Church History 79:4 (December 2010), 863–870.

doi:10.1017/S000964071000106X

Protecting the Wilderness: Comments on Howe's The Garden in the Wilderness

Kathleen Flake

"And the Lord spake unto Moses, saying, . . . set up the tabernacle of the tent of the congregation. . . . put therein the ark of the testimony . . . bring in the candlestick, and light the lamps thereof."[1] No, I am not going to preach a Puritan sermon to you. I want only to remind you of the Puritan in Roger Williams who said the words that provide the title of the book under consideration. The words come from Williams's debate with John Cotton over church government: "When they [or the those who desired to Christianize the world through the use of worldly power] have opened a gap in the hedge or wall of separation between the garden of the church and the wilderness of the world, God had ever broke down the wall itself, removed the candlestick, and made His garden a wilderness." For Mark deWolfe Howe, Williams's "theological wall of separation" represents the evangelical impulse in American religion and is an important source for understanding American law concerning church and state. A key contribution of Howe's monograph was to remind its readers that not only Jefferson's sense of natural law and individual rights but also Williams's congregational and biblical notions informed the First Amendment religion clauses. Howe finds fault with the Supreme Court's ignoring this dual lineage and favoring only Jefferson's Enlightenment view. For Howe, the modern Court's use of Jefferson's language to impute due process values to the religion clauses "distorts their manifest objectives" to grant religion constitutionally protected status—a status distinct from other forms of conscience, not least irreligion. These other forms of conscience are, he argues, protected by other constitutional guarantees, such as speech, press, and association.

This is a brilliantly wrought argument. Regardless, based on the conviction that good books are best honored by critical engagement, I wish to take issue with two aspects of Howe's analysis. First, there is, I believe, greater complexity to Williams's theological reasoning than is admitted by Howe's history or containable within the term "evangelical." I will argue also that

[1]Exodus 40:1–4 (KJV).

Kathleen Flake is Associate Professor of American Religious History at Vanderbilt University.

this third impulse—not evangelical and not deistic—had a direct affect on the Court's desire for a wall of separation and for construing that wall as solid, high, and wide. I will conclude with a few observations about the natural tension between "religion and government"—which is, after all, Howe's chief concern, as evidenced by his subtitle: "Religion and Government in American Constitutional History." In sum, my particular complaint of Howe is largely the same one he makes of the Court in his last sentence: "The complexities of history deserve our respect." For Howe, the Court's reading of Jefferson's Danbury letter was too simplistic, even "parochial,"[2] and he is right. Over-reliance on Jefferson's stress on individual liberties has placed the religion clauses in thrall to broader notions of neutrality and equality and has tended to obscure religion's peculiar constitutional status.[3] While the Court may have given "more scope" to the religion clauses, it has also given "less and less meaning to the concept of religion."[4] Without contesting his conclusion regarding the effect of the Court's reductionism and not quibbling with him regarding the historiographic difficulties in relating Williams's seventeenth-century words so immediately to eighteenth-century intentions, I would argue that Howe's reading of Roger Williams is likewise parochial (evangelically so) and fails to admit the threat to government posed by Williams's religious philosophy.

For Howe, antebellum evangelicals were those who hoped to secure "the advancement of the interests of religion" through federal disestablishment. He identifies them with the "statesmen of New England" who were "eager to put the powers of government at the service of religion."[5] These were Jefferson's political interlocutors and, as James Hutson has shown, they were the political audience for Jefferson's Danbury letter; the Baptist's merely providing the occasion.[6] Howe's definition of eighteenth-century evangelicalism is good as far as it goes, though most scholars today would want to add a few particulars to it. But it is not a very good definition of Roger Williams's religiosity, especially as represented in the quotation that frames Howe's argument and titles his book. There is another contributor to this forum whose specific expertise this is. I tread lightly upon it only to

[2]Mark deWolfe Howe, *The Garden and the Wilderness: Religion and Government in American Constitutional History* (Chicago: University of Chicago Press, 1965), 3.

[3]Ibid., 168.

[4]Ibid., 163–64. Howe's entire statement reads: "In recent opinions of the Supreme Court," he argued, "one can occasionally discover intimations that their broadening of neutrality's obligation . . . is being brought about by a . . . process of giving more scope (and perhaps, less and less meaning) to the concept 'religion.'"

[5]Ibid., 31, 25.

[6]James Hutson, "'A Wall of Separation': FBI Helps Restore Jefferson's Obliterated Draft," Library of Congress Information Bulletin (June 1998), at http://www.loc.gov/loc/lcib/9806/danbury.html.

make one quick point in service to another: Roger Williams better represents those religions that produce their own law. Though this law is not necessarily in resistance to the state, it is certainly not in service to it. Or, you could say, Williams represents a type of American radicalism whose prayer is, like the fiddler Tevya's, "May the Lord keep the Tsar very far from us."

In 1644, Williams deployed the "wall of separation" metaphor when fighting in print with John Cotton, the Massachusetts Bay statist. He accused Cotton of rationalizing Puritan coexistence with the Anglican establishment; thus, polluting the would-be pure church.[7] Listen to Williams's statement one more time and this time more fully quoted: "When they have opened a gap in the hedge or wall of separation between the garden of the church and the wilderness of the world, God had ever broke down the wall itself, removed the candlestick, and made His garden a wilderness, *as at this day.* And that therefore *if* He will ever please *to restore His garden and paradise again, it must of necessity be walled in peculiarly unto Himself from the world*."[8] To Williams, God had made Massachusetts Bay a wilderness "at this day" because clerics like John Cotton, in seeking to employ the power of the state to further the objects of religion, had breached the wall of separation and turned a fruitful garden into a barren wilderness. Williams's "garden of the church" was an allusion to Israel's temple. His reference to a candlestick in the garden's midst makes this obvious.[9] Again, reading Exodus 40 from the King James Version: "And he [Moses] put the candlestick in the tent of the congregation, . . . And he lighted the lamps before the Lord; as the Lord commanded. [10] Williams's ideal of a church, like Israel's temple, was as an island of purity or holiness set apart from the wilderness of the world.

Traditionally, the temple has been deemed, as Williams says here, a "garden and paradise" where God dwelt. Indeed, the word "paradise" originates in Old Persian (pairidaeze) for the enclosed garden of the king.[11] As such, temples were archetypal sites not only of creation and fertility, but also of law. In Williams's Bible-saturated indictment, Cotton was being accused of using the offices of a worldly king to accomplish the purposes of a heavenly one

[7]For an extended discussion, see for example, W. Clark Gilpin, *The Millenarian Piety of Roger Williams* (Chicago: University of Chicago Press, 1979), 85–89.

[8]Roger Williams, *The Bloudy Tenent of Persecution, for the Cause of Conscience, Discussed in a Conference Between Truth and Peace* (London, 1644) (emphasis added).

[9]Emil G. Hirsch and Wilhelm Nowack, s.v., "Candlestick," *Jewish Encyclopedia*, http://www.jewishencyclopedia.com/view.jsp?artid=87&letter=C.

[10]Of course, Williams would have known the Bishops' Bible version: "And he put the candlesticke in the tabernacle of the congregation, ouer agaynst the table towarde the south syde of the tabernacle, 25 And set vp the lampes before ye Lorde: as the Lorde commaunded Moyses."

[11]Jeffrey Burton Russel, *A History of Heaven: The Singing Silence* (Princeton, N.J.: Princeton University Press, 1998), 29.

and, thereby, destroying the order of and making lifeless the king's paradisiacal garden. Or, as Williams would have read in Ezekiel, after the detailed description of the temple: "Israel [shall] no more defile ["the place of my throne"] neither they, nor their kings . . . In their setting of their threshold by my thresholds, and their post by my posts, and the wall between me and them. . . . Now let them put away . . . the carcases of their kings, far from me, and I will dwell in the midst of them for ever."[12] Now, that's what I call a "wall of separation," as I think did Williams. It is not an evangelical wall. It is the wall of an antinomian perfectionist: another fine tradition in American religion and one that has had a significant effect on the development of First Amendment law.

Sixty years later, after Williams's castigation of John Cotton, Cotton Mather could not resist an "I told you so" on behalf of the family. "Mr. Williams," he wrote in his history of America, "[finally] told [his followers] 'that being himself misled, he had [misled them,' and] he was now satisfied that there was none upon earth that could administer baptism, . . . [so] he advised them therefore to forego all . . . and wait for the coming of new apostles."[13] It is true that Roger Williams finally despaired of finding persons with priestly or apostolic authority to restore God's "garden and paradise again."[14] For Rev. Mather, this was probably the full measure of Williams's antinomianism and of his extravagant perfectionism. He who would not yield to existing law and sought instead for its revelatory counterpart was forced to admit his folly. This was the moral of Mather's story, but it was not the end of the story. Other Americans continued to seek a visible church that offered a higher law in contrast to evangelicalism's sustaining embrace of the nation's law.

A century later, Joseph Smith would oblige Williams by claiming to restore the ancient apostleship, as well as the "garden and paradise of the king," the temple. Smith tried also to hedge or wall off his temple from the wilderness of the state. But in 1890, Wilford Woodruff, the then-president of the Church of Jesus Christ of Latter-day Saints was notified by the federal marshal that, pursuant to a recent Supreme Court decision, the federal government was seizing his church's temples.[15] This breach of the Latter-day Saints' "garden wall" occurred midway in an extended battle between church and state. The reasons were legion, but are ultimately reducible to contesting claims of authority.

[12]Ezekiel 43:7–9 (KJV).

[13]Cotton Mather, *Magnalia Christi Americana* (1853), 2:498.

[14]For Williams's view of ecclesiastical authority, see David L. Mueller, "Roger Williams on the Church and ministry," *Review & Expositor* 55, no. 2 (April 1958): 165–81.

[15]D. Michael Quinn, "LDS Church Authority and New Plural Marriage, 1890–1904," *Dialogue: A Journal of Mormon Thought* 18, no. 1 (Spring 1985): 42.

The Latter-day Saints believed their church authorized to save, not civilize the nation. They did not hold these truths privately as matters of personal conscience, but acted publicly. This included their obtaining control over one of the states of the United States. Theirs was a very "visible," not denominational, church and at serious odds with its host culture. This left evangelical America convinced that there was, as one senator said in frustration, "something inherently wrong in their organization or else this conflict would not be perpetual."[16] In 1888, Congregationalist Rev. A. S. Bailey spoke for many when he said, "Mormonism must first show that it satisfies the American idea of a church, and a system of religious faith, before it can demand of the nation the protection due to religion. This it cannot do, for it is not a church; it is not religion according to the American idea and the United States constitution."[17] Sensitivity to the perceived threat of Mormonism is missing from Howe's analysis of the reciprocal development of American law and religion. The Utah Territory was a de facto, if not legal, establishment unimaginable to New England federalists, much less Thomas Jefferson. Nevertheless, it was in the context of the "Mormon Problem" that the Supreme Court relied on Jefferson's "political wall" at the expense of Howe's evangelical "theological wall."

There is a truism among litigators and legal scholars that "bad facts make bad law." In other words, the extreme cases (or those based on extraordinary fact situations) are ill-suited to make law intended to govern everyone. Yet, those are often exactly the cases that make it to the Supreme Court. Enter polygamy. Among Smith's restoration was Old Testament polygamy or "plural marriage," a religious ordinance performed only in temples. The Supreme Court's first use of the Danbury letter was in 1879 in *Reynolds v. U.S.*, which held Latter-day Saint marriages unprotected by the First Amendment.[18] The Court began by observing, "The word 'religion' is not defined in the Constitution. We must go elsewhere, therefore, to ascertain its meaning, and nowhere more appropriately, we think, than to the history of the times in . . . which the provision was adopted." Justice Waite then set the pattern of turning first to the Virginia Statute and, then, the Danbury letter, holding that, although the state could not regulate belief, it "was left free to reach actions which were in violation of social duties or subversive of good order." In this last turn of phrase, the Court was relying not on the oft-quoted "wall of separation," but another, seldom-quoted portion of the Danbury letter. Jefferson had ended his assurance of support for religious

[16]Senator Fred T. Dubois (D-Idaho), *Congressional Record*, 59th Cong., 2d sess., 1906, 41, pt. 1.

[17]Rev. A. S. Bailey, "Anti-American Influences in Utah," in *Christian Progress in Utah: The Discussions of the Christian Convention* (Salt Lake City, 1888), 17–23.

[18]*Reynolds v. United States*, 98 U.S. 145 (1878).

liberty by expressing the conviction that one "has no natural right in opposition to his social duties."[19] Let me conclude with another expression of this absolute rule spoken a century later. I do so to illustrate that the popularity of Jefferson's definition of religion is in part explained by its compatibility with evangelical self-definition, in a way that Williams's sentiments were not.

Between 1903 and 1907, the United States was engaged in a very public, political trial of the credentials of Utah's newest senator, Reed Smoot. He was not only a faithful Republican, but also an apostle of the LDS Church, one of only fifteen men with plenary authority over it and in direct succession to its revelatory presidency. Petitions were immediately filed arguing that, as a leader of a lawless institution, the senator was not eligible to be a lawmaker. The matter was referred to the Senate Committee on Privileges and Elections for investigation and recommendation to the full Senate. This is a story much too long tell here. The transcript of the trial, excluding the Senate debate that allowed Smoot to retain his seat, is 3,500 pages long. What remains of petitions in opposition fill eleven feet of shelf space in the National Archives. I will mention one aspect of the trial that illuminates Americans' historic assumption that there are, in Jefferson's words, "no natural [or God-given] rights in opposition to social duties."[20]

In the course of the Senate hearing, subpoenas were issued to LDS Church leadership, including church president Joseph F. Smith. For four days, he was cross-examined on LDS beliefs, as well as on the nature of church authority in general and his power in particular. The petitioners had placed these issues at the heart of their complaint against Senator Smoot. Church leaders exercise, said the written protest, "supreme authority, divinely sanctioned, to shape the belief and control the conduct of those under them in all matters whatsoever, civil and religious, temporal and spiritual."[21] Plural marriage was the most obvious example of the feared strength and perversity of Mormonism's hierarchy, but the greater problem was the prophetic and priestly character of the LDS Church itself—its temple-centered "garden of the church" if you will. This allegation required the committee to consider matters normally forbidden to state officials; sometimes to the discomfort of those officials on the committee. Texas Senator Joseph Bailey, troubled by the extended examination of Smith's religious beliefs, interjected: "Before we proceed any

[19]"Jefferson's Letter to the Danbury Baptists: The Final Letter, as Sent," Library of Congress Information Bulletin (June 1998), at http://www.loc.gov/loc/lcib/9806/danpre.html.

[20]For an extended analysis of the hearing, see Kathleen Flake, *The Politics of American Religious Identity: The Seating of Senator Reed Smoot, Mormon Apostle* (Chapel Hill: University of North Carolina Press, 2004).

[21]U.S. Senate. Committee on Privileges and Elections. *Proceedings before the Committee on Privileges and Elections of the United States Senate in the Matter of the Protests agains the Right of Hon. Reed Smoot, a Senator from the State of Utah, to Hold His Seat*. 59th Cong., 1st sess., S. Rept. No. 486, (Washington, D.C., Government Printing Office, 1904–1906), 1:1.

further, I assume that all these questions connected with the religious faith of the Mormon Church are to be shown subsequently to have some relation to civil affairs." Famed constitutional lawyer and Massachusetts Senator George Frisbee Hoar, advised Bailey "what we might think merely civil or political they deem religious matters."[22]

As devout men themselves with strong ties to their respective denominations, the Senate panel could pursue their questioning of Smith's beliefs because they had a naive confidence in the legal disestablishment, yet de facto compatibility of church and state. Again, it was Senator Bailey who spoke to the issue, this time with a rhetorical question: "Is not a man's duty as a citizen perfectly consistent with any conception that exists in this country of his religious duty?"[23] The committee's inability to identify with the Latter-day Saint witnesses' predicament reflects the senators' opinion of Mormonism as a religion. "Any conception" of religious duty that conflicted with American law was per se not truly religious. Thus, the senators were able to unselfconsciously ask each of the Latter-day Saint witnesses: "Suppose you should receive a divine revelation, communicated to and sustained by your church, commanding your people to-morrow to do something forbidden by the law of the land. Which would it be their duty to obey?"[24] That the Latter-day Saints espoused a different order of marriage may have put them in violation of law. That they violated the law in obedience to a higher authority made them lawless or antinomian. Roger Williams, though by no means likely to have endorsed Mormonism, was closer to them in his separatist and perfectionist aspirations than he was to Howe's evangelicals. And, this helps us understand why the Supreme Court has looked with greater favor on Jefferson's conviction that there are "no natural [or God-given] rights in opposition to [one's] social duties." (Thus, Jefferson's Danbury letter makes no mention of a garden, much less a paradisiacal garden of a law-giving king.)

Howe is right that the Court has oversimplified history. He is right also that failing to recognize the theological basis for a "wall of separation" has not only significantly broadened, but also significantly emptied the religion clause of the First Amendment. But, I am not sure that it is only historical sloppiness or due process zealotry that has led to overemphasis on Jefferson's political "wall." Rather, the Court's choices (and more generally the reciprocal development of American law and religion) may have as much to do with the real conflict between the two; a conflict implied by Williams's "garden of a church" set over against the wilderness of worldly government and later illustrated by

[22]Ibid., 1:99.
[23]Ibid., 1:728.
[24]Ibid., 1:313.

the experience of Smith's overtly temple-centered church. Antinomian perfectionism is a staple of American religion and has shaped the development of First Amendment law. While I agree that the Supreme Court has oversimplified history to its own ends, I would argue for more respect for those ends than Howe gives them here. And, I would argue that Howe's binary of evangelical and Enlightenment is insufficient. The historical complexities here are more complex than he allows. But, that is what keeps us historians in business generation after generation, rewriting those who have gone before. May we write even half as well as Mark deWolfe Howe who deserves to continue to be read.

https://doi.org/10.1017/S000964071000106X Published online by Cambridge University Press