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1. The Three Theologies of *Murray v. Curlett*

Atheism, Constitutionalism, and Christianity in American Postwar Culture

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Abstract

Murray v. Curlett, decided in conjunction with *School District of Abington Township v. Schempp*, removed the Lord's Prayer and Bible reading from public schools in 1963. The prevailing national discourse that emerged during the following school year represented a relatively united organization against the ruling, based primarily on moral, rather than legal, grounds. The Supreme Court's verdict became a target of public outrage, the narrative opposing the Court's *Murray* decision creating its own theology, one that tied religious faith to a civic and patriotic idealism disconnected from the teachings of the leader in whose name they so often prayed. In the process, pundits posed American constitutionalism as its own form of theological dogma, one with similar flawed readings of the text upon which the improvised faith tradition was based. Those dogmas were posed against atheism, presented as its own theology, one that also came incumbent with a secular governmental corollary in the form of communism. The battle between atheism, constitutionalism, and Christianity would shape the narrative that would continue to influence public opinion and policy through the rest of the century.

Keywords: Madalyn Murray, atheism, Supreme Court, education, race, communism

Introduction

In June 1963, the Supreme Court decided *Murray v. Curlett* (228 MD 239 [1963]), in conjunction with *School District of Abington Township v. Schempp* (374 US 203 [1963]), ruling that organized mandatory prayer in public schools was unconstitutional, driving a debate that stretched through the rest of the twentieth century and into the twenty-first. Detractors of the ruling were compelled to speak out largely by the brazenness of the outspoken atheist petitioner Madalyn Murray, but their statements in defense of public religion, which was solely a defense of public Christianity, never hinged on specific Biblical mandates or any recognizable theological dogma. Instead, the narrative opposing the Court's *Murray* decision created its own theology, one that tied religious faith to a civic and patriotic idealism disconnected from the teachings of the leader in whose name they so often prayed. In the process, pundits posed American constitutionalism as its own form of theological dogma, one with similar flawed readings of the text upon which the improvised faith tradition was based. Posed against them was Murray herself, an atheist petitioner whose lawsuit gamely defended the separation of church and state and the rights of those vulnerable to religious indoctrination and bullying, but a similarly undisciplined proponent of atheism whose sweeping, and often wrong, pronouncements gave her public opponents opportunities to use her as a troubled paragon of the nonreligious. The public discourse surrounding the decision had little of the doctrinal minutia parsed in the nation's divinity schools, but it served as the front porch of an edifice built on three popular theologies and shaped American thought about the role of religion in the public sphere for generations to come.

Historical Antecedents

As early as 1817, the first legal challenges to the American establishment of religion emerged, involving protests, usually unsuccessful, against Sabbath laws that banned business operations on Sundays (Macedo 1998, 63; Way 1985, 913). Between the 1830s and 1870s, Catholic and Jewish immigrants made the first substantial arguments against public school Bible reading, and most states outlawed public funding for parochial education by the early 1880s (Elifson and Hadaway 1985, 318; DL 1963, 544).

The public school religion cases that directly led to *Murray*, however, began in 1940 with *Cantwell v. Connecticut* (310 US 296 [1940]), in which the Court first incorporated the Fourteenth Amendment with the First by requiring states to protect religious freedom. Cantwell stemmed from the acts of a Jehovah's Witness, who canvassed residences in New Haven and denounced Catholicism. He was charged with breach of peace and soliciting without a permit, but the Supreme Court ruled in his favor, arguing that the First Amendment embraced both "freedom to believe and freedom to act." The former was "absolute but, in the nature of things, the second cannot be." Any limitations that existed, then, would of necessity have to relate to religious action, not religious faith.

That distinction between action and faith, and the regulatory policies they could possibly engender, continued three years later in another Jehovah's Witness case. *West Virginia State Board of Education v. Barnett* (319 US 624 [1943]) upheld the right of Jehovah's Witnesses to

abstain from saluting and pledging allegiance to the American flag, a practice the group believed to be a sign of devotion to a graven image. It was a case that, like *Murray* twenty years later, would blend discussions of faith and patriotism, but it did not cause the same national uproar because the emphasis was on the patriotic act rather than religious imposition. The West Virginia Jehovah's Witnesses were not asking the state to remove the pledge of allegiance from classrooms; they were asking not to be required to participate, and to do so, despite the arguments of some mainline protestant denominations, for the sake of a Christian principle. In the minds of many Christians, the ruling set a standard that allowing abstention created a de facto permission to impose faith rituals in public schools, whether those rituals demonstrated faith in a religious concept or one devoted to a nation-state (DL 1963, 545).[1]

By 1962, that permission seemed firmly established. The Court's decisions in Establishment cases in the intervening years approved the use of public funds for parochial schools to bus children in need. They also ruled, in a series of decisions, that students could not be excused from public school general activities for religious instruction unless that instruction took place off campus (*Everson v. Board of Education*, 330 US 1 [1947]; *McCollum v. Board of Education*, 333 US 203 [1948]; *Zorach v. Clauson*, 343 US 306 [1952]; McClure 1963, 89; "No Bible in the Schools?" 1963, 3; Kauper 1964, 59, 67; "Text of Opinions" 1962, 16; Krock 1963, 28). *Torcaso v. Watkins* (367 US 488 [1961]) did not involve educational facilities, but it continued the Court's thinking on the issue by removing any devotional oath to a supreme being as a license requirement for notary publics, mandating that government could not aid religion over non-religion or God-based religions over other forms of belief. It was a significant distinction for a Supreme Court that had traditionally viewed non-establishment as the government's inability to aid one religion over another. With *Torcaso*, however, the Court seemed to argue that having no religion at all was itself just as protected as having a minority faith like that of the Jehovah's Witnesses (DL 1963, 549; Hill 1963, 20).

Engel v. Vitale

On June 25, 1962, the Supreme Court held six to one in *Engel v. Vitale* (370 US 421 [1962]) that a 1951 prayer composed by the New York Board of Regents presented an unconstitutional establishment of religion in public schools. The state never mandated the prayer and never kept records as to the prayer's use or disuse, because the state's Commissioner of Education, James Allen, feared violating the Constitution. *Engel*'s petitioners, five Long Island parents, all but one of whom claimed religious faith, argued that a constitutional violation had occurred. The subsequent ruling enflamed the passions of the American public and made the Court's *Murray* decision the following year a virtual inevitability. New York Republican Representative Frank Becker, voicing the majority's frustration with *Engel*, called the Court's decision, "the most tragic in the history of the United States." *The Pilot*, a Boston Catholic newspaper, called the verdict "a stupid decision, a doctrinaire decision, a decision that spits in the face of our history, our tradition and our heritage as a religious people." The prayer itself was short and nondenominational. "Almighty God, we acknowledge

[1] *Barnett* overturned the Court's decision in a similar Pennsylvania case, *Minersville School District v. Gobits* (333 US 203 [1940]), three years prior, the same year as the *Cantwell* decision, demonstrating an interpretational progression that was certainly not strictly linear (Cord 1982, 150–51).

our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country" (Thompson 1973, 263–64; "Supreme Court: The Fourth 'R'" 1963, 24). But after *Torcaso* had demonstrated that those without religious beliefs were just as protected as those with contested religious beliefs, New York's public schools adopting a prayer, which ensured that nonbelievers did not fit the established mold of a public institution, could not remain constitutional. Thus *The Pilot* did not make a theological or constitutional argument against the decision. It made an undocumented claim about Americans as a "religious people," not acknowledging that the Catholic Church, which funded the paper, would not have been allowed in the majority of the original thirteen colonies, and that a "religious people" was neither a static nor a singular thing. For example, eighty-three different religious denominations featured membership lists of more than fifty thousand worshipers in 1962, all of them with diverse theological emphases (Schwartz 1962, 412).[2]

Murray v. Curlett

The 1962 *Murray* argument had its genesis in a 1905 mandate by the Baltimore school district that required either the reading of one Bible chapter or recitation of the Lord's Prayer at the inception of each school day ("The Supreme Court: A Loss to Make Up For" 1963, 13). Fifty-six years later, thirty-seven states and forty-one percent of public school districts required or allowed the Lord's Prayer or Bible reading in classes. Though the mandate began before the Supreme Court's reckoning with the issue, it was not rare. The number of religious requirements in public schools rose dramatically in the southern and eastern regions of the country. It was a practice contested legally, but largely unquestioned in the public discourse of the South and East (Hirt 1995, 34; Belknap 1999, 405; Kihss 1962, 17; Dugan 1963, 1, 29).

In early-1960s Baltimore, William J. Murray, son of Madalyn Murray and the petitioner of standing, suffered continual verbal and physical assault after his mother's initial protest of the school board's Bible reading or Lord's Prayer participation requirement. The school district responded to Murray's objection by amending its policy to allow the option of excusal—essentially stating that William Murray, or any other dissenting student, could leave the classroom during the Bible chapter or Lord's Prayer recitation—attempting to conform with *West Virginia State Board of Education v. Barnett* (1943). But that was not enough for Madalyn Murray; she filed a mandamus action for removal of the practice in its entirety. A trial court dismissed the original *Murray* suit in 1961, stating that the Bible was not a sectarian document and that the school board's excusal amendment was sufficient to foster religious equality (Cohen 1963, 168; Pfeffer 1963, 166). The Maryland Court of Appeals upheld the lower court's dismissal the following year, citing Supreme Court silence as grounds. That silence became the backbone of *Murray*'s federal appeal ("Petition for a Writ of Certiorari" 1962, 10–11; "Brief in Opposition to Petition" 1962, 7).[3]

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[2] Further demonstrating the lack of religious uniformity, *Abstracts of the United States* for 1961 reported that thirty-seven percent of the American population was not religiously affiliated at the close of the 1950s (Lewis 1962a, 1, 16).

[3] After Madalyn Murray filed for certiorari in the Supreme Court, the FBI began monitoring the atheist petitioner, and Baltimore's Department of Public Welfare, Murray's longtime employer, fired her (Lewis 1963, 1, 27).

During oral arguments, attorneys for the Baltimore school district argued that Bible reading and recitation of the Lord's Prayer were secular attempts to promote moral values. "Now, the practice, we maintain, has something in it other than religiousness itself," argued attorney Francis Burch for the school district, "it has a traditional teaching of moral and ethical values." The Bible itself "was historical," he continued, "the most widely read book of all books ever composed" ("Oral Argument by Francis B. Burch" 1984, F17; Pfeffer 1963, 168).[4] Obviously the Court could not accept such an argument after its *Engel* decision, which ruled that the sectarianism of a relatively innocuous Regent's prayer necessitated its public school removal. The Bible and Lord's Prayer, by comparison, unquestionably promoted a specific belief. Perhaps more significantly, the school district was not defending the value of religious instruction, they defended that instruction by denying that it was religious, a strategy largely unnoticed by those decrying the Court's ultimate decision in the media.

The Disgruntled Public

Murray was decided in conjunction with *Abington Township v. Schempp*, but the Schempp case was brought by a soft-spoken Pennsylvania Unitarian family and ultimately affirmed an existing state law. Madalyn Murray, meanwhile, was an overt and demonstrative atheist successfully overturning a ruling by a Maryland appellate court and thus, in the opinion of the decision's detractors, stymieing state will. The rhetoric in the aftermath of the Supreme Court ruling, then, never portrayed an existential battle between trinitarian versions of Christianity and Unitarianism. It was always an assumed contest between religion and godlessness.

Generally, the overwhelmingly disgruntled public viewed the pending verdict as inevitable, as the Supreme Court's previous decisions seemed to augur a ruling against the school district. The Citizens for Educational Freedom characterized the pending verdict as "another step toward the elimination of God from all public American life," despite the respondent's argument that the district was not actively promoting God. "Every time the Supreme Court restricts religious ceremony in the public schools," wrote commentator James Reston the day following the ruling, "this country suffers a twinge of conflict between its heart and mind" (Cohen 1963, 172; McClure 1963, 89-90; Lewis 1963, 27).

But though he never admitted it himself, the conflict in Reston's heart and mind could also be described as a conflict between two different versions of America's social identity. If religion was the country's heart and constitutional equality was its mind, then the use of religion by government imposition was, by Reston's own admission, antithetical to equality. Religious establishment, in whatever form, was itself a rejection of Paul's declaration to the Galatians, "There is neither Jew nor Gentile, neither slave nor free, nor is there male and female, for you are all one in Christ Jesus" (Galatians 3:28). Reston may have responded that Paul only interpreted equality as the result of imposing Christ Jesus, but the only way to make such a case would be to ignore the dominant beliefs of regional Jews and the religious practices of various enslaved groups. They were not believers in the divinity of Jesus, and thus their

[4] Leonard J. Kerpelman argued for the petitioners, Francis B. Burch and George W. Baker, Jr. for the respondents, and Thomas B. Finan for the State of Maryland *amicus curiae* ("Freedom of Religion" 1964, 82; Lewis 1963, 27).

oneness in Christ Jesus had nothing to do with forcing Jesus upon them. Perhaps more importantly, Reston's statement was an open rejection of secular civic equality, a statement of Christian supremacy over and against the dictates of the Constitution, itself a document, like the Bible, upon which an evolving series of doctrinal beliefs had been built over generations.

The Supreme Court, of course, was only tasked with interpreting the Constitution, and ultimately ruled in favor of Madalyn Murray, arguing in an 8-1 decision that Baltimore's prayer and Bible-reading mandates violated the equal protection clause. The Bible could still be taught in public schools as a historical and literary document, but any kind of imposed religious veneration was unconstitutional. Justice Tom C. Clark wrote the Court's majority opinion, arguing that determining whether or not a governmental imposition is a violation of the Establishment Clause requires finding "the purpose and primary effect of the enactment. If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution," he wrote. "That is to say that to withstand the structures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion" (*Abington School District v. Schempp* 1963). It was clear that Baltimore's mandate did not meet Clark's standard; the Court overturned it.

Reaction to the decision was understandably diverse. Heritage and tradition arguments dominated early reaction to Supreme Court religion decisions, even prompting the normally reclusive former president Herbert Hoover to publicly warn of the 1962 *Engel* decision's "disintegration of a sacred American heritage." Dwight Eisenhower also called upon the national tradition to publicly disagree with the Court's ruling, and Justice Potter Stewart, in his *Engel* dissent, argued that denying children the opportunity to participate in the Regent's prayer denied them the "spiritual heritage of the nation." Eisenhower attempted to get around the Court's constitutional reasoning by reverting to the creator language of another of the country's founding documents. "I realize, of course, that the Declaration of Independence antedates the Constitution," said former President Eisenhower in response to the decision, "but the fact remains that the Declaration was our certificate of national birth" (Lewis 1962b, 20; Kurland 1963, 145).

In making such cases, the former presidents were not making a claim rooted in religious theology; they were calling on a specific interpretation of the secular theology of Americanism, calling on the heritage that the country's founding documents, its biblical corollaries, established to make their case. It was not a strong argument, as the historical assumption that a deity endowed humans with rights did not lead to the logical conclusion that such an endowment permitted those humans to impose a particular version of belief in that deity (or any deity) on everyone else. And if biblical readings relied on letters of the religion's founders, like that of Paul to the Galatians, then a secular theology surely needed to rely on the letters of its own founders. Jefferson's public letter to the Danbury Baptist Association in January 1802 first used the phrase "a wall of separation between Church & State" and described "the supreme will of the nation in behalf of the rights of conscience," but such documents never appeared in statements that tried to tie religious devotion to American secular theology because that theology was always incomplete, constantly evolving, and used only in attempts to win power contests in the public sphere (Jefferson 1998).

It was a phenomenon made all the more apparent when religious leaders ventured into the constitutionalist space. Billy Graham noted that religion had been a part of American heritage since the arrival of the pilgrims, adding, "Now a Supreme Court in 1963 says our fathers were wrong all these years." Graham knew better than anyone, of course, that his own faith relied on an attack on the covenant theology of those pilgrims, who would have interpreted his own preaching as decidedly heretical, but while different religious theological discussions required a thorough knowledge and recognition of different biblical readings, the secular constitutionalist theology allowed its proponents to ignore religious doctrinal differences and stand up "religion" as a single entity, despite its multivalent properties. "We need more religion, not less," said Graham. "Why should the majority be so severely penalized by the protests of a handful?" ("Billy Graham Voices Shock Over Decision" 1963, 27). That caricature of religion was so accepted in the popular press that no one thought to ask him about, for example, the need for more Islam, a religion held by the majority of the arriving slaves and thus a presence in the colonies for a full century-and-a-half prior to the writing of the Constitution. Islam was not present in Philadelphia's Independence Hall because of a bigotry that kept such voices silent, and Graham was silencing them again by using that original bigotry to argue for a new bigotry that favored his own version of a faith tradition that was also not present in the room where those founding documents were signed (Ritter 1963, 657).

The Catholic Archdiocese of New York, in a statement typical of Catholic reaction to *Murray*, noted that secularization of schools was a radical departure from American tradition. The Archbishop of Washington, Patrick O'Boyle, said of the Court, "It is obvious that little by little it is discarding religious traditions hallowed by a century and a half of American practice" (Carmel 1963, 32). The decision was, in this scenario, the antithesis of American religiosity, creating a society of atheists and agnostics, and a decided US policy shift. But it was also a secular theology that could lump "religious traditions" together, ignoring that the history of "American practice" had included, for example, the French and Indian War, fought over fear of Catholic hegemony, that there were just as many Catholics in Independence Hall as there were Muslims, and that much of "American practice" in the decades following the writing of the Constitution included the demonization of Catholic immigrants as fundamentally altering the sanctity of that very same tradition that O'Boyle now defended. Jewish organizations such as the Synagogue Council of America, with a far more nuanced understanding of the country's historical bigotries, argued that America's legacy of religious freedom should take prominence over its legacy of religion and that a practice's duration does not necessarily ensure its constitutionality. "We fervently believe," declared the Council's president, Uri Miller, "that public institutions such as the public school should be free of such practices" ("Brief of Synagogue Council" 1962, 7).

Race Responses

Southern legislators disagreed, the most memorable exhortation pronounced by Representative George Andrews of Alabama who lamented, "They put the Negroes in the schools, and now they've driven God out" (Lewis 1962a, 16). While mass disagreement with *Engel* and *Murray* emanated from every American region, the South proved far less acquiescent than the North and West. And like almost everything else in the South, the decisions were inevitably tied to race (Belknap 1999, 441–42).

Representative L. Mendel Rivers of South Carolina, typically illustrating southern frustration with perceived judicial interference, declared in 1962 that the Supreme Court was "legislating—they never adjudicate—with one eye on the Kremlin and the other on the National Association for the Advancement of Colored People" (Burnham 1962, 20). A group of southern Senators offered a constitutional amendment after *Engel* that asserted, in part, "the right of each state to decide on the basis of its own public policy the question of decency and morality" (Kendall 1964, 252, 258). Alabama Governor George Wallace pronounced in 1964, in a manner strikingly similar to some of his more prominent integration denunciations, "We will not permit God and religion to be suppressed, outlawed, and banned from the institutions created by the people. Nor will we permit the State or any branch of our Government to order God out of our schools" (Smith 1970, 225; Pollak 1963, 62).

Whether arguing against integration or for religious establishment, the arguments of white southern leaders held to the belief that the better judgment of each community should base decisions as to what a proper society should be. Wallace and others were not arguing for religion; they were arguing against judicial interference. And as racist as those cases may have been, they actually had stronger heritage claims than did those of ministers like Billy Graham. The nation's dependence upon white supremacy was far stronger than its dependence on religious faith, an element that largely united the majority of whites during the creation of those founding documents even as religious disagreements left over from the country's revivalist movements divided them. The historical presence of white supremacy did not validate white southern claims, but it did give them a historical consistency not present in other versions of constitutionalist heritage arguments.

Black southerners, meanwhile, who had experienced every form of possible establishment in the region, were supportive of the ruling. Prominent among the religious forces was Martin Luther King, Jr., who referred to the *Murray* decision as "a sound and good decision reaffirming something that is basic in our Constitution, namely separation of church and state" (Pfeffer 1988, 26; Canon 1992, 650–51). Responses such as King's allied religious liberals with nonreligious groups who made similar heritage claims about the legacy of church-state separation. After the previous year's *Engel* decision, the American Ethical Union made a strikingly similar statement to King's, declaring that "the principle of separation is a basic safeguard of freedom" and had been so from the country's founding. "Even among the theistic religions," stated the Union's amicus brief for the petitioners in *Murray*, "the Bible readings heard by the children include doctrines not accepted by some sects or denominations" ("Brief of the American Ethical Union as Amicus Curiae" 1962, 5). A similar brief filed on the petitioners' behalf by the American Humanist Association argued that public Bible reading and Lord's Prayer recitation aided "all religions against non-believers and aids those religions based on a belief in God" ("Brief of the American Humanist Association" 1962, 13, 19). The statements were a reversion back to Jefferson's paeon to "rights of conscience," the groups using a more holistic theological reading of founding documents to see that separation protected both minority faiths and those without faith.

Neutrality Claims

These separation arguments, along with southern railings against judicial interference, inevitably led to a debate over another element of constitutional secular theology, government

neutrality, which featured two competing conceptions. On one side was Justice Tom Clark, whose majority opinion stated that in order for government to remain neutral, religious exercises in the public schools must be removed. He quoted Cincinnati Judge Alphonso Taft, father of future Supreme Court Chief Justice William Howard Taft, in an 1870 opinion: "The government is neutral, and, while protecting all, it prefers none, and it disparages none" (*Abington School District v. Schempp* 1963). Clark and other proponents of removal-as-neutrality based their arguments on the work of James Madison, who insisted that governmental involvement in religious exercise degraded that exercise. It was, they claimed in direct contradiction of Potter Stewart, the public nature of such exercises that robbed them of their religious validity. If a supernatural belief is imposed, the sincerity of individual believers can never be accurately judged or trusted (Ritter 1963, 663, 665; Van Alstyne 1963, 865, 867).[5]

Justice Potter Stewart, the lone dissenter in the *Murray* decision, countered Clark by arguing that removing the option of public religious exercise promoted secularism and was fundamentally non-neutral. "For a compulsory state educational system so structures a child's life," wrote Stewart, "that if religious exercises are held to be an impermissible activity in schools, religion is placed at an artificial and state-created disadvantage" (Monsma 1994, 560). There was, he argued, a third theology at play. There was religion, broadly considered, there was secular constitutionalism, and then there was the absence of religious belief, which itself was a doctrine that was being preferenced by the Court's ruling. And though he was a minority of one on the Court, Stewart had supporters in the legal community making a similar case. A 1963 article in the *Washington Law Review* noted that *Murray* could be construed as promoting secularism over neutrality, because government denial of resources to a Christian community that had continually and historically received them effectively ruled against that Christian community (Ritter 1963, 657). The critical flaw of neutrality theory was that in order to remain strictly neutral, the government must fund both secular and religiously affiliated organizations when the purpose of each was the same. When the resources were not financial, as in the case of public Bible reading and public prayer, neutrality was best demonstrated by maintaining the historical practice (Katz and Southerland 1967, 181, 183; Couglin 1969, 38–39). Maryland's Attorney General, Thomas B. Finan, made a similar case in his amicus brief to the Supreme Court on behalf of the respondents, arguing that to avoid funding any secular activity proposed by a religious organization, just because it was a religious organization, was not, by definition, neutral. Removal of the Lord's Prayer and Bible reading, argued Finan, would "by necessary implication impose upon the populace an atheistic or at least agnostic concept of our origin and end and will itself constitute the establishment of a religion" ("Brief and Appendix of Attorney General" 1962, 3–4). Adherents as diverse as Episcopal Bishop James Pike, Republican New York Senator Kenneth Keating, and Harvard Law School's Erwin Griswold echoed Maryland's reasoning and propagated these neutrality arguments as the basis for their disapproval of *Murray*. All of them, in various ways and to various extents, made the case that

[5] A delineation of the public school religion cases featured in the *Columbia Law Review* echoed Madison in early 1963. It stated that government union with religion, even in the smallest forms, endorsed one faith as more appropriate than another, therefore encouraging the more "appropriate" faith and creating an indirectly "chosen" government religion ("The Supreme Court, the First Amendment, and Religion in the Public Schools" 1963, 73–97).

atheism was itself a religion, one that was being "established" by such decisions ("The Supreme Court: A Loss to Make Up For" 1963, 14).

It was a problematic argument, one that reasoned that since humans had believed in things they could neither see nor prove for a long time, then therefore those who did not believe in things they could neither see nor prove had the historical burden of justifying their unwillingness to go along with faith traditions. Such was not in the legacy of legal argumentation, which placed the burden of proof on the state against individuals it interpreted as deviating from state norms. This inversion of legal precedent, the claim that secular constitutional theology validated Christian theology over and against an atheist theology, for whatever its problems, conditioned much of the angry response to *Murray*.

The Specter of Communism

The Christianity of those making such inversions included both a god and a devil, a hero and a villain. For many, the theology of atheism, as they saw it, was not the disease, but a symptom. The disease was the international representation of that theology, one that conveniently also served as the perceived enemy of constitutional theology: Soviet Communism, which saturated discussions of public school secularism and provided a waiting crutch to heighten the melodrama of such arguments. The juxtaposition of freedom and totalitarianism, after all, was an integral part of that overriding "Americanism." In 1962, for instance, West Virginia Senator Robert Byrd blamed the Court's public school religion decisions on a palpable Communist influence, and various school boards throughout the nation similarly assailed the decisions as "victor[ies] for communism" (Burnham 1962, 20). The juxtaposition of freedom and totalitarianism was an integral part of the American ideal, but Communist rhetoric allowed commentators like Byrd to use the threat of totalitarianism as a tool to limit the freedom they caricatured as sacrosanct. Despite its fears, the nation was in no danger of a Red invasion of its public schools. But just as in Soviet Russia, freedom for Byrd and others meant towing a pre-approved line, which was not really freedom at all (Pfeffer 1988, 26; Kendall 1964, 246).

God and Government

While Communist charges, regardless of merit, remained relatively clear, evaluations of a proper definition of communism's counterpart and *Murray*'s inconsistency with the American status quo were far murkier. A 1954 congressional joint resolution inserted "under God" into the Pledge of Allegiance and a similar 1956 mandate made "In God We Trust" the country's official motto (Krock 1962, 30; Lemay 1987, 11–15, 158–60). Prayers in the legislature and other previously present official procedures basically, if not technically, established a national religion. While military chaplains, religious tax exemptions, and other public religious activities clouded the issue, Justice Brennan's concurring opinion in *Murray* argued that "the line we must draw between the permissible and the impermissible is one which accords with history and faithfully reflects the understanding of the Founding Fathers" ("The Supreme Court, the First Amendment, and Religion" 1963, 84). While it did not untangle the governmental inconsistencies, Brennan's stance attempted to reassure doubters that the Supreme Court did not intend to secularize the nation. The Supreme Court had previously allowed public funding for buses and textbooks for parochial school children, as well as off-campus religious

instruction for public school students. Conservative commentator L. Brent Bozell ignored Brennan's reassurances, however, arguing in the month following the decision that *Murray* continued a logical governmental progression toward "every public action affecting religious interests constitut[ing] a *prima facie* case of unconstitutionality" (Bozell 1963, 20). It was an argument rooted in the idea that a diminution of Christian hegemony in the public sphere was a necessary contradiction of national theology; it made religion co-constituent to patriotism, misconstruing constitutionalism and limiting the universality of faith by borders and majority rule.

Another example of such theological dependency came in the interpretation of the First and Fourteenth amendments. The First Amendment itself stemmed from eighteenth-century Jeffersonian liberalism that, in turn, stemmed from the primarily Baptist and Presbyterian desire for more stringent protection of religion from state authority. The 1868 Fourteenth Amendment barred the states from passing laws that abridged the rights of any American citizen (DL 1963, 542). While these generalizations made original intent arguments appear obvious and standard judicial practice dictated application of the latter amendment to the former, opponents of the *Murray* decision asserted that the First Amendment's congressional mandate and the Fourteenth's preoccupation with the newly freed slaves mitigated the use of original purpose as valid argument. "*All* that is in question is what our 50 *states* (and their subordinate agencies) can or cannot do under the First Amendment," wrote Willmoore Kendall in 1964, "which is a matter about which the Framers of the First Amendment, directed as it is exclusively at Congress, certainly had no discernable intent" (252). By emphasizing that the nation's Founding Fathers would have disapproved of total governmental absence from religion, *Murray*'s detractors further portrayed religiosity as a national ideal and magnified the disbelieving minority's outsider status.

The validity of that minority's position in a democratic society also understandably received much attention. Like "liberty" and "freedom," "democracy" served (and serves) as a vague term that supposedly set America apart, but its actual function and relationship with equality often fell victim to those prior assumptions. California Republican Don Clausen (1963, 13328) stated that the Court's *Murray* and *Engel* decisions punished the majority to accommodate a small minority, replacing the democratic theory of government with an American oligarchy. A 1962 editorial in the Catholic newspaper, *The Pilot*, railed against the "futility of following a course of public policy and public law which is based on the clamorous and constant protestation of a well-organized and litigious minority" (Lewis 1962b, 20). They were, in such statements, confusing tyranny of the minority with basic equality, with the prerogative of the majority to impose its will to the detriment of the minority, rather than the burden of the majority to craft policy to benefit everyone. "We must see to it that minority groups are protected," contributed a letter-writer to the *New York Times*, "but is their wish and whim to be the law of the land?" (Smith 1962, 26).

The concern from lawmakers and letter-writers, however, did not necessarily take hold in the pulpit. Many Protestant churches saw the need to safeguard religion, even if that religion happened to be a minority faith. Theologians such as Arthur Lichtenberger, Presiding Bishop of the Protestant Episcopal Church, argued that assuming minorities only warranted toleration—even when that minority was, like the Murray family, atheistic—was inconsistent with the concept of religious pluralism ("Court Ruling on Prayer" 1962, 26). Such an

assumption, pronounced a statement issued by the National Council of Churches prior to the Court's *Murray* decision, "endangers both true religion and civil liberties" Tolerance was not equality and, by definition, could never be equality. *Murray* and *Engel*, in Bishop Lichtenberger's conception, "reflect[ed] the Court's sense of responsibility to assure freedom and equality to all groups of believers and non-believers as expressed in the First Amendment to the Constitution" (Dugan 1963, 29). The battle for American religious pluralism had been ongoing since at least the seventeenth century and was given its most public airing in the Great Awakening, but liberal protestants in the early 1960s advanced the debate by including atheists as among the minority faiths that needed protection from the wall between church and state (Katz and Southerland 1963, 183; Hutchison 2004).

Clark anticipated the arguments of Clausen and *The Pilot* in his majority opinion, stating that the refusal of separation would only damage religious purity and confuse school children as to the divine or secular nature of religious exercise. "The place of religion in our society is an exalted one," declared Clark, "achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind" (*Abington School District v. Schempp* 1963; West 1976, 387, 394–95). Clark's value argument, endorsed by many makeshift pundits, acted as the primary countermeasure against popular coercion and consistency claims. President Kennedy, US Commissioner of Education Sterling McMurrin, and New York Senator Jacob Javits each anticipated Clark after the Court's *Engel* decision, arguing that religion in the schools transferred spiritual responsibility from the church and home to public education, thereby weakening all three and disorienting children's conception of religious purpose. When theologies mixed, they seemed to be saying, their legitimacy disappeared (Le Beau 2003, 79–80). "We have in this case a very easy remedy," said Kennedy, responding to *Engel*, "and that is to pray ourselves" ("President Urges Court Be Backed on Prayer Issue" 1962, 1). Following *Murray*, mainstream religious groups such as the National Council of Churches, the United Presbyterian Church, and the Synagogue Council of America—each with a vested interest in maintaining the unique sanctity of church life—made similar pleas as to the proper place of religion in American life (Dugan 1963, 1, 29). The National Council of Churches, in a representative statement, emphasized, "neither true religion nor good education is dependent upon the devotional use of the Bible in the public school program" ("Religion in the Schools" 1963, 24).

Devotional use, in fact, was the culprit. The sectarian nature of the Lord's Prayer and the Bible (and even the New York Regent's prayer) existed not only because the two promoted one belief system over another, but also because they distinguished between theism and atheism. This distinction became particularly relevant in light of the presence of an atheist petitioner and assumed a key role in the amicus briefs of the American Humanist Association and the American Ethical Union on the petitioner's behalf. The American Humanist Association's brief explained, "The reading of the Holy Bible in the King James, Douay or other version and the recitation of the Lord's Prayer presupposes a religious belief and a religion based on a belief in God," while the American Ethical Union described the practices as "necessarily offensive to children of followers of the Ethical religion, since they express official sanction of dogmas and practices to which these children cannot subscribe" ("Brief of the American Humanist Association" 1962, 19–20; "Brief of American Jewish Committee" 1962, 10–11; "Brief of the American Ethical Union" 1962, 5). The AHA's description of a

"religion based on a belief in God" and the AEU's notion of "the Ethical religion," however, demonstrated that labeling atheism as its own faith, its own theology, was not entirely unfounded. In defending nonbelievers, they used the language of belief. Liberal theologians like Lichtenberger had done much the same in defense of the Court's *Murray* decision (Schwartz 1962, 409–11). And they were aided by the case's petitioner, Madalyn Murray, who remained throughout her time in the media spotlight dogmatic as to her own stance. She claimed, wrongly, that throughout history "you find that nearly all who contributed anything" to society "were atheists or agnostics." She argued, rightly, that the purpose of public education was "to prepare children to face the problems on earth, not to prepare for heaven" (Howard 1964, 94). She continuously and effectively demonstrated that religion in the public schools did not and could not in-and-of-itself create moral students, but in doing so she and her amici propped up atheism as its own philosophical or theological system. It was not simply a lack of belief; it was a minority belief, like, for example, the Jehovah's Witnesses of previous Supreme Court cases ("Petitioners' Brief 1962, 11, 16).

When the "tyranny of the minority" arguments ran their course, opponents were left with the First Amendment. Violation of the Establishment Clause required one to demonstrate either "advancement" or "inhibition" of religion, while the Free Exercise Clause evaluated church and state separation from the bottom up, guaranteeing each citizen religious freedom. A decision hinged on Free Exercise, then, required a demonstration of coercion, whereas a decision based on the Establishment Clause did not. Establishment claims considered overt acts of governmental religious manipulation, while claims based on the Free Exercise Clause considered the protected population and the impact of any governmental policy on the equal participation or non-participation in the religion of one's choice (Ritter 1963, 662; Van Alstyne 1963, 867; Cohen 1963, 171; DL 1963, 548–49). The Establishment and Free Exercise Clauses, as presented in the *Murray* opinion, were inherently contradictory. Establishment encouraged government isolation while Free Exercise mandated government protection, a paradox of precedence in the petitioners' argument before the Supreme Court (Coughlin 1969, 36). Leonard Kerpelman argued for the petitioners that the Baltimore statute promoted a "free exercise" for the majority that "established" a dominant religion against minority claims. The establishment could be removed only after a reinterpretation of "free exercise" on the part of the school board. "I don't think that the free exercise of the majority can work that way," argued Kerpelman. "In exercising its right it is establishing a religion in the public school; by establishing the religion in the public school, they take away, of course, the right of the petitioners to be free of an establishment" ("Oral Argument by Leonard J. Kerpelman" 1984, F17). With the variety of available interpretations, *Murray*'s eight concurring justices did not necessarily present a unanimous voice that echoed Kerpelman's argument. Rather, each offered his own conception of how far the Establishment Clause reached, leaving the public to interpret the validity of those individual claims. Public opinion began at the water's edge of a shoreline created by these competing viewpoints (Van Alstyne 1963, 865; Perry 1989, 56).

The Perils of Implementation

A brief swim from that edge, beyond the varied arguments surrounding the logic and legitimacy of *Murray*, lay the reality of action and implementation. The Court handed down its opinion on June 17, 1963, and before the close of the month, a barrage of Constitutional

amendments appeared in both the House and Senate attempting to void the judicial decree (Howard 1964, 92). Delaware Republican Senator John Williams offered his amendment just two days following the ruling, the bill stating in part, "Nothing contained in this constitution shall be construed to prohibit the authority administering any school, school system, or educational institution supported in whole or in part from any public funds from providing for the participation by the students thereof in any periods of Bible reading or non-sectarian prayer if such participation is voluntary" (1963, 11088). Protesters picketed Justice Tom Clark, writer of the majority opinion, at a June 28 meeting of the National Council of Juvenile Court Judges in Knoxville, Tennessee ("Clark is Picketed on Prayer Decision" 1963, 20). Representative Robert Ashmore of South Carolina even introduced a bill to place "In God We Trust" above the bench of the Supreme Court within days of the decision (*A Bill to Provide for the Inscription* 1963, 11529).

Two days after the Court's opinion, the ACLU filed suit in California state court to remove "under God" from the Pledge of Allegiance in Los Angeles public schools (Hill 1963, 20). Murray continued her legal campaign the following year by unsuccessfully suing the city of Baltimore to halt the practice of exempting religious organizations from taxation (Howard 1964, 91–92; "Playboy Interview" 1965, 96; Morgan 1972, 105). Judicial scholar Leo Pfeffer predicted in 1963 that governmental support and tax status of religious organizations would be the next major area of inquiry, and America's legal community, if not its Protestant populace, seemed firmly committed to the beneficial effects of church and state separation (Pfeffer 1963, 175; Sky 1966, 1396).

That reckoning did not happen as predicted, and even implementation of the ruling was inconsistent. Many states attempted to get around the ruling, and, as *Time* magazine noted in its coverage of *Murray*, "No federal authority is likely to call out the troops to take the Bible out of a teacher's hand or order children to unclasp theirs" ("The Supreme Court" 1963, 14; LaMorte and Dorminy 1974, 403–4). Some groups, for example, attempted to forward alternatives as religious supplements, the most popular of which was the moment of silence, adopted, in fact, by both Maryland and Pennsylvania, the home states of Murray and Schempp (Hechinger 1963, 1, 18; "Jersey Bars Prayer and Bible In Schools" 1963, 25; Smith 1970, 227–28). Some school boards substituted a recitation of the fourth verse of the "Star Spangled Banner," which repeated the line, "In God is our Trust," and referred to the United States as a "heav'n rescued land." Many school districts offered released-time programs, allowing students to spend a portion of the school day receiving religious instruction off campus ("In God Is Our Trust' Backed" 1963, 20; Birkby 1966, 309; LaMorte and Dorminy 1974, 405–6). Another supplemental method, encouraging student-initiated prayer, assumed the lack of a mandate would circumvent *Murray*, but proved unconstitutional during the Court's 1965 session in *Stein v. Olshinsky* (248 F.2nd 999 [2nd Cir.], *cert. denied*, 382 US 957 [1965]). Each supplement demonstrated religious America's reluctance to move toward a more secular and equal position.

The majority of the American populace receives Supreme Court rulings from news outlets rather than careful readings of opinions, as they did in 1963. The Court's *Murray* decision, then, created a controversy based more on its portrayal than the content of its written opinion. The pattern of responses upon responses only fomented public ire and exacerbated the negative reaction towards the opinion (Casey 1976, 4–5, 12). In essence, the majority of the

populace heard Alabama Representative George Andrews declare, "They put the Negroes in the schools, and now they've driven God out," before they heard Justice Tom Clark explain from his majority opinion, "The place of religion in our society is an exalted one." Exaggerated disapproval of every Supreme Court public school religion decision, *Murray* primary among them, stemmed from exaggerated initial coverage, while more thoughtful and accepting press evaluation and legal commentary prompted gradual acceptance.

Acceptance, however, was reluctant. The *Murray* decision had a 24 percent approval rating in 1963. Twelve years later that figure rose to only 35 percent. In another survey, pollsters asked respondents whether someone who was ideologically opposed to all churches and forms of religion should be allowed to speak publicly. In 1954, 37 percent of the population approved of the possibility, while in 1976 the number rose to 64 percent (Servin-Gonzalez and Torres-Reyna 1999, 614, 620). But hesitant compliance with the Supreme Court's *Murray* decision did not signal the American religious majority's willingness to grant full equality to non-believers. Many American citizens were beholden to the theologies of their faith and their nationalism, both of which assured them of a superiority based on beliefs and place of birth. But the growing ethnic and religious diversity in America aligned the 1963 Supreme Court with popular necessity, if not popular will. The broadest support for school prayer, for example, came from the section of the population with the lowest incomes and lowest education. African Americans remained more devoted to school prayer than whites due primarily to lower socioeconomic status and heavier reliance on religion and church activities, especially in the area of civil rights (Belknap 1999, 402). The Anti-Defamation League of B'Nai B'rith, representing another prominent American minority, on the other hand, referred to the Court's prayer decisions as "splendid reaffirmation[s] of a basic American principle" (Green and Guth 1989, 42–43).

The *Murray* decision, of course, clearly acknowledged the virtual impossibility of absolute church and state separation. The continued acceptance of "under God" in the Pledge of Allegiance and similar customs made this impossibility clear, as did the fact that no Supreme Court decision had been an all-encompassing removal of religion from public schools. Even after *Murray*, the Bible could still be objectively and historically taught, but the religious majority consistently worried over the dismantling of structured religious activity in the public school system, and they did so because their broadly conceived definition of America was tied to a faith in their own religious supremacy (Coughlin 1969, 42–43).

Conclusion

In these maneuvers, the adaptability of a system of thought positing religious patriotism as the only "Americanism" appears most evident. This collective ideal held by a majority of religious Americans in the mid-1960s adjusted when forced to change. In an attack by America (the judiciary) on religion (school prayer and Bible reading), opinion sided against America in the name of Americanism. And it did so because of a conflict between three distinct theological positions. One was a conservative view of Christianity that held its teachings as integral to the defining concept of the nation. One was a constitutionalism that had learned from previous religious establishments and had therefore drawn a decided line between church and state. And one was an atheism supported by Murray and her allies that castigated the former as destroying the latter. When those doctrinaire modes of thought came together, the

constitutionalists ultimately sided with the atheists, and conservative Christians turned against the constitutionalists, even though the Constitution was the document upon which the nation they championed was based.

Bibliography

Belknap, Michal R. 1999. "God and the Warren Court: The Quest for 'A Wholesome Neutrality.'" *Seton Hall Constitutional Law Journal* 9 (Spring), 401–57.

A Bill to Provide for the Inscription in the Courtroom in the U.S. Supreme Court Building of the Phrase "In God We Trust." 1963. 88th Cong., 1st sess. HR 7252, Congressional Record, 109, pt. 9, June 25, 11529.

"Billy Graham Voices Shock Over Decision." 1963. *New York Times* (June 18), 27.

Birkby, Robert H. 1966. "The Supreme Court and the Bible Belt: Tennessee Reaction to the 'Schempp' Decision." *Midwest Journal of Political Science* 10 (August), 304–19.

Bozell, L. Brent. 1963. "Saving Our Children from God." *National Review* (July 16), 19–34.

"Brief and Appendix of Attorney General of Maryland, Amicus Curiae." 1962. No. 119, October Term. Supreme Court of the United States.

"Brief in Opposition to Petition for Writ of Certiorari." 1962. No. 119, October Term. Supreme Court of the United States.

"Brief of the American Ethical Union as Amicus Curiae." 1962. No. 119 and No. 142, October Term. Supreme Court of the United States.

"Brief of the American Humanist Association, As Amicus Curiae, and Motion for Leave to File Same." 1962. No. 119 and No. 142, October Term. Supreme Court of the United States.

"Brief of American Jewish Committee and Anti-Defamation League of B'Nai B'Rith as Amici Curiae." 1962. No. 119 and No. 142, October Term. Supreme Court of the United States.

"Brief of Synagogue Council of America and National Community Relations Advisory Council as Amici Curiae." 1962. No. 119 and No. 142, October Term. Supreme Court of the United States.

Burnham, Alexander. 1962. "Court's Decision Stirs Conflicts." *New York Times* (June 27), 1, 20.

Canon, Bradley C. 1992. "The Supreme Court as a Cheerleader in Politico-Moral Disputes." *The Journal of Politics* 54 (August), 637–53.

Carmel, Abraham. 1963. "Ruling on Prayer Deplored." *New York Times* (June 27), 32.

Casey, Gregory. 1976. "Popular Perceptions of Supreme Court Rulings." *American Politics Quarterly* 4 (January), 3–46.

"Clark Is Picketed on Prayer Decision." 1963. *New York Times* (June 29), 20.

Clausen, Don H. 1963. "The Supreme Court Decision on the Issue of Prayer in Our Public Schools." Extension of Remarks of Hon. Don H. Clausen of California in the House of Representatives. Transcript of Living Waters Broadcast, June 23. 88th Cong., 1st sess. *Congressional Record* 109, pt. 10, July 24, 13328.

Cohen, G. 1963. "Constitutional Law—Whether State Action Requiring Public Schools to Begin Each Day with Readings from the Bible Violates the First Amendment." *Chicago-Kent Law Review* 40 (Fall), 167–74.

Cord, Robert L. 1982. *Separation of Church and State: Historical Fact and Current Fiction*. New York: Lambeth Press.

Coughlin, Bernard J. 1969. "Toward a Church-State Principle for Health and Welfare." *Journal of Church and State* 11 (Winter), 33–46.

"Court Ruling on Prayer." 1963. *New York Times* (June 29), 26.

D.L. (Initials of the author) 1963. "Constitutional Law—Establishment Clause of the First Amendment—Bible Reading and the Lord's Prayer in Public Schools." *New York Law Forum* 9 (December), 540–55.

Dugan, George. 1963. "Churches Divided, with Most in Favor." *New York Times* (June 18), 1, 29.

Elifson, Kirk W., and C. Kirk Hadaway. 1985. "Prayer in Public Schools: When Church and State Collide." *Public Opinion Quarterly* 49 (Autumn), 317–29.

"Freedom of Religion . . . Bible Reading in Schools." 1964. *American Bar Association Journal* 50 (January): 81–82.

Green, John C., and James L. Guth. 1989. "The Missing Link: Political Activists and Support for School Prayer." *Public Opinion Quarterly* 53 (Spring), 41–57.

Hechinger, Fred M. 1963. "Use of Silent Prayer in Schools Weighed." *New York Times* (June 19), 1, 18.

Hill, Gladwin. 1963. "Suit Asks Change in Pledge to Flag." *New York Times* (June 20), 20.

Hirt, Catharina Csaky. 1995. "The Efficacy of Amicus Curiae Briefs in the School Prayer Decisions." Ph.D. diss., Vanderbilt University.

Howard, Jane. 1964. "The Most Hated Woman in America." *Life* (June 19), 91–94.

Hutchison, William R. 2004. Religious Pluralism in America: The Contentious History of a Founding Ideal. New Haven: Yale University Press.

"'In God Is Our Trust' Backed for Pupil Use in Illinois." 1963. *New York Times* (June 22), 20.

Jefferson, Thomas. 1998. "Jefferson's Letter to the Danbury Baptists." *Library of Congress Information Bulletin* 57 (June): https://www.loc.gov/loc/lcib/9806/danpre.html.

"Jersey Bars Prayer and Bible in Schools." 1963. *New York Times* (June 29), 25.

Katz, Wilber G., and Harold P. Southerland. 1967. "Religious Pluralism and the Supreme Court." *Daedalus* 96 (Winter), 180–92.

Kauper, Paul G. 1964. *Religion and the Constitution*. Baton Rouge: Louisiana State University Press.

Kendall, Willmoore. 1964. "American Conservatism and the 'Prayer' Decisions." *Modern Age* 8 (Summer), 245–59.

Kihss, Peter. 1962. "First Amendment Guards Religion." *New York Times* (June 26), 17.

Krock, Arthur. 1962. "In the Nation." *New York Times* (June 28), 30.

———. 1963. "In the Nation." *New York Times* (June 21), 28.

Kurland, Philip B. 1963. "The School Prayer Cases." In *The Wall Between Church and State*, ed. Dallin H. Oaks, 142–79. Chicago: The University of Chicago Press.

LaMorte, Michael W., and Fred N. Dorminy. 1974. "Compliance with the Schempp Decision: A Decade Later." *Journal of Law and Education* 3 (July), 399–407.

Le Beau, Bryan F. 2003. *The Atheist: Madalyn Murray O'Hair*. New York: New York University Press.

Lemay, JA Leo. 1987. *Deism, Masonry, and the Enlightenment: Essays Honoring Alfred Owen Aldridge*. Newark: University of Delaware Press.

Lewis, Anthony. 1962a. "Supreme Court Outlaws Official School Prayers in Regents Case Decision." *New York Times* (June 26), 1, 16.

———. 1962b. "Both Houses Get Bills to Lift Ban on School Prayer." *New York Times* (June 27), 1, 20.

———. 1963. "2 Cases Decided." *New York Times* (June 18), 1, 27.

Macedo, Stephen. 1998. "Transformative Constitutionalism and the Case of Religion: Defending the Moderate Hegemony of Liberalism." *Political Theory* 26 (February), 56–80.

McClure, William C. 1963. "Constitutional Law—First Amendment—State Law Requiring the Reading of the Holy Bible in the Public Schools Violates the 'Establishment Clause' of the Federal Constitution." *University of Pittsburgh Law Review* 25 (October), 87–91.

Monsma, Stephen V. 1994. "Justice Potter Stewart on Church and State." *Journal of Church and State* 36 (Summer), 557–76.

Morgan, Richard E. 1972. *The Supreme Court and Religion*. New York: The Free Press.

"No Bible in the Schools?" 1963. *Life* (April 12), 63–68.

"Oral Argument by Francis B. Burch, Esq., on Behalf of Respondents, Number 119–27 February 1963." 1984. In *Oral Arguments of the Supreme Court of the United States: The Warren Court, 1953 Term—1968 Term*. Frederick: University Publications of America. Text-fiche 19.

"Oral Argument by Leonard J. Kerpelman, Esq., on Behalf of Petitioners, No. 119–27 February 1963." 1984. In *Oral Arguments of the Supreme Court of the United States: The*

Warren Court, 1953 Term—1968 Term. Frederick: University Publications of America. Text-fiche 6.

Perry, Barbara A. 1989. "Justice Hugo Black and the 'Wall of Separation Between Church and State.'" *Journal of Church and State* 31 (Winter 1989), 55–72.

"Petition for a Writ of Certiorari to the Court of Appeals of Maryland." 1962. No. 119, October Term. Supreme Court of the United States.

"Petitioners' Brief." 1962. No. 119, October Term. Supreme Court of the United States.

Pfeffer, Leo. 1963. "The Schempp-Murray Decision on School Prayers and Bible Reading." *Journal of Church and State* 5 (Spring): 165–75.

———. 1988. "Prayer in Public Schools: The Court's Decisions." *National Forum* 68 (Winter), 26–29.

"Playboy Interview: Madalyn Murray." 1965. *Playboy* (October), 61–74.

Pollak, Louis H. 1963. "Public Prayers in Public Schools." *Harvard Law Review* 77 (November), 62–78.

"President Urges Court Be Backed on Prayer Issue." 1962. *New York Times*, 28 June, 1, 17.

"Religion in the Schools." 1963. *New York Times* (June 17), 24.

Ritter, Daniel B. 1963. "Constitutional Law: The Bible Reading Cases." *Washington Law Review* 38 (Autumn), 657–66.

Schwartz, Larry H. 1962. "Separation of Church and State: Religious Exercises in the Schools." *University of Cincinnati Law Review* 31 (Fall), 408–34.

Servin-Gonzalez, Mariana, and Oscar Torres-Reyna. 1999. "Trends: Religion and Politics." *Public Opinion Quarterly* 63 (Winter), 592–621.

Sky, Theodore. 1966. "The Establishment Clause, the Congress and the Schools: An Historical Perspective." *Virginia Law Review* 52 (December), 1395–1466.

Smith, Mrs. Frederick. 1962. "Minority's Wish." *New York Times* (June 29), 26.

Smith, Robert D. 1970. "Religion and the Schools: The Influence of State Attorneys General On the Implementation of *Engel* and *Schempp*." *Southern Quarterly* 8 (April), 221–35.

"The Supreme Court: A Loss to Make Up For." 1963. *Time* (June 28), 13–14.

"Supreme Court: The Fourth 'R.'" 1963. *Newsweek* (March 11), 24–25.

"The Supreme Court, the First Amendment, and Religion in the Public Schools." 1963. *Columbia Law Review* 63 (January), 73–97.

"Text of Opinions in Supreme Court Case Holding School Prayer Unconstitutional." 1962. *New York Times* (June 26), 16.

Thompson, Dennis L. 1973. "The Kennedy Court: Left and Right of Center." *Western Political Quarterly* 26 (June), 263–79.

Van Alstyne, William W. 1963. "Constitutional Separation of Church and State: The Quest for a Coherent Position." *American Political Science Review* 57 (December), 865–82.

Way, Frank. 1985. "Stability and Change in Constitutional Litigation: The Public Piety Cases." *The Journal of Politics* 47 (August), 910–25.

West, Ellis M. 1976. "Justice Tom Clark and American Church-State Law." *Journal of Presbyterian History* 54 (Winter), 387–404.

Williams, John J. 1963. 88th Cong., 1st sess. *Congressional Record*, 109, pt. 8, June 19, 11088.