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978-1-107-11731-0 - Religious Persecution and Political Order in the United States

David T. Smith

Excerpt

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I

Introduction

THE PUZZLE OF AMERICAN RELIGIOUS PERSECUTION

In the nineteenth century the Mormons were driven out of four states. In Missouri, the third state in which the Mormons settled, their neighbors declared war on them in 1838 when they seemed close to gaining a numerical majority in three counties. The ensuing skirmishes and massacres only ended when Governor Lilburn Boggs declared Mormons enemies of the state and issued an “extermination order” that forced them to flee to Illinois. In Illinois the state government initially welcomed the Mormons, but the reception soured by 1844, when local militias grew alarmed by Joseph Smith’s increasing political and military power in the city of Nauvoo. On the pretext of defending free speech, an anti-Mormon mob lynched Smith when he destroyed a Nauvoo printing press that had denounced him. After the Mormons fled to Utah in 1847, the federal government fought for decades to break Mormon political power in the territory. Republicans had vowed to abolish Mormon polygamy in the west, and in 1883 Congress passed legislation stripping Mormons of the right to vote, hold political office, or serve on juries. Even harsher legislation in 1887 allowed the federal government to seize church property, including temples. The long campaign against the Mormons eased only after their leaders capitulated on the polygamy issue and forcibly realigned Mormon voters to the Republican Party.

In the late 1930s, elementary schools across the United States expelled thousands of children of Jehovah’s Witnesses who refused to salute the American flag during the daily pledge of allegiance. In 1940, the Supreme Court ruled that school districts were within their rights to expel Witnesses, whose religious freedom did not include the right to disrupt the national unity the flag salute promoted. The flag conflict escalated into public violence as the Second World War approached and citizens questioned the loyalty of Jehovah’s Witnesses. In small towns in every state, mobs attacked Witnesses while they

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proselytized. There were more than two thousand violent anti-Witness incidents between 1940 and 1942, many of which involved police, sheriff's departments, and other local authorities. Despite the repeated pleas of Jehovah's Witnesses and the ACLU, the federal government took little action to prevent the violence. The attacks only subsided when the draft came into effect and the government began imprisoning large numbers of Witnesses who refused to enter it.

Freedom from religious persecution is a central part of American national identity. It is enshrined in the constitution and the Bill of Rights, and every generation of civics textbooks teaches that early settlers came to the American colonies to escape persecution. The International Religious Freedom Act of 1998 reinforced the global defense of religious liberty as an aim of US foreign policy. But the experience of Mormons and Jehovah's Witnesses shows that religious toleration has not been extended to everyone in the United States. The constitution has not protected the freedom of every religion; in both of these instances the Supreme Court interpreted the constitution in a way that enabled persecution. James Madison and others believed that religious diversity and fragmentation would protect minorities in America because there would be no majority rule or polarization. This religious fragmentation, however, did not help groups that others did not recognize as legitimate religions. The United States may have one of the world's strongest records of religious toleration, but the standard explanations for this toleration are lacking when it comes to explaining important exceptions. These are not "exceptions that prove the rule," but rather exceptions that cast doubt on our understanding of the rules.

The fact that American governments have victimized religious minorities in the distant past may seem like a mundane point with little importance to contemporary religious persecution. American society has changed, generally in a more liberal direction, in every dimension since the Mormons and Jehovah's Witnesses were persecuted. Americans no longer tolerate all kinds of practices, such as slavery and lynching, which were also commonplace during those periods. However, circumstances continue to arise that place some minorities outside the framework of religious protection. After the 9/11 terrorist attacks, the U.S. government subjected Muslims in America to an aggressive program of surveillance, including infiltration of places of worship, that Americans would not tolerate if it were done to other groups.¹ This was not the first time, as I will show, that the state has treated Muslims as a public threat. It is important to examine the historical record of actually existing religious freedom in America to make sense of the present and the future.

The historical persecution of religious minorities, especially Mormons and Jehovah's Witnesses, poses three puzzles. First, the conditions to which scholars attribute non-persecution in America – a tolerant constitutional framework and

¹ Davis, Darren (2007). *Negative Liberty: Public Opinion and the Terrorist Attacks on America*. New York: Russell Sage Foundation, ch. 9.

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a religiously diverse society in which no denomination has a majority – have been in place since the 1790s. If these are the institutional and social features that prevent religious persecution, why have they not done so consistently over time? Second, religious persecution has been extremely selective throughout American history. Most religious minorities *have been protected*, and even as it persecuted Mormons and allowed the persecution of Jehovah’s Witnesses, the United States justifiably earned its reputation as a place that was unusually tolerant toward other minorities such as Jews and Anabaptists. Religious freedom in the United States is not, as some revisionists have argued, mythological;² despite the dominance of political institutions and discourse by white Protestants, a basic norm of religious freedom has prevailed. The puzzle is why some were violently excluded from it.

The third puzzle is that the minorities that were excluded would seem to be among the least likely candidates for religious persecution. The two most serious cases of persecution – those of the Mormons and Jehovah’s Witnesses – were inflicted on groups that originated in the United States, were heterodox offshoots of Protestant Christianity, were numerically small at the time of their persecution, and were ethnically indistinguishable from white, mainstream Protestant denominations. The persecution of these two groups is surprising considering major theories about intergroup conflict. Previous studies have suggested that religious divides are most inflammatory when they overlap with other cleavages such as ethnicity, race, class, or nationality.³ A long-standing body of scholarship also argues that majorities see minorities as more threatening the larger they get.⁴ Studies of religious prejudice have found individuals feel more prejudice toward religious groups which are more remote and “other” from their own, such as members of different world religions.⁵ All of these things should make it improbable that violence would be visited upon two small, home-grown offshoots of Christianity with no distinctive ethnic characteristics.

² See Sehat, David (2011). *The Myth of American Religious Freedom*. New York: Oxford University Press.

³ Allport, Gordon W. (1958). *The Nature of Prejudice* (abridged). New York: Doubleday, pp. 413–426; Kleppner, Paul (1970). *The Cross of Culture: A Social Analysis of Midwestern Politics, 1850–1900*. New York: Free Press; Fox, Jonathan (2004). “Counting the Causes and Dynamics of Ethnoreligious Violence.” *Totalitarian Movements and Political Religions*, 4:3, pp. 119–144.

⁴ Key, V.O. (1949). *Southern Politics in State and Nation*. New York: Alfred A. Knopf; Blalock, Hubert M. (1967). *Toward a Theory of Minority-Group Relations*. New York: Capricorn Books; Liska, Allen E. (1992). *Social Threat and Social Control*. New York: SUNY Books.

⁵ Glock, Charles Y., and Rodney Stark (1966). *Christian Beliefs and Anti-Semitism*. New York: Harper and Row, pp. 19–40. Kalkan, Kerem Ozan, Geoffrey C. Layman, and Eric M. Uslaner (2009). “Bands of Others? Attitudes toward Muslims in Contemporary American Society.” *Journal of Politics*, 71:3, pp. 847–862; Theiss-Morse, Elizabeth (2009). *Who Counts as an American? The Boundaries of National Identity*. New York: Cambridge University Press, pp. 2–3.

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Mormons and Jehovah's Witnesses are not the only religious groups to have been persecuted in the United States. In the 1850s, a national political party devoted to stripping Catholics of their rights took power in several major cities, and street gangs fought to stop Catholic immigrants from voting. Until the 1890s, it was normal for media outlets to claim Catholic immigration was a Vatican plot to seize control of America, and the government considered legislation that discriminated specifically against Catholic schools. In 1915, the lynching of Jewish industrialist Leo Frank in Atlanta heralded a new era of popular anti-Semitism that coincided with the redoubling of WASP efforts to keep Jews out of elite institutions. The reconstituted Ku Klux Klan, which numbered more than two million in the 1920s, led boycotts of Jewish businesses. In the 1930s, Father Charles Coughlin and Gerald K. Winrod warned millions by radio of Jewish schemes to bring American Christians to their knees through their control of the government and finance.

Popular anti-Catholic and anti-Semitic sentiments in the United States were far more widespread than hatred of Mormons and Jehovah's Witnesses, who to most Americans were distant and little-known sects. But in conflicts between Catholics and Jews and their antagonists, the government usually took the side of the religious minority. This was particularly true of the federal government, which suppressed Know-Nothing gangs and thwarted nativist legislation in the mid-nineteenth century, and unleashed the FBI and HUAC against anti-Semitic groups in the twentieth century. Individual Catholics and Jews certainly suffered at the hands of their persecutors, but, as groups, Catholics and Jews ultimately triumphed over them with the help of the government. Mormons and Jehovah's Witnesses had no such victories. When the government intervened, it was on the side of the persecutors. Persecution only ended when these groups were forced into submission on the terms the persecutors demanded.

THE ARGUMENT OF THIS BOOK

In this book, I concentrate on the state's role in and response to religious persecution. Discrimination and violence toward religious minorities can arise in a society for any number of reasons. Theological disputes, struggles over resources, the demonization of outsiders, and conspiratorial rumors have all caused Americans to persecute members of religious minorities, and the relative weights of these factors are difficult to calculate. However, the response of state actors at various levels of government determines the intensity of the persecution, how long it lasts, and the terms on which it ends. When faced with the civic persecution of a religious minority, state actors can respond in one of three ways: they can act to stop it, they can allow it to happen without participating in it, or they can actively join the persecuting effort.

I argue that this response is determined by the imperatives of the state. State actors are primarily interested in maintaining political order. At the federal level in the United States this has meant imposing national authority across a vast,

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chaotic geographic and political space while defending a liberal economic order. At the provincial level, it has meant creating a safe environment for investment and growth while maintaining the power of local elites and autonomy from federal interference. At the local level, it has meant preserving community cohesion, minimizing disturbances, and peacefully managing conflict between competing interests. State actors will persecute or allow the persecution of a religious minority when they believe that minority is a threat to political order. However, they will act to stop religious persecution when they believe the persecution itself is a threat to political order.

I argue that this logic best explains the pattern of state response to religious persecution in the United States. In the 1830s and 1840s, state governments that had initially welcomed Mormons turned against them when they established rival centers of power, with militias that rivaled the states themselves in terms of military capacity. This dynamic unfolded on a much larger scale from the 1850s onwards, when the federal government sought to break Mormon domination in the remote Utah territory. In these cases, governments sided with non-Mormon neighbors of the Mormons who complained that they were sealing off large tracts of land from the economic, political, and moral norms of the United States.

During the Second World War, Jehovah's Witnesses' refusal to salute the American flag threatened the symbolic political order that linked patriotism with the social status of war veterans in American communities. In small communities where war veterans made up a considerable power bloc, local authorities either acquiesced or participated in the violent repression of Witness efforts to proselytize. While federal officials objected to this treatment of Jehovah's Witnesses, they did little about it. The American Legion and other opponents of the Witnesses used violence to intimidate and expel Witnesses from their towns, often inflicting significant harm, but they stopped short of killing Witnesses or inciting major riots. Officials in the over-stretched Justice Department had little incentive to interfere with this violence perpetrated by respectable citizens, despite Witness complaints that their First Amendment rights were being violated.

In the mid-nineteenth century, on the other hand, governments at all levels consistently refused to give in to demands of anti-Catholic nativists that they restrict immigration or voting rights for newcomers. Although Catholicism was closely linked with anti-American subversion in the popular imagination, from the viewpoint of the state, nativists themselves posed the greater threat. They organized disreputable secret societies, inviting the same complaints about secrecy and subversion that they leveled at Catholics. They were also widely associated with violent street gangs that wreaked havoc around urban elections during the 1840s and 1850s. For these reasons, nativists were more likely to be victims of violent state interventions than the Catholics they targeted, and the political establishment shut the door on nativist legislative agendas even where nativists had overwhelming majorities.

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American anti-Semitism peaked between 1915 and 1935, and was prevalent among economic and political elites who barred Jews as members of clubs and students at top universities, and supported restricted housing covenants that kept them out of exclusive neighborhoods. However, anti-Semitism as an organized political force never found support at any level of the state. In mass politics, anti-Semitism had an anti-establishment, populist, and eventually fascist tendency that represented grievances against the ruling class and industrial capitalism. When the likes of Father Coughlin and Gerald Winrod railed against Jewish financial power, they channeled a more general anger with big business and the government. Officials on both sides of politics found this threatening, and took measures to monitor and stigmatize political anti-Semitism. After Hitler came to power in Germany, anti-Semitism widely became associated with Nazism and un-American disloyalty.

The experience of American Muslims has been complicated and varied, but it also fits this general pattern. Throughout most of the twentieth-century immigrant Muslims lived in relative peace, regarded by state actors as a harmless ethno-religious minority deserving of the same protection as groups such as Catholics and Jews. But the FBI regarded the Nation of Islam, made up of African Americans, as a dangerous political “hate group” and attempted to repress it with violence, surveillance, and internal disruption using informants and agents provocateurs. Since 9/11, various state actors have regarded both Islam *and* the persecution of Islam as a threat. While condemning anti-Muslim hate crimes and popular expressions of Islamophobia, the state has also placed large sections of the Muslim population under heavy and intrusive surveillance in the name of countering terrorism and “radicalization.”

None of these are settled, binary cases of persecution or non-persecution. Each case involves a dynamic process of social conflict in which religious persecution plays a role. The responses of state actors in these conflicts were not preordained by structural factors, and they did not remain fixed over time. Would-be persecutors could sometimes anticipate how the state would respond, but the response was often unpredictable and acts of persecution tested the state’s reaction. State actors’ perceptions of threats to political order changed as circumstances changed. The way religious minorities themselves responded to persecution also shaped the course of these conflicts. In some cases when state actors participated in religious persecution, religious actors eventually arrived at explicit bargains with the state to cease the persecution, as in the case of the Mormons. In other cases, as for Jehovah’s Witnesses and the Nation of Islam, there were more gradual organizational and doctrinal changes that ultimately allowed for greater state accommodation of them, as well as changes in external circumstances that lessened the state’s perception of them as threats. Within Catholic and Jewish communities there were debates over the extent to which these groups should “Americanize” in order to avoid alienating the public or the state.

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The argument of this book assumes that actors in the democratic state, from presidents to sheriffs, have a degree of autonomy.⁶ They do not simply respond to claims from within civil society, picking the strongest side when conflicts arise in order to ensure their political survival. State actors develop and act on preferences derived from the needs and self-conception of the state as an organization. The most fundamental of these preferences relate to maintaining the state's – that is, their own – authority. This authority – the ability to make decisions that will be followed and respected by the public – rests on widespread public acceptance not just of the state, but of the entire political order that encodes the proper role of the state and its relationship with the nation, individuals, civil society, families, and markets. This political order has elements that are material (e.g., the physical resources of the state), normative (e.g., the rights of individuals and groups vis-à-vis the state and each other), and symbolic (e.g., rituals of loyalty to the nation performed by state and non-state actors alike).

Both state and non-state actors are wary of threats to this order, which may come in the forms of foreign armies, radical political movements, corrupt officials, or deviant behavior. The state assumes responsibility for countering such subversive threats. But state and non-state actors may clash sharply over what constitutes a subversive threat, and how the state should deal with it. Scholars such as David Brion Davis, Richard Hofstadter, Michael Rogin, and others have identified a long-standing “counter-subversive” strain in American political culture that is obsessed with threats to the nation and its way of life.⁷ While the state has sometimes joined this counter-subversive cause – as in the Red Scare of the 1950s, for example – it often sees these counter-subversive claims as dangerous. The “paranoid style,” as Hofstadter called it, tends to be intolerant of difference and prone to violence. In its most extreme form it accuses the government of being in the hands of the nation's

⁶ This conception of the state as a distinctive set of actors and institutions with decision-making power autonomous from society was originally developed in opposition to pluralist conceptions of the state as an arena for struggles between competing interests, or Marxian conceptions of the state as the political organization of ruling class interests. As I explain in Chapter 2, my conception of the state in this study retains the idea of autonomous decision-making derived from public authority, but moves away from other “statist” concepts such as the state as an established and unitary actor, or an impermeable boundary between state and society. On “statist” scholarship, see Huntington, Samuel P. (1968). *Political Order in Changing Societies*. New Haven: Yale University Press; Skocpol, Theda (1985). “Bringing the State Back In: Strategies of Analysis in Current Research.” In Peter B. Evans, et al. (eds.) *Bringing the State Back In*. New York: Cambridge University Press; and Krasner, Stephen D. (1984). “Approaches to the State: Alternative Conceptions and Historical Dynamics.” *Comparative Politics*, 16(2): 223–246.

⁷ Davis, David Brion (1960). “Some Themes of Counter-Subversion: An Analysis of Anti-Masonic, Anti-Catholic and Anti-Mormon Literature.” *The Mississippi Valley Historical Review*, 47(2): 205–224; Hofstadter, Richard (1965). *The Paranoid Style in American Politics*. New York: Knopf; Rogin, Michael (1987): *Ronald Reagan, the Movie: and Other Episodes in Political Demonology*. Berkeley, CA: University of California Press.

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enemies. Counter-subversives can become subversives themselves when they threaten to take power back from the state in the name of “the people.”

Religion, by nature, is a potential threat to temporal political order. Religious adherents recognize a structure of authority and obligation that goes beyond the state or normal social conventions, and they see themselves as in some way different from – if not superior to – non-adherents. Some religions are deeply critical of the existing political order, and advocate elaborate alternatives. Others avoid politics, but place heavy demands on their members that may put them in conflict with social conventions or the law. However, religion may also be supportive of political order. Religions may counsel their members to accept state authority and recognize proper distinctions between ecclesiastical and temporal authority. Those religious groups identified with the majority of the population may bolster nationalism and participate in nation-affirming rituals. Religious groups that enjoy *de jure* or *de facto* privileges from the state may wield outsized political influence and will resist any changes to the system from which they benefit.

Members of religious organizations that are invested in the political order are often suspicious of those who are not, or who seem not to be. Throughout American history, counter-subversives from the Protestant religious mainstream have complained that other religious groups are incompatible with the American political order; that they are too clannish, authoritarian, fanatical, chauvinistic, or foreign. Since the late eighteenth century, these accusations have carried far more weight than older quarrels over theological error, blasphemy, or heresy. Sometimes, state actors have agreed with these complaints. They have set aside First Amendment concerns with religious freedom to protect a political order that they believe is under threat from religious groups with no loyalty to it. But at other times, these complaints *are* the threat to social and political order, raising the specters of divisiveness, intolerance, and mob rule. This latter scenario is especially likely when the complainants are tied to broader movements that the state identifies as anti-systemic or subversive.

The struggles of religious minorities have not happened in isolation from the broader politics of the United States. Throughout the book, I will show that the fates of religions have been intertwined with some of the largest, most formative political conflicts in American history. The “Mormon question” was determined by the federal government’s quest to establish hegemony across the entire American continent. The place of both Mormons and Catholics in the politics of the nineteenth century was linked to the partisan battle over slavery. The treatment of Jehovah’s Witnesses and Jews was informed by the approach of the Second World War and the question of American involvement in it. The war between the government and the Nation of Islam occurred in the context of black insurgency against white supremacist power structures. The Muslim experience in the twenty-first century has been shaped by the post-9/11 national security state.

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ALTERNATIVE MODES OF EXPLANATION: PLURALISM,
LEGALISM, AND PARTICULARISM

As far as I am aware, this is the first work to address historical variance in the American state's response to the persecution of religious minorities. As such, there are no ready-made alternative explanations to the one offered in this book. However, existing scholarship on relationships between minorities and the state offers three alternative frameworks that could be adapted to this question.

The first framework comes from the pluralist or "society-centric" approach to American democratic politics. In this understanding, the state primarily mediates conflicts between competing interests in society. State actors, especially politicians, are individuals with their own interests and strategies for achieving them, not part of an apparatus with distinctive preferences of its own. While early pluralists such as Dahl argued that every competing group can achieve power by mobilizing diverse political resources, later pluralists such as Lindblom emphasized the structural advantages enjoyed by some groups over others in the political arena, especially those with economic power.⁸ Under this framework, especially in its latter version, one puzzle of this book seems to have an obvious solution: Mormons and Jehovah's Witnesses were subject to persecution while Catholics and Jews avoided it because the latter were simply much larger and better connected politically than the former. Jehovah's Witnesses, who numbered about 40,000 nationally at the time of their persecution, further handicapped themselves by refusing to vote, thus giving office-seeking local politicians no incentive to offer them protection.

Throughout the book, I will show that this explanation, while intuitively appealing, has limited use in explaining the experience of religious minorities in America. Mormons, who quickly became a numerical majority in the counties and territories they settled, should have been able to find patronage from one of the major parties. Because Mormons voted as a bloc under the direction of their leadership, pluralist logic suggests they possessed a political resource that could have bought them powerful allies. At several points they made overtures toward the Democratic Party, the party that traditionally resisted aggressive efforts to "Americanize" religious minorities outside the Protestant mainstream. As I will show, however, Democrats in Congress ultimately abandoned the Mormons, voting with Republicans to disfranchise them in Utah. Only those Southern Democrats who had most reason to oppose the Republicans' state-building program sided with the Mormons, who were a significant obstacle to it.

⁸ Dahl, Robert (1961). *Who Governs? Democracy and Power in an American City*. New Haven: Yale University Press; Lindblom, Charles (1977). *Politics and Markets*. New York: Basic Books. For an overview of pluralist approaches to the American state, see Krasner, Stephen (1984). "Approaches to the State: Alternative Conceptions and Historical Dynamics." *Comparative Politics*, 16(2): 223–246.

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When the Republican Party was founded in 1854 there were few Catholic votes available to it and it drew much of its support from the anti-Catholic Know-Nothings. But party leaders banished anti-Catholicism from Republican platforms as they regarded it as a distraction from the more important issue of anti-slavery. Meanwhile, various Democrats at different times embraced anti-Catholic initiatives, despite the party's strong Catholic constituency. A group of Democratic congressmen joined Republicans in 1888 to block the admission of heavily Catholic New Mexico into the Union as a state; in 1924 the Democratic Party narrowly defeated a proposed platform measure that would have denounced the anti-Catholic and anti-Semitic Ku Klux Klan.⁹ American political parties, then, have often ignored electoral incentives to support or oppose the rights of religious minorities. Most state efforts to suppress or protect religious minorities have been bipartisan, reflecting a shared ideology around political order.

The second framework, which I term "legalism," has featured in many previous studies of relations between religious minorities and the state in America. From this perspective, the changing fortunes of religious minorities can be explained by the development of legal doctrine around religion. This fits with a more general picture of courts as prime movers in American politics, the ultimate spheres of conflict over basic rights.¹⁰ The key events in the legalist story are Supreme Court cases about the scope of the First Amendment, such as the *Reynolds* decision of 1877 that decoupled the protection of religious beliefs from religious behavior, the *Gobitis* decision of 1940 that found religious expression did not trump national cohesion, and the *Barnette* decision of 1943 that overturned *Gobitis*. These cases certainly appear to have influenced subsequent religious persecutions. Congress voted to ban polygamists from voting in 1882, a few years after *Reynolds* ensured that this would not be considered an infringement of religious beliefs. Violence against Jehovah's Witnesses exploded in the weeks following *Gobitis*, which had found that school districts were within their rights to expel Witness children for refusing to salute the American flag. Many scholars have identified the incorporation of

⁹ Stewart, Charles, and Barry Weingast (1992). "Stacking the Senate, Changing the Nation: Republican Rotten Boroughs, Statehood Politics, and American Political Development." *Studies in American Political Development*, 6(2): 223–271; McVeigh, Rory (2009a). "Power Devaluation, the Ku Klux Klan, and the Democratic National Convention of 1924." *Sociological Forum*, 16(1): 1–30.

¹⁰ One of the most striking articulations of this perspective comes in J.P. Nettl's classic article, in which he argues that the law in the United States supersedes many of the roles of the state in other countries. In Nettl's words: "In the United States, the law and its practitioners have perhaps been the most important single factor making for political and social change and have time and again proved to be the normal instrument for bringing it about. Instead of demonstrating a narrow and self-sufficient interpretation of existing rules, which British law shares with that of the Continent, American law has tended to follow closely, and frequently to anticipate, major changes in public attitudes and has provided a vehicle to which the whole proliferation of social thought and action could be hitched. This is too well known to need elaboration here." From Nettl, J.P. (1968). "The State as a Conceptual Variable." *World Politics*, 20(4): 559–592.