Church, State, Courts, and Law in Indiana to 1851

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Morris Morris was one of the earliest residents of Indianapolis, arriving in 1821. Morris was what the nineteenth century called a “useful citizen.” He served as state auditor and helped oversee the construction of the state capitol building. Before coming to Indiana, he had been a successful attorney in Kentucky. He gave up the practice of law, however, for a simple reason—he had decided that he could not be both a good lawyer and a good Christian.¹

Many would have disagreed with Morris’s conclusions, but their rebuttals point to the challenge of determining the correct relationship between law and faith. Church and state relations in Indiana before 1851 were complex. Organic law—the Northwest Ordinance and the 1816 state constitution—guaranteed freedom of worship. State laws both enacted concepts of Christian morality and attempted to accommodate, as much as possible, the peculiarities of sectarian groups, but this did not guarantee accommodation of every manifestation of individual belief. Officials regularly invoked God and affirmed that Indiana was a Christian polity and the United States a Christian nation. On the other hand, separation of church

¹Berry R. Sulgrove, History of Indianapolis and Marion County, Indiana (Philadelphia, Pa., 1884), 216-17.
and state was also a widely held and oft-enunciated doctrine. The state resisted blasphemy laws and recognized the legal rights of atheists, while Hoosiers often differed on how best to reconcile their sense of living in a Christian state with prohibitions on legal establishment of any one faith.

Hoosiers, of course, were part of a wider national debate on these questions between 1800 and 1850. In the East, older restrictions and preferences were giving way, as state tax support for Congregational churches disappeared in New England and states repealed laws that limited office holding to Protestants or Christians. Although “separation of church and state” increasingly became a recognized part of the American polity, Americans disagreed about all of the implications of the First Amendment’s guarantee of “free exercise” of religion and its ban of an “establishment of religion,” debates that remain with us to the present day. Moreover, these debates took place largely at the state level, as it would not be until the twentieth century that the Supreme Court held that the First Amendment’s guarantees applied to the states.2

If the workings of religion and law in Indiana were far from simple, the state was unexceptional so far as law and religion and the relationship between church and state were concerned in the first half of the nineteenth century. The limited provisions of the 1816 constitution concerning religion were borrowed mainly from Ohio, and the foundations of legally mandated personal morality had been laid when Indiana was part of the Northwest Territory. No groundbreaking legislation or court decisions emerged from Indiana; indeed, religious issues seldom came before state appellate courts. If, as historian Sarah Barringer Gordon has argued, the states were the nineteenth century’s “battlegrounds in law and religion,” Indiana was a minor theater of combat.3 James H. Madison’s character-

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ization of “The Indiana Way” aptly characterizes Hoosiers’ approach to questions of church and state, and religion and law, in the period of the first state constitution: “The people of Indiana have tended to navigate in the middle of the American mainstream, drifting if anywhere a little closer to the more secure edge of the river. Moderation has been the Indiana way, a moderation firmly anchored in respect for tradition, in appreciation of the achievements of the generations that preceded.” Of course what was a “moderate” course in the 1840s can appear bigoted today, as discussion of legislation involving the Roman Catholics will show.

Perhaps because of this moderate, traditionalist course, Indiana in this period has received little attention from historians of church-state relations. L. C. Rudolph’s magisterial Hoosier Faiths did not take up the subject. The most recent history of Indiana law focuses on twentieth-century developments. The latest treatment of church-state relations in the nineteenth-century United States, Steven K. Green’s The Second Disestablishment, has nothing to say about Indiana. My own call in 1999 for further attention to this and related subjects by Indiana historians has as yet gone unheeded.

This article will make four arguments. The first is that religious—more specifically Protestant—influences were pervasive in Indiana in the first half of the nineteenth century, as clergy and politicians were in near unanimity in accepting the central role of religion as the foundation of morality and virtue. Lawmakers guaranteed religious liberty and looked favorably on the progress of Christianity in the state. My second key point, however, is that Hoosiers, both clerical and lay, disagreed on the precise role of law in advancing religion and morality. Generally, Whigs were friendlier to government as a religious agent, while Democrats were skeptical, invoking separation of church and state as a principle that was just as sacred as religious freedom. Debates on issues ranging from Sabbath observance to legislative chaplains to Thanksgiving proclamations showed these divisions. Third, the legislature’s inclination, in the face of these controversies, was to try to accommodate religious constituents, most often with acts of incorporation, as well as with concessions to sectarian

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peculiarities. But accommodation had definite limits, as shown by debates about religious objections to military service, slavery, capital punishment, and temperance. Finally, the legislature was the main arena for grappling with church-state relations, as state courts seldom took up religious issues in Indiana. The debates in the 1850-1851 constitutional convention showed the persistence of these patterns. The document that emerged from their resolution manifested the compromises that had emerged over the past generation, albeit reflecting more the views of the Democrats who were a majority in the convention.

The foundational document for law and society in what would become Indiana was the Northwest Ordinance of 1787. Its first article guaranteed religious freedom: “No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.” Article 3 also made a connection that many Hoosiers would assume: “Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.”6 In the territory’s first legal code of 1788, territorial officials tried to promote “religion and morality” by punishing drunkenness. Sabbath observance was only a matter of exhortation, although the law asserted that

idle, vain and obscene conversation, profane cursing and swearing, and more especially the irreverently mentioning, calling upon, or invoking the sacred and supreme being, by any of the divine characters in which he hath graciously condescended to reveal his infinitely beneficent purposes to mankind, are repugnant to every moral sentiment, subversive of every civil obligation, inconsistent with the ornaments of polished life, and abhorrent to the principles of the most benevolent religion.

The only penalty for such behavior was that “government will consider as unworthy of its confidence all those who may obstinately violate these injunctions.” In 1799, however, the territorial legislature decided to put some teeth into these sentiments. Anyone “found reveling, fighting, or quarreling, doing or performing any worldly employment or busi-

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6Northwest Ordinance, Articles 1 and 30.
ness, whatsoever, on the first day of the week, commonly called Sunday, (works of necessity and charity only excepted) or shall use or practice any unlawful game, sport or diversion, whatsoever, or shall be found hunting or shooting, on the said day,” would be fined between fifty cents and two dollars. The same penalty was imposed on anyone sixteen or older who did “profanely curse, damn, or swear, by the name of God, Christ Jesus, or the Holy Ghost.”

These laws continued when the Indiana Territory was formed in 1800, and religion was apparently a matter of little debate in the 1816 constitutional convention. Article 1, Section 3, was an eloquent statement of religious liberty, taken almost verbatim from the Ohio constitution:

That all men have a natural and indefeasible right to worship Almighty God, according to the dictates of their own consciences: That no man shall be compelled to attend, erect, or support any place of Worship, or to maintain any ministry against his consent: That no human authority can, in any case whatever, control or interfere with the rights of conscience: And that no preference shall ever be given by law to any religious societies, or modes of worship; and no religious test shall be required as a qualification to any office of trust or profit.

With this framework for defining the relationship of church and state, Indiana began its existence as a state. Historians generally agree with Madison’s judgment about Indiana in this period: “Evangelical Protestantism came to exert profound influence in shaping social, cultural, and political institutions and beliefs.”

One certainly finds contemporaries echoing this conclusion. The Quaker Barnabas C. Hobbs, born in Washington County in 1815, remembered that, “Pioneers were eminently a religious people . . . There was a strong repugnance to immorality generally, however much the people might have

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been deficient in general culture or learning.” Other contemporaries, however, saw things differently, and often bemoaned the low status of religion in the state. “From the reports furnished by our respective Presbyteries, and from other means of gaining information . . . we are constrained to believe, that religion is in a state of very great and universal depression, not only amongst our own churches, but amongst all sister denominations,” the Presbyterian Synod of Indiana concluded in 1835. A year later, a Lutheran missionary observed that “fully two thirds of the adult population of the state belong to no church whatever.” Some respected Christianity, but others were either “perfect worldlings” or “grossly immoral.” In 1849, a Bloomington editor mourned that so few Hoosiers were found in church on Sunday. Missionaries, especially Presbyterians, saw infidelity as rampant. Preachers like Indianapolis’s Henry Ward Beecher blamed the laxness and quarrels of church members themselves for the weakness of Christianity in their communities.

In the years that spanned the drafting of the original state constitution in 1816 to its revision in 1851, Hoosiers of all religious views agreed that they were fortunate to live in a land of religious freedom. S. G. Spees, pastor of Indianapolis’s Second Presbyterian Church, spoke for them in 1848 when he rejoiced that Americans lived in a land “free from all spiritual despotism” with “the unrestrained right to believe and worship God as our consciences direct us.” That meant “the dissolution of all church and state alliances, the abrogation of all religious and professional tests of civic office.” However, they disagreed on the more specific implications of how those freedoms might translate into political and legal practice.

Not surprisingly, clergymen considered religion inseparable from the virtue and morality necessary for the maintenance of a republic.

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11“Synod of Indiana,” Connersville Watchman, November 21, 1835.
13“Atheism in America,” Christian Record 7 (September 1849), 77.
14L. C. Rudolph, Hoosier Zion: The Presbyterians in Early Indiana (New Haven, Conn., 1963), 154-56.
16S. G. Spees, A Discourse on the Great American Idea—Universal Liberty. Delivered in the Second Presbyterian Church, Indianapolis, Ind., upon Thanksgiving Day, Nov. 25, 1848 (Indianapolis, Ind., 1848), 9-10.
Preaching to the students of Indiana College (now Indiana University) in 1830, President Andrew Wylie, a Presbyterian minister, argued that “the influence of the Christian religion is necessary to the preservation of the liberties and the advancement of the general interests of our nation,” and that “every government conducted in hostility to Christ and his religion shall ‘perish from the earth.’” He pointed to the Bible as the perfect guide for all moral judgments. Baynard Rush Hall, the college’s first professor, invited to preach in the state capitol building in 1826, rejoiced that he lived “in a land in which the ministers of religion . . . are heard with attention and respect, whilst they proclaim the gospel in the very temples of legislation and justice.”

If anyone in Indiana in the first half of the nineteenth century questioned the centrality of morality in a democracy, I have found no record of it. Yet, Hoosiers were divided on the question of how to legislate public morality. Generally Whigs were more willing to accept religion as a legislative force. The Quaker elder George Evans, himself a Whig party leader in Henry County, referred to the Whigs in 1848 as the party of the Protestant “priesthood.” The Logansport Herald summed up their views in an article that it reprinted in 1839: “There can be no doubt that the stability of our government depends on the character of the people, infinitely more than on the forms of that government. The nation became what it is now by the severe virtue and stern devotion to principal [sic] of its ancestors. Its substantial liberty can only be preserved in the same way.” Laws were still on the books, and had once been rigorously enforced, the article’s author argued, against “violation of the Sabbath, lewdness, drunkenness, rioting, gambling, betting, cheating and various other offences,” but there was little will to enforce them now. Paraphrasing the moral indifference that he saw around him, the author disparaged those who believe that “We live in an age of independence, and if one cannot

17 Andrew Wylie, Religion and State; Not Church and State. A Sermon on Psalm 11,10-12, Delivered July Fourth 1830 in the Hall of the Indiana College, Bloomington (Bloomington, Ind., 1830), 4, 9-10; Baynard R. Hall, Righteousness, the Safe-Guard and Glory of a Nation: A Sermon Preached in the Representative Hall, at Indianapolis, Indiana, December 31, 1826 (Indianapolis, Ind., n.d.), 3-4.
19 “Correspondence Relative to the Wilmot Proviso Question,” Vevay Campaign Palladium, October 28, 1848.
be independent of these old fashioned, bigoted, fanatical customs, what is the use of being independent.” What was needed, he argued in reply, was a return to first principles: reverence for law, combined with the “superintending authority of ‘The Church.’”

Democrats, in contrast, were inclined to see such an alliance as a dangerous infringement on separation of church and state. Such fears went back to the days when the Congregationalist clergy of New England had denounced Thomas Jefferson as an atheist and infidel. Democratic journals like the *Vevay Palladium*, the *New Harmony Indiana Statesman*, and the *Indianapolis Democrat* made “No connexion between Church and State” part of their platforms; the state Democratic editorial association endorsed that stance as one of its “principles and measures” in 1846.

Democrat Abel Pepper articulated a revealing connection in the 1850-1851 constitutional convention: “The doctrine that Church and State shall be disconnected, and that the Government and Banks shall be disconnected, are doctrines equally republican in character.” Presbyterian clergy, who were especially inclined to push government to legislate morality, found themselves attacked for promoting “union of church and state.” In his farewell address to the legislature in 1831, Governor James B. Ray, a Jacksonian, listed among his accomplishments a record of “deprecating all attempts by the national or state legislatures to define by law, what religion is, or what it is not.” Ray pronounced himself “hostile to a union of church and state; a supporter of political and religious liberty.” Two years earlier, he had praised associations to encourage “morality, religion, learning, humanity [and] temperance,” but he worried that they might have “an indirect tendency to aggrandize a few at the sacrifice of the many, or lead to a political or religious aristocracy.” Speaking at the 1850 constitutional convention, Greene County Democrat David Dobson

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even objected to receiving petitions from “religious sects or societies.” Individuals had every right to petition as citizens, Dobson argued, “but when churches or religious denominations, in a body, sign petitions and send them up here, I think they are going counter to the spirit and genius of our institutions.”

Given these partisan divisions, how did courts and legislators determine the proper relationship between faith and law? A process of accommodation, albeit one showing deep suspicion of anything that hinted of excessive influence by any one denomination or its clergy, can be seen on a variety of issues: chaplains, education, public order and morality, official proclamations, and legal incorporation of religious entities.

Chaplains appear to have been a nonissue for most Hoosiers. As early as 1817, the House of Representatives invited a clergyman to offer a prayer at the start of its session. We have no record of an equivalent invitation to the 1816 constitutional convention, but similar devotions were offered during the 1850-1851 convention. They may have been uncontroversial because no pay was given. On the other hand, it was not until 1841—two decades after the institution opened—that a chaplain was appointed for the state penitentiary in Jeffersonville. In 1845 John Pettit, an Indiana Democratic congressman, actually proposed abolishing chaplaincies at West Point. “He could not see the propriety,” an observer reported, “of teaching morality to those who were engaged and taught to kill without sparing.” Besides, Pettit “was informed . . . that there existed a paper, in Mr. [James] Madison's collection, and writing against the constitutionality of employing chaplains by the government in any department. He was willing to stand by that man's side, and be charged with infidelity.” Not surprisingly, Pettit's motion failed.

Barnabas C. Hobbs described the pioneers of Indiana as “intensely but sincerely sectarian in their religious views,” and so it was not surprising that “this feeling would often crop out in school.” The 1816 constitution had called for the creation of a public school system “as soon as cir-
cumstances will permit.” Not until the 1850s, however, would the state have a comprehensive system of tax-supported common schools. Instead, Indiana offered a patchwork of private and public schools, both receiving tax support. Historians now conclude that the desire of parents to educate children in their own religious beliefs may have been a significant factor in reluctance to create a common school system. Certainly many of the public schools were avowedly Protestant, using the Bible as a textbook. Typical of this leaning were the Madison citizens who in 1833 formed an Association for the Improvement of Common Schools. While advocates of public schooling, they were also clear that they were “forming a Christian institution.” A few Universalists and Free Thinkers blasted the “cunning, the policy and the scheming management of supercilious reverends and man-made Doctors of Divinity” who through the “dabbling, contaminating hand of priestcraft” had “transformed our schools into religious engines, purposely to model the minds of children by catechisms and tracts of terror . . . and thereby demolish our democratic fabric.” In 1848, a Bartholomew County Democrat based his opposition to a public school system on the conviction that “the bait is to give our children learning; but the chief object is to religiously traditionize them and then unite church and state.” But these were lonely voices in Indiana. In other states with large populations of Roman Catholic immigrants, Catholics demanded an end to Bible readings and prayers that they saw as at odds with their own faith. These bitter controversies fueled nativism and led to rioting in some cities, most notably in Philadelphia in 1840 and 1844. However, if any unhappy parent in Indiana ever challenged religious observances, the case never reached the appellate level.

34Carmony, Indiana, 1816-1850, 371-72.
35“Priest-craft—Common Schools,” Western Chronicle (1850), 133-36.
37Hamburger, Separation of Church and State, 219-29; Green, Second Disestablishment, 268-69.
 Legislative action on religion and education was limited to assuring that public institutions remained free from the control of a particular denomination. Thus in 1815, when the territorial legislature incorporated a seminary in Vevay, it provided that “no particular tenets of religion . . . be taught in said Seminary.”39 The greatest controversy centered on Indiana College, which in 1838 became Indiana University. The college’s 1828 charter stipulated that no faculty or students should be required “to profess any particular religious opinions,” and that no “sectarian tenets or principles be taught, instructed, or inculcated.”40 Because its early faculty were Presbyterians, however, the university faced accusations that it was unfriendly to other denominations.41 Governor Ray worried about this in 1830, and in 1834 the Indiana Conference of the Methodist Church sent a memorial to the legislature asking that “the principal denominations of Christians in this state may have their due proportion of influence in the faculty of the State College at Bloomington.”42 In vain did legislative committees and successive governors respond that several denominations were represented on the college’s board and that no evidence of “sectarian tests or the inculcation of sectarian principles could be found.”43 At least one historian has concluded that Methodist disgruntlement over the university helped defeat Presbyterian Governor Samuel Bigger’s reelection bid in 1843. Despite official reassurances, the suspicion of other denominations hindered the university’s growth until after the Civil War. On the other hand, in 1842, when the legislature made an $8,000 loan to Presbyterian Wabash College and then in 1847 agreed to forgive the debt, Methodists

41Ibid., 1:3-77; Gayle Williams, “Andrew Wylie and Religion at Indiana University, 1824-1851: Nonsectarianism and Democracy,” Indiana Magazine of History 99 (March 2003), 3-24.
responded not by raising questions of church and state, but instead by asking for a similar loan for their own Indiana Asbury University (now DePauw). They failed.\textsuperscript{44}

As has been seen, laws against profanity, drunkenness, gambling, and Sabbath-breaking went back to ordinances passed for the Northwest Territory. First the Indiana territorial legislature, and later the state legislature, affirmed them in regular revisions of the state’s laws. Penalties for gambling and drunkenness were apparently uncontroversial, but the prohibitions on profanity and injunctions to Sabbath observance were problematic for at least some Hoosiers.\textsuperscript{45}

As early as 1805, a territorial legislative committee had recommended altering the laws on vice and immorality in order to limit the imposition of penalties for profanity to offenses committed in courts or churches. The legislature did not accept the recommendation, but indications suggest that enforcement tended to be sporadic and arbitrary.\textsuperscript{46} Such offenses were tried in justice of the peace courts. Two surviving dockets, one from Union County for 1820-1822 and another from Noble County for 1847-1852, show not a single case. By law, fines for such offenses were to go to “county seminary funds.” The treasurer’s book for the Wayne County seminary fund for 1819-1831 shows that seventy-three fines for public profanity were collected in those years, compared with 150 for assault and battery or fighting.\textsuperscript{47} It is hard to believe that residents were twice as likely to commit assault and battery as to cuss. In 1828, Governor Ray remitted the fine imposed by a Hendricks County justice of the peace on Joshua Allen, who had been found guilty of swearing ten oaths and accordingly fined ten dollars. The justice and fifty-eight other petitioners told the governor that the “oaths were not sworn to the terror or disparagement of

\textsuperscript{44}Robert D. Clark, “Matthew Simpson, the Methodists, and the Defeat of Governor Samuel Bigger, 1843,” \textit{Indiana Magazine of History} 50 (March 1954), 23-33.

\textsuperscript{45}See, for example, Francis S. Philbrick, ed., \textit{The Laws of Indiana Territory, 1801-1809} (Springfield, Ill., 1930), 367-68; \textit{The Revised Laws of Indiana, Adopted and Enacted by the General Assembly, at Their Eighth Session} (Corydon, Ind., 1824), 145-46; and \textit{The Revised Statutes of the State of Indiana: Passed at the Twenty-Seventh Session of the General Assembly} (Indianapolis, Ind., 1843), 985.

\textsuperscript{46}Gayle Thornbrough and Dorothy Riker, eds., \textit{Journals of the General Assembly of Indiana Territory, 1805-1815} (Indianapolis, Ind., 1950), 52.

\textsuperscript{47}Docket of David Baughman, Justice of the Peace of Sparta Township, Noble County, Indiana, October 18, 1847, Genealogy and Local History Department, Allen County Public Library, Fort Wayne, Indiana; Edghill Burnside Justice of the Peace Docket, Union County, 1820-1822, ibid.; The Trustee of the Publick Simenary Book for Wayne County, 1819-1831, Friends Collection, Earlham College, Richmond, Indiana.
any person religiously conscientious, or in the presence of any court or person doing business,” but that the charges were malicious and the fines would impoverish Allen.48

Even more controversial were the laws on Sabbath observance. The regular exhortations of religious groups, bemoaning the decline of respect for the Sabbath, indicate that observance was anything but universal, and by the 1830s, public opposition to legal enforcement of sabbatarianism was increasing. Protestant clergy uniformly stressed the importance of Sabbath observance. “The Sabbath stands connected with everything sacred in religion,” Andrew Wylie preached, and in 1835 the Presbyterian Synod of Indiana resolved that Sabbath breaking was “one of the crying sins of the church and of our whole nation.” “If Christians desecrate the holy Sabbath, much more will others,” it continued. “Just in proportion as the Sabbath is not observed, every thing in the form of vital godliness takes its departure.”49 Other groups, ranging from Missionary Baptists to the United Brethren, shared such views and admonished their members to devote Sundays to worship and religious activity and to shun every form of unnecessary labor and all forms of recreation. In 1845 a state Sabbath convention was held in Indianapolis to advance the cause.50

Although no case involving Sabbath observance ever made it to the appellate level, it was a political issue that divided Whigs and Democrats. The issue first surfaced in state responses to a national controversy—the 1820s evangelical campaign against the federal law requiring that mail be delivered and post offices remain open on Sundays. It was offensive to God, Baynard Rush Hall preached in 1826, “for any government so to regulate any department as to render frequent violations of the divine laws necessary.” How, he asked, “shall we answer it to High Heaven, that by the regulations of Congress and of some state assemblies, the conveyance of the mail . . . always cause a violation of the sanctity of the Sabbath?”51 In reports in 1829 and 1830, Kentucky Jacksonian Senator (and future vice president) Richard M. Johnson responded that ending Sunday mail

49Rudolph, Hoosier Zion, 21-22; Wylie, Religion and State, 11-12; Connersville Watchman, November 21, 1833.
50“Minutes of the Tippecanoe Baptist Association for 1848,” Covington People’s Friend, September 16, 1848; Augustus Cleland Wilmore, History of the White River Conference of the Church of the United Brethren in Christ (Dayton, Ohio, 1925), 133; “State Sabbath Convention at Indianapolis,” Fort Wayne Times and People’s Press, December 27, 1845.
51Hall, Righteousness, the Safe-Guard and Glory of a Nation, 14-15.
delivery would involve the federal government endorsing a particular tenet of religious faith. Significantly, the Indiana legislature endorsed Johnson’s position in resolutions dated February 15, 1830:

That we view all attempts to introduce sectarian influence into the councils of the nation as a violation of both the letter and the spirit of the Constitution of the United States and of this State, and at the same time dangerous to our civil and religious liberties, inasmuch as those charters secure to every man the free exercise of his religion and the right to worship the Almighty God according to the dictates of his own conscience, and inasmuch as ally legislative interference in matters of religion would be an infraction of those rights;

We, therefore, most respectfully remonstrate against any attempt, by a combination of one or more sects, to alter the laws providing for the transportation of the mail, and against the passage of a law to regulate or enforce the observance of religious duties, or which may interfere with what belongs to the conscience of each individual.

That all legislative interference [in] matters of religion is contrary to the genius of Christianity; and that there are no doctrines or observances inculcated, by the Christian religion which require the arm of civil power either to enforce or sustain them;

That we consider every connection between church and state at all times dangerous to civil and religious liberty; and further,

That we cordially agree to and approve of the able report of the H[o]n. R. M. Johnson, adopted by the Senate of the United States at its last session, upon the petitions for prohibiting the transportation of the mail on Sunday; and while we protest in the most solemn manner against every attempt to enforce, by legislative interference, the observance of any particular day, yet believe that both the spiritual and temporal interest of mankind is promoted by setting apart one day in the week for the purpose of rest, religious instruction, and the worship of God.
Governor Ray, who sided with the supporters of Sunday mail delivery, later counted the decision among his most memorable accomplishments in office.52

The issue of Sabbath observance arose again periodically in the 1830s and 1840s. In 1844, the state senate tabled a petition from Tippecanoe County to repeal “the law against Sabbath breaking.”53 Democrats and religious liberals, on the other hand, continued to challenge the wisdom of such legislation. The New Harmony Indiana Statesman in 1845 quoted another newspaper: “We highly approve of the regular observance of Sunday as a day of rest, but we wish it to be observed by the power of reason and moral suasion, and not by physical force, or penal enactments.” The Western Chronicle, a Universalist monthly published in Philomath that was always merciless in its critique of evangelicalism, asserted in an 1847 article that “it is evident that nothing but the power is wanting among some of our ultra orthodox Christians, to enable them to revive that ferocious spirit of persecution which . . . would . . . abolish forever that ‘Liberty with which Christ has made us free.’” One day of rest among seven was good, the writer concluded, “but to make laws to compel men to be idle is as bad as to compel them to go to some church.”54

Generally less controversial were official acknowledgments of God’s goodness to Indiana. Such a practice began in the territorial legislature during the War of 1812, when it issued an address to Governor Thomas Posey, confident that “the success of our arms” was due “to the omnipotent director of Armies.” In 1822, Governor Jonathan Jennings recommended that the legislature set aside the second Friday in April as “a day of fasting and humiliation and of prayer to Almighty God, that He might avert those judgments that have impended on our land, and that He would in His manifold mercies, bless our country with fruitful seasons, and our


53“Senate,” Vevay Indiana Palladium, January 13, 1844.

citizens with health.” The legislature obliged, asking the governor to urge citizens “to abstain from all servile labor on said day” and urge “religious societies of every denomination to keep and observe the same.” A decade later, Whig Governor Noah Noble proclaimed the second Monday in November a day of “fasting with prayer” to implore divine help against the cholera epidemic that was sweeping the nation. In 1823, Governor William Hendricks began a tradition of including at least a brief acknowledgment of divine favor in his annual message to the legislature; and by 1834, Governor David Wallace noted that such a reference was customary. Noble was the first Indiana governor to issue a proclamation setting aside a day, in this case the first Thursday in December 1837, “as a day of General Thanksgiving.” His successors, both Whigs and Democrats, followed suit. To be sure, some Democrats raised questions, and they found support in the scruples of Presidents Jefferson, James Madison, and Andrew Jackson, who consistently refused to issue such proclamations. The Jacksonian editor of the Salem Annotator, writing in the midst of the national cholera epidemic of 1832, noted that in spite of numerous official “proclamations for a day of fasting and prayer, to avert the cholera, the disease continues to spread unabated.” He asked: “If fasting and prayer can have an effect to stay this desolating monster, would they not have the same virtue if performed without the civil authority; and is it prudent for our praying people to lay on their oar, waiting for the appointed time, when it is destroying thousands every day?” Somewhat irreverently, the editor suggested that crowded church services were more likely to spread the disease than abate it, and that fasting weakened people, making them more likely to become victims. In 1837, at least a few Democratic editors criticized Noble’s Thanksgiving proclamation as an objectionable mixture of church and state. But they were a minority.

Politicians are generally happiest when accommodating constituents, and one of the ways that they could accommodate religious
organizations was through passing acts of incorporation. The logic of such action was summed up in the act that incorporated the Indiana Presbyterian Church in Knox County in 1810. The legislature believed that “the propagation of the gospel contributes in an eminent degree to civilization,” and that, furthermore, “republican legislatures have, and ever ought to extend their constitutional aid to every institution, whose basis is religion.” Therefore, “the incorporation of churches with proper restrictions, will be the sure means of diffusing the great and important truths contained in the Divine revelations.” Lawmakers did, however, stipulate that the church was not to own more than 600 acres of land and that it was to govern itself by rules “not . . . inconsistent with the constitution and laws of the United States, or of the ordinance and laws of this territory.”\(^5^9\) At times the legislature rejected provisions that it considered undemocratic. In 1807, it had granted without controversy an incorporation request from the Wabash Baptist Church in Knox County. However, a year later, when the church asked to amend the articles of incorporation so that its trustees would become permanent, the legislature refused, partly out of a sense that permanent trustees might lead to an abuse of power.\(^6^0\) By 1850, the legislature regularly granted requests to incorporate not only individual congregations but schools, seminaries, orphanages, and, in the case of Indiana Quakers, their yearly meeting, the equivalent of a Presbyterian synod or Methodist conference.\(^6^1\) The legislature was also willing to mandate nonsectarianism when petitioners requested it. Thus when a group of Universalists asked to incorporate the Western Union Seminary in 1833, the legislature obligingly included an article noting that “the object of the subscribers to the above institution is to establish a seminary of education for youth, purely scientific, and entirely free from sectarian influence,” and therefore that “no religious creed, catechism, dogmas, or confession of faith, shall ever be taught in said seminary, but simply the arts and sciences.”\(^6^2\)

A heated debate in the Indiana House of Representatives in 1844 showed that the legislature was not always so evenhanded. Traditional

\(^5^9\)Ewbank and Riker, Laws of Indiana Territory, 1809-1816, 192-93.

\(^6^0\)Philbrick, Laws of Indiana Territory, 1801-1809, 572; Thornbrough and Riker, Journals of the General Assembly, 183, 195.

\(^6^1\)For examples of incorporation of religious entities, see Local Laws of the State of Indiana, Passed at the Thirty-Fourth Session of the General Assembly (Indianapolis, Ind., 1850), 23-28, 59-61, 118-19, 185, 343-46, 404-407.

\(^6^2\)Laws of the State of Indiana, Passed and Published at the Seventeenth Session of the General Assembly (Indianapolis, Ind., 1833), 122-24.
Protestant suspicion of Roman Catholics gained new life in the 1830s and 1840s with the growing immigration of Roman Catholic Irish and Germans. Generally, Democrats were supportive of immigrants, while Whigs were the party of nativism and crusading Protestantism.\textsuperscript{63} One German immigrant in Marshall County, writing home in 1846, labeled Whigs the party of the “aristocrats” who wished to impose a twenty-year residency requirement on immigrants before citizenship. He concluded that “the views of the Whigs are such as to violate often the principles of freedom.”\textsuperscript{64} Protestants could be ferocious in their anti-Catholic rhetoric. Hall was moderate when he asserted in 1826 that “Liberty . . . in every sense of the word, is more extensively known . . . in protestant, than in papal nations.” Sylvester Scovel, the future president of Hanover College, wrote in 1842 that Catholicism was the worst threat the Ohio Valley faced. When the board of Vincennes University considered selling its building to the Roman Catholic bishop of Vincennes in 1839, local residents responded with a petition claiming that “Literature and Learning [would] pine away and die” under Catholic control, and that a Catholic “advance in power” would lead to a decline of prosperity. The Presbyterian minister S. G. Spees, preaching in Indianapolis in 1848, told his congregation that they must “guard, with eternal vigilance, against the encroachments of the Roman Catholic Church,” which was unquestionably a “foe of human freedom.” He did not object to Catholic immigrants, but feared admitting such “half-tamed savages” to suffrage.\textsuperscript{65}

In December 1843 the Bishop of Vincennes asked the legislature to incorporate the diocese. The Church of Saint Francis Xavier in Vincennes had been incorporated with little controversy in 1810, but the act had put the church property under the control of lay trustees and their successors, comparable to what was done with Protestant churches. By the 1840s, however, Catholic clerics looked with disfavor on such arrangements, and tried, whenever possible, to make the bishop of each diocese a corporation sole, with ultimate authority over all property within his diocese. A House of Representatives committee reported favorably, but Samuel W. Parker, a


\textsuperscript{64}Donald F. Carmony, “Letter Written by Mr. Johann Wolfgang Schreyer,” \textit{Indiana Magazine of History} 40 (September 1944), 288-89.

Connersville Whig, submitted a minority report. He said that the minority had no prejudice against Catholics and “admired the spirit which prompted her missionaries to establish the cross in Vincennes 200 years ago.” Still, they considered it “dangerous, if not unconstitutional,” to give one person the power the bill granted. Lay Catholics should have the same rights as Protestants to control their church property, Parker concluded. Democrats responded that there was nothing unusual or improper in the proposal; in fact, they argued, the bishop currently held all church property in fee simple, and incorporation would impose restrictions presently lacking. Moreover, it was for each church to make its own regulations for holding and controlling its property. The argument then shifted to the question of whether the bill would effectively make the Pope the owner of Indiana church property, with Whigs asserting that it would. Anti-Catholic fears prevailed, and the bill was tabled.66

If the influence of Protestantism on government was clear in this period, we also see fascinating hints of an influx of secular legality and republican terminology in internal church affairs. The Disciples of Christ minister Elijah Goodwin, writing in 1849, described congregational independence as “congregational republicanism.” When the Pipe Creek Baptist Church in Ripley County voted in 1838 that it would not “admit of lectures being delivered on the subject of temperance in this house,” S. G. Alden responded that he considered the decision not only a “violation of the Constitution of the Pipe Creek Baptist Church” but also of his rights as a member, “being debarred of the liberty of conscience and freedom of speech in this house.” Church trials of members accused of various offenses also increasingly used terms and concepts drawn from the secular courts. For example, when Frederick and Christian Beeler, members of the Liberty Baptist Church in Marion County, resolved their dispute in 1828, the church was relieved that it was done “without going through an examination by witnesses.” When leaders of the Bath Presbyterian Church in Franklin County charged several members with “neglecting their duty as members, and of schism in the church” in 1834, they asked the accused if they were guilty of the charges, and, when the members pleaded “not guilty,” they were allowed to “make their defence.” One of

the accused responded with a technical challenge to the jurisdiction of
the session to act as a “church judicatory.” Such terms—pleas, defense,
calling witnesses—would have been familiar to anyone frequenting county
court sessions. Similarly, “trials” of offending members in the Methodist
Episcopal Church involved “counsel” and “prosecutors.”  

The issue that presented the clearest clash of law and faith was militia
law, which conflicted with the pacifism of a minority of Hoosiers, most no-
tably the Quakers, but also the Shakers, Mennonites, Amish, and German
Baptists. “The citizen soldier is the bulwark of our defence,” Governor Ray
told the legislature in 1826, and Democrats and Whigs generally paid at
least lip service to the militia as a guarantor of American liberties against
military despotism. The 1807 territorial statute had provided that all free,
able-bodied white men were obligated to serve in the militia, which meant
reporting twice a year, suitably equipped, for local musters. In 1810, with
the help of Ephraim Overman—a Friend in the territorial legislature from
what would soon become Wayne County—the act was amended to exempt
Quakers from peacetime service, and to allow them to pay a tax in lieu of
service in time of war. The law cited as justification “the universal benevo-
\lence which govern said society, established by their ample contributions
to all charitable and useful institutions, and particularly their exertions to
civilize the Indians.” Friends responded with gratitude, telling the legis-
lature and Governor William Henry Harrison that the exemption would
be “an inducement to many useful citizens to migrate to this territory.”

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67Elijah Goodwin, “Church Government,” Christian Record 7 (July 1849), 18; Records of Pipe
creek Baptist Church, Ripley County, Indiana, January 27, 1838, photocopy, Allen County Public
Library; Record of Liberty Baptist Church, Marion County, Indiana, 1826-1839, p. 20, photocopy,
ibid.; Proceedings of the Trustees of Bath Presbyterian Church, Franklin County, Indiana, June
30, August 6, 1834, photocopy, ibid. For accounts of Methodist church trials, see T. A. Goodwin,
ed., Autobiography of Rev Joseph Tarkington, One of the Pioneer Methodist Preachers of Indiana
(Cincinnati, Ohio, 1899), 44-45; and John L. Smith, Indiana Methodism: A Series of Sketches
and Incidents, Grave and Humorous Concerning Preachers and People of the West (Valparaiso, Ind.,
1892), 150, 218. On the influence of political culture on churches, see Nathan O. Hatch, The
Democratization of American Christianity (New Haven, Conn., 1989). For church discipline, see
Janet Moore Lindman, Bodies of Belief: Baptist Community in Early America (Philadelphia, Pa.,
2008), 190-211; and Monica Najar, Evangelizing the South: A Social History of Church and State
in Early America (New York, 2008), 65-87.


70Ewbank and Riker, Laws of Indiana Territory, 1809-1816, 181.

71Whitewater Monthly Meeting Men’s Minutes, 8th Mo. 31, 1811, Friends Collection.
privilege for the Friends. With fears of war growing, the legislature amended the act in 1811. Now “persons who are conscientiously scrupulous of bearing arms” were obliged to pay an annual fine of five dollars.\textsuperscript{72}

The outbreak of open warfare after the Battle of Tippecanoe late in 1811 created a crisis for Quakers. Their non-Quaker neighbors in Wayne County, which was on the very edge of white settlement and “exposed measurably to the Indian hostilities,” desperately wanted an effective militia.\textsuperscript{73} Quakers, however, refused either to drill or to acknowledge the government’s right to require military service of them. They also refused to pay fines levied by militia courts martial, instead submitting to seizure of property to meet the fines. One Friend described the period from 1813 to 1814 as a “reign of terror” in Wayne County, alleging that the “military dynasty” wanted to “exterminate” the Quakers or at least drive them out of the territory. Several young Friends, lacking property to distrain, were thrown into the county jail in the dead of winter and might have frozen to death without the aid of sympathetic neighbors.\textsuperscript{74} But Colonel George Hunt, the county militia commander, was equally frustrated. He complained to the legislature that the county civil court had “interfered aided by the bar in discharging some military prisoners.” A legislative committee appointed to draw up a response reported guardedly that “civil courts have in many instances a right to examine into the imprisonment of any person or persons whether the imprisonment originated by virtue of civil or military authority and that from the constituted authorities of our land the bar have a right to appear and defend for or against the prisoner or prisoners.”\textsuperscript{75}

The 1816 constitution provided that:

No person or persons conscientiously scrupulous of bearing arms, shall be compelled to do Militia duty; provided such person or persons shall pay an equivalent for such an exemption; which equivalent shall be collected annually, by a civil officer, and be hereafter fixed by law, and shall be equal as near as may be, to the lowest fines assessed on those privates in the Militia, who may neglect or refuse to perform Militia duty.

\textsuperscript{72}Esarey, Governors Messages and Letters, 5-6; Ewbank and Riker, Laws of Indiana Territory, 1809-1816, 281.

\textsuperscript{73}Thornbrough and Riker, Journals of the General Assembly, 565.

\textsuperscript{74}Henry Hoover, Sketches and Incidents, Embracing a Period of Fifty Years, ed. Willard Heiss (Indianapolis, Ind., 1962), 13-14.

\textsuperscript{75}Thornbrough and Riker, Journals of the General Assembly, 565.
To the Baptists, Methodists, and Presbyterians in the constitutional convention and subsequent legislatures, this was entirely reasonable, and the legislators even tried to assuage pacifist sentiment by emphasizing that fines were to be used for educational purposes. Quakers, on the other hand, refused to compromise. In their eyes, voluntarily paying militia fines conceded the principle that government had the right to exact such service. Conscientious Friends continued to refuse, and county sheriffs found themselves faced with the often-distasteful duty of seizing Quaker property.  

Neither Quakers nor the other pacifist sects ever directly challenged the constitutionality of the state’s militia laws on the basis of religious freedom. Yet one Henry County Quaker was willing to hold authorities to the letter of the law. In 1826 the county sheriff, Ezekiel Leavell, and some other men went to the farm of Meshach Lewelling, a Friend liable for a $2.50 fine for not performing militia duty in 1825. Lewelling alleged that they had seized a mare worth many times the value of the fine, and had broken a clock while in his house. Lewelling challenged the action on several technical grounds, among them that the list of fines was improperly prepared and that Leavell’s answer to Lewelling had not properly identified him as sheriff. In 1828, the Indiana Supreme Court remanded the case back to Henry County on the latter ground, but this was probably little comfort to the Quaker, as the decision dismissed his claim for damages and excessive force.  

Time and social change were, however, on the side of the pacifists. In 1827 the sheriff of Wayne County—which had the state’s largest Quaker population—stopped collecting muster fines after Governor Ray informed him that the law was unconstitutional.  

A prominent Wayne County Quaker wrote in 1832 that the militia was in bad repute in large
part because of the fines that had been imposed on Quakers.\textsuperscript{80} In 1829 and 1830, Ray told the legislature that “the advanced progress of the principle of toleration” as well as the difficulty of “instructing the great mass of the people in the art of war” called for an end to militia fines for conscientious objectors. Such a change, he concluded, would set “at ease the consciences of a very exemplary, peaceable, industrious and moral denomination of people in the state called ‘friends.’” Ray repeated the call in 1830, but the legislature took no action.\textsuperscript{81} His successors told the legislature that the militia system was broken. In 1838, Governor Wallace concluded that contempt for it was widespread, and that musters had ceased altogether in many counties.\textsuperscript{82} Available evidence also suggests that the provision for fining conscientious objectors had become a dead letter. Statistics on fines collected (as reported to the legislature) are suggestive.

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<thead>
<tr>
<th>Year</th>
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<tr>
<td>1827</td>
<td>$344.50</td>
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<td>1830</td>
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In 1845, the state auditor reported that the “County Seminary Fund Derived from Militia Fines” showed a balance of $445.40, but that nothing had been received in the past year. “Under our present military disorganization,” he concluded, “it is not probable that the fund will soon receive any considerable accessions.” So while neither the legislature nor courts provided explicit relief, the decline of the militia system resolved the problem.\textsuperscript{83}

\textsuperscript{80}Aaron White to Caleb and Mary White, 9th Mo. 3, 1832, box 3, Aaron White Papers, Friends Historical Library, Swarthmore College, Swarthmore, Pennsylvania.

\textsuperscript{81}Riker and Thornbrough, Messages and Papers . . . of James Brown Ray, 464-66, 583.

\textsuperscript{82}Thornbrough and Riker, Messages and Papers . . . of Noah Noble, 57; Riker, Messages and Papers . . . of David Wallace, 185-86.

\textsuperscript{83}Laws of the State of Indiana, Passed and Published at the Twelfth Session of the General Assembly (Indianapolis, Ind., 1828), 149; Special Acts Passed at the Fifteenth Session of the General Assembly of the State of Indiana (Indianapolis, Ind., 1831), 199; Laws of the State of Indiana, Passed and Published at the Sixteenth Session of the General Assembly (Indianapolis, Ind., 1832), 289; Laws of the State of Indiana, Passed and Published at the Eighteenth Session of the General Assembly (Indianapolis, Ind., 1834), 379; General Laws of the State of Indiana, Passed at the Thirtieth Session of the General Assembly (Indianapolis, Ind., 1846), 152. For the militia in Indiana, see William J. Watt and James R. Spears, eds., Indiana’s Citizen Soldiers: The Militia and National Guard in Indiana History (Indianapolis, Ind., 1980). For the decline of the militia system in another state, see Joseph L. Holmes, “The Decline of the Pennsylvania Militia, 1815-1870,” Western Pennsylvania Historical Magazine 57 (April 1974), 199-217.
In addition to their antiwar leanings, some religious groups were, not surprisingly, identified with humanitarian reforms. Perhaps the most controversial was the antislavery movement. Many settlers had been drawn to Indiana from the South because of the Northwest Ordinance’s ban on slavery, and Quakers had been the leading opponents of efforts to open the state to slavery. As calls for immediate and unconditional emancipation arose in the 1830s, other churches became more outspoken in their support of the abolitionist movement. Indiana New School Presbyterians in 1840 called slavery “a heinous sin against God and our brethren.” New groups, such as the Wesleyan Methodists and the Anti-Slavery and Congregational Friends, formed because they believed that their old denominations were not sufficiently opposed to slavery. In the 1850 constitutional convention, the Salamonie River Regular Baptist Association joined Quakers in petitioning for “equal political rights to the colored race.”

Indiana Quakers—especially the largest group, Indiana Yearly Meeting of Orthodox Friends—were most active in trying to influence legislative bodies for black rights and antislavery actions. In 1831 Hendricks County Friends, who were usually strong Whigs, deserted the anti-Jackson gubernatorial nominee, Noah Noble, because of rumors that he had sold a slave in Kentucky. In 1837, the yearly meeting sent petitions to Congress against the admission of Texas to the Union, and Quaker representative Richard J. Hubbard introduced an anti-Texas resolution in the Indiana House. In 1831 and 1839 Friends asked the legislature to repeal the law that required black people entering the state to post a bond. In 1841, they requested that the state legislature give accused fugitive slaves the right of trial by jury. Quaker state senator Achilles Williams of Wayne County championed the proposal,
which the senate killed by a 22-18 vote.\textsuperscript{91} In 1843, the Henry County Female Anti-Slavery Society, whose members were nearly all Friends, resolved that “All laws making a difference between man and his neighbors on account of color must emanate from corruption.”\textsuperscript{92} Three years later, the Indiana Yearly Meeting of Anti-Slavery Friends asked the legislature to ban the use of jails to house accused fugitive slaves and to prohibit any state officer from capturing or holding them. In December 1850, the Meeting for Sufferings of Indiana Yearly Meeting, which functioned as an executive committee, sent a memorial to the constitutional convention urging rejection of proposals to ban black emigration into the state.\textsuperscript{93}

Emma Lou Thornbrough has noted that between 1817 and 1851, Indiana legislation became increasingly less favorable to escaping slaves. The first state legislature had passed a strong “Act to Prevent Manstealing.” It imposed heavy penalties on anyone kidnapping a black person to sell into slavery, and tried to provide legal safeguards before black people could be carried off by slave catchers. Subsequent legislation, however, made Indiana more welcoming to slaveholders, easing requirements for reclaiming fugitive slaves and encouraging local officials to cooperate.\textsuperscript{94}

Free people threatened with enslavement, as well as fugitives and their allies, did however often find allies in the Indiana courts.\textsuperscript{95} In 1829, for example, a slave woman, stopping in Indianapolis on her way west with her Virginia master and her three children, sued for freedom on the grounds that even a brief sojourn in the state made her free. One of her attorneys was a leading Methodist layman, Calvin Fletcher, who rejoiced when the Marion County court ruled in her favor.\textsuperscript{96} Quakers were comfortable using the courts for these purposes, and some evidence suggests that black people were aware of this. In 1816, Bob and Anthony, who were slaves of Luke Decker, a Knox County judge and militia officer, fled to Orange County, where they found support in the local Quaker community.\textsuperscript{97} In 1839, when a Tennessee slave

\textsuperscript{91}Thornbrough, \textit{Messages and Papers . . . of Samuel Bigger}, 197.
\textsuperscript{92}Henry County Female Anti-Slavery Records, 7th Mo. 23, 1843, typescript, Indiana Division, Indiana State Library, Indianapolis.
\textsuperscript{93}Emma Lou Thornbrough, “Indiana and Fugitive Slave Legislation,” \textit{Indiana Magazine of History} 50 (September 1954), 219; Hamm et al., “Great and Good People,” 10.
\textsuperscript{94}Thornbrough, “Indiana and Fugitive Slave Legislation,” 201-28.
\textsuperscript{95}A good overview is Randall T. Shepard, “Slave Cases and the Indiana Supreme Court,” \textit{Traces of Indiana and Midwestern History} 15 (Summer 2003), 34-41.
\textsuperscript{96}Gayle Thornbrough and Paula Corpuz, eds., \textit{The Diary of Calvin Fletcher}, 9 vols. (Indianapolis, Ind., 1972-1983), 1: 167-68.
owner tried to capture two girls hiding in a black settlement in Randolph County, free blacks delayed him until the girls could escape. The master filed a suit for damages, but apparently despaired of prevailing in the Quaker-dominated county, even in a suit against African Americans.98 Five years later, when a Kentucky slave owner named Vaughan tried to claim John and Luanna Rhodes in Hamilton County, he found Quakers vexing him at every turn. First they helped the Rhodeses frustrate the attempt to seize them, then helped them escape to safety in a Quaker settlement in Henry County, and finally helped the couple prevail in court. On several occasions, Friends hired attorneys to aid free blacks who had been kidnapped—in one case sending an attorney as far as Texas to secure evidence.99

Although slavery was central to many religious groups’ reform agendas, the subject of capital punishment also became a point of contention among people of faith. The earliest legal codes of the Northwest and Indiana Territories had provided for the death penalty in certain cases, and such provisions continued after statehood. Although a movement against capital punishment gained strength in the United States after 1815, it had little effect in Indiana.100 Governor Ray made an impassioned appeal against the death penalty in his annual address to the legislature in December 1830, arguing that the “brief period” between sentence and execution offered insufficient time “for the culprit to make his atonement, to his country or his God.” The state senate referred the suggestion to the judiciary committee, which “reported that they were unable to come to any satisfactory conclusion,” and the subject was dropped.101 In 1834, the one case that came before the Indiana Supreme Court concerning religion and the death penalty involved an appeal from Bartholomew County. A Quaker, Isaac Parker, had been dismissed by the circuit court as a grand juror because in response to a prosecutor’s question he had responded that “he thought he could not in his conscience find any man guilty of an offence that would subject him to death.” The court upheld the dismissal as proper.102

In the 1830s and 1840s, Quakers and Universalists tried to rouse public sentiment to end executions. William Talbert, a prominent Union

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99Hamm et al., “‘Great and Good People,’” 17.
102Jones v. State, 2 Blackf. 475-76.
County Friend, presided over an anti-capital-punishment meeting in Liberty in April 1845, and in the same year a meeting of Wayne County Quakers asked the legislature to repeal the death penalty. The Universalist Philomath Encyclopedia condemned capital punishment as being “not in accordance with the law of God.” Reformers could point to some success. By 1846 treason and murder were the only capital crimes in Indiana, and juries had been given the option of life imprisonment in such cases. How much of this was due to religious concerns and how much looked instead to a desire not to fall behind the rest of the country in humane “progress” is difficult to determine.

People of faith had more success in trying to influence conditions in the Indiana State Prison. The 1816 constitution provided that the state legislature would “form a penal Code, founded on the principles of reformation, and not of vindictive Justice.” The 1824 statutes for the governance of the new state prison at Jeffersonville made no mention of religious or moral instruction for inmates. Although Governor Noble opined hopefully in December 1833 that the prison gave “due regard” to the “morals of the inmates,” a visitor to the prison in June 1834 found that while each prisoner received a Bible, “no Sunday School is kept in the prison and very few preachers or philanthropic persons visit the prison for the purpose of teaching the prisoners.” Five years later, Governor Wallace complained that “no steps have as yet been taken to provide the convicts with even the means of religious instruction—an omission, certainly, most fatal to the prospect of ever producing in them that radical and permanent reform, necessary to accomplish one of the chief designs of the institution.” In 1841, the legislature provided for a chapel and hospital in the prison, and F. C. Holliday, a Methodist preacher, was appointed chaplain. However,

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103“Public Meeting,” Richmond Palladium, April 30, 1845; “Petition,” New Garden Free Labor Advocate, 8th Mo. 29, 1845.
104Capital Punishment,” Philomath Encyclopedia 6 (June 1844), 484-88; Ibid., 7 (November 1845), 411-17.
106Kettleborough, Constitution Making in Indiana, 1: 114.
107Bodenhamer, “Criminal Punishment in Antebellum Indiana,” 362; Revised Laws of Indiana (1824), 397.
108Thornbrough and Riker, Messages and Papers . . . of Noah Noble, 200, 268.
110Thornbrough, Messages and Papers . . . of Samuel Bigger, 179-80; Carmony, Indiana, 1816-1850, 315-16.
while the inmates now heard regular Sunday preaching and were provided with Bibles, a visitor noted that it was a “mockery for them to be furnished with books, for they are confined in those dark miserable cells all the time, except while at work, eating, or attending preaching.” Others noted that providing Bibles did little good because few of the inmates were literate, and they usually destroyed or tried to sell the books.111

In addition to the varied successes of penal reform and abolitionist efforts, the temperance movement steadily gained strength between 1816 and 1850. Early alcohol legislation in Indiana had three aims: to punish drunkenness, to forbid the sale of alcohol to Indians, and to regulate sales to whites by requiring that sellers be licensed and of good character. Subsequent legislation provided that taverns be closed on Sundays, except to accommodate travelers, and that sales to minors be banned.112

By the 1820s, temperance had become an increasingly powerful reform movement in the United States. Reformers, pointing to the evils of drunkenness, increasingly came to advocate total abstinence from alcohol as the only moral choice for Christians. Groups ranging from Quakers to Methodists to Presbyterians came to embrace it. For some advocates, using the law to end drunkenness was naturally the next step in the temperance battle. Prohibiting the sale of alcohol, at least in small quantities, increasingly became the focus of temperance advocates, who theorized that the poor, who were most likely to abuse alcohol, would effectively be priced out of the market. Massachusetts passed the first such law in 1838. Variants of this technique included pressuring local authorities to deny licenses, or providing for prohibition within counties or towns and townships by a local vote. Between 1830 and 1850, the legislature passed 126 local laws regulating or outright banning local sales of alcoholic beverages. In other cases they authorized local referenda to decide the question.

Observers were clear that most of the pressure for such legislation came from religious groups. An attempt to include a prohibitory clause in the 1851 constitution failed, however, and an 1855 prohibitory act was soon overturned by the state supreme court. Democrats were generally hostile to prohibitory laws, and some invoked separation of church and state to justify their views. One writer in the Indianapolis Sentinel saw in such legislation not only “an entering wedge to make room for still greater

111 Thornbrough, Messages and Papers . . . of Samuel Bigger, 253, 271.
and more important restrictions upon the people” but also “an approximation to a connexion between church and State.”

During the debates in the 1850-1851 constitutional convention, one delegate opined: “Of all schisms that are incurable, those which grow up in the church and among relatives, are the worst.” Indiana courts saw many fights among relatives, but relatively few cases within churches, at least at the appellate level. In fact, between 1820 and 1850, only one case involving a congregational split made it to the appellate level. The case, which came out of a division in the Little Blue River Regular Baptist Church in Rush County in 1848, hinged on the question of which party more closely adhered to Baptist doctrine. During the original trial, one witness for the winning party had read excerpts from the works of a Baptist author named Gill. The defeated party alleged that Gill's work was not properly entered into evidence. The Indiana Supreme Court ruled that the trial judge had properly refused to instruct the jury to disregard the reading from Gill, since it had not been introduced as evidence in itself.

Aside from helping resolve internal discord, the state also served as the ultimate guarantor of order for religious groups, or at least of freedom from invasion by unwanted intruders. Early accounts left by the faithful suggest that neighborhood rowdies would occasionally attempt to disrupt church services. When the first Methodist camp meeting was held on the Whitewater River, the minister in charge felt it necessary to post placards saying that anyone disrupting the proceedings would be prosecuted. Surviving accounts suggest that the faithful themselves usually dealt effectively with disruptive elements. Subsequent legislation took aim

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at entrepreneurs who set up stands to sell liquor at camp meeting sites, banishing them to a distance of at least one mile while services were taking place.118 Even Quakers were willing to call in the law when the need arose. When Indiana Friends split into Orthodox and Hicksite groups in a bitter separation in 1828, the larger Orthodox group issued a significant statement: “The Society of Friends has ever believed in and acknowledged the authority of the magistracy to be a divine ordinance, the intent and purpose of which are agreeably to Scripture for the punishment of evil doers.” So it concluded: “We believe it to be consistent with our religious principles to appeal to civil authority for the protection of our rights and privileges.”119 Beginning in territorial times, the legislature had proven itself relatively accommodating to religious scruples. The territorial legislature, when it wrote the statutes on marriage, had recognized the right of “the society of Christians, called Quakers, in their public meetings, to join together, as husband and wife, all persons . . . who may apply to them, agreeably to the rules and usages of the respective societies.” Quakers were also exempt from securing civil marriage licenses.120 The legislature recognized Quaker principles about oath-taking. Consistent Friends argued that an oath implied that one could be trusted to speak the truth only under certain circumstances. Friends instead offered affirmations, a distinction that apparently mystified outsiders but was important to them.121

Significantly, Indiana also protected the rights of free thinkers, whether agnostic or atheist. It was an article of faith among evangelicals from the 1820s into the 1850s that infidelity was alarming in the state. Certainly open skeptics were considered otherwise respectable citizens. Robert Dale Owen, son of the founder of the utopian New Harmony community in Posey County, arrived in Indiana in 1826; by 1830, he had become one of the most visible and articulate skeptics in the United States. Owen’s heterodoxy, however, did not keep him from winning elections to the state legislature and to two terms in the United States House of Representatives. He was perhaps the

118Revised Laws of Indiana (1824), 148; Revised Statutes of the State of Indiana (1843), 983.
119Hamm, “Indiana Quakers and Politics,” 224.
120Philbrick, Laws of Indiana Territory, 1801-1809, 251-52; Revised Laws of Indiana (1824), 263.
121Philbrick, Laws of Indiana Territory, 1801-1809, 269-70; The Discipline of the Society of Friends of Indiana Yearly Meeting, Revised by the Meeting Held at White Water, in the Year 1838, and Printed by Direction of the Same (Cincinnati, Ohio, 1839), 64-65.
most influential member of the constitutional convention of 1850-1851. The law reflected this tolerance of heterodoxy. As late as the 1830s, Indiana authorities—in contrast to their counterparts in other states—made no attempts to pursue common law prosecutions of blasphemy. The legislature also passed a statute mandating that “no want of belief in the existence of a Supreme Being who will punish false swearing, shall be considered necessary in any court, or before any justice of the peace, to the competency of any witness; nor shall his belief or disbelief of such, or any other matters of religious faith, be held to affect his competency.” This measure was intended to counter arguments that those who did not believe in future punishment for sin had no incentive to avoid perjury.

Religion was not a major issue—but did surface several times—in the constitutional convention of 1850-1851. A minor debate centered on whether or not to recognize God explicitly in the document. At least one petition from Gibson County deplored the fact that the United States Constitution did not do so. Delegates made a number of suggestions. The wording finally adopted, “We, the people of the state of Indiana, grateful to Almighty God for the free exercise of the right to choose our own form of government,” was the most restrained and least theologically charged. Affirmations of Christianity went unchallenged, like the statement of Johnson Watts of Dearborn County that “civil and religious liberty and prosperity” were “so inseparably connected to each other, that the one cannot exist or prosper, without the other” and that it was simply good government to encourage religion. On the other hand, the convention outraged some when it refused to adjourn for Christmas. John Pettit, the former congressman who had challenged the constitutionality of paying chaplains from tax dollars, urged taxing church property. He once again failed to carry his point. When Isaac N. Beard of Wayne County presented a petition from a meeting of Congregational

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124 Revised Statutes of the State of Indiana (1843), 719.
128 Ibid., 2:1266-67.
129 Ibid., 2:1287-91.
Friends in Dublin that called for the abolition of “all distinction between the inhabitants of this State on account of color,” he moved William C. Foster of Monroe County nearly to apoplexy. Foster blasted the Congregational Friends—a group that had separated from the larger Quaker groups in the state to advocate radical reforms like abolition and women’s rights—as “a nondescript sect,” the most “anomalous and eccentric religious” body in all of Christendom. He wanted to reject all such proposals as unworthy of attention. Robert Dale Owen responded that such a course of action would create a new controversy by implying a gag rule. Whigs Othniel L. Clark of Tippecanoe County and Schuyler Colfax of St. Joseph County answered that it was not for the convention to judge anyone’s religious orthodoxy; for Colfax, it was irrelevant “whether that body is imbued with one iota of true religion.” The petition was eventually referred to a committee, where, of course, it died.\footnote{130Ibid., 1: 77-80. For the Congregational Friends, see Thomas D. Hamm, God’s Government Begun: The Society for Universal Inquiry and Reform, 1842-1846 (Bloomington, Ind., 1995), 201-202, 216-17.}

Delegates invoked the Bible to justify their stances on particular constitutional provisions. One bizarre exchange contested whether the use of a grand jury would have prevented the crucifixion of Jesus Christ!\footnote{131Report of the Debates and Proceedings of the Convention…1850, 1:183.} One delegate challenged capital punishment as being opposed to “the mild precepts of the Gospel,” but found little support.\footnote{132Ibid., 2: 1381-82.} Isaac Kinley, a Quaker from Henry County, used the Bible to attack the newly enacted federal Fugitive Slave Act of 1850, as did Othniel L. Clark, who considered it unworthy of a Christian land. Kinley and David Kilgore of Delaware County also invoked Scripture to attack the proposed article that would prohibit black migration into Indiana. Kilgore said that it would “violate the laws of God and everything that [was] sacred.” He was outraged that ministers in the convention would support it.\footnote{133Ibid., 1: 629, 962-64, 2: 1789-90.} On the other hand, John I. Morrison of Washington County saw the proposed article, with its encouragement of black colonization in Africa, as a means of spreading religion there.\footnote{134Ibid., 1: 603-605.}

One of the convention’s most acrimonious debates regarded women’s rights. In 1847, Indiana had passed a law guaranteeing women the right to hold property separately from their husbands, and Owen championed including such a provision in the constitution. Othniel Clark attacked the
proposal as “in contravention of one of the great fundamental principles of the Christian religion. . . . The husband and wife are one. . . . This fundamental idea of Christianity the proposition before us assails.” Oliver Badger of Putnam County, a Disciples of Christ minister, was even more heated, quoting Genesis, Numbers, and the Apostle Paul to support his argument that God intended women to be subject to husbands. At one point, Badger linked Owen’s support for the proposal to his heterodox views, pointing out that Owen had shown his contempt for religion by refusing to be married by a minister. That drew the contemptuous response from Owen that Badger had not only shown his ignorance but had also demonstrated that he was not a gentleman. While it is impossible to know whether the religious arguments prevailed, the women’s rights provision failed to make it into the constitution.

Ultimately the new constitution was a document of continuity on the relationship between religion and the state, albeit one that tended toward the language of the Democratic party, which had a two-to-one majority in the convention. Indiana historian Donald F. Carmony accurately labeled the 1851 constitution “Jacksonian.” The section on religion opened the Bill of Rights in Article 1: “All men shall be secured in the natural right to worship Almighty God, according to the dictates of their own consciences.” Other sections provided that “no law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience” and that “no preference shall be given, by law, to any creed, religious society, or mode of worship; and no man shall be compelled to attend, erect, or support, any place of worship, or to maintain any ministry, against his consent.” Religious tests for office holding were banned, as was tax support “of any religious or theological institution.” Attempts to incorporate a right of conscientious objection to military service failed, but those who objected to oaths were guaranteed the right to affirm, and “opinions on matters of religion” could never be a barrier to testimony in court. The section concluded with a ringing affirmation of liberty of discussion: “No law shall be passed, restraining the free interchange of thought and opinion, or restricting the right to speak, write, or print, freely, on any subject whatever: but for the abuse of that right, every person shall be responsible.”

136Ibid., 1: 805-19; Leopold, Robert Dale Owen, 273-76.
Thus Hoosiers laid out for themselves a new fundamental law that was continuous with the 1816 constitution and the outcomes of subsequent debates about the role of religion in shaping the laws of the state. It guaranteed the right of Hoosiers to worship God as their consciences led them and banned an established church in Indiana. Concessions to sectarianism on issues such as marriage and oaths were made with relatively little controversy. Even nonbelievers found their rights explicitly endorsed in both state and constitutional provisions regarding court testimony.

Hoosiers, however, remained traditional in most respects, unwilling to challenge the primacy of a Christian vision of American society. Some contemporary legal and political flashpoints on church and state issues, such as school prayer, were not of concern, but other issues foreshadowed debates that remain with us. Despite the doubts of Jeffersonian purists, Thanksgiving proclamations, Sabbath laws, and tax-supported chaplaincies continued in Indiana. When legislators and delegates to the constitutional convention invoked Christianity to support the prejudices of the larger society, as on the issue of women’s rights, they prevailed. When dissenters tried to use Christianity to abolish capital punishment or challenge racism, they failed. Other issues, most notably temperance, divided people of faith just as they divided politicians. Respect for the rights of conscience had its limits, as the continued failure to obtain an unconditional exemption of conscientious objectors from military service showed. The history of church and state in Indiana until 1851 was indeed one of government accommodation of various religious groups and their convictions, but that same government ultimately proved unwilling to embark on radical new courses or to veer to the extremes of either established Christianity or secularism.