How the Constitution Became Christian

Jared Goldstein
Professor of Law

This paper can be found in final form at:
68 Hastings L. J. 259 (2017)

How the Constitution Became Christian

JARED A. GOLDSTEIN*

Movements dedicated to making the United States a "Christian nation" have been a recurrent feature in American politics for more than 150 years. Over that time, however, the relationship between Christian nationalism and the Constitution has undergone a dramatic change. Nineteenth century Christian nationalists denounced the Constitution as a godless document unworthy of a Christian nation and fought for an amendment to express the nation's Christian faith. In contrast, the contemporary Christian Right that coalesced in the 1970s lauds the Constitution as the highest expression of the nation's Christian identity.

This Article asks how the Constitution became—for many Americans, at least—Christian. The answer lies in America's constitutional culture, which channels conflicts over national identity into constitutional disputes. The Constitution is conventionally portrayed as the embodiment of what it means to be American, but it is more accurate to describe the Constitution as the battleground over which disputes over national identity are fought.

This Article illustrates the dynamics that transform conflicts over national identity into constitutional conflicts by examining three movements in the longstanding debate over whether the United States should be understood to be a Christian nation: the nineteenth century Christian Amendment movement, mid-twentieth century Judeo-Christian nationalism, and the New Christian Right that began in the 1970s and 1980s. Although these movements differ in significant ways, they follow a similar pattern. In each case, members of the dominant religious group mobilized in response to perceived threats to their status—from Catholics, immigrants, communists, and secular humanists. In each episode, members of the mobilized movement believed Christian devotion to be part of America's essence and therefore considered threats to Christian dominance as attacks on America itself. And in each case, the movement attempted to preserve the nation's supposed Christian identity by making constitutional demands, either to amend the Constitution to proclaim the nation's Christian devotion or to interpret the Constitution to be Christian.

Through this recurring pattern—in which a threat to group status is understood in nationalist terms and motivates a movement that makes constitutional demands—fights about what it means to be American become fights over the meaning of the Constitution. Rather than embodying what it means to be American, the Constitution provides a seemingly neutral and patriotic language for making claims of national inclusion and exclusion, for asserting that some people and some values are authentically American, while others are dangerously foreign and must be rejected.

---

* Professor of Law, Roger Williams University School of Law. A revised version of this Article will appear in *To Kill and Die for the Constitution: How Devotion to the Constitution Leads to Hatred and Violence* (forthcoming), which explores additional episodes in the history of constitutional nationalism, the conviction that American identity is defined by commitment to ideals expressed in the Constitution. The Author thanks Alison Hoffman for her invaluable research assistance.

TABLE OF CONTENTS

INTRODUCTION

In the conventional understanding of American national identity, being American means believing in a creed, a set of universal values like equality and justice that are enshrined in the Declaration of Independence and the Constitution. It is a conviction repeated endlessly in high school textbooks, Hollywood movies, and presidential addresses.[1] Here is how Franklin Roosevelt put it in 1943:

1. *See* ROGERS M. SMITH, CIVIC IDEALS: CONFLICTING VISIONS OF CITIZENSHIP IN U.S. HISTORY 33 (1997); MARY E. STUCKEY, DEFINING AMERICANS: THE PRESIDENCY AND NATIONAL IDENTITY (2004). The myth often appears in popular culture. In Steven Spielberg's film *Bridge of Spies*, a CIA agent demands that a lawyer for an accused Soviet spy disclose confidential information about his client, saying that the stakes of the Cold War were so high that no rules apply, but the lawyer, played by Tom Hanks, rejects the demand, saying that the rule book is called "the Constitution, and we agree to the rules, and it's what makes us Americans." BRIDGE OF SPIES (DreamWorks Pictures 2015).

> The principle on which this country was founded and by which it has always governed is that Americanism is a matter of the mind and the heart; Americanism is not, and never was, a matter of race or ancestry. A good American is one who is loyal to this country and to our creed of liberty and democracy.[2]

George W. Bush invoked the same notion of a unifying American creed in his first inaugural address: "America has never been united by blood or birth or soil. We are bound by ideals that move us beyond backgrounds, lift us above our interests and teach us what it means to be citizens."[3] Barack Obama said the same thing in almost identical language in his second inaugural address.[4] The notion that American nationalism is defined by a creed and that the Constitution encapsulates that creed is repeated so often and by so many that it can seem obvious and banal, even meaningless.[5] It is one thing upon which liberal and conservative law professors can agree.[6]

The conviction that American identity is defined by devotion to principles embodied in the Constitution is a type of civic nationalism that I refer to as *constitutional nationalism.* It is a conviction that, in the classical sense, is based on a myth—a story frequently told to explain who the American people are.[7] The proposition that American

---

2. *Praises Army Plan for Japanese Unit: President Says Loyal Citizens, Whatever Ancestry, Have a Right to Serve*, N.Y. TIMES, Feb. 5, 1943, at 6 (quoting Letter from Franklin D. Roosevelt, President of the United States, to Henry L. Stimson, U.S. Secretary of War (Feb. 4, 1943)).

3. George W. Bush, President of the United States, First Inaugural Address (Jan. 20, 2001), *in* SELECTED SPEECHES OF PRESIDENT GEORGE W. BUSH 2001–2008 2, https://georgewbush-whitehouse.archives.gov/infocus/bushrecord/documents/Selected_Speeches_George_W_Bush.pdf.

4. *See* Barack Obama, President of the United States, Second Inaugural Address (Jan. 21, 2013), https://www.whitehouse.gov/the-press-office/2013/01/21/inaugural-address-president-barack-obama ("What binds this nation together is not the colors of our skin or the tenets of our faith or the origins of our names. What makes us exceptional—what makes us American—is our allegiance to an idea articulated in a document made more than two centuries ago . . . .").

5. The ubiquity of the notion that the Constitution embodies what it means to be American is an example of what Michael Billig has described as "banal nationalism"—the everyday habits by which national loyalty and national identification are reproduced. *See* MICHAEL BILLIG, BANAL NATIONALISM 6 (1995).

6. As Laurence Tribe has written, the Constitution's "text and invisible structure are part of the nation's beating heart." Laurence H. Tribe, *America's Constitutional Narrative*, 141 DAEDALUS: J. AM. ACAD. ARTS & SCI. 18, 34 (2012). Steven Calabresi, on the other hand, has exclaimed that "[t]he Constitution is the focal point of American exceptionalism: it is our holiest of holies, the ark of the covenant of the New Israel." Steven G. Calabresi, *"A Shining City on A Hill": American Exceptionalism and the Supreme Court's Practice of Relying on Foreign Law*, 86 B.U. L. REV. 1335, 1411 (2006).

7. As Rogers Smith has written, civic myths provide explanations "of why persons form a people, usually indicating how a political community originated, who is eligible for membership, who is not and why, and what the community's values and aims are." SMITH, *supra* note 1, at 33. For the American people, the Constitution provides one of its central civic myths. Jack Balkin has written that the Declaration of Independence and the Constitution together "constitute[] us as a people 'conceived in liberty, and dedicated to a proposition.'" JACK M. BALKIN, CONSTITUTIONAL REDEMPTION 19 (2011). Mark V. Tushnet and Akhil Amar have each explained that the Constitution constitutes the American people. MARK TUSHNET, TAKING THE CONSTITUTION AWAY FROM THE COURTS 12 (1999) ("[T]he nation's commitment to the thin Constitution constitutes us as the people of the United States . . . ."); Akhil Reed Amar, *Of Sovereignty and Federalism*, 96 YALE L.J. 1425, 1463 n.163 (1987) ("Thus, the most

nationalism is defined by commitment to a creed found in the Constitution is also a myth in the more everyday sense: a belief that is utterly false.[8] Although many have conceived of American identity in civic republican terms grounded in constitutional values, others have believed that real Americans are white or Christian or Anglo-Saxon.[9] The never-ending disputes that have arisen over what it means to be American preclude any monolithic understanding of American identity.

As this Article begins to show, the relationship between the Constitution and national identity is quite different than conventional wisdom suggests. Rather than defining what it means to be American, the Constitution has been the battleground on which disputes over national identity are fought. In the nation's countless conflicts over national identity, the Constitution has served as a magic mirror upon which we gaze and see ourselves. Some find in the Constitution confirmation that the nation is committed to a set of universal ideals, though what those ideals consist of depends on the viewer: Libertarians read a libertarian Constitution, while progressives read a progressive Constitution. Others find in the Constitution confirmation that the nation is defined by race, ethnicity, and religion: Nativists read a nativist Constitution, while white supremacists read a white Constitution.

This Article illustrates the dynamics that transform conflicts over national identity into constitutional conflicts by examining three episodes in the longstanding dispute over whether the United States is a "Christian nation." Part I looks at the nineteenth century movement to amend the Constitution to proclaim national devotion to Jesus Christ. As that Part discusses, some evangelical Christians rejected the Constitution because they considered it a godless document that lacked any expression of religious devotion.[10] Beginning during the Civil War and

---

important thing that the Constitution constitutes is neither the national government, nor even the supreme law, but one sovereign national People . . . .").

8. *See* SMITH, *supra* note 1, at 33 ("As Plato suggested long ago, the stories of civic identity fostered by political elites are virtually always false or at least highly dubious in important respects.").

9. *Id.* at 14–20. As Smith documents, for much of American history ascriptive notions of national identity were embodied in law, such as the 1790 limitation that only "free white persons" could become naturalized citizens, a limitation that remained on the books until 1952. *See* An Act to Establish an Uniform Rule of Naturalization, ch. 3, 1 Stat. 103 (1790), *repealed by* Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66. Stat. 163. Even among those who have asserted that a set of universal values found in the Constitution defines what it means to be American, the identification of those values has also been fundamentally contested. *Compare* Dred Scott v. Sandford, 60 U.S. 393, 407 (1856) (declaring that, under the Constitution, persons of African descent "had no rights which the white man was bound to respect"), *with* Frederick Douglass, The Dred Scott Decision, Speech Delivered Before the American Anti-Slavery Society, New York (May 14, 1857) ("'We, the people,'—not we, the white people—not we, the citizens, or the legal voters—not we, the privileged class, and excluding all others but we, the people; not we, the horses and cattle, but we the people—the men and women, the human inhabitants of the United States, do ordain and establish this Constitution[.]").

10. *See, e.g.*, *Address to the President, in* PROCEEDINGS OF THE NATIONAL CONVENTION TO SECURE THE RELIGIOUS AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES ix (1872) [hereinafter PROCEEDINGS OF

continuing through the end of the century, they organized a national movement to make the Constitution Christian. The movement was propelled by concerns over the increasing population and power of Catholics, Jews, Seventh Day Adventists, and religious freethinkers. Increasing religious diversity generated a variety of challenges to Protestant preeminence, including objections to Christian prayers and Bible reading in public schools, Sabbath observance laws, and religious oaths. Leaders of the Christian Amendment movement considered these challenges to be nothing less than a war on Christianity and therefore an attack on America itself. The nation's Christian identity could be saved, the movement argued, if only the Constitution could be made Christian.

Part II looks at "Judeo-Christian" nationalism of the Eisenhower era. Like the Christian Amendment movement, religious nationalists of the 1950s understood religious devotion to be a core aspect of America's national identity, but they developed a more ecumenical rhetoric, which valorized the nation's Judeo-Christian heritage, rather than its Christian (or specifically, Protestant) faith. In an effort to counter Communism abroad and at home, religious nationalists of the 1950s sought ways to gain official recognition of the nation's religious identity. With little opposition, they succeeded in legislative campaigns to add "under God" to the Pledge of Allegiance and to adopt "In God We Trust" as the national motto. The drive for recognition of the nation's religious identity faltered, however, when it sought to protect the nation's religious identity through a constitutional school prayer amendment.

Part III examines the constitutional vision of the New Christian Right, the Christian conservative movement that coalesced in the late 1970s, led by televangelists Jerry Falwell and Pat Robertson, founders of the Moral Majority[11] and the Christian Coalition.[12] The New Christian Right arose to combat a perceived decline in the nation's Christian values through the acceptance of abortion rights, women's rights, gay rights, pornography, and rock music. Although the New Christian Right is not ordinarily considered a constitutional movement, it had a well developed constitutional philosophy. In contrast to the Christian Amendment movement of the nineteenth century, which condemned the Constitution as godless, the New Christian Right insisted that the Constitution embodies Christian values and can only be understood as a

---

THE 1872 CONVENTION TO SECURE THE RELIGIOUS AMENDMENT] ("[E]ither from inadvertency, of following some Godless theory of civil government, we have omitted even the mention of His blessed name in the most significant and highest act of the nation.").

11. *See Jerry Falwell*, ENCYCLOPEDIA BRITANNICA (last updated Oct. 11, 2007), https://www.britannica.com/biography/Jerry-Falwell#ref928683.

12. *See Christian Coalition*, WEST'S ENCYCLOPEDIA OF AM. LAW (Nov. 30, 2016), http://www.encyclopedia.com/sports-and-everyday-life/social-organizations/private-organizations/christian-coalition.

charter for a Christian nation.[13] The Constitution must be Christian, these leaders declared, because the American people are Christian.

How did this happen? How did the godless Constitution condemned by nineteenth century Christian nationalists become the Constitution that more recent Christian nationalists laud as an expression of the nation's religious devotion? In short, how did the Constitution—for many Americans—become Christian?

The answer lies in America's constitutional culture, which transforms disputes over national identity into constitutional disputes. Despite their differences, the three movements examined here—the Christian Amendment movement of the nineteenth century, Judeo-Christian nationalism of the mid-twentieth century, and the New Christian Right of the late twentieth century—each followed a similar pattern:

- ***Group threat.*** Each of these movements arose when members of a religious community that considered itself prototypically American believed that outgroups threatened their status and power.[14]
- ***Nationalist framework.*** In each of these episodes, members of the movement considered religious identity to be a core national trait and therefore understood threats to their religious status as attacks on America itself.[15]
- ***Constitutional demands.*** Because each of these movements looked to the Constitution as the ultimate embodiment of national identity, they responded to what they saw as an attack on the nation's religious identity by making demands to amend or interpret the Constitution to entrench that identity.

In short, in each of these episodes, a constitutional movement arose when a dominant group perceived a threat to its status, saw the threat in nationalist terms as an attack on the nation itself, and responded by demanding that the Constitution reflect the group's identity.

The same pattern of perceived group threat, followed by nationalist mobilization, followed by constitutional demands can be discerned in many other disputes over national identity, such as nativist campaigns

---

13. As Reverend Falwell put it in his classic book *Listen, America!*, "the goal of the framers of our Constitution was to govern the United States of America under God's laws . . . ." JERRY FALWELL, LISTEN, AMERICA! 53 (1980). Reverend Robertson agreed that "[t]he Constitution of the United States is a marvelous document for self-government by Christian people." UNITED PRESS INT'L, *Rulings 'Not Law of Land,' Robertson Says: Evangelist Takes Aim at Supreme Court*, L.A. TIMES (June 28, 1986), http://articles.latimes.com/1986-06-28/news/mn-25509_1_supreme-court-ruling (quoting Reverend Pat Robertson, *The 700 Club* (CBN television broadcast Dec. 20, 1981)).

14. Group threat theory has its origin in Herbert G. Blumer, *Race Prejudice as a Sense of Group Position*, 1 PAC. SOC. REV. 3 (1958), and has been developed by Lawrence Bobo and others. For a review of the literature on group threat theory, see Lincoln Quillian, *Prejudice As a Response to Perceived Group Threat: Population Composition and Anti-Immigrant and Racial Prejudice in Europe*, 60 AM. SOC. REV. 586 (1995).

15. I rely chiefly on the social theory of national identity developed by Elizabeth Theiss-Morse in a book she published in 2009. ELIZABETH THEISS-MORSE, WHO COUNTS AS AN AMERICAN? THE BOUNDARIES OF NATIONAL IDENTITY (2009).

against immigration, white supremacist campaigns to save Jim Crow, and the Tea Party movement. Through this recurring pattern, America's constitutional culture translates disputed claims about what it means to be American into constitutional form. Rather than embodying what it means to be American, the Constitution serves as a seemingly neutral and patriotic source for making claims of national inclusion and exclusion, for asserting that some people and some values are authentically American, while others are dangerously foreign and must be rejected.

I. THE FIGHT TO MAKE THE CONSTITUTION CHRISTIAN

During the nineteenth century, Protestant Christianity featured prominently in American public life. Public schools made liberal use of the King James Bible to teach reading and inculcate morality. Sunday closing laws sought to ensure that citizens observed the Christian Sabbath. Many states limited public office to those who would swear their faith in Jesus Christ. Blasphemy prosecutions were occasionally brought against those who criticized Protestant teaching. As one historian has described, "[b]y the middle of the nineteenth century, leading citizens assumed that Americanism and Protestantism were synonyms."[16]

Over the course of the century, however, the nation's religious demographics underwent a dramatic change. Millions of Catholics and Jews immigrated to the United States.[17] New faiths like Mormonism and Seventh Day Adventism developed, and the population of secularists and freethinkers grew. Many Protestants considered religious minorities to be less than fully American. At the same time, members of other faiths began to challenge the prevalence of Protestant practices in American public life. These challenges often focused on the Constitution's First Amendment as the basis to reject government endorsement of Christianity.

In response, defenders of Protestant's central place in American life also turned to the Constitution, mobilizing to amend it to declare the nation's Christian faith.[18] Led by members of the small Covenanter sect

16. Timothy L. Smith, *Protestant Schooling and American Nationality, 1800–1850*, 53 J. AM. HIST. 679, 680 (1967).

17. By 1850, the American population included 1.6 million Catholics and by 1900 the Catholic population had grown to twelve million. John C. Jeffries, Jr. & James E. Ryan, *A Political History of the Establishment Clause*, 100 MICH. L. REV. 279, 299–300 (2001). In the same era, the American Jewish population grew from approximately 50,000 to 1,000,000. Jonathan D. Sarna, AMERICAN JUDAISM: A HISTORY 375 (2004).

18. For histories of the Christian Amendment movement, see STEVEN K. GREEN, THE BIBLE, THE SCHOOL, AND THE CONSTITUTION: THE CLASH THAT SHAPED THE MODERN CHURCH-STATE DOCTRINE 137–177 (2012); GAINES M. FOSTER, MORAL RECONSTRUCTION: CHRISTIAN LOBBYISTS AND THE FEDERAL LEGISLATION OF MORALITY, 1865–1920 27–47 (2002); MORTON BORDEN, JEWS, TURKS, AND INFIDELS 58–74 (1984); JOSEPH S. MOORE, FOUNDING SINS: HOW A GROUP OF ANTISLAVERY RADICALS FOUGHT TO PUT CHRIST INTO THE CONSTITUTION 119–51 (2016).

of Presbyterians, the movement attracted significant mainstream support, including thousands of followers as well as the endorsements of a Supreme Court Justice, several Senators and governors, and the nation's leading seminary.[19] In the face of challenges to prayer and Bible reading in public schools, Sabbath observance laws, blasphemy laws, and religious oaths, the Christian Amendment movement offered a simple solution. By placing an expression of Protestant faith in the Constitution, the movement declared, the nation's religious identity could be permanently protected, resolving once and for all that the United States is a Christian nation—and more specifically, a Protestant nation.[20] Although the Christian Amendment never came close to passage, the movement succeeded in gaining official recognition of the nation's religious identity in 1892, when the Supreme Court declared that the United States is a "Christian nation," making it appear for a time that the movement had achieved through the courts what it had failed to win in Congress.[21]

As this Part shows, the Christian Amendment movement illustrates the dynamics that turn disputes over intergroup dominance into constitutional conflicts. A dominant group perceived a threat to its status, understood the threat as an attack on a core aspect of national identity, and mobilized to make a constitutional demand: save America by making the Constitution Christian.

A. The Threat to Protestant Dominance and the Birth of the Christian Amendment Movement

Developed in the sociology literature, group threat theory posits that members of culturally and politically dominant groups develop hostility to subordinate groups in response to perceived threats that the subordinate group pose to the dominant group's interests.[22] Substantial research into American race relations supports the theory and has shown that white racism increases when the population or perceived power of African Americans increases.[23] Similar findings have been shown regarding the attitudes of native-born Americans towards immigrants: Native-born Americans develop increased hostility toward immigrants

19. Foster, *supra* note 18, at 82–83; Green, *supra* note 18, at 141.

20. *See* Proceedings of the 1872 Convention to Secure the Religious Amendment, *supra* note 10, at 2 (asserting that a constitutional amendment is necessary to "indicate that this is a Christian nation, and place all Christian laws, institutions, and usages in our government on an undeniable legal basis in the fundamental law of the nation . . . .").

21. Rector, Etc., of Holy Trinity Church v. United States, 143 U.S. 457, 471 (1892).

22. *See* Blumer, *supra* note 14; Quillian, *supra* note 14.

23. *See, e.g.*, Mark A. Fossett & K. Jill Kiecolt, *The Relative Size of Minority Populations and White Racial Attitudes*, 70 Soc. Sci. Q. 825 (1989); Lincoln Quillian, *Group Threat and Regional Change in Attitudes Toward African-Americans*, 102 Am. J. Soc. 816 (1996).

when the population and perceived power of immigrants increase.[24] In the case of the Christian Amendment movement, the perceived threat arose from the increased population and power of Catholics, Jews, Seventh Day Adventists, and freethinkers, which together was understood to undermine Protestant preeminence.

1. The Civil War Birth of the Christian Amendment Movement

The U.S. Constitution contains no expression of religious devotion, which makes it something of an anomaly in the American constitutional tradition. In contrast, the Declaration of Independence states that "all men are . . . endowed by their Creator with certain unalienable Rights," invokes the "Laws of Nature and of Nature's God," and appeals to "the Supreme Judge of the world for the rectitude of our intentions."[25] The nation's first constitution, the Articles of Confederation, declared that it sought the guidance of "the Great Governor of the World."[26] At the time of the Constitution's adoption, every state constitution except Virginia's contained some kind of religious expression.[27] Rather than expressing religious devotion, the Constitution's two express references to religion—the prohibition on religious tests in Article VI and the First Amendment's prohibition on laws "respecting an establishment of religion or prohibiting the free exercise thereof"—serve to keep government out of the religious sphere.[28]

Some evangelical Christians opposed ratification because the Constitution gave no special status to Christianity.[29] Luther Martin, a dissenting delegate to the Constitutional Convention, objected to the Religious Oaths Clause because of his belief that "in a Christian country it would be at least decent to hold out some distinction between the professors of Christianity and downright infidelity or paganism."[30] Some

---

24. Thomas C. Wilson, *Americans' Views on Immigration Policy: Testing the Role of Threatened Group Interests*, 44 SOC. PERSP. 485 (2001).

25. THE DECLARATION OF INDEPENDENCE paras. 1, 2, 5. (U.S. 1776).

26. ARTICLES OF CONFEDERATION art. XIII, cl. 2.

27. *See* AKHIL REED AMAR, AMERICA'S UNWRITTEN CONSTITUTION: THE PRECEDENTS AND PRINCIPLES WE LIVE BY 74–75 (2012).

28. To be sure, the Constitution contains a number of oblique references to religion that contemporary Christian nationalists occasionally identify as proof that the Constitution is Christian. Article I, section 7 provides that the President has ten days, not including Sundays, to sign a bill into law, a provision that acknowledges the Sunday Sabbath. U.S. CONST. art. I, § 7, cl. 2. In addition, the nomenclature used for denoting the date of the signing of the Constitution—"the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven"—is sometimes read to contain a reference to religious devotion. But as Akhil Amar has argued, the signature line was not part of the text of the Constitution voted on by the delegates in Philadelphia or the ratifying conventions in the states. AMAR, *supra* note 27, at 70–73.

29. MOORE, *supra* note 18, at 55–57.

30. Letter from Luther Martin, Attorney Gen. of Md., to the Legislature of the State of Md., The Genuine Information Relative to the Proceedings of the General Convention, Held at Philadelphia in 1787 (1787), *in* SECRET PROCEEDINGS AND DEBATES OF THE CONVENTION ASSEMBLED AT PHILADELPHIA, IN

Anti-Federalists argued that, under the Constitution, "Jews, Mahometans, pagans, &c., may be elected" to federal offices, and therefore the Constitution would serve as "an invitation for Jews and pagans of every kind to come among us."[31] During the ratification debates, several failed attempts were made to urge amendment to the Religious Tests Clause or otherwise to insert an expression of Christian devotion into the Constitution.[32]

Long after ratification, many evangelicals continued to oppose the Constitution because of its absence of expression of religious devotion. In 1793, Reverend John M. Mason of New York preached that "from the Constitution of the United States, it is impossible to ascertain what God we worship, or whether we own a God at all . . . ."[33] He predicted that the nation would not long survive if the American people proved to be as irreligious as its Constitution.[34] He was not alone. "Be astonished, O earth!," Reverend Chauncey Lee intoned in an 1813 sermon, the Constitution "has not the impress of *religion* upon it, not the smallest recognition of the government, or the being of God, ... I leave it with this single reflection, whether, *if God be not in the camp, we have not reason to tremble for the ark?*"[35] These ministers believed that the absence of God in the Constitution was inconsistent with the nation's Christian identity, as Reverend Ezra Stiles Ely preached in 1827: "We are a Christian nation: we have the right to demand that all our rulers in their conduct shall conform to Christian morality."[36] In 1844, former President John Quincy Adams, while serving in Congress, submitted a petition to amend the Constitution "so that it shall contain a clear and explicit acknowledgment of the Sovereign of the universe as the God of this nation; an entire and avowed submission to the Lord Jesus Christ as the ruler of this nation . . . ."[37] The petition was tabled without recorded debate.

THE YEAR 1787, FOR THE PURPOSE OF FORMING THE CONSTITUTION OF THE UNITED STATES OF AMERICA 3 (Warner W. Guy ed., 1838).

31. MOORE, *supra* note 18, at 56.

32. *Id.*

33. BORDEN, *supra* note 18, at 59.

34. *Id.* ("Should the citizens of America be as irreligious as her Constitution, we will have reason to tremble, lest the Governor of the universe, who will not be treated with indignity by a people any more than by individuals, overturn from its foundations the fabric we have been rearing, and crush us to atoms in the wreck.").

35. Chauncey Lee, Pastor of the Congressional Church in Colebrook, Sermon at Hartford, Connecticut: The Government of God the True Source and Standard of Human Government 43 (May 13, 1813) (emphasis in original); BORDEN, *supra* note 18, at 59.

36. BORDEN, *supra* note 18, at 60. In 1844, the Reverend D.X. Junkin argued that the non-religious oath of office the Constitution prescribed for the President was unfitting for a Christian people: "The oath of the President of the United States could as well be taken by a pagan or a Mohammedan as by the Chief Magistrate of a Christian people: it excludes the name of the Supreme Being." PROCEEDINGS OF THE 1872 CONVENTION TO SECURE THE RELIGIOUS AMENDMENT, *supra* note 10, at iii.

37. H.R. JOURNAL, 28th Cong., 1st Sess. 418 (Feb. 19, 1844).

The Reformed Presbytery Church, a sect of radical Scotch-Irish Presbyterians, commonly referred to as "Covenanters," was among the groups that continued to reject the Constitution as a blasphemous document.[38] Covenanters believed that valid governmental power could come only from God, while the Constitution sinfully asserts that the government's power comes from "We the People."[39] As one Covenanter explained, the Constitution amounted to a "manifest dethroning of the Lord and his Anointed from the government."[40] Because the Constitution omitted a divine basis for government, Covenanters refused to profess allegiance to the United States, and the church condemned voting or participating in national politics.[41]

Although there were longstanding expressions of opposition to the godless Constitution, it took the Civil War to give rise to a movement to put God into the Constitution.[42] Many in both the North and South understood the war in religious terms.[43] Leading up to the war, the issue of slavery was debated as a question of Christian morality, and ministers and lay people offered conflicting positions on whether the Bible supported or condemned slavery.[44] In the North, the war was described as punishment for the national sin of slavery.[45] Ministers in the South argued that the absence of an expression of religious devotion in the U.S. Constitution had been a national sin, and the adoption of the new

---

38. MOORE, *supra* note 18, at 2.

39. *Id.* at 3, 57.

40. *Id.* at 65.

41. *Id.*

42. As Morton Borden has written, "from 1861 to 1863, from moderates as well as from fundamentalists of many Protestant denominations, came a call to put God in the Constitution of the United States." BORDEN, *supra* note 18, at 61; *see* MOORE, *supra* note 18, at 123 ("Calls for a Christian America fell on deaf ears until the Civil War prompted seismic shifts in thinking about the nature of government.").

43. *See generally* MARK A. NOLL, THE CIVIL WAR AS A THEOLOGICAL CRISIS (2006) (examining how the political crisis of the Civil War was also understood as a theological crisis); ROBERT J. MILLER, BOTH PRAYED TO THE SAME GOD: RELIGION AND FAITH IN THE AMERICAN CIVIL WAR (2007) (discussing the role of religion in the American Civil War).

44. *See* RELIGION AND THE AMERICAN CIVIL WAR 6, 21–40 (Randall M. Miller et al. eds., 1998).

45. In 1863 the Senate unanimously adopted a resolution urging the President to set apart a day of "prayer and humiliation" over "the national offenses which have provoked his righteous judgment." BORDEN, *supra* note 18, at 66. Adhering to the request, President Lincoln issued a proclamation declaring a day of thanksgiving, in which he expressed the view that "the most high God" was "dealing with us in anger for our sins," and called upon the American people to undertake "humble penitence for our national perverseness and disobedience." Abraham Lincoln, President of the United States, Proclamation of Thanksgiving (Oct. 3, 1863). In his second inaugural address, Lincoln expanded on the conception of the Civil War as divine punishment for the sin of slavery. Abraham Lincoln, Second Inaugural Address, *in* 8 THE COLLECTED WORKS OF ABRAHAM LINCOLN VIII 1864–1865 333 (Roy P. Basler et al. eds., 1953) ("If we shall suppose that American Slavery is one of those offences which, in the providence of God, must needs come, but which, having continued through His appointed time, He now wills to remove, and that He gives to both North and South, this terrible war, as the woe due to those by whom the offence came, shall we discern therein any departure from those divine attributes which the believers in a Living God always ascribe to Him?").

Confederate Constitution in March 1861 gave them the opportunity to fix it.[46] In one of the few ways it differed from the U.S. Constitution, the Confederate Constitution asserted the breakaway republic's devotion to God.[47] The South could say that it had God on its side because its constitution said so, unlike the North's.

In 1863 a movement began in the North to put God in the U.S. Constitution as well. In February of that year, members of eleven Protestant denominations met in Xenia, Ohio, to discuss the spiritual implications of the war. The group was dominated by Covenanters and, consistent with their beliefs, concluded that the war was divine punishment for the nation's godless Constitution, which, in an act of hubris, places faith in "We the People" rather than in God.[48] While the movement's founders believed slavery was a national sin, they considered the omission of God from the Constitution to be "the crowning, original sin of the nation, and slavery as one of its natural outgrowths."[49] Indeed, the Civil War, "an expression of the Divine displeasure against the nation," represented the inevitable punishment for omitting God from the Constitution.[50]

Participants in the Xenia meeting quickly created a national association dedicated to amending the Constitution to express the nation's Christian devotion. First called the National Association to Secure the Religious Amendment to the Constitution of the United States, the organization was later renamed the National Reform Association ("NRA").[51] The organization declared in January 1864 "[t]hat we deem it a matter of

---

46. FOSTER, *supra* note 18, at 19–20.

47. Its preamble declared:

> We, the people of the Confederate States, each State acting in its sovereign and independent character, in order to form a permanent federal government, establish justice, insure domestic tranquility, and secure the blessings of liberty to ourselves and our posterity *invoking the favor and guidance of Almighty God* do ordain and establish this Constitution for the Confederate States of America.

CONST. FOR THE CONFEDERATE STATES OF AMERICA pmbl. (emphasis added). As one committee report of the Confederate Congress explained, the Confederacy was therefore obligated to follow Christian principles. David P. Currie, *Through the Looking-Glass: The Confederate Constitution in Congress, 1861–1865*, 90 VA. L. REV. 1257, 1321 (2004) (quoting 1 JOURNAL OF THE CONGRESS OF THE CONFEDERATE STATES OF AMERICA, 1861–1865, *reprinted in* S. DOC. NO. 58-234, at 8–10 (1904)) ("[T]he only sure basis of national prosperity and happiness are the great principles of justice, morality, and religion, as taught in the revealed will of God, and that the Great Lawgiver will not suffer these principles to be violated with impunity.").

48. MOORE, *supra* note 18, at 124. One speaker declared that the nation had long been devoted to God, but:

> [A] fatal backward step was taken in adopting that otherwise noble instrument without any direct recognition of God .... From that day the nation has been demoralized by the promulgation of an instrument as the paramount law of the land, which is far beneath the Christian sentiment of the nation.

PROCEEDINGS OF THE 1872 CONVENTION TO SECURE THE RELIGIOUS AMENDMENT, *supra* note 10, at iv.

49. T.P. Stevenson, *Introduction* to PROCEEDINGS OF THE 1872 CONVENTION TO SECURE THE RELIGIOUS AMENDMENT, *supra* note 10, at iv–v.

50. *Id.* at iii.

51. *See* MOORE, *supra* note 18, 126.

paramount interest to the life, and prosperity, and permanency of our nation, that its Constitution be so amended as fully to express the Christian national character."[52] The NRA proposed amending the Constitution's Preamble to read:

> We, the people of the United States, [*humbly acknowledging Almighty God as the source of all authority and power in civil government, the Lord Jesus Christ as the Ruler among the nations, his revealed will as the supreme law of the land, in order to constitute a Christian government*,] and in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and [secure the inalienable rights and the blessings of life, liberty, and the pursuit of happiness to ourselves and our posterity and all the people,] do ordain and establish this Constitution for the United States of America.[53]

The proposed Christian Amendment did not attempt to give additional powers to any branch of government but instead simply sought to add Christian devotion to the underlying purposes of the Constitution. In doing so, supporters of the Christian Amendment wanted to make it perfectly clear who "We the People" are—the Christian people.

The proposed amendment quickly received several key endorsements, including Senators Charles Sumner, B. Gratz Brown, and John Sherman, as well as *The Independent*, the nation's leading religious journal, and the faculty of the Princeton Theological Seminary, the nation's leading seminary.[54] In February 1864, just a month after the Association's formation, a delegation met with President Lincoln to press him to support the amendment. They told Lincoln that the amendment would help create national unity and help the Union win the war.[55] Lincoln was noncommittal and reportedly declared that "[t]he general aspect of your movement I cordially approve," but asked time to consider the particulars of the proposal because "the work of amending the Constitution should not be done hastily."[56]

---

52. PROCEEDINGS OF THE 1872 NATIONAL REFORM ASSOCIATION CONVENTION, *supra* note 10, at vii.

53. *Id.* at vii–viii.

54. GREEN, *supra* note 18, at 141.

55. According to the NRA's records, the Association's representatives delivered to Lincoln this message:

> [I]t is our first duty to repent of [the sin of slavery] and all our national sins, and to return to our obligations as a christian people, by acknowledging the true God as our God in our fundamental and organic law, in order that we may consistently implore His merciful interposition in our behalf, to give victory to our national arms, and success to the national cause; to establish the unity of the nation and the authority of the Government, now assaulted and shattered by a horrible rebellion.

PROCEEDINGS OF THE 1872 CONVENTION TO SECURE THE RELIGIOUS AMENDMENT, *supra* note 10, at ix.

56. *Id.* at x. Later, the NRA embellished the story of its meeting with Lincoln and frequently claimed that Lincoln was committed to their cause but that his assassination the following year prevented him from fulfilling that commitment. *See* GREEN, *supra* note 18, at 141.

As it became clear that the Union would win the war, support for the proposed amendment receded. Senator Sumner withdrew his support, telling a Jewish constituent that, while he had no objection to formally recognizing God in the Constitution, he objected to amending the Constitution to declare a specifically Christian faith.[57] *The Independent* also rescinded its support, describing the proposal's supporters as "fanatics" for seeking to "engraft the Christian religion into the Constitution."[58] The proposal was nonetheless introduced in Congress in late 1864, but in March 1865 the Senate Judiciary Committee issued a short report declaring that it was "unnecessary and injudicious, at this time, to make such an amendment."[59] Senator Lyman Trumbull, speaking for the Committee, sought to rebut the suggestion that the Committee opposed "the recognition of God in the Constitution."[60] On the contrary, Trumbull explained, the Committee concluded that a constitutional amendment was unnecessary because "the Constitution of the United States does recognize the existence of a Supreme Being."[61]

2. *The Post-War Resurgence of the Christian Amendment Movement*

The end of the Civil War and the 1865 Senate rejection of the Christian Amendment merely ended the first chapter in the story of the Christian Amendment movement. In fact, it was only after the war that the movement to adopt the Christian Amendment became a true national movement and established itself as a fixture on the national political scene that lasted through the end of the century.

By 1872 the National Reform Association claimed to have thirty local chapters.[62] It had thousands of members, concentrated primarily in New England and the Midwest.[63] Its journal, *The Christian Statesman*, claimed to have at least 10,000 readers.[64] In 1874 the NRA claimed to have collected over 50,000 signatures on petitions in favor of the Amendment.[65] Many prominent political and legal leaders supported the NRA, including Justice William Strong of the U.S. Supreme Court, who served as the Association's president from 1867 to 1873. In 1874 the NRA's vice

57. GREEN, *supra* note 18, at 142.

58. *Id.*

59. CONG. GLOBE, 38th Cong., 2d Sess. 1272 (1865).

60. *Id.*

61. The Constitution implicitly recognizes God by requiring federal officers to take an oath before assuming office "and what is an oath," Trumbull asked, "but a promise corroborated or confirmed by an appeal to the Supreme Being?" *Id.*

62. PROCEEDINGS OF THE 1872 CONVENTION TO SECURE THE RELIGIOUS AMENDMENT, *supra* note 10, at 15.

63. FOSTER, *supra* note 18, at 83.

64. *Id.*

65. GREEN, *supra* note 18, at 160–61.

presidents included Senators, governors, and federal and state judges, in addition to leading religious leaders.[66]

After the war, the movement was propelled by a series of conflicts over the role of religion in public life. Longstanding laws and practices supporting religion had become controversial, including laws mandating religious oaths to serve in state governments or on juries, Sabbath observance laws, and prohibitions on blasphemy.[67] These disputes reflected demographic changes that put pressures on the preeminence of traditional Protestant culture and values. At the heart of these conflicts was immigration, which was changing the religious demographics of the nation. At the turn of the nineteenth century, the population of Catholics in the United States had been less than 50,000, but by 1850, Catholics numbered approximately 1.5 million and represented the single largest religious denomination. By the end of the nineteenth century, there were over twelve million Catholics in the country.[68] With their increasing population, Catholics were becoming politically organized and culturally vocal. The population of other minority religions also greatly increased, including Jews and Seventh Day Adventists, and they too demanded religious liberty.[69]

Many American Protestants looked on these demographic changes with alarm and considered these newcomers dangerously foreign. Anti-Catholic sentiment was widespread and ran from uneducated nativist rabble-rousers to President Ulysses Grant, who in 1875 predicted that the next civil war might pit Protestants against Catholics, or as he indelicately put it, "patriotism and intelligence on the one side and superstition and ignorance on the other."[70] Many Protestants understood the demands for religious liberty made by Catholics and other minorities to amount to a demand to subjugate the Protestant majority.[71]

---

66. *See* PROCEEDINGS OF THE FIFTH NATIONAL REFORM CONVENTION TO AID IN MAINTAINING THE CHRISTIAN FEATURES OF THE AMERICAN GOVERNMENT, AND SECURING A RELIGIOUS AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES 100–03 (1874) (listing officers) [hereinafter PROCEEDINGS OF THE 1874 NATIONAL REFORM CONVENTION].

67. Well into the nineteenth century, many states required an oath of devotion to Christ to hold public office. *See* Edwin S. Gaustad & Leigh Schmidt, THE RELIGIOUS HISTORY OF AMERICA: THE HEART OF THE AMERICAN STORY FROM COLONIAL TIMES TO TODAY 232 (2002). For a history of laws regarding Sabbath observance, see Andrew J. King, *Sunday Law in the Nineteenth Century*, 64 ALB. L. REV. 675, 676–77 (2000).

68. Jeffries, Jr. & Ryan, *supra* note 17, at 299–300.

69. GREEN, *supra* note 18, at 149.

70. JOHN HIGHAM, STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM 1860–1925 29 (1955).

71. PROCEEDINGS OF THE 1872 CONVENTION TO SECURE THE RELIGIOUS AMENDMENT, *supra* note 10, at 44. As one supporter of the Christian Amendment argued:

> Stated in the plainest and most undeniable terms, this vaunted "religious liberty" is nothing more nor less than an absolute claim of right on the part of any men, however few their numbers, however low their intelligence, however false their principles, however debased and sensual their lives, to veto any thing and every thing which the moral heart of the nation demands as conservative of its highest well being.

The most contentious political disputes over religion addressed the role of Christianity in public schools, especially the legitimacy of Bible reading. Public education in the nineteenth century was generally nonsectarian in the sense that it inculcated generic Protestantism rather than providing education associated with any particular Protestant sect.[72] Public schools typically used the King James Bible to teach moral lessons, and daily Bible readings were common.[73] Over the course of the second half of the nineteenth century, demands to take the Bible out of the public schools and make them less Protestant grew louder.[74] Catholics, Seventh Day Adventists, Jews, and freethinkers considered the teaching of Protestant morality and scripture in the public schools to conflict with principles of equality and the separation of church and state.[75] At the same time, Protestant resistance grew strong. Protestant defenders of the public schools considered the Bible to be essential to inculcating morality and American values.[76]

Supporters of the Christian Amendment considered opposition to Protestantism in public life to be nothing less than a war on Christianity. Reverend David McAllister, General Secretary of the NRA, explained that the movement to amend the Constitution arose out of the alarm Protestants felt from the challenges to expressions of Christianity in civic life: "It was the attack of enemies of our common Christianity upon the Christian features of our national life that struck the alarm, and sounded the rallying cry which has drawn together many of the best citizens of our land, and banded them in this Association."[77] By challenging Bible reading in schools, Sunday observance laws, and prohibitions on blasphemy, opponents of the Christian Amendment were "waging relentless war upon every vestige of national religion yet left us."[78] As leaders of the Christian

---

Id.

72. GREEN, *supra* note 18, at 13–15. As Noah Feldman has written, "[n]on-sectarianism, it was thought, would keep the state out of bitter inter-denominational disputes, enable the flourishing of diverse voluntary, private churches, and simultaneously enable the state to take a stance in favor of broadly shared, foundational Christian virtues." Noah Feldman, *Non-Sectarianism Reconsidered*, 18 J.L. & POL. 65, 66 (2002).

73. GREEN, *supra* note 18, at 18, 30–33.

74. *See* Feldman, *supra* note 72, at 66.

75. GREEN, *supra* note 18, at 126 (providing that one Jewish newspaper stated: "'Equality and not simple toleration is the basis of all our republican institutions,' .... 'Our public schools are not intended for religious establishments.'").

76. *Id.* at 120. As Reverend George Rudd preached:

> If, just as the nation was established to be a Republican nation ... *founded on Christianity*, then it is no more unconstitutional for it to teach Christianity in its schools ... and [it] no more infringes liberty of conscience, than it does to teach its civil polity as a Republic.

Id.

77. PROCEEDINGS OF THE 1872 CONVENTION TO SECURE THE RELIGIOUS AMENDMENT, *supra* note 10, at 5 ("No thoughtful citizen can be ignorant of the assault made upon every religious act and observance in our national life."); *see id.* at 41 ("This positive, aggressive character of irreligion, is the peculiar feature of our age.").

78. *Id.* at 5 (statement by Reverend David McAllister, General Secretary of the Association).

Amendment movement saw it, their opponents were winning: "Step by step the enemy gains," warned one Presbyterian pastor, "and the Christian sentiment is overbalanced by a contemptible minority of the people . . . ."[79]

And who were these people who plotted against Protestant practices? Some pointed to "atheists and infidels, communists and papists."[80] Others pointed to "the 'secular' party [which] is thoroughly determined to sever American society from all religious influence."[81] Still others pointed to "Atheists, Deists, Jews, and Seventh-Day Baptists."[82] Regardless of the religious or political identity of those who assertedly were attacking Christianity, one fact was clear: they were foreign. Supporters of the Christian Amendment were often quite explicit that the threat to Christianity came from the nation's recent immigrants. As one speaker explained, those who were challenging Christian practices were "almost wholly of foreign importation, and that of comparatively recent date."[83] Speaker after speaker at the NRA conventions declared that the nation must take action to preserve its longstanding Christian identity due to "the character of the immigration which has poured upon us."[84]

B. THE NATIONALIST FRAMEWORK: A WAR ON CHRISTIANITY IS A WAR ON AMERICA

When Catholics, Seventh Day Adventists, freethinkers, and Jews objected to prevalent expressions of Protestantism in public life, many Americans considered these objections not merely as challenges to Protestantism, but as attacks on America itself.[85] The nationalist response to growing religious pluralism illustrates the social theory of national identity developed by Elizabeth Theiss-Morse.[86] As Professor Theiss-Morse has

---

79. *Id.* at 31.

80. *Id.* at 5.

81. PROCEEDINGS OF THE 1872 CONVENTION TO SECURE THE RELIGIOUS AMENDMENT, *supra* note 10, at 17–18.

82. *Id.* at 68.

83. PROCEEDINGS OF THE NATIONAL CONVENTION TO SECURE THE RELIGIOUS AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES 51 (1873) [hereinafter PROCEEDINGS OF THE 1873 CONVENTION TO SECURE THE RELIGIOUS AMENDMENT].

84. *The Legal Effect and Practical Value of the Proposed Amendment*, *in* PROCEEDINGS OF THE 1872 CONVENTION TO SECURE THE RELIGIOUS AMENDMENT, *supra* note 10, at 56 (reading by Reverend T. P. Stevenson); *see also id.* at 38 (statement of Reverend David McAllister) ("I would urge the strongest kind of aggression . . . against that foreign *secularism* which is attempting to get control of the country, and which would overthrow everything of a Christian character connected with our national institutions." (emphasis in original)); *id.* at 84 (statement of Reverend A. A. Hodge) ("Multitudes of disappointed political and social theorists have recently immigrated to our land, who are disseminating theories of human rights and of man's relation to God which are as inconsistent with the facts and tradition of our government as with the Christian religion.").

85. GREEN, *supra* note 18, at 120 ("A common theme in these writings was that Bible reading, and the nation's reinforcing relationship between Protestantism and republicanism, were under attack by Catholics, infidels, and misguided liberal Protestants.").

86. *See* THEISS-MORSE, *supra* note 15, 1–32.

shown through an empirical study, a cohort of Americans consider themselves prototypically American, predominately those who are native-born, white, and Christian.[87] These self-defined prototypical Americans strongly believe that their traits and values are *national* traits and values, and they consider Americans who do not share these traits and values to be less authentically American.[88] Those who consider themselves prototypically American react most sharply to criticism from people they consider to be marginal Americans, perceiving their criticisms as attacks on America.[89]

The dynamics that gave rise to the Christian Amendment movement follow Theiss-Morse's social theory of national identity. Protestant Americans of the nineteenth century who had long held a dominant position in America considered their values, especially their religious devotion, to be defining features of America. Speakers at the National Reform Association's annual conventions repeatedly declared that commitment to Christianity—a phrase they used synonymously with Protestantism—was central to American identity.[90] As Reverend A.D. Mayo declared at the 1872 Convention:

> The people understand that this is a Christian country. The mass of the people are Christian in belief. Our whole order of society and government is such as could only have grown up in a land where the people had reached a very advanced and practical form of Christian faith. The standard of public morality, as far as theory is concerned, is the standard of Jesus Christ. The New Testament is regarded as the final authority concerning the highest life of man.[91]

Proponents of the Christian Amendment considered Christian beliefs to be "interwoven in the warp and woof of our national existence."[92]

Convinced that Protestant devotion is a core aspect of American identity, proponents of the Christian Amendment considered challenges to Christian dominance to be anti-American. "[S]ecular critics," proclaimed Reverend A.D. Mayo, were "born and educated abroad, and ignorant of the first principles of American life."[93] To supporters of the Christian Amendment, these new immigrants could not share in American values because "they did not share in the first settlement of this country; they

87. *Id.* at 77.

88. *Id.* at 73, 75, 92–93.

89. *Id.* at 159.

90. *See* MOORE, *supra* note 18, at 126 (stating that the NRA sought to "capitaliz[e] on the American Christian assumption of a shared Protestant foundation").

91. PROCEEDINGS OF THE 1872 CONVENTION TO SECURE THE RELIGIOUS AMENDMENT, *supra* note 10, at 17.

92. *Id.* at 18. As Wilbur F. Crafts, who lobbied for decades to create a Sabbath observance law, declared: "With the Sabbath our Christianity and our country stand or fall." FOSTER, *supra* note 18, at 93.

93. PROCEEDINGS OF THE 1872 CONVENTION TO SECURE THE RELIGIOUS AMENDMENT, *supra* note 10, at 23; *id.* at 35 (asserting that secularists "do not understand the practical character of the American people"); *id.* at 70 (declaring that opponents of the Amendment opposed "American Republicanism and Liberty").

did not brave the hardships, they did not profess the principles which have made that settlement memorable. They never, anywhere, developed, or even dreamed of such a nationality as ours . . . ."[94] Supporters of the Amendment were often explicit in asserting that non-Christians had no rightful place in America: "[I]f the opponents of the Bible do not like our government and its christian features," Reverend E.B. Graham told an NRA Convention in 1885, "let them go to some wild, desolate land, and in the name of the devil, and for the sake of the devil, subdue it, and set up a government of their own, on infidel and atheistic ideas, and then if they can stand it, stay there till they die."[95]

While some Americans may have long assumed that being Protestant was an essential part of being American, now that this identity was challenged, supporters of a Christian conception of America recognized a need to develop an argument for why it should remain so. Proponents of the Christian Amendment responded by developing a comprehensive conception of American history that placed Christian devotion at the core.[96] As one advocate for the Christian Amendment put it:

> The principles which we here present are not new in American politics. We are able to plead many precedents, which must have the weight of authority with the American people. Our country was originally settled by men of high religious character, whose only motive in seeking a home in the wilderness was the freedom and safety of religion and the glory of God.[97]

The result was a Christian-focused history of the nation, built up by a carefully selected set of quotations and episodes in the American history.[98] Supporters of the Christian Amendment pointed to the Mayflower Compact and colonial charters to show that the first European immigrants came on a Christian mission.[99] They pointed to religious language in early state constitutions, in the Declaration of Independence, and the Articles of Confederation.[100] They pointed to state court decisions declaring Christianity part of the common law.[101] They pointed to the appointment

---

94. PROCEEDINGS OF THE 1873 CONVENTION TO SECURE THE RELIGIOUS AMENDMENT, *supra* note 83, at 61.

95. M. A. Gault, *The National Reform Movement*, CHRISTIAN STATESMAN, May 21, 1885, at 4–5.

96. As historian Steven Green has shown, a Christian-focused conception of American history began to develop in the decades after the nation's founding, when the first histories were written of the American Revolution, the Declaration of Independence, and the Constitution. STEVEN K. GREEN, INVENTING A CHRISTIAN AMERICA: THE MYTH OF THE RELIGIOUS FOUNDING (2015).

97. T.P. Stevenson, *Introduction* to PROCEEDINGS OF THE 1872 CONVENTION TO SECURE THE RELIGIOUS AMENDMENT, *supra* note 10, at xi.

98. *See* Stephen M. Stookey, *In God We Trust?: Evangelical Historiography and the Quest for a Christian America*, 41 SW. J. THEOLOGY 41, 42 (1999).

99. PROCEEDINGS OF THE 1874 NATIONAL REFORM CONVENTION TO SECURE THE RELIGIOUS AMENDMENT, *supra* note 66, at xi, 15.

100. *Id.* at iv, xi–xii.

101. *Id.* at xi–xii.

of chaplains in Congress and declarations of days of thanksgiving and prayer.[102] They compiled anthologies of founding era quotations to show that the nation had been founded by devout Christians who sought to create a Christian nation.[103] To proponents of the amendment, the nation's history unequivocally demonstrated that the United States is a Christian nation; the proposed amendment would simply make it explicit.[104]

The Christian history of the United States developed by proponents of the Christian Amendment contains the familiar features of a Golden Age narrative.[105] In the movement's explanation of American history, the Founding created a nation with pure ideals devoted to God, but then a rising tide of immigrants and secularism destroyed this purity and called into question the nation's Christian values.[106] Because the American people no longer followed the pure Christian values upon which the nation was founded, a series of challenges arose, and some tried to remove the Bible and prayer from the schools and to overturn laws respecting the Sabbath and prohibiting blasphemy.[107] The narrative pointed to a dire future: The American people would lose their Christian soul and face complete destruction if they continued to deny their true Christian nature.[108] The story also offered the only conceivable solution to the nation's current troubles—a return to the pure ideals upon which the nation had been founded.[109] For supporters of the Christian Amendment, the story of America's Christian history contained a crucial lesson: The nation must rededicate itself to its Christian faith by placing

---

102. *Id.* at xii.

103. *See, e.g.*, *id.* at 61–64.

104. PROCEEDINGS OF THE 1872 CONVENTION TO SECURE THE RELIGIOUS AMENDMENT, *supra* note 10, at xii ("There are well established features in our government, which are consistent only with such principles as we seek to introduce into the National Constitution.").

105. The structure of the appeal developed in support of the Christian Amendment followed what Andrew Murphy has described as a typical American jeremiad, "a form of political rhetoric that explicitly invokes the past as a corrective to the problems of the present . . . ." Andrew R. Murphy, *Longing, Nostalgia, and Golden Age Politics: The American Jeremiad and the Power of the Past*, 7 PERSP. ON POL. 125, 126–27 (2009). American jeremiads typically involve the following claims: (1) "Jeremiads identify problems that signal decline vis à vis the past"; (2) "Jeremiads identify a point in the past in which the harmful idea or practice responsible for decline first made its appearance, and trace out the injurious consequences from its earliest inception to the present day"; and (3) "Jeremiads call for reform, repentance, or renewal—a specific course of action to reverse contemporary decline and to reclaim the original promise of communal life." *Id.*

106. *See supra* notes 93–95 and accompanying text.

107. *See* PROCEEDINGS OF THE 1872 CONVENTION TO SECURE THE RELIGIOUS AMENDMENT, *supra* note 10, at 59; *supra* note 78 and accompanying text.

108. *See* PROCEEDINGS OF THE 1872 CONVENTION TO SECURE THE RELIGIOUS AMENDMENT, *supra* note 10, at 7 (warning that soon anti-Christian forces may "wipe out everything of a Christian or even moral character, until our whole political page should become a pure, unbelieving, irreligious, Christless, Godless blank."); *id.* at 49 (warning that secularism is "threatening destruction to all that is noblest and purest in our social life").

109. *See supra* notes 96–104 and accompany text.

an expression of that faith permanently in the document that embodies the nation's identity.

C. The Constitution and the Mirror

Group threat theory helps explain why some Protestants in the nineteenth century felt compelled to mobilize in response to the perceived threat to their status posed by the nation's increasing religious diversity. The social theory of national identity helps explain why they perceived the threat in nationalist terms as an attack on America itself. One additional question remains, and it is the central subject of this Article: Why did the mobilization focus on *constitutional* demands? The answer to that question lies in the role that the Constitution plays in America's nationalist consciousness. Americans have long understood the Constitution to be an expression of national values and character.[110] As a result, supporters of the Christian Amendment believed that the best way to demonstrate that the United States truly is a Christian nation was to place an expression of that identity in the Constitution itself.[111]

Supporters of the Christian Amendment frequently explained that it was crucial that the Constitution accurately reflect the nation's true identity. In his address to the 1872 NRA Convention, David McAllister, General Secretary of the NRA, declared:

> It is a principle clearly stated by the best writers on political science, that in a nation where there is a written Constitution, that instrument should take its character from the nation for which it is framed. A written Constitution is simply a translation into legal language . . . of the facts actually evolved by the social forces of the nation.[112]

As Amendment supporters understood it, the godless Constitution was inconsistent with the Christian nature of the American people—it did not translate into legal language "the facts actually evolved by the social

---

110. *See supra* notes 1–5 and accompany text.

111. *See* Proceedings of the 1872 Convention to Secure the Religious Amendment, *supra* note 10, at 37 (stating that the American people "will place in their great charter of liberties an acknowledgement of the nation's dependence on Almighty God . . . because it is an Anglo-Saxon people, and believers in constitutional liberty, founded on reverence for God and the morality of the Christian religion.").

112. Proceedings of the 1872 Convention to Secure the Religious Amendment, *supra* note 10, at 6 (referencing John A. Jameson, A Treatise on Constitutional Conventions § 63 (1867)). As another speaker put it: "The design of a written Constitution is simply to exhibit and declare the exact features of the unwritten Constitution, or the actual character of the nation." *Id.* at 56, 58. Yet another speaker put it similarly:

> We must then seek the character of the State in the official principles it adopts. And where shall we look for these principles unless in the Constitution which proclaims to the world the truths from which the State is to draw its life; which defines its rights and powers; which establishes its various departments, and organizes them into one symmetrical whole? The laws and usages which spring from this constitution, as their parent, are but the exponents of its character[.]

Id. at 53.

forces of the nation"—and therefore demanded correction.[113] As another speaker at the 1872 Convention put it, because the U.S. Constitution is "without a single word from which it could be determined that this is a christian nation,—we believe [it] to have been false to the true character of the nation, when it was framed; we believe it to be false to the national character to-day."[114] Supporters of the Amendment thus did not so much seek to put God into the Constitution as to "*put the people into it*, trying to make our Constitution . . . a fair and true, and not a libellous [sic] exponent of the nation."[115]

Proponents of the Christian Amendment believed that putting Christian devotion in the Constitution would protect the nation's true Christian nature. As they saw it, national identity was bound to follow the Constitution. If the Constitution became Christian, the nation would stay Christian, but if the Constitution stayed godless, the people would become godless.[116] As the NRA's David McAllister put it:

> [T]he written Constitution must be amended to conform to the facts as they have actually been evolved. . . . [or] the Constitution will in time conform everything to itself. The facts, the usages, the legislative and judicial actions, everything, in a word, that is out of harmony with the written instrument, will give way before its moulding and controlling influence, and disappear.[117]

In this conception, the Constitution not only reflects national identity but also shapes it. If the Constitution were not changed to reflect the people's Christian character, the people would become as godless as the Constitution.[118]

Opponents of the amendment—Seventh Day Adventists, Jews, and freethinkers—presented a very different conception of American identity.[119] "[W]e do not believe that this is a Christian nation," declared

---

113. As McAllister put it, "[t]he written Constitution of the United States does not translate these Christian facts into legal language. It does not authenticate them." *Id.* at 6.

114. *Id.* at 58.

115. *Id.* at 67, 68 (statement of Reverend J. Edwards). "*Resolved*, That we recognize the necessity of complete harmony between our written constitution and the actual facts of the national life . . . ." *Id.* at 50.

116. *Id.* ("[W] e maintain that the true way to effect this undoubted harmony is not to expel the Bible and all idea of God and religion from our schools, abrogate laws enforcing Christian morality, and abolish all devout observances in connection with government, but to insert an explicit acknowledgment of God and the Bible in our fundamental law."); *see* J. H. W., *Secularized Christianity*, 1 AM. SENTINEL 9, 10 (1886) [hereinafter *Secularized Christianity*] (quoting an NRA officer: "[Opponents of the Christian Amendment] demand that all Christian usages and institutions be abrogated to conform to the Constitution. We propose to amend it to conform to the actual character of the nation.").

117. PROCEEDINGS OF THE 1872 CONVENTION TO SECURE THE RELIGIOUS AMENDMENT, *supra* note 10, at 6.

118. *Id.* at 7. McAllister thus warned that failure to make the Constitution Christian would allow anti-Christian forces to "wipe out everything of a Christian or even moral character, until our whole political page should become a pure, unbelieving, irreligious, Christless, Godless blank." *Id.*

119. The leading opponents were Seventh Day Adventists who had long been persecuted for observing Saturday as the Sabbath, in violation of Sunday closing laws. FOSTER, *supra* note 18, at 108; GREEN, *supra* note 18, at 149. In 1886, the Seventh Day Adventists launched *The American Sentinel*, a

the Seventh Day Adventist paper, *The American Sentinel*, "and no amendment to our National Constitution will make it such."[120] Although the majority of Americans may have been Christian, that fact did not make the United States a Christian nation.[121] And if the nation could not be said to be truly Christian, a constitutional declaration of national faith would therefore be false.[122] Opponents also feared that the Christian Amendment would make non-Christians second-class citizens.[123] As *The American Sentinel* put it, the Amendment would have the effect of asserting that "the Jewish and unbelieving portion of our people are not, of right, part of the people."[124] The Amendment thus conflicted with principles of equality.[125]

Opponents argued that the proposed Amendment was contrary to "the American idea," which they understood in civic republican terms as equality among diversity.[126] "If as a nation we stand for any thing," freethinker John

---

newspaper devoted principally to opposing the NRA. *See* J. H. W., *The American Sentinel*, 1 AM. SENTINEL 1, 1 (1886) [hereinafter *The American Sentinel*] (explaining that *The American Sentinel* was created because "there is no paper published in the United States, which has for its distinct object the vindication of the rights of American citizens, which, we solemnly believe, are threatened by the actions and aims of [the NRA]."). Jewish organizations also petitioned Congress to oppose the Amendment. *Hebrews to Petition Congress*, N.Y. TIMES, Mar. 16, 1896, at 5. Liberal religionists and freethinkers also organized to oppose the Christian Amendment, creating in 1867 the Free Religious Association, while secularists organized the National Liberal League and local Liberal League chapters. THE FREE RELIGIOUS ASSOCIATION PROCEEDINGS AT THE FORTY-SECOND ANNUAL MEETING HELD IN BOSTON, MASS. 103 (1909); *see* GREEN, *supra* note 18, at 150–54, 161–67.

120. J. H. W., *What Is the Harm?*, 1 AM. SENTINEL 9, 13 (1886).

121. *Secularized Christianity*, *supra* note 116, at 10 ("If, in a family of ten, three were professed Christians and seven were infidels, could that family be called a Christian family?").

122. *Id.*; JOHN W. CHADWICK, LIBERTY AND THE CHURCH IN AMERICA, *in* FREEDOM AND FELLOWSHIP IN RELIGION: A COLLECTION OF ESSAYS AND ADDRESSES 299, 308 (The Free Religious Association eds., 1875) (declaring the Christian Amendment a "falsehood" because the nation includes thousands of men who are not Christians).

123. The Amendment, one writer asserted, "*will disfranchise* every one who will not acknowledge, and submit to, the provisions which they choose to embody in their Religious Amendment to the Constitution." A. T. J., *National Reform and the Rights of Conscience*, 1 AM. SENTINEL 9, 11 (1886) (emphasis in original).

124. A. T. J., *A Christian Nation*, 1 AM. SENTINEL 1, 7 (1886).

125. *Not a Christian Nation*, 1 AM. SENTINEL 14, 14 (1886) ("[T]he Israelite, the Mahommedan, or the Buddhist has an equal right to preach, and, if he can, to make converts to his faith."); CHADWICK, *supra* note 122, at 310.

126. *The American Sentinel* declared that "[t]here are many different churches and religions, or forms of religion, in the land, and no constitutional provision or judicial decision can declare that *all these* are conformable to Christian faith and practice." *The American Sentinel*, *supra* note 119, at 1; *see* CHADWICK, *supra* note 122, at 310. In 1894, Jewish organizations declared that the Amendment conflicted with principles of equality among faiths and would raise up one doctrine over all others. *Hebrews to Petition Congress*, *supra* note 119, at 5. Opponents pointed to not only diversity between Christians and other religions, but to the substantial religious diversity among Christians. *See A "Non-Sequitur,"* 1 AM. SENTINEL 1, 8 (1886) ("Would not . . . such an amendment as this Association seeks, lead to endless religious disputes in our legislatures and in Congress?"). Another writer argued that if the Amendment were adopted, "the court shall decide what is and what is not a Christian law or institution, and how Christian laws and institutions shall or shall not be observed, and what is and what is not a violation of the laws of Christianity." *Secularized Christianity*, *supra* note 116, at 9.

Chadwick wrote in 1875, "it is for 'equal rights for all;' not for 'all white men,' not for all Christians, not for all theists even, but for all."[127]

Although the competing sides in the fight over the Christian Amendment disagreed over the nature of American national identity, the fight focused on the Constitution because both sides agreed on a central premise: The Constitution should embody the nation's true values.[128] As the first witness testifying in support of the Amendment before the House Judiciary Committee in 1896 explained:

> The parties in this debate agree substantially in these two things: First, that the Constitution is a secular document; and, second, that the facts in our life are Christian; but the one party claims that a secular constitution is right and that it ought to remain so, and that all the facts in our national life should be brought down to it, viz, abolish prayers in Congress, chaplains in the Army, Bible from the schools, remove everything Christian, and convert our whole civilization into secularism. The other party contends that every Christian feature shall be maintained, and asks that the Constitution be amended so as to secure all such features.[129]

The dispute over the nation's religious identity became a constitutional dispute because of the widespread belief, shared by proponents and opponents of the Amendment, that the Constitution should reflect the true nature of the American people.

D. The Many Defeats and the One Lasting Success of the Christian Amendment Movement

The Christian Amendment never came close to ratification. Although it was introduced in Congress again and again, it never made it out of a House or Senate committee.[130] Yet by the end of the nineteenth century it appeared that the movement had succeeded after all.

In 1892, the Supreme Court issued its decision in *Holy Trinity Church v. United States* and emphatically declared that the United States is a "Christian nation."[131] The NRA was not directly involved in the case but the decision unmistakably reflects its influence. The case addresses what today is an inconsequential question involving a long repealed provision of federal immigration law prohibiting employment contracts

---

127. Chadwick, *supra* note 122, at 309. Agreeing with these opponents of the Amendment, the *New York Times* declared that the addition of an expression of Christian devotion in the Preamble would create divisions among the American people, undermining the constitutional goal of "domestic tranquility." *Christianity by Legislation*, N.Y. Times, Mar. 15, 1896, at 4.

128. In fact, in 1874 the Free Religious Association countered the NRA by proposing its own constitutional amendment, the Religious Freedom Amendment, which would have extended the First Amendment's prohibition on establishment of religion to the states. Green, *supra* note 18, at 162–63.

129. *Joint Resolution Proposing Amendment to the Constitution of the United States: Hearing on H.R. 28 Before the H. Comm. on the Judiciary*, 54th Cong. 3–4 (1896) (statement of Reverend H. H. George).

130. *See, e.g.*, Cong. Globe, 38th Cong., 2d Sess. 1272 (1865) (rejecting proposed amendment).

131. Rector, Etc., of Holy Trinity Church v. United States, 143 U.S. 457, 471 (1892).

encouraging immigration.[132] The case is of lasting significance, however, because, in ruling that the statute should not be read to cover ministers, the Supreme Court declared that the statute must be construed in light of the fact that the United States is a Christian nation.[133]

Holy Trinity Church supports the conclusion that the United States is a Christian nation with a lengthy account of the history of the United States. The Court pointed to the same evidence of the nation's Christian history that had been developed by the NRA in support of the Christian Amendment.[134] In his opinion for the Court, Justice David Brewer recited the NRA's examples of the colonial charters to show that the nation began with a religious mission.[135] The opinion points to religious language in the Mayflower Compact, the Declaration of Independence, and state constitutions, and cites to declarations in state court opinions that the United States is a Christian nation.[136] Justice Brewer cited to various state and federal laws that protect Christian practices, including many of the same laws and practices that the Christian Amendment was proposed to protect: blasphemy laws, Sunday closing laws, and legislative prayers.[137] Justice Brewer quoted approvingly from a statement by Chancellor Kent that similar protections need not be given to non-Christians.[138]

Holy Trinity Church placed the Supreme Court's imprimatur behind the central claims of Christian nationalism espoused by the Christian Amendment movement: The American people are a Christian people and therefore the United States is a Christian nation; American history demonstrates that the nation is devoted to Christianity; Christian practices must be understood to have a privileged status and should be protected by law; and Christian values and practices are an intrinsic and unobjectionable part of American public life.

The decision was immediately recognized by both sides in the fight over the Christian Amendment as an endorsement of the Amendment movement's central claims. In its first issue after *Holy Trinity Church*, the

---

132. *Id.* at 458.

133. *Id.* at 471 ("In the face of all these, shall it be believed that a congress of the United States intended to make it a misdemeanor for a church of this country to contract for the services of a Christian minister residing in another nation?").

134. *Id.* at 467–70.

135. *Id.* at 466.

136. *Id.* at 466–68.

137. *Id.* at 470–71.

138. *Id.* at 471 (quoting People v. Ruggles, 8 Johns. 290, 295 (N.Y. App. Div. 1811)) ("Nor are we bound by any expressions in the constitution, as some have strangely supposed, either not to punish at all, or to punish indiscriminately the like attacks upon the religion of Mahomet or of the Grand Lama; and for this plain reason, that the case assumes that we are a Christian people, and the morality of the country is deeply ingrafted upon Christianity, and not upon the doctrines or worship of those impostors.").

NRA's official newspaper proclaimed victory, declaring the Court's decision the "Greatest Occasion for Thanksgiving":

> "This is a Christian nation." That means Christian government, Christian laws, Christian institutions, Christian practices, Christian citizenship. And this is not an outburst of popular passion or prejudice. Christ did not lay his guiding hand there, but upon the calm, dispassionate supreme judicial tribunal of our government. It is the weightiest, the noblest, the most tremendously far-reaching in its consequences of all the utterances of that sovereign tribunal. And that utterance is for Christianity, for Christ. "A Christian nation!" Then this nation is Christ's nation, for nothing can be Christian that does not belong to him. Then his word is its sovereign law. Then the nation is Christ's servant. Then it ought to and must, confess, love and obey Christ. All that the National Reform Association seeks, all that this department of Christian politics works for, is to be found in the development of that royal truth. "This is a Christian nation."[139]

The NRA immediately took credit for the decision, accurately declaring that it "reads as if largely gathered from the National Reform Manual."[140]

The joy felt by supporters of the Christian Amendment was matched by opponents' alarm. *The American Sentinel* denounced *Holy Trinity Church* as "another Dred Scott decision," effectively decreeing "that disbelievers in the Christian religion have no rights which believers are bound to respect."[141] It agreed with the NRA that the Court had adopted the philosophy behind the Christian Amendment, declaring that the decision "culminates in the National Reform shibboleth, and the capsheaf has been put to the theory that the Christian religion is part of the common law of the individual States, by declaring, by fiat of the Supreme Court, the United States to be a Christian Nation."[142]

With the decision in *Holy Trinity Church*, it appeared that the NRA might well have achieved in court what it had been unable to achieve through the political process.[143] Indeed, America's constitutional history includes numerous instances when a movement failed in its goal of enacting a constitutional amendment, but nonetheless succeeded in gaining legal recognition of its central claims. Perhaps the most prominent

---

139. William Weir, *The Supreme Court Decision: The Greatest Occasion for Thanksgiving*, CHRISTIAN STATESMAN, Nov. 19, 1892, at 2.

140. William Weir, *Republican National Convention*, CHRISTIAN STATESMAN, June 25, 1892, at 5. Recent scholars have disagreed over whether Justice Brewer personally supported the NRA's agenda. *Compare* MOORE, *supra* note 18, at 134 (stating that Justice Brewer "never joined the NRA but came out publicly as a supporter" and asserting that he "had been giving speeches at NRA events for some time") *and* JAY ALAN SEKULOW, WITNESSING THEIR FAITH: RELIGIOUS INFLUENCE ON SUPREME COURT JUSTICES AND THEIR OPINIONS 152 (2006) ("[Justice] Brewer was clearly in agreement with many of the NRA's positions.") *with* Steven K. Green, *Justice David Josiah Brewer and the "Christian Nation" Maxim*, 63 ALB. L. REV. 427, 458 (1999).

141. C. B. Waite, *In a Great Crisis*, 8 AM. SENTINEL 41, 43 (1893).

142. W. H. M., *The Supreme Court and a National Religion*, 7 AM. SENTINEL 113, 114 (1892).

143. *See, e.g.*, W. H. M., *"Vital to the Sunday Question,"* 7 AM. SENTINEL 153, 155 (1892) (quoting PEARL OF DAYS (May 7, 1892)) ("And this important decision rests upon the fundamental principle that religion is imbedded in the organic structure of the American Government . . . .").

example is the movement to adopt the Equal Rights Amendment, which failed to win passage of a constitutional amendment, but nonetheless succeeded in gaining judicial recognition of the same principle.[144] Commentators have described the Supreme Court's rulings as creating a "de facto ERA," which Reva Siegel has explained resulted from a social movement that dramatically shifted public and elite notions of women's equality.[145] After Christian Amendment supporters succeeded in convincing a unanimous Supreme Court to declare that the United States is a Christian nation, it appeared that the proposed Christian Amendment might succeed in gaining judicial acceptance despite the failure of the amendment to gain formal adoption.

At the same time, however, *Holy Trinity Church* undercut the campaign to adopt the Christian Amendment. Perhaps there was no need to amend the Constitution, some now argued, because the Supreme Court itself had agreed that the nation was Christian and that Christianity was, in some sense, the law of the land.[146] Continuing the fight for an amendment after *Holy Trinity Church*, Wilbur Crafts argued that an amendment remained necessary so that "the Constitution shall say what the Supreme Court has already said, as to the Christian status of our government, but in a more authoritative form."[147] Opponents could now argue, however, that a constitutional amendment was no longer necessary, if it ever had been.

As a result of *Holy Trinity Church*, supporters of the Christian Amendment stopped arguing that the Constitution was godlessly secular and increasingly began to argue that the Constitution was already Christian. As reported in 1900 in *The Sentinel of Liberty* (the successor to *The American Sentinel*), National Reformers:

---

144. *See* United States v. Virginia, 518 U.S. 515, 533 (1996) (striking down Virginia's operation of a single-sex military academy and declaring that sex discrimination can be upheld only where there is an "exceedingly persuasive justification"). Another example is the Child Labor Amendment, which would have authorized Congress to prohibit child labor, which failed to win passage by state legislatures, but in 1941 the Supreme Court ruled that Congress already had such power under the Commerce Clause. *See* United States v. Darby, 312 U.S. 100, 116 (1941). As David Strauss commented, "[i]t was as if the Child Labor Amendment not only had been adopted but also had been given an especially expansive reading . . . ." David A. Strauss, *The Irrelevance of Constitutional Amendments*, 114 HARV. L. REV. 1457, 1476 (2001).

145. *See* Reva B. Siegel, Lecture, *Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the de facto ERA*, 94 CALIF. L. REV. 1323, 1332–34, 1351–66 (2006).

146. GREEN, *supra* note 18, at 176.

147. WILBUR F. CRAFTS, PRACTICAL CHRISTIAN SOCIOLOGY: ON MORAL REFORMS AND SOCIAL PROBLEMS 197 (rev. 4th ed. 1907).

> were wont only a few years ago to assail the Constitution as a "Godless instrument" because it contained no recognition of Deity. But now that a justice of the Supreme Court has shown in an *obeter dictum* how to discover in that document something which is clearly not there at all, these men are not slow to avail themselves of this aid and to loudly proclaim that "this is a Christian nation . . . ."[148]

While the Christian Amendment movement had not succeeded in amending the Constitution, it had gained official recognition from the Supreme Court of its central claim: Christianity, not godless secularism or religious pluralism, was the law of the land.

The movement to adopt the Christian Amendment never entirely died. The NRA continued to push for an amendment until it finally folded in 1945.[149] A new organization, the Christian Amendment Movement, was formed the next year with the express purpose of continuing the work begun by the NRA.[150] Because Christian practices in public life continued to be challenged, the Amendment was still necessary, one pamphlet declared, in order to "afford a constitutional basis for Christian legislation and judicial decisions."[151] The newly reformed Christian Amendment Movement declared anew that the proposed Amendment would save Christian America from the threats of secularism.[152] The proposal was endorsed in 1947 by the newly formed National Association of Evangelicals.[153]

In 1954 and 1964, Congress once again held hearings on the proposed amendment, which reiterated and expanded on the same arguments and counterarguments that had been presented in the nineteenth century hearings.[154] Representatives of groups that had thrived in the nineteenth century—the National Reform Association and the Women's Christian Temperance Union—once again argued that the Constitution failed to reflect the true Christian nature of the nation and that it must be amended to bring the American people and the Constitution into harmony.[155] They were joined by newly formed but relatively obscure organizations like the Christian Patriotic Rally and the

---

148. *"Is This a Christian Nation?,"* 15 SENTINEL LIBERTY 418, 419 (1900).

149. *See* BORDEN, *supra* note 18, at 74. *But see Christian Amendment: Hearings on S. J. Res. 87 Before the Subcomm. of the S. Comm. on the Judiciary*, 83rd Cong. 35 (1954) [hereinafter *Christian Amendment Hearings*] (statement of D.H. Elliott, a witness at the hearing, identifying him as a member of the Executive Committee of the NRA).

150. THE CHRISTIAN AMENDMENT MOVEMENT: WHAT IT IS, WHAT YOU CAN DO TO HELP 3 (1948), http://digitalcollections.baylor.edu/cdm/ref/collection/cs-vert/id/8125.

151. *Id.* at 12.

152. *See* AM. ASS'N FOR THE ADVANCEMENT OF ATHEISM, AMERICAN CHRISTIANS, AWAKE! 1, http://digitalcollections.baylor.edu/cdm/compoundobject/collection/cs-vert/id/8116/rec/4 (last visited Jan. 16, 2017) ("Let's make our 'godless Constitution' Christian lest our government and schools become purely secular.").

153. MOORE, *supra* note 18, at 153.

154. *Christian Amendment Hearings*, *supra* note 149, at 29–30, 35, 45, 52.

155. *Id.* at 8 (statement of Mrs. P. de Shishmareff); *id.* at 21 (statement of Remo Robb); *id.* at 28–29 (statement of R. E. Robb); *id.* at 43 (statement of J. Renwick Patterson).

California League of Christian Parents.[156] Supporters of the Amendment relied on the comprehensive history of Christian America developed by the Amendment's nineteenth century supporters, presenting a catalogue of religious declarations by leading Americans from the Mayflower Compact through modern times.[157] Supporters of the Amendment continued to point to *Holy Trinity Church* as the definitive declaration that the nation is Christian.[158] The renewed push to adopt the Christian Amendment was opposed by major Jewish organizations, the American Civil Liberties Union, and Americans United for the Separation of Church and State, which like their nineteenth century predecessors articulated an egalitarian national vision.[159] By then, however, the diverse groups opposing the Amendment and supporting religious pluralism had become mainstream, while those calling for a Christian Constitution had become decidedly marginal.[160]

II. JUDEO-CHRISTIAN NATIONALISM OF THE EISENHOWER ERA

While Christian nationalism of the kind advanced by the Christian Amendment movement became increasingly marginalized in the first half of the twentieth century, a new, more ecumenical movement took its place, a movement that valorized the nation's "Judeo-Christian heritage" rather than its specifically Christian or Protestant heritage. Judeo-Christian nationalism reached its apogee during the Eisenhower era, a time of unprecedented public declarations of religious faith.[161] With Eisenhower's support, religious nationalists succeeded in gaining legal recognition that religious devotion is central to American national identity, adding the words "under God" to the Pledge of Allegiance and adopting "In God We Trust" as the national motto.[162] Proponents presented these measures as expressions of America's authentic national identity, intended

156. *Id.* at 2, 7.

157. *See, e.g.*, *id.* at 28 (statement of R. E. Robb) ("The pioneers who first planted a stable government on these shores," one witness explained, "and the greatest statesmen of the Nation ever since, have consistently and with almost complete unanimity turned to Christianity as the embodiment of that code."). As a result, "we are warranted in stating categorically that this is in fact basically and fundamentally a Christian nation." *Id.* at 29.

158. *Id.* at 8 (statement of Mrs. P. de Shishmareff); *id.* at 21 (statement of Remo I. Robb); *id.* at 28–29 (statement of R. E. Robb); *id.* at 43 (statement of J. Renwick Patterson).

159. *See id.* at 69–74 (statement of Rabbi Isidor Breslau, Synagogue Council of America); *id.* at 86–92 (statement of David Brody, Anti-Defamation League); *id.* at 74–82 (statement of Leo Pfeffer, Synagogue Council of America); *id.* at 82 (statement of Protestants and Other Americans United for Separation of Church and State); *id.* at 85 (letter by the American Civil Liberties Union).

160. The NRA was so obscure in 1954—enough so that one writer on its history believed it had folded long before. *See* BORDEN, *supra* note 18, at 74.

161. *See* KEVIN M. KRUSE, ONE NATION UNDER GOD: HOW CORPORATE AMERICA INVENTED CHRISTIAN AMERICA xii (2015).

162. *See id.* at 124.

to combat the threats posed by atheism and Communism.[163] Despite these successes, Judeo-Christian nationalists failed when they sought to enshrine an expression of religious devotion in the Constitution, when a variety of factions advanced pluralism and equality, rather than religious devotion, as central to national identity.[164]

As this Part shows, Judeo-Christian nationalism of the mid-twentieth century followed the same pattern as the Christian Amendment movement. Like the Christian Amendment movement, Judeo-Christian nationalism arose in response to a perceived group threat, in this case the threat that many religious Americans perceived from Communism abroad and at home. Just as the rise of religious pluralism was seen by many nineteenth century Protestants as a threat to national identity, the threat from Communism was understood in nationalist terms as an attack on the fundamental values of America. As with the Christian Amendment movement, Judeo-Christian nationalists sought to gain official recognition of their understanding of American identity, first in the Pledge of Allegiance and the National Motto, followed by the failed attempt to adopt a School Prayer Amendment.

A. The Rise of Judeo-Christian Nationalism

Although American Presidents and other leaders had long heaped praises on the nation's Christian heritage, the language of American religious nationalism began to shift during World War II when American political and religious leaders started to praise the nation's "Judeo-Christian" heritage.[165] The phrase came into usage to express opposition to fascism and anti-Semitism, conveying the notion that Jews shared in the nation's heritage and should not be thought of as outsiders.[166] During the 1930s, fascists, anti-Semites, and their fellow travelers frequently called their organizations "Christian"—including Father Coughlin's Christian Front and Gerald L. K. Smith's fascist Christian Nationalist Crusade, with its magazine *The Cross and Flag*.[167] Because political organizations calling themselves "Christian" had become associated with fascism, "Judeo-Christian thus became a catchword for the other side," as Mark Silk explained.[168]

After the war, political leaders continued to use the term, invoking "Judeo-Christian" in much the same ways that earlier leaders had invoked the nation's Christian heritage. Thus, President Eisenhower

163. *See, e.g.*, *id.*

164. *See, e.g.*, *id.*

165. *See* Stuckey, *supra* note 1, at 167–70.

166. Mark Silk, *Notes on the Judeo-Christian Tradition in America*, 36 Am. Q. 65, 66–67 (1984).

167. *Id.* at 66; *see* Gerald L. K. Smith, *This Is Christian Nationalism*, The Cross and Flag, http://www.thecrossandflag.com/articles/christian_nationalism.html (last visited Jan. 16, 2017).

168. *Id.*

invoked the phrase to connote the nation's common religious heritage that assertedly was at the root of American history and culture: "Our form of government . . . has no sense unless it is founded in a deeply felt religious faith, and I don't care what it is. With us of course it is the Judeo-Christian concept but it must be a religion that all men are created equal."[169] In this conception, Protestant, Catholic, and Jewish traditions formed the basis for the nation's creed of equality and justice.[170]

With Eisenhower's election in 1952, religious nationalism (albeit of a generically monotheistic kind) found an enthusiastic advocate. "One of the reasons I was elected," Eisenhower explained, "was to help lead this country spiritually."[171] Religious leadership was necessary, Eisenhower believed, to reinforce the differences between the United States and the atheistic materialism of Communism.[172] As Eisenhower declared in his inaugural address, "[w]e who are free must proclaim anew our faith."[173]

Eisenhower and his allies quickly found a way for the nation to express its religious faith: by adding the words "under God" to the Pledge of Allegiance. Although others had advocated for it earlier, the proposal to add the words "under God" to the Pledge gained sudden momentum in February 1954 when Reverend George M. Docherty, Pastor of the New York Avenue Presbyterian Church, delivered a sermon, attended by Eisenhower, entitled "Under God."[174] Docherty began the sermon by trying to define the "American Way of Life."[175] The American way of life, Docherty declared, means "going to the ball game and eating popcorn, and drinking Coca Cola, and rooting for the Senators."[176] But, he concluded, "it is deeper than that."[177] He explained that America is based upon "fundamental concepts of life [that] had been given to the world from Sinai, where the moral law was graven upon tables of stone, symbolizing the universal application to all men;

---

169. *Id.* at 65.

170. *See* WILL HERBERG, PROTESTANT—CATHOLIC—JEW: AN ESSAY IN AMERICAN RELIGIOUS SOCIOLOGY 74–81 (1955).

171. KRUSE, *supra* note 161, at ix.

172. In 1951 Roger Straus, president of the National Federation of Temple Brotherhoods, said that "the 'greatest peril' confronting the western world was 'the world-wide clash of two divergent beliefs: the Judeo-Christian philosophy and the crass materialism of communism.'" Silk, *supra* note 166, at 69. J. B. Matthews, executive director of Senator Joseph McCarthy's Permanent Sub-Committee on Investigations, similarly intoned that the international communist conspiracy aimed "at the total obliteration of Judeo-Christian civilization." J. B. Matthews, *Reds and Our Churches*, AM. MERCURY, July 1953, at 3.

173. KRUSE, *supra* note 161, at xi.

174. *Id.* at 104.

175. George M. Docherty, Pastor of the N.Y. Ave. Presbyterian Church, Sermon at Abraham Lincoln's Church: Under God 1 (Feb. 7, 1954), http://www.christianheritagemins.org/articles/UNDER%20GOD.pdf [hereinafter *George M. Docherty Sermon*].

176. *Id.*

177. *Id.* at 2.

and they came from the New Testament, where they heard in the words of Jesus of Nazareth the living Word of God for the world."[178]

Assured that America is based upon Christian and Jewish values, Docherty said he was shocked when he first paid attention to the words of the Pledge of Allegiance: "I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one nation, indivisible, with liberty and justice for all."[179] Parsing the words of the Pledge, Docherty concluded:

> There was something missing in this pledge, and that which was missing was the characteristic and definitive factor in the American way of life. Indeed, apart from the mention of the phrase, the United States of America, this could be a pledge of any republic. In fact, I could hear little Muscovites repeat a similar pledge to their hammer-and-sickle flag in Moscow with equal solemnity . . . .[180]

What was missing, Docherty preached, was an expression of religious devotion, a declaration that the nation's values and liberties come from God.[181] He believed that to omit religious devotion was "to omit the definitive character of the American way of life."[182]

Docherty's proposal to add an expression of religious devotion to the Pledge of Allegiance was quite similar to the proposal to add an expression of Christian devotion to the Constitution. Just as some Christians in the nineteenth century were appalled that the Constitution did not reflect the nation's Christian faith, Docherty was disappointed to find no expression of faith in the Pledge of Allegiance. While the Pledge does not have the same stature as the Constitution, it too expresses the nation's essential principles: that the United States is "one nation, under God, indivisible, with liberty and justice for all."[183] Just as nineteenth century Christian nationalists believed that threats to the Christian nature of America necessitated amending the Constitution, Docherty argued that threats to the nation's religious identity could be met by revising the Pledge: "We face today, a theological war. . . . It is the view of man as it comes down to us from Judeo-Christian civilization in mortal combat against modern, secularized, godless humanity."[184]

To be sure, Docherty's understanding of America's religious identity was broader than that of nineteenth century Christian nationalists. He chose the words "under God" because he thought they were sufficiently ecumenical to express the full scope of America's religious identity and embraced by all true Americans. As a Christian, Docherty stated, he might

---

178. *Id.*
179. *Id.*
180. *George M. Docherty Sermon*, *supra* note 175, at 3.
181. *Id.* at 4.
182. *Id.*
183. 4 U.S.C. § 4.
184. *George M. Docherty Sermon*, *supra* note 175, at 4.

prefer the words "under Christ," but the nation had opened its doors to people of differing faiths.[185] He emphasized, however, that the revised Pledge would exclude one group: atheists.[186] Yet Docherty concluded that atheists *should* be excluded because they are not real Americans: "Philosophically speaking, an atheistic American is a contradiction of terms. . . . [T]hey really are spiritual parasites."[187] In short, secularism was un-American.[188]

Within days of Docherty's sermon, several bills had been introduced in Congress to add "under God" to the Pledge of Allegiance.[189] The short, successful campaign for the proposal—no organized opposition to the proposal emerged and it was enacted into law within a few months—echoed the same themes as Docherty's sermon. Like Docherty, many members of Congress reiterated the fear that communism and secularism posed a threat to America's religious traditions.[190] They too saw the threat to religion in nationalist terms.[191] As Congressman Louis C. Rabaut declared, the amended Pledge "ignores a definitive factor in the American way of life *and that factor is belief in God.*"[192] As Representative Charles Edward Bennett explained, putting God in the Pledge would serve to protect the nation's identity from foreign attack: "At the base of our freedom is our faith in God and the desire of Americans to live by His will and by His guidance. As long as this country trusts in God, it will prevail."[193]

In signing the bill to amend the Pledge, President Eisenhower declared that an expression of national dedication to God was necessary to make the Pledge an accurate reflection of the nation's "true meaning":

---

185. *Id.* at 5.

186. *Id.*

187. *Id.*

188. *Id.* ("The dilemma of the secular is quite simple. He cannot deny the Christian revelation and logically live by the Christian ethic. And if he denies the Christian ethic, he falls short of the American ideal of life.").

189. KRUSE, *supra* note 161, at 107–08.

190. *Id.* at 109.

191. *Id.*

192. 100 CONG. REC. H.R. 7530 (daily ed. Feb. 12, 1954) (extension of remarks of the Honorable Louis C. Rabaut on House J. Res. 243).

193. *United States Currency Inscription: Hearing on H.R. 619 Before the H. Comm. on Banking and Currency*, 84th Cong. 49 (1955) [hereinafter *United States Currency Inscription Hearing*]; *see* 100 CONG. REC. H.J.R. 458 (daily ed. June 7, 1954) (statement of Representative Oliver P. Bolton):

> It comes at a time when throughout our land and throughout the world some people express doubt, yes, doubt and even fear, regarding the future. They see the storm clouds blowing up on the horizon and sometimes not the sun behind. They see arrayed against this Nation, and the way of life which it represents, a dictatorial policy that recognizes no God and no divinity in man. Under communism, men are mere cogs in a machine, without rights, without souls, without future, without hope.

Id. at 7757–58.

> From this day forward, the millions of our school children will daily proclaim in every city and town, every village and rural school house, the dedication of our nation and our people to the Almighty. To anyone who truly loves America, nothing could be more inspiring than to contemplate this rededication of our youth, on each school morning, to our country's true meaning.[194]

Members of Congress celebrated the enactment of the bill on the steps of the Capitol.[195] As recounted in the Congressional Record, they first turned toward "the believer's flag as the witness of a great nation's faith" and recited the newly amended Pledge of Allegiance,[196] and "[t]hen, appropriately, as the flag was raised a bugle rang out with the familiar strains of 'Onward, Christian Soldiers!'"[197]

In the next few years, Congress took several more steps to proclaim the centrality of religious devotion to national identity. In 1955, Congress enacted legislation requiring that the words "In God We Trust" be printed on all bills and coins.[198] In doing so, the House Banking and Commerce Committee explained that the phrase expressed "the spiritual basis of our way of life."[199] The following year, Congress adopted "In God We Trust" as the nation's official motto, replacing the pluralist motto *E Pluribus Unum*.[200]

B. JUDEO-CHRISTIAN NATIONALISM AND THE PROPOSED CONSTITUTIONAL PRAYER AMENDMENT

By the mid-1950s, religious nationalists could feel secure that their conception of American identity had gained official recognition. The Supreme Court had declared that the United States is a "Christian nation"; school children daily acknowledged that they lived in a nation "under God"; and the nation declared "In God We Trust" on every coin and bill. A constitutional amendment declaring the nation's religious identity might have seemed superfluous. Yet a new drive was soon launched to amend the Constitution to further express and protect the nation's religious heritage. As with the drive to amend the Pledge and the national motto, the attempt to amend the Constitution followed the pattern set by the Christian Amendment movement: A perceived threat to the status or privileges of religious Americans was understood in nationalist terms, and propelled members of the threatened group to try to protect their status through a constitutional amendment. As with the

---

194. Dwight D. Eisenhower, President of the United States, Statement Upon Signing Bill to Include the Words "Under God" in the Pledge to the Flag (June 14, 1954), http://www.presidency.ucsb.edu/ws/?pid=9920.

195. KRUSE, *supra* note 161, at 110.

196. 100 CONG. REC. 8617 (daily ed. June 22, 1954) (Representative Homer Ferguson).

197. *Id.*

198. 31 U.S.C. § 5114(b); *see* KRUSE, *supra* note 161, at 119.

199. *United States Currency Inscription Hearing*, *supra* note 193, at 48.

200. Act of July 30, 1945, 70 Stat. 732, (codified at 36 U.S.C. § 302); KRUSE, *supra* note 161, at 124–25.

Christian Amendment movement, an organized opposition formed of national church bodies, Jewish groups, and civil libertarians, which presented a different conception of American identity and helped defeat the proposed amendment.

The issue that propelled the new drive to amend the Constitution—religion in public schools—had also been a moving force behind the Christian Amendment movement. The instigating event this time was a pair of decisions issued by the Supreme Court that pushed back against religious nationalism. In *Engel v. Vitale*, the Court struck down a nondenominational prayer composed by the New York Board of Regents for use in New York public schools.[201] The Regents had adopted the prayer precisely for religious nationalist reasons, declaring that "[b]elief in and dependence upon Almighty God was the very cornerstone upon which our Founding Fathers builded."[202] Citing *Holy Trinity Church* and the addition of "under God" to the Pledge of Allegiance, the New York Court of Appeals had upheld the prayer as an expression of the nation's core religious identity: "No historical fact is so easy to prove by literally countless illustrations as the fact that belief and trust in a Supreme Being was from the beginning and has been continuously part of the very essence of the American plan of government and society."[203]

In *Engel*, the Supreme Court disagreed, ruling for the first time that prayer in public school was unconstitutional.[204] The next year in *School District of Abington Township v. Schempp*, the Court struck down a Pennsylvania requirement that teachers begin the school day with Bible reading.[205] Although the Court conceded that expressions of religious faith had been a regular part of the nation's public life, the Court ruled that a state cannot conduct religious exercises as part of the public school curriculum.[206]

The decisions in *Engel* and *Schempp* provoked outrage. Many saw the decisions as an attack on the nation's Judeo-Christian essence. The Reverend Billy Graham declared that *Engel* was "another step toward secularism in the United States."[207] Former President Herbert Hoover declared that *Engel* accomplished the "disintegration of a sacred American heritage."[208] For some, *Engel* and *Schempp* were proof of a Communist

---

201. Engel v. Vitale, 370 U.S. 421, 436 (1962). "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our country." *Id.* at 422.

202. Engel v. Vitale, 176 N.E.2d 579, 584 (N.Y. 1961) (Burke, J., concurring) (quoting Regents' Statement on Moral and Spiritual Training in the Schools (1951)).

203. *Id.* at 581.

204. *Engel*, 370 U.S. at 425.

205. Sch. Dist. of Abington Twp. v. Schempp, 374 U.S. 203, 226–27 (1963).

206. *Id.* at 224.

207. KRUSE, *supra* note 161, at 188.

208. *Id.* at 185.

plot to destroy America's distinctive religious faith.[209] Governor George Wallace of Alabama agreed that the decisions were "part of a deliberate design to subordinate the American people, their faith, their customs and their religious traditions to a Godless state" and he warned that if the courts were to rule "that we cannot read the Bible in some school, I'm going to that school and read it myself."[210]

Denouncing the Court's rulings as fundamentally un-American, opponents of the Court's decisions sought to rally support for a constitutional amendment, just as the National Reform Association had sought a constitutional amendment to protect against perceived threats to the nation's religious heritage.[211] Opponents of the decisions believed what was really at stake was not simply religious practices in schools but the nation's very identity. As the National Governors' Conference declared in 1962, a constitutional amendment "will make clear and beyond challenge the acknowledgment of our nation and people in their faith in

---

209. *Congress Fails to Act on School Prayer Amendments*, CQ ALMANAC (1964), http://library.cqpress.com/cqalmanac/cqal64-1304697. As one Congressman warned:

> I fear there is much more than appears on the surface in the efforts to take religion out of public places. We know that Communism is a Godless doctrine. I am convinced that there is on foot in this nation a deadly attempt by a small minority to make our America officially a Godless nation.

Id.

210. KRUSE, *supra* note 161, at 205; *see Proposed Amendments to the Constitution Relating to Prayers and Bible Readings in Public Schools: Hearing on S. J. Res. 148 Before the H. Comm. on the Judiciary*, 88th Cong. 311 (1964) [hereinafter *1964 Proposed School Prayer Amendment Hearings*] (statement of Representative Richard L. Roudebush) ("Mr. Chairman, one of the most obvious differences in our American system, compared to that of the Soviets, is our national belief in God, and the tolerance for all faiths and religions. This difference should be emphasized and strengthened, rather than weakened and abandoned in favor of the godless Communist ideology."); *id.* (statement of Representative Albert W. Watson) (stating that the decisions amounted to "the establishment of atheism as the state school religion in this nation); *see also id.* at 642 (statement of Representative Steven B. Derounian) ("Secularism; lack of patriotism; call it what you will, but it is there. That is why I have some concern because I detect here a moral deterioration in the fiber of our country."); *id.* at 968 (statement of Dr. Robert A. Cook, Chairman, Evangelical Action Commission) (stating that the nation must halt the "trend toward the establishment of a religion of secularism" which would have been "completely foreign to the framers"); *id.* at 1046 (statement of Representative Frank Becker) (stating that with the Court's decisions the nation's religious "traditions are being sabotaged and eroded. Every day a new formula for godless secularism is being offered.").

211. *See, e.g.*, *1964 Proposed School Prayer Amendment Hearings*, *supra* note 210, at 307 (statement of Representative Arthur Winstead) ("The ruling of the Supreme Court, relative to school prayers and Bible reading, has struck a major blow at the religious heritage of our people."); *id.* at 318 (statement of Representative James Quillen) ("The decisions of the Supreme Court have violated the historical heritage of the American people and have contravened the will of the people as well."); *id.* at 638 (statement of Representative L. Mendel Rivers) ("[T]he religious faith of the Nation has been subjected to judicial interpretations that deny our heritage, defy our traditions, undermine our beliefs, ridicule our religious resolve, and make a mockery of the faith of our Founding Fathers."); *id.* at 1405 (statement of Representative Byron Rogers) (characterizing the Court's decisions "as incongruous to our American way of life, as un-American as is anarchy or totalitarianism").

God."[212] Like supporters of the Christian Amendment, supporters of the School Prayer Amendment believed that a constitutional amendment would resolve once and for all the nation's true religious identity.

An amendment appeared likely to pass when Congress first held hearings on the proposal in the spring of 1964.[213] Polls showed that seventy-nine percent of Americans supported it.[214] It was supported by several leading national organizations, including the American Legion, the Lions, Kiwanis, and the Junior Chamber of Commerce.[215] The Amendment also received the endorsement of the Republican Party, which remains committed to it to this day.[216]

However, the proposed School Prayer Amendment also engendered strong opposition. Like the failed Christian Amendment, the fight over the proposed School Prayer Amendment pitted those who considered the United States a Christian nation (or at least a Judeo-Christian nation) against those who emphasized the nation's religious pluralism.[217] Like their nineteenth century predecessors, proponents of the School Prayer Amendment believed that the nation's religious identity must be expressed in the Constitution and encouraged in public life, especially in the public schools where national citizenship was inculcated.[218] Opponents countered

---

212. KRUSE, *supra* note 161, at 205. As Kevin Kruse has written, advocates believed that the nation's Christian identity was at stake. *Id.* at 206 ("To put it in broad strokes, proponents of the prayer amendment believed America was a Christian nation—or, in their more generous moments, a Judeo-Christian nation. They were deeply invested in promoting a prominent role for religion in public life, believing that formal recognition of God was not simply an affirmation of the nation's religious roots but an essential measure for preserving the country's character.").

213. *Congress Fails to Act on School Prayer Amendments*, *supra* note 209 ("The most prominent of these proposals was submitted by Representative Frank Becker, which provided: Nothing in this Constitution shall be deemed to prohibit the offering, reading from, or listening to prayers or Biblical Scriptures, if participation therein is on a voluntary basis, in any governmental or public school, institution or place. Nothing in this Constitution shall be deemed to prohibit making reference to belief in, reliance upon, or invoking the aid of God or a Supreme Being in any governmental or public document, proceeding, activity, ceremony, school, institution, or place, or upon any coinage, currency, or obligation of the United States. Nothing in this Article shall constitute an establishment of religion.").

214. Linda Lyons, *The Gallup Brain: Prayer in Public Schools*, GALLUP (Dec. 10, 2002), http://www.gallup.com/poll/7393/gallup-brain-prayer-public-schools.aspx.

215. KRUSE, *supra* note 161, at 211.

216. *Id.* at 212; REPUBLICAN NAT'L CONVENTION, 2012 REPUBLICAN PLATFORM: WE BELIEVE IN AMERICA 12 (2012).

217. *See, e.g.*, *1964 Proposed School Prayer Amendment Hearings*, *supra* note 210, at 218 (statement of Rabbi Bernard Zlotowitz) ("[W]e do not recognize the one church as the official church, but rather we recognize all houses of worship be they Protestant, Roman Catholic, Jewish, or any others."); *id.* at 329; *id.* at 740 (stating that separation of church and state is necessary to protect "the secularist point of view as well as to churches and other religious groupings"); *id.* at 780 (statement of William A. Morrison, General Secretary, Board of Christian Education, United Presbyterian Church) (stating that religion should be kept out of public schools because they must prepare "youth for adult life in our complex, pluralistic society"); KRUSE, *supra* note 161, at 189.

218. Indeed, some members of Congress believed that adoption of the Christian Amendment, rather than the School Prayer Amendment, was the proper response to *Engel* and *Schempp*. *See Proposing an Amendment to the Constitution of the United States to Permit the Offering of Prayer in*

by arguing that the Court's broad interpretation of the Establishment Clause, which limited public expression of religion, best protected the nation's religious diversity.[219]

The proposed School Prayer Amendment failed after the national leadership of the nation's most prominent faiths turned against it. The National Council of Churches, representing most mainline Protestant churches, opposed the Amendment, as did the national organizations for Baptists, Episcopalians, Quakers, Seventh Day Adventists, and Jews.[220] The National Association of Evangelicals supported the proposed Amendment, as it had the Christian Amendment.[221] Despite the defeat, the demand to protect religion in public schools has remained a recurrent source of dispute, once again channeling a dispute over the nation's religious identity into a public contest over the Constitution.[222]

III. THE CONSTITUTIONAL NATIONALISM OF THE NEW CHRISTIAN RIGHT

Beginning in the late 1970s, a new wave of Christian nationalism came to national prominence, a movement often referred to as the "New Christian Right."[223] The New Christian Right is a somewhat loose term for a group of evangelical, fundamentalist, and Pentecostal Christians, associated most prominently with Jerry Falwell, Pat Robertson, and James Dobson, and their organizations: the Moral Majority, the Christian Coalition, and Focus on the Family.[224] These groups helped mobilize conservative Christians as an organized force in American

---

Public Schools: Hearing on S. J. Res. 205 Before the S. Comm. on the Judiciary, 87th Cong. 43–44 (statement of Representative Eugene Siler); *id.* at 81 (statement of Representative John Anderson); *id.* at 82–83 (statement of Representative J. Floyd Breeding).

219. *1964 Proposed School Prayer Amendment Hearings*, *supra* note 210, at 1077 (statement of Reverend William F. Creighton); *id.* at 1087 (statement of Reverend Brooke Mosley); *id.* at 1290 (statement of Protestants and other Americans United for Separation of Church and State); *id.* at 1345 (statement of Professor William J. Kenealy); *id.* at 1370 (statement of Dr. Franklin H. Littell).

220. *Congress Fails to Act on School Prayer Amendments*, *supra* note 209.

221. *Id.*

222. The Republican Party has continued to endorse the School Prayer Amendment in various formulations ever since President Reagan submitted a new version of the proposal in 1982. Pointing to the Mayflower Compact, the Declaration of Independence, the Pledge of Allegiance, the National Anthem, and the use of "In God We Trust" on coins and bills, Reagan declared: "The public expression through prayer of our faith in God is a fundamental part of our American heritage." *Reagan Proposes School Prayer Amendment*, N.Y. TIMES (May 18, 1982), http://www.nytimes.com/1982/05/18/us/reagan-proposes-school-prayer-amendment.html; *see* Ronald Reagan, President of the United States, *Radio Address to the Nation: Prayer in Schools* (Feb. 25, 1984), http://www.presidency.ucsb.edu/ws/?pid=39565.

223. *See* THE NEW CHRISTIAN RIGHT: MOBILIZATION AND LEGITIMATION (Robert C. Liebman & Robert Wuthnow eds., 1983); MICHAEL LIENESCH, REDEEMING AMERICA: PIETY AND POLITICS IN THE NEW CHRISTIAN RIGHT (1993).

224. THE NEW CHRISTIAN RIGHT: MOBILIZATION AND LEGITIMATION, *supra* note 223, at 1–3.

politics, inveighing against abortion, feminism, gay rights, pornography, and rock 'n roll music.[225]

The New Christian Right is not usually considered a constitutional movement. Unlike the movement to adopt the Christian Amendment in the nineteenth century and the movement to adopt a School Prayer Amendment in the 1960s, the New Christian Right did not make the demand for constitutional amendments a centerpiece of its agenda. Yet a review of books and speeches by prominent leaders of the New Christian Right reveals that constitutional concerns played a prominent role in their thinking.[226] In contrast to the leaders of the Christian Amendment movement, who read the Constitution as a godless document out of sync with the nation's Christian identity, leaders of the New Christian Right understood the Constitution to be a quintessentially Christian document intended to govern a Christian nation.[227] Rather than demanding that the Constitution be amended to protect the nation's Christian identity, the New Christian Right campaigned to *interpret* the Constitution to protect the nation's Christian identity.[228]

In campaigning for the nation to return to what the movement characterized as the true, Christian nature of the Constitution, the New Christian Right nonetheless followed much the same script as the Christian Amendment movement of the nineteenth century and the Judeo-Christian nationalism of the 1950s and 1960s: (1) the movement was propelled by a perceived a threat to the status of Christians as prototypical Americans, in this case the threat posed by "secular humanism"; (2) the perceived threat to Christian preeminence was understood in nationalist terms as an attack on America itself; and (3) the movement sought to protect the nation's Christian identity by enshrining that identity in the Constitution, in this case by demanding that the Constitution be understood as Christian. As with earlier episodes in Christian nationalism, the New Christian Right was opposed by a variety of groups who rejected Christian nationalism and instead offered a national vision based on pluralism. As with the episodes of religious nationalism addressed in Parts I and II of this Article, the clash between the New Christian Right and its opponents readily transformed competing conceptions of national identity into constitutional disputes.

A. GROUP THREAT: SECULAR HUMANISM

Since the 1950s America has been growing less Protestant and more secular. In 1954, the year that "under God" was added to the Pledge of

225. *See, e.g.*, *id.* at 2; STEVE BRUCE, THE RISE AND FALL OF THE NEW CHRISTIAN RIGHT: CONSERVATIVE PROTESTANT POLITICS IN AMERICA, 1978–1988 1–24 (1988).

226. *See infra* Part III.C.

227. *See* LIENESCH, *supra* note 223, at 147.

228. *See infra* Part III.C.

Allegiance, seventy-one percent of Americans identified as Protestant.[229] By 1979, the year Jerry Falwell founded the Moral Majority, only fifty-eight percent of Americans said they were Protestants.[230] The percentage of Americans identifying as Protestant has continued to decline, and in 2016, only thirty-eight percent of Americans identified as Protestant.[231] At the same time, the percentage of Americans who describe themselves as having no religion increased, from less than one percent in 1954, to seven percent in 1979, to seventeen percent in 2016.[232]

The rise of the New Christian Right bears out the central insight of group threat theory, that majority hostility against a minority group increases as the population and perceived power of the group increases. In the 1970s and 1980s, many Christians looked on the nation's increasing secularism with alarm and saw it as a threat to the nation's Christian heritage.[233] The New Christian Right was their response.

In *Listen, America!*, Jerry Falwell's bestselling book of 1979, Falwell set out an agenda for a new mobilization of conservative Christians.[234] Although fundamentalist and other evangelical Christian organizations had significant involvement in political disputes in the first two decades of the twentieth century—organizing to fight for prohibition and against the teaching of evolution in the public schools—they largely retreated from organized participation in politics in the 1920s.[235] In 1942, the National Association of Evangelicals was formed, but it too largely stayed out of politics.[236] In 1965, Falwell had criticized Reverend Martin Luther King, Jr. for using Christianity for political ends.[237] By 1979, however, Falwell had come to believe that conservative Christians must mobilize because America's Christian identity was in grave jeopardy.[238]

Falwell saw evidence all around that Christianity was under attack. He saw it in the Supreme Court's school prayer cases.[239] He also saw it in *Roe v. Wade* and the acceptance of abortion, homosexuality, pornography,

229. *Religion*, GALLUP, http://www.gallup.com/poll/1690/religion.aspx (last visited Jan. 16, 2017).

230. *Id.*

231. *Id.*

232. *Id.*

233. *See* THE NEW CHRISTIAN RIGHT: MOBILIZATION AND LEGITIMATION, *supra* note 223, at 16; AXEL R. SCHÄFER, COUNTERCULTURAL CONSERVATIVES: AMERICAN EVANGELICALISM FROM THE POSTWAR REVIVAL TO THE NEW CHRISTIAN RIGHT 131 (2011) (stating that the Christian Right gave "voice to broader lower-middle and working-class fears that the growth of a 'secular humanist' state had relegated traditional religion to the sidelines and that a nihilistic culture of 'permissiveness' had undermined family, church, and neighborhood.").

234. FALWELL, *supra* note 13.

235. Clyde Wilcox, *The Christian Right in Twentieth Century America: Continuity and Change*, 50 REV. POL. 659, 664–65 (1988).

236. *History*, NAT'L ASS'N OF EVANGELICALS, http://nae.net/about-nae/history/ (last visited Jan. 16, 2017).

237. MACEL FALWELL, JERRY FALWELL: HIS LIFE AND LEGACY 96 (2008).

238. FALWELL, *supra* note 13, at 255–66.

239. *Id.* at 222.

drugs, and rock music, all of which he saw as attacks on the family, which he considered a "God-ordained institution" that forms the "fundamental building block and the basic unit of our society."[240] He saw an attack on Christianity in the movement to adopt the Equal Rights Amendment and in the feminist movement, as a result of which "nearly every occupation has been invaded by women," and "many women have never accepted their God-given roles."[241] He saw an attack on Christianity in public school textbooks, which he believed denigrated faith and promoted socialism.[242] And he heard it in the rock music of David Bowie, the Rolling Stones, and the Who, which Falwell said celebrated hedonism and led to satanism.[243]

As Falwell saw it, American elites had become deeply hostile to Christianity and were engaged in widespread persecution of Christians.[244] Falwell accused liberals of attempting to victimize and silence Christians through the courts, popular culture, and academia.[245] Falwell was far from alone. Phyllis Schlaffly, who founded the Eagle Forum in 1972, agreed that anti-Christian forces had launched a "direct attack" on "those who believe that God created us, and that He created a moral law that we should obey."[246] Pat Robertson's Christian Coalition warned: "Danger! Christian Americans are under siege. Schoolchildren are being threatened and adults jailed for the peaceful practice of God-given rights. It's time to say, enough. Time to regain a voice in government and raise a righteous standard."[247]

The New Christian Right had a name for the force that was attacking Christianity and destroying America: secular humanism.[248] The term was apparently popularized by Reverend Tim LaHaye in his book *The Battle for the Mind*, which declared that "[o]nly two lines of reasoning permeate all of literature: biblical revelation (the wisdom of God) and the wisdom of man (a.k.a. humanism)."[249] For LaHaye, secular

---

240. FALWELL, *supra* note 13, at 121; Seth Dowland, *"Family Values" and the Formation of a Christian Right Agenda*, 78 CHURCH HIST. 606, 606–31 (2009).

241. FALWELL, *supra* note 13, at 125, 150.

242. *Id.* at 208–13.

243. *Id.* at 224–32.

244. *Id.* at 222.

245. *Id.*; *see* Nathaniel Klemp & Stephen Macedo, *The Christian Right, Public Reason, and American Democracy*, *in* EVANGELICALS AND DEMOCRACY IN AMERICA, VOL. II: RELIGION AND POLITICS 209 (Steven G. Brint & Jean Reith Schroedel eds., 2009).

246. Rhys H. Williams, *Politicized Evangelicalism and Secular Elites: Creating a Moral Other*, *in* EVANGELICALS AND DEMOCRACY IN AMERICA, VOL. II RELIGION AND POLITICS, *supra* note 245, at 163.

247. Klemp & Macedo, *supra* note 245, at 221.

248. Dowland, *supra* note 240, 606–31 (2009); *see* FALWELL, *supra* note 13, at 121–37; Christopher P. Toumey, *Evolution and Secular Humanism*, 61 J. AM. ACAD. RELIGION 275, 275–301 (1993). "[F]undamentalist Christians explain moral decay in modern America by positing an evil conspiracy named Secular Humanism." *Id.* at 275.

249. TIM LAHAYE, THE BATTLE FOR THE MIND: A SUBTLE WARFARE 57, 27 (1980); *see also* JEFFREY K. HADDEN & CHARLES E. SWANN, PRIME TIME PREACHERS: THE RISING POWER OF TELEVANGELISM 86 (1983) (discussing the impact of LaHaye's book and stating that "[i]n 1979 many fundamentalists had

humanism was "the world's greatest evil" and the cause of most societal problems: "[C]rime and violence in our streets, promiscuity, divorce, shattered dreams, and broken hearts can be laid right at the door of secular humanism."[250] The term soon was used by many fundamentalists and evangelicals to describe a philosophy deeply hostile to Christianity that they believed was responsible for a decline in American morality.[251] For Falwell, humanism is a philosophy of human autonomy, unrestrained by any moral principles, which places man at the center of existence and focuses on "self-realization through reason," rather than salvation through faith.[252] Secularism teaches that man, and not God, is in charge of his own destiny.[253] To Falwell, humanism is tantamount to hedonism and is summed up by the slogan, "If it feels good, do it!"[254]

There was some disagreement on the exact nature of secular humanism. For Falwell, secular humanism was simply a new version of the old Communist threat. As he declared, "Humanism promotes the socialization of all humanity into a world commune."[255] Other leaders of the New Christian Right understood secular humanism to be synonymous with the philosophies of fascism, Nazism, and New Age spiritualism.[256] What they agreed on, however, was that secular humanism threatened Christian dominance.[257]

For the New Christian Right, the Supreme Court's decisions in *Engel* and *Schempp*, to reject prayer and Bible reading in public schools, laid the groundwork for the advance of secular humanism.[258] Once God

---

not even heard of secular humanism. It was not mentioned in sermons and writings. But by the end of 1980 nearly all had adopted it as their enemy.").

250. LAHAYE, *supra* note 249, at 26.

251. *See* Don Melichar, *A Leap of Faith: The New Right and Secular Humanism*, 72 ENG. J. 55, 56 (1983) ("There seems little agreement on precisely what secular humanism is.").

252. FALWELL, *supra* note 13, at 65.

253. *Id.*; *see* PAT ROBERTSON, THE NEW WORLD ORDER 170 (1991) (identifying the assertion that "Man is the measure of all things" as the "essential credo" of secular humanism); John W. Whitehead & John Conlan, *The Establishment of the Religion of Secular Humanism and Its First Amendment Implications*, 10 TEX. TECH L. REV. 1, 30–31 (1978) ("Secular Humanism is a religion whose doctrine worships Man as the source of all knowledge and truth, whereas theism worships God as the source of all knowledge and truth.").

254. FALWELL, *supra* note 13, at 254.

255. *Id.* at 66.

256. As Ed Rowe, president of Christian Mandate for America, put it, secular humanism was based on "the idea that man doesn't need God" and "[o]ut of that corrupt fountain have come the various movements which have disturbed Planet Earth in this century—Socialism, Communism, Fascism, Nazism, and now a movement which I choose to call *New Age Globalism*." EDWARD H. ROWE, NEW AGE GLOBALISM: HUMANIST AGENDA FOR BUILDING A NEW WORLD WITHOUT GOD 1 (1985).

257. *See, e.g.*, FALWELL, *supra* note 13, at 17–23; ROBERTSON, *supra* note 253, at 143; FRANCIS A. SCHAEFFER, A CHRISTIAN MANIFESTO 42, 49, 112 (rev. ed. 1982); JOHN W. WHITEHEAD, THE SECOND AMERICAN REVOLUTION 33–42 (2004).

258. *See, e.g.*, FALWELL, *supra* note 13, at 222 (quoting Senator Jesse Helms) ("It is hardly coincidence that the banishment of the Lord from the public school as has resulted in their being taken over by a totally secularist philosophy."); M. G. "Pat" Robertson, *Religion in the Classroom*, 4 WM. & MARY BILL RTS. J. 595

had been taken out of schools, Falwell and others exclaimed, the schools began teaching the philosophy of humanism instead of the word of God.[259] The same philosophy of secular humanism permeated American popular culture, and could be found in movies, television shows, and rock music.[260] In his influential book, *A Christian Manifesto*, Francis Schaeffer declared that Carl Sagan's PBS show *Cosmos* "indoctrinated millions of unsuspecting viewers" with the secularist philosophy.[261] As Schaeffer declared, the "humanist view has infiltrated every level of society."[262]

B. THE NATIONALISM OF THE NEW CHRISTIAN RIGHT

One might suppose that the decline in the number of Americans identifying as Christian would mean that the belief that the United States is a Christian nation would also decline. But in fact, empirical data demonstrates that just the opposite has occurred: The decline in the percentage of American Christians has corresponded with an *increase* in the percentage of Americans who believe that the United States is a Christian nation.[263] Group threat theory helps explain this seeming paradox. The nation's increasing secularism and religious diversity made many Christians fear for the loss of their dominant status, making them more likely to rally around the idea of a Christian nation.[264] The more threatened some Christians felt, the stronger they believed the nation is Christian. Responding to these fears, the New Christian Right became the vehicle for defending a Christian conception of American identity.

Like other religious nationalist movements, the New Christian Right did not merely identify secular humanism as a threat to Christianity, but perceived it as a threat to America itself. As suggested by the social theory of national identity, supporters of the New Christian Right considered themselves to be prototypically American and therefore identified Christian values and beliefs to be American values and beliefs.[265] They believed that an attack on Christianity is an attack on America.[266] Looking at the rise of secular humanism, Falwell asked: "What has happened to the America we knew?"[267] He feared that a loss of America's Christian identity would spell the end of America's very

---

(1995); JOHN W. WHITEHEAD, THE SEPARATION ILLUSION: A LAWYER EXAMINES THE FIRST AMENDMENT 111–24 (1977).

259. FALWELL, *supra* note 13, at 65.

260. *Id.* at 187–232.

261. SCHAEFFER, *supra* note 257, at 53.

262. *Id.*

263. *See* Jeremy Brooke Straughn & Scott L. Feld, *America as a "Christian Nation"? Understanding Religious Boundaries of National Identity in the United States*, 71 SOC. RELIGION 280, 281 (2010).

264. *Id.* at 301.

265. *See generally* THEISS-MORSE, *supra* note 15.

266. *See supra* Part III.A.

267. FALWELL, *supra* note 13, at 57 (quoting Marvin Stone).

existence.[268] Other leaders of the Christian Right agreed that secular humanism posed an existential threat to the United States. Pat Robertson believed that the attacks on Christianity had already succeeded in destroying the nation's Christian identity, claiming that "[w]e had in America a Christian nation" but "[i]t has been taken away from us."[269] John Whitehead, founder of the Rutherford Institute, agreed that the decline of Christianity meant the destruction of America: "[I]f Christianity is separated from America then America no longer exists . . . ."[270] In fact, he believed that the point of no return had already passed and lamented that "[w]e live in a post-American culture."[271]

Christian nationalism was the New Christian Right's central message. As Falwell declared in 1993: "We must never allow our children to forget that this is a Christian nation. *We must take back what is rightfully ours*."[272] Ralph Reed, director of Pat Robertson's Christian Coalition, expressed the same nationalist sentiment: "What Christians have to do is to *take back* the country. . . . I honestly believe that in my lifetime we will see a country once again governed by Christians . . . and Christian values."[273] In his presidential bid, Robertson declared that no one outside the Judeo-Christian tradition would be welcomed.[274] Several years later, he defended this proposal:

> When I said during my presidential bid that I would only bring Christians and Jews into the government, I hit a firestorm. . . . the media challenged me . . . "How dare you maintain that those who believe the Judeo-Christian values are better qualified to govern America than Hindus and Muslims?" My simple answer is, "Yes, they are."[275]

If Christianity represented what was truly American, secular humanism was seen as an alien, foreign force that must be rooted out if American were to survive. As Tim LaHaye put it, secular humanism was responsible for the destruction of true American values: its influence "has moved our country from a biblically based society to an amoral, 'democratic' society during the past forty years."[276] Members of the New

---

268. *Id.* at 22–23 ("We must turn America around or prepare for inevitable destruction.").

269. JUSTIN WATSON, THE CHRISTIAN COALITION: DREAMS OF RESTORATION, DEMANDS FOR RECOGNITION 93 (1st ed. 1997).

270. WHITEHEAD, *supra* note 257, at 62.

271. *Id.* at 63. "At one time Christians had command of the United States. Through toleration they receded until the non-Christians grew too strong to combat any longer. Once the non-Christians were in power they began eliminating Christianity from the system." *Id.* at 35.

272. ALAN M. DERSHOWITZ, THE VANISHING AMERICAN JEW: IN SEARCH OF JEWISH IDENTITY FOR THE NEXT CENTURY 149 (1st ed. 1996).

273. *Id.* (omissions in original).

274. Wayne King, *The Record of Pat Robertson on Religion and Government*, N.Y. TIMES (Dec. 27, 1987), http://www.nytimes.com/1987/12/27/us/the-record-of-pat-robertson-on-religion-and-government.html?pagewanted=all.

275. ROBERTSON, *supra* note 253, at 218.

276. LAHAYE, *supra* note 249, at 26.

Christian Right routinely depicted secular humanism as utterly foreign to the true values upon which the nation was founded.[277]

C. THE CONSTITUTIONAL AGENDA OF THE NEW CHRISTIAN RIGHT

Perceiving a threat to the Christian faith, leaders of the New Christian Right launched a nationalist campaign to "take back" the country and return it to its true Christian values. Like the religious nationalist movements discussed in Parts I and II, the New Christian Right presented its nationalist demands in constitutional terms, equating a call to return to the nation's true Christian identity with a call to return to what the movement characterized as the true, Christian meaning of the U.S. Constitution.

Leaders of the New Christian Right understood the Constitution as a central expression of the nation's Christian heritage. As Falwell put it, "the goal of the framers of our Constitution was to govern the United States of America under God's laws . . . ."[278] Falwell preached that the United States had been established on biblical principles: "Any diligent student of American history finds that our great nation was founded by godly men upon godly principles to be a Christian nation."[279] Falwell devoted a chapter of *Listen, America!* to a review of the Christian history of the nation, compiling episodes and quotations from the Founding Fathers much like those put together by the Christian Amendment movement and found in the *Holy Trinity Church* opinion.[280] Reviewing this history, Falwell expresses pride "that our country was born in the tradition of respect for God and the love of Jesus Christ."[281]

Other leaders of the New Christian Right also understood the Constitution to be an expression of Christian values, and thus saw the supposed attack on America's Christian identity in constitutional terms. Pat Robertson declared: "The Constitution of the United States is a marvelous document for self-government by Christian people. But the minute you turn the document into the hands of non-Christian people and atheist people, they can use it to destroy the very foundation of our society. And that's what's been happening."[282] For Robertson, the Supreme Court had rejected America's essence by turning away from what he believed to be the true meaning of the Constitution, which "rests

---

277. *See, e.g.*, Edward B. Jenkinson, *The Search for Alien Religions in School Textbooks*, 70 EDUC. HORIZONS 181–88 (1992).

278. FALWELL, *supra* note 13, at 53.

279. *Id.* at 29; *see id.* at 16 ("I believe that God promoted America to a greatness no other nation has ever enjoyed because her heritage is one of a republic governed by laws predicated on the Bible.").

280. *Id.* at 29–50.

281. *Id.* at 47.

282. UNITED PRESS INT'L., *supra* note 13 and accompanying text (quoting Reverend Pat Robertson); *see* WHITEHEAD, *supra* note 257, at 115 (declaring that the Constitution "was written to promote a Christian order").

squarely on the Bible."[283] Robertson declared that the Court's treatment of the Constitution was akin to but even worse than rape:

> Rape is a horrible crime, but my message tonight is not about the brutal rape of a young woman. I want to tell you about a much more insidious rape, a rape that has been repeated over and over, a rape that was not directed against the virtue and self worth of a few individuals. I am talking about a rape of our entire society. A rape of our nation's religious heritage, a rape of our national morality, a rape of time-honored customs and institutions—yes, and, especially, a rape of our governing document, the United States Constitution.[284]

Robertson believed the assault on the Christian nature of the Constitution and America's Christian identity had begun with the Court's school prayer decision in *Engel*: "[B]ack in 1962, some of us screamed for help as the garments of civic virtue were being ripped from our society. We cried out in anguish as each successive assault tore something precious within the viscera of our nation. But . . . few heeded our cries."[285] For Robertson and other Christian nationalists, the Court's supposed rejection of the nation's Christian identity had led to national decadence:

> After a forty year assault on religious faith in our schools and public institutions, the liberal predators have given our nation the following: America leads the world in the use of illegal drugs. America leads the world in pregnancies to unwed teenagers. America leads the world in abortion. America leads the world in violent crime. America leads the world in the percentage of the population incarcerated in prisons. America leads the world in divorce.[286]

Many leaders of the New Christian Right agreed with Robertson that the Court's decisions rejecting school prayer and Bible reading were a turning point in the nation's history, a moment when governing elites rejected the nation's Christian heritage and embraced secular humanism.[287] In rejecting public expressions of religious devotion in schools, the Court had rejected what an earlier generation of Christian nationalists had achieved in *Holy Trinity Church*: a judicial recognition that the United States is a Christian nation and that its laws should be read to preserve that identity. To leaders of the New Christian Right, *Engel* and *Schempp* were not merely decisions misconstruing the Establishment Clause. These

---

283. PAT ROBERTSON, COURTING DISASTER: HOW THE SUPREME COURT IS USURPING THE POWER OF CONGRESS AND THE PEOPLE 113 (2004) (quoting Letter from The Virginian-Pilot, to Editor (Sept. 8, 1963)).

284. Robertson, *supra* note 258, at 596.

285. *Id.*

286. *Id.*; *see* DAVID BARTON, THE MYTH OF SEPARATION: WHAT IS THE CORRECT RELATIONSHIP BETWEEN CHURCH AND STATE? A REVEALING LOOK AT WHAT THE FOUNDERS AND EARLY COURTS REALLY SAID 209–16 (5th ed. 1992) (asserting that teen pregnancy, violent crime, gonorrhea, and divorce increased as a result of the school prayer decisions, while SAT scores and economic growth declined).

287. *See* BRUCE J. DIERENFIELD, THE BATTLE OVER SCHOOL PRAYER: HOW *ENGEL V. VITALE* CHANGED AMERICA 187–212 (Peter Charles Hoffer & N. E. H. Hull eds., 2007).

decisions announced a war on Christianity, an attempt by foreign forces to destroy the religious foundations of the nation.[288]

Just as the Christian Amendment movement had developed a comprehensive conception of the Christian nature of U.S. history, the New Christian Right developed a comprehensive theory of the Christian nature of the Constitution. That theory has been popularized by David Barton, author of *The Myth of Separation*, much of which is dedicated to proving that *Holy Trinity Church* was correct in declaring that the United States is a Christian nation.[289] Barton examined every source and fact mentioned in *Holy Trinity Church* and elaborated on these sources at great length.[290] Although widely criticized by professional historians, Barton's Christian-dominated history of the United States has been deeply influential in conservative circles.[291] For instance, Kansas Governor Sam Brownback has declared that Barton's work "provides the philosophical underpinning for a lot of the Republican effort in the country today—bringing God back into the public square."[292] Barton concludes that American history demonstrates that the Constitution "was designed to perpetuate a Christian order" and must be "interpreted within the understanding of Christianity."[293]

Thus, like the Christian Amendment and Judeo-Christian nationalist movements before it, the New Christian Right presented its claim that the United States is a Christian nation in constitutional terms. Yet, unlike these earlier movements, the New Christian Right did not seek to amend

---

288. *See, e.g.*, FALWELL, *supra* note 13, at 222; Robertson, *supra* note 258.

289. BARTON, *supra* note 286, at 47–82, 83–136.

290. *Id.*

291. *See, e.g.*, Erik Eckhold, *Using History to Mold Ideas on the Right*, N.Y. TIMES (May 4, 2011), http://www.nytimes.com/2011/05/05/us/politics/05barton.html ("Many professional historians dismiss Mr. Barton, whose academic degree is in Christian Education from Oral Roberts University, as a biased amateur who cherry-picks quotes from history and the Bible."); Stookey, *supra* note 98 (reviewing Barton's work); Garrett Epps, *Genuine Christian Scholars Smack Down an Unruly Colleague*, ATLANTIC (Aug. 10, 2012), http://www.theatlantic.com/national/archive/2012/08/genuine-christian-scholars-smack-down-an-unruly-colleague/260994/.

292. Chris Vaughn, *A Man with a Message: Self-Taught Historian's Work on Church-State Issues Rouses GOP*, FORT WORTH STAR-TELEGRAM (May 22, 2005), http://web.archive.org/web/20060920013836/http://www.baylor.edu/pr/bitn/news.php?action=story&story=34559. Reverend Pat Robertson has cited Barton extensively. *See* Robertson, *supra* note 258, at 596–601 (citing Barton ten times in as many pages). Former Arkansas Governor and presidential candidate Mike Huckabee called Barton "America's greatest historian," and has expressed the wish that American students should be "forced at gunpoint" to hear his theories. Kyle Mantyla, *David Barton: America's Greatest Historian*, RIGHT WING WATCH (Oct. 20, 2008, 2:04 PM), http://www.rightwingwatch.org/content/david-barton-america%E2%80%99s-greatest-historian?_ga=1.21571643.1001482859.1437763235. Barton has been a frequent guest on Glenn Beck's radio and television shows, and Beck has called him "the most important man in America." *Barton's Bunk: Religious Right 'Historian' Hits the Big Time in Tea Party America*, RIGHT WING WATCH, http://www.rightwingwatch.org/report/bartons-bunk-religious-right-historian-hits-the-big-time-in-tea-party-america/ (last visited Jan. 16, 2017).

293. BARTON, *supra* note 286, at 39, 33.

the Constitution to declare the nation's faith. Instead, it argued that the Constitution has been Christian all along.

Conclusion: National Identity and the Constitution

In this Article, I have tried to show that the ideology of constitutional nationalism—which teaches that what unites Americans is a shared commitment to a set of values found in the Constitution—has a significant and largely unrecognized consequence in American politics: It transforms deep-seated conflicts over national identity into constitutional disputes. The various movements to make the Constitution Christian illustrate the dynamics that channel conflicts over the nation's religious identity into constitutional disputes.

The movements to make the Constitution Christian—the Christian Amendment movement of the nineteenth century, Judeo-Christian nationalism of the Eisenhower era, and the New Christian Right that began in the 1970s and continues today—arose out of a shared conception of the relationship between national identity and the Constitution, in which the Constitution is understood to embody the nation's core national values. Supporters of these movements have believed that, at its core, America is a Christian (or at least Judeo-Christian) nation. Supporters of these movements have also believed that the Constitution must reflect what is authentically American. These movements have declared that the Constitution must be made Christian in order to preserve the Christian nature of the United States. For the Christian Amendment movement, that meant that the Constitution must be amended to become Christian, while for the New Christian Right that has meant that the Constitution must be interpreted to be Christian.

Although the belief that the United States is a Christian nation is deeply controversial, the premise that the Constitution embodies the fixed essence of national identity is utterly conventional.[294] The repeated attempts to make the Constitution Christian, however, should show that the relationship between national identity and the Constitution is quite different from the conventional understanding. The content of American identity has long been contested, and disputes over the Constitution have been a primary vehicle for conducting those contests. Movements to make the Constitution Christian arose when members of the nation's dominant Protestant majority believed that their status was threatened by immigrants, communists, and secularists. Identifying their own Christian devotion as central to America's essence, supporters of these

294. As Hans Kohn wrote in 1957, in the first full length academic treatment of American nationalism: "The American Constitution represents the lifeblood of the American nation, its supreme symbol and manifestation. It is so intimately welded with the national existence itself that the two have become inseparable." Hans Kohn, American Nationalism: An Interpretive Essay 8 (1957).

movements considered the threat to Christian dominance to be an attack on America itself. They mobilized to protect what they believed to be America's essence, demanding that the Constitution reflect what they understood to be the nation's true identity.

Movements to make the Constitution Christian and thereby preserve the nation's supposedly Christian nature are far from anomalous, as myriad other movements have fought to codify their understanding of America through constitutional appeals. White supremacists have long believed that the United States is essentially a white nation, and they read the Constitution to embody that essence. In the words of a 1925 Klan publication, the Constitution "put into written form the immortal principles of liberty, popular government, and equal justice, which were the fruitage of Anglo-Saxon character . . . ."[295] In the 1930s, the American Liberty League argued that the New Deal is inconsistent with the nation's core commitment to liberty for businessmen, an identity they read into the Constitution.[296] Today, the Tea Party movement has gained considerable attention by arguing that the nation has abandoned its core commitments.[297] Just as some Christians read a Christian Constitution, so do white supremacists read a white Constitution, businessmen read a businessman's Constitution, and Tea Party members read a libertarian, nativist Constitution. Each of those movements, like the movements discussed in this Article, arose when some Americans perceived a threat to their dominant status and mobilized to make constitutional claims in defense of that status.

For each of these movements and many others, the Constitution as they understand it serves to draw boundaries between what movement supporters consider truly American and what they consider dangerously foreign.[298] By declaring that devotion to Christianity is part of America's essence, movements to make the Constitution Christian sought to marginalize Americans of non-Protestant faiths. In fact, attempts to identify a national essence always involve drawing boundaries to define what is and is not truly American. Samuel Huntington, for instance, draws the line at what he refers to as Anglo-Protestant culture, asserting that socialists and others are not real Americans.[299] Gunnar Myrdal, in

---

295. Aziz Rana, *Constitutionalism and the Foundations of the Security State*, 103 CALIF. L. REV. 335, 373 n.173 (2015) (quoting *Constitution Day*, 2 AM. STANDARD 420, 420 (1925)).

296. *See generally* GEORGE WOLFSKILL, THE REVOLT OF THE CONSERVATIVES: A HISTORY OF THE AMERICAN LIBERTY LEAGUE, 1934–1940 (1962); Frederick Rudolph, *The American Liberty League, 1934–1940*, 56 AM. HIST. REV. 19 (1950) (describing the history of the American Liberty League).

297. *See generally* THEDA SKOCPOL & VANESSA WILLIAMSON, THE TEA PARTY AND THE REMAKING OF REPUBLICAN CONSERVATISM (2012) (illustrating the activities of the Tea Party since 2009).

298. *See generally* MARY DOUGLAS, PURITY AND DANGER: AN ANALYSIS OF CONCEPTS OF POLLUTION AND TABOO (1966) (discussing the ways that taboos creating boundaries between the clean and the unclean serve to protect the social order).

299. *See* SAMUEL P. HUNTINGTON, WHO ARE WE? THE CHALLENGES TO AMERICA'S NATIONAL IDENTITY xv–xvi (2004) (arguing that "Anglo-Protestant culture has been central to America's identity

contrast, drew the line at commitment to the American Creed, while asserting that Jim Crow is un-American.[300] As Rogers Smith has shown, however, Jim Crow was as all-American as the civil rights movement that brought it down.[301] We may prefer one national vision over the other, but we cannot say that one is more authentically American. America's diversity defies attempts to identify a national essence.[302]

This Article's thesis—that constitutional nationalism serves to transform disputes over national identity into constitutional disputes—is merely descriptive. Yet it seems worthwhile to conclude by dabbling briefly in the normative realm, to discuss the harms that result from constitutionalizing disputes over national identity. Perhaps some might argue that it is a healthy thing for disputes over national identity to be channeled into constitutional contests rather than, say, violence, terrorism, or civil war. History is filled with much bloodier ways to settle disputes over ethnic and religious dominance than constitutional disputes.

Yet constitutional nationalism also causes real harms to both constitutionalism and to nationalism. It makes constitutional law a mystical realm, in which a creaky document that is well over 200 years old is asked to serve as an oracle to resolve deep questions of national identity that the document is simply incapable of resolving. More importantly, labeling disputes over national identity as disputes over the Constitution serves to obscure the real source of controversy. The repeated fights over whether the Constitution should be read as a Christian document has served as a stand-in for the real dispute: whether Christian people, Christian values, and Christian practices are entitled to claim a privileged status in the United States, and whether competing values should be rejected as dangerously foreign and un-American. In this way, constitutional nationalism provides a neutral, patriotic language to express restrictive ideas about who is and who is not a real American. It is an ideology that can make the call to hate or even kill sound like the most patriotic acts imaginable. While disputes over whether the United States is a Christian nation have not generally led to bloodshed, other chapters in the history of constitutional nationalism have proven much bloodier.[303]

---

for three centuries" and as a result the American Creed can only be understood as the "product of a distinct Anglo-Protestant culture").

300. GUNNAR MYRDAL, THE AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY 52 (20th Anniversary ed. 1962).

301. SMITH, *supra* note 1, at 15.

302. Whitman put it best: "Do I contradict myself? Very well then I contradict myself, (I am large, I contain multitudes.)[.]" WALT WHITMAN, LEAVES OF GRASS: THE COMPLETE 1855 AND 1891–92 EDITIONS 246 (1855) (First Library of Am. ed. 2011) .

303. *See* Jared A. Goldstein, *To Kill and Die for the Constitution: Nullification and Insurrectionary Violence*, *in* NULLIFICATION AND SECESSION IN MODERN CONSTITUTIONAL THOUGHT (Sanford Levinson ed., 2016).