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Randall Balmer

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FUNDAMENTALISM, THE FIRST AMENDMENT, AND THE RISE OF THE RELIGIOUS RIGHT

Randall Balmer*

The First Amendment must have been very much on Thomas Jefferson's mind on New Year's Day, 1802. As he sat down to catch up on his correspondence, the President came across a letter dated October 7 of the previous year and signed by Nehemiah Dodge, Ephram Robbins, and Stephen S. Nelson on behalf of a group of Baptists from Danbury, Connecticut.¹ A year before that, when Jefferson was running against the incumbent President, John Adams, Jefferson's heterodoxy was very much an issue, especially among the Federalists in New England,² who feared the loss of Congregationalism as the preferred religion in Connecticut and Massachusetts.³ In response to the campaign invective directed against Jefferson, Baptists, Presbyterians, and other dissenters had rallied to his defense.

The occasion of the letter from the Baptists in Danbury, Connecticut, was to express support for the President's efforts to extend religious disestablishment to the states. "Our sentiments are uniformly on the side of religious liberty," the Baptists wrote, "that Religion is at all times and places a matter between God and individuals; that no man ought to suffer in name, person, or effects on account of his religious opinions."⁴

Earlier that same day, Jefferson had received an unusual entourage at the White House. While Jefferson was spending his days at Monticello, he had befriended a Baptist neighbor, John Leland, who became one of Jefferson's most fervent supporters.⁵ Leland moved to Cheshire, Massachusetts, in 1792 and continued his ministry among the Baptists there, many of whom had come from Rhode Island.⁶ Leland

* Professor of American Religious History at Barnard College, Columbia University, is the author of a dozen books, including *GOD IN THE WHITE HOUSE: A HISTORY: HOW FAITH SHAPED THE PRESIDENCY FROM JOHN F. KENNEDY TO GEORGE W. BUSH* (2008).

¹ Letter from the Danbury Baptist Association to President Thomas Jefferson (Oct. 7, 1801), in *THE SEPARATION OF CHURCH AND STATE: WRITINGS ON A FUNDAMENTAL FREEDOM BY AMERICA'S FOUNDERS* 127, 127–29 (Forrest Church ed., 2004) [hereinafter Letter from the Danbury Baptists].

² See Ian Bartrum, *The Constitutional Canon as Argumentative Metonymy*, 18 *WM. & MARY BILL RTS. J.* 327, 331–32 (2009).

³ JON BUTLER, GRANT WACKER & RANDALL BALMER, *RELIGION IN AMERICAN LIFE: A SHORT HISTORY* 155–56 (2003).

⁴ Letter from the Danbury Baptists, *supra* note 1, at 127.

⁵ C. A. Browne, *Elder John Leland and the Mammoth Cheshire Cheese*, 18 *AGRIC. HIST.* 145, 145–46 (1944).

⁶ *Id.* at 146.

enthusiastically supported Jefferson's election in 1800, rallying the town of Cheshire behind him.⁷ Early during Jefferson's first term, Leland sought to demonstrate that not all of New England opposed the Virginian.

The Baptist preacher came up with the idea of presenting the President with a local product of domestic arts as a token of the town's support and affection.⁸ Some of the residents of Cheshire, Massachusetts, had come from Cheshire, Connecticut, a town known for its cheese-makers. Leland directed that all of the locals in Cheshire, Massachusetts, collect the milk from their cows on a single day, July 20, 1801, prepare the curds, and bring them to the farm of Elisha Brown Jr.⁹ Brown's large cider press, with some modification, provided a cheese hoop, four feet in diameter and eighteen inches tall.¹⁰ Leland specifically directed that no milk from Federalist cows be allowed, "lest it should leaven the whole lump with a distasteful savour."¹¹ As the whey was being pressed out of the hoop, Leland blessed the cheese, dedicated it to the nation's chief executive, and led the townspeople in the singing of a hymn.¹² The cheese bore the Jeffersonian motto, "Rebellion to tyrants is obedience to God."¹³

A month after the pressing, the round of cheese weighed in at 1,235 pounds.¹⁴ Additional curds had been sufficient to produce another three rounds, each weighing seventy pounds.¹⁵ By early December, the "Mammoth Cheese," as it was known, was placed on a sled and carried to Hudson, New York, where it was conveyed by barge first to New York City and then (accounts differ) on to Baltimore and Washington.¹⁶ Leland and a friend, Darius Brown, accompanied the cheese, either in the same conveyance or by parallel route; Leland, who had long experience as an itinerant minister, preached to audiences along the way.¹⁷

The December 30, 1801 edition of the *National Intelligencer and Washington Advertiser* recorded the arrival of the Mammoth Cheese: "Yesterday the cheese, made in Massachusetts to be presented to the President, was brought to the city in a wagon drawn by six horses."¹⁸ On the morning of New Year's Day, 1802, Leland presented the cheese to the President, "as a token of the esteem we bear to our chief Magistrate,"

⁷ *See id.*

⁸ *See id.* at 146–47.

⁹ *Id.* at 147.

¹⁰ *Id.*

¹¹ Sylvanus Urban, *The Great Cheshire Political Cheese*, 3 GENTLEMAN'S MAG. 634, 637 (1869).

¹² Browne, *supra* note 5, at 147.

¹³ NATHAN O. HATCH, THE DEMOCRATIZATION OF AMERICAN CHRISTIANITY 96 (1989).

¹⁴ Browne, *supra* note 5, at 147.

¹⁵ *Id.*

¹⁶ *Id.* at 149.

¹⁷ *Id.*

¹⁸ *Id.*

along with an effusive letter of support from the people of Cheshire, Massachusetts.¹⁹ The declaration included appreciation for the Constitution and its “prohibition of religious tests to prevent all hierarchy.”²⁰

Later that day, after entertaining members of the Cabinet and foreign diplomats with a tasting of the Mammoth Cheese,²¹ Jefferson sat down and penned his famous letter to the Danbury Baptists. “I contemplate with solemn reverence,” the President wrote, “that act of the whole American people which declared that their legislature would ‘make no law respecting an establishment of religion, or prohibiting the free exercise thereof,’ thus building a wall of separation between church and state.”²²

This remarkable confluence of events at the White House on January 1, 1802 serves to underscore the uniqueness of the First Amendment to the United States Constitution. Not only was the notion of constructing a government without the interlocking authority of religion utterly unprecedented in Western history, but the First Amendment itself derived from the remarkable alliance between two unlikely camps: secular rationalists like Thomas Jefferson and evangelicals—especially Baptists—like John Leland.²³ The “wall of separation” metaphor itself can be traced to Roger Williams, founder of the Baptist tradition in America, who sought to protect the “Garden of the Church” from the “Wilderness of the world” by means of a “wall of Separation.”²⁴ Here it is important to note that the colonists of the seventeenth century did not share our romantic, post-Thoreauvian notions about wilderness. The wilderness was a place of darkness and danger, where evil lurked, so Williams’s sentiment must be understood as a defensive measure for the faith against the intrusions of the state.²⁵

There can be little doubt that Jefferson and other founders feared the opposite effect, that religious factionalism might imperil the new government. During his term as President, Jefferson considered the “experiment” in religious freedom that he had helped to create in the new republic and pronounced it good precisely because it had

¹⁹ John Leland, Address to President Thomas Jefferson (Jan. 1, 1802), in Browne, *supra* note 5, at 150.

²⁰ *Id.* at 149–50.

²¹ Browne, *supra* note 5, at 150–51. My assertion that Jefferson received the cheese earlier in the day is implicit from one of the contemporaneous accounts. “The great cheese arrived last night and this morning was presented to President Jefferson as a New Year’s gift.” *Id.* at 151.

²² Letter from President Thomas Jefferson to the Danbury Baptist Association (Jan. 1, 1802), in THE SEPARATION OF CHURCH AND STATE, *supra* note 1, at 129, 130.

²³ See THE SEPARATION OF CHURCH AND STATE, *supra* note 1, at 90–91.

²⁴ ROGER WILLIAMS, MR. COTTONS LETTER LATELY REPRINTED, EXAMINED AND ANSWERED (1644), reprinted in 1 THE COMPLETE WRITINGS OF ROGER WILLIAMS 108 (1963).

²⁵ See *id.*

proved conducive to political order and stability.²⁶ “We have solved by fair experiment, the great and interesting question whether freedom of religion is compatible with order in government, and obedience to the laws,” he wrote to a group of Virginia Baptists in 1808.²⁷ “And we have experienced the quiet as well as the comfort which results from leaving everyone to profess freely and openly those principles of religion which are the inductions of his own reason, and the serious convictions of his own inquiries.”²⁸

The collusion between rationalists and evangelicals—between Roger Williams and Thomas Jefferson—that produced the First Amendment has bequeathed to the United States a vibrant and salubrious religious culture unmatched anywhere in the world.²⁹ The First Amendment, just as Adam Smith predicted in his 1776 treatise on capitalism, *The Wealth of Nations*, set up a free market for religion, where religious entrepreneurs (to extend the economic metaphor) are free to peddle their wares in the marketplace without either prejudice or favoritism from the state.³⁰ American history is full of such examples, from Ann Lee,³¹ John Humphrey Noyes,³² and Joseph Smith, Jr.³³ to Aimee Semple McPherson,³⁴ Elijah Muhammad,³⁵ and Joel Osteen.³⁶ Put simply and directly, religion has flourished in America precisely because the government (for the most part, at least) has stayed out of the religion business.

The success of this religious marketplace renders all the more confounding the recent attempts by fundamentalists, especially the leaders of the Religious Right, to countermand the First Amendment. The very charter that ensured their success became a target as leaders of the Religious Right, many of whom claimed to be Baptists, sought to collapse the distinction between church and state by means of prescribed prayer in public schools, the use of taxpayer vouchers for religious schools, and the display of religious symbols in public spaces.³⁷

²⁶ RANDALL BALMER, *THY KINGDOM COME: HOW THE RELIGIOUS RIGHT DISTORTS THE FAITH AND THREATENS AMERICA* 44–45, 182 (2006).

²⁷ SIDNEY E. MEAD, *THE LIVELY EXPERIMENT: THE SHAPING OF CHRISTIANITY IN AMERICA* 59 (1963) (quoting BERNARD DEVOTO, *ACROSS THE WILD MISSOURI* 371 (1947) (quoting Letter from President Thomas Jefferson to Virginia Baptists (Nov. 21, 1808))).

²⁸ *Id.*

²⁹ See RANDALL BALMER, *BLESSED ASSURANCE: A HISTORY OF EVANGELICALISM IN AMERICA* 31–43 (1999).

³⁰ ADAM SMITH, *AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS* 309–11 (Edwin Cannan ed., Univ. Chi. Press 1976) (1776).

³¹ See BUTLER ET AL., *supra* note 3, at 206–07.

³² See *id.* at 208–09.

³³ See *id.* at 216–18.

³⁴ See *id.* at 359–60.

³⁵ See *id.* at 398–99.

³⁶ See Joel Osteen Ministries, <http://www.joelosteen.com> (last visited Feb. 11, 2010).

³⁷ See generally BALMER, *supra* note 26, at 58–69 (noting “[h]ow peculiar, then, given this history, that evangelicals associated with the Religious Right would seek to enshrine Christianity as the faith of the nation” through these means).

First, to understand the magnitude of this turnabout, we must address the matter of definition. The term *evangelical* refers to the first four books of the New Testament written by the evangelists Matthew, Mark, Luke, and John. So at its core *evangelicalism* denotes the gospel, or “good news,” of the New Testament as embodied in the teachings of Jesus.³⁸ Martin Luther’s “rediscovery of the gospel” in the sixteenth century, his attempt to reclaim the faith from what he considered the corruptions of medieval Catholicism, gave evangelicalism an unmistakably Protestant cast.³⁹ An even more specific form of evangelicalism arose in North America in the eighteenth century from the confluence of what I call the three “P”s: “Scots-Irish Presbyterianism, Continental Pietism, and the remnants of New England Puritanism.”⁴⁰ These components came together in the 1730s and 1740s, sparking a conflagration known to historians as the Great Awakening, a revival of religion that swept through the Atlantic colonies and, eventually, into eastern Canada before looping South again in the decades surrounding the turn of the nineteenth century.⁴¹ By this time, the revival was known as the Second Great Awakening, and it convulsed three theaters of the newly forming nation: New England, the Cumberland Valley of Kentucky, and upstate New York, a region so frequently singed by the fires of revival that it came to be known as the “burned-over district.”⁴² Both Awakenings also spun off new denominations and religious traditions, notably the Methodists, Baptists, and those associated with the Restorationist movement, seeking to replicate the primitive simplicity of the first-century church.⁴³

Evangelicalism has flourished in North America as nowhere else in large measure because of its protean character. Evangelicals tend to shy away from ecclesiastical hierarchies, from creeds, from liturgical rubrics, and so this leaves evangelical leaders a great deal of latitude in shaping their appeals.⁴⁴ Indeed, the genius of evangelicalism throughout American history is its ability to speak the idiom of the culture, whether it be the open-air preaching of George Whitefield in the eighteenth century, the circuit riders on the frontier during the antebellum period, the colporteurs riding the rails later in the nineteenth century, the urban revivalists like Billy Sunday and Billy Graham, or the televangelists and the megachurches in the twentieth century.⁴⁵ Leveraging the power of the First Amendment, evangelicals have exquisitely fashioned

³⁸ See *id.* at xii–xiii.

³⁹ See *id.* at xiii.

⁴⁰ *Id.* at xiv.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at xiv–xv.

⁴⁴ Edith L. Blumhofer & Randall Balmer, *Introduction* to MODERN CHRISTIAN REVIVALS xi, xii (Edith L. Blumhofer & Randall Balmer eds., 1993).

⁴⁵ See BALMER, *supra* note 26, at 67.

their message to appeal to the masses, and they have been inordinately successful at doing so.

Despite all of the permutations throughout American history, however, it is still possible to discern characteristics of the three “P”s in contemporary evangelicalism. From the Puritans, evangelicals inherited a penchant for obsessive spiritual introspection.⁴⁶ The Puritans kept diaries to record their spiritual progress; evangelicals constantly monitor the state of their souls, worrying about whether they are praying enough or are sufficiently godly. From the Presbyterians, evangelicals learned the importance of doctrinal precision,⁴⁷ and there is no shortage of theological “cops” among evangelicals who insist on one or another orthodoxy and harangue anyone who does not agree. Finally, evangelicals derived from the Pietists the importance of an *affective* religion.⁴⁸ Faith is more than merely intellectual assent; it must be accompanied by a warm-hearted piety.⁴⁹

Now, finally, a definition. An evangelical, in my considered opinion, is someone who believes three things. First, that the Bible is God’s revelation to humanity. Many evangelicals take this to the point of literal interpretation—although, as I have argued elsewhere, most engage in the ruse of selective literalism.⁵⁰

Second, an evangelical believes in the centrality of a conversion, or “born again,” experience.⁵¹ This derives from the third chapter of the Gospel according to St. John where Nicodemus, a Jewish leader, visits Jesus under cover of darkness and asks how he can be admitted into the kingdom of heaven.⁵² Jesus replies (in the King James translation) that Nicodemus must be “born again.”⁵³ Evangelicals understand this to mean that at some point an individual must make a conscious decision to surrender his or her life to Jesus, to forsake a life of sin, and thereby be “born again.”⁵⁴ For evangelicals, this is the defining moment, a datable experience of grace that marks the transition from darkness to light, from death to life, from sin to salvation. For many, this conversion is dramatic and often accompanied by strong emotions.⁵⁵ But that is not always the case. On the night of his conversion in Charlotte, North Carolina, for example, Billy Graham worried that it might not be valid because he was not

⁴⁶ *Id.* at xiv.

⁴⁷ *Id.*

⁴⁸ See Randall Balmer, *Eschewing the “Routine of Religion”: Eighteenth-Century Pietism and the Revival Tradition in America*, in MODERN CHRISTIAN REVIVALS, *supra* note 44, at 1, 1; see also BALMER, *supra* note 26, at xiv.

⁴⁹ See Balmer, *supra* note 48; see also BALMER, *supra* note 26, at xiv.

⁵⁰ See generally BALMER, *supra* note 26, at 1–34 (discussing the “Ruse of Selective Literalism”).

⁵¹ *Id.* at xviii.

⁵² See *John* 3:1–8 (King James).

⁵³ *John* 3:3 (King James); see also BALMER, *supra* note 26, at xviii.

⁵⁴ BALMER, *supra* note 26, at xviii–xix.

⁵⁵ *Id.* at xix.

overcome with emotions as others were in that gathering beneath Mordecai Ham's revival tent.⁵⁶

Third, and this too must be qualified, an evangelical believes in the importance of *evangelism*, bringing others into the faith.⁵⁷ The biblical warrant for this is the so-called Great Commission, when Jesus tells his followers to go into all the world and preach the gospel.⁵⁸ Some textual scholars point out that this injunction, coming at the end of St. Mark's Gospel, does not appear in many of the earliest biblical manuscripts,⁵⁹ but that makes little difference to most evangelicals, who see it as an obligation to proselytize. The qualification here is that it has been my observation over the past fifty or so years that evangelicals *talk* more about evangelism than they actually do it. Increasingly, they hire professionals to do it for them—missionaries, campus pastors, ministers of evangelism or outreach on the staffs of megachurches. Still, most evangelicals will attest to the importance of “sharing their faith” with others.

Encamped beneath this broader evangelical umbrella are various strains: the holiness movement, pentecostalism, neo-evangelicalism, the charismatic movement, the sanctified tradition, and various ethnically-inflected groups, especially a growing number of Hispanic evangelicals.⁶⁰ I generally assign the Southern Baptist Convention to a separate category, both because of its size and because it has remained fairly insular.

Fundamentalism is still another sub-category of evangelicalism, a movement that took its name from a series of pamphlets published between 1910 and 1915.⁶¹ Financed by Lyman and Milton Stewart of Union Oil Company of California,⁶² *The Fundamentals* contained very conservative statements on such issues as the virgin birth of Jesus, the authenticity of miracles, the inerrancy of the Bible, and the bodily resurrection of Christ.⁶³ The pamphlets were meant to stanch the rise of theological liberalism, or “modernism,” in mainline Protestant denominations,⁶⁴ and those who subscribed to the doctrines contained in the pamphlets came to be known as fundamentalists.⁶⁵ Although the term has since been appropriated to refer to conservatives in other religious traditions—Islam, Judaism, Hinduism, Mormonism, and the like—the

⁵⁶ See BILLY GRAHAM, *JUST AS I AM: THE AUTOBIOGRAPHY OF BILLY GRAHAM* 29 (1997).

⁵⁷ BALMER, *supra* note 26, at xix.

⁵⁸ See *Matthew* 28:16–20 (King James); *Mark* 16:14–18 (King James); *Luke* 24:44–49 (King James); *John* 20:19–23 (King James); see also BALMER, *supra* note 26, at xix.

⁵⁹ See, e.g., THE NEW OXFORD ANNOTATED BIBLE 91 (Michael D. Coogan et al. eds., 3d ed. 2001); Robert L. Plummer, *The Great Commission in the New Testament*, S. BAPTIST J. THEOLOGY, Winter 2005, at 4, 8 (citing BRUCE M. METZGER, *A TEXTUAL COMMENTARY ON THE GREEK NEW TESTAMENT* 126 (3d ed. 1971)).

⁶⁰ See BALMER, *supra* note 26, at xix.

⁶¹ *Id.* at 208 n.11.

⁶² WILLIAM MARTIN, *WITH GOD ON OUR SIDE: THE RISE OF THE RELIGIOUS RIGHT IN AMERICA* 10 (1996).

⁶³ See BALMER, *supra* note 26, at 208 n.11.

⁶⁴ *Id.* at 112.

⁶⁵ *Id.* at 208 n.11.

word properly belongs to a militant strain of evangelicalism that emerged in the early decades of the twentieth century.⁶⁶

Political and religious machinations of the 1970s conspired to alter the fundamentalist deference to the First Amendment. Even though Baptists throughout American history, from Roger Williams, Isaac Backus, and John Leland to George Washington Truett, Walter Shurden, and James Dunn, had been fervent defenders of the separation of church and state,⁶⁷ a new generation of Baptists, all of whom fit the definition of fundamentalists, advocated a different course. The most brazen example was W. A. Criswell, the fundamentalist pastor of First Baptist Church in Dallas, Texas, and sometime president of the Southern Baptist Convention.⁶⁸ During the presidential campaign of 1960, Criswell declared: "It is written in our country's constitution that church and state must be, in this nation, forever separate and free."⁶⁹ Religious faith, he wrote, must be voluntary, and "in the very nature of the case, there can be no proper union of church and state."⁷⁰ Twenty-four years later, however, on August 24, 1984, during the Republican National Convention, Criswell changed his tune: "I believe this notion of the separation of church and state was the figment of some infidel's imagination."⁷¹

What happened? In 1979, conservative insurgents mounted a takeover of the Southern Baptist Convention,⁷² thereby setting in motion a series of initiatives that utterly reshaped the denomination. Aside from retooling boards of trustees of various schools and agencies, the new leadership aligned itself with the newly emergent Religious Right⁷³ and, accordingly, took a dim view of church-state separation and even began to insist that the United States was founded as a "Christian nation."⁷⁴

The Religious Right itself took shape the same year, 1979, with the formation of the Moral Majority.⁷⁵ Although leaders of the Religious Right tried retrospectively to claim that the *Roe v. Wade* decision of 1973⁷⁶ was the catalyst behind their politicization, that claim collapses on closer examination.⁷⁷ During the summer of 1971, the

⁶⁶ *Id.*

⁶⁷ *See id.* at 41–53; MARTIN, *supra* note 62, at 51; WALTER SHURDEN, *THE BAPTIST IDENTITY: FOUR FRAGILE FREEDOMS* (1993).

⁶⁸ BALMER, *supra* note 26, at 12.

⁶⁹ RANDALL BALMER, *GOD IN THE WHITE HOUSE: A HISTORY: HOW FAITH SHAPED THE PRESIDENCY FROM JOHN F. KENNEDY TO GEORGE W. BUSH* 36 (2008).

⁷⁰ *Id.*

⁷¹ Richard V. Pierard, *Religion and the 1984 Election Campaign*, 27 *REV. RELIGIOUS RES.* 98, 104 (1985).

⁷² BALMER, *supra* note 26, at 63.

⁷³ *Id.* at 63–64.

⁷⁴ *See id.* at 64–65, 183.

⁷⁵ *See* MARTIN, *supra* note 62, at 200.

⁷⁶ 410 U.S. 113 (1973).

⁷⁷ *See* BALMER, *supra* note 69, at 93–94.

delegates to the Southern Baptist Convention in St. Louis, Missouri, passed a resolution that stated, “we call upon Southern Baptists to work for legislation that will allow the possibility of abortion under such conditions as rape, incest, clear evidence of severe fetal deformity, and carefully ascertained evidence of the likelihood of damage to the emotional, mental, and physical health of the mother.”⁷⁸ The Southern Baptist Convention, hardly a redoubt of liberalism, reaffirmed that position in 1974, the year after the *Roe* decision, and again in 1976.⁷⁹

When the *Roe* decision was handed down, W. A. Criswell himself expressed his satisfaction with the ruling. “I have always felt that it was only after a child was born and had a life separate from its mother that it became an individual person,” one of the most famous fundamentalists of the twentieth century declared, “and it has always, therefore, seemed to me that what is best for the mother and for the future should be allowed.”⁸⁰

Though some evangelicals mildly questioned the *Roe* ruling, including *Christianity Today* magazine,⁸¹ most responded with silence or approval; Baptists, in particular, saw the ruling as an appropriate division between church and state, articulating the necessary line between government regulation of behavior and individual morality.⁸² “Religious liberty, human equality and justice are advanced by the Supreme Court abortion decision,” wrote W. Barry Garrett of *Baptist Press*.⁸³

If the catalyst for the formation of the Religious Right was not *Roe*, what was? It was in fact a judicial ruling, but it was the District Court for the District of Columbia’s decision in *Green v. Connally*⁸⁴ that served as the cause for the rise of the Religious Right. In the early 1970s, the federal government sought ways to extend the reach of the Civil Rights Act of 1964, which forbade racial segregation and discrimination.⁸⁵ In enforcing the Act, the Internal Revenue Service issued rulings stating that any organization that practiced racial discrimination would no longer qualify as a charitable organization, and therefore would be denied tax-exempt status. In addition, contributions to these institutions no longer were tax-exempt.⁸⁶ On June 30, 1971, the IRS decision was affirmed in *Green v. Connally*.⁸⁷ The District Court for the District of Columbia ruled that tax-exempt status could not be extended to any educational organization or any donations made to educational organizations “unless the school or other

⁷⁸ Southern Baptist Convention, *Resolutions on Abortion*, June 1971, available at <http://www.johnstonsarchive.net/baptist/sbcabres.html>; see also BALMER, *supra* note 69, at 94.

⁷⁹ BALMER, *supra* note 69, at 94.

⁸⁰ Max Blumenthal, *Agent of Intolerance*, NATION, May 16, 2007, available at <http://www.thenation.com/doc/20070528/blumenthal>.

⁸¹ See Editorial, *Abortion and the Court*, CHRISTIANITY TODAY, Feb. 16, 1973, at 32, 32–33.

⁸² See BALMER, *supra* note 69, at 95.

⁸³ Editorial, *What Price Abortion?*, CHRISTIANITY TODAY, Mar. 2, 1973, at 39, 39.

⁸⁴ 330 F. Supp. 1150 (D.D.C. 1971), *aff’d sub nom.* *Coit v. Green*, 404 U.S. 997 (1971).

⁸⁵ BALMER, *supra* note 69, at 95.

⁸⁶ *Id.*; see also *Connally*, 330 F. Supp. at 1156.

⁸⁷ 330 F. Supp. 1150.

educational institution involved has a racially nondiscriminatory policy as to students.”⁸⁸ Although the case specifically applied to a segregated school in Mississippi, the effects were much broader.

Because the change in IRS policy was “applicable to all private schools in the United States at all levels of education,”⁸⁹ a fundamentalist institution in Greenville, South Carolina, Bob Jones University, stood directly in the crosshairs.⁹⁰ In the wake of *Green v. Connally*, the University had to admit students of color, and began doing so in 1971.⁹¹ However, the school maintained its discriminatory practice of not admitting single African American students until 1975, and continued to forbid interracial dating throughout the 1970s and into the 1980s.⁹² Interracial dating was grounds for expulsion, and school policy dictated that any students who “espouse, promote, or encourage others to violate the University’s dating rules and regulations will be expelled.”⁹³

In April of 1975, the IRS notified Bob Jones University of the pending revocation of the school’s tax-exempt status.⁹⁴ On January 19, 1976, the revocation took effect, retroactively removing the University’s tax-exempt status as of 1970 when the IRS policy formally took effect.⁹⁵ The University sued to maintain its tax-exempt status.⁹⁶

In the midst of the case, conservative activist Paul Weyrich—who “had been fighting for conservative causes going back to Barry Goldwater’s failed bid for the presidency in 1964”⁹⁷—saw an opportunity. He recognized the possibility of engaging evangelical voters in the conservative crusade, and he had been encouraging action on the part of evangelical leaders on matters ranging from abortion and school prayer to pornography and the proposed Equal Rights Amendment since the early 1970s.⁹⁸ “I was trying to get those people interested in those issues and I utterly failed. What changed their mind was Jimmy Carter’s intervention against the Christian schools, trying to deny them tax-exempt status on the basis of so-called de facto segregation,” Weyrich later recalled.⁹⁹

Weyrich’s attribution to Carter of the action against Bob Jones University was either simply mistaken or a cynical attempt to assign blame to the wrong person, probably for political reasons. When the IRS rescinded the tax exemption of Bob Jones

⁸⁸ *Id.* at 1179.

⁸⁹ *Bob Jones Univ. v. United States*, 461 U.S. 574, 578 (1982).

⁹⁰ *See* BALMER, *supra* note 69, at 95–96.

⁹¹ *Bob Jones Univ.*, 461 U.S. at 580; *see also* BALMER, *supra* note 69, at 96.

⁹² *Bob Jones Univ.*, 461 U.S. at 580.

⁹³ *Id.* at 580–81.

⁹⁴ *Id.* at 581.

⁹⁵ *Id.*; *see also* BALMER, *supra* note 69, at 96.

⁹⁶ *See Bob Jones Univ.*, 461 U.S. 574; BALMER, *supra* note 69, at 96.

⁹⁷ BALMER, *supra* note 69, at 96.

⁹⁸ *Id.*

⁹⁹ MARTIN, *supra* note 62, at 173.

University on January 19, 1976, Jimmy Carter was still running for the Democratic nomination; he would not be inaugurated President until a year and a day after the IRS action.¹⁰⁰ The Bob Jones case eventually found its way to the United States Supreme Court in the fall of 1982,¹⁰¹ at which time the Reagan administration argued that Bob Jones University should be allowed to keep both its racially discriminatory policies and its tax exemption.¹⁰² The Court disagreed. By an eight-to-one margin, the Supreme Court ruled against Bob Jones on May 24, 1983.¹⁰³ (The sole dissenter was William Rehnquist, whom Ronald Reagan later elevated to Chief Justice.)¹⁰⁴

The unlikely alliance between Baptists and other religious dissenters, on the one hand, and secular liberals like Thomas Jefferson, on the other, bequeathed to American life a provision that has helped to ensure both political quiescence and a vibrant religious marketplace. The First Amendment satisfied Roger Williams's desire to shield the "Garden of the Church" from the "Wilderness of the world," even as it protected the government of the new nation from the ravages of religious factionalism.¹⁰⁵

The rise of the Religious Right in the late 1970s, however, in response to perceived attacks on the autonomy of fundamentalist institutions, had the effect of robbing the First Amendment of one of its stalwart defenders: America's Baptists. The fundamentalist leaders of the Religious Right, many of whom claimed to be Baptists—Jerry Falwell,¹⁰⁶ W. A. Criswell,¹⁰⁷ Adrian Rogers,¹⁰⁸ Tim and Beverly LaHaye,¹⁰⁹ James Robison,¹¹⁰ and others—discarded their tradition's historic defense of church-state separation in favor of a political activism slanted decidedly toward the right of the political spectrum.¹¹¹ The conservative takeover of the Southern Baptist Convention in 1979, moreover, removed a powerful sentinel from the "wall of separation" between church and state.

The relative absence of voices articulating historic Baptist principles opened the way for attacks on the First Amendment, both rhetorical and political. The chorus of fundamentalists who insisted that the United States was founded as a "Christian

¹⁰⁰ BALMER, *supra* note 69, at 100.

¹⁰¹ *Bob Jones Univ.*, 461 U.S. 574.

¹⁰² See BALMER, *supra* note 69, at 99.

¹⁰³ *Bob Jones Univ.*, 461 U.S. at 576.

¹⁰⁴ *Id.* at 612–23 (Rehnquist, J., dissenting); see also BALMER, *supra* note 69, at 99.

¹⁰⁵ See BALMER, *supra* note 26, at 42; see also *supra* note 24 and accompanying text.

¹⁰⁶ See BALMER, *supra* note 26, at 17.

¹⁰⁷ See BALMER, *supra* note 69, at 94.

¹⁰⁸ See BALMER, *supra* note 26, at 63.

¹⁰⁹ See *id.* at 97.

¹¹⁰ See BALMER, *supra* note 69, at 118.

¹¹¹ See BALMER, *supra* note 26, at 63–64.

nation” not only flouts the Constitution itself and the evidence of history, it also contradicts the explicit language of the Treaty of Tripoli, which was ratified unanimously by the United States Senate on June 7, 1797: “[T]he Government of the United States of America is not, in any sense, founded on the Christian religion.”¹¹² More important, the abdication of traditional Baptist principles on the part of fundamentalists associated with the Religious Right led to policies that compromised the disestablishment clause of the First Amendment: taxpayer vouchers for religious schools, public prayers in public schools, faith-based initiatives, and the display of religious sentiments in public spaces.¹¹³

The long sweep of American history, however, amply demonstrates the genius of the First Amendment, the grand experiment of constructing a government without the interlocking apparatus of an established religion. The fact that religious faith has flourished in the United States as nowhere else renders the fundamentalist attempts to compromise the First Amendment all the more confounding.

¹¹² Treaty of Peace and Friendship, U.S.-Tripoli, art. XI, Nov. 4, 1796, S. Treaty Doc. No. 58-171. This clause was omitted from the superceding 1805 Treaty of Peace and Amity. See Kurt T. Lash, *Power and the Subject of Religion*, 59 OHIO ST. L.J. 1069, 1139 n.267 (1998).

¹¹³ See BALMER, *supra* note 26, at 64.