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"*Courts of Conscience*": *Local Law, the Baptists, and Church Schism in Kentucky, 1780–1840*

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This article examines how religious controversy affected antebellum Kentucky's legal culture and helped construct the relationship between church and state. It incorporates legal theory to broaden conceptions of law and argues that Baptist churches served as important legal sites for their communities. More than simply punishing moral transgressions, churches litigated disputes that under common law and within county courts would be considered criminal or civil law. By acknowledging that individuals produced law outside of state institutions, the article illuminates a more complex and fluid trans-Appalachian legal culture, one in which church members and non-members alike possessed a capacious vision of law. During the late 1820s and 1830s, Kentucky Baptists faced years of discord emanating from Alexander Campbell's "Reformation." Amidst a religious backdrop of doctrinal controversy and schism, afflicted churches witnessed a decline of disciplinary activities as individuals' ceased to envision their churches as sites for neutral dispute resolution. The failure of church courts to contain internal dissension and curtail schism led to contentious court battles over rights to local meetinghouses. As judges reviewed church disciplinary records and litigants debated religious doctrine at the courthouse, these church property disputes highlight the process of redefining church-state relations in the post-establishment era.

I. Church Authority and Religious Insurgency

In April 1831 the Fox Run Baptist Church of Shelby County, Kentucky gathered for their monthly meeting. Following prayer and reception of new members, the moderator opened the floor for the airing of grievances. Brother John Ford claimed that fellow-member James Drane had failed to comply with a contract to which the two men had previously agreed. The church clerk initially recorded little detail, but did note that a committee was

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formed "to examine into the merits of the case, and their Decision [was] to be final." The committee subsequently ordered that Drane pay Ford "a reasonable rent for the use of the 35 acres of land" or otherwise let Ford retain the land until he thought it proper to give full possession of the tract to Drane. At the following meeting in May, the church admonished Brother Jeptha Brite "for opening his doors to disorderly preaching." The two cases appear to have little in common, and are actually rare in that the church body did not level any exclusions from the church fellowship, nor is there record of either man making acknowledgement to any wrong doing in order to remain a full member of the Fox Run Church.[1] A closer look reveals that the two men were in-laws; Brite's wife, Elizabeth, was a Drane by birth. And the "disorderly preaching" that took place at the Brite home was the handiwork of one or both of the Creaths, a family whose affinities with the dissenting views of Alexander Campbell were well known throughout the region.[2] The defendants' collective action over the next weeks—with the apparent aid and support of their wives—speaks to the changing nature of church authority over matters of dispute resolution during the 1830s, as well as to how insurgent religious movements altered the way individuals envisioned and engaged with law in post-Revolutionary Kentucky. Not only did the rise in competing religious sects in the trans-Appalachian West alter member-relations within churches, transforming individuals' vision of their congregations as arbiters of disputes, it also engendered schisms which led to contentious court battles between opposing factions for rights to, or control over, church property. These suits at local chancery courts and state appellant judicatories highlight an often unnoted dimension of church-state relations in the early nineteenth-century United States—a time when Americans were reformulating the role of religious groups in society—as church bodies sought out state power to secure their temporal holdings.[3]

[1]Minute Books of Eminence, Kentucky Baptist Church (formerly Fox Run), April/May 1831, Archives and Special Collections, James P. Boyce Centennial Library, The Southern Baptist Theological Library, Louisville, Kentucky (hereafter SBTL).

[2]For the marriage of Elizabeth Drane and Jeptha Brite, see Ancestry.com, accessed March 18, 2013, http://search.ancestry.com/cgi-bin/sse.dll?ti=0&indiv=try&db=eamky&h=63158. It cites Jordan Dodd, *Kentucky Marriages, 1802–1850* (Provo, Utah). In the June 1831 records of Fox Run Church, a letter from the Dranes and Brites mentions that a "Creath" preached in the Brite home. Jacob Creath, Jr., "was the most active and turbulent advocate of Campbellism in the state," while his uncle, Jacob Creath Sr. "was among the first converts to Campbellism." See, John H. Spencer, *A History of Kentucky Baptists From 1769 to 1885, including more than 1800 biographical Sketches*, vol. 1 (Cincinnati, Ohio: J.R. Baumes, 1886), 204, 312.

[3]Mark D. McGarvie notes in *One Nation Under Law: America's Early National Struggles to Separate Church and State* (Dekalb: Northern Illinois University Press, 2004), 9, that early-National Americans were especially concerned with the degree of societal leadership that churches would assume in the new republic. Indeed, he concludes, this matter "was at the heart of successful efforts to separate church and state in the early republic."

The cases against Drane and Bright typify how church tribunals in the early nineteenth century served to mitigate seemingly secular quarrels such as land disputes, but also how church bodies shaped the doctrinal boundaries of their exclusive communities through the practice of discipline.[4] Members charged one another with drunkenness, fornication, adultery, and theft in front of their church bodies. Others brought land disputes, probate matters, and disputed slave sales to their brethren for mitigation. Indeed, church meetinghouses served as important sites for legal production during the early republican and antebellum periods. Kentucky Baptists and their brethren throughout the trans-Appalachian West constituted churches—often biracial and including slaves—based upon articulated church covenants, rules of decorum, and disciplinary procedures.[5] Church members debated doctrine and voted upon resolutions at Saturday church meetings, in members' homes, and at annual gatherings of governing associations. Discipline, as an integral part of church ritual, helped to define the individual and create the church body.[6] Yet over the course of the nineteenth century, this practice faded from use, and historians are still grappling with the causes for its decline. Historian Donald Mathews, acknowledging the practice of discipline in southern churches through the Civil War, laments that "the meaning of these patterns of discipline, with their recurring cycles of intensity, is not yet totally clear."[7] Why, for example, did many churches record a decline in disciplinary activities during the late 1820s and through the 1830s?

[4]Use of the term "tribunal" here is merely descriptive of the church gathered and addressing disciplinary matters. It should not be misconstrued as a sitting or appointed body that dispensed discipline. All attending full members—which as discussed below, were increasingly defined as white male members—voted on disciplinary matters at Saturday business gatherings.

[5]And, as Amanda Porterfield notes in *Conceived in Doubt: Religion and Politics in the New American Nation* (Chicago: University of Chicago Press, 2012), 113, "religious communities had governments of their own that supplemented—and in important respects superseded—local, state, and federal authority."

[6]See Ellen Eslinger's discussion on the importance of ritual in creating community in *Citizens of Zion: The Social Origins of Camp Meeting Revivalism* (Knoxville: University of Tennessee Press, 1999), xix.

[7]Donald G. Mathews, *Religion in the Old South* (Chicago: University of Chicago Press, 1977), 46. Suggestions concerning the decline of church discipline vary in scope and detail. Monica Najar, in *Evangelizing the South A Social History of Church and State in Early America* (New York: Oxford University Press, 2008), does not specifically address the fluctuations in church disciplinary proceedings across space or time. Unlike Najar, Randy Sparks, in *On Jordan's Stormy Banks: Evangelicalism in Mississippi, 1773–1876* (Athens: University of Georgia Press, 1994), does note a marked decline in church disciplinary procedures after the 1820s in Mississippi. He largely attributes this to disputes between "Modernists"—who wanted disciplinary power to reside with synods, conferences, or associations—and "Traditionalists" who charged their opponents as too concerned with worldly status, prestige, and membership numbers" (see 151); Randolph Ferguson Scully, in *Religion and the Making of Nat Turner's Virginia Baptist Community and Conflict, 1740–1840* (Charlottesville: University of Virginia Press, 2008), ch. 4, addresses disciplinary patterns related to the defendants' race and sex, but not to the recurring patterns that Mathews notes; Gregory A. Wills, in *Democratic Religion:*

The congregational form of early Baptist churches presents challenges to making broad generalizations about change over time within the denomination.[8] This essay, however, contends that the influence of Alexander Campbell and Barton Stone's "Reformation" upon individual Baptist churches and their governing associations in north-central Kentucky subtly altered the role of churches in settling disputes and regulating the morals of their members. During the 1820s and 1830s the trans-Appalachian West's religious landscape scorched with dissension as the teachings of Campbell gained prominence and adherents. Campbell's calls for the supremacy of the individual over the collective will of the congregation, along with his denunciation of any religious body not deriving from the scriptures, found fertile ground among Kentucky Baptists. By the time the Fox Run Church admonished Jeptha Brite for allowing a Campbellite to preach in his home in 1831, area Baptists had experienced years of schism within their churches, governing associations, and "neighbourhoods." Notions of church and community did not completely erode, of course, but for some individuals, internal dissension and church schism transformed how they understood their church's role in enforcing discipline and maintaining the social peace of the community.[9] This uncovers at least one reason for the "recurring cycles of intensity" of which Mathews noted. As these schisms at times led to property disputes in secular courts, too, it also illuminates the

Freedom, Authority, and Church Discipline in the Baptist South, 1785–1900 (New York: Oxford University Press, 1997), points to a steady decline of discipline in Georgia Baptist churches after 1850, connecting it to a number of factors, including generational change, the growth of urban churches, and a greater concern among evangelicals with reforming all of society (see 9–10). In his *The Democratic Dilemma: Religion, Reform, and the Social Order in the Connecticut River Valley of Vermont, 1791–1850* (New York: Cambridge University Press, 1987), 282–283, Randolph Roth claims that why "discipline perished" in evangelical churches "is difficult to explain." Yet, "by 1860 evangelical churches made virtually" no use of disciplinary mechanisms. Christopher Waldrep, in "The Making of a Border State Society: James McGready, the Great Revival, and the Prosecution of Profanity in Kentucky," *The American Historical Review*, 99 no. 3 (June 1994): 781–782, argues that the religious fervor emanating from Campbell's movement led to an upswing in the number of prosecutions for profane swearing in the county courts, but does not mention how the "revival" altered patterns of discipline within church tribunals. Likewise, in his article, "'So Much Sin': The Decline of Religious Discipline and the 'Tidal Wave of Crime,'" *Journal of Social History* 23, no. 3 (Spring 1990): 535–536, Waldrep argues that the "southern church discipline declined because southern communities lost their cohesiveness" on more general grounds than simply the "growth of sentimentalism and industrialism." Focusing on Trigg County, Kentucky, Waldrep's primary goal is to show how a decline in church discipline led to a rise in vigilantism during the decades following the Civil War.

[8]Janet Moore Lindman, *Bodies of Belief: Baptist Community in Early America* (Philadelphia: University of Pennsylvania Press, 2008), 93.

[9]On community see the introduction in Bruce Mann, *Neighbors and Strangers: Law and Community in Early Connecticut* (Chapel Hill: University of North Carolina Press, 1987).

interconnections between church-based legal systems and those of the state, the interplay of ordering-structures across legal arenas.[10]

Motivating factors for a seeming reluctance, on the part of some churches, to enforce hitherto common disciplinary practices are difficult to ascertain, but as member relations became strained by the influence of the "reformers," church discipline receded and church bodies grew less willing to enforce their law-making powers. The practice of church discipline did not completely cease amidst the schisms of the late 1820s and early 1830s. It continued, especially in rural areas, throughout the nineteenth century.[11] Amidst internal dissension and schism, however, many afflicted churches recorded fewer or no charges during the controversy, or increasingly directed disciplinary proceedings towards black members. Fractured churches then often found themselves engaged in bitter contests over church meetinghouses. The disputing factions' turn to state law to secure property rights, an acknowledgment that their church tribunals could not contain internal dissension, further constructed the murky boundaries between church and state—between civil and religious authority—in antebellum America.

In order to illuminate a more nuanced legal culture—how, when, where, and why individuals interacted with one legal site rather than another—of post-Revolutionary Kentucky, this essay posits the practice of church discipline as a form of localized law.[12] A generation ago, legal historians, focusing largely on small New England communities, argued that during the colonial and

[10]Richard J. Ross, in "The Legal Past of Early New England: Notes for the Study of Law, Legal Culture, and Intellectual History," *The William and Mary Quarterly* 50, no. 1 (Jan., 1993): 32–39, insists that each legal subculture, whether based on religion, race, class, gender, or something else, such as occupation, is "interrelated and changing over time" (33). Although Ross's essay is directed toward historians of colonial North America, his discussion of legal culture and its relationship to the broader society is relevant for any legal historian. He also notes the importance of dispute resolution studies, but does admit that different questions need to be asked and pursued. "While we have fine studies of why colonists chose this or that dispute-settling institution and how they acted within those institutions," he writes, "we need to go back a step and figure out how legal culture helped place labels—for instance, the label of 'legal dispute'—on the ambiguous words and deeds of daily life" (39). Since disputes brought to Baptist churches were bound up with the social and familial relations of the congregation, studying the particulars of disputes which spilled out of church walls and into local courtrooms holds the potential of illuminating individuals' larger conceptualizations of the legal world.

[11]See in general, Wills, *Democratic Religion*.

[12]This understanding of "legal culture" derives from Lawrence M. Friedman, "Legal Culture and Social Development," *Law & Society Review* 4 no. 1 (August 1969): 34. For persistence of localized law see, Laura F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: University of North Carolina Press, 2009); Laura F. Edwards, "The Peace: The Meaning and Production of Law in the Post-Revolutionary South," *UC-Irvine Law Review* 1, no. 3 (February 2011). Edwards, though reacting to formalist and instrumentalist tendencies of legal historiography, is also building on the work of William Novak and others who have charted the extensive reach of local governments in subverting the individual to the needs of the community. See, William Novak, *The People's Welfare: Law & Regulation in Nineteenth-Century* America (Chapel Hill: University of North Carolina Press, 1996). For various "legalities," of British North America,

immediate post-Revolutionary periods, the courthouse became the primary arena for dispute resolution. The professionalization and formalization of the colonial legal system—facilitated by an expanding commercial economy and an increase of disputes which stretched across town and county borders—led many early Americans to seek recourse through courts rather than churches.[13] In her recent study of local law in the post-Revolutionary Carolinas, however, historian Laura Edwards contends that despite the increased professionalization and formalization of law at the state level, the primary objective of local law was to maintain the "peace" of a community. The role of the conceptual peace was to uphold the social order, the particularities of which the local populace determined. Whereas state law by the 1820s and 1830s increasingly sought to sustain liberal individual rights (for white men), local courts continued to look to the particulars of each case, at times elevating the community peace over abstract notions of individual rights. No matter where a community sought to exercise this peace, "the results moved the legal process into social relations, so that law both guided and emerged from the dynamics of people's lives."[14] Although subordinate groups had little access to the secular legal system, Edwards demonstrates that women, slaves, and free blacks all influenced, albeit at times indirectly, the practice of law at the local level.[15]

Moreover, shifting from courtrooms to meetinghouses, social and religious historians of the South and West have pointed to the persistence of church-based arbitration, especially among evangelical groups, well into the nineteenth century.[16] Church tribunals functioned as a parallel judicial

see in general, *The Many Legalities of Early America*, eds. Christopher Tomlins and Bruce H. Mann (Chapel Hill: University of North Carolina Press, 2001).

[13]Mann, *Neighbors and Strangers*; William E. Nelson, *Dispute and Conflict Resolution in Plymouth County, Massachusetts, 1725–1825* (Chapel Hill: University of North Carolina Press, 1981); David Thomas Konig, *Law and Society in Puritan Massachusetts, Essex County, 1629–1692* (Chapel Hill: University of North Carolina Press, 1979); Cornelia Hughes Dayton, *Women Before the Bar: Gender, Law, & Society in Connecticut, 1639–1789* (Chapel Hill: University of North Carolina Press, 1995). Legal scholar Christopher Tomlins has argued that during the early-nineteenth century, law became the "modality of rule" for Americans. See, Tomlins, *Law, Labor and Ideology in the Early American Republic* (New York: Cambridge University Press, 1993). Historian Mark McGarvie, in his investigation of the process of disestablishment, agrees with Tomlins's assertion, arguing that law, as a modality of rule, led to the triumph of common-law contract doctrine over Christian ethics, and the judge and court replaced the minister and church tribunal as social arbiter. See McGarvie, *One Nation Under Law*, 69.

[14]Edwards, "The Peace," 565.

[15]In, *The People and Their Peace*, 83–84, Edwards does briefly examine disciplinary mechanisms of the Baptists, Presbyterians, and Methodists, but her examination is geared toward transformations of local law as practiced in courthouses, not church meetinghouses.

[16]Strict disciplinary practices persisted in the South and West "long after New England Congregationalists abandoned the practice in the mid-eighteenth century." See Sparks, *On Jordan's Stormy Banks*, 146–147. Scholars disagree as to whether church tribunals were sites for social control. See, for example, Najar, *Evangelizing the South*. Najar looks at church

system for all sorts of complaints.[17] They litigated disputes that under common law and within county courts would be considered criminal or civil law. Actions taken at the church meetinghouse, too, held the potential to affect cases pending at local courts. Although legal historians have argued that by the time of American Independence law became rooted in state institutions, multiple legal systems continued to operate in various social arenas. Baptist churches, this article contends, served as instrumental legal sites through which members, and at times non-members, created law for their communities. Similar to the workings of localized law, church discipline served to protect the conceptual "peace" of the church fellowship and the wider neighborhood.

Over the past two generations, anthropologists and socio-legal theorists have argued that all societies are legally plural.[18] Although scholars of legal pluralism cohere around their disregard for legal centralism—arguing that

disciplinary proceedings in the Upper South—Virginia, North Carolina, Kentucky, and Tennessee—focusing especially on how church bodies exerted their authority within individual households (thus challenging the authority of the household head) but also how church discipline "eased the progress of the market economy" for members and provided a "version of 'citizenship'" for women and free and enslaved blacks (90). Janet Moore Lindman, in *Bodies of Belief*, examines Baptist churches in the mid-Atlantic region, noting that "as a means of social control, the church courts set standards of conduct for all members" (91). Lindman focuses less on the opportunities church tribunals presented to subordinate groups, and more on the top-down imposition of church rules, insisting that church elders decided upon and enforced church regulations. In *Religion and the Making Of Nat Turner's Virginia*, 169, Randolph Scully contends that among southeastern Virginia Baptists during the early-nineteenth century, "despite white male control over the institution of church discipline, the process never became a straightforward application of social control," as all members fell under the church's jurisdiction; Similarly, Randy Sparks, in *On Jordan's Stormy Banks*, 164-168, devotes a full chapter to the disciplinary practices of evangelical churches in Mississippi and argues that no member, black or white, free or enslaved, was exempt from church disciplinary proceedings, although blacks were "disciplined at a rate higher than their percentage of membership in some churches." Instead of solely a matter of social control, Sparks concludes, church discipline was "an effort to foster self-control, a crucial attribute in a republican society" (148). Wills, in *Democratic Religion*, 9–10, argues that church discipline was less about social control and more about ecclesiastical control.

[17]Lindman, *Bodies of Belief*, 94.

[18]See, for example, Leopold Pospisil, "Legal Levels and Multiplicity of Legal Systems in Human Societies," *The Journal of Conflict Resolution* 11, no. 1, (March 1967): 2–26; See also, Leopold Pospisil, *Anthropology of Law: A Comparative Theory* (New York: Harper & Row, 1971), 98–99. Legal anthropologist Sally Engle Merry notes that some institutions, such as corporations, factories, civil associations, and universities "include written codes, tribunals, and security forces" which replicate "the structure and symbolic form of state law." Furthermore, in any society, various "informal systems"—from the family, labor group, or collective—establish rules and seek to gain compliance with them. A variety of legal systems are found in almost all societies—not only in the colonized—and central to the investigation of law is the relationship between official state legal regimes and all other forms of social ordering which are separate yet still dependent upon state authority. Merry, "Legal Pluralism," *Law & Society Review* 22, no. 5 (1988): 870–874.

law manifests itself through a variety of institutions or social interactions—there is still little agreement upon both the power and place of the state in such studies and where law ceases and social action begins.[19] This essay, however, defines law, quoting from legal scholar Brian Tamanaha, as "*whatever people identify and treat through their social practices as 'law'.*"[20] Post-Revolutionary Baptists identified church discipline as the practice of law, and thus, it should be considered a viable legal system. As a contractual association, church membership required members to keep "watchcare" over their fellow brethren, and to take the proper legal steps (the "gospel steps") with transgressors or those with whom they disputed. Failure to do so could itself lead to a charge from the church body. The Pleasant Grove Baptist Church, for instance, resolved in 1840 that it was "the imperious duty of every member to watch over each other," and to bring unresolved conflict to the church body. Those "who shall neglect to reprove and try to reclaim" a fellow member should "be dealt with for a neglect of duty."[21] Though churches did not possess the ability to inflict bodily punishment, church sanctions—whether through admonishment, suspension, or excommunication—could have social ramifications, and for the true believer, eternal consequences. The state holds no monopoly upon means of coercion.[22] Thus, by acknowledging that individuals produced law outside of state institutions, we can illuminate a more complex and fluid trans-Appalachian legal culture, one in which individuals possessed a capacious vision of law, authority, and governance, and one through which individuals' constructed the boundaries of religious and civil authority at the local and state level.

[19]For instance, the critical legal pluralists decry "social-scientific conceptions" of legal pluralism, such as the one advanced by Merry above, and their continued "appeal to the primacy of the institutionalized State legal order." Instead, critical legal pluralists attribute more agency to the legal subject, endowing him or her "with a responsibility to participate in the multiple normative communities by which they recognize and create their own legal subjectivity." See, Martha-Marie Kleinhans and Roderick A. Macdonald, "What is a *Critical* Legal Pluralism?" *Canadian Journal of Law & Society* 25 (1997): 35, 37–38. On the pitfalls of classifying all normative ordering systems as "law," see in general Brian Z. Tamanaha, "A Non-Essentialist Version of Legal Pluralism," *Journal of Law and Society* 27, no. 2 (June, 2000): 296–321; For a recent review on the state of legal pluralism within the field of history, albeit directed at empires and not religious groups, see the introduction to Lauren Benton and Richard J. Ross, eds., *Legal Pluralism and Empires, 1500–1850* (New York: New York University Press, 2013).

[20]This position is put forth by Brian Tamanaha in "A Non-Essentialist Version of Legal Pluralism," 313. Italics in original. "Thus, what law is," Tamanaha continues, "is determined by the people in the social arena through their own common usages, not in advance by the social scientist or theorist" (314).

[21]Pleasant Grove Baptist Church Records, December 1840, Filson Historical Society, Louisville, Kentucky (hereafter FHS).

[22]Sally Falk Moore, "Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study," *Law & Society Review* 7, no. 4 (Summer 1973): 721.

Investigating the disciplinary practices of Baptist churches in post-Revolutionary and early-nineteenth century Kentucky illuminates the workings of localized law amidst a changing religious and legal landscape. In contrast to many of their religious counterparts, Baptists' highest earthly authority was the local church, not an ecclesiastical board such as the Methodist's Judicial Council or Presbyterian's General Assembly. Decisions on governing forms and disciplinary matters were decided by full-church members (increasingly defined after 1800 as white male, converted believers), by family, friends, and neighbors.[23] Furthermore, Baptist churches were the first institutions of any kind on the trans-Appalachian frontier of the 1770s and 1780s, and their early arrival and continued development allowed them to entwine their values into the region's social structures.[24] Revolutionary-era Kentucky Baptists did not face an entrenched Anglican establishment as did their counterparts to the east, and found much success in gaining converts in the early West. Internal dissension spread through the ranks of Kentucky Baptists in the 1820s and 1830s, however, as disagreements over the role of missionary societies, the proper form of church governance, and doctrinal quibbles all worked to disrupt the peace and stability of individual churches. Anti-Missionists associated the newly formed missionary, Bible, and tract societies with a loss of congregational autonomy, and they increasingly saw Baptist governing associations as unbiblical, centralized bodies invested with a dangerous amount of power.

Baptists also faced competition from new religious groups. Alexander Campbell, after nearly a decade of critique and reform efforts, left the Baptist denomination in 1830. Two years later he joined forces with Barton Stone, the leader of the "Christian" movement, to form the Disciples of Christ, a sect "particularly parasitic on the Baptists" throughout the trans-Appalachian region, and in Kentucky especially.[25] Religious and legal scholars have also highlighted the interplay between religious enthusiasm,

[23]For the lessening influence of women and blacks, free and enslaved, in post-Revolutionary Kentucky Baptist churches, see, Blair A. Pogue, "'I Cannot Believe the Gospel That Is So Much Preached': Gender, Belief, and Discipline in Baptist Religious Culture," in *The Buzzel About Kentuck: Settling the Promised Land*, ed. Craig Thompson Friend (Lexington: The University Press of Kentucky, 1999).

[24]Najar, *Evangelizing the South*, 9.

[25]John G. Crowley, "'Written that Ye May Believe': Primitive Baptist Historiography" in *Through A Glass Darkly: Contested Notions of Baptist Identity*, ed. Keith Harper (Tuscaloosa: University of Alabama Press, 2012), 212. Campbell's "Disciples" were particularly detrimental to Baptist church membership in Kentucky; see William Warren Sweet, *Religion on the American Frontier: The Baptists, 1783–1830* (New York: Cooper Square, 1964), 26. For information on the growth of the "Primitive" Baptist movement, see Jeffrey Wayne Taylor, *The Formation of the Primitive Baptist Movement* (Ontario: Pandora Press, 2004).

particularly the Campbellite movement, and secular law in Kentucky.[26] During periods of revival, evangelicals tried to extend their influence over grand juries, resorting to church tribunals only when they felt their power waning alongside declining revivalist fervor.[27] And, when those same church tribunals failed to contain internal dissension, opposing church bodies' resorted to secular courts to secure their property rights and helped to construct the relationship between church and state. After doctrinal schisms, judges found themselves reviewing, even overturning, church disciplinary actions and courthouses emerged as venues through which the faithful debated religious doctrine.

II. Settling Kentucky

Churches, of course, were not the only governing institutions in the Revolutionary-era trans-Appalachian West. Settlers of Kentucky in the 1770s and 1780s initially organized into stations, log houses connected by a high wooden wall which acted as a fortified structure. Designed to provide defense against Indian raids, stations became less necessary by the early 1790s when Indian threats abated and an increase of migration from eastern states pushed settlers deeper into the western territory.[28] During that decade, the state began to exercise greater influence over the lives of Kentucky's inhabitants. As frontier communities expanded, economic transactions became more complicated, and population numbers swelled, Kentuckians looked to the government for order and stability. After the achievement of statehood in 1792, state and local government emerged as important regulators of daily life in Kentucky. Construction of roads, community defense, litigation of disputed land titles, and regulation of prices all fell under the domain of local governance.[29] Indeed, local courts in 1790s served

[26]In his study on profanity prosecutions within local courts in antebellum Kentucky, "The Making of a Border State Society," 779, Christopher Waldrep argues that "grand juries in some jurisdictions responded closely to upswings and downturns in religious enthusiasm." Increases in profane swearing prosecutions in these areas were "closely connected to outbursts of evangelicalism such as the Campbellite crusade," yet this "did not occur elsewhere in the nineteenth century."

[27]Craig Thompson Friend, *Kentucke's Frontiers* (Bloomington: Indiana University Press, 2010), 234.

[28]Malcolm J. Rohrbough, *Trans-Appalachian Frontier: People, Societies, and Institutions, 1775–1850*, 3rd ed. (Bloomington: Indiana University Press, 2008), 31–32.

[29]Even still, as Carli N. Conklin argues in "Transformed, Not Transcended: The Role of Extrajudicial Dispute Resolution in Antebellum Kentucky and New Jersey," *The American Journal of Legal History* 48, no. 1 (January 2006), that despite what legal scholars such as Morton Horwitz, who focuses largely on eastern regions, contend about the triumph of formalized law over the particularities of extra-judicial arbitration during the antebellum period, such practices continued throughout the early-republic and antebellum periods in Kentucky.

as the "principle agents" of law and order, both regulating and facilitating community affairs.[30] Although county courts of the time did serve a vital role in settling commercial and property disputes, they did little to enforce moral regulations.[31] The 1799 Constitution expanded the power of county courts, enlarging their influence in Kentuckians lives. At some point, every individual, from freeholder to slave, dealt with these county tribunals.[32] This, however, is only a fraction of the story, as the top-down imposition of state-based legal institutions paralleled the persistence of legalities rooted in community consensus, such as those practiced at the local church.[33]

Baptists began settling the Kentucky region during the 1770s and soon established an institutional presence on the frontier. At times whole church bodies traversed the Appalachian Mountains and continued their fellowship in the western country.[34] More often, however, individual Baptists, such as those "in the neighborhood of Bryans" near present day Lexington, "considered their scattered state, and the want of discipline among themselves," and constituted a church. Churches like the one at Bryan's Station, connected through kinship and neighborhood networks, served as vital sites for not only spiritual nourishment, but for social and economic interaction as well. Much like their counterparts in the colonial Chesapeake region, churches in early Kentucky and throughout the trans-Appalachian West served as regulators of public and private life, and as community centers, fostering a sense of belonging on the rural frontier.[35]

Though Conklin does not examine churches' role in settling land disputes, her work demonstrates the need to place legal systems within their local context instead of relying upon historiographical contentions arising from different locations.

[30]Friend, *Kentucke's Frontiers*, 185.

[31]Eslinger, *Citizens of Zion*, 96.

[32]Robert M. Ireland, *The County Courts in Antebellum Kentucky* (Lexington: The University Press of Kentucky, 1979), 4–5, 18.

[33]Rohrbough, *Trans-Appalachian Frontier*, 57, 6. In contrast to Rohrbough's contention that the federal government was relatively weak during the early decades of settlement, William H. Bergmann, in his recent work, *The American National State and the Early West* (Cambridge, Mass.: University of Cambridge Press, 2012), 2, posits the federal government as an important actor in the region, "cultivating partnerships with state governments and local businesses, thereby fostering a commercial economy." Christopher Waldrep, in "The Making of a Border State Society," notes that during the early nineteenth century, "Kentucky courts had established themselves as forums for neighborhood dispute resolution." He has also demonstrated that before 1850, circuit court cases began in front of grand juries, which "often operated with little supervision" and paved the way for "ordinary citizens" to play "a large role in shaping the traffic through the court," allowing "grand jurors to control access to its criminal justice system more often than legal professionals" (773–774).

[34]Najar, *Evangelizing the South*, 97.

[35]Bryan's Station Church Record Book, July 1786, Kentucky Historical Society, Frankfort, Kentucky (hereafter KHS); Monica Najar, *Evangelizing the South*, 3–4; Donald G. Mathews *Religion in the Old South*, 3–4; Edward A. Ayers, *Vengeance and Justice: Crime and*

Once a number of churches had been established in an extended-area, many joined together in regional associations. Revolutionary-era Baptists considered the church as the only scripturally-sanctioned religious body, and members claimed broad authority over their churches' internal affairs. Unlike Methodists and Presbyterians, and certainly Roman Catholics, Baptists did not have to answer to any hierarchical governing organization and possessed remarkable autonomy. Autonomy is not isolation, however, as congregations communicated with their "sister churches," subscribed to (and encouraged subscription of) Baptist periodicals, and sent messengers to annual association meetings. The "basic unit in Baptist polity for intercongregational relationships," associations served as information networks, sites of socialization and, at times, they connected geographically remote congregations. The association was not a permanent body. Churches were free to separate from an association as they pleased, and many did so. But the fluid nature of associational affiliations should not mislead us to think that the governing body had no influence upon an individual church's practice. Associations routinely heard questions over doctrine, ordinance, and discipline.[36] An association was expected to respect the autonomy of its member churches. Yet "for all practical purposes" an association acted as an "ecclesiastical court." If the governing body deemed a church's doctrine unsound, its practices unbiblical, it possessed the power to remove the church from the fellowship. This was not a small matter, as excluding one church could lead to division not only within that particular congregation, but in the association as a whole. And in a time of increased religious competition, when the religious landscape of the trans-Appalachian West burned with schism over matters of doctrine and proper church governance, an unstable association's authority could be further weakened if one church's exclusion led to a series of congregational withdrawals. Thus, if a central responsibility of the association was to cultivate harmonious relations between isolated congregations, its failure to do so could potentially disrupt or alter the ritual of individual churches.[37]

By 1800, six associations in the state housed just over one hundred churches with a total membership of 5,110. The religious fervor emanating from the

Punishment in the 19th-Century American South (New York: Oxford University Press, 1984), 120–121.

[36]At times, however, associations refused to take up such queries or referred them back to the individual churches to consider.

[37]Albert W. Wardin ,Jr., *Tennessee Baptists: A Comprehensive History, 1779–1999* (Brentwood: Tennessee Baptist Convention, 1999), 97–100; See also, Richard F. Nation, *At Home in the Hoosier Hills: Agriculture, Politics, and Religion in Southern Indiana* (Bloomington: Indiana University Press, 2005), 69–70, which notes that, although one of associations' 'primary functions was to help resolve doctrinal disputes within the local church," they instead "often served to fan the flames of dissent."

Cane Ridge meetings swelled Baptist ranks over the next three years, doubling the number of churches, and more than tripling the number of professing Baptists in Kentucky to 15,495. That number increased to 31,689 members in 1820, when the population of Kentucky, including slaves and free blacks, was 564,135.[38] Baptists clearly did not constitute a majority of the population in Kentucky. Yet if we broaden our scope to encompass the entire South, as well as western territories heavily settled by southerners, and place Baptist totals alongside the membership numbers for Methodists and Presbyterians (two denominations that utilized similar disciplinary mechanisms), we cannot deny the importance of church-based law during the early nineteenth century. One historian recently estimated that 25.6% of whites and 11.4% of blacks in southern and western states were members of one of these three groups in 1835. Moreover, the presence of "adherents," those who attended church services but never became full members, drastically enlarged the sphere of influence for church tribunals, and thus, the importance of church bodies in maintaining the social peace of a community.[39] For a large swath of the population, black and white, slave and free, church meetinghouses served as legal and social sites, venues through which individuals' not only worshipped God, but resolved disputes, facilitated economic transactions, found succor, and enforced community norms.

III. Church Tribunals and Localized Law

During the early days of settlement, bringing one's dispute to the local church was not abnormal. Law existed "everywhere and nowhere," as courthouses were not always available. Although local governments increasingly assumed much responsibility for regulating the public order, "there was no single location for law."[40] Circuit courts met in any building that could accommodate the proceedings, locations that otherwise served a variety of purposes. This process continued throughout Kentucky's developmental stages, as the legislature carved new counties out of older ones, and new

[38]Sweet, *Religion on the American Frontier: The Baptists,* 24–26; For the state's population see, James A. Ramage and Andrea S. Watkins, *Kentucky Rising: Democracy, Slavery, and Culture from the Early Republic to the Civil War* (Lexington: University Press of Kentucky, 2011), 238.

[39]Christine Leigh Heyrman, *Southern Cross: The Beginnings of the Bible Belt* (Chapel Hill: University of North Carolina Press, 1997), 265. By 1835, Heyrman notes, 65.8% of whites and 28% of blacks were "adherents" of southern evangelical churches. "According to contemporary accounts," she continues, "Baptist adult adherents outnumbered members by about three to one." For Heyrman, the South includes "Delaware, Maryland, District of Columbia, Virginia, North and South Carolina, Georgia, Kentucky, Tennessee, Alabama, Mississippi, and Missouri, as well as the western country settled principally by southerners—Ohio, Indiana, and Illinois."

[40]Edwards, *The People and Their Peace*, 67.

institutional seats of judicial power were imagined, designed, and built.[41] Churches, too, often lacked official meeting places. Congregations assembled in members' homes, in shared community ("republican") meetinghouses, or, on occasion, at the local courthouse. Even after the Bluegrass Region of north-central Kentucky emerged as a more economically and socially complex society during the second decade of the nineteenth century, churches continued as central legal sites.[42] Thus, when Brother and Sister Collins of the Long Run Church accused Brother Chimmith for "detaining [their] property" from them illegally, there was nothing strange in their actions at all.[43] Indeed, such instances occurred throughout the state during this period. The actions taken by the church body at Long Run presumably restored harmonious relations between the brethren, accomplishing the task of early-nineteenth-century localized law. By mitigating the dispute, the church became a governing mechanism and a site for the production of law.

Churches across Kentucky and elsewhere took up similar charges at their monthly business gatherings. The majority of church disciplinary actions focused on matters of drunkenness, fornication, adultery, swearing, and non-attendance at service. Gambling, dancing, fighting, or "rioting" also dot church record books through the first half of the nineteenth century. Churches did not shy away from more serious civil or criminal matters either (and surely they took all the above instances very seriously), often hearing contract disputes, theft accusations, and indebtedness charges. The David's Fork Baptist Church in Lexington, for example, took up a dispute over a slave sale between two members in 1823. After initially conceding that Brother Hayes owed Brother Duerson "200 Dollars in specie by contract," the church body further investigated the matter, ruling that Brother Duerson did not have "sufficient evidence for cause of grief with regards to the negro."[44] More than simply sites for enforcing social norms, Baptists envisioned their churches as legal venues through which to secure their property and protect the peace of their congregation and church

[41]This should not mislead us to think that local courts did not exert influence in their communities. As Robert Ireland argues, "So essential were these local tribunals to Kentuckians that any group of citizens who experienced the slightest inconvenience in reaching the county seat inevitably petitioned the state legislature for the creation of a new county." See *The County Courts in Antebellum Kentucky*, 4.

[42]On Kentucky's economic transformation see in general, Stephen Aron, *How the West was Lost: The Transformation of Kentucky from Daniel Boone to Henry Clay* (Baltimore, Md.: Johns Hopkins University Press, 1996).

[43]Church Records of Long Run Baptist Church, Jefferson County, Kentucky, November-December 1806, SBTL. Chimmith was admonished and restored to fellowship in December 1806.

[44]David Fork's Baptist Church Minutes, Lexington, Kentucky, May-June 1823, accessed June 11, 2014, http://davidsfork.org/images/David_s_Fork_minutes_1802-1850_PDF.pdf..

neighborhood. When Brother Ashurd of the Mount Pleasant Church found himself mired in a land dispute with Brother Chilton, a member of a nearby church, he asked his fellow Mount Pleasant brethren to investigate the matter. Two months later, after much discussion, the church decided "to say no more about [the case] at present, except [that] one should take the other under *legal* dealings before either of the Churches they belong to."[45]

When constructing their legal system, early Kentucky Baptists relied on procedure, encouraging members to take the "gospel steps," and in so doing, created an accessible and familiar venue through which to settle disputes. Legal sociologists have noted the importance of the disputants' familiarity with the arena utilized when seeking resolution. Resolution outlets "may be distinguished from one another by [their] formality, accessibility, the conception of what is relevant, decisional styles, and the character of authority adhering to actors within [that] arena."[46] Church members encouraged each other to attempt to settle their disputes privately (following the strictures of Matthew 18: 15-17), before bringing them to the church. Any case appearing in front of the church tribunal had already developed into a more serious matter, a crack in the social fabric of the church fellowship, with presumably both parties acknowledging the need for a more authoritative arbiter. Dispute resolution through church courts held a number of advantages. Churches formed investigative committees and "legally" cited transgressors and witnesses to testify. They met monthly and generally settled disputes quickly, with attention paid to the circumstances of each incident. There were no fees, no technical legal jargon, or strangers ruling on one's case. Individual Baptists could be sure that those mitigating their cause —generally white male members—would not only likely be their kin and neighbors, but also instilled with the same moral principles as themselves.[47]

Individuals without a legal identity in the eyes of the state, including married women and slaves, actively used their local churches for dispute resolution, finding in such bodies authoritative recourse largely unavailable to them in local courts. Slaves charged one another with disorderly conduct, theft, and adultery. White women charged others with drunkenness, profane swearing, and at times leveled accusations against husbands and patriarchs for mistreatment or negligence. Though at times lacking a voice in matters of church governance, their actions within the disciplinary sphere—as plaintiffs,

[45]Mount Pleasant Baptist Church Records, Folder 1, July-September 1799, KHS. My emphasis.

[46]Jeffrey Fitzgerald and Richard Dickens, "Disputing in Legal and Nonlegal Contexts: Some Questions for Sociologists of Law," *Law & Society Review* 15, no. 3/4 (1980–1981): 687.

[47]Christopher Waldrep, in his discussion of declining church discipline in post-bellum Kentucky has noted that the very professionalism of southern lawyers "may have made courts appear to be inefficient and ineffective to those familiar with church courts." See Waldrep, "'So Much Sin,'" 541.

defendants, witnesses, and even investigators—directly affected how law developed in the congregational community, and thus helped to define the contours of church authority in maintaining the social peace of a church neighborhood.[48] Brother Thomas Baskett of the Buffalo Lick Baptist Church, for instance, found himself reproved by the church after a female slave spread reports through the neighborhood of his "getting in a violent passion," "[m]aking at her with a knife," and chastising her with a cowhide.[49] The actions of women and free- and enslaved-blacks in early Baptist churches do not, of course, completely refashion our understandings of the gender, racial, and social hierarchies of the early United States. Considered as a whole, however, the workings of these early Baptist church tribunals do challenge us to re-think our conceptions of law's location, its practice, and its beneficiaries in the post-Revolutionary United States.[50]

Not all members turned to churches for every dispute, but all were aware of its existence, and all had access to this arena for remedy. In their disputes with other Baptists, churches expected members to settle such matters at local meetinghouses rather than courthouses. At times, too, church bodies sanctioned members to "pursue ordinary recourse" when settling a dispute. In August 1815 the Elk Lick Primitive Baptist Church of Scott County did just that, sanctioning Brother George Payne "to put [state] law in force if he saw proper to do so" in order to retrieve a debt owed him by Brother Matthew Fields.[51] For white male Baptists like Payne, the persistence of church-based legalisms provided them with a number of options when seeking authoritative mediation.[52] One's choice of venue could potentially alter the outcome of his case, and each individual weighed a number of factors before making his decision. The convenience, accessibility, and knowledge of church procedures undoubtedly assisted those who pursued recourse through this arena, yet Baptists also surely felt the watchful eye of

[48]Some churches did allow women a vote in matters of church government and discipline. Yet increasingly after the Revolution, although white women and African Americans were considered members, church "member" was defined as white male. See Pogue, "'I Cannot Believe the Gospel That is so Much Preached'," 217; Randolph Scully argues that in southeastern Virginia "formal institutional authority in the churches rested on masculinity and freedom." Not until the 1813 did any church in the region explicitly tie participation in church governance to white males, with most following suit in the 1830s. See Scully, *Religion and the Making of Nat Turner's Virginia*, 148–149.

[49]Buffalo Lick Baptist Church Minutes, July–November 1809, FHS.

[50]Edwards, "The Peace," 585. For examples of subordinate groups participating in church disciplinary procedures, as well as the workings of the disciplinary system itself see, Najar, *Evangelizing the South*, chapter 4.

[51]Elk Lick Primitive Baptist Church, vol. 1, August 1815, KHS.

[52]And as Janet Moore Lindman reminds us, "white men served as arbitrators of the social, sexual, and religious behavior of other members." See *Bodies of Belief*, 104.

the church body, aware that its punishment could be just as socially damning as one emanating from the local courthouse.[53]

Disciplinary actions taken at church meetinghouses had the potential to alter cases pending in local courts. For instance, in September 1803, Hiram Mitchell, a member of the South Elkhorn Church of Fayette County, visited the Bryan's Station Church meetinghouse and complained of Bro. John Pickett "for entering a suit against him in Law contrary to gospel rule." The previous April, Pickett had filed suit against Mitchell, claiming that Mitchell's wife, Nancy, made slanderous remarks that significantly injured his character and good standing in the community. Pickett sought five hundred pounds in damages, and the Fayette Circuit Court summoned the Mitchells to its June session. The case was laid over until September, but before a decision could be put down, Mitchell spoke up at the Bryan's Station Church meeting. A church appointed committee conversed with Mitchell and Pickett and satisfied both parties. The case pending in the circuit court was apparently withdrawn, as the September declaration is the last record in the existing case file.[54]

It is unclear why Pickett initially entered the suit in the Fayette Circuit Court rather than immediately approaching the church body. Since Mitchell was a member of a neighboring congregation, Pickett may not have known that Mitchell was even a Baptist. Or perhaps Pickett did not think that his church could successfully mitigate the dispute. Whatever the reason, the resolution of their case demonstrates the ability of church courts to influence the outcome of a case that began in the secular legal system. Scholars have investigated the importance of "setting" in the resolution of disputes. When a dispute moves from one arena to another, say the church to the courthouse, or vice-versa, this has the potential to alter the outcome of the case.[55] Furthermore, it can alter the very nature of the dispute itself. Pickett and Mitchell's dispute began with Nancy Mitchell's alleged slander of Pickett, but it transformed from a simple slander to a dispute between two Baptists, members of two separate congregations, with apparently different visions of how or where the matter should be resolved. In this case, at least, the boundaries of church and secular authority were blurred, as both parties utilized available resolution outlets that best met their immediate needs.

[53]Fitzgerald and Dickins, "Disputing in Legal and Nonlegal Contexts," 687–688, 691. Especially in rural communities, excommunication from the church body could lead to social ostracism. See Waldrep, "'So Much Sin,'" 541.

[54]Bryan's Station Baptist Church, Fayette County, Kentucky, September 1803, KHS. For the court records, see *Pickett v. Mitchell* (1803), Fayette County Circuit Court Records, box 6, drawers 51–53, case no. 746, Kentucky Department of Library and Archives, Frankfort, Kentucky (hereafter KDLA).

[55]Fitzgerald and Dickins, "Disputing in Legal and Nonlegal Contexts," 687–691.

Even when churches were not vigorously meting out discipline or resolving disputes, members actively constructed the contours of their intra-congregational system of law, and thus the sphere of church authority. Between 1807 and 1810, the Fox Run Church in Shelby County recorded only four cases, three for drunkenness and one for "gaming." Despite this apparent lack of disputation or moral regulation, concerns about the ritual of discipline remained prominent. In June 1807 members voted that church business should "be transacted in a private manner; that is, that no persons not of our community should be present." This resolution was followed by a query on whether it was the duty of the church "to declare to the World" the exclusion of "Members for disorderly conduct." In July the church voted that they had no such duty, that disciplinary procedures should remain matters of internal concern. A year later, in March 1808, the church agreed that "in the future all matters of private grief" between members should be "transacted in a private manner when brought before the church," while all other matters were to be transacted publicly. Two months later, Fox Run took up a proposition on the extent of women's authority in matters of church governance, and voted in favor of the proposal, exclaiming that "in the future [female members] have a vote in all things that may come before the Church." In July, however, the church opened the floor for more debate on this resolution, finally deciding in August 1808, "after maturely considering" the matter, that women did not have a "ruling voice in the church." And finally, in October 1809, a member queried as to whether the scriptures provided any mode for bringing complaints to the church other than the "18th Chap of Matthew." The church laid over the query until July 1810, when it agreed that members could bring complaints directly to the church rather than striving to first settle the dispute in private.[56]

These resolutions dealing with the procedure of church discipline—alternate modes for bringing complaints, to what audience would matters be aired, the duties of the church, and who possessed the power to vote—signals a church body grappling with the contours of the disciplinary system itself. Many Baptists, especially white male members, may have still been uneasy about their social status amidst the changing religious and secular landscape of early Kentucky. Allowing non-members, those who had not experienced a re-birth through Christ, to watch as churches disciplined their own for various moral shortcomings surely gave many members pause, as they knew that gossip networks extended well beyond the confines of the church community and that accusations at the meetinghouse could affect their

[56]For all quotes see, Minute Books of Eminence, Kentucky Baptist Church (formerly Fox Run), vol. 1, March 1807, June/July 1807, March 1808, May 1808, July/August 1808, October 1809, July 1810, SBTL.

business or other social transactions. Moreover, the fact that church bodies subjected white patriarchs to the same disciplinary actions as free blacks, slaves, and women, directly challenged their civic identities as sovereign, independent heads-of-households.

Non-members often attended church meetings. Some of these spectators were earnest Christians, who, for whatever reason, had not gained full membership into the church body. Others were relatives of full-members, or nearby residents who visited local meetinghouses because they served as centers for social activity in "church neighbourhoods." Such was the case of Roadham Rout, who in 1834 visited the Mt. Vernon Church in Woodford County. Asked why, not being a member of any church body, he attended the proceedings, he claimed, "I had herd [sic] there was to be dificulty [sic]" in the church "which was the reason of my being there that day."[57] Some outsiders even took a central role in disputes between church members. In May 1803, Robert McAfee, a young lawyer and future Lieutenant Governor of Kentucky, visited "the Holeman's [B]aptist Meeting House, to settle a dispute between two men." Although he further reported that "nothing was done," his brief mention of his intended role in the dispute does complicate our understanding of church autonomy, or rather, the role of outsiders in mitigating differences between church members. McAfee, a lawyer, saw nothing unusual in dispute resolution within the church, as he mentioned the church matter as casually as he did cases he was pleading in the local court. Both Rout's claims and McAfee's actions testify to the continued importance of church meetinghouses as social and legal sites for members and non-members alike.[58] Saturday church meetings also proved a more opportune time for non-members to make contact with those within the church fellowship. If one had a deal to broker with a Baptist church member, where better to find him than at the Saturday conference, before the Sabbath and the strictures against work which came with it? Economic transactions at church gatherings had become so commonplace at the David Fork's meetinghouse near Lexington that by the mid-1820s the church body formed a committee of eight members "to keep order at her meetings and to Forewarn all persons From Selling and buying in time of worship."[59]

[57]"Deposition of Roadham Rout," *Bennett et al Trustees of the Mt. Vernon Church vs. Curd et al* (1836), folder 1, case 7914, box 69, Court of Justice, Woodford Circuit Case files, 1833–1837, (hereafter CJWCC), KDLA.

[58]Robert B. McAfee journals, 1796–1807, folder 1, p. 61, KHS. It does not appear, in 1803 at least, that McAfee was a member of any church. McAfee consistently noted happenings at local churches (especially inter-faith gatherings), including sermons preached by ministers of various Protestant faiths.

[59]David's Fork Baptist Church Minutes, Lexington, Kentucky, June 1826, accessed June 11, 2014, http://davidsfork.org/images/David_s_Fork_minutes_1802-1850_PDF.pdf.

Many Baptist churches welcomed the company of non-members at their meetings and services, and in many ways, their attendance signaled the extended influence of Christianity and the Baptist faith in the wider society. Yet not all outsider reaction to church disciplinary practices was as ambivalent as Rout's or McAfee's. In the context of post-Revolutionary republicanism, in which the virtuous individual was the paragon of citizenship, some believed that church discipline facilitated the development of the nation. For others the practice was a holdover from centuries previous, "'a relic of barbarism.'"[60] Non-members' suspicion of their internal ritual may have convinced some Baptist churches to seek greater privacy when members aired their intimate transgressions, not necessarily for the individuals, but for the church's reputation within the surrounding area.

The process of church discipline, its procedures, participants, and audience were of central importance to Baptists as they sought to maintain the moral purity of their communities. Moreover, in their pursuit to preserve the social peace of their church neighborhoods, Baptists insisted upon church authority over a range of matters that would have otherwise found resolution in secular courts. In doing so, they created law through their church bodies. Responding to a member's query on the power of the church in 1793, the Bryan's Station Church succinctly expressed the Baptist vision for their exclusive communities. "The design of a church," the clerk recorded, "is for the honour [sic] and Glory of God[,] the Advancement of the redeemers kingdom in the world and the good of God's chosen people." Furthermore, "her power extends to make any rule for her own government consistant [sic] with the word of God, and to exercise her power in the Discipline of her members agreeable thereto." Yet, many of these carefully constructed communities of believers, bound by church covenants and rules of governance, witnessed internal dissension and schism due to Campbell and Stone's "Reformation," a religious insurgency which subtly altered many churches' role in enforcing discipline and mitigating disputes. Ultimately, it led some to seek state power to rectify disagreements they themselves could not resolve.[61]

IV. Kentucky Baptist Associations and "The vain imaginations of A. Campbell"

During the 1820s and 1830s, rather than experiencing harmonious relations between and within congregations, Kentucky Baptists experienced a period

[60]Quoted in Wills, *Democratic Religion*, 14.
[61]Bryan's Station Church Records, December 1793, KHS.

of prolonged dissension and schism. The Elkhorn and Long Run Baptist Associations, made up of churches from north-central Kentucky, serve as useful case studies through which to uncover how an increase in internal disputes over doctrine affected the workings of Baptist church tribunals. Kentucky Baptists organized the Elkhorn Association in 1785, the first such body west of the Appalachians. Initially constituted with only five affiliated churches, within ten years the Elkhorn Association housed thirty churches with just under 2,000 members.[62] By the turn of the century, membership in Elkhorn's affiliated churches more than doubled to 4,853.[63] Between 1826 and 1840, from the first rumblings of Campbellism through the next decade, the Elkhorn Association averaged 3,742 members, and continued to be a leading governing organization for Kentucky Baptists.[64] Elkhorn's counterpart, the Long Run Association, resulted from the "Great Revival" of religious sentiment that swept through frontier regions at the turn of the nineteenth century. Responding to the rise in membership, twenty-six churches from seven different counties (including one in the Indiana territory) came together in 1803 and formed the Long Run Association. By 1810, Long Run had added thirteen more churches, bringing its total membership to 2,851, making it the largest association in the state at that time. For the next thirty years, the association averaged nearly 3,200 members and remained one of the principal governing bodies amongst Kentucky Baptists.[65]

In the mid-1820s, the phenomenal growth of the Baptist denomination in Kentucky was severely challenged by Alexander Campbell's rising popularity in the trans-Appalachian West. Campbell, originally a Presbyterian who converted to the Baptist faith in 1812, attacked not only Baptists' system of governance, but their use of creeds, confessions of faith, missionary societies, and their conversion practices. Two years after he preached to the congregation in 1823, the Church of Louisville queried the Long Run Association about the justification of various organizations. "Is there any authority in the New Testament for a Religious body to make human Onsets, and confessions of faith[?]" she asked. And what of associations

[62]Numbers from Basil Manly Jr.'s *Sketches of the History of the Elkhorn Association, Kentucky* (1876), Baptist History Homepage, accessed July 23, 2014, http://baptisthistoryhomepage.com/elkhorn.assoc.his1.manly.html.

[63]Ibid.

[64]For an average, see Records of the Elkhorn Association of Baptists, 1826–1840, SBTL. On the history of the association in general, see Ira Birdwhistell, *The Baptists of the Bluegrass: A History of the Elkhorn Baptist Association, 1785–1985* (Berea, KY: Berea College Press, 1986).

[65]Ira V. Birdwhistell, *Gathered at the River: A Narrative History of the Long Run Baptist Association* (Louisville, Ky.: Long Run Baptist Association, 1978), 9–11; Spencer, *A History of Kentucky Baptists,* vol. 1, 566. For averages see, Book of the Records of Long Run Association, vol. 1, SBTL.

themselves—does the New Testament authorize such bodies, and "if so what is it?" Following Louisville's lead, the Shelbyville Church asked, "Are our associations as annually attended of general utility?"[66] Delegates referred the queries to the church bodies, and requested each to send a reply in their 1826 letter. The queries stirred up some consternation in member churches, as the exclusion-per-member rate for all of Long Run's reporting churches jumped from just 1.04% in 1825 to 4.56% the following year, its highest level in over two decades.[67]

The Elkhorn Association also witnessed disorder among member-churches due to Campbell's teachings. In 1827, two sets of delegates arrived from Lexington's First Baptist Church, each claiming to be the true representatives of that body. The minority faction, who sought to change the church's appellation from "Baptist" to "Church of Christ," had excluded seven "of the most prominent members opposed to them." The majority in turn excluded forty-two members associated with the dissenting faction. The seated delegates at Elkhorn stated their hesitance over interfering "in the internal government of the Churches composing her body," but they were convinced that the majority formed the true First Baptist Church of Lexington. The Elkhorn delegates also warned the minority "of the awful danger and alarming tendency of causing divisions in society by [the] introduction of a system of things by which the name and character of the Baptist denomination would be essentially changed."[68] That same year, however, Kentucky Baptists witnessed the beginnings of revival that lasted for three years. From 1827 to 1828 alone, Elkhorn's churches reported an increase of

[66]Book of Records of the Long Run Association, September 1825, p. 145, SBTL.

[67]The exclusionary rate is based upon Long Run's affiliated churches' membership totals and their reported exclusions for the previous year. In 1805 the exclusionary rate was 4.68%. To place the 1826 percentage in closer context, from 1814 to 1825, it never reached 2% and averaged only 1.47%. The query to the churches, then, ignited dissension and led to a drastic increase in excommunications.

[68]Records of the Elkhorn Association of Baptists, 1827, SBTL. Though the Elkhorn Association did not mention Campbell in 1827, the "Church of Christ" appellation is rooted in the "Restoration" movement headed by Barton Stone and Alexander Campbell. The leader of the dissenting faction was Dr. James Fishback, who, as discussed below, was throughout his life central to many church schisms. His denominational loyalties, if any, are difficult to pin down. During the controversy over the Mt. Vernon meetinghouse in the mid-1830s he stridently insisted that he remained a Baptist preacher. In 1841, however, he attended a meeting for the union of churches of Disciples of Christ. Alonzo Willard Fortune, a historian of Kentucky's Disciples, notes that Fishback at this time "was wavering between the Baptists and Disciples." See Fortune, *The Disciples in Kentucky* (Kentucky: Convention of Christian Churches, 1932), 152. John Spencer notes in his second volume of *History of Kentucky Baptists*, 29–30, that Fishback, though a "fine scholar" and "excellent speaker," "was unstable in all his ways, ever learning, and never able to come to a knowledge of the truth."

1,500 members.[69] Across the state during the three-year revival, Baptist churches received over 15,000 new members.[70]

The revivalist fervor which prevailed through north-central Kentucky owed a great deal to the growing popularity of Campbell's teachings, and for the rest of the 1820s, discord pervaded the region's Baptist churches. Nineteenth-century Baptist historian John Spencer, noting that the revival "probably suspended" many of the schisms bubbling during 1825 and 1826, admitted that it "greatly favored [Campbell's] reformation." Despite the growing membership numbers, Spencer insisted that the revival had left Baptist churches in Kentucky "proportionately weakened in moral power."[71] The Elkhorn and Long Run Associations, and associations throughout the state, continued to deal with doctrinal dissension engendered by Campbell's movement during the last years of the decade. Elkhorn's 1829 circular letter noted the "great agitation" spreading through the region's religious society, but reminded brethren "that in all cases of difficulty and grievance, there are proper tribunals to which we may resort for satisfaction, to which each individual member is accountable for his sentiments."[72] At the following meeting in 1830, the Elkhorn Association dropped communication with the Church at Versailles for "receiving into her membership" Jacob Creath, Jr. who had "in faith and practice, departed from [Elkhorn's] constitution" and who had been active in "constituting minorities." After appointing a committee to investigate the standing of another member-church, and its rumored departure from Elkhorn's constitution, the delegates voted to cease "further correspondence with churches and Associations that hold to certain doctrines of Mr. Alexander Campbell."[73] Delegates to the Long Run Association took a similar route, making clear in 1830 that it was "constituted on a Baptist Philadelphia Confession of faith" and that the Campbellite doctrine stood "in direct opposition to the existence and general dictates of our constitution." The report concluded by urging the transgressors to "discontinue their writings" and cease their "rebellion against the principles of our associational existence."[74]

By 1830, the good-feelings of revival had clearly ended. At times, whole church bodies had departed from the Baptist faith and adopted Campbell's doctrinal views. Others, like Lexington's First Baptist noted above, split into opposing factions. The Long Run Association reported a loss of just over 1,100 between 1829 and 1831. Likewise, Elkhorn churches noted a decline

[69]Records of the Elkhorn Association, 1827–1828, SBTL.
[70]Spencer, *A History of Kentucky Baptists,* vol. 1, 599.
[71]Ibid., 598–599.
[72]Records of the Elkhorn Association of Baptists, 1829, SBTL.
[73]Records of the Elkhorn Association of Baptists, 1830, SBTL.
[74]Book of Records of the Long Run Association, September 1830, p. 176–177, SBTL.

of 892.[75] In just one year, 1829 to 1830, Kentucky Baptist churches suffered a loss of over 5,500 members.[76] "All the intelligent of the denomination saw [by 1830] that the cause of Christ was languishing," Spencer wrote, "that the churches were diminishing in numbers, and still more in piety, intelligence and the enforcement of discipline."[77] Throughout his multi-volume work on Kentucky Baptists, Spencer reverted to harsh language, especially when discussing anti-missionists and anyone associated with Alexander Campbell. Yet a closer look at the disciplinary practices within individual churches bears out his insistence. The dissension, coupled with the revivalist-induced influx and then schism-induced withdrawal of individuals, strained member relations and altered how Baptists envisioned their churches as legal sites.

The Flat Rock Baptist Church of northwest-Shelby County divided over Campbell's teachings in August 1831.[78] At that month's business meeting, twenty-one church members, a minority, met and composed the letter to the Long Run Association requesting recognition as the true church of Flat Rock. "[A] majority of the church," they claimed, had, "*for some time passed* [sic]" departed from "not only the Faith but also the Rules and Regulations of the Baptists." In the decade previous the split, the church clerk recorded charges ranging from "going with vain company," to intoxication, fighting, adultery, mistreatment of children, "joining the Methodist Society," and "going to law" with a fellow member.[79] From 1815 through 1825 (the year the Long Run Association referred the queries over Campbellite doctrine to the churches), the church averaged one-charge-recorded per every 5.5% of the church membership.[80] For the last five years of that period (1820–5), that same average reached 7.34%. In contrast, over the subsequent decade (1826–36) that average collapsed to a mere 0.85%, including no recorded charges for nearly seven years, from October 1829 to July 1836 (See Figure 1).[81] From the first signs of doctrinal disturbance within the Long Run Association in 1825, the Flat Rock church witnessed a decade of declining disciplinary activity. The church body, no longer a site

[75]For numbers see, Records of the Long Run and Elkhorn Associations, 1829–1831, SBTL.

[76]Birdwhistell, *Gathered at the River,* 29–31.

[77]Spencer, *A History of Kentucky Baptists,* vol. 1, 646.

[78]Today the church, now the Pleasant Grove Church, is in the greater-Louisville metropolitan area.

[79]For quotes from church letter, see Pleasant Grove Baptist Church Records (formerly Flat Rock), August 1831, FHS. My emphasis. For range of charges over the decade, see ibid., 1821–1831.

[80]This does not necessarily mean that the church charged 5.5% of the membership with a transgression, as one individual could have multiple charges leveled against them.

[81]For all charges see, Pleasant Grove Baptist Church Records, 1815–1836, FHS; I want to thank Michael Benedict for putting together both Figures 1 and 2 for this article.

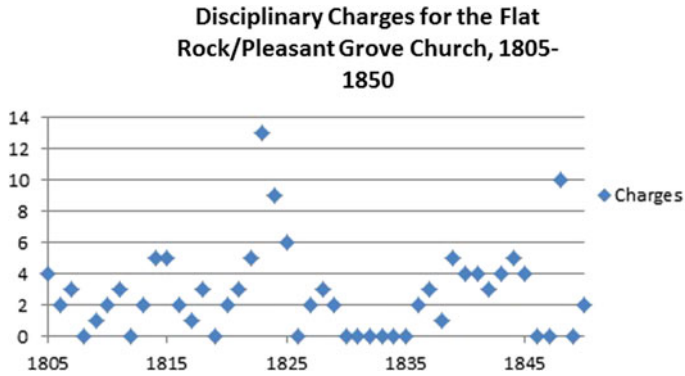

Fig. 1. The Flat Rock Baptist Church was organized in March 1805 in Shelby County, Kentucky. For nearly two years before it divided over Campbell's doctrine in August 1831, and for another five years after, the church clerk did not record any disciplinary activity. In May 1837, the church changed its name to the Pleasant Grove Baptist Church. Not until the 1840s did disciplinary rates again reach their pre-schism levels. See Pleasant Grove Baptist Church Records, 1805-1888, Filson Historical Society, Louisville, Kentucky.

for impartial resolution from one's religious peers, instead became a site of doctrinal contestation and distrust.

Deeper in the Bluegrass, the David's Fork Church of Fayette County also experienced internal dissension and schism due to Campbell's movement, upheaval that by the end of 1820s transformed how white members approached their church for dispute resolution or moral regulation. From 1824 through 1829 the David's Fork Church recorded one charge per every 3.49% of its membership. In 1830, the year a Campbellite minority seceded from the church, that average unsurprisingly skyrocketed to 8.71%, the highest such figure between 1824 and 1840, and nearly three points higher than the next closest year, 1824, which averaged one charge per every 5.88% of the membership. Over the course of the rest of the 1830s, in contrast, the church documented only one charge per every 1.52% of the church membership.[82] This significant drop in disciplinary activity is made even greater when we split the charges down by race. As Figure 2 shows, after 1825, the David's Fork Church focused its disciplinary practices almost exclusively at its black members.

This rolling sum of charges from the church's organization in 1803 through the antebellum period demonstrates continued actions taken against both black

[82]Membership numbers taken from Records of the Elkhorn Association of Baptists, 1824, 1826–1840, SBTL.

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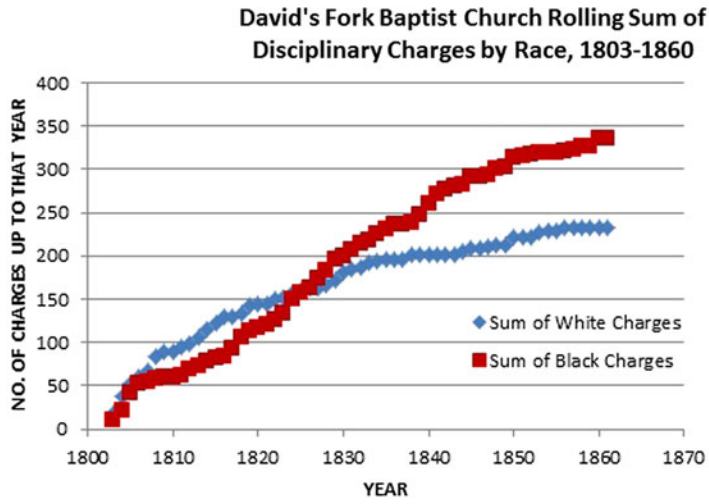

Fig. 2. David's Fork Baptist Church of the greater Lexington area was constituted in December 1802. This graph charts the total number of recorded charges against black and white members through the antebellum period. By the late 1820s, charges against black members eclipsed those leveled against whites. In 1830, a Campbellite minority seceded from the church, and the number of charges against both races, but whites especially, began to decline. See "History," David's Fork Baptist Church, http://davidsfork.org/history.html.

and white members, only to have charges against black members surpass whites amidst the doctrinal turmoil of the late 1820s. From 1830 to 1860, the church recorded 186 charges, only 49 of them leveled against white members, and over one-third of those focused upon members' non-attendance at meetings or interaction with another religious body.[83] Clearly, by 1830 white members of David's Fork had re-imagined the ritual of discipline. The church's disciplinary mechanism had transformed into a forum through which to police the ranks of black members, both free and enslaved, while white members showed increased reticence during the 1830s to discipline one another or utilize the church body for dispute resolution.

Amidst the Campbellite insurgency, both the David's Fork and Flat Rock Baptist Churches witnessed a decline in disciplinary activity. Figures 1 and 2 indicate that the practice of discipline did not completely cease in the two churches. The Flat Rock church resumed its disciplinary activities again in

[83]For all charges, see David Fork's Baptist Church Minutes, 1802–1860, accessed June 11, 2014, http://davidsfork.org/history.html. The church charged ten whites for non-attendance at meetings, and eight for joining or interacting with another religious sect or denomination.

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the early 1840s. The David's Fork Church, too, continued to charge members, especially black members, through the antebellum period. Yet each faced a dearth of disputation and moral regulation during the 1830s due to the changing religious landscape. As historian Nathan Hatch has noted, the increased competition from both the secular and religious spheres—from civic associations and other religious groups—for allegiance during this time period meant that "many denominations maintained their authority only by seldom exercising it."[84] Perhaps Campbell's elevation of the individual's interpretation of the scriptures for salvation undercut attempts at maintaining a communal order. The continued controversy, too, would have instilled distrust amongst the brethren, causing some individuals to look elsewhere for dispute settlement. Moreover, the churches of the Long Run and Elkhorn Associations, as well as with Baptist churches across Kentucky, witnessed a period of expansion and retraction during the late 1820s and early 1830s. Congregants certainly took notice of both neighbors and strangers moving in and out of their church, and this may very well have altered their sense of community and the role of the church in fostering or maintaining social relations. An individual would be far less likely to bring a dispute to his local church if his familiarity with or trust in those who would be deciding the case—one of the chief advantages of church-based arbitration—had receded due to heightened internal tensions. This proved the case for the Brites and Dranes of the Fox Run Church in the early summer of 1831, as both families insisted the charges against them emanated from a "spirit of persecution" which had infiltrated the church.

V. "We do not wish to have any more cases in the Court"

For Shelby County Baptists in 1831, the Campbellites were simply one scourge among others that had recently swept through the area. During the previous year, the county had experienced a smallpox epidemic, a scarcity of drinking water, and an increase of "mad dogs" roaming its towns and villages.[85] In the eyes of some area Baptists, the rabid dogs proved a perfect metaphor for the Campbellites, or as the renowned Baptist preacher John Taylor described them, those "hairbrained [sic] reformers," who "in all their extravagant folly, and wicked disorder," were "tearing churches to pieces."[86] Hair-brained or

[84]Nathan O. Hatch, *The Democratization of American Christianity* (New Haven, Conn.: Yale University Press, 1989), 63.

[85]Geo. L. Willis, Sr., *History of Shelby County, Kentucky* (Shelby County Genealogical-Historical Society's Committee on Printing, 1929), 59–60.

[86]John Taylor, *History of Clear Creek Church; and Campbellism Exposed* (Frankfort, Ky.: A. G. Hodges Commentator Office, 2nd ed., 1830), 35.

not, Campbell's movement divided churches, families, and neighborhoods along religious lines. Within the Long Run Association, at least four churches broke apart, including those of Flat Rock, Harrod's Creek, and Floyd's Fork. In the Elkhorn Association, a number of churches—First Baptist of Lexington, David's Fork, and Clear Creek—divided along doctrinal lines. The Elkhorn Association, too, ceased correspondence with other bodies, such as the churches of South Elkhorn, Versailles, and Providence for departing "from the faith and constitution of the Association."[87]

Similar to other churches in the region, the 1820s proved a period of decreased disciplinary activity for the Fox Run Church.[88] From 1820 to 1824, the church recorded one charge per every 2.59% of the membership. In 1825, the church witnessed a rash of disciplinary cases, leveling one charge per every 12.94% of the church membership, up from only 2.22% the previous year. This drastic increase can partly be attributed to the church's opening up a Sunday morning session for its enslaved members to take part in church discipline (over half of that year's charges were against slaves for disorderly conduct). Yet the record book demonstrates that Campbell's teachings had also crept into members' doctrinal leanings. In August 1825, the church excluded Brother Thomas for making "a public declaration" against "some doctrines held and believed by this Church (and the Baptists, generally)," and which fell in line with the then strengthening Campbellite movement. From 1826 to 1830, the charge per member average dropped to only 1.18%, the bulk of these charges directed at black members. In the five years previous to its accusations against the Dranes and Brites, the Fox Run Church only leveled charges against one white man, in 1829, for intoxication and "whipping his two sisters."[89]

Within this context of doctrinal discord and disciplinary declension, the Fox Run church took up the respective cases of Brethren Drane and Brite. In each, the church failed to dispense a traditional punishment, and it required neither of the two men to make "satisfaction" for their actions. The church simply "disapprobated Brother Brite's proceedings" for allowing such "disorderly

[87]See Records of the Elkhorn Association, 1830, STBL.

[88]For instance, the Harrod's Creek Church divided over Campbell's doctrine in 1831. From 1819 through 1824, the church recorded one charge every 3.8% of the membership body. In contrast, from 1825 through 1830, the same average was only 2.3%. Unfortunately, in 1831, after most of the church party joined the Campbellites, the church book becomes very sloppy, and jumps over most of 1832 before picking back up in 1837. Yet even from that point, with a complete record book, the church documented no charges for three years until recording one in May 1840. See, The Harrod's Creek Baptist Church, Crestwood, Ky., 1819–1840, vol. 1, SBTL. For information on the schism see, Spencer, *A History of Kentucky Baptists,* vol. 1, 348–349.

[89]For all charges and those against Bro. Thomas, see Minute Books of Eminence, Kentucky Baptist Church (formerly Fox Run), August 1829, SBTL. Membership totals taken from Book of Records of the Long Run Association, 1820–1830, SBTL.

preaching"—that of one of the Creaths—in his home. And Drane, it seemed, was only ordered to pay rent on land in his use, but which belonged to Brother John Ford. Presumably, Fox Run members came to these decisions in order to avert disorder, uphold church authority, and maintain peaceful social relations amongst the fellowship.[90]

In June 1831, however, the Brites and Dranes submitted a letter of grievances to the church and demanded it be recorded in the minute book. Their remonstrance made clear that tensions had been bubbling within Fox Run for at least a year. "We are dissatisfied with [B]rother Wm. Ford," the letter began, "for his unwarranted insinuations and reflections which he cast upon us in the church letter of 1830 to the Association." William Ford had, at the very least, made accusations in this letter that the Dranes and Brites were involved with the Campbellites, and perhaps under the influence of one of the Creaths. His subsequent apology, the Dranes and Brites claimed, did "not prove satisfactory." Furthermore, Ford had not only failed to truly account for the doings of the Fox Run church. He had, along with others, "held a Council—we do not mean a Church Council—just before [the 1830 Association meeting] for the purpose of sending Brother Woods and Basket, to try [the Drane's and the Brite's] Faith by the Creed." Apparently, the doctrinal leanings of the two families had been under suspicion for some time. Having been presented to the Long Run Association in 1830, and spoken of in an unsanctioned Council by their fellow church members, the two families believed that they had fallen victim to a "spirit of intolerance and persecution" which had arisen within the Fox Run Church.[91]

The letter to the association and the investigation into their doctrinal leanings were merely fragments of the Drane's and Brite's overall set of complaints against the "leading members" of Fox Run. The church had further refused "to Record the accusation" against James Drane "as it was acted upon." The committee formed to investigate the dispute between Drane and John Ford determined the matter to be a "misunderstanding" and not a willful breach of contract by either party. Yet the church ruled that Drane should "pay fifty dollars for misunderstanding Bro. Ford." The money, however, seemed to be a secondary concern as the Dranes insisted that the church erred in handling the case. For their part, the Brites felt they too had been wronged by the charges laid in against Jeptha. Yes, he had allowed the Creaths to preach in his home, but he did not appreciate the course pursued by "those that took an active part against" him. He and his wife Elizabeth had simply invited neighbors and the Creaths into their home "so that they could be accommodated with seats." The church had no authority in the matter, they

[90]Minute Books of Eminence, April/May 1831, SBTL.
[91]Minute Books of Eminence, June 1831, SBTL.

claimed, because there had been no church resolution prohibiting a member "from inviting who he pleases [into] his own private house." "Now Brethren," the accused concluded, "if this is the way you dispose of business in your courts of Conscience; we do not wish to have any more cases in the Court."[92]

If anything the remonstrance demonstrates how the changing religious landscape could infiltrate the workings of a church's disciplinary system. According to both defendants, the fellowship of the Fox Run church had been broken, and it manifested in unfair disciplinary procedures. The initial charges against each, the Dranes and Brites insisted, resulted primarily from a persecutory spirit which pervaded the minds of some of Fox Run's "leading members." No longer, with the increase in doctrinal disagreement and strained relations (in this case dating back at least a year, and perhaps all the way back to 1825 with Brother Thomas's exclusion), could their church body be expected to serve as a neutral arbitrator, a familiar venue through which to seek resolution. Once the church's "courts of Conscience" and its ritual practice of discipline (one that both created and maintained the fellowship) could no longer be trusted to justly uphold the peace of the congregational body, then the church community was fractured. The Brites and Dranes did not attack the church because they necessarily ceased to believe in its doctrine, but rather because of how the church practiced law.

In 1834, three years after the Dranes and Brites demanded exit from the church, they joined other Baptist dissenters, many from Fox Run, and constituted the Clear Creek Church, a body affiliated with the Disciples of Christ.[93] Not all Baptists who left their congregations under the influence of the Campbellites directly attacked their church's disciplinary procedures. Yet, as has been shown, other congregations that faced internal upheaval or schism due to Campbell and Stone's "Reformation" witnessed a curtailment of disciplinary procedures. For these church-goers, too, the continued dissension and strained relations affected how they approached their church body for authoritative recourse. Fox Run's record book makes no mention of further disputation between Drane, Brite, or any of the dissenters, but for many of their sister churches, schism proved simply the beginning.

VI. "Spiritual Matters in a Tempiral [sic] Court"

Thanks to the efforts of John Taylor, the 1828 schism within the Clear Creek Baptist Church of Woodford County—just one county removed from Shelby

[92]Ibid.

[93]Willis, *History of Shelby County*, 79. This is not to be confused with the Clear Creek Baptist Church of Woodford County.

and bordering Fayette—was probably the most infamous example of Campbell's influence in Kentucky. The "intruders [had] pushed in," Taylor reported in his 1830 pamphlet, *A History of Clear Creek Church; and Campbellism Exposed*, and through their preaching "divided and distracted the church." After the division, the Baptists of Clear Creek, "like many other distressed places in Kentucky," had to share their house and "forbear to commune together at the Lord's table" with those "vulgarly called Campbellites." Campbell's adherents, Taylor remarked, "seem to be very church hungry; if they cannot get a whole one, they will put up with a scrap."[94] Taylor's comments can be read in two ways. Hungry for new followers and converts to their doctrine, Taylor believed that the Campbellites endeavored to sway whole church bodies, or at least a minority faction, to their doctrinal position. His lamentations also point to the material realities of doctrinal dissension and church schism, however, as church meetinghouses throughout Kentucky emerged as sites of negotiation and controversy for competing religious groups. More was at stake than simply the membership rolls. Following schisms, church-factions engaged in bitter contests for rights to, or control over, local meetinghouses and landed property. Each side understood the importance of the meetinghouse for the continued growth and success of their respective body, and as the case of the Mt. Vernon Baptist Church of Woodford County demonstrates, both sides proved willing to seek out state authority to protect what they believed to be their religious and civil rights to the disputed property.

In May 1834 the members of the Mt. Vernon Baptist Church of Woodford County took up a resolution detailing their property claim to the local meetinghouse. The church, the resolution asserted, "considers herself as occupying this house agreeably to the design of the original builders and givers of the lots of grounds." According to the title and original subscription for the construction of the house, Mt. Vernon Baptists had no authority to use the property "in any other way or manner than as a constituted part of the Baptist Society of Kentucky." If church members allowed a preacher of "another sect or denomination" to use the building, then they might "forfeit" their own rights to the house. No church member initially expressed any misgivings with the resolution and it was unanimously approved. Immediately thereafter, however, member John Curd produced a remonstrance signed by twenty-one church members criticizing past actions taken by their pastor, Doctor James Fishback.[95] Curd insisted that he and his followers "must withdraw" from the church body, and since

[94]Taylor, *History of Clear Creek Church*, 5–6, 36.

[95]"Deposition of James Fishback," pp. 23–26, in *Bennett et al v. Curd et al* (1836), folder 1, case 7914, box 69, CJWCC, KDLA.

they possessed "equal rights" to the meetinghouse, they intended to continue using the building for worship.[96] Fishback retorted that Curd had ignored church rules and sought to organize a new church "consisting of the disciples" of Alexander Campbell and Barton Stone. Yet, he still offered them dismissal on good terms from the church, rather than exclusion, and twelve dissenters accepted. Curd and others refused, and were excluded for slander, breach of covenant, railing, and fomenting division within the church. Just days after the exclusions, Curd, his fellow dissenters, and a new pastor, "forcibly entered" the meetinghouse and constituted a new church.[97] Over the summer of 1834, the two factions fought over who possessed rights to or the exclusive use of the meetinghouse. Rather than rejecting the authority of secular legal institutions, church members reluctantly turned to local courts to mediate messy doctrinal disputes that implicated property.

The failure of the Mt. Vernon church tribunal to contain internal dissension led to the fracture of the congregational community, setting in motion nearly four years of negotiations and legal quarrels.[98] After a failed effort at extra-judicial arbitration, Fishback and the church trustees filed suit at the Woodford County Circuit Court meeting in chancery. The court perpetually enjoined Curd's schismatic faction from disturbing Fishback's church "in the exclusive possession and control of the house in controversy," but allowed original subscribers—those who had donated money to build the meetinghouse—even if they had been excluded, to continue using the house when not in use by the Baptist Church. Curd and his co-defendants, though expressing "mortification and pain" in arguing "spiritual matters in a tempiral [sic] court," appealed to Kentucky's Court of Appeals, the state's highest judicatory. Justice George Robertson reversed the lower court's decision, and awarded proportional usage to Curd's faction dependent upon its number of seceding members from the original body (Fishback's church). Robertson based his decree upon an 1814 Act of the Kentucky Legislature. The Act not only outlined a framework for Christian religious groups to fill vacancies on their board of trustees, but forbade those trustees from banning schismatic groups from their former meetinghouses unless they had been

[96]"Remonstrance," in ibid..

[97]"Deposition of James Fishback," pp. 23, 30–32, in ibid. On the new church, see, the complainants' declaration to the Court (9).

[98]Similar disputes over rights or ownership of church meetinghouses had erupted in the late eighteenth century. In the Connecticut River Valley of the Revolutionary era, Congregationalists and Baptists fought over the use of meetinghouses, while, according to historian Randolph Roth, "at times violent conflicts" also arose between Congregationalists and non-Calvinist groups such as Methodists and Universalists. Much like Baptist groups in the trans-Appalachian West during the 1830s, Congregationalists sought to bar these latter groups entirely from town meetinghouses in an effort "to prevent them from wooing away nominal adherents," see, Roth, *The Democratic Dilemma*, 72–73.

excluded for immorality.[99] This, of course, touches on one of the Act's potential problems: who defines "immorality?" The judges? The church body itself? Of the twenty-one remonstrators, Fishback reported that only twelve accepted letters of dismission, and that the church majority excluded the other nine. Fishback also testified the dissenters *had* acted immorally. "By immorality is ment [sic]," he wrote, "'any act, conduct, or practice, which contravenes the divine commands or the social duties of the members of the Church'."[100] For him and surely other Mt. Vernon Baptists, the dissenters' actions constituted immoral behavior, necessitating their excommunication from the church. By basing rights to church property upon proportional membership, instead of upon the rulings of the church, the Court of Appeals, relying upon statute law, directly contravened church authority in matters of internal regulation.

This was not an isolated occurrence. Four years later in a similar church property dispute, another local judiciary, the Franklin Circuit Court, also proved willing to impinge upon the autonomy of church bodies. In March 1841, Frankfort Baptist Church expelled seven members. The excommunicated, along with "some other persons professing the same religion," constituted a new church, elected trustees to fill vacant offices for the church building belonging to the Baptists, and "procured from the County Court of Franklin a ratification of that election." Members of the new church made frequent use of the Baptist meetinghouse, causing difficulties with their former brethren who eventually secured an injunction against the new church at the circuit court. The expelled members answered the injunction bill, insisting their exclusions were irregular, and that "as an organized community of Christians," they had the right to use the house of worship on weekly basis. The Franklin Circuit Court claimed that the 1814 statute did not pertain to the case, removed the three surviving original trustees from their posts, and "decreed a vacation of the appointment of new trustees" by the new church. The Court ordered another election of all the trustees—not simply the three elected by the schismatic group—to be conducted "by all the white members of the church," including those already excluded by the church majority. Its decision, in ordering that the excluded members have a say in their former church's governance, clearly demonstrated the court's willingness to involve itself in internal church affairs. The Court of

[99]"Bennett &c v. Curd &c," Bennett et al v. Curd et al, CJWCC, KDLA. "Curd, Steele, & Redd, 'Answers,'" p. 1, in ibid. For Court of Appeals decision see, Curd v. Wallace, 37 Ky. 190, Lexis 118 (1838). For the 1814 Act, see *Acts Passed at the First Session of the Twenty Second General Assembly, for the Commonwealth of Kentucky: Begun and Held in the Town of Frankfort, on Monday the Sixth Day of December, One Thousand Eight Hundred and Thirteen, and of the Commonwealth the Twenty-Second* (Frankford, Ky.: Gerard & Berry—Printers for the Commonwealth, 1814), 211–212.

[100]"Deposition of James Fishback," p. 3, *Bennett et al v. Curd et al*, CJWCC, KDLA. Fishback quotes the "Webster Dict." Underlined in original.

Appeals, while agreeing that the 1814 Act did not apply to the case, reversed the decision of the lower court, claiming that state-based courts, "having no ecclesiastical jurisdiction, cannot revise or question ordinary acts of church discipline or excision." The exclusions, Justice Robertson continued, must be taken as evidence that they are no longer members of that society, and thus no longer "entitled to any rights or privileges incidental or resulting from membership therein."[101]

Instances such as the disputes at Mt. Vernon and Frankfort highlight the willingness of nineteenth-century judges to dabble in the affairs of independent church bodies, and should encourage scholars to look at disestablishment as a cultural process rooted in redefining the relationship between religious groups and the state. Though in the case of the Frankfort Baptist Church, Justice Robertson and the Kentucky Court of Appeals reversed a lower court's decision which directly interfered with a church's internal operations, the factions' turn to state courts signify an underlying dimension in the history of church-state relations. In many ways, disestablishment, legal-historian Sarah Barringer Gordon insists, "set the stage for extensive legislative and judicial oversight of churches and other religious groups."[102] Through property restrictions and imposition of the corporate form, state governments sought to harness the power and wealth of religious groups. Furthermore, schisms such as those experienced throughout Kentucky in the late 1820s and 1830s unwittingly increased the state's role in religious life. Local courthouses became venues through which individuals debated religious doctrine and constructed the bounds of religious tolerance. Witnesses often noted that they understood the buildings in question as "republican meetinghouses," free for all professing Christians except "Roman Catholics and Shaking Quakers."[103] The cases of Mt. Vernon and Frankfort are simply two examples of religious schism in the antebellum period that led to legal contests over rights to church property.[104]

[101]Shannon v. Frost, 42 Ky. 253, 255, 258, Lexis 151 (1842).

[102]Sarah Barringer Gordon, "The First Disestablishment: Limits on Church Power and Property Before the Civil War," *University of Pennsylvania Law Review* 162, no. 2 (January 2014), 309, 311. For a recent discussion of the process of disestablishment in the nineteenth century, with a particular focus on legislative enactments, see Steven K. Green, *The Second Disestablishment: Church and State in Nineteenth Century America* (New York: Oxford University Press, 2010); See also, in general, McGarvie, *One Nation Under Law.*

[103]"Deposition of James McGee," in *Baptist Church of Lancaster v. Presbyterian Church of Lancaster* (1855), Garrard County Circuit Court, Chancery/Equity Case Files, box 76, bundle 308, case 24-28, KDLA.

[104]I have identified four other cases—Gibson v. Armstong, 46 Ky. 481, Lexis 63 (1847), Hadden v. Chorn, 47 Ky. 70, Lexis 121 (1847), Scott v. Curle, 48 Ky. 17, Lexis 5 (1848), Berryman v. Reese, 50 Ky. 287, Lexis 58 (1850)—which revolved around disputed property after a schism. During the post-bellum period, and in Border States especially, many church property conflicts centered upon racial ideology and not necessarily theological disagreements. For a work focused

Yet by examining these and other instances, we can better uncover how doctrinal dissension and schism begot "a jurisprudence of disestablishment created through, rather than in opposition to, the legal system."[105]

The doctrinal controversy and church schism resulting from Campbell's "Reformation" reveals how a region's transforming religious culture impacted individuals' conceptions of the broader legal culture. Churches served as important sites for the production of localized law. By pursuing dispute resolution and disciplining moral transgressors at town meetinghouses, members constructed their churches' institutional form and authoritative reach. Law emanated from the social relations of the church neighborhood, manifesting through a variety of institutions and social interactions. Campbell's critiques of Baptists' church governance and his elevation of the individual over the collective will of the congregation had an immense influence throughout north-central Kentucky during the 1820s and 1830s, straining member-relations and dividing churches and neighborhoods along doctrinal lines. Amidst this discord, as dissension and distrust pervaded Kentucky churches, individuals no longer envisioned their church bodies as neutral arbiters. This resulted in not only a decline of disciplinary activity—an alteration of church ritual—within afflicted churches, but also a turn to secular courts as churches sought to secure their property rights even if their membership ranks proved fluid and unstable. Church courts' failure to maintain the peace of their communities, then, inadvertently further constructed the contours of church-state relations in the nineteenth-century United States.

on Missouri, see Lucas P. Volkman, "Houses Divided: Evangelical Schisms, Society, and Law and the Crisis of the Union in Missouri, 1837-1876," (Ph.D. Dissertation, University of Missouri, 2012). Today, church property disputes have found new life due to the cultural politics of gay marriage. See, for example, Michelle Boorstein, "After Prolonged Legal Battle, Virginia Episcopalians Prepare to Reclaim Property," *The Washington Post,* February 11, 2012, accessed August 26, 2014, http://www.washingtonpost.com/local/after-prolonged-legal-battle-virginia-episcopalians-prepare-to-reclaim-property/2012/02/08/gIQAhfJI7Q_story.html.

[105]Gordon, "The First Disestablishment," 320.

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