

The New Christian Right and the Death of Secularism as Neutrality in the United States

Over recent years religious conservatives in the United States have fervently contested the idea of a liberal, secular public sphere. This article urges scholars to consider that contest in light of the history of the New Christian Right (NCR) of the late 1970s and 1980s. NCR activists, intellectuals, lawyers, and government officials advanced a critique of Rawlsian political liberalism, one charging that public institutions were not the bastions of neutrality supposed by American liberals. Contrary to the U.S. Constitution's ban on an establishment of religion, this critique alleged, cultural elites and judges had lifted the "religion" of secular humanism up to a preferred status while attempting to purge the public sphere of Christianity. Focusing on a pair of federal court cases from the 1980s, this article considers one of the NCR's most fascinating strategies—defining as a "religion" the very secularism meant to contain religion to private life.

In the United States, over the past few years, activists have waged celebrated efforts to Christianize the public sphere. The chief justice of the Alabama Supreme Court hauled a huge granite monument of the Ten Commandments into the courthouse during the night and refused to remove it; Congress noisily championed the cause of parents trying to prevent the removal of a life-support system from their brain-dead adult daughter; a local school board mandated that "intelligent design" be taught alongside scientific explanations of the world's origins; a right-wing president nominated to the U.S. Supreme Court a candidate whose only apparent qualification was that she was an evangelical.¹

These pressures have been building for about thirty years. Beginning in the late 1970s, the New Christian Right (NCR) began trying to reform American political culture, which it considered to be infested with licentious art, depraved sexual expression, and decadent public education. NCR activism was motivated largely by the belief that, in trying to maintain a religiously-neutral public landscape, the American government injured Christians, who, even in public life, were obliged to act always *as Christians*. This paper looks at the NCR's critique of public-sphere secularism, which Reagan-era reli-

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Key words:

New Christian Right, Secularism, political liberalism, U. S. Constitution

gious conservatives denounced as a “religion” of sorts—one that was alien to and intolerant of biblical Christianity.²

Nothing drew the ire of American religious conservative like the U.S. Supreme Court. In the decades after WWII, for the first time, the Court had applied the U.S. Constitution’s ban on religious establishment directly to the individual states and ordered them to stop conducting religious exercises in their public schools. That directive gradually convinced the Christian Right that liberal values had displaced Christian morality in the classroom. In the 1970s and 1980s parents of public-school students tried to shield their children from the corrosive effects of “humanism” and even tried to stop local schools from promoting an allegedly anti-Christian worldview in the classroom.³ Evangelical attorneys, for the first time, pursued specifically Christian cause lawyering.⁴ Activists throughout the U.S.—but especially in the South and West—pressured textbook publishers to balance modern “humanistic” perspectives with Christian ones.⁵ And, while conservative senators attempted to strip the federal courts of jurisdiction over school prayer and abortion,⁶ the New Christian Right’s biggest hero—Ronald Reagan—vowed to win passage of a constitutional amendment legalizing school prayer.⁷

During these same years conservative writers openly complained that American society’s liberal norms had ostracized and marginalized Christians embracing traditional moral views. In *The Culture of Disbelief*, Stephen L. Carter famously charged that liberal laws and social prescriptions trivialized religion in general and treated it as something of which people ought to feel ashamed. Carter condemned liberal political and constitutional theorists for urging that religiously-justified positions be barred from public institutions. When religious citizens are prohibited from acting publicly on the basis of religious reasons, he asserted, society ceased to be inclusive. The law ceased to be fair. When government demanded that public institutions maintain religious neutrality, it not only tread over the rights of religious citizens but also deprived society of the moral multivocality to which it otherwise enjoyed access.⁸ “What is needed is not a requirement that the religiously devout choose a form of dialogue that lib-

eralism accepts, but that liberalism develop a politics that accepts whatever form of dialogue a member of the public offers. Epistemic diversity, like diversity of other kinds, should be cherished, not ignored, and certainly not abolished. What is needed, then, is a willingness to *listen*, not because the speaker has *the right voice* but because the speaker has *the right to speak* (229-30; italics in original).⁹

Writers, such as Carter, who articulated the NCR’s critique of American liberalism subtly wove together two distinct charges into a coherent critique. While accusing liberalism of trivializing and marginalizing Christians (or conservative Christians, who seemed to count most as “Christians”), those writers also condemned liberalism for its moral bankruptcy. Liberalism, it would appear, harmed “Christians” both because it imposed its own distinct moral worldview onto an entire society and because that worldview lacked moral content. NCR scholars argued that behind the liberal policies of the Supreme Court and the liberal curricula and methods of the public schools lay an ideology—a political and moral orientation toward the world so coherent that it could be accurately categorized only as a religion. Its opponents alternately referred to this religion as “humanism” and “secular humanism.” In the rhetoric of the NCR, the religion of secular humanism became the scourge of all devoted Christians who sought merely to raise children and to live lives according to their own preferred religious values. Secular humanism signified, all at once, the absence of religious value and the presence of an alien, anti-Christian religion that silenced all competitors. Its NCR critics characterized humanism as thoroughly “secular” and fundamentally “religious.”

To be sure, this conception of humanism as a secular religion had circulated since at least the 1960s. In a footnote to *Torcaso v. Watkins* (1961) the U.S. Supreme Court plainly referred to secular humanism as a religion. In his dissent in *Abington v. Schempp* (1963), Justice Potter Stewart insisted that “a refusal to permit religious exercises” in the classroom should be “seen, not as the realization of state neutrality, but rather as the establishment of a religion of secularism.”¹⁰ The influential social critic Rousas John Rushdoony complained in

the early Sixties that American public schools served as organs of an Enlightenment-based, humanistic religion incompatible with biblical Christianity. Rushdoony urged followers to reassert the dominance of Christianity over the human-centered religion that had been established by the federal government and the public schools that functioned as its church. In the early Eighties a cadre of writers published works that would develop and popularize those ideas. Especially prominent were Tim LaHaye's *Battle for the Mind*, Francis A. Schaeffer's *A Christian Manifesto*, John W. Whitehead's *The Second American Revolution*, and James Hitchcock's *What Is Secular Humanism?* With these and other works the NCR grounded, in its own indigenous literature, a concept of religion operating through a Christian/humanist dichotomy.¹¹

The emergence of this literature affected more than the world of ideas. Its impact was practical, affecting even the United States government. In 1978, Rushdoony wrote an essay charging the U.S. with violating its own ban against religious establishment by establishing the religion of secular humanism. This essay stirred Rushdoony's protégé, attorney John W. Whitehead, who would later, with Rushdoony's assistance, create the Rutherford Institute, the nation's most important provider of legal services for conservative evangelical causes. Soon after Rushdoony's piece appeared, Whitehead published a law-review article, "The Establishment of the Religion of Secular Humanism and Its First Amendment Implications." Whitehead's piece resonated widely in NCR intellectual circles, just as his legal brief submitted in *Widmar v. Vincent* (1981) helped persuade the Court to reverse thirty-five years of interpreting the First Amendment's establishment clause as demanding secularization of the public sphere through an impenetrable "wall of separation" to keep religion out of public institutions. Beginning with *Widmar*, the Court embraced an alternative interpretation of the establishment clause, one requiring that religious citizens and institutions be guaranteed "equal access" to state-run facilities and programs. That is, public institutions could no longer discriminate against religious speech or practice; to accommodate secular organizations but not religious organizations was possibly to

violate the Establishment Clause. From this time forward, the Court has balanced its earlier secularization standard with its more recent equal-access standard. The logic driving Whitehead's article and legal brief gained tremendous traction within legal, academic, and government circles.¹²

The affects of *Widmar*—and the writings of Rushdoony, Whitehead, LaHaye, and Schaeffer—can be traced throughout U.S. politics and culture during the upcoming years. Prominent right-wing organizations, such as the Moral Majority, Concerned Women for America, and the Christian Coalition, would energetically defend religious citizens' equal access to public goods and services. Likewise, they would continue to deny that secular norms secured a religiously-neutral environment. Secularism-as-neutrality, they insisted, discriminated against religious speech and exercise. Employing this rationale, the U.S. Congress passed the 1984 Equal Access Act, which required public high schools to extend to religious extracurricular groups the same access to school facilities that it granted to groups whose purpose was not explicitly religious. Six years later, in *Board v. Mergens*, the Court confirmed "that the Equal Access Act does not on its face contravene the Establishment Clause." Reiterating its *Widmar* ruling, the Court insisted that "Congress' avowed purpose—to prevent discrimination against religious and other types of speech—is undeniably secular." For a school to accommodate its "Christian Club" as completely as it accommodated all other extracurricular groups was to execute a fully proper, *secular* policy.¹³

Church-state separation would be refuted most eloquently by an upcoming generation of theorists who attacked not only the Court's secularism-as-neutrality doctrine but its underlying liberal theory as epitomized by the work of John Rawls. Since the late 1980s those scholars have reworked the NCR position, rendering it more subtle and reasonable by trying to ensure that the U.S. be, not a Christian state, but a pluralistic state accommodating its ideologically diverse citizenry. Secularism-as-neutrality continues to withstand attack as a ruse obscuring the suppression by liberals of religious citizens' constitutional rights. Christian conservatives urge government

instead to assume a “genuine” neutrality that would neither silence nor support religion, and that would no more endorse secular humanist values than theistic ones.¹⁴

As political liberalism withstands assault, the church-state separation that it supports continues to erode. This erosion can best be grasped in its historical context. The New Christian Right of the 1980s disrupted American political, cultural, and constitutional history. Prior to the NCR’s emergence secularism was widely regarded as neutral, fair, and inclusive—the only ethos wholly suitable to the public sphere. Prior to the NCR’s emergence, few Americans ever talked of “secular humanism.” Virtually no one suggested that it might constitute a religion. Today, these notions are commonplace among conservative-s-. Only by examining the religious-conservative activism of the Reagan era can we fathom the trajectory and implications of today’s “culture wars.” A brief look at one such moment is instructive.

Early in 1982, Ishmael Jaffree bristled upon discovering that his three young public-school children took part in daily recitation of prayers in their Mobile, Alabama, classrooms. This riled Jaffree, a transplant from Cleveland, Ohio. Jaffree had rejected the fervent Christianity of his upbringing and, as a college student and then law student, had embraced a free-thinking agnosticism toward religion. Learning of his children’s “indoctrination,” Jaffree repeatedly asked his children’s teachers, their principals, and the superintendent of schools to cease the prayers. Not only were his attempts to no avail; they incited staunch local resistance. The Mobile County school board elected to defend its teachers’ rights to free religious exercise against Jaffree’s lawsuit, filed in May 1982. In response Gov. Fob James won passage of a law sanctioning classroom prayer and promptly got named as a co-defendant in the suit. Public response in Mobile toward Jaffree was hostile, even from fellow African Americans. Only the federal courts might set the situation right, Jaffree and his lawyering concluded.¹⁵

Jaffree’s most noteworthy resistance came from a group of evangelicals who organized to protect the right of children and teachers to pray in the classroom. One of the group’s

two lawyers worked for the governor and was affiliated with Whitehead’s Rutherford Institute. Many of the group’s members belonged to Mobile’s enormous Cottage Hill Baptist Church, whose pastor was part of the conservative faction then asserting dominance over the Southern Baptist Convention. The group held numerous rallies, appeared on TV and in the newspapers, and successfully petitioned to intervene in the case alongside the defendants. When the trial began in November, Ishmael Jaffree and his lawyer found themselves outspent and outmaneuvered. The Court’s ban on school prayer carried little weight with Alabamians.¹⁶

The *Jaffree* trial demonstrated much that was distinctive about the NCR. Defense lawyers boldly argued that, notwithstanding forty years of U.S. case law, the First Amendment’s proscription against an establishment of religion did not apply to the individual states. The defense made this argument through an expert witness, James McClellan, an advisor to several U.S. senators and a prominent conservative constitutional scholar and legal activist. The judge, Brevard Hand of Mobile, shared McClellan’s conviction that decades of liberal judicial activism had butchered the U.S. Constitution and endangered American democracy. Hand was easily persuaded by McClellan’s arguments about the First Amendment and about the role of judges, who, McClellan insisted, were bound to uphold, not Supreme Court precedent, but only the Constitution’s precise text and the history of its adoption. Hand’s ruling brazenly announced that “this Court’s independent review of the relevant historical documents and its reading of the scholarly analysis convinces it that the United States Supreme Court has erred in its reading of history.” Basing his decision largely on McClellan’s testimony and writings, Hand determined that the actions of neither the state of Alabama nor its schools were constrained by the U.S. Bill of Rights. Accordingly, Hand dismissed Jaffree’s complaint.¹⁷

The judge promised that, in the likely event of his reversal on appeal, “this Court will look again at the record in this case and reach conclusions which it is not now forced to reach.” What “conclusions” did he foresee reaching? The arguments of the intervenors had persuaded Hand. Those argu-

ments did not play a primary role in his *Jaffree* decision: Since he ruled the Establishment Clause inapplicable to the individual states, there was no immediate need to determine whether it had been properly applied in this case—whether, as the intervenors argued, the Establishment Clause actually protected Christianity’s place in the classroom. Should he eventually be forced to render that determination, Hand warned, he would return to the intervenors’ claims, claims that he looked favorably on.¹⁸

Throughout the trial the intervenors had asserted that the real victims of religious discrimination by the Alabama public schools were not the *Jaffree* children. Christian students were the real victims, the intervenors contended. Religion did pervade the textbooks and curricula, to be sure, but it was the religion of secular humanism—and not Christianity—that was pervasive. Testifying for the intervenors was R. J. Rushdoony, who betrayed none of his theocratic extremism. On the witness stand Rushdoony spoke as a religious pluralist wishing merely to see Christianity provided equal treatment with humanism. Rushdoony spun the usual Establishment Clause argument around: The government, through its schools, had established the religion of humanism and had denied Christians their religious liberty. Controlled by humanists, the government had tread over the pluralism that once made America great. The government granted religious freedom to humanists but not to others. “If there were freedom for a variety of groups,” Rushdoony maintained, “there would be more understanding and a greater ability to live together in appreciation of what each group contributes to a pluralistic society.” In a society such as ours, schoolteachers needed to act “as fairly as possible,” to accord “respect for varying positions,” to nurture “a free market of ideas.”¹⁹

So it went with the intervenors’ several expert witnesses, including the well-known televangelist James Kennedy. Each argued that school prayer should be permitted, not because an establishment of Christianity was desirable or permissible, but because the current establishment of humanism could most easily be countered by opening the classroom up to competing religious influences.²⁰ The “free market of ideas,” the in-

tervenors hoped, might effectively disestablish humanism. These arguments impressed Judge Hand, whose opinion noted “that the curriculum in the public schools of Mobile County is rife with efforts at teaching or encouraging secular humanism—all without opposition from any other ethic—to such an extent that it becomes a brainwashing effort.” If he was prohibited from opening up the classroom to competing religious influences, then he would be forced to consider alternative means of disestablishing humanism. Hand promised that, “if this Court is compelled to purge [prayer] from the classroom, then this Court must also purge from the classroom those things that serve to teach that salvation is through one’s self rather than through a deity.” If the higher courts would not let Christianity in, then Judge Hand would see to it that humanism were forced out.²¹

The higher courts, indeed, would not let Christianity in. The Eleventh Circuit Court of Appeals reversed the judge’s decision and rebuked his disregard for Supreme Court precedent. It pointed out that the Supreme Court has unambiguously determined that the Establishment Clause attaches to the states and prohibits its administrators and teachers from authorizing prayer. Although the Supreme Court may choose to revisit and even amend its own past decisions, no district court judge may challenge high Court case law. Several months later, the Supreme Court affirmed, without a hearing, most parts of the Circuit Court’s holding. It did agree to hear arguments on a single element of the case—an Alabama statute that authorized “voluntary” silent prayer—but even that did not pass constitutional muster, the Court ruled in a 6-3 decision in June 1985.²²

The intervenors, Judge Hand, and the state of Alabama could gain solace only from Justice Rehnquist’s dissent, which questioned the constitutionality of strict separation between church and state. “The Establishment Clause did not require government neutrality between religion and irreligion,” Rehnquist held, insisting that “there is simply no historical foundation for the proposition that the Framers intended to build the ‘wall of separation’ that was constitutionalized in [the] *Everson* [case of 1947].” When the case ended up back

in Hand's courtroom and the judge was forced to implement the proscriptions implied by the Establishment Clause, he had a new "Supreme Court precedent" from which to draw—one that did not construe those proscriptions as prohibitions against all religious expression in public schools.²³

In August 1985 Brevard Hand realigned the *Jaffree* parties. The erstwhile defendant-intervenors now became plaintiffs, and, like the plaintiffs in the prior case, they complained that religion had been routinely, systematically advanced in Mobile County classrooms, in violation of the Establishment Clause. Unlike Ishmael Jaffree, the new plaintiffs charged the schools with promoting the religion of secular humanism. Of the three parties named as defendants, two—the Mobile County Board of School Commissioners and the governor of Alabama—admitted to the plaintiffs' charges and agreed to cease promoting secular humanism within public schools. Only the Alabama Board of Education chose to go to trial and defend itself. Its legal expenses were paid by the American Civil Liberties Union and the People for the American Way, while most of the plaintiffs' expenses were covered by Rev. Pat Robertson's National Legal Foundation. So began the saga's second round, *Smith v. Board*, which commenced in Hand's courtroom on October 6, 1986.²⁴

Once again, the conservative evangelicals (now plaintiffs) provided most of the expert witnesses. Once again, their witnesses argued at great length that secular humanism was a religion; that its values derived from anthropocentrism and thus conflicted with Judeo-Christian values; that it permeated the textbooks and curricula employed in Mobile schools; and that its ubiquity in public education, combined with the near absence of theism, created an establishment of religion. Theologians, psychologists, sociologists, philosophers, and historians lined up to testify to what they considered a grave injustice against millions of religious Americans unable to express their religious beliefs alongside their humanist fellows. Several of these witnesses noted that they had defined "religion" functionally rather than substantively, precluding any requirements of sacredness or supernaturalism.²⁵ As sociologist James Davison Hunter explained, "the functional approach defines religion according to what it does. . . . For the individual, reli-

gion provides a sense of meaning, a sense of order, a sense of place in life and in the cosmos, a sense of direction and meaning in life. It also provides moral coordinates by which individuals can live everyday life, a means by which they can know right from wrong, correct from incorrect, appropriate from inappropriate, and so on."²⁶

The plaintiffs' expert witnesses insisted that humanism so completely encompassed its adherents that it could only be considered a religion, one whose "core notion," in the words of witness James Hitchcock, was "the central importance of man in the scheme of reality, and that man's dignity, man's self-fulfillment, and man's power are all dependent upon . . . the exclusion of meaningful belief in God." Ethicist Richard Baer reported that all of the textbooks he examined for the trial "reflect[ed] a position that value judgments are all subjective, relative, and irrational." Parents wanting their children to accept God's absolute moral law would thus be countered by textbooks and teachers preaching moral relativism. And, tragically, this moral relativism had been allowed to avoid censure as a religion and so operated with impunity in America's public schools.²⁷

Not surprisingly, Judge Hand ruled in the plaintiffs' favor. Forced now to hold the Establishment Clause against Alabama schools, he interpreted it to prohibit any single religion from dominating the classroom, to require that an even-handed, pluralistic environment be maintained. For the sake of religious neutrality, Hand claimed, he had to treat all moral ideologies equally. To privilege secularism was to condone establishment. "The promotion and advancement of a religious system occurs when one faith-theory is taught to the exclusion of others, and this is prohibited by the first amendment religion clauses. . . . For purposes of the first amendment, secular humanism is a religious belief system, entitled to the protections of, and subject to the prohibitions of, the religion clauses."²⁸

Accordingly, Hand ruled that the forty-four textbooks examined during the trial be removed from use in the Mobile school system. Strewn throughout with humanistic values, their continued use would violate the U.S. Constitution.²⁹

Once again, Hand was overturned on appeal.³⁰ His equality-between-ideologies argument stood up in the higher courts no better than had his states' rights argument. Nonetheless, Hand's *Jaffree* and *Smith* rulings, along with the testimony of several well-prepared scholars, bequeathed to religious conservatives a compelling understanding of worldview, neutrality, and religious establishment. These cases tell us much about the decline of post-WWII liberalism in the U.S. By defining "religion" functionally, Hand and the witnesses before him suggested that, in upcoming decades, the idea of religious neutrality might fall on hard times.³¹ *Jaffree* and *Smith* remind scholars from across all disciplines that the history of the New Christian Right in the U.S.—a history just now starting to be written—enriches immeasurably our understanding of current-day religious fundamentalism and its threat to Enlightenment rationalism.

These events challenge historians to adopt new analytical concepts. By claiming "worldview" as a locus of injustice, religious conservatives in the U.S. emphasized its importance as a source of identity. To understand these actors, historians of Reagan-era America will need to supplement their standard tools of analysis—race, class, gender, and sexuality—with "worldview" or "moral ideology." Historians would do well to borrow the conceptual lenses of James Davison Hunter and of linguist George Lakoff, who states plainly that "contemporary American politics is about worldview." Historians might also heed cultural theorist Timothy Brennan, who points out that "communities of political belief are themselves forms of identity" and "possess their own proper *cultures*."³² Histories of the NCR will likewise gain much from works in political theory that trace connections between citizens' comprehensive moral doctrines and the larger processes of political compromise.³³ Identity politics may dominate post-Sixties society, but identity politics undoubtedly has acquired a religious dimension—an ideological dimension. To a great extent the NCR gained for "Christianity" a political currency not unlike "color" or "queerness." This, beyond all else, is the legacy of Reagan-era religious conservatism. Only by reckoning with its proponents in their own terms—rather than dismissing their

behavior as conditioned by "mere ideology," the product of "false consciousness"—will historians produce the rich, nuanced history of the New Christian Right that surely awaits them.

Notes:

¹ Washington Post, Oct. 24, 2002, p. A3; New York Times, March 20, 2005, p. A1; New York Times, Dec. 21, 2005, p. A1; New York Times, Oct. 18, 2005, p. A26.

² Sara Diamond, *Not by Politics Alone: The Enduring Influence of the Christian Right* (New York: Guilford, 1998); Walter H. Capps, *The New Religious Right: Piety, Patriotism, and Politics* (Columbia: University of South Carolina Press, 1994); Michael Lienesch, *Redeeming America: Piety and Politics in the New Christian Right* (Chapel Hill: University of North Carolina Press, 1993); Steve Bruce, *The Rise and Fall of the New Christian Right: Conservative Protestant Politics in America, 1978–1988* (New York: Oxford University Press, 1990).

³ *Everson v. Board of Education*, 330 U.S. 1 (1947); *Engel v. Vitale*, 370 U.S. 421 (1962); *School District of Abington, Pa. v. Schempp*, 374 U.S. 203 (1963). Fritz Detweiler, *Standing on the Premises of God: The Christian Right's Fight to Redefine America's Public Schools* (New York: New York University Press, 1999), 157–84; William Martin, *With God on Our Side: The Rise of the Religious Right in America* (New York: Broadway, 1996), 77–78, 117–43, 192; Godfrey Hodgson, *The World Turned Right Side Up: A History of the Conservative Ascendancy in America* (Boston: Houghton Mifflin, 1996), 166–75; Lienesch, *Redeeming America*, 82, 157–72; Stephen Bates, *Battleground: One Mother's Crusade, the Religious Right, and the Struggle for Our Schools* (New York: Holt, 1993), 40–57.

⁴ Kevin R. den Dulk, “In Legal Culture, but Not of It: The Role of Cause Lawyers in Evangelical Legal Mobilization,” paper delivered at conference on cause lawyers and social movements, University of California, Los Angeles, March 2005 (in Robert Daniel Rubin's possession); Stuart A. Scheingold and Austin Sarat, *Something to Believe In: Politics, Professionalism, and Cause Lawyering* (Stanford: Stanford University Press, 2004), 112–17; Gregg Ivers, “Religious Organizations as Constitutional Litigants,” *Polity*, 25 (1992), 243–66; Karen O'Connor and Lee Epstein, “The Rise of Conservative Interest Group Litigation,” *Journal of Politics*, 45 (1983), 479–89.

⁵ Melissa M. Deckman, *School Board Battles: The Christian Right in Local Politics* (Washington, D.C.: Georgetown University Press, 2004); Martin, *With God on Our Side*, 117–43; Bates, *Battleground*, 25–28, 210–32; James Moffett, *Storm in the Mountains: A Case Study of Censorship, Conflict, and Consciousness* (Carbondale: Southern Illinois University Press, 1988); Paul C. Vitz, *Censorship: Evidence of Bias in Our Children's Textbooks* (Ann Arbor: Servant, 1986).

⁶ Bruce J. Dierenfield, “‘Somebody Is Tampering with America's Soul': Congress and the School Prayer Debate,” *Congress and the Presidency*, 24 (Autumn 1997), 184–85; Washington Post, April 6, 1979, sec. A, p. 7; New York Times, Aug. 3, 1980, sec. 4, p. 20.

⁷ Bruce J. Dierenfield, “‘A Nation under God': Ronald Reagan and the Crusade for School Prayer,” in *Ronald Reagan's America*, vol. 1, ed. Eric J. Schmertz, Natalie Datlof, and Alexej Ugrinsky (Westport, Conn.: Greenwood, 1997), 235–61; New York Times, May 4, 1982, sec. A, p. 1.

⁸ Stephen L. Carter, *The Culture of Disbelief: How American Law and Politics Trivialize Religious Devotion* (New York: Anchor, 1994), 10, 15, 227–32.

⁹ *Ibid.*, 229–30; emphasis in original text.

¹⁰ *Torcaso v. Watkins*, 367 U.S. 488, 495n11 (1961); *Abington v. Schempp*, 313.

¹¹ Rousas John Rushdoony, *Intellectual Schizophrenia: Culture, Crisis, and Education* (Philadelphia: Presbyterian and Reformed Publishing, 1961); Rousas John Rushdoony, *The Messianic Character of American Education: Studies in the History of the Philosophy of Education* (Vallecito, Ca.: Ross House, 1963). Tim LaHaye, *The Battle for the Mind* (Old Tappan, N.J.: Revell, 1980); Francis A. Schaeffer, *A Christian Manifesto* (Wheaton, Ill.: Crossway, 1981); John W. Whitehead, *The Second American Revolution* (Westchester, Ill.: Crossway, 1982); James Hitchcock, *What Is Secular Humanism? Why Humanism Became Secular and How It Is Changing Our World* (Ann Arbor: Servant, 1982). See also Onalee McGraw, *Secular Humanism and the Schools: The Issue Whose Time Has Come* (Washington, D.C.: Heritage Foundation, 1976); Homer Duncan, *Secular Humanism: The Most Dangerous Religion in America* (Lubbock: Christian Focus on Government, 1979); Rockne McCarthy et al., *State, Society, and Schools: A Case for Structural and Confessional Pluralism* (Grand Rapids: Eerdmans, 1981), 107–44; Josh McDowell and Don Stewart, *Understanding Secular Religions* (San Bernadino, Ca.: Here's Life, 1982); Franky Schaeffer, *A Time for Anger: The Myth of Neutrality* (Westchester, Ill.: Crossway, 1982); John W. Whitehead, *The Stealing of America* (Westchester, Ill.: Crossway, 1983); and Carl H. Horn, ed., *Whose Values? The Battle for Morality in Pluralistic America* (Ann Arbor: Servant, 1985).

¹² Rousas John Rushdoony, “The State as an Establishment of Religion,” in *Freedom and Education: Pierce v. Society of Sisters Reconsidered*, ed. Donald P. Kommers and Michael J. Wahoske (Notre Dame: Center for Civil Rights, 1978), 37–46. John W. Whitehead and John Conlan, “The Establishment of the Religion of Secular Humanism and Its First Amendment Implications,” *Texas Tech Law Review*, 10 (Winter 1978), 1–66. *Widmar v. Vincent* 454 U.S. 263 (1981).

¹³ Martin, *With God on Our Side*, 191–220, 299–370; Capps, *New Religious Right*, 1–57; Diamond, *Not by Politics Alone*. *Equal Access Act*, 20 U.S. Code, vol. 20, sec. 4071 (1984). *Board of Education of the Westside Community Schools v. Mergens*, 496 U.S. 226, 253, 249 (1990).

¹⁴ Theoretical works indicting secularism-as-neutrality and its underlying political liberalism include James W. Skillen, “The Theoretical Roots of Equal Treatment,” in *Equal Treatment of Religion in a Pluralistic Society*,

ed. by Stephen V. Monsma and J. Christopher Soper (Grand Rapids: Eerdmans, 1998), 55-74; Steven D. Smith, *Foreordained Failure: The Quest for a Constitutional Principle of Religious Freedom* (New York: Oxford University Press, 1995); Frederick Mark Gedicks, *The Rhetoric of Church and State: A Critical Analysis of Religion Clause Jurisprudence* (Durham: Duke University Press, 1995); Michael W. McConnell, "'God Is Dead and We Have Killed Him!': Freedom of Religion in the Post-modern Age," *Brigham Young University Law Review* (no. 1, 1993), 163-88; Stephen V. Monsma, *Positive Neutrality: Letting Religious Freedom Ring* (Westport, Conn.: Greenwood, 1992); and Douglas Laycock, "Formal, Substantive, and Disaggregated Neutrality toward Religion," *DePaul Law Review*, 39 (Summer 1990), 993-1018. Monsma contends that, for government to act with true neutrality, "it must sometimes take certain positive steps to recognize or accommodate religion," while Laycock's ideal of "substantive neutrality" posits that religion "should proceed as unaffected as unaffected by government as possible." Monsma, *Positive Neutrality*, 13; Laycock, "Formal, Substantive, and Disaggregated Neutrality toward Religion," 1002. Political liberalism is expressed most authoritatively in John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996). It is effectively applied to religious issues in Stephen Macedo, "Liberal Civic Education and Religious Fundamentalism: The Case of *God v. John Rawls*," *Ethics*, 105 (April 1995), 468-96.

¹⁵ Testimony of Ishmael Jaffree at *Ishmael Jaffree et al. v. Board of School Commissioners of Mobile County et al.*, Civil case no. 82-0554-H, box no. 1, accession no. 021-93-0423, location no. C0681974 SAN (Federal Records Center, East Point, Ga.), Nov. 15, 1982, pp. 144-66, 207-86; Joseph W. Newman, "Organized Prayer and Secular Humanism in Mobile, Alabama's, Public Schools," in *Curriculum as Social Psychoanalysis: The Significance of Place*, ed. Kincheloe and Pinar (Albany: SUNY Press, 1991), 45-74; "A Conversation with Ishmael Jaffree," part 1, *Azalea City News & Review*, Feb. 17, 1983, pp. 1, 4; *ibid.*, part 2, Feb. 24, 1983, pp. 1, 5. Minutes of the Regular Meeting of the Board of School Commissioners of Mobile County, Alabama, Central Administrative Office of the Mobile County Public School System, Barton Academy (504 Government Street, Mobile, Ala.), July 28, 1982. *Montgomery Advertiser*, July 13, 1982, pp. 1-2. Second amended complaint, *Ishmael Jaffree et al. v. Board of School Commissioners of Mobile County et al.*, *ibid.*, June 30, 1982. Ron Williams interview by Robert Daniel Rubin, March 19, 2002, Mobile, Al.

¹⁶ Thomas Kotouc interview by Robert Daniel Rubin, Mar. 22, 2002, Montgomery, Al., 2-3, 5; Francis Wilkinson, "Judge Hand's Holy War," *American Lawyer*, 9 (May 1987), 112. Fred Wolfe interview by Robert Daniel Rubin, Dec. 4, 2000, Jackson, Miss; Burt Rieff, "Conflicting Rights and Religious Liberty: The School-Prayer Controversy in Alabama, 1962-1985," *Alabama Review*, 54 (July 2001), 163-207, 192-93; Wayne Flynt, Ala-

bama Baptists: Southern Baptists in the Heart of Dixie (Tuscaloosa: University of Alabama Press, 1998), 567; Wilkinson, "Judge Hand's Holy War," 113.

¹⁷ Testimony of James McClellan at *Ishmael Jaffree et al. v. Board of School Commissioners of Mobile County et al.*, Civil case no. 82-0554-H, box no. 1, accession no. 021-93-0423, location no. C0681974 SAN (Federal Records Center, East Point, Ga.), Nov. 15, 1982, pp. 519-605. Regarding the Establishment Clause and its applicability to the states, see James McClellan, "Congressional Retraction of Federal Court Jurisdiction to Protect the Reserved Powers of the States: The Helms Prayer Bill and Return to First Principles," *Villanova Law Review*, 27 (May 1982), 1019-29; and James McClellan, "The Making and Unmaking of the Establishment Clause," in *A Blueprint for Judicial Reform*, ed. by Patrick B. McGuigan and Randall R. Rader (Washington, D.C.: Free Congress Research and Education Foundation, 1981), 295-325. W. Brevard Hand interview by Robert Daniel Rubin, Dec. 5, 2000, Mobile, Al., 2-3; *ibid.*, Oct. 10, 2002, 18-19. Testimony of James McClellan at *Jaffree v. Board*, 556, 603. *Jaffree v. Board of School Commissioners of Mobile County*, 554 F.Supp. 1104, 1128, 1124, 1130 (1983).

¹⁸ *Jaffree v. Board*, 1129.

¹⁹ Testimony of Rousas John Rushdoony at *Jaffree v. Board*, Nov. 15, 1982, pp. 331, 332-33, 361.

²⁰ Testimony of James Kennedy at *Jaffree v. Board*, Nov. 15, 1982, pp. 606-40. See especially the testimony of Richard A. Baer Jr. at *Jaffree v. Board*, Nov. 15, 1982, pp. 779-815.

²¹ *Jaffree v. Board*, 1129n41.

²² *Jaffree v. Wallace*, 705 F.2d 1526 (1983); *Wallace v. Jaffree*, 472 U.S. 38 (1985).

²³ *Wallace v. Jaffree*, 106.

²⁴ Douglas T. Smith et al. v. Board of School Commissioners of Mobile County, 655 F. Supp. 939 (1987). *Ibid.*, 944. Wilkinson, "Judge Hand's Holy War," 112.

²⁵ Transcript, Douglas T. Smith et al. v. Board of School Commissioners of Mobile County, Civil case no. 82-0554-H, box nos. 4-5, accession no. 021-93-0423, location no. C0681974 SAN (Federal Records Center, East Point, Ga.), Oct. 6-22, 1986.

²⁶ Testimony of James Davison Hunter at *Smith v. Board*, Oct. 7, 2006, p. 253.

²⁷ Testimony of James Hitchcock at *Smith v. Board*, Oct. 9, 2006, p. 745. Testimony of Richard A. Baer Jr. at *Smith v. Board*, Oct. 9, 2006, p. 814.

²⁸ *Smith v. Board*, 982.

²⁹ *Ibid.*, 988.

³⁰ Board of School Commissioners of Mobile County v. Smith et al., 827 F.2d 684 (1987).

³¹ In the years after the trial, witnesses Hunter and Baer would continue to develop their arguments for defining religion functionally. See James Davison Hunter, "Religious Freedom and the Challenge of Modern Pluralism," in *The Religious Liberty Clauses and the American Public Philosophy*, ed. James Davison Hunter and Os Guinness (Washington: Brookings, 1990), 54-73; and Richard A. Baer Jr., "Why a Functional Definition of Religion Is Necessary If Justice Is to Be Achieved in Public Education." In *Curriculum, Religion, and Public Education: Conversations for an Enlarging Public Square*, ed. by James T. Sears and James C. Carper (New York: Columbia University Press, 1998), 105-15. See also James M. Donovan, "God Is as God Does: Law, Anthropology, and the Definition of 'Religion,'" *Seton Hall Constitutional Law Journal*, 6 (Fall 1995), 25-99.

³² James Davison Hunter, *Culture Wars: The Struggle to Define America* (New York: BasicBooks, 1991); George Lakoff, *Moral Politics: How Liberals and Conservatives Think* (Chicago: University of Chicago Press, 2002). *Ibid.*, 3. Timothy Brennan, *Wars of Position: The Cultural Politics of Left and Right* (New York: Columbia University Press, 2006), 11; emphasis in original text.

³³ Cf., Rawls, *Political Liberalism*; William A., Galston *Liberal Pluralism: The Implications of Value Pluralism for Political Theory and Practice* (New York: Cambridge University Press, 2002); Rob Reich, *Bridging Liberalism and Multiculturalism in American Education* (Chicago: University of Chicago Press, 2002); Stephen Macedo, *Diversity and Distrust: Civic Education in a Multicultural Democracy* (Cambridge, Mass.: Harvard University Press, 2000); Nancy L. Rosenblum, ed. *Obligations of Citizenship and Demands of Faith: Religious Accommodation in Pluralist Democracies* (Princeton: Princeton University Press, 2000); Eamonn Callan, *Creating Citizens: Political Education and Liberal Democracy* (New York: Oxford University Press, 1997); Amy Gutmann and Dennis Thompson, *Democracy and Disagreement: Why Moral Conflict Cannot Be Avoided in Politics, and What Should Be Done about It* (Cambridge, Mass.: Harvard University Press, 1996); Amy Gutmann, "Civic Education and Social Diversity," *Ethics*, 105 (April 1995), 557-79; Jurgen Habermas, "Reconciliation through the Public Use of Reason: Remarks on John Rawls's *Political Liberalism*," *Journal of Philosophy*, 92 (March 1995), 109-31.□