁵ With an unprecedented cooperation, they allied with Northern Baptists to create the BJC, though the bulk of the funding and direction came from the SBC. The BJC worked against Catholic projects that they considered antithetical to the separation of church and state, especially the use of public funds for parochial schools. Then in the early 1960s, the Supreme Court ruled that even the “non-denominational” Protestant practices, such as prayer and Bible reading, were unconstitutional. Backlash against this unpopular decision led to a call for a constitutional amendment to the First Amendment to overturn the ruling. Working against pressures and measures to change the First Amendment “to put God back in the schools” in the post-*Schempp* United States, American Baptist elites help save it by vigorously, systematically and publicly opposing them.⁵⁶

Ironically, the structures and organizations which greatly aided this effort to expand religious tolerance and liberty by these evangelicals have their origins instigated, in large part, by Southern Baptist antipathy to the Catholic Church. Finally, the BJC’s support of *Schempp* and thus the de-Christianization of the public schools led to the loss of institutional support from the SBC once that organization experienced its rightward turn in 1979. In a process similar to Hollinger’s Protestant Dialectic, these “moderate” Southern Baptists of the BJC lost their numbers and their influence in public affairs while supporting liberal notions of church-state separation, which put them on the side of the ecumenists.⁵⁷ This chapter intersects with Sehat’s *Myth of Religious Freedom*.⁵⁸

⁵⁴ Gordon, “‘Free’ Religion and ‘Captive’ Schools,” 1178.

⁵⁵ This is explored in detail in Chapter 1. See Robert A. Ventresca, *Soldier of Christ: The Life of Pope Pius XII*, Sew edition (Cambridge, Mass: Belknap Press, 2013).

⁵⁶ ⁵⁶ *Abington Township School District v. Schempp* (consolidated with *Murray v. Curlett*⁵⁶), 374 U.S. 203. More famous than *Schempp* was the plaintiff William J. Murray, the son of Madalyn Murray O’Hair, who founded the group American Atheists in 1963 and who, in 1964, *LIFE* magazine called “the most hated woman in America.” William Murray converted to Christianity in 1980. In 1982, he published *My Life Without God* an exposé à la *Mommy Dearest* of his childhood and mother. Note that the case begins as *Schempp*, but then the litigants and plaintiffs swap places on the way to the Supreme Court, so in some works the case is referred to as *Abington*. I will continue to use *Schempp* here.

⁵⁷ These elites were “moderate” when compared to the right-leaning Southern Baptists who captured the SBC, but they self-identified as conservative both politically and theologically. They also did not share the diversity-accepting ideas of the ecumenical Protestants.

Chapter two charts the intellectual commerce between the American Jewish Committee (AJC) and the BJC and other Southern Baptist and evangelical elites in the post-WWII United States. The Jewish and evangelical organizations shared the common goal to foster the separation of church and state, particularly in regard to public schools.⁵⁹ This intellectual exchange is demonstrated by the large number of AJC publications, particularly pamphlets, in possession of and written about by SBC elites. These publications, speeches, television shows, etc. were primarily aimed at Christians in general and were tailored to be particularly salient for Baptist audiences. AJC executives were mindful of the prejudices existing in the country, their status as a minority religion, and the real consequences of backlash. Thus the AJC spokespeople were extremely careful not to antagonize Christians generally or Baptists in particular. Historian Mark Noll has argued that, “American evangelicals are not exemplary for their thinking...Even in its more progressive and culturally upscale subgroups, evangelicalism has little intellectual muscle.”⁶⁰

This chapter demonstrates how Southern Baptists elites of the BJC and SBC interacted with and borrowed from the thinking of the urban Jews of the AJC, which contributed to the former becoming more cosmopolitan. These Southern Baptists demonstrated significant intellectual creativity in their endeavors, as witnessed in chapter one, and chapter two contributes to the intellectual and religious history of this period.

Chapter three charts the founding and funding of the POAU. Like the BJC, the institution was focused on the struggle between itself and what it viewed as a powerful and dangerously illiberal Catholic Church bent on the destruction of that liberty. In fact, the POAU was founded by the executive director of the BJC, but with funding sourced outside the SBC (their primary benefactor was John Cowles, the Sovereign Grand Commander of the Scottish Rite Southern Jurisdiction order of freemasonry, who was similarly opposed to those Catholic projects). This *raison d'être* lasted until the 1980s, when, as with the BJC, the POAU experienced an erosion of conservative evangelical support in the aftermath of *Schempp* which led to a major restructuring of the institution.⁶¹ Ironically, those conservative evangelicals who fled the POAU, those conservative evangelicals who believed the Warren Court rulings more dangerous to the Protestant Establishment than was the Catholic Church, became willing to work with conservative Catholics on shared issues, thus forming the alliance that came to be called the Religious Right. The Religious Right, in turn, became the new *bête noire* for the revamped, post-1980 Americans United (or AU, formerly the POAU).

Chapter four examines the post-*Schempp* resistances to the Supreme Court ruling by conservative evangelicals in addition to the Becker hearings discussed in chapters one and three. The chapter focuses on the 1966 *Seattle Bible Trial* where two

⁵⁸ Mark Douglas McGarvie, “David Sehat. The Myth of American Religious Freedom,” *The American Historical Review* 116, no. 4 (October 1, 2011): 1066–68.

⁵⁹ Note: at this time the American Jewish Congress, that likewise was quite active in the arena of church-state issues, also used the acronym AJC. In this work AJC will always refer to the American Jewish Committee.

⁶⁰ Noll, *The Scandal of the Evangelical Mind*, 3.

⁶¹ *Schempp* forbade the devotional use of the Bible or school-sponsored prayer in the public schools. See Brennan, School District of Abington Township, Pennsylvania v. Schempp (BRENNAN, J., Concurring Opinion), 374 U.S. 203 (U.S. Supreme Court 1963).

Bible Presbyterian ministers unsuccessfully sued the University of Washington claiming that its *Bible as Literature* course was religious, and thus forbidden under the U.S. and Washington state constitutions. Ironically, it was the fundamentalists using the Establishment Clause to root out “religion” from the public square. Typically, separationist organizations such as the ACLU would be on that side of the argument, but in this case they stood with the university. The Bible Presbyterian church was an evangelical or fundamentalist schism aligned with Carl McIntire’s ICCC. Significantly, the case instigated discussions at the university which lead to the formation of the Comparative Religion Program at the Henry M. Jackson School of International Studies at the University of Washington (UW).

The *Seattle Bible Trial* intersected with a “flourishing of departments of religion in public colleges and universities and an intense conversation about the appropriate approach to the academic study of religion in the U.S. context.”⁶² This chapter engages with Sullivan’s *The Impossibility of Religious Freedom* to suggest some theoretical ground for an exploration into the possibilities of religious separation in the United States.⁶³ However, this work is less theoretically driven than historically minded. Ultimately, these discussions and court decisions centered not just on differences between epistemes regarding the appropriateness of religion in the public square, but fundamentally on what is and is not “religious.”

The *Seattle Bible Trial* was the first in the nation to decide whether public university religious departments and courses ran afoul of the Establishment Clause or the state Blaine Amendments. While the U.S. Supreme Court has never ruled directly on this issue, they let stand the UW case and the academic study of religion has continued in public universities. Though the Seattle ministers lost the case, and by the 1970s the ACCC waned as McIntire’s finances and influence crumbled, fundamentalist evangelicals such as they would find a home in the burgeoning conservative movements of the Culture Wars. In this case, *Schempp* spurred discussions which led to an increase in the academic study of religion in the public university. It also proved to be a pivot point and catalyst for institutional changes and the energizing and informing of constituencies (such as fundamentalist evangelicals) which by the 1980s would come to be known as the Religious Right.

⁶² Paul Harvey, “CFP: 50 Years After Schempp,” *Religion in American History*, accessed September 7, 2013, <http://usreligion.blogspot.com/2013/03/cfp-50-years-after-schempp.html>.

⁶³ Winnifred Fallers Sullivan, *The Impossibility of Religious Freedom* (Princeton, N.J.: Princeton University Press, 2005), 3.

Chapter One

The Bible in American Public Schools Post-World War II and How Baptists Helped Save the First Amendment

Working against pressures and measures to amend the First Amendment “to put God back in the schools” in the post-*Schempp* United States, American Baptist elites helped save it from alteration by vigorously, systematically and publicly opposing them.¹ This put them in conflict with conservative elements of the Southern Baptist Convention (SBC) which ultimately undermined institutional supports for the Baptist Joint Committee (BJC). Ironically, the structures and organizations that greatly aided this effort to expand religious tolerance and liberty originated, in large part, by many Baptists who held a virulent antipathy for Catholicism held by many Baptists. The BJC was founded to thwart Catholic projects deemed to dangerous to church-state separation, and initially untroubled by the Protestant Establishment’s “non-sectarian” religion in the public square, but ultimately these elites defended the stricter separation in *Schempp* which sought to de-Christianize the public schools. This work intersects with Sehat’s *Myth of Religious Freedom* and borrows from Hollinger’s idea of the “Protestant dialectic” to show how the post-war U.S. and separationist institutions were mutually constitutive in this period.

Nowhere has religion in the public square been more controversial and contested in the United States than in the public schools. From the Bible riots in nineteenth-century New York, Philadelphia, and other East Coast cities to the recent querulous debates over Texas textbooks, religion in the public schools has been a contentious issue. My work examines the controversy over the Bible as a devotional device in the public schools, primarily in the period after World War II and through the aftermath the 1963 *Schempp* decision, wherein the U.S. Supreme Court declared school-sponsored Bible reading for religious purposes in public schools in the United States to be unconstitutional.

I argue that negative reactions to this ruling energized and informed many constituencies that would become part of the “religious right”. Simultaneously, the *Schempp* decision emboldened those who supported a strong separation of church and state, which made for inter-religious alliances and exchanges with existing separationist groups, and the formation of new ones.² In this paper I will demonstrate how Baptist

¹ *Abington Township School District v. Schempp* (consolidated with *Murray v. Curlett*), 374 U.S. 203. More famous than *Schempp* was the plaintiff William J. Murray, the son of Madalyn Murray O’Hair, who founded the group American Atheists in 1963 and who, in 1964, *LIFE* magazine called “the most hated woman in America.” William Murray converted to Christianity in 1980. In 1982, he published *My Life Without God* an exposé à la *Mommy Dearest* of his childhood and mother. Note that the case begins as *Schempp*, but then the litigants and plaintiffs swap places on the way to the Supreme Court, so in some works the case is referred to as *Abington*. I will continue to use *Schempp* here.

² New groups of this sort included the Baptist Joint Committee on Public Affairs (BJC), the Protestants and Other Americans United for the Separation of Church and State (POAU) and National Council on Religion and Public Education (NCRPE). As of today, the first two still exist but have changed names slightly and/or shifted or sharpened their focus. The latter lasted from 1983-1995, and its papers now

elites, primarily those associated with the Baptist Joint Committee for Public Affairs (the full name of the BJC), functioned as a separationist “watchdog” group; operated and lobbied in the corridors of power in Washington D.C.; testified before Congress, and made known their position as *amici curiae* (“friends of the court”) briefs in relevant separationist cases; otherwise furthered a more strident separationist regime. I will examine how institutional beliefs and practices of the BJC (and, ultimately, the SBC) influenced and impelled their participation in a dialectic on the use of the Bible in public schools. Significantly, the BJC often shared information and objectives in this regard with secular Jewish organizations such the American Jewish Committee (AJC).³ Additionally, the BJC was initially inspired, and constantly innervated, by concerns over what they perceived was the grave danger that American Catholic schools or institutions might receive any public support, or that the United States government might recognize or dialogue with any part of the Catholic hierarchy (and the Vatican in particular). Finally, the larger U.S. society and these institutions existed in tension as two inseparable and mutually constitutive groups. These institutions helped reify a more capacious understanding of the separation of church and state, while they themselves were redefined in the process. Like the current BJC, the Americans United for the Separation of Church and State (POAU, now called simply Americans United), and the SBC are manifestly different than their pre-1980s incarnations.

For many Baptists of this period, particularly the educated elites, keeping public monies from being spent on parochial schools was paramount. While it pained them deeply to see the Bible removed from its pride of place in the public schools, the idea of Catholic schools receiving any public funding frightened and appalled them more, and if the former was necessary to thwart the latter, most elites were willing to accept Bible-free public schools. Ironically, a sea change had occurred in the Catholic hierarchy’s opinion on the Bible in public schools. In the 19th century Catholics had objected strenuously to the inevitable use of the King James Version of the Bible, the ubiquitous anti-Catholic rhetoric in school readers, and the unapologetic proselytizing of Catholic youth in the public schools. A more confident and entrenched U.S. Catholicism was concerned with what they called “secularism” and with receiving what they considered was a fair share of the tax money Catholics spent on funding education.⁴ To the extent that First Amendment arguments were being used to bolster the former and thwart the latter, the Catholic hierarchy found that problematic.

How serious was the threat to the First Amendment? In the 1960s, the Constitution was amended four times, producing Amendments XXIII, XXIV, XXV and XXVI.⁵ The latter one limited the minimum voting age to eighteen in all states, and was adopted in response to activism against the Vietnam War but also to overrule the Supreme Court’s decision in *Oregon v. Mitchell*. Amendment XXVI was ratified in record time, within four months of the Congress submitting it to the states. Clearly, there was at that time a willingness for amending the Constitution and it was a readily used procedure, even for overruling the Supreme Court. The Becker Amendment was

reside in the Religion and Public Education Resource Center (RPERC) at California State University, Chico.

³ The intellection commerce between the BJC and the AJC is explored further in another chapter.

⁴ Historically this had been termed “infidelity” or even the heresy of “Americanism.”

⁵ Nothing like this had been evidenced since the Progressive Era, when Amendments XXVI through XIX were ratified between 1913 and 1920.

crafted to overturn the *Engle* and *Schempp* decisions, and “put God back in the public schools.” The BJC helped sink the Amendment when congressional hearings were held, though there were other factors at work with regarding thwarting the Becker Amendment: a conservative Congress may have brought the Amendment to a vote while emotions ran high; understanding of the Supreme Court decisions was incomplete; polls showed most of the American public was unhappy with the Supreme Court. Had the Republicans controlled Congress at this particular moment, the proceedings could have gone quite differently. One of the amendments would likely have made it swiftly to the floor where there were the votes to pass it, rather than its getting stuck in committee. Perhaps if a conservative Democrat chaired the Judiciary Committee, the trajectory of the bill might have gone differently. As it was, Emmanuel Celler, the Jewish congressman representing New York’s 10th District (Brooklyn) deftly stalled the Becker Amendment. Religious groups, such as Project America: International Christian Youth – USA, circulated form letters to send to congressmen to demand a Discharge Petition to overrule Celler and bring the bill to the floor.⁶ When Celler felt the Discharge Petition might be nearing enough votes to move the bill out of committee, he was obliged to hold lengthy hearings on the Amendment, during which it became clear that there was no simple solution and the appetite for tinkering with the First Amendment waned.⁷

That the amendments to the Constitution which succeeded were for more progressive causes does not mean that a reactionary amendment might not have won the day. In 1972, the Equal Rights Amendment (ERA) passed both houses of Congress and went to the state legislatures for ratification. However, a concerted, well-organized group of conservatives eventually thwarted its ratification. Similar conservative groups organized to overturn *Schempp*. Importantly, it was in this era that the SBC would become the single largest Protestant denomination in the country, and it is conceivable that if they had come down on the other side of the question, things might have gone the other way. That is, the First Amendment may have been changed by the Becker Amendment and *Schempp* overturned. Surely, the fact that powerful, liberal Democrats who supported *Schempp* also controlled key committees in the Congress was a major factor in averting the movement to amend the First Amendment, and my argument does not intend to simplify what was a complex political dynamic. Nonetheless, I maintain that the task of thwarting the Becker Amendment would have been much more difficult, and perhaps even have failed, if not for the help of these Baptists.

I hope to achieve in this chapter for the Baptists something similar to what David Hall has done for the Puritans.⁸ Hall challenges readers to discard long-standing stereotypes of the Puritans as authoritarian despots. While careful not to claim that Puritans were “liberal” or egalitarian in any contemporary sense, Hall demonstrates that the colonists insisted on aligning their social practices and institutions with practices

⁶ The youth group was the invention of Carl McIntire’s International Council of Christian Churches (ICCC), though other conservative Christians, especially evangelicals, supported the bill. An example of the form letter can be found here: <https://lcrm.lib.unc.edu/blog/index.php/category/online-resources/> (Accessed December 12, 2014)

⁷ The fourth longest-serving congressman in history, Celler served from 1923 to 1973. In 1939, Celler urged U.S. Secretary of State Cordell Hull to begin a process, which took 45 years but which led, in 1984, to full, formal diplomatic relations between the United States and the Holy See. He also was chairman of the Judiciary Committee during Watergate, and frequently interviewed. I know of no biography of Celler.

⁸ Hall, *A Reforming People*.

consistent with their notions of liberty and equality. Though the leadership of the SBC will be captured by their right wing in 1979, in the 1960s the SBC elites were reliable proponents of a strong separation of church and state and supported *Schempp*. Eventually, Southern Baptists will swell the ranks of conservative YIVt-soldiers in the culture wars, and this contemporary posture often informs our image of their past, but before they make an about face on this issue Baptists will help save the First Amendment from those who strenuously sought to amend it. To lose sight of this fact would elide the history of mid-twentieth century Baptists and confound of the complexities of their political engagement in this period.

The Becker Amendment and SBC and BJC Opposition

In 1964, congressional Republican Representative Frank J. Becker of New York introduced a resolution to amend the First Amendment to the U.S. Constitution and overturn *Schempp*. While 115 of his fellow congressmen issued 160 similar resolutions, the *Becker Amendment* was the bill that was ultimately debated in congressional hearings. The SBC leaders testified before Congress against the amendment and were solidly separationist with regard to church-state issues at this time.

The SBC elites helped counter negative aspersions cast at *Schempp* defenders in the *Becker Amendment* hearings and elsewhere. *Becker Amendment* proponents argued that support of *Schempp* implied support for atheists and communists, and these partisans were not above red-baiting those who argued against them. The *Becker Amendment* had existed before *Schempp*, and began in response to the *Engle v Vitale* decision of June, 1962.⁹ Congressman Frank Becker of the House, a Catholic and Republican from Brooklyn, introduced the proposed amendment the day after the *Engel* ruling. Others did the same. Congressmen, both Southern Democrats and Republicans, instantly decried and sought to overturn the Supreme Court ruling in *Engle*, which forbade the state of New York from requiring a prayer be performed in the public schools. Thus began the call for a Constitutional amendment to overturn the decision. Becker, the eventual and titular leader in the drive for a constitutional amendment, called *Engle* "the most tragic decision in the history of the United States."¹⁰ Senator Sam Ervin, Democrat and Presbyterian from North Carolina, decried the Warren Court's decision that, in his view, "made God unconstitutional." Senator Herman Talmadge, Democrat and Southern Baptist from Georgia, was adamant that the ruling had "dealt a blow to all believers" and "given aid to the disciples and followers of atheism."¹¹ Strom Thurmond, Democrat (he would switch to the Republic party in 1964) and Southern Baptist, thundered against the decision, and gave an impassioned speech which criticized the ruling but also foregrounded how it troubled the Cold War rhetoric of the time:

This irrational--and I think irreverent--decision in *Engel v. Vitale* comes, Mr. President, at a time when the world is locked in a cold war struggle

⁹ *Engel v. Vitale* (Syllabus), 370 U.S. 421 (U.S. Supreme Court 1962).

¹⁰ *CBS Reports*, "Storm Over the Supreme Court," 13 March 1963, transcript pp. 66-67; 108 Cong. Rec. 11675 (1962). Steven K. Green, "Evangelicals and the Becker Amendment: A Lesson In Church-State Moderation," *Journal of Church and State* 33, no. 3 (July 1, 1991): 548, doi:10.1093/jcs/33.3.541. and footnote 41

¹¹ Green, "Evangelicals and the Becker Amendment," 564.

between the forces of freedom which look to a Supreme Being for Divine guidance and supplication and the forces of tyranny which are presided over by an ideology which does not recognize true freedom or any god except man himself and the worship of materialism. In this time of the most critical period in our national life, we need to increase rather than decrease individual and national attention to spiritual and moral values which undergird our nation in this struggle.¹²

These Cold War concerns left *Engel* sympathizers open to red-baiting. Denominations as disparate as the Assemblies of God (aka Pentecostals) and the Catholic hierarchy were critical of *Engel* for having “banned God” from the schools. Evangelist Billy Graham warned that the decision furthered the United States’ slide into secularism, and prayed that “God pity our country when we can no longer appeal to God for help.”¹³ While some of this fury had died down by the time *Schempp* was decided a year later, much of the ardor remained. These were the forces arrayed against Congressman Celler. Nonetheless, he was able to keep any of the amendments from getting out of committee for a vote on the House floor. Mail to Congress from concerned citizens was nearly unanimously in favor of the *Becker Amendment*, prior to the hearings scheduled by.¹⁴ For the modernist or more secular proponents of *Schempp*, the BJC leadership offered an example of clearly committed Christian believers who nonetheless did not support the amendment. Though most of the Southern Democrats in congress were proponents of the *Becker Amendment* and many had signed the petition to move it out of committee, The Southern Baptists of the BJC showed that Southerners were not all in favor of tampering with the First Amendment to overturn *Engle* and *Schempp*. This helped provide much-needed cover for those who might be in danger of subtle (and not so subtle) red-baiting by the opposition.

Despite a Cold War climate which was increasingly friendly to religious speech in the public square, as evidenced by the addition of “under God” to the Pledge of Allegiance and the inclusion of “In God We Trust” on all currency and as the national motto, the SBC consistently voted against First Amendment amendments in their annual conventions of this period.¹⁵ SBC officers testified before congressional hearings against such amendments. They stated their position in both the Baptist and the mainstream press, along with the rationales for such positions. They answered letters from their members who did not understand or agree with their position. They appeared on television to defend and explain their position. They financed, designed

¹² [Senator Thurmond's Speech Against the Court Decision in the School Prayer Case; Washington, DC June 28, 1962 “Strom Thurmond Collection Speeches Series Mss.0100.11,” text, accessed March 13, 2015, http://media.clemson.edu/library/special_collections/findingaids/manuscripts/Mss0100.11ThurmondSpeeches.html.

¹³ “Tempest Over School Prayer Ban,” *Christianity Today* 6:21 (July 20, 1962), 46

¹⁴ For discussion of the letters regarding the cases sent to Strom Thurmond, see Sweeney, J. K.(2013). *Public Education In A 'Religious State': South Carolina Responds to Engel V. Vitale (1962), Abington V. Schempp (1963), and Murray V. Curlett (1963)*. (Doctoral dissertation). Retrieved from <http://scholarcommons.sc.edu/etd/1236> (Accessed March 13, 2015)

¹⁵ The phrase "under God" was incorporated into the U.S. Pledge of Allegiance on June 14, 1954, by a Joint Resolution of Congress amending §4 of the Flag Code (enacted in 1942). On June 29, 1955, Lyndon Baines Johnson (D-TX) introduced H.R. 619, a bill to provide that all United States currency shall bear the inscription “In God We Trust.” A later bill (House Resolution 396) was introduced to establish "In God We Trust" as a national motto and became law on July 30, 1956.

and distributed pamphlets to educate others—often confused or dissenting members of their own denomination—as to why and how believing Christians in general and Baptists in particular could and should be firm supporters of a separation of church and state. They even worked with the AJC and other Jewish institutions to coordinate these responses.¹⁶ Finally, Baptist history of religious tolerance and a theological aversion to coercion gave them intellectual and theoretical underpinnings to deploy effective separationist arguments. The SBC supported this clear separation of church and state when it came to the Bible in public schools, despite the valorization of the Bible in their theology and the prevalence of Bible use in schoolrooms in the South. This was partially because of their tradition for separationist views in general their theological emphasis on the free choice of religion *sans* coercion. Ultimately, though, their support for the separation of church and state reflected their virulent antipathy toward any public support of Catholic projects. Again, many viewed any erosion of the First Amendment as a slippery slope to public funding for parochial (i.e. Catholic) schools. This reason perhaps did not spring from the better angels of their natures, but it was often the most poignant and effective when quelling dissent from their more conservative members on this issue.

Finally, some arguments deployed in the culture wars run the risk of downplaying the real religious coercion which was reproduced in law and politics of the United States, despite any reverence for the First Amendment in the U.S. Constitution. Schools are local institutions in the United States and most church-state issues in law and politics are handled on the state and local level. When it comes to arguing over whether the United States was a “Christian country”, partisans on both sides of the culture wars tend to “cherry pick” evidence and “upstream” the mindsets of historical actors in ways that support their polemics but mystify the historical reality. As Sehat explains in his *The Myths of American Religious Liberty*:

Stripping away the myth of American religious freedom and conceding the coercive role of religion in enforcing moral norms through law requires an alteration of several key terms and assumptions in the current debate. Common ways of thinking about religion’s role in U.S. law and politics fail in various ways. Most evince what the intellectual historian David Hollinger has called “patterns of engagement and evasion.” Unwilling to look squarely at the past forms of religious coercion, participants in the contemporary debate too often selectively deploy the myth of religious freedom for partisan political ends. In order to move beyond the shibboleths that govern discussion of religion in American life, we must reject bad history that informs the debate.”¹⁷

Sehat’s thesis, which goes beyond mere Establishment Clause case histories, deploys a historical framework which posits the moral (Protestant) establishment as the most important conception for understanding power and resistance in church-state issues. He argues there was no real federally enforced religious liberty on the ground prior to incorporation, and the Protestant Hegemony could and did protect its privileges

¹⁶ See chapter two which discusses the intellectual commerce between the BJC and the AJC.

¹⁷ David Sehat, *The Myth of American Religious Freedom* (Oxford University Press, USA, 2011), 284.

and enforced the limits of what dissenters, free thinkers, and religious minorities were allowed to do and say. This provides a more useful lens for interpreting the history of church-state separation which occurred in U.S. public schools with after World War II. Additionally, it might also prove useful to sketch a brief outline of Baptist history before returning to this period.

A Brief Baptist History of Religious Freedom and Toleration

This section attempts to provide some basic separation context pre-dating the U.S. Constitution and hopes to historicize pre-WWII Baptist thinking regarding the separation of church and state, while cautioning that the required brevity necessitates a cursory, coarse and facile treatment in the dissertation. Given the scope of the summary, simplifications and omissions are inevitable.¹⁸

Baptist statements in support of religious liberty begin in their earliest history. John Smyth, the seventeenth-century Anglican priest considered by many as the founder of the Baptist tradition, said: “That the magistrate is not by virtue of his office to meddle with religion, or matters of conscience, to force or compel men to this or that form of religion, or doctrine: but to leave Christian religion free, to every man’s conscience, and to handle only civil transgressions.”¹⁹ In 1612, Thomas Helwys, a London contemporary and co-founder of the Baptist tradition, wrote in his *The Mystery of Iniquity*, “Let them be heretickes, Turcks, Jewes, or whatsoever it apperteynes not the earthly power to punish them in the least measure (in spiritual matters).”²⁰ In America, in 1644, Roger Williams, in his *Bloudy Tenent of Persecution for Cause of Conscience* wrote, “God requires not a uniformity of religion to be enacted and enforced in any civil state...toleration of [erroneous persons] ought to continue till doomsday...persecution for the cause of conscience, is most evidently and lamentably contrary to the doctrine of Jesus Christ, the Prince of Peace.”²¹ As a persecuted minority for much of their history (Helwys died in prison for his beliefs), Baptists had a practical reason for their position on religious liberty. Throughout their history, whenever the state got involved in religious affairs, the autonomy and pocketbooks of Baptists tended to suffer. Their notions of religious liberty also had sound theological underpinning, most notably articulated in one of their “four freedoms”.

Soul Freedom is one of the “four freedoms”, and is the belief that every person is capable and of and *responsible for* making decisions in matters of faith, without compulsion or coercion by any civil or religious body. Baptists believe that for faith to be valid, it must be a voluntary obedience to God. The only conversion that counts is conversion by ‘conviction.’ “Spirituality,” a common word in American discourse today, meant for Baptists of the World War II era “the free pursuit” of piety. As one historian notes, “Forced faith,’ ‘coerced faith,’ ‘unchosen faith,’ ‘involuntary faith,’ ‘convictionless

¹⁸ Further reading for early history of Baptists, see G. Hugh Wamble, “Baptist Contributions to Separation of Church and State,” *Baptist History and Heritage* 20 July 1985 and Jason G. Duesing, Thomas White, and Malcolm B. Yarnell, *Upon This Rock: The Baptist Understanding of the Church* (B&H Publishing Group, 2010).

¹⁹ William L. Lumpkin, *Baptist Confessions of Faith*, ed. Bill J. Leonard, 2 Revised (Judson Pr, 2011), 140.

²⁰ H. Leon McBeth, *The Baptist Heritage: Four Centuries of Baptist Witness* (Broadman Press, 1987), 86.

²¹ Roger Williams and Richard Groves, *The Bloudy Tenent of Persecution for Cause of Conscience: Discussed in a Conference between Truth and Peace: Who, in All Tender Affection, Present to the High Court of Parliament, (as the Result of Their Discourse) These, (among Other Passages) of Highest Consideration* (Mercer University Press, 2001), 3,57,180,263. as quoted in Brackney

faith,' 'ritualistic faith,' 'sacramental faith'—all such theological constructs would have been an oxymoron for these Baptists.”²² However, when it came time to decide the separationist issue, not all Baptists would come to view Bible-reading in the public schools as coerced faith. Many still clung to the long-held notion espoused by the Protestant hegemony that reading the Bible without comment was *not* coerced faith. But as we shall see, the Baptist elites of the BJC in the post-WWII era would largely come around to the idea that Bible reading in public schools was not constitutional. Still, the roots of Baptist thinking about the “separation of church and state” stretch deep into the seventeenth century.

Roger Williams, an English Protestant theologian in America, was a vehement proponent of the separation of church and state and religious freedom. In 1636, he began the colony of Providence Plantation (Rhode Island), which served as a refuge for American religious minorities. Williams also founded the first Baptist church in America. His 1644 tract, *The Bloody Tenent of Persecution, for Cause of Conscience, Discussed in a Conference between Truth and Peace* about government force, argued for a “wall of separation” between church and state and for state toleration of various denominations, *including* Catholicism. He also suggested toleration of “paganish, Jewish, Turkish or anti-Christian consciences and worships.”²³ A call for multi-cultural tolerance that was almost unheard of in the seventeenth century. Baptists have a proud and long tradition of defending religious liberty, and I do not intend to obscure this fact when complicating the narrative with any anti-Catholic motivations that may have existed with that tradition.

Of course, in the United States, Baptists have grown from the smallest mainstream Protestant denomination in colonial times, to the largest Protestant denomination today. As Baptists adjusted to this new reality, and made their own encounters with modernity, separationist ideas would be tested. In his 1950 monumental study on church-state issues in the U.S., Anson Phelps Stokes gushed “No denomination has its roots more firmly planted in the soil of religious freedom and Church-State separation than the Baptists”. He then went on to warn, “The Baptists today are typical of those groups who have fought heroically to secure their own freedom from State interference and would fight again to maintain it; but in freedom of thought and teaching, or even freedom for certain other groups, such as Roman Catholics on the one hand, and liberal theologians on the other, their record has not been uniformly good.”²⁴ Touché. By the 1980s, in a significant sea change, conservative Catholics and Protestants would join forces to achieve common political goals, where just a generation earlier cooperation of this sort would have been unthinkable. In the earlier part of the twentieth century, Baptists could be quick to see where others were not living up to their separationist standards (very quickly when it came to Catholics) but, like many, were less adept at recognizing their own inconsistencies. Yet, when forces initially mobilized to change the First Amendment “to put God back in the public schools”, the BJC and the SBC consistently and publicly fought against them.

²² “What ‘Being Baptist’ Meant for Southern Baptists during World War II,” 2001, 4, http://findarticles.com/p/articles/mi_m0NXG/is_3_36/ai_94160972/pg_4/. Accessed

²³ Williams and Groves, *The Bloody Tenent of Persecution for Cause of Conscience*.

²⁴ Anson Phelps Stokes, *Church and State in the United States ...* (Harper, 1950), 485,762. as quoted by James E. Wood Jr in the Forward to Brackney

The Strange Career of the Baptist Joint Committee

Southern Baptist institutional involvement in national public affairs began formally on Saturday, May 16, 1936, when the Southern Baptist Convention (SBC) created the Committee on Public Relations.²⁵ The convention messengers (i.e. voting members in attendance) came to St. Louis, Missouri that year.²⁶ Two months earlier, on March 7, Hitler had broken the Treaty of Versailles, sending troops into the Rhineland. At that meeting they voted to form this new organization by changing the name and focus of the General Committee on Army and Navy Chaplains.²⁷ Three years later, in 1939, responding to both international and domestic issues, the SBC, NBC and National Baptist Convention, USA jointly ratified the “American Baptist Bill of Rights.”²⁸ They declared, in part:

No issue in modern life is more urgent or more complicated than the relation of organized religion to organized society. The sudden rise of the European dictators to power has changed fundamentally the organic law of the governments through which they exercise sovereignty, and as a result, the institutions of religion are either suppressed or made subservient to the ambitious national programs of these new totalitarian states...Standing as we do for the principle of voluntariness of religion, grounded upon the competency of the human soul, Baptists are essentially antagonistic to every form of religious coercion or persecution... Believing religious liberty to be not only an inalienable human right, but indispensable (sic) to human welfare, a Baptist must exercise himself to the utmost in maintenance of absolute religious liberty for his Jewish neighbor, his Protestant neighbor, and for everybody else. Profoundly convinced that any deprivation of this right is a wrong to be challenged, Baptists condemn every form of compulsion in religion or restraint of the free consideration of the claims of religion. We stand for the civil state, “with full liberty in religious concerns.”²⁹

²⁵ *Annual of the Southern Baptist Convention, 1936*, p. 96. "... as situations arise, in which agencies of this Convention are compelled to confer, to negotiate, to demand just rights that are being threatened or to have other inescapable dealings with the American or other Governments, this Committee shall function, when so requested by any existing board or agency of this body, as the representative of Southern Baptists and shall report in detail to the Southern Baptist Convention the results of such conferences and negotiations."

²⁶ The mid-West was experiencing a terrible drought that year and convention goers would have experienced a dry landscape. The average total precipitation for St. Louis in June, July, and August hit an all-time low. Meanwhile, Dizzy Dean, the Cardinals ace pitcher, garnered one of his four consecutive strikeout titles (1934–1937) on his way to another All Star performance. Unfortunately for the Convention goers, the Cardinals were out of town that weekend, on the east coast road trip playing the Boston Bees.

²⁷ Pam Parry, *On Guard for Religious Liberty: Six Decades of the Baptist Joint Committee* (Smyth & Helwys Pub, 1996), 7.

²⁸ William H. Brackney, *Baptists in North America: An Historical Perspective* (Wiley-Blackwell, 2006), 227.

²⁹ Southern Baptist Convention, “Annual of the Southern Baptist Convention, 1939” 1939, 114, Southern Baptist Historical Library and Archives, http://www.sbhla.org/sbc_annuals/index.asp.

Though the SBC nominated foreign threats as their motivation for forming what became the BJC, domestic concerns quickly dominated their agenda. Totalitarian bogeymen such as Tojo, Hitler, and Mussolini notwithstanding, politically alert Southern Baptists saw great danger on the home-front as well. “Every session of the Congress,” they claimed, brought issues of the federal government’s relation to religious concerns. These Southern Baptists were frequent and vociferous critics of what they perceived as Catholic esurience for public funds and always quick to repudiate any state aid, direct or indirect, to sectarian schools. They also rebuked the president of the United States for appointing an ambassador to the Vatican, among other church/state concerns.³⁰ While Baptists couched their rhetoric in their history of religious freedom and toleration, or against the rising authoritarian governments of the day, one deep if unspoken root of Baptist political activism at this moment was the concern over the Roosevelt Administration’s rapprochement with the Vatican, the growing political clout and social capital of American Catholics, and the real prospect of public monies being spent to aid children attending parochial schools. In the above quote, Catholics are notably absent in the list of specific neighbors that Baptists should be alert to protect.

That high-minded rationales often elide the sectarian tensions which undergirded the arguments over religion in the public square is not a new idea. Will Herberg, best known for his groundbreaking work *Protestant—Catholic—Jew: An Essay in American Religious Sociology*, warned about it in his 1952 essay “The Sectarian Conflict over Church and State: A Divisive Threat to Our Democracy?”³¹ In 1955, *Life* reported that the “wall of separation” was in fact “an uneasy four-way truce among Catholics, Protestants, Jews and secularists.”³² More recently, historian Kevin Schultz has introduced his idea of a *Tri-Faith America*, “Every time the state sought some sort of middle ground concerning religion, sectarian disputes bubbled to the surface...The wall of separation was not entirely about keeping politics and religion apart for the sanctity of both (as the rhetoric of the debate had been) or about maintaining Protestant hegemony (as the reality had been since the early nineteenth century); rather, it was about honoring pluralism in Tri-Faith America.” Schultz recognizes Philip Hamburger’s argument from *Separation of Church and State* that First Amendment case histories and earlier church-state jurisprudence on the state and local levels had very little Constitutional foundation, and then posits a “a dramatic and largely unrecognized shift in the rhetoric and justification of separation” where the courts are working out the limits of pluralism in post-war America.³³ The nativist underpinnings of this story will also be discussed further in the chapter on the POAU.³⁴

³⁰ Southern Baptist Convention, “Annual of the Southern Baptist Convention, 1939,” 115.

³¹ Will Herberg, “The Sectarian Conflict Over Church and State: A Divisive Threat to Our Democracy?,” *Commentary*, November 1952, 450–62. **from Schultz p135**

³² Henry Luce, ed., *LIFE MAGAZINE DECEMBER 26, 1955 SPECIAL ISSUE: CHRISTIANITY, THE GREAT WERDEN CRUCIFIX, KOREAN ORPHANS, BILLY GRAHAM*, VOL 39 NO.26 -VOL. 40,NO.1 (LIFE Magazine, 1955), 56. **See Schultz p 134 & footnote 43**

³³ Kevin M. Schultz, *Tri-Faith America: How Catholics and Jews Held Postwar America to Its Protestant Promise* (Oxford University Press, USA, 2011), 134,135.

³⁴ **To wit, concerned Protestants “argued that a unified and powerful Catholic bloc might attempt to overturn republican government in favor of one controlled by the pope. To prevent Catholics from capturing free government, Protestants felt they had to deny Catholics equal civil and political rights, employing the language of separation. This allowed de facto Protestantism to rise to a place of privilege in the public sphere.”** Schultz, *Tri-Faith America*, 134,135.

Schultz is apposite in this assessment. At moments of crisis, such as a visiting Vatican official or the election of a Catholic president the evidence of anti-Catholic motivations becomes most stark for these Protestants. During the JFK administration, the appointment of Catholic judges or cabinet officers was seen by many Baptist leaders as de facto evidence of a breach in the separation of church and state. Also notable is the indication of a “culture war” stretching all the way back to the Colonial period!³⁵ While this argument is not entirely new, this manuscript endeavors to confirm and seeks to complicate and enrich those ideas.³⁶

For instance, the rumors concerning, and arrival of, a Vatican representative in the U.S. coincided precisely with Baptist measures which would eventually lead to the formation of the BJC. On October 8, in 1936, just a few months after the SBC created the CPR, Cardinal Eugenio Pacelli sailed for New York. There was intrigue surrounding his voyage, as Pacelli changed plans at the last minute, forgoing his customary vacation in Switzerland, to travel to the United States “in the strictest incognito” as reported by the Associated Press (AP).³⁷ That the AP followed the changes of Cardinal Pacelli’s itinerary, and that the *New York Times* saw fit to print it, speaks to a more than passing interest in this issue. Historically, Baptist conventions did not cooperate with each other, and the sectional conventions (North and South) never did. The unprecedented move to create the BJC by combining the SBC’s CPR with other Baptists’ groups was almost certainly due to the alarm over the federal government’s overtures to the Vatican. It would be difficult to overstate the alarm created in Baptist circles at the prospect of any federal government liaison with representatives of the Vatican. The arrival of Pacelli was front page news for the *New York Times*, as was the news that he intended to “invite the Washington government to establish formal diplomatic relations with the Vatican and with the Papal Nuncio.”³⁸ This idea would hardly sit well with Baptists.

Pacelli was met by the young auxiliary bishop of Boston, Francis Joseph Spellman. In his month-long tour, Cardinal Pacelli, then the Vatican Secretary of State, travelled throughout the United States, visiting numerous cities and Catholic educational institutions in most major cities, including Baltimore, Boston, Chicago, St.

³⁵ That is, the Danbury Baptists, who sent the letter to Thomas Jefferson, which prompted his now famous response which coined the phrase “wall of separation between church and state,” knew he had no power to help them with their state government and its religious establishment. This had more to do with the early culture wars between Jefferson’s Democratic-Republicans and the Federalists under President John Adams. In what is sometimes referred to as the “Revolution of 1800”, Jefferson defeated Adams for President the United States, and ousting of the Federalist administration on the national level gave Baptists hope that change might also be possible in their state. Jefferson knew that if religious dissenters joined the Republicans in Connecticut, the coalition might be capable of overthrowing the Congregationalist, *Federalist* government. While Jefferson was certainly a proponent of religious liberty, it seems unlikely his *Letter to Danbury Baptists* was not without political motivations as well. “Jefferson’s Letter to the Danbury Baptists,” *The Heritage Foundation*, accessed March 20, 2015, <http://www.heritage.org/initiatives/first-principles/primary-sources/jefferson-s-letter-to-the-danbury-baptists>.

³⁶ This anti-Catholicism is at the heart of Hamberger’s argument about the separation debate. See also Gregg Ivers, *To Build a Wall: American Jews and the Separation of Church and State* (Charlottesville: University of Virginia Press, 1995). From Schultz, p125, footnote 44 See also Philip Hamburger, *Separation of Church and State* (Harvard University Press, 2002). and Gjerde and Kang, *Catholicism and the Shaping of 19th Century America*, 2012.

³⁷ Associated Press, “Pope Bids Him Farewell,” *New York Times*, October 3, 1936, 13.

³⁸ Arnando Cortesi, “Pacelli Reported Seeking Aid of U.S. in Anti-Red Drive,” *New York Times*, October 2, 1936, 1.

Louis, Cincinnati, Cleveland, Detroit, Philadelphia, St. Paul, Los Angeles, San Francisco, Washington D.C., New Haven, New York as well as *Mount Vernon*.³⁹ Pacelli would go on to become Pope Pius XII three years later, and one of his first acts was to appoint Spellman the sixth Archbishop of New York. Bishop Spellman's central role in coordinating the future pope's visit foreshadowed his meteoric career. The Archbishop would remain quite active in American politics throughout his career, and eagerly weighed into the church-state debate following the *Schempp* decision in 1963. Baptist elites, especially but not solely in the PAOU, always framed Spellman as *the* representative of the Vatican in the U.S. However, in 1936 he was still serving as the tour guide to the future pope in this trip through the United States.

Baptists were worried, correctly it turned out, that Pacelli would try to initiate a meeting to discuss Vatican ties to the federal government, and there was public speculation that such a request would be granted.⁴⁰ On November 4, at a luncheon arranged by Joseph Kennedy, Pacelli arrived on a special train from New York City, along with Cardinal Spellman and a company of guests, to lunch with the president at his Hyde Park home on the Hudson. While no record (or even photograph) of their two-hour private conversation exists, it is presumed that it was there that Pacelli received assurances from FDR that the United States would once more forge diplomatic ties with the Vatican.⁴¹ These ties had been severed in 1867 before the Papal States were disbanded.⁴² At that time, the U.S. Senate severed diplomatic ties with the Vatican after Pope Pius IX issued his Syllabus of Errors, which was deemed offensive to many Protestants. In 1936, many Catholics had still not forgotten anti-Catholic rioting from the nineteenth century. For example, in 1853, Archbishop Gaetano Bedini had arrived in the U.S. to inquire about the U.S. government's interest in establishing a nunciature, which touched off anti-papal and anti-Catholic riots.⁴³ Nativists and Know Nothing Party members saw the papacy as a proponent of despotism and anti-democratic, anti-republican values and policies. Hutton writes, "His visit to Cincinnati touched off violent demonstrations where militant agitators burned him in effigy" and even American bishops resented the visit due to this negative attention.⁴⁴ In 1936, there was no guarantee that Pacelli's visit would be greeted with any greater warmth by American Protestants.

³⁹ Leon Hutton, "The Future Pope Comes to America: Cardinal Eugenio Pacelli's Visit to the United States," *U.S. Catholic Historian* 24, no. 2 (April 1, 2006): 109–30.

⁴⁰ Edward T. Folliard, "Prelate's Visit Revive Gossip of Papal Envoy," *The Washington Post*, October 3, 1936, X4.

⁴¹ Leon Hutton, "The Future Pope Comes to America," 126–127.

⁴² See <http://history.state.gov/countries/papal-states> and <http://www.encyclopedia.com/doc/1G2-3401803157.html> for a more detailed history of the U.S. diplomatic relationship to the Vatican. From the later, "The United States maintained diplomatic ties to the papal states from 1797 to 1867. Congress established a consulate in Rome in 1797 to facilitate commercial and legal transactions between Americans and the papal states. In 1848, Congress approved President James K. Polk's proposal to raise the consulate to a ministry. This action was designed to affirm the reformist Pope Pius IX, improve commercial prospects in Rome, gain influence in other Catholic states, and please the burgeoning Catholic vote at home. Formal diplomatic relations lasted less than two decades. Tension mounted when the U.S. chargé d'affaires Nicholas Browne celebrated the republic created in the 1848 revolution as a triumph of liberty over papacy. Congress terminated the mission to Rome in 1867. As the Italian unification movement challenged papal authority, liberals regretted U.S. recognition of the nondemocratic papal government, and the minuscule level of commerce provided no rationale for continuing to fund a mission."

⁴³ A nunciature is a top-level diplomatic mission of the Catholic Holy See, similar to an embassy.

⁴⁴ Leon Hutton, "The Future Pope Comes to America," 115.

Indeed, the Senate was not friendly to the idea of an official Vatican representative. Pacelli became Pope Pius XII on March 2, 1939.⁴⁵ In 1940, FDR contented himself with the appointment of Myron Taylor as his personal representative at the Holy See. Writing sometime later, Colin Standish, speaking from the conservative wing of the Seventh-day Adventist Church warned, “Thus *de facto* diplomatic recognition was accorded...A future alliance between the United States and the Vatican seemed impossible at that time, but God had spoken and once more His word would be fulfilled. So sensitive were Protestants to the Papacy in 1936 that Roosevelt dared not meet Pacelli until after the 1936 Presidential Election had secured him a second term in office.”⁴⁶ Though a Seventh-Day-Adventist, Standish’s deep antipathy toward and suspicion of “Vatican motives” was representative of most evangelicals of the time, including Baptists. Suffice it to say that in 1936, when Vatican representatives called on the U.S. president, American Protestants, especially evangelicals, were greatly disturbed.⁴⁷ It was at this precise moment that Baptists took an unprecedented move to form an inter-conventional group focused on national politics. They became energized and committed to having a full-time, professional lobbying group in Washington D.C. to “keep an eye on things” and make their interests known.

The Northern Baptist Convention (NBC) crafted their own version of such a council the next year, precipitating some cooperation between that group and the CPR. Then in 1941, joint resolutions were passed that supported an organizational merger.⁴⁸ This organization was initially called the Joint Conference Committee on Public Relations. Significantly, the National Baptist Convention, USA and the National Baptist Convention of America, the two major black Baptist Conventions, were included in the new organization.⁴⁹ Since Baptist Conventions (much less *churches*) tended to be fiercely independent, and in this period entirely segregated, this level of inter-convention and inter-racial cooperation was unprecedented.

In 1946, this organization became the Baptist Joint Committee on Public Affairs (BJCPA or simply the BJC) and established offices in Washington, D.C. Joseph Martin Dawson was elected the organization's first full-time Executive Director, a position he held until his retirement in 1953. The rest of the original members were E. Hilton Jackson (D.C.), Perry Mitchell (Virginia), John Garland Pollard (D.C.), J.T. Watts (Maryland) and Rufus W. Weaver (D.C.).⁵⁰ Dawson oversaw the creation and publication of a new BJC periodical, the *Report from the Capital*, which featured news and editorials on national political issues, often including church-state issues. Other worthies also participated in the organization’s early history.

In 1937, Alabama Senator Hugo Black was elected to represent the SBC on the Committee. This appointment was short-lived, however. On August 12, 1937, Franklin D. Roosevelt nominated Black to the U.S. Supreme Court, the first of nine FDR

⁴⁵ Scholars have noted connections between Pacelli and Franco, Mussolini, and Hitler. See especially John Cornwell, *Hitler's Pope: The Secret History of Pius XII*, Revised edition (New York, N.Y.: Penguin Books, 2008).

⁴⁶ Colin D. Standish, *Two Beasts, Three Deadly Wounds, and Fourteen Popes* (Hartland Publications, 2001), 73.

⁴⁷ For an excellent treatment of the Pacelli trip, please see Leon Hutton, “The Future Pope Comes to America.”

⁴⁸ *SBC Annual*, 1941, p. 109; *NBC Annual*, 1941, pp. 108-110 respectively

⁴⁹ *SBC Annual*, 1944, p. 136; *NBC Annual*, 1944, p. 161

⁵⁰ Parry, *On Guard for Religious Liberty*, 8.

appointments to the court. Though many regarded him as a “liberal” justice, one biographer notes that Black said he “disliked the Catholic Church as an institution” and gave numerous anti-Catholic speeches in his 1926 election campaign to Klu Klux Klan (KKK) meetings across Alabama.⁵¹ In fact, Black joined the KKK. In 1921, Black successfully defended E. R. Stephenson, a Southern Methodist Episcopal minister and Klansman, in the sensationalistic trial for the murder of Father James E. Coyle, in Birmingham, Alabama. Father Coyle, an immigrant from Ireland, had performed a secret wedding between Stephenson's daughter, Ruth, and Pedro Gussman, a Puerto Rican. The Klan funded Stephenson's defense, and the racial as well as anti-Catholic overtones in this effort were obvious.⁵² Black would later repudiate joining the Klan, but never wholly stepped away from his Anti-Catholic rhetoric. This was not the last that the BJC would see of Black.

Toward the end of his seven-year tenure, Dawson ensured that the Committee would focus heavily on church-state issues with the preparation of the BJC's first constitution.⁵³ The Constitution read, “The [BJC] shall be empowered to enunciate, defend, and extend the historic, traditional Baptist principle of religious freedom with particular application to the separation of church and state as embodied in the Constitution of the United States.”⁵⁴ By the time its charter was formalized, the BJC was primarily envisioned as a church-state separationist “watchdog” group. No real concern over autocrats abroad was ever evinced. The BJC was initially inspired, and constantly innervated, by concerns over what Baptists perceived was the grave danger that American Catholic schools or institutions might receive any public support, or that the United States government might recognize or dialogue with the Vatican. Granted, the BJC helped articulate church-state separation arguments more generally, and defended Supreme Court decisions which did not have much to do with Catholic schools (such as *Schempp*), but concerns about the Catholic hierarchy and their danger of public monies going to parochial schools was their prime mover.

There is evidence of cross-over with other separationist projects which drew support from evangelical fears of Catholics.⁵⁵ Dawson also helped establish the Protestants and Others United (POAU) for the Separation of Church and State (today called simply Americans United for Separation of Church and State or AU for short) and was its first recording secretary when the group formally incorporated on November 20, 1947, at Chicago's Methodist Temple.⁵⁶ Dawson apparently didn't see the group as a rival but rather as a complementary organization. Perhaps a less constrained one. Or he may have imagined the BJC as the “good cop” to the POAU's “bad cop”, an arrangement where the BJC took a more measured approach leaving the POAU to unfettered antagonism towards the Catholic Church without any oversight from the

⁵¹ Roger K. Newman, *Hugo Black: A Biography*, 1st. ed (Pantheon, 1994), 87,104.

⁵² Stephenson's team argued, successfully, that he was not guilty but also *not guilty by reason of insanity*, having been driven temporarily out of his wits by the marriage of his daughter to a Catholic man of color.

⁵³ For a bio on Dawson see <http://www.tshaonline.org/handbook/online/articles/fda52>

⁵⁴ “Constitution of the Joint Conference Committee on Public Relations” *Annual of the Southern Baptist Convention*, 1949 p 351-352

⁵⁵ This is explored in greater detail in the chapter three concerning the POAU.

⁵⁶ Parry, *On Guard for Religious Liberty*, 12.

Conventions?⁵⁷ Though they claimed to be broadly working for church-state separation, in its first years the main focus of POAU activity was opposition to what they saw as the political agenda of the Catholic Church. It was seen by critics as clearly an anti-Catholic organization.⁵⁸ Glenn L. Archer, founder and Executive Director of the POAU, tirelessly railed against the Catholic hierarchy for the over three decades of his leadership. He stated publicly that the Catholic Church was more dangerous and clever than communism; that American Cardinals should have their citizenship revoked; that House Un-American Activities Committee should investigate Catholic clergymen as spies of an “alien organization.”⁵⁹ The Southern Baptist connection with the POAU is further evidence of the anti-Catholic subtext to the church-state separationist project.

The U.S. Supreme Court Defines Church-State Boundaries for Public Schools

This chapter is not intended as a study of the separationist Supreme Court case histories, but a brief sketch as it relates to Baptist thinking is in order. It is noteworthy that the Establishment Clause of the First Amendment is virtually unremarked by the U.S. Supreme Court for the first century of its existence, and *none* of the provisions of the Bill of Rights applied to the states until well into the twentieth century.⁶⁰ This relates to Sehat’s thesis.⁶¹ This point was also raised by Baptist critics of *Schempp*, who asked the BJC elites why Bible reading was “suddenly” illegal, if it had been allowed for so long? The First Amendment was not applied to the states by the Supreme Court until 1947 in *Everson*. The beginning of the First Amendment of the Constitution says, “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof..” That is the controlling doctrine in church-state separation cases, but what these sixteen words actually mean has been (and continues to be) contested and debated. Again, the First Amendment has only come to include state and local jurisdictions in the last half of the twentieth century. By virtue of various U.S. Supreme Court decisions “Congress” has come to mean any public agency—federal, state, and all the way down to local school boards. And “law” in the controlling language may cover any form of publicly supported practice. But this was not true when the BJC was first formed; at that point the states were more-or-less free to do whatever they liked when it came to religion in the public square, subject only to their own local laws and customs and state constitutions. Recall that Sehat’s thesis rests on the idea that there was no real federally enforced religious liberty on the ground prior to incorporation, and the

⁵⁷ A separate chapter on the PAOU is in preparation, based on their archives at the Seeley G. Mudd Manuscript Library, Princeton, NJ

⁵⁸ “Religion: The Wall of Separation,” *Time*, February 7, 1949, <http://www.time.com/time/magazine/article/0,9171,799797,00.html>.

⁵⁹ Responding to a eulogy for Archer released by Americans United in 2002, Catholic League for Religious and Civil Rights president William Donohue claimed that Archer was an “inveterate Catholic basher” and that AU had covered up these details. See <http://www.catholicleague.org/americans-united-washes-the-face-of-a-bigot-2/>

⁶⁰ The 14th Amendment itself is one of Reconstruction Amendments, ratified in 1868. Prior to the 1890s, the Bill of Rights was held only to apply to the federal government. Incorporation of the Bill of Rights into state law began in 1925 with the case *Gilow v. New York*, in which the Supreme Court upheld that states must respect the First Amendment freedom of speech.

⁶¹ McGarvie, “David Sehat. The Myth of American Religious Freedom.”

Protestant Hegemony could and did protect its privileges and enforced the limits of what religious minorities and free thinkers were allowed to do and say.

The first case where the establishment clause of the First Amendment was applied to a local practice had to do with education. This was *Everson vs. Board of Education*. This case was a challenge to a public subsidy of the transportation by bus of Catholic school children in a New Jersey community. This is the case that “incorporated” the First Amendment (that is, made it apply to state and local governments and not just the Federal government) and also the case where Justice Black quoted Jefferson, saying that the “clause against establishment of religion by law was intended to erect ‘a wall of separation between church and state.’”⁶² BJC Chair E. Hilton Jackson (listed as their constitutional lawyer) filed an amicus brief opposing the practice. In a 5-4 decision, the court ruled that because the state paid the parents, and not the schools, the New Jersey practice did not violate the Establishment Clause. The former BJC member, Justice Black, wrote: “The First Amendment has erected a wall between church and state. That wall must be held high and impregnable. We could not approve the slightest breach. New Jersey has not breached it here.”⁶³ The BJC disagreed with its former member, but this disagreement didn’t gain wide publicity nor stir much animosity from within the SBC.

The Supreme Court applied the *Everson* doctrine a year later in *McCullum v. Board of Education of Champaign (Ill.)* where elective courses on religious subjects taught in public schools by representatives of religious bodies was found unconstitutional.⁶⁴ The Court found the program to be “a utilizing of the tax-established and tax-supported public school system to aid religious groups and spread their faith.” The Court began to refine what the “wall of separation” was and where exactly it stood.

The controversy over BJC positions on church-state issues began in earnest with *McCullum* in 1948, where the Supreme Court had examined the constitutionality of these “release time” programs on religious instruction in public school classrooms. In release time programs, public schools would set aside a certain time wherein pupils were “released” to another, usually not a school employee, for religious instruction. Sometimes this was on school grounds and sometimes not. Again, Jackson filed a BJC amicus brief in opposition to the practice. The CPR said in their brief that, “however desirable may be the widespread teaching of religion to children, it seems ‘too plain for argument’ that the public school system with compulsory education laws cannot be used for that purpose.”⁶⁵ However, not all Baptists who agreed with cutting off funding to support Catholic children riding the bus were similarly happy with removing *all* release time, including Protestant teaching, from the classroom. Duke K. McCall, executive

⁶² Jefferson’s quote is from his Letter to the Danbury Baptists
<http://www.loc.gov/loc/lcib/9806/danpre.html>

⁶³ *Everson v. Board of Education of the Township of Ewing (Syllabus)*, 330 U.S. 1 (U.S. Supreme Court 1947).

⁶⁴ *MCCOLLUM V. BOARD OF EDUCATION*, 333 U.S. 203 (1948) see
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=333&invol=203> for details

⁶⁵ Duke McCall, “Letter from McCall to Dawson” December 9, 1947, Box AR 627-1 box 81, Executive Committee—ADMIN Records, folder 81-24 “Public Schools—Champaign, Illinois 1947-48, Southern Baptist Historical Library and Archives.

secretary for the SBC, disagreed with the CPR. He maintained that, “Had the statement of the brief said, ‘sectarian instruction’ instead of ‘religion’ I would have been and would now be in hearty agreement with the position of the [committee].”⁶⁶ He felt that the absence of religion necessarily implied “a complete materialist” or atheist philosophy and “the kind of education which would suit an atheist is just as abhorrent to me as the kind of education which the Roman Catholic church would espouse.”⁶⁷ McCall’s letter nicely encapsulates both the Protestant Establishment’s notion that sectarianism in schools is unsavory and unconstitutional while “religion” is beneficial and constitutional, and also the Baptist abhorrence for things Catholic. And he fought back.

McCall spoke out in the Baptist Press, saying that the BJC brief was “ill advised” and that good Baptists would not stand for it.⁶⁸ That article was reproduced from the Salisbury North Carolina Evening Post, thus this issue was playing out in the mainstream press as well. This was a big test for the nascent BJC, since the SBC was by far the largest member organization and where they got the vast majority of their funding. The Associated Press (AP) reported on this imbroglio between the BJC and an executive from its largest member body, the SBC. McCall wanted the BJC to abjure and recall their amicus brief, but those from other Conventions spoke up in support.⁶⁹ In a refrain that would be repeated again and again in separationist cases, McCall complained that the brief was filed “in co-operation with an atheist.”⁷⁰

Additionally, McCall held the view that Bible reading without comment was not sectarian, and sectarianism, not religion, was the issue. McCall explained that, “Had the statement of the brief said, ‘sectarian instruction’ instead of ‘religion’ I would have been and would now be in hearty agreement with the position of the Public Relations Committee.” McCall felt that absence of religion implied “a complete materialist” or “atheist” philosophy (like that of Mrs. McCollum) and that, “The kind of education which would suit an atheist is just as abhorrent to me as the kind of education which the Roman Catholic Church would espouse.” For McCall and those who made this argument, *sectarianism* was bad and illegal in the public square, but “religion” was a social good and both desirable and legal the public square.⁷¹

However, the members of the BJC felt just as strongly that not only was this incorrect, but that Baptists should come together on this issue. In a letter to McCall from Jackson he writes, “All I can say is that it is our firm conviction that the cause of

⁶⁶ McCall, “Letter from McCall to Dawson.”

⁶⁷ McCall, “Letter from McCall to Dawson.”

⁶⁸ C.E. Bryant, “McCall Disassociates Himself From Supreme Court Plea” November 18, 1947, Box AR 627-1 box 81, Executive Committee—ADMIN Records, folder 81-24 “Public Schools—Champaign, Illinois 1947-48,” Southern Baptist Historical Library and Archives.

⁶⁹ Parry, *On Guard for Religious Liberty*, 13.

⁷⁰ **The person in question here is Vashti McCollum.** She called herself an atheist in Illinois court proceedings, was framed in the Supreme Court case and the media as an “avowed atheist”, but later said she preferred the word “humanist”. **The December 9, 1947 issue of The Evening Star, Washington D.C., reports that Vashti was the “daughter of Arthur G. Crowell, president of the Freethinkers Society of Rochester, N.Y.” and she “chose to read [her] son...in the family tradition of atheism.”** See Douglas Martin, “Vashti McCollum, 93, Who Brought Landmark Church-State Suit, Is Dead,” *The New York Times*, August 26, 2006, sec. Obituaries, <http://www.nytimes.com/2006/08/26/obituaries/26mccollum.html>.

⁷¹ McCall, “Letter from McCall to Dawson.”

separation of church and state must undertake a clean cleavage from top to bottom, or the breaches in the wall will widen.⁷² In this context, the “widening breach in the wall” is almost always code for the Catholic Church getting public money. Dawson himself notes that Catholics “raised loud outcry” over taking away release-time, and that “Everywhere the Catholics constitute the group to take the fullest advantage of the release time plan. It is incidentally their strongest means of breaking the wall of separation between the state and church. The official Catholic position is that the schools should belong to the churches but the government should finance them, hence the effort to get free bus transportation, free textbooks for their parochial school and obtain full financial support from the tax funds.”⁷³ Thus we see how “the Catholics” serve as a rhetorical foil for those Baptists arguing for a stronger version of separation that imagines “religion”, not just sectarianism, removed from the public schools.

Additionally, controversy was created when the AP reported that the amicus brief filed by the BJC “was on behalf of fourteen million Baptists.” This created an outcry in the Baptist press, and the Committee had to release an immediate clarification that they did not speak (ahem) “ex cathedra” for all Baptists but were merely outlining the Baptist position on the separation of church and state as they understood it. McCall also chose to take his case to the press, though BJC officers other than Dawson generally replied to him privately. In refuting the argument against Baptists being in agreement or in the “company” of bad characters, Jackson explained to McCall, “It does happen that the agnostic takes the same position on the question of religious liberty and religious instruction in the public schools as taken by the Committee in the brief.” He noted that Jehovah’s Witnesses had been instrumental in clarifying First Amendment issues in this regard. A clarification which most Baptists would find agreement with, yet clearly they did not also share the same beliefs as the Watchtower Society.⁷⁴ That is, one did not necessarily follow the other. McCall was never convinced, however, and the same sort of “guilt by association” arguments would be deployed again and again in debates of this type among Southern Baptists and other Christians. The Salsbury Evening Post and the Journal of Winston Salem reported on McCall’s protest, and these clippings made their way into the SBC Executive Committee’s files.⁷⁵

BJC elites responded to critiques in the Baptist and mainstream press. A Charlotte Observer editorial, “The Bible in Schools,” observed that for many years Charlotte schools had offered Bible courses as an elective, with teachers paid out of voluntary contributions.⁷⁶ Dawson attempted to assuage the SBC Executive

⁷² Joseph Dawson, “Letter to Dr. Charles L. Bromley from Joseph M. Dawson” November 24, 1947, Box AR 627-1 box 81, Executive Committee—ADMIN Records, folder 81-24 “Public Schools—Champaign, Illinois 1947-48,” Southern Baptist Historical Library and Archives.

⁷³ “Statement on Joint Baptist Committee for Public Relations,” *Religious Herald*, December 25, 1947, Box AR 627-1 box 81, Executive Committee—ADMIN Records, folder 81-24, “Public Schools—Champaign, Illinois 1947-48,” Southern Baptist Historical Library and Archives.

⁷⁴ E. Jackson Hilton, “Letter from E. Hilton Jackson to Dr. Duke K McCall” (letter, November 18, 1947), Box AR 627-1 box 81, Executive Committee—ADMIN Records, folder 81-24 “Public Schools—Champaign, Illinois 1947-48,” Southern Baptist Historical Library and Archives.

⁷⁵ “Salsbury Evening Post” November 17, 1947, Box AR 627-1 box 81, Executive Committee—ADMIN Records, folder 81-24 “Public Schools—Champaign, Illinois 1947-48,” Southern Baptist Historical Library and Archives.

⁷⁶ Charlotte Observer editorial page, “The Bible in Schools,” November 1947, Box AR 627-1 box 81, Executive Committee—ADMIN Records, folder 81-24 “Public Schools—Champaign, Illinois 1947-48,” Southern Baptist Historical Library and Archives.

Committee's concerns, and both dispel the idea that *McCollum* was hostile to religion in general and remind them of the need for separation. Though he did not succeed in convincing him, he also did not back down to McCall. Jackson also keeps reminding folks that the BJC stand does not commit the entire membership of Baptist churches to Mrs. McCollum's support. For a time, their assurances are enough. In 1949, the SBC "messengers" (i.e. voting members of the convention) voted to validate Dawson's position by supporting the Supreme Court's decision.⁷⁷

Thus, very early in its tenure, the organization was embroiled in controversy with those from their member bodies who didn't understand or agree with the separationist program of the BJC. Dawson and the other BJC elites believed they were "in the mainstream" with other Baptists and Protestants on this, and indeed, time and again the SBC would vote in the affirmative on strong separationist motions. Hilton wrote, "I regret that not all our people stand together on this question, but am happy to inform you that not only do a majority of them, I firmly believe, hold with us on this matter, but the best Protestant opinion in America, insofar as I am able to judge, holds the same view."⁷⁸ While Dawson was successful at thwarting SBC motions to change the First Amendment, his rosy assessment of the Protestant Hegemony may have been overconfident. He and other elites appeared not to have considered that the SBC majorities on this issue might have been tenuous, or held together by the transparent fear of the Catholic Church and not built on a solid foundation of religious liberty. After McCollum was -----decided, McCall received a letter from Rev. O. R. Shields in which he warned that, "The one thing which distresses me is the blindness of my Baptist brethren to the fact that the atheist has a religion which, since it is called no religion, is perfectly acceptable to our public schools. So in our opposition to Roman Catholics we have joined to make it unconstitutional for a social science teacher to say that 'men are endowed by their Creator with certain inalienable rights.'" ⁷⁹ He goes on to cite Amos 5:19, "As if a man did flee from a lion, and a bear met him; or went into the house, and leaned his hand on the wall, and a serpent bit him." Certainly Shields meant to imply that Baptists were fleeing from the lion of Catholicism into the jaws of the atheist bear; did he also mean to imply the preternaturally apt metaphor that they were leaning on the seemingly safe wall of separation, only to have the viper of secularity sink its poison? In any case, it seems almost impossibly prescient of the rupture in Baptist ranks over this issue in the wake of *Schempp* and the eventual capture of the SBC by its right wing.

Throughout the 1950s, 1960s, and 1970s the BJC elites were consistently concerned with thwarting any public monies reaching Catholic parochial schools, and less cognizant of the unintended consequences of their support of a strict separation of church and state in the public schools. I argue that for BJC elites' political engagement, life in D.C. and interactions with other cosmopolitans functioned in a dialectic which blinded them to a brewing reactionary backlash. This gap between the leadership and the "masses" for evangelical or Baptists was not unlike the one which existed for

⁷⁷ Southern Baptist Convention, "Annual of the Southern Baptist Convention, 1949" 1949, 4-5, http://www.sbhla.org/sbc_annuals/index.asp, Southern Baptist Historical Library and Archives.

⁷⁸ Dawson, "Letter to Dr. Charles L. Bromley from Joseph M. Dawson."

⁷⁹ "Letter from Rev. O. R. Shields to McCall" March 18, 1948, Box AR 627-1 box 81, Executive Committee—ADMIN Records, folder 81-24 "Public Schools—Champaign, Illinois 1947-48," Southern Baptist Historical Library and Archives.

ecumenical or “Mainline” Protestants, though for other reasons and issues.⁸⁰ They could not imagine the revolution which ultimately replaced the SBC leadership with right-wing partisans and severed the connection between the BJC and the SBC. Simply put, they were wrong about being squarely in the Baptist mainstream.

In 1954, C. Emanuel Carlson took over as Executive Director and helped grow the BJC and build its professional staff. He also oversaw its response to the two landmark cases involving religion in the public schools: *Engel v. Vitale* in 1962 and the *Schempp* case in 1963. It is noteworthy that Carlson met with candidate John F. Kennedy in August of 1960 and both agreed that “a frank renunciation by all churches of political power as a means to religious ends would greatly improve the political climate and would seem to be a legitimate request by both political parties.” While Baptists would never retreat from their battle against public funds reaching parochial schools, JFK’s support of *Schempp* (and later, the reforms of Vatican II) seemed to take some of the vehemence out of the Southern Baptists’ anti-Catholic impulses in the Carlson era. However, the issue would resurface in 1970 when President Nixon appointed Henry Cabot Lodge as an “occasional visitor” to the Vatican.

Carlson and the BJC tirelessly voiced their support for *Schempp* and opposed any and every attempt to overturn it and alter the First Amendment. Using all manner of media they explained why and how believing Christians in general and Baptists in particular could and should be firm supporters of a separation of church and state. Carlson testified before a Senate Judiciary Committee in 1963, House hearings on the Becker Amendment in 1964, and the 1965 hearings in both houses on an education bill. As he put it, “Where the community’s population has pluralism and mobility, scores of questions will continue to arise regarding details of the classroom. I would expect our people to favor a maximum of both freedom and responsibility for the administrators and the teachers within the legal framework that protects the religious rights of people. I doubt that our people will ask either the Supreme Court or the United States Congress for the solutions to the problems of the fine art of sensitive interfaith relations. I am abundantly sure that they will not want to amend the Bill of Rights every time a question or a problem arises.”⁸¹ Carlson did a splendid job of defending the First Amendment

⁸⁰ See especially David A. Hollinger, *After Cloven Tongues of Fire: Protestant Liberalism in Modern American History* (Princeton University Press, 2013). Hollinger describes the social thought of “ecumenical Protestants,” that is, mid-century mainstream Protestants that abandoned particularistic Christian terms and instead valorized “the diversity of the human species and the diminution of inequalities within it were intimately bound up with one another.” For them, seeking justice became a more important calling than seeking to convert non-Christians. While not suggesting the BJC or SBC elites ever lost their evangelical zeal, I argue that they became willing to surrender some of the Protestant Hegemony’s privilege (Bible reading in the public schools, for example) which, in the microcosm of the SBC, meant they “lost their numbers and their influence in public affairs” in a similar dialectic as did U.S. Protestantism as a whole. Southern Baptists like Jimmy Carter and Bill Clinton may have political currency today, but they no longer have any salience in a SBC which is now almost entirely beholden to the religious right. The right-wing operatives that took over the SBC were the “Politically and theologically conservative evangelicals [who] flourished while continuing to espouse popular ideas about the nation and the world.” I argue that, before they lost their influence, these SBC moderates helped save the First Amendment, a task that scholars such as Balmer would suggest goes to the very heart of Baptist thought. Thus, like the ecumenical Protestants, their eventual decline should not overshadow the successes of their respective projects. Hollinger, *After Cloven Tongues of Fire*, 2013.

during his tenure, and was succeeded by James E Wood Jr. in 1972. Amendments to change the First Amendment would be submitted in every subsequent Senate term, and Woods continued to fight the good fight throughout the seventies.

Eventually, the support for a strong separation of church and state by the Southern Baptist Convention would evaporate. Throughout the sixties and seventies, the SBC was led by elected officers who were, for want of a better term, “moderates” who garnered majorities at their conventions and who straddled the line between the “progressives” and the “right-wing” factions of the convention.⁸² In 1979, the SBC elected Adrian Rogers to the convention presidency, ushering in a sea change in policy and funding priorities. The BJC, perceived as “liberal” by the new leadership, was not immune to these. James Dunn assumed Executive Directorship for the BJC in 1980 at the beginning of the controversy, but despite his best efforts could not stem the tide of hostility from the new SBC leadership. In 1990, the SBC slashed the BJC budget by 87%.⁸³ A year later, all SBC funding to the BJC was abolished and the connection between the two was severed.⁸⁴ That same year, Episcopalian blue-blood and U.S. president George H. W. Bush addressed the SBC, and the membership voted for a prayer Amendment to the U.S. Constitution for the first time in their history.⁸⁵ In fact, it was the first time any denomination in the U.S. explicitly called for the First Amendment to be modified to overturn *Engel* and *Schempp*. The SBC had made a complete about-face on the issue of amendments to the religion clauses of the First Amendment.

In the early 1960s, Baptists, as evidenced by the BJC and other Baptist institutions and leaders, helped save the First Amendment of the Constitution of the United States from amendments that would have reversed the *Engel* and *Schempp* Supreme Court rulings which forbade the devotional use of the Bible and prayer in the public schools. To be sure, they were not the only institutions and activists involved in separationist battles, and these others have received more extensive treatment in the literature. The American Civil Liberties Union (ACLU), especially the local chapter in Philadelphia, was instrumental in the success of the *Schempp* case. The ACLU had sponsored the *Everson* case, where the Establishment Clause is first incorporated, and was instrumental in representing the Jehovah’s Witnesses in a number of First Amendment cases involving religious speech. As early as 1949, The American Jewish Congress (AJCongress, not to be confused with the American Jewish Committee) and the indefatigable Leo Pfeffer brought suit against the Sunday closing law in New York,

⁸¹ Emanuel Carlson, “Judiciary Committee, House, Establishment Supreme Court Cases of 62/63, Hearing May 28, 1964” n.d., Executive Committee-ADMIN AR 627-1 “Carlson, C.E. –Executive Director –Baptist Joint Committee—Papers” 1963-64 folder 20-26, Southern Baptist Historical Library and Archives.

⁸² In no way did these “moderates” consider themselves anything but conservative theologically. They also would argue that their position on a strong separation of church and state was normative for Baptists, and that the so-called “conservative” faction was in fact innovative and hostile to Baptist tradition. The “conservatives” disagree. This right-wing faction captured the SBC leadership in 1979 in no small part due to their dislike of the denomination’s stance on this issue. Though the terms are imprecise and problematic, we will continue to use “moderates” and “conservatives” or right-wing in this manuscript.

⁸³ Southern Baptist Convention, “Executive Committee Cuts BJCPA--CLC Receives Religious Liberty Assignment and \$391,796” Southern Baptist Public Affairs,” Spring 1990, 9.

⁸⁴ Dorothy Cherry Schleicher, *A History and Analysis of the Role of the Baptist Joint Committee, 1972-Present* (Baylor University, 1993), 194.

⁸⁵ Andrew Preston, “The Politics of Realism and Religion: Christian Responses to Bush’s New World Order*,” *Diplomatic History* 34, no. 1 (January 1, 2010): 1, doi:10.1111/j.1467-7709.2009.00834.x.

and filed *Amicus* briefs in most of the significant church-state cases during this period. Nothing here intends or purports to suggest that the Southern Baptists were the sole players in this drama. My argument is simply that their role was significant, and that this story has not been widely told.

The SBC consistently funded, authorized and provided the leadership for the BJC. BJC and other Baptist elites worked tirelessly on church-state issues. Sometimes they had to convince their own members of the value of a particular separationist stance, particularly southern politicians. It is not certain if the Becker amendment or other attempts to overturn *Schempp* would have succeeded without help from the Baptists, but it is certain that their participation helped mitigate red-baiting of opponents and gave some political “cover” to those making more secular arguments. Finally, without taking away anything from the achievements of the Baptists in this regard, it seems clear that fear of and antipathy toward the Catholic Church played a key role in the establishment of the organizations that helped fight for the separation of church and state.

Perhaps politics works in mysterious ways, its wonders to perform.

Chapter Two

Mapping Intellectual Exchanges and Influence on Church-State Issues between Southern Baptist Elites and the American Jewish Committee, 1950s-60s

In the post-WWII United States, members of the American Jewish Committee (AJC) exchanged ideas and documents with Southern Baptist Convention (SBC) organizations and elites, to further its goal to preserve the separation of church and state, particularly in regard to public schools.¹ This intellectual exchange was demonstrated by the large number of AJC publications, particularly pamphlets, in possession of and written about by SBC elites. These publications, speeches, television shows, etc. were primarily aimed at Christians in general and were tailored to be particularly salient for Baptist audiences. I will further show how the AJC executives, mindful of the prejudices existing in the country, their status as a minority religion, and the real consequences of backlash, were extremely careful not to antagonize Christians generally or Baptists in particular when making their appeals. This was often, though not always, accomplished by distributing reprinted articles or leveraging journal articles, speeches, and quotes of Christian rather than Jewish writers. Additionally, the provenance of AJC pamphlets was sometimes omitted to elide any “Jewish” connection.

This chapter intervenes in a historical narrative which often frames Southern intellectual development in this era as hidebound, as well as the South itself, and Baptists in particular, as culturally and politically isolated. This chapter seeks to confound the assumption of southern provincialism by examining the exchange of ideas and documents between Southern Baptists and cosmopolitan, urban Jews. While not an explicit argument in this chapter, my view is that SBC elites became more cosmopolitan themselves, as an inevitable consequence of their intellectual exchanges with AJC thinkers and their engagement in national politics in the Washington D.C. offices of the Baptist Joint Committee on Public Affairs (BJC).² This likely energized the right wing of the SBC, which caught its mainstream elites unawares when they captured the leadership in 1979. As such, this chapter helps re-periodize the political engagement of evangelicals and explores the irony of how separationist impulses in the SBC helped spur the rise of the religious right.

Additionally, the standard historiography of First Amendment separationist arguments and litigation typically acknowledges the work of the American Jewish Congress in the church-state debate, while downplaying or ignoring the contributions of the American Jewish Committee. This is primarily due to the American Jewish Congress’s outspoken defense of the separation of church and state and religious liberty, and the tireless work of its counsel, Leo Pfeffer, in this regard. In the absence of critical consideration of the American Jewish Committee’s role in religious pluralism, the conventional narrative misses its more nuanced and careful approach to separationist projects, as well as the important intellectual commerce with unexpected allies such as the Southern Baptist elites.

¹ At this time, the American Jewish Congress, who likewise was quite active in the arena of church-state issues, also used the acronym AJC. In this work AJC will always refer to the American Jewish Committee.

² This idea is explored in greater detail in chapter 1.

This chapter closely examines AJC pamphlets and other material found in possession of BSC elites. Unbound booklets or “pamphlets” have been written and distributed to influence human opinion ever since literacy gained traction. They are, of course, not new. As A. Hyatt Mayor, the renowned curator of prints at the Metropolitan Museum of Art, reminded us, pamphlets were certainly circulating during the age of Saint Paul, “who is still the most widely read of pamphleteers.”³ Church-state issues have long been addressed in this medium, by Pauline epistles, by Luther’s writings, and by soapbox evangelists on street corners today. Neither is the discussion of Eisenstein’s “Unacknowledged Revolution” new, nor are academic treatments of print culture before the advent of electronic media and the “information age”.⁴ These changes in post-WWII printing technology provided an effective means of intellectual exchange, and provide us with rich sources from both the BJC and SBC committees. Additionally, while not the seditious, underground works of Darnton’s characters, the AJC nonetheless also chose to obscure or elide its authorship of certain pamphlets.⁵ This was certainly done to protect themselves from controversy or worse.⁶ The primary sources in this chapter endeavor to excavate examples of pamphleteering in the liminal space after the advent of mass production but before cheap electronic reproduction. The AJC (and elements of the BJC) were able to reproduce journal and magazine articles and other printed material in a cost-effective manner, allowing them to target and influence constituencies which otherwise may not have been exposed to such ideas. These were not grubby, mimeographed broadsheets, but typeset, polished brochures with an air of authority and the cache of professionalism. In this way, information normally written for and consumed by the elite was disseminated to less-educated readers in the pews. These sources were significant in that they were cheaply made, widely distributed and easily consumed.⁷ As we shall see in subsequent chapters, the BJC was quick to respond with a pamphlet when encountering social issues within its purview, and especially with regard to church and state issues. The BJC drew on the AJC pamphlets penned in the 1950s for inspiration when seeking to address the controversies over *Engel* and *Schempp* rulings in the 1960s.

As discussed in the previous chapter, the SBC helped save the First Amendment of the Constitution of the United States from amendments that would have reversed *Engel* (1962) and *Schempp* (1963), which were the Supreme Court rulings which forbade the devotional use of the Bible and prayer in public schools.⁸ The Cold War

³ A. Hyatt Mayor, “Renaissance Pamphleteers Savonarola and Luther,” *The Metropolitan Museum of Art Bulletin* 6, no. 2 (October 1, 1947): 66, doi:10.2307/3257336.

⁴ Elizabeth L. Eisenstein, *The Printing Press as an Agent of Change* (Cambridge University Press, 1980), 3.

⁵ Robert Darnton, *The Literary Underground of the Old Regime* (Harvard University Press, 1985).

⁶ The 1915 lynching of Leo Frank in Marietta Georgia would have been in the living memory of most of the men mentioned here. The “Knights of Mary Phagan” who openly kidnapped and killed Frank, later burned a gigantic cross on top of Stone Mountain, reportedly inaugurating a revival of the Second Ku Klux Klan. The group was led by William J. Simmons, founder of the Second KKK, and attended by 15 charter members and a few aging survivors of the original Klan. The Anti-Defamation League (ADL) was formed in 1913 by members of B'nai B'rith, in response to the episode, one month after Frank's conviction.

⁷ For more on the phenomenal growth of this industry in the post-war era, See *Publishers' Weekly*, September 21, 1940, pages 1098-1100

⁸ *Engel v. Vitale*, 370 U.S. 421 (U.S. Supreme Court 1962) *School District of Abington Township, Pennsylvania v. Schempp* 374 U.S. 203 (U.S. Supreme Court 1963). Note the case begins its life as *Schempp v. School District of Abington Township, Pa.*, 177 F. Supp. 398 - Dist. Court, ED Pennsylvania 1959, but as the district lost, on appeal

climate in the United States was increasingly friendly to religious speech in the public square, in order to counter the “godless communism” of the Soviet Union, as evidenced by the addition of “under God” to the Pledge of Allegiance and the inclusion of “In God We Trust” on all currency and as the national motto.⁹ Throughout this period, the SBC voted, on numerous occasions at its annual conventions, against any tinkering with the First Amendment (that is, it voted against overturning those decisions). Additionally, SBC officers and BJC elites testified before congressional hearings against such amendments. They stated their position in both the Baptist and the mainstream press, along with the rationales for such positions. They answered letters to members who did not understand or agree with their position. They appeared on television to defend and explain their position. They financed, designed and distributed pamphlets to educate others—often confused or dissenting members of their own denomination—as to why and how believing Christians could and should be firm supporters of a separation of church and state. They sometimes worked with the AJC, and other Jewish institutions, to coordinate this response. More often, they read and collected the separationist materials which the AJC was publishing and distributing.

Contrary to themes of popular television shows of the time, and the mythologies that are reproduced even in some scholarly works, the 1950s were not always a period of widespread conformity and social tranquility. As Protestants, Catholic and Jews came together to fight the Cold War, the social construct of a common “Judeo-Christian” unity mystified the clash over disagreements as to how (and, sometimes even if) religion should operate in the public square.¹⁰ The Protestant hegemony in the United States was contested as religious minorities and “free thinkers” were beginning to demand not mere toleration but an equal footing for legitimacy.¹¹ Nowhere was this more evident than in public schools. Throughout the 1950s and 1960s, these disagreements played out in the media, in public meetings, in the courts, and in myriad pamphlets crafted by constituencies that were intended to articulate arguments to not only its own base, but also those outside its ambit. This was particularly true for the AJC members, who wished to educate both Jewish and Christian audiences with pro-separationist materials.

Since the creation of the common school, which brought together students from different ethnicities, denominations, and traditions, religion in public education had

the role of plaintiff was reversed and as the appellant *Abington* is listed first in the Supreme Court case. The Supreme Court case could correctly be called “*Abington*” but for clarity most scholars continue to call it *Schempp*.

⁹ The incorporation of “under God” into the Pledge of Allegiance was achieved in 1954 by a Joint Resolution of Congress amending §7 of the Flag Code enacted in 1942. Significantly, in 1951, the Knights of Columbus, a Catholic fraternal service organization, began including the words “under God” in its Pledge of Allegiance and lobbied the government for such a change. Pub.L. 83-396, Chap. 297, 68 Stat. 249, H.J.Res. 243, enacted June 14, 1954. The phrase “In God We Trust” had appeared on U.S. coins since 1864 but was first required on paper currency in 1957. The phrase was adopted as the official motto of the United States in 1956.

<http://www.treasury.gov/about/education/Pages/in-god-we-trust.aspx> Accessed on October 18, 2011

¹⁰ The present meaning of “Judeo-Christian” first appeared with the phrase “the Judaeo-Christian scheme of morals” in the *New English Weekly* on July 27, 1939. Peter Novick, *The Holocaust in American Life* (Houghton Mifflin Harcourt, 2000), 28. Footnote 26

¹¹ For an erudite analysis of the construction of conformity and how Dewey’s American “child centered” pragmatism in public schools was co-opted and progressive education was perverted to endorse craven conformism, see Andrew Hartman, *Education and the Cold War: The Battle for the American School* (Palgrave Macmillan, 2011).

been a contentious issue. The Protestant Hegemony, reproduced through local school boards, attempted to craft a lowest-common-denominator morality which would be acceptable to its constituents, though religious minorities sometimes resisted this status quo. Beginning in the nineteenth century, when their numbers were great enough, which was primarily in eastern and mid-western urban centers, Catholics resented and resisted the overt denigration of their religion in school readers and the unapologetic proselytization of their children in public schools. However, Protestant reformers in public schools often felt they had the right and the duty to “Americanize” what they believed were superstitious and backward immigrants, which meant instilling republican values (e.g. freeing them from loyalty to “foreign potentates” such as the Pope) and rationality. When the Bible was used in public schools, it was invariably the King James Version, valorized by American Protestants. Jews, no less than Catholics, resented such treatment but were often gathered in lesser numbers and generally had less power to resist. In any case, resistance could be dangerous or even deadly, as Catholics found out in the Bible Riots of the late nineteenth century.¹²

Some scholars argue that religion is particularly robust in the U.S. because of the First Amendment of its Constitution, which allowed a free market of religious bodies to flourish and compete.¹³ Yet, when the Protestant Hegemony was threatened, or a general irreligiosity was perceived, the reflex was often to “crack down” and “restore” religion to its “rightful place” in society. Specifically, this occurred when courts or other bodies ruled that Bible reading by the state was not appropriate in public schools. When this reaction occurred in the U.S. Congress, it resulted in the Becker and other amendments which would have amended the First Amendment to overturn *Schempp*.¹⁴ While the authors of these amendments supposed this would have restored the previous understanding of the Establishment Clause, others felt that this would have destroyed the First Amendment (the very thing which many argue had allowed religion to flourish in the United States). Representatives from both the AJC and BJC would testify against the Becker Amendment in congressional hearings.

These Southern Baptist elites supported a clear separation of church and state when it came to the Bible in public schools, despite the valorization of the Bible in their theology and the prevalence of Bible use in schoolrooms in the South. Reasons for this view included their tradition for separationist views in general, their theological emphasis on the free choice of religion absent coercion, and especially because they viewed any erosion of the First Amendment as an inevitable slippery slope to public funding for parochial (i.e. Catholic) schools. The last of these reasons did not spring from the better angels of their nature, it was often the most poignant and effective argument when quelling dissent from the more conservative members of their flock.

Throughout the 1960s and 1970s, the SBC was led by elected officers who were, for want of a better term, “moderates” who garnered majorities at their conventions and who straddled the line between the “progressive” and “conservative” factions of the

¹² For an essay on the riots, written in the period discussed in this chapter, See Vincent P. Lannie and Bernard C. Diethorn, “For the Honor and Glory of God: The Philadelphia Bible Riots of 1840,” *History of Education Quarterly* 8, no. 1 (April 1, 1968): 44–106, doi:10.2307/366986.

¹³ Finke and Stark, *The Churching Of America 1776-1990*.

¹⁴ The Becker Amendment was a reaction to the *Engle* and *Schempp* Supreme Court decisions of 1962 and 1963, and sought to overturn them. The story of the Becker Amendment will be covered in depth in Chapter 4. See also: Paul Finkelman, *Encyclopedia of American Civil Liberties* (Routledge, 2013), 117.

convention.¹⁵ The mouthpiece of the SBC in the political arena was the Baptist Joint Committee on Public Affairs (BJCPA, usually truncated to just “BJC”). It grew from a collection of committees drawn from various Baptist Conventions.¹⁶ The Committee on Public Relations was created on Saturday, May 16, 1936 by the SBC and was charged with the following responsibilities: “as situations arise, in which agencies of this Convention are compelled to confer, to negotiate, to demand just rights that are being threatened or to have other inescapable dealings with the American or other Governments, this Committee shall function, when so requested by any existing board or agency of this body, as the representative of Southern Baptists and shall report in detail to the Southern Baptist Convention the results of such conferences and negotiations.”¹⁷ In like fashion, at its convention, a similar body was chartered by the Northern Baptist Convention (NBC) on May 25, 1937.¹⁸ At times these committees worked jointly on issues of mutual concern, though a formal merger was resisted until 1941, when an SBC resolution was passed that supported such an organization.¹⁹ The NBC’s Committee on Public Relations quickly passed an identical resolution, and the Joint Conference Committee on Public Relations was officially created.²⁰ Significantly, in an era of segregated churches and Baptist conventions, these resolutions included provisions for including the Committee on Public Relations of the National Baptist Convention of America and the National Baptist Convention, USA, the two major black Baptist Conventions. Reports to the SBC and NBC indicate that these black conventions were included in the formation of the joint venture.²¹

In 1946, this enterprise established offices one block east of the U.S. Supreme Court Building at 200 Maryland Avenue, N.E. in downtown Washington, D.C. and officially became known as the Baptist Joint Committee on Public Affairs (known simply as the BJC). Southern Baptist minister and journalist Joseph Martin Dawson was elected as the organization’s first full-time executive director, a position he held until his retirement in 1953. Though always outspoken on social issues, Dawson had deepened his commitment to social justice in 1914, when he read the works of Walter Rauschenbusch in preparation for a series of articles for the *Baptist Standard*. These articles (and the sermons they inspired) dealt with social applications of the Gospel to such subjects as child labor, the exploitation of immigrants, and women’s rights.²²

¹⁵ In no way did these “moderates” consider themselves anything but conservative theologically. They also would argue that their position on a strong separation of church and state was normative for Baptists, and that the so-called “conservative” faction was in fact innovative and hostile to Baptist tradition. The “conservatives” disagreed. This right-wing faction captured the SBC leadership in 1979 and subsequently reversed the denomination’s public stance on this issue. Though these terms are imprecise we will continue to use “moderates” and “conservatives” for now.

¹⁶ Technically, Baptists have no hierarchy or denominational structure. Each individual church is autonomous, but most of them belong to confederations of churches called Conventions, the largest of which is the Southern Baptist Convention (SBC). Yearly meetings of delegates gather to discuss and vote on various motions, and voluntary donations from individual churches fund Convention projects.

¹⁷ *Annual of the Southern Baptist Convention, 1936, p. 96*

¹⁸ *Annual of the Northern Baptist Convention, 1937, p. 278*

¹⁹ *Annual of the Southern Baptist Convention, 1941, p. 109*

²⁰ *Annual of the Northern Baptist Convention, 1941, pp. 108-110*

²¹ *Annual of the Southern Baptist Convention, 1944, p. 136; Annual of the Northern Baptist Convention, 1944, p. 161*

²² Though the Social Gospel is often thought of as a northern, urban phenomenon, I will argue that the BJC exhibited a recognizable form of this philosophy, along with their strict separationist ideals. For an

Dawson also took a leading role in organizing Protestants and Other Americans United for the Separation of Church and State (POAU), serving as its first executive secretary and acting director in 1947-48.²³ After Dawson stepped down from the BJC, Dr. C. Emmanuel Carlson moved to the directorship, having previously served as Dean of Bethel College. Dr. Carlson directed the Committee from 1954 to 1971, further establishing the professional reputation of the Baptist Joint Committee. Carlson continued to foreground social aspects of Baptist praxis in this role. Though a joint committee in theory, in practice the directorships, financing, objectives and political directions of the BJC were dominated by SBC elites.²⁴ The POAU, which I argue was also founded and funded by Southern Baptists, is also covered in depth in chapter three.

Inter-Religious Intellectual and Political Crosscurrents between the SBC and the AJC

By the 1950s, there was an exchange of ideas and information between SBC executives and Jewish organizations, particularly the AJC, as evidenced by letters exchanged and AJC-published pamphlets received. These bi-directional transfers of ideas and epistemes were significant, as they signaled a moment when inter-faith comity had sufficiently opened interstitial pathways between faith traditions to facilitate meaningful intellectual exchange.²⁵ It is also significant that Jews and Baptists cooperated to help thwart attempts to amend the First Amendment, not only because the task may not have been accomplished without them, but also because they formed an unusual, unprecedented, and heretofore unexplored affinity on this issue. This relationship may have also contributed to these Southern Baptist elites of the BJC unwittingly becoming more cosmopolitan and less likely to notice that they were being outflanked by right-wing adversaries in the SBC's internal politics. These pamphlets were sometimes written by AJC members, but more often were reprints of periodicals and scholarly journals, such as *The Christian Century*.²⁶

The most direct evidence of AJC executives' intent to influence Christians generally and targeting Southern Baptists specifically, comes from a letter from Samuel Rabinove, director of the Legal Division of the AJC. Sent on January 21, 1969, to all the area directors, it lauds the work of AJC's Southeast Area Coordinator, Charles

excellent treatment of this argument, See Dr. Keith Harper, *The Quality of Mercy: Southern Baptists and Social Christianity, 1890-1920* (University Alabama Press, 1996).

²³ Dawson's role in the POAU is explored further in Chapter N. See http://www.txgenweb6.org/txnavarro/biographies/d/dawson_joseph_martin.htm (Accessed on October 18, 2011)

²⁴ See chapter 1 for the origins of the BJC and early Baptist history.

²⁵ For an excellent analysis of this, see Schultz, *Tri-Faith America*.

²⁶ According to POAU assistant Director C. Stanley Lowell, the *Christian Century* was friendly to the POAU in the 1940s and 1950s, but "with the coming of Martin Marty to the staff, a man immersed in the ecumenical movement, the journal began to change." Marty is a Lutheran Church-Missouri Synod pastor and took his Ph.D. from the University of Chicago in 1956. After writing for the *Christian Century* he became associate editor in 1958. In 1963, Marty joined the faculty of the University of Chicago Divinity School, where he taught American religious history. He frequently wrote on the ecumenical movement and pluralism. POAU executives framed the "ecumenical movement" as Catholic sympathizers who were either indifferent to or unaware of the dangers posed by the Catholic Church. Lowell claimed that Marty attacked the POAU in the September 18, 1963 issue in a story about Pope Pious XII. C. Stanley Lowell, *Embattled Wall: Americans United, an Idea and a Man*, (Protestants and Other Americans United for Separation of Church and State, n.d.), 128.

Wittenstein and his “continuing, conscientious efforts” to influence local Southern Baptists in the area of church-state separation, as the situation on the ground did not always (or often) live up to the ideals of the SBC elites back in Nashville.²⁷ Rabinove writes:

The council’s declaration is a highly significant development in a state where fundamentalist Protestantism remains strong and where religious practices continue unabated, particularly in rural areas, in defiance of Supreme Court rulings. The fact that the Council’s policy statement is essentially in harmony with the AJC position on these issues is not accidental. Rather it is a tribute to the continuing, conscientious efforts in this regard on the part of our Southeast Area Coordinator, Charles Wittenstein. *Among other things, Charles distributed copies of our “Religion in Public Education” Pamphlet to leaders of various faiths with who (sic) he had already established close working relationships.* When the declaration came out, Charles solicited newspaper editorial support in its behalf.²⁸

Stapled to this letter is a copy of an editorial from *The Atlanta Journal & The Atlanta Constitution* of December 15, 1968.²⁹ The editorial has been reproduced, not simply photocopied but nicely typeset, by the Georgia Council of Churches (GCC). It clearly is a pamphlet of its own, intended for redistribution. The editorial largely quotes the GCC, arguing that “genuine religious belief is a voluntary act of the will and not a product of human coercion.” This was part of orthodox Baptist theology, though the text of the pamphlet argued that it was also necessary, in a pluralistic society, to have “scrupulous regard for the freedoms of others” and that “governmental support of religion is inevitably a form of such coercion and is, therefore, ineffectual and detrimental.”³⁰ While also consistent with Baptist teaching and tradition, as a practical matter, in Southern Baptist strongholds (i.e. the South), when it came to limiting Bible reading in public schools, the implementation of these ideals was less than scrupulous. In fact,

²⁷ Charles Wittenstein retired in 1994 as ADL Southern Counsel and Southern Area Civil Rights Director headquartered in the League’s Southeast Regional office in Atlanta, Georgia, after working for the ADL for 21 years. Mr. Wittenstein joined the ADL in 1957 as director of the League’s Ohio-Kentucky office and then went to work for the AJC before returning to the ADL in 1973 as Southern Counsel and Southern Area Civil Rights director. In 1986, Mr. Wittenstein was instrumental in the Jewish community’s efforts to have the Georgia State Board of Pardons and Paroles reverse a 1983 refusal to grant a posthumous pardon to Leo Frank. Frank was lynched in 1915 after having been convicted of murder, in a trial rife with anti-Semitism, and of a crime he denied committing. Mr. Wittenstein, who worked on petitions to the Board in behalf of Frank, called the pardon an acknowledgement by the State of Georgia of “a great injustice” and he commended the Board for “its sensitivity in seeking to heal old wounds.” Author’s correspondence with ADL archivist Gerry Baumgarten, G.Baumgarten@adl.org Mr. Wittenstein died during the preparation of this dissertation. His obituary in the *Atlanta Constitution Journal* may be found here <http://www.ajc.com/news/news/local-obituaries/charles-wittenstein-85-helped-pardon-leo-frank/nWGbf/> (Accessed: December 12, 2014)

²⁸ Samuel Rabinove, “Letter to Area AJC Directors, Department and Division Heads, January 21, 1969” January 21, 1968, 1, BERTRAM GOLD BOXES 1960s “The Christian Lawyer” to Czechoslovakia Box #5 Folder, “church-State 1969” BGX 1960s, AJC Archive. **Italics added for emphasis**

²⁹ *The Atlanta Journal & The Atlanta Constitution*, December 15, 1968, Editorials, p18-A

³⁰ *The Atlanta Journal & The Atlanta Constitution*, December 15, 1968, Editorials, p18-A

many Southern Baptists did not value this sort of pluralism, and became hostile to the idea of church-state separation when the Warren Court began to dismantle Protestant Establishment privileges in public schools.

Though all Baptist churches are in theory independent, the pamphlet reminds the readers is has the “imprimatur” of the GCC. The editors conclude that, “This statement is a very useful clarification by the state’s highest interdenominational voice,” and that they, “hope school administrators will take respectful note.” Finally, there is a political cartoon in the pamphlet with the caption “Sanctuary”, showing a robed man (possibly judges robes), with a cane, in deep snow and blizzard in darkness, with a light beaming from a building labeled, “Georgia Council of Churches.”³¹ The semiotics indicate the GCC as a “light shining in the darkness,” evoking John 1:5 for any Bible-literate Christian. The imagery also suggests that others, perhaps judges, could come in from the “wilderness” and find enlightenment from the Baptist ideal of the separation of church and state. In any case, the support for the separation of church and state was plain, and the paper trail connecting the AJC to the BJC on this project was clear and unambiguous.

The AJC pamphlets on separation of church and state are legion, and continue into the 1960s. For instance, the pamphlet “Before the U.S. Supreme Court: Prayers and Bible Reading in the Public Schools, A Fact Sheet” was crafted by the AJC and published in February of 1963 in anticipation of the *Schempp* ruling, which was expected to be announced before the Court recessed in June of that year. This pamphlet (or “fact sheet” as they called it) was in the possession of Clifton Judson Allen, head of one of the most powerful institutions of the SBC. In 1937, Allen accepted a position as associate editorial secretary at the Baptist Sunday School Board in Nashville, Tennessee, where he served for 31 years until his retirement in 1968.³² The Baptist Sunday School Board was founded in 1891, and was then and remains one of the largest Christian publishing houses in America (and perhaps the world). They had a massive budget and the organization was hugely influential. Allen had a weekly radio program on WSM (the AM home of the *Grand Ole Opry*), wrote several books, scores of articles, and spent the last 10 years of his career as the recording secretary of the SBC. Among Allen’s correspondence are letters from Senators Sam Irvin and Jesse Helms, Governor and President James Earl “Jimmy” Carter, Bobby Bowden (football coach), Charles Colson (former special counsel for President Richard Nixon), Foy Valentine (executive director of the Southern Baptist Christian Life Commission), and E. E. “Hot Dog” Lee (territorial organizer of the Baptist Young Peoples Union or BPYU).³³ Clearly, Allen was well connected to a diverse set of Southerners. It is not known from whom Allen received the pamphlet, but if it did not come from the AJC directly it likely may have been passed on to him from Valentine, who did actively correspond with AJC executives.³⁴ The AJC

³¹ Rabinove, “Letter to Area AJC Directors, Department and Division Heads, January 21, 1969,” 2.

³² The Sunday School Board of the Southern Baptist Convention was founded in 1891 and served as a business for the production of Bibles, church literature, supplies and media. By the 1960s, it was a very big deal with a large budget. Today, it is called LifeWay Christian Resources and is an incorporated 501(c)(3) religious nonprofit organization with 4,500 employees and 163 stores.

³³ Most of these worthies were well known. Bowden coached the Florida State Seminoles from 1976 to 2009 and holds the NCAA record for most career wins and bowl wins by a Division I coach.

³⁴ Southern Baptist Convention Executive Committee Records Administrative and Program Planning Files, SBHLA, AR 627 – 1, Southern Baptist Convention Executive Committee Records, 1917 – 1989, Box 21, Folders 21 & 22, Christian Life Commission (Foy Valentine), 1964 –1967

pamphlets on church-state issues show up in the papers of most every SBC elite I have investigated.

The AJC was careful with its rhetoric, and these pamphlets regarding church-state issues were crafted by the AJC to instruct Christians about their own religious and political heritage, often accomplished by reprinting or quoting Christian sources. The *Engel* case outlawing mandated public school prayer had been decided the year before the publication of the pamphlet, and it argued that the primary cause of the negative reactions to the ruling had been ignorance. The tone and argument of this pamphlet is that once the readers are properly educated about the historical, constitutional and theological issues related to the decisions, they would understand how the cases were decided correctly. The pamphlet argues that because, “Unfortunately, in many instances the reactions reflected a lack of information and historical perspective. Insufficient knowledge of the core of the case—the religion clauses of the First Amendment to the U.S. Constitution, with their twin guarantees of religious liberty and separation of church and state—led to widespread misunderstanding of the decision, its intent and import.”³⁵ The hope was that, “opinion leaders in the mass media and elsewhere can render a significant public service by presenting the facts that well-informed citizens need to bear in mind.” The two main misconceptions were held to be “that challenges to prayer and Bible reading in public schools are unprecedented in American history; and...that these exercises are customary in the vast majority of public schools.”³⁶ The pamphlet was in essence a scholarly, if brief, essay on history, the law and even up-to-date sociological surveys. For instance, it included charts and statistics taken from what were then recent studies: one chart indicated that Bible reading was conducted in a minority (41.74%) of schools in the United States, and was rare in the Midwest (18.26%) and even rarer in the West (11.03%).³⁷ Additionally, ten states, mostly in the West, forbade religious or devotional activities, including Bible reading, in public schools.³⁸ The pamphlet gave a brief summary of church-state case law, then a catechism on “The Roots of Religious Liberty” from Madison’s *Memorial and Remonstrance* (1778) and Jefferson’s *Virginia Statute of Religious Liberty* (1786). This was followed by a sketch on the drafting and meaning of the Bill of Rights and the First Amendment, “These few words are known as the religion clauses...The first ten words, called the Establishment Clause, build, in the words of Jefferson, ‘a wall of separation between church and state.’”³⁹ The footnote for this would have been of particular interest to Southern

³⁵ Southern Baptist Convention Executive Committee Records Administrative and Program Planning Files, SBHLA, AR 627 – 1, Southern Baptist Convention Executive Committee Records, 1917 – 1989, Box 21, Folders 21 & 22, Christian Life Commission (Foy Valentine), 1964 –1967

³⁶ Southern Baptist Convention Executive Committee Records Administrative and Program Planning Files, SBHLA, AR 627 – 1, Southern Baptist Convention Executive Committee Records, 1917 – 1989, Box 21, Folders 21 & 22, Christian Life Commission (Foy Valentine), 1964 –1967

³⁷ Though not cited, these statistics were clearly borrowed from Richard B. Dierenfield, *Religion in American Public Schools* (Public Affairs Press, 1962).

³⁸ The Pamphlet also reprints charts from Richard B. Dierenfield, *Religion in American Public Schools*, Public Affairs Press, Washington, D.C., 1962. Dierenfield was an associate professor of education at Macalester College, St. Paul, Minnesota when he concluded this study. His son, Bruce J. Dierenfield, is professor of history at Canisius College, and wrote *The Battle over School Prayer: How Engel v. Vitale Changed America*.

³⁹ “Before the U.S. Supreme Court: Prayers and Bible Reading in the Public Schools, A Fact Sheet” n.d., Clifton Judson Allen Papers, box AR 795-221, folder 58-73, “Public School Prayer,” Southern Baptist Historical Library and Archives.

Baptists, showing, as it did, that this phrase was coined in Jefferson's Letter to the Danbury Baptists.⁴⁰ The pamphlet proceeded to elaborate the various attempts by state and federal courts to define what "establishment of religion" means. The pamphlet totaled seven, 8.5x11inch, pages of "fact sheet." There is no mention of any Jewish organizations or people in the body of the text, though the pamphlet concludes on the back page, in a shaded box, "The American Jewish Committee, founded in 1906, is a pioneer human-relations organization dedicated to combating bigotry, safeguarding the civil and religious rights of Jews here and abroad, and advancing those rights for all people of all religions and ancestries."⁴¹ This, along with the AJC address on the bottom of the back page would be the only explicit indications that the pamphlet came from a Jewish organization. Thus, the Jewish connection to this pamphlet is neither wholly obscured nor significantly foregrounded.

Another type of pamphlet distributed by the AJC was reprints of periodical articles, often from *This Christian Century*.⁴² In the case of one pamphlet, the provenance is somewhat circular, as the reprinted article was written by Philip Jacobson, an AJC executive and scholar who worked tirelessly arguing the merits of a strong separationist view of church-state issues. This is another largish pamphlet, like the 8.5x11 inch booklet above, but with fewer pages. It was found in the boxes of executives for the Christian Life Commission (CLC) of the SBC.⁴³ The CLC was chartered with fostering "Christian citizenship" which meant addressing contemporary issues in government and society. Though many Baptists would strenuously object to the characterization, I believe this was essentially the Social Gospel as understood and articulated by Southern Baptists.⁴⁴ This understanding of the CLC supports Harper's argument that Social Gospel was not exclusively a product of northern, industrial society.⁴⁵ The CLC's 1938 convention adopted resolutions on "fundamental human rights" including "freedom of religion" and in 1940 "protested the appointment of a

⁴⁰ See <http://www.loc.gov/loc/lcib/9806/danpre.html> Accessed October 19, 2011

⁴¹ Southern Baptist Convention Executive Committee Records Administrative and Program Planning Files, SBHLA, AR 627 – 1, Southern Baptist Convention Executive Committee Records, 1917 – 1989, Box 21, Folders 21 & 22, Christian Life Commission (Foy Valentine), 1964 –1967

⁴² Founded in 1884 as the *Christian Oracle*, the magazine took its current name at the turn of the 20th century in response to the optimism of those who believed that "genuine Christian faith could live in mutual harmony with the modern developments in science, technology, immigration, communication and culture that were already under way." In the 1950s and 1960s, the magazine considered itself to be the voice of ecumenical, mainline Protestantism. Notable contributors in the early decades included Jane Addams and Reinhold Niebuhr. In 1963, the *Century* was the first major periodical to publish the full text of Martin Luther King's "Letter from Birmingham Jail." See Elesha J. Coffman, *The Christian Century and the Rise of the Protestant Mainline*, 1 edition (New York: Oxford University Press, 2013).

⁴³ The Christian Life Commission (renamed the Ethics and Religious Liberty Commission in 1997) is an agency of the Southern Baptist Convention assigned with the task of speaking to the denomination on social and moral concerns and issues and the roles of the "Christian citizen." The Commission is housed in the Southern Baptist Convention Building in Nashville, Tennessee. The Commission traces its roots to the Social Services Commission, established in 1913.

⁴⁴ In 1938, the CLC addressed concerns about industrial relations and child labor, and later in the century they confronted the War in Vietnam, and support for the United Nations, environmentalism, urban renewal, etc.

⁴⁵ Harper, *The Quality of Mercy*.

personal representative to the Vatican by President Roosevelt.”⁴⁶ In the 1950s, the CLC addressed issues ranging from calling on the president to outlaw the serving of liquor on airplanes, to gesturing toward *Brown v. Board* with the statement that, “We express our belief in the public school system of our nation as one of the greatest factors in American history for the maintenance of democracy and our common culture, and we express the hope that in the working out of necessary adjustments, its place in our educational program shall not be impaired.”⁴⁷ The idea of a “common culture” reified by public schools was in tension with ideas of pluralism when it came to church-state separation, and the CLC elites of the 1930s may have not been of the same mind as those who read this pamphlet in the 1960s. The title of this piece asks “Should Ayes Always Have It?” and was subtitled, “Majority rule cannot decide questions of religion.” From the bottom of the cover page, six hands reach up as if to vote “yea” or “nay” on these questions.⁴⁸ The reception of this piece is lost to us, but the CLC executives thought enough of it to file it in their permanent papers.

Jacobson deploys Christian Scripture (in this case, gospel quotes) as evidence, as well as the caution that if the majority always rules, one might be outvoted by religious rivals (N.B.: Roman Catholics). These arguments would be particularly persuasive for Protestants in general and Baptists in particular. This was due to Baptists’ valorization of the Bible and their fierce belief that Catholic attempts to secure public funding for parochial schools was a slippery slope toward anti-republican, anti-democratic “Roman” control of American politics. Jacobsen argues against the idea that a crèche on public property or religious matters in the public school should be subject to “majority rule.” He reviews history and the Constitution, reminding his readers that, “It was precisely to make certain that the majority, through its control of government, would not override the religious convictions of the minority that the First Amendment to our Constitution erected the wall of separation between church and state.”⁴⁹ He quoted Jefferson, saying the wall of separation has “become axiomatic in American life” and further quotes the proclamation from the Letter to Danbury Baptists, ‘...that religion is a matter which lies solely between man and his God...[and] he owes account to none other for his faith and worship.’⁵⁰ Again, this argument resonated particularly well with a Baptist audience, and appears to have been tailored as such. Logically, Jacobsen said, one cannot have it both ways: once the state has an interest in religion, it is no longer simply between man and his God.

Jacobson also waves the bloody rag of Catholic atrocities, the remembrance of which is foundational to many Protestant origin myths, and ties that to the idea of the United States as a particularly Christian nation, “Surely those who contend that the furtherance of religion is a ‘public’ concern and those who seek to establish this nation officially as a Christian country, are overlooking the many blood-stained pages of history which marked the state’s (and the majority’s) determination to promote religious allegiances. The Roman populace which cried ‘To the lions with the

⁴⁶ Dorothy Davis, “Inventory of the Christian Life Commission Minutes, AR138-1” May 2008, 13, Christian Life Commission Minutes AR 138-1, BOX 1, Southern Baptist Historical Library and Archives.

⁴⁷ Davis, “Inventory of the Christian Life Commission Minutes, AR138-1,” 20.

⁴⁸ Jacobson, Philip, “Should the Ayes Always Have It?” n.d., CLC Resource Files Box ARB8-2 Folder22-11 Religion in the Public Schools 1950s, Southern Baptist Historical Library and Archives. **front cover**

⁴⁹ Jacobson, Philip, “Should the Ayes Always Have It?” **p2**

⁵⁰ Jacobson, Philip, “Should the Ayes Always Have It?” **p3**

Christians' were, of course, in the majority; so were the Spanish Inquisitors some 14 centuries later; and so were the French Bartholomew's Day rioters a hundred years after that." He reminded his readers that during the American Colonial period "the majority" had "heaped indignities" on Baptists (as well as others).⁵¹ Jacobsen knew his audience, and was not above using the Black Legend to further his rhetorical aims. Even though Jacobsen wrote in a mainstream Protestant magazine, all this rhetoric would have been particularly salient to a Baptist audience. Finally, he deftly weaves Mathew 22:21 ("render unto Caesar"⁵²) and Luke 6:31 (the Golden Rule⁵³) in his conclusion:

What then might be suggested as a sound criterion for the disposition of these troublesome issues? For myself, I should be happy to be governed by our unique tradition of separation of church and state, leaving unto Caesar that which is Caesar's, and to our churches and synagogues the kind of voluntary role which has brought religion to the independence and vigor it now enjoys on the American scene. But if the tensions and anxieties of our time have rendered the line of separation so hazy that it has become all but invisible, then I would suggest an added stress on that noble rule which has its counterpart in every religious creed the world has known. Much strife in this area might be avoided if, in considering matters touching on the sacred area of conscience—particularly in an area which serves the children of many groups—we remember to do unto others as we would have them do unto us.⁵⁴

While Jacobson's allusions to the Gospel would certainly have been clear to the mainstream Christians who were the target audience of *This Christian Century*, he may well have been attentive to how Biblical references would have spoken to the Bible-loving Baptists. His exhortation to "leave to Caesar what is Caesar's" is a not-so-subtle reminder of the Christian exhortation that they should be "in the world but not of the world" and that politics is a dirty, corrupt business of a fallen world. While this may be pushing the point a bit too far, there is the historical precedent (though clearly in tension with activism) that Christians should obey their secular government (i.e. Romans 13:1). That is, in this case, Christians should not question the legitimacy of the Supreme Court.⁵⁵

Finally, Jacobson argues that the non-religious should not feel compelled by the state, in language that would speak to the voluntary nature of Christian salvation as understood by any Baptist. Eschewing not only Catholic sacraments (or any other

⁵¹ Jacobson, Philip, "Should the Ayes Always Have It?" p4

⁵² "They say unto him, Caesar's. Then saith he unto them, Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's." KJV (Cambridge Ed.) I use KJV, rather than the NRSV or other translations, since that is the translation overwhelmingly favored by Baptists. Indeed, many conservative Baptists rejected the New American Standard Bible (NASB), the New International Version (NIV), or even the New King James Version (NKJV) as being "modern" and superfluous.

⁵³ "And as ye would that men should do to you, do ye also to them likewise." KJV (Cambridge Ed.)

⁵⁴ Jacobson, Philip, "Should the Ayes Always Have It?" p4

⁵⁵ "Impeach Earl Warren" flyers and signage were found from San Francisco, California to Georgia and throughout the South. See <http://georgiainfo.galileo.usg.edu/tdgh-may/Impeach%20Earl%20Warren%20Sign.jpg> Accessed 12/12/2012

“works”) but dogma or creed of any kind (outside the Bible as understood by the priesthood of believers), Baptists had always seen baptism and salvation as voluntary and personal. Gesturing at the Cold War climate, Jacobsen said, “We seem to have reached a point in our national thinking where it is most unpopular to be religiously unaffiliated—even if not yet dangerous socially, economically and politically” but goes on to say,

Paralleling this tendency is the growing disposition to equate religious belief with good citizenship. I consider this most unfortunate. I am suspicious of those official compulsions which seek to impose a community acceptance of religious belief. America’s spiritual strength has always rested in the voluntary nature of its religious institutional life. Given the right to disbelieve, the majority choose to believe. Add a measure of compulsion and we will have begun the process of sapping the strength from our spiritual underpinnings.⁵⁶

Though he goes on to provide a quote by renowned Rabbi Louis Finkelstein to underline this idea, he could have picked any number of Baptist ministers or scholars who would agree with the statement that, “In America, we recognize that compulsory ethics is not ethics at all. Morals must stem from the heart and mind; from an inner propulsion, not from outer compulsion. We therefore reject all regimentation.”⁵⁷ This is, in fact, one of the very arguments that Southern Baptist executives, such as Valentine, used when testifying before Congress on the issue of the Bible in public schools in the 1960s. These pamphlets were a crucial conduit of communication, but they weren’t the only source of intellectual commerce between the SBC and the AJC.

Intellectual commerce between the AJC and the SBC also came in the form of memos and press releases, either from the AJC itself or along with the Anti-Defamation League (ADL).⁵⁸ For instance, a Joint Memo from the AJC and ADL announced a 1959 State of Washington Supreme Court ruling that “release time” was constitutional in that state (though certain provisions were problematic).⁵⁹ A similar memo about Wisconsin “release time” program, wherein the attorney general (AG) of Wisconsin notified that

⁵⁶ Jacobson, Philip, “Should the Ayes Always Have It?” p3

⁵⁷ Finkelstein took his Ph.D. from Columbia University in 1918 and was ordained at the Jewish Theological Seminary of America (JTS) the following year. He joined the JTS faculty in 1920 as an instructor in Talmud and went on to serve as an associate professor and professor of theology. He later became provost, president, chancellor and chancellor emeritus.

⁵⁸ Founded as The Independent Order of B'nai B'rith in 1913, this U.S.-based Jewish service organization’s original mission statement was “to stop, by appeals to reason and conscience and, if necessary, by appeals to law, the defamation of the Jewish people. Its ultimate purpose is to secure justice and fair treatment to all citizens alike and to put an end forever to unjust and unfair discrimination against and ridicule of any sect or body of citizens.” This mission often intersected with issues of Christianity in public schools, though in practice the ADL often let the AJC take the lead in this arena.

⁵⁹ “Release time” was a scheme used in the post-WWII United States public school system wherein pupils enrolled in public schools were permitted by law to be “released” during school hours to receive religious instruction. In *McCullum v. Board of Education*, 333 U.S. 203 (1948) the Supreme Court of the U.S. ruled that schools could not set aside time in classrooms for religious instruction, but in *Zorach v. Clauson*, 343 U.S. 306 (1952) the Court expressly permitted it off-site. In the ten subsequent years leading up the *Engel*, many assumed some hybrid form of public/private education, based on “release time”, could or would be used to “solve” the religion issue.

state congress that he thought the state law was unconstitutional. On Nov. 12, 1959, the SBC issued a joint press release with the ADL regarding a Washington state Supreme Court ruling on a (religious) release time program in Spokane, WA.⁶⁰ The court ruled that release time was generally legal under U.S. and Washington laws, though some provisions of the program were not. Specifically, the distribution of consent cards (for participation in the program) and the announcements by representatives of religious groups done in the public school classrooms was held to be unconstitutional.⁶¹ The memo never alerted the reader to the fact that Jewish children would have been singled out by “opting out,” but does mention that the “program in question had been in operation since 1938. A group of Protestant denominations and one parish of the Roman Catholic Church participate.”⁶² The memo abstracted how the court squared its decision with respect to *McCullum* and *Zorach*.⁶³ Recall that in 1948, with *McCullum*, the U.S. Supreme Court ruled against “release time” programs where the school had direct involvement with religious education, but then in 1952, in *Zorach*, the Court permitted schools to allow some students to leave school during school hours for purposes of religious instruction. In a concurring opinion, Chief Justice Weaver pointed out that Article IX, Section 4 of the Washington State Constitution “is more proscriptive than the other constitutional provisions discussed in the opinion” as it states “all schools maintain or supported wholly or in part by the public funds shall be forever free from sectarian control or influence.”⁶⁴ He further noted that in the Convention of 1899, when adopting the provision, the delegates has specifically rejected an amendment to strike the words “or influence” from the section.⁶⁵ This issue is explored further in chapter 4 which examines the University of Washington *Seattle Bible Trial* of 1966. The AJC memo, in noting this Washington state decision, was educating the target audience about the fact that states have their *own* constitutional guarantees of church-state separation, which were often *stronger* than the federal prohibitions.⁶⁶ While the memo did not argue that Jewish children were affected by this practice, the inference that any Jewish child who attended the school would be either uninterested or unwelcome at the various Protestant or Catholic services seems clear. In this way, the ACJ was able to further its aims (i.e. lobbying against practices which single out or proselytize Jewish children) in subtle ways, without appearing shrill, argumentative, or seeming to request any “special treatment.” This memo was in the possession of the CLC of the SBC. Though the original addressee is lost to us, it seems likely it was one of the executives of the CLS, who would have been a Southern Baptist elite.

A similar memo was released on July 22, 1959, detailing how the attorney general (AG) of Wisconsin had found its release time proposed legislation of “doubtful validity”

⁶⁰ Sol Rabkin and Theodore Leskes, “Perry v School District No. 81, Spokane, Washington—Release Time” (: Joint Memo, The American Jewish Committee & the Anti-Defamation League of B’nai B’rith, 12 1959), CLC Resource Files Box ARB8-2, Folder22-11 “Religion in the Public Schools 1950s,” Southern Baptist Historical Library and Archives.

⁶¹ Rabkin and Leskes, “Perry v School District No. 81, Spokane, Washington—Release Time.” p. 1

⁶² Rabkin and Leskes, “Perry v School District No. 81, Spokane, Washington—Release Time.” p. 1

⁶³ Rabkin and Leskes, “Perry v School District No. 81, Spokane, Washington—Release Time.” p. 2

⁶⁴ **These ideas will be explored further in the chapter 4.**

⁶⁵ Rabkin and Leskes, “Perry v School District No. 81, Spokane, Washington—Release Time.” p. 3

⁶⁶ **This is because of *Blaine Amendment* additions to state constitutions and will be taken up in greater length elsewhere**

and in violation of the Wisconsin State Constitution.⁶⁷ Before the body of the memo, the digest states succinctly, “Any release time plan which uses school regulations to facilitate attendance for religious instruction, whether such instruction is on or off school property, is of doubtful validity. Similarly, any release time plan under which school authorities cooperate with religious groups by releasing the children for religious instruction is of doubtful validity if the children remain under the technical jurisdiction and discipline of the public school.” The AG, John W. Reynolds, directed his ruling to the members of the 1959 Wisconsin State Assembly who had passed Bill No. 281, relating to release time in education.⁶⁸ Reynolds’ analysis also touched on the *McCullum* and *Zorach* rulings and Wisconsin also had a more specific and restrictive separation clause in its state constitution. In the memo, Reynolds quotes a previous Wisconsin case: “The clause that no sectarian instruction shall be allowed therein was inserted *ex industria* to exclude everything pertaining to religion. They are called by those who wish to have not only religion, but their own religion, taught there in ‘Godless schools.’ They are Godless, and the education department of the government is Godless, in the same sense as the executive, legislative, and administrative departments are Godless...the only object, purpose, or use for taxation by law in this State must be exclusively secular.” In *Weiss v District Board*, otherwise known as the “Edgerton Bible case,” this idea was explored further.⁶⁹ The court concluded, “The connection of church and state corrupts religion, and makes the State despotic.”⁷⁰ Using the same argument that would be used in the *Schempp* case—that opting out of a religious practice does not eviscerate the coercive nature of the practice—the AG argued:

[The attorney general] also expressed the view that an element of compulsion is present in the released time program by the bill because the plan intends that those students who do not go to religious instruction will be held in the school building even though it is impossible for them to have the normal class instruction. He indicated that this would have the desired effect of encouraging them to leave their class rooms and join their fellow students in attending religious instruction. This compulsion, he stated, would violate the provisions of Article 1 of section 18 of the Wisconsin State Constitution, which states that no man shall be compelled to attend any place of worship.⁷¹

This memo was similarly located in the CLC records of the SBC. In the original are handwritten marginalia in pencil asking, “Newsletter or standard?” which indicates it was considered for re-publication using Southern Baptist resources and to target its audience. Thus, it appears that AJC efforts were successful in promoting their issues to Southern Baptist elites who in turn communicated with the much wider audience of

⁶⁷ Sol Rabkin and Theodore Leskes, “Attorney General of Wisconsin Rules Release Time Bill Unconstitutional.” 22 1959, CLC Resource Files Box ARB8-2, Folder22-11 “Religion in the Public Schools 1950s,” Southern Baptist Historical Library and Archives.

⁶⁸ Rabkin and Leskes, “Attorney General of Wisconsin Rules Release Time Bill Unconstitutional.” p. 1

⁶⁹ *State ex rel. Weiss and others v District Board*, 76Wis. 177 (1890)

⁷⁰ Rabkin and Leskes, “Attorney General of Wisconsin Rules Release Time Bill Unconstitutional.” p. 2

⁷¹ Rabkin and Leskes, “Attorney General of Wisconsin Rules Release Time Bill Unconstitutional.” 3.

Baptists via their newspapers, newsletters, and other media throughout and beyond the South.

Another significant AJC pamphlet located in the CLC files is a reprint from the *Christian Century Foundation* entitled “Are The Public Schools ‘Godless’” by Virgil M. Rogers.⁷² Rogers wished to highlight some aspects of the religion in public schools situation that “may not be obvious to those who are wholeheartedly involved with organizational religion.” Rogers was a good choice to make such an argument to Southerners, being a Southerner himself (though as an integrationist, he faced charges of radicalism on that front). He served in both world wars, which made him less susceptible to claims of being unpatriotic, a term often heaped on those calling for a “Godless” public school system. Dr. Rogers had an impressive résumé: he graduated from Wofford College; received a master’s degree from Western State College, Gunnison, Colorado; took a Ph.D. from Teachers College of Columbia University. He served as Superintendent of Schools in three different states. In the early 1940s, in Battle Creek, Michigan, he precipitated a dispute by hiring the first black teachers for the school system. The grandson of slave owners, Rogers testified in Federal District Court on behalf of black students in an action to suspend racial integration by the school board of Little Rock, Arkansas. In 1953, he was named dean of the School of Education at Syracuse and held the post until he retired in 1963. He then moved to Washington and led National Education Association tours to Europe, South America, Africa and the Middle East. He was president of the American Association of School Administrators and in 1989 received its Distinguished Service Award in Educational Administration. He served in the Army in World War I, and at the close of World War II he was sent to Germany as an Army brigadier general to help plan the reorganization of the German school system. In short, he was a southerner, a professionally accomplished military man, and his patriotism was beyond reproach.⁷³

Rogers began his essay on an upbeat note, noting the “most heartening document, the 30-page pamphlet *The Church and the Public Schools*, an ‘official statement’ published by the Presbyterian Board of Christian Education with approval of the 169th General Assembly of the Presbyterian Church, USA” which makes him feel “that even at this long last the all-important American concept of separation of church and state may yet be saved.”⁷⁴ He then began his argument by challenging the assumption of the Protestant hegemony by asking which religion would or could be used in the schools:

Shall the Koran be taught in these schools? The Book of Mormon? Science and Health? Shall the schools use the Old Testament, to which Judaism subscribes, or the New Testament, on which Christianity is largely based? And shall this New Testament be the King James Version or one of the more recent Protestant versions, even though only the Douay Version is permissible for Roman Catholic students? Educators are constantly encountering people who think of the public schools as the “Protestant

⁷² Virgil M. Rogers, “Are the Public Schools ‘Godless’” 11 1957, CLC Resource Files Box ARB8-2, Folder22-11 “Religion in the Public Schools 1950s,” Southern Baptist Historical Library and Archives.

⁷³ “Virgil M. Rogers, 92; Was Syracuse Dean And Headed Schools - New York Times,” accessed October 25, 2011, <http://www.nytimes.com/1990/03/08/obituaries/virgil-m-rogers-92-was-syracuse-dean-and-headed-schools.html>.

⁷⁴ Rogers, “Are The Public Schools ‘Godless,’” 2.

schools” in spite of the fact that approximately half of all Roman Catholic children in this country attend them.⁷⁵

Next, Rogers argued that “secular” is not a dirty word. In rehabilitating the term, he anticipated many of the aspersions which will be cast at those who support a secular view of society in the wake of the *Schempp* decision. He wrote, “There is nothing sinister and unclean about that word. It is not to say ‘godless,’ ‘antireligious,’ ‘in league with evil,’ but merely ‘secular’—like the courts or the presidency.” Like Philip Jacobson, Rogers used the “Render unto Caesar...” verse but goes a good deal further by arguing, “Jesus’ own recognition of the validity of certain separations was expressed” therein. While the Jewish Jacobsen might naturally be reluctant to explicitly draw this inference, for a man of Rogers’ background and *bona fides* this was not an issue. Rogers also used sociological data in his argument, noting the “shock” of religious and education leaders to a 1928 study which showed no correlation between the “verbalizing of moral sentiments” and a change in behavior toward that was put into practice.⁷⁶ This use of sociological data to lend a scientific and dispassionate air to his analysis was in stark contrast with the *ad hominem* or dogmatic entreaties of his opponents.

However, Rogers was not above stooping to a somewhat frothy emotional appeal, drawing the analogy between children affected by church-state issues to the then recently-released, award-winning film *A Desk for Billie*, about a migrant child who was not welcome at the public school.⁷⁷ Rogers also could not resist discrediting segregationists, reminding his audience that, “The American public schools are predicated on the principle of the brotherhood of man (though some of their patrons continue to object to this principle).” He wrapped up the argument by pointing out how Billie Davis, the subject of the film, who grew up to become a religious writer and responsible adult, despite not getting religion (or even compassion) in school. Even if churches proceed from the Fatherhood of God, Rogers noted, “It must be concluded that churches and schools have separate functions.”⁷⁸ While Rogers is writing for the northern and eastern audiences of the Mainline Protestant sects (i.e. *This Christian Century*) he is nonetheless very attentive to how both race and Bible verses would be particularly poignant for Southern Baptists. The fact that AJC material ends up in the files of CLC elites of the SBC, even when we have no explicit information on how it was received, demonstrates that the AJC purposely and successfully communicated its separationist ideals to Southern Baptist elites, starting well before either *Engel* or *Schempp* are decided and into the 1960s and 1970s.

ADL-Produced Materials

Some church-state pamphlets collected by CLC elites were the sole project of the ADL, without any collaboration with the AJC. These differed in tone and content. One

⁷⁵ Rogers, “Are The Public Schools ‘Godless,’” 1.

⁷⁶ Columbia University and Hugh Hartshorne, *Studies in the Nature of Character*, (New York: The Macmillan Company, 1928). Rogers nominates *Studies in deceit*: bk. 1: General methods and results [by] Hugh Hartshorne and M. A. May. p. 245-248

⁷⁷ “A DESK FOR BILLIE - YouTube,” http://www.youtube.com/watch?v=vGrm_qdEl0w. (Accessed October 25, 2011)

⁷⁸ Rogers, “Are the Public Schools ‘Godless,’” 4.

example is called “Religious Education in the Public Schools” and is a reprint of a statement adopted at the ADL’s 1958 meeting.⁷⁹ The tenor of the argument in the statement is more directed and it used a more heated rhetoric than AJC-produced pamphlets generally adopted. For instance, the pamphlet argued unequivocally that the Bible is inherently sectarian, since nobody agreed on translation or meaning.⁸⁰ Contrariwise, the argument from defenders of Bible reading in public schools hinges on the idea that the Bible read “without comment” was non-sectarian. Most Southern Baptists would also have maintained that the Bible, which they believed was understandable by any adult, and outside of any particular creed or dogma, was non-sectarian. Though the idea that Bible reading without comment was not “religious” was debatable, the AJC always preferred not to engage in such debates, and strove, where possible, to use statements from Christians (or justices in friendly court decisions) to present their arguments for them, sometimes arguing obliquely and always doing so carefully. The ADL showed a markedly different style, taking the Protestant argument (and thus their Bible) head on. This helps show how the Jewish community was neither monolithic nor homogeneous when it came to opinions and approaches to church-state issues. It also problematizes the notion of an emerging “Jude-Christian” pluralism—what the ADL argued for was a de-Christianizing of the public square, not a union of Jewish and Christian commonalities. This lack of Jewish homogeneity was also evidenced after some rabbinic organizations and conservative Jews disagreed with both the ADL and AJC on the *Engel* and *Schempp* decisions.

The ADL also produced a pamphlet based on the 1957 *This Christian Century* article, “Is Release Time Worth It?” by Howard Waterhouse. Waterhouse argued that the “release time” policy was an, “ill-conceived venture which will inevitably lead persons and institutions into compromising and equivocal positions.”⁸¹ He argued that since there are Hebrew Schools and ethnic (i.e. Greek and German) groups for cultural and religious after school programs run by their churches, why couldn’t Protestant kids? The back of this pamphlet announced that reprints were available from B’nai B’rith. Thus, it is clear that the ADL also used this technique and reproduced Christian articles for a wider audience and to further their own agenda.

Supporting evidence of CLC interest in the Jewish intellectual community is found in a 1958 report showing how pamphlets from the AJC and the ADL were being read by northern evangelical, Mainline Protestants, as well as the Southern Baptists. The report also highlights the range of thinking in this area in the 1950s. It has the ponderous title of “A POLICY STATEMENT on The Relation of the Churches to the Public Schools and The Place of Religion in Education, Submitted to the Churches and Denominational Boards of Christian Education by the Church Federation of Greater Chicago, Prepared by The Commission on Religion and Education of The Department of Christian Education”.⁸² This document is of particular interest because the “Appendix

⁷⁹ Anti-Defamation League of B’nai B’rith, “Religious Education in the Public Schools” n.d., 1, CLC Resource Files Box ARB8-2, Folder 22-11 “Religion in the Public Schools 1950s,” Southern Baptist Historical Library and Archives.

⁸⁰ Anti-Defamation League of B’nai B’rith, “Religious Education in the Public Schools,” 7.

⁸¹ Howard Waterhouse, “Is Release Time Worth It?” (reprint from *This Christian Century*, reprints available by B’nai B’rith, Summer 1957), 1, CLC Resource Files Box ARB8-2, Folder 22-11 “Religion in the Public Schools 1950s,” Southern Baptist Historical Library and Archives.

⁸² The Church Federation of Greater Chicago, “The Relation of the Churches to the Public Schools and the Place of Religion in Education” 1958, 1, CLC Resource Files Box ARB8-2, Folder 22-11 “Religion in the Public Schools 1950s,” Southern Baptist Historical Library and Archives.

A. SELECTED BOOKS AND PAMPHLETS” lists not only AJC (“Religion in Public Education”, *Religious Education*, July-August 1955) and ADL (“policy statement prepared by a national committee”, May 1, 1955) material, but also a pamphlet published by Fordham University (by Constanzo, Joseph F., S.J., “Religion in Public Education”, an article reprinted from *Thought*) and another undated piece from the Guild of Catholic Lawyers, six reports by the National Council of Churches in Christ U.S.A. (NCC) (from 1947-56), four from the National Education Association (NEA) (from 1946-56), the Presbyterian Church in the U.S.A (1957), the Reformed Church in America (“The Relationship of Public and Parochial School Education,” A Statement of the Board of Education, New York, NY 1957), the American Association of Colleges for Teacher Education (annotated bibliography, produced as part of the Teacher Education and Religion Project, E.L. Sebalay, national coordinator, 1956), and finally the September, 1948 edition of *Ladies Home Journal* (“Should Religion Be Taught in Our Schools?” by Gauss Christian).⁸³ This list shows that a number of denominations were thinking deeply, reading, and writing about the role of religion in public schools in the post-*McCullum*, pre-*Engel* era. “APPENDIX B. SELECTED REFERENCES FROM PUBLIC SCHOOL SITUATIONS” lists 13 documents, including “Religion, Man’s Search for God” used in 10th grade World History unit (Baltimore County, Maryland, published by the School Board, 1948) and “The Contributions of Religions to Present Democratic Procedures” for use in the 8th grade (published by the Office of the Superintendent, Springfield, Mass.).⁸⁴ While the list is selective, rather than exhaustive, it does give some indication of the types of courses that were common in K-12 public education when religious issues were being raised. The Church Federation of Greater Chicago was founded in 1907 as an interdenominational body representing 1,200 churches and 27 denominations.⁸⁵ It took a “strongly reformist outlook and would become especially activist in the 1950s and 1960s.”⁸⁶ This supports the argument that the 1950s was not a period of uniform or automatic conformity when it came to church-state issues. Additionally, this evidences intellectual commerce between Southern Baptists and Midwestern clergy, educators, and elites. This exchange may also have contributed to the cosmopolitanization of the BJC elites.

Oddly, the report was undated, but appeared to have been drafted around 1958. The report shows how pamphlets from the AJC and the ADL were being read by northern evangelical, Mainline Protestants as well as the Southern Baptists. Clearly the intellectual commerce was not only taking place between these two constituencies, but their northern/mid-Western contemporaries were taking notice of it and also joining the conversation.

The Church Federation seemed more interested in fostering debate on the religious issues than in solving any particular problem or resolving any difficulties. The cover letter for the report, sent to “member bodies and their educational units” in April of 1958, by Chairman of the Department of Christian Education Thomas H. West, and

⁸³ The Church Federation of Greater Chicago, “The Relation of the Churches to the Public Schools and the Place of Religion in Education,” 31–33.

⁸⁴ The Church Federation of Greater Chicago, “The Relation of the Churches to the Public Schools and the Place of Religion in Education,” 34.

⁸⁵ L Richesin, *Eighty Years of Ministry: The History of the Church Federation of Greater Chicago (1907-1987)* (Chicago Ill.: Church Federation of Greater Chicago, 1987).

⁸⁶ “Religious Institutions,” accessed October 26, 2011, <http://encyclopedia.chicagohistory.org/pages/1060.html>.

Chairman on Religion and Education Edward H. Stullken of the Church Federation of Greater Chicago, declared up front that it was “submitted with the hope that it will arouse serious and even vigorous discussion.”⁸⁷ However, he immediately goes on to say that, “The Commission...is aware that within the denominations there may be differences of opinion about some portions of this policy statement. If it stimulates all concerned people, in or outside the fellowship of the Federation’s Department of Christian Education, to think more deeply about this important matter it will have served one of its important purposes.”⁸⁸ The Church Federation was keen to encourage critical thinking and welcomed debate outside its commissions and even outside its denominations. That pamphlets from the AJC and the ADL were leveraged in service of this project shows the catholic interests of the Church Federation. The fact that Southern Baptists were reading a report crafted in Chicago shows the extent of their reach when investigating church-state issues.

Another AJC pamphlet, not merely a reprint of a magazine or journal article but one crafted for a particular purpose, appeared in 1957 and was titled, “Religion in Public Education, A Statement of Views.” This was part of a series of pamphlets produced to celebrate the AJC’s Fiftieth Anniversary (though the cited source is the second printing). First, the AJC pamphlet stated that, “For a half-century, the American Jewish Committee has advanced the principle of human equality—*not* toleration.” This is in contrast to the generally mild tone found in most of the other AJC separationist pamphlets. It is a direct shot at the idea of a Protestant hegemony which enjoyed special privileges and pride of place in American life, and the idea that others should be grateful to co-exist with and be “tolerated”.⁸⁹ The AJC made it clear while it was not opposed to Bible in Literature courses it was opposed to the policy of release time. They further argued, in rhetoric that would be familiar to and a logic plain to most Baptists, that, “By taking one side or another in the age-old philosophical dispute over the ultimate sources of values, the school uses its authority to usurp the proper function of the home, church and synagogue, at the same time virtually depriving many Americans of the right of personal choice in a matter of conscience.” They then go further, however, by recognizing non-supernatural and pragmatic sources for moral behavior. That is, “Our schools must recognize that there is no unanimity concerning the wellsprings of moral behavior; while many hold that the values which guide human conduct stem from the great religions, there are others who believe that values derive from human experience.”⁹⁰ The argument concluded by noting that release-time threatened the independent character of public school, that it was a mechanism for divisiveness, that normal school routine was disrupted, and finally that many children simply skipped it anyway (i.e. that it was *ineffective* as well as divisive, disruptive and disintegrative). The AJC stressed that dangers were not to be overcome simply by an efficient implementation of the scheme, because “Even when most carefully

⁸⁷ Thomas West and Edward Stullken, “Letter of Transmittal, To The Member Bodies and Their Educational Units” April 1958, 1, CLC Resource Files Box ARB8-2, Folder 22-11 “Religion in the Public Schools 1950s,” Southern Baptist Historical Library and Archives.

⁸⁸ West and Stullken, “Letter of Transmittal, To The Member Bodies and Their Educational Units,” 1.

⁸⁹ American Jewish Committee, “Religion in Public Education: A Statement of Views” (Pamphlet, April 1957), 1, CLC Resource Files Box ARB8-2, Folder 22-11 “Religion in the Public Schools 1950s,” Southern Baptist Historical Library and Archives.

⁹⁰ American Jewish Committee, “Religion in Public Education: A Statement of Views,” 14.

administered, the program's inherent abuses become evident: subtle sectarian pressures are exerted by overzealous administrators."⁹¹ While BJC members (and many Protestants) were generally open to "religion" in the public square, they were steadfastly opposed to what they viewed as "sectarian" practices, especially in the public schools. Clearly, the AJC writers were attuned to this language, knew their audience, and made use of this knowledge. Most Baptists (and many Protestants) at this time considered the reading the Bible without comment to be "non-sectarian" and that was the assertion made by the defense in the *Schempp* case. This AJC pamphlet made the case that Bible reading in the public square *was* sectarian, well before ACLU lawyers would do so before the Supreme Court in *Engel*.

CRC files also revealed a different sort of AJC pamphlet, which hid its provenance. The work was published by the "Relations Service," which resided at the same address as the AJC: 386 Fourth Avenue, New York 16, N.Y. The Relations Service was part of AJC. The pamphlet was entitled *Church and State in America*, by Irving Brant.⁹² This pamphlet was reprinted from the December, 1948 issue of *The American Mercury*.⁹³ Brant was taking on various critics of *McCullum v. Board of Education*, where the Supreme Court had ruled 8-1 to declare unconstitutional the "release time" program used in Champaign, Illinois.⁹⁴ Without actually mentioning Jews, he said that religious folk—both Catholic and Protestant—were upset by the ruling, "The decision has brought a good deal of complaint from some of the larger Protestant sects, and from some Catholic sources. The Catholic magazine *Commonweal* called it an 'establishment of atheism.'"⁹⁵ Since Protestants at that time could not know that the *Zorach* case, which would allow release time off campus, would be forthcoming, they feared that *McCullum* would spell the end for the release time solution, a compromise that many figured was the only viable alternative for church-state tensions in the schools.⁹⁶ Brant believed that "The Court decision was a heavy blow to many Protestants."⁹⁷ He said, "The 'release time' system had begun in Gary, Indiana, in 1914,

⁹¹ American Jewish Committee, "Religion in Public Education: A Statement of Views," 15.

⁹² Born in 1885 in Walker, Iowa, Brant graduated from the University of Iowa in 1909. Brant worked variously as a reporter, author, newspaper editor and biographer. The year of this article he published his work on constitutional law, *James Madison The Nationalist 1780-1787*. His monumental biography of James Madison (*The Fourth President*) was his opus.

⁹³ *The American Mercury* was an American magazine founded by H.L. Mencken in 1924. Curiously, the popular television program *Meet the Press* can trace its ancestry to the magazine. In 1945, while editing the magazine, Lawrence Spivak created a radio program called *American Mercury Presents "Meet the Press."* NBC began broadcasting it as a television program on November 6, 1947, as *Meet the Press*. It was the single longest-running televised news program in history. In 1952, the magazine was forced to sell to a sometime financial contributor, Russell Maguire (owner of the Thompson Submachine Gun Company). Ironically, various groups, including the ADL, accused Maguire's *Mercury* of ongoing and increasing Jew-baiting, particularly when it reprinted a number of anti-Jewish comments from the writings of Mencken himself. The magazine went out of print in 1981. As of 2014, the television show is in its 66th season.

⁹⁴ There was short a window where it appeared that "release time" would not be permissible at all, before the court revisited the issue of religious instruction in *Zorach v. Clauson* in 1952. That 6 to 3 ruling held that a New York program allowing religious education off campus during the school day was permissible, because it did not use public school facilities or public funds.

⁹⁵ *Church and State in America*, Irving Brant

⁹⁶ The idea of the Protestant hegemony coming to an end was even further from their imaginings.

⁹⁷ *Church and State in America*, Irving Brant

and had been spreading ever since. Whether the system is now on the way out is hard to say.”⁹⁸ Clearly, many felt anxious about the possibility of its demise.⁹⁹

Brant was optimistic, however, that “...it is probable that nothing would do more to bring about religious peace, and establish a new American unity, than wholehearted acceptance of that total separation of church and State required by the First and Fourteenth Amendments, and now re-assured by the Supreme Court.”¹⁰⁰ He anticipated the thinking that would not really come to full fruition in the federal courts until the 1960s. While prescient in some respects, Brant perhaps misjudged the unifying powers of a strict separation.

Brant reminded his readers of the long history of popular resistance to parochial school aid, in the form of a quote from President Grant.¹⁰¹ Grant inveighed against it in 1875, in his Des Moines Convention of the Army of the Tennessee speech, when he said “Encourage free schools and resolve that not one dollar appropriated for their support shall be appropriated for the support of any sectarian schools...Leave the matter of religion to the family altar, the church and the private school supported entirely by private contributions. Keep the church and State forever separated.” Brant pointed out that that one of the *amicus* briefs filed in *Everson* came from the Junior Order of United American Mechanics, a New Jersey fraternal order founded that same year “to defend the public school system.”¹⁰² Brant omitted that Grant’s speech likely helped motivate U.S. Congressman (Republican, Maine) James G. Blaine to propose an amendment to the federal Constitution to outlaw such aid, and Catholics believed this played into the vigorous, Nativist, anti-Catholic rhetoric of the day.¹⁰³ What Brant did say was that, “To Roman Catholics, State aid to church schools is not only natural, it is something for which increasing need is felt.”¹⁰⁴ The costs for constructing and maintaining parochial schools had risen, and there had never been enough of them to educate all Catholic children in every diocese in any case. He explored how the National Catholic Councils, in its *amicus* brief in *McCullum*, argued that the state acted as *parens patriae* (“parent

⁹⁸ *Church and State in America*, Irving Brant

⁹⁹ They could not know that in just a few years, in 1952, the case of *Zorach v. Clauson* would allow release time as long as it occurred off campus.

¹⁰⁰ *Church and State in America*, Irving Brant

¹⁰¹ This quote is often cited in secondary sources. For example, in Stephen Green’s *The Second Disestablishment: Church and State in Nineteenth-Century America* and elsewhere. However, I am unable to locate any source which cites a primary source of the original speech.

¹⁰² American Jewish Committee, “Religion in Public Education: A Statement of Views,” ?

¹⁰³ In 1875, the Blaine Amendment passed in the House by a vote of 180 to 7, but failed to achieve the two-thirds necessary in the Senate by just four votes. However, “Blaine Amendments” would find their way into a number of state constitutions, particularly in the American South and West. Blaine was Speaker of the House under Grant, Secretary of State under three U.S. Presidents (Harrison, Garfield, and Arthur), a one-term Senator, and a U.S. Presidential candidate. Blaine was a leading candidate going into the 1876 Republican National Convention, and the rivalry between his supporters (“Half Breeds”) and Grant’s (“Stalwarts”) was so heated that a compromise candidate, Rutherford B. Hayes, was chosen in 1876. This controversial election ended in the Compromise of 1877 and the end of Reconstruction. In the 1884 election, Blaine lost to Grover Cleveland, the first election of a Democrat as President of the United States since the election of 1856. For a 2003 Fordham Law Review article on the Blaine Amendments, see <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3939&context=flr> (Accessed December 12, 2014). Fordham Law School is a historically Catholic, Jesuit university. Historian Steven Green disagrees with the anti-Catholic bias of so-called Blaine Amendments. More on this subject below.

¹⁰⁴ American Jewish Committee, “Religion in Public Education: A Statement of Views,” ?

of the nation”) of every child, thus it “may provide a flow of State aid to all children regardless of their religion.” He pointed out that in an earlier decision, *Cochran v. Louisiana State School Board of Education* (1930), the court upheld a Louisiana statute that allowed expenditure of public funds to purchase and supply nonsectarian textbooks to parochial school students. Brant further claimed that this argument was in “exact accord” with the papal encyclical *Christian Education of Youth*.¹⁰⁵ He quoted the Pontiff’s encyclical, which argued “In a nation where there are different religious beliefs, it becomes the duty of the State...to leave free scope to the initiative of the Church and the family, while giving them such assistance as justice demands...[Catholics] are not mixing in party politics, but are engaged in a religious enterprise demanded by conscience.” Brant ends section two of this pamphlet without weighing in on Pius XI’s argument, but seems to encourage the reader to consider the point-of-view of the Catholic side.

This was another case of the provenance of the pamphlet being hidden, printed by the “Community Relations Service” which was an arm of the AJC. The term “Jewish” never occurs anywhere in the document.¹⁰⁶ As the majority of AJC pamphlets explicitly listed their name somewhere in the document, this appears to have been done on purpose. I would argue that, given the possible controversial contents of the piece, the AJC deliberately obscured their connection to the reprinting.

Another pamphlet from the 1950s, also in the possession of the CLC elites of the SBC and published by the Community Relations Service, the “Experiment on our Liberties”, by Philip Jacobson and Fred McLaughlin, obscured AJC publication. This pamphlet made clear its support of a strict separation. The pamphlet is undated but located in a folder with other documents from the 1950s, and may have been reprinted from the 1953 John Dewey Society, Harper collection *Educational Freedom in an Age of Anxiety*.¹⁰⁷ Below are the closing paragraphs, wherein it maintained as “wholly unacceptable” the “assumption that common ideals are grounded solely in sectarian doctrine” which are not “universally accepted ideals and standards.”¹⁰⁸ Jacobson and McLaughlin insisted that public schools had the obligation to students and society:

Respect for the dignity and worth of personality, tolerance, the spirit of fraternity, love of one’s fellow men, justice and fair dealing for all are ideals which the public school can and must teach, both by precept and example. Wholly unacceptable is the assumption that common ideals are grounded solely in sectarian doctrine. The people of the United States face a rare opportunity. They spring from diverse backgrounds. They represent nearly every conceivable race, color, creed, and nationality. And they possess a secular public-school system. Within the portals of the schools, the children of all the people can work and learn together on the

¹⁰⁵ “Pius XI, Divini Illius Magistri (31/12/1939),” accessed November 1, 2011, http://www.vatican.va/holy_father/pius_xi/encyclicals/documents/hf_p-xi_enc_31121929_divini-illius-magistri_en.html.

¹⁰⁶ “NASSP Bulletin,” 1950, 22, <http://bul.sagepub.com/content/34/170/262.citation>.

¹⁰⁷ H Hullfish, *Educational Freedom in an Age of Anxiety*, [First ed.] (New York: Harper, 1953).

¹⁰⁸ Philip Jacobson and Fred McLaughlin, “Experiment on Our Liberties: Religion and American Education” (Pamphlet, circa 1950s), box ARB8-2 (CRC resource files) folder 22-11 “Religion in the Public Schools 1950s), Southern Baptist Historical Library and Archives.

basis of equality and the spirit of mutual respect. They can acquire ways of thinking, dealing, and acting that comprise a common morality. The public schools must not be diverted from their supremely important task of creating and cementing bonds of loyalty to these universally accepted ideals and standards.¹⁰⁹

Again, it is not certain whether the provenance of the AJC is obscured in the pamphlet on purpose or accidentally. What does seem clear is that a pamphlet with strong progressive leanings (people of “every conceivable race, color” who can “work and learn together on the basis of equality and the spirit of mutual respect”) would probably not be well received by a white, Southern Baptist audience of the 1950s. The redaction of any connection to the AJC or other Jewish organization coincides with issues that might provoke white, Southern readers. I argue that this was not accidental but an intelligent and prudent precaution on the part of the AJC.

Another striking document coming out of the 1950s collection of the CLC of the SBC, is an original typewritten report “An Analysis of the New York Board of Superintendents Guiding Statement for Supervisors and Teachers on Moral and Spiritual Values and the Schools” written by The New York Board of Rabbis.¹¹⁰ The report appears to be an original, typewritten copy, rather than a carbon or mimeograph. It is undated, but appears to have been written in 1955.¹¹¹ While the New York Board of Rabbis claimed to sympathize with the New York Board of Superintendents’ desire to assure the public that the schools are concerned with values, and to allay any fears that public schools were “Godless”, the rabbis took issue with a number of statements and underlying assumptions in the document.

The rabbis laid out seven connected arguments for why Bible reading in public schools was a bad idea. Firstly, that there was no guarantee that the public school teacher was qualified to instill faith in her students: teachers were not theologians. Specifically, they said “Superintendents’ proposals would catapult public schools into an area where they do not belong. Religious education and training was the exclusive responsibility of the home, church and synagogue.”¹¹² Secondly, even if, as the superintendents supposed, their teachers were “religious in character, in action and belief” and “belong to a church or synagogue” the only way to be absolutely certain would be to institute some sort of religious test, a policy that the rabbis asserted “violates the basic principles and traditions of American democracy.”¹¹³ Thirdly, the superintendents mistakenly equated “moral and spiritual” with “religious”, which discriminated against the unaffiliated (the rabbis were not quite prepared to stand up for the atheist in this venue). They pointed out that the document presupposed that

¹⁰⁹ Jacobson and McLaughlin, “Experiment on Our Liberties: Religion and American Education.”

¹¹⁰ The New York Board of Rabbis, “An Analysis of the New York Board of Superintendents Guiding Statement for Supervisors and Teachers on Moral and Spiritual Values and the Schools” (10 East 73rd Street New York City, undated), CLC Resource Files Box ARB8-2, Folder 22-11 “Religion in the Public Schools 1950s,” Southern Baptist Historical Library and Archives.

¹¹¹ New York Board of Rabbis., *An Analysis of the New York Board of Superintendents’ Guiding Statement for Supervisors and Teachers on Moral and Spiritual Values and the Schools*. (New York: New York Board of Rabbis, 1955). **from Worldcat**

¹¹² The New York Board of Rabbis, “An Analysis of the New York Board of Superintendents Guiding Statement for Supervisors and Teachers on Moral and Spiritual Values and the Schools,” 3.

¹¹³ The New York Board of Rabbis, “An Analysis of the New York Board of Superintendents Guiding Statement for Supervisors and Teachers on Moral and Spiritual Values and the Schools,” 4.

spiritual and moral values can be neither taught nor learned outside of a religious context. While they allowed that there was “little doubt that most members of the New York Board of Rabbis would agree with the Superintendents on this score,” they nonetheless “cannot accept this assumption as policy for our public schools.” They were not prepared to “insist that good citizenship is possible only among people who are religious” and believed that “such a conclusion would constitute a serious offense against millions of religiously unaffiliated Americans who lead wholesome and moral lives.” Though using the euphemism of “unaffiliated Americans”, the rabbis took a bold stand on this. They stood squarely against the oft-stated argument that only a small minority of malcontents were concerned with Bible reading in public schools, and that those who agreed with them ultimately supported atheists, communists or their fellow travelers. The rabbis also wanted to make clear that they believed that when the rights of religious minorities were threatened or trampled upon, it posed a danger to the “rights of all.”¹¹⁴ This was an argument made by SBC elites time and time again after *Schempp*, both in testimony before Congress, and to their own fellow Baptists who abhorred the decision. Fourthly, the rabbis argued that the policy would inevitably cause some sectarian strife, because some teachers—wittingly or not—would advocate their own brand of religion, while others would “no doubt, become advocates of a watered-down, meaningless “public school religion”.”¹¹⁵ This is another argument that would be made by SBC elites before Congress, though more in the context of discussing “non-denominational” prayer in the wake of *Engel*: a prayer sufficiently watered-down to offend “nobody” was not one that a saved Baptist was very interested in praying to their risen Christ. The Rabbis found neither of these outcomes acceptable. Fifthly, the rabbis caution that the superintendents’ call to “teach the moral code and identify God as the ultimate source of natural and moral law” can only lead to a “perilous realm of theological dispute” over Natural Law, and “fierce denominational disputes.”¹¹⁶ Baptists, ever suspicious of creeds and non-Biblical sources of authority (not to mention Catholic-sounding sources such as “Natural Law”) would have been likely to agree. In addition, the rabbis read into the superintendents’ statement “the implication that religious groups in our community are derelict in meeting their responsibility for the religious education of our children.”¹¹⁷ While acknowledging that there was always room for improvement, this was not an implication they were prepared to accept.

The rabbis vitiated against this by assuring that, “Standards are set and religious schools and teachers are licensed by the Jewish Education Committee, and they do not recognize another other agency with the authority for this “sacred and difficult responsibility”.”¹¹⁸ Baptists would have agreed wholeheartedly that religious education was neither the responsibility nor the rightful jurisdiction of the state. The problem that the rabbis (and others) would have with this audience is convincing them that reading

¹¹⁴ The New York Board of Rabbis, “An Analysis of the New York Board of Superintendents Guiding Statement for Supervisors and Teachers on Moral and Spiritual Values and the Schools,” 4.

¹¹⁵ The New York Board of Rabbis, “An Analysis of the New York Board of Superintendents Guiding Statement for Supervisors and Teachers on Moral and Spiritual Values and the Schools,” 5.

¹¹⁶ The New York Board of Rabbis, “An Analysis of the New York Board of Superintendents Guiding Statement for Supervisors and Teachers on Moral and Spiritual Values and the Schools,” 6.

¹¹⁷ The New York Board of Rabbis, “An Analysis of the New York Board of Superintendents Guiding Statement for Supervisors and Teachers on Moral and Spiritual Values and the Schools,” 4.

¹¹⁸ The New York Board of Rabbis, “An Analysis of the New York Board of Superintendents Guiding Statement for Supervisors and Teachers on Moral and Spiritual Values and the Schools,” 6.

the Bible (without comment) was tantamount to religious education or a religious practice.

Penultimately, the rabbis were certain that values were being properly taught in public schools and that if anybody “requires assurance,” they suggested an “impartial survey” be taken which they nonetheless were certain would “demonstrate that these values were adequately taught.”¹¹⁹ In other words, the schools were not obviously broken, and they should not be fixed unless they were surveyed (impartially) and found to be broken, which the rabbis were certain would not be found to be the case.

Lastly, though significantly, the rabbis insisted that “it is not our intention to discuss the document in terms of legality”.¹²⁰ While making it clear that they were not intending to sue anybody or legally challenge the superintendents’ actions or document, they nonetheless insisted that “even if every teacher in the school system carried out these proposals with the best of good will, the measures would still constitute a clear violation of the constitutional guarantee of separation of church and state.”¹²¹ Great care was taken in how the rabbis framed their critique: not as lawyers or with any threat of legal challenge, but by gently and clearly pointing out problems, and inviting Christians to think about their own legacy. This might have been particularly poignant for Baptists, for whom the “separation of church and state” language was part of its denominational history. It also was another clear example of how gingerly Jews needed to, and did, tread in order to not suffer the consequences of Christian backlash. While this work made its way into the CRC files of the Southern Baptist Convention, I was unable to determine precisely who sent it and which SBC elites received it. Copies also made their way into the libraries of the University of California, University of Washington, Northwestern, Brigham Young, and elsewhere.¹²²

As a counter example, a document with obvious Jewish connections, published in the 1950s, made its way to the SBC CLC elites. It was entitled “Church, State and Education,” a reprint from the *American Jewish Year Book* by Nathan Schachner.¹²³ Schachner was an American trained as a lawyer and a chemist, but also a prolific writer of science fiction in the 1930s. Asimov called his work the “epitome of science fiction.”¹²⁴ Later, Schachner was an autodidact biographer of Hamilton, Burr, Jefferson and the “Founding Fathers.”¹²⁵ In 1948, he wrote a book on the history of the AJC.¹²⁶ This seems to have precipitated a willingness to be associated with clearly Jewish

¹¹⁹ The New York Board of Rabbis, “An Analysis of the New York Board of Superintendents Guiding Statement for Supervisors and Teachers on Moral and Spiritual Values and the Schools,” 6.

¹²⁰ The New York Board of Rabbis, “An Analysis of the New York Board of Superintendents Guiding Statement for Supervisors and Teachers on Moral and Spiritual Values and the Schools,” 7.

¹²¹ The New York Board of Rabbis, “An Analysis of the New York Board of Superintendents Guiding Statement for Supervisors and Teachers on Moral and Spiritual Values and the Schools,” 7.

¹²² New York Board of Rabbis, *The American Council for Judaism: An Analysis and Evaluation of Its Platform and Program: A Factual Study* (New York: The Board, 1963). See <http://www.worldcat.org/title/american-council-for-judaism-an-analysis-and-evaluation-of-its-platform-and-program-a-factual-study/oclc/4164232> (accessed December 12, 2014)

¹²³ Nathan Schachner, “Church, State and Education” (Pamphlet, n.d.), box ARB8-2 (CRC resource files) folder 22-11 “Religion in the Public Schools 1950s), Southern Baptist Historical Library and Archives.

¹²⁴ Isaac Asimov, *Gold: The Final Science Fiction Collection* (Harper Voyager, 2003), 213.

¹²⁵ While it was somewhat unusual for Jews to publish biographies of the Founding Fathers in the 1940s, there are examples. Saul Kussiel Padover, professor of history at the New School for Social Research, wrote *Jefferson: A Great American's Life and Ideas*, first published in 1942. He wrote about Alexander Hamilton and James Madison also.

¹²⁶ Nathan Schachner, *The Price of Liberty: A History of The American Jewish Committee* (American Jewish Committee, 1948).

organizations, something not evidenced earlier in his career, and he afterwards published in the *American Jewish Year Book*. That materials and arguments regarding church-state issues from a Jewish writer of pulp science fiction, would have informed Southern Baptist elites in 1950s Nashville, Tennessee seems extraordinary.

In his article, Schachner cited a 1915 Louisiana case, *Herold v. Parish Board*, in which Bible reading was forbidden in public schools because non-Christians had rights that needed respecting.¹²⁷ He wrote, “Whereas in 1913 only two states had provisions for the mandatory reading of the Bible, by 1933 the number had increased to twelve and the District of Columbia.”¹²⁸ In addition, by that time eighteen states permitted Bible reading at the option of local boards, while only eleven states mandated a prohibition.¹²⁹ The evidence was clear that state-sponsored or tolerated practice was increasing. The implication was that this was dangerous. As with all the other pamphlets with possibly controversial arguments or sources, further copies were available by writing the “Community Relations Service”, and the AJC was not named on the pamphlet. I argue that this was likely intentional and certainly prudent.

The *Religious Education* journal was first published in 1906 and its participation in the church-state discussion showed there was professional and academic interest in this debate. The prolific Jacobson (from the AJC) appears again in a pamphlet called “Religion in the Public Curriculum” which was reprinted from *Religious Education*, May-June 1953.¹³⁰ Reprinting from academic and professional journals helped legitimize the AJC’s arguments, even when—as in this case—the article was written by AJC officers. Another reprint from *Religious Education*, was a pamphlet version of the article “Kentucky Pioneers” by J. Mansir Tydings.¹³¹ Tydings was the director of the Division of Moral and Spiritual Education in the Kentucky Department of Education. He advocated using “teaching moments” when reading Shakespeare to instill morality or leveraging the inevitable school ethical problems to teach values, instead of the recitation of Bible verse. That Tydings was southern man and probably a Baptist himself would not have been lost on the SBC members of the CLC. His rhetorical gesture to hardy “pioneers” as the epitome of true Americans would also have resonated. Still, printed on the back of the pamphlet, it was noted that copies of the pamphlet were available from the urban Jews of the AJC.

An example of a reprint from a non-religious magazine by the AJC is from an article in the 1955 edition of *Reporter Magazine*, “The Fight Over America’ Fourth ‘R’” by William Lee Miller. Miller was from Yale Divinity School and professor of Religion at Yale and Smith College before becoming a staff writer for the magazine.¹³² He started off by noting that the patriotism of the “religious revival” was most urgently felt in public schools. He quoted the New York Board of Regents’ (the ones who would soon be sued by Vitale) 1954 statement, “These troubled times call for the teaching of ‘Piety

¹²⁷ 68 So. 116

¹²⁸ Schachner, “Church, State and Education,” 1.

¹²⁹ Schachner, “Church, State and Education,” 1.

¹³⁰ Philip Jacobson, “Religion in the Public Curriculum” (Pamphlet, n.d.), box ARB8-2 (CRC resource files) folder 22-11 “Religion in the Public Schools 1950s), Southern Baptist Historical Library and Archives.

¹³¹ I could find no explicit connection between the Tydings of Kentucky and Senator Millard Evelyn Tydings or his adopted a son, Joseph Davies Tydings, who was also a Senator representing Maryland.

¹³² William Lee Miller, “The Fight Over America’ Fourth ‘R’” n.d., box ARB8-2 (CRC resource files) folder 22-11 “Religion in the Public Schools 1950s), Southern Baptist Historical Library and Archives.

and Virtue' in the schools, and of that dependence upon Almighty God so clearly recognized in the Declaration of Independence, the Constitution of the United States, the Constitution of the State of New York, and in the pronouncements of the great leaders of our country."¹³³ Miller took issue with the "guiding statements," arguing that the schools' job was to teach, not inculcate with religion. He reminded his readers that, "The public school did not bring "secularism" to America, and it would not and could not bring it "religion." He deployed a number of arguments which would be redeployed in both *Engel* and *Schempp*, including those that children are particularly susceptible to adult coercion, and that the state may in fact do violence to the very piety it attempts to promote. For instance, Miller said "Young people are often not too hard to persuade but too easy; they take positions and choose up sides before they know what they are talking about. A good teacher in the public schools may do religion a service by holding back the headlong rush to take positions and set beliefs, indicating that there is vastly more to the subject of religion than can possibly be dealt with in the public school."¹³⁴ For Baptists, the "taking positions and set beliefs" or anything that smacks of dogma or creeds is anathema. However, getting them to agree that reading the Bible "without comment" was akin to taking a religious position was not without its challenges. Pamphlets such as these may well have helped arm Southern Baptist elites with arguments they could deploy when they eventually encountered opposition to *Engel* and *Schempp* from elements in their own denomination, or when they spoke as "friends of the court" or were asked to speak before congress.

While the AJC used myriad pamphlets to get its message across, they were not shy about sending its luminaries to speak at public engagements as well. A typewritten transcript of a speech by Philip Jacobson entitled "The Relation of Religion To Public Education" was delivered to the "Annual Conference on Moral and Spiritual Values" at the University of Kentucky, Lexington, on June 25, 1956.¹³⁵ This annual summer conference began in 1948 and was presented under the auspices of the University. The transcript appears to be typed (i.e. not a reproduction) and "The American Jewish Committee" is prominent on the cover page. Jacobson spoke directly to Cold War anxieties and to the fact that most at the time people "think" about the issue of religion in the schools with "our hearts and our emotions."¹³⁶ He also admitted that there were those for whom the "alarming increase in rates of juvenile delinquency is evidence" that the schools had failed to "perform their function" of socializing the youth.¹³⁷ He also acknowledged concern from the clergy who, "observe that the motivating force in our national life is a pervasive secularist philosophy, an all-embracing materialism. The deteriorating process, they assure us, has already set in, eating at the roots of our moral and ethical community."¹³⁸ Jacobson set out to quell these fears.

Jacobson did not shy away from a bit of rhetorical flourish, and is not afraid to scold parents or clergy for heaping upon schools the burden of any shortfall in religious education in the home or church. He said, "It is for the schools to perform a special

¹³³ Jacobson, "Religion in the Public Curriculum."

¹³⁴ Miller, "The Fight Over America' Fourth 'R.'"

¹³⁵ Philip Jacobson, "The Relation of Religion To Public Education" June 25, 1956, box ARB8-2 (CRC resource files) folder 22-11 "Religion in the Public Schools 1950s), Southern Baptist Historical Library and Archives.

¹³⁶ Jacobson, "The Relation of Religion To Public Education," 1.

¹³⁷ Jacobson, "The Relation of Religion To Public Education," 2.

¹³⁸ Jacobson, "The Relation of Religion To Public Education," 2.

magic, to fill the void of religious illiteracy and root out paganism. I am particularly saddened by the apparent abdication of the churches, one of whose spokesmen recently said, “Evidently home and church have not sufficed for the rectitude of conscience.”¹³⁹ Jacobson wound up this speech with a five-point argument: that schools should maintain complete neutrality with respect to religion, that there be no religious instruction for teachers, that there be complete equality for “every shade of religious opinion”, and that pertinent mention of religion as relates to “teaching of history, the social studies, art, literature and other subjects” is fine but that schools are “not adjunct of church or synagogue, but rather as one of the chief instruments for developing an informed citizenry and achieving the goals of American democracy.”¹⁴⁰ Again, it is notable that Jacobson is delivering his address to an audience in Kentucky, rather than the Yankee audiences of New York or Boston. While not located in the “deep” South, Kentucky had been a border slave state and the year 1956 was shortly after *Brown v. Board*, a decision outlawing racial segregation and widely unpopular in segregated locales. To have a notable New York Jew invited to give a strict separationist argument at the University of Kentucky event was significant. We see direct evidence of the intellectual exchanges taking place between an urban, cosmopolitan Jew of the AJC and “provincial” Southerners, most of whom would have been Southern Baptists.

While I have primarily viewed documents from the 1950s, when these cases first start to wind their way through the courts, we also have some early 1960s documents which exhibit concern for what “release time” is going to mean (recall that pre-*Engle* it looked like the “release time” compromise might be the model that would be reproduced in the United States). There was a lot going on in international politics in the early 1960s. On Wednesday, October 11, 1961 President John F Kennedy held a press conference, wherein he discussed sending General Maxwell D. Taylor to Saigon to meet with officials regarding the recent attacks on the people of South Vietnam and answered questions from the press on the situation in Berlin and the construction of the Berlin Wall.¹⁴¹ That day, on the Upper Westside of New York, sixty people gathered for an “off-the-record”, invitation-only discussion of “shared time” (also known as “release time”) and then lunched at the Jewish Theological Seminary.¹⁴² The appendix from the report marked “CONFIDENTIAL” has a reprint of the *Saturday Review* article “While School Keeps” from page 51 of the November 18, 1961 issue of that magazine. It read, in part:

Protestant and Jewish leaders see in the plan a way to avoid a bitter dispute over the issue of public funds for parochial schools. Some also see in it a means for providing more effective religious training for children of their faiths without assuming the enormous expense of setting up complete parochial schools systems. Roman Catholic leaders are equally anxious to avoid a bitterly divisive fight over the issue and see in the plan a possible way to extend the essentials of parochial school training to all

¹³⁹ Jacobson, “The Relation of Religion To Public Education,” 2.

¹⁴⁰ Jacobson, “The Relation of Religion To Public Education,” 16.

¹⁴¹ “Press Conference, 11 October 1961 - John F. Kennedy Presidential Library & Museum,” accessed November 8, 2011, <http://www.jfklibrary.org/Asset-Viewer/Archives/JFKWHA-052.aspx>.

¹⁴² R.L. Hunt, “Shared-Time Schools” (CONFIDENTIAL Report, October 11, 1961), 3, Box AR 138-2 (CLC Resource Files) folder 22-12 “Religion in the Public Schools-1960,” Southern Baptist Historical Library and Archives.

Catholic youth without placing an impossible financial burden on the Catholic community.

It is worth recalling the contingency of this moment, as few predicted the sweeping changes that *Engel* (and then *Schempp*) would bring to the church-state issue. It is clear that many viewed some flavor of “release time” as the only real, workable solution. In addition, not a few wondered whether, if churches were teaching morals and values and religion why not also history and literature and anything not strictly “secular”, like math and science? While acknowledging the dangers of the counterfactual, it is not unlikely that dialogues of this sort would have continued in the absence of the Supreme Court’s intervention, with the eventual implementation of two-tiered educational system—“public” and religious—in some areas of the United States.

By 1963, pamphlets were not sufficient to the task in articulating the AJC’s message on church-state issues in light of *Engel* and *Schempp*, and Jacobson crafted a “guide for discussion” which included, “a new chapter on School Prayers and revised material on Bible Reading and other Church-State issues in the new.”¹⁴³ Note the non-threatening frame of “guide” and “for discussion” which is further evidenced by the fact that it “gives no ready-made answers; takes no sides. It states fully and dispassionately the pros and cons of nine major subjects”.¹⁴⁴ Costing 75 cents (sent to the American Jewish Committee, Institute of Human Relations) for a full forty four 8.5x11 pages, the piece also sported an “easy to use tab index and space for notes”.¹⁴⁵ Thus the workbook was not only nonthreatening but invited interactivity! Yet another example of the care with which SBC elites engaged with the gentile audience.

I have argued that the AJC elided or obscured their authorship of certain pamphlets, lest Jews in general or the AJC in particular experience backlash or other negative consequences from being associated with a separationist view of church-state relations. Is there evidence that they were in fact concerned about such consequences? Rabbi Arthur Gilbert helped articulate this concern in an address, noting “in the constellation of problems that confronts us as citizens and Americans, the question of religion in the public schools is rather insignificant” and furthermore that Jews “are dealing here not simply with legal issues but with human relations, the relation between people, the relations of a school to a community, the relations of the Jewish community to the Christian community.” Gilbert, Director of Interreligious Cooperation for the Anti-Defamation League of B’nai B’rith, spoke of his grassroots upbringing, where there was not much support in the community for his people. He sought to answer the question of why the church-state issue was of special concern to Jews: “It is true, as some analysts point out, that there has been no “shedding of blood” nor violence to Jewish property. But there have been occasions where crosses were burned on the lawn of a Jewish parent who raised objections to a Christian play, or harrassing (sic) telephone calls were made to Jewish parents for their objection to the posting of the Ten Commandments. There is a case where a Jewish merchant, though he may have only

¹⁴³ “Religion in Public Education Flyer” (Flyer, 1963), box, AR 138-2 CLC-Resource Files, folder 22-13 “Religion in the Public Schools, 1961-1963,” Southern Baptist Historical Library and Archives.

¹⁴⁴ “Religion in Public Education Flyer.”

¹⁴⁵ “Religion in Public Education Flyer.”

imagined a boycott, felt compelled to put an ad in the newspaper saying, “I am not the Goldberg who asked that Christmas be taken out of the public schools.”¹⁴⁶

In 1960, there were still *real* consequences for Jews who objected to practices that the Christian Hegemony deemed normative, particularly where Jews represented a significant minority. The rabbi suggested that Jews should pick their battles. It is lost to us from whom and how the CLC received this document. Why would a transcript of a Jewish speaker to a Jewish audience be of interest to Southern Baptists? I suspect it was forwarded from contacts in the AJC to a contemporary at the SBC, or perhaps even by the rabbi himself. Gilbert concluded, “I believe strongly however, that were we to use other methods and were we to equip ourselves with a better understanding of what motivates our Christian neighbors, we might achieve a different kind of result in our relationship with them.”¹⁴⁷ Here is clear evidence that by 1960, Jews in positions of authority in national organizations were attempting to discover what motivated their Christian neighbors, and how this would be of use in addressing the church-state issue. Later, in his 1966 essay, *Religious Freedom in Jewish Tradition*, Gilbert argued, “Jews are still disadvantaged in many ‘Christian countries’ where the faithful control the structures of education and impose rites of Christian affirmation on school children as part of school policy. We are concerned ... when the evangelical purposes of one church or of all churches are supported through disbursements from the public treasury.”¹⁴⁸

Rabbi Gilbert was also active in radio programs, which often spoke to church and state issues. The National Conference of Christian and Jews (NCCJ) inaugurated a program called “Religious Freedom and Public Affairs,” which ran a radio program on NBC called “Faith in Action.”¹⁴⁹ The program featured national and regional representatives who discussed issues about religion in the public square and about which religious groups differed. It hoped to tackle “complex and knotty questions such as public funds for the church school, religious practices in the public schools.”¹⁵⁰ At the time, federal aid to public schools was being discussed at the national level, and the Catholic hierarchy had threatened that they would oppose any aid to schools that doesn’t give aid to parochial schools also, arguing that Catholics were already paying “double taxes” at the local level to fund public schools and provide religious ones.¹⁵¹ In the May 12th 1963 Faith In Action program, it was suggested that right after the *Engel* decision there “may have been some hasty reporting” which influenced the reactions of the Catholic hierarchy. Nonetheless, there was still great concern within the Catholic hierarchy with the “growing secularization” and “growing materialism” of the culture.¹⁵²

¹⁴⁶ Arthur Gilbert, “Rabbi Arthur Gilbert’s Address to the Jewish Community Council on Church-State, Detroit” April 20, 1960, 1, Box AR 138-2 (CLC Resource Files) folder 22-12 “Religion in the Public Schools-1960,” Southern Baptist Historical Library and Archives.

¹⁴⁷ Gilbert, “Rabbi Arthur Gilbert’s Address to the Jewish Community Council on Church-State, Detroit,” 2.

¹⁴⁸ Neophytos Edelby and Teodoro Ignacio Jiménez Urresti, *Religious Freedom* (New York: Paulist Press, 1966).

¹⁴⁹ The Conference was located in New York City, just south of Central Park and just east of Carnegie Hall at 43 W. 57th St. This is just a block from the American Jewish Committee offices at 65 East 56th Street. It is worth noting that the offices of many a religious-oriented organization were all within walking distance of each other, these elites would have seen each other often in restaurants, trains and even on the street.

¹⁵⁰ “Faith in Action, Transcript of May 19, 1963” May 19, 1963, box AR 138-2 CLC-Resource Files, folder 22-13 “Religion in the Public Schools, 1961-1963,” Southern Baptist Historical Library and Archives.

¹⁵¹ “Faith in Action, Transcript of May 19, 1963.”

¹⁵² “Faith in Action, Transcript of May 12, 1963” May 12, 1963, box AR 138-2 CLC-Resource Files, folder 22-13 “Religion in the Public Schools, 1961-1963,” Southern Baptist Historical Library and Archives.

A century before, the Catholic response would have been seen through the lens of the Eliot School Rebellion (sparked by the beating of a Catholic boy who refused, on advice from his priest, to read the King James Version of the Ten Commandments aloud in a Boston public school) which provided the impulse to accelerate the creation of parochial schools and resist being proselytized by the Protestant Establishment.¹⁵³ Even a generation earlier this issue may still have had some currency, but by the 1960s the Catholic hierarchy saw the specter of modernity and “secularism” as the greater evils.¹⁵⁴ The Jewish community, however, remained steadfast in its separationist stance.

Rabbi Gilbert responded that the “Jewish community enthusiastically supported prayer decision” and was optimistic about the upcoming *Schempp* case.¹⁵⁵ With regard to the various calls to overturn *Engel*, he did not think the amendments would get very far, but allowed that “many or most Protestants are going to be deeply disturbed if the Court rules against Bible reading.”¹⁵⁶ In the broadcast of March 7, the moderator asked the Rabbi about “non-sectarian prayer” and if he might support Bible reading “only from the Old Testament.”¹⁵⁷ Gilbert avoided a direct answer and added that the majority of Jews simply wanted a separation of church and state. This would be the consistent message and approach from the AJC: deflect sensational questions and avoid controversy yet firmly hold fast their commitment to the separation of church and state. The rabbi further indicated that, when it came to the discussion of majority rule, one justice in *Engel* asked if Hawaiian Buddhists should force Christian kids to say “Buddha prayers.”¹⁵⁸ Again, this is indicative of the AJC approach--quoting or reprinting the words and works of Christian judges and scholars to help make their point for them.

Sharing the radio program commentary with Rabbi Gilbert was Kenneth Wilson, executive editor of the *Christian Herald*. Gilbert asked him if it wasn't the case that “Protestants also were quite divided in reaction to [*Engel*]; there did not appear to be any one prevailing viewpoint.”¹⁵⁹ He asked him to interpret “Protestant” concerns with regard to the question of religious practices in the schools, and Wilson allowed that there was a division as “Many Protestants saw the New York prayer as a violation of the principle of Church and State” while “Others, however, felt that this decision was a watering down of a rightful religious influence in the public schools.”¹⁶⁰ Wilson also thought the court had hinted at broader Establishment violations, outside of the schools, and Gilbert allowed that Justice Douglas may have “suggested that there might be a whole host of other involvements of church and state that can be called into question, such as religious slogans on the coinage” and such. This was exactly the sort of slippery slope that opponents of *Engel* had been shouting about, especially the “In God We Trust” inscription on U.S. currency, motto, and the fourth verse of the Star-Spangled

¹⁵³ John T. McGreevy, *Catholicism and American Freedom: A History* (W. W. Norton & Company, 2004), 1–15,42.

¹⁵⁴ A more extensive discussion of this can be found in chapter 3. See also Jon Gjerde and S. Deborah Kang, *Catholicism and the Shaping of nineteenth Century America* (Cambridge; New York: Cambridge University Press, 2012).

¹⁵⁵ “Faith in Action, Transcript of May 12, 1963.”

¹⁵⁶ “Faith in Action, Transcript of May 12, 1963.”

¹⁵⁷ “Faith in Action, Transcript of March 7, 1963” n.d., box, AR 138-2 CLC-Resource Files, folder 22-13 “Religion in the Public Schools, 1961-1963,” Southern Baptist Historical Library and Archives.

¹⁵⁸ “Faith in Action, Transcript of March 7, 1963.”

¹⁵⁹ “Religious Practices in the Public Schools” (Transcript of Radio Broadcast, May 12, 1963), 2, box, AR 138-2 CLC-Resource Files, folder 22-13 “Religion in the Public Schools, 1961-1963,” Southern Baptist Historical Library and Archives.

¹⁶⁰ “Faith in Action, Transcript of May 12, 1963.”

Banner (whence the idea of the motto likely originated, during the War of 1812). Additionally, many opponents of *Engel* railed against the possibility that chaplains in the military would be outlawed, the Bible would disappear from courtrooms, etc. Without hearing the radio broadcast itself, it is hard to tell if Gilbert is genuinely sympathetic to these concerns or not. He does go out of his way to alert his listeners to the various sides of the issue with respect to Protestant reactions.

Thus far we have surveyed the pamphlets and other media that were constructed by the AJC and known to be read by or in the possession of Southern Baptist elites. But is there any direct evidence that the AJC executives were targeting the Protestant audience? An abstract of the program statement for the 1953 “PUBLIC INFORMATION AND EDUCATION DEPARTMENT INTERRELIGIOUS DIVISION” meeting of the American Jewish Committee, the “Methods and Materials” section reads:

Public education promoted through AJC Chapters, special purpose organizations, local citizens’ groups and educational and civil organizations
Production and distribution of articles encouraged
Information service provided for staff, researchers, authors and others
Bibliography made available to interested organizations and individuals.
Resources of agency made available where serious community tensions have developed due to church-state conflict.
Consultation with religious leaders—*meetings initiated with important Protestant leaders.* Current legislative developments analyzed¹⁶¹

One can well imagine the AJC worthies coming equipped with plenty of their shiny church-state pamphlets when they visited with the important Protestant leaders mentioned. Later, on page six of the transcript, the report bemoans the fact that, “Public ignorance of and apathy toward church-state problems is a major obstacle.”¹⁶²

These pamphlets were not always targeted at Christians. The AJC also crafted pamphlets that targeted Jewish audiences. On April 18, 1955, Maury B Fagan wrote, on *Philadelphia Jewish Community Relations Council* letterhead, to Rabbi Morris N. Kertzer, director Interreligious Division, AJC, about his concern that the Jewish lay people were not sufficiently educated or enthused about church-state issues, and asked if more pamphlets might be in order.¹⁶³ He said, “Perhaps I should make clear that in my judgment the question of convincing the Jewish Community that it has a tremendous stake in the maintenance of separation of church and state is the big

¹⁶¹ “PUBLIC INFORMATION AND EDUCATION DEPARTMENT INTERRELIGIOUS DIVISION, Abstract of Program Statement, 1953” June 10, 1952, 6, Call # RG 347, Title: American Jewish Committee collection 1918-1970s, GEN 10, “Box 44, Folder 3” “Ch-ST American Jewish Committee (1950-1961),” YIVO Institute for Jewish Research. *Italics added for emphasis*

¹⁶² “PUBLIC INFORMATION AND EDUCATION DEPARTMENT INTERRELIGIOUS DIVISION, Abstract of Program Statement, 1953.”

¹⁶³ Fagan formed Anti-Defamation Council — later the Jewish Community Relations Council — of Philadelphia, conducting studies on ethnic and racial discrimination and prejudice, including one that documented a quota system limiting the number of Jews in medical schools in the area. In 1941, they formed the Philadelphia Fellowship Commission. Fagan and the Fellowship Commission worked closely with the Philly chapter of the NAACP, which had joined the Commission in 1942.

<http://www.ajc.org/site/apps/nlnet/content2.aspx?c=ijTTI2PHKoG&b=1531915&ct=1152981> Accessed 11/06/2012

problem which faces us locally all over the country...Until and unless rank and file members of Jewish organizations become convinced that we are not making a mountain out of a mole hill, there will neither be the budget to support much work nor cooperation from the Jewish community-at-large. A brief, well written pamphlet or series of articles on this subject would make an invaluable contribution. Perhaps the American Jewish Committee could undertake this job.”¹⁶⁴

The reply of April 21 came from Phil Jacobson who agreed that, “I’ve actually *felt* the lack of urgency in the lay audiences to which I’ve spoken...when they walk out the door, they shed the problem from them because they do not feel that it touches them personally.”¹⁶⁵ Jacobson would go on to labor tirelessly in this area, writing scores of works, including a 47-page *Religion in Public Education: A Guide for Discussion* in 1969. But in this post-*Zorach* and pre-*Schempp* era, he sounded pessimistic about the possibility of galvanizing the ranks. Jacobson continued, “Will another and different kind of pamphlet make an appreciable difference? Frankly, I don’t know. I would certainly want to talk this over with you to see if we can’t come up with the right handle. I have one approach in mind; I’m sure you have some thoughts on what such a pamphlet should look like. Let’s try to get together over the week end.”¹⁶⁶

Clearly, AJC officers were communicating and working with Jewish elites from other major cities, and targeting pamphlets at Jewish lay audiences as well as Christian ones. Though we have no evidence of a direct connection, Philadelphia is the city where Ellory Schempp lived, and about a year after Jacobson’s letter was posted, 1956, Schempp staged his protest at the Abington Township school.

For confirmation on how self-consciously circumspect the elites of the AJC were when it came to worrying about what Christians would think of their church-state stance, we can see the care (and sometimes, self-censorship) which permeated their communications with the gentile world. In January of 1952, their NATIONAL COMMUNITY RELATIONS ADVISORY COUNCIL had its EXECUTIVE COMMITTEE MEETING, and in the statement by Mortimer Brenner on “*Religion in the Public Schools*” he wrote:

Although the NCRAC became involved in this area as far back as 1944, the first year of its existence, it was not until the spring of 1947 that the NCRAC agencies and the Synagogue Council of America adopted their first joint statement of position on the subject of release time. That joint position was adopted unanimously. It was implemented unanimously with the submission of the brief filed on behalf of all the religious and community relations agencies in the McCollum case.”¹⁶⁷

¹⁶⁴ Maurice B. Fagan, “Letter to Rabbi Morris N. Kertzer, Director Interreligious Division, AJC, April 18, 1955” April 18, 1955, Call # RG 347, Title: American Jewish Committee collection 1918-1970s, GEN 10, “Folder 8” “Ch-St Conferences Philadelphia J C R C (1950-55), YIVO Institute for Jewish Research.

¹⁶⁵ Philip Jacobson, “Letter (reply) to Maury B Fagan, April 21, 1955” April 21, 1955, 1, Call # RG 347, Title: American Jewish Committee collection 1918-1970s, GEN 10, “Folder 8” “Ch-St Conferences Philadelphia J C R C (1950-55), YIVO Institute for Jewish Research.

¹⁶⁶ Jacobson, “Letter (reply) to Maury B Fagan, April 21, 1955,” 2.

¹⁶⁷ Mortimer Brenner, “NATIONAL COMMUNITY RELATIONS ADVISORY COUNCIL EXECUTIVE COMMITTEE MEETING Minutes,” January 15, 1952, 1, RG 347.17.10, Box 44, AJC Record Group GEN-10, AJC memos, YIVO Institute for Jewish Research.

Later on page 2 he adds, “Two significant circumstances in connection with the 1948 resolution must be stressed:

- (1) As adopted at the Sixth Plenary Session of the NCRAC and by the Synagogue Council, the statement included opposition to Bible-reading, hymn-singing and certain other practices; but for public relations reasons, the published version of the statement did not include this passage.¹⁶⁸

The AJC specifically did not want the published versions of its reports to include church-state issues *for public relations reasons*. The American Jewish Congress was less concerned about PR issues and less circumspect in its dealings with the non-Jews, whereas the circumspection of the American Jewish Committee has tended to mystify its participation, even when the evidence of it has been clear.

To be sure, the AJC was not the only institution to field activists involved in separationist battles, though others have received more extensive treatment in the literature. As noted in chapter 1, nothing here intends or purports to suggest that the Southern Baptists of the BJC or the Jews of the AJC were the sole players in this drama. My argument is simply that their roles were significant, that this story has not been widely told, and that the intellectual commerce between the two had the effect of making the elite of the BJC more cosmopolitan in its outlook, while likely distancing them from lay Southern Baptists and the right wing of the SBC.

¹⁶⁸ Brenner, “Minutes,” 2.

Chapter Three

Which Church and Whose State? POAU Debates with American Catholicism over an Emergent Pluralism and the Meaning of the Establishment Clause

Yet so natural to mankind is intolerance in whatever they really care about, that religious freedom has hardly anywhere been practically realized, except where religious indifference, which dislikes to have its peace disturbed by theological quarrels, has added its weight to the scale. In the minds of almost all religious persons, even in the most tolerant countries, the duty of toleration is admitted with tacit reserves. One person will bear with dissent in matters of church government, but not of dogma; another can tolerate everybody, short of a Papist or a Unitarian; another, everyone who believes in revealed religion; a few extend their charity a little further, but stop at the belief in a God and in a future state. Wherever the sentiment of the majority is still genuine and intense, it is found to have abated little of its claim to be obeyed.

–John Stuart Mill, *On Liberty*, 1869 ¹

From its inception, the Protestants and Other Americans United for the Separation of Church and State (POAU) was focused on a Manichean struggle between itself and what it viewed as a powerful and dangerously illiberal Catholic Church bent on the destruction of that liberty. The POAU elites considered it the only organization in the U.S. solely dedicated to the preservation of the separation of church and state, and the Catholic Church as their archenemy.² This *raison d'être* lasted until the 1980s, when the erosion of conservative Evangelical support in the aftermath of *Schempp* led to a major restructuring of the POAU.³ Ironically, those conservative Evangelicals who fled the POAU, who believed that the Warren Court rulings were more dangerous to the Protestant Establishment than was the Catholic Church, became willing to work with conservative Catholics on shared issues, thus forming the alliance that came to be called the Religious Right. The Religious Right, in turn, became the new *bête noire* for the revamped, Americans United (or AU, formerly the POAU) in the “Culture Wars” beginning in 1980s.

This narrative starts with the organizational meetings in 1947 which lead to the formation of the POAU and ends at the beginning of the rightward turn of the Southern Baptist Convention in 1979. This chapter examines the POAU, from its founding through the 1950s, 1960s, and 1970s, when the organization was primarily concerned

¹ John Stuart Mill, *On Liberty*, ed. *Currin V. Shields* (Indianapolis: Bobbs-Merrill, 1956) p11

² In a 1951 press release, the PAOU declared they were “The only organization in America devoted exclusively to the task of maintaining religious liberty as grounded in the separation of church and state.” The POAU worked with the Baptist Joint Committee, American Jewish Committee, and others with separationist interests, but felt uniquely focused on this issue. POAU materials frequently contrasted the organization as small, poor, and embattled as compared to an immense, rich, and aggressive Catholic Church. See “PAOU Press Release, Friday, Feb. 2, 1951” n.d., Box 14, Americans United for the Separation of Church and State, MC 185, Series 1: Admin files Folder, “Press Releases, 1951-1987,” Seeley G. Mudd Manuscript Library.

³ *Brennan, School District of Abington Township, Pennsylvania v. Schempp* (BRENNAN, J., Concurring Opinion), 374 U.S. 203 (U.S. Supreme Court 1963).

with opposing American Catholicism and Catholic attempts to gain public support for its projects, primarily a share of public funds for parochial school children and Catholic schools. Public support for parochial schools was anathema for the POAU, who considered such projects not only an outrage, but as a perilous and slippery slope towards the destruction of the separation of church and state altogether, and a grave danger to republican democracy in the United States.

The POAU was explicit and public about its concerns regarding American Catholicism. In 1948, these ideas were trumpeted in its *Manifesto*, published on the front page of the *New York Times*, in that same month's *Christian Century*, and in many other newspapers and popular magazines.⁴ The POAU set up a Washington D.C. office because they "recognized that there were many religious implications to political decisions then being made in Congress, the courts, the state legislatures, and that there were political implications to many of the changes in religious life of the nation."⁵ The "changes in religious life" the POAU was concerned with were the growth in population and political power of American Catholics. The "religious implications" they feared were the destruction of religious liberty, by the Catholic Church.

These concerns were made explicit in its *Manifesto*, its press releases, its public pronouncements, and the speeches of its spokesmen and keynote speakers. In 1951, Paul Blanshard, the keynote speaker of the Third National Conference on Church and State, hosted by the POAU, declared that "A fundamental conflict exists between the ideals of democracy and the political ambition of the Roman Catholic hierarchy" and further that the citizens of the United States must confront the Catholic Church's "foreign imperialism" which was as dangerous (if not more so) as communism and which urgently needed to be combated.⁶ This was the first major conference hosted by the POAU and attended by the media. Though the event was framed around the separation of church and state it nonetheless included a variety of religious trappings.⁷ The conference was held in the neo-classical and Protestant-identified edifice Daughters of the American Revolution Constitution Hall, and the event began with an organ prelude, an invocation, and "Ye Watchers and Ye Holy Ones" and "Battle Hymn of the Republic" sung by the Methodist-affiliated American University Chorus. The opening included an offering and the Lord's Prayer, before Blanshard rose to give his keynote speech entitled "The Vatican and the Kremlin."⁸ The speech was an abstract of Blanshard's book, *Communism, Democracy, and Catholic Power* which had just been

⁴ Glenn L. Archer and Albert J. Menendez, *Dream Lives On: The Story of Glenn L. Archer and Americans United* (Washington: Robert B Luce, 1982), 70.

⁵ Archer and Menendez, *Dream Lives On*, 71.

⁶ Paul Blanshard, "Press Release from the Third National Conference on Church and State" February 2, 1951, Box 14, Americans United for Separation of Church and State Records, MC 185, Series 1: Admin Files, folder "Press Releases, 1951-1987," Seeley G. Mudd Manuscript Library.

⁷ POAU elites were friendly to Christianity in the public square and unconcerned with evidence of the Protestant Establishment in public schools, including Bible reading and prayer, in this period. As shall be demonstrated, most considered Protestantism as a necessary foundation for republican democracy and integral to Americanism. In their view, the goal of separation was broadly anti-sectarian, rather than antireligious, and specifically anti-clerical. Anti-clerical and "church" in POAU writings referred to the Catholic Church *tout court*.

⁸ "Program, The National Conference on Church and State, Third Anniversary of POAU, 1948-1951 January 31-February 1, 1951" January 31, 1951, BOX 3, MC 185 Americans United for Separation of Church and State Records Series 1: Administration Files Folder (11 in finding aid) The National Conference on Church and State, 1951, 1962, 1964, Seeley G. Mudd Manuscript Library.

published.⁹ This dire warning about American Catholicism was not a unique occurrence or isolated incident for POAU conferences. Five years later, in his address to the Eighth National Conference of the POAU, the Rev. Frederick H. Olert, minister of Second Presbyterian Church of Richmond, VA, maintained that “the seedplot out of which our American traditions have come is not Roman Catholicism but Protestantism.”¹⁰ The constant refrain from POAU conferences and materials was that Roman Catholicism was antithetical to Americanism, and these Catholic projects were a grave danger to the separation of church and state. Throughout the 1950s, some of its public warnings about the Catholic hierarchy contained a whiff of the Black Legend. In its press release issued during the 1956 national conference, the POAU warned of the “Unconstitutional, and oftentimes specifically illegal *intrusions of the Roman Catholic management, the hierarchy, into the functions of government, moving toward a union of church and state, to produce that from which our colonial forebears once fled.*”¹¹ While always careful to frame the “Roman Catholic citizen” as no different than his Protestant, Baptist, or atheist counterpart, the POAU’s message was clear that those supporting or deferring to the Catholic hierarchy were complicit in its un-American and dangerous project.

Blanshard’s likening of the Vatican and the Kremlin was not an isolated incident, but a common theme in the POAU’s arguments throughout the Cold War era.¹² At the height of the Cold War, POAU spokespersons frequently argued that “Roman Clericalism” was as dangerous as International Communism.¹³ At the 1957 Southern Baptist Convention, held that year in Chicago, PAOU Director Archer was adamant about this perceived threat.¹⁴ As reported in the subsequent POAU press release, Archer sharply denounced what he saw as the “mounting Roman Catholic pressure for government subsidies to their schools” and warned of serious consequences “if Roman Catholic priests resort to political action to enforce their demands for subsidy, as they did last week in Connecticut.” Archer was alluding to plans of some Catholics to exert political pressure on or reprisals against legislators who refused to vote for a bill granting state funds to Catholic schools. “This is a grim business,” Archer warned darkly, “and it may lead to pretty serious consequences. The ramparts need watching at such a time as this. They need watching because there are enemies in our camp who would decree their destruction. Certainly Communism is such a foe...the second threat to our ramparts, though not so much is heard about it, is Roman Clericalism...I see no

⁹ Paul Blanshard, *Communism, Democracy, And Catholic Power*, (Beacon, 1951).

¹⁰ Rev. Frederick Olert, “Address to the 8th National Conference of Protestants and Others United” (Press Release, January 26, 1956), Box 14, Americans United for Separation of Church and State Records, MC 185, Series 1: Admin Files, folder “Press Releases, 1951-1987,” Seeley G. Mudd Manuscript Library.

¹¹ “PAOU Press Release, Jan 27, 1956” n.d., Box 14, Americans United for the Separation of Church and State, MC 185, Series 1: Admin files Folder, “Press Releases, 1951-1987,” Seeley G. Mudd Manuscript Library. **Italics added**

¹² **Ironically, Catholic spokesmen were quick to note that Blanshard had himself been a socialist, and the red-baiting cut both ways.** For a trenchant article on the American public’s changing concerns with Catholicism and how mounting paranoia regarding Communism influenced Supreme Court decisions, see James E. Zucker, “Better a Catholic than a Communist: Reexamining *McCullum v. Board of Education* and *Zorach v. Claiborn*,” *Virginia Law Review* 93, no. 8 (December 1, 2007): 2069–2118.

¹³ “PAOU Press Release, Jan 27, 1956.”

¹⁴ **Significantly, G. Emmanuel Carlson, executive director of the Baptist Joint Committee (BJC), gave his report to the SBC right before director Archer of the POAU gave his.** The BJC’s contribution to the Southern Baptist separationist project is covered in chapter 1.

difference. Both things are tyranny.”¹⁵ This sort of martial imagery—the battles, foes, ramparts, etc.—were common in POAU rhetoric. For many American Catholics, having Catholicism likened to Communism and the Vatican conflated with the Kremlin sounded like bigotry and the ugly Nativism which many had experienced directly, and rhetorical battles between these two camps were waged from the very inception of the POAU.¹⁶

The America in which the POAU imagined a church and state separation was one where the idea of the Protestant Establishment went unchallenged. The Protestants of the POAU were clearly alarmed by Catholic political power and the Catholic vision of pluralism in the post-war era. A 1962 article about Ed Kennedy and his campaign against the Boston Brahmin George Cabot Lodge, opined that “The *Cleveland Plain Dealer*, gazing into the crystal ball of the future, pointed out that if Robert Kennedy succeeded his brother in 1968, and Edward Kennedy reached the White House in 1976, Caroline would be old enough to enter politics at that time.”¹⁷ This article, which was quickly reprinted in the POAU’s *Church & State* magazine, is evidence of the specific concern of a Kennedy (i.e. Catholic) “dynasty” wresting control of the Presidency, and evinces a near obsession with a possible Catholic takeover of state, local, and federal governments. This POAU antagonism towards Catholic projects and an orientation towards protecting Protestant privilege continued throughout the 1970s, until a rapid shift in priorities and adversaries occurred in response to the flight of conservative evangelical support for the organization in the post-*Schempp* political landscape. Concomitant with the “rise” of the Religious Right, the POAU reinvented itself and opposed this new adversary in church-state issues.

An Evolving Pluralism in the Post-World War II U.S.

Excavating the debate between POAU spokesmen and American Catholics helps to elucidate the history of church-state separation in the post-war era it developed on the ground, but also aids in our understanding of contested ideas of pluralism in this period. A goal of this chapter is to elaborate on and support Schultz’s assertion that “Understanding [Jews’ and Catholic’s] struggle for pluralism as a root cause of their contentiousness adds some much-needed context to the public school battles of this era, which have usually been interpreted as a simple quest to keep the state free from religion, and religion free from the state. The battles were instead a struggle about the exact dynamic of pluralism that would create civic peace in multicultural America.”¹⁸ To that end I shall detail the origin of the POAU and its public school battles in post-World-War II U.S., which were always framed as a defense of the “Separation of Church and

¹⁵ Archer and other POAU spokesmen often used martial imagery which describing their conflicts with the Catholic hierarchy: ramparts, battles, foes, reinforcements, enemies in our camp, etc. “POAU Press Release, May 31, 1957” n.d., Box 14, Americans United for the Separation of Church and State, MC 185, Series 1: Admin files Folder, “Press Releases, 1951-1987,” Seeley G. Mudd Manuscript Library.

¹⁶ The POAU responded to accusations that they were no different than the KKK or No-Knowings by assuring the public they repudiated those movements and that they were simply critiquing the Catholic hierarchy and Church for its stated policies and documented actions. POAU spokesmen said they had no animosity towards Catholic individuals. For many Catholic critics of the POAU these claims rang hollow, and seemed to be a distinction without a difference.

¹⁷ “Politicians Weasel on School Aid”, *Church & State*, Vol 15, No 5” May 1962, 7, American’s United for Separation of Church and State, 1947-1993, Box 1, Seeley G. Mudd Manuscript Library.

¹⁸ Schultz, “Favoritism Cannot Be Tolerated,” 578.

State” but inevitably involved a larger, more complicated, dialectic with American Catholics about their place in a pluralistic America, and the danger to democracy that many Protestants saw in a more muscular, activist Catholic hierarchy operating in the U.S.¹⁹

Ironically, this battle against Catholicism ultimately weakened the Protestant Establishment and its hegemony, as the POAU found itself, in its all-out effort to combat public monies helping fund Catholic projects and supporting the U.S. Supreme Court’s de-Christianization of public schools in the *Engle* and *Schempp* rulings, which in turn alienated many conservative evangelical Christians.²⁰ Thus, the POAU, from the very first, carried within it the seeds of its own destruction, and its subsequent displacement by a more egalitarian, pluralistic Americans United was inevitable.²¹

Origins of the POAU

Founded in 1947, the institution now known as Americans United (AU) was originally incorporated as Protestants and Other Americans United for the Separation of Church and State (POAU). Their first full-time executive director was Dr. Glenn L. Archer, who passed away in 2002.²² When AU Executive Director Barry Lynn issued a eulogy for Archer, William Donohue, the president of the Catholic League for Religious and Civil Rights, fired off a press release accusing Archer of having been an “inveterate Catholic basher” and claimed that AU had covered up these details and “washes the face of a bigot.”²³ Donohue and the Catholic League do not represent moderate, mainstream Catholics. Donohue is known for his extreme rhetoric and has been called “contentious” and “perennially indignant” by the *New York Times*.²⁴ The Catholic League today represents a right-leaning, if nonetheless vocal, strain of conservative Catholicism in the U.S.²⁵ The contemporary AU is rarely at loggerheads with the Catholic hierarchy in the U.S. Nonetheless, the Catholic League foregrounded those Catholic battles with the POAU of a bygone era. This chapter endeavors to excavate a history which helps explain Donohue’s venom towards Archer (and thus Lynn). This isolated, twenty-first century

¹⁹ The POAU never considered the American bishops and hierarchy in the U.S. as separate from the Catholic Church world-wide, and often cited mistreatment of Protestants by Catholics outside the U.S., or the Vatican’s signing the Concordat of 1953 with Franco’s Spain, and other evidence of Catholic support for illiberal and religiously intolerant regimes or policies, as evidence of the danger posed by the American Catholic hierarchy.

²⁰ As with the BJC, the monomaniacal concern with Catholic church-state issues blinded the POAU to the growing fifth column of right-leaning Protestants, especially Southern Baptists and other evangelicals, who fortified the nascent Religious Right and became the POAU’s primary adversaries in the 1980s and up to the present day. The idea of an alliance between conservative Catholics and evangelicals was unthinkable for POAU leaders.

²¹ “Seeds” metaphor originally from Karl Marx and Frederick Engels, “Address of the Central Committee to the Communist League”, London, England, March, 1850

²² <https://www.au.org/media/press-releases/statement-on-death-of-glenn-archer-first-au-executive-director> (Accessed: December 12, 2012)

²³ <http://www.catholicleague.org/americans-united-washes-the-face-of-a-bigot-2/> (Accessed: December 12, 2012)

²⁴ Paul Vitello, “A ‘Marine’ for Catholics Sees a Time of Battle,” *The New York Times*, May 15, 2009, sec. New York Region, <http://www.nytimes.com/2009/05/15/nyregion/15donohue.html>.

²⁵ Paul Vitello, “A ‘Marine’ for Catholics Sees a Time of Battle,” *The New York Times*, May 15, 2009, sec. New York Region, <http://www.nytimes.com/2009/05/15/nyregion/15donohue.html> Donohue was parodied in a South Park episode entitled “Fantastic Easter Special” which aired on Comedy Central on April 4, 2007.

quarrel hinted at the long-standing conflicts which existed when the POAU was founded in the mid-twentieth-century and which developed over the subsequent decades.²⁶

Rev. Barry W. Lynn joined AU in 1992. Lynn is a United Church of Christ minister and an attorney specializing in American civil liberties issues, especially church-state matters. Since the advent of the latest Culture Wars, circa 1980, the AU has championed the separation of church and state by confronting the constituency it identifies as the Religious Right.²⁷ However, this was a shift from its historical nemesis, the Catholic Church. That is, the POAU was originally constituted by concerned Protestants, led by Southern Baptists, to counter what they believe to be the growing political power of the Catholic Church in the United States, a situation they felt was, at best, inimical to the separation of church and state and, at worst, a possible death knell for civic republicanism and American democracy. From its inception in 1947 to the rise of the Religious Right, the POAU was primarily concerned with opposing the Catholic Church, especially in the areas of public financing for parochial schools and diplomatic ties between the United States government and the Vatican. As historian Kevin Schultz notes, “In short, the POAU sought to counter Catholic unity by creating a unified Protestant opponent and reasserting its power.”²⁸ However, I argue the POAU was not a unified Protestant institution but rather an evangelical, and largely Southern Baptist project.

In his article on the legal battles over the 1951 distribution of Bibles in public schools, historian Schultz demonstrates the importance of religion in the public debates, not simply as a legal exercise to determine the meaning of the separation of church as state, but also as a struggle over the meaning of pluralism in the post-war United States. The relationship of the POAU and the Catholic hierarchy is one of strange bedfellows in Schultz’s article. As outlined in “Favoritism Cannot Be Tolerated”, these adversaries found themselves in agreement over their opposition to the Gideons International (an evangelical Christian group) program of distributing Bibles at public schools.²⁹ It is a rare exception which proved the rule of antagonism between these groups. There is a contrast between the inter-faith comity argued in Schultz’s *Tri-Faith America* and the narrative of a Protestant Hegemony mounting a staunch defense of its power and privileges, as evidenced by the POAU vigorously opposing what it viewed as a muscular and dangerous American Catholicism. Catholics sought a definition of pluralism which included aid to parochial school children, diplomatic ties with the Vatican, and ultimately a Catholic president. The spokesmen of the POAU found this view of

²⁶ The Catholic League began in 1973 as a low-profile, anti-defamation advocacy group. The Catholic League for Religious and Civil Rights was founded in 1973 by Jesuit priest Virgil Blum, as their version of the Jewish Anti-Defamation League (ADL), to counter discrimination against Catholics in the media and government. Like the ADL, the group used both public education campaigns and lawsuits. Since 1993, under Donohue, the Catholic League has become more vocal and known for its provocative statements. In an interview with the author, Rev. Lynn insisted Donohue’s response to the Archer obituary was an isolated incident and a “tempest in a teapot.”

²⁷ AU’s self-described history can be found here: <https://www.au.org/about/our-history>. The word “Catholic” is never mentioned, though this *raison d’être* of opposing government aid to “private religious schools” is noted. (Accessed: December 12, 2012)

²⁸ Schultz, “Favoritism Cannot Be Tolerated,” 585.

²⁹ These battles over the legality of distributing Bibles and religious literature on public school grounds continue over a half-century later: “Injunction Upheld in Iron County Bibles Case; Both Sides Claim Victory,” *seMissourian.com*, accessed August 9, 2014, <http://www.semissourian.com/story/1555377.html>.

pluralism abhorrent. The Protestants of the POAU fought for a definition of Americanism and pluralism that would include Catholics, so long as they eschewed those policies they deemed dangerously illiberal.³⁰ Thus, the POAU in this period was vigorously defending the Protestant Establishment, rather than embracing a more capacious Tri-Faith America given that the POAU was founded on the idea that Catholic participation and power in American politics would corrupt and perhaps destroy republican democracy in the United States.

Additionally, the argument in this chapter intervenes in Sehat's *The Myth of American Religious Freedom*, especially the penultimate chapter, "The Liberal Moment", where he outlines the direction of jurisprudential action on religious issues by the Supreme Court from the 1920s to World War II, illustrating the decline of the Protestant moral establishment, the development of a liberal church-state jurisprudence, and the subsequent push-back from both religious conservatives and liberals.³¹ While the dissertation as a whole supports the thesis of the *Myth of Religious Freedom*, this chapter suggests that anti-Catholic arguments played a greater role in the construction of separationist rhetoric than Sehat's book records.³² Since the SBC was neither part of the Mainstream Protestantism (i.e. "liberal") nor the NEA (i.e. "conservative") groups included in Sehat's analysis, they, and the POAU founded and funded by them, are largely absent from his analysis. Since the SBC became the largest Protestant denomination in this time frame, an exploration of the Southern Baptist and POAU role in this story aids in the understanding of the construction of separationist ideas and the competing notions and the limits of religious pluralism in the post-war United States. Finally, as there is as yet no academic monograph on the history of the POAU, this chapter fills some gaps there and helps provide context to the two insider histories published by the organization.

Primary Sources

This chapter considers two insider histories of the POAU as primary source material to explore how the POAU viewed itself, its Executive Director and its nemesis, the Catholic Church.³³ Copyrighted in 1966, *Embattled Wall, AMERICANS UNITED: an Idea and a Man* was self-published by the POAU, written by C. Stanley Lowell, and the first biography of Archer and the history of the institution.³⁴ Lowell was active in

³⁰ Director Archer and other POAU spokesmen argued that Catholic religious (nuns, priests, bishops, etc.) were unable to contradict such policies, since they had taken oaths to their God and the Pope to uphold them, and these oaths had not been renounced.

³¹ Sehat, *The Myth of American Religious Freedom*. See also chapter 1.

³² See Philip Hamburger *Separation of Church and State* (Harvard University Press, 2002) for this argument as it applies to the eighteenth and nineteenth centuries, and Kevin M. Schultz's, "'Favoritism Cannot Be Tolerated': Challenging Protestantism in America's Public Schools and Promoting the Neutral State," *American Quarterly* 59, no. 3 (September 1, 2007) for twentieth century examples.

³³ A third insider history, also published by the POAU, duplicates the other two and is not used here. However, it does include the full *Manifesto* of the POAU and the text from some Archer speeches, and might be useful for those looking for published primary sources: Harold E. Fey, *With Sovereign Reverence;: The First Twenty-Five Years of Americans United*, (R. Williams Press, 1974).

³⁴ C. Stanley Lowell, *Embattled Wall: Americans United, an Idea and a Man*, First Edition (Protestants and Other Americans United for Separation of Church and State, n.d.).

many other POAU-related activities during the 1960s.³⁵ The second insider history, *The Dream Lives On: The Story of Glenn L. Archer and Americans United*, published by Robert B. Luce, Inc. in 1982, also includes a biography of Archer.³⁶ Both histories are framed around a heroic narrative of the POAU's first Director.³⁷ *The Dream Lives On* was co-written by Archer and Albert J. Mendez. Additional primary sources cited in this chapter include letters, meeting minutes, press releases, pamphlets, conference programs, POAU journals, newspaper clippings, and other materials in the "Americans United for Separation of Church and State Records, 1947-2007" collection in the Princeton University Library Department of Rare Books and Special Collections, Seeley G. Mudd Manuscript Library, Princeton, New Jersey. To my knowledge, this is the definitive archive of POAU institutional materials. A rich trove of additional POAU material recently became available in the Flynn T. Harrell Collection on the Separation of Church and State, South Carolina Political Collections, The University of South Carolina Libraries. This collection also includes a wealth of pamphlets, journals, clippings, audio-visual media, etc. as well as myriad correspondence by Harrell, including many with POAU elites and employees. Harrell was raised a Baptist and once served as President of the South Carolina Baptist Convention.³⁸ He first contacted Archer in 1976.³⁹ Harrell went on to serve on the POAU's National Advisory Committee, Board of Trustees, Personnel Committee, Nominating Committee and Executive Committee into the 1990s.⁴⁰ Some additional out of print sources, such as *The Conspiracy that Failed: The Inside Story of the Campaign to Scuttle Church-state Separation in New York*, and the Lowell and Archer books were available for purchase and are in the possession of the author.⁴¹

Historiography

This dissertation engages primarily with the works of historians Sarah Barringer Gordon, David Sehat, Kevin Schultz, and Jon Gjerde. Philip Hamburger's ideas from

³⁵ Lowell was a guest on the radio show "Night Call" in 1965, the first call-in show with a national audience, entitled "What the Vatican Council II Did Not Do" and criticized Vatican II as not having gone far enough: http://catalog.gcah.org/DigitalArchives/NightCall/Lowell_Vatican_DA_1156.mp3. His book *The Great Church-State Fraud*, a 1973 work critical of government aid to parochial schools and U.S. diplomacy with the Vatican, is reviewed in *California Western Law Review*, 9 Cal. W. L. Rev. (1972-1973)

http://heinonline.org/HOL/Page?handle=hein.journals/cwlr9&div=40&g_sent=1&collection=journals#569

³⁶ Archer and Menendez, *Dream Lives On*.

³⁷ A third insider history, by Dr. Harold E. Fey, also published by Americans United, adds little in the way of new material. It does include the complete POAU *Manifesto* in its appendixes: Fey, *With Sovereign Reverence*.

³⁸ A short biography can be found here: <http://library.sc.edu/scpc/Harrell.pdf> (Accessed July 12, 2014)

³⁹ The author is grateful for an interview with Mr. Harrell in June of 2014 while working in the archives of the University of South Carolina.

⁴⁰ Significantly, in the 1997, Harrell and his wife left the SBC and joined the Presbyterian Church/USA congregation, citing the growing conservatism of the Convention as their motivation. In an interview, Harrell explained that the "fundamentalism" now evidenced in the SBC was not the Baptist church he recognized. While beyond the scope of this chapter, Harrell's departure is indicative of how moderates and progressives in the SBC either fled or were forced out of the denomination. Luminaries who have formally left the SBC due to philosophical differences include Jimmy Carter, Bill Clinton, Al Gore, and Bill Moyers. In the 1920s, those denominations which fractured over fundamentalist-modernist controversies typically lost its conservative wing: with the SBC, it has been just the opposite.

⁴¹ Edd Doerr, *The Conspiracy That Failed: The Inside Story of the Campaign to Scuttle Church-State Separation in New York* (Americans United for Separation of Church and State, 1968).

Separation of Church and State are also explored, primarily as disputed, complicated, or referenced by the other three. A brief review of the relevant historiography is included below.

The POAU has not been a frequent subject of scholarship. As of 2014, only 23 articles in JSTOR even mention the organization.⁴² Gordon's *"Free" Religion and "Captive" Schools: Protestants, Catholics, and Education, 1945-1965* appears to be the only scholarly work that examines the origins and early activities of the POAU.⁴³ As Gordon demonstrates, when it comes to church-state jurisprudence and the tensions between these Protestants and Catholics over school issues, "the key battles occurred in the lower courts, and have been all but forgotten."⁴⁴ Perhaps even more importantly, those church-state narratives which focus primarily on jurisprudence and the history of case law "miss the opportunity to track the unfolding of a new constitutional regime at the ground level."⁴⁵ I argue that Southern Baptists played a more significant role than Gordon discovers in the founding and funding of the POAU, which she views as a "distinctly ecumenical community." Significantly, Gordon demonstrates how POAU support for *Engle* and *Schempp* in the early 1960s begins to tear apart this coalition, with the eventual quietus to the POAU (at least, in its original formation) coming after the right-wing takeover of the SBC.⁴⁶ As previously mentioned, the POAU thus bore in itself the seeds of its own undoing, by vigorously bringing disestablishment issues and church-state separation in the public schools lawsuits to public attention. Ironically, though neither the Catholic hierarchy nor the POAU elites wished to de-Christianize the public schools, with increasing religious pluralism in American society the "secularist" position was reinforced, became inscribed into case law with regard to public schools, and contributed to a destabilized Protestant Establishment.⁴⁷

In his *Myth of Religious Freedom*, Sehat sketches the familiar story of the religious "liberals" who emerged victorious in the fundamentalist-modernist battles of the 1920s. These theologically liberal (or in some cases, perhaps, simply tolerant) factions consolidated their control of the major American Christian denominations—Mainline or "ecumenical" Protestant denominations—and gathered to form the Federal Council of Churches (FCC).⁴⁸ Sehat writes that when it came to church-state relations, these factions "partially embraced the liberal moral vision that was emerging in the Court, though they rejected or missed its frank secularity and connected it with their vision of Christianity."⁴⁹ I argue that while some Southern Baptists did recognize, and were concerned with, this frank secularity, many of the SBC elites, and especially those who contributed to the BJC and the POAU, were primarily concerned with a project designed to thwart Catholic attempts to secure public support to parochial schools or

⁴² Jstor is a not-for-profit organization which provides access to back issues of nearly 2,000 academic journals.

⁴³ Gordon, "'Free' Religion and 'Captive' Schools."

⁴⁴ Gordon, "'Free' Religion and 'Captive' Schools," 1179.

⁴⁵ Gordon, "'Free' Religion and 'Captive' Schools," 1178.

⁴⁶ See Gordon note 225. David T. Morgan, *The New Crusades, the New Holy Land: Conflict in the Southern Baptist Convention, 1969-1991* (Tuscaloosa: University Alabama Press, 1996), 46.

⁴⁷ For more on this analysis see Jeffries Jr, John C, and James E. Ryan, *A Political History of the Establishment Clause*, SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, April 27, 2001), <http://papers.ssrn.com/abstract=267786>.

⁴⁸ The FCC never included the SBC.

⁴⁹ Sehat, *The Myth of American Religious Freedom*, 227.

diplomatic recognition of the Vatican. Elite Baptists who recognized the increased secularity taking shape in the Court's opinions considered it the "lesser of two evils" and viewed growing Catholic power in the United States as an existential threat to religious liberty, Protestantism, and Americanism. Sehat outlines the metanarrative which holds that after the controversies of the 1920s, fundamentalists initially grew alienated from society and withdrew into their own spheres.⁵⁰ These fundamentalists regarded the FCC denominations and their leaders as "morally and spiritually bankrupt."⁵¹ Then in the 1940s, fundamentalists reemerged into public life, "having grown unhappy with the futile effort of doing God's work by issuing wintry prophecies of the nation's impending doom."⁵² Sehat details how the National Association of Evangelicals (NAE) and the American Council of Christian Churches (ACCC) countered the projects of the FCC.⁵³ However, neither the NAE nor the ACCC ever included the SBC, which was then quickly becoming the largest Protestant denomination in the U.S. The NAE sought to remain theologically conservative while engaging in social welfare projects, while Carl McIntire's ACCC was designed to bring fundamentalists into direct opposition with the liberalism of the FCC. Ironically, McIntire's obsession with theological purity "managed to estrange even other fundamentalists in his zeal for doctrinal purity" and his quixotic quest caused his groups to "splinter into ever-smaller shards".⁵⁴ The dissertation considers McIntire and his ilk in chapter four on the *Seattle Bible Trial* of 1966. In this chapter, I argue that any analysis which omits the Southern Baptists is going to give an incomplete picture of the religious and political landscape. Thus, this chapter functions as both gap-filling and a corrective to the standard narrative.

Southern Baptists did not belong to the FCC, NEA and ACCC axis outlined by Sehat. Yet, as Mainline Protestant numbers would erode in this period, the SBC would become the largest Protestant denomination in the country. Southern Baptists would not have self-described as fundamentalists (they eschewed any written creed) and would have considered "evangelicalism" a phenomenon of the North.⁵⁵ Nonetheless, 1947 is precisely when the Supreme Court incorporates the Establishment Clause in *Everson v. Board of Education*, allowing public funds to support busing Catholic schoolchildren to parochial schools, which alarms Southern Baptists, and leads to the creation of the POAU.⁵⁶ I argue that the creation of the POAU is less a "re-emergence" of evangelicals but rather a willingness and ability of evangelicals in general and Southern Baptists in particular to participate directly in national politics and to put resources into lobbying organizations in the nation's capital. Including the POAU in the "post-*Scopes*" story

⁵⁰ Some historians argue that fundamentalists never retreated from politics, and succeeded in shaping education policy in the 1920s and beyond. See especially: Adam Laats, *Fundamentalism and Education in the Scopes Era: God, Darwin, and the Roots of America's Culture Wars* (New York: Palgrave Macmillan, 2012).

⁵¹ Sehat, *The Myth of American Religious Freedom*, 228.

⁵² Sehat, *The Myth of American Religious Freedom*, 228.

⁵³ ACCC is the national equivalent of the International Council of Christian Churches (ICCC).

⁵⁴ Sehat, *The Myth of American Religious Freedom*, 228. McIntire and his colleagues are discussed in chapter 4 which considers the *Seattle Bible Trial* of 1966.

⁵⁵ See the Introduction for a discussion on the difficulties and decisions around the use of the term "evangelical" in this dissertation.

⁵⁶ For the social and religious history of *Everson* see Gordon, "'Free' Religion and 'Captive' Schools," 1181–1191. Also at footnote 9, see Daryl R. Fair, *The Everson Case in the Context of New Jersey Politics, in Everson Revisited: Religion, Education, and Law at the Crossroads 1* (Jo-Renee Formicola & Hubert Morken eds., 1997)

more fully illuminates the religious ecology in which the Court's decisions are received and interpreted, as well as the limits of religious pluralism in this early post-war period.

Again, the analysis of the POAU in this chapter tests the limits of Schultz's thesis in *Tri-Faith America* and its exploration of post-WWII interfaith comity.⁵⁷ Schultz only fleetingly considers the contempt and alarm evinced by fundamentalists and right-wing evangelicals for a "creeping secularism," not to mention their scorn for the ecumenism of his tri-faith America. As many still do today, these constituencies approved of (King James Version) Bible reading and (Christian) prayers in the schools and other public places.

Since the SBC becomes the largest denomination in American Protestantism during the period studied by Schultz, leaving this institution out of the *Tri-Faith America* story gives an incomplete picture of the religious landscape. In 1927, The Catholic Church joined with Jews and some Protestants to form the National Conference of Christians and Jews (NCCJ). The NCCJ was a response to the anti-Catholic sentiment being expressed during Al Smith's run for the Democratic nomination and was designed to counter the bigotry of the Ku Klux Klan (KKK) and other nativist partisans of that era.⁵⁸ The NCCJ figures heavily in Schultz's argument in *Tri-Faith America*. However, by the 1940s, both Catholic religious and lay writers were claiming that the efforts and rhetoric of the POAU were indistinguishable from that of the Know Nothings and the KKK. In *Everson*, Catholics had seen the Junior Order United Americans Mechanics (JOUAM) and the Patriotic Order of the Sons of America (POSA) allied against them. The JOUAM had ties to the KKK and the POSA connections to conservative evangelicals.⁵⁹ The POAU was more aggressive, litigious and ecumenical than was the BJC and viewed the Catholic Church as antithetical to American democracy and a real danger to the separation of church and state. How might "tri-faith America" be understood in the context of this conflict? Schultz found ample evidence for the growth of religious toleration in post-WWII America, a period wherein Catholics and Jews held Protestants to the promise of religious freedom, and when the "Protestant nation" was replaced by what he calls the "Tri-Faith" nation. An engaging and useful book, *Tri-Faith America* does not contemplate the story of how America's largest Protestant denomination (the Southern Baptists) founded an organization (the POAU) which actively opposed the "second disestablishment" of Protestantism in American society. This chapter endeavors to fill that gap.

This chapter is also interested in the conversation between Schultz's *Tri-Faith America* and his 2007 article "Favoritism Cannot be Tolerated." The POAU is only mentioned tangentially in *Tri-Faith America*, as a strange bedfellow to its arch-rival the Catholic hierarchy, and thus Schultz's article is more germane to this chapter. It explores the limits of the Protestant Establishment in 1950s United States via the lens of a 1952 court case involving a New Jersey school board that allowed the Gideons to

⁵⁷ Schultz, *Tri-Faith America*.

⁵⁸ The NCCJ was concerned that the POAU was constructed specifically to attack the Catholic Church rather than confronting all church-state separation issues. See Gordon, "'Free' Religion and 'Captive' Schools," 1200. In 1999, the organization's name changed to The National Conference for Community and Justice. Perhaps, not unlike the Baptist Joint Committee and the Americans United, the NCCJ also found itself with a broader and less religious mission in the post-1980 Culture Wars.

⁵⁹ Gordon, "'Free' Religion and 'Captive' Schools," 1182. ⁵⁹ Chapter 1 examines this issue with respect to the BJC.

distribute the King James Version of the Bible to school-children over the objections of Catholic and Jewish parents.⁶⁰ Schultz notes how the issue drew in national religious groups, such as the Catholic hierarchy and the American Jewish Committee.⁶¹ While the boundaries between “church and state” were being argued, litigated, and inscribed in the mid-century years, in the 1950s the issue of whether proselytizing was allowed on public school grounds was still an open question. The defendant’s attorneys argued that the plaintiffs, the parents and children, were substitutes for the Catholic Church and Jewish organizations bent on challenging the Protestant Establishment.⁶² This may have been a mere legal tactic to have the case thrown out for lack of standing, but may also evidence the limits of pluralism in the public schools, where Catholics and Jews challenging the *status quo* were deemed out of line. Schultz locates this challenge as the pivot for a shift from civic republicanism to rights-based liberalism, and argues that “the procedural republic did not emerge out of the dislocation brought on by increased industrialism, but that it was shaped by post-World War II civil rights liberals seeking to delineate and create a pluralistic nation. Foremost in this collection of civil rights liberals were everyday Catholics and Jews working to establish a society that enabled them to be true to their unique characteristics while still granting them the latitude to be labeled Americans.” The Catholic hierarchy, however, considered “infidelity” (what today would be called “secularism”) the greater evil. These two impulses existed in tension, though by the twentieth century, with a robust parochial school system and greater political clout, the Catholic hierarchy was less concerned about anti-Catholicism in the public schools and more concerned with “infidelity.” American Catholics were not as monolithic and homogenous as POAU elites believed, however, as would be seen when some lay Catholics (and President Kennedy) supported the Supreme Court in the *Engel* and *Schempp* decisions. Ultimately, Schultz argues that we must recognize the role of religious minorities to properly understand the story of rights-based liberalism. He concludes, “That religious minorities were vital to the creation of the procedural republic is often forgotten; those derisive of liberal individualism usually cite the divisions of black power and cultural politics that followed it as principal provocateurs. In the thinking of these critics, the identities that shaped ‘identity politics’ were racial, sexual, or gendered.” Shultz argues that the story is complicated, and that these minorities were not always in agreement. The pitched battles between the POAU and American Catholics in this period show that Catholics and Protestants had very different notions of what pluralism would look like in the post-war United States. Schultz’s essay explores a case in which Jews and Catholics “came together to deny a persistent notion of civil republicanism ground in a singular founding quality, Protestantism.”⁶³ Clearly, the sort of separation advocated by Catholics was very different from the First Amendment as imagined by the POAU, which felt Catholicism was antithetical to republicanism and the Catholic hierarchy as inherently illiberal and antidemocratic. Legal historian Philip Hamburger argues that Protestant animus towards Catholics was always *the* animating principle behind advocates for the separation of church and state, and Schultz largely supports this argument in his article.

⁶⁰ *Tudor v. Board of Education of Borough of Rutherford*, 14 N.J. 31, 100 A. 2d 857 (1953)

⁶¹ Schultz, “Favoritism Cannot Be Tolerated,” 566. The AJC communications with and connections to the BJC are explored in chapter 2.

⁶² Schultz, “Favoritism Cannot Be Tolerated,” 567.

⁶³ Schultz, “Favoritism Cannot Be Tolerated,” 570.

While I do not wholly accept Hamburger's premise in his *Separation of Church and State*—that Americans in the Early Republic never envisioned a separation of church and state—when it comes to separationist battles by Southern Baptists in the twentieth century, my dissertation lends supports to his and Schultz's assertion that in the latter half of the nineteenth century, anti-Catholicism spawned a reconceptualization of the meaning of religious freedom into a doctrine of separation of church and state.⁶⁴ Schultz elaborates on Hamburger's argument concerning church-state jurisprudence troubles the standard narrative that "masks an uglier history."⁶⁵ Specifically, "the doctrine of separation emerged shortly after the nation's founding as a result of growing fears of churches, especially the Catholic Church."⁶⁶ Thus, the history of the founding of the POAU in the mid-twentieth century may be rooted in antagonisms stretching back into the previous century when "nativists and, more broadly, American Protestants adopted the principle of separation as a way to keep newly arrived Irish Catholics from obtaining the same social and political rights that Americans with a longer North American pedigree possessed."⁶⁷ With respect to the founding document, projects, and pronouncements of the POAU, many American Catholics viewed POAU concerns as identical to the nativist ones of a century earlier. When the POAU was founded in 1948, American Catholics had greater demographic, economic, and political power than ever before. According to Schultz, in the previous century "Protestants argued that a unified and powerful Catholic bloc might attempt to overturn republican government in favor of one controlled by the pope. Thus, to prevent Catholics from capturing free government, Protestants felt they had to deny Catholics equal civil and political rights."⁶⁸ By the twentieth century, the idea of disenfranchisement of immigrant Catholics was not intellectually tenable, but some Protestants still viewed Catholicism as inimical to civil rights thus they believed they were *protecting* constitutional rights by opposing Catholic projects they viewed as dangerous to democracy.⁶⁹ One goal of this chapter is to demonstrate how Protestant fears of Catholic projects were a catalyst for separationist politics, rhetoric, and jurisprudence in post-World War II America, and how this phenomenon lasted well into the 1970s, especially as concerned institutions founded by and connected to Southern Baptists, such as the POAU.

In the post-war era, Catholics were not satisfied with second-class citizenship, and an emerging definition of pluralism put them in conflict with the Protestants of the POAU. Many Catholics were stalwart Cold Warriors but also "torn by the increasing

⁶⁴ Hamburger, *Separation of Church and State*.

⁶⁵ Schultz, "Favoritism Cannot Be Tolerated," 574.

⁶⁶ Schultz, "Favoritism Cannot Be Tolerated," 574.

⁶⁷ Schultz, *Tri-Faith America*, 135.

⁶⁸ Schultz, "Favoritism Cannot Be Tolerated," 574.

⁶⁹ For examples of POAU objections to Catholic political engagement, see Archer's warning (above) that "if Roman Catholic priests resort to political action to enforce their demands for subsidy" there would be dire consequences. The POAU also vilified boycotts of Protestant businesses by Catholic lay people. Archer condemned the practice in his autobiography, and the POAU crafted an educational film condemning the practice as mean-spirited and un-American. See also Gordon, "'Free' Religion and 'Captive' Schools." Footnote105. HAROLD E. FEY, WITH SOVEREIGN REVERENCE: THE FIRST TWENTY-FIVE YEARS OF AMERICANS UNITED 12 (1974). POAU loved press coverage. See EBERSOLE, *supra* note 88, at 105 (quoting a speech by Archer calling for more space in the "religious press," as secular newspapers might be "throttled by fear of boycotts and reprisals").

religiosity demanded in Cold War America and the resurgent Protestantism that seemed to be part of it.”⁷⁰ American Catholics faced the conundrum of how to solve this “problem of pluralism”; they sought cultural and intellectual legitimacy in a society dominated by a Protestant Establishment which did not agree with their “diverse conceptions of the good.”⁷¹ There was no clear answer on how to achieve the goal of first-class citizenship, how to do so peacefully, and how to achieve this acculturation without losing Catholic ethnic and religious identities and uniqueness. While the public schools had always been sites for enculturation and Americanization of immigrants and “Others,” American Catholics had constructed a separate parochial school system that was outside the control of the Protestant Establishment. However, these parochial schools were never able to serve the majority of American Catholics. In the post-war U.S., due to a boom in the number of school-age children, there was a surge in Catholic fundraising to construct and enlarge parochial schools. As the demand began to outstrip capacity, Catholic organizations increased their lobbying for a share of government resources to assist parochial schools and its pupils. While this sharing of public funds seemed just and rational to many Catholics, it caused outrage and anxiety for many Protestants, especially Southern Baptists and the POAU.⁷² When the idea of federal assistance for schools was floated in this period, Catholics argued for a share of these resources also.⁷³ Thus, the Catholic hierarchy in the U.S. remained keenly interested in the public schools and their effects on Catholic schoolchildren. As Schultz points out, “In 1952, the Catholic Bishops of America adopted a resolution warning that the nation faced a grave danger from the ‘irreligious decay’ of its most important institutions, pointedly criticizing public schools for ignoring the importance of religion in the lives of children.”⁷⁴ This resolution came out just four years before sixteen-year-old Ellery Schempp protested the mandatory Bible reading at his school, which led to the Supreme Court decision which ruled there could be no sponsored devotional practices in the public schools. The Catholic hierarchy (and many lay people) believed

⁷⁰ Schultz, *Tri-Faith America*, 126.

⁷¹ Schultz, “Favoritism Cannot Be Tolerated,” 574.

⁷² Many Catholic groups were adamant that they not be left out of government school funding at the national level. Lobbying by the National Catholic Welfare Council (NCWC) led to Catholic interests being addressed in such proposals, including the National Defense Education Act (NDEA) of 1948. See Lawrence J. McAndrews, *Broken Ground*, 1 edition (Routledge, 2012), 25–31.

⁷³ The prospect of federal monies going to parochial schools deeply distressed POAU spokespersons. Debates over which sorts of schools should receive federal funds started soon after World War II. In 1946, the Thomas-Hill-Taft Bill was approved by the Senate and provided for federal money to fund education in the states in the form of block grants, with the possibility of the funding for textbooks or transportation aid being received by parochial school children. Education was a priority in Truman’s Fair Deal. Chairman of the Special Subcommittee on Federal Aid to Education in the House, Graham Barden (D-SC) rejected the Senate proposal and was expressly opposed to aid to any parochial schools. The parochial aid question created an uproar that essentially killed the legislation, though there would be similar bills later supported by the Eisenhower, Johnson, and Nixon administrations. When Barden was able to thwart a similar bill in 1949, Cardinal Spellman denounced it as “discrimination.” Eleanor Roosevelt, in her newspaper column, supported the bill and the “separation of church and state” whereby Spellman accused her of being anti-Catholic and her comments as “unworthy of an American mother.” This made for instant controversy in national headlines, and Spellman apologized, admitting there had been “many regrettable misunderstandings and misinterpretations.” See *Time Magazine*, Monday, August 15, 1949. Significantly, Coffman located Barden at the founding meetings of the POAU. Coffman, *The Christian Century and the Rise of the Protestant Mainline*, 254 footnote 26.

⁷⁴ Schultz, “Favoritism Cannot Be Tolerated,” 575.

that religion *should* be part of a child's education, including public school education, but they did not want that religious education to have a Protestant character or anti-Catholic elements. Ultimately, though, the Catholic hierarchy was more concerned with irreligion in the public schools than they were with Catholic schoolchildren being subjected to non-Catholic (King James Version) Bibles or prayers (i.e. the redacted, Protestant version of the Lord's Prayer). Most of the Catholic hierarchy took a dim view of the *Engle* and *Schempp* rulings of the early 1960s, which forbade prayers and the devotional use of the Bible by public school authorities. Whereas the POAU (along with the BJC) defended those rulings, in large part because they feared any emendation to *Schempp* would open the door for public aid to parochial schools, which they considered wholly unacceptable. The thesis of this chapter supports Schultz's assertion that, "Understanding [Jews' and Catholic's] struggle for pluralism as a root cause of their contentiousness adds some much-needed context to the public school battles of this era, which have usually been interpreted as a simple quest to keep the state free from religion, and religion free from the state. The battles were instead a struggle about the exact dynamic of pluralism that would create civic peace in multicultural America."⁷⁵ This chapter seeks to further explore this history, and show the sectarian roots to the creation and projects of the POAU and their contribution to the post-war, church-state challenges centered primarily around the public schools.

In his article, Schultz looks closely at the 1953 case *Tudor v. Board of Education of Rutherford and the Gideons International*, which sought to determine whether the Gideons could distribute bibles in a New Jersey public middle-school.⁷⁶ In this case the judge ruled the practice constitutionally permissible. Schultz argues that "More telling, however, was the fact that the decision arrived at roughly the same time as numerous Protestant complaints about Catholic intrusion into public school grounds—a claim that, more than anything else, stirred the pot of anti-Catholic animosity in postwar America...Could Protestants have advocates on campus while Catholics could not?"⁷⁷ The issue of consistency would become salient in subsequent cases after *Schempp*, which in 1963 instituted the doctrine of "no preference" by government regarding one religion over another for Establishment Clause cases. The POAU argued for a strong separation of church and state in order to ensure that Catholic schools received no public aid, but support of *Schempp* meant supporting the opposition of school-sponsored reading of the Bible in public schools, something they hitherto had shown no interest in combating. The POAU believed that maintaining their opposition to aid to Catholic schools was absolutely crucial, even if it meant defending a ruling, such as *Schempp*; a ruling which many of their conservative supporters found distasteful and wrongly reasoned. The "no preference" test in *Schempp* began to dismantle the Protestant Establishment, which had existed in American public schools from their beginning, something the POAU never set out to accomplish. POAU support helped defend and justify the Supreme Court cases which led to a high-water-mark for

⁷⁵ Schultz, "Favoritism Cannot Be Tolerated," 578.

⁷⁶ To understand how this ruling and the "flexible wall" of separation was viewed by its contemporaries, see Duncan O. McKee, "The Public Schools and the Bible," *Duke Bar Journal* 4, no. 2 (July 1, 1954): 127–31, doi:10.2307/1370845.

⁷⁷ Schultz, "Favoritism Cannot Be Tolerated," 583.

separationist jurisprudence, ultimately elaborated by the *Lemon* test in 1971.⁷⁸ Thus, though it was never their intention, by opposing Catholics, and helping thwart Congressional attempts to overthrow *Schempp*, the POAU ultimately undermined the Protestant Establishment.

In a little-known 1948 church-state case, *Zellers v. Huff*, Lydia Zellers sued the state of New Mexico, claiming that the Dixon public schools were run by the Catholic Church and had effectively become parochial schools.⁷⁹ The POAU funded and directed the Zellers' legal campaign, and attempted to frame the incident as a local example of a national problem.⁸⁰ The state of New Mexico was enjoined from allowing St. Joseph's Catholic School to run the nominally public school, and as neither the state nor St. Joseph's appealed, the matter was settled relatively quietly.⁸¹ The POAU considered this a huge win, and the case gained a modicum of national attention.⁸² The "captive school" narrative was of special interest to the Baptist press. Gordon finds evidence, from the National Catholic Welfare Conference, of 324 "Catholic-public" schools existing in the U.S. in 1948, and reports that "by the early 1950s, captive school cases were a distinct form of litigation, more common than busing, release-time, or funding suits."⁸³ I argue that those lawsuits were more common in this era precisely because of the POAU policy of concentrating their efforts to foreground those issues involving the Catholic Church, and the "captive school" narrative was very effective in capturing the attention of concerned evangelicals.⁸⁴ The POAU mounted publicity campaigns to highlight this

⁷⁸ Most Constitutional scholars, based especially on comments by Justices Kennedy, Scalia, Thomas, believe there are no longer five votes on the Supreme Court to uphold the *Lemon* test. See <http://law2.umkc.edu/faculty/projects/ftrials/conlaw/lemonest.html> (accessed: December 12, 2014)

⁷⁹ Following shortly after *Everson v. Board of Education*, which incorporated First Amendment freedoms to state law, the case might have tested the limits of that doctrine.

⁸⁰ Schultz, "Favoritism Cannot Be Tolerated," 584.

⁸¹ Dr. Holscher, professor of American Studies and Chair of Roman Catholic Studies in the Religious Studies program at University of New Mexico, has written about this case extensively. See also Kathleen Holscher, *Religious Lessons: Catholic Sisters and the Captured Schools Crisis in New Mexico* (New York: Oxford University Press, 2012), 11–12, 110–128, 154.

⁸² Dixon, New Mexico is and was an unincorporated, sparsely populated, mostly Latino community in a remote location north of Santa Fe. The lack of quality childhood education had troubled the community for 150 years, and many Northern New Mexico villages had yet to be fully secularized in the 100 years after the Treaty of Guadalupe, which turned the territory over to the United States. The history of public schools in this part of the country was particular and unusual, though the POAU, in pamphlets and press releases, nominated the incident as evidence for a nationwide project of "usurpation" of the public schools by the Catholic Church. The POAU also confronted the Catholic Church in densely populated, mostly European immigrant communities as well, though these encounters often did not lead to court cases in this period and were less publicized than *Zellers*. For more on the POAU's involvement in the Dixon incident, see Shelley Roberts, *Remaining and Becoming: Cultural Crosscurrents in An Hispano School* (Routledge, 2000). For examples of urban "Catholic-public" schools see Gordon "Free" Religion and "Captive" Schools.

⁸³ Gordon, "'Free' Religion and 'Captive' Schools," 1203.

⁸⁴ From its inception, the BJC was less litigious than the POAU, and while critical of the Catholic Church did not participate in lawsuits. The American Jewish Congress (AJCongress) was willing to litigate church-state issues, but took a very careful, measured, and long-term approach. For instance, Leo Pfeffer, council for the AJCongress, was opposed to the *Schempp* case, as he thought the time was not ripe to press the Protestant Establishment on Bible reading in the public schools. The American Jewish Committee (AJC) was even less likely to litigate. In the 1930s and early '40s, the ACLU defended Jehovah's Witnesses in a variety of cases involving literature, speech, and mandatory flag salutes. These cases centered on the Free Speech portion of the First Amendment, however, rather than the Establishment or Free Exercise clauses. In the late 1940s, the ACLU successfully led the challenges of *Everson* and *McCullum*,

issue, which became an “extraordinarily successful tactic” for energizing conservative Protestants.⁸⁵ These were campaigns wherein “the Catholic Church painted by the POAU rhetoric was rigidly hierarchical, monolithic, and secretive. By contrast, and almost always through innuendo rather than direct argument, Protestants were portrayed as open, free, and public-spirited.”⁸⁶ There are dozens of pamphlets in the POAU archives which deploy such rhetoric.⁸⁷ In one example, a reprint of a POAU magazine *Church and State* article, which was a transcript of a sermon delivered by Rev. C. Stanley Lowell (POAU Associate Director and author of the *Embattled Wall*) wherein he warned his flock that “Roman Catholicism with its 33 million members (the hierarchy’s figure) is a divisive influence in America today...they have worked to discredit and undermine the public schools.”⁸⁸ There were myriad, widely distributed, POAU pamphlets published along these lines. This particular pamphlet had been “printed and re-printed many times. Well over half a million copies have been distributed in all 48 states.”⁸⁹ Contrariwise, I am unaware of any PAOU pamphlets of that era which focused on the activities of the Gideons. The POAU was relatively unconcerned with “non-denominational” Protestant activities in the public schools. Schultz asks why the evangelical Gideons were allowed to bring Protestant religion into the public schools, but Catholics, in the “captive” schools, were not. He wonders, “Why hadn’t the courts protected the rights of Catholics to bring religion onto campus? Where was the line that demarcated the differences between these cases of proselytes?”⁹⁰ This was eventually addressed by the U.S. Supreme Court in *Schempp*, when the Court ruled Bible reading and prayer by school authorities, even denuded prayers and “non-sectarian” Bible reading without comment, was unconstitutional. However, the works of Gordon and Schultz show how this religio-political landscape was the battleground for differing notions of pluralism, educational goals, and the meaning and utility of the separation of church and state.

Philip Hamburger’s *Separation of Church and State* examines the issue of church and state in the early Republic and argues that separationist arguments were used as a bludgeon against American Catholics.⁹¹ Schultz agrees that, “As Philip Hamburger has shown, the principle of separation has long been a weapon used to keep upstart religious minorities in check by denying them the capacity to make national claims.”⁹² However,

which incorporated those clauses. By the 1950s, the ACLU pursued a careful and more moderate course, and the national office was initially reluctant to pursue *Engle* and *Schempp* cases of the early 1960s. The POAU was uniquely qualified, willing, and able to pursue Establishment Clause church-state cases in the 1950s, and the cases it was most interested in were “captive schools” ones involving American Catholics.

⁸⁵ Gordon, “‘Free’ Religion and ‘Captive’ Schools,” 1203.

⁸⁶ Gordon, “‘Free’ Religion and ‘Captive’ Schools,” 1204.

⁸⁷ Space precludes an exhaustive catalogue of all the pamphlets. The Rare Books and Special Collections University of South Carolina Libraries, Flynn Harrell Papers, contains two boxes of pamphlets. In this collection, of the dozens issued by the POAU in this era, over half focus on Catholic projects and the danger of the Catholic Church.

⁸⁸ Rev. C. Stanley Lowell, “THE SUMMONS, Originally a Reformation Sunday Sermon Delivered at Wesley Methodist Church, Washington D.C.” n.d., Box # 14, Americans United for the Separation of Church and State, MC 185, Series 1: Admin files, Press Releases, 1951-1987, Seeley G. Mudd Manuscript Library.

⁸⁹ Rev. C. Stanley Lowell, “THE SUMMONS, Originally a Reformation Sunday Sermon Delivered at Wesley Methodist Church, Washington D.C.”

⁹⁰ Schultz, “Favoritism Cannot Be Tolerated,” 584.

⁹¹ Hamburger, *Separation of Church and State*.

⁹² Schultz, “Favoritism Cannot Be Tolerated,” 584–585. See footnote 40

in the post-war U.S. the POAU never united most Protestants behind its project and they were often critical of ecumenical bodies which sought comity with Catholics. Schultz, while recognizing Hamburger's contribution, locates the pluralistic turn in twentieth century church-state jurisprudence as a field where the substantive Republic dominated by the Protestant Establishment gave way to a procedural Republic which recognized the equal rights of non-Protestants, and thus anticipated the rights-based approach applied later for issues of race, gender, and other markers.⁹³ This chapter supports Schultz's assertion that sectarian conflict was a fundamental context in numerous church-state cases in the postwar era. Inflecting Hamburger's thesis, Schultz argues that, "during the years between the Second World War and the rise of the civil rights movement in the early 1960s, religious divisions—especially between Protestants, Catholics, and Jews—were the acceptable grounds for hashing out the limits of diversity and for the affirmation that a neutral state that protects the rights of minorities is the most acceptable form of government in a multicultural nation—even if the result is what its opponents have labeled as the heartless 'procedural republic.'"⁹⁴ The debate over church-state separation among the evangelicals of the POAU and American Catholics was part of the "hashing out." Of course, the idea of cultural pluralism had existed for some time before this era.

The Jewish philosopher Horace Kallen is credited with coining the phrase "cultural pluralism," a term used to describe the attempts of smaller groups within a larger society to maintain their unique cultural identities, and have their values and practices accepted by the wider culture. Many believed that cultural pluralism required these practices be consistent with the laws, values, and expectations of "society", that is, the "mainstream" or dominant culture, which the POAU and many Protestants assumed to be the Protestant Establishment. In a 1915 *Nation* magazine article entitled "Democracy versus the Melting Pot," Kallen described America as a "federation or commonwealth of national cultures" and nominated the "orchestra" metaphor as a more accurate and harmonious idea than a "melting pot."⁹⁵ Kallen defined for Jews the sort of cultural pluralism that Catholics were also attempting to accomplish in the post-war U.S. As this chapter argues, the evangelicals of the POAU feared that if allowed to sit with the orchestra, a raucous Catholic minority would drown out the liberal tune being called by the Protestant Hegemony. In short, the POAU viewed the Catholic Church as holding values inconsistent with the dominant culture, and discovered in "separation of church and state" jurisprudence a method to combat that perceived threat. These sectarian concerns and cultural battles were not exactly new, of course, and a sketch of some nineteenth century examples may provide a productive context for those events that unfold in the mid-twentieth century. Additionally, many of the mature men who were advising and funding the POAU in the 1940s were raised and educated in the late nineteenth century, and thus the ugly Nativism of that era was within their living memory.

⁹³ For more on the procedural Republic, see Michael J. Sandel, "The Procedural Republic and the Unencumbered Self," *Political Theory* 12, no. 1 (February 1, 1984): 81–96.

⁹⁴ Schultz, "Favoritism Cannot Be Tolerated," 588.

⁹⁵ Daniel Greene, "A Chosen People in a Pluralist Nation: Horace Kallen and the Jewish-American Experience," *Religion and American Culture: A Journal of Interpretation* 16, no. 2 (June 1, 2006): 161–94, doi:10.1525/rac.2006.16.2.161.

Jon Gjerde's *Catholicism and the Shaping of nineteenth Century American*, published posthumously and edited by S. Deborah Kang, offers a wealth of information on the intellectual contests between Protestant and Catholics, as well as a correction to Hamburger's argument on the cultural (rather than strictly legal) construction of the separation of church and state.⁹⁶ As Kang explains, "Gjerde's work serves as response to Philip Hamburger's call to construct cultural and social accounts of the separation of church and state."⁹⁷ This chapter argues that these constructs still had currency in post-World War II America. I argue for an extension of Gjerde's claim that, "If it has currency in modern-day debates, the rise of Roman Catholicism in antebellum America tells us much about the conception of nation and the ways in which Catholicism was denominationalized in the nineteenth-century United States. Those who feared the Roman Church saw its very presence—in conjunction with guarantees of religious freedom—as offering enormous challenges to the nation."⁹⁸ This was precisely the fear of POAU elites in the mid twentieth century, despite and perhaps because of Catholic cultural assimilation occurring in post-war U.S. POAU elites were also concerned that their "Protestant" idea of religious liberty might contain the germ of its own undoing, inasmuch as it allowed the political participation of Catholics whom they viewed as having dangerously illiberal agendas. Gjerde articulates this quandary or "Protestant conundrum" of "how to integrate non-Protestants into a nation that was established on Protestant principles."⁹⁹ That is, full political participation of non-Protestants would undermine the culture's essential "Americanism" (i.e. Protestantism). For the POAU elites, the solution was a tightening of the legal definition of the "separation of church and state," yet, ironically, that strict definition eroded the Protestant Hegemony as it encouraged the de-Christianization of America.¹⁰⁰ Kang explains that, "It was Gjerde's aim to demonstrate the ways in which the antebellum era dialectic between Protestants and Catholics created the framework for analogous debates from the late nineteenth century to the present."¹⁰¹ I argue this dialectic was still robust in the post-World War II era, in those arenas entered into by the POAU.¹⁰² This dissertation supports the assertion that, "In short, the late twentieth-century legal developments have only reinforced the political freedoms that enabled religious minorities to sustain their particularist faiths in a pluralistic society."¹⁰³ Additionally, Gaustad and Schmidt offer several explanations for the growing role of the Supreme Court in mediating the relationship between church and state: the incorporation of the First Amendment under the Fourteenth Amendment; the increased organization and political activism of religious minorities who possessed the resources (and will) to bring religious cases to

⁹⁶ Jon Gjerde and S. Deborah Kang, *Catholicism and the Shaping of nineteenth Century America* (Cambridge; New York: Cambridge University Press, 2012), xv. See also footnote 26.

⁹⁷ Jon Gjerde and S. Deborah Kang, *Catholicism and the Shaping of nineteenth Century America* (Cambridge; New York: Cambridge University Press, 2012), footnote 26. See Hamburger, p17

⁹⁸ Gjerde and Kang, *Catholicism and the Shaping of nineteenth Century America*, 11.

⁹⁹ Gjerde and Kang, *Catholicism and the Shaping of nineteenth Century America*, 13.

¹⁰⁰ The *Engel*, *Schempp*, and *Lemon* rulings outlawed all devotional practices in the public schools, where the Protestant Establishment had previously been untroubled at the federal level.

¹⁰¹ Gjerde and Kang, *Catholicism and the Shaping of nineteenth Century America*, 257.

¹⁰² As I argue in chapter one, the BJC and other Southern Baptist-run or -inspired organizations also participated in this dialectic.

¹⁰³ Gjerde and Kang, *Catholicism and the Shaping of nineteenth Century America*, 260.

the Court; and the increased pressure from a diverse society for a more secular state.¹⁰⁴ This dissertation suggests that the POAU, as protectors of the Protestant Hegemony, played an ambivalent role. The POAU defense of *Schempp* helped fuel the sharp rightward turn of the BJC (which was captured by its ultra-conservative wing) which in turn ultimately moved organizations such as the POAU to the left once its evangelical support was hollowed out.

While Catholic participation increased in many aspects of American political and economic life in the post-World War II era, Catholics remained simultaneously distinct in numerous ways. This was true of most ethnic enclaves, though unlike most ethnics Catholic distinctiveness was protected by an institutional structure featuring a wide network of schools and churches that could shield them from interactions with non-Catholics. These networks had their own nineteenth century roots. The Second Plenary Council of Baltimore of 1866, which was published widely and revised as the Baltimore Catechism in 1941, required religion as an integral part of a child's education.¹⁰⁵ Some American bishops exhorted their flock not to participate in the public schools at all, while others sought equality of religious participation in them.¹⁰⁶ The POAU saw a Catholic community in the U.S. was in thrall to an illiberal and dangerous hierarchy.¹⁰⁷ However, Gjerde reminds us of G.K. Chesterson's chestnut, that "in America, even the Catholics are Protestants."¹⁰⁸ Significantly, the arguments Gjerde deploys about Catholics in the aftermath of the Civil War continue to apply the period after World War

¹⁰⁴ Edwin S. Gaustad, *The Religious History of America: The Heart of the American Story from Colonial Times to Today*, Revised edition (San Francisco: HarperOne, 2004), 349–50. See also footnote 16, p260 of Gjerde

¹⁰⁵ For the Church hierarchy and many Catholics, religion was considered an essential and natural part of childhood education: "Every day experience renders it evident that to develop the intellect and store it with knowledge, while the heart and its affections are left without the control of religious principle, sustained by religions practices, it is to mistake the nature and object of education, as well as to prepare for parent and child the most bitter disappointment in the future, and for society the most disastrous results." See "New Albany Daily Commercial, Wednesday, November 14, 1866, Page 3," accessed August 3, 2014, <http://newspaperarchive.com/us/indiana/new-albany/new-albany-daily-commercial/1866/11-14/page-3>.

¹⁰⁶ There are myriad examples in nineteenth century American popular culture of Protestant fears that Catholics would destroy the public school system, none more iconic than the works of political cartoonist Thomas Nast. In "The American River Ganges" he showed Catholic bishops, whose miter hats formed the toothy jaws of crocodiles, attacking the public schools and devouring children, with the connivance of Irish Catholic politicians who have wrecked the schoolhouse. A white male Anglo-Saxon Protestant school teacher, with a necktie *made of the Holy Bible*, protects the praying schoolchildren on the shore. In the background, shadowy Catholic figures can be seen clubbing the schoolchildren, and another Irishman, brandishing his cudgel, is seen leading Columbia off to the gallows to be hanged. The flag of Vatican City is seen flying over Tammany Hall, which has been relabeled as "The Political Roman Catholic Church." Thomas Nast, "The American River Ganges", *Harpers Weekly*, September 30th, 1871, p284 Nast's cartoon was reprinted a number of times, and accompanied by anti-Catholic articles ("The Priests and the Children" in 1871 and "The Common Schools and Their Foes" in 1875, both penned by Eugene Lawrence) in which, according to Robert C. Kennedy "the Catholic hierarchy is bitterly assailed for its alleged assault on the public school system." See <http://www.harpreek.com/09Cartoon/BrowseByDateCartoon.asp> (Accessed December 12, 2014)

¹⁰⁷ The POAU frequently quoted Catholic dogma to bolster its arguments, including the Gilded Age concern with the heresy of "Americanism," which was promulgated in the *Longinqua oceani* in 1895 by Pope Leo XIII, and warned the Catholic hierarchy about the dangers of the American system of separation of church and state.

¹⁰⁸ Gjerde and Kang, *Catholicism and the Shaping of 19th Century America*, 2012, 133. See footnote 23, *The Robert Bellah Reader*

II.¹⁰⁹ I argue that while the naked anti-Catholicism of Nativism witnessed in earlier eras declined in the post-World War II era, the intellectual debate over the place of Catholics and Catholicism in American culture and politics did not, as evidenced especially by the POAU's charter and projects. These struggles between the POAU and American Catholicism continued well into the 1970s.

Though the POAU contested with American Catholics over the meaning and limits of church-state separation, the primary adversary of Americans United today is the Religious Right. As Gjerde notes, "Many Americans today express fears that fundamentalism in contemporary America, with its antimodernist perspectives, might lead political leaders to act on principles that are detrimental to the nation's place in the world economy. Protestant leaders in the nineteenth century had similar fears [about Catholics]."¹¹⁰ The POAU was created by evangelical Protestant leaders, namely Southern Baptists and conservative evangelicals, who were convinced that American Catholicism presented a clear and present danger to separation of church and state and even democracy. Catholics inveighed against the argument that their religion was incompatible with republicanism.¹¹¹ They argued that their separate schools had been created to avoid proselytizing and anti-Catholic curricula foisted on them by a Protestant Establishment which sought to annihilate their culture. A pastoral letter of 1840 warned that the common schools sought to "misrepresent our principles, to distort our tenets, to vilify our practices and to bring contempt upon our Church and its members."¹¹² In some cases the practices were insidious, in others unapologetic. Many Protestants viewed Catholicism as synonymous with superstition and anti-democratic principles, and proselytizing them was both a service and a necessary ingredient for the assimilation and Americanization of immigrants. In the 1830s, Bishop John Hughes had unsuccessfully attempted to transform the school system of New York City to be less antagonistic toward Catholics. As Gjerde notes, "For Catholics, the practical problem with the schools was that they were not sectarian, but rather that they were patently anti-Catholic, both in content and in practice. The schools maintained a particularist slant in practice (the reading of scripture from the Protestant King James Version of the Bible without comment, which contradicted the 'prevailing theory' of Catholic tradition) and in content (schoolbooks that impugned Catholics in the past and present)."¹¹³ This "practical problem" existed well into the twentieth century and was one of arguments accepted by the Court in *Schempp*. When POAU officials regaled American Catholics for

¹⁰⁹ "The relationship between the church and the state was transformed in the aftermath of the Civil War, just as many Roman Catholics demonstrated their loyalty to the American nation by the shedding of blood. Yet as this chapter will illustrate, anti-Catholicism survived...the division of church and state and the place of Roman Catholics within it would endure (to the 1870s)." Gjerde and Kang, *Catholicism and the Shaping of nineteenth Century America*, 18.

¹¹⁰ Gjerde and Kang, *Catholicism and the Shaping of nineteenth Century America*, 19.

¹¹¹ "Not surprisingly, the Catholic leadership, when it recognized the need for schools, rejected the conflation of Protestantism and republicanism...Catholics opposed these undertakings [instructing Catholic children on the pieties of a generic American Protestantism], setting in motion a conflict that would have profound outcomes for the Roman Catholic Church in the United States and for state-led institutions aimed at advancing the creation of a homogenous American whole." Gjerde and Kang, *Catholicism and the Shaping of nineteenth Century America*, 143.

¹¹² Catholic Church, National Conference of Catholic Bishops, and Peter Guilday, *The National Pastorals of the American Hierarchy, 1792-1919*; (Westminster, Md.: Newman Press, 1954), 133–34. Quotes in Gjerde 143

¹¹³ Gjerde and Kang, *Catholicism and the Shaping of nineteenth Century America*, 147.

separating themselves from the public schools, or for their sometimes stated hostility toward them, they mystified this history. At times this was a convenient omission to avoid a sticky subject. At other times it was unapologetically argued that Americanism sprung from Protestantism, and that Catholicism was its antithesis, and the particularist Protestant slant of the public schools was right and proper. Oddly, long before *Schempp* was decided in 1963, it was no longer the Protestant content of public schools that most troubled the Catholic hierarchy, but the increased “secularism” (i.e. de-Christianization, which they described as “infidelity”) of the public schools. This Catholic concern had deep roots, and was thought to bode ill for America’s children and society at large. Bishop Hughes worried about infidelity, and condemned the public schools as one and the same with “Socialism, Red Republicanism, Universalism, Infidelity, Deism, Atheism, and Pantheism—anything, everything, except religionism and patriotism.”¹¹⁴ Evidence of this Catholic concern remains a century later, in the negative reaction of the Catholic hierarchy to the *Schempp* ruling, which forbade the requirement for reading of the Bible (typically the Protestant King James Version, favored by evangelicals) in public schools. POAU thinkers never acknowledged the predicament faced by American Catholics. Gjerde writes that, “Catholic parents in the early republic thus were given a Hobson’s choice: violate conscience or neglect children’s education (and pay for schools anyway).¹¹⁵ Catholics in the twentieth century continued to feel pressure to make this difficult choice, and communicated their frustration for what they considered to be a “double taxation” for education. Indeed, it was in reaction to, or fear of, Catholic successes in obtaining public subsidy for their children’s education that was the primary impetus for the formation of the POAU. Most POAU elites felt as Congregational clergyman George B. Cheever had, in 1854, that “Protestant Christianity was at the heart of the American civilization and therefore it could be sacrificed only at the peril of surrendering the essence of the United States.”¹¹⁶ In the post-war era, while members of Mainline Protestant denominations were engaging in ecumenical ties with American Catholics, evangelical Christians—especially the fast-growing Southern Baptists—formed institutions specifically to oppose Catholic projects and to defend the Protestant Establishment. The POAU was the most litigious and vocal of these.

Lastly, Gjerde gives us a nineteenth century foreshadowing of the alliance which eventually formed between conservative elements of the Catholic Church and evangelical Protestants which together constituted the Religious Right. Amidst the nineteenth century battles over religion in the public schools there was a call for a coalition against free thinkers and “secularity” in the public schools by Isaac Heckler. He suggested a truce between the antagonists, and that together they combat atheism and infidelity. The Catholic Heckler implored that they “Fight, therefore, Protestants, no longer us, but the public enemy.”¹¹⁷ No such alliance formed, and the suggestion was the exception which proved the rule of antipathy between the parties, but is a fascinating example nonetheless.

¹¹⁴ Gjerde and Kang, *Catholicism and the Shaping of nineteenth Century America*, 160.

¹¹⁵ Gjerde and Kang, *Catholicism and the Shaping of nineteenth Century America*, 165.

¹¹⁶ George B. [from old catalog Cheever, *Right of the Bible in Our Public Schools...*, 1854, 62, <http://archive.org/details/rightofbibleinou00chee>. Quoted in Gjerde 170, footnote 96

¹¹⁷ Gjerde and Kang, *Catholicism and the Shaping of nineteenth Century America*, 167.

Catholic Accusations of the POAU as the New Nativism

Time and again the POAU claimed it had no connection or affection for the Nativist movements of the nineteenth century. However, Catholic critics pointed out that the POAU flagship magazine, *Church & State*, printed full-page anti-Catholic *Harper's Weekly* cartoons from the nineteenth century. One called "A Foreign Demand," depicted an ugly, fat, grimacing bishop wearing a miter and holding a document which reads "We as Catholics demand a part of the school fund, Bishop Gilmour's Pastoral." Seated on the padlocked "School fund" is a clean-shaven, handsome, and young Uncle Sam holding a whip and next to him a sign that reads, "The Constitution of the United States recognizes no Creed, Sect or Society."¹¹⁸ As was common with such nineteenth century Nativist creations, the Irish Catholic bishop is heavily racialized, with nearly simian features, while Uncle Sam is drawn as an idealized, clear-eyed, white Anglo-Saxon specimen. The accompanying *Church & State* article states that "[the cartoon] depicts the Cardinal Spellman of that day making the traditional Roman Catholic demand for public funds to operate a religiously segregated Catholic school system."¹¹⁹ Cardinal Spellman was the *bête noire* of those Southern Baptists concerned with American Catholicism, from his relationship with Cardinal Pacelli (who became Pope Pius XII in 1939) to his continued support of public funding for parochial schools. The article concluded with the dire warning that there was no "blunt answer to the Catholic demands" due to the "intimidation, the threats of boycott, and the tricks of propaganda" such that "no publication dares to answer the bishops."¹²⁰ This echoed a common refrain from the POAU that other institutions and publications were so intimidated by the Catholic Church they would not critique Catholic projects, leaving only the POAU to confront them. According to Gordon, it was inevitable that the "POAU attracted those whose sympathies lay further out on the spectrum of anti-Catholicism."¹²¹ As late as 1963, the official POAU magazine was publishing reprints of vehemently anti-Catholic Nast cartoons from the nineteenth century. For the Catholic critics of the POAU, this proved its connection with and affection for the Nativist movements of that era.

The POAU chose Blanshard as one of its primary spokespersons, a move which was certain to enflame its Catholic critics. In 1947, the year the POAU was formed, and again in 1948, Paul Blanshard published articles in *The Nation* detailing his "ten years of intensive study of the Catholic Problem in the United States."¹²² In choosing Blanshard as a spokesperson, the POAU backlit its primary concern: American Catholicism. The POAU surely anticipated the resulting criticism which came from Catholic quarters. The Jesuit theologian John Courtney Murray, S.J., who often countered the POAU in the public press, described Blanshard as the figurehead of the

¹¹⁸ "A Foreign Demand", Reprint of Harper's Weekly, Journal of Civilization, New York, Saturday, September 27, 1873, Vol. XVII, No 874 in "Church & State, Vol 16, No 6" June 1963, 5, American's United for Separation of Church and State, 1947-1993, Box 1, Seeley G. Mudd Manuscript Library.

¹¹⁹ "The More It Changes," "Church & State, Vol 16, No 6," 5.

¹²⁰ "The More It Changes," "Church & State, Vol 16, No 6," 5.

¹²¹ Gordon, "'Free' Religion and 'Captive' Schools," 1200.

¹²² Philip Jenkins, *The New Anti-Catholicism: The Last Acceptable Prejudice* (Oxford University Press, 2003), 37.

“New Nativism.”¹²³ While there were many vocal Catholic critics of the POAU, Murray was the foremost public Catholic intellectual to engage with Blanshard and the POAU.¹²⁴ Hugh Douglas Price wrote that it became obvious during the dispute over parochial school aid “that the subject was more in the class with civil rights than with such mundane matters as minimum wage, housing and urban redevelopment, or social security coverage.”¹²⁵ That is, these issues were highly emotional, or what Murray called “high temperature issues.” Ironically, while Murray publicly debated with the POAU, he was privately censured by the Church hierarchy for some of his views, including his evolving belief that the complete separation of church and state was consistent with Natural law and Church teachings.¹²⁶

Notably, Will Herberg, a secular Jew, considered Blanshard a synecdoche for what he saw as the increasing anti-Catholicism in postwar America. He referred to this anti-Catholicism as “Blanshardism.”¹²⁷ Herberg, like Schultz, may have seen these separationist battles as a conflict over the limits of a developing pluralism, rather than simply an evolution of rights-based jurisprudence.¹²⁸ Herberg was generally sympathetic toward American Catholics and their views on public education and public funding for religious education. As Gaston notes, “Herberg identified American Catholics as the staunchest supporters of his position on religion’s public status. To be sure, he discerned an authoritarian tendency in the Church and called on it to ‘moderate its demands in the field of education, to curb exhibitions of ecclesiastical power in politics,’ and generally ‘to avoid inflaming the non-Catholic mind.’”¹²⁹ At the same time, Herberg scolded American Protestants for their emotional and “proprietary, interest in the public school.”¹³⁰ On pluralism, Herberg appreciated the views of Jesuit scholar John Courtney Murray, a frequent critic of the POAU. Gaston writes that Herberg thought that Jews had a lot to learn from Catholics with respect to public education, and “he downplayed his critique of Catholicism when he addressed the largely Jewish readership of *Commentary*, lauding Catholics’ staunch opposition to secularism and support for publicly funded religious education.”¹³¹ Herberg declared that the Catholic

¹²³ For more on Murray’s contribution to the dialogue, see “Federal Aid to Church Related Schools.” *Yale Political: A Journal of Divergent Views on National Issues*. 1 (1962): 16, 29-31.

¹²⁴ See especially John Courtney Murray, *We Hold These Truths: Catholic Reflections on the American Proposition* (New York: Sheed and Ward, 1960).

¹²⁵ Hugh Douglas Price, “Race, Religion, and the Rules Committee,” in Alan F. Westin (ed), *The Uses of Power* (Harcourt, Brace & World, 1962), 70.

¹²⁶ After his essays achieved notoriety, Fr. Murray was first instructed to seek the approval of Church authorities before publishing any further material on church and state. Then in 1955, he was told to stop writing on the subject entirely. However, five years later, he published *We Hold These Truths: Catholic Reflections on the American Proposition* which received ecclesiastical *imprimatur* on June 18, 1960, from Bishop Robert Joyce, of Burlington, Vt.. For more on Murray and this tension in the Church, see “The Cooperation of Church and State,” *Our Sunday Visitor Catholic Publishing Company*, accessed March 3, 2015, <https://www.osv.com/Article/TabId/493/ArtMID/13569/ArticleID/16279/The-cooperation-of-Church-and-state.aspx>.

¹²⁷ Schultz, “Favoritism Cannot Be Tolerated,” 584.

¹²⁸ Herberg, “The Sectarian Conflict Over Church and State: A Divisive Threat to Our Democracy?” See also Gaston footnote 23

¹²⁹ K. Healan Gaston, “The Cold War Romance of Religious Authenticity: Will Herberg, William F. Buckley Jr., and the Rise of the New Right,” *Journal of American History* 99, no. 4 (March 1, 2013): 1133–58, doi:10.1093/jahist/jas588.

¹³⁰ Herberg, “The Sectarian Conflict Over Church and State: A Divisive Threat to Our Democracy?,” 454, 456, 461.

¹³¹ Gaston, “The Cold War Romance of Religious Authenticity.”

call for public funding for parochial schools was “thoroughly in line with the best of democratic tradition.”¹³²

POAU Patron John Cowles and the Support of Scottish Rite Masons

The initial funding for the POAU came from Southern Baptists, mostly from members of the Scottish Rite Southern Jurisdiction order of freemasonry, and most especially from John Cowles, the Sovereign Grand Commander of that order.¹³³ Though framed as a multi-denominational institution, the POAU was imagined, founded and funded primarily by Southern Baptists. Joseph Martin Dawson, the first Executive Director of the BJC, also founded the POAU and served as its Executive Secretary and acting Director from 1947 to 1948. After the Charter for POAU was approved in January of 1948, Dawson felt that the number one priority was “to find financial resources to carry out such an undertaking.”¹³⁴ Initially, only “A few contributions trickled in” but then “Sovereign Grand Commander John H. Cowles of the Scottish Rite Mason’s Southern Jurisdiction handed us a check which aided us in the budgetary needs of the first year.”¹³⁵ More willing to litigate and unafraid of public challenges with its Catholic opponents, the POAU often functioned as the “bad cop” to the BJC’s “good cop.”¹³⁶ The POAU “embraced controversy” and “delighting in opposition from Catholic apologists” which contrasted sharply with the softer rhetoric of the BJC.¹³⁷ Executive Director Archer was also a mason, and advised local chapters seek financial support from masonic bodies.¹³⁸ The masonic connections to and roots in the POAU were unambiguous.

Many Catholic critics of the POAU likened them to Nativist, anti-Catholic institutions, such as the Know Nothings and the Ku Klux Klan (KKK). The Second KKK had espoused support for the separation of church and state, public schools, and a virulent anti-Catholicism. Some Catholics viewed support of the POAU by masons as evidence of such Nativism, as masonry was understood by them as antithetical to the Catholic Church.¹³⁹ News of the POAU founding meeting was published in Catholic newspapers as far away as Seattle, and one noted that the Supreme Council of the

¹³² Herberg, “The Sectarian Conflict Over Church and State: A Divisive Threat to Our Democracy?,” 454, 456, 461.

¹³³ William L. Fox, *Lodge of the Double-Headed Eagle (c)* (University of Arkansas Press, n.d.), 202.

¹³⁴ Archer and Menendez, *Dream Lives On*, 67.

¹³⁵ Archer and Menendez, *Dream Lives On*, 69. Archer also specifically nominated the Baptist Press as being “tremendously helpful in the early days of POAU.”

¹³⁶ For more on the BJC, see chapter 1.

¹³⁷ Gordon, “‘Free’ Religion and ‘Captive’ Schools,” 1198.

¹³⁸ Gordon, footnotes 124 & 125; Frank J. Sorauf, *The Wall of Separation: The Constitutional Politics of Church and State* 54 (1976)

¹³⁹ See especially Pope Leo XIII’s 1884 encyclical *Humanum Genus*. Section 21 on education is most germane to the conflicts over education. For example, “With the greatest unanimity the sect of the Freemasons also endeavours to take to itself the education of youth. They think that they can easily mold to their opinions that soft and pliant age, and bend it whither they will; and that nothing can be more fitted than this to enable them to bring up the youth of the State after their own plan. Therefore, in the education and instruction of children they allow no share, either of teaching or of discipline, to the ministers of the Church; and in many places they have procured that the education of youth shall be exclusively in the hands of laymen, and that nothing which treats of the most important and most holy duties of men to God shall be introduced into the instructions on morals.” For the full encyclical, see http://www.vatican.va/holy_father/leo_xiii/encyclicals/documents/hf_l-xiii_enc_18840420_humanum-genus_en.html (Accessed December 12, 2012)

Scottish Rite was representative, and that the masons' opposition to Catholic schools was well known.¹⁴⁰ This likely was a reference to the Oregon compulsory school referendum, which sought to outlaw Catholic schools, and was supported by the KKK and the masons.¹⁴¹ On the front page of one Catholic newspaper covering the POAU founding, was an article reprinted from the *The New Age*, the official organ of Scottish Rite masonry. Intended to alarm its Catholic readers, the newspaper reprinted the masonic lamentation that *Everson*, which allowed public funding for schoolchildren bused to parochial schools, was a "serious setback" for religious liberty and that "the seriousness of the situation should startle every Scottish Rite Mason" so "The fight is on! Scottish Rite, awaken!"¹⁴² American Catholics associated masonry with that sort of militant anti-Catholicism.

There is no evidence that Archer, Dawson, Cowles, or any of the POAU founders were Klan members, and the organization vigorously protested being likened to Nativist or bigoted organizations. This did not stop the comparisons from being made, however. When the retired Archer wrote his memoirs, he recalled the enmity between the groups. He claimed that anti-Catholic Nativism had been put aside during World War II, and was only rekindled due to "the increasing strength and defensiveness of the Catholic Church."¹⁴³ Further, Archer claimed that any anti-Catholic feelings in the post-war era were due to "increasing signs of militancy and aggressiveness in the Vatican began to jar the basic, easy-going friendliness of most of the American Protestant churches."¹⁴⁴ Archer, writing decades after the POAU founding, laid the blame for any anti-Catholic feelings of Protestants on the Catholic hierarchy.

Not all Catholics chose to counter the POAU by likening or connecting them to Nativist organizations. Some Catholics, especially intellectuals of the National Catholic Welfare Conference (NCWC), responded primarily to the substance of the POAU's arguments.¹⁴⁵ However, many Catholics, from spokesmen in the Church hierarchy in the 1940s, to Bill Donohue of the Catholic League in the twenty-first century, freely drew comparisons between the POAU and historically anti-Catholic organizations.

Contrariwise, POAU spokesmen routinely equated the Vatican with the Kremlin and the Catholic Church as a scheming, medieval power bent on domination. As late as the 1970s, Archer was exhorting the audience at the POAU World Conference about the dangers of Catholic influence in politics. The reprint of his fiery speech shows Archer railing against Catholics, asking, "Are we to spoil it all by implementing those worn-out practices of the old world where totalitarian religion stifled thought and made stagnant a whole society known to history as the victims of the Dark Ages? Never!"¹⁴⁶ POAU spokesmen viewed the illiberal policies of the Catholic Church as incompatible with

¹⁴⁰ "New Clearing House For Bigotry Aims At Pope, Catholic Schools," *Catholic Northwest Progress*, October 24, 1947.

¹⁴¹ The law was struck down by the U.S. Supreme Court in 1925 in *Pierce v. Society of Sisters*. See http://www.oyez.org/cases/1901-1939/1924/1924_583/ (accessed 12/12/2014)

¹⁴² "New Clearing House For Bigotry Aims At Pope, Catholic Schools." *Northwest Catholic Progress*, October 24, 1947, p1 & 5

¹⁴³ Archer and Menendez, *Dream Lives On*, 77.

¹⁴⁴ Archer and Menendez, *Dream Lives On*, 77.

¹⁴⁵ Holscher, *Religious Lessons*, 154.

¹⁴⁶ Glenn L. Archer, "Celebrating Our Freedoms, Address to the 25th National Conference of the POAU" (Pamphlet reprint of a speech, February 5, 1973), Box 6, "Harrell, Organizations, Americans for the Separation of Church and State, Brochures (2 of 2)," Flynn T. Harrell Collection on the Separation of Church and State, South Carolina Political Collections, The University of South Carolina Libraries.

republican democracy, and any Catholic influence in public schools or attempts to secure public monies as an existential threat to the Republic. They often framed themselves as the righteous but poor “David” verses the “Goliath” of the rich Catholic Church, and sought resources from those sympathetic to its project. Initially, the POAU was primarily bankrolled by John Cowles, the Sovereign Grand Commander Scottish Rite Southern Jurisdiction order of freemasonry, as evidenced in letters between Cowles and Executive Director Archer.

Commander Cowles was raised through various branches of masonry, and its attendant bodies. He was “affluent.”¹⁴⁷ He was also “hypersensitive to the potential of anti-Masonic activity and writing” especially that of Catholic author Bernard Fay, and his *Freemasonry and Revolutions*.¹⁴⁸ Fox writes, “Roman Catholicism, to him, was a sleeping monster always threatening Masonry...Cowles took transparent delight in showing up the Roman Catholic hierarchy.”¹⁴⁹ Cowles was willing to bankroll the POAU and the organizations primary patron. This was not his only project combating Catholicism. Cowles paid to have certain papal encyclicals and pronouncements from the eighteenth century reprinted and publicly distributed. He once sought to have Bing Crosby movies blacklisted by the Hays Office (now the Motion Picture Producers and Distributors of America), convinced that films which included sympathetic characters such as Father O'Malley and Sister Benedict, were propaganda designed to confuse Americans about the true nature of the Catholic Church.¹⁵⁰

Cowles was born during the Civil War and raised during the Reconstruction and Redeemer Eras. As with all Southerners of his generation, he was a product of the Jim Crow South and Redeemer ideology. Nationwide, Catholics were a growing minority in post-war U.S., and on their way to becoming the country's largest Christian denomination. But in the American South of the 1940s, Catholics would have numbered barely 1% of the population, and many Southern Protestants regarded Catholics as unsaved and Catholicism as a non-Christian, pagan mystery religion.¹⁵¹ Masonry (in the South, as elsewhere) had long possessed an antagonism with Catholicism and the Church, and this tension survived well into the twentieth century. In 1960, Luther A. Smith, Sovereign Grand Commander of the Scottish Rite, Southern Jurisdiction, anxious at the prospect of a Catholic president, wrote in Scottish Rite newsletter, “Whatever bigotry is in evidence in the United States is exhibited solely by the Roman Catholic hierarchy; that the Canon Law of the Roman Church and the directives of the Pope validate the fears of the people that the dual allegiance of American Catholics is a present danger to our free institutions, and lastly that the people in passing upon the

¹⁴⁷ Cowles was born at Dripping Springs, Kentucky in 1863 and came of age during the Period of Reconstruction in the South. He organized Company H of the First Kentucky Volunteer Infantry in 1898, after the outbreak of the Spanish-American war, and served in Puerto Rico. The company elected Cowles “captain.” After the war, Cowles preferred to be called “Captain,” which is evidenced in the letters between him and POAU officers. Fox, *Lodge of the Double-Headed Eagle* (c), 203.

¹⁴⁸ William L. Fox, *Lodge of the Double-Headed Eagle: Two Centuries of Scottish Rite Freemasonry in America's Southern Jurisdiction* (Fayetteville: University of Arkansas Press, 1997), 244.

¹⁴⁹ Fox, *Lodge of the Double-Headed Eagle*, 244.

¹⁵⁰ Cowles thought that the sympathetic portrayal of a Catholic priests and nuns in *The Bells of Saint Mary* was worth censoring. Fox, *Lodge of the Double-Headed Eagle*, 244. For her work in the film, Bergman was nominated for an Academy Award for Best Actress, and won the Golden Globe Award for Best Actress in a Leading Role and the New York Film Critics Circle Award for Best Actress.

¹⁵¹ Indeed, some still do.

qualifications of a Catholic candidate for the Presidency will be guided by their knowledge of history and their great store of plain old-fashioned common horse sense, and their innate caution not to gamble when their liberties and the national security are at stake.”¹⁵² There are many similar jeremiads in the archives. However, the Democratic Party dominated the politics of the South, and not all masons there were opposed to Kennedy for president. The Grand Master of the Grand Lodge of South Carolina, Thomas Pope, who was Speaker of the House in South Carolina, “went around the state saying that the Catholics weren’t going to kill all the Protestants.”¹⁵³ Still, the fact that this was a concern that needed rebutting is telling. The insistence that the stakes were very high and the danger to liberties very real in its conflict with American Catholicism was a core belief running through all POAU literature up into the 1970s, and certainly was a core belief shared by its primary benefactor Captain Cowles.

Critique of Catholic Spain was often cited in POAU literature, and freemasons recalled how their brothers were mistreated and hanged during the Spanish Civil War. Masons were troubled by developments in Franco’s Spain, and in 1936 were shocked by the “horrible atrocities” which were “almost beyond belief, yet...not exaggerated”.¹⁵⁴ Fox does not explicitly nominate the Catholic Church as complicit in Franco’s Nationalist Spain, but his inference seems clear. The actual connections between fascist Spain and the Catholic Church would have been known to most masons. That is, Franco negotiated the 1941 Convention with the Vatican before signing the Concordat of 1953, which gave the Church royal patronage, state funding, and an exemption from government taxation. Masons were well aware of the antagonism between their fraternal orders and the Catholic Church, as promulgated in numerous papal encyclicals. For many masons, this entanglement made the Church complicit in the atrocities of Franco’s Spain. For Cowles and the POAU, there was no distinction between the Roman Catholic Church’s activities worldwide, and American Catholic projects to garner aid for parochial schools or schoolchildren; these state and local church-state issues were all part of a larger agenda. The POAU elites argued that if these Catholic projects were not thwarted, the Church would take control of the government where possible and institute illiberal policies, wherever and whenever it had the opportunity to do so.

While Cowles was committed to putting his resources to work funding the POAU, and the POAU was glad to have it, the organization was not initially eager to advertise this source of financial support. In 1950, Charl Ormond Williams, POAU board member and president of the National Education Association, sent an urgent letter to Dr. Joseph M. Dawson, who was to chair the conference where Cowles was to be honored. Williams wanted to ensure that “no speaker on this program make any reference whatsoever to any assistance, financial or otherwise, which Captain Cowles or his organization has given to POAU. The reasons, I am sure, will be obvious to you.”¹⁵⁵ One obvious reason

¹⁵² Luther A. Smith, *The New Age* "The Grand Commander’s Message. *New Age magazine*, February 1960. Luther A. Smith, *The New Age* "The Grand Commander’s Message, The New Age and the Election." The Supreme Council, Scottish Rite of Freemasonry, Southern Jurisdiction, Washington, D.C.: November 1960. p. 4

¹⁵³ Ernest F. Hollings, *Making Government Work* (Univ of South Carolina Press, 2008), 91.

¹⁵⁴ Fox, *Lodge of the Double-Headed Eagle*, 247.

¹⁵⁵ Charl Ormond Williams, “Letter from Charl Williams to Dr. J. M. Dawson” (Letter, September 13, 1950), Folder 3, Special Correspondence, Captain Cowles, Grand Commander, Box 7, Seeley G. Mudd Manuscript Library.

may have been that the recently founded POAU was still addressing public assertions that it was essentially a neo-Nativist organization no different than those besmirched predecessors, and if the majority of its funding was known to be connected to masonry in the South, this might have proved embarrassing. Albert Pike, founder of the Southern Jurisdiction of Scottish Rite masonry, had been linked to the first Ku Klux Klan by historian Walter Fleming, and Cowles association with that body could have been used as ammunition for POAU adversaries.¹⁵⁶ Furthermore, if it were discovered that Scottish Rite masons were supplying the bulk of the funding to the nascent POAU, this might have undermined the idea that the organization was broadly based, rather than predominantly backed by Southerners.

Cowles was not the only mason involved in the early years of the POAU. Other Scottish Rite officials were present in the early discussions about forming the POAU. In 1947, Elmer E. Rogers, editor of the Scottish Rite magazine *The New Age*, attended the group convened to discuss forming the organization.¹⁵⁷ The headquarters of the Scottish Rite of Freemasonry, Southern Jurisdiction (aka "House of the Temple") was located in Washington, D.C., which eased communications between Scottish Rite officers and those of the POAU.¹⁵⁸ Eventually, after some time had passed and the allegations by Catholic critics that the POAU was essentially like the Second KKK were discredited, the organization became more open about its connections to Southern Rite masonry. In his 1982 autobiography and insider history of the POAU, Director Archer wrote openly about the considerable contributions of masons to the POAU.¹⁵⁹

Cowles provided more than just the seed money to start the POAU in 1948. In 1949, Archer sent letters to Cowles, pleading for more funding. He rationalized for Cowles how the requested annual budget of \$100,000, a significant sum for the day, was not excessive.¹⁶⁰ Archer began by warning Cowles about the resources being marshaled by their adversaries:

The enemies of religious liberty and American Democracy have the solid support of one million dollars to win federal aid for their sectarian schools. The Knights of Columbus for St. Louis now spend one and one-half million of dollars annually to advertise in leading national publications inimical to American liberty...The scope and vastness of this organized and institutionalized machine require that POAU be made a permanent and effective agency to combat this un-American propaganda designed to

¹⁵⁶ John C. Lester and Daniel Love Wilson, *Ku Klux Klan: Its Origin, Growth and Disbandment* (Neale Publishing Company, 1905), 27.

¹⁵⁷ Lowell, *Embattled Wall*, 28.

¹⁵⁸ Interestingly, only two people are buried in the House of the Temple. In 1944, the remains of Albert Pike were removed from Oak Hill Cemetery and interred at the site. The remains of Cowles were entombed in the temple after his death in 1952, which ended his 31 year reign as Grand Commander of the Southern Jurisdiction.

¹⁵⁹ See also: Lowell, *Embattled Wall*, 140.

¹⁶⁰ While measuring relative worth of dollar amounts in the past is difficult, www.measuringworth.com puts the range (in 2015 dollars) between \$785,000 and \$6,100,000. www.MeasuringWorth.com was founded by Samuel H. Williamson, Professor of Economics at University of Illinois at Chicago. Specializing in economic history, Dr. Williamson also cofounded of The Cliometric Society and created EH.Net, the economic history services website.

destroy the American Constitutional principle of separation of church and state.¹⁶¹

This “organized and institutionalized machine” was of course the Catholic Church. Archer urgently requested an immediate sum of \$50,000 “to offset the crisis growing out of the current drive for federal aid to sectarian schools” and warned Cowles that the POAU will need an additional \$400,000 for 1950 and any other “crisis year” otherwise, “the loss of this battle will spell doom to public education and release vast sums now used by parochial schools to further an intensified campaign to destroy America’s free institutions.”¹⁶² The POAU often framed the Catholic Church as an existential threat to America itself. Archer warned not only of the imminent destruction of the public schools, but he further argued that with the money the Catholic Church would have saved from public funds going to its parochial schools, Catholics would then deploy “vast sums” in their project to “destroy America’s free institutions.”¹⁶³ In this case the alarmist rhetoric was used in private correspondence to encourage financial support of the organization; however the content and tone is consistent with public POAU literature at the time. Archer’s entreaties proved effective in convincing Cowles to continue funding the POAU.

If Cowles identity as the POAU’s major donor was hidden in those early years, the arguments the POAU used to motivate him were nearly identical to those they deployed in public. A pamphlet published by the POAU in the same year used a nearly identical argument. The cover shows an illustration of a colonial era “town crier” ringing a bell and reading a document, while he exclaims “Wake up America!”¹⁶⁴ The pamphlet declares that the POAU “Arouses a Sleeping Nation, *By education, By litigation, By organization.*”¹⁶⁵ It claims the POAU was “shocked into existence” in 1948 because “the Roman Catholic, had denounced Separation of Church and State as ‘the shibboleth of doctrinaire secularism.’”¹⁶⁶ The statement by American Bishops, directed to the

¹⁶¹ Glenn L. Archer, “Letter from Glenn Archer to Captain Cowles” (Letter, September 29, 1949), 1, Folder 3, Special Correspondence, Captain Cowles, Grand Commander, Box 7, Seeley G. Mudd Manuscript Library.

¹⁶² Archer, “Letter from Glenn Archer to Captain Cowles,” 2.

¹⁶³ Glenn L. Archer, “Letter to Dr. Edwin McNeill Poteat” September 29, 1949, 1, MC185, Americans United for the Separation of Church and State Series 1: Administration Files Box 7 Folder 3, Special Correspondence, Captain Cowles, Grand Commander, Seeley G. Mudd Manuscript Library.

¹⁶⁴ As Criers or “bell men” did not generally wake up sleeping townsfolk, and it appears the pamphlet is conflating the crier figure with the story of “Paul Revere’s Ride”, the 1860 poem penned by American poet Henry Wadsworth Longfellow to commemorate the 1775 actions of Paul Revere. The poem is not historically accurate, but is the story known by many Americans, and in any case Revere represents a heroic trope of revolutionary protector that the POAU to liken itself to.

¹⁶⁵ POAU, “Wake Up America!” (pamphlet, undated, circa 1950s), Box 14, Americans United for the Separation of Church and State, MC185 Series 1: Administrative Files, Folder “Press Releases, 1951-1987,” Seeley G. Mudd Manuscript Library.

¹⁶⁶ The phrase was coined in reaction to *McCollum*, the ruling where the U.S. Supreme Court forbade religious release time programs on school grounds. American bishops claimed the Court had created a “novel interpretation” of the Establishment Clause and it might be turning the phrase “separation of church and state” into “the shibboleth of doctrinaire secularism.” A number of Protestant leaders and denominations spoke out against the ruling also, though it is always the Catholic reaction that is foregrounded in POAU literature. In 1952, the *Zorach* decision did not exactly overturn *McCollum* but allowed religious release time as long as it occurs off public school grounds. Release Time programs are still found today, especially in Utah (serving primarily Latter Day Saints students), New York City

Supreme Court after the *McCullum*, is often cited by the POAU as the *casus belli* for the organization's formation and its battles with the Catholic Church.¹⁶⁷ The pamphlet warns that the Catholic Church had summoned its people to work "patiently, persistently and perseveringly" for the destruction of religious liberty in the U.S.¹⁶⁸ Again, the wording of the private letters to Cowles is nearly identical to the public POAU posture in its pamphlets.

While Cowles provided the initial seed money to get the POAU financed, would he continue to fund the organization in subsequent years? In his letter to Cowles, Archer anticipated that, "The question may be raised as to why POAU has not been able in 20 months to develop a self-supporting constituency."¹⁶⁹ Foremost among the many arguments Archer nominated for continued and increased funding of the POAU was the Catholic Church's scheming. That is, "The opponents of freedom have been so sly in their invasions and violations that the general public is just now awakening to the dangers inherent in Roman Catholic power."¹⁷⁰ But he also argued that the inter-faith movement and the Christians who participated in or were duped by it. Archer warned that the "Jesuitically inspired Interfaith movement with its budget of \$2,500,000.00 has lulled to sleep our people concerning the ever pressing need for vigilance to safeguard sacred freedoms. Reeducation moves slowly."¹⁷¹ Throughout his career, Archer publicly and frequently criticized ecumenical movements, and took a hard line against any inter-faith organizations that included or were "soft on" Catholics. He later wrote, "A large percentage of Americans United membership came from those churches which chose not to join or participate in the National Council of Churches or the World Council of Churches...They wanted nothing to do with...the kind of ecumenism which blurs distinctives, creates a bland consensus, ignores principle and truth and has given us the kind of church-state problems that we have faced in the past fifteen years."¹⁷² Ironically, while constantly framing the POAU as a multi-denominational project, Archer frequently attacked what he called the "ecumenical movement," which he defined as groups including Mainline Protestant denominations which cooperated with and uncritically engaged with Catholics (that is, did not critique those Catholic projects that the POAU found intolerable) in the name of interfaith comity. While the Catholic Church was always the arch-nemesis of the POAU, the inter-faith movement, as they understood it, was frequently framed as either an unknowing dupe or a knowing accomplice of the Vatican in the battle over the separation of church and state.

In his letter to Cowles, Archer outlined the dire consequences if he did not provide the funding, and argued that a fully funded POAU would be an (and perhaps the only) effective deterrent to the Catholic Church. He gave credit to the POAU for the fact

(primary for Jewish students), and where evangelical groups such as School Ministries, Inc. have made inroads into public schools, primarily in the South. See also: Holscher, *Religious Lessons*, 155.

¹⁶⁷ As demonstrated in chapter 1, the Southern Baptists who founded the POAU were first propelled into national political engagement when Cardinal Eugenio Pacelli (the future Pope Pius XII) toured the United States and met with President Franklin Delano Roosevelt in 1936. That led to the founding of the BJC. I argue that the POAU's genealogy stretches back to this common ancestor. For more on the American Catholic response to *McCullum*, see Holscher, *Religious Lessons*, 155.

¹⁶⁸ POAU, "Wake Up America!"

¹⁶⁹ Archer, "Letter from Glenn Archer to Captain Cowles," 2.

¹⁷⁰ Archer, "Letter from Glenn Archer to Captain Cowles," 3.

¹⁷¹ Archer, "Letter from Glenn Archer to Captain Cowles," 3.

¹⁷² Archer and Menendez, *Dream Lives On*, 199.

that “church-state separation issues was (sic) the third most newsworthy subject in American life last year.”¹⁷³ The actual dollar amounts of subsequent Cowles donations to the POAU are lost to us, though the later writings make clear the significance of those masonic contributions:

In the early days Glenn Archer formed a lasting association with the Scottish Rite Masons of the Southern Jurisdiction, which proved most helpful. Funds for the first building which the organization purchased on Massachusetts Avenue in Washington, D.C., were provided by its Supreme Council at a time when John H. Cowles was Sovereign Grand Commander. Under the succeeding Commanders, Thomas J. Harkins and Judge Luther A Smith, this fine relationship had continued. These men were all no-nonsense Americans. They believed in the public schools and in the separation of church and state. They quickly saw in the director of Americans United a man who could be trusted to support actively the ideals of Americanism which were dear to them.¹⁷⁴

Smith held his Sovereign Grand Commander position until 1969, and the cozy relationship between the POAU and Southern masons continued well past the death of Cowles in 1955.¹⁷⁵ The POAU was not unaware of how its rhetoric might be perceived, and had concerns that the organization’s posture towards American Catholics might be seen as self-serving outside of the organization. In the PAOU Policy Committee meeting of April 28, 1965, the officers worried that “there is feeling that we use the Catholic issue to `raise money””.¹⁷⁶ Dr. Binns said he felt the BJC also exploited anti-Catholic feelings to raise money.¹⁷⁷ He was encouraged, however, that Director Carlson of the BJC was making “headway among Baptists” and that the POAU should keep its close ties with the organization.¹⁷⁸ The BJC was also largely funded by Southern Baptists and also primarily concerned with Catholic provocations when it came to church-state issues. The Southern orientation of the POAU funding and its concerns were clear, and its opposition to Catholic projects deemed illiberal by Baptists almost certainly did help its fundraising. As the press reported in 1967, “Among the churches, the Southern Baptists are the largest contributors” to the POAU.¹⁷⁹

Executive Director Dr. Dawson of the BJC Finds the POAU

The POAU was the brainchild of Southern Baptist elites and the focus and charter of the POAU were rooted solidly in Southern Baptist’s concerns. The original idea for the organization came from Dr. Rufus Washington Weaver. Weaver had served as

¹⁷³ Archer, “Letter from Glenn Archer to Captain Cowles,” 3.

¹⁷⁴ Lowell, *Embattled Wall*, 140.

¹⁷⁵ Fox, *Lodge of the Double-Headed Eagle*, 316.

¹⁷⁶ POAU, “Minutes of the Policy Committee, April 28, 1965” n.d., 1, Box # 14, Americans United for the Separation of Church and State, MC 185, Series 1: Admin files, Seeley G. Mudd Manuscript Library.

¹⁷⁷ POAU, “Minutes of the Policy Committee, April 28, 1965.”

¹⁷⁸ POAU, “Minutes of the Policy Committee, April 28, 1965.”

¹⁷⁹ Mary Hornaday, , Christian Science Monitor, “N.Y. Fight Shapes on Religion” September 15, 1967, Box 11, Americans United for the Separation of Church and State, MC185 Series 1: Administrative Files, Folder 2, Seeley G. Mudd Manuscript Library.

president of the Education Board of the Southern Baptist Convention (SBC), had been president of Mercer University, and had held numerous other Baptist leadership positions.¹⁸⁰ He was living in Washington D.C. when Dawson arrived in 1946 to found the BJC. Weaver thought “it was too much to expect that Baptists alone could lead the kind of effort needed to preserve church-state separation” and he approached Dawson about putting such a project into motion.¹⁸¹ The selection of Glenn Archer for executive director suggests that Dawson imagined the POAU as a much more aggressive and litigious organization compared to the BJC. Though the BJC was in theory a coalition of many Baptists conventions, it was primarily funded and managed by Southern Baptists.¹⁸² Weaver called a meeting in D.C. in 1946 to discuss forming an organization other than the BJC to focus on church-state issues. Weaver’s idea was to form a multi-denominational, though mostly evangelical, organization. However, the idea for the institution, the funding, and even its first office and typewriter, all came from Southern Baptists. Besides Weaver and Dawson, other Southern Baptists attended the original organizational meeting. One of those present was Senator Olin Johnston of South Carolina.¹⁸³

J.M. Dawson presided at the original organizational meeting. He had been educated at Baylor Academy and graduated as class valedictorian in 1904. He was a Baptist representative at the founding of the United Nations in San Francisco in 1945, delivering petitions with 100,000 signatures which called for the incorporation of a declaration of religious liberty in the UN charter.¹⁸⁴ At that time, Dawson was a pastor and an editor of numerous Baptist publications and first full-time executive director of the Baptist Joint Committee on Public Affairs (BJC), a position he would hold until 1953.¹⁸⁵ He was chairman of the Southern Baptist Committee on World Peace in 1945 and chairman of the Executive Committee of the Southern Baptist Convention from 1945 to '46. He was in every sense a member of the Baptist educated and politically-connected elite. Dawson did not object to Bible reading and other public school practices that the Protestant Hegemony considered “non-sectarian” and thus not “religious.” However, he did vehemently object to any public aid for parochial school children or schools and any official government recognition of the Vatican. Dawson did not believe the National Catholic Welfare Conference’s stated support of the public schools was genuine. He asserted that “derelict religionists” who “angrily or frantically cry so loudly” for religion in the public schools that they “would start a riot.”¹⁸⁶ He hinted darkly that if the U.S. had established an embassy with the Vatican, there could be backlash against American Catholics. What that would “place the average American

¹⁸⁰ See <http://www.sbhla.org/downloads/99.pdf> (Accessed: May 12, 2014)

¹⁸¹ Lowell, *Embattled Wall*, 28.

¹⁸² This will be explored in more depth in chapter 1.

¹⁸³ Senator Johnston was concerned with the Catholic Church. Fourteen years later, at the 1960 Democratic National Convention, Senator Johnston objected so strenuously to the nomination of Catholic John F. Kennedy, that he stormed the rostrum, yelling, and fell over a fence and into a hedge. Hollings, *Making Government Work*, 93.

¹⁸⁴ Dawson’s memoirs and oral histories may be found in the Texas Collection, Baylor University, Joseph Martin Dawson Papers, J. M. Dawson Church-State Research Center, Baylor University. A short biography can be found at <https://tshaonline.org/handbook/online/articles/fda52> (Accessed December 12, 2013)

¹⁸⁵ The BJC is covered in chapters one and two.

¹⁸⁶ Joseph Martin Dawson, *America’s Way in Church, State and Society*, (Macmillan & Co Ltd, 1953), 42–45.

Catholic in the mind of his non-Catholic neighbor is not difficult to imagine nor pleasant to consider.”¹⁸⁷ The POAU was constructed by Southern Baptists to combat this threat.

The subsequent POAU planning meeting was held in the National Memorial Baptist Church in D.C. and another was held at Calvary Baptist Church later in 1947. Dr. Dawson crafted the POAU *Manifesto*, which was approved by the founding members.¹⁸⁸ This charter of the nascent group was released to the *New York Times*, which printed it in its entirety.¹⁸⁹ In his history of the POAU, Lowell highlights the ecumenical complexion of the original POAU, and that the board “included men who were currently holding, or would soon hold, the highest elective offices in America’s three largest Protestant denominations—Southern Baptist, Methodist, and Presbyterian.”¹⁹⁰ Gordon also considers the early POAU an ecumenical group, though she also details the Southern Baptist and masonic connections in her article.¹⁹¹ However, it is clear that the original impetus, the crafting of the *Manifesto*, the primary funding, the provision of the office and supplies, and the initial executive director of the organization and director of the search committee which hand-picked Archer, were all manned, provided, or run by Southern Baptists. Thus, the evidence does not support the idea that the POAU was originally a “distinctly ecumenical” organization, as Lowell claims and Gordon describes, though the organization certainly tried to frame itself as such.

Dawson Chooses Glenn Archer to Direct the POAU

In 1982, six years after his retirement as Executive Director, Glenn L Archer and Albert J. Menendez of the POAU, published a triumphant account of Archer’s biography and the history of the organization. The first chapters detail Archer’s life, highlighting his humble beginnings “from a pioneer family” and the meteoric rise of his “promising political career that catapulted him almost certainly toward the Governorship or Supreme Court of Kansas, or a Presidential cabinet position.”¹⁹² Archer’s self-sacrifice and humility are underscored in this narrative. In the origin story of the POAU, the authors explain how, in 1948, Dr. Joseph Martin Dawson, Southern Baptist who had become the first director of the BJC, invited Archer to Washington, D.C. to meet with the executive committee of the POAU. There, Dawson implored Archer to take charge of the organization. Archer tells of his initial reluctance to take over as executive director, and his eventual acquiescence and relocation to D.C. Upon arrival, he found no office, no staff, and no supplies, so he worked with Dawson in the “Baptist Building” (i.e. the BJC’s office).¹⁹³ The evidence shows that the POAU was the creation of Southern Baptists, especially those elites which worked at or with the BJC, but that the organization was imagined and framed as multi-denominational. I argue that Dawson, and the fellow Southern Baptist elites who founded and funded the POAU, chose the fiery Methodist Archer as a stalking horse, to obscure the Southern Baptist roots that lay

¹⁸⁷ Dawson, *America’s Way in Church, State and Society*, 162.

¹⁸⁸ Lowell, *Embattled Wall*, 29.

¹⁸⁹ See also: “Separation of Church and State: A Manifesto”, *Christian Century*, January 21, 1948, p79

¹⁹⁰ Lowell, *Embattled Wall*, 29.

¹⁹¹ Gordon, “‘Free’ Religion and ‘Captive’ Schools.”

¹⁹² Archer and Menendez, *Dream Lives On*. inside dust jacket

¹⁹³ Archer and Menendez, *Dream Lives On*, 62.

in the POAU. After learning of Archer's new role at the POAU, the Catholic priest in his home town canceled the church's contract with the family lumber business. Gordon notes that, "Thirty years later, Archer still seethed with anger."¹⁹⁴ This was the sort of passion and personal investment to the project that Archer brought to the POAU.

Though I argue that the POAU was largely a Southern Baptist inspired and funded organization, its elites included men of numerous Protestant denominations. Its president was an American Baptist (not Southern Baptist, like Dawson and Cowles). For vice-presidents, the POAU chose the founder of *Christian Century* Charles Clayton Morrison (Disciples of Christ), Dr. John A. Mackay, President of Princeton theological Seminary (Presbyterian), and Bishop G. Bromley Oxnam of New York (Methodist). What these worthies shared were denominational associations other than Southern Baptist and their antipathy for the Catholic Church and its desire for public aid to parochial schools.¹⁹⁵ Though the POAU had denominational diversity at the executive levels, Baptists were not absent from the organization. The executive committee included the then president of the SBC, Dr. Louie D. Newton, Associate Editor of the *Scottish Rite Bulletin* Mr. Elmer E. Rogers, National Education Association official Dr. Charl Ormond Williams, and Secretary for the National Association of Evangelicals, Dr. Clyde L. Taylor.¹⁹⁶ Still, Archer emphasized the denominational diversity of the POAU in his biography, especially those religious leaders who attended the POAU's first National Advisor Council (NAC). Archer admits, however, that from the beginning, Baptists were always the largest denomination represented in the POAU, "In denominational terms, Baptists ranked first in that NAC. Methodists second, Unitarians third. Episcopalians, Presbyterians and 'Evangelicals' were well represented, as were Lutherans, Seventh-Day Adventists, Disciples of Christ, Congregationalists, and Christian Scientists. Some undoubtedly held no religious connection."¹⁹⁷ Archer's own history evidences the abundance of Baptists involved in the founding of the POAU. The SBC frequently passed motions praising the POAU and POAU elites frequently addressed SBC conventions. For instance, in 1948, the Southern Baptist Convention (the first convention held after the POAU was founded) issued a resolution supporting the new organization, and noted that the POAU *Manifesto* had been signed by the SBC President Louie D. Newton. The SBC noted further that the POAU was prepared "to redress the specific violations [of the separation of church and state] which have recently come into force."¹⁹⁸ The violations that the SBC condemned most often were public aid for parochial schools and the diplomatic recognition of the Vatican, areas of primary focus for the POAU.

Though public schools and diplomatic relations were the most common arenas of contention for the POAU, U.S. Postage stamps were another battleground where the organization found the influence of the Catholic Church in the public square. Federal

¹⁹⁴ Gordon, "'Free' Religion and 'Captive' Schools," 1197.

¹⁹⁵ For a treatment of Oxnam's thoughts on and issues with Catholicism, see Robert Moats Miller, *Bishop G. Bromley Oxnam: Paladin of Liberal Protestantism* (Nashville: Abingdon Pr, 1990).

¹⁹⁶ Dr. Williams was the only women involved in the POAU at this level. For more, see <http://tennesseencyclopedia.net/entry.php> (Accessed December 12, 2012)

¹⁹⁷ Archer and Menendez, *Dream Lives On*, 74.

¹⁹⁸ Resolution On Protestants And Other Americans United For Separation Of Church And State, Memphis, Tennessee – 1948. The full resolution may be found at <http://www.sbc.net/resolutions/amResolution.asp?ID=932> (Accessed December 12, 2012)

recognition of Christmas, a Christian holiday, did not in itself trouble the POAU. The United States Postal Service (USPS) began issuing Christmas stamps in 1962, though it was not until 1966 that the POAU found the practice provocative.¹⁹⁹ The first three years they were issued, the imagery depicted on the stamps was not overtly religious. The stamps sported representations of a wreath, candles, and the national Christmas tree, and also holly, mistletoe, and poinsettia. The 1965 stamp used an image of an angel with trumpet, copied from a weather vane from a Methodist Church, but this aroused no interest from the POAU. However, in 1966, when the USPS issued a Christmas stamp depicting a five-color reproduction of Hans Memling's *Madonna and Child with Angels*, the POAU objected.²⁰⁰ Even after *Schempp*, where the Supreme Court had rejected the logic that "non-sectarian" Christianity was not religious in the sense of the Establishment Clause, the POAU continued to operate with this paradigm. That is, the POAU elites were comfortable with stamps that reified the Protestant Establishment in the form of non-sectarian Christmas imagery, but were livid when the Post Office issued stamps they viewed as "Catholic." In 1967, the Rocky Mountain Baptist Press reported that the then associate director of the POAU, C. Stanley Lowell, again denounced the re-issuance of the Christmas stamp.²⁰¹ Lowell exclaimed that it was "simply incredible" that Postmaster O'Brien would "reissue in a larger size the same 'sectarian' Christmas stamp that caused controversy last year. 'It is nothing in the world but a Roman Catholic stamp portraying Mary enthroned as Queen of Heaven, holding in her hand a Roman Catholic missal, a book of liturgy used only in the mass.'" ²⁰² The ongoing connection between the POAU and Southern Baptist interests can be seen in the widespread reporting of this outrage in the Baptist Press.²⁰³ In 1967, the Florida Baptist Witness reprinted the story as a Catholic "Vehicle for Sectarian Ads" and the Alabama Baptist newspaper denounced the stamp as well.²⁰⁴

POAU spokesmen were suspicious of Catholics appointed to public office, especially by the Kennedy administration, and tended to view this as a violation of the separation of church and state, by definition, unless proved otherwise. Lawrence Francis "Larry" O'Brien, Jr., a Catholic, had been one of the Democratic Party's leading electoral strategists and helped build the foundation for Kennedy's 1960 presidential campaign. O'Brien had also served as the United States' 57th Postmaster General in the cabinet of President Lyndon Johnson. The controversy over Christmas stamps continued in 1968, as evidence by a letter to the editor of the Protestant Journal, "I

¹⁹⁹ For these and other Christmas stamps, see <http://about.usps.com/who-we-are/postal-history/christmas-stamps-2013.htm> (accessed August 12, 2014)

²⁰⁰ Note that the painting had hung in the National Gallery of Art since 1937 without controversy. Hans Memling, *Madonna and Child with Angels*, oil on panel, after 1479. See <http://www.nga.gov/content/ngaweb/Collection/art-object-page.48.html> (Accessed December 12, 2012)

²⁰¹ Rocky Mountain Baptist, "POAU Denounces 1967 Madonna-and-Missal Stamp," August 25, 1967, Box 11, Americans United for the Separation of Church and State, MC185 Series 1: Administrative Files, Folder 3, "General Publicity," Seeley G. Mudd Manuscript Library.

²⁰² "Post Office Decision to Re-Issue 'madonna and Child' Stamp Evokes Protests," *Jewish Telegraphic Agency*, accessed November 6, 2014, <http://www.jta.org/1967/05/31/archive/post-office-decision-to-re-issue-madonna-and-child-stamp-evokes-protests>.

²⁰³ These articles exist in the newspapers themselves and also as the collection of clippings by POAU executives in the Seeley G. Mudd Manuscript Library.

²⁰⁴ "Magazine Scores Madonna Stamp as Vehicle for Sectarian Ads" September 14, 1967, Box 11, Americans United for the Separation of Church and State, MC185 Series 1: Administrative Files, Folder 2, Seeley G. Mudd Manuscript Library.

never realized that the Post Office was so controlled by Catholicism. Do you have any information on what the 1968 Stamp will be?" To which the editor replied, "The P.O.A.U. reported that almost the last thing Lawrence F. O'Brien did before turning over his duties to his successor was to announce the issuance of the '68 Christmas stamp—a five color design with a religious theme. This year's special stamp will reproduce a portion of *The Annuciation* by Jan van Eyck, a 15th century Flemish artist." The editor went on to remind the reader that the angel Gabriel, who is depicted making the announcement to Mary, is "the patron saint of Roman Catholic postal employees."²⁰⁵ The fact that Gabriel might be more meaningful to Catholics made the stamp "sectarian" and therefore, unlike the previous "non-sectarian angel," an Establishment Clause issue. These stories were widely reported by Baptist newspapers in the South.

Another hot-button issue for the POAU in the 1960s was the concern over state constitution conventions, which they believed to be Catholic-inspired attempts to overturn the so-called Blaine Amendments. Blaine Amendments exist in many state constitutions, and generally provide stronger church-state protections than the Establishment Clause of the federal constitution. Many Catholics believed that Blaine Amendments had been implemented in a bigoted attempt by Nativists to restrict access to public funds by parochial schools.²⁰⁶ In the 1960s, a number of state constitutional conventions were called to address, among other issues, the so-called Blaine Amendments. To the extent that these provisions of the state constitutions precluded public monies for parochial school children or schools, the Catholic hierarchy and many American Catholics supported amending or repealing them. The POAU was greatly alarmed by these conventions. The POAU and other evangelical elites saw "attempts to revise constitutions in at least a dozen states in part, at least, as an organized moved to undermine the barriers the U.S. constitution has set up between church and state."²⁰⁷ *The Christian Index* called this "the final unfolding of a clerical plot to disrupt separation of church and state."²⁰⁸ As with POAU rhetoric, the concern was one of 'plots' and clericalism and the Catholic Church. New York, Pennsylvania, Florida, and Maryland considered its Blaine Amendments and POAU partisans were convinced that the country was in real danger of "public funding for parochial and private schools".²⁰⁹ The Protestant press that covered this story was getting frequent press releases from the POAU. When the attempts to overturn Blaine Amendments failed, POAU celebrated

²⁰⁵ "Protestant Journal, 4th Quarter, 1968," n.d., Box 11, Americans United for the Separation of Church and State, MC185 Series 1: Administrative Files, Folder 2, Seeley G. Mudd Manuscript Library.

²⁰⁶ Blaine Amendments are covered in more detail in chapter 4. Some scholars argue that so-called Blaine Amendments pre-date Blaine or else were not animated by anti-Catholic animus. See especially Steven K. Green, "The Blaine Amendment Reconsidered," *The American Journal of Legal History* 36, no. 1 (January 1, 1992): 38–69, doi:10.2307/845452.

²⁰⁷ Religious New Service, "Wire Release of October 20, 1967" n.d., Box 11, Americans United for the Separation of Church and State, MC185 Series 1: Administrative Files, Folder 3, "General Publicity," Seeley G. Mudd Manuscript Library.

²⁰⁸ Christian Index, "New York Constitution Revisions Up for Vote" October 12, 1967, Box 11, Americans United for the Separation of Church and State, MC185 Series 1: Administrative Files, Folder 3, "General Publicity," Seeley G. Mudd Manuscript Library.

²⁰⁹ Crusader, "Hot Issue in Several States as Constitutions Are Rewritten" October 1967, Box 11, Americans United for the Separation of Church and State, MC185 Series 1: Administrative Files, Folder 3, "General Publicity," Seeley G. Mudd Manuscript Library.

this news with press releases also.²¹⁰ The Catholic defeat made the rounds of the Baptist press, which trumpeted that “Americans United (POAU) once again has justified faith of its founders and those who came after them to help separate church and state.”²¹¹ Thus, the connection and affection between the POAU and Southern Baptist organizations is clear.

While issues regarding U.S. postal stamps and state constitutional conventions could garner POAU attention, nothing animated them as much as the reoccurring threat of public funding of parochial aid. Even well after *Schempp*, and just before the right-wing capture of the SBC, this remained its primary concern. At its 30th National Congress, the POAU invited Presbyterian minister Rev. Calvin W Didier to speak about its hot-button issue of 1978: the “Packwood-Moynihan Bill.”²¹² Didier framed the bill as a “massive campaign launched in Congress to obtain huge outlays of federal aid to parochial and private schools by means of tuition reimbursement grants and income tax credits.”²¹³ The Tuition Tax Credit Act was a bi-partisan bill sponsored by Senate Republican and Unitarian Universalist, Bob Packwood the Catholic Democrat Sen. Daniel P. Moynihan. Moynihan proposed tax credits for private schools, including parochial schools. The POAU had been fighting against the public funding of parochial schools since its inception. President Johnson’s Great Society programs augured an increased likelihood of federal funding, starting with the Elementary and Secondary Education Act (ESEA) of 1965.²¹⁴ The POAU quickly reprinted Didier’s speech and distributed it in a slick, multi-page pamphlet. Didier warned, “Make no mistake about it. The Packwood-Moynihan bill is another grandmother’s nightcap to disguise a plan to gobble up the little red school of public resources.”²¹⁵ Of course, the Catholic Church is the Big Bad Wolf in this metaphor. Didier went on to say that Moynihan protested too much, claiming that the education bill was “not a Catholic bill.” Didier likened Moynihan’s objection to an anecdote of a cow that claimed it didn’t have horns; it didn’t have horns, “because it is a jackass.”²¹⁶ This was reprinted in a POAU pamphlet which was distributed widely. The Packwood-Moynihan Bill made the national news, and ultimately collapsed upon the issue of tax credits for private elementary and secondary schools, which the House demanded, and which the Senate majority opposed.²¹⁷ President Jimmy Carter, a moderate Democrat and a Southern Baptist, threatened to veto the bill, though it never came to his desk. Conservative columnist George Will, who was friendly to private and therefore “free market” solutions in education, criticized

²¹⁰ Washington’s Weekly Religious News, “POAU Leader Lauds Charter Defeat in New York State” November 8, 1967, Box 11, Americans United for the Separation of Church and State, MC185 Series 1: Administrative Files, Folder 3, “General Publicity,” Seeley G. Mudd Manuscript Library.

²¹¹ Baptist Standard, “Victory in State Aid Issue” November 22, 1967, Box 11, Americans United for the Separation of Church and State, MC185 Series 1: Administrative Files, Folder 3, “General Publicity,” Seeley G. Mudd Manuscript Library.

²¹² **The Tuition Tax Credit Act, Senate bill 2142.**

²¹³ Rev. Calvin W Didier, “Address to the 30th National Congress of the POAU” (Pamphlet, San Antonio, TX, February 6, 1978), Box 6, “Harrell, Organizations, Americans for the Separation of Church and State, Brochures (1 of 2),” Flynn T. Harrell Collection on the Separation of Church and State, South Carolina Political Collections, The University of South Carolina Libraries.

²¹⁴ **Later, President Nixon’s openness to the idea of federal funds for parochial schools, and his courting of the Catholic vote, would alarm the POAU spokesmen.**

²¹⁵ Rev. Calvin W Didier, “Address to the 30th National Congress of the POAU,” 4.

²¹⁶ Rev. Calvin W Didier, “Address to the 30th National Congress of the POAU,” 5.

²¹⁷ Rebecca Ross, “Tuition Tax Credit Bill Stirs Church-State Debate,” *Boca Raton News*, April 19, 1978.

Carter for not supporting the bill.²¹⁸ Here we see evidence of the fracturing which occurred in this period, and left the POAU elites on the opposite side of the argument as the right-wing members of the SBC who would soon take over the convention.²¹⁹ Alienating conservative Southerners left them with a small constituency, for they never had appealed to Eastern liberals: “To liberal Easterners, Archer, Dawson, the *Christian Century*, and the generally southern aura of the POAU and its Baptist and Methodist constituency painted the world in unsophisticated shades of black and white.”²²⁰ Once this alienation led to the fracture in the Southern Baptist denomination, it left the POAU without a solid constituency and lacking in funding.

Conclusion

By the mid-1960s, the POAU faced crises that would substantially change its membership and its charter. First, the political engagement of American Catholics, and the federal government’s diplomacy with the Vatican, evinced less Protestant concern after the JFK presidency produced no church-state separation catastrophe, and after the Second Vatican Council (colloquially known as “Vatican II”) reforms were announced. Rhetoric viewed as anti-Catholic ceased to be palatable to many. Gordon notes that, “POAU officials soon understood that the same sentiments that attracted political and religiously conservative Protestants also alienated the liberal leaders whose support had been so crucial at the founding.”²²¹ In 1964, POAU founder Ellis H Dana quit the POAU over its anti-Catholicism.²²² However much erosion the POAU suffered from its liberal allies, they lost much more from the conservatives. Beginning in 1962, after the *Engel* and *Schempp* decisions, the POAU could not hold this coalition together. When the Supreme Court denied all devotional practices in the public schools, including prayer and Bible reading, and forbade all openly religious activities, including Protestant ones, they angered many Americans. Conservative evangelicals, who believed those Warren Court rulings were more dangerous to the Protestant Establishment (and “America”) than was the Catholic Church, were not inclined to support the POAU’s argument that holding the line for a stricter church-state separation of the Establishment Clause was the correct path. As Gordon notes, “For conservative Protestants, whose involvement with law had primarily been a staunch defense of public education against a perceived Catholic onslaught, the decisions were *unexpected and disastrous*. The new threat emanated from Washington, not Rome, and it wore judicial rather than clerical garb.”²²³ Not long after, and for similar reasons, the rightward turn of the SBC in 1979 would completely shift the denomination’s stance on the separation of church and state. Ironically, conservative evangelicals became willing to work with conservative Catholics

²¹⁸ *Pittsburgh Post-Gazette*, Mar 29, 1978

<https://news.google.com/newspapers?nid=1129&dat=19780329&id=74BIAAAAIBA&sjid=MW0DAAAIBA&pg=1403,531692&hl=en> (Accessed: December 12, 2014)

²¹⁹ Interestingly, Will is a self-described “amiable, low-voltage atheist.” See http://www.realclearreligion.org/articles/2014/09/22/george_will_the_realclearreligion_interview.html (Accessed: December 12, 2014)

²²⁰ Gordon, “‘Free’ Religion and ‘Captive’ Schools,” 1201.

²²¹ Gordon, “‘Free’ Religion and ‘Captive’ Schools,” 1200.

²²² “Founder-Trustee Withdraws from POAU - An Open Letter :: Institute of Church-State Studies Vertical File Collection,” accessed March 11, 2015, <http://digitalcollections.baylor.edu/cdm/ref/collection/cs-vert/id/5536>.

²²³ Gordon, “‘Free’ Religion and ‘Captive’ Schools,” 1213. **emphasis added**

on shared issues, a coalition which would have been unthinkable a generation before. This cooperation helped form an alliance that came to be called the Religious Right. Faced with these defections, the POAU took a leftward turn and became less overtly evangelical in its underpinnings. Ultimately, the Religious Right became the new nemesis for Americans United (as the POAU is known today).

Thus the POAU suffered a declension, the same fate which befell the Baptist Joint Committee, and for the same reasons.²²⁴ The elites continued to argue for a strong separation, but the people in the pews did not. As so much of the funding and support came from Southern Baptists, when the SBC and many of its members lost interest in the separationist side of the church-state debate, the POAU, like the BJC, was hollowed out. Gordon notes that, "Leading Protestants were divided, with the opinions drawing more support from the elite, but the response was overwhelmingly negative among the people...In such a light, POAU looked like a traitor to much of its own constituency."²²⁵ The POAU lost much of that constituency, and with them a great deal of its funding. An n-gram view of the use of the word "POAU" in books shows the rise after the institution's founding in 1948, a sharp spike in 1955, and an equally precipitous fall after 1963.²²⁶ By the late 1970s to the present the usage has been extremely low.²²⁷ Archer stepped down as executive director in 1976, and the POAU was never quite the same.

Americans United was led by a handful of men in the late 1970s and 1980s, including Dr. Robert L. Maddox, a Baptist minister and former Carter White House official, who became executive director in 1984. As mentioned previously, AU's current director, Rev. Barry Lynn, served as legislative counsel with the Washington office of the American Civil Liberties Union (ACLU), and is a civil liberties activist and attorney. Rev. Lynn is United Church of Christ (UCC) minister. The UCC is a member of the World Council of Churches (WCC) and its American conference has been active in numerous traditionally liberal social causes in the U.S. By the 1980s, the projects of the Catholic Church in America ceased to be the primary focus of AU. School vouchers for parochial schools were opposed, but the focus of the POAU was no longer on the Catholic Church. The primary nemesis of the post-1980 AU is and was the Religious Right.

²²⁴ See chapter 1.

²²⁵ Gordon, "'Free' Religion and 'Captive' Schools," 1214. See her footnote 217

²²⁶ An n-gram is a contiguous sequence of n items from a given sequence of text, in this case the number of times the term "POAU" has been used in all the books scanned by google. Note that the fall occurred the same year as the *Schempp* ruling.

²²⁷ See

https://books.google.com/ngrams/graph?content=POAU&year_start=1948&year_end=2015&corpus=15&smoothing=3&share=&direct_url=t1%3B%2CPOAU%3B%2C%0 (Accessed December 12, 2014)

Chapter Four

The Seattle Bible Trial of 1966 after *Schempp*, from Right-wing Resistances to Ironic Inversions

I think it is possible to pinpoint when the decline of this country really began. It began when Madalyn Murray O'Hair...conspired with Communist attorneys who came to her home to orchestrate the lawsuit that resulted in the First Supreme Court decision banning prayer.

–Senator Jesse Helms (1994)¹

Our school day began with the Lord's Prayer and each day a new student would select a psalm to read which was how I learned by heart Psalms 23 and 100 at P.S. #215, but Madeline Murray O'Hair was responsible for removing that from public schools!
(2015)²

Introduction

This chapter provides a brief sketch of the history of court cases regarding religion in the public schools, as well as resistances to these Supreme Court decisions, to then explore the ironies, tensions, and consequences stemming from the 1966 case of *Calvary Bible Presbyterian Church v Regents of the University of Washington* (henceforth referred to this chapter as the *Seattle Bible Trial*). In this church-state separation case, two fundamentalist ministers unsuccessfully sued the University of Washington (UW), claiming that its *Bible as Literature* course was in fact “religious” and therefore prohibited by the U.S. and Washington State Constitutions. Ironically, the case instigated discussions at the university which led to the formation of the Comparative Religion Program at the Henry M. Jackson School of International Studies at UW. The *Seattle Bible Trial* occurred in an era of the “flourishing of departments of religion in public colleges and universities and an intense conversation about the appropriate approach to the academic study of religion in the U.S. context.”³ It was the first occurrence of a public university being sued for teaching “religion” in an academic course in the post-*Schempp* era. The Supreme Court let stand the Washington Supreme Court’s ruling allowing the academic study of religion at UW, which quieted anxieties in this regard at other universities in the post-*Schempp* era.⁴ Nonetheless, *Schempp* was

¹ Quoted in Rob Boston, “Split Decision,” *Church and State* 47 (March 1994): 4-6. Helms made his comments in Senate debates on February 3, 1994. Interestingly, Helms mistakes O'Hair's involvement in the case that prohibited devotional Bible reading (*Schempp*) with the earlier case, *Engel v. Vitale*, which was the first Supreme Court case to prohibit school-sponsored prayer in public schools.

² Comments echoing Helms' 1994 complaint were heard in the wake of the *Engel* and *Schempp* rulings, and continued to appear in contemporary public discourse on a weekly basis. Former Senator Rick Santorum derided O'Hair at the Liberty Counsel's “The Awakening” conference on March 14, 2015, insisting that “we” could put Bibles back in public schools if proper political pressure was brought to bear. For a contemporary example of this trope in print, see “What Ails America,” *Baltimoresun.com*, accessed March 25, 2015, <http://www.baltimoresun.com/news/opinion/readersrespond/bs-cd-hogan-letter-20150324-story.html>.

³ Harvey, “CFP.”

⁴ The U.S. Supreme Court has never accepted a case concerning the study of religion in public universities.

imagined as a pivot point in the Culture Wars for those right-wing constituencies that reacted negatively to the ruling.

This chapter engages with Sullivan's *The Impossibility of Religious Freedom* to suggest some theoretical ground for an exploration into the possibilities of religious separation in the United States.⁵ However, this chapter is less theoretically driven than historically minded. Ultimately, these discussions and court decisions centered not just on differences between epistemes regarding the appropriateness of religion in the public square, but fundamentally on what is and is not "religious." For instance, the Philadelphia school board in *Schempp* eventually and unsuccessfully argued that the required reading of the Bible without comment was not religious per se but merely an exercise in "secular moral instruction."⁶ In the *Seattle Bible Trial*, brought in the wake of *Schempp*, fundamentalist Christian litigants unsuccessfully argued that the study of the Bible was necessarily religious, and the literary criticism of the Bible (whether intentionally proselytizing or not) was indistinguishable from extant liberal theologies, and therefore not allowed in any form in publicly financed schools. As Washington State's Constitution had stricter prohibitions against religion in public schooling than did the U.S. First Amendment, the litigants had precedents which might have worked in their favor.

In the United States, the courts may function as the arbiters of last resort for those who feel threatened by a perceived establishment of religion. Though the justices in *Schempp* mused that the U.S. Supreme Court did not wish to micromanage the curricula of schools, when citizens and institutions disagree on issues of religion in the public square, then local battles are brought to the lower courts.⁷ When the ruling hinges on First Amendment and *Schempp* or other Supreme Court rulings, unsatisfied parties may eventually appeal up to the U.S. Supreme Court. The U.S. Supreme Court has never ruled on whether college-level courses on religion (or the appropriateness of Religious Studies departments) are constitutional vis-à-vis the First Amendment, though they have tacitly allowed lower court rulings to stand by denying Petitions for Writ of Certiorari (informally called "Cert Petitions" or simply "Cert") on appeal. Significantly, the *Seattle Bible Trial* was the earliest case I have found where plaintiffs challenged the legality of a college-level course based on separationist First Amendment arguments in the post-*Schempp* era. For these reasons, study of the *Seattle Bible Trial* is illustrative, and fills some gaps in 1960s church-state separation history discourse. This chapter sheds light on institutions that grew out of or changed under these discourses, and engages with theory about the possibility (or *impossibility*) of religious separation in the United States.

⁵ Sullivan, *The Impossibility of Religious Freedom*, 3.

⁶ *Abington v Schempp*, 374 U.S. 203 (1963) Note that the plaintiffs are swapped on appeal to the U.S. Supreme Court, though in the literature it is most common to use *Schempp* to refer to all cases rather than switching to "*Abington*" as shorthand for the appeal to the Supreme Court.

⁷ See Justice Brennan concurring opinion in *Schempp*, especially "To what extent, and at what points in the curriculum, religious materials should be cited are matters which the courts ought to entrust very largely to the experienced officials who superintend our Nation's public schools. They are experts in such matters, and we are not. We should heed Mr. Justice Jackson's caveat that any attempt by this Court to announce curricular standards would be to decree a uniform, rigid and, if we are consistent, an unchanging standard for countless school boards representing and serving highly localized groups which not only differ from each other, but which themselves from time to time change attitudes." 300-301

In Seattle Washington, where school-sponsored devotional Bible reading in the public grade and high schools was not common, the *Seattle Bible Trial* exposed a spirited evangelical resistance to the “secular forces” which many religious fundamentalists saw lurking in the *Schempp* ruling. The *Seattle Bible Trial* case was unusual, since it was not brought by the typical separationist-minded groups (i.e. the ACLU, POAU, etc.), but by Christian fundamentalists who maintained that the purported scholarly study of the Bible as literature was in fact unalterably religious. The case was similarly unusual in that it was opposed by separationist institutions, and ACLU counsel represented UW at trial. While the legal tests of *Schempp* were not in doubt, the trial court and then Supreme Court of Washington had to decide if and how the facts of the case fit into those tests. With respect to the U.S. Constitution, the courts had to decide whether the UW course constituted or “established” religion as defined by the First Amendment. However, that was not all, since Washington had stricter church-state separation in its constitution than was required by federal law, thus the court needed to consider that as well.

In addition, the courts also had to decide whether the Washington State Constitution, with its Blaine Amendment provisions, might bar the course, even of the U.S. Constitution did not. Since Blaine Amendments tend to be more restrictive than the First Amendment Establishment Clause, and exist in some form in all but 11 state constitutions, it was not inconceivable that sufficiently motivated courts could have found legal justification for banning the academic engagement with the Bible in publicly financed schools. There were ample precedents in Washington jurisprudence to warrant some optimism on the part of the plaintiffs. In other sections of the United States, such as the South, where devotional Bible reading was more common and popular, the *Schempp* decision was often resisted publicly by self-serving politicians, defiantly by some school administrators, perhaps more quietly by teachers and administrators on the ground at the schools themselves, and sometime loudly by others using the courts. As was outlined in chapters one and three, the *Schempp* ruling marked a pivot in the erosion of evangelical support for the BJC and POAU in their separationist projects, and a sketch of right-wing resistances helps illuminate the loss of these institutional supports.

This chapter examines the *Seattle Bible Trial* and situates the ruling in the context of these resistances. Religion is fluid, though the Christian fundamentalists in the *Seattle Bible Trial* thought they were protecting “traditional” practices and returning to some Golden Age of orthodoxy. As such, they were in the same company as those who railed against the *Engel* and *Schempp* rulings in the early 1960s.⁸ Since the courts must rule on what is and is not “religion” in these separation cases, it places them in the position of reifying religious orthodoxy, whether the courts like it or not. This has unintended consequences, and impacts the Freedom of Religion clause in the First Amendment. Sullivan argues that “religions everywhere are being reinvented by their adherents to suit new circumstances” and asks, “how and whether, given these conditions, law anywhere today can do what it is being asked to do: guarantee freedom of religion. Courts need some way of deciding what counts as religion if they are to enforce the laws. Is it possible to do this without setting up a legal hierarchy of religious orthodoxy? And who is legally and constitutionally qualified to make such judgments?

⁸ See chapter one.

Can ‘lived religion’ ever be protected by laws guaranteeing religious freedom?”⁹ We might well ask the same question about religious separation. Sullivan adds, “Religion and law today speak in languages largely opaque to each other.”¹⁰ An example of this was seen in the efforts of the plaintiffs in the *Seattle Bible Trial*, when they argued that state-sponsored courses which deny biblical inerrancy and infallibility invariably spoke to the very core of their religion. For Christian evangelicals, for whom the Bible is central, and fundamentalists, for whom it is inerrant, this was self-evident. The judges did not agree, except for the lone dissent in the Washington Supreme Court. The trial court attempted to frame the question as a battle of authority between religious *scholars*, but ultimately they rejected the plaintiffs’ argument that the Bible was inalienably religious and that ideas concerning Biblical authority were essentially theological.

Sullivan argues that religious freedom might be better protected if it were unmoored from the legalistic framework of First Amendment rights and the courts. In the 1960s, the courts themselves said they did not wish to get into the job of deciding course curricula, but absent an alternative, in a dispute of this sort *somebody* had to decide what was and was not an establishment of “religion.” Hierarchies of orthodoxy had to determine this; authority had to be either granted by proxy to public schools and universities when they were left unchallenged to decide curricula, or else enforced by the police powers of the state when plaintiffs availed themselves of the courts.

The Washington courts were no more eager to get into the business of micromanaging public school curricula than the Supreme Court had been. In an effort to side-step this quagmire, the *Seattle Bible Trial* became a battle of experts—a conflict in which the experts supporting the university’s views were judged more legitimate, in large part due to their credentials, including the accreditation of the higher education they had received as well as their history of publications. Unlike the judge in the case that Sullivan examined (and testified before), the judges in the *Seattle Bible Trial* seemed eager to defer to expert witnesses, albeit to those it considered actual “experts.” Thus, while the court needed to adjudicate whose definition of “religion” was legitimate in this instance, it was primarily occupied with establishing the professional qualifications of the experts and academics on each side.

Additionally, the courts had to address the plaintiffs’ argument that their case be decided in light of *Dearle*, which declared the historical, biographical, narrative, and literary features of Bible is an invalid area of study in the Washington public schools.¹¹ Since *Dearle* offered no loophole for the literary or historical study of the Bible, it offered the plaintiffs their best legal argument in the case. Though previous rulings and precedents, as well as Washington attorney general “findings of fact,” included higher education in the state’s stricter separation language, the court ruled that *Dearle* did not apply in the *Seattle Bible Trial*. The facts of the case were different, the court ruled. That is, the prohibition against expending public money for religious instruction in schools in the Washington Constitution, (Article 1, Sec 11) did not apply to UW because

⁹ Sullivan, *The Impossibility of Religious Freedom*, 3.

¹⁰ Sullivan, *The Impossibility of Religious Freedom*, 4.

¹¹ 102 Wash. 369, 173 P. 35 (Wash. 1918)

the university and university students were not applicable to *Dearle*.¹² Specifically, the Washington Supreme Court ruled that the facts of the case were different because UW students were not children and their attendance was not required by law. Without *Dearle* as a precedent, the plaintiffs' case appeared doomed. This did not deter them, however, and they soldiered on in the trial, appealed to the Washington Supreme Court (where they lost the appeal) and to the U.S. Supreme Court (where they were denied cert).

The *Seattle Bible Trial* in Scholarly Literature

There were two scholarly articles of note written about the *Seattle Bible Trial*. These articles are helpful in situating the scholarly discussion of how the Bible was used in academic courses in the early 1970s, and demonstrate the concerns in academe about whether religious studies at publicly funded institutions might be legally allowed post-*Schempp*. Wallace F. Caldwell's "The Bible as Literature: A Constitutional Controversy" skillfully summarized the trial and the appeal of the *Seattle Bible Trial*. This article also explained the history of and difference between the "insulation concept" and "neutrality concept" of separation at that time.¹³ Caldwell demonstrated how the U.S. Supreme Court had developed and accepted both concepts of separation, though the *Schempp* ruling was seen as evidence that the neutrality concept—wherein religion in the public square was free from both sponsorship or restraint—had the authoritarian imprimatur in the area of education.¹⁴ The other article, Robert S. Michaelsen's "Constitutions, Courts and the Study of Religion" considered the *Seattle Bible Trial* in the context of other church-state separation cases in religious or church-related colleges in Connecticut and Maryland, where public support of the study of religion and theology was the object of inquiry in connections with constitutional challenges. In one case, the courses were found to be free of any efforts to indoctrinate or proselytize and fitted into the "predominant higher education mission...to provide their students with a secular education."¹⁵ In another case, the aid was allowed generally as long as it excluded courses in theology and religion, though if they were academically legitimate the Court felt there was some possibility they might be used to deepen "religious experiences in a particular faith."¹⁶ The article uses the Connecticut and Maryland cases as well as the *Seattle Bible Trial* to show the state of the law with respect to religion in the public higher education in the late 1970s.¹⁷ This era was the high-water mark for strict

¹² Later, by 2002, in *State ex rel. Gawley v. Grimm*, 48 P.3d 274 the court explicitly ruled that colleges, universities, and other institutions of higher education in Washington state are not "schools," within meaning of State Constitution.

¹³ Caldwell was a graduate fellow at UW in 1958 and may have had some personal knowledge of the faculty and coursework there.

¹⁴ Wallace F. Caldwell "The Bible as Literature: A Constitutional Controversy" *Research Studies*, 39 (2), June, 1971

¹⁵ Robert S. Michaelsen, "Constitutions, Courts and the Study of Religion," *Journal of the American Academy of Religion* XLV, no. 3 (1977): 1, doi:10.1093/jaarel/XLV.3.291.

¹⁶ *Ibid*

¹⁷ Robert S. Michaelsen "Constitutions, Courts and the Study of Religion" *JAAR* XLV/3 (1977), 291-308

separation in the United States, after the *Lemon v. Kurtzman* ruling, which added the “undo entanglement” test to tests established in *Schempp*.¹⁸

The Arguments in the Seattle Bible Trial

The university argued that its *Bible in Literature* course was not religious. Dr. Solomon Katz, University of Washington provost, assured the court of the university’s due diligence in this matter. He said, “The course has been taught by professors who are regular members of the faculty, retained because of their competence as scholars in literary history and criticism. The ‘Outline for the Study of the Bible as Literature’, published by Professor David C. Fowler, has been reviewed from both academic and legal standpoints and it is the opinion of the University that the course does not purport to be religious exercise or instruction, nor is it being taught as such.”¹⁹ The judge placed great emphasis on the professional qualification of the scholars (and, perhaps also, the lawyers) in the *Seattle Bible Trial*.²⁰ Ultimately, the superior qualifications and credentials of the UW scholars were used to justify denying the plaintiffs’ suit. Yet, in deciding who was the expert and who was not—that is, whose ideas of what is “religion” and “theology” were valid—the court was establishing an orthodoxy by proxy, albeit one they could plausibly deny having reified themselves. The court also was aware of the context in which the lawsuit had been brought.

The *Seattle Bible Trial* took place under the backdrop of turbulent local, national, and international events. Judge W. R. Cole, presiding in King County Superior Court, refused to grant a temporary injunction to halt the course, in part because “justice required that students now taking the course...to...stay out of the draft should not have their rights denied.”²¹ The war in Vietnam and the military draft had grown controversial by 1966.²² The years since *Schempp* and leading up to the *Seattle Bible Trial* had been momentous. The *Schempp* decision had been handed down just two short months before the March on Washington for Jobs and Freedom where Dr. Martin Luther King Jr. famously delivered his “I Have a Dream” speech. Three months after that, U.S. President John F. Kennedy was assassinated, plunging the country into a state of mourning. The groundbreaking 1964 Civil Rights Act and the 1965 Voting Rights Act were framed as tributes to the slain leader by President Lyndon B. Johnson. Then in

¹⁸ *Lemon v. Kurtzman*, 403 U.S. 602 (1971) established the “Lemon test”, which added “excessive government entanglement” to *Schempp*’s “secular legislative purpose” and neutrality prongs. Based on comments from other rulings, scholars doubt that there are five votes on the U.S. Supreme Court that would uphold two of the three pillars of the Lemon Test today.

¹⁹ University of Washington Press Release dated April 19, 1966 cited in article p96 of Caldwell

²⁰ Contrast with the case studied in Sullivan’s *Impossibility of Religious Freedom*, wherein it seemed that the court did not or could not understand or accept the nuances of definition and arguments that academics made.

²¹ Cited in Caldwell as *University of Washington Daily*, May 10, 1966 but my experience from the archive show this is mistaken and the article is from a Tuesday. Curiously, there was no front page in microform copy for May 10th.

²² The Students for a Democratic Society (SDS) chapter at the University of Washington was formed circa 1963, and other chapters existed at Western Washington University in Bellingham, Central Washington University in Ellensburg, and Washington State University in Pullman. By early 1968, the UW chapter was thriving, focusing its activities on antiwar, labor, and civil rights issues, as well as publishing a newsletter, *SDS News*. For more on the Viet Nam war draft resistance in Seattle, see http://depts.washington.edu/antiwar/vietnam_draft.shtml (Accessed 12/12/2012)

August of 1965, The Watts Riots shocked the country as Los Angeles witnessed a six-day period of violence which resulted in 34 deaths, 1,000 injuries, 3,500 arrests, and many millions in property damage.²³ Seattle was less affected by urban conflicts than many urban areas, but other, equally troubling, issues occupied UW officials in the mid-1960s. In early 1966, the first public “Acid Test”—parties fueled with LSD and psychedelic rock and roll music—debuted in San Francisco, California. UW was trying to decide what, if anything, to do about UW students who were also openly experimenting with LSD. In April of 1966, Time Magazine ran a front-page article, “Drugs: The Dangers of LSD,” and by October the drug would become illegal in California.²⁴ Concerns about the drug culture on campus and youth rebellion continued as backdrop to the trial, and news reports of the trial were read alongside upheavals domestic and abroad. The *Seattle Bible Trial* appeal was argued during the “long hot summer” of 1967, during which The Six Day War (also known as the Arab-Israeli War) was fought in the Middle East, and 159 race riots (or uprisings) erupted across the United States.²⁵ This war in the Middle East influenced the religious landscape in the U.S., as evangelical Christian dispensationalists saw the capture of Jerusalem as proof of Bible prophecy and an eschatological prophesy, while the war’s affect on diaspora Jews made for an increased support for Israel and a re-energized Jewish ethnic identity. U.S. support of Israel against Soviet allies moved the country close to a hot war with the USSR.²⁶ Race riots and anti-war protests caused fear and anguish domestically, and wars cold and hot fueled anxiety about foreign affairs. Thus, the circus-like atmosphere of the *Seattle bible Trial*, which the press explicitly likened to a “modern day Monkey Trial,” was set against the backdrop of the dramas and turmoil of “The Sixties.” In fact, after *Schempp* many evangelicals argued it was precisely in these “difficult times” that the Bible was needed “more than ever” in the public sphere.²⁷ *Schempp* undoubtedly energized the evangelical ministers who sued UW to stop them from teaching what they considered to be a heretical, liberal interpretation of the Bible.

Reverends Miller and Webb, the plaintiffs in the *Seattle Bible Trial*, made two constitutional arguments in their complaint. The federal argument that UW was establishing religion under the First Amendment and another using the provision of the Washington Constitution which read “Absolute freedom of conscience in all matters of

²³ *Burn, Baby, Burn! The Los Angeles Race Riot, August, 1965* / by Jerry Cohen and William S. Murphy. *Introd. by Robert Kirsch*, (New York : Dutton, n.d.).

²⁴ See content.time.com/time/magazine/article/0,9171,899158,00.html (Accessed 12/12/2012)

²⁵ To see how riots were framed in 1968, see Louis C. Goldberg, “Ghetto Riots and Others: The Faces of Civil Disorder in 1967,” *Journal of Peace Research* 5, no. 2 (June 1, 1968): 116–31, doi:10.1177/002234336800500202. In June, there were riots in Atlanta, Boston, Cincinnati, Buffalo and Tampa. In July, violence erupted in Birmingham, Chicago, New York City, Rochester, Milwaukee, and Minneapolis. The bloodiest riots occurred in Newark, New Jersey and Detroit, Michigan. In response to the Twelfth Street Riot, in Detroit, Governor Romney ordered out the Michigan National Guard, and President Johnson sent in Army troops. In Detroit alone, the casualties included 43 dead, 1,189 injured, over 7,200 arrests, and more than 2,000 buildings destroyed. By late October, the first national anti-war rally arrived in Washington, D.C. The largely educated, white, middle-class protestors who occupied the Lincoln Memorial on October 2nd were met with six thousand U.S. Army units with fixed bayonets. According to US Marshalls Service estimates, 35,000 protestors moved on the Pentagon.

²⁶ “McNamara: US Near War in '67”, *The Boston Globe*, AP, September 16, 1983, p1

²⁷ See chapter one.

religious sentiment, belief, and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person, or property, on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for, or applied to any religious worship, exercise or instruction, or the support of any religious establishment.”²⁸ The former was perhaps a long-shot, but the latter argument had precedents where the section had been interpreted very narrowly. The plaintiffs appeared confident that the *Dearle* precedent would support their case.

Miller and Webb hoped that *Dearle* and the stricter church-state separation in the Washington constitution was the key to their case. For instance, though *Everson* had allowed public funding to be spent on transportation of children to parochial schools, in *Mitchell v. Consolidated School District* (1943) this was forbidden under Washington state constitution.²⁹ If UW was going to win the case, their lawyers needed to figure a way around *Dearle* and the other separationist Washington state rulings. In an earlier Washington case, *State ex rel. Clithero v Showalter* (1930), the courts sustained an objection to an official order requesting that the state board of education promulgate an order requiring Bible readings in the public schools. That is, they did not order the Bible read in public schools. Miller’s attorney also introduced a history of the State Attorney General’s opinions sympathetic to their argument, including one which stated that “legislation providing state funds to any institution of collegiate grade in Washington for the purpose of establishing scholarships for needy students was unconstitutional, since church-supported institutions would be included.”³⁰ *Dearle* seemed to give the plaintiffs substantial legal support, gesturing to the claim made by the plaintiffs in the *Seattle Bible Trial* that, “Bible history, narrative and biography...cannot be taught without leading to opinion and oftentimes partisan opinion.”³¹ The plaintiffs introduced evidence that the Washington legislature had proposed the Amendment which informed *Dearle* precisely to avoid controversy over religious issues in the public square. But ultimately, the trial court found these precedents unconvincing or not germane to the facts of the *Seattle Bible Trial* case. The facts were different, surely, but perhaps the notions of pluralism and the pride of place of the Protestant Establishment which existed in 1905 when *Dearle* was decided, had undergone change by 1966?

Who Decided What Constituted “Religion” in the Schools and Universities?

From the Old Deluder Satan Act of 1647 to the “non-sectarian” but Christian-inflected majoritarian systems of Horace Mann in the nineteenth century, to the ongoing legal and political debates in the twenty-first century, religion has had a significant and changing role in American public education. In the early 1960s, the

²⁸ Fourth Amendment to the Washington constitution, Art. I, Sec. 11 (Religious Freedom) Approved November, 1904.

²⁹ 17 Wn.2d 61, 135 P.2d 79 (1953). Cited in Caldwell, 98.

³⁰ Advisory Opinions of the Attorney General of the State of Washington, Vol. 58, No. 266. Cited in Caldwell, 99, footnote 23

³¹ 173 Pac. 35, at 38. cited in Caldwell, 99, footnote 26

United States Supreme Court issued two decisions prohibiting school sponsored prayer and the devotional reading of the Bible in the public schools. One common narrative of this story holds that state-sponsored Bible reading had been untroubled since the first Puritan schools in New England, before it was suddenly banned by an activist court to appease a minority who object to it.³² While there has generally been a majority of Americans who have supported Bible reading in the schools, there has also been significant resistance to this practice from believers (usually religious minorities) and non-believers alike.

In addition, the narrative spun by opponents of *Engel* and *Schempp* holds that the powerful Supreme Court, backed by the massive coercive powers of the Federal government, effectively “took the Bible out of the schools.” This idea mystifies the fact that the dicta in *Schempp* indicated that Bible reading for the study of history or literature would be allowed, though this would not become certain until such cases were in fact tested.³³ This narrative also omits the organized resistance to the decisions and the assumption of a Protestant Establishment in the public schools as unproblematic. Finally, the story mystifies religious history and misses that most legal action in this area occurred at the state and local level and never made it to federal courts, as was the case in the *Seattle Bible Trial*.³⁴ There is also some evidence that religion in the public schools may not have been as wide-spread or complete as some, particularly the religious right, have maintained.³⁵ This historiography continues to illuminate and complicate the story of the Bible in public schools, and my dissertation endeavors to help add to the understanding in this field.

Partisans in the Culture Wars who support religion in the public schools often dredge up the nineteenth century quote from Associate Supreme Court Justice David Brewer, who waxed about religion in the Court’s 1892 opinion in *Church of the Holy Trinity v. United States*.³⁶ While this case was not specifically about religion, the court considered America’s Christian identity as lending strong support for its ruling. Almost half of the text of the opinion is spent demonstrating America’s Christian identity, in order to show that congress could not have intended to prohibit foreign ministers. Justice Brewer wrote for the Supreme Court that our legal and cultural traditions make it clear “this is a Christian nation.”³⁷ Of course, Brewer’s quip was dicta, not the “law.” Still, the directness of the statement is meaningful for those who believe that America is a Christian nation.

³² Joan DelFattore, *The Fourth R: Conflicts Over Religion in America’s Public Schools* (New Haven, Yale University Press, 2004), 13

³³ One occasionally finds the anachronistic argument that the *Schempp* decision was responsible for the creation of religious studies departments in the U.S. This idea has been debunked in papers given at the “Religious Studies 50 Years after *Schempp*: History, Institutions, Theory” the weekend of September 27-29, 2013 hosted by the Department of Religious Studies at Indiana University-Bloomington, and previously in blogs such as: <http://mirrorofjustice.blogspot.com/mirrorofjustice/2011/11/the-supreme-court-and-the-field-of-religious-studies.html>

³⁴ For an excellent history of these phenomena, see Schat, *The Myth of American Religious Freedom*.

³⁵ Laurence Moore’s *The Godless Constitution* (1997), his *Journal of American History* article in 2000, and Ben Justice’s *The War That Wasn’t* (2005) suggest that religious exercises in public schools were much less common than is thought, particularly as articulated by the religious right.

³⁶ *Church of the Holy Trinity v. United States*, 143 U.S. 226 (1892).

³⁷ *Ibid*

Recall from chapter one that, in *Everson v. Board of Education* (1947) Justice Hugo Black wrote that the, “‘establishment of religion’ clause of the First Amendment means at least this: ‘Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion over another. Neither can force or influence a person to go or to remain away from a church against his will or force him to profess a belief or disbelief in any religion...No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion...In the words of Jefferson, the clause against establishment of religion by law was intended to erect ‘a wall of separation between church and state.’”³⁸ Black (re)coined the famous phrase, originally from President Thomas Jefferson’s letter to the Danbury Baptists, and set the stage for the various cases testing religion in the public schools which began making their way through the courts in the 1950s. As noted in chapters one and three, some evangelical institutions advocated a wall of separation to keep American Catholics from garnering public funds for parochial schools, while still believing the Protestant Establishment in the public schools to be unproblematic. That was to change in 1963.

In *Schempp*, writing for the majority, Justice Tom Clark proposed a two-part test for resolving Establishment questions: first, “What are the purpose and primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds its scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion.” These were the two prongs of the test, which would be further refined in *Lemon*. Clark added, in *dicta*, his oft-quoted words, “it might well be said that one’s education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be affected consistently with the First Amendment.” Justice Arthur Goldberg put it a bit more succinctly in his concurring opinion, “It seems clear to me from the opinions in the present and past cases that the Court would recognize the propriety of...teaching *about* religion, as distinguished from the teaching *of* religion, in the public schools.”³⁹ Justice Brennan, the strictest separationist in those decades, in a concurring opinion, said “The holding of the Court today plainly does not foreclose teaching *about* the Holy Scriptures or about the difference between religious sects in classes on religion and history.” Justice Brennan continued, “To what extent, and to what points in the curriculum religious material should be cited, are matters which the courts ought to entrust very largely to the experienced officials who superintend our Nation’s public schools. They are the experts in such matters, and we are not.” It is certain that the justices in the *Seattle Bible Trial* were in agreement, and they seemed no less eager to get into the business of approving course syllabi. While the courts were understandably reluctant to intrude into decisions regarding curricula, it is clear that differing ideas on what constituted legitimate material or inquiry in the public schools would need to be adjudicated by *somebody*.

³⁸ *Everson v. Board of Education*, 330 U.S., 1, 15-16, 18 (1947)

³⁹ *Schempp*

When decisions are left to the schools, standards varied and those variations were reproduced until and unless somebody objected.⁴⁰ When that happened, those objections generally were settled in the courts. Where there were not citizens (with legal standing) who were willing and able to object to devotional readings of the Bible, the *Schempp* ruling could be (and often still is) quietly ignored in the manner of covert resistance. It should be noted that *dicta* was not the “black letter law” like the prongs of the test in *Schempp*. *Dicta* are the parts of a written opinion where the justices are “thinking out loud” about issues that were not present in the facts of the case. While they can and should be used as guidance by lower courts, particularly in the absence of other precedents, they need not be.⁴¹ Again, the U.S. Supreme Court has never ruled on a “Bible as Literature” type course or the legality of Religious Studies departments and programs in public institutions.

Though written after the *Seattle Bible Trial*, a useful summary of the doctrine on the academic study of religion comes from Justice Fortas, “Government in our democracy, state and national, must be neutral in matters of religious theory, doctrine, and practice. It may not be hostile to any religion or to the advocacy of no-religion; and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite. The First Amendment mandates governmental neutrality between religion and religion, and between religion and non-religion.”⁴² By the twenty-first century, however, the U.S. Supreme Court will retreat from the “neutrality concept.”⁴³ Though this chapter cannot provide an exhaustive review of establishment case histories, these nuances of definition help understand how “religion” is defined by the courts, and who is doing the deciding.

It is also significant that the cases which were decided by the Supreme Court in the early 1960s began their way through the courts in the mid-1950s, at the height of Cold War public piety in the United States. If the USSR (and China) promoted governmental affirmations of atheism, the United States would respond with its public declarations of God and religion.⁴⁴ Anxieties in the United States grew as the Cold War grew increasingly hot. A “cease fire” was declared for the Korean War in 1953, which was a “hot war” wherein U.S. and Communist Chinese troops directly confronted each other.⁴⁵ The first Soviet test of a hydrogen bomb took place on August 12, 1953, when Ellory Schempp was 13-years-old, just a couple of years before his protest of the overt religious exercises at his high school. The Sputnik satellite was launched by the USSR on October 4th, 1957, shortly after Ellory’s protest at school, but before his case would

⁴⁰ As of 2015, the Freedom From Religion Foundation (FFRF) issues cease and desist letters or sues a public school for Bible reading or prayers on a weekly basis.

⁴¹ Dictum is Latin for “remark,” a comment by a judge in a decision or ruling which is not required to reach the decision, but may state a related legal principle as the judge understands it. While it may be cited in legal argument, it does not have the full force of a precedent (previous court decisions or interpretations) since the comment was not part of the legal basis for judgment. The common counter argument to citing dicta is, “it is only dictum (or dicta).”

⁴² *Epperson v. Arkansas* 393 U.S. 97, (1968)103-4

⁴³ See chapter three.

⁴⁴ See T. Jeremy Gunn, *Spiritual Weapons the Cold War and the Forging of an American National Religion* (Westport, Conn.: Praeger Publishers, 2009).

⁴⁵ The negotiated Demilitarized Zone (DMZ) was a site of continued tension, including The Korean DMZ Conflict of 1966 through 1969 (sometimes referred to as a Second Korean War) where “low-level” armed clashes between North Korean, South Korean and United States forces.

go to trial. The Cold War was a constant backdrop and subtext in debates about the proper role of religion in the public sphere.

Ellery Schempp, a Pennsylvania Unitarian Universalist, had his day in local and lower federal courts, before his case made it to the U.S. Supreme Court. *Schempp* was joined with *Murray v. Curlett*, a case that originated in 1960, when Madalyn Murray O'Hair filed a lawsuit against the Baltimore City Public School System, after her son Bill's refusal to partake in the Bible readings had resulted in violence being directed against him by his classmates.⁴⁶ As noted earlier, there was a growth in Religious Studies departments and courses of this type during that time at the college level.⁴⁷ Clearly more research of this period, which is beyond the scope of this paper, would add greatly to this discussion.

A Brief Survey of Resistance to the *Schempp* Decision Prior to the *Seattle Bible Trial*

It may prove useful to further situation the *Seattle Bible Trial* in the historical context of right-wing resistances to *Schempp*. A century before the *Schempp* decision, in the same Philadelphia area where Ellery Schempp lived, rumors of an order to suspend (King James Version) Bible readings in the schools led to the Bible Riots between Catholic and Protestant mobs that lasted for days, killed nine, injured scores and witnessed the burning of a number of churches and homes.⁴⁸ Similar Nativist verses Catholic riots occurred in New York and elsewhere. Ironically, the earliest attacks on public funding for church-run schools in New York were aimed at Methodists and Baptists, not Catholics. There is much nineteenth century background this mid-twentieth century story. An in-depth review would be beyond the scope of this paper, but the Bible Riots of 1844 were significant enough to be mentioned in the opening arguments of *Schempp*, which was argued not far from the location of the mayhem.⁴⁹ While clashes over the Bible in public school continued into the twentieth century, the aim of this section is to examine how *Schempp* was overtly resisted after the decision.

In 1959 Florida, a group of agnostic, Jewish and Unitarian parents were plaintiffs in a trial court dispute which upheld Bible-reading, after-hours Bible classes, religious films and symbols, holiday services, religious census of the students, and religious tests

⁴⁶ William J. Murray, was more famous (or infamous) than Schempp. The son of Madalyn Murray O'Hair, who founded the group American Atheists in 1963 and who, in 1964, *LIFE* magazine called "the most hated woman in America." William Murray converted to Christianity in 1980. In 1982, he published *My Life Without God* an exposé of his childhood and mother. Tragically, in 1995, Madalyn O'Hair, her son Jon, and granddaughter Robin were kidnapped and murdered

⁴⁷ Ellery Schempp would go on to take a Ph.D. in physics from Brown in 1967, and become an accomplished physics professor. As of fall 2008, he taught a class on the separation of church and state at Tufts' Experimental College. See <http://www.excollege.tufts.edu/coursesPrevious08fall.asp>

⁴⁸ "For the Honor and Glory of God: The Philadelphia Bible Riots of 1840" Vincent P. Lannie and Bernard C. Diethorn, *History of Education Quarterly*, Vol. 8, No. 1 (Spring, 1968), pp. 44-106 See also the discussion on Catholic resistances in the nineteenth century in chapter three.

⁴⁹ This topic will be explored further in the chapter on Protestants and Other Americans United for the Separation of Church and State. For an excellent treatment of this period, see Jon Gjerde and S. Deborah Kang, *Catholicism and the Shaping of 19th Century America* (Cambridge; New York: Cambridge University Press, 2012).

for the employment and promotion of school personnel. The Florida Supreme Court affirmed this decision and declared (referring to the recent school prayer ruling) that the U.S. Supreme Court's incorrect interpretations of the Constitution were undermining federalism and the authority of states' rights and threatened "the long established and accepted customs of the vast majority of the American people."⁵⁰ *Chamberlin* was appealed to the U.S. Supreme Court, which vacated the decision and sent it back to the Florida Supreme Court to reconsider under the light of *Schempp*. The Florida Supreme Court then affirmed its earlier ruling on the grounds that the Bible reading had an explicit secular purpose of "a good moral training, of a life of honorable thought and good citizenship" ignoring that this line of reasoning had been expressly invalidated by the majority in *Schempp*. Shockingly, the court refused to comply with *Schempp* because "the Establishment Clause of the Constitution was never designed to prohibit the practices complained of."⁵¹ Apparently the judge had not heard of *Marbury v. Madison*.⁵² The plaintiffs appealed again, and the U.S. Supreme Court struck down the Bible reading again.⁵³ Though it appears that the school complied after this last ruling, the depth and boldness of the resistance indicated, I believe, the prevailing mood in the South. *Chamberlin* was decided before *Schempp* was argued before the Supreme Court, but prefigured resistances which would follow.

Another example of resistance leading to lawsuits occurred when New Jersey Attorney General Arthur Sills sued two school boards who resisted compliance with *Schempp*. In the case of *Sills v. Board of Education of Hawthorne* both the Superior Court and the Supreme Court of New Jersey ruled against the school board, who eventually complied, albeit reluctantly.⁵⁴ A more novel approach was tried by the school board in Netcong, New Jersey, which required reading of sections of the *Congressional Record* in which prayers of House and Senate chaplains were reported. The board's reasoning was that simply repeating the *Congressional Record* could not be illegal.⁵⁵ After the Netcong board defied Sills' order to terminate the practice they were also taken to court. Numerous telegrams and letters were sent to the court by pro-board partisans, calling those who disagreed with them "Communists," "Anti-Christ," and "Anti-God."⁵⁶ Though the plaintiffs in these cases were almost never actual communists or even fellow travelers, there was considerable Cold War tension and red-baiting which occurred in these cases.⁵⁷ The court chastised the board for using "intemperate and unwarranted

⁵⁰ *Chamberlin v. Dade County*, 143 So. 2d 21 [1962], p. 30

⁵¹ *Ibid.* pp. 537,538

⁵² *Marbury v. Madison*, 5 U.S. 137 (1803) was the case wherein the U.S. Supreme Court outlined the basis for the exercise of judicial review in the U.S. under Article III of the Constitution.

⁵³ *Chamberlin v. Dade County Board*, 377 U.S. 402 (1964)

⁵⁴ Joan DelFattore, *The Fourth R: Conflicts Over Religion in America's Public Schools* (New Haven, Yale University Press, 2004), 97.

⁵⁵ **This loophole was tried by the Alabama legislature in 2014.** See "Bills Seek to Allow Prayer in Alabama School - MONTGOMERY Ala. — Alabama Lawmakers Are Proposing a Multitude of School Prayer and Religious Expression Bills This Session. Legislators Say the Bills Are an Effort to Push Efforts to Squash All Vestig...", accessed April 3, 2014, http://mdjonline.com/view/full_story/24630859/article-Bills-seek-to-allow-prayer-in-Alabama-school.

⁵⁶ Joan DelFattore, *The Fourth R: Conflicts Over Religion in America's Public Schools* (Yale University Press, 2004), 98.

⁵⁷ As quoted above, in Senate debates on February 3, 1994 Senator Jesse Helms said "I think it is possible to pinpoint when the decline of this country really began. It began when Madalyn Murray O'Hair ...conspired with Communist attorneys who came to her home to orchestrate the lawsuit that resulted in the first Supreme Court decision banning prayer."

adjectives” to describe the Supreme Court and explained that *Schempp* was not in fact “a recently concocted, ultra-liberal construction of our Federal Constitution.”⁵⁸

In Delaware, Attorney General David Buckson ordered state authorities to not comply with *Schempp* because, he claimed, state laws took precedence over Supreme Court rulings!⁵⁹ Irving Morris, president of the ACLU in Delaware, reminded the AG that unless Delaware had seceded from the Union it was still subject to federal authority.⁶⁰ The subsequent lawsuit, *Johns v. Allen*, had no chance in the federal circuit court.⁶¹ In an interview some thirty years later, Buckson jovially admitted to the interviewers that he never intended to win that fight, but as he had been planning on running for governor of the state, he didn’t want to appear too willing to comply with a ruling he felt most Delawareans didn’t agree with. Morris, in a separate interview, agreed that it was “win-win” for Buckson: if he succeeded he was a miracle worker, but even in a loss Buckson would win points with constituents for “standing up to” the federal government.⁶²

Though *Schempp* affected many more schools than did the school prayer case *Engle*, according to DelFattore, the public reaction “lacked the note of startled hysteria” which had characterized the response to the prohibition of school-sponsored prayer.”⁶³ My reading of the sources and the existence of the Becker Amendment and many other attempts to overturn *Schempp* seem to belie this notion. *Schempp* generated its share of passion, and much of it was connected to Cold War hysterics. Senator Strom Thurmond (R-South Carolina), a former chairperson for the Senate Judiciary Committee, sponsored several pieces of legislation to re-implement school-sponsored devotional Bible reading and prayer, saying “when the Supreme Court handed down their decision, everybody seems to feel, well, that is it.”⁶⁴ Jesse Helms, quoted above, was a Democrat at this time.⁶⁵ Many conservative Democrats were apoplectic with outrage over the *Schempp* ruling including Senator Willis Robertson (D-Virginia) who deplored what he felt was the “disrespect for the Bible and for the fact that we are a Christian Nation.” Robertson claimed that, “the most inherent distinction between our representative democracy and communism is our belief in God and the acceptance of the Bible as His Holy Word.”⁶⁶ The flurry of objections from many national politicians were equally vocal and unequivocal, as were the less publicized though no less passionate reactions from their constituents.

⁵⁸ *State Board of Education v. Board of Education of Netcong*, 108 N.J. Super. 564; 262 A. 2d 21 (1970) pp. 571,580

⁵⁹ DelFattore, *The Fourth R*, 99.

⁶⁰ The court stopped short of reminding the board who had won the Civil War.

⁶¹ Article Six, Clause 2—the Supremacy Clause—of the U.S. Constitution establishes that it as “the supreme law of the land” meaning federal law takes precedence over any state or local laws.

⁶² DelFattore, *The Fourth R*, 99.

⁶³ DelFattore, 101, 102

⁶⁴ 1983 Judiciary Committee Meeting, “Voluntary School Prayer,” p419, quoted from *The Fourth R*

⁶⁵ Helms was a five-term Senator from North Carolina. Like most conservative southern Democrats in the Senate, he switched to the Republican Party in the wake of the Civil Rights movement (in his case, in 1970). Of the Southern Democrats in the Senate when *Schempp* was decided who remained in office into the 1970s, only Robert Byrd of Virginia remained in the Democratic Party until his retirement. See chapter one for more on congressional resistances to *Schempp*.

⁶⁶ *Congressional Record*, June 19, 1963, pp. 11143,11145

The controversy of the Bible in public schools continues to play out today. As of 2014, disparate incidents are a weekly occurrence in the U.S.⁶⁷ The very fact that the place of the Bible in public schools continues to be resisted, negotiated, and litigated is telling. Teaching about religion and religious subjects in public schools has constitutional implications that are not shared by other subjects. Exploring the history of the controlling constitutional doctrine for this issue through the lens of the case of the *Seattle Bible Trial* helps increase our understanding of the ideas associated with the appropriateness of religion in the public square. What sort of people objected to the Bible as an object of inquiry in the public schools? Were they all wild-eyed lefty atheists, as claimed by *Schempp's* opponents? What about conservative Christians who objected to the purportedly academic treatment of the Bible in public schools?

In 1966, two fundamentalist Presbyterian ministers in the Seattle area sued the University of Washington (UW) asserting that UW's "Bible as Literature" class was in violation of both the state and U.S. constitutions. The ministers had purchased the syllabus and readings for the course, and in the highly-publicized court case, even subpoenaed class lists. Six UW students were brought to the stand to testify in court. According to Professor emeritus David Fowler, who had been teaching the course since coming to UW in 1952, "The students were amazed and indignant that this was happening...the cross-examination was what was equivalent to an oral exam in public, in front of reporters and everything."⁶⁸ Fowler was concerned for his students but added, "I was actually very proud of what my students were able to do."⁶⁹ Initiated just forty years after the "Scopes Monkey Trial", that modernist-fundamentalist battle was in the living memory of many of the *Seattle Bible Trial's* participants.⁷⁰ The *Seattle Bible Trial* had a "circus atmosphere" according to one witness.⁷¹ What did the fundamentalist ministers think was wrong with the study of the Bible at the university?

A Sketch of the History of Religion and the Bible in Education

The connection between religion and academe has a long and storied tradition in the western canon.⁷² The medieval European university was itself an eleventh-century invention, primarily interested in the education of clerics.⁷³ In 1499, Cardinal Ximenes de Cisneros established the University of Alcalá and had the Complutensian Polyglot Bible assembled in order, as he wrote in the preface, to "revive the languishing study of the Sacred Scriptures."⁷⁴ Over the centuries, translation errors had crept into various

⁶⁷ See Conclusion for more detail.

⁶⁸ "Comparative Religion Celebrates Its 25th," *The Daily*, accessed April 9, 2014, <http://dailyuw.com/archive/1999/10/29/imported/comparative-religion-celebrates-its-25th>.

⁶⁹ Interview with the author.

⁷⁰ "UW Men Testify at Bible Hearing," *Seattle Post Intelligencer*, June 28th, 1967 p45

⁷¹ "UW Men Testify at Bible Hearing," *Seattle Post Intelligencer*, June 28th, 1967 p45

⁷² Among the religious practices that took place at Academeia, the site of Plato's school in the fourth century BCE, were torch-lit nighttime footraces, various funeral games and a frenzied Dionysiac procession.

⁷³ This is not to suggest a *longue durée* connection between medieval universities and the University of Washington, only that the study of the Bible in academe has deep roots, and the arrival of literary criticism produces ironic consequences.

⁷⁴ See <http://biblemanuscriptsociety.com/Bible-resources/Early-Bibles/Complutensian-Polyglot> (Accessed: December 12, 2010)

incarnations of the Bible, eventually leading to an astonishing number of differences between versions which were difficult to reconcile.⁷⁵ Cardinal Cisneros endeavored to use the resources of the University and cutting-edge techniques to rectify the situation. This required an impressive application of humanistic, renaissance scholarship using textual (or “lower”) criticism to rationalize the embarrassing collection of biblical variants that existed at the time. The completion of this project was hailed as a great success.

However, these same techniques, when employed together with new ideas based on enlightenment rationality, suggested conclusions that biblical literalists found equally disturbing. Higher criticism, sometimes known as historical criticism, is a branch of literary analysis that moves beyond the goal of attaining an accurate version of the document to investigations of the origins, authorship, and dating of a text, especially the text of the Bible. In particular, higher criticism focuses on the sources of a document and tries to determine the authorship, date and place of composition of the text. These critical techniques and their conclusions disturbed many biblical literalists, who felt they challenged the claims to the supernatural origins and immutability of the Bible.

It was ultimately this sort of analysis which disturbed the primary plaintiff in the *Seattle Bible Trial*, the Rev. Thomas W. Miller. Miller maintained on the stand that the Bible, “cannot be taught objectively as a part of a secular program of education.” The council for the plaintiffs attempted to establish that those who taught “The Bible as Literature” course had accepted the “modernist or documentary hypothesis” with regard to the Bible, and that this hypothesis was obviously associated with a particular religious point of view. The plaintiffs argued that the teachers who taught the course were teaching religion *whether they intended to or not*, because liberal Protestant theology’s take on the Bible was indistinguishable from the criticism used to study the Bible as literature. If they were correct about the identity of higher criticism with a particular theology, did that mean the UW course taught a religion? Who got to decide?

Recall, the first part of the First Amendment of the Constitution says, “Congress shall make no law respecting an establishment of religion.”⁷⁶ That is the law of the land and the controlling doctrine in the *Seattle Bible Trial* case, although the Washington state constitution would also come into play. By virtue of U.S. Supreme Court decisions of the last 60 years, “Congress” has come to include any public agency—federal, state, and all the way down to local school boards. And, “law” in the controlling language may cover any form of publicly supported practice. As we shall see, since “Establishment Clause” cases were exceedingly rare in the history of the nation’s first 100 years, the definition of what constituted the “establishment of religion” has been worked out relatively recently.

The first case where the Establishment Clause of the First Amendment was applied to a local practice that had to do with education was *Everson vs. Board of Education*, decided in 1947. This case was a challenge to a public subsidy of the transportation by bus of Catholic school children in a New Jersey community. *Everson* is an example of those curious cases where the practice itself survived judicial scrutiny, but the decision was a landmark one because of its new and stringent “definition of doctrine.” As we saw in chapter one, Justice Hugo Black, writing for the majority said, “The ‘establishment of

⁷⁵ This project created the first printed polyglot, or multi-language, translation of the Bible.

⁷⁶ See http://www.archives.gov/exhibits/charters/bill_of_rights_transcript.html (Accessed 12/12/2012)

religion' clause of the First Amendment means at least this: Neither a state nor the federal government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another...no tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State.'" No justice had articulated the Establishment Clause quite like that before Justice Black, halfway through the twentieth century.

The Court applied the *Everson* doctrine a year later in *McCollum vs. Board of Education*, where elective courses on religious subjects taught in public schools by representatives of religious bodies was found unconstitutional. The Court found the program to be "a utilizing of the tax-established and tax-supported public school system to aid religious groups and spread their faith." The Court began to refine what the "wall of separation" was and where it stood.

The *Everson* doctrine was further reaffirmed and defined sixteen years later in a pair of cases having to do with devotional Bible reading and recitation of the Lord's Prayer in the public schools in Pennsylvania and Baltimore. In *Abington School District vs. Schempp* decided in 1963, the Court suggested a refinement of doctrine by formulating a more precise test of legality: "What are the purpose and primary effect of the enactment [or practice]? If either is the advancement or the inhibition of religion" it exceeds constitutional limits. The Court said that to fall within the legal limits of the Establishment Clause "there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion." The controlling doctrine can be summarized as the "secular purpose" and "neutrality" (meaning the practice is "neither advancing nor inhibiting religion") tests. A third test of "avoiding entanglement of religion and government" was added in 1971, but this was not in effect during the *Seattle Bible Trial* of 1966.⁷⁷

Of great interest in the "Bible Trial" were the *dicta* uttered by Justice Clark writing for the Court in *Schempp*, which perhaps bears repeating: "Nothing we have said here indicates that...study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment." The Court said this to refute the charge that without prayer in schools they would be establishing the "religion of secularism." The Court said further that, "it might well be said that one's education is not complete without the study of comparative religion or the history of religion and its relationship to advanced civilization." And Justice Goldberg, in his concurring opinion, suggested that the proper study of religion means teaching "objectively as part of a secular program of education." That is, "teaching *about*" religion but never the "teaching *of*" religion. Though they had never ruled on a case where such facts were at issue, in a variety of ways, different justices had indicated they thought that the academic study of religion was not "religious" in the sense of establishing religion in the First Amendment.

The *Schempp* decision was repeatedly appealed to by both sides in their arguments in the *Seattle Bible Trial*. It became the burden of the plaintiffs to prove that the

⁷⁷ This was known as the "lemon test" as outlined in *Lemon v. Kurtzman*, 403 U.S. 602 (1971)

University of Washington course had been taught “slanted in a religious direction, or designed to induce a particular religious belief, or to advance particular religious interests, or whether the course amounts to a religious indoctrination by teaching from a fixed theological position to promote a particular theology.”⁷⁸ The justices concluded that the plaintiffs were unable to show any such thing. They lost, appealed to the Washington Supreme Court where they lost again. Miller appealed to the U.S. Supreme court, which declined to hear the case and thus the decision stood.

Miller did not have anybody outside his own church testify at the trial. He could not enlist the any of the three most successful separationist litigation groups—ACUL, the American Jewish Congress, or the POAU—and in fact, the ACLU actually supported the university in its interpretation of academic freedom and sent a lawyer to represent UW in the case. Many religious groups, including the Seattle Union of Presbyterian churches, of which Miller’s *Bible Presbyterian* church was not a member, sent in *amici* “friends of the court” briefs in favor of the university. Indeed, a whole host of *amicus curiae* for the defendants included ones from the Council of Churches of Greater Seattle, the Diocese of Olympia, Episcopal Church in Western Washington, the Catholic Archdiocese of Seattle, B’nai B’rith Hillel Foundation at the University of Washington, the Washington, Northern Idaho Council of Churches, the Protestant Denominational Executives Conference and the Religious Directors Association at the University of Washington.⁷⁹

Minister Miller had been in close communication with Carl McIntyre, and brought him in as his “star” witness, though McIntire’s testimony did not shine brightly. McIntyre was a fervent anti-Communist, rabble-rousing, fiery radio preacher and the *bête noir* of Presbyterian fundamentalism. Yet McIntire waited three days to get on the stand, and then much to his dismay his testimony was severely circumscribed by the court. Additionally, the University’s lawyers shrewdly declined to cross-examine him. His testimony ended with a whimper rather than a bang. If the controlling doctrine in *Schempp* was their only recourse, the plaintiffs’ argument would have foundered immediately. However, the case law and practices with respect to the Washington Constitution was more sympathetic to the complete separation of public monies from any, even scholarly, treatment of religion. With more competent counsel to make this argument, could the decision gone otherwise? After all, the Washington Supreme Court contained only three justices, and one of them dissented.

Did they really believe that Professor Fowler was teaching a kind of modernist religion? Did they believe they had a chance to win? Or was the *Seattle Bible Trial* a publicity stunt? Most likely, all three could be answered in the affirmative. Miller was a conservative gadfly who had railed against other local causes he deemed anathema, such as Seattle’s Open Housing debate in 1963, which he believed unconstitutionally (*and* un-Biblically) interfered with his right to discriminate. In his testimony Miller had been citing the Decalogue and other Old Testament passages. He was then skewered by a

⁷⁸ Box 1, 1697-71-15 folder 1-10, David C. Fowler Papers, Manuscript Collection No. 1996, Special Collections, University of Washington Libraries, Thomas W. Miller and Harold Webb, Plaintiffs, vs, Board of Regents of the University of Washington, Defendants, No. 657 671 in the Superior Court of the State of Washington for King County.

⁷⁹ box 1, 1697-71-15 folder 1-10 Fowler Papers, Thomas W. Miller and Harold Webb, Plaintiffs, vs, Board of Regents of the University of Washington, Defendants, No. 657 671 in the Superior Court of the State of Washington for King County.

councilman who asked him if he could cite where the Bible commanded one to “Love thy neighbor” and he could not.⁸⁰ Miller seemed to enjoy the limelight, even when it was unflattering. Having lost the *Seattle Bible Trial* and attempts to remove the Bible As Literature class from the Lake Washington, Seattle high school did not deter him in his campaign against perceived threats. On December 8, 1969, the Clergy and Laymen Concerned About Vietnam (CALCAV) group announced that they would aid draft resisters and military deserters to escape to Canada. The president of the Seattle School Board, Dr. Edward Palmason, was a CALCAV member. Rev. Miller went after him, publicly demanding Palmason’s resignation.⁸¹ In the press, Miller styled himself as president of the Northwest Chapter of the American Coalition of Christian Churches. This group represented a mere handful of churches that bore allegiance to Carl McIntire’s ever-narrower definition of theologically “pure” Christianity.⁸² Rev. Miller often appeared arrogant and unsympathetic but it would be misleading and unhelpful to paint him as merely a two-dimensional caricature. If we did, we might miss an opportunity to understand how his connection to a constituency which would become energized in the following decade. The debate as to what is, and is not, “religious” did not end in the 1960s, but appears to be with us always. Miller’s extreme views might help us think about the possibility of religious separation in the United States and explore the boundaries of what we mean by “religious”.

There may be no definitive answers to these questions or the sources may not be available get access to the more private thoughts of Rev. Miller. Letters between McIntyre and Miller offer some insight into the latter’s thinking, but they are merely brief notes and there is a paucity of records to Miller’s private thoughts. Mostly, we are left with his public pronouncements, and at times it is difficult to divine how much of those are grandstanding for publicity or aggrandizement. However, the Miller I have come to know from his testimony and newspaper interviews seemed to have genuinely believed that the UW Bible class was teaching a form of modernist Christianity. It was a horrific, blasphemous form, denuded of any supernatural agency, but a religious form nonetheless. One of the Washington Supreme Court justices, in a dissenting opinion, agreed with the plaintiffs. If just one other justice had joined him, the case would have gone otherwise.

Professor Fowler was still alive when I began this project, and I had the privilege to interview him by phone. His voice was a little weak, but his memory of the events was

⁸⁰For an audio recording of Miller testifying before this commission, see http://www.blackpast.org/files/audio/openhousing_sea/part6/11_Thomas_W_Miller_part4_questions_from_WingLu_Ke_Herb_Reichert_part1.mp3 Miller argued against the provision which would bar race discrimination in housing, because he claimed it violated the 8th section of the Decalogue, “Though shalt not steal” (i.e. regulating properly in this manner was stealing). Miller was asked by councilman what chapter and verse is it in the New Testament which says “Love thy neighbor as thyself”? Miller answers, “I don’t know the exact verse right offhand.” (Accessed 12/12/2012)

⁸¹ “Seattle Group To Aid Deserters,” *Seattle Post-Intelligencer*, December 10, 1969, p. 3; Also: “Deserters’ Aid To Be ‘Looked Into,’” *Seattle Post-Intelligencer*, December 11, 1969, p. 2; “Palmason Explains Affiliation,” *Seattle Post-Intelligencer*, December 12, 1969, p. 7

⁸² **From the Carl McIntire Papers:** “American Council of Christian Churches, Northwest Chapter, Fifth Annual Meeting Program,” March 4, 1965, Box 385: Subseries 2:1: ACCC - ICC - TAM 1. ACCC - Pacific Northwest Council of Christian Churches, Seattle, Washington, Princeton Theological Library, “Luce Library”, Special Collections. Besides the Bible Presbyterian Churches of the complainants, the ACCC Northwest Chapter represented Baptist churches in Seattle, Tacoma, Bellevue, Tumwater, Richmond and Puyallup.

very powerful, and the *Seattle Bible Trial* was clearly a peak experience for him. What comes through clearly in his trial testimony, correspondences and in the interview was his dedication to his craft and to the task of teaching the Bible as literature with the same rigor and professionalism that he would approach Chaucer or any of his other literary subjects. Indeed, a critical edition of *Piers Plowman* was introduced as evidence at trial, and Professor Fowler was by training a Medievalist who specialized in Cornish literature. He shared the duty of teaching the Bible as Literature course with the other English professors in his department. And yet, when he was interviewed by the alumni magazine in 2004, Fowler stated that there was “no doubt that the ‘Bible trial’ of 1966 is my most significant experience” of his career at the University of Washington.⁸³

In the institutional memory of UW they remember the case as having been the impetus for formation of the Comparative Religion Department at the Jackson School of International Studies. After the appeal to the Washington Supreme Court was won, a committee was formed in 1970 to study the “feasibility of establishing the study of religion.”⁸⁴ The program was organized in 1973 and began accepting students in 1975. Though Fowler continued to teach in the English department, he remembered that prior to the lawsuit “The campus was very touchy” concerning religious studies classes and the climate was “fearful.”⁸⁵ In celebrating the 25-year anniversary of the department, comparative religion professor Eugene Webb said that the Court decision, “Was decisive in making the comparative religion department possible...it took away the veil of fear.”⁸⁶ Ironically, Miller’s lawsuit seems to have increased rather than decreased the kinds of critical study of religion that he abhorred.

While the *Seattle Bible Trial* helped free the University of Washington of its reluctance to teach courses on religion, and the *Schempp* case did not outlaw the study of religion in schools, increasingly, some K-12 administrators and school boards were eager to be rid of the Bible-based electives they may have blithely taught in the past. There was certainly resistance to *Schempp*, both overt and covert, which continues to this day.⁸⁷ However, in Seattle itself and elsewhere (West and East coast cities in particular) the Bible as Literature courses lost their appeal. I would argue this was primarily due to these electives losing their constituency in the 1960s and ‘70s. Those who wanted a more theological or religious approach to Bible teaching—a “Sunday School” type of class—were not interested in, and at times hostile to, the public schools teaching a disenchanting version of the Bible. Increasingly, secular-minded people who wanted no Bible at all in the public schools were emboldened by the *Schempp* decision to speak up and resist the academic treatment of the Bible. Administrators did not welcome the controversy nor want the headache of policing their faculty to ensure the Establishment Clause was not being violated, and thus had little incentive to continue with Bible courses. At Lake Washington high school, in the suburb of Seattle, where Rev. Miller had unsuccessfully turned his attention to remove the Bible as Literature course, the elective would cease being taught by the late 1970s.⁸⁸ As the English teachers who taught them retired or passed away, the courses became rarer in the

⁸³ <https://www.washington.edu/alumni/columns/dec04/theway03.html> (Accessed 12/12/2012)

⁸⁴ “Comparative Religion Celebrates Its 25th.”

⁸⁵ Interview with the author.

⁸⁶ No relation to Rev. Webb

⁸⁷ Ellis Katz, “Patterns of Compliance with the Schempp Decision,” *Journal of Public Law* 14 (1965): 396.

⁸⁸ Lake Washington high school course catalogs, in the author’s possession

Seattle public schools.⁸⁹ Eventually, Lake Washington's Bible as Literature course was offered less often and finally replaced with electives on Science Fiction and other topics. These electives tended to end with a whimper rather than a bang.

However, Time Magazine ran a front page article 40 years later, trumpeting the comeback of these courses, and exposing the two privately produced curricula crafted to pass Establishment Clause muster.⁹⁰ Though the curricula are often legally suspect, as of 2007 these textbooks were employed in 460 school districts in 37 separate states.⁹¹ While the printings are currently modest, the larger of the two publishers claims to be doubling the number of districts it is selling to each year. While there are both separationists and believers who might find this trend alarming, one poll suggested that 60% of Americans favored secular teaching of the Bible in K-12 schools.⁹² The Time article argued that a "new consensus" for secular Bible study was evidenced which believed that such knowledge was appropriate and essential for developing well-rounded citizens.⁹³

At trial, another irony came to light: Professor Fowler was also a Presbyterian, albeit of the mainline denomination, not the fundamentalist offshoot that Rev. Miller belonged to (though Fowler was raised as a Baptist). In fact, Fowler taught Bible Study at his church. This seemed not to generate much examination at trial, perhaps because it did not speak to the sort of argument that Miller and Webb were making. Reverends Miller and Webb belonged to the Bible Presbyterian Church splinter group, and in many ways the *Seattle Bible Trial* was simply a rehashing of the earlier Modernist versus Fundamentalist controversy.⁹⁴ Rev. Miller, from the Seattle church, seemed to be the real energy behind the court case, but Rev. Webb was a significant witness in the trial. Webb got his start at Calvary Bible Presbyterian of Glendale in 1952, and went to college on the GI Bill. I was lucky enough to have a phone interview with Rev. Webb as well as some email exchanges. Since Rev. Miller retired from public life in ill health and left Seattle around 1970, Rev. Webb was my only source after that date.⁹⁵

The national leader of Webb's Presbyterian synod was Carl McIntire.⁹⁶ McIntire would also be the "star" witness for their case. McIntire had a publication called "The Christian Beacon" as well as a radio broadcast "twentieth Century Reformation Hour", as did Webb for a time. McIntire set up a whole series of organizations serving what he called the "twentieth Century Reformation." He attacked the World Council of Churches for being apostate and picketed their meetings. His message was enthusiastically

⁸⁹ Course catalogs, Lake Washington High School, drawer of guidance counselor, 12033 NE 80th St, Kirkland, WA 98033, photocopies in author's possession.

⁹⁰ Time Magazine, Thursday, Mar. 22, 2007

<http://content.time.com/time/magazine/article/0,9171,1601845,00.html> (Accessed 12/12/2012)

⁹¹ Time Magazine, Thursday, Mar. 22, 2007

<http://content.time.com/time/magazine/article/0,9171,1601845,00.html> (Accessed 12/12/2012)

⁹² Time Magazine, Thursday, Mar. 22, 2007

<http://content.time.com/time/magazine/article/0,9171,1601845,00.html> (Accessed 12/12/2012)

⁹³ Time Magazine, Thursday, Mar. 22, 2007

<http://content.time.com/time/magazine/article/0,9171,1601845,00.html> (Accessed 12/12/2012)

⁹⁴ Bradley J Longfield, *The Presbyterian Controversy: Fundamentalists, Modernists, and Moderates* (New York: Oxford University Press, 1991).

⁹⁵ Regrettably, I was unable to uncover any obituary for Rev. Miller.

⁹⁶ MacIntyre spelling is used in court documents but is most often cited as "McIntyre" in documents and by the gentleman himself.

received by many other fundamentalists, but all was not well. In 1956, the General Assembly of the Bible Presbyterian Church voted to leave the American Council of Christian Churches and the International Council of Christian Churches which McIntire had founded. This split the Bible Presbyterian Church into two. The majority gave McIntire the name of the denomination, Shelton College, Faith Seminary, the ACCC and ICCC. The remainder formed the Evangelical Presbyterian Church. In 1965, they joined a group from the United Presbyterian Church to become the Reformed Presbyterian Church, Evangelical Synod. This denomination joined the PCA in 1982. Essentially, McIntire kept bifurcating and splitting off from other fundamentalist denominations over every minor issue, until he and the small (but pure!) Bible Presbyterian Church became more and more isolated. However, maintenance of the Faith Seminary is important to the story since that is where their “expert” witnesses will come from. The gist of the problem was this, according to Webb, “Because Jesus Christ said that David wrote certain of the Psalms, and this course taught that the Psalms were written four hundred years after David was dead.”⁹⁷ The course “teaches the position that the Bible is not trustworthy as a divine, infallible revelations from God to man. It teaches that Jesus Christ was ignorant or a deceiver.”⁹⁸ For Webb and Miller, the higher criticism used in studying the Bible as Literature was indistinguishable from the Modernist Christian theology that demystified the gospels and denied the fundamentals.

In his deposition, Rev. Webb describes the split from Presbyterian Church, U.S.A. in 1937 or '38 to become Tacoma Bible Presbyterian Church. Webb recalled the fight over whether missionaries sent by the Foreign Board of the Presbyterian Faith were faithful to the Westminster Confession of Faith.⁹⁹ Webb and Miller belonged to a denomination which had sprung directly from schisms created after the Modernist versus Fundamentalist Controversies of the 1920s and '30s. In 1920, the Presbyterian General Assembly had approved an "organic union" with 17 other denominations to be known as the United Churches of Christ in America. Fundamentalists, including Princeton professor J. Gresham Machen, opposed Church Union, worrying that it would cede control of the denomination to modernists. The union was voted down in 1921. In 1922, Harry Emerson Fosdick, an ordained Baptist who was given special permission to preach in First Presbyterian Church in New York City, delivered his famous sermon "'Shall the Fundamentalists Win?" where he claimed that Baptist and Presbyterian liberals were sincere evangelical Christians who sought to reconcile new discoveries in science, Biblical criticism, and history religion with their Christian faith.¹⁰⁰ He argued that fundamentalists refused to deal with obvious facts and new discoveries and in their

⁹⁷ Box 1, 1697-71-15 folder 1-10, David C. Fowler Papers, Manuscript Collection No. 1996, Special Collections, University of Washington Libraries, Thomas W. Miller and Harold Webb, Plaintiffs, vs, Board of Regents of the University of Washington, Defendants, No. 657 671 in the Superior Court of the State of Washington for King County.

⁹⁸ Box 1, 1697-71-15 folder 1-10, David C. Fowler Papers, Manuscript Collection No. 1996, Special Collections, University of Washington Libraries, Thomas W. Miller and Harold Webb, Plaintiffs, vs, Board of Regents of the University of Washington, Defendants, No. 657 671 in the Superior Court of the State of Washington for King County.

⁹⁹ box 1, 110534, folder 1-9, Fowler Papers, Deposition of Harold Leland Webb, Jr., June 1, 1966, Seattle, Washington, Douglas J. Smith (of Cartano, Botzer, and Chapman) represented Webb, James B. Wilson, Assistant Attorney General, attorney & counsel for Board of Regents of the University of Washington.

¹⁰⁰ <http://www.fpenyc.org/about-us/history/harry-emerson-fosdick.html> (Accessed 12/12/2012)

intolerance sought to police arbitrarily limits in religious discussion. The 1923 finding of the Presbyterian General Assembly held that scripture was infallible, Jesus was born of a Virgin, Christ died as a substitute for sins, and He was raised literally from the dead, performed “mighty” miracles—nearly the “classic” Five Fundamentals, except that the last finding would be the Second Coming instead. However, by the 1930s, J. Gresham Machen accused the Presbyterian Board of Foreign Missions of being insufficiently evangelical and had refused to require missionaries to subscribe to the Five Fundamentals. Machen attempted a coup, and consequently the presbytery brought heresy charges against him, including violation of his ordination vows and renouncing the authority of the church. In 1935 and again in 1936, trials were held and Machen was convicted and suspended from the ministry. This led to a schism, and Machen formed the Presbyterian Church of America. In 1939 it was forced to change its name to the Orthodox Presbyterian Church. Further infighting arose in the fundamentalist camp, which led to the eventual creation of the Bible Presbyterian Church that Miller and Webb belonged to.

Webb and Miller were asking for an injunction to stop the course from being taught, and the court ruled that the burden of proof was on them. In its Statement of Facts the Court declared: “It is further ordered that the issues of fact upon which the plaintiffs have the burden of proof are whether English 390 as taught at the University of Washington by Professor Fowler, or any other instructor at the University, is slanted in a religious direction, or designed to induce a particular religious belief, or to advance particular religious interests, or whether the course amounts to religious indoctrination by teaching from a fixed theological position to promote a particular theology.”¹⁰¹ This is the court’s interpretation of incorporating both the “neutrality” and “secular purpose” tests of *Schempp* but also the case law related to the Washington Constitution’s prohibition on public funds being spent for religious purposes. I will come back to this when I cover Blaine Amendments and the *Dearle* case.

On that first day of testimony Professor Fowler took the stand and under direct examination answered questions about the class and how he taught it. Smith, the lawyer for the plaintiffs, was looking for something to paint Fowler as less than objective in his teaching. Smith finally asked “don’t you think that whether David wrote the psalms or Moses the Pentateuch...would necessarily affect someone’s acceptance of the Bible as a holy book.” Fowler said, essentially, no. Then Smith asked “Do you believe that the Bible is an infallible revelation?” Wilson, the lawyer for the University objected as irrelevant, Smith retracted and then never came back to it.¹⁰² The court would not allow Fowler’s personal religious convictions to be used as evidence in the trial. This made the plaintiffs’ burden all the tougher. They would, however, be very interested in his professional qualifications.

The Trial transcript is still available to use because Professor Fowler kept a copy and then donated it to the Special Collections library at the University of Washington along with his other personal papers. Very occasionally there are marginal notes in

¹⁰¹ Box 1, 1697-71-15 folder 1-10 Fowler Papers, Thomas W. Miller and Harold Webb, Plaintiffs, vs, Board of Regents of the University of Washington, Defendants, No. 657 671 in the Superior Court of the State of Washington for King County.

¹⁰² *Ibid*, pg 39

Fowler's hand. One that is particularly significant is when Wilson, the University's lawyer, is establishing Fowler's *bona fides*, and in particular asking him about journals which public articles espousing the sort of higher criticism that he teaches in his course. He asked:

WILSON. Do you consider the Journal as an objective source for materials related to the study of the Bible as literature?

Mr. SMITH. I would like to object to that.

THE COURT: On what ground?

Mr. SMITH: That he is not qualified.

THE COURT: Objection overruled.

There is a marginal comment in the trial transcript in the archive which reads, "Right on!"¹⁰³ Clearly, Fowler was happy that the court had ruled he was qualified. Despite the continued objections by the plaintiffs' lawyers that Fowler was not qualified (in this case, to determine which journals are "objective") they were overruled. Given the burden of proof was on the plaintiffs to prove their case, this essentially doomed their chances.

Professional qualifications were key pieces of evidence in the *Seattle Bible Trial*. During the trial during Dr. Fowler's cross and re-cross examination, the defense established that the professor taught at an *accredited* university and had done original research and published it. That is, he was *qualified* to judge if a journal is objective or not. He possessed the *bona fides* and the plaintiffs' experts did not. The issue of professional qualifications would loom large, because it offered the court a way out of ruling directly on the appropriateness of the Bible as a curricular device in the University of Washington. The lawyers for the defendants attempted to show the court that Fowler was indeed competent to make these judgments, and at the same time cast doubt on whether the plaintiffs and their witnesses were. The plaintiffs attempted to prove that the literary criticism used in the course was indistinguishable from a given theological stance and that the Bible itself was inextricably religious, and brought in their own experts.

The Plaintiffs brought in Professor Allan A. MacRae, from Elkins Park, Pennsylvania as one of their witnesses. He was a professor of Old Testament at Faith Theological Seminary in Elkins Park. He graduated from Occidental College in LA in 1922 and earned an MA in history from there as well. He took a Ph.D. in Oriental Studies from University of Pennsylvania. MacRae argued that it was not possible to teach the Bible as literature and not take a religious point of view. Then the defendant's lawyer in his cross-examination quickly determined that the Theological Seminary was not an accredited institution and established MacRae had never done any original,

¹⁰³ Box 1, folder 1-10, David C. Fowler Papers, Manuscript Collection No. 1996, Special Collections, University of Washington Libraries. In a 2007 email interview with Professor Fowler's daughter, Caroline Aaron, she said that "My dad never exclaimed 'Right on!' His Southern upbringing would have precluded that!" She suggested it may have been Jim Wilson, the Seattle ACLU attorney who defended UW. Professor Fowler passed away in the preparation of this dissertation. I am grateful he had the foresight to save the entire transcription of the *Seattle Bible Trial*. Ms. Aaron made arrangements for the rest of his personal files to be delivered to the Special Collections at Suzallo library, and these may well be worth studying to shed additional light on the subject.

published research of his own (whereas Fowler had published widely).¹⁰⁴ The defense did a very good job at showing how Fowler was a qualified professional and the plaintiffs' witnesses were suspect in this respect. This helped the court to determine who would be qualified to define what was "religious" in the academy and what was not.

Later in the trial, Mr. Smith, the plaintiffs' lawyer, called Dr. Gary Cohen, also of Elkins Park, Pennsylvania, and also on the faculty of Faith Theological Seminary. Cohen graduated from Temple University with a BA in the Science of Education. He testified that he had been raised as a Jew but had a conversion experience while attending Temple University and became a Christian. He first came to Faith Theological Seminary in 1961 and earned a Bachelor of Divinity. In 1966, he took a Doctor of Theology from Grace Theological Seminary in Winona Lake, Indiana. Cohen would not fare any better than MacRea in establishing his credentials.

While Cohen was being questioned by Smith on various Biblical matters, Mr. Wilson, lawyer for the defense, made numerous objections as to whether Cohen was qualified to answer questions. The court overruled Wilson's objections, but said it "will give such weight as I deem it entitled to in connection with all the other evidence."¹⁰⁵ Wilson accepted this but stressed that "he is not a scholar in the sense that we understand scholarship to mean. He studies these books only to support a prefixed theological position."¹⁰⁶ That is, Wilson's argument was that the university was a place of scholarship and free inquiry, and that plaintiffs were the ones who represented a rigid theological frame. Later, Wilson demonstrated that Cohen never took any religion courses at Temple University, and that Faith Theological Seminary was not accredited. In fact, Cohen claimed that it could not be accredited, based on its fundamentalist understanding of authority. That is, it was not accredited because Cohen and the Bible Presbyterians *did not accept the authority* of the accreditation boards. Cohen explained, "the general principle is...we take from Second Corinthians 6:14 to 7:1 in the scriptures, which says: 'Be ye not unequally yoked to unbelievers.' In other words, we believe it is wrong by principle to get in certain organizations which are controlled by those who reject the deity of Christ as we know it, as we believe it."¹⁰⁷ The plaintiffs had claimed that the criticism used in the UW Bible as Literature course was indistinguishable from the liberal theology being taught at Harvard. Wilson finished his cross examination of Cohen with this question:

¹⁰⁴ Box 1, folder 1-10, David C. Fowler Papers, Manuscript Collection No. 1996, Special Collections, University of Washington Libraries. Thomas W. Miller and Harold Webb, Plaintiffs, vs, Board of Regents of the University of Washington, Defendants, No. 657 671 in the Superior Court of the State of Washington for King County.

¹⁰⁵ Box 1, folder 1-10, David C. Fowler Papers, Manuscript Collection No. 1996, Special Collections, University of Washington Libraries. 230.

¹⁰⁶ Box 1, folder 1-10, David C. Fowler Papers, Manuscript Collection No. 1996, Special Collections, University of Washington Libraries. Thomas W. Miller and Harold Webb, Plaintiffs, vs, Board of Regents of the University of Washington, Defendants, No. 657 671 in the Superior Court of the State of Washington for King County.

¹⁰⁷ Both Macrae and Cohen monomaniacally insisted that that all textual criticism of the Bible was a version the *Graf-Wellhausen* theory which itself had been thoroughly discredited. The court did not accept that argument and did not seem to be much impressed by the plaintiffs' witnesses in general. In 1866, Karl Heinrich Graf published his *The Historical Books of the Old Testament*. Wellhausen published his *Prolegomena to the History of Israel* in 1878. Macrae and Cohen were knocking down a very old straw man.

Q. Is it your understanding that the Harvard Divinity School rejects the deity of Christ?

A. Unquestionably.¹⁰⁸

The lawyers for UW sought to show their witnesses were scholars who were qualified. The defense called Wallace F. Caldwell, who had a B.A. from Washington State University, an M.A. and Ph.D. from the University of Washington, and a J.D. from Humphreys College School of Law.¹⁰⁹ These were all accredited institutions. He also had extensive experience in private practice. Professor Caldwell had taught Constitutional Law I, II, III and Torts for over twenty years as undergraduate Professor of Constitutional Law, University of Pacific, Laurence Drivon School of Law.¹¹⁰ This witness was a fully vetted, qualified professional who testified that Fowler's scholarship was state-of-the-art in the field of scholarly research of the Bible. The plaintiffs' lawyers attempted but were unable to impeach Caldwell. By establishing Fowler's authority, and calling into question the credentials of the plaintiffs' witnesses, the lawyers for the university made it very difficult for the plaintiffs to win their case. The plaintiffs' one remaining hope to win at trial was to leverage the provisions under the Washington Constitution, which were stricter than the First Amendment prohibitions on the Establishment of Religion.

Blaine Amendments and the Washington Constitution Provisions on Funding Religion in the Schools

Blaine Amendments are amendments or provisions that exist in most state constitutions that forbid direct government aid to educational institutions that have any religious affiliation.¹¹¹ These stem from a failed attempt, in 1875, to amend the United States constitution with the intent of denying any possible funding to parochial schools. The amendments are named after James G. Blaine, a former Speaker of the United States House of Representatives who led a campaign to have the provision added to the United States Constitution. In 1875, the proposed amendment passed by a vote of 180 to 7 in the House of Representatives, but failed to achieve the necessary two-thirds majority by four votes in the United States Senate. The Amendment or something much like it, appeared in every state constitution save Arkansas, Connecticut, Louisiana, Maine, Maryland, New Jersey, North Carolina, Rhode Island, Tennessee, Vermont and West Virginia. Many included the provisions in constitutions drafted by newly-formed states concomitant with their admission to the Union and are thus not "amendments" in the strict sense, but are still referred to as Blain Amendments. The original wording of the Blain Amendment was:

¹⁰⁸ Box 1, folder 1-10, David C. Fowler Papers, Manuscript Collection No. 1996, Special Collections, University of Washington Libraries. 243

¹⁰⁹ This was the same Caldwell who authored the article on the trial quoted previously.

¹¹⁰ In fact he is still listed as being on their faculty, 40 years later. See also the works of his I cite in the literature review.

¹¹¹ "The Blaine Amendment Reconsidered" Steven K. Green *The American Journal of Legal History*, Vol. 36, No. 1 (Jan., 1992), pp. 38-69

No State shall make any law respecting an establishment of religion, or prohibiting the free exercise thereof; and no money raised by taxation in any State for the support of public schools, or derived from any public fund therefor, nor any public lands devoted thereto, shall ever be under the control of any religious sect; nor shall any money so raised or lands so devoted be divided between religious sects or denominations.

These state constitutional provisions figured in the *Seattle Bible Trial* and others like it. Ironically, most of the recent repeal bids for Blaine Amendments have been led by fundamentalist or evangelical Protestants, often of the same denominations that had initially spearheaded the drive to pass them originally, fearing the rising prominence of the Catholic Church in the American educational apparatus.

There is considerable scholarly disagreement on the anti-Catholic origins of the so-called Blaine Amendments. Historian Steven Green argues that not all of these stricter state provisions of church-state separation are in fact “Blaine” amendments since some pre-date Blaine’s political career.¹¹² However, the Know-Nothings and Nativism also pre-dated Blaine’s career.¹¹³ Long before Blaine was born, many states had provisions in their constitutions barring diversion of tax money to religious ministries and other sectarian institutions. Green argues that these constitutions did not specifically mention religious schools because at that time education was not seen as a government concern. Thus, there was no competition between public and private institutions for funds.¹¹⁴ Recently, the U.S. Commission on Civil Rights commissioned a report entitled *School Choice; The Blaine Amendments and Anti-Catholicism* which investigated these claims.¹¹⁵ One of the panelists, Ms. Hollyn Hollman, is council for the contemporary BJC. She argued, “Painting such provisions with a broad “anti-Catholic” brush is a flawed tactic that betrays our country’s rich history of religious freedom. It emphasizes an anomalous period of religious conflict and threatens to mislead about the historic origins and contemporaneous importance of concepts of church-state separation.”¹¹⁶ Recall however, Sehat challenges the idea of a “rich history of religious freedom.”¹¹⁷ This dissertation questions the argument that a “period of religious conflict” was really anomalous as the conflict between the BJC and the POAU with the Catholic hierarchy continued well into the 1970s.¹¹⁸ Hollman cites Green in her

¹¹² Green, “The Blaine Amendment Reconsidered.”

¹¹³ Originating out of local New York politics in the 1840s, an institution called American Republican Party spread this anti-Catholic movement which used various names, including the Native American Party. Affiliated fraternal “secret” orders came into existence, such as the Order of United Americans and the Order of the Star Spangled Banner. The so-called “Know-Nothings” were also a secret order and entered politics under the American Party name in 1855.

¹¹⁴ See Church & State, Rob Boston, September 2002 <https://www.au.org/church-state/september-2002-church-state/featured/the-blaine-game> (Accessed December 12, 2014)

¹¹⁵ U. S. Commission of Civil Rights, *School Choice; The Blaine Amendments and Anti-Catholicism* (CreateSpace Independent Publishing Platform, 2013). <http://www.usccr.gov/pubs/BlaineReport.pdf> (Accessed 6/12/2014)

¹¹⁶ Rights, *School Choice; The Blaine Amendments and Anti-Catholicism*.

¹¹⁷ Sehat, *The Myth of American Religious Freedom*.

¹¹⁸ See chapter ones and three.

argument.¹¹⁹ Her project was to counter the argument that using so-called Blaine Amendments to fight state vouchers was inherently anti-Catholic. She argued that even if we grant some anti-Catholic animus from the past, the “Criticism of certain concepts of separation as used in the nineteenth century aside, critics of the state Blaine amendments that charge they are tainted by bigotry lack evidence that these statutes (or the terms used in them) are currently used or interpreted in ways that specifically harm Catholics or religion in general.”¹²⁰ These Blaine Amendment arguments continue today, and were central to the issues at trial in 1966.

Washington courts had previously interpreted Article I, section 11 of the state Constitution (arguably a Blaine Amendment, drafted in 1889) in very prohibitive terms. That article reads:

Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty and conscience hereby secured shall not be so constructed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. *No public money or property shall be appropriated for or applied to any religious worship, exercise or institution, or the support of any religious establishment.*¹²¹

The case law in this area was largely drawn from *Dearle*.¹²²

The Washington State Supreme Court had emphasized that state constitutional provisions regarding the separation of religion and the Bible from the public square were even broader and more inclusive than Federal First Amendment prohibitions.¹²³ The U.S. Supreme Court allowed this, absent any conflict with existing federal precedents. The Washington precedent was that instruction about religion was prohibited, particularly where the Bible was used as a text: “Bible history, narrative and biography, cannot be taught without leading to opinion and oft-times partisan opinion.”¹²⁴ The plaintiffs in the *Seattle Bible Trial* were counting on a strict interpretation of the article with regard to UW’s Bible as Literature course, and as the trial developed this approach seemed to be the only possible precedent which might win the plaintiffs their injunction. It turned out to be too thin a reed.

The trial court ruled that the article did not apply to the university course. With respect to the *Dearle* precedent, they ruled that the facts of the case were different. *Dearle* had applied to grade and high schools, where attendance is mandatory, and where students are impressionable children. The court held that a university serving

¹¹⁹ Steven K. Green, *Blaming Blaine: Understanding the Blaine Amendment and the ‘No Funding’ Principle*, 2 *First Amendment L. Rev.* (Winter 2003)

¹²⁰ Rights, *School Choice; The Blaine Amendments and Anti-Catholicism*.

¹⁷ emphasis added

¹²² See footnote 12. *Dearle* 173 Pac. 35

¹²³ Wallace F. Caldwell, “The Bible as Literature: A Constitutional Controversy”, *Research Studies* 39 (2), June, 1971

¹²⁴ *Dearle* 173 Pac. 35, at 38

adults, who are not required to attend, did not require an absolute prohibition on using the Bible as a text. There was no state constitutional prohibition. The plaintiffs appealed. The Washington State Supreme Court majority heard the appeal.

The appeal was argued on April 30, 1967 and the Washington Supreme Court delivered its decision on December 28, 1967, affirming the trial Court's opinion.¹²⁵ Petition for a rehearing was filed and denied, and the judgment became final in March 8, 1968. A petition for a writ of certiorari duly followed with one of the four states reasons being, "the decision would establish a novel rule, without citing precedent, and which would undoubtedly serve as a model for other state courts to uphold Bible courses at other state universities."¹²⁶ On November 25, 1968, the U.S. Supreme Court denied the petition for a writ of certiorari, ending the case.¹²⁷ It was the first case of its type to be tried after *Schempp*, and it was a precedent where the U.S. Supreme Court let stand a ruling that the academic study of the Bible and religion in the university setting was permissible.

Academic Freedom and the First Amendment

Mr. Wilson, attorney for the university, had argued that not only was the course allowable under *Schempp*, but to grant relief in the case would have seriously infringed upon academic freedom as protected and guaranteed by the First Amendment.¹²⁸ His brief maintained:

Appellants' position, in the last analysis, is this: They feel that any mention or study of the Bible in a secular context collides with their view of it as "the Revealed Word of God"...and, therefore, tends to erect a "religious" view contrary to their own. Their claims could only be satisfied by eliminating both the Bible and religion entirely from the University curriculum. *The result would be the wholesale destruction of the central part of higher education: that of man's religious writings to the literature and conscienceness (sic) of the ages. Nor would this destruction stop with the Bible as Literature...Surely the Sciences—anthropology, zoology, astronomy, to mention a few—might well collide with "religious views" appellants profess, and would not their logic demand excision of such courses from the curriculum?*¹²⁹

The majority in the Washington Supreme Court did not need to address this *argumentum ad horrendum* to rule on the *Seattle Bible Trail*. Judge Weaver stated

¹²⁵ Judge Hunter dissented, arguing that the facts were similar enough that *Dearle* and other precedents applied.

¹²⁶ Brief in support of Petition for a Writ of Certiorari, *Calvary Bible Presbyterian Church of Seattle; Tacoma Bible Presbyterian Church; Rev. Thomas W. Miller and Rev. Harold Webb v. Board of Regents of the University of Washington*, to the U.S. Supreme Court, No. 165, October Term, 1967.

¹²⁷ 393 U.S. 960 (1968)

¹²⁸ Caldwell, p. 111

¹²⁹ Brief for Respondent in the Supreme Court of the State of Washington, No. 39226 pp. 9-11, quoted from Caldwell, p. 111 Emphasis added.

that *Dearle* was irrelevant because “the facts were entirely different” and that was all that was required to uphold the trial court’s refusal of the injunction. Judge Hunter, dissenting, did not accept the majority’s argument, and insisted that the precedent in *Dearle* of “state support of...historical, biographical, narrative and literary features of the Bible, violates Art. I, section 11 of our state constitution, as amounting to the application of public funds to religious instruction.”¹³⁰ Judge Hunter insisted that the majority’s claim that *Dearle* was not overruled was specious.¹³¹ However, the other two judges ruled that *Dearle* and the other precedents were not applicable or germane to the facts of the case and two was all that was required in 1967. In terms of contingency, it is worth considering what might have happened had one more Washington Supreme Court justice ruled against UW. Would the U.S. Supreme Court have then taken the case? The Washington Supreme Court did not find any legal requirement for removing the Bible as a circular device from the publicly financed schools, university or otherwise. This would become important, as Rev. Miller would next turn his attention to the local high schools in the Seattle area, at least one of which required courses in the Bible as Literature.

The *Seattle Bible Trial* spurred a variety of actions. Professor Fowler, who took the stand to defend his course, later recalled how prior to the lawsuit the “campus was very touchy” about religious studies and the climate was “fearful.”¹³² Nonetheless, the *Seattle Bible Trial* instigated discussions that led to the formation of the Comparative Religion Department in the Jackson School of International Studies at UW. Conversely, some Seattle high schools required Bible as Literature courses in 1967, and were also sued unsuccessfully by Rev. Miller. Though perfectly legal, these courses are no longer taught at Lake Washington high school. Conversely, there appears to be a growth in Religious Studies departments and course of this type at the college level.¹³³ However, no U.S. Supreme Court decision has ever directly addressed the constitutionality of university departments of religious studies.¹³⁴ The U.S. Supreme Court stated in *Schempp* that justices wished to leave curricula decisions to the local school authorities, and the Washington courts found that Fowler was a competent professional scholar capable of making such an informed curricular decision. This is how church-state separation in public universities is understood today, with a strong preference for academic freedom, and little concern for the so-called Blaine Amendments which exist in most state constitutions.

According to Webb, Reverend Miller moved to California and died of a heart condition around 1970.¹³⁵ This ended his career as an evangelical gadfly in the Seattle

¹³⁰ 436 P.2d 189, at 193 quoted from Caldwell p. 112

¹³¹ Caldwell, p 114

¹³² “Comparative Religion Celebrates Its 25th.”

¹³³ Ellery Schempp would go on to take a Ph.D. in physics from Brown in 1967, and become an accomplished physics professor, As of fall 2008, he teaches a class on the separation of church and state at Tufts' Experimental College. See <http://www.excollege.tufts.edu/coursesPrevious08fall.asp>

¹³⁴ Warren A. Nord, *Religion & American Education, Rethinking a National Dilemma* (Chapel Hill, University of North Carolina Press, 1995), 305

¹³⁵ Interview with the author, August 13, 2009

area, and his contribution to the debate about the separation of church and state in public schools.

Conservative evangelicals, from denominations which would have supported the original Blaine Amendments, now oppose them where they thwart school voucher programs they now support. However, the same conservative evangelicals who wish to have the Bible and prayer back in public grade schools and high schools, were frequently opposed to the manner in which non-Christians or liberal Christians influenced the study of the Bible or Christianity in the public universities. Studying the *Seattle Bible Trial* helps our understanding of how church-state separation issues were developed on the ground in state and local courts, and how *Schempp* became a pivot point for the conservative evangelicals who resisted what they saw as an encroaching secularity in American culture.

Conclusion

Any staunch Christian...would support voluntary prayer in school. You guys [The Carter Administration] are real bummers. You don't even deserve to be called Baptists.

--Letter from Terry Miller to Bob Maddox, President Carter's religious liaison, 1980¹

By the 1980s, the BJC and the POAU, institutions founded and funded by Southern Baptists to advocate for the separation of church and state and to oppose Catholic projects, lost their evangelical grounding and underwent substantial changes. In 1979, the SBC experienced a right-wing revolution and subsequently withdrew its support from the BJC. Angered by BJC and POAU support of *Schempp*, which they viewed as improperly de-Christianizing the public schools, many evangelicals withdrew their support from these institutions. By 1991, all SBC funding to the BJC was abolished and the connection between the two was severed.² Additionally, the U.S. in the 1980s witnessed the "Reagan Revolution," the ratcheting up of the Culture Wars, and the emergence of a conservative Rehnquist Court.³ These events significantly changed the BJC and the POAU, and the institutions that emerged (the POAU by this point was called simply Americans United or AU) focused their defense of the separation of church and state with respect to the projects of the Religious Right.

The founders of the BJC and the POAU could not have anticipated the events which would eventually strip these organizations of institutional support from evangelicals. The BJC was chartered as a confederation of Baptist conventions, and the POAU was framed as a multi-denominational Protestant group, and both institutions were founded and funded by Southern Baptists. Dr. J. M. Dawson, a Southern Baptist leader, who had served on the Executive Committee of the SBC, was the first Executive Director of both the BJC and the POAU. He hand-picked a fiery evangelical Methodist to run the POAU while he stayed to direct the BJC. Their mission was to defend a church-state separation which they viewed as endangered by Catholic projects, especially any public funding of parochial schools. However, these founders of the BJC and the POAU never intended or attempted to unseat the Protestant Establishment or de-Christianize the public square.

Unbeknownst to the BJC and POAU officers, their institutions and activism likely alienated them from their own base. These Southern Baptist and evangelical elites were transported from the South to the nation's capital, moved in the corridors of power and political circles of Washington D.C., exchanged ideas and materials with cultured urbanites—including the officers and spokesmen of the American Jewish Committee—and became increasingly more cosmopolitan the longer they did so. This subtle change began to distance them from the lay and right-wing Baptists who remained in the South.

¹ Letter (handwritten), Terry Miller [Dallas, Texas] to Bob Maddox, August 22, 1980, "Office of Public Liaison, Bob Maddox, Religious Liaison," Box 3, Jimmy Carter Library. Quoted in <http://bjconline.org/wp-content/uploads/2014/03/Randall-Balmer-In-Search-of-Americas-Baptists.pdf> (Accessed December 12, 2014)

² Schleicher, *A History and Analysis of the Role of the Baptist Joint Committee, 1972-Present*, 194.

³ See James Davison Hunter, *Culture Wars: The Struggle To Control The Family, Art, Education, Law, And Politics In America*, Reprint edition (New York: Basic Books, 1992).

When the elites of the BJC and the POAU chose to support the Supreme Court's 1963 decision in *Schempp*, which forbade the devotional use of the Bible or prayers in the public schools, they helped defeat Congressional efforts to overturn the Court's ruling with a Constitutional amendment; an amendment supported by many if not most Southern politicians and lay Baptists. The BJC and POAU support of a strict separation, and the acceptance of the removal of Bible reading and prayer from the public schools by its spokesmen, angered and alienated many of their fellow Southern Baptists, including lay people and politicians, especially the right wing of the SBC. The BJC and the POAU had always experienced some critique in this area from the right wing of the SBC but had always weathered these storms. Prior to 1980, at its annual meetings, the SBC consistently voiced its support for a solid separation of church and state and against any constitutional amendments to the First Amendment. Until the SBC experienced the revolution brought about by the 1979 right-wing take-over, after which these positions were reversed. Though the BJC and POAU were originally chartered to counter Catholic projects they felt inimical to the separation of church and state, eventually they supported a much stricter separation defined in *Schempp* which entailed a de-Christianization of the public schools. Many Southern Baptists, who already held the Warren Court in distain due to its anti-segregation rulings, found the *Schempp* decision unacceptable. Disagreements over the limits of separation of church and state contributed to the fracturing of the SBC and the energizing of constituencies which would eventually become known as the Religious Right. Thus, the BJC and the PAOU contained the seeds of their own destruction as Southern Baptist-supported and evangelical institutions.

The fall of the BJC and POAU as Southern Baptist-backed and evangelically-minded institutions focused on Catholic projects coincided with the beginning of the decline of a strict separation of church and state. The doctrine of strict separation of church and state reached its high-water mark in *Lemon v Kurtzman* in 1971.⁴ The *Lemon* test added a third "prong" to the Establishment Clause requirements of the *Schempp* decision.⁵ Significantly, in *Lemon v Kurtzman* the Court found that the parochial school system was "an integral part of the religious mission of the Catholic Church" and that the sole beneficiaries of the Pennsylvania law were teachers from Catholic schools.⁶ This was exactly the sort of victory against Catholic projects that sought public monies for parochial schools, which the BJC and the POAU had been working to achieve for decades. However, changes to the complexion of the Supreme Court in the 1980s led to an erosion of the wall of separation between church and state from this height.

In 1979, eight years after *Lemon* was decided, the SBC was captured by its right wing, which ultimately led to its cutting ties with the BJC and the POAU, which destabilized the institutional support for those organizations. This right-wing takeover of the SBC was concurrent with a revolution in denominational cooperation, which witnessed conservative Catholics allied with conservative evangelicals in a confederation

⁴ *Lemon v Kurtzman*, 403 U.S. 602 (1971)

⁵ The test was named after the plaintiff in *Lemon*. The test added the "excessive government entanglement" or Entanglement Prong to the existing Effect (the statute must not advance nor inhibit religious practice) and Purpose Prongs (the statute must have a secular legislative purpose) which were defined in *Schempp*.

⁶ The law intended to reimburse all private schools for salaries, textbooks, and instructional materials. However, the majority of such schools were Catholic parochial schools.

unimaginable even a decade earlier. This cooperation marked a sea change in American politics. Also in 1979, Jerry Falwell (Southern Baptist) and Paul Weyrich (Catholic) founded the Moral Majority political action committee. The Moral Majority was a southern-oriented organization of conservatives which had been called the Christian Right and what was eventually called simply the Religious Right. Falwell and the organization achieved national prominence after the election of Ronald Reagan in 1980. Weyrich later stated that Falwell launched the Moral Majority political action committee partly in response to President Jimmy Carter's "intervention against Christian schools" by "trying to deny them tax-exempt status on the basis of so-called *de facto* segregation."⁷ American Catholics were also concerned about the tax-exempt status of their parochial schools and whether they might be subject to similar political pressures.

In 1986, a major shift occurred in the orientation of the Supreme Court when conservative jurist William Rehnquist was named Chief Justice, a role he was to hold for nearly two decades. In 1980, there was only one Catholic on the Supreme Court, the outspoken liberal William J. Brennan, Jr. Antonin Scalia, the Catholic arch-conservative, joined the court to fill Rehnquist's Associate Justice position.⁸ This marked the beginning of the rightward turn of the Supreme Court.⁹ Since then, the Court has not supported a wall of separation as high or as solid as the one constructed under the Warren Court.

Today, many legal scholars believe there are no longer five votes on the Supreme Court to uphold the *Lemon* test. In the 1993 *Lamb's Chapel* case, where the Court ruled unanimously that a New York school could not bar an evangelical church from screening a James Dobson lecture series on public school property solely because of the film's religious content, Justice Antonio Scalia poetically expressed his distaste for the *Lemon* test, and his belief that the precedent was not long for this world:

Like some ghoul in a late-night horror movie that repeatedly sits up in its grave and shuffles abroad, after being repeatedly killed and buried, *Lemon* stalks our Establishment Clause jurisprudence once again, frightening the little children and school attorneys of Center Moriches Union Free School District. Its most recent burial, only last Term, was, to be sure, not fully six feet under: Our decision in *Lee v. Weisman*...conspicuously avoided using the supposed "test" but also declined the invitation to repudiate it. Over the years, however, no fewer than five of the currently sitting Justices have, in their own opinions, personally driven pencils through the creature's heart (the author of today's opinion repeatedly), and a sixth has joined an opinion doing so...The secret of the *Lemon* test's survival, I think, is that it is so easy to kill. It is there to scare us (and our audience) when we wish it to do so, but we can command it to return to the tomb at will...When we wish to strike down a practice it forbids, we invoke it; when we wish to uphold a practice

⁷ Max Blumenthal, *Republican Gomorrah: Inside the Movement That Shattered the Party* (New York: Nation Books, 2009), 25.

⁸ As of 2015, Scalia is the longest-serving justice currently on the Court.

⁹ In the subsequent two decades after Scalia was appointed, Presidents Reagan, G.H.W Bush, and G.W. Bush would appoint four more Catholics to the Supreme Court. President Obama appointed Sonia Sotomayor to the Court in 2009, and there are currently no Protestants whatsoever.

it forbids, we ignore it entirely. Sometimes, we take a middle course, calling its three prongs “no more than helpful signposts.” Such a docile and useful monster is worth keeping around, at least in a somnolent state; one never knows when one might need him.¹⁰

Battles over religion in the public square continued to play out during the Culture Wars, and the retreat from a strict separation does not mean that religion has been welcomed back into the public schools. In 2005, in a highly publicized case concerning the school district of Dover, Pennsylvania, a United States District Court, applying the *Lemon* test, ruled that “intelligent design”—an alternative to evolution, which posits an intelligent actor influencing biology—could not be taught in the public schools.¹¹ Like the *Scopes Trial* eighty years prior, the proceedings had somewhat of a circus atmosphere. In the aftermath of the decision, none of the members of the Dover School Board who voted for the intelligent design policy were re-elected and a new board, which rejected the intelligent design policy, precluded the possibility of an appeal to a higher court. Thus the Supreme Court did not weigh in on this particular case. In 2007, in deciding whether taxpayers have the right to challenge the existence of the White House Office of Faith-Based and Community Initiatives, the Court ruled that taxpayers do not have the right to challenge the constitutionality of expenditures by the executive branch of the government.¹² Barry Lynn, the Executive Director of AU said he was disappointed in the ruling, while noting it only applied to limited circumstances.¹³ AU had filed an *amicus* brief arguing that taxpayers should have access to the courts to challenge government expenditures on religion, even against the Executive Branch while noting that “an array of Religious Right organizations sided with the Bush administration.”¹⁴ As of 2015, under President Obama, the White House Office of Faith-based and Neighborhood Partnerships continued to operate.¹⁵ ? In 1997, the Supreme Court ruled in *Agostini v. Felton*, in a five-to-four decision, that federal tax dollars may be used to pay teachers who conduct remedial classes in parochial schools as well as those in public schools.¹⁶ This was exactly the sort of public policy that the POAU worked vigorously to oppose. In *Agostini v. Felton* the majority essentially dismantled the Entanglement Prong of the *Lemon* test.

It is difficult to know whether the founders of the BJC and the POAU would have been satisfied by the status of church-state separation today. The United States has had an Ambassador to the Holy See (i.e. the Vatican) since 1984. In 2002, in *Zelman v Simmons-Harris*, the Supreme Court ruled 5 to 4 that tuition aid (aka “school

¹⁰ *Lamb's Chapel v. Center Moriches Union Free School District*, 508 U.S. 384 (1993) SCALIA, J., concurring in judgment, 398-399

¹¹ *Tammy Kitzmiller, et al. v. Dover Area School District, et al.* (400 F. Supp. 2d 707, Docket no. 4cv2688)

¹² *Hein v. Freedom From Religion Foundation*, 551 U.S. 587 (2007)

¹³ Lynn is a lawyer, Reverend of the United Church of Christ, and former legislative counsel for Washington's ACLU office. He has been Executive Director of Americans United for Separation of Church and State since 1992, and represents the new face of the AU in its post-evangelical incarnation. The AU continues to be a strong advocate of a strict separation of church and state.

¹⁴ See <https://www.au.org/media/press-releases/supreme-court-ruling-blocks-courthouse-door-for-some-faith-based-lawsuits-says> (Accessed December 12, 2014)

¹⁵ See <https://www.whitehouse.gov/administration/eop/ofbnp/about>

¹⁶ See http://www.oyez.org/cases/1990-1999/1996/1996_96_552 (Accessed December 12, 2014)

vouchers”) did not violate the Establishment Clause, even though the bulk of such funding went to parochial schools.¹⁷ These were the primary concerns of the BJC and the POAU, had battled against for decades, and it seems unlikely the founders of these institutions would be anything other than horrified at these turns of events. The denominational numbers and political clout of American Catholics in the twenty first century might also seem the fulfillment of their worst imaginings. One in four Americans identify as Roman Catholic.¹⁸ While the Southern Baptist Convention is by far the largest Protestant denomination in the U.S., numbering about one in ten Americans, and evangelical Protestants together represent over a quarter of Americans. As of 2013, their own statistics show a decline in membership, baptisms, and attendance.¹⁹ And, in what would surely have shocked those Southern Baptist elites of the 1930s, in 2014 there are six Catholics serving on the Supreme Court (Samuel Alito, Anthony Kennedy, John Roberts, Antonin Scalia, Sonia Sotomayor, and Clarence Thomas) and zero Protestants. Yet as has been noted, in an alliance that would have been unimaginable to mid-century Southern Baptists, the contemporary BJC and AU advocate for a strong church-state separation against a Religious Right comprised of both conservative Catholics and conservative evangelicals.

Conflicts and court cases over religion in the public schools in the U.S. continue to this day, and can be found every week in newspaper headlines, talk radio, and the 24-hour news cycle. A 2007 cover story for *Time* magazine carried the headline, “Why We Should Teach The Bible in Public School {But Very, Very Carefully}.”²⁰ In 2009, a Georgia high school became the first of many in recent times to offer a publicly funded elective using the Bible as a core text.²¹ These sorts of courses appear to be on the rise, and they are neither comparative religion nor Bible as literature courses: they focus on the content of the Bible, though purport to steer clear of any devotional content which would run afoul of the law.²²

In the twenty-first century, there has been a renaissance of scholarship on religion in American history. There is also an older tradition of the academic study of

¹⁷ *Zelman v. Simmons-Harris* (Syllabus), 536 U.S. 639 (U.S. Supreme Court 2002).

¹⁸ 23.9% according to Pew Research. These numbers vary from study to study but all are near one quarter of the U.S. population. See <http://religions.pewforum.org/affiliations> (Accessed March 13, 2015)

¹⁹ “Baptism, Worship Declines Prompt Southern Baptist Leaders’ Prayers for ‘Renewed Passion,’” *Baptist Press*, accessed April 13, 2015, <http://www.bpnews.net/42659/baptism-worship-declines-prompt-southern-baptist-leaders-prayers-for-renewed-passion>.

²⁰ “TIME Magazine Cover: Why We Should Teach The Bible In Public School - Apr. 2, 2007,” *TIME.com*, accessed April 9, 2014, <http://content.time.com/time/covers/0,16641,20070402,00.html>.

²¹ “The Index-Journal from Greenwood, South Carolina · Page 16,” *Newspapers.com*, accessed April 13, 2015, <http://www.newspapers.com/newspage/71524173/>.

²² Mark A. Chancey, Department of Religious Studies, Dedman College of Humanities and Sciences at Southern Methodist University, has done extensive research in this area in Texas, and reports that many of these courses are legally suspect. Dr. Chancey is co-chair of the Society of Biblical Literature’s Working Group on the Bible and Public Education, and authored the report *Reading, Writing & Religion II: Texas Public School Bible Courses in 2011-12* which can be found at http://www.tfn.org/site/DocServer/TFNEF_ReadingWritingReligionII.pdf?docID=3481 His earlier reports on this issue led the drastic revisions of nationally deployed curricula and drew attention to ways in which Bible courses continue to contain unconstitutional promotion of religious views. For instance, dates are often assigned to Biblical ahistorical events such as Creation, Noah’s Ark, etc. and miracle stories may be integrated into timelines as if their historicity were unquestioned. See especially “How Should We Teach the Bible in Public Schools?,” accessed April 13, 2015, <http://religionandpolitics.org/2014/01/07/how-should-we-teach-the-bible-in-public-schools/>.

religion and the Bible in public universities. The University of California, Berkeley offers English C107, “The English Bible as Literature” course every year. While the Supreme Court has not ruled directly on whether using the Bible in a university course is constitutional, it has let stand rulings such as the 1966 *Seattle Bible Trial* which allowed it. The dicta from *Schempp* argued that the academic study of the Bible in public schools does not run afoul of the Establishment Clause.²³ In 2013, for the first time, an entire academic conference was devoted to the role of *Schempp* in the culture and academe.²⁴

Lastly, the rightward turn of the SBC has led to the loss of many if not most progressive and moderate members of that denomination, solidifying the conservative turn of the denomination. Democrat Presidents Jimmy Carter and Bill Clinton once identified as Southern Baptist; they do no longer. Flynn Farrell, a Southern Baptist stalwart, who worked as the business and financial officer of the South Carolina Baptist Convention as well as the taking many positions in the POAU, left the SBC in 2002, and is now a member of the Presbyterian Church/USA where he serves as an elder and moderator-elect of the presbytery.²⁵ Unlike the Presbyterians, whose conservative wing broke off in their modernist-fundamentalist debates of the 1930s, the SBC has lost their moderate and progressive voices, and it may be destined to remain politically on the right and antagonistic to the de-Christianization of America and a strict separation of church and state. A rightward turn which has put the SBC at odds with the very institutions they once fostered to guarantee the separation of church and state.²⁶

²³ See Chapter 4.

²⁴ See <http://indiana.edu/~relstud/news/schempp> (Accessed December 12, 2013)

²⁵ See <http://library.sc.edu/blogs/scpc/2014/10/15/flynn-t-harrell-friend-of-the-archives/> (Accessed December 12, 2014)

²⁶ “Footnotes are loved by academics, not because they are necessary, but because they are intimations of infinity: prose commenting on prose adumbrates mind contemplating mind and opens an exuberance of mirrors.” Golden Hours, I, 33. Robert Anton Wilson, *The Widow's Son* (Penguin Group USA, 1991), 166.

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