

SYMPOSIUM

“THE ARC OF THE MORAL UNIVERSE”: CHRISTIAN ESCHATOLOGY AND U.S. CONSTITUTIONALISM

*Nathan S. Chapman**

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*The role of social and religious sentiment, which was once so critical in the life of our societies, has been largely taken over by law.*¹

INTRODUCTION

At the heart of American constitutionalism is an irony. The United States is constitutionally committed to religious neutrality; the government may not take sides in religious disputes. Yet many features of constitutional law are inexplicable without their intellectual and cultural origins in religious beliefs, practices, and movements. The process of constitutionalization has been one of secularization. The most obvious example is perhaps also the most ideal of liberty of conscience that fueled religious disestablishment, free exercise, and equality was born of a Protestant view of the individual's responsibility before God.

This Essay explores another overlooked instance of constitutional secularization. Many jurists and scholars count the modern Supreme Court's progressive interpretations of constitutional rights and equality provisions among the nation's greatest achievements. Scholars have given little attention, however, to the religious origins of those decisions. This Essay suggests that they were heavily influenced by Christian ideas of moral and social progress.

Nineteenth- and twentieth-century Christian intellectual and political movements grounded in post-Enlightenment views of eschatology—or “the last things”—contributed to a doctrine of American civil religion that in turn contributed to the Supreme Court's reasoning. That doctrine of American civil religion holds that America has a special moral destiny. From at least the early nineteenth century, many Americans have believed their nation to be a “city on a hill,”² built and directed by Providence to lead the world in moral reform. The doctrine is well captured by a phrase first written by a nineteenth-century Unitarian minister but popularized by Martin Luther King Jr. and President Barack Obama: “The arc of the moral universe is long, but it bends towards justice.”³ Numerous Presidents, of both political

1 Lord Sumption, 27th Sultan Azlan Shah Lecture: The Limits of Law 3 (Nov. 20, 2013) (transcript available at <https://www.supremecourt.uk/docs/speech-131120.pdf> [<https://perma.cc/U832-CK66>]).

2 See *infra* Sections I.A, II.B.

3 See sources cited *infra* notes 121–22; President Barack Obama, Remarks by the President at Commencement Address at Rutgers, the State University of New Jersey (May 15, 2016) (transcript available at <https://obamawhitehouse.archives.gov/the-press-office/2016/05/15/remarks-president-commencement-address-rutgers-state-university-new> [<https://>

parties, have further distilled the concept by emphasizing the importance of being on the “right side of history.”⁴

Beginning in the mid-twentieth century, the Supreme Court deployed a secularized version of this doctrine in constitutional decisions about rights and equality. The incorporation of the Bill of Rights, the “evolving standards of decency” doctrine under the Eighth Amendment, and the “new insights” into liberty and dignity that inspired the landmark decision to extend the marriage rights to same-sex couples all implemented the beliefs that morality is progressive and the U.S. Constitution incorporates that progress.⁵ Though many current members of the Court reject this view of constitutional interpretation, most scholars still hold it.⁶ They do not appreciate, however, that the intellectual origin of this view is a theologically controversial position on an esoteric question of Christian theology, strained through the generalizing dynamics of American civil religion.

The secularization of disputed Christian eschatology into constitutional law challenges two of the core tenets of modern liberalism. The first is that liberal constitutionalism is coherent and stable without theological suppositions. As some scholars appear to appreciate, a constitutional commitment to moral progress, regardless its initial

perma.cc/83S2-9QLY]); President Barack Obama, Presidential Proclamation—Death of Nelson Mandela (Dec. 5, 2013) (transcript available at <https://obamawhitehouse.archives.gov/the-press-office/2013/12/05/presidential-proclamation-death-nelson-mandela> [<https://perma.cc/3JS9-2M7S>]).

4 See David A. Graham, *The Wrong Side of ‘the Right Side of History’*, THE ATLANTIC (Dec. 21, 2015), <https://www.theatlantic.com/politics/archive/2015/12/obama-right-side-of-history/420462/> [<https://perma.cc/8W3R-75ZV>] (noting that President Obama used the phrase “the right side of history” fifteen times, “the wrong side of history” thirteen times); see also *id.* (“Bill Clinton referred to ‘the right side of history’ 21 times over his time in office, while his staffers added another 15.”); Abraham Lincoln, President of the U.S., Second Annual Message (Dec. 1, 1862) (transcript available at <https://millercenter.org/the-presidency/presidential-speeches/december-1-1862-second-annual-message> [<https://perma.cc/8589-28G3>]) (“The way is plain, peaceful, generous, just—a way which if followed the world will forever applaud and God must forever bless.”); John F. Kennedy, President of the U.S., Inaugural Address (Jan. 20, 1961) (transcript available at <https://www.archives.gov/milestone-documents/president-john-f-kennedys-inaugural-address> [<https://perma.cc/M3C4-YN7G>]) (“With a good conscience our only sure reward, with history the final judge of our deeds, let us go forth to lead the land we love, asking His blessing and His help, but knowing that here on earth God’s work must truly be our own.”); Ronald Reagan, President of the U.S., Address to Members of the British Parliament (June 8, 1982) (transcript available at <https://www.reaganlibrary.gov/archives/speech/address-members-british-parliament> [<https://perma.cc/8K2Z-B3ME>]) (describing “the march of freedom and democracy which will leave Marxism-Leninism on the ash-heap of history as it has left other tyrannies which stifle the freedom and muzzle the self-expression of the people.”).

5 See *infra* Section I.B.

6 See, e.g., Steven D. Smith, *Idolatry in Constitutional Interpretation*, 79 VA. L. REV. 583, 587 n.25 (1993) (listing examples).

motivation, boils down to hope. A theistic view would ground that hope in a synthesis of ontology, epistemology, and human freedom; a secularized version has little to hope for but hope itself.⁷

The second challenge for modern liberalism is to constitutionalism's pretension to religious neutrality. The development of the constitutional norm of moral progress illustrates that religion and constitutional law are a two-way street: specific religious beliefs influence American civil religion, which influences constitutional law; and, as a prime actor in the American civil religion, the Court's implementation of those norms advances one contested religious doctrine over another, effectively determining the content of the civil religion and shaping the terms around which specific religious groups, in this case Christians, engage in their own theological disputes.⁸

This Essay first attempts to understand how a contested Christian doctrine found its way into constitutional law. It does so through a reverse genealogy of ideas—an archaeology, perhaps. The Essay begins by sketching how U.S. constitutionalism, in both theory and doctrine, reflects the belief that the “arc of the moral universe is long, but it bends toward justice.” It then suggests that underlying this constitutional theme is a merger of two features of American civil religion: the tradition of treating the Declaration of Independence and the Constitution as the central texts of a sacred canon and the belief that America has a special moral destiny.

The Essay then unearths the religious streams contributing to the doctrine of moral destiny. Each of them reflects a position on Christian eschatology. The first is the postmillennial movement among mainstream and evangelical American Protestants beginning in the Second Great Awakening, a movement that birthed a wide range of associational efforts to promote social progress. The second and third were both influenced by the Hegelian school's philosophy of history, in which God is synonymous with human conscience, social conflict, and an inexorable trajectory of moral progress. These streams include the liberal Protestant movements of the late nineteenth and early twentieth centuries, and the deliberate secularization of historical eschatology by pragmatists like John Dewey.⁹ The stream nearest in time to the constitutionalization of this doctrine was the religious leadership of the civil rights movement, especially Martin Luther King, Jr. Together,

7 See *infra* Section IV.A.

8 See *infra* Section IV.B.

9 See *infra* notes 134–41 and accompanying text.

these streams leant rhetorical power to President Kennedy's appeal to the Puritan image of America as a "city upon a hill."¹⁰

The Essay concludes by reflecting on this development. Scholars have not appreciated how much U.S. constitutional law reflects American civil religion, which itself reflects the various and often competing religious beliefs of Americans. Each of these—constitutional law, civil religion, and denominational religion—influences the others. This suggests new challenges for the ideal of governmental neutrality, both among competing notions of American civil religion and among diverse religious groups.

I. ECHOES OF ESCHATOLOGY IN U.S. CONSTITUTIONAL LAW

Constitutional jurists and scholars dispute whether constitutional law should reflect progressive notions of justice, liberty, and equality. This used to be a dispute between originalists and everyone else, but now even some originalists believe the Constitution's provisions on liberty and equality require significant "construction," and may, or should be, read progressively.¹¹ So far, scholars have largely ignored one of the most vital intellectual sources of constitutional progressivism. When the Supreme Court bakes a theory of moral progress into constitutional law, it implements, however unwittingly, tenets of the American civil religion, which itself incorporates ideas that began in post-Enlightenment Christian eschatologies.

Because this Essay proceeds by reverse chronology, a brief introduction to Christian eschatology may help set the stage.¹² Eschatology means the study of last things. Christian eschatology encompasses beliefs about the destiny of individuals—death, resurrection, judgment, and eternal destination—as well as the destiny of the world—judgment, destruction, and new creation. Christians disagree among themselves, sometimes vehemently, about the details of eschatology. This Essay focuses on one family of American eschatological views that grew out of the Enlightenment, those that hold that the kingdom of God is coming to earth gradually through the good works of the church. The point is neither to endorse nor criticize this view on theological grounds, but to convey it, and its influence on American civil religion and constitutional law, as accurately as possible.

10 John F. Kennedy, U.S. President-Elect, *The City Upon a Hill Speech* (Jan. 9, 1961) (transcript available at <https://www.jfklibrary.org/learn/about-jfk/historic-speeches/the-city-upon-a-hill-speech> [<https://perma.cc/Y8ZY-4AYN>]).

11 See, e.g., JACK M. BALKIN, *LIVING ORIGINALISM* (2011).

12 See generally *infra* Section III.A.

A. *The Brennan Paradigm*

Justice William Brennan's theory of constitutional interpretation exemplifies this influence. In a speech at Georgetown University, Brennan declared that

the Constitution embodies the aspiration to social justice, brotherhood, and human dignity that brought this nation into being. The Declaration of Independence, the Constitution and the Bill of Rights solemnly committed the United States to be a country where the dignity and rights of all persons were equal before all authority.¹³

The Founders' "commitment" to the equal "dignity and rights of all persons," "a sparkling vision of the supremacy of the human dignity of every individual,"¹⁴ was forward looking. "It is a vision that has guided us as a people throughout our history, although the precise rules by which we have protected fundamental human dignity have been transformed over time in response to both transformations of social condition and evolution of our concepts of human dignity."¹⁵ Originalism fails, Brennan argues, because it "turn[s] a blind eye to social progress and eschew[s] adaptation of overarching principles to changes of social circumstance."¹⁶ The constitutional "demands of human dignity will never cease to evolve."¹⁷

Brennan frames his theory with the eschatological doctrine of American civil religion. In the introduction, he argues that Americans "are an aspiring people, a people with faith in progress. Our amended Constitution is the lodestar for our aspirations."¹⁸ In conclusion, he invokes one of the central symbols of American civil religion going back to the seventeenth-century Puritans:¹⁹

If we are to be as a shining city upon a hill, it will be because of our ceaseless pursuit of the constitutional ideal of human dignity. . . .

13 William J. Brennan, Jr., Just., Sup. Ct. of the U.S., Speech To the Text and Teaching Symposium (Oct. 12, 1985), in *THE GREAT DEBATE: INTERPRETING OUR WRITTEN CONSTITUTION* 11, 11 (1986).

14 *Id.* at 18.

15 *Id.* at 19.

16 *Id.* at 15.

17 *Id.* at 23.

18 *Id.* at 11.

19 See PETER GARDELLA, *AMERICAN CIVIL RELIGION: WHAT AMERICANS HOLD SACRED* 54 (2014) ("In the image of the city on a hill, American civil religion has borrowed directly from Christianity."). See generally *id.* at 54–60 (discussing the tradition). The first application of this symbol to what became America was by John Winthrop in *A Model of Christian Charity*. See *id.* (citing John Winthrop, *A Model of Christian Charity*, in 2 *DEFINING DOCUMENTS IN AMERICAN HISTORY: EXPLORATION AND COLONIAL AMERICA* (1492–1755) 457, 460 (Daisy Martin ed., 2013)).

As we adapt our institutions to the ever-changing conditions of national and international life, those ideals of human dignity—liberty and justice for all individuals—will continue to inspire and guide us because they are entrenched in our Constitution. The Constitution with its Bill of Rights thus has a bright future, as well as a glorious past, for its spirit is inherent in the aspirations of our people.²⁰

Brennan's speech plainly illustrates the influence of Christian eschatology on constitutional thought. The Constitution, which for Brennan includes the Declaration of Independence, provides much more than just a "framework for governance";²¹ its main purpose is to promote "human dignity," conceived of as "liberty and justice for all individuals."²² The "demands of human dignity will never cease to evolve,"²³ and courts and other officials, in their duty to interpret and enforce the "commitment" of the Constitution, are obliged to give meaning to the unending "aspirations of our people" to be "a shining city upon a hill."²⁴ Justice is progressive, the Constitution incorporates it, and the Court has a duty to enforce it. This view both reflected, and influenced, the views of other judges and constitutional theorists.²⁵

B. *Echoes in Doctrine*

A number of constitutional doctrines, too, reflect the view that constitutional interpretation should enforce the hope of Americans for a "ceaseless pursuit" of the expansion of "liberty and justice for all individuals." As such, they may be understood as a manifestation, reflection, or echo of a particular doctrine of American civil religion and a subtly secularized view of Christian eschatology. The following account is suggestive, not comprehensive. By highlighting the influence of progressive views of justice on doctrine, it is also necessarily partial; the Court's reasoning and holding in any constitutional case is the product of many contingent doctrinal, practical, and, sometimes, political factors.

In his Georgetown speech, Brennan gave the application of the Bill of Rights to the states as an example of the Court's efforts to "foster and protect the freedom, the dignity, and the rights of all persons within our borders" in light of an ever-growing "modern activist

20 Brennan, *supra* note 13, at 25.

21 BALKIN, *supra* note 11, at 3.

22 Brennan, *supra* note 13, at 25.

23 *Id.* at 23.

24 *Id.* at 25.

25 See, e.g., BALKIN, *supra* note 11; RONALD DWORIN, *FREEDOM'S LAW: THE MORAL READING OF THE AMERICAN CONSTITUTION* (1996); MICHAEL J. PERRY, *THE CONSTITUTION, THE COURTS, AND HUMAN RIGHTS: AN INQUIRY INTO THE LEGITIMACY OF CONSTITUTIONAL POLICYMAKING BY THE JUDICIARY* (1982).

state.”²⁶ I suggest that this was so in at least two senses. The first is in the doctrine by which the Court decided whether a specific provision of the Bill of Rights ought to be “incorporated” or “absorbed”²⁷ into the Due Process Clause of the Fourteenth Amendment. Although the Justices never uniformly agreed upon a single test for incorporation, the one suggested by Justice Cardozo and endorsed by Justice Brennan was “the belief that neither liberty nor justice would exist” without applying the federal standard to the states.²⁸ Putting it this way implies a progressive notion of justice. The Bill of Rights did not originally apply to the states, the Fourteenth Amendment did not plainly “incorporate” those rights against the states, and the Supreme Court initially held that it did not.²⁹ A rule that then asks whether it is *necessary* for a provision’s application to the states to secure justice and liberty implies, at least, a changed—and therefore evolving—understanding of the minimum standards of justice and liberty.

In keeping with this conception, the Supreme Court has often construed the Bill of Rights to implement a progressive view of justice. In light of the Supreme Court’s decisions liberalizing the rules of criminal procedure, Judge Simon Rifkind wrote:

[T]he object of a trial is not the ascertainment of truth but the resolution of a controversy by the principled application of the rules of the game. In a civilized society these rules should be designed to favor the just resolution of controversy; and in a progressive society they should change as the perception of justice evolves in response to greater ethical sophistication.³⁰

With the “evolving standards of decency” doctrine, announced to implement the Punishment Clause of the Eighth Amendment, a progressive understanding of justice is on the tin. In considering whether a criminal punishment of denationalization was “cruel and unusual punishment,” the Court reasoned that “the words of the Amendment are not precise, and that their scope is not static. The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.”³¹ Denationalization “is a form of punishment more primitive than torture” as evinced by the “virtual unanimity” of “[t]he civilized nations of the world.”³² Though the Court has struggled to develop a consistent and coherent approach

26 Brennan, *supra* note 13, at 20.

27 Palko v. Connecticut, 302 U.S. 319, 325–26 (1937).

28 *Id.* at 326; see Brennan, *supra* note 13, at 21.

29 Slaughter-House Cases, 83 U.S. (16 Wall.) 36, 74–83 (1873).

30 Simon H. Rifkind, *The Lawyer’s Role and Responsibility in Modern Society*, 30 REC. ASS’N BAR CITY N.Y. 534, 535–45 (1975).

31 Trop v. Dulles, 356 U.S. 86, 100–01 (1958) (footnote omitted).

32 *Id.* at 101–02.

to implementing the Eighth Amendment, it has never formally abandoned the “evolving standards” principle.³³ For instance, the Court applied the doctrine to invalidate capital punishment in all cases,³⁴ only to reverse course four years later.³⁵

The Court has also relied on the notion of progressive justice to interpret the Equal Protection and Due Process Clauses of the Fourteenth Amendment. The heyday, of course, was during the Warren Court (or as Mark Tushnet has argued, perhaps it is more accurately labeled the “Brennan Court,” for the latter’s influence).³⁶ Perhaps the most influential early case was *Brown v. Board of Education*.³⁷ The opinion in *Brown* was brief, shorn of jargon. The central reasoning purported to apply the “separate but equal” doctrine from *Plessy v. Ferguson*³⁸ to a new understanding of “education in the light of its full development and its present place in American life throughout the Nation.”³⁹ Two factors led the Court to conclude “[s]eparate educational facilities are inherently unequal.”⁴⁰ First, since the adoption of the Fourteenth Amendment, primary and secondary education had become a necessary path to full and equal participation in the social and political life of the nation.⁴¹ Second, scientific studies had shown that racially segregated education negatively affects the psychological and social lives of racial minorities.⁴²

Applying an old legal standard—*Plessy*—to changed facts—education’s centrality to civic equality and the negative effects of segregation—does not, on the surface, implement a progressive notion of the Constitution’s meaning. What reflected a progressive understanding of the demands of equal protection was the Court’s view of the purpose of the Equal Protection Clause and its changed view of the relevant facts. In *Plessy*, the Equal Protection Clause, as applied to social rights,

33 Westlaw shows that at least 178 federal and state cases have cited it as the foundational doctrine of the Punishments Clause.

34 See multiple concurring opinions citing the evolving standards principle in *Furman v. Georgia*, 408 U.S. 238 (1972).

35 See *Gregg v. Georgia*, 428 U.S. 153, 168–69 (1976).

36 E.g., Mark Tushnet, Comment, *Pragmatism & Judgment: A Comment on Lund*, 99 NW. U. L. REV. 289, 289 (2004).

37 347 U.S. 483 (1954).

38 163 U.S. 537 (1896).

39 *Brown*, 347 U.S. at 492–93.

40 *Id.* at 495.

41 See *id.* at 493 (“[T]hese days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”).

42 See *id.* at 494 (“Whatever may have been the extent of psychological knowledge at the time of *Plessy v. Ferguson*, this finding is amply supported by modern authority.”); see also *id.* at 494 n.11; *Sweatt v. Painter*, 339 U.S. 629 (1950); *McLaurin v. Okla. State Regents for Higher Educ.*, 339 U.S. 637 (1950).

was understood to require relatively equivalent physical facilities.⁴³ In *Brown* (and in the handful of higher education segregation cases it relied on),⁴⁴ the right to equal education had political, not merely social, implications, and the Equal Protection Clause was understood to require equality of opportunity to achieve political and social parity.⁴⁵ *Brown*, and the subsequent cases that cited *Brown* to invalidate various forms of government-mandated social segregation, silently transformed *Plessy*'s conception of equality.⁴⁶

It is an overstatement to say that the Brennan Court relied exclusively, or even mostly, on arguments from progressive justice to implement the Bill of Rights and the Fourteenth Amendment. The Court frequently referred to Founding-era materials, especially in Establishment Clause cases,⁴⁷ and of course it relied heavily on precedent. But it is no exaggeration to say that the motivation and content of the rights doctrine it articulated reflected the view of most of the Justices that the law of constitutional rights should be adapted to whatever is *necessary* to sustain "liberty and justice."⁴⁸

This view gradually caught on among legal scholars but it prompted a political and intellectual backlash that fueled the conservative legal movement. Its influence waned as more conservative justices joined the Supreme Court. Its high-water mark in recent years was undoubtedly the Court's opinion in *Obergefell v. Hodges*, holding that the fundamental right to marry extends to same-sex couples.⁴⁹ The Court provided multiple reasons for that extension, but in addressing historical objections, it argued that "rights come not from ancient sources alone. They rise, too, from a better informed understanding of how constitutional imperatives define a liberty that remains urgent in our own era."⁵⁰ "The nature of injustice," the Court wrote, "is that we may not always see it in our own times. The generations that wrote and ratified the Bill of Rights and the Fourteenth Amendment did not presume to know the extent of freedom in all of its dimensions, and so they entrusted to future generations a charter protecting the right of

43 *Plessy*, 163 U.S. at 548–49.

44 *See, e.g., Sweatt*, 339 U.S. 629; *McLaurin*, 339 U.S. 637; *see* MICHAEL J. KLARMAN, FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY 204–12 (2004).

45 *Brown*, 347 U.S. 483.

46 *See* KLARMAN, *supra* note 44, at 321.

47 *See, e.g., Engel v. Vitale*, 370 U.S. 421, 425–30 (1962); *Everson v. Bd. of Educ.*, 330 U.S. 1, 8–15 (1947).

48 *See Palko v. Connecticut*, 302 U.S. 319, 328 (1937) (quoting *Hebert v. Louisiana*, 272 U.S. 312, 316 (1926)).

49 576 U.S. 644, 681 (2015).

50 *Id.* at 671–72.

all persons to enjoy liberty as we learn its meaning.”⁵¹ Justice Brennan might have put it more eloquently, but it would have expressed the same sentiment: constitutional law must keep pace with evolving notions of justice, liberty, and equality.

II. ESCHATOLOGY IN AMERICAN CIVIL RELIGION

The fact that constitutional law has, to some extent, incorporated moral progressivism is not news. Historians have explored some of the features of mid-twentieth-century American society that may have motivated judges and scholars to do so. Certainly, the Court understood that Jim Crow undermined America’s moral authority abroad.⁵² But where did the Court get the notion that the *Constitution* incorporates a commitment, not only to certain norms of liberty and equality, but to moral progress?

The most proximate source was the merger of two doctrines of American civil religion. The first is that the United States has a unique, God-given moral destiny, and the second is that the Declaration of Independence and the Constitution, among perhaps a handful of other official statements, constitute the religion’s canon of sacred scriptures. Both of these doctrines have their origins in or before the Founding; both have evolved over time; and, like other features of American civil religion, the contours of both remain contested.

As the next part of this Essay argues, the intellectual, social, and political sources of the moral destiny doctrine are rooted in Christian eschatology. Justices and scholars secularized the doctrine, argued that the Constitution incorporated it, and sought to implement it according to well-established norms of constitutional reasoning. The Essay’s claim is *not* that justices and scholars sought to self-consciously implement the American civil religion or its theological sources. Rather, the claim is that American civil religion powerfully influenced the incorporation of moral progressivism into constitutional law.

51 *Id.* at 664; *see also* *Lawrence v. Texas*, 539 U.S. 558, 578–79 (2003) (“Had those who drew and ratified the Due Process Clauses of the Fifth Amendment or the Fourteenth Amendment known the components of liberty in its manifold possibilities, they might have been more specific. They did not presume to have this insight. They knew times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress. As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom.”).

52 *See, e.g.*, KLARMAN, *supra* note 44, at 183–84. *See generally* MARY L. DUDZIAK, *COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY* (2000).

A. American Civil Religion

Scholars debate whether American “civil religion”⁵³ amounts to a “real” religion and, in any case, whether it is desirable.⁵⁴ No beliefs, traditions, or other aspects of American political life declare themselves to be a feature of an “American civil religion.” The object of inquiry is vague and highly subjective, and the concept has massive normative implications. Indeed, most of the scholars are participants in the tradition, bringing their own religious and political viewpoints to bear on the inquiry.

Yet many social theorists have concluded that “there actually exists alongside of and rather clearly differentiated from the churches an elaborate and well-institutionalized civil religion in America.”⁵⁵ “[T]his religion—or perhaps better, this religious dimension—has its own seriousness and integrity and requires the same care in understanding that any other religion does.”⁵⁶ This “religious dimension” of American society has its own community, narrative, canon, and doctrines;⁵⁷ its own rituals, ceremonies, and practices;⁵⁸ its own saints, priests, and prophets;⁵⁹ its own sacred symbols, places, days, and hymns;⁶⁰ its own founding myth, tales of struggle, exodus, and redemption; its own values, norms, and hopes for the future.⁶¹ As with any other religion, each of these features of American civil religion have been contested and each is subject to development and change.⁶²

For some theorists, civil religion is a religion indeed, “a genuine apprehension of universal and transcendent religious reality.”⁶³ For

53 Robert Bellah introduced the term “civil religion” into American sociology, but the basic concept predates his use. See generally Donald G. Jones & Russell E. Richey, *The Civil Religion Debate*, in AMERICAN CIVIL RELIGION 3 (Russell E. Richey & Donald G. Jones eds., 1974); Robert N. Bellah, *Civil Religion in America*, DÆDALUS, Winter 1967, at 1. Bellah attributed the term’s first use to Jean Jacques Rousseau. *Id.* at 5; see also JEAN JACQUES ROUSSEAU, *THE SOCIAL CONTRACT* 115–25 (Charles Frankel ed. & trans., 1947).

54 See Jones & Richey, *supra* note 53, at 9–10.

55 *Id.* at 6 (quoting Bellah, *supra* note 53, at 1).

56 Bellah, *supra* note 53, at 1.

57 See PHILIP GORSKI, *AMERICAN COVENANT: A HISTORY OF AMERICAN CIVIL RELIGION FROM THE PURITANS TO THE PRESENT* 30–35 (2017).

58 See *id.* at 30–33 (discussing the concepts of “canon, archive, pantheon, and narrative”).

59 See *id.* at 31.

60 For a discussion of an extensive list, see GARDELLA, *supra* note 19.

61 See *id.* at 3 (arguing that four values “have come to dominate American civil religion”—personal freedom, political democracy, world peace, and cultural tolerance); GORSKI, *supra* note 57, at 1–4, 19 (arguing that the religion’s principal, and most desirable, norms have been drawn from a unique form of “prophetic republicanism”).

62 See GORSKI, *supra* note 57, at ix (arguing for evolution rather than decline).

63 Bellah, *supra* note 53, at 12; see also Sidney E. Mead, *The “Nation with the Soul of a Church”*, in AMERICAN CIVIL RELIGION, *supra* note 53, at 45, 60, 68–70; GARDELLA, *supra* note

them, the religion is nonexclusive, overlapping with other religious denominations, rather than replacing them. The religion has value not only as a source of national unity, but as a canopy that tempers the universal pretensions of particular religious groups.⁶⁴ Others see civil religion as a form of nationalistic idolatry that too often generates violence.⁶⁵ For others, the notion is purely metaphorical, a useful heuristic for understanding and analyzing features of American political history and practice. This Essay makes no claims of the religion's status as such (that would require first establishing a definition of religion), nor does it take a normative view among competing conceptions of American civil religion. (As will become clear, many debates about policy and constitutional interpretation can be reframed as disputes about what should be orthodoxy in American civil religion.) On any descriptive account, the religion—or “religious dimension” of American life—has from the beginning incorporated Christian eschatological beliefs and sacralized the Constitution.

B. America's Moral Destiny

Christian eschatology has to do with the moral destiny of human beings and all of creation—with the resurrection of the dead, judgment, and the eternal reign of Christ. Building on Jewish traditions and apocalyptic literature, Christianity conceives of history as progressing toward an end rather than, as the Greeks and Romans had believed, repeating itself in cycles. It was only natural for Puritan colonists living in a season of religious, political, and scientific tumult to situate their project within the Biblical narrative. John Winthrop famously quoted the Gospel of Matthew to depict the Bay Colony as “a city upon a hill,” one that “[t]he eyes of all people are upon.”⁶⁶ The world was watching to see whether the colonists would keep their covenant with God and enjoy his blessings or would breach that covenant to their shame. Philip Gorski describes Winthrop's speech as “the ur-text of a certain genre of civil religious writing that conceives of America as a ‘New Israel’ (in the words of Timothy Dwight) and of Americans as an ‘almost chosen people’ (in the words of Abraham Lincoln).”⁶⁷

19, at 2 (“[T]hese monuments, texts, and images, along with the behaviors and values associated with them, amount to a real religion.”).

64 See Mead, *supra* note 63, at 68–71.

65 See GORSKI, *supra* note 57, at 17–18 (attempting to distinguish civil religion and nationalism).

66 John Winthrop, *A Model of Christian Charity*, in 2 DEFINING DOCUMENTS IN AMERICAN HISTORY: EXPLORATION AND COLONIAL AMERICA (1492–1755) 457, 460 (Daisy Martin ed., 2013).

67 GORSKI, *supra* note 57, at 31.

What are Americans “almost chosen” to do? President John F. Kennedy, who shortly before took office referred to the United States as a “city upon a hill,”⁶⁸ declared in his inauguration speech that “we are the heirs of that first revolution,” the one motivated by “the belief that the rights of man come not from the generosity of the state but from the hand of God.”⁶⁹ At that moment, he said, “the trumpet summons us again . . . to bear the burden of a long twilight struggle . . . against the common enemies of man: tyranny, poverty, disease, and war itself.”⁷⁰ His conclusion was this: “With a good conscience our only sure reward, with history the final judge of our deeds, let us go forth to lead the land we love, asking His blessing and His help, but knowing that here on earth God’s work must truly be our own.”⁷¹ As Bellah noted, “[t]he whole address can be understood as only the most recent statement of a theme that lies very deep in the American tradition, namely the obligation, both collective and individual, to carry out God’s will on earth.”⁷²

We might sharpen Bellah’s insight. In Kennedy’s hands, the key features of Christian eschatology were subtly secularized for the civil religion of a nation that was by then sociologically split among Protestants, Catholics, and Jews.⁷³ America’s calling was to fight against injustice at home and abroad, a fight that was subject to “final judg[ment]” in history and to the “sure reward” of “a good conscience.”⁷⁴ The work is “God’s” but “here on earth” it “must truly be our own.”⁷⁵ This is the American civil religion’s doctrine of moral destiny. It “was the motivating spirit of those who founded America, and it has been present in every generation since.”⁷⁶

The prophetic aspect of this doctrine was especially present in the work of Martin Luther King, Jr. “God somehow called America to do a special job for mankind”: to “solve the problem” of racial pluralism.⁷⁷

68 Kennedy, *supra* note 10.

69 Kennedy, *supra* note 4.

70 *Id.*

71 *Id.*

72 Bellah, *supra* note 53, at 5.

73 See WILL HERBERG, PROTESTANT—CATHOLIC—JEW: AN ESSAY IN AMERICAN RELIGIOUS SOCIOLOGY (1955). Writing in the mid-1950s, Herberg lamented that “[t]he God of judgment has died.” *Id.* at 280 (quoting A. Roy Eckardt, *The New Look in American Piety*, 71 CHRISTIAN CENTURY 1395, 1396 (1954)). He did not anticipate the prophetic declarations and witness of the civil rights movement or, for that matter, Vatican II.

74 Bellah, *supra* note 53, at 1–2 (quoting Kennedy, *supra* note 4).

75 *Id.* at 2 (quoting Kennedy, *supra* note 4).

76 *Id.* at 5.

77 GORSKI, *supra* note 57, at 150 (quoting Martin Luther King, Jr., *The American Dream*, in A KNOCK AT MIDNIGHT: INSPIRATION FROM THE GREAT SERMONS OF REVEREND MARTIN LUTHER KING, JR. 79, 92 (Clayborne Carson & Peter Holloran eds., 1998)).

“[S]omehow if we can’t solve the problem in America, then the world can’t solve the problem, because America is the world in miniature and the world is America writ large.”⁷⁸ King’s eschatological vision of America was consistent with “the original exceptionalism of the Puritan era, which saw America as an almost-chosen nation, a people who had been set apart and placed under judgment. Like Winthrop, King hoped that America could serve as an example to the world”⁷⁹

The belief that maintains that America has a special moral destiny and stands under the ultimate judgment of a transcendent standard has not always been a dominant feature of American civil religion—and it has always been contested. Secularists have emphasized moral progress without a transcendent standard, as many Christian nationalists have dropped the concern for God’s judgment, equating God’s will with whatever America does. Yet, as we shall see, the postmillennialism of nineteenth-century evangelicals, the Hegelian theory of history, and the liberal Protestant social gospel contributed to an enduring, though malleable, doctrine of American moral destiny.

C. *The Constitution as Sacred Text*

How did this doctrine merge with American constitutionalism? “[T]he Constitution has become a sacred scripture of American civil religion.”⁸⁰ Whether a “real” religion or merely a metaphor,⁸¹ many scholars have considered religion a useful concept for analyzing U.S. constitutionalism.⁸² Many have discussed the parallels between scriptural and constitutional hermeneutics for a community shaped by a shared narrative and committed to a common life.⁸³ Sanford Levinson’s distinction between “Catholic,” or top-down, and “Protestant,” or bottom-up, modes of interpretation nicely captures disputes about the respective roles of the Supreme Court and the people to offer

78 *Id.*

79 *Id.* at 150–51.

80 GARDELLA, *supra* note 19, at 131.

81 See John Witte, Jr., *The Metaphorical Bridge Between Law and Religion*, 47 PEPP. L. REV. 435, 457–58 (2020) (discussing the application of religion to constitutional law as a metaphor).

82 See, e.g., PAUL W. KHAN, *POLITICAL THEOLOGY: FOUR NEW CHAPTERS ON THE CONCEPT OF SOVEREIGNTY* 8–16 (2011); Lior Barshack, *Constituent Power as Body: Outline of a Constitutional Theology*, 56 U. TORONTO L.J. 185, 185 (2006); W. Tarver Rountree, Jr., *Constitutionalism as the American Religion: The Good Portion*, 39 EMORY L.J. 203 (1990); SANFORD LEVINSON, *CONSTITUTIONAL FAITH* (2011).

83 See Smith, *supra* note 6, at 585–87; Peter J. Smith & Robert W. Tuttle, *Biblical Literalism and Constitutional Originalism*, 86 NOTRE DAME L. REV. 693, 721–50 (2011); Thomas C. Grey, *The Constitution as Scripture*, 37 STAN. L. REV. 1, 3–13 (1984); JAROSLAV PELIKAN, *INTERPRETING THE BIBLE AND THE CONSTITUTION* 2–37 (2004).

authoritative interpretations of the Constitution.⁸⁴ Scholars have observed that some Supreme Court decisions comprise a “canon” of constitutional scripture and others an “anticanon.”⁸⁵ The decisions and arguments of exemplary Justices and officials carry the weight of apostles, saints, or doctors of the American political church.

Many, from Frederick Douglass to Abraham Lincoln to William Brennan, have included the Declaration of Independence in the canon.⁸⁶ Unlike the Constitution, the Declaration’s text plainly connects American constitutionalism to Christian eschatology, asserting that all “are endowed by their Creator with certain unalienable Rights,” confessing “a firm Reliance on the Protection of divine Providence,” and appealing ultimately to “the Laws of Nature and of Nature’s God,” “the Supreme Judge of the World.”⁸⁷

The Declaration’s appeal to first principles highlights the political choices that “reflect and reify fundamental beliefs and values—deep ontological metaphors, about the meanings and measures of authority and liberty, justice and mercy, rule and equity, nature and custom, canon and commandment, and more.”⁸⁸ These choices undergird “the legitimacy of [the] legal order,” “even if [they] remain hidden from day-to-day legal and communal life.”⁸⁹ According to John Witte, Jr., each revolution in western legal systems, including the American revolution of 1776, “offered a new eschatology and a new apocalyptic vision of the perfect end-time,” and each, “in its radical phase, sought the death of an old legal order to bring forth a new order that would survive its understanding of the Last Judgment.”⁹⁰ American constitutionalism is central to disputes about the narrative and norms of the American political community.⁹¹

Scholars have given far less overt attention to the eschatological features of American constitutionalism. Tarver Rountree did so thirty

84 LEVINSON, *supra* note 82, at 27–30; *see also* JACK M. BALKIN, CONSTITUTIONAL REDEMPTION: POLITICAL FAITH IN AN UNJUST WORLD 10 (2011) (preferring a hybrid approach).

85 *See* Jamal Greene, *The Anticanon*, 125 HARV. L. REV. 379 (2011); Mark A. Graber, *Hollow Hopes and Exaggerated Fears: The Canon/Anticanon in Context*, 125 HARV. L. REV. F. 33 (2011); J.M. Balkin & Sanford Levinson, *Constitutional Canons and Constitutional Thought*, in LEGAL CANONS 400, 417–18 (J.M. Balkin & Sanford Levinson eds., 2000).

86 *See* BALKIN, *supra* note 84, at 122; PAULINE MAIER, AMERICAN SCRIPTURE: MAKING THE DECLARATION OF INDEPENDENCE (1997); *see also* Brennan, *supra* note 13, at 11 (considering the Declaration of Independence alongside the Constitution as a source of constitutional values).

87 THE DECLARATION OF INDEPENDENCE paras. 1, 2, 32 (U.S. 1776).

88 Witte, *supra* note 81, at 454.

89 *Id.*

90 *Id.* at 456.

91 Robert M. Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 4–5 (1983).

years ago in a short essay arguing that “much of the development of constitutional law has been motivated by movement toward a fuller realization of the prospects of a better life and society.”⁹² Jack Balkin’s theory of constitutional redemption relies tacitly on a secularized notion of eschatology.⁹³ No legal scholars, to my knowledge, have plumbed the origins of these features of the American civil religion or its historical origins in the nineteenth and early twentieth centuries.

When combined with the Constitution’s sacredness, the doctrine of America’s moral destiny raises questions about the trajectory of American constitutional beliefs, practices, and doctrines. What or who sits in judgment of American constitutionalism? The Founders only? Current Americans only? The sensibilities of “civilized” nations? The “Laws of Nature and of Nature’s God?”⁹⁴ Future generations? Progress? How do we know progress when we see it—or when people of good will dispute it? American civil religion has always been vague on these points, and necessarily so: they rest on intellectual, religious, and political traditions that are in tension with one another, even as they agree at a high level of generality that the nation has a unique moral destiny, one reflected in its sacred texts.

III. STREAMS OF AMERICAN ESCHATOLOGY

This Essay Part introduces several significant historical streams that have fed the civil religion doctrine of American moral destiny. Each, in different ways, reflects a unique post-Enlightenment notion of Christian eschatology, and each believed that America had a special role within that eschatology.

A. *Christian Eschatology: A Primer*

During the celebration of Communion or Eucharist, Christians declare “Christ has died; Christ is risen; Christ will come again.”⁹⁵ Christian eschatology (literally, in Greek, the study of last things⁹⁶) is built on the belief that the risen Christ will come again. The belief has individual and cosmic implications: God will raise each person for

92 Rountree, *supra* note 82, at 209; *see id.* at 210 (“There seems to be a strong sense of pilgrimage involved in all of this. The nation is set out on a journey beset with dangers and difficulties, but faith and effort in the tradition will bring us to the Celestial City.”).

93 *See* BALKIN, *supra* note 84, at 25 (“According to this story our system of government has a point, a trajectory: It works toward the realization in history of the promises made in the Declaration of Independence and the Constitution.”).

94 THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

95 Jerry L. Walls, *Introduction* to THE OXFORD HANDBOOK OF ESCHATOLOGY 3, 3 (Jerry L. Walls ed., 2008).

96 *Id.*

judgment and eternal reward, and God will, in Christ, “make all things new.”⁹⁷ The Greeks and Romans believed history was cyclical—it isn’t going anywhere in particular.⁹⁸ Like the Jews before them, though, Christians believe that history has a beginning, a middle, and an end, or *telos*, understood as both a goal and a completion.⁹⁹

The Old and New Testaments both foretell final divine judgment and an age of peace and righteousness.¹⁰⁰ Revelation 20–21 describes a thousand years when Satan will be bound and saints will rule the earth.¹⁰¹ At the end of that millennium, Satan will be free to persecute the saints for a time; then God will condemn him to eternal punishment, resurrect the dead for final judgment, and reign forever in a new heaven and new earth.¹⁰²

Christians have always disputed the meaning of this story.¹⁰³ Following Augustine, the Catholic Church officially teaches a doctrine sometimes referred to as *amillennialism*: the thousand-year reign is figurative of the church’s existence in the world during history.¹⁰⁴ In the eighteenth and nineteenth century, though, many American Christians expected a coming thousand-year period of peace and righteousness. They disagreed, however, about whether Christ would physically return before or after the millennium. *Premillennialists* believed that Christ will intervene in human affairs by physically returning, putting an end to history, and personally reigning on this earth for a thousand years before final judgment.¹⁰⁵ *Postmillennialists* believed that the church will usher in a uniquely peaceful thousand years of Christ’s spiritual reign in history before the Second Coming.¹⁰⁶

97 Revelation 21:5. See generally Walls, *supra* note 95, at 3–4.

98 E.I. Johnston, *How the Greeks and Romans Regarded History*, 3 GREECE & ROME 38, 40 (1933).

99 Walls, *supra* note 95, at 4–5.

100 See *id.* at 3–5.

101 Revelation 20:1–5.

102 Revelation 20:7–13; Revelation 21:1–4.

103 See generally Timothy P. Weber, *Millennialism*, in THE OXFORD HANDBOOK OF ESCHATOLOGY, *supra* note 95, at 365.

104 See CATECHISM OF THE CATHOLIC CHURCH paras. 1042–50 (2d ed. 2000), <https://www.usccb.org/sites/default/files/flipbooks/catechism/> [https://perma.cc/48M6-9WZL]; Paul VI, *Lumen Gentium*, ch. VII (Nov. 21, 1964), https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19641121_lumen-gentium_en.html [https://perma.cc/KH7Z-B6N5]; Weber, *supra* note 103, at 368; see also Brian Daley, *Eschatology in the Early Church Fathers*, in THE OXFORD HANDBOOK OF ESCHATOLOGY, *supra* note 95, at 91, 100 (discussing the influence of Augustine).

105 See Weber, *supra* note 103, at 367. Premillennialism is sometimes called “millenarianism”; e.g., DANIEL WALKER HOWE, WHAT HATH GOD WROUGHT: THE TRANSFORMATION OF AMERICA, 1815–1848, at 290 (2007).

106 See Weber, *supra* note 103, at 367–68.

B. American Postmillennialism

The reservoir of Christian belief that perhaps contributed the most to the doctrine of American moral destiny was early-nineteenth-century American Protestant postmillennialism. The colonial Puritans believed that they had entered into a special covenant with God.¹⁰⁷ Some of them believed that they were living near the end times, and that “their efforts to restore the purity of New Testament Christianity hastened the millennium.”¹⁰⁸ For Jonathan Edwards, the Great Awakening of the mid-eighteenth century signaled that “the millennial age approached and might well begin in America.”¹⁰⁹ But it was the Second Great Awakening, in the 1810s to 1830s,¹¹⁰ that put postmillennialism at the center of American social and political thought.¹¹¹ Historian Daniel Walker Howe summarizes the role of postmillennial sentiment reflected in many sermons, political speeches, and tracts of the era:

[M]aterial improvements, political democratization, and moral reform all provided encouraging signs that history was moving in the right direction, as did the spread of Christianity to the four corners of the globe. Americans seemed a “chosen people” not only because they enjoyed a covenanted relationship with the God of Israel but also because they were destined to prepare the way for the return of His Messiah and Son.¹¹²

This was no passive belief, though, for many American Protestants believed that their prayers and actions would hasten the millennium. Voluntary reform associations proliferated to stem the tide of social ills like alcoholism, lotteries, duels, and slavery.¹¹³ President John Quincy Adams declared that, “[p]rogressive improvement in the condition of man is apparently the purpose of a superintending Providence.”¹¹⁴ He “saw himself as working for the establishment of the messianic age foretold by the second Isaiah.”¹¹⁵ Francis Wayland, Baptist minister,

107 See HOWE, *supra* note 105, at 285–86.

108 *Id.* at 286; see E. BROOKS HOLIFIELD, *THEOLOGY IN AMERICA: CHRISTIAN THOUGHT FROM THE AGE OF THE PURITANS TO THE CIVIL WAR* 48–51 (2003) (discussing colonial millennialism).

109 HOWE, *supra* note 105, at 286.

110 See *generally id.* at 164–202; NATHAN O. HATCH, *THE DEMOCRATIZATION OF AMERICAN CHRISTIANITY* (1989); ROBERT H. ABZUG, *COSMOS CRUMBLING: AMERICAN REFORM AND THE RELIGIOUS IMAGINATION* (1994).

111 See HOWE, *supra* note 105, at 286–87.

112 *Id.* at 286.

113 *Id.* at 166–70.

114 DANIEL WALKER HOWE, *THE POLITICAL CULTURE OF THE AMERICAN WHIGS* 59 (1979).

115 HOWE, *supra* note 105, at 287.

economist, and later president of Brown University, said that “[t]he dim shadows of unborn nations . . . implore this country to fulfill the destiny to which she has been summoned by an all-wise Providence, and save a sinking world from temporal misery and eternal death.”¹¹⁶ This merger of postmillennialism and nationalism “flourished” among antebellum Protestants.¹¹⁷

Americans were not the only ones who believed the American project to be a “city on a hill.” Among others, the German philosopher G.W.F. Hegel called America “the land of the future,” predicting that “[i]n the time to come, the center of world-historical importance will be revealed there.”¹¹⁸ Intriguingly, Hegel’s view that *Spirit* was directing history through human morality toward its ultimate destiny would have a subtle but important influence on the development of American postmillennialism.

C. Liberal Protestantism

Within several decades, American postmillennialism had leant its concepts at once to the “doctrine” of manifest destiny and to abolitionist sentiments that usually opposed expansion. What both shared was a belief in America’s providential role as a moral example for the world. At the same time, a handful of New England Protestants were going in a new direction, one that would shape American social movements into the twentieth century.

Theodore Parker was a Unitarian minister whose sermons and writings influenced Abraham Lincoln and Martin Luther King, Jr. His transcendentalist sentiments reflected Hegel’s philosophy of history.¹¹⁹ In an abolitionist sermon published in 1853, Parker argued that the “facts of the world” show “a continual and progressive triumph of the right”¹²⁰:

I do not pretend to understand the moral universe, the arc is a long one, my eye reaches but little ways. I cannot calculate the curve and complete the figure by the experience of sight; I can divine it by conscience. But from what I see I am sure it bends towards justice.¹²¹

116 *Id.* at 288 (quoting FRANCIS WAYLAND, *THE DUTIES OF AN AMERICAN CITIZEN* 44 (Boston, James Loring, Washington Street 2d ed. 1825)).

117 *See id.* at 289.

118 G.W.F. HEGEL, *INTRODUCTION TO THE PHILOSOPHY OF HISTORY* 90 (Leo Rauch trans., Hackett Publ’g Co., Inc. 1988) (1837).

119 Parker was heavily influenced by Auguste Comte’s theory of the historical and moral development of humanity. *See* HOLIFIELD, *supra* note 108, at 450.

120 THEODORE PARKER, *Of Justice and the Conscience*, in *TEN SERMONS OF RELIGION* 66, 84 (Boston, Crosby, Nichols, & Co. 1853).

121 *Id.* at 84–85.

This quote had an outsized influence on American civil religion: it was one of Martin Luther King, Jr. and President Barack Obama's favorite inspirational quotes.¹²²

Parker was "sure" of the universe's moral trajectory because conscience declares God's law and God will work through conscience to advance justice and righteousness.¹²³ "His justice, our morality working with that, shall one day create a unity amongst all men more fair than the face of nature, and add a wondrous beauty, wondrous happiness, to this great family of men."¹²⁴ Parker went on to declare that

"in human affairs the justice of God must work by human means. . . . You and I can help forward that work. God will not disdain to use our prayers, our self-denial, and the little atoms of justice that personally belong to us, to establish his mighty work,—the development of mankind."¹²⁵

Parker's views took the assumptions of postmillennialism another step: God designed the moral universe to be progressive *and* cooperative. God works through human consciences, prayers, and acts of righteousness to bring about a universal kingdom of justice, peace, and love. This neo-postmillennialism would diverge into several streams that fed into the American civil religion doctrine of American moral progress. The most important of those streams was self-consciously influenced by Hegel and his German theological heirs.¹²⁶

From the late nineteenth century to the 1930s, liberal protestantism was dominated by theologians who promoted the "social gospel hope that democracy was the wave of the future and that America could become the world's first genuine democracy."¹²⁷ The theological basis for this hope was the belief in "the fatherhood of God, the brotherhood of humanity, the absolute worth of the individual, an

122 See *infra* Section III.D (discussing King's use of the quote). President Obama had the quote sewn into a rug for the Oval Office. *White House Backs King Quote on Oval Office Rug*, CBS NEWS (Sept. 7, 2010, 7:54 PM), <https://www.cbsnews.com/news/trump-manhattan-grand-jury-indictment-could-be-close/> [<https://perma.cc/Q9L5-JU6Z>].

123 See PARKER, *supra* note 120, at 73–74.

124 *Id.* at 99.

125 *Id.* at 100.

126 See GARY DORRIEN, *SOUL IN SOCIETY: THE MAKING AND RENEWAL OF SOCIAL CHRISTIANITY* 22 (1995); see also *id.* at 26–27, 34 (discussing Walter Rauschenbusch's debt to German theological liberalism); RICHARD RORTY, *ACHIEVING OUR COUNTRY: LEFTIST THOUGHT IN TWENTIETH-CENTURY AMERICA* 20–21 (1998) (discussing the influence of Hegel on Walt Whitman and John Dewey).

127 DORRIEN, *supra* note 126, at 5; see also SHAILER MATHEWS, *THE SOCIAL TEACHING OF JESUS: AN ESSAY IN CHRISTIAN SOCIOLOGY* 35, 75 (N.Y., The Macmillan Co. 1897) (arguing that "the goal of human evolution" is the realization of the kingdom of God in the "brotherhood of man"); GARY DORRIEN, *THE MAKING OF AMERICAN LIBERAL THEOLOGY: IDEALISM, REALISM, AND MODERNITY, 1900–1950*, at 21–22, 73 (2003).

ethic of social cooperation and peace, and the kingdom of God as a historically attainable ideal¹²⁸—as “an ideal social order attainable through moral effort.”¹²⁹ Some, like Shailer Mathews, maintained that the key to social reform was not a particular political or economic system, but the moral reform of individuals through Christ’s spirit,¹³⁰ while others, like Walter Rauschenbusch, pushed for democratic socialism in response to economic and political inequality.¹³¹ The social gossellers agreed, however, that the way of Christ required standing for policies that would ameliorate social injustice and suffering and that “the project of building a cooperative commonwealth would bring about the kingdom of God.”¹³² This project of “morally transforming American society” entailed supporting Prohibition and opposing militarism.¹³³

During the same era, philosopher John Dewey, also writing in Hegel’s shadow,¹³⁴ advanced similar arguments for progressive economic and political reform through social democracy. Dewey was influenced by “the Christian conception of democracy,” but his later work, especially, is self-consciously secular.¹³⁵ For Dewey, the objective of liberal progress is not some predetermined *telos* such as the kingdom of God over which there stands an eternal judge or moral norm, but simply human beings, through free and equal education and exchange,¹³⁶ “solving more problems”¹³⁷ and thus increasing liberty, individualism, and diversity.¹³⁸ Such progress is brought about not through spreading

128 DORRIEN, *supra* note 126, at 22.

129 *Id.* at 31.

130 *Id.* at 38. See generally DORRIEN, *supra* note 127, at 151–215.

131 DORRIEN, *supra* note 126, at 39. See generally DORRIEN, *supra* note 127, at 73–150.

132 DORRIEN, *supra* note 126, at 89; see Shailer Mathews, *Christian Sociology. II. Society.*, 1 AM. J. SOCIO. 359, 367 (1895) (speaking of the kingdom of God, “Jesus meant an ideal (though progressively approximated) social order in which the relation of men to God is that of sons, and (therefore) to each other, that of brothers”).

133 GARY DORRIEN, SOCIAL ETHICS IN THE MAKING: INTERPRETING AND AMERICAN TRADITION 234 (2011).

134 See RORTY, *supra* note 126, at 20–21.

135 *Dewey’s Political Philosophy*, STAN. ENCYCLOPEDIA PHIL. (updated July 26, 2018), <https://plato.stanford.edu/entries/dewey-political/> [https://perma.cc/4BG4-6NR4] (“While the Christian conception of democracy recedes (but does not entirely disappear) in Dewey’s later work, the idea that democracy should be viewed as a form of relationship that encompasses and unifies different spheres of social life remains important.”); RORTY, *supra* note 126, at 17 (“Both Dewey and [Walt] Whitman viewed the United States as an opportunity to see ultimate significance in a finite, human, historical project, rather than in something eternal and nonhuman.”).

136 See RORTY, *supra* note 126, at 30.

137 *Id.* at 28.

138 JOHN DEWEY, LIBERALISM AND SOCIAL ACTION 56–58 (Capricorn 1963) (1935).

the gospel of Christ's love but through free and equal "education in its full meaning."¹³⁹

Dewey thus secularized the liberal Christian notions of progress in two ways. He eliminated the protagonist from the Christian narrative: God. Without even a thin conception of a universal standpoint from which to discern progress, Dewey had to do away with any fixed or even knowable *telos*. Democracy and education are the means to achieving liberty and happiness, but both of these remain underdetermined. And necessarily so: discerning and defining them is the unending work of the eons.¹⁴⁰ Dewey thus offered secular rationales for the civic religion of American moral progress,¹⁴¹ expanding its canopy to include non-Christians and nontheists.

D. *King and the Civil Rights Movement*

The New Deal implemented some of the political and economic visions of social gossellers like Rauschenbusch and pragmatists like Dewey. Neither liberal protestantism nor the New Deal, however, addressed "the problem of the color-line."¹⁴² For that, America needed the voice of an eloquent prophet steeped in the teachings of the social gospel.¹⁴³ Besides President Kennedy, Martin Luther King, Jr. was perhaps the most publicly visible contributor to the American doctrine of moral progress during the era in which the Supreme Court began to incorporate features of that doctrine into constitutional law.

The millennial aspects of King's moral and eschatological vision were apparent from his earliest leadership in the campaign for desegregation. In a 1956 speech made upon the success of the Montgomery bus boycott, King declared that:

[A]s we struggle, God struggles with us, and . . . the arc of the moral universe, although long, is bending toward justice. We have lived under the agony and darkness of Good Friday with the conviction that one day the heightening glow of Easter would emerge on the horizon. We have seen the truth crucified and goodness buried, but we have kept going with the conviction that truth crushed to earth will rise again. . . . It is my firm conviction that God is working in Montgomery. . . . With this dedication we will be able to emerge

139 *Id.* at 58.

140 See RORTY, *supra* note 126, at 11–13.

141 See *id.* at 9, 15.

142 W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* 32 (Yale Univ. Press 2015) (1903); see DORRIEN, *supra* note 127, at 557–58.

143 King was especially influenced by the liberalism of Benjamin E. Mays at Morehouse College and the personalist moral philosophy that was dominant at Boston University. See DORRIEN, *supra* note 127, at 342, 425–29.

from the bleak and desolate midnight of man's inhumanity to man to the bright and glittering daybreak of freedom and justice.¹⁴⁴

The framework of King's eschatological morality is plain: moral progress is a cooperation between God and humanity in history; the *telos* is "the bright and glittering daybreak of freedom and justice"; and Christ's death and resurrection are the figural and spiritual means of achieving that *telos*.¹⁴⁵ Like the social gospellers before him, King was committed to working with God to foster "a restless determination to make the ideal of brotherhood a reality in this nation and all over the world."¹⁴⁶ As we have seen, President Kennedy drew on a secular version of this sentiment in his Inauguration Day address. Marrying it with the Constitution's status as a sacred text, Justice Brennan incorporated it into a theory of constitutional interpretation, one that continues to influence judges and theorists today.

IV. REFLECTIONS ON SECULARIZATION AND NEUTRALITY

The Supreme Court's implementation of the doctrine of moral progress confirms many familiar observations—and criticisms—of secularization. It also calls into question the extent to which constitutional decisions can be rightly understood to be religiously neutral.

144 Martin Luther King, Jr., *Statement on Ending the Bus Boycott* (Dec. 20, 1956), in 3 PAPERS OF MARTIN LUTHER KING, JR.: BIRTH OF A NEW AGE, DECEMBER 1955–DECEMBER 1956, at 485, 486–87 (Clayborne Carson, Stewart Burns, Susan Carson, Peter Holloran & Dana L.H. Powell eds., 1997). The editors note that "[t]his phrase, which became commonplace in King's oratory, may have come to his attention through John Haynes Holmes, 'Salute to Montgomery,' *Liberation 1*, no. 10 (December 1956): '[t]he great Theodore Parker, abolitionist preacher in the days before the Civil War, answered this doubt and fear when he challenged an impatient world, "The arc of the moral universe is long, but it bends toward justice."'” *Id.* at 486 n.5. Holmes may have encountered this version of the Parker quote in an earlier writing. See Theodore Parker, *Justice*, in READINGS FROM GREAT AUTHORS 17, 18 (John Haynes Holmes, Harvey Dee Brown, Helen Edmunds Redding & Theodora Goldsmith eds., 1918) (“The arc of the moral universe is long, but it bends towards justice.”).

145 See Martin Luther King, Jr., Sermon at the National Cathedral: Remaining Awake Through a Great Revolution (Mar. 31, 1968) (transcript available at <https://www.seemonline.com/history/mlk-jr-awake.htm> [<https://perma.cc/4HSY-BKT8>]); Martin Luther King, Jr., Address at the 11th Annual Southern Christian Leadership Conference: Where Do We Go from Here? (Aug. 16, 1967) (transcript available at <https://kinginstitute.stanford.edu/where-do-we-go-here> [<https://perma.cc/UU9W-BXSY>]); Martin Luther King, Jr., Speech in Montgomery, Ala.: Our God is Marching On! (Mar. 25, 1965) (transcript available at <https://kinginstitute.stanford.edu/our-god-marching> [<https://perma.cc/2DN7-LFQW>]); Martin Luther King, Jr., Baccalaureate Service & Address at Wesleyan University (June 7, 1964) (transcript available at <https://digitalcollections.wesleyan.edu/object/vertical-6> [<https://perma.cc/3KBZ-JVA9>]); Martin Luther King, Jr., *Out of the Long Night*, GOSPEL MESSENGER, Feb. 8, 1958, at 14 [hereinafter King, *Long Night*].

146 King, *Long Night*, *supra* note 145, at 14.

A. *Secularization*

This account confirms the concern that liberalism leads to the secularization of religious ideas. A commitment to religious neutrality leads to the generalization of particular religious beliefs and ideals in order to appeal to as many members of a religiously pluralistic society as possible. In this case, a contested reading of a particularly mysterious religious text—Revelation 20—merged with notions of technological and economic progress to gain traction with a youthful and growing society. At the level of national rhetoric, figures like President John Quincy Adams translated the idea into a more generic notion of America’s providential destiny in the world. Over time, more Americans adopted unconventional Christian and nontheistic beliefs. The social gospellers and pragmatists adapted the postmillennial view of America’s calling to promote democracy and moral progress to accord with new theological and philosophical assumptions. The figurehead of the civil rights movement, Martin Luther King, Jr., was uniquely able to appeal to both traditional and liberal Christian theologies and to merge them with the longstanding belief in America’s moral destiny. Modern officials like President Kennedy and Justice William Brennan translated all of these streams into a unified, less theistic message of America’s unique moral calling. From specific to general, from religious to secular.

Unsurprisingly, then, the story also confirms some familiar criticisms of secularization. When arguments about normative matters are “disenchant[ed],”¹⁴⁷ when they are stretched to cover as many competing “comprehensive doctrines” as possible,¹⁴⁸ they become shallower¹⁴⁹ and, for some, less satisfying.¹⁵⁰ Secularized notions of moral progress “smuggle” metaphysical and anthropological assumptions into public discourse, commitments that would be controversial among Christians and that would be unintelligible or unacceptable to non-Christians.¹⁵¹ Even John Dewey’s secularized eschatology smuggles normative assumptions about the relative value of individual freedom, dignity, community solidarity, tradition, and religious authority. So too do secularized constitutional theories of moral progress. The constitutional implementation of progressive eschatology suggests that, in some cases,

147 MAX WEBER, *Science as a Vocation*, in FROM MAX WEBER: ESSAYS IN SOCIOLOGY 129, 155 (H.H. Gerth & C. Wright Mills eds. & trans., 1946).

148 JOHN RAWLS, POLITICAL LIBERALISM 134, 133–72, 222–36 (expanded ed. 2005).

149 See STEVEN D. SMITH, THE DISENCHANTMENT OF SECULAR DISCOURSE 25 (2010).

150 See, e.g., Jürgen Habermas, *An Awareness of What Is Missing*, in AN AWARENESS OF WHAT IS MISSING: FAITH AND REASON IN A POST-SECULAR AGE 15, 15–24 (Ciaran Cronin trans., 2010).

151 SMITH, *supra* note 149, at 26–27, 39.

these familiar critiques of secularization apply equally to civil religion and to constitutional law.

One of the more religiously attuned accounts of American constitutionalism illustrates this problem. In *Constitutional Redemption*, Professor Jack Balkin argues for “a narrative of redemption,” that is, a narrative of a “change that fulfills a promise of the past.”¹⁵² For Balkin, that promise appears to be that the Constitution can be changed through the democratic process “to better approach our ideals.”¹⁵³ For this reason, “democratic legitimacy requires faith in the processes of constitutional construction over time.”¹⁵⁴ This is not far from Dewey’s progressive notion of justice-through-democracy, but Balkin is perhaps more candid than Dewey by admitting that the process requires religious-like¹⁵⁵ “faith in a transgenerational project of politics”¹⁵⁶ and “hope” that the norms of constitutional discourse can change for the better¹⁵⁷ because “the future is always open, [and] there is always a promise of redemption.”¹⁵⁸

So far, Balkin sounds like a liberal Protestant seeking to implement the kingdom of God through constitutional law. The difference, of course, is that, from the perspective of liberal Protestants, the main character is missing from the stage. Balkin’s argument sounds like the secularized form of American civil religion that the Court has from time to time implemented in constitutional law. As a result, his theory has no clear *telos*—either as an endpoint or, perhaps more importantly, as a standard of evaluation. The postmillennial notion of progress, in its various forms, was grounded in a specific conception of justice and equality embodied by the person and work of the Jesus of the New Testament and his teachings, and, for many, his present and coming reign. It was grounded in a sophisticated combination of ontology, anthropology, epistemology, and teleology. Unmooring the conception of progress from its Christian suppositions no doubt makes it more acceptable to non-Christians, but it renders the concept of justice so vague as to defeat the very notion of progress understood in the most basic sense as moving forward. Balkin himself seems to understand this when he admits that

we do not know how what we do today will look to the future. We may be on the “wrong” side of a controversy—whether it be abortion or national security policy—as judged by later generations. . . .

152 BALKIN, *supra* note 84, at 5.

153 *Id.* at 10.

154 *Id.*

155 *Id.* at 6–7.

156 *Id.* at 6.

157 *Id.* at 12.

158 *Id.* at 16.

We do not know if we will play the hero or the villain in the future's constitutional stories, or some combination of each.¹⁵⁹

The prospect that “the future” may cast us as “the villain” does not seem to suggest to Balkin that “we” may take the wrong path, only that “we may be misunderstood by the future.”¹⁶⁰ By that reasoning, “we,” as the past’s “future,” have no business condemning constitutional arguments for slavery, segregation, or the subordination of women—all we can say, apparently, is that those views are inconsistent with our understanding of liberty, due process, equal protection, and so forth. Without defining those concepts with something other than whatever definition politics produces, it is hard to see how constitutional development (“redemption”?) could be anything more than muddling through, of surviving political churn. The kingdom of God, as conceived by the social gossellers, left a great deal to the imagination, but at least it relied on thicker conception of moral progress, and was therefore a more useful measuring stick for constitutional decisionmaking, than Dewey’s hope in more democracy, or Balkin’s faith in democratic constitutionalism.¹⁶¹

B. *Neutrality*

The case study also raises questions about the ideal of religious neutrality.¹⁶² The Essay has relied on a metaphor of streams contributing to a larger body of water to illustrate the influence of particular religious beliefs and practices on American civil religion, which in turn contributed to U.S. constitutional law. This metaphor directs attention to the ways that specific religion influences civil religion, and how the latter influences constitutionalism. But it obscures the influence of civil religion on specific religion, and the influence of constitutionalism on both. The relationship among them is multivalent. It may be obvious that civil religion affects denominational beliefs and practices, in some cases becoming part of them. Many American churches, for instance, incorporate patriotic sermons, hymns, and symbolism (like the American flag) into their worship services around national civic holidays.

I want to focus, however, on the influence of constitutionalism on American civil religion and specific or denominational religion. One

¹⁵⁹ *Id.* at 15.

¹⁶⁰ *Id.*

¹⁶¹ To be clear, I do not think the U.S. Constitution embodies or should be read as embodying anything like the kingdom of God as understood in the New Testament, the mainstream of the western Christian tradition, or the Social Gospel.

¹⁶² There are multiple conceptions of religious neutrality. For a brief primer, see ANDREW KOPPELMAN, DEFENDING AMERICAN RELIGIOUS NEUTRALITY 15–26 (2013).

might expect the Supreme Court to have a special duty to be religiously neutral. A court's purpose, after all, is to resolve disputes without bias. Yet the Court's role in American civil religion disables it from being neutral with respect to that "religious dimension" of American society.¹⁶³ The Constitution is a sacred text, and the Supreme Court has said that it is the supreme interpreter of that text. Inevitably, the Court's interpretations of the Constitution have a dynamic relationship with American civil religion—in this case, they derive from, and in turn contribute to, a doctrine of moral destiny.

Yet the terms of American civil religion are not uncontested. Should it be more nationalistic or more universalistic? Should it pay more homage to the past, to the future, or to some selective combination of the two? In concrete terms (literally), which public monuments should we keep? Which should we erect now?

With the final word on constitutional interpretation, the Supreme Court plays the role of high priest of the constitutional features of civil religion. When it implements the doctrine of moral progress, it plays the role of prophet, too, both as a voice of judgment on society and as a prognosticator of its trajectory. Of course, since the Court is a governmental institution, its declarations also carry the weight of law. It is an unusual prophet, for it has the power to bring its predictions to pass. Its decisions touching on civil religion make more than law—they refashion the boundaries of religious contestation. The ostensible secularism of constitutional doctrine makes no difference; the Court's constitutional interpretations are at once thermometers and thermostats of the beliefs and practices of American civil religion.

Constitutional decisions affect denominational religion too. It cannot be otherwise, for denominational religion and civil religion are a two-way street. Civil religion generalizes the specific religious views of many millions of Americans. Denominational beliefs are the source of civil religion, and civil religion in turn shapes those beliefs. Denominational disagreement about a religious issue—say, the propriety of same-sex marriage—feeds into disagreement about the proper scope of American civil religion. When the Supreme Court takes a position on an issue that is contested at the level of denominational religion, it is only natural that one side of a religious controversy will the decision as a win, the other side as a loss. This is especially the case when American civil religion—and much American denominational religion—assigns special weight to the narrative of American moral progress. For civil and denominational religious progressives, *Obergefell v. Hodges*¹⁶⁴ both confirmed *and* enacted their beliefs about America's moral

163 See *supra* text accompanying notes 56–62.

164 576 U.S. 644 (2015).

destiny. For civil and denominational conservatives, the decision confirmed and enacted their beliefs about America's moral decline. For many, *Dobbs v. Jackson Women's Health Organization*¹⁶⁵ put the shoe on the other foot. Both sides have their theological adversaries at the level of denominational religion, and their religious (if not theological) adversaries at the level of civil religion. The Court's constitutional decisions on issues of theological and religious dispute necessarily favor one or the other. And in doing so, those decisions necessarily influence them—whether toward conformity with the new doctrine of the civil religion, or toward political activism to reverse that new doctrine.

The secularization of constitutional conceptions poses a question for theorists of neutrality.¹⁶⁶ Andrew Koppelman, for instance, accepts that the law cannot be neutral with respect to its *effects* on religion.¹⁶⁷ He claims, however, that U.S. law is—and should be—religiously neutral with respect to the law's *purpose* and with respect to the *reasons* the government gives to justify the law.¹⁶⁸ Under a strict understanding of a law's purpose and justification, the progressive constitutional doctrines that were influenced by a particular view of Christian eschatology are neutral: their purpose is to implement a secularized notion of moral progress, and the Court has justified them by reference to a secularized theory of evolving moral insight. Yet for many Americans the concepts are indissolubly theological, and they remain the subjects of ongoing theological dispute. A conception of neutrality that would permit the government to “take a position on contested theological propositions”¹⁶⁹ so long as it first drains them of any theological content would be toothless. The same reasons that many advocates of religious neutrality would give for opposing secularized religious symbols on government property—such as the erection of a cross as a war memorial¹⁷⁰—apply with equal force to secularized religious conceptions that work their way into constitutional law. For those for whom a conception (or symbol) has not been, and cannot be, secularized, the government's position is anything but neutral. Indeed, secularized constitutional doctrines should be more worrisome than secularized religious symbols, for constitutional law, unlike symbols, directly restricts

165 142 S. Ct. 2228 (2022).

166 Some theorists, of course, deny that religious neutrality is possible. See, e.g., STEVEN D. SMITH, *FOREORDAINED FAILURE: THE QUEST FOR A CONSTITUTIONAL PRINCIPLE OF RELIGIOUS FREEDOM* 96 (1995).

167 See KOPPELMAN, *supra* note 162, at 18–19 (“*Neutrality of effect*, under which no way of life would be advantaged over others, is impossible, because no society can possibly be equally congenial to all forms of life.”).

168 See *id.* at 19 (“Contemporary Establishment Clause doctrine requires both neutrality of aim and neutrality of justification, albeit only with respect to religion.”).

169 See *id.* at 6.

170 See *Am. Legion v. Am. Humanist Ass'n*, 139 S. Ct. 2067 (2019).

self-governance. This is the case not only for progressive results, but also, and perhaps more importantly, for progressive modes of constitutional interpretation. The view that the demands of liberty, justice, and equality are progressive, and therefore should guide the interpretation of constitutional provisions that use those terms, is moored, in the American tradition, in contested theological beliefs about humanity's *telos* in the kingdom of God, beliefs that many American progressives have long abandoned, and that many American adherents of mainstream or conservative versions of Christianity never held. It is no wonder that constitutional interpretive norms, as much as constitutional results, are the site of so much political and cultural contestation. As for so many other features of American constitutionalism, conflicts over interpretative methodology obscure deeper, more fundamental disagreements about incommensurable beliefs.

CONCLUSION

This Essay seeks a deeper understanding of the relationship between religion and American constitutionalism. Most constitutional scholars take for granted that religion is—or should be—essentially irrelevant to conventional constitutional reasoning. This Essay has argued that some of the Supreme Court decisions most lauded by secular progressives owe a tremendous intellectual, cultural, and even religious debt to Christian intellectual and political movements that indelibly shaped American civil religion. None of this is to be lamented. In fact, given the fact of religious pluralism and the nature of American civil religion, it is likely inevitable. It does, however, suggest that disputes about constitutional interpretation, and especially the proper role of the Supreme Court, have even weightier implications than most political scientists and lawyers have imagined.