

Building the “Wall of Separation”: Construction Zone for Historians

W. CLARK GILPIN

THE argument of Mark deWolfe Howe’s *The Garden and the Wilderness* turned on the contrast Howe drew between two uses of a single phrase: “wall of separation.”¹ Thomas Jefferson used the phrase in 1802, in a letter to the Danbury Baptist Association: “I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should ‘make no law respecting an establishment of religion or prohibiting the free exercise thereof,’ thus building a wall of separation between church and state.”² More than a century and a half earlier, in 1644, the colonial advocate of religious freedom Roger Williams had employed the same phrase in a letter to his theological opponent, the Reverend John Cotton of Boston. According to Williams’s reading of the Bible, the people of God—Jews and Christians—were “separate from the world,” and, “when they have opened a gap in the hedge or wall of separation between the garden of the church and the wilderness of the world, God hath ever broke down the wall itself, removed the candlestick, and made His garden a wilderness, as at this day. And that therefore if He will ever please to restore His garden and paradise again, it must of necessity be walled in peculiarly unto Himself from the world; and that all that shall be saved out of the world are to be transplanted out of the wilderness of the world, and added unto his church or garden.”³

According to Howe, Williams and Jefferson had constructed their respective walls of separation for quite different purposes, and it certainly seems the case that the use of the same phrase by two such different thinkers was quite

¹Mark deWolfe Howe, *The Garden and the Wilderness: Religion and Government in American Constitutional History* (Chicago: University of Chicago Press, 1965), 1–9.

²Thomas Jefferson, “To Messrs. Nehemiah Dodge and Others, a Committee of the Danbury Baptist Association, in the State of Connecticut,” in *Thomas Jefferson: Writings* (New York: Literary Classics of the United States, 1984), 510.

³Roger Williams, *Mr. Cotton’s Letter Lately Printed, Examined and Answered*, in *The Complete Writings of Roger Williams*, ed. Reuben Aldridge Guild (New York: Russell and Russell, 1963), 1:392.

W. Clark Gilpin is Professor of the History of Christianity at the University of Chicago.

fortuitous. While, in the course of time, Williams's wall fell into obscurity, Jefferson's rose to new influence in the mid-twentieth century, when the Supreme Court cited his Danbury missive in its 1947 decision in *Everson v. Board of Education*. Howe wrote to rebuild the historical importance of Roger Williams's wall—but not only that. In addition, Howe established a quite specific contrast between the “wall of separation” as used by Williams and by Jefferson, in order to advance his interpretation of the historical development of judicial interpretations of the separation of church and state in the United States and, especially, the meaning of the First Amendment.

Howe's contrast between the wall of separation metaphors employed by Williams and Jefferson drew its force from Howe's interpretation of the characteristic constitutional concerns of the U.S. courts during the middle decades of the twentieth century. This leads me to read *The Garden and the Wilderness* backwards, first summarizing Howe's analysis of the contemporary courts in his two final chapters and, then, returning to the beginning of the book to see how his appraisal of twentieth-century jurisprudence shaped his reading of Roger Williams as a forgotten architect of the wall of separation. Not surprisingly, Howe's concerns are not identical with our own, and I conclude by pointing out significant features of Roger Williams's wall of separation metaphor that Howe inadequately considered. The “unattended” features of the metaphor, I argue, augment our contemporary interpretation of the religion clauses of the First Amendment: that Congress shall “make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

I. “BELIEVERS,” “SKEPTICS,” AND THE WALL OF SEPARATION

Howe read constitutional history with the overall assumption that contemporaneous political ideals and the social issues of the day profoundly affect “the temper of the Court's mind,” as it searches for historical precedents and reaches its opinions. Consequently, controversies adjudicated by the courts invariably reflect “the dominant political tradition of the community in which the court sat.” Howe argued that a fundamental historical reshaping of “the temper of the Court's mind” had begun with the Civil War and the passage of the Fourteenth Amendment shortly thereafter. Prior to the Civil War, “it was assumed that the national government had only a very few powers” and “that the day-to-day business of governing the secular affairs of the American people was to be supervised by the states.” But in the twentieth century and especially after World War II, the Supreme Court extended the reach of the Fourteenth Amendment on issues related to civil rights, by ruling that the amendment's guarantee of equal protection

under the law incorporated the main provisions of the Bill of Rights and protected those rights from infringement by state laws. Furthermore, with respect to the relation of church and state, Howe concluded that the modern “judicial tendency to make equality the central object of constitutional government” had dramatically reinterpreted “the principle that between all sects the government must assume a position of neutrality.” His concluding chapters therefore emphasized “the ways in which evolving concepts of equality and neutrality have reflected and influenced the development of constitutional doctrine” concerning religion.⁴

Howe summarized “the old concept of neutrality” as “sympathetic neutrality” toward the religions on the part of the state. In this older model, the federal government had recognized equally the various *denominations*, a set of distinctive religious societies sustained by the voluntary participation of their members and competitively related to one another in a situation of religious pluralism. Like denominations of currency, the concept of religious denominations presupposed a rough parity of validity—if not of size or spiritual “purchasing power”—based on an underlying commonality of ethical and spiritual purpose. In the United States this common purpose was presumed to center on unifying and elevating the moral fiber of the nation. The ideal of “sympathetic neutrality,” in Howe’s estimation, led to a theory of the separation of church and state in which the government recognized its “obligation to allow all religions and all denominations to pursue, in freedom, the common enterprise of advancing what they conceived to be the spiritual welfare of the American people.” The government adopted a stance of neutrality toward the competing faiths, and, in the words of the First Amendment, it therefore made “no law respecting an establishment of religion.” But it was *sympathetic* neutrality because “the common enterprise” of the denominations was deemed conducive to the public good.⁵

In this aspect of its argument, *The Garden and the Wilderness* participated in a much wider debate, during the 1950s and 1960s, about the relationship of religion to American national identity and character. Howe’s contemporaries, the historian Sidney E. Mead and the sociologists Will Herberg and Robert Bellah, asserted in this period that the nation exhibited a “religion of the Republic,” an “American religion,” or a “civil religion.”⁶ Distinct from the religion of the churches, this “religion of the Republic” centered on the ideals and ethical

⁴Howe, *Garden and the Wilderness*, 109, 75–76, 65, 150, 157–58, 149.

⁵*Ibid.*, 154, 157, 154.

⁶Sidney E. Mead, *The Lively Experiment: The Shaping of Christianity in America* (New York: Harper and Row, 1963); Mead, *The Nation with the Soul of a Church* (New York: Harper and Row, 1975); Will Herberg, *Protestant, Catholic, Jew: An Essay in American Religious Sociology* (Garden City, N.Y.: Doubleday, 1955); and Robert N. Bellah, “Civil Religion in America,” *Daedalus* 96, no. 1 (Winter 1967): 1–21.

obligations that guided national life as a whole, but it nonetheless drew symbols and mythic narratives from the resources of the religions and they, in turn, interpreted their own public responsibilities in ways that overlapped with the "civil religion." Howe, Mead, Herberg, and Bellah had different interests and purposes in advancing these ideas, but, collectively, they pointed out the extent to which Americans, while recognizing a "wall of separation" between church and state, nonetheless assumed the benevolent public presence of what might be called an informal establishment of the denominations.

In his contribution to this wider discussion, Howe argued that, in the late nineteenth century to some degree but more expansively from the 1940s forward, the Supreme Court gave "the principle of non-establishment a much broader sweep" than this older concept of sympathetic neutrality had presupposed. By the 1940s the Court's outlook "was far more secular than religious," and it opposed "not merely liberty-infringing establishments but all governmental action aiding one religion or all religions." According to Howe's reading of twentieth-century judicial history, this transformed the concept of equality among religions into equality "between religion, on the one hand, and non-religion, on the other." In turn, the government's earlier stance of sympathetic neutrality toward the various denominations turned into comprehensive neutrality "between belief and doubt."⁷

Howe's historical narrative of the transition from one form of neutrality to another and the emergent contrast between belief and doubt led him to identify two theories of the separation of church and state, one "evangelical" and another the product of "doubting liberalism." He projected these contrasting theories backward to, respectively, Roger Williams and Thomas Jefferson, proposing both that "Roger Williams would have embraced most of the presuppositions of sympathetic neutralism" and that the twentieth-century version of governmental neutrality was "Jeffersonian." Furthermore, Howe thought that "at the time when the First Amendment was adopted," the predominant concern was "not the Jeffersonian fear that if it were not enacted the federal government would aid religion" but rather "the evangelical hope that private conscience and autonomous churches, working together and in freedom, would extend the rule of truth." Following this line of reasoning, Howe concluded that the First Amendment, in declaring the independence of church and state, "embraced *the believing affirmations of Roger Williams* and his heirs no less firmly than it did *the questioning doubts of Thomas Jefferson* and the Enlightenment."⁸ Indeed, when the political dynamics of the early republic "brought *believers* and *skeptics*

⁷Howe, *Garden and the Wilderness*, 109, 138, 155.

⁸*Ibid.*, 152, 154, 19, 9 (emphasis added). For further use of the distinction between "skeptics and believers" in which "doubt" is identified entirely with the Jeffersonian tradition, see 7, 10, 15, 18–19.

together in support of the First Amendment,” Howe thought “the amendment’s prohibitions at the time of their promulgation were generally understood to be more the expression of Roger Williams’ philosophy than that of Jefferson’s.”⁹ Howe wrote to redress the balance between these two philosophies of the separation of church and state.

What, then, according to Howe, was “Roger Williams’ philosophy?” Early in his first chapter, Howe wrote with regard to Williams’s use of the wall metaphor: “When the imagination of Roger Williams built the wall of separation, it was not because he was fearful that without such a barrier the arm of the church would extend its reach. It was, rather, the dread of the worldly corruptions which might consume the churches if sturdy fences against the wilderness were not maintained.” In the opening paragraph of his final chapter, Howe offered another synopsis of Williams’s central “thesis” on the separation of church and state: “government must have nothing to do with religion lest in its clumsy desire to favor the churches or its savage effort to injure religion, it bring the corruptions of the wilderness into the holiness of the garden.” These interpretations of Williams’s wall of separation are, I submit, incorrect, and they significantly mislead our efforts to understand Williams’s concept of the relation between religion and government.¹⁰

II. THE WALL OF SEPARATION METAPHOR, REVISITED

Reappraising the rhetoric of Williams and Jefferson, significant differences appear in the role each attributed to human agency in constructing the wall of separation. It was the “act of the whole American people” in building the wall of separation that inspired Jefferson’s “sovereign reverence.” Williams, by contrast, voiced alarm that, throughout history, religious people had destructively “opened a gap” in the wall, compromising its protection of the church’s purity and impelling God to destroy the wall entirely, “as at this day.” As this implies, Williams thought that Christians of his own time had brought the wall of separation to such a state of disrepair that true religion had disappeared, becoming indistinguishable from “the wilderness of the world.”¹¹

Specifically, Williams identified the human act that dismantled the wall of separation as the Christian impulse to establish a national church, which

⁹Ibid., 19 (emphasis added).

¹⁰Ibid., 6, 149.

¹¹This interpretation of Williams’s thought is argued in my earlier study, *The Millenarian Piety of Roger Williams* (Chicago: University of Chicago Press, 1979).

imposed a single religious orthodoxy on the nation as a whole. In pursuit of this policy of uniformity, “all others dissenting from them, whether Jews or Gentiles,” not only had “not been permitted civil cohabitation” in the nation but also had “been distressed and persecuted” by the established church and its clergy.¹² The Reverend John Cotton, however admirable his personal piety, directly benefited from this religious establishment, “swimming with the stream of outward credit and profit, and smiting with fist and sword of persecution such as dare not join in worship with him.” By “confounding” church and civil government, this effort to build a Christian nation had not simply failed to achieve a social consensus but had thrown “all the world into combustion,” by generating enmity and violence among citizens of differing religious convictions.¹³ A failure on the part of ministers and magistrates to distinguish between a religious difference and an assault on civil order explained, to Williams’s satisfaction at least, his earlier banishment from Massachusetts Bay, and he asked rhetorically, “why was I not yet permitted to live in the world, or commonweal, except for this reason, that the commonweal and church is yet but one, and he that is banished from the one, must necessarily be banished from the other also.”¹⁴

In light of the broader argument against religious establishment within which Williams employed the wall of separation metaphor, I thus find Howe’s assertion quite misleading that “it was not because” Williams feared that “without such a barrier the arm of the church would extend its reach.” On the contrary, it was precisely because the church *had* extended its reach, with catastrophic results, that Williams argued for a wall of separation that would bring an end to violence against religious minorities and refocus the church on what he regarded as its proper mission. Howe was similarly misleading when he declared that Williams proposed “government must have nothing to do with religion” because it might “bring the corruptions of the wilderness into the holiness of the garden.” Once again, Williams’s actual position was that the primary agents responsible for the destruction of the wall of separation were Christians overly zealous for social dominance, who had misinterpreted Christian scripture as a justification for undue religious influence in civil government.

As a consequence of Williams’s unflinching opposition to religious establishments, his wall of separation metaphor implied both a concept of how civil governments should conceive their role independently from ecclesiastical bodies and a proposal for appropriate relations among citizens of differing religious affiliation. These implications of his wall of separation,

¹²Williams, *Cotton’s Letter . . . Examined*, 361.

¹³*Ibid.*, 339, 335.

¹⁴*Ibid.*, 327.

I will argue, make it highly unlikely that Williams would have approved the legal doctrine that Howe characterized as *sympathetic neutrality*.

In arguing for a separation of church and state, Williams did not advocate a government that was, in our contemporary sense, *secular*. Instead, Williams proposed that, just as God had set forth the “two tables” of the Decalogue—one set of duties owed to God and the other set to our fellow humans—so the divine purposes had also arranged for two “essentially distinct” governments, one “properly and adequately fitted by God, to preserve the civil state in civil peace and order” and the other “a spiritual government and governors in matters pertaining to his worship and the consciences of men.”¹⁵ This distinction between civil and spiritual government was implicit in a famous letter Williams wrote to the town of Providence in January 1655, employing yet another metaphor: the state as a ship at sea. Since the “weal and woe is common” for its crew and passengers, such a ship provided “a true picture of a commonwealth, or an human combination, or society.” If one supposed that “papists and Protestants, Jews, and Turks, may be embarked into one ship,” then the liberty of conscience for which Williams pleaded “turns upon these two hinges, that none of the papists, Protestants, Jews, or Turks, be forced to come to the ship’s prayers or worship; nor, secondly, compelled from their own particular prayers or worship, if they practice any.” To which, Williams added that prohibition of a forced uniformity of religion and guarantee of its free exercise in no way denied that “the commander of this ship ought to command the ship’s course; yea, and also to command that justice, peace, and sobriety, be kept and practiced, both among the seamen and all the passengers.”¹⁶

The wall of separation thus assigned to the state’s maintenance an enduring set of ethical norms—“justice, peace, and sobriety”—that guided the public welfare, whatever the religious affiliation of individual citizens and magistrates. However, as Williams recognized, the boundary would not always be entirely clear between the need to maintain civil order and the liberty to engage in conscientiously motivated religious practices. The 1655 ship of state letter, for example, had been occasioned by religiously motivated arguments against the maintenance of a colonial militia, and Williams had taken the position that the public safety must, in this case, take precedence. In general, Williams argued fairly consistently that, in negotiating this boundary between civil and spiritual governments, the state

¹⁵Ibid., 335. For examples from the Revolutionary era of the continuing residual influence of the “two tables” distinction, see Howe, *Garden and the Wilderness*, 24–25.

¹⁶Glenn W. LaFantasie, ed., *The Correspondence of Roger Williams* (Providence: Rhode Island Historical Society / Brown University Press / University Press of New England, 1988), 2:423–25. For a careful analysis of this letter, see Timothy J. Hall, *Separating Church and State: Roger Williams and Religious Liberty* (Urbana: University of Illinois Press, 1998), 108–9.

should accommodate “tender consciences” to the fullest reasonable extent and that religious communities should recognize that the state’s regulation of social obligations was ultimately grounded in divine law.

Quite remarkably for his time, Williams extended the right to liberty of religious practice to groups whose theological ideas were quite unwelcome in both England and New England and whose religious assemblies were widely feared as threats to civil government. An obvious instance was Williams’s advocacy of liberty of conscience for Catholics, despite the fact that he shared the strongly anti-Catholic bias of his Protestant contemporaries. From this perspective, Williams’s wall of separation signaled that religious disagreement need not endanger civil peace, and it recognized that members of religious minorities had the capacity to participate in and lead civil government. As Martha Nussbaum has persuasively argued, this dimension of separation was “about equality and equal respect.” The ship of state cannot safely sail apart from an “emphasis on the importance of a mutually respectful civil peace among people who differ in conscientious commitments.”¹⁷ Roger Williams endorsed, in fact, *practiced*, spirited public debate of religious ideas, and, like many of his contemporaries, he was willing to carry debate quite beyond what we would regard as the standards of civility. But he insisted, with equal vigor, that “papists, Protestants, Jews, or Turks” had equal competence in matters political and that effective and just government required mutual respect among these diverse citizens.

Finally, Williams supported the right of religious communities to pursue purity of practice and truth of doctrine in no small measure because he was convinced, as he wrote to John Cotton, the confounding of church and world had turned the churches of his own day from a garden into a wilderness, as the title of Howe’s book announced. The contest among the claimants to religious truth was constitutive of an ongoing quest for truth. In the parlance of his own time, Roger Williams was a “seeker” who found the religious life so beset by error and impurity that spiritual safety lay in withdrawal from the organized churches. This position, to which Williams adhered for almost half a century, requires a more careful distinction between the *believer* and the *skeptic* than is to be found in Howe’s stark contrast between Williams and Jefferson.

III. WALLS OF SEPARATION, COMPARED

In sum, Williams’s mistrust of religious hankering after the power of an established church and his grounding of the political order in divine law

¹⁷Martha C. Nussbaum, *Liberty of Conscience: In Defense of America’s Tradition of Religious Equality* (New York: Basic, 2008), 12, 36–37.

together suggest that we should take a second look at Howe's sharp contrast between Williams the believer and Jefferson the skeptic. Both Williams and Jefferson set up their metaphorical walls in the broad context of resistance, revolution, and reform, identifying the established Church of England as one prominent agent in seventeenth- and eighteenth-century regimes of social and spiritual tyranny. Established religion was an instrument of government, backed by the power of the state and a complementary system of civil and ecclesiastical courts; furthermore, it was an instrument of governance that sought not merely to suppress unorthodox religious practices but to assault the conscience. I would argue that Roger Williams and Thomas Jefferson are better interpreted as exponents, within a variegated and evolving modern tradition, of the view that religions are groups based on voluntary affiliation that best pursue their religious purposes, including their public religious purposes, when they remain disentangled from direct political power.

Similarly, just as Roger Williams grounded civil government in a broadly construed theory of divine law, exemplified by the second table of the Ten Commandments, so Jefferson's conception of government presupposed a background notion of natural law. This feature of Jefferson's thought was fully exploited by Howe's contemporary, the Jesuit scholar and theologian John Courtney Murray in his book *We Hold These Truths*. There, Murray explained that Catholics could participate fully in American politics because they shared the founders' respect for political principles drawn from the natural law tradition: "The philosophy of the Bill of Rights was also tributary to the tradition of natural law, to the idea that man has certain original responsibilities precisely as man, antecedent to his status as citizen." Murray argued that "the power of this doctrine, as it inspired both the Revolution and the form of the Republic," lay in the fact that it drew a "line of demarcation around the exercise of political or social authority. When government ventures over this line, it collides with the duty and right of resistance."¹⁸ Both Williams and Jefferson in their own ways presumed, in Howe's words, a set of "inalienable rights that may not be touched at all by government," including a "deep conviction that the realm of spirit lay beyond the reach of government."¹⁹

I am thus inclined to understand Williams and Jefferson as part of a continuing conversation of the seventeenth and eighteenth centuries regarding the proper relation of church and state. Different though they certainly were, because of their engagement at different historical stages of the conversation, they nonetheless remain a fruitful pair of interlocutors in

¹⁸John Courtney Murray, *We Hold These Truths: Catholic Reflections on the American Proposition* (New York: Sheed and Ward, 1960), 37–38.

¹⁹Howe, *Garden and the Wilderness*, 18.

our own efforts to understand this enduring discussion within the American polity. Hence, the fortuitous use that each made of the wall of separation metaphor has occasioned important revaluations of the First Amendment and the concepts of separation, and *The Garden and the Wilderness* is especially notable among those revaluations.

Having stressed this continuity between Williams and Jefferson and raised a doubt about Howe's contrast between the believer and the skeptic, what would I identify as the most important difference between these two construals of the wall of separation? Both men, of course, argued, as Jefferson would put it to the Danbury Baptists, "in behalf of the rights of conscience." But Jefferson went on to declare that he and the Baptists shared the view that "religion is a matter which lies solely between man and his God."²⁰ This individualist emphasis was strikingly absent from Williams's earlier exposition of the wall of separation in his response to John Cotton. Instead, Williams's images of religion were consistently communal in form, and he wrote explicitly in behalf of persecuted minority religious groups. Indeed, in its immediate literary context, *wall of separation* functioned as a virtual pun for "the Separate Churches," whom Cotton had condemned but whom Williams found heroic in witnessing their faith "by writing, disputing, and in suffering loss of goods and friends, in imprisonments, banishments, death, etc."²¹ If another chapter were to be written in the historical narrative of *The Garden and the Wilderness*, perhaps its subject should be the differences in application of the religion clauses of the First Amendment to religious communities, on the one hand, and individuals, on the other.

²⁰Jefferson, *Writings*, 510.

²¹Williams, *Cotton's Letter . . . Examined*, 393.