

University at Buffalo School of Law

Digital Commons @ University at Buffalo School of Law

Journal Articles

Faculty Scholarship

Fall 1-1-1987

Religion, Revival, and the Ruling Class: A Critical History of Trinity Church

Elizabeth B. Mensch

University at Buffalo School of Law

Follow this and additional works at: https://digitalcommons.law.buffalo.edu/journal_articles



Part of the [Law and Society Commons](#), [Legal History Commons](#), and the [Religion Law Commons](#)

Recommended Citation

Elizabeth B. Mensch, *Religion, Revival, and the Ruling Class: A Critical History of Trinity Church*, 36 Buff. L. Rev. 427 (1987).

Available at: https://digitalcommons.law.buffalo.edu/journal_articles/770



This Article is brought to you for free and open access by the Faculty Scholarship at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Journal Articles by an authorized administrator of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

BUFFALO LAW REVIEW

Volume 36

Fall 1987

Number 3

Religion, Revival, and the Ruling Class: A Critical History of Trinity Church

ELIZABETH MENSCH*

TABLE OF CONTENTS

I.	INTRODUCTION	428
II.	COLONIAL BACKGROUND	431
	A. <i>The Hierarchical Model and the Dutch and Anglican Churches</i>	431
	B. <i>Early British Rule: The Duke's Laws and Leisler's Rebellion</i>	436
	C. <i>Order Restored</i>	443
	D. <i>Hierarchy Challenged</i>	452
III.	TRINITY AND THE NEW REPUBLIC: THE PROBLEM OF PROPERTY RIGHTS	470
	A. <i>The Aftermath of Revolution</i>	470
	B. <i>Accommodation and Constitutionalism</i>	479
	C. <i>The Continuation of Struggle and the Meaning of Private Rights</i>	483
	D. <i>The Ongoing Dilemma of Public and Private, Law and Morality</i>	492
	E. <i>High Church, Low Church, Property, and Immigration</i> .	504

* Professor of Law, Faculty of Law and Jurisprudence, State University of New York at Buffalo. The author expresses her appreciation to Alan Freeman, for help and cooperation that greatly exceeded the bounds of collegial (and spousal) duty, and to Fred Konefsky, for valuable editorial and research advice. This article, in preliminary form, was first presented at the Legal History Workshop, University of Wisconsin School of Law, to which I am indebted for a stimulating summer of research and discussion. Finally, Lori Cohen, as research assistant, did a remarkably resourceful and thorough job in finding and assembling the information contained in the Appendix.

IV. THE INSTITUTIONAL CHURCH MOVEMENT AND THE PROGRESSIVE JUSTIFICATION OF PROPERTY	521
A. <i>Trinity and Social Reform in the Post-Civil War Period</i>	521
B. <i>The "Broad Church" and Progressivism</i>	525
C. <i>Trinity as Landlord</i>	549
V. AFTERWORD	565

I. INTRODUCTION

JOINING the northbound Brooklyn-Queens Expressway at Atlantic Avenue in Brooklyn, one is situated between the bustling prosperity of Brooklyn Heights above and the refurbished promise of Miss Liberty in the harbor across the river. Then, almost immediately, the view across the East River becomes that of Lower Manhattan, workplace for many ambitious Brooklyn Heights residents, where the awesome citadels of concrete and steel still (at least at this writing) constitute the headquarters of world capitalism.

Easily visible from the expressway are the giant plastic bubbles near the river where lawyers and financiers play tennis to reduce the stress of their frenetic lives. Then, for a fleeting moment, the vista shifts to reveal Wall Street itself, an uphill canyon topped by a hauntingly dark gothic spire reaching toward the sky. Physically dwarfed by neighboring skyscrapers, that spire nevertheless challenges the buildings around it with an almost mystical power that predates them all, and, one suspects, may outlast them as well.

The spire is that of Trinity Church, one of the richest and most prestigious churches in American history. That it still stands, and stands where it does, is a testament to an extraordinary and paradoxical history. Trinity's power is rooted in Manhattan real estate, and her history as an institution is inextricably linked to the history of her landholdings. For a time the property Trinity claimed for herself included nearly all of Manhattan Island up to Houston Street, as well as most of present-day Greenwich Village and a large tract on the Upper West Side adjoining and embracing the present site of Columbia University.¹ After the Revolution that land made Trinity easily the wealthiest religious institution in Manhattan.² Despite more than a century of conveyances that depleted her total acreage, Trinity's holdings in 1910 were still sufficient

1. See Appendix.

2. See F. JAHNER, *THE URBAN ESTABLISHMENT* 229 (1982).

to earn her the denunciation of leading progressive-era muckrakers, who considered her the richest church in America and probably the most un-Christian.³

Trinity's power rested upon her land, but only because that land was recognized as "property." Land itself simply exists, part of the natural world and requiring no explanation, whereas property is by definition legally conferred power and calls for legal and political justification. A wealthy church would seem to bear a special burden of justification, for its mission in the world is conceived to be a moral one. As applied to churches, the usual free-enterprise language of pure self-interest is peculiarly inappropriate. For over two hundred years Trinity's burden of self-justification was especially weighty due to a surprising history rooted in corruption, maintained by privilege, and consistently antithetical to the egalitarian and democratic traditions associated with the American Revolution and its aftermath.

Trinity began in the 1690s as the officially established Anglican Church in provincial New York, structured by the British expressly to quell democratic disorder and promote hierarchy and authority in the province. Her earliest founders and sponsors were two of the most corrupt and despised governors in the entire history of New York: Fletcher, who first established Trinity, was removed from office for bribery and piracy; and Cornbury, one of Trinity's most ardent promoters, has been characterized as "a mean liar, a vulgar profligate, a frivolous spendthrift, an impudent cheat, a fraudulent bankrupt, and a detestable bigot."⁴ Haughty and imperious, Trinity dismissed with cavalier disregard the spiritual impulse of the Great Awakening, allied herself as best she could with New York's ruling class, and was, on the eve of the American Revolution, a bastion of Tory power and privilege.

That Trinity survived the Revolution at all no doubt stunned her Tory members, most of whom fled the country, yet by the 1790s she had literally risen from the ashes, with a membership representing the most powerful of New York's emerging Federalist elite, including, for example, Alexander Hamilton and John Jay. Subjected to populist attack as nothing but a wily, moneyed corporation with undue political influence, Trinity fought back an 1814 assault on the legitimacy of her landholdings by cleverly invoking the emerging legal rhetoric of private rights. Then, confronted from within by more high-minded (but low-church) Epis-

3. R. BAKER, *THE SPIRITUAL UNREST* 1-48 (1910).

4. J.R. Brodhead, *quoted in* W. Chazanof, *Land Speculation in Eighteenth-Century New York*, in *BUSINESS ENTERPRISE IN EARLY NEW YORK* 60 (J. Frese & J. Judd, eds. 1979).

copalians seeking a more democratic and compassionate deployment of Trinity's wealth, she successfully responded in the 1850s by convincing the New York State Legislature that she was ready to perform a new and challenging role as agent of moral uplift and social control in ministering to the teeming and threatening immigrant masses.

That newly fashioned image of benevolence and guardianship became more than a little suspect when Trinity was exposed in the 1890s as the largest owner of squalid tenement housing in New York City, as well as one of the most irresponsible and obdurate in the face of legally mandated health and safety requirements. Once again Trinity overcame the virulence of her detractors by successfully portraying herself as part of the progressive movement, applying a systematic social science methodology to problems of both housing reform and social welfare generally.

At the level of intellectual history, particularly legal and political theory, Trinity's repeated successes illustrate the apt appropriation of the three conceptual models that sequentially dominated American thought. Those models, and the dilemmas they contained, in turn paralleled prevailing models of religious thought within the Episcopal Church, so that law, politics, and religion were all marked by a similar discourse. In a sense, then, this is less a story about discrete institutional history and particular parcels of land than it is about the ideas and language which gave that land its meaning as "property." Trinity provides a focus—a worm's eye view, as it were—from which to understand some of the intellectual transformations that took place during two centuries of American thought, as well as the relation of those transformations to an important and powerful institution which played a central role in the social history of New York.

The three basic conceptual models, described in detail in the next three sections, will be briefly introduced here. First was the model of pure hierarchy, which characterized Trinity during the colonial period. Under that model there was an assumed unity of law, politics, religion and the economy. The substantive and essentially static truth that gave moral content to all four realms descended, so to speak, from God through the King and from there ever downward through all of the carefully graduated hierarchies of social/political/religious life. The goal was to achieve a single, all-embracing harmony, uniting church and state and reflecting here on earth the divine harmony of the Heavenly City.

The second model, the model of rights and sovereignty, emerged after the Revolution as an accommodation between the most radical republican implications of the Revolution and the claims of privilege and

hierarchy which survived despite the war. As an alternative to the true republican community, founded on full participatory democracy and economic equality, the model constructed by liberals after the Revolution severed both religion and economics from politics. The former were transformed into private rights to be protected by the rule of law from the leveling threat of popular sovereignty. Objective reason, once a substantive truth descending from God and expressed throughout the social order, was now located solely within the methodology of law, a discipline devoted not to moral truth, but to the objective definition of boundaries. Religion, politics, and market choice, all existing in separate spheres, were conceived as expressing only a pure and legally protected subjectivity.

The third model, which might be called progressive-confessional, began to emerge after the Civil War, even while jurists were still busily working out a fully refined and rationalized version of the second. Under that third model the lines between the political and the private realm became blurred. Both religion and property were conceived, not just as private rights but as servants of a broader public purpose. The new emphasis was on norms rather than rights—norms of attitude and behavior which could be statistically derived, using the new tools of sociological research, and then imposed on all aspects of social and personal life. Under this model Trinity would, in a new form, once again lay claim to the role she had earlier played as an established church—an agent of social control in the service of political authority.

II. COLONIAL BACKGROUND

A. *The Hierarchical Model and the Dutch and Anglican Churches*

In 1693, when Governor Fletcher granted to Trinity both its earliest property holdings and its status as an established church, the history of established religion in New York was already a complicated one. Trinity's role in the province is impossible to understand without reference to that history, for Trinity was built upon a foundation of church/state relations which had already been laid by the Dutch in New York, and from the outset Trinity officials maintained a close religious and political alliance with the conservative wing of the Dutch Reformed Church. Moreover, in important ways the prior experience of the Dutch church served as a model for Trinity in its role as an established church dealing simultaneously with civil authority and citizen unrest. Thus, the history of Trinity is inseparable from the history of the Dutch Reformed Church in

New York, and the story of Trinity actually starts in early New Netherland.

In Dutch New Netherland the Dutch Reformed Church had been the officially established religion of the province, with its own carefully structured ecclesiastical organization. The charter which originally granted the Dutch West India Company (WIC) full political and economic control over the province also stated that no other religion should be publicly admitted except the Calvinist Dutch Reformed, and stipulated that the WIC should "provide good and suitable preachers" for the new colony.⁵ The Synod of Holland carefully passed acts designed to insure the orderly supervision of colonial churches, giving the Classis (an ecclesiastical supervisory body) in Amsterdam, where the WIC directors had their headquarters, direct jurisdiction over the provincial churches.⁶ Individual provincial congregations called their own ministers, but the Classis retained authority to examine and ordain all ministers sent to the colonies and to settle all disputes regarding doctrine and church order. There was no local organization of churches; each church turned directly to the Classis for guidance, and was absolutely bound by Classis decision. In turn, the Classis was in every respect subordinate to the Synod of North Holland, whose task it was to maintain Calvinist principles of church order first established by the Synod of Dort in 1619. Under the Dutch structure no provision was made for local autonomy or improvisation.

While one might suppose that an established church, backed by civil authority, could easily preside over a regime of hierarchy, order, and doctrinal purity, the opposite often proved to be the case. Its very dependence on civil authority, both political and financial, placed the Dutch Reformed Church in a position of accommodation and compromise, while nevertheless exposing it to the opposition of dissidents who focused only on its establishment status. Predictably, as later happened with Trinity, God's official representative became a pragmatic political institution, preoccupied as much with its political role as with the promotion and preservation of the True Faith.

Rev. Michaelius, the first minister sent to New Netherland, expressed his own strong commitment to authoritative church structure by immediately and humbly requesting Classis direction. In his first letter to

5. See 1 DOCUMENTS RELATIVE TO THE COLONIAL HISTORY OF THE STATE OF NEW YORK 119, 123 (E.B. O'Callaghan ed. 1856).

6. See, e.g., 1 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK 38, 74, 76 (H. Hastings ed. 1901).

the Classis, for example, he wrote that if those “who have special superintendence over us here, deem it necessary to administer to us any correction, instruction, or good advice, it will be agreeable to us and we will thank your Reverence therefore; since we must have no other object than the glory of God”⁷ Michaelius expected a similar and parallel chain of authority in civil affairs: “In my opinion it is very expedient that the Honorable Directors of this place (the WIC) should furnish plain and precise instructions to their Governors, that they may distinctly know how to conduct themselves in all possible difficulties and events.”⁸ He apparently envisioned two neatly drawn cooperative but coordinate lines of authority, ecclesiastical and civil, ultimately linked in Holland under a single head and dedicated to preserving order and harmony.

By the 1640s, Rev. Michaelius’ tidy conceptual model was utterly belied by a social reality of several hundred quarrelsome, disruptive New Amsterdam inhabitants, notoriously contemptuous of official authority. Nevertheless, Peter Stuyvesant, the most important of the Dutch governors, completely shared the Michaelius view, believing, as he stated, that “the honor of God, the advancement of the Reformed Religion, and the common quietness, peace and harmony of the place”⁹ were all mutually dependent, and dependent in turn upon strict control over religious practice. Otherwise, “we would soon become a Babel of confusion, instead of remaining a united and peaceful people [which would be] . . . injurious to the political as well as the religious interests of the place.”¹⁰

Predictably, therefore, when he established a municipal government, Stuyvesant carefully chose a small group of “greater burghers” to closely supervise the province. Those greater burghers were all men who had held high military, ecclesiastical, or civil office, or their decedents. In effect, he created a new hereditary aristocracy, uniting the orders of church, state, and military. The greater burghers carefully regulated every aspect of civil and economic life. Not only religion, but also vital economic activities like brewing, baking, meat production, and carpentry

7. *Id.* at 54-56.

8. *Id.* at 55.

9. *Id.* at 408-09.

10. *Id.* at 387-88. It had already become such a Babel. According to Bernard Bailyn: Men and women from half-a-dozen nations—Dutch, Walloons, French, English, Portuguese, Swedes, Finns, Jews, and Brazilian blacks—speaking, it was reported, eighteen different languages, and professing every religious persuasion from Catholicism to Anabaptism, flocked to the settlement seeking to turn a profit on exchanges of furs, goods, produce, or land. . . .

B. BAILYN, *THE GREAT REPUBLIC* 66 (1977).

were controlled, and monopolies were freely granted to insure both revenue and needed production. Similarly, strict conditions were placed on land ownership and use for the sake of maintaining the general good of the community.¹¹

In order to insure the strength of this united church/state order, Stuyvesant zealously enforced local payment of ministerial salaries to supplement allowances provided by the WIC, often confronting exceedingly recalcitrant congregations when he did so. For example, the citizens of Brooklyn found the services of an elderly minister, Domine Polhemius, decidedly uninspiring. Apparently influenced by voluntarist New England ideas about free congregational choice, the upstart Brooklynites announced that they would not be bound "to anything, except to what from inclination and free and unbiased will" they felt they should contribute.¹² Stuyvesant and his council of greater burghers responded by ordering them to pay double the salary money originally demanded, "as a warning example to others."¹³ Similarly, Stuyvesant was vigilant in efforts to stamp out dissident sects. For example, he jailed Lutherans for conducting private worship services in their homes, and later, when a Lutheran minister arrived in the province and began preaching, Stuyvesant shipped the offending minister back to Europe.¹⁴

Doctrinal purity had its limits, however. The divisiveness caused by suppression of dissidents was politically costly, and also impeded the WIC's primary goal, which was to encourage population growth and vig-

11. See M. KAMMEN, *COLONIAL NEW YORK—A HISTORY* 55 (1975); C. SMITH, *RELIGION AND TRADE IN NEW NETHERLAND* 153 (1973). Smith describes in excellent detail the tension between rigid religious control and the WIC goal of promoting profitable trade, a tension which is only briefly summarized here. As he points out, that tension was a replay of a similar history in Amsterdam, where the Calvinist goal of a civil order committed to upholding religious truth gave way to the merchant goal of encouraging international commerce and the free availability of capital.

12. 1 *ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK*, *supra* note 6, at 367-68. Apparently the WIC had also been unwilling to contribute to Polhemius' salary, but Stuyvesant was determined to have him conduct services in Ames Foort, Brooklyn, Middleborough, and Midwout. The petitioners from Brooklyn claimed that due to age Polhemius was unable to speak for more than a quarter of an hour, so that "when we think, that the prayer or sermon, whatever it be called, is beginning, it is already over." *Id.* at 367.

13. *Id.* at 420.

14. The Lutherans had declared "rather saucily" that the WIC had allowed them to call their own minister, Joannes Goetwasser. *Id.* at 393. The Dutch Reformed ministers, Drisius and Megapolensis, considered Goetwasser a "snake in our bosom" and implored the Classis to "prevent the evils threatened to our congregation by the creeping in of erroneous spirits." *Id.* at 393-94. Goetwasser actually preached openly for months, while Drisius and Megapolensis despaired as ship after ship left the harbor without Goetwasser aboard. The WIC waffled, backing neither Stuyvesant nor Goetwasser; finally Stuyvesant arrested Goetwasser and shipped him off. C. SMITH, *supra* note 11, at 190-211.

orous capital investment from whatever source. The worldly merchants, who directed the WIC, therefore, began to advocate the quite painless (from their perspective) adjustment of religious doctrine for the sake of including dissenters safely within the all-embracing fold of the established church. For example, when the Lutherans advised the WIC directors that their chief stumbling block to unity with the Dutch Reformed Church lay in the forms followed in the baptismal service, the WIC could see no sensible reason for not modifying the ceremony and ordered Revs. Drisius and Megapolensis, then the city's Reformed Ministers, to do so.¹⁵

At first the churchmen were torn between their loyalty to doctrine and their desire to accommodate, but the Dutch ministers had long ago abandoned the goal of establishing a pure Calvinist Church order, having learned that the benefits accruing to an established church necessarily entail the inconvenience of ultimate submission to civil authority. Thus they promised to give "indulgence in what does not affect truth and order, heartily wishing prosperity to the church of Christ here,"¹⁶ and, with the sanction of the Classis, they agreed to "indulge in no unnecessary precision"¹⁷ in religious matters.

Ironically, then, even though Stuyvesant himself was a purist eager to impose a strict religious and hierarchical ordering on the already disordered and pluralistic society of New Netherland, he and his ministers had to submit to the political reality of their subordination to the WIC directors, who cared far more about encouraging profitable trade and population growth than they did about maintaining a religiously ordered society. Since the goal of growth would remain elusive if only members of the Dutch Reformed Church were allowed in the province, the WIC pushed the always reluctant Stuyvesant in the direction of ever-increasing toleration. Eventually even Jews were allowed in, to the great dismay of the Dutch ministers.¹⁸ Similarly, monopolies were disallowed by the WIC almost as fast, it seemed, as Stuyvesant granted them,¹⁹ and regulations were lifted from trade as well as from religion in order "that com-

15. They cautioned Drisius and Megapolensis henceforth to "use the least offensive and most tolerant means, so that people of other persuasions may not be deterred from the public Reformed Church." 1 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 6, at 423. Through Stuyvesant the directors then officially ordered the change in form, and warned that, in the future selection of ministers, the WIC would take care that those chosen not be "infected with scruples about unnecessary forms, which cause more division, than edification." *Id.* at 460.

16. *Id.* at 431.

17. *Id.* at 485-86.

18. *Id.* at 335.

19. See M. KAMMEN, *supra* note 11, at 57.

merce . . . may not be discouraged and people disgusted with it."²⁰

As a result, when the British took control of New York in 1664, its religious history was already a peculiar mix of control and diversity, a combination which continued to characterize the province under the British. A small group of Dutch ministers had become accustomed to both the privileges and restraints of occupying an established position, and those ministers were also closely linked to the group of families that considered themselves the Dutch provincial aristocracy. Early English governors were quick to form close ties with those natural allies. At the same time, the British inevitably inherited the lingering resentment over such practices as forced salary payments and suppression of dissidents which inevitably accompanies established religion. Inhabitants had come to associate those ecclesiastical controls, quite accurately, with economic regulation, monopolies, and hierarchical political authority in general. Paradoxically, however, because of WIC policies of toleration, the British also inherited a sectarian diversity which threatened to run rampant, and which, like Stuyvesant, they associated with political and social chaos.

B. *Early British Rule: The Duke's Laws and Leisler's Rebellion*

When the English took control of New York, Charles II gave his brother, James, a proprietary patent to the province which conveyed, as had the WIC charter, virtually unlimited political and economic authority. The assumptions James brought to governing the province were entirely hierarchical. Authority had descended from God through Charles to himself, and in no sense could be said to rest with the local inhabitants. Thus James had no patience with colonial assemblies, which he considered more trouble than they were worth because of their tendency to disturb the peace of the government wherein they were allowed. The best way to deal with the whole question of self-determination, he announced, was to "discourage any mocon of yt kind."²¹

James himself took little interest in governing the province, allowing his broad powers to be passed on, essentially intact, to provincial governors, who moved rapidly to establish a small colonial aristocracy based on a tightly interlocking network of land ownership, monopoly, and patronage. For example, New York City was granted a monopoly over ex-

20. *Id.*

21. 3 DOCUMENTS RELATIVE TO THE COLONIAL HISTORY OF THE STATE OF NEW YORK 230 (E.B. O'Callaghan ed. 1853). See D. LOVEJOY, THE GLORIOUS REVOLUTION IN AMERICA 109 (1972).

port trade and flour bolting,²² which benefited merchants who were concurrently receiving large land grants. Those same merchant/land-owners were also awarded lucrative government contracts by which they would agree to provide necessities (such as supplies for government troops) in return for "warrants" to be repaid at high interest rates. As a result the finances of the province soon became, in complex ways, intertwined with the wealth of a few powerful political allies of the governor. It was their wealth on which the province operated, essentially on credit, and the debts that were owed to them could be used for political purposes.²³

Trinity Church, once established, became part of this system of monopoly and patronage. Until the 1690s, however, there was no established church and British policy toward religion remained one of official toleration combined with more subtle forms of civil control. Although instructions to governors generally included clauses such as "to the end the Ecclesiastical Jurisdiction of the said Archbishop of Canterbury may take place in that our Province as far as conveniently may be . . ." ²⁴ the early governors apparently concluded, sensibly, that "as far as conveniently may be" was no distance at all. The Anglicans were a tiny minority in the province, and conducted only one short service, in a church they borrowed from the Dutch. Visitors in 1679 gave the following account:

22. By 1670 New York City held an exclusive monopoly on Hudson River carrying trade, and was the only place where goods produced in other colonies could be sold. In 1678 New York City received a monopoly over export trade as well, and in 1684 it received a flour-bolting monopoly. "Noe fflower was to be bolted or packed or biskett made for Exportacon butt in the City of New York being for the encouragmt of trade and keeping up the Reputacon of New York fflower. . . ." 3 DOCUMENTS RELATIVE TO THE COLONIAL HISTORY OF THE STATE OF NEW YORK, *supra* note 21, at 337-38. Such monopolies were resented by Long Islanders who had their own port at Southampton and preferred trading directly with New England rather than depending on New York City.

Farmers, similarly, resented being forced to send their grain to the city for processing, which made them dependent on the prices paid by city millers. This dependency was increased when provincial liquor distilling was prohibited and when grain embargoes were imposed for all grain except in "flower Bread, or Bisquett." J. REICH, *LEISLER'S REBELLION* 45 (1953). Grain prices were thus kept low, and the farmers remained indebted to merchants and millers, and consequently, it was said, their slaves. "It is considered at New York a great pleasure and liberty, not to be indebted to the merchants, for anyone who is will never be able to pay them." *Id.* at 44 (quoting the journal of Jacob Hanckaerts). Albany fur traders resented having to trade exclusively through New York City merchants, although these same traders, about twenty or thirty powerful *Landlaers*, jealously guarded their own exclusive trade with the Iroquois, and allowed only family members to take part. Livingston, for example, only gained entry by marrying into the Schuyler family. *See generally* L. LEDER, *ROBERT LIVINGSTON 1654-1728 AND THE POLITICS OF COLONIAL NEW YORK* (1961).

23. *See* L. LEDER, *supra* note 22, at 77-79; Leder, *Dongan's New York and Fletcher's London: Personality and Politics*, 55 N.Y. HIST. QUART. 28 (1971).

24. 2 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK 915-16 (H. Hastings ed. 1901).

We went at noon to-day to hear the English minister, whose services took place after the Dutch Church was out. There were not above twenty or thirty people in the Church. . . . A young man then went into the pulpit and commenced preaching, who thought he was performing wonders; but he had a little book in his hand out of which he read his sermon, which was about a quarter of an hour or half an hour long. With this the services were concluded, at which we could not be sufficiently astonished.²⁵

This was hardly the material out of which to fashion an all-inclusive established church, and the early English governors did not even attempt the task.²⁶ Instead, the Duke's Laws, by which the early governors administered the colony, allowed for seemingly unlimited local autonomy in the choice of ministers. Those laws also envisioned, however, a decidedly civil function for the local churches, and in fact important connections were formed between political and religious structures.

Under the Duke's Laws each parish elected eight overseers, from whom two elders were chosen. The overseers called any ordained Protestant minister of their choice, and had the authority, backed by the courts, to collect money for "building and repairing the churches, provision for the poor, maintenance for the minister, as well as the more orderly man-

25. 1 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 6, at 711.

26. The frequency of religious squabbling suggests that the governors had their hands full just maintaining peace. Governors sometimes allowed dissident groups to splinter off from parishes established by law, apparently viewing the growing multiplicity of sects with less alarm than the civil discord which accompanied religious quarrels. In 1675, for example, Lutherans near Southriver were allowed to establish their own parish rather than attend Dutch Reformed services, and the wording of their petition suggests that such requests were frequently granted. However, allowing for separation did not always end squabbles; in the Southriver case the minister of the parent church was later jailed when he kept directing "foul language" and "impious words" at the dissident Lutherans. 1 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 6, at 673-74. Similarly, the young Anglican minister, Wolley, who led the first Anglican services in the colony, reported increasing quarrels between the Lutherans and Dutch Reformed. In his *Journal* he described the following incident:

In the same city of New York where I was Minister to the English, there were two other Ministers or Domines, as they were called there, the one a Lutheran a German or High Dutch, the other a Calvinist an Hollander or Low-Dutchman, who behav'd themselves one towards another so shily and uncharitably as if Luther and Calvin had bequeathed and entailed their virulent and bigotted Spirits upon them and their heirs forever.

1 A HISTORY OF THE PARISH OF TRINITY CHURCH IN THE CITY OF NEW YORK 52-53 (M. Dix ed. 1898) (quoting C. WOLLEY, TWO YEARS JOURNAL IN NEW YORK 55 (O'Callaghan ed.) (New York 1860)). See also, J. FISKE, 2 THE DUTCH AND QUAKER COLONIES IN AMERICA 88 (1899). Wolley invited the two ministers to his house, and when they saw each other "they stood so appalled as if the Ghosts of Luther and Calvin had suffered a transmigration," but the amiable Anglican, who did not relish "narrowness," loosened their stiffness with wine "of which the Calvinist Domine was a true Carouzer" and eventually the two talked in a friendly manner, and in such fluent Latin that the young Anglican "blushed at myself" for being unable to follow the conversation. *Id.*

aging of all parochial affairs."²⁷ Further, these civilly elected church officials were directed to protect public morality by reporting, in open sessions, all "swearing, prophaneness, Sabbath breaking, drunkenness, fornication, adultery, and all such abominable sinnes."²⁸

Implicit in early instructions to the governors was the clear assumption that religion was useful for the preservation of the social order. Provisions were therefore to be made that "God Almighty be devoutly and duly served throughout (the) Government," and instructions to Governor Dongan, for example, included the charge:

You shall be careful that the Churches already built there shall bee well and orderly kept and more built And that besides a competent maintenance to bee assigned to ye Minister of each Church, a convenient House bee built at the Comon charge for each Minister, and a competent Proportion of Land assigned him for a Glebe and exercise of his Industry.²⁹

The early English governors and courts apparently took pains to insure that the churches performed the services expected of them and also received the support that was legally due to them. Salaries were withheld if ministers did not perform their duties,³⁰ and churches were directly accountable for their handling of funds;³¹ at the same time, records show a number of court orders directed against parishioners who had fallen behind in the salary payments required by law.³²

27. 1 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 6, at 570.

28. *Id.* at 572.

29. 3 DOCUMENTS RELATIVE TO THE COLONIAL HISTORY OF THE STATE OF NEW YORK, *supra* note 21, at 369, 372.

30. Poor Domine Megapolensis, used to a more certain salary from the WIC, overcame his usual deference to English authority enough to complain about salaries. His deference was exemplified by his quickness to sign a loyalty oath to the English crown that resulted in his being charged with disloyalty to Holland. See 1 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 6, at 687. Nevertheless, he went so far as to complain in one letter:

The labors of the ministry are now much more burdensome than they ever were under the Dutch. . . . [S]ervice must be rendered in both hot and cold weather; and the extremes are much greater here than in the Fatherlands. . . . Under this English government the case is thus: when the labor ceases, the salary also ceases.

Id. at 596.

31. For example, when a Lutheran church in New Amsterdam was charged with failing to support the poor, "[t]he Worshipful Court ordered that each Church should for the future Maintaine their owne Poore; and that the Deakons of the said Lutheran Church should yearely deliver up their Accounts in a publick Meeting in the same Manner as in the reformed Christian Church of this City." *Id.* at 622. This case was complicated by the fact that the Dutch and Lutheran churches were both charged with the care of the poor, and each wanted the other to carry a heavier burden. The case was appealed to the Mayor's Court, but the final resolution is unclear.

32. By 1667 New Amsterdam had already fallen behind in salary payments, and Nicholls advised the court to order that "all the inhabitants of this City, who are in arrears to the said Salary,

This reluctance to pay salary money, even for ministers freely chosen by elected overseers, was in fact widespread,³³ and to some extent was simply the reluctance of a people who did not have money to spare. More significantly, however, civil enforcement of maintenance payments set patterns in church/state relations which had a marked effect upon the way people viewed both their churches and the government. On the one hand, since civil officials enforced salary claims, the ministers on behalf of whom those claims were made came to be perceived (not incorrectly) as an arm of the provincial government. People who resented burdensome taxation, absence of political rights, and a heavily monopolized economy directed some of their ire at the ministers who were a visible and immediate symbol of arbitrary authority.

On the other hand, and more subtly, the formal toleration that was written into the Duke's Laws was modified by the fact of civil control over salaries. Ministers who depended upon court-enforced salary payments began to identify their interests with the interests of the government, and court orders for salary payments provided an effective tool with which to exert pressure on ministers whose religious message was conceived to be disruptive.³⁴ The eventual consequence in many cases

promptly to pay their dues on this warning, and the Deacons of this City are requested to . . . exert all possible means to promote the collection of the said arrears." *Id.* at 588.

33. Salary payments were so unpopular that taxes were apparently better received if "upon any other account as for the Maintenance of a Minister," and in New Amsterdam the court finally resorted to taxing liquor sold to the Indians rather than imposing a direct tax to pay ministers' salaries. *Id.* at 619-20. Stuyvesant, in contrast, had prohibited liquor sales to the Indians.

Megapolensis complained that the people "seem to desire, that we should live upon air and not upon produce." *Id.* at 602. He said the Governor would not back the salary claims of Dutch ministers, taking the position that "if the Dutch will have divine service their own way, then let them also take care of and support their own preachers." *Id.* If this was in fact said by the governor, I suspect it may have been out of exasperation with Megapolensis, who was old and crotchety by then, and feeling generally ill-used. There is in general considerable evidence of government support for Dutch ministers in their quarrels with their ungenerous congregations. *Id.* at 618.

34. The Rev. John Youngs of Southold, an Independent, is one case in point. Apparently Youngs preached dissenting views which antagonized some of the more conservative members of the town, and also angered Governor Lovelace. In particular, in the disruptive New England tradition he refused baptism or sacraments to those who did not show evidence of grace, rather than welcoming everyone within the civilizing folds of the church. Lovelace warned Youngs, with atypical directness:

'Tis confest ye Labourer is worthy of his Hire, but then withall it must appeare hee proves soe to mee, and not to others only [presumably a majority of Southold inhabitants supported Youngs] if hee expects any wages from mee. The Administration of ye Sacrament of Baptism to Infants, and ye Lord's Supper to ye Children of Grace I acct. to be ye essentiall parts of the Ministeriall ffunction as well as ye dispensing of ye Word of Life; and hee that with holds either away from mee cannot be properly a Labourer in ye Lord's Vineyard, but a Capricious Distributer and applier of ye meanes putt into his

was an essentially Tory minister preaching to a rebellious congregation. The resulting antagonism ran high, linking political and economic grievances with religious controversy.

These conflicts reached a head during the very popular and briefly successful rebellion in New York led by Jacob Leisler in 1689. Leisler, the son of a Palatine clergyman, was a prosperous captain in the militia. He was related by marriage to Nicholas Bayard and Stephen Van Cortlandt, two of the most powerful merchants in the province, but had managed to antagonize both of them in a quarrel over his wife's property. Even more bitter, however, were his religious quarrels with the Van Rensselaers (the family of the great Dutch patroon), and with the provincial governor. Leisler's anger focused on Nicholas Van Rensselaer, who, having proved himself useless in helping to manage the vast family estate, chose instead to devote himself to the writing of apparently uninspired religious musings. In those musings he predicted the Restoration of the Stuarts, thereby gaining the favor of Charles II during Charles' exile. After returning to power, Charles instructed Governor Andros to appoint Nicholas as minister to a Dutch Reformed congregation in Albany. Rev. Nieuwenhuysen, a Dutch minister in New York City, objected because Nicholas had been ordained in England by the Anglicans, not in Holland by the Classis in Amsterdam. The governor's council forced Nieuwenhuysen to withdraw his objection, seeming to confirm the mounting suspicion that many clergymen in the province had become the mere servants of English political power. Leisler drove the point home by attending Nicholas' sermons and pointing out their doctrinal errors. That effort led to his imprisonment, but he became a hero among the growing number of political and religious dissidents,³⁵ while at the same time earning the undying personal hatred of the merchant/landowning provincial elite.³⁶

Hands by ye Lord of ye Vineyard as his Humor shall direct him, refreshing some Roots with water and other nourishment and with holding it altogether from others; How consonant this is to ye discipline of true Christianity, Common Charity, and ye Practice of ye Apostles (who would that all men might be saved). I believe you better know, then (I fear) practice; And therefore I would desire you not to insist on such rigorous Courses against those who desire to live under ye knowne and Establishd Lawes of his Majesty's Dominions. . . .

Id. at 618-19.

35. See Leder, *The Unorthodox Domine: Nicholas Van Rensselaer*, 35 N.Y. HIST. 166,168-74 (1954). He had also backed rebellious Long Islanders, and refused to pay customs duties. See J. REICH, *supra* note 22, at 60.

36. Nicholas' wife was Alida Schuyler, and one of Alida's sisters had married Stephen Van Cortlandt. In 1679 Robert Livingston married Alida, who had recently been widowed by Nicholas.

When the Glorious Revolution succeeded in England, New Yorkers expected the dawn of a new Protestant age in the province as well. During the crisis of uncertain colonial authority that followed the English Revolution, Leisler was chosen to lead an attack on the New York City fort. That attack then turned into an anti-Catholic crusade against the whole provincial established order, and a genuinely populist revolt against privilege in general. Leisler and his followers interpreted as "Catholic" virtually any form of hierarchical political, religious or economic authority,³⁷ and were inclined to find evidence of Papist conspiracy in most of the grievances they suffered under the Stuarts.³⁸ They were also convinced that the governor and his council of wealthy merchants controlled the provincial churches, using both Dutch and Anglican ministers to prepare the province for Catholicism by subverting from their pulpits the true word of God.³⁹

Thus, when Leisler and his followers gained control of the province, Leisler directly attacked the most respectable of the Dutch clergy, chiefly Revs. Selyns, Varick, and Dellius.⁴⁰ At the same time Leisler instituted popular assemblies and eliminated the monopoly privileges from which the most powerful merchants, like Van Cortlandt, Phillipse, Bayard, De

Thus, by opposing Nicholas, Leisler had effectively risked arousing the animosity of the leading families of the province.

37. See D. LOVEJOY, *supra* note 21, at 109; see also J. REICH, *supra* note 22 (an account of the take-over can be found in Chapter III).

38. Thus, imposition of taxes without representation was viewed as simply one aspect of the general papist conspiracy. See *The Case of William Atwood, Esq.*, COLLECTIONS OF THE NEW YORK HISTORICAL SOCIETY FOR THE YEAR 1880, at 237, 241-42 (1881) [hereinafter *The Case of William Atwood, Esq.*]. Some New Yorkers were so terrified of a Catholic conspiracy that they were afraid to sleep in their beds at night, taking to the woods or sleeping in boats to escape imminent Catholic massacre by the Catholics. D. LOVEJOY, *supra* note 21, at 282-84.

39. Leisler and his followers believed the conservative ministers were ready to welcome rule by the French Catholics: "Yes, Do. Varick, Minister at Midwoud, said he would go and meet them with a glass of wine and bid them welcome. . . ." *Documents Relating to the Administration of Leisler* COLLECTIONS OF THE NEW YORK HISTORICAL SOCIETY FOR THE YEAR 1868, at 398, 409 (1868) (letter from members of the Dutch Church in New York to the Classis of Amsterdam).

40. As the Dutch ministers complained:

Our ministers have been cast under suspicion through slanders against them; while the populace, ever ready for any change, were advised not to contribute for the support of religious services or for ministers' salaries. Members of the Council (of former Governors), who were also mostly Elders of the Church [probably in reference to Baynard, Van Cortlandt, and Phillipoe] have been called by the unheard of titles (for them) of traitors and papists. Church officers and other members have been imprisoned and maltreated, put in irons, and confined to darkness. And not satisfied with doing such things, even the Sanctuary has been attacked with violence and open force.

2 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 24, at 1041-42.

Peyster, Livingston, and Schuyler, had benefitted,⁴¹ so that the leading merchants and landowners fiercely opposed him. In one typical account, both ministers and merchants, calling themselves the "Principal Inhabitants" of New York, complained that Leisler was:

[s]eizing our estates without any tryall or Conviction . . . to the manifest ruin of our Trade Scandallizing and abusing our Ministers and Rulers of the Reformed Churches here seizing ye Revenues thereof so that our liberties are taken away our Religion in great danger our Estates ruined sevell of the best and most considerable inhabitants are forced to retire from their habitations to avoid [Leisler's] fury⁴²

Leisler lost some of his support when he imposed heavy taxes to finance an expedition against Catholic French Canada, but the popular enthusiasm for him was still evident when Gov. Sloughter arrived from England to govern a province that seemed dangerously out of control. Sloughter sided with the old oligarchy against Leisler, and, despite considerable popular protest in both New York and New England, hanged him in 1691.⁴³ Two centuries later, Rev. Dix, writing the official history of Trinity, provided the accepted Episcopalian view that Leisler "represented nothing save those elements of disorder and danger which exist in every civil organization."⁴⁴

C. Order Restored

In 1691 the old elite of ministers and merchant/landowners stood

41. In the new popular assembly:

[A]fter a few days sitting, an act was made. . . that all townes and places should have equall freedom to bould and bake and to transport where they please directly to what place or Country they think it fitt, . . . and that the one place should have no more priviledges then the other, this is all what this wise assembly did. . . .

3 DOCUMENTS RELATIVE TO THE COLONIAL HISTORY OF THE STATE OF NEW YORK, *supra* note 21, at 715, 717.

42. *Id.* at 748-49; see J. REICH, *supra* note 22, at 99. Even less powerful merchants who resented the oligarchy in New York City still suffered when the city lost its port monopoly. See D. LOVEJOY, *supra* note 21, at 318.

43. According to rumor no carpenter would build the ladder for the scaffold, and the ladder was finally furnished by Rev. Selyns. 2 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 24, at 1394, 1407; see J. REICH, *supra* note 22, at 122. Increase Mather said that Leisler and his assistant Milbourne (who was also executed) "were not only murdered they were barbarously murdered." *Id.* at 125. The official order read that Leisler and Milbourne were to "be hanged by the Neck and being Alive their bodys be Cutt Downe to the Earth that their Bowells be taken out and they being Alive burnt before their faces that their heads shall be struck off and their Bodys Cutt into four parts. . . ." Leder, *Records of the Trials of Jacob Leisler and His Associates*, 36 N. Y. HIST. SOC'Y Q. 431, 454 (1952). They were, however, merely hung.

44. 1 A HISTORY OF THE PARISH OF TRINITY CHURCH IN THE CITY OF NEW YORK, *supra* note 26, at 71.

ready to reestablish order and safety. Thus, when a new assembly was convened, those who had favored Leisler, although elected, were in general simply excluded,⁴⁵ and the governor's council included only prominent anti-Leislerians, like Bayard, Van Cortlandt, and Phillipse. Eagerly, the old elite restored monopoly privileges, affirmed land grants, and introduced bills to curb the "[E]xtravagancy of tradesmen and labourers"⁴⁶ who, under Leisler, had been allowed to demand high wages for their work.

When Gov. Fletcher, with Tory backing in England, replaced Sloughter in 1692, he was determined to keep authority safely in the hands of trusted anti-Leislerians. To that end he was also more determined than former governors had been to replace the local autonomy allowed under the Duke's Laws with a more centralized structure of religious authority. In particular, he immediately pressured the assembly for the establishment of the Anglican Church, calling in his opening address for the "support and encouragement of an able ministry,"⁴⁷ by which he evidently meant an able *Anglican* ministry. In 1693 he repeated his urging, piously asking the assembly to "[l]et us not forget that there is a God who made us, who will protect us if we serve him,"⁴⁸ and reminding the representatives that "[t]here are none of you but what are big with the privilege of Englishmen and Magna Charta, which is your right; and the same law doth provide for the religion of the church of England."⁴⁹

The Assembly stalled at first, but finally passed the Ministry Act of 1693, which created legally designated parishes in New York City and the counties of Richmond, Queens and Westchester. The specific terms of the Ministry Act were not, however, markedly different from those set forth by the Duke's Laws. The Act stated that in each parish "there shall be called, inducted, and established, a good sufficient Protestant Ministry;"⁵⁰ it did *not* say a sufficient *Anglican* ministry. Also, the structure for insuring support was the same as that under the Duke's Laws. Local justices called the freeholders of each parish to elect ten vestrymen and two church wardens; the justices and vestrymen then levied a tax on the inhabitants, and gave the proceeds to the wardens, who in turn paid for the maintenance of the church and had to "give a just and true account" of how the money was spent. Significantly, the minister was called by the

45. See D. LOVEJOY, *supra* note 21, at 357.

46. J. REICH, *supra* note 22, at 128.

47. 2 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 24, at 1045.

48. *Id.* at 1073-74.

49. *Id.* at 1054.

50. *Id.* at 1076-77.

elected vestrymen and church wardens, who by the literal terms of the Act had no obligation to call an Anglican minister.⁵¹

Predictably, then, when the first Vestry election was held in New York City, the elected vestrymen and wardens called a dissenting minister. No parish created by the Ministry Act contained even a bare majority of Anglicans, since at the time, according to Chief Justice Atwood, the Church of England could claim no more than ten members who were not government officials.⁵² The Assembly then announced that it was consistent with the meaning of the Ministry Act for vestrymen to call and support dissenting ministers.⁵³ Fletcher angrily responded by proposing his own (Anglican) minister, whom the Assembly, in turn, refused to accept.

A second vestry election was called to end the stalemate, but only one Anglican was elected. The governor threatened to prosecute if the vestrymen did not do as he ordered,⁵⁴ but he did not directly try to impose his own minister over the vestrymen's opposition. The Assembly reaffirmed its declaration that a dissenting minister was acceptable under the Ministry Act, at which point Fletcher called the Assembly into his chamber and announced that since the Church Wardens and Vestrymen were officers of the Church of England, the Assembly had no authority to declare what those officers could or could not do; only the courts could render such a decision.⁵⁵

Meanwhile, in 1697 a number of prominent Anglican New Yorkers were arranging for the construction of Trinity Church, as the first

51. *Id.* at 1079.

52. *The Case of William Atwood, Esq., supra* note 38, at 274.

53. 2 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 24, at 1096.

54. *Id.* at 1112.

55. The Anglican legal argument was based in part upon the limited authority of the New York Assembly. "The Assembly was not an authority. It was a creature of the Crown. . . ." 1 A HISTORY OF THE PARISH OF TRINITY CHURCH IN THE CITY OF NEW YORK, *supra* note 26, at 86 n.2 (quoting *Centennial Hist. Prot. Epis. Church* 98).

Therefore the Assembly could not validate the calling of an Independent minister under the Ministry Act. The ancient Presbyterian was deceived in fancying that the New York Assembly had the power to establish Presbyterianism. The modern Churchman is deceived if he supposes that it established the Church of England. It could not do anything except what the King, through his agent, the governor, allowed. So far as the Church of England was concerned, the business of the Assembly was simply to recognize the legal status of the Church. That was all that the Act accomplished in 1693.

Id.

Supposedly New Yorkers, with a legal status different from that of the New England colonies, had no authority to question Fletcher's establishment of the Church of England.

The squabbles between Fletcher and the Assembly are described in *Id.* at 86.

Anglican church in the province. When they officially requested a corporate charter for the new church, Fletcher not only granted the charter but also used its terms as a device to resolve the ambiguity of the Ministry Act and settle his quarrels with the Assembly. The charter recognized Trinity as a corporate body, and then, in effect, pronounced New York City to be a parish under the ecclesiastical jurisdiction of the Church of England. The first clause of the charter announced Fletcher's own version of legislative intent by declaring that the Ministry Act had officially established the Church of England, and paragraph eight declared the rector of Trinity to be by definition "a good sufficient Protestant Minister according to the true intent and meaning of the said Act of Assembly."⁵⁶ Since the rector was a "sufficient Protestant minister," it further followed that he should receive the maintenance provided for under the Act.

Moreover, under the terms of the corporate charter, the vestrymen and wardens who were elected by all of the inhabitants under the provisions of the Ministry Act became mere civil officials, required to collect the maintenance and pay it over to Trinity. If the funds were not given over, the Rector was authorized to prosecute the civil vestrymen in a debt action.⁵⁷ *Church* vestrymen, on the other hand, became a wholly distinct group, selected only by the corporate body of Trinity (although the first church vestrymen and wardens were specifically named in the charter and apparently approved by Fletcher).⁵⁸ The result was a dual structure which secured public support for Trinity, while at the same time insulating the parish from control by the popularly elected, usually dissenting, civil vestrymen.

Surprisingly, neither the Assembly nor the city vestry seems to have challenged the legality of Fletcher's devious tactic. The next step was to appoint a Rector William Vesey, a dissenting minister who had recently been converted to Anglicanism (and who was therefore especially loathsome to the Independents) was straightaway shipped off to London to be ordained and then installed as Rector of Trinity. Vesey's allegiance was later said to have been bought by Fletcher,⁵⁹ who was notorious for both giving and accepting bribes. Whether that particular charge was

56. *Id.* at 455, 464.

57. *Id.*

58. *Id.* at 459-60.

59. See, e.g., 3 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK 2014, 2019, 2028 (H. Hastings ed. 1902) ("God forbid that Interest should be the motive to any man's Conformity."): Evidence of conformity for the sake of "filthy lucre" was apparently brought up in a proclamation issued against Vesey in 1714. He was called before a grand jury, but I could not find out whether or not a trial followed. Dix, of course, maintains that Vesey was always a dedicated Anglican and never

true or false, Vesey remained steadfastly loyal to the Tory faction Fletcher represented—he opposed with zeal Fletcher's Whig successor and enemy, Bellamont, and favored the autocratic Cornbury who followed. With Vesey as the publicly supported minister of Trinity, Fletcher achieved for the Tories exactly what he wanted—a strong political ally in a position of ecclesiastical authority.

In a parallel move Fletcher also granted the privilege of incorporation to the conservative wing of the Dutch Reformed Church. Ever since the pre-Leislerian period the Calvinist Dutch Church in New York had been clearly divided into two separate camps: one was doctrinally broad, aristocratic, and inclined to fraternize with Episcopacy; the other was democratic, sectarian, and Puritanical.⁶⁰ Fletcher was determined to strengthen the authority of the first group as part of his general effort to consolidate the power of the provincial elite. He had already come to the aid of Revs. Selyns, Varick and Delliuss when they faced congregations still bitterly Leislerian,⁶¹ and Selyns was named by the Dutch Reformed charter as the first minister of the newly incorporated church. The charter also named, as two elders of the Dutch church, the wealthy merchants Bayard and Van Cortlandt, who were also on the governor's council. Not surprisingly, those same names appeared also on special committees assigned to conduct both official government and Anglican business. When, for example, Fletcher wanted the Assembly to authorize money for an Anglican chapel, Van Cortlandt and Bayard met with Heathcote (a leading councillor, mayor, landowner, and also a Trinity elder as named by Fletcher's charter) to help apply pressure to the As-

accepted a bribe from Fletcher. 1 A HISTORY OF THE PARISH OF TRINITY CHURCH OF THE CITY OF NEW YORK, *supra* note 26, at 98-107. As to Vesey's background, Atwood reported:

'tis no secret, that he went raw from the *Boston University of Dissenters* from the *Church of England* [i.e., Harvard], and was among them bred up to a popular way of Preaching, in which his Schoolboys Memory, and heated Fancy, gave him a reputation for his Talent at Invectives, which then were against the *Church of England*.

The Case of William Atwood, Esq., *supra* note 38, at 274 (emphasis in original). Vesey had preached on Long Island after graduating from Harvard in 1693; in 1696 he received a loan of L95 from the vestrymen and wardens of Trinity to go to England to be ordained by the Bishop of London.

60. John Fiske cites Leisler's opposition to Nicholas Van Rensselaer as evidence of this split. See 2 J. FISKE, *THE DUTCH AND QUAKER COLONIES IN AMERICA* 89 (1899).

61. As Rev. Varick reported:

Our Governor, a very wise and pious man, has . . . been the chief one to act on my behalf, and has spoken severely to certain ones. He wrote . . . that I should report to him the names of all deserters from the church, in order to frighten them etc. He has brought it about, that I now receive more of my salary. . . . [M]any remain obstinate, and want neither one thing nor another. Others are more influenced by fear, than by love.

2 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 24, at 1048, 1051.

sembly. Similarly, Van Cortlandt collected money for Anglican charities, and then, at Fletcher's request, turned the surplus over to Trinity.⁶² It was later claimed that Bayard aspired to be head of a "pretended English and Church Party" and "us'd to come to the English Church one part of the day, and as has been said, to supply Mr. Vesey with Beer. . . ."⁶³ Vesey, in turn, used his pulpit to preach in favor of the Bayard-Van Cortlandt political faction.

Under Fletcher the leaders of the Dutch and Anglican churches thus formed a single congenial elite, which in turn coincided in most cases with the merchant/landowning class that dominated the economy. Monumental land grants further enhanced that domination. Both Trinity and the Dutch Church received extensive land with their charters. Additional personal grants went to Bayard, Schuyler, Rev. Dellius and Heathcote, among others. Rev. Dellius' tract, the largest, totalled seven hundred thousand acres. Similarly, the town of Westchester, which Heathcote virtually owned for the use of his milling enterprise, was fully incorporated under Fletcher.⁶⁴

Fletcher's land grant policy resulted in fierce controversy, for it flew in the face of the official British policy to promote cultivation by limiting the size of individual holdings. Later, when Gov. Bellamont succeeded Fletcher, many grants were repealed, including, arguably, the grant to Trinity. A particularly controversial part of Trinity's grant, which remained the subject of legal dispute for decades, involved the Anneka Jans farm. Anneka Jans was the widow of a manager of Rensselaerwyck to whom the farm had been given by Van Rensselaer. Jans then married Domine Bogardus, a Dutch minister. Despite a provision in the Jans-Bogardus prenuptial agreement that the children of Jans' first marriage were to receive a certain sum of money, they had received nothing by the time of her death. To raise the money the farm was sold to Governor Lovelace, from whom it then went to the Duke, to pay off existing debts. The Duke then made the Anneka Jans farm a perquisite of English gov-

62. *Id.* at 1216-17.

63. *The Case of William Atwood, Esq.*, *supra* note 38, at 275 (emphasis in original).

64. See D. FOX, *CALEB HEATHCOTE* 55-58 (1926). Bellamont later charged that the Dutch Reformed charter was "very extraordinary, for it is setting up a petty jurisdiction to fly in the face of the government This is much such an institution as Colonel Fletcher made yonder at West Chester; that city consists of about twenty houses, and have greater priviledges than any town in America. . . ." 2 *ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK*, *supra* note 24, at 1274. Selyns had claimed charter privileges when Bellamont wanted to check the records of the church, specifically to see how much Fletcher had been bribed by Van Cortlandt before granting the charter—such bribes were standard practice in dealing with Fletcher.

ernors, and a property of the Crown. Fletcher, as had other English governors, used the farm for rentals and also to pasture horses and cows, but when he learned he was to be replaced by the Whig Bellamont he divided the farm, granting part to Trinity and part to Caleb Heathcote, presumably to keep it under Tory control.

When Bellamont became governor he not only objected to Fletcher's land grants in general, but he also specifically claimed the Anneka Jans farm as an incident of the governorship, insisting he would not permit Fletcher to give it away for the sake of political insult. (Fletcher did "take away much of the necessary convenience of future Governours.")⁶⁵ The Trinity grant, like many of Fletcher's, was revoked by the Assembly in 1699 at Bellamont's urging.⁶⁶ Furthermore, the Assembly expressly forbade future grants of the Anneka Jans farm that extended beyond a single term of office.

When Governor Cornbury succeeded Bellamont in 1702, however, he was determined to reinstate Fletcher's land grant policy and successfully urged the Assembly in 1702 to revoke the Act that had revoked Fletcher's grants. In 1705 he also granted former Trinity holdings, by letters patent and under royal seal, once again to Trinity Church—in fee simple rather than merely for the duration of the governorship. Meanwhile, Cornbury's capricious rule made him one of the most thoroughly despised of the English governors. One prominent citizen likened him to "a maggot,"⁶⁷ and city inhabitants were particularly outraged when he pranced along the ramparts dressed in the clothes of his cousin, Queen Anne. New Yorkers were relatively cosmopolitan, but were not quite prepared to accept a transvestite governor.⁶⁸ Nevertheless, the queen favored her cousin, and later, in 1714, she seemed to confirm the Cornbury

65. *Id.* at 1285.

66. Bellamont's attacks were directed with particular vigor against the huge grant to Dellius, of whom Bellamont said: "If a great lyar, incendiary, and proud person make up the character of piety, then Mr. Dellius may pass for a saint." Runcie, *The Problems of Anglo-American Politics in Bellamont's New York*, 26 WM. & MARY Q. 207, 208 (1969).

For a description of crown land grant policy and Bellamont's opposition to Fletcher's grants, see Mensch, *Colonial Origins of Liberal Property Rights*, 31 BUFFALO L. REV. 635, 660-91 (1982).

67. E. ELLIS, *THE EPIC OF NEW YORK CITY* 110 (1966).

68. See 1 W. SMITH, *THE HISTORY OF THE PROVINCE OF NEW YORK* 130 (1972). Cornbury has been called the most eccentric and perverse of New York governors. He was not only a transvestite but a fetishist as well. According to Edward Ellis, he was for a time madly in love with his wife's ear, and when he fell out of love with Lady Cornbury's ear he neglected her and his seven children. Lady Cornbury had to beg clothes from other ladies, but then refused to return them. See also S. ROSS, *FALL FROM GRACE: SEX, SCANDAL, AND CORRUPTION IN AMERICAN POLITICS FROM 1702 TO THE PRESENT* (1988).

grant to Trinity.⁶⁹

That confirmation was not, however, without ambiguity, especially given the context of earlier events. In 1708 Queen Anne had revoked the Act of 1702 which had, in turn, revoked the Act of 1699, which had originally revoked the Fletcher land grants, including the grant to Trinity. Arguably, an order confirming the Act of 1699 could be taken as a revocation of the letters patent bestowed by Cornbury in 1705. Under the Act of 1699, the letters patent would have been void.

Moreover, the supposed confirmation of 1714 was really no more than a letter addressed to the succeeding governor, Hunter, and failed to settle the validity of Trinity's title. Governor Hunter, who succeeded Cornbury in 1710, assumed that after the order of 1708 the rents from the Trinity property should go to him, and had commenced suit in the name of the Crown to recover them. The 1714 letter from the Queen was simply a directive relating to that suit. In the preamble, the letter referred to the Trinity grant, to the fact that the letters patent from Cornbury had been "rendered disputable" and to the fact that that suit had been pending in court. The actual directions to Hunter then stated:

[O]ur will and pleasure is, that immediately upon receipt hereof, you do stop the prosecution now carrying on in our court of chancery there against the said corporation, and do not suffer any further proceedings to be had in that suit, until we shall signify our further pleasure to you . . . and so we bid you farewell.⁷⁰

This was hardly unequivocal confirmation of the validity of Cornbury's grant or Trinity's title.⁷¹

Subsequently, the heirs of Anneka Jans brought a series of lawsuits in their own names challenging Trinity's title and claiming that a rich and powerful ecclesiastical corporation had denied them personally of

69. See *The Charter of Trinity Church in the City of New York; and Laws and Proceedings Relating to the Same* 44-45 (Albany 1846) (Queen Anne's Recognition and Instructions of April 14, 1714) [hereinafter *Charter of Trinity Church*], reprinted in 1 TRINITY CHURCH PAMPHLETS (available from Cornell University Library, Ithaca, New York).

70. *Charter of Trinity Church*, supra note 69, at 44-45.

71. A number of accounts have been given of the ambiguous character of Trinity's grant under the crown, for the issue arose whenever Trinity's title was challenged during the nineteenth century. See, e.g., R. Miller, *Letter and Authentic Documentary Evidence in Relation to the Trinity Church Property, in the City of New York, Submitted to the Commissioners of the Land office* (Albany 1855) [hereinafter R. Miller], reprinted in 2 TRINITY CHURCH PAMPHLETS (available from Cornell University Library, Ithaca, New York). The same history can be pieced together through the Ecclesiastical Record. It is often difficult, however, to separate out issues relating to Trinity's holdings in general and those relating specifically to the Anneka Jans farm.

their rights.⁷² These lawsuits, which lasted until after the Revolution, were unsuccessful but well publicized, keeping alive the general impression that Trinity must somehow have cheated someone in order to lay claim to her property.

The church/state/landowning/merchant elite which founded Trinity and also dominated New York under Fletcher and then, later, under Cornbury, was such an extreme example of hierarchical control as to represent something close to parody, reaching even to the point of violating those principles that have traditionally legitimated hierarchy itself. For example, the monopolized and lucrative trade system that flourished under Fletcher did so only by circumventing the Crown's own trade regulations and control over shipping. To elude customs officials, merchants would rendezvous with pirates in places like Madagascar, sell them rum and gunpowder at exorbitant prices, and then return loaded with pirate plunder.⁷³ Apparently Fletcher and Bayard were partners in the enterprise, and Fletcher bribed officials who could not be circumvented.⁷⁴

For his own indiscretion Fletcher was hauled back to England to face piracy charges, but the old alliance retained much of its power. When Bellamont tried to break up the piracy system and enforce the Acts of Trade, along with revoking the most exorbitant Fletcher land grants, the New York merchants Bayard and Brooke accompanied Rev. Dellius on a trip to England to complain about Bellamont's land and trade policies, receiving support from several English merchants. Rev. Vesey wrote to the Bishop of London in support of Rev. Dellius, and the Classis sent representatives to argue on his behalf. Bellamont complained that Vesey "has left me out of his prayers, as Governour, and prays for Dellius by name."⁷⁵ Despite Anglican pressure, the Board of Trade generally supported Bellamont's policies, but little real change in basic economic patterns emerged from the Bellamont period, and Bellamont himself was eventually discredited in England by his opponents.⁷⁶

Perhaps the autocratic Cornbury represents a fittingly degenerate

72. See 1 A HISTORY OF THE PARISH OF TRINITY CHURCH IN THE CITY OF NEW YORK, *supra* note 26, at 149.

73. See Runcie, *supra* note 66, at 202-03.

74. See *The Case of William Atwood, Esq.*, *supra* note 38, at 246.

75. 2 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 24, at 1329-30. Bellamont called his opposition the "Jacobite Party" and described how "all the factious merchants of this town . . . [met] til one or two of the clock on the morning" plotting the London campaign against him. Runcie, *supra* note 66, at 197. Anti-Leislerians contributed £700 towards the Bayard-Brooke-Dellius trip, and Bayard and Brooke testified on Fletcher's behalf during his long trial for piracy.

76. Tories had been embarrassed by the long trial of Fletcher and needed a scapegoat. Bel-

end to the tidy alliances of the late seventeenth and early eighteenth centuries. After Cornbury the old elite began to unravel into warring factions roughly along the lines of merchants versus landowners.⁷⁷ Moreover, those governors who were staunch royalists, like Colden, often found themselves opposing the most prominent landowning families and favoring instead the dissenting republican townships that the Board of Trade strove to protect. Like the Dutch WIC, the British crown did not necessarily favor the hierarchical model.⁷⁸ This created a complex political situation, within which Trinity never found a comfortable role for herself. While in principle remaining fiercely royalist until and during the Revolution, Vesey and subsequent rectors managed to antagonize *both* the dissident communities that looked to the Crown for support and the prominent New Yorkers who wanted to free themselves from Crown economic controls.

D. *Hierarchy Challenged*

The fiercest anti-Trinity disputes arose in Long Island, which contained New York's most radically republican and non-conforming townships. Trinity officials had assumed that the Ministry Act as interpreted in the Trinity charter authorized the imposition of Anglicanism in any of the parishes named by the Act. The Society for the Propagation of the Gospel (S.P.G.), the Church of England's missionary wing, stood ready to send "missionaries" from England to dissenting communities. Predictably, however, those communities had no tolerance for Anglican church forms and were not inclined to hand over public money to Anglican ministers. As two missionaries wrote from Long Island in 1705:

The Inhabitants of this Country are generally Independents, and what are not so are either Quakers or of no professed Religion at all, the generality averse to the discipline of our holy mother, the Church of England & enraged to see her Ministry established among them. The ancient settlers have transplanted themselves from New England, . . . & are buoyed up by Schismatical Instructions from that Interest which occasion all the disturbance

lamont was charged with piracy, but in fact had probably backed Captain Kidd in order to chase down pirates, not join them. See Runcie, *supra* note 66, at 197.

77. See generally P. BONOMI, *A FACTIOUS PEOPLE: POLITICS AND SOCIETY IN COLONIAL NEW YORK* (1971). For example, the Livingstons, whose profits were derived chiefly from land ownership, split with old allies like the Van Cortlandts, Schuylers, and Bayards, whose main profits came from commerce. The political intrigues which followed were Byzantine in their complexity and actually defy neat ideological or economic categorization.

For an elaborately detailed description of later provincial politics, see generally S. KATZ, *NEWCASTLE'S NEW YORK* (1968).

78. See Mensch, *supra* note 66, at 660-91.

& opposition we meet with in both our parishes. They have hitherto been used to a Dissenting Ministry, & they still support one at Jamaica who has a most pestilential influence over our people. . . .⁷⁹

In fact, the Anglicans had viewed the Jamaica church of Queens "with a jealous Eye"⁸⁰ and Cornbury backed them in their effort to seize church, parsonage, glebe and town salary money. When the Jamaican inhabitants objected to their assigned Anglican minister, Cornbury proposed to the Assembly a new Act, explanatory of the Ministry Act ("an Act for the better explaining & more effectual putting in execution" of the Ministry Act).⁸¹ The new Act officially acknowledged the "difficulty which some very worthy ministers of the Church of England have met with, in getting the maintenance settled upon them by an Act of the General Assembly [the Ministry Act]."⁸² This "explanatory" Act not only declared Anglican ministers entitled to salary payments under the terms of the Ministry Act, but also included additional Long Island towns as parishes covered by the Ministry Act's terms. The new Act quickly passed the Assembly in 1705, during the temporary anti-Leislerian climate.

The Anglican clergy, ever grateful to Cornbury ("a true nursing father to our infancy here his countenance and protection never wanting to us"),⁸³ wrote that peace "might reasonably have been expected" from the passage of that Act.⁸⁴ Jamaicans, however, continued to set up "Clamours," with "divisions arising & parties making to heap up Complaints against his Lordship . . . and . . . this order of his Lordship was called an arbitrary & unjust Order."⁸⁵ Riots accompanied the dispute from the start,⁸⁶ and the controversy lasted for years. Gov. Hunter, who

79. 3 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 59, at 1589.

80. 1 W. SMITH, *supra* note 68, at 118. See also M. FLINT, LONG ISLAND BEFORE THE REVOLUTION 206 (1967).

81. See 3 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 59, at 1589, 1595.

82. *Id.* at 1589.

83. 3 DOCUMENTARY HISTORY OF THE STATE OF NEW YORK 209 (E.B. O'Callaghan ed. 1850) [hereinafter DOCUMENTARY HISTORY]. Urquhart attributed whatever success the Anglicans had in the province to Cornbury.

84. *Id.* at 224, 227.

85. *Id.* at 227-28.

86. Rev. Hubbard, the dissenting Jamaican preacher, had been ordered by Cornbury to give both the manse and glebe to Rev. Urquhart, the Anglican minister. The inhabitants, who had chosen Hubbard, objected. In 1703, when Hubbard returned from a trip to Boston and found Anglican services being conducted in his church, he

started back and went aside to an orchard hard by, and sent in some to give the word that [he] would preach under a tree, then I perceived a whispering thro' the Church & an

was an Anglican but no fan of Vesey's, wanted the case to be tried in court to determine the true meaning of the Ministry Act. Vesey quarreled with him, requesting a direct order ousting the dissenting minister.⁸⁷ Eventually Governor Cosby, more loyal to Trinity, installed an Anglican minister (who happened to be Vesey's son-in-law) as the Jamai-

uneasiness of many people . . . in the meantime some that had gone out returned again for their seats & then we had a shameful disturbance hawling & tugging of seats shoving one the other off, carrying them out & returning again for more. . . .

Id. at 211. Inhabitants broke into the church and carried away the pew cushion. *Id.* at 212. Cornbury issued a warrant authorizing the sheriff to dispossess Hubbard of the parsonage and church, but the wardens and vestrymen of the parish refused to collect taxes that were destined to be paid to an Anglican minister, despite direct orders from Cornbury, and were fined the following year as a result. *See id.* at 205-08.

Cornbury's treatment of the Jamaica inhabitants received a fair amount of publicity, and was criticized by many outside the county. Morris, for example, said that Cornbury had acted "by force [and] without any procedure at Law." *Id.* at 244-45.

87. Urquhart died in 1710, and before the arrival of his replacement from the S.P.G. (Rev. Poyer), the Independents convinced Urquhart's widow to turn the parsonage over to the Dissenters. When Poyer arrived the Dissenters refused to release the parsonage and furthermore proceeded to commit "a Riot or forceable Detainer of ye Church at Jamaica." 3 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 59, at 1846. When Poyer demanded his rights (salary, as well as church and parsonage) the elected church wardens replied that they had no money, no orders from the justices and vestry to turn money over, and "thought Mr. Poyer not Qualified according to the act of assembly of this Province as minister or Incumbent of Jamaica." *Id.* at 1871.

This response clearly drew the lines for a court interpretation of the Ministry Act. When Poyer appealed to Hunter for help, Hunter consulted Chief Justice Mompessor, who advised him that Poyer could not be put into possession of the church "otherwise than by due course of law without a high crime & misdemeanor." DOCUMENTARY HISTORY, *supra* note 83, at 250-51. Hunter refused to displace the Dissenters. Even Heathcote agreed with that position, despite his sympathy for the S.P.G. *See id.* at 234-35. While charging that Hunter was refusing to back the interests of the Church, Vesey and Poyer believed that the S.P.G. and the Bishop of London could use their influence to force a change of governors. 3 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 59, at 1909-10. The S.P.G. favored Poyer, but confined its efforts to convincing the Queen to give special permission to appeal the case to the Crown and Privy Council in England, if it should be decided against Poyer in the New York courts. Although ordinarily no claim appealed to England could be for less than £100, the S.P.G. argued that an unfavorable ruling would result in "the utter ruin of the Church established in those parts" which "doth in the consequences of it amount to a much greater value. . . ." *Id.* at 1963-64.

So far as I can tell, no appeal was taken. Accounts of the trial which finally took place in New York are somewhat confusing. When Poyer demanded his salary from the town vestry, a Justice Whitehead, who allegedly favored Poyer, bribed the other justices of the Jamaica precinct to insist that the wardens pay Poyer his salary. When the wardens refused, the justices turned them out of office and installed wardens of their own choice.

[T]here was no ways for Mr. Whitehead to come at his Debt [force the wardens to pay Poyer] but by influencing the Justices, and Joyning them himself to adjudge the money to Mr. Poyer, . . . and that none of their measures might fail them, Mr. Samuel Clowes [an Anglican] . . . was appointed . . . to Implead the Church Wardens before the Court of Justices. . . and for his Reward in pleading for himself he is made Church Warden: we submit it to your Excellency what manner of proceedings these were.

Id. at 2129. A trial of the wardens was held before a jury of men chosen by the justices.

can rector, after removing Chief Justice Morris from office in part for favoring the dissenters when the Jamaica Church case was appealed to the Supreme Court of New York, and decided in favor of the Presbyterians in 1731.⁸⁸

In 1714 similar battle lines were drawn on the issue of Vesey's own salary. While Vesey was travelling in England, seeking support for the Jamaican Anglicans, the city vestrymen reasserted their right to withhold payments from a minister whom they had never called, thereby, in effect, once again disputing Fletcher's interpretation of the Ministry Act.⁸⁹ In that case a letter directly from the King settled the dispute in Vesey's favor,⁹⁰ but the episode again reminded New Yorkers that an established church meant the autocratic imposition of British authority.

88. L. LEVY, *THE ESTABLISHMENT CLAUSE: RELIGION AND THE FIRST AMENDMENT* 13 (1986). Poyer's lawyer had sought to demur on some point of evidence, but had waived the demurrer on Morris' promise that if the jury found for the dissenters, Morris would grant Poyer a new trial. According to Cosby's account:

[T]he Defendant's Council were very unwilling to do it, but . . . fearing the worst . . . if they refused, they did consent, and the Jury found for the Plaintiff [the dissenters]; the defendants Council moved the next term . . . for a new Tryall, and urged his [Morris] promise; he denied at first that he gave any, but when they offered to make oath of it, he said a rash promise ought not to be kept, and never would grant them a new Tryall. . . .

4 *ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK* 2623-24 (H. Hastings ed. 1902).

Cosby's direct interference in the Jamaica Church occurred when Rev. Poyer died. The new Anglican minister, Colgan (who married Vesey's daughter) demanded the £60 salary which had accumulated during the interim between Poyer's death and Colgan's arrival. The Assembly passed an Act in 1733 which empowered the Wardens to pay the money back to the Vestry, for whatever use "the Major part of them shall think fitt." *Id.* at 2633-34. Vesey feared the Act would be a "leading Card to effect such purpose" of repealing the Ministry Act. *Id.* at 2635. The S.P.G. was successful in urging the Board of Trade to report the Act to the King, for his repeal. *Id.* at 2645-46. Cosby and his family, along with an armed militia and considerable ceremony, attended Colgan's first service, based on the Genesis passage "Surely the Lord is in this place." M. FLINT, *supra* note 80, at 210. From the point of view of Cosby, Colgan and Vesey, surely He was, for the divinely ordained order of Church and State had successfully been imposed, by prerogative authority, upon the willful and disruptive Long Islanders.

89. As one commentator explained at the time:

The City Vestry was elected by the people in accordance with the provisions of the Ministry Act of 1693, which did not establish the Church of England. But they had been arbitrarily superseded by a Church Vestry elected only by members of the Church of England [according to the terms of incorporation]. The City Vestry, now that the Rector was away, took advantage of their legal position, and refused to transfer the funds to the Church Vestry, as they were never intended specifically for them; but had only been collected and paid before, because of official pressure. The claim had always been considered a perversion, as it really was.

3 *ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK*, *supra* note 59, at 2052-53.

90. *See id.* Vesey also quarrelled with Hunter over a chapel Hunter established at the fort, which provided free services rather than the pews at Trinity, which were rented. Vesey viewed Hunter's fort chapel as an insult to his authority. *See id.* at 2014, 2017-18; A HISTORY OF THE PARISH OF TRINITY CHURCH IN THE CITY OF NEW YORK, *supra* note 26, at 182.

Vesey continued to be unpopular, but with British backing Vesey remained secure in his position at Trinity and under Gov. Cosby once again had an ally in the governorship.⁹¹

The most serious threat to Trinity's position in New York arose during the Great Awakening, a religious movement that swept across the colonies and unleashed a new spirit of radical evangelicalism. Anglicans were uniformly alarmed. For example, Rev. Seabury, successor to Vesey's son-in-law at Jamaica, described "a *continual* . . . almost . . . daily succession of Strolling Preachers & Exhorters; & the poor Church of England is on every occasion misrepresented as Popish & as teaching her Members to expect Salvation on account of their own Works & deservings."⁹²

The Great Awakening was threatening because it had the effect of highlighting with new intensity a dilemma lodged deep at the core of Protestant theology.⁹³ The great teaching of the Reformation had been that salvation comes through faith, not good works. Given their fallen state human beings are powerless to save themselves—to fulfill the requirement of perfect righteousness laid down by God's law. Indeed, the process of striving after righteousness leads only to an ever-deeper recognition of the gap between God's command and the human capacity to obey, until the sinner finally recognizes that only the unearned gift of divine grace can accomplish the otherwise impossible task of redemption.⁹⁴ Furthermore, at the heart of the mysterious process of redemption is a wonderful moment of voluntarism, a feeling in the human heart of willing reconciliation to God and the human community, which virtually by definition can never be coerced by outward authority.

Redemption, however much to be yearned for, raises a fundamental question. If indeed God saves through grace rather than through works, then of what value is law and the external forms of order, whether in church or state? As St. Paul himself had asked, "Do we then overthrow the law by this faith?"⁹⁵ Radical Protestants were inclined to leap to the most extreme conclusion: If the sole requirement for salvation is God's

91. See *supra* note 88.

92. DOCUMENTARY HISTORY, *supra* note 83, at 327 (emphasis in original).

93. One of the best accounts of this dilemma is to be found in D. LITTLE, RELIGION, ORDER, AND LAW (1969), which describes, in detail, Anglicanism and Puritanism in England. See also 2 E. TROELTSCH, THE SOCIAL TEACHING OF THE CHRISTIAN CHURCHES (O. Wyon trans.) (Midway Reprint 1976) (Troeltsch discusses his important distinction between church-type and sect-type, of which the Anglicans and evangelicals are, respectively, examples).

94. See *Romans* 3:19-26.

95. *Romans* 3: 31.

grace, without which all else is vain, then the feeling in the heart, the voluntary response to God Himself, was all that the Christian needed. Outward conformity to the external demands of worldly authority, or any conformity that did not spring from the loving heart of the regenerate saint, was worthless. The law was no more than an empty shell, rightly discarded. True community could be founded only on the free assent of the redeemed.

At that point the whole fabric of the traditional moral and social order seemed to be at stake. Many Protestants in the mid-eighteenth century, especially the Anglicans, were still scholastics in their basic assumptions about the world. One of those assumptions was that the hierarchical order instituted by God on earth was a reflection of divine harmony, without which the natural reason given by God could not triumph over the unruly human passions. Thus the true voluntarism of the moment of redemption was always to be distinguished, somehow, from "mad men acting according to their frantick passions;" such men, by the "very light" of natural law and reason are to be "restrained with chains, when they can not be restrained otherwise."⁹⁶ In fact, without the restraint of church and civil law the whole process of redemption itself would be jeopardized. Order would dissolve into the chaos of a multitude of individual sects, each spreading its own pernicious doctrine and thereby not only destroying the unifying harmony ordained by God but also distorting all the true doctrine. If doctrine were allowed to be weakened, if sinners did not hear the terrible message of their own inexcusability, then their hearts would not be readied for the gifts of grace, and the true voluntarism of redemption would not be possible.

At this point the relation of law to the doctrine of sin and redemption reaches its paradoxical full circle. What is involuntary is worthless, yet coercion is essential to maintain God's order. Law is a hollow shell, something always to be transcended by a new and willing relationship to God, yet it is also the cutting edge that humbles the heart and prepares it for grace. Thus even Calvin himself could recognize that the heart of his theology lay in the voluntarism that characterized the moment of redemption, yet could demonstrate a "passion for order"⁹⁷ that exceeded even that of more traditional scholastics.

96. P. MILLER, *THE NEW ENGLAND MIND: THE SEVENTEENTH CENTURY* 392 (1967). Miller has described the same dilemma as it was played out in New England. There it was expressed within covenant theology while in New York the tendency was more to externalize it, in the form of Anglican/sectarian disputes or disputes within the Dutch Reformed Church.

97. D. LITTLE, *supra* note 93, at 75.

This paradox, the dilemma of law and earthly power in Protestantism, bore directly on how political and social relations were conceived. Inevitably, the old order of hierarchy could exist only in continual tension, conceptually, with the new order of voluntarism. The effort to realize the new order in concrete political form came to characterize the dissenting Long Island radical republicans or the Great Awakening Evangelicals, who were always eager to institute, here on earth, the true, regenerate, egalitarian community of the saved. In contrast, the Anglican Trinitarian or conservative Dutch domine were ever reluctant to discard the old forms and structures of the hierarchical social order. Neither Anglican nor radical would for a moment deny the basic doctrine of sin and redemption, yet they carried that doctrine in different directions, with different social and political implications.

Traditionally, Anglicanism had solved the potential tension between the old order and the new by simply refusing to recognize any temporal, external significance to the process of redemption. God does indeed work upon the human heart, but salvation is so private and individual that the experience of grace has no relevance to questions of church or political organization. Eliminating any reference to a new social order, Anglicans totally identified the order of God with preexisting structures of political authority. That unitary conception of church and state was in turn based on an appeal to tradition—the ancient offices and rites of the church as linked to the tradition of royalty and aristocracy, and the patrimonial tradition of economic privilege plus regulation. Thus, rather than a break with the past there was continuity, a pattern, so to speak, of conformation rather than reformation.

The effect of the Great Awakening in America was to heighten the most anti-hierarchical (and therefore anti-Anglican) impulses within Protestantism, and to bring to the fore its most radical political and economic implications. Preexisting rank and privilege in both church and state were discredited, since the only proper basis for social relations was conceived to rest in the free decision to serve God. Similarly, the role of the minister (and by implication, political leaders as well) could only be understood in relation to the needs of a particular congregation. Preaching was a direct calling from God, and only from its free exercise—the preacher's willingness to answer to God and to the congregation that calls him—would come the correct interaction of God's word with the people's spiritual needs. Thus a minister absolutely could not be imposed upon a congregation by church or civil authority, nor could he merely speak in conventional homilies sanctioned by church custom but unre-

sponsive to the experience of the congregation. His job was not to repeat the ceremonies sanctioned by time, but rather to transform the hearts of his people.

It was not without reason, therefore, that the Anglicans so broadly condemned the Great Awakening enthusiasts, who were described as "Creating Disturbances & Occasioning Revolts among his Majesties Subjects."⁹⁸ In fact, the great, often violent, land revolts in New York during the mid- and late-eighteenth century, which pitted republican townships against landowners like Van Rensselaer, Van Cortlandt, and Livingston, were closely connected to the religious ferment of the Great Awakening.⁹⁹

Rev. Vesey reacted to the challenge with unimaginative denunciation of all enthusiasts; there was no hint of accommodation or compromise. When, for example, Rev. Whitefield, the famous evangelical preacher from England, visited the province, Vesey refused him access to all Anglican churches and pressured the Dutch to do the same.¹⁰⁰ Whitefield responded by simply preaching in the fields, an alternative which would not, presumably, have occurred to Vesey. Predictably, the effect of Vesey's policy was not to quash the evangelical spirit, but simply to exacerbate the antagonism directed against the established church. The tension was externalized rather than contained within the Anglican fold.

That temptation—to use the privilege of civil backing for the purpose of excluding dissidents—is ever present in a politically established church. On the surface, radicals seem more easily ousted than contained. The inevitable cost of a policy of exclusion, however, is not just popular resentment, but also a loss in the moral fervor which is part of the voluntarist spirit.¹⁰¹ Without some element of that fervor, however potentially disruptive it might be, ecclesiastical hierarchy becomes stiff, crusty, and unappealing. Under Vesey, Trinity fell prey during the Great Awakening to the temptation to exploit the right to impose authoritarian rule, and paid the price of consequent public disdain and moral emptiness.

Trinity's intransigent response to the Great Awakening might well

98. 4 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 88, at 2906.

99. See Mensch, *supra* note 66, at 727.

100. See 4 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 88, at 2798-99.

101. A similar result, on a broader scale, occurred in England, where the Anglican Church so vigorously quashed Puritans that the church was left as a kind of shell, with little internal spirit of its own. See R. ALBRIGHT, A HISTORY OF THE PROTESTANT EPISCOPAL CHURCH 226 (1964). Even Vesey (unlike Stuyvesant) did not attempt outright persecution of dissident Protestants after the unsuccessful prosecution of Francis Makemie, the famous Presbyterian, in 1707.

have led to costly defeat at the hands of anti-hierarchical republican voluntarist insurgents. Fortunately for Trinity, however, her allies in the Dutch Church responded more astutely to their own very similar problems, offering Trinity a role model in the application of that "delicacy and circumspection"¹⁰² which is associated with the wise and studied exercise of power by conservative ecclesiastical/political institutions.

Of necessity leaders of the Dutch Church operated with less political clout than did Vesey. While the Dutch Reformed Church was favored by a number of British governors, it was not a part of the official British establishment, and its strength in the province depended ultimately upon popular support, combined with the continued toleration of a foreign state. Perhaps because of their somewhat anomalous position, those at the top of the Dutch Church hierarchy chose a policy of containment rather than exclusion during the Great Awakening. The model they thereby provided would exemplify Trinity's own deployment of power in later years, under the constitutional structure of church/state separation. More immediately, the Dutch policy also served to strengthen Trinity's position in a fierce controversy that finally threatened to undermine her authority toward the end of the colonial period—the important battle over incorporation of King's College. Before describing the particulars of the King's College episode, however, it seems necessary to tell the story of the Dutch response to the Great Awakening—to show how a vigorous and passionate assault was contained by measured political response, with consequent political benefits for Anglican as well as Dutch authority.

When the Great Awakening arrived in New York, it arrived first and most dramatically among the Dutch, causing the Classis to complain that its New York churches caused more strife than did any of the other churches within world-wide Classis jurisdiction. As early as the 1720s, Rev. Frelingheusen, the Dutch Reformed minister at Raritan, had called into question virtually every assumption of the conservative Dutch church. His quarrels with the provincial Dutch churchmen had started from the day of his arrival in New York, when he had been invited to the

102. See generally Hay, *Property, Authority and the Criminal Law*, in *ALBION'S FATAL TREE* 17, 49-56 (1975) (the concept of "delicacy and circumspection" is discussed in the context of 18th century England's approach to criminal law). According to Hay:

[T]he law did not enforce uniform obedience, did not seek total control; indeed, it sacrificed punishment when necessary to preserve the belief in justice. The courts dealt in terror, pain and death, but also in moral ideals, control of arbitrary power, mercy for the weak. In doing so they made it possible to disguise much of the class interest of the law.

Id. at 55.

home of Domine DuBois, one of the most respectable and privileged Dutch ministers, and had commented that DuBois' elaborate house furnishings seemed an unnecessary luxury for one dedicated to the service of God.¹⁰³ Shortly thereafter he also offended the wealthy members of his own new congregation by refusing to admit any but the regenerate to participate in the Lord's Supper, and by, moreover, discovering that the regenerate were, for the most part, to be found among the "wretched and the needy" rather than among the prosperous landowners of the Raritan Valley.¹⁰⁴

In his preaching Frelingheusen cut through the carefully organized hierarchies of church life in order to stress, once again, the Calvinist message of the terrible and mysterious sovereignty of God and the inevitable unworthiness of even the most righteous among us: "What else canst Thou expect . . . but to drink fire and brimstone?"¹⁰⁵ He viewed the path toward salvation as one marked by strife, not by the secure and ordered harmony sought by the Anglicans and conservative Dutch. According to Frelingheusen redemption requires ruthless self-examination, during which sinners wrestle with their own inner natures and recognize the utter unworthiness of even their best works. That inner strife by no means guarantees salvation ("Oh no, that is free grace"); yet strife is the "way to salvation, for God leads his children through conflict to conquest."¹⁰⁶ The result of "conquest," of the experience of redemption, is then a love of God and the human community so complete that the sinner will become "intoxicated with love."¹⁰⁷

Believing in preaching as a key to this experience of strife and conquest, Frelingheusen insisted that no true minister could serve his congregation by merely following established church forms. Thus he instructed Rev. Goetschius, one of his students, that preaching "must be structured to the differing conditions of one's hearers . . . How pernicious are general applications has been shown by many earnest divines."¹⁰⁸ He was always ready to discard the conventional text prescribed by church authority, even including the Lord's Prayer, in favor of words more appropriate to the congregation, drawing, for example, on analogies to farming, which "actually you people know better than I."¹⁰⁹ He also re-

103. See J. TANIS, *DUTCH CALVINIST PIETISM IN THE MIDDLE COLONIES* 110 (1967).

104. *Id.* at 115.

105. *Id.* at 103.

106. *Id.* at 152.

107. *Id.* at 153.

108. *Id.* at 154.

109. *Id.* at 153.

fused to repeat material already familiar to the congregation ("Why do we always need to be chewing on the shell?").¹¹⁰ Directly rejecting the conservative preference for the comfortable repetition of known forms, Frelingheusen regarded comfort as a barrier to the experience of strife and despair that precedes salvation.

Since established forms were to be disdained, Frelingheusen did not hesitate to preach from a barn when his conservative opponents temporarily took over his church; and when he invited the evangelist Whitefield to preach in his church to an overflowing congregation, he perched Whitefield on a wagon, and the people listened from a sloping field.¹¹¹ As he insisted to the offended conservatives, the preaching of truth inevitably brings conflict rather than comfort, so their opposition was to be expected, but "I would wish to die a thousand deaths, rather than not preach the truth."¹¹² As he repeatedly maintained, that truth was to be found, not in the outward order of the church, but only in the "innermost part"¹¹³—of the minister who answers the direct call from God, and of the regenerate congregation who willingly responds. Truth lay not in static, external forms that could be imposed from above, but only in the changing, reciprocal relation between preacher and people.

Inevitably, this position threatened fundamental assumptions about the nature of order itself. If the traditionally structured church was not necessary for the minister's or the individual's rebirth, which were at least as likely to take place in a field as in a church house, then of what use was the church, and what was the source of its authority? As one alarmed Dutch churchman reported during the Great Awakening, the numerous followers of Dutch New Light preachers were starting to say "The yoke of the fathers had better be shaken off. The Classis has no power over *us*. Of what good is its power to *us*? We are all brethren, and are well able to do things as they are. . . . And they say other fine things of that sort!"¹¹⁴ The political implications of such statements were, of course, well recognized by provincial leaders.

Within the Dutch Church itself, the controversies occasioned by Frelingheusen and his followers (led by his students, Leydt and Goetschius) centered on two issues of church organization: whether ordina-

110. *Id.* at 152.

111. *Id.*

112. *Id.*

113. *Id.*

114. 5 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK 3713-14 (H. Hastings ed. 1905).

tion in Holland was essential for a legal calling to the ministry, and whether the New York congregations should be allowed to form an independent Classis in America (as opposed to a subordinate Coetus, which the Amsterdam Classis had approved). The radical position was that since a valid calling comes only from God, the trip to Holland was an idle formality; and since true fellowship arises from the hearts of the regenerate, the unity of their spirit was the proper source of organizational structure—not the hierarchy based in Holland.

This assault was directed at an institution, the Classis in Amsterdam, that shared virtually all of the basic assumptions of Anglicanism. Their political task was a delicate one, however, since they governed a church under the jurisdiction of the English government. In fact, they had frankly acknowledged the superior authority of the British, even over Dutch church management,¹¹⁵ and in return for that deference, the conservative Dutch churchmen had been awarded privileges (such as incorporation) which they were always solicitous not to jeopardize.

The Classis met the Great Awakening challenge, not by simply disallowing New Light preachers, as Vesey had suggested, but rather by trying to contain the radicals and keep Zion intact. In so doing, the Classis employed four basic forms of ecclesiastical and political management: insistence on the legitimacy of its authority combined with a deferential compromise in its political exercise; cooptation of dissenters to keep them within the fold; doctrinal compromise; and preservation of a context of warm paternalism. As a result of its successful management of the Great Awakening, the Dutch Church retained much of its popular support and could offer itself as a powerful ally to the politically less astute Anglicans of Trinity.

First, while the Classis always in principle reserved the right to issue an order contrary to the will of the congregation, and as a point of doctrine rejected thoroughly the radicals' arguments in favor of congregational self-rule, in fact it rarely flew in the face of majority opinion. As it wrote more explicitly than usual to one minister who complained of congregational opposition, "Must not the majority decide?"¹¹⁶ In most cases,

115. See, for example, their refusal to object when Cornbury imposed his own minister upon the Dutch church in Flatbush. The Flatbush congregation viewed that refusal as Classis abandonment: "[H]ow can we look upon this otherwise than as a practical withdrawal of the care you owe us? What shall we do? To whom shall we go for refuge. . . . Are we then independent? Orphans without a father?" 3 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 59, at 1973, 1976. Hunter later allowed for compromise.

116. 5 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 114, at 3322, 3324.

however, allowing for majority rule did not end dispute. When disaffected minorities raised objections the Classis followed what seemed to become a fairly standard procedure. It admonished all to live in peace, love, humility, etc. and then outlined a specific series of compromises to effect that peace. Most susceptible to pressure toward compromise were the conservatives, who while resenting the takeover of their churches by espousers of strange evangelical doctrine, nevertheless submitted when ordered to do so by the Classis.¹¹⁷

In extreme cases, where compromise was impossible, minorities were allowed to separate and form their own churches. As a result of such schemes the unified Zion was in fact split into a number of separate sects. These sects wrangled endlessly at Coetus meetings, but at least each maintained an independent loyalty to the Classis and open rebellion was averted.

Second, the Classis used the offer of a legal calling as an important inducement to loyalty, and made it a specific point of policy to keep the most militant of the ministers, like Frelingheusen, Goetschius, and Leydt, safely preaching at established churches. Instead of excluding such wayward spirits, the Classis consistently urged the loyal conservatives to remember that "Zion cannot be built up by gathering the material and then scattering it to the winds."¹¹⁸ As the Classis explained when urging a calling for Goetschius, "[t]here is also danger that disturbances would increase if he should join himself to some of the [dissenting] sects with his adherents,"¹¹⁹ rather than staying safely within the fold.¹²⁰

Third, it was inevitable that the Classis accommodation to the Great Awakening led to a fair amount of doctrinal compromise. Sometimes the Classis gave outright permission for change, as by allowing English New Light preachers to speak (in English) in the Dutch churches. Sometimes, too, the Classis allowed deviation in fact while admitting of no change in principle; for example, a few ministers ordained locally were declared

117. For example, the elders excluded Frelingheusen from the Lord's Supper by declaring that his deviation from church doctrine rendered his ministry illegal; moreover, they expected the Classis to confirm their own choice of a new "legal" minister for Raritan. Eventually Frelingheusen was ordered to allow certified members of the Church to partake of the Lord's Supper, but elders were ordered not to object when Frelingheusen invited evangelical ministers to preach at the church, even in English (which was contrary to Dutch church custom).

118. 5 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 114, at 3566-67.

119. 4 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 88, at 2944-45.

120. In return, Goetschius, who had been vigorously preaching that most ordained ministers were unregenerate, that callings can come only from God, etc., declared submission to the Classis. *See id.* at 2842-43. While he continued to urge formation of an independent classis, he stopped short of defiantly declaring independence.

lawful (although later the Classis refused to grant even occasional exceptions on that issue). Sometimes, however, the Classis remained firm, and when it did, the ministers obeyed. Frelingheusen dutifully sent off several of his students to Holland for ordination, even while fiercely arguing for the right to ordain them locally. Ironically, two of his brothers died on shipboard as a result of the required Holland ordination, but even after their deaths the Classis continued to insist on the journey to Holland. Frelingheusen complied.

Finally, it seems impossible to discount wholly the paternal quality of the direct relationship between the Classis and the individual churches, even when that relationship depended upon letters shipped across the ocean. The Classis wrote voluminous letters, invariably filled with expressions of support and loving concern. Praise was freely given, and admonishment gentle. However intangible the force of this paternal relationship may have been, it seems significant that even the dissidents, complaining of Classis authority, would speak of their *father's* yoke.¹²¹

It is difficult to assess precisely how much of the Classis' authority was real and how much had become merely nominal, especially after the mid-eighteenth century.¹²² In the symbolically important King's College (now Columbia University) disputes, however, which once again joined political and economic to religious controversy, the Classis history of skillful church management helped win for Trinity a victory the Anglicans might not have achieved on their own. The controversy arose over a proposal to establish an institution of higher learning in the province. Trinity offered "any reasonable quantity" of her original land grant to help provide a site for the college,¹²³ taking the position that the school should be basically an Anglican institution, headed by an Anglican president. Trinity officials insisted also that the school's Anglican structure should be established and protected by Crown incorporation. The goal was to replicate in the college the fundamental structures of hierarchical control in the colony, which closely linked church establishment with the

121. Later, when the Classis began to correspond exclusively with the intermediate Coetus (even Classis' patience with quarreling New York churches began to wear thin), it seemed to lose some of its direct influence over individual churches, and disputes were harder to settle.

122. It does seem a testament to successful Classis management that no Dutch churchman (that I know of) really advocated an open breach from the basic congregation/consistory/classis/synod structure; even the most radical sought only to establish an independent classis, and hoped for permission to do so. In 1772, the Classis finally did grant permission for the desired local classis and thus once again illustrated its preference for accommodation in order to avoid a complete break with authority that might have followed continued refusal to compromise.

123. 5 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 114, at 3220.

select conferral of Crown land grants and (as a parallel form) Crown corporate charters.

By the mid-eighteenth century, however, Crown authority was not necessarily welcomed by all of those who had once received its privileges. Particularly in the case of land grants, the actual exercise of royal authority meant enforcement of onerous conditions, or, often, forfeiture. For example, large landholdings could be revoked by the Crown for failure to settle and cultivate; while that royal privilege was not exercised with uniformity, it was invoked frequently enough to be feared, and rendered questionable many provincial land grant titles. A primary goal of provincial Whig lawyers and politicians was to resist Crown authority by attempting to interpose a barrier between the free exercise of economic privileges and the Crown's efforts to limit those privileges.¹²⁴

Given that context, the Whig triumvirate of leading young lawyers, Smith, Scott and Livingston, seized upon the college controversy to argue against the whole political and economic structure of Crown-governed privilege, as well as to attack the corresponding imposition of Anglican ecclesiastical control in the province.¹²⁵ In their newspaper, the *Independent Reflector*, the triumvirate likened the proposed crown charter conferring Anglican control upon the college to a "Monopoly" which, instead of leading to the free flow of commerce, would be "an impure stream", which "must necessarily . . . endanger our precious Liberties, discourage our Growth, and be obstructive to the public Emolument."¹²⁶ As with colonial property rights, the controls established by Crown incorporation meant subjecting the college to the constant danger of arbitrary political authority:

[i]f the tyrannical Arts of James return to distress that Nation, the Oppression and Avarice of a future Governor, may countenance . . . iniquitous Practices of the Trustees, or destroy the charter by improving the Opportunity of some little Error in their Conduct; and having seized the Franchise, dispose of it by a new Grant to the fittest Instruments of unjust and imperious Rule, and then adieu to all Remedy against them . . . This would be the cause of Learning, the Rights and Privileges of the College, our public Liberty and Happiness, become a Prey to the base Designs and united In-

124. See Mensch, *supra* note 66, 663-70. Conditions included settlement, quit-rents, and preservation of pine trees. The most extreme instances of revocation occurred during Bellamont's governorship.

125. Livingston attacked the legality of the established church in the province, as well as the proposed college structure. See 5 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 114, at 3437-32. William Livingston was a Presbyterian, but some Livingstons were Anglicans or Dutch Reformed.

126. W. LIVINGSTON, INDEPENDENT REFLECTOR 185 (M. Klein ed. 1963).

terest of the Governor and Trustees.¹²⁷

While prominent Whig lawyers like Livingston were certainly not Great Awakening evangelicals, Livingston borrowed from radical Protestant theology an alternative, "bottom-up" conception of incorporation as springing from the willing consent of the regenerate community, rather than from the "top-down" conferral of authority and privilege. Thus Livingston proposed the then somewhat novel idea of a corporate charter conferred by the assembly, as an expression of the free will of the people of the province, and of course without the attached condition of Anglican control. Livingston argued that an Assembly charter, protected from Crown authority, would be "productive of the richest Blessings," and would furthermore "render its Advantages the more precious, by their superior Stability."¹²⁸ Similarly, the President of the college, rather than simply reflecting the authority of church hierarchy would, almost like the secular version of a New Light preacher, (or, for that matter, the modern public servant) serve the interests of the people. He would be "kept in a continual and ultimate dependence upon the Public," with the "wisdom of the Province being his only Support."¹²⁹

When the proposed charter was debated in the province, Anglicans and dissenters lined up, predictably, respectively for and against the Crown charter. As always the Anglicans, who never represented more than ten percent of the population, were in the minority, so that a key question was whether the Dutch would remain faithful to the old Anglican-Dutch Reformed alliance. Appealing to that alliance, the governor tentatively agreed to insert in the King's College charter a clause which provided that the Dutch should have a professorship established at the college, with Dutch professors to be chosen according to the doctrine, discipline, and worship established by the National Synod of Dortrecht—in effect, offering a professorship under the authority of the Dutch church hierarchy.¹³⁰

Meanwhile, Dutch Reformed ministers in the New York Coetus were in the process of deciding whether to defy the Amsterdam Classis' authority and declare themselves an independent classis. They had almost reached a majority decision to do so despite the fear that they might thereby lose their semi-established position. The Coetus also opposed the

127. *Id.* at 200.

128. *Id.* at 185.

129. *Id.* at 182.

130. See 5 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 114, at 3582, 3584.

royal college charter, supporting instead Frelingheusen's efforts to found an independent Dutch college—a notion that the Classis thought merely fanciful. Inevitably, the two issues of loyalty to the Classis and a Crown charter for the college became inextricably linked, and the Dutch had to decide whether limited establishment privileges under the Anglicans, which in turn implied subservience to Holland, were worth the sacrifice of self-determination.¹³¹

Despite what seemed for a time to be majority support for independence, and apparently in the face of his own congregation's opposition,¹³² Rev. Ritzema, the New York City Dutch minister, suddenly withdrew from the Coetus and began to conduct further negotiations with the Anglicans concerning the Dutch professorship. The offer of a professorship was withdrawn soon after Ritzema left the Coetus, much to Ritzema's embarrassment among the Dutch, but it was subsequently reaffirmed. On that basis Ritzema led the support for the charter among the Dutch. He defended his pro-charter position by expressly appealing to Dutch loyalty to the established form of the Dutch church, which, he carefully explained, had been adhered to within the college charter. The Dutch professor was to be chosen according to all of the rules established by the Synod of Dort, trustees were authorized to act as judges in case of misconduct, etc. Ritzema argued that given this authoritative structure carefully designed to insure an orderly peace, opposition to the college would necessarily be the work of "schismatical people" bent upon resisting the powers which are "ordained of God."¹³³ Furthermore, opposition to the charter could result in loss of those privileges which the Dutch Church enjoyed under its own corporate charter, and in dissension between the Dutch and Anglican churches—"especially as there is such a close alliance between us."¹³⁴

Ritzema, who was then made one of the governors of the college,¹³⁵ was successful in mustering Dutch support for the proposed college charter. The charter finally granted to King's College was, indeed, a royal

131. The best account of the intersection of these two issues and of Rev. Ritzema's maneuverings on behalf of the college charter (summarized *infra*) is to be found in Corwin, *The Character and Development of the Reformed Church in the Colonial Period*, in CENTENNIAL DISCOURSES: A SERIES OF SERMONS DELIVERED IN THE YEAR 1876, BY THE ORDER OF THE GENERAL SYNOD OF THE REFORMED (DUTCH) CHURCH IN AMERICA 41 (2d ed. 1877).

132. See 5 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 114, at 3574-75.

133. *Id.* at 3582, 3584.

134. *Id.*

135. See *id.* at 3574-75. As a governor, Ritzema then signed the petition asking the Assembly to ratify the charter and grant public money to the college.

charter insuring an Anglican college entitled to public financing.¹³⁶ Livingston was bitter, for he had specifically appealed to the Dutch for support¹³⁷ and it was inconceivable to him that Dutch assemblymen, under the influence of a Dutch minister, would choose to submit to both Anglican and royal authority. He wrote a satirical article in the *New York Mercury* which fictionally reported that the college's Dutch Professor of Divinity was removed by the Anglicans for daring to say in one of his lectures that "Christ is the Supreme Head of the Christian Church; and in order to prevent the like heresy for the future, the governors of the said college had passed a resolve that none but an Episcopalian be for the future promoted to said professorship."¹³⁸

The victory that Dutch loyalty to paternalistic hierarchy won for Trinity was not without cost. Division among Dutch clergymen over the independent Classis issue lasted until independence was finally achieved in 1772; and of course Dutch support in the Assembly on the King's College charter could hardly provide Trinity with real popular support.¹³⁹ If anything, the college debates simply provided more cause for resentment, which was unleashed in full fury during the Revolution, when the Trinity rector and officers (Tory, of course) were safe only under British protection. In that sense Trinity won the King's College battle but lost the war. On the other hand, the fall from power during the Revolution lasted only briefly, and Trinity was soon to exercise more real power than royal charters had ever provided.

136. The actual founding of the college took place in a complex series of stages, with accounts differing somewhat as to detail. The Assembly had started a public lottery to raise money for an institution of learning. *See id.* at 3389-94. The money was turned over to a board of trustees. Livingston was one trustee, but seven out of ten were Anglican. Trinity then offered a tract of land, over 10 acres, for the college, with the condition of Anglican control. The trustees asked for a charter with the terms proposed by Trinity; and Governor DeLancey, an Anglican and a friend of the Archbishop of Canterbury, bypassed the Assembly and granted the requested charter. Smith and Livingston led the opposition to the charter terms, attempting to stir up both Assembly and popular opposition, but their only success lay in the Assembly's refusal to turn over all of the money to the college: half went to the college and half to the city corporation for a jail and place of internment for crews of infected vessels. *See* P. BONOMI, *supra* note 77, at 176-77; G. DANGERFIELD, CHANCELLOR ROBERT R. LIVINGSTON OF NEW YORK, 1746-1818, at 22 (1960); D. DILLON, THE NEW YORK TRIUMVIRATE 32-39 (1949); E. McCAUGHEY, FROM LOYALIST TO FOUNDING FATHER: THE POLITICAL ODYSSEY OF WILLIAM SAMUEL JOHNSON 35-40 (1980).

137. *See* 5 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 114, at 3366-67.

138. *Id.* at 3529-30; Corwin, *supra* note 131, at 72.

139. The DeLancey faction lost at the next election to the Livingston party, although the causes were more complex than simply reaction against the college charter. *See* G. DANGERFIELD, *supra* note 136, at 23. King's College graduated no more than 5 boys each year during its first decade. *See* E. McCAUGHEY, *supra* note 136, at 41.

III. TRINITY AND THE NEW REPUBLIC: THE PROBLEM OF PROPERTY RIGHTS

A. *The Aftermath of Revolution*

The Revolutionary War was the low point in Trinity's history. As a symbol of political and economic privileges that were once granted in the name of the Crown to only a favored few, Trinity was an obvious target for fierce revolutionary hostility. The behavior of its officers during the War served only to exacerbate that hostility. Charles Inglis, Rector of Trinity, denounced the "rebellion" as "one of the most causeless, unprovoked, and unnatural that ever disgraced any country; a rebellion marked with peculiarly aggravated circumstances of guilt and ingratitude."¹⁴⁰ After the outbreak of war, Inglis closed Trinity's chapels and denied their use to American chaplains while Washington was in New York. Most of the officers of the church, almost all Tories, fled the city. Then, returning only during the British occupation, the Trinity vestrymen acted as British agents in the collection of rents from inhabitants.¹⁴¹ Not surprisingly, in 1779 the new state legislature passed an Act calling for the death of, among others, Charles Inglis and his wife.¹⁴²

Along with public contempt for its officers, the war brought physical destruction to the church itself. What had once been "the prettiest edifice of all, Trinity Church at the head of Wall Street,"¹⁴³ was, by the end of the war, a "spectral ruin,"¹⁴⁴ having been destroyed in the great fire of 1776. Inglis blamed the rebels for the fire, noting that "[t]he church corporation had suffered prodigiously, as was evidently intended."¹⁴⁵ For the successful revolutionaries, Trinity's charred steeple on Broadway uplifted a "black, reminding finger"¹⁴⁶ when the Americans reoccupied New York in 1783. Nevertheless, by the 1790s Trinity had literally risen from the ashes: Its elaborately rebuilt church was regarded as the most notable architectural achievement of the period, with its steeple, "an awe-inspiring sight" to the New Yorkers of the day,¹⁴⁷

140. 6 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, 4292-93 (H. Hastings ed. 1905).

141. See H. HARTOG, PUBLIC PROPERTY AND PRIVATE POWER: THE CORPORATION OF THE CITY OF NEW YORK IN AMERICAN LAW, 1730-1870, at 83 (1983).

142. See 1886 N.Y. LAWS 173 (laws passed from 1777-1784).

143. M. LOMASK, AARON BURR: THE YEARS FROM PRINCETON TO VICE PRESIDENT 84 (1979).

144. *Id.*

145. 6 ECCLESIASTICAL RECORDS OF THE STATE OF NEW YORK, *supra* note 140, at 4298.

146. G. DANGERFIELD, *supra* note 136, at 199.

147. S. POMERANTZ, NEW YORK: AN AMERICAN CITY 1783-1803, at 231 (2d ed. 1965).

dominating all other buildings in the metropolis.¹⁴⁸

To reach its status and power, Trinity not only had to rebuild her steeple, but also had to overcome her legacy of Crown-based ecclesiastical hierarchy, her history of elite privilege, and the always questionable validity of her land titles. The egalitarian logic of the Revolution challenged virtually every aspect of Trinity's structure. Her very existence seemed inconsistent with revolutionary republicanism, which opposed all privileges, and in particular those, like land grants and incorporation, that had been based on Crown favoritism.

In fact, under the most radical (and especially evangelical) versions of republican theory, property was conceived as an extension of the sovereign will of the people, and therefore subject to whatever controls were necessary to promote harmony, participation, and equality.¹⁴⁹ For a time this radical, egalitarian view of property seemed, in fact, the only available alternative to the discredited Crown grant system, with its conception of property as an extension of royal authority. Even Thomas Jefferson, following the great republican theorist Harrington, assumed that agrarian laws to limit individual land holdings were necessary to protect republican virtue.¹⁵⁰ That same view also had deep roots in New York, where many of the dissenter townships on Long Island had followed a republican model of organization that linked free citizen participation and true congregational unity to rough economic equality. The Great Awakening had intensified the desire to establish, here on earth, a true Christian and therefore necessarily egalitarian community. That evangelical spirit helped give force to the great land revolts in New York after the mid-eighteenth century, which had clearly pitted republican conceptions of property against proprietors who claimed vast acreage on the basis of Crown grant title.¹⁵¹ With the Revolution the most radical

148. See *id.* See also E. ALEXANDER, *A REVOLUTIONARY CONSERVATIVE: JAMES DUANE OF NEW YORK* 179 (1938).

149. See Mensch, *supra* note 66, at 645-56.

150. See Katz, *Thomas Jefferson and the Right to Property in Revolutionary America*, 19 J. L. & ECON. 467 (1976). See generally E. SPAULDING, *NEW YORK IN THE CRITICAL PERIOD 1783-1789* (1932) (discusses the land system and the power of the landlord in politics in 18th century New York State).

151. See E. COUNTRYMAN, *A PEOPLE IN REVOLUTION: THE AMERICAN REVOLUTION AND POLITICAL SOCIETY IN NEW YORK 1760-1790*, at 54 (1981); Mensch, *supra* note 66, at 727-28. See also D. MILLER, *JACKSONIAN ARISTOCRACY: CLASS AND DEMOCRACY IN NEW YORK 1830-1860*, at 142-46 (1967). See generally W. McLoughlin, *REVIVALS, AWAKENINGS, AND REFORM: AN ESSAY IN RELIGION AND SOCIAL CHANGE IN AMERICA 1607-1977* (1978); Moorhead, *Between Progress and Apocalypse: A Reassessment of Millennialism in American Religious Thought, 1800-1880*, 71 J. AM. HIST. 524 (1984) (revivalism and revolution succeeded in producing "a new set of cultural ideas identified with the Republic and to a considerable extent embodied in its polity: egalitarianism,

implications of evangelical republicanism were expressed with renewed vigor.¹⁵²

Corporations were viewed with almost as much suspicion as Crown land grants. Like land grants, corporations during the colonial period had represented the conferral of special economic and political privilege. Even after the Revolution they were still conceived as essentially political bodies performing a public function; as such, their insulation from community control was viewed as by definition undemocratic, a vestige of authority once linked to Crown control. Thus corporations were attacked as "monopolies of legal privilege," historically bestowing "unequal portions of our common inheritance on favorites."¹⁵³

More specifically, Trinity's own corporate ecclesiastical structure seemed inseparable from the Crown authority that the Revolution had repudiated. As an Anglican church Trinity had been established by the laws of England, which placed her under the jurisdiction of the Archbishop of Canterbury and ultimately, therefore, under the Crown. Without that Crown-based line of hierarchical authority Trinity had no obvious source of legitimacy. Thus, the revolutionary antagonism toward land grants and corporate privilege in general seemed especially appropriate when directed against Trinity. With the seizure of many other Tory estates after the Revolution, there seemed no obvious reason why property owned by Trinity should be exempt.

The initial position of the new state legislature was, in fact, that Trinity's property should be claimed by the state. A committee headed by Assemblyman Yates was appointed to investigate Trinity's ownership claims. The Yates Committee report, with which all but six assemblymen initially concurred, expressly argued for confiscation, citing two grounds. First was the ambiguity of Trinity's title even under the Crown. Reviewing the details of the acts revoking land grants during the early 1700s and the vagueness of Queen Anne's letter to Gov. Hunter, the committee concluded that Trinity's title was too flimsy to be considered legally binding.

The second argument, based on the disestablishment clause of the new state constitution, went more fundamentally to the question of Trinity's basic structure. According to the committee, even assuming the letter of 1714 from Queen Anne to be, in fact, a valid confirmation of title,

individual freedom, repudiation of arbitrary authority, diffusion of power, and translocal unity based on shared ideology").

152. See, e.g., E. SPAULDING, *supra* note 150, at 71-114.

153. H. HARTOG, *supra* note 141, at 87; see also D. MILLER, *supra* note 151, at 34.

its reference was to a grant made specifically "to the Rector and inhabitants of the city of New-York, in communion of the Church of England, as by law established."¹⁵⁴ After the Revolution and the disestablishment clause, even if the grant had been valid under the Crown, it was a grant to inhabitants who would never again exist; there was no longer, in the city, a Church of England "by law established."¹⁵⁵ The implications were broader than a mere quirk in language. As other anti-Trinitarians summarized the essential point of the Yates argument even fifty years later:

[I]t may be asked, how could a corporation holding property from the crown of England to support the church of England, as established by the laws of England, claim to hold the same property from a Democratic government repudiating from the foundation the idea of an established hierarchy?¹⁵⁶

Even as the Yates Committee was formulating its position, however, the new state government was starting to demonstrate that its repudiation of established hierarchy was far from complete. Prominent New York Whigs, who were weakly opposed or at best nervously tolerant during the confiscation of Tory estates, were not necessarily ready to conclude that republican virtue required complete equality. Chancellor Robert Livingston, for example, told Alexander Hamilton: "I seriously lament with you, the violent spirit of persecution which prevails here and dread its consequences upon the wealth commerce & future tranquility of the State"¹⁵⁷ Livingston feared that the radicals "have acquired influence in turbulent times which they are unwilling to lose in more tranquil seasons."¹⁵⁸ The impulse to seize property in the name of the sovereign people threatened not only Tory estates, but the whole foundation of stable property relations and established social order as well.

154. *Charter of Trinity Church*, *supra* note 69, at 44-45 (Queen Anne's Recognition and Instructions of April 14, 1714) (emphasis added).

155. JOURNAL OF THE ASSEMBLY OF THE STATE OF NEW YORK, 8th Sess., at 22-24 (1785).

156. R. Miller, *supra* note 71, at 12.

157. See G. DANGERFIELD, *supra* note 136, at 197.

158. *Id.* at 198. Somewhat ironically, the emerging Federalist elite opposed confiscation because of its dangerously egalitarian implications, but, at the same time, managed to enhance their own position by purchasing the very lands whose confiscation made them nervous. See S. POMERANTZ, *supra* note 147, at 76-92. See G. DANGERFIELD, *supra* note 136, at 200-01; see also F. JAHNER, *supra* note 2, at 171. They also formed close alliances with ex-Loyalists, with whom they shared both a fear of mass rule and, in many cases, their Episcopal faith. By virtue of that alliance, many ex-Loyalists retained much of their former status and influence. See G. DANGERFIELD, *supra* note 136, at 196-203; D. FOX, *THE DECLINE OF ARISTOCRACY IN THE POLITICS OF NEW YORK 26-27* (1919); M. JENSEN, *THE NEW NATION: A HISTORY OF THE UNITED STATES DURING THE CONFEDERATION 1781-1789*, at 271 (1967); S. POMERANTZ, *supra* note 147, at 83-92; E. SPAULDING, *supra* note 150, at 33, 126-32, 241-42.

In fact, the Revolution had created a crisis in republican theory. Political leaders like Hamilton and Livingston were serious in their resolve to repudiate the past hierarchy they associated with feudalism and Tory ideology, with its entrenched hereditary aristocracies and static ordering of essentially land-based property relations. In that sense they earnestly called themselves republicans and cited a long civic humanist tradition of citizen independence and freedom. They could also comfortably join with radical evangelical republicans in opposing established economic privilege and oppressive political authority when that opposition was directed specifically against the Crown's exercise of prerogative power over the colonies' economic and political institutions.

Nevertheless, in America the republicanism of both civic humanism and evangelicalism contained a strong anti-commercial element, as consistent with the emphasis on equality and yeoman-farmer independence. Yet most of the prominent post-Revolutionary political figures in New York, who were quickly becoming prominent national Federalist leaders as well, also viewed the young republic as opening up new possibilities for commercial enterprise and economic growth. To these New Yorkers republican liberty meant, at least in part, the freedom of the industrious individual to pursue private economic gain, unhampered by oppressive political control. Inevitably, this vision of unleashed commercial striving conflicted with the economically more static republican vision of the egalitarian community bound together by a shared moral vision.

A key dilemma, therefore, was the meaning of republican virtue itself. Hearty commercial activity, which was expected to bring wealth to the nation and exciting new opportunities to her more enterprising citizens, was not easily dismissed as unvirtuous, despite earnest preachers who warned of the moral decay at the heart of commercial life. But this emphasis on the unleashing of private energies meant, almost by definition, a rejection of republican virtue conceived as a shared moral/political/economic vision publicly forged by a participating citizenry: a community devoted to preserving egalitarianism and a public morality threatened the "liberty" of private entrepreneurship no less than did crown prerogative control.

Therefore, from the perspective of New York Federalists, it was essential that virtue, like economic gain, be redefined as something to be achieved, not publicly, as a citizen, but privately, as a vigorous, enterprising individual. Commercial enterprise and industrial progress were regarded as clearly inconsistent with the inhibiting rigor of egalitarian property forms. Like virtue, property was therefore reconceived as a pri-

vate right—not for the sake of preserving a Tory social order, but as providing a foundation for free and vigorous individual effort.¹⁵⁹

Thus, while the logic of the revolution might be most radically interpreted as requiring the destruction of all hierarchical privilege, the need to reestablish order and stability in the new nation seemed, in fact, to require its protection. Toward that end, and well before the Federal Constitution was ratified and judicial review established, leading New York Federalist jurists had already enunciated a theory that interposed natural law as a protective barrier between property rights and the levelling impulses of popular sovereignty. For example, in the important *Waddington* case, argued by Alexander Hamilton and decided by James Duane (both prominent Trinity members), the court in effect overruled an anti-Tory Trespass Act, passed by the legislature, as being contrary to the law of nature, which Duane described as “*immutable*, as being founded on the *nature of things*,” so that its obligations were “*necessary and indispensable*.”¹⁶⁰ Therefore, in New York the legal wedge had al-

159. For the problem of interpreting republicanism, see, e.g., E. FONER, *TOM PAINE AND REVOLUTIONARY AMERICA* (1976), G. NASH, *THE URBAN CRUCIBLE: SOCIAL CHANGE, POLITICAL CONSCIOUSNESS, AND THE ORIGINS OF THE AMERICAN REVOLUTION* (1979); J. POCOCK, *THE MACHIAVELLIAN MOMENT: FLORENTINE POLITICAL THOUGHT AND THE ATLANTIC REPUBLICAN TRADITION* (1975); G. WOOD, *THE CREATION OF THE AMERICAN REPUBLIC 1776-1787* (1969); Berthoff, *Peasants and Artisans, Puritans and Republicans: Personal Liberty and Communal Equality in American History*, 69 J. AM. HIST. 579 (1982); Shalhope, *Republicanism and Early American Historiography*, 39 WM. & MARY Q. 334 (1982); Yarbrough, *Republicanism Reconsidered: Thoughts on the Foundation and Preservation of the American Republic*, 41 REV. OF POL. 61 (1967). Shalhope points out that there has still been relatively little scholarship on the transformation of republican theory after the Revolution in light of laissez-faire and liberal ideas. See Shalhope, *supra*, at 346-47.

160. SELECT CASES OF THE MAYOR'S COURT OF NEW YORK CITY, 1674-1784, at 302-26 (R. Morris, ed. 1935). Quotes are from Duane's opinion, which is sometimes cited as precedent for judicial review. It is replete with citations to natural law theory, with quotes from Grotius, Pufendorf, Wolfius, Burlamaqui, and Vattel, but in fact was a careful political compromise. In the spirit of Coke, it stated only that legislative acts are to be interpreted so as not to be unreasonable, as against the background of the law of nations. The decision was regarded as a firm stroke against Tory-baiting, and resulted in widespread public hostility. See E. ALEXANDER, *supra* note 148, at 161-64; S. POMERANTZ, *supra* note 147, at 84-87; E. SPAULDING, *supra* note 150, at 128-30.

Duane, a Livingston son-in-law and proprietor of Duanesburg (an estate of 40,000 acres), was from an Episcopalian merchant family. A loyalist until the Revolution, he was attorney general in 1767 under the British, and was appointed mayor in February 1784. He was one of Trinity's most loyal supporters, financing the new church after the Revolution. Like Hamilton and Robert Troup, he also provided legal counsel to Trinity. He headed the "Committee for the Defense of Trinity's Rights" in the post-war renewed battle over Trinity's land, in opposition both to the Bogardus family and the State Assembly. See generally E. ALEXANDER, *supra* note 146 (concerning Duane). See also S. POMERANTZ, *supra* note 147, at 36-41; E. SPAULDING *supra* note 150, at 244. For Troup and Hamilton's involvement, see THE LAW PRACTICE OF ALEXANDER HAMILTON 551 n.1 (J. Goebel & J. Smith eds. 1981).

ready been driven between property and sovereignty, private and public, and the background had been laid for the argument that Trinity was a private property holder whose rights were to be legally protected from state interference. From that perspective, republicanism required not legislative confiscation of Trinity's property, but rather reconfirmation of her holdings.

Meanwhile, although the thrust of colonial Whig opinion had been to oppose Trinity as representative of arbitrary Crown rule, prominent post-Revolutionary Whigs began to take a keen interest in Trinity's continued institutional strength, as part of the general effort to reconstitute order and stability. Even as early as 1777 representatives in the New York State Constitutional Convention were sensitive to the growing pro-Episcopalian sentiment among Whig leaders and announced their opposition to the unbridled dissenter attacks leveled against Trinity and the Anglican Church in general. Such attacks, the representatives announced, were "interfering with the interest of the American cause,"¹⁶¹ presumably because they were alienating wealthy Whig supporters, some of whom, like John Jay (who had been baptised by Vesey at Trinity in 1745),¹⁶² were members of the convention. With that concern in mind, the convention had tactfully worded the state constitution's disestablishment clause so as to refrain from specifically mentioning Episcopalianism. The new constitution simply invalidated any statute which "may be construed to establish . . . any particular denomination of Christians."¹⁶³

Of course, disestablishment, however delicately worded, still left open the thorny question of what to do with Trinity's estate. While the Yates Committee was working on its report advocating seizure by the state, prominent New York Whig Episcopalians like James Duane, Robert Livingston,¹⁶⁴ John Jay, and Alexander Hamilton, were beginning a series of maneuvers which would simultaneously wrest control of the Church from its old Tory officers—who were not yet out of the picture—

161. J. PRATT, *RELIGION, POLITICS, AND DIVERSITY* 91 (1967) (quoting *Jour. Prov. Cong.*, I, 521).

162. Jay became Governor of New York and the first Chief Justice of the United States. His grandparents included a Bayard, a Van Cortlandt and a Philipse. See F. JAHNER, *supra* note 2, at 221. See generally JOHN JAY: THE MAKING OF A REVOLUTIONARY: UNPUBLISHED PAPERS 1745-1780, at 32 (R. Morris ed. 1975) (Jay's family background).

163. N.Y. CONST. art. XXXV (1777), reprinted in 7 SOURCES AND DOCUMENTS OF U.S. CONSTITUTIONS 178 (W. Swindler ed. 1978). See J. PRATT, *supra* note 161, at 90-91.

164. Chancellor of New York, distant cousin of Robert (Third Lord of Livingston Manor), brilliant lawyer and orator, law partner of John Jay, and thorough-going patrician in manner and taste. See generally G. DANGERFIELD, *supra* note 136.

while at the same time protecting the estate from over-zealous republican levellers in the Assembly.

In 1783 a provisional council for the Southern District exercised control over Trinity's property, along with other former British land in the city. In March of that year Trinity's rector, Rev. Inglis, seemingly oblivious to the desires of those who wished to hang him, wrote to James Duane that he no longer felt bound to England and would be guided by Duane's "Candour and Judgment" on the "delicate question of remaining in New York."¹⁶⁵ The former Tory rector apparently received a candidly negative message from Duane, for he chose to leave New York with the British. Inglis was rewarded for his British loyalty by being appointed Bishop of Nova Scotia, where most of the departing New York Tories also settled.

Not every Tory left, however. Two weeks before "Evacuation Day," the loyalist vestrymen of Trinity, still in New York City, hastened to elect a new rector to replace Inglis, choosing one Benjamin Moore, "a man," according to Livingston, "who had preached and prayed against us during the war."¹⁶⁶ The Whig Episcopalians selected a committee, headed by Duane, to deal with these Tory vestrymen, who, with surprising gall, refused even to compromise on the choice of rector. It seemed for a time as if there would be ecclesiastical civil war, and that the Whigs would have to seize Trinity from the Tories by force.¹⁶⁷

Instead, the Whig Episcopalians then petitioned the provisional council, asking that they be allowed to appoint a new rector, and that they be vested with all the powers previously granted by Charter to the Corporation of Trinity Church. The petition succeeded, and the church and estate were placed under the control of nine trustees, including Duane, Livingston, and other prominent New Yorkers such as Francis Lewis,¹⁶⁸ Lewis Morris,¹⁶⁹ Isaac Sears,¹⁷⁰ and William Duer.¹⁷¹ The

165. E. ALEXANDER, *supra* note 148, at 176 (quoting Letter from Trinity's rector Rev. Charles Inglis to James Duane (March 28, 1783)).

166. G. DANGERFIELD, *supra* note 136, at 199.

167. *Id.* See also E. ALEXANDER, *supra* note 148, at 176-77.

168. A merchant who had enlarged his fortune during the Revolution by supplying the Continental Army. See F. JAHER, *supra* note 2, at 179. He was a delegate to the Second Continental Congress. See E. ALEXANDER, *supra* note 148, at 108.

169. Westchester landowner (last Lord of Morrisania) delegate to the Constitutional Convention, and brother of Chief Justice Richard Morris. He was a pre-war Admiralty judge who became a patriot during the war. See E. SPAULDING, *supra* note 150, at 66-67, 246.

170. Assemblyman and radical Whig leader. See S. POMERANTZ, *supra* note 147, at 376. He later slipped back into obscurity, unlike the others. See F. JAHER, *supra* note 2, at 172.

171. Washington and Dutchess County landowner, who helped draft the Articles of Confedera-

trustees then sought to name Samuel Provoost as rector, while agreeing to permit Moore to continue preaching so long as he did not insist upon holding the rectorship. Moore, however, stubbornly refused to step down, insisting that the trustees' "power extended only to the temporalities."¹⁷²

The trustees then went to the legislature. Thus, even while the Yates Committee was announcing its popular report calling for the seizure of Trinity's estate, an alliance of powerful Whig Episcopalians was simultaneously beating back a final assault from the Tories and trying to protect Trinity's estate from public confiscation. The legislature backed away from seizure, instead favoring the Whig alliance on both fronts. On April 17, 1784 it confirmed a revised charter for Trinity which gave the Whigs, as new officers of the Church, the power to call and induct their own rector. Named as wardens were Duane and Livingston. The Whig vestrymen included Richard Morris,¹⁷³ Lewis Morris,¹⁷⁴ Isaac Sears,¹⁷⁵ Francis Lewis,¹⁷⁶ Marinus Willett,¹⁷⁷ Robert Troup¹⁷⁸—a group which contained all of the Whig Episcopalians who had originally petitioned the provisional council for authority to manage the Trinity Estate. Four days later Samuel Provoost became rector, while Moore, who was not excluded altogether, was named as one of the three assistant ministers.¹⁷⁹

Thus, with the help of the legislature, James Duane and his fellow Whig Episcopalians took over Trinity Church. In 1788 the Legislature then went a step further in consolidating Trinity's authority as a Whig institution of extraordinary wealth. In order to remove the ambiguity disestablishment had created in Trinity's grant title, the legislature

tion. He was the foremost speculator of the post-Revolutionary period, having emerged from the war a rich man with interests in land, securities and manufacturing ventures. He was named by Hamilton as assistant Secretary of the Treasury. He unethically promoted speculation in the public debt. His bankruptcy in 1792 caused a panic in New York City, but his family remained prominent. *See* F. JAHNER, *supra* note 2, at 172; S. POMERANTZ, *supra* note 147, at 181-84.

172. E. ALEXANDER, *supra* note 148, at 177.

173. Chief Justice of the New York State Supreme Court, 1779-1790.

174. *See supra* note 169.

175. *See supra* note 170.

176. *See supra* note 168.

177. Assemblyman, Sheriff and Mayor in 1807-1808. *See* S. POMERANTZ, *supra* note 147, at 376.

178. Along with Alexander Hamilton and Aaron Burr, he was one of the three leaders of New York's legal practitioners. *See* E. ALEXANDER, *supra* note 148, at 161; S. POMERANTZ, *supra* note 147, at 54, 376. He was one of the Federalist leaders, but kept fearing the worse for the Federalist cause. *See* M. LOMASK, *supra* note 143, at 150-51. Genuinely religious, he became president of the Society for the Relief of the Destitute in 1827, and was also a Federal District Judge.

179. *See* E. ALEXANDER, *supra* note 148, at 177.

passed an act entitling Trinity to use the name "the Rector and Inhabitants of the city of New-York in communion of the Protestant Episcopal Church in the State of New-York" instead of the designation in the original grant with its reference to establishment. Under its new name, the corporation was then declared entitled to all property that it held under its previous name.¹⁸⁰ Thus Trinity's property remained intact, and under the stewardship of prominent political leaders. In effect, an ordered hierarchy uniting church, state, and property had once again been constituted.

During this period, Duane remained senior churchwarden of Trinity. In that capacity he took part in a ceremony on August 23, 1788, laying the cornerstone for a new church, a project to which he had liberally contributed. In February 1790, when streets were laid out on Trinity's lands bordering the Hudson, the first was named Duane. A second was Jay.¹⁸¹

As if to celebrate Trinity's role in the new government, the inauguration of President Washington was conducted almost as a Trinity event. Samuel Provoost, first post-Revolutionary rector of Trinity and then Bishop of New York, was appointed Chaplain of the Senate. He conducted the special Episcopalian service at Trinity's St. Paul's chapel (Trinity Church itself had not yet been rebuilt) to celebrate the inauguration. Participants in the event included Trinity notables like Chancellor Robert Livingston (first warden at Trinity), John Jay (then acting secretary of state, and also a warden), and James Duane, all of whom, with Bishop Provoost, accompanied President Washington from the Federal Building to St. Paul's on Inauguration Day.¹⁸²

B. *Accommodation and Constitutionalism*

The new republic attempted to resolve (or mask) the underlying tension between the egalitarian claims of radical republicanism and the perceived need for order and stability with the adoption of the Federal Constitution.¹⁸³ A parallel dilemma faced the American Episcopal

180. *Charter of Trinity Church*, *supra* note 69, at 27 (Act of 1788 to enable the Corporation of Trinity Church in the City of New York to assume the name therein mentioned).

181. See E. ALEXANDER, *supra* note 148, at 179.

182. Washington's pew is still set aside at St. Paul's, and decorated with American flags. A bronze door on Trinity Church also commemorates the inauguration. For a summary of the post-War success of the Episcopal Church in New York City, see S. POMERANTZ, *supra* note 147, at 374-76.

183. *E.g., compare* *Marbury v. Madison*, 5 U.S.(1 Cranch) 137 (1803) *with* *Luther v. Borden*, 48 U.S. (7 How.) 1 (1849). On the dilemmas faced by the new republic and their purported resolution,

Church: how to reach an intermediate position between the republican and Tory polarities. For the church as well as for the new nation, the old ties to the British hierarchical order had been broken, so the church could no longer look to the established monarchical episcopate in England, with its royal appointments, as a source of ecclesiastical authority. Nevertheless, Episcopalians were bound to find the radical evangelical protestant alternative—order as embodied only in the pure will of the local congregation—a woefully inadequate source of structure. Even those who had been Whigs rather than Tories during the Revolution longed for the comfortable old forms of traditional church authority. The problem was how to contain these competing and contradictory impulses within a unified institution.

In 1784 a committee to draft a new church constitution, of which Duane was a member, moved toward accommodation by voting to retain the doctrines held by the Church of England, while making the liturgy consistent with the changes created by the Revolution. The committee called for a general convention in Philadelphia the next year with clerical and lay delegates, and recommended the election of a bishop in each state.¹⁸⁴ By 1788, however, the national church still remained divided. A pessimistic Massachusetts minister concluded that "Oil & Vinegar cannot unite, Whigs & Tories cannot act cordially together, one have a democratical Constitution to act by, the other a monarchical."¹⁸⁵

National organizational unity was nevertheless eventually achieved. The Episcopal approach to the problem of accommodation mirrored almost exactly the approach taken by the Federalists at the Constitutional Convention. In a series of conventions of their own, Episcopalian churchmen gradually hammered out a constitution that restructured the church according to an essentially federalist scheme.

The authority of the bishops had quickly emerged as the most controversial issue of constitutional church organization, for the bishop's office represented to many in the church the old authority of the English episcopate, ultimately linked to Crown rule. Given its symbolic signifi-

See, e.g., G. DENNISON, *THE DORR WAR: REPUBLICANISM ON TRIAL, 1831-1861* (1976); *THE FEDERALIST* No. 78 (A. Hamilton); C. MAGRATH, *YAZOO: LAW AND POLITICS IN THE NEW REPUBLIC* (1966); G. WOOD, *THE CREATION OF THE AMERICAN REPUBLIC, 1776-1787* (1969); E. SPAULDING, *NEW YORK IN THE CRITICAL PERIOD 1783-1789* (1960); Wood, *Framing the Republic 1760-1820*, in *THE GREAT REPUBLIC* 229-421 (1977).

184. *See* E. ALEXANDER, *supra* note 148, at 178.

185. *See* E. MCCAUGHEY, *FROM LOYALIST TO FOUNDING FATHER: THE POLITICAL ODYSSEY OF WILLIAM SAMUEL JOHNSON* 270 (1980) (quoting Samuel Parker to Samuel Peters, Sept. 29, 1787).

cance, most churchmen were loathe to reproduce the office's old prerogative power. Sentiment on the question, however, varied from state to state. In Connecticut, where the American clergy had grown accustomed to British ecclesiastical structures, the former Tory, Bishop Seabury, still ruled with virtually unlimited authority. In South Carolina, at the other extreme, anti-bishop feeling ran so high that an Episcopalian clergyman named Henry Purcell, author of a bitter pamphlet called "Strictures on the Love of Power in the Prelacy," became so rebellious that he was eventually placed under bond by court order to preserve the peace.¹⁸⁶ With much less strife, New York had elected Samuel Provoost as Bishop, choosing him simply because he was the only Episcopalian minister in the state who had supported the Revolution. Provoost, anticipating the early demise of the Episcopal Church in the post-Revolutionary period, served without enthusiasm. Despising Seabury, who was gaining national prominence in the church, he retired in 1801 to his farm in the Bowery to translate Tasso and pursue his studies of botany.¹⁸⁷

At the first national convention, which gathered representatives from the various states, bishops were accorded no special powers; the churchmen simply formed a single body of representatives. Connecticut and the bishops in England objected to that equality, and a revised constitution provided that bishops should constitute a separate House, presumably on the model of the Senate, but with the limitation that this "Upper House" of bishops could neither initiate legislation nor sustain its veto against a three-fifths vote of the Lower House. Later, the Bishops were granted the right to "originate and propose acts for the concurrence of the House of Deputies," and were given a veto that could be overridden only by a four-fifths vote of the deputies, or Lower House.¹⁸⁸ Finally, in 1808, bishops were given full veto power. Seabury, the senior bishop, was the first bishop to preside in the Upper House.¹⁸⁹

As finally adopted, the national church constitution provided for a triennial convention as the supreme governing body of the church. The convention included a House of Deputies consisting of not more than four clerical and four lay deputies from each state, and the House of Bishops. Each bishop was elected according to the rules of his own state's convention, and his jurisdiction was limited to the state that elected him. Bishops and other clergy were to be tried by their respective conventions

186. See R. ALBRIGHT, *A HISTORY OF THE PROTESTANT EPISCOPAL CHURCH* 142-43 (1964).

187. See *id.* at 145.

188. *Id.* at 138-39.

189. See *id.* at 139.

in case of alleged misconduct, but at least one bishop was required at the trial of a bishop, and only a bishop could depose a bishop, presbyter or deacon. The Book of Common Prayer, which was revised to be in accord with the church's new relationship to the state, was made mandatory.¹⁹⁰

In form, then, the new national Episcopal Church constitution replaced England's single line of hierarchical control with a more complex structure of federal/state spheres, separation of powers (but without a separate executive or judicial branch) and democratic elections mixed with protected official prerogative. This structure partially, and no doubt self-consciously, paralleled the new national federal structure.

On the other hand, given constitutional disestablishment, the Episcopal organizational scheme existed within a sphere that was, at least conceptually, wholly separate from the state's political power. That separation of spheres was part of the general transformation in thinking which occurred with liberal Madisonian constitutionalism—essentially, the split between public and private, state and civil society. As a supposed private body exercising the private rights of property and religious freedom, the church was theoretically protected *from* political power, and not included *within* it. Rather than being part of a single, all-embracing social/political hierarchy, property and religion had both been severed from the state and reconceived as private spheres confronting a potentially hostile sovereignty, protected only by the mediating structure of the rule of law. That separation of spheres had, at least, been the conceptual justification for Trinity's continued ownership of her property after the Revolution, a Constitutional point that Justice Story later underscored when the Supreme Court invalidated the Virginia legislature's confiscation of Episcopal property in that state.¹⁹¹ While in Trinity's case it had been the complete overlap between Trinity officials and powerful political leadership that had *in fact* protected her property from immediate legislative seizure, *in theory* Trinity's special position stemmed from complete separation.

This separation of church and state, a notion seemingly antithetical to the long Anglican tradition of establishment, was in fact embraced by Episcopalian leaders. During the early nineteenth century continued anti-British feeling often included a suspicion of Episcopalianism, given its supposed monarchical affinity; and the Jacksonian suspicion of established privilege found a natural target in the hierarchical premises of the Episcopal Church order. In the face of this popular hostility, Episcopal

190. See *id.* (discussion of the convention's accomplishments).

191. *Terret v. Taylor*, 13 U.S. (9 Cranch) 43 (1815).

Church leaders began to stress the church's link, not to the English post-Reformation period, but rather to the pure, pre-Constantinian primitive Church of Christ, which had also been isolated in a hostile political environment. As the modern embodiment of this ancient Church, the American Episcopal Church was described as a kind of purified vessel, existing in but not of the world and representing that which was eternal and rooted in ancient form, aloof from transitory political and social issues. Almost sectarian in its supposed separation from the modern polity, the Episcopal Church in America started to view the period of establishment in England as an historical accident. For American Episcopalians, the true Episcopal tradition lay not in the English or colonial experience, but rather in the Church's ever-enduring continuity with the ancient primitive church.¹⁹²

Both within the church and outside it, however, the premise of private, bounded spheres separating church and property from state power became increasingly difficult to maintain during the nineteenth century; so, too, did the federalist episcopal compromise between hierarchical control and new order evangelicalism. As efforts at accommodation, both were inherently unstable and threatened to unravel during the course of the pre-Civil War period. The instability of private rights conceptualization as applied to Trinity became most apparent in repeated conflicts between Trinity and the New York State Legislature, and those conflicts in turn incorporated basic conflicts within the church itself.

C. *The Continuation of Struggle and the Meaning of Private Rights*

Within Episcopalianism, the Protestant tension between hierarchy and the voluntarist thrust of evangelicalism expressed itself as a struggle between "high church" and "low church" positions, a struggle which dominated the history of the church during the whole pre-Civil War period. High Church Episcopalians stressed established church forms, ecclesiastical authority, and the Episcopal link to the early primitive church. It was the high church theologians who tended to emphasize most vehemently the church's separation from political and social concerns. In contrast, low church Episcopalians were suspicious of prescribed forms, emphasizing the primacy of spiritual regeneration and personal religious experience. Also, they were often eager to join interdenominational Bible Societies, composed of groups devoted to encourag-

192. R. MULLIN, *EPISCOPAL VISION/AMERICAN REALITY: HIGH CHURCH THEOLOGY AND SOCIAL THOUGHT IN EVANGELICAL AMERICA* 86-87 (1986).

ing widespread study and discussion of the Bible. These societies were popular during the period, and considered fittingly American because they "democratically" disseminated Bibles throughout the population, yet they were scorned by high churchmen because they dispensed with established Episcopal forms like the Prayer Book. Similarly, those associated with the low church movement were more inclined than high church clergy to share the common antebellum assumption that America represented the coming of a new millennial age, virtually the Kingdom of God on Earth.¹⁹³ This evangelical vision of America's destiny, while too easily transformed into a small-minded moralistic patriotism, found its best and most heightened expression in the abolitionist movement. Inevitably, this millennial vision embraced by low churchmen challenged the delicate high church attempt to retreat into ecclesiology and to isolate the Episcopal Church from the concerns of the modern world. As the low church group steadily gained influence in New York, it also formed a natural alliance with those members of the New York State Legislature who retained a deep suspicion of Trinity's continued wealth and power.

One of the early and most influential of the high churchmen in New York was John Henry Hobart, a rector of Trinity who was later made Bishop of the New York Diocese. His consecration as Assistant Bishop in 1811 (preliminary to his assuming the office of Bishop) formed the background for the first important Trinity dispute of the 19th century calling for legislative intervention. During the first decade of the century, when Hobart was an assistant minister of Trinity, he had already published a number of essays that staked out the high church position. In "Preliminary Instructions Concerning the Church," for example, Hobart stated that the church as an authoritative institution was divinely formed and that the bishops, priests and deacons received their authority from Christ through the Apostles and their successors. Therefore salvation could come only through the established church order; without the church there was nothing but schism and sin.¹⁹⁴ Similarly, in an *Apology for Apostolic Order and Its Advocates* Hobart had restated with particular force the Episcopal opposition to the Calvinist doctrine of predestination,¹⁹⁵ which was also, implicitly, an opposition to the egalitarian implications of the new order formed by grace rather than through law. Hobart's publications, which theologically aligned him with the Tory Bishop Seabury of Connecticut, caused a good deal of controversy, but

193. *Id.* at 56-58.

194. *See* R. ALBRIGHT, *supra* note 186, at 174.

195. *See id.*

also helped gain him prominence, leading to his appointment as Assistant Bishop in the Diocese in 1811.

Cave Jones, a Trinity assistant minister with Hobart, resented Hobart's swift promotion in the Diocese. Jones published a pamphlet opposing the appointment on the basis of Hobart's intolerant and autocratic temperament. Indeed, Hobart was known to be unrelenting in his efforts to dominate and control, so that even a sympathetic historian of the Hobart era has stated that it was difficult to know where Hobart's vision of the distinct role of the church ended and where "personal monomania" began.¹⁹⁶ Jones found support among a number of church members with low church leanings, but was then asked to resign because of the resulting controversy. When Jones refused and continued to attack Hobart, he was censured by the Trinity vestry and suspended from the ministry by Bishop Moore, who had replaced Provoost as acting Bishop of New York. The evangelicals appealed to the retired Bishop Provoost, who had been peacefully studying plants and translating Tasso, but whose resignation had never been officially acknowledged by the House of Bishops. Provoost, a long-time enemy of Seabury, was sympathetic to the evangelicals. He announced he was resuming his prerogatives as Bishop in order to reinstate Jones. A long series of pamphlets ensued discussing the exact reach of Provoost's authority, an issue that was finally settled by compromise when Jones took the dispute to civil court and received monetary damages but not reinstatement.¹⁹⁷

The Cave Jones dispute, which received a good deal of attention in New York due to lingering anti-Episcopalian sentiment, served to forge a link between the low church position and those legislators who were still skeptical of Trinity's exclusive control over valuable Manhattan property. Several new Episcopal congregations had formed in New York, and according to Jones the "anti-old Trinity" spirit was so powerful among them that if these non-Trinitarian Episcopalians were allowed to vote in vestry elections, the high church principles of Hobart would be defeated.¹⁹⁸ Not incidentally, the Trinity vestry would also lose its tight control over the corporation's valuable real estate. Thus Jones' quarrel with Hobart served to call into question the Trinity vestry's authority in general, both over corporate property and over the high church stance of

196. WERTZ, JOHN HENRY HOBART 308 (cited in R. MULLIN, *supra* note 192, at 50 n.59).

197. *See id.* at 175-76 (discussion of the Jones and Hobart controversy).

198. *See* A brief Statement Relative to the late Election of Wardens and Vestrymen in Trinity Church, and in the other Parishes of the Protestant Episcopal Church in the City of New-York (Apr. 1812) (available in the New York Historical Society).

the church, and that vestry authority was a question the legislature was finally forced to address as a legal issue in 1813.

Jones' appeal to non-Trinity Episcopalians was specifically aimed at the congregations of nine Episcopal parishes in New York City which had been formed in addition to Trinity. Some of those churches had received independent charters, but their relation to Trinity corporation was ambiguous. Arguably, by the name given the corporation by the legislature in 1788 and also by the terms of the original land grant from Fletcher, all Episcopalian inhabitants of the city were incorporators of Trinity, entitled to vote in Trinity elections and thereby share in the control of the property. That right was not tested until the period of the Cave Jones dispute, when in 1812 several members of independent Episcopal churches, presumably low churchmen, arrived at Trinity on voting day, claiming that they had a right to vote in the annual election of Trinity wardens and vestrymen. Predictably, their arrival was not greeted with enthusiasm. Trinity officials refused to allow them to vote, insisting that such attempts on the part of "outsiders" to meddle in the business affairs of Trinity "cannot fail to produce strife and litigation, and to foster and keep alive pretensions of the most unreasonable nature and of the most mischievous tendency."¹⁹⁹

Meanwhile, Jones indiscreetly published his quarrels with Trinity in the city newspapers, and his supporters went so far as to advertise a meeting in Mechanic's Hall that would open up the whole question of Trinity's authority to a town meeting forum. This approach was, of course, vigorously attacked by Trinity officers as an alarming invasion of the right of the church to conduct its own (private) affairs by its own ordered procedures, free from public scrutiny. At issue was the protection of the church's rights, and the security of the legal boundary separating religion and property from the threat posed by a "passionate" democratic people. The public meeting thus

set the example of degrading the solemn affairs of the Church, where reason and temper should prevail, to a level with the party politics of town-meetings, where the object principally is to excite passion.²⁰⁰

The importance of protecting rights as against democratic control was given special emphasis by the fact that control of property was at stake, along with the religious autonomy of the church:

199. *Charter of Trinity Church*, *supra* note 69, at 28-29 (Petition of Corporation of Trinity Church) Applying for the Act of 25th January, 1814).

200. A plain Address to *Episcopalians* on the proposed Meeting at *Mechanic-Hall* (Jan.13, 1812) (available in the New York Historical Society).

But I have heard another object avowed by some of the great promoters of this meeting. It is to make an attack upon property—upon the property of a religious society. Pause Episcopalians! When the rights of property come to be discussed at town-meetings, whose property is safe? What religious society, what individual can think his property secure?²⁰¹

Because Jones had taken his case to civil court as well as to the general meeting, he was also accused of allowing essentially legal issues to be presented to the public as if they were issues open to popular determination—a failure to respect the distinction between law and politics, which was a distinction upon which the whole structure of private rights depended:

Take care how you show contempt for the courts of justice, the guardians of your life, liberty, and property. . . . Who ever heard of a man appealing to the civil courts for a redress of injuries, and of his friends calling a town-meeting to redress them? The thing is unprecedented. It is offensive to all order, all law, all justice.²⁰²

Nevertheless, despite their emphasis on Trinity as a private institution, separate from the state and legally protected from popular democratic control, it was difficult for Trinity's high churchmen to conceive of Trinity's role as purely private. Inevitably the officers of the church tended to view their own order and authority as deeply embedded in and representative of public order as a whole, so that at times the rhetoric of private rights was replaced by the old Anglican habit of linking religion to the public realm. This deep ambivalence was as evident in the Cave Jones controversy as was the new appeal to private rights. Thus when Jones, in a letter to the Trinity vestry, invoked the Christian spirit of forgiveness, which he said should have guided the vestry in his case, the official Trinity response was to explain carefully that forgiveness pertained to relations between private individuals, not to public institutions. Because the church was a public body, punishing Jones was analogous to "punishing offenders against the authority, the order, and the peace of civil society." Precepts such as loving one's enemies, by considerations of prudence, justice, and public good, were restricted to private injuries inflicted on individuals in their private capacities. They did not apply to injuries inflicted on people in their public capacities.²⁰³

Thus, punishment was justified in Jones' case because his offense in

201. *Id.*

202. *Id.*

203. See J. H. Hobart, A Statement, Addressed to Episcopalians in the State of New-York, Relative to Some Recent Events in the Protestant Episcopal Church in the Said State (Jan. 7, 1812) (available in the New York Historical Society).

disputing Hobart's appointment was not just an offense against private individuals, but against the entire religious structure, including the church bureaucracy, the congregation, and society as a whole.²⁰⁴ Once again, the high churchmen were conceiving of their authority and the civil order as a single unified whole. However often they invoked the rhetoric of private rights as against the legislature or their own low churchmen, they could never quite surrender their perception of themselves as a public body.

Trinity officials responded to the attempted assertion of non-Trinitarian corporator voting rights not only by ousting Cave Jones and condemning public meetings, but also by immediately petitioning the state legislature, seeking an additional (inevitably "public") conferral of corporate benefit for the sake of consolidating their "private" power. Specifically, they requested that the legislature change the corporate name of Trinity to "The Rector, Church-Wardens, and Vestrymen of Trinity Church, in the City of New-York," rather than the more general "Rector and Inhabitants of the City of New-York in Communion of the Protestant Episcopal Church."²⁰⁵ At stake in the proposed name change was whether the mounting wealth of Trinity would remain under the control of a small, select, basically high church elite who controlled the Trinity vestry or whether that control would be diffused at least to the extent of including other New York City Episcopalians. Trinity had escaped the threat of state seizure of property, but now faced a similar threat of redistribution from within her own church. Moreover, ironically, the legal claim of the "outsiders" was based on precisely the same rights conceptualism which had initially served as justification for Trinity's own continued ownership of the property. Strictly speaking, given the wording of the 1788 confirmation, a right to the property had vested in all New York City Episcopalians. If republicanism meant that all individuals were equally protected in their autonomous enjoyment of property rights, then the rights of the outsiders required protection.

Trinity's petition to the legislature at first received a favorable response in the Senate, but at the same time the petition also stirred up old hostilities, once again directed against her favored position. Trinitarians complained that pamphlets were written to "excite against Trinity

204. See *id.* The same pamphlet addressed the details of the controversy concerning the reach of Provoost's authority.

205. See *Charter of Trinity Church*, *supra* note 69, at 28-33 (Petition of Corporation of Trinity Church, Applying for the Act of 25th January, 1814) (Act of 1814 to alter the name of the Corporation of Trinity Church in New-York, and for other purposes).

Church the prejudices and passions of the community.”²⁰⁶ The history of the arguably flimsy grant title was reviewed, and pamphleteers repeated the call that the legislature pass no law “which will sanction the unjust proceedings of Trinity Church.”²⁰⁷

As a result of that controversy Trinity’s petition was vigorously debated in the assembly, which finally referred it to the Attorney General for an opinion as to whether the proposed name change would “defeat or vary any existing or vested rights.” The report of the Attorney General was favorable to Trinity,²⁰⁸ after which the “Act to alter the name of the Corporation of Trinity Church in New-York” passed the assembly; but when the bill was delivered back to the Senate and sent to the Council of Revision (a quasi-judicial body with veto power in the early state legislature) objections were entered by Chancellor Lansing and half of the Council members, who concluded that whether or not the bill divested existing incorporators of their rights should be determined judicially.²⁰⁹

At this point the proceeding apparently reached an impasse. The challenge Trinity faced was to satisfy the Council that the bill was consistent with the prevailing legal imagery of individual rights as protected from state interference. A leading New York jurist and Trinity vestryman, Judge Robert Troup, rose to the challenge. He presented the Council with what was later described as the decisive argument in Trinity’s favor. Troup’s first point started as a technical one drawn from English ecclesiastical law, but was then transformed into one that drew upon the imagery of protected autonomy and vigorous self-reliance. Troup carefully explained that by definition a parishioner can belong to only one parish; furthermore, the formation of each new ecclesiastical corporation in New York City carried with it the formation of a new parish, and inevitably reduced the size of the original parish to which the Act of 1788 extended charter privileges and to which the Trinity property had originally been granted: “[T]he extent of the original parish of Trinity Church is reduced in proportion to the mass of the parishes attached to the new

206. *The Charter of the Corporation of Trinity Church Defended Against the Attacks of a Late Pamphlet Reprinted from the Original, Published A.D.1813*, at 18 (New York 1846) [hereinafter *Defense Against Attacks*], reprinted in TRINITY CHURCH PAMPHLETS (available from Cornell University Library, Ithaca, New York).

207. A. Troup, *Remarks on Trinity Church Bill, Before the Council of Revision* 67 (New York 1813) (containing Memorial of Thomas Farmer and Others in opposition to the bill) [hereinafter *Remarks on Church Bill*], reprinted in 1 TRINITY CHURCH PAMPHLETS (available from Cornell University Library, Ithaca, New York).

208. See *id.* at 68-69 (Report of the Attorney General, March 26, 1813).

209. See *Charter of Trinity Church*, *supra* note 69, at 34-35 (Chancellor Lansing’s Objections, and the vote of the Council of Revision thereon).

corporations.”²¹⁰ The thrust of the argument was to insist that each parish be conceived as an independent entity with its own set of protected rights. There was to be no sloppy overlapping of boundaries, which would be the result if a churchgoer could claim membership in another ecclesiastical corporation while still voting in the Trinity parish elections.

This need for a clear definition of boundaries as between discrete individual parties was especially acute, Troup argued, because Trinity intended to endow some of the new parishes with property from the estate. With the clarification that would come with the proposed name change, title passing by such conveyances would clearly be passing from one autonomous institution to another, not clouded by the possibility that the grantee was really part of the grantor. In turn, by strengthening the new parishes through land grants, Trinity would in fact be promoting the republican ideal of autonomous self-reliance. Thus “ratifying the conveyances of real estate executed by the Vestry to the new churches” would “allay the fears of those honest republicans who look upon large estates as nurseries of sentiments hostile to liberty.”²¹¹ In other words, instead of hampering independence and invading spheres of protected rights, Trinity’s petition was in fact designed to promote vigorous republican self-determination.

Despite that promise, Troup did not deny that the proposed name change would affect the rights of existing non-Trinity Episcopalians. Troup evaded the implications of that fact by drawing a careful distinction between property rights and voting rights. Although the legislature could not divest persons of their private property, Troup argued, the legislature could exercise “its discretion in moulding the elective franchise of corporations into new shapes.”²¹² While private property was a “subject too sacred to be touched,” the elective franchise of corporators was a “subject fit to be carefully handled.”²¹³ Then, switching from an emphasis on self-reliance, Troup employed the paternalistic imagery of trusteeship, also popular in legal literature at the time. He claimed that the real effect of the bill would not be to divest non-Trinity Episcopalians of their property, but rather to make Trinity officials trustees of the property, while at the same time recognizing that non-Trinity as well as Trinity Episcopalians were beneficiaries of the trust. In that sense, while non-Trinitarians were indeed deprived of voting rights, they still retained

210. *Remarks on Church Bill, supra* note 207, at 18 (emphasis in original).

211. *Id.* at 37.

212. *Id.* at 29.

213. *Id.*

their property rights: “[I]f the members of the new corporations actually have an interest in the estate of the corporation of Trinity Church, they can only be interested as *cestui que* trusts. . . . And the *cestui que* trust has no share in the choice of the trustee appointed to dispose of the trust estate.”²¹⁴

Furthermore, Troup promised, the legislature could be confident that Trinity officials would behave as respectable and benevolent trustees: “Will it be said that Trinity Church has no claims on the patronage of government? . . . Is she not connected with a very ancient, numerous, and respectable congregation? Has she not freely dispensed her wealth in building churches, supporting the clergy, and advancing literature in different parts of the State?”²¹⁵

Thus the paternalistic imagery of trustee/beneficiary, although in seeming contradiction to Troup’s republican imagery of autonomous self-reliance, served as a convenient dodge to the question of vested property rights. Like all good lawyers, Troup knew that “rights” is a concept capable of infinite redefinition. The imagery was also part of a broader social theme, however. Several times the judge referred to the “unexampled increase of the population of the city of New-York,”²¹⁶ which he described as an “unexpected and portentous crisis.”²¹⁷ This crisis was portrayed as a potential source of discord for Trinity, something that would “distract her peace” and “endanger her property.”²¹⁸ The underlying fear was that if the Trinity franchise were extended in proportion to the increase in population, then the affairs of Trinity would no longer rest in trustworthy and respectable hands. In a growing city, broad democratic control of wealth was too risky. New Episcopalians might “out of their own members”²¹⁹ elect “men perhaps averse to its (Trinity’s) views and interests, and who may perversely appoint or continue obnoxious ministers, and injuriously manage or sell its estate.”²²⁰ Indeed, the whole elective process itself, if extended beyond the select Trinity membership, suggested disorderly and distasteful scenes: “[T]he strenuous efforts of the contending parties, to obtain the votes of their adherents, would be apt to beget scenes of confusion and tumult, scandalous to the Christian

214. *Id.* at 28-29.

215. *Id.* at 36.

216. *Id.* at 35.

217. *Id.*

218. *Id.*

219. *Id.* at 26.

220. *Id.*

name, and threatening to the public order."²²¹

Another Trinity writer drew more explicitly the analogy implicit in Judge Troup's argument. Trinity was not alone in controlling great wealth while at the same time confronting a growing population. If democracy were not contained, and if the control of wealth by select "trustees" were allowed to be open to dispute, there might be no end to the resulting upheaval. Legislative protection of Trinity was, in microcosmic form, protection of the whole established social order:

Let the friends of social order and of the rights of property recollect, that the invectives by which it is sought to excite unfounded jealousies of the wealth and influence of Trinity Church, may be employed, . . . against the wealth and influence of other public bodies, and even of individuals.²²²

It was in that broad sense that granting Trinity's petition represented the protection of property rights, not, as the outsiders claimed, their destruction. Thus, when Trinity begged "in the eloquent language of distress,"²²³ as Troup claimed, that the legislature "establish peace on a firm foundation"²²⁴ by limiting the Trinity franchise, she was finally treated with sympathy by the Council. Hers was a distress presumably feared by others as well, and the "Act to alter the name of the Corporation of Trinity Church" was passed in January of 1814. Control of church property remained safely in the trusteeship of a tight inner circle of Trinity wardens and vestrymen.

D. *The Ongoing Dilemma of Public and Private, Law and Morality*

The social respectability of the Trinity "trustees" remained unimpeached throughout the nineteenth century. Over one-half of those who had been officers in the management of Trinity affairs by 1850 had also been either appointed or elected officials in state or national government, and most others were wealthy merchants or professionals.²²⁵ These connections were a particular source of pride to Trinity spokesmen:

Who that is at all familiar with our local history . . . can look back upon the names of these respected and venerated men, without a feeling of reverence for that ancient Corporation . . . Who that now belongs to this Parish . . . can help feeling some honest pride in being a member of a body which

221. *Id.* at 36.

222. *Defense Against Attacks*, *supra* note 206, at 20.

223. *Rémarks on Church Bill*, *supra* note 207, at 35.

224. *Id.* at 36.

225. For a complete list, with positions indicated, see W. Berrian, *Facts Against Fancy; or, a True and Just View of Trinity Church* 57-73 (New York 1855), reprinted in 2 TRINITY CHURCH PAMPHLETS (available from Cornell University Library, Ithaca, New York).

associates him with those who in past generations adorned the age in which they lived, and with those who in the present day are held in honour and respect?²²⁶

Not incidentally, many of the names associated with Trinity were also associated with Columbia College (the former King's College), which after the Revolution had been chartered by the state as officially dissociated from Episcopalianism, but which still had strong connections with the Church. Election to the Columbia board of trustees, like election to the Trinity vestry, was a high social honor. By 1853 the college board of twenty-four members contained eleven lawyers, six clergymen, and three doctors.²²⁷ Of those, nineteen were Episcopalians, and three were members of the Dutch Reformed Church; only one was Presbyterian and one Catholic.²²⁸

Although the social and political prominence of Trinity officials was a source of satisfaction to those inside the church, to outsiders it often suggested the decidedly un-republican continuation of colonial economic and political privilege.²²⁹ Thus, when the title to Trinity's land was specifically excluded from an 1848 legislative inquiry into the titles of other manors from the colonial period, it was charged that the legislature was under the influence of the vestrymen of Trinity Church. That suspicion was by no means lessened when the Trinity rector dared to boast of his church's "political weight."²³⁰ Trinity was called a "monopoly" and a "political machine," and one pamphleteer commented on "how little is to be trusted to mere authority of great names, when a wily corporation is wielding a vast amount of moneyed, religious, and political influence."²³¹

Despite such protests, after the Act of 1814 Trinity was once again secure in the ownership of her property and in the satisfaction that its control was safely in the hands of a small and powerful elite of wealth and privilege. But this security had come at a price, one which would be paid in new tensions, new disputes, and subsequent investigations into the legitimacy of Trinity's power. That price had been Trinity's resort to

226. *Id.* at 73.

227. See 2 THE DIARY OF GEORGE TEMPLETON STRONG 137 n.19 (A. Nevins & M. Thomas eds. 1974).

228. *Id.*

229. See C. Roosevelt, *The Political and Legal History of the Trinity Church Monopoly* (New York 1848), reprinted in 1 TRINITY CHURCH PAMPHLETS (available from Cornell University Library, Ithaca, New York).

230. *Id.* at 5.

231. *Id.* at 11.

an emergent, positivistic, legal culture. However ambivalently, she had defended her holdings by asserting her privatism, her fungible status as one of many private holders of property rights. Despite Hobart's retreat into an ecclesiology which adopted the strict separation of church and state, however, the Anglican church had always drawn its power from its role of moral leadership in a stable, ordered, hierarchical structure. As a powerful religious institution rooted in that hierarchical tradition, Trinity suddenly found herself in a more troubling world where her ownership was private and necessarily amoral, and religion itself was becoming no more than an individualized, subjectively chosen private right. In her dealings with the outside world, Trinity had too much power to succeed for long in portraying herself as just another autonomous individual who happened to have a lot of land. The continuing question of legitimacy required the adoption of a new, more modern role as promoter of *public* morality, but without recourse to the defunct claims of anachronistic hierarchy.

Meanwhile, as was evident in the Jones episode, within the Church the logic of subjectivity had actually led to a religious individualism that was anti-hierarchical and more consistent with radical, evangelical protestantism than with the ordered structure of the Episcopal Church. It was not at all certain that the church could successfully contain these evangelical forces, as had the Dutch church during the Great Awakening, especially when the abolitionist spirit gained force during the pre-Civil War period. This dilemma appeared and reappeared as the high church/low church controversy, and was exacerbated when some Trinity members tried to take seriously, if only with respect to specific issues, the necessarily moral role of the church. In so doing they challenged the politically conservative elite in control of the institution.

Trinity, as usual, emerged victorious from these problems, and in the process actually discovered for herself a new public and social role appropriate to a secular, liberal world. The story is a complicated one, closely linked to the dilemmas within a changing legal culture, for jurists at the time were undergoing their own searching reexamination of the relationship between law and morality, public and private, natural law and common law. Those issues were directly linked to the way Episcopalians conceived of their church and its relation to the new American culture. Therefore, a quick discussion of the pre-Civil War legal culture as related to the Church will precede a more specific account of the renewed political struggles of the 1840s and 50s, when Trinity's own internal religious conflicts once again led to legislative intervention.

Throughout the nineteenth century prominent lawyers were consistently numbered among the "great names" that made up New York City's Episcopalian elite, and most quite consciously associated their professional dedication to stability and order with the church's similar respect for established authority. It is therefore not surprising that the favorite quotation in the legal rhetoric of the early nineteenth century was taken directly from the great Anglican theologian Hooker: "Of law there can no less be acknowledged than that her seat is the bosom of God; her voice, the harmony of the world."²³² The relation between law and Episcopalianism was a complex one, however, reflecting not a single, unitary vision, but rather tensions within both early American legal theory and the church's conception of itself in the new republic.

The new conceptual gap between law and morality created an obvious source of intellectual tension for Episcopalian lawyers, as did the parallel Hobartian emphasis on a politically neutral, almost amoral ecclesiology. The Hooker quotation lawyers so fondly repeated during the early nineteenth century expressed the assumptions of a hierarchical, epistemological and legal (as well as social and political) model: law contained a substantive truth which descended from God and infused an ordered moral/social structure. Under the new constitutional model of rights as protected from sovereignty, however, law was to be perceived not as embodying objective moral truth, but rather as an essentially amoral barrier protecting a religious/moral realm of pure subjectivity. While that Constitutional model did borrow from the Anglicans the always tenuous conception of redemption as a purely private experience without social significance—thus denying the most radical implications of Protestantism—it also threatened both to rob law of its old moral force and to rob the church of its old role as protector of the public good. Put briefly, the old union of virtue and authority had been severed,²³³ and the new conception of law as amoral boundary seemed to render trivial both religious and legal obligations. In that sense the familiar old Hooker quotation was an anachronistic relic from the past.

However anachronistically, many lawyers of the early nineteenth century still linked their professionalism with their Episcopalianism. This

232. There are countless examples of its use, found in the Cornell Law School Library's Collection of Legal Addresses (uncatalogued under a single title). See, e.g., S. Greenleaf, A Discourse Pronounced at the Inauguration as Royall Professor of Law in Harvard University 11 (Aug. 26, 1834).

233. See Katz, *Studies in Boundry Theory: Three Essays in Adjudication and Politics*, 28 BUFFALO L. REV. 383 (1979) (explores the relationship between continuity of the social order and modes of political representation).

was so not just at the level of grand moral rhetoric, as in the repeated invocation of Hooker, but as part of the daily reality of professional life. A good example from within the Trinity fold can be found in the life of the talented lawyer George Templeton Strong. Not one of the great Episcopalian jurists of his day, like Jay, Troup, or Hamilton, he was probably more typical than they of the small elite of well educated and socially respectable practitioners in New York City.

Strong attended Columbia College, where he became a dedicated Episcopalian under the influence of a professor who had written a biography of Hobart, and where he also acquired a strong proficiency in classical studies as befitting a gentleman of the time. After graduating from Columbia, Strong joined his father's successful legal practice. He tended to prefer the general theoretical questions of law to the lucrative but tedious probate and real estate cases which took up most of his professional time. Part of the challenge of practice was to find broad moral significance in the endless details of legal work.²³⁴ Despite a busy work schedule Strong was also a trustee of Columbia College and a vestryman at Trinity, and as time went on he was tempted to devote much of his time and energy to college and church. After the Civil War Strong was depressed by the corruption which he thought had come to characterize law and public life, and he finally accepted John Jacob Astor's invitation, issued on behalf of Trinity, to become Trinity Corporation's full-time controller.²³⁵

All of Strong's impulses went toward maintaining a strong connection between law and morality. Thus he emphasized the good moral character which he found in his family and close associates, and which he thought should typify the legal profession in general. For example, Strong deplored the modern tendency to view legal and financial obligations as without moral weight, a tendency which he thought was debasing the new republic:

It dissolves out all the sterling integrity there may be in the great mass of the people, and leaves the dross and dirt behind. The practical question for the merchant and the financier becomes, 'For how much is my credit good in Wall Street'—*not* 'Shall I be able to keep my promise and pay this debt I'm contracting? . . . The sanctity and religious force of a promise to pay money or do anything else is lost sight of.'²³⁶

234. See Nevins, *Preface* to 1 THE DIARY OF GEORGE TEMPLETON STRONG at xxiii-xxiv (A. Nevins & M. Thomas eds. 1974).

235. *Id.* at xxxvi-xxxviii.

236. 2 THE DIARY OF GEORGE TEMPLETON STRONG, *supra* note 227, at 48-49. I have focused on Strong because of his close connection to Trinity, but his views were typical. Lawyers conceived

Despite that lingering desire for a unity of legal and religious obligation, Strong at the same time thoroughly accepted, however paradoxically, the new constitutional (and Hobartian) position that religion was a private civil right to be carefully separated from state action. This was apparent when in 1854 he championed the appointment of Walcott Gibbs to a professorship at Columbia College despite the fact that Gibbs was a Unitarian. According to the charter that the state had granted the college, Columbia positions were to be awarded without religious qualifications; in fact, however, the school remained predominantly Episcopalian. The "fossil party" (as Strong termed it) of staunch Episcopalians on Columbia's board defeated Gibbs' appointment while frankly admitting that the vote would have been favorable had Gibbs been a member of Trinity rather than an espoused Unitarian.²³⁷

Strong was outraged, viewing the vote as a clear violation of Gibbs' rights and of the college's legally binding agreement with the state. He refused to accept the board's strained distinction between a vote based on religion and an explicit religious qualification, and he described violation of the no-qualification rule as based on the view that "it is morally right to do moral wrong for the maintenance of truth or the repression of error,"²³⁸ so that the fossil party found itself "guilty of dishonesty and immorality for the sake of religious truth, truth which demands many sacrifices but condemns *that*."²³⁹ Thus, despite Strong's own religious convictions, he now attached the highest morality, not to the protection of substantive religious truth in both church and state, but rather to the (amoral) legal protection afforded religion as a mere subjective right. It was the pure liberal position, which would have been incomprehensible to Vesey and was still alien to many of Strong's own Episcopalian associates.

Strong's greatest quarrel with Episcopalianism's tendency to intrude morality into law related not to the hierarchical views of the fossils but rather to the egalitarian claims of the small but growing abolitionist wing

of their role as a kind of moral trusteeship for the virtue of the republic, with their own unimpeachable characters as the embodiment of the same ethical principles which informed the law. As such, lawyers were described as "priests at the temple of justice." See, e.g., J. Story, *A Discourse Pronounced Upon the Inauguration of the Author, as Dane Professor of Law in Harvard University* (Aug. 25, 1829) (available from the Cornell Law School Library).

237. The statement was specifically from Jonathan Wainwright, Provisional Bishop of New York, and Benjamin Haight, Assistant Minister of Trinity, both conservative Columbia trustees. See 2 THE DIARY OF GEORGE TEMPLETON STRONG, *supra* note 227, at 147.

238. *Id.* at 154.

239. *Id.* at 155.

of the Episcopal Church in New York City. As suggested above, one danger of Anglicanism's traditional invocation of morality to justify its ecclesiastical hierarchy lies in the fact that some members are bound to take those moral claims with atypical seriousness, and in fact use them to discredit the very hierarchy they were once used to justify. That dialectic, which has always been part of the long history of Christianity, emerged with some intensity within the abolitionist movement. Closely associated with the Second Great Awakening then sweeping the country, especially in rural areas,²⁴⁰ the abolitionist movement also attracted some prominent Trinity members. For example, both William and John Jay, son and grandson, respectively, of the patrician first Chief Justice, were active, dedicated abolitionists.

Abolitionism was peculiarly distasteful to American high church clerics, and to lay members, like Strong, who shared the high church perspective. In the case of Trinity, one might cynically point to the fact that much of New York City's commercial wealth was based on the cotton trade, yet there was also a general Episcopal reluctance to allow the political and moral agitations of the moment to disrupt the harmony of a church order that was conceived to rest upon the apostolic ordering of past ages. The splitting of the Presbyterian church over the question of slavery in 1837 no doubt contributed to the fear of schism, but a deeper fear was the loss of a distinct Episcopal mission, rooted in the mythology of the pure church and the ancient witness—neither of which offered any particular evidence that slavery was unacceptable. As against that primitive ecclesiastical authority, abolitionism seemed one more instance of misguided evangelical millennialism, a false identification of modern crusading reformism and America's particular destiny with what should be the timelessness of the ancient church.²⁴¹ Episcopal anti-abolitionist spirit ran so high that Peter Williams, rector of the only black Episcopal congregation in New York City, was forced by rioters, as well as by request from the Bishop, to resign his membership in the Anti-Slavery So-

240. See, e.g., W. CROSS, *BURNED OVER DISTRICT* (1950) (discusses the religious character of Western New York during the first half of the 19th century); W. McLOUGHLIN, *MODERN REVIVALISM: CHARLES GRANDISON FINNEY TO BILLY GRAHAM* (1959) (discusses and explains religious revivalism in the United States since 1825); Davis, *Expanding the Republic 1820-1860*, in *THE GREAT REPUBLIC* 425, 504-12 (1977) (religious revivalism as a powerful organizing and nationalizing force). Little research seems to have been done on the direct effect of the Second Great Awakening on urban areas, especially New York City, although the indirect effect appears evident in the abolitionist movement and the surprising strength of the evangelicals even in the Episcopal Church in New York. See R. ALBRIGHT, *supra* note 186, at 171).

241. R. MULLIN, *supra* note 192, at 124-26, 200-03.

ciety.²⁴² This was interpreted as a triumph of church order over misplaced individualism.

For Strong, the correctness of anti-abolitionism derived not just from the high church emphasis on ecclesiology, but also the distinction, crucial to the emerging legal culture, between law and morality. For example, at one point in his diary Strong noted an article in Horace Greeley's *Tribune* that criticized Daniel Webster's support for the Fugitive Slave Law, which required federal agents to return slaves to their owners when slaves escaped to free states, and also provided virtually no procedural safeguards. The *Tribune* had cited Daniel Webster's invocation of the Hooker quotation and had asked, rhetorically, "whether he (Webster) can in his heart believe that this Fugitive Act is within the meaning of that grand eulogium." Strong responded disdainfully:

[T]he school of the *Tribune* can see no justice or right in laws that recognize or enforce inequalities in men. Lucky for the universe it is that Greely cannot raise his voice with the smallest prospect of success in any great comprehensive scheme for the reformation of its numerous inequalities and the amelioration of its thousand inequitable diversities of condition and other crying abuses that must strike his philosophic eye every time he opens it
²⁴³

Similarly, Strong described John Jay's²⁴⁴ abolitionist activities with sarcasm (Jay and friends were "volunteer champions of the blackey"), and hoped that the judge in one of Jay's cases would steadfastly dismiss Jay's moralistic anti-slavery arguments and instead "do his duty, . . . and administer the law as he found it written, whatever his notions might be of natural equity."²⁴⁵

In another instance Strong explicitly described the abolitionism of the Jays as a threat to property rights generally, so that only a strict separation between law and morality could provide sufficient protection against the (moralistic) impulse toward redistribution. He observed:

The Northern Nullifiers of the Fugitive Slave Law are opening a crevasse for anarchy. They denounce and repudiate and resist the law because it enforces the rights of the owner in a kind of property which they consider it sinful to possess. Twenty years hence . . . there will be an equally respecta-

242. *Id.*

243. 2 THE DIARY OF GEORGE TEMPLETON STRONG, *supra* note 227, at 31-32.

244. This was the grandson of the Chief Justice and a graduate of Columbia College (1836). He had become head of the New York Young Men's Anti-Slavery Society and served as counsel for fugitive slaves. *See id.* at 31 n.17. He also forced the Episcopal Convention to accept representation from a black congregation in 1853, after a seven-year fight. *See id.* at 131 & n.13. William Jay, his father, was also a strong abolitionist. *See id.* at 89 n.6.

245. *Id.* at 31.

ble minority to maintain that the possession of superfluous real estate and the ownership of an excess of chattels is a sin and a crime and an injustice and a fraud upon all our brethren who have less than what they regard as enough of either. . . we need in these days to be reminded of the truism that if people don't obey laws because they are laws, anarchy can only be warded off by despotism.²⁴⁶

On the other hand, as if to underscore the intractability of the theoretical dilemma raised by the positivism of legal rights, in the same entry Strong admitted that when law was conceived as wholly distinct from morality, it in fact offered no real ethical claim to obedience:

If a state is a mere aggregation of units like sand on the seashore, without a common life and growth and unity . . . there is no sanctity or virtue in the word Law that can entitle any Act of Congress, or of any other law-making power, to one particle of respect when the conscience, judgment or private opinion of any man tells him it is unjust or inequitable. . . .²⁴⁷

For many Episcopalians, eventually including even Strong, the legal and religious sanction given to slavery, based both on the Constitution and ancient Biblical authority, created a crisis of conscience and an ultimate refusal to respect the strict line of separation that had been drawn to exclude morality from both church and law. As one theologian framed the issue, "[S]lavery is *per se* either morally wrong or morally right: if morally wrong it must and ought to fall, and the Constitution and the Bible and all else that protects it deserve to be buried with it in a common grave. . . ."²⁴⁸ While Strong never went quite so far as to speak of burying the Constitution or the Bible, after the firing on Fort Sumter he strongly supported the Union and as a vestryman at Trinity he insisted that a Union flag be flown from the great gothic church tower. The careful Hobartian distinction between church and state had started to unravel, as is evident in Strong's observation on the flag:

[T]he ideas of Church and State, Religion and Politics, have been practically separated so long that people are specially delighted with any manifestation of the Church's sympathy with the state. . . . This flag was a symbol of the truth that the Church is no esoteric organization, no private soul saving society; that it has a position to take in every great public national crisis, and that its position is important.²⁴⁹

246. *Id.* at 24-25.

247. *Id.* at 25.

248. R. MULLIN, *supra* note 192, at 208 (quoting letter from Samuel Seabury to Alonzo Potter (March 14, 1864)).

249. A. NEVINS & M. THOMAS, *THE DIARY OF GEORGE TEMPLETON STRONG: 1835-1875*, 126 (Macmillan ed. 1952) (quoted in R. MULLIN, *supra* note 192, at 202).

The separation between law and morality was closely linked to a second preoccupation of early 19th century lawyers—the seeming conflict between natural law theory and the common law tradition. For Episcopalians, that conflict was also linked to the high church/low church controversy. The Hooker quotation of which lawyers were so fond was essentially a claim about the universality of natural law as an expression of the natural reason God bestowed upon human beings. Traditionally, natural reason had been represented by institutions associated with Crown prerogative. In England those institutions had included the king and those courts that were conceived as a direct extension of the king's own justice—in particular, the courts of Chancery, Star Chamber, and High Commission. Since their legitimacy was rooted in conceptions of natural justice, those courts were both theoretically and in fact closely associated with religious authority, and even after the Reformation drew on canon law and civil law rather than English common law.

In contrast, according to legal mythology, the common law represented not Crown authority, but the customs of the English people themselves. Those customs were sanctioned by the people over time (existing from “time immemorial”) rather than by natural reason. In modern form they represented a highly particularized set of rules, replete with procedural technicality, in contrast to the general and universal substantive principles of natural law. Common law lawyers and the English parliament had joined to oppose the authority of the Crown's prerogative courts, which were described as being arbitrary because they were unconstrained by fixed rules. Puritans joined that opposition, associating prerogative courts with the oppressive quashing of religious dissidence.²⁵⁰

By the end of the nineteenth century, American jurists had finally concluded that the rights guaranteed and positivized by the Constitution were rooted in natural law and at the same time contained within the common law tradition, thereby closing a conceptual gap that had lasted hundreds of years.²⁵¹ Before reaching that happy conclusion, however,

250. This is a brief and over-simplified summary of a complex history. See W. HOLDSWORTH, *A HISTORY OF ENGLISH LAW* 605-10 (1966); R. USHER, *THE RECONSTRUCTION OF THE ENGLISH CHURCH* 230-72 (1910); Maguire, *Attack of the Common Lawyers on the Oath Ex Officio as Administered in the Ecclesiastical Courts in England*, in *ESSAYS IN HONOR OF C. H. MCILWAIN* 199 (1936).

For further examples of the conflict between the institutional church and the common law, see *Prohibitions Del Roy*, 77 *ENG. REP.* 1342 (1607); Speech by James I to Parliament (Mar. 21, 1609), reprinted in *HARVARD POLITICAL CLASSICS: THE POLITICAL WORKS OF JAMES I* at 306 (McIlwain ed. 1918); Speech by James I in the Star Chamber (June 20, 1916), reprinted in *id.* at 326; Usher, *James I and Sir Edmund Coke*, 18 *ENG. HIST. REV.* 664 (1903).

251. For this process described in detail, see D. Kennedy, *The Rise and Fall of Classical Legal*

American jurists devoted an extraordinary amount of legal thought to the common law/natural law distinction. Some claimed that the best of American law was borrowed from the civil and natural law tradition of reasonableness (so that our most important legal principles "wear a Roman toga"),²⁵² unhampered by the quirky and archaic forms of the common law. Others instead extolled the common law for its supposedly more democratic origins in custom and for its history of being invoked as a restraint to the arbitrary exercise of royal and judicial power.²⁵³

That debate became a part of the high church/low church controversy since the high church appeal to the prerogative authority of bishops, including their alleged authority to stamp out dissidents, seemed to replicate the authority exercised by judges in the English prerogative and ecclesiastical courts. That comparison leapt to mind with special ease during Hobart's term as bishop, since Hobart was known for his intolerant attempts to quash the more evangelical ministers in his diocese. For example, Hobart attacked Pennsylvanian Episcopal ministers for participating in interdenominational worship groups that relied on the Bible and extemporaneous prayer without church liturgy. When he went so far as to refuse to seat a low church delegate from Pennsylvania at the General Convention, one pamphleteer linked Hobart's high churchism, (with its "zeal for ceremony and the external beauty of the church") with the belief in the divine right of kings, the civil law tradition, the Court of Star Chamber, passive obedience, and "all the other notions so delightful to prerogative."²⁵⁴ The pamphleteer described the trial of Dr. Alexander Leighton at the Court of High Commission, who was charged with publishing a book critical of church hierarchy. Leighton was set on a pillory

Thought, 1850-1940 (1975) (unpublished manuscript available from the State University of New York at Buffalo Law School Library).

252. That phrase was actually from an 1890 speech when the whole debate was still going on. See Hon. W. MacFarland, *The Sources of Our Jurisprudence, An Address Delivered Before the School of Law of Cornell University 13* (June 16, 1890) (available from the Cornell Law School Library).

For examples from the pre-Civil War period that discuss the civil law tradition of reasonableness and its Roman origins, see, e.g., S. Greenleaf, *supra* note 232; J. Richardson, *An Address Delivered Before the Members of the Norfolk Bar at Their Request* (Feb. 25, 1837) (available from the Cornell Law School Library); H. Warner, *A Discourse on Legal Science, Before the Corporation of the New-York Law Institute, at Their Anniversary* (May 1832) (available from the Cornell Law School Library); *The Civil Law*, 2 AM. JURIST 39 (1829).

253. See, e.g., Hon. E. Washburn, *Address at the Social Festival of the Bar of Worcester County, Massachusetts* (Feb. 7, 1856) (available from the Cornell University Law School Library).

254. See Rev. B. Allen, *Second Letter to the Right Reverend John Henry Hobart, D. D. Bishop of the Protestant Episcopal Church in the Diocese of New York* (1828) (available in the New York Historical Society).

at Westminster; he also had one ear removed, and his nose slit, and he was branded with a double "SS" for "sower of sedition." Hobart was rhetorically reminded that he could no longer wield the power of Laud. Here in America Hobart could command no pillory, so the ears of critics were safe.²⁵⁵

By contrast, the common law was described as more suited to the new republic, which had repudiated the tradition of arbitrary power, whether that power was royal or judicial. In turn the common law was also described as consistent with low church principles. Thus, for example, the great common law jurists in England, such as Coke, Selden, and Sir Matthew Hale were all described as low churchmen. Indeed, America itself was said to be "founded" by low churchmen. Common law, low church principles, and democracy were all related notions.²⁵⁶

Thus Episcopalians—whether high church or low church—tended almost as a matter of course to link dilemmas concerning the church's conceptions of itself to dilemmas about the meaning of law and republicanism in general. That linkage is hardly surprising given the church's history as an essentially public body, with close ties to political authority. Nevertheless, the continuing reality of those ties also served, ironically, as a constant challenge to the single most important legal construct of the period—the boundary separating public power from private right. Despite Trinity's pressing need to redefine itself after the Revolution as a purely private body, complete redefinition proved an elusive goal which was abandoned entirely even by Strong with the coming of the Civil War.

Success was further hindered by fierce splits within the church itself; these divisions intensified during the second quarter of the nineteenth century. While intensification may have been inevitable given the ultimate irreconcilability of the high church and evangelical positions, on abolitionism as well as on religious grounds, conflict was, at the very least, exacerbated by the Oxford Tractarian Movement, an Anglican theological movement embraced by many high churchmen in America. In turn, that renewed theological conflict created the context for Trinity's greatest pre-Civil War confrontation with the state legislature, during which she was finally forced to abandon her image of pure private right holder.

255. *See id.*

256. *See id.*

E. *High Church, Low Church, Property, and Immigration*

The Oxford Movement,²⁵⁷ or Tractarianism, derived from a series of discussions called "The Tracts for the Times," which were based upon positions advocated by Anglican theologians at Oxford. The best known author of the Tracts was John Newman, who had apparently been influenced by Bishop Hobart of Trinity during a Hobart visit to England. The Tracts, published in the 1830s and 40s, emphasized the apostolic succession as the basis of church authority and the vital role of the church's historic traditions in the interpretation of scripture. They thereby explicitly denied the Bible's self-sufficiency as a statement of Christianity. Also, both implicitly and explicitly, the Tracts supported the role of good works in achieving salvation.

John Newman's beliefs led him to a crisis in faith which resulted in his conversion to Catholicism. Eventually the Tracts were roundly discredited in England as contrary to Protestantism and rejected by the Anglican church with little ensuing controversy. In America, however, the Tracts were welcomed by high churchmen as an impressive refutation of evangelicalism, but were denounced by low churchmen as sinister Romanism. The resulting debate was so intense that Bishop Stewart of Quebec said he heard more about the Tracts in three days in New York than he had heard in London in a year.²⁵⁸

It has been noted that the Tracts were more important as a symbol for the American clergy than as a real source of ideas. While Trinity opinion was favorable to the Tracts, even William Berrian, rector of the church, admitted to reading rarely from the Tracts themselves. An American edition of E.B. Pusey's "Letter to the . . . Lord Bishop of Oxford," which summarized the Tractarian position, was probably read more often, but the key point for high churchmen was that the Tracts symbolized an appeal to the primitive church, and expressed a pious reverence for that which the church alone possessed, such as the liturgy and the historic ministry.²⁵⁹

Even lay parishioners felt obliged to take a stand on the Tracts. Strong, for example, read them and was favorably impressed,²⁶⁰ while

257. The following account is based largely upon R. ALBRIGHT, *supra* note 186, at 226-51 (the chapter is entitled "The Oxford Movement and Party Spirit").

258. *See id.* at 230.

259. R. MULLIN, *supra* note 191, at 134.

260. In fact, he headed his list of "necessary attractions" in any prospective wife, that she admire the Oxford Tracts. *See* 1 THE DIARY OF GEORGE TEMPLETON STRONG 179 (A. Nevins & M. Thomas eds. 1974).

reformers like William Jay and even a number of moderates became increasingly antagonistic to high church principles. Low church antagonism was so vehement that Bishop Benjamin Onderdonk of New York, a Columbia trustee closely associated with Hobart, was suspended from Diocesan office, ostensibly because of irregular conduct with women,²⁶¹ but also quite probably because of fierce low church opposition to his Tractarian sympathies. His brother, Henry Onderdonk, Bishop of Pennsylvania, was similarly removed from office. In his case as well, the stated reason for removal was drinking and indecorous behavior toward women, but the more serious crime may have been Tractarianism.²⁶²

After a thorough-going investigation into the General Theological Seminary in New York, conducted for the sake of rooting out any Tractarianism that bordered on Catholicism, the General Convention of 1844 spent four days debating the Tracts and their influence. The challenge, of course, was to maintain a middle position that would contain within the fold high churchmen (a few of whom had already converted to Catholicism) without so eroding the basic protestant premises of the church as to drive out the evangelicals. The Convention's intent was to be neither Romanist on the one hand, nor an enemy of the Protestant tradition of the Episcopal Church on the other.²⁶³ The balance was a difficult one to achieve and conflict continued. For example, when the third, and present, Trinity Church, with its 275 foot Gothic spire, was consecrated on Ascension Day, May 21, 1846, there was a bitter dispute over the wearing of surplice and scarf, indicia of excessive high churchmanship, and nine Episcopal clergymen of the diocese refused to attend. Nevertheless, the Convention had clearly abandoned the Hobart/Vesey policy of autocratic exclusion of dissidents, moving instead toward the broad, all-inclusive toleration which had been so successfully employed by the Dutch in colonial times, and which also characterized Episcopalianism later in the century. By heightening the contradiction between Hobartian high church principles and the more evangelical impulses of the low church clergy, the Tracts had served to push the church out of the strict Hobart era and into a period of greater tolerance and inclusiveness.

It was against that theological backdrop that the New York State Legislature once again launched an extensive investigation into the Trin-

261. See 2 THE DIARY OF GEORGE TEMPLETON STRONG, *supra* note 227, at 458-64.

262. See R. ALBRIGHT, *supra* note 186, at 241; † THE DIARY OF GEORGE TEMPLETON STRONG, *supra* note 234 at lii.

263. See R. ALBRIGHT, *supra* note 186, at 240 (quoting the pastoral letter of the House of Bishop's).

ity property, an investigation that, like the Tracterian controversy and the abolitionist movement, eventually forced the church to adopt a new role for herself. That investigation was conducted from the late 1840s through the early 1850s, and was initiated by a committee of prominent Episcopalians who seem to have taken with atypical seriousness the church's moral obligation to the growing New York City immigrant population. Most Trinity members were of course quite aware of immigrant poverty, which they viewed largely with distaste. Trinity, for example, built a new chapel in upper Manhattan to accommodate wealthy families who moved north to avoid proximity to the poor.²⁶⁴ Many also believed in selective private charity for the poor, as charitable activities were considered thoroughly respectable and commendable, especially as a pastime for upper class women.²⁶⁵ A few Trinitarians were willing to press the notion of obligation further, however, insisting that as a powerful and wealthy ecclesiastical corporation Trinity was obliged to distribute her wealth and power among the poor, either by extending access to corporate decision-making and/or by granting independent endowments to churches built specifically for the poor. When a committee of dissident Episcopalians took those demands to the legislature, their petition reopened controversies that the Act of 1814 had only temporarily quieted.

Those who first instigated legislative action against Trinity were not radical evangelical preachers of the Second Great Awakening, but rather successful merchants and professionals who wanted the church to move in a more reformist direction. For example, a leading figure in the controversies of the mid-century was Robert B. Minturn, a merchant and shipowner who also became New York's first Commissioner of Emigration. Minturn was a partner in Grinnel, Minturn & Co., which owned more than fifty ocean-going vessels including some, like the *Flying Cloud*, which were among the most notable of American clipper ships. His estimated personal worth in 1845 was \$200,000. In 1835 Minturn married the daughter of John Lansing Wendell, a lawyer of eminence in Albany, who was descended from an old Dutch family. Thereafter, he moved to Hudson Square in New York City and joined Trinity's St. John's Chapel. He became well known to the rector there and was invited to become a Trinity officer.²⁶⁶ He accepted the invitation but immediately began to denounce Trinity for its refusal to spend its wealth to

264. See, e.g., I THE DIARY OF GEORGE TEMPLETON STRONG *supra* note 234, at 310-11 (discusses his own and Trinity's plans to move away from nearby immigrant squalor).

265. See 2 THE DIARY OF GEORGE TEMPLETON STRONG, *supra* note 227, at 209.

266. See R. MINTURN, MEMOIR OF ROBERT BOWNE MINTURN 45-46 (1871).

help the general population of the city. Apparently Minturn was so offensive in his frankness at meetings that he was not asked to serve a second time as officer, whereupon he joined with others in taking anti-Trinity complaints to the legislature.²⁶⁷ Strong described Minturn with a derision apparently shared by other conservative Trinitarians. Minturn, said Strong, was "too good, *too much* merchant prince and liberal Christian, and glorified donor to charitable causes. Fatuous and fat-headed, I think, and puffed up, I fear."²⁶⁸

Another key figure in the anti-Trinity controversies was Luther Bradish, a lawyer, diplomat and distinguished parliamentarian in the Assembly. He was a Speaker of the Assembly, then ran for Governor and lost by a close vote in 1842. Abandoning politics, he moved to New York City, where he became President of the New York Historical Society and of the American Bible Society;²⁶⁹ he was also an intimate friend of Millard Fillmore.²⁷⁰ Bradish was chosen as chairman of the committee established to exert anti-Trinity pressure on the legislature, apparently because of his experience and skill with legislative intrigue. He was in close contact with W.H. Bogart, who became Clerk of the New York Senate in 1850 and who helped the committee in its dealings with the legislature.²⁷¹

The initial committee request was that the legislature repeal the Act of 1814, and thereby extend control of Trinity property to non-Trinitarians, in particular to members of Episcopal churches in the poorer downtown parishes. Wendell, who worked with the committee on the legal issues, argued that the Act of 1814 had been unconstitutional because it destroyed the rights of non-Trinity incorporators. In fact, Wendell favored taking the case to the courts rather than to the legislature, for he thought the issue was clearly a constitutional rather than political one; as an old conservative, he explained, he could back the committee only because he found their constitutional argument legally compelling.²⁷² Wendell seems to have been alone in preferring litigation, however, and the committee

267. *See id.* at 46-47.

268. 2 THE DIARY OF GEORGE TEMPLETON STRONG, *supra* note 227, at 149.

269. *See id.* at 182 n.14.

270. *See generally* Luther Bradish Papers (1840-46) (available in the New York Historical Society) (a Sept. 10, 1842 letter from Fillmore is indicative of their friendship).

271. *See* Letters from W. H. Bogart to Luther Bradish (Jan. 2, 1846; Jan. 8, 1846; Jan. 12, 1846; Jan. 15, 1846; Jan. 20, 1846) (Luther Bradish Papers (1840-46), available in the New York Historical Society).

272. *See* Letter from John L. Wendell to Luther Bradish (June 20, 1845) (Luther Bradish Papers (1840-46), available in the New York Historical Society).

worked hard to try to insure legislative repeal of the Act.²⁷³

Instead of repealing the 1814 Act, however, the legislature used the committee request and the threat of repeal to insist that Trinity provide a series of financial reports, starting in 1846, detailing the corporate use of funds. A Senate Committee was appointed to report on the Trinity question, led by Mark Spencer and James Noxon, who were both sympathetic to the anti-Trinity Bradish committee. The Senate Committee then used the demand for Trinity financial reports as the basis for extensive hearings conducted to investigate in depth the manner in which Trinity had used her wealth since 1814.²⁷⁴ Trinity was asked to submit a complete report of assets and expenditures, and also to report on the number of incorporators who voted in annual Trinity elections. In particular, she was directed to specify exactly how much of her estate and income had been spent in building churches in the "destitute portions"²⁷⁵ of the city, and in aiding "institutions of charity, benevolence, or learning."²⁷⁶

From the outset of the investigation Trinity officials considered the committee resolutions an infringement of the chartered rights of the church:

[B]eing charged with the care and guardianship of a large property and important rights, they [the Vestry] beg leave, respectfully, to represent that the requiring of such reports as that asked for by the resolutions of the honorable Senate, is not justified by any legal principle, and is oppressive of this corporation.²⁷⁷

Nevertheless, the vestry did acknowledge a desire to "remove any unfa-

273. Apparently the initial resolution called either for a return of the Trinity property, based on repeal of the 1814 Act, or at least an inventory of her wealth, which was the measure actually taken. See Letter from W. H. Bogart to Luther Bradish (Jan. 2, 1846) (Luther Bradish Papers (1840-46), available in the New York Historical Society).

274. Noxon seems to have been the most influential member on the committee, and was well-known for the stand that he took during the Trinity dispute. Noxon was from Onondaga, where his father was a lawyer. He went to Hamilton College and then Yale, to study law. He became chairman of the Judiciary Committee in the Senate, and was much respected as a sound lawyer and eloquent debator, with a multitude of political friends. See W. MURPHY, *BIOGRAPHICAL SKETCHES OF THE STATE OFFICERS AND MEMBERS OF THE LEGISLATURE OF THE STATE OF NEW YORK IN 1858*, at 81-84 (Albany 1858).

275. *Report of the Select Committee, on the Report of Trinity Church, Made in 1855*, at 6 (Albany 1857) [hereinafter *Report of the Select Committee*], reprinted in 2 TRINITY CHURCH PAMPHLETS (available from Cornell University Library, Ithaca, New York).

276. *Id.* at 7.

277. *Communication of the Vestry of Trinity Church, in the City of New-York, to the Honorable the Senate of the State of New-York, Passed April 13, 1855*, at 3 (Albany 1856) [hereinafter *Communication of the Vestry*], reprinted in 2 TRINITY CHURCH PAMPHLETS (available from Cornell University Library, Ithaca, New York).

avorable impression detrimental to the interests of Trinity Church,"²⁷⁸ and so submitted the requested report, rather than further challenging the authority of the Senate.

After initial Trinity reports and a preliminary set of hearings, the committee's findings proved to be dramatically inconsistent with the public posture Trinity tried to assume for herself—that of a responsible and disinterested benefactor whose wealth had been depleted by a multitude of generous gifts.²⁷⁹ First, the Senate Report disputed Trinity's own valuation of her corporate wealth. By overlooking ("through an inadvertant omission") one especially valuable lot, St. John's Square, by leaving out the value of bonds and mortgages held against other churches, and by undervaluing other lots, the Trinity vestry had estimated Trinity's total net estate to be \$1,016,327.58. By Senate computation, however, the net value of the estate was \$5,221,293.47—more than five times the figure reported by Trinity.²⁸⁰

Furthermore, Trinity had also reported falsely on corporate elections. By charter all communicants or pew-holders of Trinity were entitled to vote in the annual election. Trinity listed 92 communicants and 213 pew-holders at its four chapels, but listed a much smaller number of voters: 32 in 1855 and 26 in 1854, for example. Trinity's explanation was that Trinity members trusted their officers:

The corporators voting at the annual election for church wardens and vestrymen have been generally few for a long series. The cause of this may be found in the confidence reposed in the discreet and prudent management of the affairs of the vestry . . . and in the fact that in the absence of any contest the corporators have not deemed it important to exercise their privilege of voting, except to a limited extent.²⁸¹

In fact, however, the committee discovered that the list of corporators

278. *Id.* at 3.

279. The picture the Vestry painted was always a magnanimous one:

Not for her parish nor for her churches has she thus disposed of this estate, nor has she for herself or her own people incurred this large debt; but for other parts of the church of God—to spread his gospel for the increase of true knowledge, and to diffuse the blessings of charity, Trinity Church has hastened to dispense abroad out of her own bounds, the surplus which she could spare.

Id. at 8.

280. See *Report of the Select Committee, supra* note 275, at 12. Actually, close valuation may have been nearly impossible. Much later, in 1908, the *New York Times* attempted to value the Trinity property and concluded that it was worth anywhere between \$38 million and \$100 million. By then there was a real problem determining exactly what property Trinity owned. See *N.Y. Times*, July 19, 1908, § 5, at 3, col.1.

281. *Communication of the Vestry, supra* note 277, at 5.

had been inflated by the names of many who had either moved or died.²⁸² It also discovered that Trinity had narrowed the list of those eligible to vote by leasing pews for periods which always expired exactly two days before election day and did not recommence, if renewed, until four days after election day. Thus a parishioner could be a pew-holder for years but not be considered as such on Easter Tuesday, the day elections were held. To clarify the point, pew leases contained the provision that "[T]he above agreement, or the occupation of a seat, does not give any person the rights and privileges of a corporator."²⁸³ By this method the Trinity vestrymen had apparently maintained a rigid control over voting within their parish; they chose their own members, and then insured their election.

Furthermore, the figures which Trinity provided to explain expenditures did not suggest quite the disinterested generosity Trinity claimed for herself. In the three years prior to the Senate report Trinity had made no appropriations for "institutions of charity, benevolence and learning" except for the gift of five plots in the Trinity cemetery (one plot to the Orphan Asylum, one to the Society for the Relief of Aged and Indigent Females, etc.). Since 1814 Trinity had established no hospitals or other charitable institutions. Annual income expenses that went to charitable purposes were listed as \$3,850 for "schools, visitation, and relief of the poor,"—as compared, for example, to \$17,276 for maintaining choirs and instrumental music in Trinity's chapels.²⁸⁴

Part of Judge Troup's argument for the Act of 1814 had been that the clarification it provided would allow Trinity to grant endowment to other churches as independent entities. The vision Troup invoked was one of republican self-reliance. In fact, however, since 1814 Trinity had endowed no churches; the only lots Trinity had given away were the five cemetery lots. Instead, what Trinity gave to other churches or clergymen was in the form of mortgages recallable at will (sixty-six parishes had such mortgages) or annual stipends. The effect was to create dependency and subservience, rather than the independence enjoyed by endowed churches. As one minister testified, the stipendary system made it impossible for churches to "sustain themselves by their own inherent and ac-

282. See *Report of the Select Committee*, *supra* note 275, at 113-14.

283. *Id.* at 5. See also *Report and Testimony Taken Before the Senate Committee in the Matter of Trinity Church* 67-68 (Albany 1857) (reference found in testimony) [hereinafter *Report and Testimony*], reprinted in 2 TRINITY CHURCH PAMPHLETS (available from Cornell University Library, Ithaca, New York).

284. See *Communication of the Vestry*, *supra* note 277, at 9.

quired strength."²⁸⁵ Instead, it created "parochial debility, and personal dependence."²⁸⁶

This financial dependence carried with it political control. Stipends tended to be given only to those churches that followed the high church position espoused by Trinity. From 1835 to 1847, \$80,000 had been awarded to high churchmen, and \$8,000 to low.²⁸⁷ The rector of one church testified that the warden of another church, seeking aid from Trinity, was told "We can give you no help, for your minister voted against us at the last convention."²⁸⁸ The issue in question had been whether to reinstate Bishop Onderdonk, and the Trinity controller had explained that "to vote against measures approved by Trinity Church [such as Onderdonk's reinstatement] is to vote against her, and we are resolved, for the future, to take care of our friends."²⁸⁹ As the committee described its impression of Trinity's grant-giving policy:

[T]he aid of Trinity, when given as an annual appropriation or pension, or on mortgage, has been regarded, not as the administration of a trust for the benefit of those to whom it belonged by the charter, nor yet as a loan on good security, but rather as a pure gratuity, "a bounty," an act of "munificence," for which due "gratitude" was expected ever after; a mode of regarding the subject liable to interfere still further with the independence of those thus aided. The weight of this sense of obligation has been still further increased by the frequency and facility with which applications have been refused, and the ungracious and wearisome reluctance with which grants are obtained when obtained at all.²⁹⁰

Thus Trinity had, in effect, followed a policy of financial management which reproduced the high church, hierarchical, ecclesiastical assumptions of most of its churchmen. The general result had been that the rich churches got richer and the poor churches got poorer. Trinity had appropriated \$227,165 in order to build a new chapel on 26th Street for her own parish to accommodate the many Trinity parishioners who had moved uptown when the influx of immigrants caused the old site of Trinity Church to become surrounded by working and lower class neighbor-

285. *Report of the Select Committee, supra* note 275, at 103.

286. *Id.*

287. *See id.* at 110.

288. *Id.* at 104.

289. *Id.* at 105. A stipend to St. Jude's had also been cut off, after St. Jude sent an anti-Trinity memorial to the legislature. *See A Brief Statement of Facts, as Connected with an Application by the Rector, Wardens, and Vestrymen of St. Jude's Protestant Episcopal Free Church, to the Corporation of Trinity Church, N. Y., First Presented, April 25th, 1843 for an Appropriation* (Albany 1846), reprinted in 2 TRINITY CHURCH PAMPHLETS (available from Cornell University Library, Ithaca, New York).

290. *Report of the Select Committee, supra* note 275, at 19-20.

hoods. Meanwhile, three churches in working class neighborhoods, unable to support themselves, were either sold (to the Catholic Church) or reconveyed to donors. One of the three was St. Matthews, the first free church in the city; it repeatedly sought aid from Trinity and was denied. Trinity had never built a church in a working or lower class neighborhood despite offers, like that of one churchman, to pay two-thirds of the cost of a free church if Trinity would pay for the other third.²⁹¹ One minister who had applied to Trinity for help on behalf of two free churches reported that:

Members of the Vestry have stated that they reported against it, from the fact that they had no funds. While this was pending they have expended \$15,000 for the improvement of St. John's Chapel [one of their own]. . . . The two churches for which I applied were very poor and needy, and while my application has been pending they have finished an expensive chapel in 26th St., for a neighborhood that it is my impression was able to build one for themselves.²⁹²

Similarly, another minister testified:

[R]ecently, Trinity church has erected a chapel, at a cost for which three or four churches could have been built . . . and this in a quarter of the city in which the people are able to build churches for themselves. Missionaries, endeavoring to establish free churches in the . . . eastern district [a "poor and crowded population, where free churches are especially needed"], and struggling to support themselves while so doing, have frequently complained of the little encouragement afforded them by Trinity church . . .²⁹³

This first set of committee hearings resulted in somewhat vague recommendations—chiefly, the committee expected further financial disclosures and left open the threat that the Act of 1814 would be either adjusted or repealed. Meanwhile, the pro-Trinity forces were in a state of panic. Strong, for example, conceded in his diary that almost all of his time was taken up with Trinity's struggles with the legislature;²⁹⁴ the general expectation was that the legislature would take some dramatic, although as yet undefined, action against Trinity.

In the face of that challenge, some old-guard Trinitarians simply retreated into an elaborate invocation of the old model of private rights as protected from state interference. Typical was a "Reply" to the report

291. *See id.* at 117-18.

292. *Id.* at 118.

293. *Id.* at 114.

294. *See* 2 THE DIARY OF GEORGE TEMPLETON STRONG, *supra* note 227, at 329-30.

of the legislative committee, written by Frederick Ogilby in 1857.²⁹⁵ Ogilby linked the separation of church and state to the basic liberties of “private citizens” in general, and argued that the barrier between state action and private right must always remain absolute. Thus, if the state insisted upon overseeing Trinity’s financial affairs, “her unhallowed foot must trample upon the dearest and most sacred liberties, when she invaded the sanctuary of the church, to intermeddle with its affairs, no less than if she rudely entered into the sanctuary of each private home.”²⁹⁶ The fundamental principle of equality of right meant that “[t]he wealth of a Church, if honestly acquired, gives the state no more right to interference, than the wealth of each individual citizen. Why might not a legislative committee have been appointed to inquire into the administration of the properties of Mr. Girard or Mr. Astor?”²⁹⁷ Furthermore, the principle of equality would be violated if Trinity were forced to build chapels for the poor rather than the wealthy: such a distinction would imply an “unwarranted and undemocratic” distinction between rich and poor.²⁹⁸

Ogilby acknowledged that the Act of 1814, and Troup’s argument in favor of that Act, had evidenced sound policy judgment. Nevertheless, he insisted that the clear basis for both had been not expediency, but legal principle. Thus the Act was “founded on the stronger and deeper basis of *right*. . . . It was founded, as all laws should be, upon ‘right.’” Therefore the threat of legislative repeal or adjustment of the Act posed a grave danger to a society premised on the equal protection of rights. Legislative action “concerns the honor of the State, the rights of her citizens, and the security of their property. Let them have timely warning if they are in danger of sharing the guilt of sacrilege, the infamy of agrarianism!”²⁹⁹ Indeed, the redistributive impulses implicit in the legislative hearings, if unchecked, would “destroy all sense of security in vested rights, and place the most sacred endowments at the mercy of the popular will.”³⁰⁰

Despite his rhetorical flourishes, Ogilby’s argument had an obviously threadbare quality, most evident, perhaps, when he conceded that in fact Trinity was *not* asking for utter equality in the protection of rights, but rather for special consideration based on wealth and responsibility. Thus, Ogilby argued, the legislature would be unreasonable if it

295. F. Ogilby, A Reply to the Report of the Select Committee to whom was referred the Report of Trinity (Feb. 6, 1857) (available in the New York Historical Society).

296. *Id.* at 3.

297. *Id.*

298. *See id.*

299. *Id.* at 19.

300. *Id.*

expected Trinity elections to be as open and democratic as elections in other congregations. More than other churches Trinity needed to guard against "sudden and violent changes in the persons of its administrators."³⁰¹ Precisely because of her extensive property holdings, Trinity Parish "is not to be judged by the rules which govern ordinary congregations. Some may think . . . that the door of entrance . . . should, in this case, be guarded with some additional bolts and barriers. So it always is where a great moneyed interest has to be guarded."³⁰² The rights rhetoric was, in other words, starting to collapse under the weight of its own contradictions, and the real challenge Trinity faced was to find an alternative argument to convince both skeptical legislators and impatient reformers within the church itself.

Ironically, the solution came from the reformers themselves. A pamphlet by William Jay,³⁰³ fiercely critical of the old guard Trinitarians, both mocked the church's reliance on the legal rhetoric of private rights and then skillfully outlined the approach that the church finally adopted. Jay cited the church's self-pitying "lamentations" over the public insults directed against her ("on all sides men were saying 'Down with her, down with her, even to the ground, by law if they can, without law if they cannot'"). This widespread popular outrage, Jay argued, was the direct result of Trinity's own selfish hoarding of wealth and arrogant attempt to maintain political control over other churches: "Wealth is naturally defiant, and so long as you can lengthen your rent roll and multiply your thousands, and purchase submission and obsequiousness, you may afford to look down with supercilious indifference on the complaints and disaffection of those who are impotent to injure you."³⁰⁴

According to Jay, however, the legislature, unlike other churches, was far from impotent, and the church's insistence upon its supposed "rights" as against legislative attack was simply naive. Rhetorically addressing Trinity's rector, Jay declared "But, sir, there are signs in the political horizon which threaten a coming tempest which may level the proud pinnacles of Trinity in the dust."³⁰⁵ Jay outlined some of the op-

301. *Id.* at 6.

302. *Id.*

303. W. Jay, *A Letter to the Rev. William Berrian, D.D., on the Resources, Present Position, and Duties of Trinity Church: Occasioned by His Late Pamphlet "Facts Against Fancy"* (New York 1856), reprinted in 2 TRINITY CHURCH PAMPHLETS (available from Cornell University Library, Ithaca, New York). William Jay was later characterized as a radical egalitarian, but his letter is more in the mode of an early progressive reformer.

304. *Id.* at 8-9.

305. *Id.* at 9.

position to Trinity which had been expressed before the legislature. He included not only the hearings of the 1850's, but also petitions to the Land Office since 1835 demanding confiscation of the property. In addition, an act passed in 1854 gave preference on the calendar to "any suit by the Attorney-General to enforce the right of the state" against Trinity. One private group went so far as to promise to reimburse the state for all expenses incurred by the Attorney General in any suit against Trinity so long as the "said patriotic friends of the rights of the people" were promised one-fourth of the resulting proceeds.³⁰⁶ Such political signs were ample evidence, Jay asserted, of the legislature's power over Trinity:

You seem to think the enemies of Trinity are resolved to crush her either by or "without law." You have little cause to apprehend lawless violence. You will have the consolation of being robbed *legally*, if at all. Popular sovereignty. . . has accomplished more daring and atrocious feats than the arbitrary transfer of a few hundred building lots from one owner to another.³⁰⁷

Thus, instead of trusting in illusory legal barriers, the church needed a more positive and convincing stance than that of private right holder. Jay proposed that the new self-definition could be found by reference to the growing immigrant population, which many perceived to threaten social stability. Jay described the "large and reckless population which is now fermenting and festering in this great city, and spreading throughout the whole extent a deadly malaria." Churches, Jay argued, were ideally suited to cope with this "peculiarly dangerous" lower class, for the churches were prepared to provide not only charity but also "moral reformation." Action by the church was therefore as much required as "the strong arm of authority" if "security for life and property" were to be maintained:

Duty to God, ourselves, and our country, unite in calling us to strenuous efforts for the moral improvement both of those who are exposed to the temptations of poverty, and those who are already sunk in vice and sensuality.

. . . [R]eligious reformation is . . . of all charities the most permanent, and the most reproductive; leading to sobriety, industry, reputation, domestic peace and comfort, respect for the rights of others, and love for all.³⁰⁸

The best justification for Trinity's wealth lay, therefore, not in unbridled enjoyment of the private right to be wealthy, as Ogilby suggested, but rather in a conception of public duty—a new link to public authority

306. *Id.*

307. *Id.* at 10.

308. *Id.* at 18.

in the combined effort to maintain control over the poor. Therefore Trinity must no longer:

neglect that moral waste over which your lofty spires cast their shadows, and your chimes send forth their peals, but on which you have sowed no seed, and garnered no fruit for the Lord. With lavish hands you have embellished our parks and fashionable avenues with costly and ornamental structures; now trim and dress the highways and hedges frequented by the poor and wretched, and make straight their crooked paths.³⁰⁹

Significantly, according to Jay the "public" concern of the church with the welfare and rectitude of the poor did not necessarily imply that the poor needed to be treated as social equals. While Trinity could find a new conception of itself by reference to the poor, that did not involve any levelling, or mixing of the classes. As Jay commented, "A family of scavengers and rag-pickers would feel uncomfortable in a pew in your splendid churches, and would perhaps impart a similar feeling to their genteel neighbors."³¹⁰ Thus social responsibility did not entail equality, and could in fact be used as an argument in support of *inequality*, more convincingly than could the now bankrupt appeal to equal "rights."

Minturn's own anti-Trinity position, as urged before the legislature, seems as well to have been far from genuinely radical. A sense of his views may be inferred from the pioneering work of his closest friend, William Muhlenberg, a reformist Episcopal minister who began in the 1850s to fashion a new role for the church that would be consistent with both the amorality and the inequality associated with nineteenth-century capitalism. Muhlenberg, with Minturn as his largest financial backer, sought to bridge the gulf between substantive religious truth and a market economy premised on the pure subjectivity of values.³¹¹ What Muhlenberg offered was an opportunity to incorporate the new, amoral market within the divine church tradition through an emphasis, not on Hobartian ecclesiology, but rather on the church's role in class relations. The new could be subsumed within the old, and the resulting incorporation would obscure increasingly evident social problems. Muhlenberg pointed out to his patrons that their wealth derived from the poverty of

309. *Id.* at 17.

310. *Id.*

311. As Muhlenberg explained in one early sermon, the marketplace had renounced the standards of Christian virtue: "Merchant's honesty is one thing and Christian honesty is another." A. SKARDON, *CHURCH LEADER IN THE CITIES—WILLIAM AUGUSTUS MUHLENBERG 104-05* (1971). The market had "maxims of its own" which excluded such "eternal laws of justice" as "Thou shalt love thy neighbor as thyself" yet embraced such principles as "[k]eep all you can get, and get all you can" *Id.* at 105.

the lower class, and that a resulting discontent was inevitable. What he suggested was not that the system be changed but rather that the sanctifying powers of the church be invoked. The only effective instrument of sanctification, he argued, was the traditional one of religious charity.

Muhlenberg therefore emphasized rather than minimized the moral dilemma which existed at the heart of the modern economy: "The riches of the one [capitalist] are owing to the poverty of the other . . . one class rises on the ruins of the other." The solution Muhlenberg offered was not that industrialists refrain from seeking profits, but that they contribute generously to the church, recognizing it as the one institution ideally suited to pacify the poor:

[M]ay we not ask them, as Christians and citizens and philanthropists, and especially as capitalists, whose business and success tend to make the poor poorer; to give . . . to build the church and the schoolhouse, and replenish the treasury of the church. . . .³¹²

The most astute Trinity spokesmen understood quickly that their best defense against legislative assault lay in this new reformist theme of social responsibility. In their report to the legislature in 1855 Trinity officials acknowledged that since three of her four chapels were located downtown, "surrounded by the poor, the ignorant, and the emigrant,"³¹³ a "duty" thereby arose to "minister to them the holy offices of religion; to aid and to instruct them."³¹⁴ Officials announced that "[o]n such plans for the good of the poor has the vestry now entered . . . and further measures for the attainment of the same ends are yet in contemplation."³¹⁵

By the time the committee hearings of 1857 opened, Trinity was ready with evidence for the legislature that she was, indeed, carrying out those plans. On the first day of the hearings Rev. Benjamin Haight testified that for nearly two years (in other words, exactly since the end of the first set of hearings) he had served Trinity as special minister in charge of charitable works. During that period several new downtown projects had been instituted, including industrial training schools, a parish school near St. Paul's for fifty poor children, a Sunday School for the poor below Fulton Street ("out of two hundred and twenty-three maybe five who are not poor children"), a special agency on Castle Garden to meet and to aid newly arrived immigrants, etc. Rev. Haight reported that he had been

312. *Id.* at 167.

313. *Communication of the Vestry, supra* note 277, at 11.

314. *Id.*

315. *Id.*

assigned several assistants, allowing for increased visitation among the immigrants, and that a minister was always available at Trinity's mission office, all day, every day, to help anyone who requested aid. He also pointed out that only two other Protestant denominations continued to maintain downtown churches—there was one Methodist and one Dutch Reformed.³¹⁶ Thus, to the extent that the poor were aided at all, they were aided almost entirely by Catholics or Episcopalians.

Such changes in Trinity policy were noted with approval by the committee, although it did wryly observe that the new policies came directly in response to political pressure:

All this good work appears to have been done since the resolutions of inquiry passed the Senate The first actual step was taken June 11, 1855, and all the rest has been accomplished since then. Your committee does not assert, however, that this great and happy change is due, in any degree, to the action of the Senate; for the Rector declares emphatically that "neither the fear nor the favor of man had anything to do with it."³¹⁷

The basic thrust of the new social responsibility argument was made evident in the testimony of Col. John Dix, eminent Trinity vestryman, politician (U.S. Senator, Secretary of the Treasury, Governor of New York), capitalist (president of the Erie and Union Pacific railroads), and father of the well-known future rector of Trinity, Morgan Dix. Dix described the fact that New York City contained extremes of wealth and poverty. On the one hand was a "concentration of refinement, luxury and splendor unequalled, excepting by a few of the great capitals of Europe."³¹⁸ That splendor was now located in the upper part of the City, where the possessors of nearly the whole private wealth of the city have become domesticated.³¹⁹ In this area resided those who controlled "to a great extent, the commercial and financial power of the Union."³²⁰ In contrast, the downtown area of the city contained a vast population of "poor and necessitous," who if abandoned, "would have presented an example of religious destitution unparalleled in the history of Christian civilization."³²¹

This description of extremes was not meant to introduce an argument for redistribution. The goal was control, not equality, and social control could best be achieved through lessons taught by the Church:

316. See *Report and Testimony*, *supra* note 283, at 5 (reference found in testimony).

317. *Id.* at 8-9 (reference found in the report).

318. *Id.* at 106 (reference found in testimony).

319. *Id.* at 117 (reference found in testimony).

320. *Id.* at 118 (reference found in testimony).

321. *Id.* at 104 (reference found in testimony).

[W]hat shall be our social condition if, in a large portion of the city, destitution and spiritual neglect shall combine with cupidity, to arm the hand of violence and stimulate it to still grosser outrage. What higher office can Trinity Church fulfill, what higher benefit can she confer on the classes which have the deepest stake in the security of property and life, than by devoting herself, as she is now doing, to make the lessons of religious and social duty familiar to those who, under the pressure of their physical wants, have the strongest temptation to forget them?³²²

Dix elaborately argued that the stability of the whole national social structure ultimately depended upon the work (and therefore the continued wealth) of Trinity. "The State, nay the whole country, has a deep interest in this question."³²³ Because New York City was the center of national wealth, "The slightest agitations on her surface, undulate in all directions to the great circumference of which she is the centre."³²⁴ If the work of Trinity were impaired, "one of the most important districts in the emporium of the Union" would be consigned to a "spiritual death" which would threaten both state and national stability.³²⁵

The committee retained to the end a hearty skepticism about Trinity's motives, but nevertheless the essentials of the Trinity argument seem to have been persuasive. In effect Trinity promised that if she were allowed to keep full control over her property—not forced to endow other churches as independent entities and not forced to open up Trinity elections—then the resulting consolidation of wealth and power would allow Trinity to do an effective job of socializing the lower classes. Trinity spokesmen argued that Trinity's position was analogous to the position occupied by the upper class; both were stewards of wealth and power, and both were forced to defend their positions in the face of antagonism and potential violence. In that situation Trinity claimed to be ideally suited to stand as the "representative" of the wealthy in the downtown areas from which they had fled, and her work among the poor was designed to protect the interests of all those who had a share in the prosperity of the City.

By the time the committee presented its recommendations to the Senate, most of the really serious anti-Trinity sentiment had been softened. The committee suggested that Trinity be required to issue periodic financial reports to the Senate, and that the legislature consider amending the charter to include other Episcopalian church members as corpo-

322. *Id.* at 117 (reference found in testimony).

323. *Id.* at 118 (reference found in testimony).

324. *Id.*

325. *Id.*

rators, but this latter proposal seemed more for the purpose of protecting Trinity from control by downtown congregations than for the purpose of distributing power among the poor. There was no recommendation to revoke the Act of 1814, dramatically alter the terms of the charter, or commence lawsuits claiming Trinity lands for the state.

The old-guard Trinitarians were indignant when the report was issued, and became especially angry when Noxon implied that Trinity vestrymen used the wealth of Trinity for their own private advantage.³²⁶ However, their indignity seems oddly misplaced. A vague insinuation of private corruption was in no sense an attack upon the legitimacy of Trinity's property ownership itself, and Trinity had, in fact, accomplished an extraordinary feat: by skillfully drawing on the feared potential of immigrant violence and class unrest, within only a few years Trinity had managed convincingly to redefine her ecclesiastical and economic role in the state from that of purely private right holder to that of public servant.

Despite that accomplishment, reflected in the legislative committee report's relatively mild proposals, Trinity defenders continued their fierce opposition to all legislative supervision of Trinity affairs. Remonstrances were sent from businessmen and clergymen disputing the legislature's right to demand financial reports,³²⁷ and after a debate in the Senate a substitute bill was introduced by Senator Brooks providing that all city Episcopalians should be made incorporators of Trinity but that the property of the parish should remain solely under Trinity's control. That modified bill passed the Senate, but the governor stated his opposition to it. Under the threat of the governor's veto, it did not pass the Assembly.³²⁸ So died this "bold and unjustifiable assault"³²⁹ upon Trinity, but not the new role Trinity had defined for herself in the midst of controversy.

326. See 2 THE DIARY OF GEORGE TEMPLETON STRONG, *supra* note 227, at 331.

327. See 4 A HISTORY OF THE PARISH OF TRINITY CHURCH IN THE CITY OF NEW YORK 446 (M. Dix ed. 1906).

328. See 2 THE DIARY OF GEORGE TEMPLETON STRONG, *supra* note 227, at 325-26.

329. 4 A HISTORY OF THE PARISH OF TRINITY CHURCH IN THE CITY OF NEW YORK, *supra* note 327, at 446. The *New York Times* sided with Trinity during the controversy, vehemently denouncing what it saw as a looming legislative interference with private property. The *Times* thought it quizzical that "the movement to deprive Trinity Church of her property should be in great measure sustained by gentlemen whose worldly interests would be much damaged were all titles to real estate treated with as little consideration as they would have shown to that by which Trinity Church holds hers." N.Y. Daily Times, Apr. 6, 1857, at 4, col. 4. See also *id.* Mar. 28, 1857, at 4; *id.*, Apr. 11, 1857, at 4, col. 5.

IV. THE INSTITUTIONAL CHURCH MOVEMENT AND THE PROGRESSIVE JUSTIFICATION OF PROPERTY

A. *Trinity and Social Reform in the Post-Civil War Period*

Despite the social service image that the legislature and Episcopal reformers had forced upon Trinity, Trinity's institutional move in that direction was less than dramatic during the immediate post-war period. The latter point is underscored by the vestry's choice of Morgan Dix as its new rector in 1862: Dix proceeded to become the leading New York spokesman for conservative Episcopalianism. He seems to have been chosen for his gentlemanly and statesmanlike manner, which he derived from his upbringing as the son of the eminent John Dix.

Initially, John Dix had intended that Morgan should become a lawyer, and Morgan had conscientiously attended to his legal studies before turning to the ministry. Those early studies convinced Morgan that religion and law, properly understood, were unified disciplines, both sanctioned by God, with law only slightly lower than theology in the intellectual hierarchy. As Rev. Dix explained in an address to the graduating class of the Columbia Law School:

There is a close relationship between your office and mine; we are both, although in different spheres, ministers of God. . . . [A]ll laws end in one Will, one Spirit, one Intelligence, one Being, even in Almighty God. You and I are both in reality busy about the same thing; we seek to maintain, in this troubled world, the order and harmony which reign unbroken beyond it.³³⁰

Dix acknowledged that in an amoral market commercial pursuits no longer necessarily brought people into contact with God ("commerce and trade may bring wealth, unhallowed and unblessed to their marts"), but he insisted that like religion, law could never "do without God; each implies Him and His providence."³³¹ As Rev. Dix grandly informed his listeners, while theology was God's first born daughter, jurisprudence was surely His "younger daughter":

You and we, you advocates and we priests, stand nearer to Him, in our professional character, than other men; our faith should be the same, and our motive one, to glorify Him in our lives, and to set forth and maintain His justice and righteousness in the presence of the people.³³²

330. M. Dix, *The Bar: Its Ancient Fame and Impending Perils—A Sermon Preached Before the Graduating Class of the Law School of Columbia College 30-31 (May 13, 1866)* (available from the Cornell Law School Library).

331. *Id.* at 31.

332. *Id.* at 32-33.

In other words, Dix still believed in the old Hooker hierarchical vision of society, and that belief informed both his religion and his political views. Theologically, Dix was a staunch high-churchman. At the Union Theological Seminary he had been drawn to the Tractarian movement, and although he was never tempted to foresake the Episcopal for the Roman Catholic Church, he fiercely believed in the need for formalism and unquestioning acceptance of ecclesiastical authority. Thus he had patience neither for evangelical simplicity in church services, nor for the watering down of essential Episcopal dogma for the sake of conformity to an increasingly secular and scientific age.³³³

On the other hand, and always somewhat paradoxically, as a conservative Dix also accepted the propriety of a careful Hobartian distinction between church and state, so that social and political views were almost never addressed from Trinity's pulpit. Rare exceptions to that policy included Dix's denunciation of feminists, of the Bryan campaign of 1896, and of the new class of nouveau riche that was replacing an older, more refined and educated aristocracy. Those disruptive modern developments were sufficiently alarming to warrant direct criticism in Dix's sermons.

Otherwise, Dix's social views were not expressed during church services but were nonetheless thoroughly predictable and hardly secret. Dix believed the poor were an inevitable part of God's hierarchy. Thus, while the wealthy had a sacred obligation to administer to the needs of the deserving poor (Dix did, in fact, considerably expand the charitable services Trinity provided), the poor were to be discouraged from depending on such aid, and were most especially to be prevented from lawlessly asserting equality. Dix viewed labor unions and strikes with alarm, considering them destructive of the whole social order, and he had no respect for progressive proposals for economic reform. What the nation required instead, he believed, was a return to the structures and virtues of the past: respect for law and military discipline, an upper class rigorously educated in the classics rather than in excessive factual knowledge, and a patriarchal family life conducive to training the young to be mannerly and orderly.³³⁴

333. On the views of Dix, see C. Griffen, *An Urban Church in Ferment: The Episcopal Church in New York City, 1880-1900*, at 302-22 (1960) (unpublished Ph.D. Thesis, Columbia University) (available from the Yale Divinity Library). I have drawn on Griffen's account extensively, although with a somewhat different emphasis from his. See also *5 A HISTORY OF THE PARISH OF TRINITY CHURCH IN THE CITY OF NEW YORK* 12-46 (L. Lewis ed. 1950).

334. See C. Griffen, *supra* note 333, at 305-308.

Dix held those views unswervingly until his death in 1908, and despite the obligatory ministerial visits to the sick, he seems to have successfully insulated himself from those unpleasant realities of urban New York in the late 19th century that were starting to trouble many of his contemporaries. Certainly the social circle within which he moved had little direct contact with the poor and foreign-born.³³⁵

In contrast to Dix, however, many Episcopal leaders found the social reality of life in New York City both distressing and increasingly difficult to ignore. The steadily rising and generally impoverished immigrant population was one factor, but immigration had been a cause of concern in New York City since the colonial period and was therefore not by itself a new reason for alarm. More troubling was the assumed link between immigration and the spectre of class warfare. This spectre was precipitated by the depression of 1873, the longest and most severe that America had yet experienced. During the winter of 1873-74 a quarter of all laborers in New York City were unemployed, and during the following winter the number increased to one-third.³³⁶ Some claimed that the fear of an uprising among New York City's unemployed directly motivated Trinity's purchase during that period of a building for relief work and lodging for the destitute.³³⁷ Nationwide, labor discontent mounted, reaching its peak in 1877—the worst year of the depression—when President Hayes sent troops to defeat railroad strikers and rioters who had effectively fought state militias.³³⁸

The fear of labor unrest which emerged during the depression continued after the depression ended. The Chicago Haymarket bombing in 1886 convinced many clergymen that anarchists and socialists were ready to lead a violent revolution that would overthrow the whole structure of American society. Thus the Episcopal magazine *The Churchman* announced that socialist uprisings were “mutterings that presage the approaching storm. Sooner or later it must come, and the foundations of

335. Access to the best social circles and clubs afforded Dix opportunities to dine with J. P. Morgan, William Maxwell Everts, J.J. Astor, Morris K. Jesup, Mayor Chauncy De Pew, Whitelaw Reid, Chester Griswold, Governor Fish, General Aspinwall, and Cornelius Vanderbilt. *See id.* at 40-41.

336. *See* D. Donald, *Uniting the Republic 1860-1890*, in *THE GREAT REPUBLIC* 647, 795 (1977).

337. *See* C. Griffen, *supra* note 333, at 64.

338. *See generally* R. BRUCE, *1877: YEAR OF VIOLENCE* (1959) (giving the historical perspective of the labor uprisings of 1877); J. COOPER, *THE ARMY OF CIVIL DISORDER: FEDERAL MILITARY INTERVENTION IN LABOR DISPUTES, 1877-1900* (1980) (chapters 1-4 detail military involvement in the labor uprisings of 1877); P. FONER, *THE GREAT LABOR UPRISINGS OF 1877* (1977).

society will be shaken."³³⁹ Similarly, the Bishop of New York, Horatio Potter, warned that a "class conflict, whose proportions it is daily becoming more difficult to measure, has grown up in this land which threatens not only the peace and good order of society, but the permanence of our free institutions."³⁴⁰

New York clergymen tended to share the general assumption that class conflict was directly linked to immigration. Some considered the connection to be a natural result of immigrant poverty, and therefore urged that conditions of poverty and degradation be eliminated. Others, however, saw in the immigrants a dark and alien force, naturally prone to embrace sinister anarchist plots. For example, referring to the conviction of New York boycotters in 1886, *The Churchman* said "it is a comfort to think that no true American-born citizen has been mixed-up in these anarchical deeds."³⁴¹ For a time, New York City Germans in particular were depicted as a major source of radicalism. In 1885 Dix reported having received "startling accounts of the growth of the Socialist party among the Germans on the East side of the town,"³⁴² and just a month earlier *The Churchman* had described Little Germany as a center of "socialism, atheism and vice."³⁴³ Later, immigrants from southern Europe would more typically be blamed for creating unrest.

Thus, despite the relative complacency of Trinity's Rev. Dix, most Episcopal leaders during the late nineteenth century shared a mounting national preoccupation with the "problem" of class conflict and its relation to immigration. Moreover, combined with this perception of social ferment was a profound sense of intellectual ferment. Emerging from the Civil War with the high church-low church conflict still essentially unresolved, Episcopalians found themselves also facing a new and troubling intellectual challenge to the authority of religion itself. Darwinism often has been cited as the key example of that challenge, because it seemed to dispute both the Biblical account of creation and the special religious significance of human beings as creatures set apart from and above the rest of nature.³⁴⁴ More generally, however, the growing prestige of scientific positivism, with its emphasis on the self-sufficiency of knowledge based on objective "facts," seemed to rob both human beings and nature of their spiritual significance—a significance which, almost by definition,

339. C. Griffen, *supra* note 333, at 65 (quoting from *The Churchman*, Jan. 10, 1885, at 31).

340. *Id.* (quoting from *The Churchman*, May 22, 1886, at 565).

341. *Id.* at 68 (quoting from *The Churchman*, July 17, 1886, at 58).

342. *Id.* (quoting a Feb. 21, 1885, entry from Dix's diary).

343. *Id.* at 69 (quoting from *The Churchman*, Jan. 21, 1885, at 205).

344. See C. Griffen, *supra* note 333, at 106-10. See also R. ALBRIGHT, *supra* note 186, at 302-03.

could not be reduced to demonstrable data. In an age that adopted scientific objectivity almost as a new religious faith, the clergy found their own religion increasingly relegated to the realm of pure and irrelevant subjectivity.³⁴⁵ Positivism, in other words, added new and crushing force to the danger already implicit in defining religion as no more than a private, subjective right.

B. *The "Broad Church" and Progressivism*

In the face of that intellectual challenge the Episcopal Church followed the lead first set by the 1844 Convention, moving in what came to be called the "Broad Church" direction.³⁴⁶ The effort of the broad churchmen was to minimize the sense of conflict both between the high church and low church positions and between religion and science. The mood was one of enlightened toleration of diverse views within the Church, and an easing of the sense of inevitable contradiction. The tendency was to ignore hard theological questions, emphasizing instead the Church's social responsibility in a troubled time. For that reason the sense of impending social crisis that characterized the late nineteenth century was addressed by Episcopal clergy in a tone suggesting relief and enthusiasm as well as dismay. A period of national crisis provided the Church with fresh new possibilities for a vision of social significance, while at the same time providing a new focus for the unification of diverse intellectual positions.

The broad church movement within Episcopalianism coincided with, and often overlapped, the national move toward progressive reform generally. The years following the Civil War had been marked by various piecemeal demands for reform in the delivery of basic urban services and in factory working conditions. By the 1890's, however, there had been more deterioration than improvement. Elaborate city mansions stood close to squalid tenements and filthy, unpaved streets, while the minimal factory legislation on the books went largely unenforced. Urban dwellers blamed a sinister alliance of city bosses and big business for these condi-

345. See generally, e.g., D. KEVLES, *IN THE NAME OF EUGENICS* 68 (1985) (Francis Galton, a founder of eugenic theory, "had expected eugenics to provide a secular substitute for traditional religion, and in the opening decades of the twentieth century, amid the turbulence of Anglo-American urban industrial life, it was said to have accomplished just that."); E. PURCELL, *THE CRISIS IN DEMOCRATIC THEORY: SCIENTIFIC NATURALISM AND THE PROBLEM OF VALUE* (1973) (discusses the tension between naturalistic attitudes and traditional democratic theory); P. WIENER, *EVOLUTION AND THE FOUNDERS OF PRAGMATISM* (1949) (discusses how, in the late 19th century, the "infinite perspective of science was displacing the transcendental brooding of theology").

346. For a useful account of this movement, see C. Griffen, *supra* note 333, at 161-97.

tions, and not without cause. Bribery, kickbacks, and monopoly utility franchises were the standard way of doing city business, and business leaders who were quick to claim their "private rights" as against state regulation seemed equally quick to feed at the public trough.

Progressivism first appeared as a people's revolt against the obvious corruption of big city life. It quickly developed a democratic and moralistic rhetoric, moving from a focus on particular demands, like better sanitation and lower streetcar fares, to a broad-based attack on the role of municipal bosses and big business generally. The call for reform also included a call for a new conception of social life, one that stressed a model of collectivity rather than individual rights, cooperation rather than atomized, alienated fragmentation. As one progressive commentator explained: "The very nature of city life compels manifold cooperation. The individual cannot 'go it alone'; he cannot do as he pleases, he must conform his acts in an ever increasing degree to the will and welfare of the community. . . ." ³⁴⁷

This model was embraced with special enthusiasm by young professionals as many sons and daughters of the upper class went to German universities for training in the new social sciences. Some then joined in the expanding settlement house movement, which was developing close ties to universities. For example, the University Settlement on Manhattan's Lower East Side attracted graduates from uptown Columbia University, just as Jane Addams' Hull House in Chicago drew academics like John Dewey from the University of Chicago. By 1895 there were over fifty such settlements in major cities nationwide, with workers who were invariably young, religious, college-educated, and from genteel family backgrounds. These social service workers relied heavily on the new social science methodology of fact-gathering and statistical analysis in their attempts to understand the city as an organic, interdependent whole.

The emphasis on social science research merged with an emphasis on expertise. Professionalism came to be viewed as the key to improving urban conditions. Ideally, professionally trained commissioners would replace corrupt city officials in formulating and implementing public policy. Thus the modern "policy expert" emerged, ready to impose order on an otherwise chaotic social environment. Meanwhile, by 1900 the number of national professional organizations had grown dramatically—economists, sociologists, political scientists, tax reformers, charity or-

347. Thomas, *Nationalizing the Republic: The Politics of Reform*, in *THE GREAT REPUBLIC: A HISTORY OF THE AMERICAN PEOPLE* 892 (D.C. Heath ed. 1977). For an excellent and succinct account of progressivism on which I have relied, see *id.* at 890-902.

ganizers, etc. had all formed professional groups, complete with publications claiming and exhibiting a distinct area of expertise and a demonstrable scientific methodology. These groups retained close ties to the universities, where social scientists were studying urban problems, proposing reforms, and generally advocating a new kind of politics—politics as the “science of constructive, intelligent social control.”³⁴⁸

Ironically, this reformist emphasis on control and efficiency began to bear a striking resemblance to the same emphasis in the modern business corporations. As Rockefeller sought to bring a high level of predictability to the volatile oil market, social reformers sought to bring a new, scientifically rationalized structure to urban life. This inevitably elitist appeal to order and scientific expertise began to replace the more moralistic and democratic thrust of early progressivism.

Meanwhile, as progressivism made its way into the law school world in the form of legal realism, reformers sought to apply the methodology of fact-gathering and policy analysis to law, replacing the traditional emphasis on formal doctrinal categories. The most astute of the realists applied their carefully honed skills of logical analysis to a swash-buckling demolition of the central categories of conventional legal thought, in particular the distinction between “public” and “private.” Under realist assault, the supposed private spheres of property and contract (*i.e.* the market) came to be reconceived as a function and delegation of public power. By definition property was the legally conferred power to exclude and withhold, and that publicly sanctioned power formed the coercive core of every so-called “free” bargain on the market. Both property and contract rights could thus be understood as, inevitably, the distribution of sovereign power—and therefore as social and political, rather than as strictly private.³⁴⁹

As with progressive reform generally, the realist assault, directed

348. *Id.* at 895 (quoting statement of political scientist Charles Merriam).

349. See generally F. Cohen, *Transcendental Nonsense and the Functional Approach*, 35 COLUM. L. REV. 809 (1935) (calling for a union of objective legal science and critical social values theory); M. Cohen, *Property and Sovereignty*, 13 CORNELL L. Q. 8 (1927) (addressing the shift of sovereign power to industry via property laws, with potentially dangerous social ramifications); Dawson, *Economic Duress—An Essay in Perspective*, 45 MICH. L. REV. 253 (1947) (addressing duress as a convergence of complex ideas, which result from economic growth, with a judicial system ill-equipped to handle them); Hale, *Bargaining, Duress, and Economic Liberty*, 43 COLUM. L. REV. 603 (1943) (arguing that increased judicial intervention into broad policies of private property, and freedom to contract, would provide the economically weak with power to resist the bargaining strength of the rich); Hale, *Coercion and Distribution in a Supposedly Non-Coercive State*, 38 POL. SCI. Q. 470 (1923) (addressing the need to develop an economic/legal theory to guide lawmakers faced with coercive restrictions on individual freedoms).

against conventional legal categories, carried with it a potentially radical message. Conceived as an on-going distribution of sovereign power, property lost the legitimacy once claimed for it as a private "right," immune from state interference. During a period when questions of distribution were central, given the fear of class conflict, the realists showed that nothing in legal logic compelled or sanctioned the gross inequality which characterized American society.

This explicitly distributional message, however, was obscured by the preoccupation with social science that came to dominate the realist movement. That preoccupation played into the cult of expertise, with the lawyer portrayed as trained policy maker rather than as protector of private rights. The cult of policy expertise became most apparent in the law school world when Laswell and McDougal proposed a reform curriculum designed to replace doctrinal analysis with policy science. The goal was to produce an elite corps of lawyers taught to formulate public goals and then, using all the tools of social science, to manage people efficiently so those goals could be achieved. The anti-democratic tone of their proposals was embarrassingly evident.³⁵⁰

Not surprisingly, the same tendencies became evident within the Episcopal response to progressivism. The broad church movement contained its own tension between elitist and egalitarian elements, expressed with the special intensity that religion imparts to moral and political issues. A crucial figure in the Church's move toward progressive reformism was Henry C. Potter,³⁵¹ who had been elected Assistant Bishop of New York in 1883 over his closest competitor, Trinity's Morgan Dix. Dix had received the support of the high churchmen, but the combination of evangelicals and broad churchmen who supported Potter had prevailed, indicating that Dix represented an increasingly antique past. Potter had come from a family of prominent Episcopal churchmen, and, like Dix, he was accustomed to the most elegant social circles: his friends included J.P. Morgan, Andrew Carnegie, the Vanderbilts, and the Astors. He had also been rector of Grace Episcopal Church in New York City, which since the 1850s had begun to eclipse Trinity as the most fashionable city church among the nouveau riche.³⁵² Unlike Dix, how-

350. See Laswell & McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 YALE L. J. 203 (1943).

351. This account of Potter is drawn largely from Griffen. See *id.* at 346-89. See also 6 C. BRIDGEMAN, *A HISTORY OF THE PARISH OF TRINITY CHURCH IN THE CITY OF NEW YORK* 68 (1962).

352. See F. JAHER, *THE URBAN ESTABLISHMENT: UPPER STRATA IN BOSTON, NEW YORK, CHARLESTON, CHICAGO AND LOS ANGELES* 230 (1982).

ever, Potter showed relatively slight interest in internal ecclesiastical organization, nor did he spend much time pondering complex theological dilemmas. Moving with little internal struggle from early evangelicalism to a later broad church toleration, he also embraced Darwinism as pleasantly compatible with the Episcopal view of the world.³⁵³

Almost from the start of his ministry, Potter's chief concern was with politics and economics rather than theology, and he rapidly became widely known for his leadership in the direction of progressive social reform. Emphatically disavowing the church's attempt to remain isolated from political and social concerns, he repeatedly preached and wrote about the unholy selfishness that competitive capitalism had encouraged, and about capitalism's destructive effects upon the family and the social order. In a pastoral letter entitled "The Duty of the Clergy in the Present Emergency," he specifically requested the clergy to preach upon the proper relation between labor and capital, insisting that the "Present Emergency" was caused chiefly by the "arrogance of the rich" who treated labor as a commodity "to be bought or sold . . . paid or underpaid, as the market shall decree," rather than dealing with labor in a "fair and fraternal" manner.³⁵⁴

One especially well-publicized expression of Potter's views was contained in a speech Potter delivered during an elaborate celebration of the Centennial of Washington's First Inauguration, conducted in 1889. The celebration, like the original inauguration, ended with an Episcopal service at Trinity's St. Paul's Chapel. President Harrison sat in Washington's pew during the events, and other prominent public figures and businessmen filled the church. Potter, who conducted the service, used the occasion not to praise Washington and America, as expected, but rather to speak out against the "growth of wealth, the prevalence of luxury, the massing of large material forces, which by their very existence are a standing menace to the freedom and integrity of the individual."³⁵⁵ Invoking the earlier vision of a more egalitarian republicanism, he warned against "mistaking bigness for greatness, and sadly confounding gain and godliness—all this is a contrast to the austere simplicity, the unpurchaseable integrity, of the first days and first men of our Republic,

353. He did, however, retain a healthy skepticism concerning positivism's claim of being a forerunner of enlightenment, asserting that human experience did not vindicate the movement. See C. Griffen, *supra* note 333, at 355.

354. *Id.* at 367 (quoting H. Potter, *The Duty of the Clergy in the Present Emergency* (1886) (a pastoral letter)).

355. *Id.* at 365 (quoting H. Potter, *Sermon Delivered in Observance of the Centennial of Washington's First Inauguration* (1889)).

which makes it impossible to reproduce to-day either the temper or the conduct of our fathers.' ”³⁵⁶ Not surprisingly, this nostalgic appeal to republican virtue was deemed to be in exceedingly bad taste.

Nevertheless, Potter was not by temperament a thorough-going radical egalitarian. Until the 1890s his chief emphasis was upon the notion of stewardship—the hope that the wealthy could be convinced, especially with religious prodding, to use their vast resources in a more socially responsible fashion. By the 1890s his interest turned to advancing trade unionism. The unionists’ emphasis upon solidarity, he came to believe, embodied in modern form the gospel idea of the “brotherhood of man under the fathership of God,” an ideal he believed capitalism had systematically undercut. Thus Potter became a vigorous leader in a New York City Episcopal organization called The Church Association for the Advancement of the Interests of Labor (CAIL), which was the only major society of any denomination actively and explicitly to support unionism. CAIL, which cooperated with leaders in the Knights of Labor and the American Federation of Labor (ties with Gompers were especially close), advocated regulations and enforcement procedures designed to protect workers, urged tenement house reform, and in some cases worked to unionize previously unorganized workers. Potter himself became Chairman of CAIL’s Board of Conciliation and Mediation, which held itself out as available for mediating disputes between labor and capital.

CAIL’s underlying spirit derived directly from Christianity rather than from the increasingly popular secularized version of religion as ethical science. Thus, in its newsletter, *Hammer and Pen*, CAIL writers explained that while Christ had preached a social gospel, he meant that social gospel to derive its meaning from the fact and experience of redemption, through which people were brought into communion with God and with each other. It was only through redemption that one could fully understand that God:

created all men equal. This equality was confirmed and ratified when God the Son took man’s flesh and man’s nature upon Him and shed His most precious blood, not for a class or a race, but for all mankind, thereby reknitting together for all time that bond of brotherhood which had been severed by selfishness and sin.³⁵⁷

Despite the egalitarian religious spirit which seemed to permeate the organization’s support for unionism, both CAIL and Potter himself always fell short of advocating total social and economic equality. The em-

356. *Id.*

357. *Id.* at 407 (quoting 1 *Hammer and Pen* 1 (1898)).

phasis instead was on gradualism in improving the relationship between labor and capital. "Men must creep before they can walk," *Hammer and Pen* carefully explained, and any attempt to revolutionize property relations would be "too sudden for the new order to last."³⁵⁸ Thus Potter could participate in CAIL and still retain his belief in responsible stewardship rather than immediate equality as the most realistic hope. The goal was not redistribution, which Potter continued to believe would be unfair to owners, but rather true equality of opportunity combined with a spirit of social responsibility evidenced by those who succeeded—reform, but clearly not revolution.

In that sense, while the animating spirit behind both CAIL and Potter's work as Bishop lay in the radical Protestant conception of the new order made possible through redemption, that spirit was still carefully contained. At least for the foreseeable future, the new order could do no more than very gradually evolve within the old (hence the appeal of Darwin's imagery to Potter),³⁵⁹ and the aim of Episcopal social reform was to give some expression to new order possibilities while at the same time insuring that such expression was ultimately conciliatory rather than revolutionary. Potter's interest in mediation and conciliation as methods by which to resolve labor conflict within the existing economic structure was thus an important symbolic statement of the perceived goal.

While Potter's own greatest interest lay specifically in labor relations, he also endorsed the best known of the progressive church movement's institutional work—the founding of social service centers designed chiefly to Americanize the immigrants.³⁶⁰ Most of CAIL's

358. *Id.* at 405-06 (quoting 5 *Hammer and Pen* 2 (1902); 6 *Hammer and Pen* 102 (1903)).

359. The image was always one of steady progress up an essentially vertical ladder, rather than of horizontal multiplicity. Cf. S. GOULD, *EVER SINCE DARWIN* 56-63 (1977) (claims evolutionary sequences are not rungs on a ladder, but a "circuitous path running like a labyrinth, branch to branch, from the base of the bush to a lineage now surviving at its top").

360. The institutional church movement has been described in a number of histories. See e.g., A. ABELL, *THE URBAN IMPACT ON AMERICAN PROTESTANTISM 1865-1900* (1943); C. HOPKINS, *THE RISE OF THE SOCIAL GOSPEL IN AMERICAN PROTESTANTISM 1865-1915* (1940); J. STRONG, *RELIGIOUS MOVEMENTS FOR SOCIAL BETTERMENT* (1900). The traditional account is that the churches reawakened to their moral and social responsibilities by ending narrow-minded doctrinal and denominational controversies and joining with each other and with secular agencies in order to meet the needs of the poor by establishing hospitals, asylums, homes for the aged, juvenile reformatories, and missions which provided recreation, education and charity as well as religious services. In other words, the churches became good progressives.

These "enlightened" social services, however, are of course subject to the same criticism that can be directed against the progressive movement generally—that it served to consolidate power and achieve a high level of social control while at the same time diffusing more radical social criticism. See generally 1 M. KATZ, *GLASS, BUREAUCRACY, AND SCHOOLS: THE ILLUSION OF EDUCATIONAL CHANGE IN AMERICA* (2d ed. 1975); G. KOLKO, *THE TRIUMPH OF CONSERVATISM* (1963) (the

founders had in fact, already done some form of institutional church work before becoming involved with the labor movement, and Potter himself spent a well publicized summer in 1895 in an Episcopal neighborhood center in the Stanton Street slum, one of the poorest districts in the lower east side, as an example to other, more reluctant, clergymen in the diocese.

Under Potter the Episcopal Church led all other Protestant denominations in supporting institutional church activities, and unlike CAIL, which caused considerable controversy because of its explicitly pro-union position, the social service movement proved to be an extraordinarily successful unifying force in a church that had emerged from the Civil War in a state of deep division. Even traditionalists like Dix could lend

progressive movement operated on the assumption that the general welfare of the community could be best served by satisfying the concrete needs of business); R. LUBOVE, *THE PROGRESSIVES AND THE SLUMS: TENEMENT HOUSE REFORM IN NEW YORK CITY, 1890-1917* (1962) (conception of housing reform as a technique of social control); *SHAPING THE AMERICAN EDUCATIONAL STATE* (C. Karier ed. 1975) (while espousing a "meritocratic" system, the educational state served to stabilize and rationalize a class system based on privilege, status, and economic power); Thomas, *Nationalizing the Republic 1890-1920*, in *THE GREAT REPUBLIC* 827, 866-902, 938-78 (1977) ("Under the triple impact of industrialization, modernization, and urbanization a growing number of leaders in all parts of the national community came to recognize the need for controls and system as new means of acquiring efficiency and stability."); R. Marks, *Testers, Trackers and Trustees: The Ideology of the Intelligence Testing Movement in America: 1900-1959* (1972) (unpublished dissertation available from the Stanford University Cubberley Library) (meritocracy is promoted by intelligence tests which fail to provide an impartial and just measure of an individual's innate abilities, but perpetuate the status-quo and maintain intellectual elite in leadership positions).

For this point more specifically and effectively made with respect to the churches, and from a religious perspective, see R. NIEBUHR, *THE CONTRIBUTION OF RELIGION TO SOCIAL WORK* (1932). Niebuhr points out that the general thrust of organized Christian charity is to accept (and preach) a static conception of society, *see id.* at 8, and "always create a spirit of generosity within terms of a social system, without developing an idealism vigorous or astute enough to condemn the social system in the name of a higher justice. Religion, in other words, is more fruitful of philanthropy than of social justice." *Id.* at 19. Thus what Christian charity achieves is effective social control rather than a change in the existing distribution of power. A chief point of Niebuhr's book is that secular social work has emerged from institutions first established by the church at the end of the 19th century, and suffers from the same static vision—efficiency of service is substituted for significant change in the distribution of power. *See id.* at 79-82. Niebuhr's point is consistent with Troeltsch's description of the relation of church-type Christianity to the social structure:

This is the type of Christian patriarchalism founded upon the religious recognition of and the religious overcoming of earthly inequality . . . [I]ts basic idea of the willing acceptance of given inequalities, and of making them fruitful for the ethical values of personal relationships, is given. All action is the service of God and is a responsible office, authority as well as obedience. As stewards of God the great must care for the small, and as servants of God the little ones must submit to those who bear authority; and, since in so doing both meet in the service of God, inner religious equality is affirmed . . . by the exercise of the tender virtues of responsibility for and of trustful surrender to each other.

E. TROELTSCH, *supra* note 93, at 78.

support (although somewhat reservedly) to the movement as being consistent with the patrician belief in charity as an upper class obligation, and high churchmen in general felt comfortable with the careful institutional structuring of social service work. Some high church clergy began to establish groups of celibate men and women who devoted themselves to charitable works, essentially reproducing that particular feature of Roman Catholicism.³⁶¹ At the same time evangelicals embraced the direct contact with the poor, finding in their missionary work among the immigrants the concrete experience of the redemptive process that cuts through established social hierarchies. Perhaps most important, however, the institutional church movement also drew on the progressive period's fascination with scientific methodology, organization, and data. Efficient social service meant disciplined, scientifically administered social service, and the siren call of efficiency seemed irresistible.

One danger of embracing that methodology, of course, lay in secularization; some clergymen began to worry that there would soon be no difference between religion and sociology.³⁶² Most Episcopal churchmen, however, saw not danger, but rather a new opportunity for Episcopalians to reinvent their old role as the publicly acknowledged, if not explicitly established, national church. By taking the leadership in tackling what everyone conceded to be the great social problem of the day—immigration and its link to class conflict—Episcopalians carved out for themselves an historic, public, and decidedly national mission.³⁶³ Through their social work efforts Episcopal leaders then began to form alliances with other denominations, with the ultimate goal of encompassing all Protestants and, some dared to hope, Catholics as well, within the great Episcopal fold.

In retrospect, the goal of once again becoming *the* national church appears to have been a grandiose one, but at the time it seemed utterly consistent with talk of America's destiny as civilizer of other nations: Both the Phillipines and New York City's immigrant population were conceived as part of the same challenge and the same obligation. With its historic link to the Anglican church of England, which had its own long-

361. Muhlenberg had moved in this direction already. See A. SKARDON, *supra* note 311, at 125-37. See also C. Griffen, *supra* note 333 at 323-24. Griffen points out that Father Huntington's Anglo-Catholicism led to radical social views, in sharp contrast to Dix's. Of course, the same division is to be found in Roman Catholicism.

362. See C. Griffen, *supra* note 333, at 91-93. For the take-over of "scientific" bureaucratic thought in all areas, see R. WIEBE, *THE SEARCH FOR ORDER, 1877-1920* (1967) (particularly Chapter 6).

363. See C. Griffen, *supra* note 333, at 71-106.

standing imperial vision of the White Man's burden, the Episcopal church seemed the natural representative of that Anglo-Saxon burden in its American form. That sense of national mission explains the odd juxtaposition of pessimism and optimism with which church spokesmen described "the social problem." The spectre of class conflict was invoked in the darkest imaginable terms, but with an air of self-importance and promised solution: It was the very gravity of the problem that gave the Episcopal institutional church movement its hope of playing a national role in keeping with its long historic tradition.

Trinity itself did not fully enter into the spirit of the institutional church movement until Dix died in 1908 and was replaced by a more progressive rector, but even as early as the 1870s Trinity's Record Books show an emphasis upon Trinity's charity work in the poorest quarters of New York. Despite Dix, the sweep of progressivism pushed even Trinity into the modern age. An 1878 description of the Mission Home and Chapel of St. Augustine, for example, shows in architectural detail the transition that was starting to take place. According to the *Records*, the chapel had two uses, "the one purely religious; the other, pertaining rather to the temporal wants of the neighborhood."³⁶⁴ As to the first use, the chapel was designed with all of the traditional Episcopal emphasis upon height, splendor and tradition:

The treatment of the tower is purely ecclesiastical, and with the spire crowned with the gilded cross, gleaming in the sun, or glowing with light at night, tells, as clearly tower and spire can tell, that within, men meet for the worship of God . . . Great prominence is given to the central entrance by means of a broad archway, which can be closed by light iron gates, opening into a wide brick-lined passage, with tessellated pavement and timbered ceiling. This entrance is flanked on both sides by large piers, with elaborately carved caps, from which springs the gable surrounding it.³⁶⁵

On the other hand, as an institution for schooling and social work, the chapel house was also designed with a modern concern for discipline, efficiency, and cleanliness. In the intermediate department of the school two separate staircases were built, one on the right for the girls and the other on the left for the boys. Square or rectangular rooms were laid out in rows, and though stained glass windows kept outsiders from looking in, for church officers the doors were "filled with clear glass that they may inspect the classes." As the Church Register explained, "this plan of

364. *The Churchmen*, Dec. 22, 1877, quoted in the Year Book and Register of the Parish of Trinity Church in the City of New York, 1878.

365. *Id.*

separate classrooms for instruction by the teachers is the only one by which a large school can be kept orderly and managed with satisfaction." Even the details of managing heat and water supplies were described for the edification of Trinity readers: two huge basins with pipes gave off streams of water, and bunsen burners produced drafts to carry away foul air through ventilating shafts going to the roof.³⁶⁶

By the 1890s the Record Books were showing photographs of properly disciplined and uniformed young people and adults taking part in various institutional church programs. Trinity conducted a Sunday School, an Industrial School, a Daily Parish School for Boys, a Night School (teaching English, Mathematics, Bookkeeping, Drawing, Telegraphy, Shorthand), a Ladies' Employment Society (in which women did sewing for pay arranged by the church), the Altar Society, and various guilds organized by age group ("Beginning with the youngest children, we pass them on from Guild to Guild, until they are full grown; nor do we let them go then . . .").³⁶⁷ By 1890, the Record proudly announced, these activities were managed by seventeen different supervisors, rather than only one as before.³⁶⁸

Meanwhile, the separate Trinity Church Association, developed specifically for charitable works, provided a Mission House, Mothers' Meetings, Guild Meetings, Bible classes, counseling services for the poor, a physician and dispensary, a kindergarten, training school for girls in Household Services, lectures for the poor, Seaside Home for Children, and a Relief Bureau.³⁶⁹ During the same period descriptions of the Trinity Charity Hospital began to include charts systematically indicating exactly how many patients suffered from which diseases, with the degree of medical specificity advancing during the last decade of the nineteenth century.³⁷⁰

The Trinity Parish Cooking School provided a key example of the most self-consciously modern educational procedures, as designed by a "gentleman whose scientific attainments have won trans-Atlantic reputa-

366. *Id.*

367. Year Book and Register, 1890: Summary of Chapels and Other Churches Aided by Trinity.

368. *Id.*

369. *Id.* Even in one of the black districts Trinity established St. Chryostom's Chapel and helped conduct a Mutual Benefit Society in which "colored men and women" could provide for their sick and burial of their dead; there was also a bureau to place black women in nursing home work and "work by the day." (Wealthy Trinity members were informed that "Persons looking for work-women will find the Bureau of use to them.").

370. *See generally*, Year Book and Register, 1893-1900.

tion . . . as an educator." The school used the most advanced equipment, complete with a large model of a dissected ox which showed all the different parts to be used for food. The instruction, "both practical and scientific," was designed to inculcate principles of thrift and efficiency. Girls and women were taught

what foods are most nutritious and healthy, and how to prepare them in the best way, with the best results and with the greatest saving of labor and material. They are shown how to avoid an unnecessary waste and how to make the most of everything, and are taught the secret, so far as cooking is concerned, of how to preserve health, and how to make money go as far as possible.³⁷¹

Rules of attendance were also carefully laid out—every pupil was required to present a Card of Admission and exhibit it whenever requested to do so; every pupil was required to wear "the appointed Apron and Cap;" and "every pupil must observe perfect order in the schoolroom, and must not engage in conversation with either fellow pupil or visitor."³⁷²

It is impossible to overstate the Episcopal emphasis upon its social work role in New York City, and Episcopal leadership in the institutional church movement was well recognized and applauded, even by those of other denominations. For example, *The Christian Union*, a paper originally started by Henry Ward Beecher, praised Episcopalians for settling quarrels between the low church and high church factions, thereby building a new church that "gives neither to Rome nor Geneva for a definite policy" but serves as an "American Church for an American people."³⁷³ In turn, the *Union* urged all other denominations to join the Episcopalians in forming a new, united church movement for the sake of public service: "No one individual, no one church, has done the work; no one church can do the whole work. There is need of mutual understanding, of fraternal conferences, and of hearty cooperation."³⁷⁴ This was utterly consistent with the stated Episcopal goal of organizing the whole country into parishes, so that every person in the nation could be systematically administered to. The ultimate aim was a revamped, progressive model of the traditional Anglican ideal of a coextensive church and state.

The importance of religion in inculcating the basic virtues of obedience, cleanliness, and attention to duty was emphasized by sociologists,

371. Year Book and Register, 1893.

372. *Id.*

373. *The Christian Union*, Oct. 28, 1874, at 331.

374. *The Christian Union*, Feb. 6, 1890, at 190. See also June 3, 1886 at 6.

politicians, and industrial leaders, as well as by the church leaders. For example, an early issue of *The American Journal of Sociology* contained an article by Shailer Mathews specifically about the social dangers of radical religious idealism, but also, simultaneously, about the importance of religion in teaching obedience rather than rebellion. Mathews described the radical discontent of the present age as the "child" of religious idealism; radicals were, in the name of love and justice, turning their church-taught lessons against their teachers and against all those in a position of authority. In this volatile situation, Mathews warned, it was essential that church leaders not allow their "influence and power to pass into other hands, less intelligent." History taught, Mathews explained, that the church was required to:

Hold in check the violence of the masses and the self-indulgent impulses of the individual . . . civilized society has rested on religion The church is especially fitted to educate and direct the social impulses, both within itself and society at large. And in two ways: by enforcing regard for law and by guaranteeing sanity in reform.³⁷⁵

The great social lesson of the church, Mathews said, was that redemption and social transformation were both linked to submission, not rebellion:

The metaphysical formula for religion does not permit the man who has come within the influence of the church to arrogate to himself discretionary power as to what laws should be obeyed and what may be disobeyed. Authority always is an element in religion Better a law-abiding spirit and bad laws than anarchy Besides the church, so far as I can see, there is no institution, state or school, court or prison, capable of. . . enforcing this. . . indispensable truth.³⁷⁶

Thus, regeneration through the institution of the church— through the spirit of religious charity which characterized the institutional church movement—would alone insure the containment of radicalism: "[I]n Jesus and Paul radicalism in teaching was tempered by sanity in method." Christ and Paul both prevented "a revolutionary and unintelligent effort to realize his new social order. Paul sent the converted slave Onesimus back to his Christian master. . . ." ³⁷⁷

Greater church and state cooperation in the administration of charity was achieved in 1894, when, at the state Constitutional Convention, Protestant Republicans from the National League for the Protection of American Institutions worked out a significant compromise with Catho-

375. S. Mathews, *The Church and the Social Movement*, 4 A.J. Soc. 608-09 (1898).

376. *Id.* at 610-11.

377. *Id.* at 612.

lic leaders. The convention passed two amendments, the first of which declared that separation of church and state required that no state aid be given to denominational schools, most of which were Catholic. This amendment satisfied widespread anti-Catholicism. On the other hand, in accordance with the report of the charities committee—which had advised that state interests would not be served by applying a strict church/state separation principle to charities—the convention in the second amendment allowed for state aid to sectarian charitable institutions.³⁷⁸ This compromise, which helped Republican candidates in the fall election, raised legal ambiguities which still have not been resolved.³⁷⁹ It did, however, promote systematic organization and supervision of religious charities, and encouraged their expansion. Notably, the most dramatic growth in Episcopalian charities followed passage of the amendment.

In 1913 Episcopalians published the first of their tri-annual reports on the progress of their charitable work.³⁸⁰ The emphasis was on efficiency, and on the fact that the working class represented a valuable resource which must be both conserved and socialized: "The interest of the people urges that our forests, water rights, and natural resources be conserved. The best interest of our nation—the good of all—demands that there be a conservation of our native American stock!"³⁸¹ (Apparently immigrants were somewhat more expendable). In order to promote efficiency, it was suggested that the whole country be divided into parishes, and within each parish Episcopalians would closely cooperate with secular authorities and with the religious agencies of other denominations. All information gathered by the churches would "be presented to the authorities, police courts, school boards, or whatever else" in the hope of producing "great results for good."³⁸² The need for technical training in social work was stressed,³⁸³ and elaborate flow charts outlined how the necessary coordination would be achieved.³⁸⁴

Statements from officers and lawyers in major industries were quoted at length applauding the work of the church and praising its utility in insuring a productive and obedient work force. One attorney for a large steel corporation explained:

378. See J. PRATT, *supra* note 161, at 225-56.

379. See B. COUGHLIN, *CHURCH AND STATE IN SOCIAL WELFARE* 44-58 (2d ed. 1965).

380. See generally *THE JOINT COMMISSION ON SOCIAL SERVICE OF THE PROTESTANT EPISCOPAL CHURCH, SOCIAL SERVICE AT THE GENERAL CONVENTION OF 1913* (1913).

381. *Id.* at 81.

382. *Id.* at 106-07.

383. See *id.* at 130.

384. See *id.* (Appendix D).

As the Lord had to adopt sanitary means and methods for the children of Israel in the wilderness, because they were just out of bondage and did not know how to make suitable provision for themselves, for the same reason I think the captains of industry should look after the welfare especially of their ordinary laboring men, who are frequently quite unfitted to look after themselves. If they are of use to the great industrial corporations, then they should be. . . protected and cared for. I think the church is in a position to be of great practical use along these lines. . . .³⁸⁵

Employers stressed also the moral and social lessons which the church should teach when it provided needed services:

He [the laboring man] must be industrious; he must be saving; he must be self-sacrificing; he must diligently develop and cultivate within himself a sense of duty and responsibility.³⁸⁶

Similarly:

The employee should recognize his responsibility towards his employer, and give faithful, industrious service, with an intelligent interest and concern in the success of the business. The above should be taught very clearly and earnestly.³⁸⁷

At the same convention that heard the report of the charity committee, however, one dissenting Episcopal minister presented the radical laborer's version of religious charity. Citing Marx on the labor theory of value, he explained:

[W]ages do not support religion. If religion is supported, it is supported out of profits, not out of wages. It is, therefore, in the judgment of the class-conscious worker, a gift of the rich made possible through plundering the workers. If the church is endowed, it is supported by past plunderings. Therefore, self-respect requires that the class-conscious worker repudiate organized Christianity as a charity to which the same self-respect forces him to despise. It has no connection with the justice for which he longs, but which he knows he must struggle for himself.³⁸⁸

He urged the church not to continue to support the capitalist structure, but to side with the worker: "Jesus Christ was not interested in legal rights or in property rights. One of his greatest followers declared that the 'strength of sin is the law,' and He Himself insisted that property was more likely to be a hinderance than a help."³⁸⁹ This same minister concluded that "the Church, if she is to be a real power in the twentieth

385. *Id.* at 56.

386. *Id.* at 54.

387. *Id.* at 55.

388. *Id.* at 18.

389. *Id.* at 12.

century, must cease to be merely the almoner of the rich and become the champion of the poor."³⁹⁰

Predictably, that position was not adopted by the convention; flow charts prevailed. The statement illustrated, however, the dangerous radical potential implicit in the church's moral preoccupation with the social needs of the working class. Many workers at the time were demanding not church guilds and cooking schools, but full social and economic equality—the realization, in the immediate future, of the new order ideal of the purified community under God. Moreover, that demand was quite often being phrased in explicitly religious terms, as Mathews had pointed out. It was therefore difficult for the churches to ignore or fully contain, and it also posed a theoretical challenge to the supposed church/state distinction no less than did Bishop Potter's progressivism.

A radical paper called *The New Time*, published toward the end of the century with the endorsement of Eugene Debs, illustrates the extent to which religion provided a vocabulary for describing and advocating radical social change during the progressive period. The impulse to establish a new social order was declared to be essentially religious ("There is a divine discontent with things as they are."),³⁹¹ and the model for the new social order was a version of purified Christianity ("The political organization of Christ's law of love.")³⁹²

Significantly, *The New Time* also contained a notable emphasis upon the need for a total reformation of society—a zeal to discard completely the old and the corrupt in favor of the new and the regenerate. This destruction/renewal theme has been a part of radical sectarianism since the eschatological prophecies of the Old Testament. God in His dreadful but righteous wrath will destroy the whole society, but He will also save out a few, the chosen remnant, and from those purified roots He will build a new society.³⁹³ The same spirit rests at the core of the central Protestant experience of redemption—the individual is so overwhelmed by his own sinfulness that only divine grace can provide a complete cleansing. Then, from the cleansed hearts of those who have been saved, springs a new, purified church order.

One result of the destruction/renewal emphasis is that the contrast

390. *Id.* at 21.

391. Tyner, *Religion in Social Reform*, 3 *THE NEW TIME* 75 (1898).

392. Pomeroy, *The Fundamental Religious Argument for Direct Legislation*, 1 *THE NEW TIME* 80 (1897) (quoting Prof. George D. Herron).

393. For that tradition, see generally N. COHN, *THE PURSUIT OF THE MILLENNIUM: REVOLUTIONARY MESSIANISM IN MEDIEVAL AND REFORMATION EUROPE AND ITS BEARING ON MODERN TOTALITARIAN MOVEMENTS* (2d ed. 1961).

between good and evil is thereby intensified. Truth and falsehood are thrown, as it were, into a dramatic confrontation, and only from the resulting conflict (*not* from compromise and accommodation—or, for that matter, from Potter's "mediation,") can righteousness emerge. Hence the zeal always to speak the "truth", despite resulting strife with the external world: "[T]he peace which is without truth is more execrable than a thousand contentions."³⁹⁴

Exactly that spirit is expressed in passages like the following, from *New Time*:

The ax of Jesus' truth will be laid to the root of every social and individual, every industrial and political, every religious and ecclesiastical tree, and the fruitless and the barren will be hewn down and cast into the fire of the new fervor of social brotherhood.³⁹⁵

It is repeatedly stressed that the new brotherhood cannot be formed from existing institutions. Since both church and state are "affording protection to great interests" their preservation and prosperity "comes to be looked upon as of greater importance than the salvation of the people. . . . [A]s devotion to the organization . . . becomes the dominant motive, brotherly love is driven out."³⁹⁶ Therefore, what is required is not adjustment or expansion of the institutions; instead, "We must have a New Church for the New Time,"³⁹⁷ from which will emanate the spirit for a new social order. Only those who are spiritually purified will be ready to demolish the old order and introduce the new ("Who would be free, himself must strike the blow."),³⁹⁸ and those who do work for the new order are warned to expect the strife which results from the assertion of truth:

[Y]ou will have against you the combined might of intellect, culture, learning, respectability, established religion, business and political magnates. . . . Right in the face of it declare the scriptural assertion, "As a man thinketh in his heart so is he!"³⁹⁹

Thus the editors of *New Time*, evidently perceiving a close link between religious enthusiasm and the zeal for revolutionary social change,

394. D. LITTLE, *supra* note 93, at 92 (quoting 2 WORKS OF WHITGIFT 238 (London 1851-53)). This is in sharp contrast to the Anglican tradition, within which peace is to be preferred to such strife: since the only social "truth" recognized by the church is the static order of the combined church/state structure, then no new and preferable social order could emerge as a result of contention.

395. Wilson, *The Social Crusade*, 2 THE NEW TIME 232, 234 (1898).

396. Wattles, *A Brotherhood Church*, 3 THE NEW TIME 178 (1898).

397. *Id.*

398. Tyner, *supra* note 391, at 75. See also Pomeroy, *supra* note 392, at 81.

399. Diaz, *Human Brotherhood as Political Economy*, 1 THE NEW TIME 47 (1897).

feared that if the religious spirit were drained from revolutionary politics, then the political movement would be robbed of its potentially most radical force: "The most damnable heresy of modern times is the division of the sacred from the secular."⁴⁰⁰ Conversely, the greatest hope for social change lay in the rising tide of religious/social enthusiasm. The description of its fervor suggests that nothing less than another Great Awakening was anticipated:

The rapidly growing social spirit which is moving onward with increased momentum is profoundly religious The new order is assured. The present hour is big with possibilities never before within the reach of earth's millions.⁴⁰¹

. . .

We are to-day just having the first intimations of a great outpouring of the spirit of God through the hearts of men, in a new realization and application of the kingdom of heaven upon the earth.⁴⁰²

Many of the churches, including the Episcopal, were becoming concerned that their own churchmen were being drawn to the religious spirit which seemed to underlie the most radical demands of the labor movement. Part of the genius of organized Christianity, however, has always been to keep its most errant and potentially disruptive spirits carefully within the fold of the church organization, so that the voluntarist implications of Christianity are expressed only through the church, and therefore in forms that pose no great threat to the social order. The task of careful containment is a delicate one, as illustrated so well in New York by the Dutch Reformed Church's successful response to the First Great Awakening. On the one hand, without the fierce spirit of perfectionist enthusiasm Protestantism loses much of its moral force, as in Vesey's refusal to make any accommodation with the Great Awakening, which left him, unlike the Dutch, presiding over a church with political sanction but little spiritual content or popular support. On the other hand, the spirit of people like Frelingheusen, once unleashed, carries with it a huge potential for social disruptiveness, and that potential was once again embodied in the social gospel spirit of the late nineteenth century. Part of the great success of the Episcopal broad church movement during the progressive period lay in its willingness to tolerate diverse and quite radi-

400. Pomeroy, *supra* note 392, at 80. Similarly, we must "increas[e] the sentiment of brotherly love in the hearts of men. . . . [T]he labor movement must be a religious movement—the religious sentiment must be made predominant in it." Wattles, *supra* note 396, at 177.

401. Flower, *Human Brotherhood: The Ideal of Primitive Christianity and the Soul of the Present Conflict*, 1 THE NEW TIME 109, 110 (1897).

402. Wilson, *supra* note 395, at 232.

cal views while at the same time successfully marshalling radical energy in the service of church organizations which ultimately did more to conserve the social order than to revolutionize it.

A case in point is the career of Rev. W.S. Rainsford, a kind of modern-day Frelingheusen. In 1883 Rainsford, son of an Irish evangelical preacher, had been asked by J. Pierpont Morgan to be rector of St. George's Church. This once elegant chapel on the lower east side had been endowed by Trinity before 1814 and was therefore independent of her direct control. By the late 1870s the chapel had become surrounded by a slum neighborhood upon which the church had virtually no impact. Although the congregation dwindled as wealthy families moved uptown, Morgan, who was Senior Warden, had refused to desert the church, deciding instead to select a rector who might somehow make the church a vigorous force in the neighborhood. Usually his motives are said to have stemmed from loyalty to the old and beloved chapel.⁴⁰³ Several ministers were called but the prospects for success were so dim that only Rainsford accepted the challenge.⁴⁰⁴ By the time he retired twelve years later the church had one of the largest and most active congregations of any church in the city, but Rainsford's reputation as a dissident precluded his being considered for higher ecclesiastical office, and he personally believed that he never would be called to another church.⁴⁰⁵

In one sense Rainsford was the true uncompromising radical protestant. For example, a familiar element in Rainsford's theology was, as with *New Time's* writers, a marked emphasis upon preaching an uncompromising "truth". That truth, moreover, was one which could be learned only through an earnest struggle with God, which necessarily entailed the rejection of hierarchically authorized creeds: "I must act as my heart tells me; I won't speak until I have the light. . . ."⁴⁰⁶

This emphasis on truth meant that Rainsford refused to adjust his

403. See H. ANSTIU, *HISTORY OF ST. GEORGE'S CHURCH* 288 (1919).

404. See W. RAINSFORD, *A PREACHER'S STORY OF HIS WORK* 235 (1904).

405. See *id.* See also W. RAINSFORD, *A STORY OF A VARIED LIFE* 260 (1922) [hereinafter *STORY OF A VARIED LIFE*] The latter point was never tested for he was too ill when he retired to continue full-time work.

406. W. RAINSFORD, *supra* note 404, at 107. During a "crisis" period in Rainsford's ministry, when he doubted his own faith and underwent the intense self-scrutiny that marks the individual religious experience, Rainsford revealed to his congregation his own lonely uncertainty rather than merely repeating the doctrines the church taught and expected him to preach. Although he felt a fierce responsibility ("the burden of souls") to his congregation, he maintained that "suffer as I might—and I did suffer in those dark, lonely days—of one thing I was sure, one duty I saw clearly; it was this: If I . . . was to be true to myself, to my people, and to my God, I dare not temporize about speaking the truth." *Id.* at 185-86.

preaching to the requirements of old (and wealthy) parishioners who objected.

[N]o organization is the stronger for half-hearted members. It is a mistake to raise so much as a finger to keep any one in your church. . . . Your business, if you believe you have any business in the Church of Jesus at all, is to speak out the truth as you see it, and never, never, "hedge."⁴⁰⁷

The "truth as you see it," moreover, could never be defined statically at any single moment in time; rather, it grew out of the preacher's individual and continuing relation with God and with his congregation. Thus the Church's attempt to define and impose a single, immutable, and universal truth was gross arrogance. Rainsford's sharpest criticism of the Episcopal church was on this point:

The root mistake they [orthodox churches] have made, and none of them have made it quite so persistently as has the Protestant Episcopal Church, has been in the diverting of this divinely entrusted work of the preacher into an assumption of a religious control over the taught. Not so much a patient purpose to seek and find spiritual values, as a growing will to improve a doctrinal and sacramental system; *an assumption of power, rather than a seeking for truth.*⁴⁰⁸

According to Rainsford, the preacher's proper relation to his congregation was defined entirely by an always experiential definition of truth. The truth the preacher teaches is in large measure a truth learned *from* the congregation, and he, in turn, becomes an instrument through which the people express themselves. What is established is a continuing, unmediated interrelationship involving God, the preacher, and the congregation. There can be no substitute for the intensity of that interaction. The preacher becomes *not* a figure of authority, but a means through which the interrelationship is accomplished:

I profoundly believe that when a man has a vision of God on the one hand, and, on the other the needs of the people in his heart. . . . [n]o writing, no literature, no diffusion of knowledge, no religious or pedagogical press, or anything else, can take the place of [his] preaching.⁴⁰⁹

Therefore, Rainsford insisted, the preacher absolutely could not stand aloof from his congregation. Distance defeats the immediacy of the relationship which is the heart of preaching: "I try to make myself the mouthpiece of my parish. . . . The sermons I often preach are more often

407. STORY OF A VARIED LIFE, *supra* note 405, at 259-60.

408. *Id.* at 354-55.

409. W. RAINSFORD, *supra* note 404, at 198.

theirs than mine.”⁴¹⁰

In turn, this intense three-way relationship forms the basis for a new Christian community:

[S]ome of the very best suggestions and the best points I have made . . . I have gained by contact with people in visiting. We do not fully appreciate the value of knowing people—how they live and what they think. Just as the sonship of man to God is only about dawning on men’s minds to-day, so it follows that the brotherhood of men to one another. . . has not been accepted at all; and it seems to me that the constant intercourse I have spoken of affords all sorts of opportunities to illustrate this revolutionary gospel and press it home.⁴¹¹

Moreover, since the church, by virtue of this interrelationship, becomes the concrete embodiment of a new sound order, an illusory separation of church and state provides no excuse for an evasion of direct social responsibility.

[T]he Church of Jesus should show the way to all sorts of betterment. . . . [S]he can and should not only protest . . . but further, she must stand ready to illustrate concretely . . . what should and could be accomplished for good under the circumstances confronting her.⁴¹²

Always mindful of the church’s obligation to “illustrate concretely” a new social order, Rainsford stressed repeatedly the importance of voluntarism in matters of church organization. Since the church was defined by its immediate relation to God, whatever did not spring from the willing—and equal—hearts of the congregation was without value. On this question Rainsford was uncompromising. Pews were free, and previous owners who would not sell their pews back to the church found that their supposed privilege was simply ignored—all were seated equally, and even J. Pierpont Morgan had trouble finding a seat on crowded mornings. “To own or rent a foot of the floor of the House of God is to contradict . . . the Gospel of Jesus.”⁴¹³

As part of his emphasis on the “bottom-up” voluntarism of the church, Rainsford rejected the traditional Anglican practice of hiring choirs and instrumental music. Instead, Rainsford insisted upon congregational singing, and a choir made up entirely of people from the neighborhood—including, for the first time, women, and a black soloist. At one point an old and wealthy parishioner of St. George’s offered Rain-

410. *Id.* at 199-201.

411. *Id.* at 217-18.

412. *STORY OF A VARIED LIFE*, *supra* note 405, at 225.

413. *Id.* at 212.

sford \$200,000 to build a neighborhood center Rainsford had wanted. The one condition to the gift, however, was that the donor should have charge of the church's music, hiring only skilled musicians. Rainsford refused the gift, saying, "I would not give up my large chancel choir idea, its members recruited from the congregation, leading the congregation in its worship because they wanted to lead it, not because they were paid."⁴¹⁴

A similar but ultimately more significant issue resulted in a major confrontation between Rainsford and Morgan. Morgan, as First Warden, with one other warden and a vestry of eight, controlled the finances of the church. While Morgan had (sometimes reluctantly) backed Rainsford in other matters, in 1889 he refused to accept Rainsford's plan to expand the vestry so that more working class members of the congregation would be included. Rainsford insisted that the congregation should be "represented by their own class," but on the issue of financial control Morgan finally drew the line. Calling Rainsford and the vestry together, he said:

The rector wants to democratize the church, and we agree with him and will help him as far as we can. But I do not want the vestry democratized. I want it to remain a body of gentlemen whom I can ask to meet me in my study.⁴¹⁵

Morgan then introduced a motion to *reduce* the size of the vestry, rather than enlarge it. After long deliberation, a vestryman (to whom Morgan had lent a considerable amount of money) finally—"white to the lips"—announced that he agreed with Rainsford. Seth Low, mayor of New York, seconded a motion to increase the size of the vestry to eleven, which passed with all but Morgan agreeing. That evening Morgan resigned (temporarily) as First Warden.⁴¹⁶

So far as I know, that vestry decision, under Rainsford's leadership, marked the first effort to allow and encourage working class participation in the management of any New York City Episcopalian property. It also formed, in effect, a concrete, ecclesiastical example of Rainsford's evolving political view that the charity offered by the church was no substitute for economic equality:

To comfort and help with doles an overworked and "sweated" family was not what was wanted and the sufferers knew it. What was needed was a

414. *Id.* at 216.

415. *Id.* at 231.

416. *See id.* at 280-83.

radical change. . . .⁴¹⁷

Thus, Rainsford's attitude towards ecclesiastical property had implications that extended well beyond the church, and led to his advocating, for example, public ownership of property that he believed rightly belonged to the people. In fact, he shocked an anti-Tammany gathering of New York Republican lawyers (including Elihu Root, Joseph Choate, and James Carter, then head of the New York Bar) by declaring that the street railroads operated on land stolen from the public. Later Choate told Rainsford that he personally agreed with Rainsford's position, but that no leaders of the Bar would take that stand publicly because they were all, including Choate himself, retained by the street railway companies. According to Rainsford, Choate had in effect admitted that:

his native city's government is so rotten that under it the property of its citizens is being misappropriated, but that, obeying the custom of the profession, he and the leaders of the New York Bar have allowed themselves to be retained by those men who they believed are robbing the city, and [thereby] . . . have made it impossible to take any part in publishing this wrongdoing. . . .⁴¹⁸

It is, finally, in this skeptical attitude towards law that radical Protestants most dramatically, and perhaps most significantly, separate themselves from traditional Episcopalians. While Morgan Dix, from his lofty pulpit, declared that jurisprudence was God's second daughter, Rainsford derived his understanding of what law meant from the experiences of his congregation:

If we had things to teach Tony, Tony certainly had much to teach us. His home a slum tenement, no room or little room for him at school, no understanding of him when he did get a place in school, and when he broke from school's unsympathetic and most unnatural restraint, then a bad law, shamefully administered, which tied his wild vivid boyhood up with older and vicious criminals, in a prison for truants. No place to play but the street, and no peace in the street for the ubiquitous "cop," his natural enemy. Everything that stood for order and for property, the policeman, the landlord, the church, all were against him.⁴¹⁹

That perception, gained from the reciprocal relation between preacher and people, made it impossible for Rainsford to support the general effort of his church to help maintain social order: God's law and the law of the state were not joined, but opposed. Thus, when Mr. Fish, a wealthy speaker at a dinner meeting, announced that only a religious revival

417. *Id.* at 242.

418. *Id.* at 321.

419. *Id.* at 236-37.

could save the country (for "when men ceased to believe in God they would cease to respect property"), Rainsford replied that a revival of "the religion of the God of property" was impossible for "that God is dead as a Juggernaut." What he predicted instead was a revolution in "our ideals of justice and right. It is leavening our people as never before. *It is the religion of the God of men.*"⁴²⁰

At that point, of course Rainsford fundamentally separated himself from the basic tenets of his own church. God's law served, for Rainsford, not to legitimate the social order but to undermine it; the new order had forever severed itself from the old. The fact remains, however, that Rainsford never left the church, and he stayed an Episcopalian precisely because its broad church leadership, under Potter, allowed him the freedom both to express his views, and to give them concrete social and political form.⁴²¹ Moreover, that toleration proved beneficial to the church, for Rainsford's success at St. George's immeasurably strengthened New York Episcopalianism. St. George's grew from about 100 communicants in 1882 to well over 5,000 in 1902, making it the largest parish in the Episcopal Church,⁴²² and no single institution did as much as St. George's to establish Episcopalian leadership in the institutional church movement. Rainsford's success no doubt also accomplished precisely what Morgan envisioned as the ultimate goal for his chapel, for despite Rainsford's own emphasis on voluntarism, St. George's became an oft-cited and prime example of successful socialization of the lower class. For example, Theodore Roosevelt wrote that:

As a preacher, as an executive, as a citizen among his fellow citizens, Dr. Rainsford made St. George's Church the most notable institution of its kind in the world. Not only New York City but the nation as a whole owes him a debt of gratitude for his moulding of American citizenship in the form in which it should be cast.⁴²³

Not surprisingly, despite Rainsford's remarkable success, Dix con-

420. *Id.* at 423 (emphasis in original).

421. *See* C. Griffen, *supra* note 333, at 229.

422. *Id.* at 221.

423. *Id.* at 221. Griffen does not stress the contrast between Rainsford as radical and Potter as progressive reformer. I think the contrast is important and, in the case of these two men, accurate. It is also true, however, that Rainsford never articulated any systematic political philosophy, Marxist or otherwise. He showed a strong aversion to any classifiable dogma, believing, as always, in a more experiential definition of "truth." He also thoroughly doubted the sufficiency of any wholly positivist description of society. *Id.* at 228. Of course that prevented an allegiance to any particular political doctrine, which I see as genuinely "radical," but not necessarily in the orthodox Marxist sense. Arguably, it also limited Rainsford's political thought in some ways.

sidered Rainsford's political views distasteful,⁴²⁴ while Rainsford found Trinity's refusal to use more of her wealth to benefit the poor a disgrace. Some conflict between the two was inevitable, and it occurred most directly in the 1890s, when the New York Legislature, with Rainsford's cooperation, once again reopened the whole question of Trinity's property. This time the investigation was part of a general examination of tenement house conditions, and led the legislature to challenge financial policies that had made Trinity the single largest owner of tenement property in the city.

C. *Trinity as Landlord*

Trinity's status as tenement landlord had been the subject of some grumblings prior to the 1894 investigation. As early as 1855 testimony before the Senate Committee revealed that Trinity's policy of renting her city real estate tended to discourage improvement and to debase surrounding land values. Then, in 1878, one hundred and fifty tenants, feeling the impact of the Panic of 1873, organized to seek a rent reduction. Most of these tenants were middle-man landlords, who argued that they could not extract sufficient rents from the buildings they had erected on Trinity property to cover the rent owed to Trinity and still clear a profit. General John Dix, although sympathetic, explained that "The corporation is desirous of treating its tenants fairly, and at the same time to keep its own interests in view." Accordingly, the corporation rejected the requested reduction of 25%, but did agree to negotiate a compromise, which the tenants grudgingly accepted.⁴²⁵

Unfortunately for Trinity, however, a newspaper called the *Index* followed up on the story with some research into the Trinity estate. In an article called "Astounding Facts about Trinity Church," the *Index* claimed that Trinity owned 5,000 lots worth \$70 million, on which it paid no taxes.⁴²⁶ Moreover, declared the article, the real estate of Trinity

424. As illustrated by the following sarcastic passage from Dix's Diary:

Mr. Rainsford was very earnest as usual; announced himself as a "Christian Communist;" . . . inveighed against piling up enormous fortunes. He also wanted rich men to buy up the tenement house blocks, pull them down, build good houses for people & be content with 4% instead of 14%; and rich women to go as district visitors & city missionaries. He also said that he had been at some of the meetings of the Socialists in this city. . . . He also eulogized the self-sacrifice and devotion of the Nihilists, saying that they renounced everything, and braved every danger, simply with the aim of helping people whom they pitied as pure and trodden down.

C. Griffen, *supra* note 333, at 231-32 (quoting a Nov. 18, 1883, entry from Dix's Diary).

425. W. SWANBERG, *THE RECTOR AND THE ROGUE* 80-82 (1968).

426. *See id.* at 80.

supported 764 liquor saloons and 96 houses of prostitution ("ninety-two white and four colored").⁴²⁷ The article created so much publicity that General Dix was authorized to publish refutations. Since the investigations of the 1850s, Trinity had self-righteously maintained that its business affairs were not to be subjected to crass public view; Dix's refutations represented something of a descent from that lofty position. Dix showed that Trinity did pay taxes and that it owned only 750 lots. He also produced letters from the chief of police and the head of the Excise Department vouching for the fact that no church-owned lots were used for saloons or brothels. The *Index* reports were refuted, but the fact that Trinity had been forced to account for herself was decidedly unseemly.⁴²⁸

Moreover, there may have been some truth to the *Index* story. Rainford reported learning that Trinity was receiving rent from saloons and at least one brothel. He had given the information to the Trinity Vestry, but nothing was done until he threatened to take the issue before the Diocesan Convention— "[U]nder such pressure at last action was taken."⁴²⁹ Conceivably, the *Index* could have discovered evidence of that threat.

Such sensational publicity, combined with Trinity's well-known position as a wealthy property owner in a city owned largely by the rich,⁴³⁰ formed a lively backdrop for the 1890s exposé of Trinity's role as cut-throat tenement landlord. Articles not only about Trinity, but about New York's generally deplorable housing conditions for its poor and immigrant population, had led the state legislature to appoint the Tenement House Committee of 1894. Its chairman was Richard Watson Gilder, a zealous housing reformer and son of a Methodist minister. From his father, Gilder had acquired a deeply rooted sense of moral obligation,⁴³¹ and he was irrepressible in his quest for justice and struggle against evil. Though he was himself an Episcopalian⁴³² (and may even have been a member of Trinity), he did not hesitate to expose Trinity as the largest single owner of tenement housing in the city, several hundred of whose

427. *See id.* at 81.

428. *See id.* at 81-82.

429. *STORY OF A VARIED LIFE*, *supra* note 405, at 242.

430. As reported by the New York Herald, by the end of the century over one-half of the land in New York City was owned by 170 families. Of 2,000,000 residents, 1,800,000 had no interest in the island except as renters. *See FACTS AND FIGURES FOR PEOPLE WHO THINK*, 2 *THE NEW TIME* 68 (compiled by W. Handy 1898).

431. *See R. LUBOVE*, *supra* note 360, at 88-89.

432. *See id.* at 90.

buildings were dilapidated "disease-traps," dirty and unsafe.⁴³³

The Committee focused especially on fire hazards caused by overcrowding and accumulated filth, combined with the absence of either fire escapes or an available supply of water. In fact, during the investigation seven new tenement house fires were reported in the city, with fifteen resulting deaths. The Board of Health had tried to enforce a regulation requiring a water supply on every floor of a tenement building, but Trinity had opposed that enforcement,⁴³⁴ and defended its anti-water position before the committee by explaining that lower class tenants could not be trusted to use water; "slop" would go into the sinks, and "the whole place will be dirty and nasty."⁴³⁵

In response, others testified that in general tenants preferred to be cleaner than their limited access to water allowed them to be. Rev. Rainford, for example, reported that people in his neighborhood welcomed and used the baths he had installed for public use at St. George's parish buildings,⁴³⁶ and a physician with a tenement house practice described the opening of a few public baths which immediately became so popular that they had to be closed because of crowding.⁴³⁷

Meanwhile, the descriptions of tenement house conditions were graphic. The representative of a charity group which had organized a work force to clean and lime one slum area reported removing 3,903 barrels of refuse, along with the bodies of dead dogs, cats and rats, putrid meat, old bedding, and straw.⁴³⁸ Mr. John B. Devins, Pastor of Hope Chapel, said that not only were state laws concerning whitewashing tenements hardly ever followed, but owners furthermore opposed the work of charitable relief societies when they tried to perform the tasks that landlords neglected.⁴³⁹ A building on land owned by Trinity was described as having walls so broken that the wind tore through. Ceilings were ready to fall, stairs were dark and rickety, floors were broken and the yard was filled with rubbish and stagnant pools of water.⁴⁴⁰ A Priest of the Chapel of the Holy Rosary described other tenement house conditions that were

433. *Id.* at 114.

434. *See Report of the Tenement House Committee of 1894*, DOC. NO. 37, NEW YORK ASSEMBLY DOCUMENTS, 118th sess., at 56, 539 (1895) [hereinafter *Report of the Tenement House Committee*].

435. *Id.* at 540.

436. *See id.* at 508-09.

437. *See id.* at 437-38.

438. *See Report of the Tenement House Committee, supra* note 434, at 426-27.

439. *See id.* at 426-27.

440. *See id.* at 543.

so bad he could not stand to go upstairs because of the smells.⁴⁴¹ A "tenement-house visiting doctor" of the New York Infirmity for Women and Children described children in the tenements working on button sewing and basting. Such conditions inevitably led to poor morals among the children, he claimed, despite the determination of parents to maintain good standards: a boy taken away from the area by the fresh air fund grew up "into a good, moral young man," while his brother and sister "living under the influence of the tenement-house have become the reverse."⁴⁴² When Trinity's controller, Stephen Van Rensselaer Cruger, claimed that he had inspected one of the Trinity tenements under investigation and had found it "pretty clean," Gilder impatiently responded, "I was there on Thanksgiving Day, and it was absolutely filthy."⁴⁴³

As the committee revealed, the problem lay not just with landlord inattention to upkeep, but with the whole structure of leasing and profit. Property owners like Trinity, who often leased to middlemen landlords, had no financial incentive to maintain good conditions on their property. The general pattern was to switch from long-term over to short-term leases, with owners holding the property for the expected rise in the market price, and then either selling the land or converting it for commercial use. Middlemen, in turn, simply extracted maximum profits from dilapidated buildings while awaiting termination of leases.⁴⁴⁴ Moreover, model experimental tenements, which featured sunshine, ventilation, and decent sanitation, had brought a profit of only three percent on investment so long as overcrowding was not allowed, a return too low to attract investors.⁴⁴⁵ As Rainsford testified, the poor were already paying between one-fourth and one-fifth of their income for shelter, and could not afford to pay more.⁴⁴⁶ Thus, the highest profits came from crowding the maximum number of people into run-down buildings rather than attempting to upgrade the quality of available housing. Nor did housing regulation really result in improved conditions, since bribery of inspectors made evasion of the codes both simple and commonplace—a practice which, as one witness noted, did not exactly instill among the tenants a respect for

441. *See id.* at 526.

442. *Id.* at 530-31.

443. *Id.* at 539. Cruger was manager of numerous estates besides Trinity's. He was a staunch Republican and belonged to the most fashionable New York City clubs: Metropolitan Club, Union, Union League, Republican, Knickenbacker, Church Club, Tuxedo, St. Nicholas, and New York Yacht Club. He was also a trustee of the Metropolitan Museum of Art and the Museum of National History.

444. *See, e.g., id.* at 402-03.

445. *See id.* at 386.

446. *See id.* at 506.

the law.⁴⁴⁷

During the investigation there was considerable discussion of alternative plans used by European governments to provide decent housing. Under particular scrutiny were expropriation laws in Britain which allowed for condemnation of tenement buildings determined unfit for habitation. Those laws were useful as a threat as well as when acted upon, especially because compensation to owners for expropriated property was then based upon the value of the tenement buildings "as old materials" rather than on rental value; the latter was often higher in slums than in upper class apartment buildings.⁴⁴⁸ Rainsford advocated such a scheme for the United States. Others, however, were still convinced that the problem of squalid slum conditions was actually caused by the low moral standards of the tenants and advocated a system of supervised lodging homes that would insure proper discipline. Thus the "lazy and the immoral, the criminal and the drunken, the wrecks and the waifs of society," who "know nothing of the family relation, except its physical side," should be "coralled" into lodgings "where a good solid disciplinary system can be applied, and where the sexes may be separated, so as to prevent in some degree the perpetuation of moral defectives."⁴⁴⁹

Following the investigations Trinity was once again forced into the unpleasant position of having to defend the management of her property against legislative charges that carried with them the veiled threat of expropriation. Rev. Dix tried to insist upon the principle of private right, announcing that the "financial affairs of Trinity Corporation were no more the concern of the general public than were the transactions of a private business corporation." The clerk of the vestry, however, tried to be more informative, testifying that the tenements complained about either did not belong to the church or were rented on long-term leases and were therefore outside of Trinity's control. Even Dr. Dix made a statement that no saloons, brothels, or other "anti-social conditions" existed on Trinity's property.⁴⁵⁰ Neither the Committee, nor, presumably, the public, was convinced.

The upshot of the Gilder Committee's investigations was the arousal of much public indignation against the squalor of tenements, and the most dramatic display of such indignation was directed at Trinity

447. *See id.* at 438-39.

448. *See id.* at 349-61.

449. *Id.* at 360.

450. C. BRIDGEMAN, *supra* note 351, at 117-18.

Church. The Committee had brought to public attention the outrageous fact that Trinity, one of the largest landowners in the city and the largest single owner of tenement housing, was enriching itself by extracting rents from "dilapidated disease-traps," tenements so "old and rickety" that the death rate in them was a third higher than for the rest of the city in a given five-year period.⁴⁵¹

The wealthiest church in America was not only an un-Christian and un-charitable landlord, but a stubborn offender against a "public sentiment fully enlightened by scientific sanitation and aroused by University Settlement Work and the Tenement House Commission."⁴⁵²

Even in the face of these revelations and the attendant unfavorable publicity, Trinity persisted in its refusal to obey the 1887 law requiring the provision of water on every floor in its tenements, forcing the issue to the New York Court of Appeals. The Health Department had taken Trinity to court in 1892 to enforce section 663 of the Consolidation Act, an 1887 amendment of New York's 1867 Tenement House Law. The statute provided that every tenement house, defined as any building rented to three families or more, "shall have . . . water furnished at one or more places on each floor occupied . . . by one or more families."⁴⁵³ When Trinity refused to obey the order of the Health Department to provide "suitable appliances to receive and distribute water" on every floor of her tenement buildings, the Department filed a complaint.

The trial court treated the order as presumptive evidence that water was needed, refused to admit Trinity's evidence to the contrary, and issued a directed verdict for the Health Department. Trinity appealed,⁴⁵⁴ combining hypertechnical legalism with a generalized attack on the state's interference with her property rights. She argued first that four of her buildings, which housed only three or four families each, did not fit the "reasonable" and "usual" definition of tenement house, although they obviously fit the statutory definition. She also argued that the Health Department order was not authorized, for it specified that Trinity

451. See R. LUBOVE, *supra* note 360, at 114.

452. *Id.* at 115. The sense of the public outrage against Trinity is illustrated by the *New York Times'* scathing reports on the deplorable conditions of Trinity's tenements and on her manipulative attempts to evade and mask her responsibilities. Particularly striking are the series of articles that appeared before and after Christmas, 1894. See, e.g., N. Y. Times, Dec. 22, 1894, at 1, col. 1; *id.*, Dec. 23, 1894, at 2, col. 4; *id.*, Dec. 24, 1894, at 8, col. 3; *id.*, Dec. 25, 1894, at 9, col. 1; *id.*, Dec. 26, 1894, at 4, col. 2; *id.*, Dec. 27, 1894, at 9, col. 3; see also L. FRIEDMAN, GOVERNMENT AND SLUM HOUSING 28-37, 55 (1968).

453. Consolidation Act. ch. 84, § 663, 1887 N.Y. Laws 94, 100 (amending ch. 410, § 663, 1882 N.Y. Laws 1, 185).

454. See *Health Dept. v. Rector, etc., of Trinity Church*, 17 N.Y.S. 510 (1892, C. P. Ct.).

provide "suitable appliances" for water whereas the act delegated authority only to require water "to be furnished." Finally, she argued that the order—which would require the substantial expenditure of \$100 per building for compliance—was an unconstitutional taking of property without just compensation and an invalid exercise of the police power.

Agreeing with Trinity, the Court of Common Pleas reversed the trial court, invoking the classical conception of property as a purely private right to be freely exercised in a competitive market. The court admitted evidence to show that "sufficient" water had been provided by basement and backyard taps. Further supplies, as Trinity had argued, were only for the "convenience" of the tenants, some of whom complacently testified that they really preferred not to have the extra water anyway. The court agreed that in such circumstances the order must be construed not to bear a "fair, just, reasonable" relation to health as the city claimed; rather it was an attempt to "take" from Trinity and to "give" to the tenants.⁴⁵⁵ Moreover, added convenience did not meet the "reasonably necessary, or apparently conducive to health" due process standard, without which there would be "no conceivable limitation [to] restrain the power of the legislature to impose burdens upon property for the benefit of others." If tenants require water, the court declared, "self-interest and the rivalry of competition are sufficient to secure it."

The conclusion to which the legal argument conducts us is all the more satisfactory because of its consistency with the genius of our institutions, and its tendency to strengthen the securities of property A conclusion contrary . . . would involve the essential principle of . . . socialism. . . .⁴⁵⁶

In 1895 the New York Court of Appeals reversed the Court of Common Pleas.⁴⁵⁷ Dismissing Trinity's first two arguments as essentially trivial (to provide water "necessarily requires some appliance for that purpose"),⁴⁵⁸ the court went on in a rather curious opinion to uphold the constitutionality of the statute. The opinion's curiosity stems from the odd juxtaposition of its reasoning style and its author. In its reasoning, the opinion seems to reflect the more modern conception of property as carrying with it a semi-public obligation. Quoting Holmes, the court explained that the difference between a taking and the valid exercise of police power is "only one of degree,"⁴⁵⁹ and refused to find the cost

455. *Id.* at 514-15.

456. *Id.* at 515-16.

457. *Health Dept. v. Rector, etc., of Trinity Church*, 145 N.Y. 32, 39 N.E. 833 (1895).

458. *Id.* at 52, 39 N.E. at 840.

459. *Id.* at 42, 39 N.E. at 836.

imposed on Trinity unreasonable when balanced against the harm to be prevented. The court insisted that Trinity's due process argument ignored the fact that added "convenience" in the availability of water promoted public health by promoting cleanliness, and served as well to prevent the spread of fire and the consequent loss of surrounding property:

We cannot say as a legal proposition that it [the act] tends only to the convenience of the tenants in regard to their use of water. We cannot say that it has no fair, and plain, and direct tendency towards the promotion of the public health or towards the more speedy extinguishment of fires.⁴⁶⁰

Therefore the scope of the issue extended beyond the welfare of tenement inhabitants to include the welfare of the public as a whole, and that assumption formed the crux of the court's due process reasoning:

The tenement house in New York is a subject of very great thought and anxiety to the residents of that city . . . the exposure of their occupants to contagious diseases, and the consequent spread of the contagion through the city and country, the tendencies to immorality and crime where there is very close packing of human beings of the lower order in intelligence and morals, these are all subjects which must arouse the attention of the legislator and which it behooves him to see to in order that such laws are enacted as shall directly tend to the improvement of the health, safety, and morals of those men and women that are to be found in such houses We feel that we ought . . . to hesitate before declaring any such law invalid so long as it seems to tend plainly in the direction we have spoken of and to be reasonable in its provisions.⁴⁶¹

Thus the court's due process argument seemed to rest on the proposition that public order required more protection from "human beings of the lower order" than the "rivalry of competition" had provided. Disease and violence presented sufficient threat to the social structure as a whole so that better housing for *them* would result in protection for *us*.

That the basis for the decision was much more the fear of the lower class as a source of physical, moral, or social plague than any real change in the conception of property rights seems consistent with the character of the opinion's author. Rufus Peckham, who would join the United States Supreme Court less than a year later, was as arch-conservative a jurist as one could find. It has been said that his "chief claim to fame is his bitter hostility to social legislation as a New York and federal judge."⁴⁶² He was of course the author of the Supreme Court's infamous

460. *Id.* at 48, 39 N.E. at 838.

461. *Id.* at 50, 39 N.E. at 839.

462. L. FRIEDMAN, *supra* note 452, at 30.

decision in *Lochner v. New York*,⁴⁶³ which struck down a law mandating maximum working hours for bakers. His opinion in *Lochner* relied on the most classical conception of contract rights and elicited one of the most bitter dissents in Court history from none other than Justice Holmes. His limited concern for the welfare of the poor as such is evident in an earlier passage from his opinion in the *Trinity* case:

The learned counsel for the defendant (*Trinity*) asks where this kind of legislation is to stop. Would it be contended that the owners of such houses could be compelled to furnish each room with a bath tub and all the appliances that are to be found in a modern and well-appointed hotel? Is there to be a bath room and water closet to each room and every closet to be a model of the very latest improvement? To which I should answer, certainly not. That would be so clearly unreasonable that no court in my belief could be found which would uphold such legislation, and it seems to me equally clear that no legislature could be found that would enact it.⁴⁶⁴

While Peckham went on to try his best to make good on his prediction about court treatment of reformist legislation, he must have been surprised by the legislative success of the reformers. Within six years, propelled in part by the anti-*Trinity* campaign of the 1890s,⁴⁶⁵ the legislature enacted the Tenement House Law of 1901, prototype of the modern housing code, which provided for, among other things, private bathroom facilities.⁴⁶⁶

Despite the enactment of the 1901 code, followed by vigorous enforcement efforts, criticism of *Trinity* continued, reaching a peak in 1908 and 1909, when the tenement house issue became linked to the fate of St. John's Chapel. The connection between the two issues, on the surface a somewhat unlikely one, was nonetheless intimate. In 1908 *Trinity* announced plans to close the downtown chapel of St. John's and to consolidate its congregation with nearby St. Luke's. St. John's was an impressive chapel, once overlooking an elegant *Trinity*-owned park and residential area, the inhabitants of which included the Astor family. The park had been sold, under urging by Cornelius Vanderbilt, to serve as the site for a train terminal. By 1908 St. John's Chapel had become surrounded by warehouses and immigrant tenements, so the Vestry decided to abandon it and to sell the lot to commercial bidders. This action was opposed by a resolute group of old Chapel communicants who consid-

463. 198 U.S. 45 (1905).

464. 145 N.Y. 32, at 49, 39 N.E. 833, at 839.

465. See, e.g., N.Y. Times, July 19, 1908, § 5, at 3, col.1; Russell, *The Tenements of Trinity*, 19 EVERYBODY'S MAGAZINE 47.

466. Tenement House Act, ch. 334, § 95, 1901 N.Y. Laws 889, 910.

ered the building an historic landmark and who also wanted St. John's charitable work among the poor to continue. Richard Gilder, who had conducted the investigations into Trinity's tenements, wrote a poem which was quoted "*ad nauseam*" (as Rev. Dix complained) in the metropolitan and national press:

Guardians of a holy trust
 Who, in your rotting tenements,
 Housed the people, till the offence
 Rose to the Heaven of the Just—
 Guardians of an ancient trust
 Who, lately, from these little ones
 Dashed the cup of water; now
 Bind new laurels to your brow,
 Fling to earth these sacred stones,
 Give the alter to the dust!
 Here the poor and friendless come—
 Desolate the templed home
 Of the friendless and the poor,
 That your laurels may be sure!
 Here beside the frowning walls
 Where no more the wood-bird calls,
 Where once the little children played,
 Whose paradise you have betrayed,
 Here let the temple low be laid,
 Here bring the alter to the dust—
 Guardians of a holy trust!⁴⁶⁷

Eminent figures like President Roosevelt, J. Pierpont Morgan, Mayor George McClellan, and Elihu Root signed a petition to protest the abandonment of St. John's; and a committee from St. John's obtained a temporary restraining order from the New York Supreme Court. Seeking a permanent injunction, the committee argued that since St. Luke's was a free church, pew owners from St. John's would lose corporate voting rights when forced to abandon their chapel pews and worship in St. Luke's. Furthermore, as present incorporators the committeemen claimed a right of property and a beneficial interest in Trinity's estate which entitled them to demand that a proportionate share of the estate be devoted to maintaining the chapel.⁴⁶⁸

467. C. BRIDGEMAN, *supra* note 351, at 88.

468. *See id.* at 93 (concerning the committee's arguments). Although in the end the committee did not win its court case, *see id.* at 98-99, the legal reasoning was at least defensible. Trinity's own lawyer counseled Trinity to extend voting privileges to St. Luke's as soon as pew owners from St. John's joined the congregation—so that the closing of St. John's "should not in any way impair or jeopardize the right of the people of St. John's to vote." *See* W. Manning, *The Policy of Trinity*

Meanwhile, as a response to the St. John's issue in particular, a bill was proposed in the New York Assembly calling for a new investigation of the whole history of Trinity's estate, starting, once again, with the letters patent of 1697. Similarly, a Senate bill was introduced to revoke the Act of 1814, and another Assembly bill proposed the first full investigation of Trinity's affairs since the hearings of 1856. During the same year (1909) cartoons appeared in major newspapers showing Trinity vestrymen as bloated landlord capitalists reaching into full Trinity moneybags, and showing Trinity ministers kneeling before alters on which dollar signs replaced crosses.⁴⁶⁹ A play presented in New York, called "The Writing on the Wall," represented Trinity in the form of a wealthy landlord who neglected the health and safety of his tenants until his own son burned to death in one of his buildings.⁴⁷⁰

In 1908 the *New York Times* reviewed the history of the Trinity estate and, in particular, of the tenement house issue. It described as a fundamental irony the fact that "Trinity Parish, as landlord, calmly exacts money of the very poor to expend for worship and beneficence to the poor."⁴⁷¹ This was a theme introduced earlier by Charles Russell, in a series of three magazine articles about Trinity. After describing in detail the conditions among the tenement apartments, Russell concluded:

Every chapel in the Trinity organization has its guilds and associations for charitable work; every one of its clergy is thoroughly impressed with the idea of doing good in the world. But the fact from which I have found no escape is that the money for these excellent excursions [Trinity regularly conducted its Sunday School children on an excursion up the Hudson] is produced from a living inferno, and the greatest of all the mysteries seems to be this: that even for the religious and benevolent purposes specified by Trinity's charter the means should come in this way.⁴⁷²

Russell also noted the inegalitarian social assumption upon which the Trinity policy was necessarily based:

Parish 9-10 (1909), reprinted in 3 TRINITY CHURCH PAMPHLETS (available from Cornell University Library, Ithaca, New York). It was claimed that voting rights were given to St. Luke's "only on account of pressure from without" and because of the institution of legal proceedings, but one should note the actual effect of that extension. St. John's eventually became a mission, with no regular communicants and no voting rights at all. The "regulars" of St. John's retained their rights when they transferred congregations, but the lower class members of St. John's were excluded. The compromise was probably acceptable both to the St. John's communicants and to Trinity—the only group excluded was the new lower class St. John's congregation.

469. See C. BRIDGEMAN, *supra* note 351, at 116.

470. *Id.*

471. *N.Y. Times*, July 19, 1908, § 5, at 3, col. 1.

472. Russell, *supra* note 465, at 57.

We should mind such things, but these people do not, because of some great difference in their physical and mental make-up. In fact, they are said to be very happy in the station to which Providence has assigned them, and we really should let them live on in their cellars and back rooms so long as tuberculosis and typhoid will allow.⁴⁷³

Russell acknowledged that to question these assumptions, and the "contradictions and inconsistencies" inherent in Trinity's combined policies of exploitation and benevolence, was ultimately to question "the sacred basis of the social edifice."⁴⁷⁴

Predictably, the *Times* was not prepared to examine political contradictions so deeply, but it did investigate the financial affairs of the church and pointed out that of an annual income of \$775,000 a year, only \$10,000 came from pew rents and contributions—the rest was derived from real estate. Of that total income Trinity spent over one-half for its own church and chapel expenses, and only \$72,680 for charity—schools, hospitals, Sunday schools, alms, etc. Furthermore, the *Times* reported, when a Trinity official was asked why more improvements were not made in tenement housing conditions, especially as leases expired and Trinity gained full control of the buildings, the reply was simply that "The question of good business policy comes in there."⁴⁷⁵

In 1908 Morgan Dix died and William Manning became rector. Manning, warned of possible legislative action, was less impervious than his predecessor to public criticism. His first political task was successfully to manage the only seriously contested vestry election in a century. A contingent of St. John's pew owners was determined to vote in full force, and could count on a fair number of sympathy votes. The combination of tenement house publicity and the threatened demolition of a cherished chapel led even staid Trinity parishioners to question Trinity's leadership. Dr. Manning met the challenge by informing all ministers and loyal corporators of the importance of the election.⁴⁷⁶ As a result, on voting day ministers from the various Trinity chapels (now eight) filed into the Trinity Church office with as many qualified pew owners and communi-

473. *Id.* at 52.

474. *Id.* at 48.

475. N.Y. Times, July 19, 1908, § 5, at 3, col.1. Many of the buildings Trinity acquired when leases expired, and leasees who had built the houses abandoned them rather than tear them down. These houses, once one-family homes, were then subdivided for three or four families.

476. Dr. Manning later commented on the "sense of responsibility" aroused by the election; loyal corporators appeared despite "the conditions of New York business life" which made it hard to take time away from business affairs. I suspect that by then definite promises had been made about the use of the chapel and more "enlightened" management of the property. See W. Manning, *supra* note 468, at 17.

cants as they could muster, to vote in large blocks for the "regular" slate of officers. Watchers from the St. John's faction questioned the qualifications of two of these voter blocks, but in the end the regular slate defeated the St. John's slate by a vote of 529 to 124. The next day, almost as if in response to the election, the Supreme Court lifted the temporary restraining order. In an opinion emphasizing the importance of ecclesiastical freedom from civil restraint, the court also announced its decision not to grant an injunction prohibiting abandonment of St. John's.⁴⁷⁷

The position of Dr. Manning and the regular vestry was now more secure, but Dr. Manning was apparently determined to convince parishioners, the legislature, and the public that Trinity's wealth was serving a valuable social function. In April of 1909, right after the successful vestry election, Dr. Manning preached a sermon in which he promised to continue to expand Trinity's institutional church work. Dr. Manning's argument bears a marked similarity to Gen. Dix's argument, fifty years earlier, before the Senate Committee. Both asserted, in effect, that Trinity's consolidated power and wealth enabled her to do an effective job among the poor—a job which could not be done so efficiently if her wealth and power were diffused. Trinity church, Dr. Manning declared, "may justly be called, 'the rich church of the poor people.'"⁴⁷⁸

Dr. Manning referred specifically to a number of new projects—the Athletic Clubs, the Night Schools, the Manual Training Schools, the Cooking Schools, the Laundry School, the Schools of Stenography—all such obviously useful projects proved the falseness of the charge that "Trinity Church has done little or nothing for years past but conduct stately services."⁴⁷⁹ Dr. Manning further promised that St. John's Chapel would not be demolished, but would be used as a center for evangelistic services and street preaching: "I have received many letters from leading clergymen and well known business men of our own and other communions expressing great interest in this work. . . ."⁴⁸⁰ Moreover, Dr. Manning assured his listeners several times that these new projects were "not measures which we have adopted unwillingly, or as a mere concession to agitation or pressure from without."⁴⁸¹ They would have been instituted "quite independently of any of the recent agitation or discussion."⁴⁸² Indeed, the vision of Trinity's role invoked by the end of the

477. See C. BRIDGEMAN, *supra* note 351, at 98-99.

478. W. Manning, *supra* note 468, at 11.

479. *Id.* at 12.

480. *Id.* at 7.

481. *Id.* at 13.

482. *Id.*

sermon was the traditional Anglican vision of a single, all inclusive, and *changeless* church which embraces, in one divine order, both religion and society:

[W]e shall not be moved or disturbed by change, we shall rejoice in it, if it be a way to larger service; and in the midst of whatever changes it may see Trinity Parish will stand for the Changeless amid the Transitory.

. . . [Trinity's] enlarging life, . . . growing vision, . . . [and] increasing service . . . shall make this venerable Mother Parish of the Diocese, with each year that passes, more and more a blessing and a power for God in the Church and in the City."⁴⁸³

Ultimately, in a way which may seem surprising to a modern reader, athletic clubs and schools of stenography were linked to the immutable kingdom of God. Projects which reformers, businessmen and angry legislators urged, once adopted as church policy, became, by definition, part of a single, changeless, divine order of church and state.

One specific and significant declaration of policy related to tenements. Dr. Manning announced his determination to "meet this responsibility" of being both a church and a landlord by maintaining the "very highest" standards. He announced that work had already started which would lead to better housing conditions, and he described in the vestry "a most earnest desire that this whole matter of our property shall be dealt with not merely from the business point of view, but from the standpoint of religion, of social responsibility, and of enlightened citizenship."⁴⁸⁴ Dr. Manning suggested that a survey be made by the Tenement House Committee of the Charity Organization Society of New York City, a committee whose director was Lawrence Veille and whose secretary was Emily Dinwiddie—both active professional housing reformers. Three alternatives were submitted for the committee's consideration: Trinity could either sell the lots for commercial use, repair unhealthy conditions, or erect new, model tenements.⁴⁸⁵

The report which the committee submitted, chiefly the work of Emily Dinwiddie, contained conclusions conceded to be a "surprise to those making it."⁴⁸⁶ Dinwiddie investigated the 334 houses over which Trinity maintained complete control. After checking and reporting, in statistical detail, on roofs, stairways, availability of water, light and ventilation,

483. *Id.* at 25.

484. *Id.* at 9.

485. See *Condensed Report-Trinity's Tenements 1* (1909), reprinted in 3 TRINITY CHURCH PAMPHLETS (available from Cornell University Library, Ithaca, New York); see also R. LUBOVE, *supra* note 360, at 81-149.

486. *Id.* at 2.

number of rooms per family, drain pipes, water closets, etc., Dinwiddie reported that the Trinity houses could be divided into three classes: those with only minor defects (62%); those with some or many defects (34%); and those in truly abhorrent condition (4%).⁴⁸⁷ This result meant that on the average Trinity housing was superior to other tenement housing, and that to destroy the tenements would “displace a population of several thousand persons, driving them probably into inferior quarters at higher rents and increasing overcrowding.”⁴⁸⁸ If some of the buildings were to be destroyed, they should be replaced, Dinwiddie said, with model tenements. Moreover, any of the existing defects could be cured, she claimed, simply by exerting greater control over the tenants; she felt that “more careful selection and supervision of the tenants in some of the houses . . . is needed.”⁴⁸⁹ While in the “better class” of houses, “[n]eater and more orderly tenants could scarcely be found,” many occupants of lower rent housing “need to be required to maintain a decidedly better standard of cleanliness if they are to be allowed to remain in the buildings.”⁴⁹⁰

As Dinwiddie noted, however, this favorable report applied only to housing directly under Trinity’s supervision. Between two and three hundred tenement houses were on Trinity plots which were still leased to middleman landlords. Most of those houses, “like many other tenements throughout the city” were in deplorable condition.⁴⁹¹ Improvements were not made because middleman landlords had little incentive to invest in property which would eventually revert to Trinity. Furthermore, a report of the vestry which was appended to the Dinwiddie Report indicated that Trinity rarely found it practical to replace or improve tenements once they did revert to the church: “In many instances, . . . the Church removes the buildings entirely, and it now holds many lots vacant, because conditions prevailing in the district do not justify the erection of new dwellings of the same class. . . .”⁴⁹² Trinity then either replaced the tenements with commercial buildings or sold the vacant lots to commercial investors:

The erection of the ordinary four or five story tenement on a single lot is contrary to the policy of the Church. . . . In considering the property as a whole, it must be realized that the Church is compelled to deal with the

487. *Id.* at 13.

488. *Id.* at 14.

489. *Id.* at 15.

490. *Id.*

491. *Id.*

492. *Id.* at 17.

transitory condition which belongs to that section of the city, and that Trinity's problem concerning its own land is only a part of the problem relating to the entire neighborhood.⁴⁹³

The vestry concluded that whether the Church could maintain its existing tenements in decent condition, and whether it could erect newer model tenements "presents a question which cannot now be definitely determined."⁴⁹⁴

That final paragraph of the Trinity response suggests some of the contradictions still inherent in Trinity's position. In 1908 \$2,000,000 was borrowed on bonds. Some of this was spent for improvements in tenement conditions,⁴⁹⁵ and critics unkindly suggested that such expenditures were in preparation for the requested Dinwiddie survey of 1909. The major thrust of the new vestry policy, however, was simply to replace low-yield residential properties with more modern commercial buildings. This policy, initiated in 1908, was soon pursued with vigor. For example, two hundred and twenty-five tenements were removed in 1910 alone, and \$10,000,000 borrowed during the next few years was spent chiefly for investment in new commercial buildings.⁴⁹⁶

Meanwhile, on the basis of her favorable report of 1909, Emily Dinwiddie was hired by Trinity to oversee the remaining tenements. She reported each year on conditions and also acted as social worker, helping the tenants with their "manifold social problems."⁴⁹⁷ Presumably, this meant that she performed the careful "selection and supervision" of tenants which she had earlier declared to be necessary. The effect of the Dinwiddie Report and of her later management of tenement housing was to deflect criticism of Trinity and also to provide an example of "benevolent landlordism."⁴⁹⁸ In 1912 Trinity set up an exhibit in Washington at the Exhibition on Health of the XVth International Congress on Hygiene and Demography, where Trinity tenements were hailed as a model of their kind.

The Trinity exhibit must have pleased many by supposedly demonstrating that private capitalist landlordism could serve the needs of society and generate profits at the same time. The Trinity display obscured a central problem, however: Trinity quickly paid off the total debt she incurred as a result of her capital investments (reduced to \$1,600,000 by

493. *Id.* at 17-18.

494. *Id.* at 18.

495. *See* C. BRIDGEMAN, *supra* note 351, at 130-31.

496. *Id.* at 128-31.

497. *Id.* at 127.

498. R. LUBOVE, *supra* note 360, at 107.

1921 and paid off completely shortly thereafter),⁴⁹⁹ not by improving her tenement housing but through her policy of eliminating much of that housing and reinvesting in commercial buildings. This, as the vestry's reports had suggested in 1909 and as the Tenement House Committee had predicted, was the pattern essentially followed by other large landlords, with the result that families were forced into more crowded conditions.⁵⁰⁰ While Emily Dinwiddie's carefully selected and supervised tenants were living in decent conditions, many others were victims of the fact that investment in low-income housing yields low profits. If one looks below the surface, it seems evident that the interests of Trinity as property owner and the interests of the poor for whom she provided so many charitable services remained, ultimately, at odds. The "contradictions and inconsistencies" which Russell had exposed in Trinity's position were not resolved by Trinity's new policies. They were only obscured.

V. AFTERWORD

The handful of Anglicans who gathered every Sunday during the mid-1600's to listen to perfunctorily delivered sermons in a church borrowed from the Dutch might have been surprised to know that their church was destined to become one of the wealthiest and most powerful in an independent nation. Now, in 1988, with the extraordinary power of that nation acknowledged throughout the world, one can still feel the awesome dark presence of Trinity's spire, located at the very heart of America's wealth. Dwarfed by surrounding towers of steel and glass, it stands as a tribute to institutional persistence.

What is the meaning of that persistence? Much of Trinity's success was surely attributable to the instrumental genius of leaders and supporters, especially the wily post-revolutionary elite who saved her for the sake of making her influence their own. To a large extent, too, Trinity's success over the years resulted from the sophisticated deployment of political and legal ideology, from the imperial hierarchy of the colonial established church, to the liberal sanctity of property rights in the early nineteenth century, to the imagery of the social service agency at the close of the century. But neither ideology nor instrumentalism fully captures the staying power of this institution.

The Trinity of 1988, still at the head of Wall Street, is also, still, an

499. See C. BRIDGEMAN, *supra* note 351, at 130-31.

500. This, also, was precisely what Dinwiddie herself had predicted. See *supra* note 488 and accompanying text.

owner of extensive real estate holdings, recently made more profitable due to the growing popularity of the lower West Side. Just in the area bounded by Houston Street, West Broadway, the Hudson River, and Ericson Place, Trinity now owns twenty-seven buildings, and with the eighties came extensive plans for commercial revitalization.⁵⁰¹ As if harkening to a dread memory from the past, however, Trinity's managing director for commercial real estate, Walter Spardel, has refused to consider converting any of the buildings to apartments or coops: "We're not interested in residential," he has stated. "We might be too susceptible to tenant complaints, and the last thing we need is a little old lady saying she's being mistreated."⁵⁰²

Largely as a result of her landholdings Trinity probably remains the richest Episcopal parish in the country, richer in fact than the whole New York Diocese, of which she is a generous and supportive member.⁵⁰³ Nationally, the Episcopal Church, still sometimes called "the Tory party at prayer," continues to represent much of the American upper class,⁵⁰⁴ a point underscored by the recent election of George Bush, a devout Episcopalian. It has been estimated that even today a third of the corporate wealth of America is controlled by Episcopal executives and entrepreneurs.⁵⁰⁵ As Kit and Frederica Konolige write, in their book *The Power of Their Glory*, Episcopalians are "outstandingly powerful because they have bred a small, supersuccessful, and superwealthy elite that has become, historically and today, America's aristocracy."⁵⁰⁶ Not surprisingly, Trinity has continued to minister to the special needs of this aristocracy, running, for example a Trinity Center for Ethics and Corporate Policy; there, executives, many from Fortune 500's top companies, are counseled on the ethics of corporate practice. An express goal of the center, which charges fees ranging from \$10,000 to \$100,000, is to help corporations avoid bad publicity.⁵⁰⁷

Cynicism comes easily, as do glib descriptive terms like "religion as legitimating ideology," and "ruling class self-interest." Such terms, however, have never captured the whole story of religion in American life, nor do they fully account even for the persistence of Episcopal influence

501. N.Y. Times, Feb. 10, 1982, § 4, at 23.

502. *Id.* at 46.

503. Anderson, *Profiles: Standing Out There on the Issues— Bishop Paul Moore, Jr.*, THE NEW YORKER, Apr. 28, 1986, at 79.

504. *Id.* at 46.

505. *Id.*

506. *Id.* (quoting from K. AND F. KONOLIGE, *THE POWER OF THEIR GLORY* 29 (1978)).

507. *Guarding Wall Street's Morals*, THE ECONOMIST, July 27, 1985, at 24.

in New York. Contradictions abound, now no less than early in the century, for the history of religion is dialectical, not static.

Take the present controversial Episcopal Bishop of New York, Paul Moore, Jr. Bishop Moore is grandson of William Moore, probably the foremost business promoter during the robber baron period and second only to J.P. Morgan in developing business mergers. Pressured to follow his father in handling the vast family enterprises, Moore instead discovered that the High Church Episcopal conventions his family took for granted had the power to transform his life.⁵⁰⁸

Finding special inspiration in the lives of the High Church Anglican priests who had lived in poverty in the slums of East London, Moore has taken it as a matter of deep faith that Christ is present on earth first among the poor.⁵⁰⁹ As with his Catholic counterparts in the Liberation Theology Movement, for Moore direct involvement with the lives of the poor and socially marginalized is not a question of obligation, but derives from the meaning of incarnation itself, as understood through the experience of faith, and is a concrete, ongoing expression of God's choice to be identified with "the least" among us.⁵¹⁰ That simple truth informs Moore's vision of Christianity, and in turn provides the spiritual core for a bottom-up politics which has led Moore to devote his ministry especially to the needs of the poor, of minorities, of the homeless, and now of AIDS victims in a way that inevitably challenges the always tenuous separation of religion from politics. Moore, who recently joined Jesse Jackson in leading a march in New York City on behalf of the homeless, recalled not long ago:

My experience in Jersey City validated what I had read in those early books about the London slum priests. . . . The Jersey City experience made me see that you couldn't go next door to visit a little kid who came to your Sunday-school class, find him living in one room with eight brothers and sisters—to say nothing of rats—and just pat him on the head and say, 'Jesus loves you.' You had to do something about the conditions you saw. And when you started doing something about the rats, then you got to the landlord; you tried to organize a rent strike, as we did. A family got kicked out,

508. Anderson, *supra* note 503, at 53.

509. *Id.* at 79. Moore was very active in the anti-Vietnam War movement. When asked how such a radical minister could come to be elected Bishop of New York, Moore replied, Because of the Anglo-Catholic tradition I came out of, I always had at the very guts of my belief that we are all children of God—that you couldn't go to church and worship at the Mass, the Eucharist, and ignore Christ's presence in the poor. That has always been at the heart of my worship, not just my sense of duty.

Id.

510. *Matthew* 23:40.

and lived with you for several months, until they found another home. Why was it so hard for them to find another home? Because the public housing project discriminated against blacks, and let only a few of them in. What did you do about the public housing project? You went to City Hall. There you got a lot of promises but no action. What did you do next? You went to Washington. And sooner or later you got involved in wider politics—all starting with that little boy.⁵¹¹

The paradox of Trinity is also the paradox of Christianity in America. The same Christianity that accommodates and depends upon wealth, hierarchy, order, and stability, serves as well to voice and even embody the aspirations of the poor, the powerless, the homeless, the oppressed, and the excluded. The same religion that buttressed the degenerate worldly authority of Governors Fletcher and Cornbury also inspired Rev. Frelingheusen to defy all established structures of wealth and power; the religion of the New York Federalist elite and the autocratic Hobart was also the deeply-felt religion of the radical abolitionists; and the religion that once gave comfort to J.P. Morgan and the aristocratic Rev. Dix and now moves Moore, like Rev. Rainsford before him, to invert, in the name of faith, all hierarchy, crossing a gulf as wide as the whole of American society.

* * * * *

'Tis the gift to be simple, 'Tis the gift to be free, 'Tis the gift to come down,
To where we ought to be. . .⁵¹²

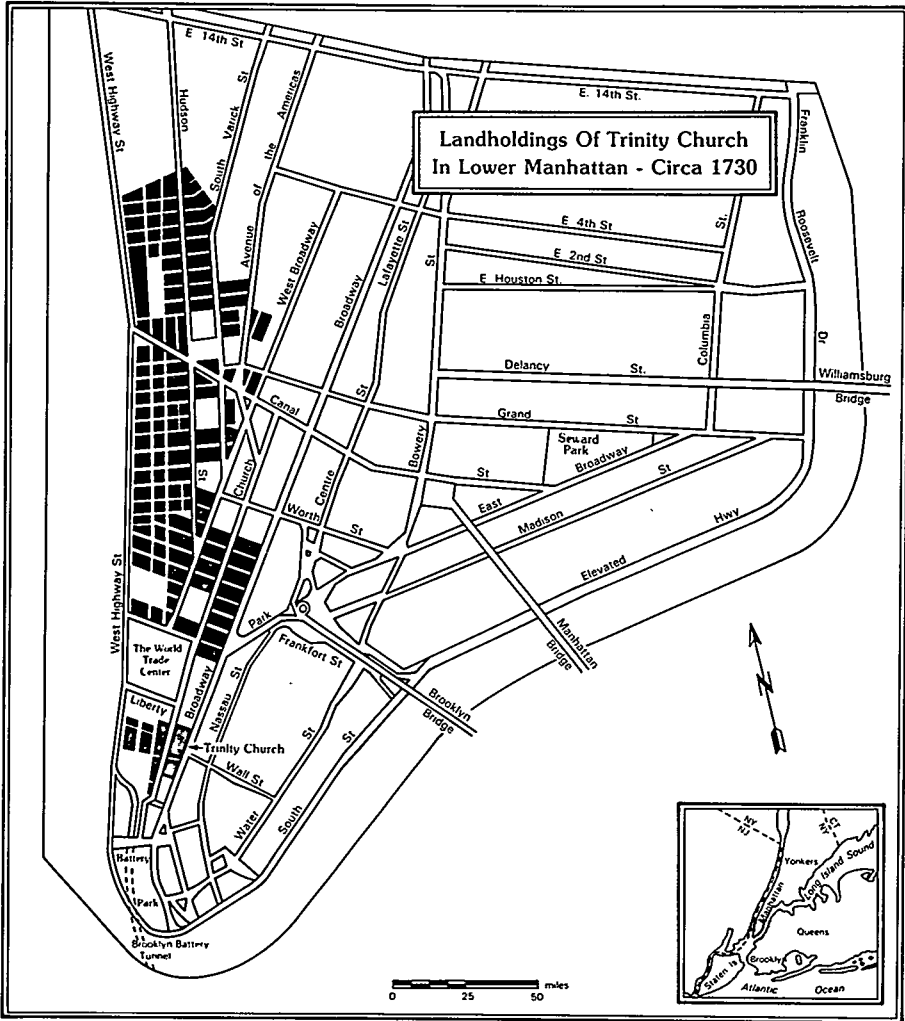
Amazing grace, how sweet the sound, that saves a wretch like me; I was
lost, but now I'm found, I was blind, but now I see, Oh Lord—I was bound,
but now I'm free.⁵¹³

511. *Id.* at 73.

512. *Simple Gifts*, reprinted in *STANDING COMMISSION ON CHURCH MUSIC OF THE EPISCOPAL CHURCH, THE HYMNAL*, at 554 (1985) [hereinafter *CHURCH MUSIC*].

513. J. Newton & J. Rees, *Amazing Grace*, reprinted in *CHURCH MUSIC*, *supra* note 512, at 671.

Map 1730



Map 1830

