

CIVIL THEOLOGY AND CHURCH ESTABLISHMENTS IN REVOLUTIONARY AMERICA*

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ABSTRACT. *The discourse of America's founding generation, it is now widely recognized, was rich and variegated in its composition, drawing upon the commonwealth tradition, the English common law, Montesquieu, Locke, Scottish moral philosophy, and the classics. These sources yield significant clues as to how eighteenth-century Americans viewed religious liberty and church–state relations, subjects of the First Amendment to the Constitution. Supplementing the work of legal historians on the religious provisions of the early state constitutions, the study of political ideas suggests the parameters of the eighteenth-century debate over the effects which various types of religious belief and ecclesiastical establishment had upon manners and institutions. It also reveals the ideological underpinnings of the apparently inconsistent legal provisions for religion at the state level, and, far from settling the elusive question of 'original intent', highlights the nature of the divisions within the founding generation.*

I

The separation of church and state is one of the most contentious areas of contemporary American political culture.¹ Although jurists and politicians dominate the debate, historians have also been drawn in because of the tremendous amount of authority invested in the religious provisions of the First Amendment to the Constitution: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.' These clauses have been subjected to conflicting liberal and conservative readings. Conservative critics of the broad construction placed on the First Amendment by an activist judiciary have argued on grounds of original intent that this measure has been misinterpreted. This position has received some support from ecclesiastical historians, in particular Thomas Curry, who maintains that in eighteenth-century terms an 'establishment' implied a degree of preference. In other words, given that there was no such entity as a non-preferential or multiple establishment at the time of the First Amendment, then the

* I should like to thank Tim Breen, John Robertson, Dan Greenstein, and John McCaffrey for commenting on an earlier draft of this paper.

¹ See e.g. M. Marty, 'The Virginia statute two hundred years later', in M. Peterson and R. Vaughan, eds., *The Virginia statute for religious freedom* (Cambridge, 1988); K. D. Wald, *Religion and politics in the United States* (New York, 1987), pp. 131–3.

constitutional prohibition of establishments does not preclude non-preferential state support for Christianity. Furthermore, conservatives argue, the First Amendment applied only at the federal level, and did not prohibit establishments in the individual states.² These views are starkly contradicted by the liberal thesis of Leonard Levy, who argues that the constitutional prohibition on establishments has always excluded even a non-preferential multi-denominational establishment, and is incorporated at the state level through the Fourteenth Amendment.³

Original intent is, of course, a chimera.⁴ Partisans of both liberal and conservative camps are on marshy ground, as it is impossible to recover a single straightforward 'original intent'. Whose 'original intent' determines the issue: the original intent of the state ratifying conventions which suggested amendments to the initial Constitution; the First Amendment's sponsors, notably James Madison; those congressmen who altered it in its passage through both houses and committee; or the members of the various state legislatures which ratified the bill of rights? Moreover, at each stage the clauses under debate suggested a multiplicity of interpretations. It is impossible to recover a single position which adequately describes the views of the founders: there was no unanimous understanding of the First Amendment.

On the other hand, the historian of ideas can perhaps suggest a way forward which bypasses some of the intractable problems faced by the constitutional jurist. The history of the political and ecclesiological discourses of the founding era can at least establish the broad parameters within which the statesmen of the early American republic discussed and debated the pros and cons of established religion and the scope of liberty of conscience. Legal historians have tended, when establishing a wider context for their analyses of original intent, to approach the question via the texts of late eighteenth-century state constitutions.⁵ This has opened up the subject quite considerably, for these constitutions embrace a wide variety of positions on the question of religious establishments. Nevertheless, jurists have not engaged fully with the tremendous revolution in the history of eighteenth-century American political ideas.

Developments in the history of political thought over the past thirty years have transformed our understanding of the origins of the American Revolution and of the foundations of the new republic's constitution. Displacing the Lockean liberal tradition which had hitherto underpinned America's myth of origins, the works of Bernard Bailyn and Gordon Wood highlighted the importance of a libertarian ideology based upon classical notions of civic virtue

² T. J. Curry, *The first freedoms: church and state in America to the passage of the first amendment* (Oxford, 1986); G. V. Bradley, *Church-state relationships in America* (Westport, CT, 1987).

³ L. W. Levy, *The establishment clause: religion and the first amendment* (New York, 1986).

⁴ D. S. Lutz, *A preface to American political theory* (Lawrence, KS, 1992), ch. 3; J. Rakove, *Original meanings: politics and ideas in the making of the Constitution* (New York, 1996).

⁵ M. W. McConnell, 'The origins and historical understanding of the free exercise of religion', *Harvard Law Review*, 103 (1990), pp. 1409–1517.

in which freedom was conceived as participatory rather than as a passive state of immunity from interference.⁶

More recently the revisionists have themselves been subject to some revision. A tradition of Lockean liberalism is being reintegrated into the new ideological landscape uncovered by the revisionists. Alan Houston has pointed to the danger of modern historians' exaggerating differences between civic republican and Lockean liberal traditions, of which contemporaries were themselves unaware. Self-rule links the two putative traditions: participatory liberty, virtue, and corruption were not antithetical to rights. James T. Kloppenberg has shown how civic, liberal and religious ideas were fused and recombined at various stages in America's revolutionary transformation.⁷

However, it is also worth pointing out that even the champions of republicanism never claimed that this species of discourse exerted a total dominance over the patriotic ideology of revolutionary America. Bailyn in particular scrupulously avoided reifying classical republican arguments into 'civic humanism'. Rather, he went out of his way to identify the various influences which in different proportions, and in combination, constituted the ideological origins of the American Revolution. These included the tradition of English common law jurisprudence, and its most systematic exponent, William Blackstone; the ideas of the European Enlightenment, most notably Montesquieu and the writers of the Scottish Enlightenment; English whig historiography; Calvinist political theory – the legacy of New England Puritanism – which included arguments for resistance and a compact theory of government; and the ancient model of the classics, which was a direct influence on American thought, though, of course, its message was also received indirectly, mediated through the early modern language of classical republicanism.⁸ Donald Lutz's thorough analysis of contemporary political writings has indeed confirmed that Montesquieu and Blackstone were the two most cited authorities of the founding era,⁹ while Jack P. Greene has re-emphasized the importance of the assertion of the traditional rights of Englishmen – parliaments and common law – in the emergence of a revolutionary ideology.¹⁰ Some historians have also drawn attention to the importance of millennialist beliefs and rhetoric, others to Calvinist theories of defensive arms transmitted through Scots–Irish Presbyterianism.¹¹ The result

⁶ B. Bailyn, *The ideological origins of the American Revolution* (Cambridge, MA, 1967); G. S. Wood, *The creation of the American republic, 1776–1787* ([1969]; New York, 1972).

⁷ A. C. Houston, *Algernon Sidney and the republican heritage in England and America* (Princeton, 1991); J. T. Kloppenberg, 'The virtues of liberalism: Christianity, republicanism and ethics in early American political discourse', *Journal of American History*, 74 (1987), pp. 9–33.

⁸ Bailyn, *Ideological origins*, ch. 2.

⁹ D. S. Lutz, 'The relative influence of European writers on late eighteenth century American political thought', *American Political Science Review*, 78 (1984), pp. 190, 193.

¹⁰ J. P. Greene, *Peripheries and center* ([1986]; New York, 1990).

¹¹ See e.g. R. Bloch, *Visionary republic* (Cambridge, 1985); B. Bailyn, 'Religion and revolution: three biographical studies', *Perspectives in American History*, 4 (1970), pp. 85–169; J. C. D. Clark, *The language of liberty, 1660–1832* (Cambridge, 1994), pp. 122–3, 264–6, 276.

is a more textured and pluralistic map of the ideological sources of American republicanism, though the civic tradition is still accorded an important role.

The revolution in the history of early American republicanism initiated by the champions of the classical republican interpretation led to a number of plausible new perspectives on problems in late eighteenth-century American history, such as the debate over the future economic development of the infant republic and the fear that it might be swamped by commerce, luxury, and corruption.¹² However, the new historiography has had less impact on the contentious question of church–state relations in the founding era. Historians have, by and large, ignored the importance of civil theology within republicanism and its constituent traditions.¹³ The discourse of civil theology¹⁴ involved the recognition that religious beliefs were not irrelevant to political life. Just as different types of economic activity or military organization were seen respectively to be either supportive or harmful to liberty, so also religious doctrines were classified in terms of their effects on manners and institutions.

Civil theology was not a dogma; rather it marked the parameters of a conversation or debate which rested on the shared assumption that there was some correlation between a society's religion and its government. It assumed both conservative and radical forms, the former focusing more on the beneficial effect of religion on behaviour, the latter on the pernicious effects of priestcraft. What is at issue here is not the identity of the particular strain which predominated in late eighteenth-century America, but the transmission of civil theology as a contested discourse which informed the vexed question of church–state relations in the new republic. As we shall see, eighteenth-century Americans inherited the insights of civil theology from the various constituent sources of their political culture.

II

Religion was at the troubled heart of early modern republican ideology. According to Machiavelli's notorious position on civic religion, Christianity, with its glorification of humility and contemplation, was less useful to states than the pagan exaltation of worldly heroes.¹⁵ When the political experiments of the 1650s concentrated English minds on the possibilities of republicanism, a pronounced tension appeared between Machiavelli's pagan ideal and visions of a reconstituted Hebraic polity. For example, the legacy of James Harrington, the most influential of Machiavelli's English interpreters, shows some am-

¹² D. McCoy, *The elusive republic* ([1980]; New York, 1982).

¹³ There are some exceptions. M. A. Noll, *Princeton and the republic, 1768–1822* (Princeton, 1989), explores notions of a virtuous Christian republicanism, and N. Hatch, *The sacred cause of liberty* (New Haven, 1977), examines 'civil millennialism'.

¹⁴ 'Civil theology' as described here should not be confused with 'civil religion', the secular worship of America's republican creed, for which see R. E. Richey and D. G. Jones, eds., *American civil religion* (New York, 1974).

¹⁵ Machiavelli, *Discourses*, ed. B. Crick (Harmondsworth, 1970), Bk 1, chs. 11–15, pp. 139–52.

bivalence in the sphere of ecclesiastical polity: the utopian republic outlined in *Oceana* embraced both a national established religion and toleration.¹⁶

Republican liberty also became intertwined with the liberty from Rome which in the first instance defined England's Protestant freedoms. Andrew Marvell, for example, catalogued in some detail the deleterious political and social consequences of Roman Catholicism, such as the tyranny of priestcraft over free consciences, and the perversion of morality by casuistry.¹⁷ From the Restoration era, Anglicans also began to reflect on the dangers of religious enthusiasm, and attacked the dissenting remnants of puritanism as a perverted species of Protestantism which was infected with dangerously radical politics of resistance and king-killing. The critiques of Catholicism and of religious enthusiasm became part of the standard baggage of English social and political theory. However, Machiavellian civic religion was to reassert itself in the late seventeenth century, in combination with a theology of latitude and concern to reverse the declension from the simplicities of primitive Christianity, but at whose extremes could be found a dislike of clerical disputation, a critical approach to Scripture and an idealization of an unsullied – and hence consensual – natural religion.¹⁸ A more generalized critique emerged of the oppressions associated with priestly religions, Protestant as well as Roman Catholic. Robert Molesworth, in a celebrated account of the rise of despotism in Lutheran Denmark, argued that it had been

a great mistake among us, that the Popish religion is the only one, of all the Christian sects, proper to introduce and establish slavery in a nation ... it is not Popery, as such, but the doctrine of a blind obedience, in what religion soever it be found, that is the destruction of the liberty, and consequently of all the happiness of any nation.¹⁹

The particular idiom of English republicanism which was to prove so influential in American revolutionary discourse was formulated by John Trenchard and Thomas Gordon in *Cato's Letters* and the *Independent Whig*. This new brand of republican freethinking was heterodox, subversive in some cases of revealed Christian mystery and tending towards a minimalist natural religion, yet also appreciative of the Ciceronian distinction between a vain *superstitio* and the functional utility of a civic *religio*.²⁰ Thus, although Roman

¹⁶ M. Goldie, 'The civil religion of James Harrington', in A. Pagden, ed., *The languages of political theory in early modern Europe* (Cambridge, 1987).

¹⁷ [Andrew Marvell], *An account of the growth of popery and arbitrary government in England* (1677; repr., Farnborough, 1971).

¹⁸ B. Worden, 'English republicanism', in J. H. Burns and M. Goldie, eds., *The Cambridge history of political thought, 1450–1700* (Cambridge, 1991), pp. 472–4. Interestingly, one of the leading influences on this tradition, Edward, Lord Herbert of Cherbury, *The antient religion of the Gentiles* (1663; English trans., London, 1705), pp. 3–4, identified belief in a doctrine of future rewards and punishments as one of the five universal attributes of natural religion.

¹⁹ Robert Molesworth, *An account of Denmark as it was in the year 1692* (1694; 5th edn, Glasgow, 1745), p. 182.

²⁰ M. Goldie, 'Priestcraft and the birth of whiggism', in N. Phillipson and Q. Skinner eds., *Political discourse in early modern Britain* (Cambridge, 1993), p. 211; J. Champion, *The pillars of*

Catholicism and high church Anglican clericalism, indeed priestcrafts of all sorts, were undoubted bugbears, there was still an important place in Trenchard's and Gordon's scheme of a whig commonwealth for institutionalized Christianity. While 'craft' was a foil for 'conscience', virtue and liberty were complemented by – indeed, unattainable without – true religion, which moderated the passions. Atheists, on the other hand, acted without the restraint imposed by the fear of God. The crux of the matter lay in defining the proper relationship of church and state, the powers and status of the clergy, and the creed to be propagated.²¹

For classical republicans, the classics did not – as is often assumed – provide a wholly secular model of civilization for the early modern world. The reception of a language of politics derived from the republics of pagan antiquity did not lead to the secularization of early modern discourse. Religion had played a fundamental part in the thought of several of the principal political writers in the classical canon. Cicero had stressed in *De legibus* the importance of inculcating a republican citizenry with the notion that the gods were the rulers of all things and that they carefully observed the characters of men.²² The Roman history of Polybius focused on the corruption, decline, and transformation of political systems, and was driven by admiration of triadic mixed constitutions of monarchy, aristocracy, and democracy. These attractive features established Polybian ideas at the heart of the English whig tradition and its American continuation. It is thus of considerable significance that Polybius attributed to religion the decisive superiority of the Roman republic over its contemporary rival Carthage. Moreover, he drew attention to a particular pagan doctrine which played a vital role in the maintenance of republican cohesion – the punishments of Hades, a belief whose anticipation of Christianity would mesh neatly with the insights of eighteenth-century civil theology.²³

priestcraft shaken (Cambridge, 1992), p. 185. For a Lockean reading, see R. Hamowy, 'Cato's Letters, John Locke, and the republican paradigm', *History of Political Thought*, 11 (1990), pp. 273–94.

²¹ *The Independent Whig* (2nd edn, London, 1722), pp. xxxvi, 8, 19, 325, 328–9, 347; *Cato's Letters*, no. 66, 17 Feb., 1721, ed. R. Hamowy (2 vols., Indianapolis, 1995), 1, pp. 462–71. For the 'Protestant' reception of Trenchard and Gordon in the colonies, see C. Strout, *The new heavens and new earth: political religion in America* (New York, 1974), p. 55; H. May, *The Enlightenment in America* (Oxford, 1976), p. 156; J. Butler, *Awash in a sea of faith: Christianizing the American people* (Cambridge, MA, 1990), p. 199; E. Gaustad, *Neither king nor prelate: religion and the new nation, 1776–1826* (Grand Rapids, 1993), p. 34; Clark, *Language of liberty*, pp. 26–7.

²² Cicero, *De legibus* (Loeb edn (with *De republica*), trans. C. Keyes ([1928]; Cambridge, MA, 1966)), book II, vi, 15–xxvii, 60, at pp. 389–457; C. D. Hazen, *Contemporary American opinion of the French Revolution* ([1897]; repr. Gloucester, MA, 1964), p. 267, notes that Ciceronian arguments for the utility of religion were deployed in America during the 1790s.

²³ Polybius, *The rise of the Roman empire*, trans. I. Scott-Kilvert (London and New York, 1979), p. 349; G. Chinard, 'Polybius and the American constitution', *Journal of the History of Ideas*, 1 (1940), pp. 38–58. Cf. Plutarch, 'Against Colotes', *Plutarch's morals*, v (5th edn, London, 1718), pp. 351–2.

Eighteenth-century historians of Rome, including the ones most widely read in America such as Laurence Echard and Oliver Goldsmith, and the much-translated French writers, the Abbé Vertot and the Jansenist Charles Rollin, tended to allot important roles to religious ideas and institutions in the rise and fall of the republic. In particular, the religious institutions established by the second king Numa Pompilius were widely regarded as essential pillars of Rome's phenomenal success and rise. While Romulus laid the foundations of Roman martial valour and ferocity, Numa was the architect of Roman civility, whose religious institutions domesticated these aggressive manners in the interests of internal civil stability.²⁴ However, Edward Wortley Montagu, Jr, in his influential *Reflections on the rise and fall of the antient republics* (1759), argued that the 'atheistical doctrine' of Epicurus had undermined this civic religion. Whereas the Pompilian religion had been well suited to Roman policy, the Epicurean system depended on a different metaphysic. The civic virtue of the former was engendered through fear of the gods and a firm belief in a superintending providence. Epicureanism was merely a moral philosophy without a theological apparatus of obligation: 'of what service is the best system of morality when the sanction of future rewards and punishments, the great motive which should enforce the practice, is removed by the denial of a providence, and the doctrine of annihilation?' Montagu attributed the main cause of the 'declension' of the Roman republic to deep religious causes; the flood of luxury which had corrupted Roman manners had been facilitated by the rise of Epicureanism in the stead of a Pompilian religion which bore a suspicious resemblance to Christianity.²⁵ Similarly, Adam Ferguson attributed a major role in the corruption of Rome's constitutional self-government to the influx from Greece of noxious non-providentialist philosophy. Although Ferguson was an opponent of American independence, his *History of the progress and termination of the Roman republic* (1783) was, nevertheless, widely cited by the founding generation of the U.S.²⁶

This approach to the classification of beliefs also surfaced in the Lockean

²⁴ Laurence Echard, *The Roman history* (10th edn, London, 1734), pp. 21–2; Oliver Goldsmith, *The Roman history* (2 vols., London, 1769), I, pp. 23–4; Charles Rollin, *The Roman history* (2 vols., London, 1739), I, pp. iv–vi, 85–6; Abbé Vertot, *The history of the revolutions that happened in the government of the Roman republic*, trans. M. Ozell (2 vols., London, 1720), I, pp. 4–5, 16–18. For the wide influence of these histories in America, see H. T. Colbourn, *The lamp of experience* (Chapel Hill, 1965), Appendix II. Cf. Champion, *Pillars of priestcraft*, ch. 6; also the views of classical antiquity found in William Warburton, *The divine legation of Moses* (2 vols., London, 1738–41), I, pp. 102–5, 131–7, 264–6, 284–7, 295–300. For the theism of Rollin's classical histories, see W. Gribbin, 'Rollin's histories and American republicanism', *William and Mary Quarterly*, 3rd ser., 29 (1972), pp. 611–22. For the extensive debate on the significance of the classics for eighteenth-century Americans, see C. Richards, *The founders and the classics: Greece, Rome and the American Enlightenment* ([1994]; pbk edn, Cambridge, MA, 1995), 'Introduction'.

²⁵ Edward Wortley Montagu, Jr, *Reflections on the rise and fall of the antient republics* (London, 1759), pp. 23, 225–6, 270, 293–8, 301–10. For Montagu's influence in America, see Colbourn, *Lamp of experience*, Appendix II.

²⁶ Adam Ferguson, *The history of the progress and termination of the Roman republic* (3 vols., London, 1783), I, p. 10; II, pp. 112–15; Chinard, 'Polybius', p. 45.

scheme of religious tolerance. Locke's *Letter concerning toleration* advanced a civil theology based on the distinction between 'speculative' and 'practical' opinions. 'Speculative' opinions, Locke argued, 'terminate simply in the understanding', and could safely be tolerated, whereas 'practical' opinions 'influence the will and manners'. Locke considered that 'the business of the laws is not to provide for the truth of opinions, but for the safety and security of the commonwealth, and of every particular man's goods and person', which might well need to be protected from certain 'practical' beliefs: 'No opinions contrary to human society, or to those moral rules which are necessary to the preservation of civil society, are to be tolerated by the magistrate'. Without succumbing to unseemly bigotry, Locke outlined certain general doctrines which were socially subversive, including those associated with Roman Catholic political theology which threatened to pervert the allegiance of the subject. On the other hand, atheists undermined the basic building-blocks of trust – oaths and promises – upon which society depended. Though clearly jettisoning confessionalism – the notion that the state should uphold religious truth – Locke had carefully qualified the ideal of toleration with the argument that the state could legitimately regulate 'practical opinions' without in any way compromising its religious neutrality.²⁷ Locke's taxonomy was appropriated by William Warburton and his followers within the ranks of Georgian England's magisterial Enlightenment, to uphold a utilitarian and explicitly non-theological case for religious establishments. In *The divine legation of Moses* (1738–41), one of the most widely debated texts in eighteenth-century England, Warburton argued that belief in a doctrine of future rewards and punishments was a social necessity. Moreover, it had prevailed in every age and culture, with the glaring exception of the Hebrews who, being governed directly by God through a special divine providence, had not needed a doctrine of future rewards and punishments. Warburtonian argument was still a notable feature of English political debate during the era of the American Revolution.²⁸

Similar arguments prevailed within the non-Humean mainstream of the Scottish Enlightenment. The works and pupils of Glasgow University's celebrated Irish-born professor of moral philosophy, Francis Hutcheson, are recognized as having been crucial to the transmission of commonwealth whig politics and enlightened moral sense ethics to the mid-eighteenth-century colonies. A champion of religious liberty, Hutcheson favoured a 'general toleration', but was keenly aware of the need to set limits to religious freedom:

²⁷ John Locke, *A letter concerning toleration* (1689; Boston, 1743), pp. 52–3, 59–62; E. Sandoz, *A government of laws: political theory, religion and the American founding* (Baton Rouge and London, 1990), pp. 80–1. For similar religious provisions in the Fundamental Constitutions of Carolina (1669), which Locke had a hand in drafting, see McConnell, 'Free exercise', pp. 1428–9.

²⁸ B. W. Young, *Religion and Enlightenment in eighteenth-century England* (Oxford, 1998), ch. 5; P. N. Miller, *Defining the common good: empire, religion and philosophy in eighteenth-century Britain* (Cambridge, 1994), ch. 5, esp. pp. 300–7. For Warburton's influence in America, see A. Baldwin, *The New England clergy and the American Revolution* (Durham, NC, 1928), pp. 8–10; Curry, *First freedoms*, p. 121.

‘As to direct atheism, or denial of a moral providence, or of the obligations of the moral or social virtues, these indeed directly tend to hurt the state in its most important interests’. Nor was it simply a matter of setting limits to freedom; the state also had an active role to play in promoting a minimal core of religious tenets to further the overall good of society. Its components were a belief in a benign deity whose providence governed the world and who dispensed justice in a future state by rewarding ‘all social dispositions, and punishing the contrary’. It was necessary for any ‘civil power’ to see that the people were ‘well instructed in these points’.²⁹

The English common law tradition also embodied the values of civil theology. In a decision of 1676 Chief Justice Hale clearly established blasphemy as an offence at common law, arguing that ‘to say “religion is a cheat” is to dissolve all the obligations by which civil societies are preserved, and Christianity being parcel of the laws of England, therefore, to reproach the Christian religion is to speak in subversion of the law.’ This view was echoed by Mansfield and Blackstone, and, although challenged by Thomas Jefferson, confirmed by the decision of Chief Justice James Kent in the New York blasphemy case of ‘The people v. Ruggles’ (1811).³⁰

The social consequences of organized religion constituted a significant theme of the European Enlightenment. In their different ways, Locke, Warburton, Hutcheson, and the common lawyers point up the marginal impact made upon received assumptions by the sceptical Huguenot encyclopedist Pierre Bayle, the first major figure to undermine the supposed contradiction of a society of atheists. Atheism was understood to mean not only that one had no belief in a God, but also that one behaved as if there were no God. Bayle himself was not so much an atheist as a detached and fideistic Augustinian ironist; nevertheless, he tried to separate atheistic doctrine from its automatic association with immoral and antisocial consequences.³¹

Montesquieu, the most widely cited authority in the writings of the American founding generation, was sceptical of Bayle’s claim that a society of atheists

²⁹ Francis Hutcheson, *A system of moral philosophy* (2 vols., London, 1755), II, pp. 310–17. See John Witherspoon, *Lectures on moral philosophy*, in *Works* (9 vols., Edinburgh, 1804–5), VII, pp. 119–21; J. L. McAllister, ‘Francis Alison and John Witherspoon: political philosophers and revolutionaries’, *Journal of Presbyterian History*, 54 (1976), p. 44.

³⁰ L. W. Levy, *Blasphemy* ([1993]; Chapel Hill, 1995), pp. 219–22, 326–30, 401–6, 409–11, 413; A. Cromartie, *Sir Matthew Hale, 1609–1676* (Cambridge, 1995), pp. 174–5; R. Lund, ‘Irony as subversion: Thomas Woolston and the crime of wit’, in R. Lund, ed., *The margins of orthodoxy: heterodox writing and cultural response, 1660–1750* (Cambridge, 1995), pp. 174, 184, 187; Thomas Jefferson, ‘Inquiry whether Christianity is a part of the Common Law’ (1768?), in M. DeWolfe Howe, *Cases on church and state in the United States* (Cambridge, MA, 1952), pp. 8–13; Jefferson to Thomas Cooper, 10 Feb. 1814, and to John Cartwright, 5 June 1824, in Jefferson, *Writings*, ed. M. Peterson (New York, 1984), pp. 1321–9, 1494–5; Clark, *Language of liberty*, pp. 176–80; G. Wood, *The radicalism of the American Revolution* (New York, 1992), p. 331.

³¹ Pierre Bayle, *Pensées diverses sur la comète* (1682; 2 vols., Paris, 1984), esp. II, pp. 5–159. For Warburton’s *Divine legation* as a response to Bayle see P. Rossi, *The dark abyss of time*, trans. L. Cochrane (Chicago, 1984), p. 240.

could function successfully: ‘even a false religion is the best security we can have of the probity of men’. Civil theology was of some importance in Montesquieu’s pioneering sociology of liberty. In his analysis of the rise and fall of Rome, *Considérations sur les causes de la grandeur des Romains et de leur décadence* (1734), he attributed a central role to Epicurean ideas in the declension of the manners vital to a republican citizenry: ‘Je crois que la secte d’Epicure, qui s’introduisit à Rome sur la fin de la république, contribua beaucoup à gâter le cœur et l’esprit des Romains.’ In *De l’esprit des lois*, described by Gilbert Chinard as ‘the most compact and the most complete handbook on the science and history of government’ available to the founding fathers, Montesquieu devoted several chapters to a discussion of the relationship between the laws of various states and the types of religious belief and organization which their societies embraced. As both religious and civil laws had a role to play in turning out good citizens, then a defect in the one had to be redressed in the other. For instance, a lack of severity in a religion ought to be remedied by a more punitive code of laws: ‘Thus the reigning religion of Japan having few doctrines, and proposing neither future rewards nor punishments, the laws to supply these defects have been made with the spirit of severity, and are executed with an extraordinary punctuality.’ Montesquieu thought some types of Christianity accorded better with some forms of government than others. He believed that while Roman Catholicism was compatible with monarchy, Protestantism was more appropriate to a republic.³²

Despite a barrage of criticism directed against the traditional confessional state, the Enlightenment was not indifferent to the social consequences of belief. Cynics were informed by the Ciceronian notion of the double doctrine – that the socially beneficial ‘truths’ propagated to the people might differ in substance from the higher esoteric ‘truths’ confined to the elite.³³ A libertine such as Voltaire apparently subscribed to the view that some form of public religion was necessary to keep the vulgar (and credulous) masses in order, a view which was to find an echo in Benjamin Franklin’s instrumentalist approach to religion.³⁴ The central dilemma for proponents of religious freedom was the perceived need for a mechanism of moral obligation which would be effective in maintaining virtue. In general, the necessity of belief in a

³² Montesquieu, *Considérations sur les causes de la grandeur des Romains et de leur décadence* (1734), in Montesquieu, *Oeuvres* (8 vols., Paris, 1826), vii, p. 97; Montesquieu, *The spirit of the laws* (1748; trans. T. Nugent, 1750; New York, 1949), II, books xxiv–xxv, esp. pp. 30–5; Chinard, ‘Polybius’, p. 42. Though unpublished in his lifetime, one of Montesquieu’s earliest works was a *Dissertation sur la politique des Romains dans la religion*, delivered as a talk to the Academy in Bordeaux in 1716, in which he argued that Rome’s rulers had fashioned a utilitarian civil religion subordinated to the needs of the state (*Oeuvres*, vii, esp. pp. 255–8). For Montesquieu’s engagement with Bayle, see A. M. Cohler, *Montesquieu’s comparative politics and the spirit of American constitutionalism* (Lawrence, KS, 1988), pp. 26–7, 131; May, *Enlightenment in America*, p. 41.

³³ F. Manuel, *The eighteenth century confronts the gods* (Cambridge, MA, 1959).

³⁴ Voltaire, *Dictionnaire philosophique* (Paris, 1964 edn), ‘Athée, athéisme’, ‘Catéchisme chinois’, ‘Enfer’; May, *Enlightenment in America*, p. 129; P. Bonomi, *Under the cope of heaven* (New York, 1986), pp. 103–4.

state of future rewards and punishments was accepted, and few ventured across this ultimate line of doctrinal minimalism. A noted exception, the atheistical D'Holbach, whose work, like Bayle's, was deliberately subversive of the established tenets of civil theology, felt that the social 'inutilité' of religion outweighed potential benefits. Temporal rewards and punishments via a system of 'police' seemed a more efficacious way of maintaining 'la sûreté intérieure des états'.³⁵

Civil theology was a fundamental part of eighteenth-century social discourse. An arena of contention rather than a stable doctrine, it was bounded by questions of moral obligation and social cohesion on the conservative end, and on the other by doubts about religious establishments fuelling superstition and tyranny and encroaching on the natural and divine rights of religious freedom. Eighteenth-century Americans were attuned to the main conversation of civil theology and it became an important aspect of republican political culture.

III

Before independence the colonies had witnessed a variety of experiments and expedients in ecclesiastical polity and religious laws, some embracing establishments, others complete religious freedom.³⁶ The transformation of the colonies into states provoked significant changes, yet overall the result was largely a reconfiguration of the basic colonial pattern.³⁷ Nevertheless, the ideal of religious liberty was also a major factor in political culture throughout the former colonies, though it found a variety of institutional expressions.³⁸

What did late eighteenth-century Americans mean by religious liberty, and how did it relate to republican freedoms? There was, of course, no single understanding of religious liberty. However, it does seem likely that the mainstream definition was at some intermediate station between the original Protestant sense of liberation from the shackles of Rome (or in the case of an independent America, Canterbury) and the untrammelled 'divine supermarket'³⁹ which prevails in late twentieth-century America. In the founding era the notion of choice was most probably restricted to a range of orthodox brands of Protestantism. The liberal ideal of free competition among a variety of sects and denominations was qualified by concern lest liberty degenerate into licence.

Modern First Amendment jurisprudence reflects the long-term triumph of the radical anticlerical strain in the civil theology inherited by the founding generation of republicans. It does not, however, reflect a consensus within the

³⁵ D'Holbach, *La politique naturelle, ou discours sur les vrais principes du gouvernement* (2 vols., London, 1773), II, pp. 166–78; V. W. Topazio, *D'Holbach's moral philosophy* (Geneva, 1956), pp. 117–70; Manuel, *Eighteenth century confronts the gods*, pp. 240–1.

³⁶ See e.g. Levy, *Establishment clause*, ch. 1.

³⁷ Butler, *Awash in a sea of faith*, p. 260; E. R. Norman, *The conscience of the state in North America* (Cambridge, 1968).

³⁸ McConnell, 'Free exercise', pp. 1436–7, 1455–7.

³⁹ See M. Ruthven, *The divine supermarket: shopping for God in America* (London, 1989).

ranks of the founding fathers. Although it would be a mistake to reify them as distinct traditions, there were two different strains of emphasis in republican civil theology. One was liberationist and critical of religious oppression, the other conservative, keen to defend religious institutions as vital buffers against the anarchy – a prelude, moreover, to dictatorship – which, tragically, had all too often been the consequence of republican freedom. Although, in general, there was a sharp tension between the ideals of religious freedom and religious order, what characterizes late eighteenth-century American republicanism is not so much the triumph of the former as the vigorous attempt to reconcile the two ideals.

The American republican tradition – both before and after the Revolution – was characterized by ambivalence on the question of ecclesiastical polity. The seminal republican works of Trenchard and Gordon were widely read throughout the colonies, provoking imitation, most notably *The Independent Reflector*, which maintained the ambivalence shown by English republicans on religious matters. This journal was the brainchild of William Livingston (1723–90), an opponent of the Anglican faction in New York (and later, the first post-independence governor of New Jersey). Livingston was slightly more tolerant than Locke: ‘The civil power hath no jurisdiction over the sentiments or opinions of the subject, till such opinions break out into actions prejudicial to the community, and then it is not the opinion but the action that is the object of punishment.’ Dangerous opinions should not be punished where merely ‘dormant’ in the breast. Livingston claimed that ‘being priest-ridden, is worse than having no religion at all’, a position which approached dangerously close to Bayle’s outrageous paradox. Despite this violently anticlerical radicalism, there were traces of a more orthodox civil theology in Livingston’s ideology. ‘A good clergyman’, that is, one who did not go into orders for priestly gain but to encourage moral reform, was ‘the glory and ornament of society’: ‘In a political regard, he is instead of twenty magistrates, who can only deter from vice by the punishment of the criminal: whereas he, by inculcating internal purity of heart, may prevent the necessity of punishment.’⁴⁰

Religion retained a nagging presence in American republican anxieties. Republican ideology was no sunny celebration of freedom and self-government. Its predominant characteristic was a dark pessimism prompted by the entropy law of republics: so onerous were the burdens of self-rule that most republics tended to degenerate into anarchy and eventual despotism. The nascent American republic was wracked by worry about the dangers which might befall its experiment in government. Financial speculation, standing armies, and luxurious consumption all threatened to undermine the moral supports of republican society. Furthermore, just as religion was the best support of virtue, so nothing had a greater potential to wreck the republican dream than irreligion. What was the point of religious freedom if false theologies began to

⁴⁰ *The Independent Reflector*, ed. M. H. Klein (Cambridge, MA, 1963), no. 34, 19 July 1753, p. 294; no. 36, 2 Aug. 1753, p. 308.

undermine the fabric of a free society? The Reverend Phillips Payson of Massachusetts took the familiar line that religion was of ‘special importance in a free government’. As well as keeping ‘alive the best sense of moral obligation’ which was a matter of ‘extensive utility’ to civil society, ‘the fear and reverence of God, and the terrors of eternity’ exercised ‘powerful restraints upon the minds of men’.⁴¹ Such arguments were the staple of the many weekday sermons delivered in New England on election days, days of thanksgiving and fast days – and generally published, sometimes in multiple editions – which, unlike the standard Sunday sermon, dwelt specifically on the role of religion in furthering the public good.⁴²

However, republicans did not all share the same nightmare of declension. Others, equally in thrall to a version of civil theology, felt that republican freedoms were more endangered by priestcraft, church establishments, and religious tests for officeholding. Ironically, such concerns resulted in ‘liberal’ limitations on religious liberty. The possibility of clericalism was quickly nipped in the bud: between 1776 and 1796 the constitutions of Delaware, Georgia, Kentucky, New York, North Carolina, South Carolina, and Tennessee excluded ministers from public office. Furthermore, Roman Catholicism was regarded as inconsistent with republican values. New York required naturalized citizens to abjure any foreign allegiance in ecclesiastical as well as civil matters, and similar demands were made of officials in other states, including Massachusetts.⁴³

Nevertheless, there was no republican high road to disestablishment. Only in

⁴¹ See Phillips Payson’s Massachusetts election sermon of 1778, reprinted in C. Hyneman and D. Lutz, eds., *American political writing during the Founding era, 1760–1805* (2 vols., Indianapolis, 1983), 1, p. 529. Cf. Jonathan Edwards Jr., *The necessity of the belief of Christianity by the citizens of the state, in order to our political prosperity* (1794), in E. Sandoz, ed., *Political sermons of the American founding era, 1730–1805* (Indianapolis, 1991); ‘Worcestriensis’, no. iv, *Massachusetts Spy*, 4 Sept. 1776; Joseph Lathrop, *A miscellaneous collection of original pieces* [selections] (Springfield, 1786); Benjamin Rush, *A plan for the establishment of public schools* (Philadelphia, 1786); Samuel Kendal, *Religion the only sure basis of free government* (Boston, 1804), all reprinted in Hyneman and Lutz, eds., *American political writing*; C. Rossiter, *Seedtime of the republic* (New York, 1953), pp. 429–33; Wood, *Creation of the American republic*, pp. 427–8; Butler, *Awash in a sea of faith*, pp. 213–14; McConnell, ‘Free exercise’, p. 1441; Noll, *Princeton and the republic*, pp. 95–6; R. Bloch, ‘Religion and ideological change in the American Revolution’, in M. A. Noll, ed., *Religion and American politics* (New York, 1990), p. 55. The Alford chair of natural religion, moral philosophy, and civil polity founded at Harvard in 1782 required its holder (first installed 1817) to expound, among other things, a doctrine of future rewards and punishments and the utility of revelation in the social sphere: see D. W. Howe, *The Unitarian conscience: Harvard moral philosophy, 1805–1861* ([1970]; Middletown, CT, 1988), pp. 2–3, 13.

⁴² Baldwin, *New England clergy*, pp. 5–6; R. A. Ferguson, *The American Enlightenment, 1750–1820* (Cambridge, MA, 1997), pp. 62–6. Lutz, *Preface to American political theory*, p. 136, notes that ‘at least 80 per cent of the political pamphlets during the 1770s and 1780s were written by ministers’. Cf. D. Scott, *From office to profession: the New England ministry 1750–1850* (Philadelphia, 1978), pp. 1–17, 22–3, 148. For the colonial inheritance, see H. Stout, *The New England soul* (New York, 1986).

⁴³ Ferguson, *American Enlightenment*, p. 73; Gaustad, *Neither king nor prelate*, Appendix B, pp. 160–3, 168–9, 171–2; Curry, *First freedoms*, p. 162. Cf. C. Bridenbaugh, *Mitre and sceptre* (New York, 1962).

two of the states – Virginia and Rhode Island – was there no hint of any establishment or confessional restriction of full citizenship. The other states ranged from explicit, albeit broad-bottomed, establishments which raised religious taxes, to religious restrictions on the highest exercise of citizenship, officeholding. Delaware required adherence to the doctrine of the Trinity. Pennsylvania imposed a belief in heaven and hell, a minimalist core of belief necessary for the working of society. In the aftermath of independence six states either upheld religious establishments in practice (Massachusetts, Connecticut, New Hampshire) or had constitutional provisions permitting non-preferential establishment (South Carolina, Maryland, and Georgia). Vermont, which attained statehood in 1791, also maintained a loose establishment between 1783 and 1807. Republicanism was not considered incompatible with state support of religion. The preamble to New York's trustee act stated that it was the 'duty of all wise, free and virtuous governments to countenance and encourage virtue and religion and to remove every let or impediment to the growth and prosperity of the people'. Nevertheless, religious establishments, however attenuated, were controversial, arousing the wrath of principled objections not only from enlightened proponents of religious liberty but also from those convinced by their powerful Christian commitments that the state connection defiled religion. However, unlimited freedom in the religious sphere was equally contentious. The debate over the draft constitution of 1778 for Massachusetts provides a telling example of the tension between the liberal and conservative poles of civil theology. There were over two hundred objections from townships within the state to the draft constitution. Fifty-nine townships complained about the third article of the bill of rights, which imposed on the citizen an obligation to support some form of public worship. On the other hand, seventy townships remonstrated that the constitution failed to insist that the state governor be a Protestant.⁴⁴

The post-revolutionary debate in Virginia exhibits the difficulties in assigning to the founding generations a single understanding of the proper relationship of church and state. Patrick Henry and George Washington defended the idea of establishment; Jefferson and Madison were unequivocally committed to the absolute freedom of the religious sphere from state interference. In 1779 there was a proposal for Virginia to have a general non-sectarian establishment based on five basic tenets of Christianity: a belief in God and a future state of rewards and punishments; the public worship of God; the truth of Christianity; the divine inspiration of the Old and New Testament; and the duty of every man to bear witness to the truth. This measure was defeated. The key to Virginia's ecclesiastical politics lay in the state's

⁴⁴ Gaustad, *Neither king nor prelate*, Appendix B; S. Botein, 'Religious dimensions of the early American state', in R. Beeman, S. Botein, and E. C. Carter II, eds., *Beyond confederation: origins of the Constitution and American national identity* (Chapel Hill, 1987), pp. 318–19; Curry, *First freedoms*, chs. 6, 7; DeWolfe Howe, *Cases on church and state*, p. 94; McConnell, 'Free exercise', pp. 1436–7, 1455–7; Levy, *Establishment clause*, ch. 2; J. R. Pole, *Political representation in England and the origins of the American republic* (London, 1966), p. 211; Norman, *Conscience of the state*, pp. 79–80.

Presbyterians. Virginia Presbyterians divided into two camps, those who favoured the separation of the church from the state, motivated either by a desire to avoid compulsory religious taxes, or for fear of an episcopalian establishment, and those who favoured a non-preferential system of state support. The Presbyterian plan of 1784 calling for a general assessment was founded on principles of religious freedom: 'Religion as a spiritual system is not to be considered as an object of human legislation; but may in a civil view, as preserving the existence and promoting the happiness of society.' The essential core doctrines which were identified as contributing to the common good of society were 'the belief of one God, his righteous providence, our accountableness to him, and a future state of rewards and punishments'. However, the passage late in 1784 of a bill incorporating the episcopal church sank the assessment scheme. This rekindled anti-episcopalian resentment among the Presbyterian community, which turned against its own assessment proposal. It is worth noting that confessional animosities were not completely absent from the Virginia statute of religious freedom of 1786; it was accompanied by a repeal of the episcopalian incorporation act.⁴⁵

One of the major Anti-Federalist criticisms levelled at the new Constitution was that the very extent and diversity of the United States threatened to undermine the supportive relationships which existed in the states between organized religion and political virtue. On the other hand, although there would be no religious tests for federal officeholding, Federalists and Anti-Federalists alike were content to see these continue at the state level.⁴⁶ Indeed, disestablishment was generally a protracted process, in New England especially so. New Hampshire's establishment lasted till 1817, Connecticut's until 1818, and that of Massachusetts was the last to fall, succumbing only in 1833. These establishments declined through internal pressures, in the curious case of Massachusetts from the spite of conservative Trinitarian congregationalists whose dominance had been usurped by a liberal Unitarian establishment.⁴⁷ State involvement in religion would be formally curtailed only in the 1940s, with judicial 'incorporation' of Federal First Amendment protection of religious liberty into the Fourteenth Amendment (1868) in 'Cantwell v. Connecticut' (1940) followed by 'Everson v. Board of Education' (1947), when the majority opinion, although sanctioning New Jersey's reimbursement of parents for the costs of transporting of their children to religious schools, narrowed the scope for non-preferential state support of religion. Only with 'Torcaso v. Watkins' (1961) did American atheists establish the right to hold

⁴⁵ Peterson and Vaughan, eds., *Virginia statute*; T. Buckley, *Church and state in revolutionary Virginia, 1776-1787* (Charlottesville, 1977); R. Isaac, *The transformation of Virginia, 1740-1790* (Chapel Hill, 1982), ch. 12.

⁴⁶ H. J. Storing, *What the Anti-Federalists were for* (Chicago, 1981), pp. 22-3; M. Borden, 'Federalists, Antifederalists, and religious freedom', *Journal of Church and State*, 21 (1979), pp. 469-82; Botein, 'Religious dimensions', pp. 319-22.

⁴⁷ W. G. McLoughlin, *New England, dissent 1630-1833: the Baptists and the separation of church and state* (2 vols., Cambridge, MA, 1971), II, sections x-xIII; Howe, *Unitarian conscience*, pp. 216-21.

state office. Thereafter, the judgement in ‘Engel v. Vitale’ (1962) banning school prayer and ‘Lemon v. Kurtzman’ (1971) which set rigorous standards prohibiting even state entanglement in religion, further eroded the possibility of the most minimal state action in the religious sphere.⁴⁸

The legacy of civil theology from the age of Bayle and Locke remained controversial. Although Jefferson was to collapse the distinction between speculative and practical opinions, his revision of the classical Lockean stance on religious freedom was far from universally shared by his fellow Americans. The Virginia statute of 1786 which proclaimed that ‘our civil rights have no dependence on our religious opinions any more than on opinions in physics or geometry’,⁴⁹ was something of an anomaly in the early republic. Indeed, Jefferson’s indifferentism prompted a litany of complaint during his victorious presidential election campaign in 1800:

Is atheism indeed no injury to society? Is it no injury to untie all the cords which bind you to the God of Heaven, and your deeds to his Throne of judgment? ... Is it indeed no injury to you, or to those around you, that your neighbour buries his conscience and all his sense of moral obligation in the gulph of atheism? Is it no injury to you, that the oath ceases to be sacred? That the eye of the Omniscient no more pervades the abode of crime? That you have no hold on your dearest friend, farther than the law is able to reach his person?⁵⁰

By this stage the example of the French Revolution and the rise of ‘infidel Jacobinism’ had punctured Enlightenment complacency about the possibility of a virtuous society of atheists. As a result the conservative strain of civil theology was articulated with a new clarity.⁵¹ Fearing the spread of French Jacobin heterodoxy to the new republic, Alexander Hamilton advocated the establishment of a Christian Constitutional Society as an antidote. Hamilton was convinced that the Jacobin assault on Christianity was subversive of republican liberty: ‘Morality overthrown (and morality must fall with

⁴⁸ Levy, *Establishment clause*, ch. 6; M. Hunter and D. Wootton, eds., *Atheism from the Reformation to the Enlightenment* (Oxford, 1992), ‘Introduction’, p. 3.

⁴⁹ DeWolfe Howe, *Cases on church and state*, p. 7. Cf. Jefferson, *Notes on the State of Virginia*, in *Writings*, ed. Peterson, p. 285. Yet even the anti-Trinitarian Jefferson, particularly in his later years, accepted several of the basic tenets of a non-establishmentarian civil theology emphasizing the importance of future rewards and punishments: see E. R. Sheridan, ‘Introduction’, *Jefferson’s extracts from the Gospels*, Papers of Thomas Jefferson, 2nd ser. (Princeton, 1983), pp. 13–23; Jefferson to Benjamin Waterhouse, 26 June 1822, in *Writings*, ed. Peterson, pp. 1458–9.

⁵⁰ John M. Mason, *The voice of warning to Christians, on the election of a president of the United States of America* (1800), repr. in John M. Mason, *First ripe fruits: being a collection of tracts* (London, 1803), p. 274; N. E. Cunningham, Jr, ‘Election of 1800’, in A. M. Schlesinger and F. L. Israel, eds., *History of American presidential elections, 1789–1968* (4 vols., New York, 1971), 1, pp. 124–5; T. Buckley, ‘The political theology of Thomas Jefferson’, in Peterson and Vaughan, eds., *Virginia statute*, p. 75.

⁵¹ Hazen, *Contemporary American opinion*; V. Stauffer, *New England and the Bavarian Illuminati* (New York, 1918); G. Nash, ‘The American clergy and the French Revolution’, *William and Mary Quarterly*, 3rd ser., 22 (1965), pp. 392–412; Noll, *Princeton and the republic*, pp. 144–5. For the reinvigoration of a Federalist civil theology in response to French infidelity, see D. Fischer, *The revolution of American conservatism* ([1965]; New York, 1969), pp. 48–9. Cf. *Diary and autobiography of John Adams*, ed. L. H. Butterfield (4 vols., Cambridge, MA, 1962), 14 Aug. 1796, III, pp. 240–1.

religion) the terrors of despotism can alone curb the impetuous passions of man, and confine him within the bounds of social duty.⁵² Timothy Dwight of Yale, the central figure in the intellectual repulse of infidel ‘metaphysico-politics’, argued that Jacobinism ‘presents no efficacious means of restraining vice, or promoting virtue’. The mortalism propagated by the French Convention was identified as a particularly damaging public doctrine. If death were presented to the people as an anodyne ‘eternal sleep’, then this would destabilize society, removing the central pillar of civil theology – the doctrine of future rewards and punishments. Dwight favoured religious latitude, but there were crucial ‘limits’, suggestive of Lockean influences, to his argument for the toleration in society of a wide range of moral codes: ‘The truths holden must be fundamental truths; or those on which virtue can rest; and the errors must not be fundamental errors; or opinions subversive of all virtue.’⁵³

Religious indifference and certain dangerous forms of heterodoxy were viewed by conservatives as pathological phenomena capable of subverting a republican society. Like their British counterparts, educated Americans subscribed to the view that religion had played a prominent role in the fall of the great republics of classical antiquity. Mercy Otis Warren believed that religion was the ‘grand palladium’ of republican institutions. Whilst they observed their sacred religious rites Rome and Athens had remained free republics. Each had been ‘subverted’ by the corrosive spread of irreligious philosophies within its elites. The Athenian city-state had been ‘corrupted by the influx of wealth, the influence of aristocratic nobles, and the annihilation of every principle connected with religion’. In ancient Rome religion and republicanism had risen and fallen in step. It was significant that the most tyrannical of the new emperors, Caligula, had ‘set up his horse to be worshipped as a burlesque on religion’. Fisher Ames, who had played an important role in drafting the First Amendment, concurred with Warren’s basic thesis: ‘The Romans were not wholly sunk from liberty till morals and religion lost their power.’ He blamed those ‘Thomas Paines’ of ancient Rome who had introduced the doctrines of Epicurus for the corruption of Roman republican manners.⁵⁴

There was a broad band of opinion in the early republic supportive, on utilitarian grounds, of a non-discriminatory civil theology. Non-sectarian

⁵² G. Stourzh, *Alexander Hamilton and the idea of republican government* (Stanford, CA, 1970), pp. 122, 125; *The papers of Alexander Hamilton* (27 vols., New York, 1961–87), *The Stand no III*, (7 Apr. 1798), xxi, pp. 402–5; ‘Fragment on French Revolution’, xxvi, pp. 738–41; ‘The French Revolution’, xvii, p. 587. For the development of Hamilton’s views, see D. Adair and M. Harvey, ‘Was Alexander Hamilton a Christian statesman?’, in D. Adair, *Fame and the founding fathers* (New York, 1974).

⁵³ Timothy Dwight, *Sermons* (2 vols., New Haven, 1828), ‘The nature and danger of infidel philosophy’ (1797), I, pp. 340, 365.

⁵⁴ Mercy Otis Warren, *History of the rise, progress and termination of the American Revolution*, ed. L. H. Cohen (2 vols., Indianapolis, 1994), II, pp. 680–1; Monitor, *The Palladium*, 17 Apr. 1804, in *Works of Fisher Ames*, ed. W. B. Allen (2 vols., Indianapolis, 1983), I, p. 226; McConnell, ‘Free exercise’, pp. 1455n, 1482.

religious establishments might be justified as a civil good, which, as Locke had demonstrated, erased any apparent confessional animosity attaching to the means. On the other hand, there was considerable disquiet about how such beliefs might be upheld. While a consensus reigned that coercion was inappropriate for republican citizens, some scepticism remained about the suasive efficacy of religious institutions supported only by voluntary contributions. The idea behind religious taxes was not that they were to support the churches to which they were allocated, but to assist the state through the beneficial effects which religion had on the wider society. If religious assessments were interpreted as civil levies, then they did not necessarily conflict with liberty of conscience. The crux of the matter was this: did state-sanctioned religious assessment signify spiritual tyranny or the fulfilment of a public good?⁵⁵

There was no clear resolution in the short term to this issue. States attempted a wide range of highly technical solutions to the dilemma of reconciling religious freedom with a safety net of religious institutions. William McLoughlin has questioned the received notion that the main trend in the early republic was towards the separation of church and state. Rather, suggests McLoughlin, the preferred solution as in so many other spheres of public life, including the construction of turnpikes and canals, was the adoption of a chartered enterprise system, with the virtuous and socially necessary objectives of religion being farmed out to authorized denominational franchises. For example, there were numerous state laws which dealt with the legal incorporation of churches, endowing them with certain privileges in return for their expected contribution to the public good.⁵⁶

Massachusetts provides an example of a state at the opposite extreme from the oft-cited case of Virginian religious freedom, but one no less representative, whose non-sectarian establishment rested on a coherent body of civil theology which combined respect for liberty of conscience with a utilitarian system of religious regulation. The preamble to Article III of the post-revolutionary Massachusetts constitution of 1780 stated that 'the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion and morality' and that these could not be 'generally diffused through a community, but by the institution of the public worship of God, and of public instruction in piety, religion and morality'. Article III was never formally ratified, but it was nevertheless generally regarded as part of the fabric of the new commonwealth. Massachusetts had a devolved multiple establishment. Each township had its own individual local establishment sanctioned

⁵⁵ J. Smylie, 'Protestant clergy, the First Amendment and beginnings of a constitutional debate, 1781–1791', in E. Smith, ed., *The religion of the republic* (Philadelphia, 1971); Levy, *Establishment clause*, pp. 30–2, 49–50; Botein, 'Religious dimensions', p. 319; McConnell, 'Free exercise', pp. 1436–7, 1469–71.

⁵⁶ W. G. McLoughlin, 'The role of religion in the Revolution: liberty of conscience and cultural cohesion in the new nation', in S. G. Kurtz and J. H. Hutson, eds., *Essays on the American Revolution* (Chapel Hill, 1973).

by the state constitution and supported by local religious taxes. There was also a system of licensed opting-out. Massachusetts case law gives some indication of the extent to which the state's jurisprudence was informed by a conservative civil theology. In 1783 John Murray, a universalist minister, sought redress from the town assessors of Gloucester for taxes owing from members of his congregation. However, it was ruled that because the universalist belief in a general salvation of all mankind excluded the socially useful possibility of punishment in the afterlife, this defective theology disqualified universalist churches from the privileges of a properly constituted religious society. Although Murray subsequently won on appeal in 1786 at the state supreme court, the case illuminates the assumption that a preacher needed to uphold a theology which included some form of divine retribution after death in order to fulfil the legal requirements of an authorized teacher of morality. A qualified minister enjoyed tenure regardless of the wishes of his congregation. As Chief Justice Theophilus Parsons ruled in the case of 'Avery v. The inhabitants of Tyringham' (1803), any such minister was an agent of the state who had to be able to deliver moral judgements – the socially appointed task for which taxes were raised – free of local fear or favour. In 'Barnes v. First Parish' (1810) Parsons issued a clear justification of religious assessments based on the state's right to appropriate money for any fit purpose. He argued that the support of public teachers of religion produced benefits for the whole of society, even for those who did not attend public worship: 'The object of public religious instruction is to teach, and to enforce by suitable arguments, the practice of a system of correct morals among the people... by which every man's person and property are protected from outrage.'⁵⁷

IV

The civil theology of the early republic is now part of a world we have lost. Its existence as a discursive agenda exercises little influence on Supreme Court jurisprudence, except in so far as the champions of religious liberalism – Jefferson and Madison, misinterpreted as exemplars of a frozen consensus – are wrenched out of context. Republicans of the founding generation were almost universally hostile to clerical influence on temporal institutions, to Erastianism, and to the monopoly of the federal government by any one particular denomination; nevertheless, there was also a widely perceived need for some form of civil encouragement of religious institutions at the state or local level in the interests of the wider commonwealth.⁵⁸ On the other hand, the most compelling and widely endorsed case against establishments – the *religious* argument made by Baptists and others who condemned the contaminating effects upon Christianity of a state connection – provides an ironic counterpoint

⁵⁷ J. T. Noonan, Jr, "'Quota of imps'", in Peterson and Vaughan, eds., *Virginia statute*; McLoughlin, *New England dissent*, I, pp. 655–7; II, pp. 1084–92; DeWolfe Howe, *Cases on church and state*, pp. 29–35.

⁵⁸ Gaustad, *Neither king nor prelate*, p. 56.

to the utilitarian arguments of civil theology.⁵⁹ However, the Second Great Awakening of the early nineteenth century witnessed a major realignment of positions, as some of the staunchest upholders of the New England standing order devised a voluntaristic strategy of religious revivalism as an alternative to establishments.⁶⁰

⁵⁹ McConnell, 'Free exercise', p. 1442; E. Gaustad, 'A disestablished society: origins of the First Amendment', *Journal of Church and State*, 11 (1969), esp. pp. 410–14.

⁶⁰ See e.g. R. Birdsall, 'The Second Great Awakening and the New England social order', *Church History*, 39 (1970), pp. 345–64, for Lyman Beecher's conception of a network of interdenominational moral societies as a surrogate for formal establishments.