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J. Judd Owen

Excerpt

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I

A third way of religious freedom?*Thomas Jefferson, Isaac Backus, and
the struggle for the American soul*

Painting with a broad brush, there were two distinctive sources of support for the strict separation of church and state and religious freedom at the time of the American Founding – sources that were theoretical or theological antagonists of one another, but nevertheless political allies: on the one hand, the theologically skeptical political science of the Enlightenment, and, on the other hand, an array of devout religious beliefs – for the most part, Protestant Christian ones.¹ The religiously devout supporters of religious freedom and disestablishment differed among themselves theologically, as they also differed in the reasons for their support. In some cases, there was a theological basis for opposing a political establishment of religion – such as the protection of the purity of God’s church from the corrupting influence of man’s politics; in other cases, minority religions simply sought to protect themselves through religious liberty.

In William Lee Miller’s account of these two sources of religious freedom in *The First Freedom* (2003), he proceeds largely by way of historical narratives featuring, principally, Thomas Jefferson and James Madison (representing the Enlightenment) and Roger Williams (representing devout Protestant Christianity, though long before the American Founding). Miller is mainly interested in the ideas, rather than the history. But his historical approach to the ideas is called for, since, as he points out, religious freedom has come to mean something different for

¹ This is not to say that there were only two camps or two sources of American political thought as a whole. Cf. Witte 2000, 24; Adams and Emmerich 1990, 21–31; McConnell 1990, 1409–1517; Powell 1993, 52–86.

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Excerpt

[More information](#)

Americans today than it did for either Jefferson and Madison or Williams; hence both the Enlightenment rationalists and the devout believers of old are somewhat alien to us, their heirs.

It may appear, then, that we have a “third way” of religious freedom today that is distinct from either Enlightenment rationalism or old-style piety. Certainly Miller views religious freedom today as a salutary blend of its two main original sources (233–54). Yet certain aspects of his presentation support the conclusion that the Enlightenment’s influence has in fact predominated. In Miller’s book, he repeatedly is forced to remind his reader of how central and vitally important religion used to be, even in the widely “enlightened” early United States. Speaking, for example, of Jefferson’s “Bill for Establishing Religious Freedom,” Miller writes, “The politics of this affair, to a degree that may be difficult for a modern American to comprehend, revolved around the debates from within, and rivalries among, the denominations” (2003, 32). It is difficult to comprehend owing to what Miller calls “a modern view,” according to which “one should not believe in any religious affirmation ‘too strongly’” (153), lest one be tempted to violate the principle of toleration. Jefferson and Madison would perhaps be heartened to find that a history lesson would be required for later generations to learn of the intense religious concerns they struggled against. Yet as a sign that they have not received all they might have wished for, the idea of natural right also requires a history lesson.

It will be helpful to set our situation in sharper relief by looking more closely at these two sources of religious freedom in America. As my representative of the devout Protestant justification of religious freedom, let us consider a figure who is not as famous as Roger Williams, but who was active at the time of the Founding: the Massachusetts Baptist Isaac Backus. One can find no better representative of the Enlightenment among the American Founders than Thomas Jefferson.

Among the myriad positions on church and state that one finds at the time of the American Founding, those of Jefferson and Backus stand out for two reasons. First, both were unusually strict separationists at a time when prevailing opinion, at least at the state level, supported some form of religious establishment, which, although extremely mild by earlier standards, would not pass constitutional muster today. The policy of strict separation that they supported eventually won the day. And yet, Jefferson and Backus also stand out because the reasons that each supported strict separation differed radically. However *politically* compatible their views may have been, the basis of their views – for

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J. Judd Owen

Excerpt

[More information](#)*A third way of religious freedom?*

3

Backus, a distinctly Calvinist theology, and for Jefferson, a distinctly rationalist political science – were fundamentally antagonistic to one another. This antagonism, as we shall see, forces us to qualify substantially their political agreement on religious freedom.

Jefferson, as author of the Declaration of Independence and president, is, of course, far more famous than Backus, whose political efforts were generally (though by no means exclusively) limited to Massachusetts and whose foremost concern was, in any case, the Christian Church. Backus remains a historically important figure for American Baptist Christianity, but this fact underscores one reason that his name is not remembered as widely as Jefferson's: Backus as a Baptist was (to use Jeffersonian terminology) sectarian. Jefferson, on the other hand, spoke of mankind more readily than the church, eschewed all forms of sectarianism, and is therefore seen as a more universal figure – or, at any rate, as belonging to America as a whole rather than to one part, such as the Baptists. This is one reason that the courts readily make reference to Jefferson, but not to Backus or other sectarian supporters of religious freedom.²

But increasingly it has come to be doubted that any such broad universalism is possible. Increasingly, the Enlightenment is seen as just another sectarian camp and its universalism as a boast. Moreover, appeals by the courts to what Rawls would call Jefferson's "comprehensive doctrine" – in particular, his deeply heterodox views on religion – would no doubt prove highly controversial. Jefferson himself only hinted at his views on religion in his public and political writings and expressed his hesitancy to reveal them even in his private correspondence, our main access to those views.

It is tempting in the case of Jefferson and even Backus simply to draw a line between the public-political principle of religious freedom and private views on religion, along the lines of John Rawls's distinction between the political and the "metaphysical," which would include the theological. Perhaps this is our "third way" of religious freedom. The prevailing view of both the U.S. Supreme Court and liberal theory in America today is that liberal principles are neither essentially secular nor essentially religious, but somehow foundationally neutral. As Justice

² William McLoughlin argues, however, that Backus is the better representative of American thinking on religious freedom at the time of the American Revolution. Although "in the secular mood of the twentieth century the United States Supreme Court has drawn heavily upon Jefferson and Madison," they "were too indifferent, if not hostile, toward revealed religion to be entirely representative of the American approach to church-state relationships" (1968, 1392).

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Excerpt

[More information](#)

Fortas put it in *Epperson v. Arkansas*, “The First Amendment mandates government neutrality between religion and nonreligion.”³ The attractive possibility presented in Jefferson and Backus is of two men who are profoundly at odds in their views on religion and yet remain compatriots in agreement on basic political freedoms. (Backus has been called “a Jeffersonian in politics” [Backus 1968, 61].) Surely Jefferson’s practice of keeping his views on religion private indicates that Jefferson maintained some such distinction.

But that distinction proves to be deeply problematic upon closer examination. Such a distinction fails to capture a crucial aspect of Backus’s support for religious freedom, and the same can be said of Jefferson on the basis of his “private” views as they are found precisely in his correspondence. Both Backus and Jefferson viewed the policy of religious freedom, not only as extensions of their views on religion, but as *instruments* for the spread of those views in a struggle for the soul of the new republic. Backus supported religious freedom in large part in order to remove human interference from the work of the Holy Spirit. Religious freedom would, he earnestly hoped, lead to revival and the spread of the true church (Calvinist-Baptist) throughout New England and the New World. Jefferson, on the other hand, hoped that religious freedom would have nearly the opposite result. Jefferson despised Calvinism, and he hoped that religious freedom would entail the spread of a “religion of reason” or a rational Christianity. Or, as he stated in one letter, “I trust there is not a young man now living in the United States who will not die a Unitarian” (1904, 15:385). Jefferson and Backus were thus not merely antagonists in their private opinions but, despite their agreement on religious freedom, in politics as well. Each sought a profound transformation of religion, though the transformations they sought were profoundly at odds.

Isaac Backus

The Reverend Isaac Backus was the leader of the Baptist Separatist movement in Massachusetts and the most prominent spokesman of the pietist case for religious freedom at the time of the American Revolution. “Separatist” was not, in the first place, a political designation, but rather a denominational one. The Separatists broke from the mainstream Baptists

³ 393 U.S. 97, 104 (1968). This passage was cited as a statement of the Court’s “touchstone” in its recent decision in *McCreary County v. ACLU of Ky.*

Cambridge University Press

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J. Judd Owen

Excerpt

[More information](#)*A third way of religious freedom?*

5

in the wake of the Great Awakening of the 1740s. Yet one cannot ultimately divorce this denominational separatism from the cause of political separation, or religious disestablishment, which cause the Baptist Separatists, under the leadership of Backus, staunchly championed.

Backus's theology was rooted in Calvinism, and central to all of his thinking was the notion of the election of individuals by God's mysterious grace. The elect are those who have experienced God's call and whose understanding has thus been illuminated by God for the first time. Owing to this emphasis on a radically new divine illumination, Backus and other like-minded Christians became known as the "New Lights" (a radically different sort of enlightenment). The true church, according to Backus, is the body of true believers. Not all who call themselves Christians, nor all those who have been raised as Christians from birth, are true believers. Only those who have experienced God's new light as mature adults and accepted it of their own volition are true believers and members of Christ's church. Backus thus stressed the purity of the church, and he maintained that the church could not be purified through reform, but only through separation by the elect. Only the church of true believers was under the leadership of Christ, rather than some merely human authority. The bogus church from which they separated was, in contrast, hopelessly mired in the intrusive institutions of man.

Backus's theology led to a doctrine of religious freedom because it mistrusted all attempts by man to direct Christ's church or otherwise lead human beings to God. In contrast, the theology that dominated Massachusetts Christianity – known as covenant theology and inherited from the early Massachusetts Puritans – viewed religious establishment as essential to the mission of both church and state. We can draw out the political implication of Backus's theology more clearly by setting it in contrast, as Backus himself does, to covenant theology.

Covenant theology formed the basis of Puritan Christianity and experienced its fullest bloom in America in the early Massachusetts Bay Colony under the leadership of John Winthrop and John Cotton. Although Puritanism maintained a distinction between secular and religious authority, both were emphatically understood to be ministers of God's will and to form two parts of a single orthodox Christian community. The model for Puritan covenant theology was the theocracy of the ancient Hebrews under the Mosaic Law. And although Winthrop's Puritans dedicated themselves to liberty, they did not mean by this "natural liberty" or natural right since, as Winthrop declared, "our nature is now corrupt." Natural liberty is "the liberty to do evil as well as good," whereas "civil or

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Excerpt

[More information](#)

federal” liberty, which “may also be termed moral, in reference to the covenant between God and man . . . is a liberty to that only which is good, just, and honest” and is of a piece with “the liberty of the church under the authority of Christ, her king and husband.”⁴ Temporal authority was ultimately subordinate to spiritual authority, and the instruments of political and communal life were to be directed emphatically toward salvation as the ultimate end of human life, both individually and collectively. Covenant theology was thus emphatically communal – the community as a whole, though under the spiritual leadership of the clergy, was responsible for teaching, nurturing, and chastising children, youth, and those adults who strayed. Accordingly, the distinction between church and state for the Puritan entailed very limited religious freedom in the modern (not Winthrop’s) sense and was not extended to, for example, Quakers, Baptists, or even dissident Puritans such as Roger Williams and Anne Hutchinson.

Although by Backus’s time, covenant theology had been greatly moderated or diluted,⁵ it remained at the core of the political theology of his chief Christian opponents. Vestiges of the old Puritan system remained in political institutions and in the opinions that supported them. Massachusetts maintained, for example, a parish system, with approved clergy (including the mainstream Baptists, but not the Separatists) receiving financial support from taxation. Backus opposed this system long before the Revolution, and he welcomed the Revolution in large part in hope of a providential overturning of the religious establishment. In the years leading to the Revolution, he reports in his history of New England, the Baptist faith had spread in “revivals” throughout the colonies: “Within seven years past several thousand had been hopefully converted from the errors of their ways,” and these conversions “bespoke a design of final deliverance” of the true church from oppression (1871, II:198).

Backus more fully developed the political implications of his theology after the war in the debates surrounding the new Massachusetts constitution, which sought to maintain the basic outline of colonial ecclesiastical law. The new constitution had provisions for the protection of religious free exercise, but as William McLoughlin notes with some exaggeration, “no one in New England, except the Baptists, thought that

⁴ John Winthrop, “On Liberty.”

⁵ Critical changes occurred in Puritan thought in the late seventeenth and early eighteenth centuries owing to the influx of the new thinking of the Enlightenment, especially that of John Locke; see Newlin 1962.

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J. Judd Owen

Excerpt

[More information](#)*A third way of religious freedom?*

7

‘the free exercise’ of religion implied separation of Church and State” (1967, 138), that is, full disestablishment. Backus rejected the Puritan notion of a covenant between God and a community that assumes responsibility for the salvation of individuals by enforcing God’s laws. This, according to Backus, was indeed God’s way to salvation before Christ. But the New Testament rejects all human attempts to enforce God’s law. Puritanism, like any attempt at a Christian political establishment, was the product of “men’s jumbling the Old Testament Church and the New together” (1968, 159): that is, of “confounding law and grace together” (413). The Christian revelation in the New Testament replaced law as a path to salvation with the direct dispensation of grace to individuals.

We return, then, to Backus’s theological starting point: individual salvation, understood to be accepted *directly* from God’s mysteriously bestowed grace. Human attempts to enforce God’s law, and thereby mediate between God’s will and human responsibility, he saw as human usurpations of Christ’s leadership of believers on earth. Backus’s approach to the political doctrine of religious freedom and separation of church and state is therefore emphatically salvation and the “purity and life of religion” (1968, 333).

This does not mean, however, that Backus was unconcerned with the welfare of political society as well. His theological and political opponents insisted on state support and at least some degree of regulation of religion, not only as a means of guidance to salvation, but also on the grounds that public morality and hence sound government depend on religion. Religion is vitally necessary for political society, and therefore political society ought to promote and even help guide it. Backus agreed on the political necessity of religion, and indeed of true Christianity: “True Christianity . . . is as necessary for the well-being of human society as salt is to preserve from putrefaction or as light is to direct our way and to guard against our enemies, confusion, and misery” (1968, 371). But true Christianity, he argued, and hence the sound morality that government requires, is found only in the true church, with Christ and Christ alone at its head. So although he supported public worship, he opposed the state’s either dictating or in any way favoring one Christian denomination over another. Allowing human government, which God set over temporal affairs, any hand in maintaining or regulating the church “evidently tends to destroy the purity and life of religion” (Backus 1968, 333). Backus did not view disestablishment as leaving religion to “the humors of the multitude,” as one political opponent characterized

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Excerpt

[More information](#)

it, but rather to the leadership of Christ through the Holy Spirit. “How came,” asks Backus, “the kingdoms of *this world* to have a right to govern in Christ’s kingdom which is *not of this world!*” (333).⁶

Although Backus’s theological disagreement with the Puritans made him a political ally of Enlightenment proponents of religious freedom, his radical difference from these allies is seen in the first place in his notion of what freedom means. His most systematic presentation appeared in a pamphlet written in 1778 entitled “Government and Liberty Described; and Ecclesiastical Tyranny Exposed.” Backus begins with an account of liberty that is closer to Winthrop’s than to the Enlightenment’s – Backus makes clear that the rights he speaks of are not natural rights (Backus 1968, 328). Liberty is not the freedom to do as one pleases: “Judgment and righteousness are essential to freedom . . . Freedom is not acting at random but by reason and rule,” which results from “the flow of mercy and grace from God to men,” as well as “its effects in them in producing obedience unto him” (350). Freedom properly understood requires government – there is no natural freedom or natural right prior to government. But freedom is also, as a product of “the flow of mercy and grace from God to men,” stronger than the merely human forces of tyranny and licentiousness. Government must provide order in temporal matters. But it must also remove all obstacles to true liberty (judgment and righteousness):

Streams and rivers are of great use and cause a constant flow of refreshment and blessing wherever they come; so does the exercise and administration of judgment and righteousness among all people that enjoy them. Hence, . . . the command of Heaven is, Let them run down; put no obstruction in their way. No, rather be in earnest to remove everything that hinders their free course. (350–51).

⁶ Backus did not object to Article Two of the proposed Massachusetts constitution, which began by asserting “the right as well as the duty of all men in society, publicly and at stated seasons to worship the Supreme Being, the great Creator and Preserver of the universe.” Nor did he object to the beginning of Article Three, which stated that “the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion, and morality, and . . . these cannot be generally diffused through a community but by the institution of public worship of God, and of the public instruction in piety, religion, and morality” (quoted at McLoughlin 1967, 148). Backus never objected to the notion that Massachusetts was and should remain a Christian commonwealth, provided church and state were not conflated. Backus does not blame the Puritans for being “earnestly concerned to frame their constitution both in church and state by divine rule” (Backus 1871, I:37). He objects to “how unscripturally they had confounded church and state together” (36).

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J. Judd Owen

Excerpt

[More information](#)*A third way of religious freedom?*

9

It is the duty – emphatically the Christian duty – of the civil rulers to prevent merely human institutions from usurping Christ’s leadership. For Backus, church and state were distinct, but both – like all of God’s creation – were ultimately subject to God.

Thus liberty, for Backus unlike for the Enlightenment, did not mean “self-determination,” which he called a “horrid impiety” (404). Self-determination means that “men have assumed the judgment seat and have arraigned the sayings of God to their bar” (403). They (and “they,” as we will see, includes Jefferson) have “set up their reason above divine revelation” (402). But “all mankind in their natural condition is in a state of revolt against [the] heavenly ruler”; and “of themselves,” through their “unassisted reason,” are “never able to come to the knowledge of the truth” (402, 403).

Backus trusted that if man would step aside, subordinate his reason and his pride to God’s revelation, which meant among other things permitting an unqualified freedom of conscience, God would work in hearts and minds. Backus insisted on religious freedom, because he trusted that the Great Awakening, “when God was pleased remarkably to pour out his Spirit and gloriously revive religion [in New England]” (424), would continue to spread in the New World. The American Revolution would issue in “the advancement and completion of the Redeemer’s kingdom,”⁷ for “the truth is great” (1968, 402).

Thomas Jefferson

Although the “Bill for Establishing Religious Freedom” was written not as an expression of Jefferson’s own views, but rather as a legal document for Virginia, it nevertheless provides a helpful point of access to Jefferson’s doctrine.⁸ The bill mostly comprises a long list of justifications for religious freedom. And while Backus may have approved of the policy of religious freedom that follows, he would reject many of the claims on which Jefferson depends in his list of justifications. Perusing that list in search of common ground with Backus, we come upon two main points: the denial at the beginning of free will regarding religious belief and

⁷ Quoted at McLoughlin 1967, 186.

⁸ In his autobiography, Jefferson wrote that his two proudest accomplishments were the Declaration of Independence and the “Bill Establishing Religious Freedom.” It should be noted that Virginia did not adopt Jefferson’s draft in its entirety – including some of the elements to be discussed here. Our discussion will concern Jefferson’s full draft.

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J. Judd Owen

Excerpt

[More information](#)

the affirmation near the end that “the truth is great and will prevail if left to herself” (947). But even here – indeed precisely here – in these two points, we see the theological gulf that separates these two political allies. For when Jefferson denies human free will in religious belief, he does not point to our bondage to sin, on the one hand, and our need for God’s grace, on the other, as Backus would.⁹ Instead, Jefferson says that “the opinions and belief of men depend not on their own will, but follow involuntarily the evidence proposed to their minds” (946). One’s beliefs are not freely chosen; they are, rather, dependent on evidence, as evaluated by the mind. Thus religion cannot be determined by legislation or compulsion, no matter how great, but by “reason alone.” Although Backus at times employs language akin to Jefferson’s, speaking, for example, of each person’s “unalienable right to act in all religious affairs according to the full persuasion of his own mind” (1968, 487), he, unlike Jefferson, places that mind in relation to God’s “revealed will.” Jefferson speaks of Nature’s God, not the revealed God, since, according to Jefferson, “reason is our only oracle” (Letter to Carr). As McLoughlin explains, whereas Jefferson “trusted entirely to man’s reason and free will,” Backus “insisted that only through the supernatural grace of God would men find the Truth that is in Jesus Christ” (1968, 144).¹⁰

Thus, too, when Jefferson affirms alongside Backus that “truth is great” and therefore in no need of state sponsorship, he does not mean, as did Backus, that the truth of God’s revelation will triumph over the folly of man’s attempt to establish himself as judge. Rather “the truth [itself] is the proper and sufficient antagonist to error, and has nothing to fear from the conflict unless by human interposition disarmed of her natural weapons, free argument and debate” (947). Human folly does indeed provide the obstacle; but the solution lies precisely in the free judgment of unassisted human reason.

Jefferson provides a fuller account of this confidence in unassisted truth to defeat error in his *Notes on the State of Virginia*, the second most public elaboration of his doctrine of religious freedom. In Query 17, we see Jefferson repeating his claim: “It is error alone which needs the support of government. Truth can stand by itself” (675). And again the gulf separating the grounds of Jefferson’s confidence from those of Backus is clear: “Reason and free inquiry are the *only* effectual agents against error. Give a loose to them, they will support the true religion by

⁹ See McLoughlin’s account of Backus’s conversion experience at 1967, 14–15.

¹⁰ Cf. Yarbrough 1998, 183–84 and McLoughlin 1967, 170.