Church and State in America

The First Two Centuries

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Contents

Series Editor's Foreword

The First Amendment to the Constitution, embodied in the Bill of Rights proposed by Congress in 1789 and ratified by three-fourths of the states in 1791, concerned religion. The amendment simply states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." This amendment prevented the federal government from establishing a national religion and allowed people to freely exercise their religious beliefs and practices. The amendment appeared straightforward, but in practice it was ambiguous and increasingly controversial.

The establishment clause – that Congress shall make no law respecting the establishment of religion – appears at a minimum to prevent the newly established federal government from granting any denomination or religious sect the privileges enjoyed in England by the Anglican Church or in other European nations by the Roman Catholic Church. The amendment was not intended, it appears, to do away with established religious denominations then exsting in the states. The question of state-established churches was left to the states.

Similarly, the free exercise clause was intended to prevent governmental persecution of dissenting religious sects and denominations as was common in England and other European countries. Congress

probably intended the free exercise clause to prevent the federal government from imposing civil penalties on religious dissenters; nevertheless, even after ratification of the First Amendment, many states continued to impose civil restrictions on non-Protestants and atheists.

Throughout the nineteenth century the First Amendment drew little attention from the courts. Indeed, in the nineteenth century the Supreme Court decided only two establishment clause cases. The free exercise clause was tested in the Mormon polygamy cases, most notably, *Reynolds v. United States* (1879), in which the Court ruled that polygamous marriage was not a constitutional right founded in the First Amendment.

The shift in interpretation of the separation of church–state relations came in *Everson v. Board of Education* in 1947 when the Supreme Court considered whether a city could pay for bus transportation of school-aged children to parochial as well as public schools. The Court ruled that public funding of school buses for parochial schools was unconstitutional. Based on its review of Virginia's rejection of general taxation for the support of ministers in 1785, the Supreme Court ruled that the establishment clause was "intended to erect a 'wall of separation' between Church and State." The phrase "wall of separation" was taken from a letter Thomas Jefferson had written to a group of Baptists who opposed the state of Virginia's use of general tax funds to support established ministers. *Everson* was the first of a series of decisions undertaken by the Court in determining the precise meaning of the establishment clause and the free exercise clause.

Historian James Hutson revisits the meaning of religious toleration as it developed in colonial America and the early Republic. Hutson presents a complex understanding of the historical

background for the First Amendment. He cogently argues that the rich tradition of religious pluralism in the colonies encouraged religious toleration in America. Religious toleration, he argues, was not the founding principle of the colonies, but evolved gradually as a wide array of religious denominations and religious groups blossomed in the colonies. In accomplishing this, Hutson sheds new light on the meaning of the separation of church and state at the time of the nation's founding.

Hutson provides the reader with an historical understanding of a unique feature of the United States: religious freedom. The world he creates is far different from the secular world of the twentieth century, dominated by secular legal regimes in most countries. In this age of secularism, religious faith and secular law often appear in conflict and speak languages opaque to one another. The world that Hutson describes in colonial America was not any less complex or any less controversial than today, but the crisis of church and state that plagued Europe since the fierce religious wars of the sixteenth and seventeenth centuries appeared resolved in the American experience. The story of how this resolution came about is worth knowing because it tells us much about the founding of our nation and the meaning of toleration in this age of religious discord and hatred.

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4

The Constitution and Beyond

NEITHER THE REVOLUTIONARY STATE GOVERNMENTS nor the Articles of Confederation gave Americans a stable, prosperous society. Consequently, a group of energetic, young leaders, responding to a demand (that they themselves had helped stimulate) for a new national government, convened in Philadelphia in May 1787 and in four months produced the federal Constitution, the *summa* of American statecraft.

Critics attacked the Constitution from all angles as soon as its text became public in mid-September. Believers accused the Framers of selling out the nation's faithful by showing "cold indifference towards religion." To other distressed churchgoers it appeared that "in all probability the composers had no thought of God in all their consultations." Some accused the Framers of recklessly repudiating America's covenant with God; "if civil rulers won't acknowledge God, he won't acknowledge them; and they must perish from the way." These kinds of complaints continued to dog the Constitution. In 1789 Benjamin Rush informed John Adams that "many pious people wish the name of the Supreme Being had been introduced somewhere in the new Constitution." A few years later, Timothy Dwight still could not conceal his unhappiness: "we found the Constitution

without any acknowledgement of God; without any recognition of his mercies to us . . . or even of his existence. The Convention, by which it was formed, never asked, even once, his direction or his blessing upon their labours."

The Constitution did, in fact, glance in the Almighty's direction – certifying in Article 7 that it was adopted "in the Year of our Lord" 1787 and recognizing, in Article 1, Section 7, the sanctity of the Sabbath by excluding it from the ten days in which a president was obliged to return a bill to Congress. In three places the Constitution required officials to take an oath, which commentators have judged to be "a religious act." As James Iredell explained in the North Carolina Ratifying Convention, "according to the modern definition of an oath, it is considered a solemn appeal to the Supreme Being, for the truth of what is said, by a person who believes in the existence of a Supreme Being and in a future state of rewards and punishments." If these actions were efforts to smuggle religion into the Constitution, they did not appease pious Americans who considered them proof enough that the Framers had unaccountably turned their backs on God.

Partisans in the late twentieth-century disputes about the relationship between government and religion have used the complaints of the disillusioned believers, just quoted, and other similar ones to prove that the Framers deliberately wrote a "Godless Constitution." This phrase has a certain shock value – as those who coined it intended – because the Framers were not "godless" men. How, then, could they have written a "godless" Constitution?

During the Revolutionary War many Framers had drafted proclamations in state legislatures and in Congress beseeching God to intervene on their country's behalf and many, at the state and local level, had favored government support of religious institutions. Even some of the rationally inclined Framers were convinced that they

and their colleagues had received divine assistance at Philadelphia. Benjamin Franklin said that he had

> so much faith in the general Government of the world by Providence, that I can hardly conceive a Transaction of such momentous Importance to the Welfare of Millions now existing, and to exist in the Posterity of a great nation, should be suffered to pass without being in some degree influenc'd, guided, and governed by that omnipotent, omnipresent, and beneficent Ruler in whom all inferior Spirits live, and move, and have their Being.

In *Federalist* 37 Madison wrote that "it is impossible for the man of pious reflection not to perceive in it [the Constitution] a finger of that Almighty hand which has been so frequently and signally extended to our relief in the critical stages of the revolution." Finally, Washington wrote of tracing, "with a kind of grateful and pious exaltation . . . the finger of Providence through those dark and mysterious events, which first induced the states to appoint a general Convention and then led them one after another . . . into an adoption of the system recommended by that general Convention."

These pious effusions do not, however, conceal the fact that the Constitution is a secular document. It contains no conspicuous acknowledgment of God nor does it attempt to incorporate religion into the structure or operations of government. Men who respected God had apparently written, as charged, a "godless" document. Why?

In a speech to the convention on June 28, Benjamin Franklin offered a clue about the fortunes of religion at Philadelphia. Franklin reproved his fellow delegates for forgetting God, that "powerful Friend," who guided America to victory over the mighty British Empire. I have lived "a long time," Franklin explained, "and the

longer I live, the more convincing proofs I see of this Truth – *that God governs in the Affairs of Men*. . . . We have been assured, Sir, in the Sacred Writings, that 'except the Lord build the House, they labour in vain that build it.' I firmly believe this; and I also believe, that, without his concurring Aid, we shall succeed in this political Building no better than the Builders of babel." Accordingly, Franklin moved that "prayers, imploring the Assistance of Heaven, and its Blessing on our Deliberations, be held in this Assembly every morning." The motion failed, ostensibly because the convention lacked funds to pay local clergymen to act as chaplains.

The delegates, Franklin scolded, needed to remember what they had done at the First Continental Congress: "in the beginning of the Contest with G. Britain, when we were sensible of danger we had daily prayers in this room for divine protection." What Franklin meant was that in 1774 war was imminent – just after the First Congress convened, reports swept Philadelphia that the British navy had bombarded Boston – and from that moment to at least 1782 every member of Congress – every state and local official for that matter – was in personal peril. A sudden shift in the fortunes of war might bring everyone to the gallows as traitors. Consequently, the First and subsequent Congresses were composed of anxious men who packed official pronouncements with religious language.

Members of the Constitutional Convention felt that they too were meeting in a time of national crisis, but many of their fellow citizens disagreed, accusing them of exaggerating the nation's problems so that they could personally profit from a new political order of their own devising. If there was, in fact, a genuine crisis in 1787, it was a different kind of predicament from the one the nation faced in 1774. No one's life was in danger. The issues before the convention were not matters of war and peace but complicated problems in

political science such as the empowerment of a national government, representation in a bicameral legislature, and the establishment of a republican executive. Although the convention delegates believed that nothing escaped the notice of God, they evidently considered it unseemly to request divine assistance for problems best solved by bargaining between political power brokers.

A more compelling reason why religion was absent from the Constitution was that its inclusion would have been fatal to the plans of the Framers. Many of them concluded that the common denominator running through the troubles that brought them to Philadelphia – social instability, unjust legislative majorities, economic distress – was the irresponsible civic behavior of the body politic. James Wilson spoke for the Framers when he complained in 1787 that "the rock of Freedom, which stood firm against the attacks of a foreign foe, has been sapped and undermined by the licentiousness of our own citizens." There was a remedy for popular licentiousness: the improvement of national morality by strengthening the forces of religion with financial subsidies, funded by general assessments or other forms of taxation, laid by the national or state governments. During the Confederation period, general assessment proposals had caused political discord wherever proposed, terrifying a segment of the population with visions of the red dragon of persecution and with inquisitors poised to put dissenters to the torch. The prospect of religious taxation had manifestly disturbed the "public Quiet," as Washington and Madison both asserted 1785.

In 1798 John Adams experienced how inflammatory the exercise of a familiar religious act by a national official could be in a country that had been taught to cultivate and cherish republican jealousy. On March 23 of that year, when the nation was in the midst of a "quasi-war" with France, Adams proclaimed a national day of fasting

and humiliation, a practice that American magistrates had followed since the earliest days of the seventeenth century. It so happened that the General Assembly of the Presbyterian Church was meeting in Philadelphia when Adams issued his proclamation. Though not a Presbyterian, Adams was branded one by his political opponents and was accused of scheming to rivet a Presbyterian establishment on the nation, the evidence being his fast day proclamation. "A general suspicion prevailed," he wrote, "that the Presbyterian Church was ambitious and aimed at an establishment as a national church. I was represented as a Presbyterian and at the head of this political and ecclesiastical project." The result of his fast day proclamation, Adams claimed, was his defeat in the presidential election of 1800. The lesson, he said, "was that nothing is more dreaded than the national government meddling with religion."

The delegates to the Philadelphia Convention were aware of this dread. Washington, Hamilton, and other like-minded delegates, who in principle had no objections to funding and employing religion to produce virtuous citizens, were certain that injecting religion in any form into the Constitution would antagonize voters who might already be dubious about the document for other reasons. Religion, therefore, was banished from the Constitution for political considerations not because of any generalized enmity to it. It is, accordingly, more appropriate to speak of a politique Constitution than a "Godless" one.

As the advocates of the "Godless" Constitution freely acknowledge, religion was not, in fact, completely banished from the Constitution, for the document, as adopted by the delegates on September 17, 1787, contained in Article VI, clause 3, a ban on religious tests "as a Qualification to any Office or public trust under the United States." The author of the test ban was Charles Pinckney of South Carolina, who told his fellow delegates that "the prevention of

Religious tests . . . is a provision the world will expect from you, in the establishment of a System founded on Republican Principles, in an age so liberal and enlightened as the present." Pinckney's proposal passed "by a great majority," although an undetermined number of delegates supported test oaths. According to Luther Martin of Maryland, "there were some members [himself included] so unfashionable as to think, that a belief in the existence of a Deity, and of a state of future rewards and punishments would be some security for the good conduct of our rulers, and that, in a Christian country, it would be at least decent to hold out some distinction between professors of Christianity and downright infidels."

After the Constitution became public, substantial numbers of Baptists supported Martin's view that the federal government must have the power to impose religious test oaths, although some Baptist leaders, including Backus and Leland, disagreed with their brethren on the issue. Baptists and other like-minded people convinced themselves that, if the federal government were divested of its power to administer religious tests to public officials Catholics, Jews, "pagans, deists, and Mahometans might obtain offices among us." To some, it was not inconceivable that the Pope might become president. And, if a Jew became chief executive, "our dear posterity may be ordered to rebuild Jerusalem." A North Carolina Baptist minister warned that "the exclusion of religious tests is by many thought dangerous and impolitic." The votaries of "Jupiter, Juno, Minerva, Proserpine, or Pluto" might infiltrate American governments. "We ought," the minister continued, to "be suspicious of our liberties. We have felt the effects of oppressive measures, and know the happy consequences of being jealous of our rights."

As the Constitution emerged from the convention on September 17, 1787, it was, despite its ban on religious tests and its furtive glances at God, a secular document. But so was the Articles of

Confederation, whose text, aside from prescribing an oath for commissioners settling boundary disputes, said nothing about God or religion. The drafters of both documents gave the federal government no power to inject itself into the religious sphere. Both assumed that whatever meaningful interaction occurred between government and religion would take place at the state level. The unamended Constitution, in short, left the relationship between religion and government exactly as it found it under the Articles of Confederation. And, as will appear, officials acting under the Constitution, assumed, as their predecessors acting under the Articles had done, that they possessed certain undefined powers to act in religious matters that would be acceptable to their constituents.

The fear of the Pope and the minions of Minerva and Pluto was symptomatic of a much broader jealousy that consumed the opponents of the new Constitution, who were soon labeled Antifederalists, to them an unfair and distasteful epithet. To Madison and his fellow Framers, the Antifederalists had let their jealousy run wild. In *Federalist* 46 Madison commended their "sober apprehensions of genuine patriotism" but assailed them for surrendering themselves to the "incoherent dreams of a delirious jealousy." Returning to the subject in *Federalist* 55, Madison railed against the Antifederalists' eagerness "to renounce every rule by which events are to be calculated, and to substitute an indiscriminate and unbounded jealousy with which all reasoning must be in vain."

Jealousy convinced many Antifederalists that the Constitutional Convention was "as deep and wicked a conspiracy as ever was invented in the darkest ages against the liberties of a free people." The intention of the Framers, they believed, was to deprive Americans of their liberties, to bring to fruition an "insidious and long meditated design of enslaving their fellow citizens." From one

end of the continent to the other, Antifederalists charged that there was a conspiracy afoot to degrade Americans from "respectable, independent citizens, to abject, dependent . . . slaves." The Framers would accomplish this nefarious objective, Antifederalists believed, by putting into operation the oppressive, "consolidated" government they had designed at Philadephia, one that would emasculate the individual states and prevent them from protecting the people's liberties.

Was there any language in the new Constitution, the Antifederalists anxiously asked, that protected religious liberty? No, there was not a word. State bills of rights guarded liberty of conscience. But the Constitution that emerged from the Philadelphia convention contained no bill of rights. There must, the Antifederalists insisted, be a bill of rights in the new Constitution that would conserve liberty of conscience as well as other fundamental rights of the people.

Leaders of the Federalists, as supporters of the new Constitution were called, received these suggestions with impatience and, in some cases, with indignation. They believed that a bill of rights was unnecessary, dangerous and ineffective, and that its high-profile supporters were insincere and malicious. Bills of rights, the Federalists held, were unnecessary because the Framers had given the new government no power to touch religion. "Why," Alexander Hamilton wrote in a characteristic rejoinder to the Antifederalists, "declare that things shall not be done which there is no power to do." Bills of rights were dangerous because by singling out a few rights for protection, they might be interpreted to mean that all other rights were ceded to the government. They were ineffective, wrote Madison to Jefferson on October 17, 1788, because "experience proves the inefficacy of a bill of rights on those occasions when its control is most needed. . . . Repeated violations of these parchment barriers have

been committed by overbearing majorities in every State." Finally, the Federalists were convinced – and most modern historians agree with them – that Antifederalist leaders concocted the bill of rights issue to inflame the population against the Constitution, not because they were truly worried about the danger to their fellow citizens' liberties but because they wanted to gut the Constitution to preserve the power of the state governments in which they had invested their careers.

Federalist arguments did not blunt the demand for a bill of rights, which became "the favorite topics of the ablest Antifederal declaimers." Beginning with the ratification contest in Massachusetts in February 1788, the Federalists were obliged to promise, as the price of approval of the Constitution by the state conventions, that they would seek to amend it as soon as the new government was up and running. In Virginia there was high anxiety about the Constitution's apparent indifference to religious liberty. On March 7, 1788, for example, the Virginia General Baptist Committee unanimously resolved that the Constitution failed to make "sufficient provision for the secure enjoyment of religious liberty." Simultaneously, a memorandum was placed in Madison's hands from his friend, the influential Baptist leader John Leland, in which Leland asserted that "what is dearest of all – *Religious Liberty* – is not secured." Fearing, evidently, that the Constitution might pave the way for a return to the pre-1776 regime of government-established religion in Virginia, Leland worried that "if a Majority of Congress with the President favour one system more than another, they may oblige all others to pay to support their system as much as they please."

At the Virginia Ratifying Convention, which met in June 1788, Madison did not conceal his conviction that a bill of rights was not needed to protect religious liberty. Employing his pet theory about

the public benefits of a plurality of groups, Madison asserted on June 12 that a "multiplicity of sects . . . is the best and only security for religious liberty in any society. For where there is such a variety of sects, there cannot be a majority of any one sect to oppress and persecute the rest." Madison, nevertheless, supported the Federalist strategy of promising to amend the Constitution when the new government went into operation. The Virginia Convention ratified the Constitution, 89–79, and recommended forty amendments.

Madison's work at the Virginia Ratifying Convention did not neutralize the religious liberty issue. Running for a seat in the First Federal Congress in the winter of 1789 in a district that had been gerrymandered by Patrick Henry to include hosts of Antifederalists, Madison found himself confronted by a rumor, spread by opponents, that "he had ceased to be a friend to the rights of conscience." He refuted this calumny in public letters to various constituents, promising, if elected, to work for amendments protecting religious liberty. Madison defeated James Monroe in a close race and took his seat in the First Congress, sitting in New York, on March 14, 1789.

"Bound in honor and duty" to his constituents to amend the Constitution, Madison lobbied his colleagues to take action as soon as possible, making something of a nuisance of himself to men like Senator Ralph Izard of South Carolina, who hoped "we shall not be wasting time with idle discussions about amendments of the Constitution; but that we shall go to work immediately about the Finances, & endeavour to extricate ourselves from our present embarrassed & disgraceful situation." Privately, Madison indicated that he shared Izard's distaste for the amending initiative, informing Jefferson on March 29, 1789, that "conciliating" amendments would have to offered "to extinguish opposition to the system, or at least break the force of it, by detaching the deluded opponents from their

designing leaders." In August Madison went further, complaining to a friend about the "nauseous project of amendments" that was taking so much of his time. In public Madison took a different tone, acknowledging the sincerity of the ordinary Antifederalists' anxieties about a possible erosion of their rights and conceding that many of their leaders were "respectable for their talents, their patriotism, and respectable for the jealousy they have for their liberty, which, though mistaken in its object is laudable in its motive."

On May 4 Madison moved that the House of Representatives "debate the subject of Amendments to the Constitution." Action was postponed until June 8, when Madison, at last, introduced his "long expected amendments." In analyzing Madison's amendments and describing how they fared in Congress, it is essential to keep in mind that the evidence available to reconstruct their passage through the House and Senate is so woeful that a conscientious historian must admit that his account is, in many instances, little better than guesswork. For the First Congress the Journals of the House and Senate are merely registers of motions made by the members. They contain no floor debates nor any information about deliberations in committees. Such debates as are available were published by shorthand reporters, whose techniques were "like all 'eighteenth century shorthand . . . inadequate to the task of recording speeches verbatim.'" The principal shorthand reporter, Thomas Lloyd, published the House debates (the Senate barred reporters) in a volume that he called the *Congressional Register*. Reprinted in 1834, as the *Annals of Congress*, it is the principal source of documentation for the evolution and adoption of the Bill of Rights. Lloyd's shorthand records have been deciphered by a modern specialist who has demonstrated that what he published about the Bill of Rights "bears only a slight resemblance to the literal transcription of his own notes. Sometimes

a speech is printed for which no notes or only very brief notes exist; sometimes a long speech reported in the manuscript is printed briefly or not at all. "Lloyd's notes are interrupted by doodling, a mark of a mind wandering, caused, no doubt, by the excessive drinking in which he indulged in 1789. It is no wonder that on May 9, 1789, Madison condemned Lloyd's *Congressional Register* for exhibiting "the strongest evidences of perversion & mutilation" and Elbridge Gerry complained that "sometimes members were introduced as uttering arguments directly the reverse of what they had advanced." Such is the nature of the "evidence" from which an account of the origins of the Bill of Rights must be written.

We must also remember that, instead of packaging his amendments and placing them at the end of the Constitution, as was done in August at the suggestion of Roger Sherman, creating the Bill of Rights in the form we now know it, Madison incorporated his June 8 amendments into the body of the Constitution. Article I, section 9, of the Constitution contains a list of actions that Congress is forbidden to take (i.e., suspending the writ of habeas corpus, passing ex post facto laws). Madison proposed to increase the number of prohibited Congressional actions by inserting in section 9 the following language: the "civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext infringed." Madison did not stop here, however. In Article I, section 10, which contains a list of actions that the states are forbidden to take (i.e., emitting bills of credit, impairing the obligations of contracts), Madison proposed to insert this phrase: "No state shall violate the equal rights of commerce."

None of the amendments Madison offered on June 8 were "structural" – those that would have tilted the balance of power back

toward the state governments by limiting the national government's authority to tax, by inhibiting its ability to employ military force, or by restricting the jurisdiction of the federal judiciary – all favorites of Antifederalist leaders. Madison's amendments protected civil and religious liberties, which the Federalists denied were endangered. Hence, they appeared to his fellow Federalists as inconsequential and were roundly ridiculed as "milk-and-water amendments," "bread pills" for an imaginary illness, "a little Flourish and Dressing." Madison, in short, was viewed as having cobbled together a string of libertarians platitudes, designed to please the witless Antifederalist multitude – as having cleverly thrown a "tub to the whale," as sailors did to divert sea creatures who menaced their ships.

Madison, however, had prepared his amendment with care and calculation, According to the cynical Massachusetts congressman, Fisher Ames, his amendments "were the fruit of much labour and research," which would not have surprised anyone familiar with Madison's indefatigable industry in mastering every aspect of American statecraft. Madison, Ames claimed, had "hunted up all the grievances and complaints of newspapers – all the articles of Conventions – and the small talk of their debates." "Upon the whole," Ames concluded, Madison's amendments "may do good towards quieting men who attend to sounds only, and may get the mover some popularity – which he wishes."

What did Madison learn from his research into the nearly two hundred amendments suggested by the state ratifying conventions? He learned that some of the ratifying states concluded that the Constitution posed no danger to religion. The amendments offered by Massachusetts and South Carolina did not mention religion. Nor did Maryland's amendments, although the state constitutional convention rejected a proposal that "there be no national religion

established by law; but that all persons be equally entitled to protection in their religious liberty" (there is no evidence, however, that the delegates who turned down this resolution favored the establishment of a "national religion.")

The Pennsylvania Convention recommended no amendments. The state's Antifederalist minority, however, adopted an unofficial "Dissent" on December 18, 1787, stating that "the rights of conscience shall be held inviolable: and neither the legislative, executive, nor the judicial powers of the United States shall have authority to alter, abrogate, or infringe any part of the constitution of the several states, which provide for the preservation of liberty in matters of religion." New Hampshire wanted assurances that Congress could make "no Laws touching Religion" nor exercise powers to "infringe the rights of Conscience." The three states in which the passage of the Constitution encountered the roughest passage – Virginia, New York, and North Carolina (which did not ratify until 1789) – recommended in common the amendments proposed by Virginia, which stated that "all men have an equal, natural and unalienable right to the free exercise of religion according to the dictates of conscience, and that no particular religious sect or society ought to be favored or established by Law in preference to others." Nowhere, not in the invectives of mudslingers abusing each other in the nation's newspapers nor in the more decorous debates in the state ratifying conventions, did Madison encounter a demand for the separation of church and state.

Madison discovered that in 1789 in many parts of the nation the division persisted over the issue that had convulsed Virginia in 1784–5: Were religious denominations to be funded by public taxation or were they to be left "to shift for themselves" by relying on voluntary contributions? This issue continued to elicit competing

definitions of liberty of conscience and of the scope of religious establishments. Most of the Federalists had been allied with or were in sympathy with the established churches of the colonial era; they subscribed to the limited, "spiritual" conception of liberty of conscience and of a religious establishment, contending that both were confined to religious faith and practice and that religious taxation was an unrelated "civil" matter, outside the orbit of both. The Antifederalists were principally members of colonial dissenting sects, Baptists, and others, who took a more expansive view of liberty of conscience and religious establishments, insisting that both comprehended religious taxation and that both could be invoked to forbid it. In presenting "religious" amendments to the Constitution, Madison saw his task as the delicate one of placating the Antifederalists without offending the Federalists, thus securing the support of both groups for the Constitution. He knew that, in formulating amendments, he must address their different understandings of the liberty of conscience and religious establishments. His challenge was to craft language that would simultaneously satisfy holders of strongly held, conflicting views on these matters.

Madison's strategy was to resolve these problems within the context of small *f* federalism, which received its classic expression in the Tenth Amendment to the Constitution: "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Here, in Madison's and many of his fellow Federalists' view, was the articulation of the theory of the Constitution that the jealous Antifederalists had been unable or unwilling to comprehend. And here, of course, was the reason the Federalists insisted that amendments to protect religion against the national government were unnecessary – Congress had no power to legislate on religion. As Madison declared

at the Virginia Ratifying Convention: "there is not a shadow of right in the General Government to intermeddle with religion. Its least interference with it would be a most flagrant usurpation." At one point Jefferson suggested that the Tenth Amendment alone might be sufficient to quit the anxieties of religious dissenters, but Madison knew that the jealousy of his constituents in Virginia would not be assuaged unless guarantees against religious oppression were explicitly spelled out.

Comparing the respective limitations on the powers of Congress and the state governments in Madison's inserted phrases in Article I, sections 9 and 10, reveals how he tilted his amendments toward federalism. In Article I, section 9, he forbade Congress to establish a "national religion." In Article I, section 10, an establishment of religion is not mentioned, which meant, presumably, that as odious as the prospect would have been for Madison, section 10 did not preclude a state establishment. In section 9 Madison specified that Congress not infringe the "full" rights of conscience, using the expansive adjective which would have been universally understood to mean that Congress was prevented from laying religious taxes, including those of the "nonpreferential" kind, which general assessment laws levied. In section 10, on the other hand, Madison used the old, limited definition of liberty of conscience (omitting "full"), which permitted states to lay religious taxes, without being accused of violating consciences. His amendments vested the states with substantial powers in the religious realm, which the national government did not have. Madison must have expected to satisfy the Antifederalists, by explicitly stripping the national government of intrusive power in religious matters, and the Federalists, especially those in New England, by maintaining considerable state autonomy in religion.

The issue of state autonomy arose in mid-August, generating the only discussion in the First Congress about the religious amendments which the shorthand reporters captured and preserved. On July 28 the House received a report from a select committee, which recommended revising Madison's amendments so that the insertion in Article I, section 9, read: "no religion shall be established by law." Dropped was Madison's modifier "national," which alarmed the New England delegates who feared eliminating a word that limited Congress's involvement with religion to the "national" level might suggest that it could "intermeddle" with religion in the states.

If the report in the *Congressional Register* of a House debate of August 15 can be trusted, Benjamin Huntington of Connecticut made a remarkably prescient analysis of the problem the language of the revised amendment posed for New England. Huntington told Madison that "he understood the amendment to mean what had been expressed" by him [Madison] but that "others might find it convenient to put another construction upon it." What troubled Huntington was that, because preachers' salaries and church construction in the states "to the eastward" [New England] were funded by public taxes, "if an action was brought before a federal court on any of these cases, the person who neglected to perform his engagements could not be compelled to do it; for a support of ministers, or building of places of might be construed into a religious establishment." Huntington feared that the national government, through the agency of its courts, might find a way to arrogate to itself power over religion in New England and, using an expansive definition of a religious establishment, terminate the region's time-honored practice of supporting religion with public taxation.

What Huntington feared actually happened in 1940, when the Supreme Court, under its theory of incorporation, decided that the

language of the First Amendment, prohibiting Congress from making laws establishing a religion, applied to the states and brought their religious practices under the scrutiny of the federal courts. To put Huntington and his fellow New Englanders at ease, Madison declared that "if the word national was inserted before religion," making the amendment read "no national religion shall be established by law," "it would satisfy the minds of the honorable gentlemen." And, in fact, Madison moved in Congress that very day to restore to the amendment the word "national." His objective was to make it clear that restraint on Congress's authority over religion at the national level could not be construed to authorize interference with religion elsewhere. Religion in the states must be kept beyond the reach of any agency of the national government. Federalism must not be compromised, even if it protected the levying of religious taxes at the state level.

On August 24 the House agreed to seventeen amendments, enumerated as Articles I through XVII, which it now proposed to add seriatim at the end of the Constitution and sent them to the Senate. Article III of the seventeen was the old, amended Article I, section 9. It now read: "Congress shall make no law establishing religion or prohibiting the free exercise thereof, nor shall the rights of Conscience be infringed." New England continued to object to the language of Article III, despite Roger Sherman's appeal to his countrymen to stop worrying about words relating to religion, "inasmuch as congress had no authority whatever delegated to them by the constitution, to make religious establishments." On September 9 Senator Oliver Ellsworth of Connecticut, like Sherman a Framer of the Constitution, persuaded the Senate to substitute in Article III the phrase "articles of faith or a mode of worship" for the word "religion." Article III now read "Congress shall make no law establishing

articles of faith, or a mode of worship, or prohibiting the free exercise of religion." What Ellsworth had done was to insert the limited, "spiritual," definition of liberty of conscience, which permitted religious taxation, in the proposed Bill of Rights, and to eliminate any reference to a "religious establishment" which might lend itself, in the hands of an unfriendly court, to a broad construction, incompatible with publicly supported religion in New England.

The Senate's amendments were read in the House on September 14, which refused to accept Ellsworth's version of Article III, apparently because the members realized that his stripping out of the amendment any specific prohibition of an establishment of religion and introducing language that permitted religious taxation would be totally unacceptable to the Anifederalists. A conference committee was appointed – Madison, Sherman, and Vining represented the House – and on September 21 the Senate "receded" from its version of the Third Amendment and accepted the familiar language that was sent to the states on September 28, 1789, as Article III of the Bill of Rights: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The New England members of the House voted to accept this language, which can only mean that they were satisfied that the term "establishment of religion" permitted their states to lay and collect religious taxes without the threat of interference by agents of the national government. Whether the Antifederalists, who loathed religious taxes laid by any level of government, were aware that the phrase "establishment of religion" could be understood in this restricted sense is unclear. Senator Richard Henry Lee of Virginia complained to Patrick Henry in September that the Senate's objective in offering its amendments was to "produce ambiguity." The best guess – and it is only a guess – is that the establishment clause,

as it related to religious taxation, may have been intended to be deliberately ambiguous, permitting the members to interpret it as it best suited their personal and regional interests.

Discerning the meaning of the religious language of the Third Amendment, which became the First Amendment after the states rejected the first two original amendments submitted to them, has become a cottage industry in the nation's law schools and history and political science departments as a result of decisions of the United States Supreme Court after World War II. The amendment was intended by Madison and his fellow drafters to make explicit the small *f* federalism on which the Constitution was grounded. The states had granted Congress no power over religion. The First Amendment was intended to declare this to be so. Clear language, affirming Congress's lack of power, was suggested by Samuel Livermore of New Hampshire during the August 15 debates: "congress shall make no law touching religion." Madison knew, however, that the Antifederalists, would not be satisfied with short, general statements. They wanted specifics, and specifics he gave them in introducing his religion amendments on June 8. His specifics survived the drafting process and emerged, in altered form, in the First Amendment, as the terms "establishment of religion" and "free exercises" of religion.

The debates in the First Congress on the religion clause of the Third, later First, Amendment are meager. There is no indication that any attempt was made to define an "establishment of religion," which, as stated earlier, may have been left deliberately ambiguous. In 1789 the most expansive American definition of the term would have included state regulation of its citizens' faith and practice and state imposition of taxes to pay ministers and build churches. Beyond these limits, most Americans would have granted the state

considerable latitude in supporting religion. But this possibility was evidently not discussed in the First Congress. Members, for example, appear not to have tried to obtain clarification about whether the new national government could grant "friendly aids" to religious groups with the same generous hand that all agreed, during the debates on general assessment, the states could provide for churches within their boundaries. As incompetent as the shorthand reporters were, they surely would have produced some account, garbled or otherwise, of discussions of these and similar questions had they been raised during the First Congress. All indications are that in debating the religion clause of what became the First Amendment, Congress only considered the issue of federalism as it related to the propriety of religious taxes levied by the New England state governments. Congressmen, who did not think amendments necessary in the first place and who were impatient with the whole amending process, were unwilling to invest time in defining terms whose meaning is passionately contested by their posterity.

A debate in Congress on September 25, occurring, as it did, the day after the House adopted the amendments to the Constitution, sheds light on how the members regarded the religious language of the Third, later First, Amendment. On September 25, the pious Elias Boudinot, president of Congress, 1782–3, announced to his colleagues that he could not "think of letting the session pass without offering an opportunity to all citizens of the United States of joining, with one voice, in returning to Almighty God their sincere thanks for the many blessings that He poured down upon them." Boudinot moved, therefore, that the House and Senate request the president "to recommend to the people of the United States a day of public thanksgiving and prayer, to be observed by acknowledging, with grateful hearts, the many signal favors of Almighty God."

Thanksgiving and fast day proclamations soon became controversial, as John Adams discovered in 1798, because they were viewed by the emerging Jeffersonian Republican Party as instruments of partisan politics. In 1789, however, proclamations were considered to be as beneficial and unobjectionable as they had been for the past two centuries, even though they were acknowledged to be religious actions initiated by the executive branch of government. Because of the unimpeachable precedents for issuing proclamations, Boudinot may have been surprised, when two of his colleagues objected to his motion on the grounds that it violated the principle of federalism. Issuing a thanksgiving proclamation, Thomas Tucker of South Carolina complained, "is a business with which Congress have nothing to do; it is a religious matter, and, as such, is proscribed to us. If a day of thanksgiving must take place, let it be done by the authority of the several states."

Roger Sherman answered Tucker by observing that the "practice of thanksgiving [was] warranted by a number of precedents in the Holy Writ," which he commended as being "worthy of Christian imitation on the present occasion." Boudinot cited "further precedents from the practice of the late Congress" which, of course, had approved the wholesale issuance of thanksgiving and fast day proclamations. Boudinot's purpose in referring to practices in the Continental and Confederation Congresses was to make the point that under the Constitution, as well as under the Articles of Confederation, the national government could assume, without objection, that it possessed undelegated, inherent powers to conduct religious activities, which trumped the principle of federalism as well as the language of the just minted Third Amendment, prohibiting an establishment of religion. These powers included, at the very least, issuing religious proclamations and appointing military and civilian

chaplains. They expanded during the Jefferson administration to the staging of religious services on public property. During the first years of the government under the Constitution, no attempt was made to define the limitations on these "friendly aids" to religion.

Boudinot's motion for a presidential proclamation passed both houses of Congress with only two recorded objections. On October 3, 1789, George Washington issued a proclamation recommending that the American people, on November 26, 1789, hold thanksgiving services to express their gratitude to God for his "signal and manifold mercies, and the favorable interpositions of his providence" as well as to beseech Him "to pardon our national and other transgressions."

The language concerning religion in the First Amendment to the Constitution (ratified with the other nine amendments on December 15, 1791) had almost no immediate impact on relations between government and religion at either the national or state level. Speaker of the House Frederick Muhlenberg of Pennsylvania wrote Benjamin Rush on August 18, 1789, of his hopes that the proposed amendments to the federal constitution might "perhaps be the Means of producing the much wished for Alterations & Amendments in our State Constitution." The Pennsylvania constitution of 1790 eliminated the test oath, imposed by the 1776 constitution, that compelled public officer holders to be Christians, although it required them to acknowledge the "being of a God and a future state of rewards and punishments." If this clause was inspired by action at the federal level, the model was Article VI of the federal constitution, not the First Amendment. Commenting on the South Carolina constitution of 1790, a scholar has asserted, without producing any evidence, that "the pressure on the convention to do away with all religious distinctions came from the favorable adoption of the First Amendment to the U.S. Constitution." Few other scholars have been bold enough to attribute any immediate influence to the First Amendment. The

historian Michael Kammen has, in fact, argued that the Bill of Rights had no impact in the United States until 1939–41, the first years of the Second World War, when it was at last "discovered" by the American public.

In the early years of the nineteenth century a disengagement of government from religion occurred in the New England states, but this divorce owed nothing to the First Amendment; it was the result of the democratization of American society and of the dynamics of American religion, specifically, of the evangelical tsunami, the Second Great Awakening, which began during the presidency of John Adams. The Awakening started with revivals at the eastern and western extremities of the United States, which soon passed each other, heading in opposite directions. Evangelical energy began coursing through Connecticut in 1797, quickly spread through New England, and reached northeast Ohio by 1802. The western revival began at Gaspar River, Kentucky, in the summer of 1800 and moved east to North Carolina by 1801; by 1803 it had swept through the entire southern seaboard.

Although the Second Great Awakening in New England was led by disciples and descendants of Jonathan Edwards and occurred in the same area as the First Great Awakening, the ferment in distant Kentucky was closer in spirit to the earlier revival in the passions of its preachers, the unrestrained emotional responses of its audiences and the controversies it generated. The sober and decorous New England revivals were universally approved and continued in some locations for decades. Connecticut became so saintly that foreign visitors were happy to hurry through the "dullest, most disagreeable state in the union."

To critics, Kentucky seemed to be in a state of nonstop bedlam. The crowds in Kentucky, though they seemed prodigious to participants, were no bigger than some that George Whitefield had

drawn sixty years earlier. But they looked different. First Great Awakening audiences usually came from towns and cities and convened on short notice. In Kentucky and in other frontier areas, the audiences came from great distances by wagon, packed with provisions to sustain families for several days. When assembled, usually in clearings in the wilderness, these conventions of frontier farmers became camp meetings – a unique American contribution to religious history.

The largest and most famous Kentucky camp meeting took place at Cane Ridge in Bourbon County in August 1801. As many as twenty-five thousand people (twelve times the population of Kentucky's largest city) may have met for marathon day–night services, conducted by more than a score of Presbyterian, Baptist, and Methodist ministers, using stumps and fallen logs for pulpits. "The noise," recalled a participant, "was like the roar of Niagara. The vast sea of human beings seemed to be agitated, as if by a storm." "At night," wrote another eye witness:

> the whole scene was awfully sublime. The ranges of tents, the fires, reflecting light amidst the branches of towering trees; the candles and lamps illuminating the encampment; hundreds moving to and fro, with lights and torches, like Gideon's army; the preaching, praying, singing and shouting, all heard at once, rushing from different parts of the ground, like the sound of many waters, was enough to swallow all powers of contemplation. Sinners falling, and shrieks and cries for mercy awakening in the mind a lively apprehension of the scene, when the awful sound will be heard, 'arise ye dead and come to judgment.'

Traditionalists charged that camp meetings had all the excesses of a 1960s rock concert, including sexual license. At the meetings, it was said, "more soul were begat than saved." Presbyterians and

Baptists renounced them. Embraced by the Methodists, they quickly became the ecclesiastical signature of that denomination. By 1805 Methodists had brought the camp meeting across the Alleghenies to Virginia. Three years latter, they conducted a "remarkable" revival in New York City, followed in the next decade by major revivals in Philadelphia, Baltimore, and Providence. Scholars credit the Methodists with bringing the "lusty breath of the western revival into the east," but they were assisted by preachers like the Presbyterian, Charles Grandison Finney, who used their "new measures" to conduct a major evangelical campaign in the big cities along the Atlantic Coast in the 1830s.

Finney's first successes occurred in that region of western New York known as the Burned Over District, because of the frequency with which it had been seared by the fires of revivalism. Between 1800 and 1830, the nation itself can be thought of as a giant burned over district, for during this period no region was too remote to have been at least singed by evangelical religion. Evangelicalism's hegemony in 1830 can be read in the membership roles of the nation's denominations. Those churches that embraced and sponsored revivalism dwarfed those that spurned it. The Baptists and Methodists were in a virtual dead heat in 1830 as the nation's largest denominations. Their growth rate was remarkable. The Methodists, for example, starting with fewer than 10,000 members in 1780, numbered 250,000 in 1820, doubled to 500,000 by 1830, and doubled again during the next decade to become, by 1844, the nation's largest denomination with 1,068,525 members.

The Second Great Awakening produced, as had the First, schisms among the major churches, which notably increased the pluralism of American religion. In addition, new religious groups like the Mormons appeared, whose origins were tangentially related to the

Awakening. American religion, according to one observer, now "had as many shades of difference as the leaves of autumn." Scholars have written that among the factors contributing to the multiplication of religious groups and opinions was the egalitarianism and jealousy fostered by revolutionary ideals which convinced the average citizen that his opinion on religious matters was as valid as those of the "experts." It was reported of one evangelical leader that "wherever he went, he industriously awakened the jealousy of the humble and ignorant against all men of superior reputation as haughty, insolent and oppressive."

By producing legions of Baptists and Methodist who were opposed in principle to tax support of religion and who, in addition, were generally "common men," suspicious of religious elites, the Second Great Awakening put the remnant of religious establishment in New England – the support of ministers and churches by taxation – on the path to extinction. Between 1816 and 1819 New Hampshire and Connecticut abolished religious taxation. Massachusetts resisted the tide until 1833, when it too abolished religious taxes. The last relic in America of the ancient, coercive Hildebrandine system had disappeared

But the abolition of religious taxes in favor of the reliance throughout the United States on voluntary, freewill financial support of churches did not mean that the states or the national government renounced other forms of government patronage of religion. It is true that the nursing fathers metaphor, with its talk of kings and queens, fell out of favor in the militantly republican atmosphere of early nineteenth-century America (it continued, nevertheless, to be used into the 1840s). The scriptural precept that the metaphor embodied, that the civil authorities should help their churches, continued to be honored, however, well beyond the Age of Jackson.

Professor John Witte has compiled a list of the "friendly aids" that the national and state governments offered to religion in the first half of the nineteenth century, which, although omitting incorporation and church services on public property, gives a good idea of the wide scope of this activity:

> Government officials . . . regularly acknowledged and endorsed religious beliefs and practices. "In God We Trust" and similar confessions appeared on currency and stamps. Various homages to God and religion appeared on state seals and state documents. The Ten Commandments and favorite Bible verses were inscribed on the walls of court houses, schools, and other public buildings. Crucifixes and other Christian symbols were erected in state parks and on state house grounds. Flags flew at half mast on Good Friday and other high holy days. Christmas, Easter, and other holy days were official holidays. Sundays remained official days of rest. Government-sponsored chaplains were appointed to Congress, the military, and various government asylums, prisons, and hospitals. Prayers were offered at the commencement of each session of Congress and of many state legislatures. Thanksgiving Day prayers were offered by presidents, governors, and other state officials. States underwrote the costs of Bibles and liturgical books for rural churches and occasionally donated land and services to them. Federal and state subsidies were given to Christian missionaries who proselytized among the native American Indians. Property grants and tax subsidies were furnished to Christian schools and charities. Special criminal laws protected the property and clergy of churches. Tax exemptions were accorded to the real and personal properties of many churches, clerics, and charities.

Witte and other scholars have asserted that this wide array of state support for religion (shorn of coercive laws assaulting the convictions and pocketbooks of individual citizens) amounted to

a "de facto Christian establishment," an "informal Protestant establishment."

A major reason for public approval of multifaceted government support of religion was a broadly based concurrence in the ancient conviction that religion served the public good. By the third decade of the nineteenth century, more Americans than ever were prepared to acknowledge openly that this was so. Evangelicals had traditionally been reluctant to tout the public utility of religion for fear that their endorsement would recoil upon them. During the debates on general assessment in Massachusetts in the 1780s, Isaac Backus had more than once declared that "piety, religion, and morality are essentially necessary to the good order of civil society." He was challenged by opponents, who claimed that by acknowledging the public utility of religion, he was conceding the rationale for laying taxes to support it. William Gordon wrote in a Boston newspaper in May 1780 that, by endorsing public utility, Backus "gave up the whole cause for which he was Agent. Having allowed the premises, he could not appear with any consistency in opposition to the conclusions naturally and necessarily flowing from it." As the clock began to tick, ever louder, at the beginning of the nineteenth century, against religious taxation in its last New England citadels, this type of argument no longer had the power to intimidate evangelicals, and they began exuberantly asserting the public utility of religion, joining their voices to their former opponents to form a powerful national consensus on this point.

Nineteenth-century evangelical literature abounds with statements that could have been inspired by the religion section of Washington's Farewell Address or copied from the Massachusetts Constitution of 1780: "the religion of the Gospel is the rock on which civil liberty rests"; "civil liberty has ever been in proportion

to the prevalence of pure Christianity"; "genuine religion with all its moral influences, and all its awful sanctions, is the chief, if not the only security we can have, for the preservation of free institutions"; "the doctrines of Protestant Christianity are the sure, nay, the only bulwark of civil freedom"; "Christianity is the only conservator of all that is dear in civil liberty and human happiness."

Evangelical petitions to Congress stressed these themes. One from a Vermont group in 1830 asserted, in the language of 1776, that "No Republican form of Government . . . can long exist in its original purity, without virtue & intelligence in the body politic . . . the principles and practice of the Christian Religion, unshackled by government, are the most effectual means of promoting & preserving that virtue and intelligence." To clinch their case, the pious petitioners added a paraphrase of Washington's Farewell Address.

For the evangelical community, the way to put these convictions into action, the means of becoming "doers of the word," was, of course, the promotion of revivals. "The preservation of our invaluable liberties and free institutions and all the happy prospects of our most favored country," wrote an evangelical spokesman in 1833, "depend greatly, under God, upon these pure and frequent and spreading revivals of religion, for which all American Christians of whatever names should pray."

Revivals proved their mettle in reforming social behavior throughout the country. A teacher traveling to Kentucky in 1802, at the peak of the revivals, was amazed at the transformation in what had been a brutal, lawless society: "I found Kentucky the most moral place I had ever been in," wrote the teacher, "a religious awe seemed to pervade the country." In South Carolina the same result was observed: "Drunkards have become sober and orderly – bruisers, bullies and blackguards meek, inoffensive and peaceable." Revivalists

transformed the wayward into virtuous, law-abiding citizens by preaching the doctrine of a future state of rewards and punishments, a tactic considered for ages to be a foolproof method of creating good social behavior.

Fear of punishment, said one evangelical spokesman, must subdue the roughnecks populating the new republic and "no fear was strong enough but the fear of literal and everlasting burnings." James McGready, a leading western Presbyterian evangelist was admired for his ability "so to array hell before the wicked that they tremble and quake, imagining a lake of fire and brimstone yawning to overwhelm them and the hand of the Almighty thrusting them down the horrible abyss." More obscure exhorters used the same technique. Benjamin Henry Latrobe described a Methodist camp meeting outside Washington, D.C., in 1809, at which "Bunn the blacksmith" preached: "that's the pitch," bellowed Bunn, "the judgment to come, when the burning billows of hell wash up against the Soul" of the sinner; he has no power to "allay the fiery torment, the thirst that burns him, the parching that sears his lips . . . this is the judgement to come, when hell gapes, and the fire roars, Oh poor sinful damned souls, poor sinful souls all of ye, will ye be damned, will ye, will ye, will ye be damned!"

The evangelical community believed that the challenge to revivalism became more formidable with the acquisition of Louisiana in 1803 and with the rapid growth of urban America. Haunted for decades by the supposedly corrosive spiritual effects of western expansion, American religious leaders after 1803 saw beyond the Alleghenies an endless breeding ground for "violent and barbaric passions." Two missionaries who traveled to the farthest reaches of the Louisiana Territory in 1812 described their trip as an excursion into a moral "Valley of the Shadow of Death." The nation's growing

cities were another source of anxiety, for they appeared to be filling up with a coarse rabble that might be indigestible by the nation's institutions. Evangelical religion alone seemed to be capable of implanting into these potentially dangerous populations that portion of virtue and morality needed to sustain a republican society and government.

To accomplish this goal, many of the nation's denominations surmounted the tensions within the evangelical camp, pooled their resources, and created institutions new to the country – the benevolent societies that, during the second decade of nineteenth century, began to blanket the land. These societies, which one scholar has called an "evangelical united front," were inspired by British examples and were the direct result of the extraordinary energies generated by the evangelical movement, specifically, by the "activism" resulting from conversion. "The evidence of God's grace," an evangelical spokesman insisted, "was a person's benevolence toward others."

Grounded in the churches, the benevolent societies usually operated as independent, ecumenical entities. The six largest societies in 1826–7 (based on their operating budgets) were all directly focused on conversion of souls: the American Education Society, the American Board of Foreign Missions, the American Bible Society, the American Sunday School Union, the American Tract Society, and the American Home Missionary Society. Three of these groups subsidized evangelical ministers, one specialized in evangelical education, and two supplied the literature that the other four used. The activity of these societies was feverish: During its first decade, the American Tract Society published and distributed thirty-five million pamphlets and books; in 1836 alone, the American Sunday School Union distributed seventy-three million pages of literature;

by 1826 the American Bible Society was publishing three hundred thousand bibles per year; and by 1831 the American Home Missionary Society had 463 missionaries in the field. So great was this pulsing energy that it extorted from a hostile observer, the Scottish freethinker, Fanny Wright, a backhand compliment on the success of the societies in clothing and feeding traveling preachers, "who fill your streets and highways with trembling fanatics, and your very forests with frantic men and hysterical women."

The benevolent societies and their supporting denominations were proud that, by converting their fellow countrymen, they made them good citizens; many, in fact, were boastful about what they considered the patriotic dimension of their work, using the term "patriotism" in its literal meaning of preserving the nation and its institutions. Consider the promotional literature distributed in 1826 by the American Home Missionary Society, whose records contain countless descriptions of the revivals conducted by its agents in the west and elsewhere. In 1826 the Society described how "feelings of Christian patriotism [were] excited and rendered ardent by the spiritual desolations which are seen to pervade many portions of our land." "More, much more," it asserted, "must be done by the sons of the Pilgrims and the servants of God, in the work of patriotism and Mercy." Make no mistake, the Society assured its readers, "we are doing the work of patriotism no less than Christianity and the friends of civil liberty may unite with all Christians and with the angels for the Agency of the Society. It has sought and, to no inconsiderable extent, it has already promoted, that intelligence and virtue without which civil liberty can not be maintained."

A few years later a convocation of the Episcopal Church received a similar message from one of its spokesmen: "we owe it to patriotism as well as to piety to keep the [missionary] system . . . should

it cease . . . corruption and disorder will run riot over our country to the destruction of our civil and religious liberties . . . we must go forward for our country's sake as well as that of the church." Scripture was marshaled to support the synthesis of piety and patriotism; the apostle Paul, claimed a minister, was "one of the sublimest examples of patriotism ever exhibited to the world." But he was, another preacher pointed out, merely following the example of his Master, for "Jesus Christ was a patriot."

Missionary revivalism could support patriotism in other ways, its advocates contended. One was knitting together a society that showed signs of fragmenting, a task that many feared was beyond the capacity of the weak states-rights-oriented federal government of the early nineteenth-century republic. To Lyman Beecher, who recommended that "every man must be a revival man,"

> the prevalence of pious, intelligent, enterprising ministers throughout the nation, at the rate of one for a thousand, would establish . . . habits and institutions of homogeneous influence. These would produce a sameness of views, and feelings, and interests which would lay the foundation of our empire upon a rock. Religion is the central attraction which must supply the deficiency of political efficiency and interest.

Religion, in short, could be the "cement of civil society," a metaphor at least as old as the nursing fathers language.

In the first decades of the nineteenth century, evangelical America regarded itself (and was accepted by the nation's politicians) as a voluntary partner of a weak national government, operating in an area that was constitutionally off-limits – the formation of a national character sufficiently virtuous to sustain republican government – and in an area where the federal government was politically

hamstrung – the creation of national unity. Saving souls, it was thought, would save the republic. This conviction commanded a consensus that extended from the floors of Congress to the nation's cities and farms to the humble colporteur tracking through the western wilderness with a saddlebag full of Bibles: all agreed that there must, as an 1826 sermon proposed, be an "association between Religion and Patriotism."

In the mid-1830s two observers, Charles Coffin and Alexis de Tocqueville, commented on the role of religion in the United States. Reverend Coffin, a New England-bred minister who followed a call to preach the gospel in Tennessee, is as obscure as Tocqueville is famous, but he was a thoughtful man who knew his country's history well. In 1833 he explained why the United States had been so hospitable to evangelicalism in general and revivalism in particular:

> never was there any other country settled, since Canaan itself, so much for the sacred purposes of religion, as our own. Never did any ancestry, since the days of inspiration, send up so many prayers and lay such ample foundations for the religious prosperity of their descendants, as did our godly forefathers. It is a fact, therefore, in perfect analogy with the course of Providence, that there never has been any other country so distinguished for religious revivals as our own.

At the same time that Coffin made these observations, Tocqueville was writing an account of his recent travels in the land of revivals that, when published in 1835 under the title of *Democracy in America*, became an instant classic. Everywhere he went in America, Tocqueville encountered the conviction, fostered by the evangelical juggernaut, that religion was essential to the political prosperity and durability of the republic and that there must, accordingly, be an "association" between it and government. Tocqueville, who rarely

missed a trick, perceived the importance of this view, although he did not mention that it was an offspring of the revolutionary era conviction of the "public utility" of religion. Tocqueville recorded the public's opinion with his customary clarity:

> I do not know whether all Americans have a sincere faith in their religion; for who can search the human heart? But I am certain that they hold it indispensable to the maintenance of republican institutions. This opinion is not peculiar to a class of citizens or to a party, but it belongs to the whole nation, and to every rank of society.

The Tocqueville quotation is just the kind of penetrating statement that authors use to end their books. And it would have ended this book had Thomas Jefferson not written a letter some thirty years earlier that contained a controversial metaphor about the relationship between government and religion in the early republic that became a household expression in late twentieth-century America and that, as interpreted in various quarters, clashes with the conclusions reached in this book.

Inaugurated as the third president of the United States on March 4, 1801, Jefferson was immediately besieged with addresses of congratulations from supporters in all parts of the country. The nation's Baptists were overjoyed with the election of a man whom they had long regarded as a friend and ally. On October 7, 1801, members of the Danbury, Connecticut, Baptist Association sent Jefferson a letter congratulating him on his election, affirming their devotion to religious liberty and assailing the reactionary religious laws still on the books in Connecticut. The Baptists acknowledged that the federal nature of the American government prevented any direct presidential action to improve their local situation – they were "sensible,"

they said, "that the national government cannot destroy the Laws of each State" – but they hoped, nevertheless, that Jefferson's sentiments, "like the radiant beams of the Sun, will shine & prevail through all these States . . . till Hierarchy and tyranny be destroyed from the Earth."

Jefferson responded to the Danbury Baptists on January 1, 1802. In the course of his letter, he asserted that the religion section of the First Amendment – "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" – was intended to build a "wall of separation between Church & State." So slight was the impression made by the Danbury letter in 1802 and in the years immediately following that it was omitted from the first edition of Jefferson's collected works. The letter achieved publicity in legal circles in 1879, when it was quoted by Chief Justice Morrison Waite in his opinion in *Reynolds v. United States*, a case in which the Supreme Court decided that polygamy as practiced by the Mormons in Utah, in response to what they believed to be a divine revelation, was not protected as "free exercise" of religion under the First Amendment. Justice Waite quoted the wall of separation section of the Danbury Baptist letter, which was not, in fact, germane to his decision, based, as it was, on the distinction Jefferson made in the letter between religious opinions and actions stemming from them. The Danbury letter, opined Justice Waite, "may be accepted almost as an authoritative declaration of the scope and effect of the [first] amendment."

Despite Waite's salute to the Danbury letter, it retreated into the constitutional shadows until it was "rediscovered" by the Supreme Court in 1947, which turned the spotlight on the letter in *Everson v. Board of Education*, a case involving the constitutionality of public reimbursement of bus fares of students attending Catholic schools.

Speaking for a majority, which, it is often forgotten, approved the reimbursement, Justice Hugo Black wrote: "in the words of Jefferson, the clause [in the First Amendment] against the establishment of religion by law was intended to erect 'a wall of separation between church and state.'" "That wall" Black continued, "must be high and impregnable. We could not approve the slightest breach." The next year in another case about religion and the public schools, *McCollum v. Board of Education*, the Court "constitutionalized" Jefferson's wall metaphor, by asserting that it was the correct interpretation of the First Amendment's establishment clause. In subsequent decades, it employed the wall metaphor to strike down a number of venerable and cherished practices, such as prayer and Bible reading in the public schools, and various customary religious activities in public spaces, which, alternatively, thrilled and enraged opponents and proponents of these measures and made the "wall of separation" a familiar phrase. The *Everson* decision, predictably, became subject of vitriolic controversy among lawyers, academics and partisan interest groups.

For an historian the intriguing feature of the *Everson* decision is the method Justice Black and his colleagues used to affirm that Jefferson, in writing to the Danbury Baptists in 1802, had correctly discerned the meaning of the First Amendment, passed in Congress thirteen year earlier when he was in France, where he could not have known what its drafters intended. The Justices used history to establish the meaning of the First Amendment and to confirm Jefferson's correct understanding of it. They wrote of finding the "meaning and scope of the First Amendment . . . in the light of its history." Justice Rutledge claimed that "no provision of the Constitution is more closely tied to or given content by its generating history than the religion clause of the First Amendment. It is at

once the refined product and terse summation of that history." Here the Justices were following the strategy of Chief Justice Waite who declared in *Reynolds* that, since the First Amendment was not self-defining, "we must go, elsewhere, therefore, to ascertain its meaning, and nowhere more appropriately, we think, than to the history of the times in the midst of which the provision was adopted."

Justice Waite proceeded to provide a sketch of the history of the government–religion question in the United States after 1776, observing that the "controversy upon this general subject was animated, but seemed at last to culminate in Virginia," which led him to focus on Madison's and Jefferson's roles in the conflict. In writing the *Everson* opinion, Justice Black expanded on Waite's capsule history, carrying the story back to the settlement of the American colonies in the seventeenth century. Colonial Americans, Black wrote, experienced a "repetition of many of the old-world practices and persecutions," practices that became "so commonplace as to shock the freedom loving colonists into a feeling of abhorrence." Assistance to religion proffered by their own governments aroused their "indignation." "It was these feelings which found expression in the First Amendment. No one locality and no one group throughout the Colonies can rightly be given the credit for having aroused the sentiment that culminated in the adoption of the Bill of Rights provisions embracing religious liberty." Black agreed with Justice Waite that the movement for religious liberty reached its culmination in Virginia. "The people there, as elsewhere, reached the conviction that individual religious liberty could be achieved best under a government which was stripped of all power to tax, support, or otherwise to assist any or all religions." Virginia was represented as an uncompromising monolith in support of separation of church and state, despite the fact that, had Patrick Henry not become governor in

1784, the state's assembly would have passed a bill, supported by John Marshall and George Washington, taxing its citizens to pay its preachers.

Black and his colleagues applauded the efforts of Jefferson and Madison to realize what they took to be the people's aspirations. Jefferson's Bill for Establishing Religious Freedom was quoted at length in the *Everson* decision; Madison's Declaration and Remonstrance of 1785 was reprinted in its entirety. These documents were considered as vehicles for the articulation of the popular demand for separation of church and state. Madison was considered to have incorporated the popular sentiments into the First Amendment in 1789. Since Jefferson's views, identical to Madison's, could also be considered to have been embedded in the First Amendment, he naturally knew its separationist purpose, which he conveyed to the Danbury Baptists in 1802. By deriving the meaning of the religion section of the First Amendment from the alleged strict separationist intentions of the American population, the Supreme Court in the *Everson* case, which was accused in this instance and in many others of an egregious abuse of its powers, ironically indulged in what opponents of "judicial activism" in the 1980s applauded as the "jurisprudence of original intention."

If there was a widespread popular demand in the 1770s and 1780s for the strict separation of church and state, as the Justice Black and his colleagues believed, the account given in this volume of the relationship between government and religion during these years is wrong. I have not found a scintilla of evidence that in the period after independence there was a popular groundswell for the separation of church and state. The opponents of government assistance to religion limited their demands to disestablishment, by which they meant the prohibition of coerced consciences and taxation to pay ministers'

salaries. Beyond that, even the most resolute of former dissenters believed that there were plenty of ways in which the state could fulfill its old role of being, as the Presbyterians said, the nursing father of the church, thereby establishing what the Baptists agreed should be the "sweet harmony" between government and religion.

In 2002 the legal historian Philip Hamburger published a magisterial history of the concept of the separation of church and state in the United States, appropriately called *Separation of Church and State*, in which he established that not until the year 1800 was the concept introduced into American public discourse and then in the political arena by Jefferson's supporters trying to "browbeat the Federalist clergy from preaching about politics." As Hamburger traced the concept from its emergence in 1800 to its controversial career in the late twentieth century, he offered an explanation of what might have induced Justice Black in 1947 to discover separationist sentiment in the American population in the 1770s and 1780s. Hamburger demonstrated that the concept of the separation of church and state, as enunciated in Jefferson's letter to the Danbury Baptists, was distasteful to its Baptists recipients and gained little traction in the United States until, roughly, the Van Buren administration (1837–41), when it began to be employed to combat the massive influx of Catholic immigrants who, it was feared, would erect a Roman Catholic spiritual tyranny on the ruins of Protestantism. The concept thus became a shibboleth of nativists and anti-Catholics and eventually became a dogma of the Ku Klux Klan, a haven for both groups. Justice Black had been a Klansman as a young man, although he is credited with renouncing, later, the racism but not the anti-Catholicism of the "Invisible Empire."

The *Everson* case raised the issue of public funding for the Catholic Church, which Black, in obedience to his long-settled

convictions, believed must be separated from the state. In *Everson*, Black sought to give the principle of separation of church and state historical corroboration by indulging in a species of judicial pseudo-scholarship, known in the legal fraternity as "law office history," which usually results, as a recent Chief Justice observed, in "bad history."

Practitioners of law office history are not interested in the complexities of the period they examine. They scan the historical record and select only those bits of evidence that will bolster their preconceived conclusions. Black's strategy – and here he was following the path Waite had taken in the *Reynolds* decision – was to concentrate on the church–state controversy in Virginia, on the grounds that it and its protagonists, Jefferson and Madison, fairly represented the views of the country at large (academic and other writers following in Black's footsteps as defenders of the principle of the separation of church and state often take the same approach when delving into the history of 1770s and 1780s). Black and his admirers viewed the nation as Virginia writ large and Madison as a tribune of the whole American people.

This is a gross misreading of the history of the postindependence period. Virginia, as this book has pointed out, was a special case. The Old Dominon was, in fact, unique among her sister colonies and, after 1776, states. She was the only colony to have sustained well into the eighteenth century the ancient ideal of uniformity of religion. When the perpetuation of uniformity was challenged in the 1760s, she was the only colony that experienced – and in most places condoned – massive and violent repression of the dissenters. The animosity that these events generated persisted after 1776 to a degree unequaled in the other states. Madison's reaction to the repression of the 1760s and 1770s was the cultivation of a settled

hostility to the organized religion that appears to have been unique in America. He was the only politician in the nation who denied that religion had any "public utility." He was the only politician who opposed the appointment of legislative and military chaplains. He was the only major politician who opposed laws incorporating religious denominations. These and similar positions have prompted recent historians to describe Madison's views on the relationship between church and state as anomalous, "eccentric, and "radical." To claim that Madison's opinions on this subject represented those of his fellow citizens across the new republic is as farfetched as to assert that Voltaire's views on religion represented those of the Catholic hierarchy in France. Idiosyncratic personalities and events in Virginia cannot, in a word, be considered as surrogates for the United States in the first decades of the new republic.

As for the Danbury Baptist letter itself, Justice Black and his admirers were not in possession of evidence that became available in 1998 that demonstrated that in writing the letter Jefferson was interested less in making a general pronouncement about the relationship of government and religion than he was in explaining his position on a far narrower issue: the behavior of a republican chief executive. Jefferson's purpose in responding to the Danbury Baptists, he informed his attorney general, Levi Lincoln, on January 1, 1802, was to explain "why I do not proclaim fastings & thanksgivings, as my predecessors did," a practice that had become politically contentious during the Adams administration. In the fall of 1801, the proclamation problem reared its head again, when Jefferson refused to issue a Thanksgiving proclamation, praising God for the Treaty of Amiens between Great Britain and France, which saved the United States from being sucked into a devastating European war. The Federalists charged that Jefferson's delinquency was another

example of his atheism, the alleged existence of which was the basis of their scurrilous campaign against him in the election of 1800. One of Jefferson's purposes in writing to the Danbury Baptists was to mount a political counterattack against the Federalists. The letter was meant to turn the tables on them by showing that their support for executive religious proclamations was another example of their unpatriotic thirst for the trappings of British monarchy, of their "Anglomania," of their Toryism.

As deleted and blotted out sections of the Danbury letter (recovered by the FBI in 1998) show, Jefferson intended to make his indictment of the Federalists stick by explaining the contrasting religious roles of the British monarch and the American president. He proposed to do this by using the ancient distinction – attributed by scholars to the fifth-century pope, Gelasius I – between the spiritual and temporal aspects of authority, between *sacerdotium* and *regnum*. It was a well-established principle of English law, a commentator wrote in 1713 in the *Codex Juris Ecclesiastici Anglicani*, that "England is governed by two distinct Administrations; one Spiritual, for matters of a Spiritual nature; and the other Temporal, for matters of a temporal nature." The King of England combined these two authorities in his own person, for, as another commentator wrote in 1679, he was a "mixed person." "*Rex Angliae est persona mixta, cum sacerdote*, say our Lawyers. He is a Priest as well as a King." As a priest–king, the British monarch was head of the Church of England and fully competent to perform ecclesiastical duties. Jefferson explained the propriety of the King of England's sacerdotal role in the blotted out section of the Danbury letter: "performances of devotion [can be] practiced indeed legally by the Executive of another nation as the legal head of a national church." The chief executive of the American republic could not, however, imitate the King of

England because the religion clause of the First Amendment had, in Jefferson's view, built a wall of separation between what in monarchical Europe had always been considered the chief magistrate's dual ecclesiastical and civil functions. The Bill of Rights, Jefferson believed, had debarred the president of the American republic from officiating in spiritual matters; "the duties of my station," he wrote, making the ancient distinction, "are merely temporal."

There was a political problem with the Danbury Baptist letter, as drafted, which Attorney General Lincoln spotted when Jefferson asked him to review it. By stigmatizing presidential proclamations as a tainted, Tory custom, the president risked offending New Englanders, Republicans, and "honest" Federalists alike, who, Lincoln reminded Jefferson, had "always been in the habit of observing fasts and thanksgivings in pursuance of proclamations of their respective executives" and who considered the custom as "venerable being handed down from our ancestors." Accordingly, Jefferson deleted those sections of the letter that could be interpreted as an "implied Censure" of proclamations, noting in the margin of the letter that they "might give uneasiness to some of our republican friends in the eastern states." In the process the president deprived future generations of the means of understanding the limited purpose he meant to achieve in the Danbury letter – distinguishing a republican from a monarchical chief executive – by using the phrase, wall of separation, in conjunction with the religion clause of the first Amendment.

Jefferson's refusal to issue proclamations continued to be fodder for his critics throughout his eight years as president. In January 1808 he sent the Reverend Samuel Miller a lengthy defense of his policy in which he raised the issue of federalism, of which he was a passionate advocate. Jefferson told Miller that the state

governments, having reserved to themselves powers not granted to the national government in religious and other matters, might assist the cause of religion in ways that the national government could not. Although the president, in his view, could not issue religious proclamations, state governors might do so (as, in fact, Jefferson, as governor of Virginia, had done in November 1779, proclaiming a "Day of Solemn Thanksgiving and Prayer"). Jefferson did not comment on the wisdom of such policies, just as Madison had refrained from denouncing religious taxation in New England, which he tried to protect on the principle of federalism during the drafting of the First Amendment, however repugnant he personally considered the policy.

The edited Danbury letter, as sent to the Connecticut Baptists on January 1, 1802, lacked the explanatory power to blunt the Federalist criticism of Jefferson's refusal to issue religious proclamations. How could he publicly exonerate himself from their accusations of atheism? An opportunity presented itself on January 3, 1802, when Jefferson's old friend, John Leland, the Baptist preacher famous for the fervor of his evangelical preaching and his opposition to state support of religion, accepted an invitation to preach in the House of Representatives. "Contrary to all former practice," wrote a startled Federalist congressman, Jefferson appeared at church services in the House to hear Leland preach; Jefferson, in other words, attended an evangelical religious service and sung hymns, accompanied by the Marine Band, on public property two days after writing that the First Amendment erected a wall of separation between church and state, proof that he used the wall metaphor in the restrictive sense just described.

Jefferson's presence at Leland's service in the House, which generated nationwide publicity, as he must have anticipated, was not a

one-time, cameo appearance. According to Margaret Bayard Smith, an early Washington insider, "Jefferson during his whole administration was a most regular attendant" at House services. There is abundant documentary evidence to support Mrs. Smith's claim. During Jefferson's presidency, Episcopal, Presbyterian, Quaker, Methodist, Baptist, and Swedenborgian ministers preached to congregations in the House, using the speaker's podium as their pulpit. On January 12, 1806, a female evangelist, Dorothy Ripley, entreated Jefferson, Vice President Aaron Burr, and a "crowded" House audience to open themselves to the necessity of the new birth. Services in the House continued until after the Civil War.

Those Federalists, who asserted that Jefferson's worshipping in the House on January 3, 1802, was sudden and unexpected, were wrong. During the preceding Congress (which assembled for the first time in Washington in the fall of 1800), Thomas Claggett, the chaplain of the Senate, told a friend that Jefferson, then vice president, "very constantly attended prayers every morning and . . . a course of Sermons which I have delivered in the Capitol on the truth of the Divine System." Afer he left public office and retired to Virginia, Jefferson constantly attended "union services," leadership of which rotated weekly between Presbyterians, Episcopalians, Baptists, and Methodists, at the Albemarle County Court House, arriving from Monticello with a "portable chair" and a prayer book.

Jefferson did more than passively attend religious services on public property. He permitted executive branch buildings, the War Office and the Treasury, to be used for services by local and visiting preachers, requiring, of course, that the structures be made available on an equal, nondiscriminatory basis. The first services at these sites, beginning in May 1801, were conducted by Baptists and Episcopalians. A Presbyterian clergyman, the Reverend James

Laurie, frequently preached at the Treasury. Laurie was a favorite of New Englanders. One of them, Manasseh Cutler, described a "very solemn," four-hour communion service in the Treasury, at which Laurie officiated just before Christmas in 1804. In 1806 John Quincy Adams inscribed a diary entry about the same Laurie as he ministered to an overflow audience in the Supreme Court chambers, a popular preaching venue during the Jefferson and Madison administrations.

Jefferson's patronage of religion during his presidency, which also included authorization of government funding for the Catholic Church's missionary efforts among the western Indians, demonstrates that his views about the relationship between government and religion were not, after all, that different from those of the great majority of his fellow citizens, although the extent of the "friendly aids" that he was prepared to offer to the country's churches was certainly near the low end of the national scale. Still, there is no reason to doubt the accuracy of a Jeffersonian anecdote recorded by a nineteenth-century Washington pastor. Walking to church in the Capitol one Sunday morning "with his large red prayer book under his arm," Jefferson responded to an acquaintance, skeptical about his destination, in the following manner: "no nation has ever yet existed or been governed without religion. Nor can be. The Christian religion is the best religion that has been given to man and I as chief Magistrate of this nation am bound to give it the sanction of my example."

Here was an articulation of what Justice Joseph Story in 1833 called "the general, if not universal, sentiment in America . . . that Christianity ought to receive encouragement from the State" because it promoted the public welfare, specifically, the "political prosperity" that Washington mentioned in his Farewell Address. These two

ideas, that religion served the "public utility" and that it ought, accordingly, to be supported by the state (to the extent that the political culture permitted) were ancient; the rulers of Babylon and the Pharaohs of Egypt knew them and practiced upon them.

The other two major ideas about the relationship of religion and government, to which Americans subscribed in the Age of Jackson, were merely old, ushered into the world by small groups of courageous men and women – principally Anabaptists – during the Protestant Reformation of the sixteenth century. These ideas were the liberty of conscience and voluntarism. Liberty of conscience (more narrowly defined, to be sure, than twenty-first-century libertarians would prefer) was achieved in all American colonies save Virginia before the independence was declared in 1776. The American Revolution expanded its definition and anchored it unshakeably everywhere in the new nation. Voluntarism, the principle that religion must receive its financial support from freewill offerings of individuals not through state coercion in the form of taxes, was the exception rather than the rule in colonial America. It was a bitterly contested issue in the years immediately following the Revolution and did not prevail throughout the union until 1833.

The principal ideas about the relationship between religion and government to which the American nation subscribed in the 1830s were, respectively, three thousand and three hundred years old. If the American Revolution introduced into American life new ways of thinking about things and new ways of doing them – which it indisputably did – its innovative impulse produced little novelty in the realm of religion and government. There, in the years after the Revolution, ancient ideas thrived, and old ones were brought to fruition.