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BETWEEN SECULARISM AND RELIGIOSITY: AMERICA'S FOUNDING PROTESTANT PHILOSOPHY

NICHOLAS P. MILLER, JD, PHD¹

We tend to think of the battle between religion and secularism as a distinctly modern one. We often see it as arising in the early 20th century, or at the earliest, in the late 19th century, with the rise of Darwinism and philosophical positivism. But the conflict is a lot older than that, even if we limit our view to post-medieval western Europe. Even before the skeptical philosophes of the French Revolution, such as Voltaire and Rousseau, the ideas of Hume and Spinoza were challenging conventional views of religious revelation. But an even more important point than the age of the conflict is its originally tri-part, rather than dual nature. It was not religion versus secularism, but rather one kind of medieval-like church/state arrangements versus various kinds of “enlightened” ideologies that promoted the idea of a state that was neutral in matters of religion.

Some of these “enlightenment” ideologies were overtly hostile towards ideas of revelation and theistic religion. For these systems, separation of church and state needed to happen to protect a reasoned, enlightened state from the superstitions and misguided zeal of religious fanatics. But other versions of these “enlightenment” systems of thought were sympathetic towards religious claims. Indeed, some versions seemed to be products of certain kinds of dissenting religious thought. These sought a separation of church and state out of a mutual respect for the dual but differing spheres of sovereignty assigned to each one. Both, it was thought, should protect and respect the role of the other.

I am certainly not the first to make this observation about the diversity of enlightenment, or what we have come to call, secular thought. In the 1970s, Henry May wrote his famous book, *The Enlightenment in America*, that identified four strands of the enlightenment. Of interest to us is his “skeptical enlightenment,” which was much like the stereotypical, anti-religious, skeptical kind of secularity found in revolutionary France. But there was also the “moderate enlightenment,” a much more religiously-sympathetic, even influenced, system of thought found in Scotland and England. There was also the “Didactic Enlightenment,” flowing from Scotland to America, which was also very religious in perspective, with many of its

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primary thinkers being Protestant clergymen.

I raise this point about the diversity of secularities in early America to draw the contrast with today, where secularism seems all on the non-religious side. In today's battles over religious freedom between the religious and the secular, the differences between how different religious believers view church and state has become overshadowed by the apparent gulf between skeptics and believers. The implications of May's work on the Enlightenment, however, is that the modern contest is not two-sided, but three-sided. There is a moderating position between the so-called religious right and secular left, one based on the dissenting Protestant heritage that came to be forcefully expressed at the constitutional founding. I think an understanding of this position can be helpful to other communities and societies as they seek to bring culturally religious peoples into an acceptance of the freedoms and tolerances offered by a secular government. It can show a pathway to how secularism does not need to mean anti-religious.

This position can be understood by examining differing approaches of each to the relationships between the individual, church, state, and God. To understand our possible futures, it will be helpful to revisit the past. Specifically, the end of the seventeenth century when the revocation of the Edict of Nantes sent legal thinkers to their libraries to prepare defenses of religious toleration. At that time, these positions were ably expressed by three of the most brilliant legal and theological minds of that time.

The three were Samuel Pufendorf, a Lutheran natural rights lawyer and counselor to the King of Sweden; John Locke, political philosopher whose acquaintance we have already well made; and Pierre Bayle, an influential French Huguenot theologian and philosopher. In their writings can be found the basic outlines of the Puritan, semi-theocratic model; the separationist model based on the right of private judgment; and the secular, liberal separationist model.²

1.1 PUFENDORF AND MEDIEVAL PRIVILEGES

Born in 1632 in Saxony, Pufendorf was best known for his works on international law, especially *The Law of Nature and Nations*.³ Published in 1672, this work was widely influential on the continent, in Scotland, and in the newly formed American colonies.⁴ When the Edict of Nantes was revoked, Pufendorf took the opportunity to write what has been described as an "appendix," which applied his natu-

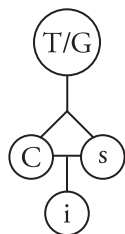
² This article includes material originally published in Nicholas P. Miller, "The Dawn of the Age of Toleration: Samuel Pufendorf and the Road not Taken," *Journal of Church and State*, Vol. 50, Spring 2008, 255-275.

³ Samuel Pufendorf, *Of the Nature and Qualification of Religion in Reference to Civil Society* (Indianapolis, IN: Liberty Fund, 2002), xii-xiii. A discussion of Pufendorf and his views on toleration can be found at Simone Zur-buchen, "From Denominationalism to Enlightenment: Pufendorf, Le Clerc, and Thomasius on Toleration," in John Christian Laursen, ed., *Religious Toleration: "The Variety of Rites" From Cyrus to Defoe* (New York, NY: St. Martin's Press, 1999), 191-204.

⁴ J.B. Schneewind, *The Invention of Autonomy* (UK:Cambridge University Press, 1998), 118.

ral law theory to issues of church and state.⁵ Entitled *Of the Nature and Qualification of Religion in Reference to Civil Society* (“*Religion and Civil Society*”), Pufendorf’s work was published in 1687. It set out a principled basis for what was ultimately a pragmatic, anemic toleration. It represented the magisterial Protestant continuation of the medieval view of church and state.

Pufendorf dedicated the book to the elector of Brandenburg-Prussia and used it to recommend himself for a post in the elector’s Berlin court, which he indeed received.⁶ The intended audience perhaps helped shape the work. He sets out a high view of the state and its power and a rather limited and weak basis for religious toleration. The work begins with apparently strong principles of separation between ecclesiastical and civil spheres, as well as a commitment to individual rights. But the last third of the book returns spiritual powers and oversight to the “Christian” ruler that is denied to secular rulers in the first portions of the book. To simplify his thinking in a useful way, we can diagram it. The diagram contains four basic elements: God/Truth, the church, the state, and the individual. Pufendorf’s arrangement of these elements would look like this:



Here, God and the accessibility of truth are recognized. A distinction between church and state is also accepted, but that distinction allows for a great deal of cooperation, especially when the ruler is a Christian. The importance of the individual is minimized, because of his or her need to go through the organs of church and state to obtain truth, whether spiritual or civil. It represents the world of the divine right of kings and popes, where no individual rights exist, but only privileges extended by the rulers. It is one where church and state are distinct entities, but play a role in cooperating to civilly enforce the majority religious beliefs and practices of society. Under this system, the church in theory has a superior position in society, as kings and ruler are subject to the superior spiritual authority of church. Bishops and Popes at times provided legitimacy to the claims of leaders to civil authority, at times crowning them, as Pope Leo III did for Charlemagne. This relationship is shown by the capital “C” and lowercase “s.”

Pufendorf criticized the revocation of the Edict of Nantes, but not because the Huguenots had some sort of natural right claim to religious liberty. Rather, he believed that the crown, once having extended the toleration, should keep its word

⁵ Pufendorf, *Religion in Reference to Civil Society*, xi.

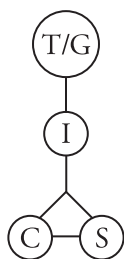
⁶ *Ibid.*, xiii.



and not withdraw it. It was a question of honoring agreements and contracts, and the social stability protected by that practice. Pufendorf had no principled or moral argument for why the Edict should have been entered into in the first place. That was a policy calculation that brought political peace against an aggressive and armed minority. In Pufendorf's model, religious liberty became a question of policy, a privilege to be extended or denied at the inclination of the ruler. His philosophical fruit fell not far from the medieval tree.

1.2 LOCKE AND PROTESTANT RIGHTS

John Locke's church/state principles were most clearly outlined in his *Letter on Toleration* published in 1789. His views show the shape of the new world that Luther helped create in proposing that each person should access God through prayer and Bible study. The priesthood of all believers inverted the bottom half of Pufendorf's diagram. The belief vaulted the individual to a position above the church and the state, with direct access to God and truth. Locke's model of these four elements would look like this:



This model accepted, like the medieval model, that God exists and that certain truths can be ascertained about both the world and spiritual things. But the new, Protestant view placed the individual above church and state. Each person now had the duty and right to seek this truth from God, through both the Bible (especially about spiritual things) and through nature (especially political matters and civil morality). The church and the state existed to support and protect the rights of the individual, one as a member of the spiritual world, the other as a citizen of the temporal world. There was a separation between these two powers, since their jurisdiction is limited to their separate spheres of concern, whether spiritual or civil. It is a separation of equality and mutual respect, with each entity respecting the sovereignty of the other in its own sphere. Hence, both are represented by the capital symbols "C" and "S."

The individual's rights against the state, in turn, derived from the duties that he or she owed to God. This is essentially the political expression of the Protestant model of the priesthood of all believers. It serves as a robust foundation for individual rights, hence the individual is shown by a capital "I." This is the model that we have traced through the early modern west and seen to be an important part of the



impulse to disestablishment in colonial America.

1.3 BAYLE AND SKEPTICAL RIGHTS

The third writer during this period was Pierre Bayle. While ostensibly a Calvinist theologian, Bayle was actually a strongly skeptical thinker who based his view of toleration on broad epistemological skepticism. Bayle was accused by fellow Calvinist theologians of supporting atheism, and was deprived of his professorship at his Protestant university as a result.⁷ Rather than an heir of Calvin and ancestor of the New England Puritans, Bayle was more an heir of Pyrrhonius and ancestor to Hume, Voltaire, Rousseau, and eventually Franklin and Jefferson.⁸

Bayle largely shared Pufendorf's view on the supremacy of the state over the individual. He rejected Locke's notion of a reciprocal contract between ruler and people, denied the right of rebellion, and upheld a strong duty of obedience to the ruler.⁹ But unlike Pufendorf, Bayle held a skeptical view of the world. Especially in the area of speculative truths, including religion, he affirmed a strong difference from mathematical or empirical truths. For the former, he believed one could only attain a "reputed" truth, rather than actual truth.¹⁰ This led Bayle to defend the notion of individual conscience.

Other thinkers of the day often spoke of the rights of conscience, but it was generally understood that they were not talking about erroneous conscience or acts against one's conscience. Bayle was one of the first to propose that rights of conscience should extend to consciences that were believed to be in error—the so-called "erroneous conscience."¹¹ Even if one could know that someone else was in error, argued Bayle, how could one know that the other person was convinced of that error?¹² This question was a central point of contention in the debate between Roger Williams and John Cotton over the issue of toleration and persecution.

Bayle's strong defense of conscience, then, was based on a weak view of truth, or at least human ability to know truth. This led him to view individual judgment and conscience as important. Thus, he held a strong view of the duty of the state to tolerate religious differences. To put Bayle's view into our diagram looks like this:

⁷ Perez Zagorin, *How the Idea of Religious Toleration Came to the West* (Princeton: Princeton University Press, 2003), 285. For an extended discussion of the opposition to Bayle within French Protestant circles see Guy H. Dodge, *The Political Theory of the Huguenots of the Dispersion* (New York: Columbia University Press, 1947).

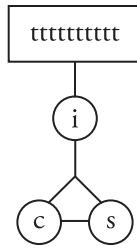
⁸ Pierre Bayle, *Political Writings*, Sally L. Jenkinson, ed. (Cambridge University Press, 2000), back cover; for a helpful overview of Bayle's thought in relation to toleration see Sally Jenkinson, "Bayle and Leibniz: Two Paradigms of Tolerance and Some Reflections on Goodness without God," in John Christian Laursen, ed., *Religious Toleration: "The Variety of Rites" From Cyrus to Defoe* (New York, NY: St. Martin's Press, 1999), 173-186.

⁹ Zagorin, *How the Idea of Religious Toleration Came to the West*, 270.

¹⁰ *Ibid.*, 282-283.

¹¹ *Ibid.*, 280-281; Bayle, *A Philosophical Commentary*, 219-233.

¹² Bayle, *A Philosophical Commentary*, 145-149.



The lowercase “t”s represent the individualistic conception of truth, where no universal view of truth exists, but everyone conceives his or her own truth. Church and state are still separate, but it is not a separation of mutual equality and sovereign spheres. Rather, it is a separation based on a suspicion of the truth claims made by religious people. The tolerance in this scheme is dependent on a commitment to skepticism—from the logic that if truth cannot be known, then no one can or should enforce it. The real threats to this system are those who claim knowledge of absolute truths.

Churches and people who believe in special revelation were such a threat. Therefore, religious people and their beliefs are to be kept far away from politics and the public square generally. Separation of church and state, rather than being based on a view of separate sovereignties, becomes founded on hostility to the truth claims of religious people and their views of special revelation. Religious people and their ideas are kept not only out of government, but on the fringes of the public square generally. The attitude under this view of the state towards the church was symbolically expressed by Napoleon when, in contrast to Charlemagne, he crowned himself emperor in the presence of the pope. The marginalization of the church and religion in this system is represented by a lowercase “c.”

Rights in this system are not quite as secure as under the Lockean view. Individual autonomy is a somewhat fragile thing when it is based merely on skepticism, rather than on individual duties to, and rights before, God. The solitary autonomy of the individual becomes fairly quickly outweighed by the interest of the group once accommodation of the individual becomes anything more than a slight inconvenience. This is seen very clearly in the skeptical/atheistic communist systems, where respect for the individual is very quickly submerged to the common good. A similar thing happens in a democracy, we have seen, when terrorism threatens national security. Hence, the “i” for individual is lowercase.

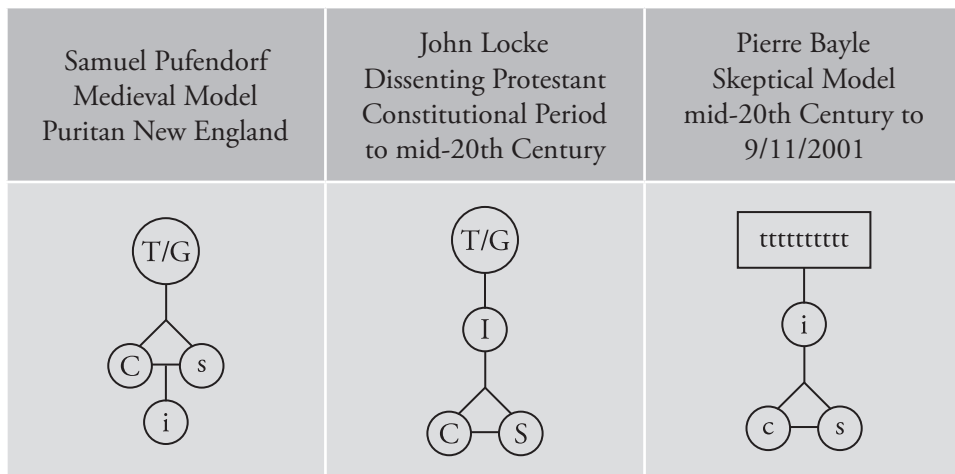
Under this model, there is no real reason why religious claims to truth should obtain greater protection than claims to convictions in other areas. Why should religious claims have special protection beyond that received by a wide range of special interest claims, such as environmentalists or animal rights supporters or advocates of unions and labor? People feel strongly about all these issues. If it is the individual conviction only that provides the basis for rights, as this model suggests, then all



these convictions should be treated equally. But ultimately, if all convictions are equally protected, none can be meaningfully protected, or democracy will ultimately become gridlocked amidst a cacophony of clashing rights claims.

1.4 THREE VIEWS IN AMERICAN HISTORY

My discussion of the third view has moved beyond what Bayle himself would have suggested into how at least parts of modern liberalism has developed this view. All three of these views, the Pufendorffian, the Lockean, and the Baylean models, have been influential at various times in American history. A side-by-side comparison of these models, a representative advocate, the historical periods they represent, and their time of greatest influence in America, is represented in the diagram below.



The American Puritans developed a Pufendorffian-like church/state arrangement in early New England, with a civil magistrate involved in enforcing ecclesiastical rules and discipline. Thus, the earliest American colonies were founded on the theory of the Medieval model on the left, with the exception of Rhode Island. Some later ones, especially New Jersey, Pennsylvania, Delaware and North Carolina, were founded basically on the Protestant theory in the center box, which also guided the formation of the national constitution. Despite Pufendorf's enormous influence in both Scotland and the American colonies, the founders of the American republic explicitly rejected his form of church/state arrangement.¹³ At the time of the Revolution and the formation of the Constitution, Pufendorf's model of toleration was limited to two or three New England states, and within a few years vanished from even there.

It was Locke's formulation, mediated by Madison, Witherspoon, and other key American thinkers, of dissenting Protestantism that carried the day in the founding

¹³ Schneewind, *The Invention of Autonomy*, 118.



of the American republic. Their views of the separate roles of the two powers were the ideological victors on the topic of tolerance and religious freedom in the early Republic. It is this shift from a medieval, paternalistic, hierarchical model to an individualistic, egalitarian, rights-based outlook that Gordon Wood so ably documents in his justly famed *The Radicalism of the American Revolution*.¹⁴ Wood broadly and convincingly documents the change from hierarchy, patriarchy, aristocracy, and patronage to democracy, equality, republicanism and the rule of law in colonial America. This chart can perhaps shed light on one of the puzzles in Wood's book. In his sub-title, he asserts that the book shows "How a Revolution Transformed a Monarchical Society into a Democratic One Unlike Any Other That Had Ever Existed." While he is right about the uniqueness of American society, it seems apparent from the story in his book that the Revolution did not cause the shift from monarchical to republican ethos. Rather, the Revolution was a symptom of a shift that had already occurred in American culture and society.

Wood does an excellent job of describing that shift from monarchical to republican outlook, but offers, in my view, less than convincing arguments for the reasons or causes of the shift. He focuses on the Enlightenment, arguing that "for the revolutionary generation America became the Enlightenment fulfilled."¹⁵ This raises the problem, earlier discussed, of trying to explain a movement with tremendous popular appeal by appeal to an elite affinity and state of mind. Wood is unwilling to give religious thought much, if any, credit for the paradigm shift to a republican outlook, instead crediting Enlightenment and rationalistic sources. Indeed, he views religion as a conservative force that largely resisted that shift.¹⁶

But it seems that Wood is looking at only one version of religion in telling this story, that of magisterial Protestantism. This is most obviously displayed when he describes the belief in "liberty of conscience and separation of church and state" as an "Enlightenment belief" that was resisted by "many religious groups."¹⁷ Indeed, there were religious groups that opposed religious liberty and the separation of church and state. But the dominant religious groups in early Republican America had taken on a dissenting Protestant perspective, which Wood seems to miss almost completely. Wood's larger story becomes much more explicable when religion and religious belief are given their due weight in shifting popular views along from a medieval to a protestant outlook on church, society and the individual.

The religious support for American independence as well as religious liberty was well understood by those closer to the Revolution, such as Edmund Burke, the British parliamentarian. Burke famously explained the independent character of the American colonists by fact that "the people are Protestants, and of that kind which is the most adverse to all implicit submission of mind and opinions.... All Protestant-

¹⁴ (New York, NY: Alfred A. Knopf, 1992).

¹⁵ Wood, *The Radicalism of the American Revolution*, 191.

¹⁶ *Ibid.*, 330-331.

¹⁷ *Ibid.* 331.



ism, even the most cold and passive, is a sort of dissent. But the religion most prevalent in our northern colonies is a refinement on the principle of resistance: it is the *dissidence of dissent, and the Protestantism of the Protestant religion*.¹⁸ Burke, a strong critic of the Enlightenment-driven ideology of the French revolution, saw very different, and much more religious and Protestant principles at work in America.

But by the late nineteenth century, the rise of uncertainty in theology, science, and philosophy undermined the American Protestant outlook, and laid the groundwork for a toleration based on skepticism. John Stuart Mill's view of skeptical individualism increasingly became the prism through which Locke was understood. As a consequence, the twentieth century saw a wholesale move, at least in the elite centers of thought, to toleration based on epistemological uncertainty and moral relativism.

After the Civil War, the rise of Darwinism, and the growth of philosophical uncertainty, many American elite institutions, including colleges and universities, the professions, and the media began to move towards the much more skeptical view represented by Bayle. This shift did not happen overnight, and much has been written on the involved process of secularization in American history.¹⁹ The Protestant umbrella broadened to include an even more generic and diffuse sense of American spiritual identity.

The influence of German higher idealism, with its attendant historicism and philosophy of relativism, in the mid-to-late-nineteenth and early twentieth century called into question the natural law foundations of the country. This philosophy also undercut the Protestant model of church and society that was based on these views of natural law and natural rights. New approaches to the law based on social and pragmatic concerns accompanied the gradual acceptance of legal positivism. These ideas gained ground in the early twentieth century and especially influenced legal thought in the second-half of the twentieth century.²⁰

These new ideas made progress to different degrees in differing parts of society. They made greater inroads earlier in "elite" institutions, such as colleges and universities, and in the press and media. Old paradigms continued to hold sway at more popular levels. The civil rights movement of the 50s and 60s could be described as the last gasp of Protestant-style natural rights/public morality arguments at the popular level, which combined with a more modern, liberal rights perspective among its

¹⁸ Edmund Burke, *The Portable Edmund Burke*, Kramnick, Isaac, ed. (New York, NY: Penguin Books), 263 (emphasis added).

¹⁹ A good overview is provided by Christian Smith, *The Secular Revolution: Power, Interests, and Conflict in the Secularization of American Public Life* (Berkeley, CA: University of California Press, 2003). Helpful works dealing more generally with secularization in the west include, Callum G. Brown & Michael Snape, eds., *Secularization in the Christian World: Essays in Honor of Hugh McLeod* (Burlington, VT: Ashgate, 2010); Hugh McLeod & Werner Urstorf, eds., *The Decline of Christendom in Western Europe, 1750-2000* (Cambridge: Cambridge University Press, 2003); Steve Bruce, ed., *Religion and Modernization: Sociologists and Historians Debate the Secularization Thesis* (Oxford: Oxford University Press, 1992).

²⁰ Steven Green documents the rise of the substitution of secular theories for natural law foundations occurring as early as the mid-19th century in a wide range of legal areas, from oaths, to probate law, to church property disputes, to Sunday closing laws. Green, *The Second Disestablishment*, 204-247.

leadership, the media, and the courts.

But the cycle of ideas has continued to roll, and now a vocal segment of the American public, especially after the events of 9/11, is vigorously rejecting the skepticism and relativism that has come to be associated with our current system of rights. Rather than returning to a pre-Mill, Lockean view, however, there are many who appear ready to embrace a model more like that of Pufendorf.²¹ In this post-9/11 world, significant segments of American society are simultaneously rejecting moral relativism as well as seeking for the security provided by a stronger government.

This rejection of the modern paradigm moves society from the right side of the tolerance diagram generally leftward. It does not require a conscious repudiation of the importance of the individual to move over the Locke column into the Pufendorf column. The difference between Locke and Pufendorf was not over their ostensible commitment to the individual and freedom to worship. Rather, it was that a strong view of the supremacy of the state generally negated Pufendorf's theoretically positive view of the individual.

But the point of all this for overseas observers is that a "secular" version of government that has a healthy and robust freedom of religion can exist in a highly religious community. France, with its de-religioned public square, is not the only, or most attractive, model of a "secular" government that exists. The traditional American system offers a philosophical framework that is sympathetic towards religion and claims about a Supreme Being, while offering respect and accommodation to all religious claims that respect the well-being of the state and other individuals.

In this system, while the state should not promote your religious view, you and your fellow believers should be free to do so, even within the public square, as long as you respect the rights and freedoms of others to do the same. In this sense, a fair and balanced state secularism can actually lead to a greater and more robust religiosity.



²¹ Scholars who would largely reject the stricter separation between church and state and would be sympathetic to a model of greater church-state cooperation would include Robert N. Bellah, *The Broken Covenant: American Civil Religion in Time of Trial* (Chicago, IL: University Of Chicago Press, 1992); Daniel Dreisbach, *Thomas Jefferson and the Wall of Separation Between Church and State* (New York: NYU Press, 2003); Philip Hamburger, *Separation of Church and State* (Cambridge: Harvard University Press, 2002); Richard John Neuhaus, *The Public Square: Religion and Democracy in America* (Grand Rapids, MI: Wm. B. Eerdmans Publishing Company, 1986); Harold J. Berman, *Law and Revolution, II, The Impact of the Protestant Reformations on the Western Legal Tradition* (Cambridge, MA: Belknap Press, 2006).