

Oxford Research Encyclopedia of Religion

Race, the Law, and Religion in America

Michael Graziano

Subject: Religion and Politics, Religion in America Online Publication Date: Sep 2017

DOI: 10.1093/acrefore/9780199340378.013.501

Summary and Keywords

The history of race, religion, and law in the United States is a story about who gets to be human and the relevance of human difference to political and material power. Each side in this argument marshaled a variety of scientific, theological, and intellectual arguments supporting its position. Consequently, we should not accept a simple binary in which religion either supports or obstructs processes of racialization in American history. Race and religion, rather, are co-constitutive. They have been defined and measured together since Europeans' arrival in the western hemisphere. A focus on legal history is one way to track these developments.

One of the primary contradictions in the relationship between religion and race in the U.S. legal system has been that, despite the promise of individual religious free exercise enshrined in the Constitution, dominant strands of American culture have long identified certain racial and religious groups as a threat to the security of the nation. The expansion of rights to minority groups has been, and remains, contested in American culture.

"Race," as Americans came to think about it, was encoded in laws, adjudicated in courts, enforced through government action, and conditioned everyday life. Ideas of race were closely related to religious and cultural assumptions about human nature and human origins. Much of the history of the United States, and the western hemisphere of which it is part, is linked to changing ideas about—even the emergence of—a terminology of "race," "religion," and related concepts.

Keywords: law, politics, national security, African American religion, Native American religion, Islam in America, evangelicalism, slavery

Religion, Law, and the Power of Myth

“The question of the ‘religions,’ ” historian of religion Jonathan Z. Smith wrote, “arose in response to an explosion of data.”¹ The same could be said of the relationship between religion, race, and law in the Atlantic world. Since the European arrival in the western hemisphere, ideas about “race” and “religion” were codified in law for the express purpose of facilitating colonial conquest and management. These laws were shaped by Old World ideas even as they were adapted to account for new variables in North and South America. Theories and practices of law were shaped by Old World ideas even as they were adapted to account for acts of encounter, conquest, and resistance in the Americas. By looking at how legal systems classified different groups of people and empowered certain transcendent claims to authority, the story of the relationship between race, religion, and law comes into clearer focus.

To say the situation was diverse is not to say it was equal or just. The story of race, religion, and law in the United States is not a progress narrative in which human equality increased incrementally and automatically. Race has been a popular and powerful way to classify people and has remained a constant theme in the history of religion in America. Opposition to indigenous religions, African American religions, Catholicism, Mormonism, and Islam often centered on religious and racial assumptions about a minority group’s inherent qualities and essential identity. Changes in these ideas would require shifts in legal, religious, and other cultural attitudes toward human difference and the value of human life.

This article approaches legal understandings of “race” as part of a larger process of racialization that classified groups of people based on presumed genealogical and theological differences. In the history of the United States, “race” is co-constitutive with ideas of class, religion, and gender. Especially in its connection to religious ideas, race was often expressed through stories that explained why people of different races, ethnicities, and religions should be treated differently under the law. Law, then, is a kind of myth in the sense that the historian of religion Bruce Lincoln uses the word, as an “ideology in narrative form.” Lincoln explains that “when a taxonomy is encoded in mythic form, the narrative packages a specific, contingent system of discrimination in a particularly attractive and memorable form.” Myth, for Lincoln, is the struggle for control of discourse. Thinking about myth in this way—as the struggle for control of stories—is a helpful way to approach law and the stories told about it. In the legal history of the United States, there was never only one myth or one story. One of the benefits of studying law is that there are records of counter-stories: the judge’s dissent, the politician’s vote, or the protestor’s song. Courts and legislatures determine winners and losers: this is religious, this is not; this person is free, this person is not. Law is a record of this storytelling.²

Constitutional Precedents: Savagery, Race, and Law

What Europeans commonly referred to as the “New World” was also, in a sense, a “New World” for indigenous peoples who had to contend with the European invasion and colonization. From an indigenous or “eastward-facing” perspective, this so-called new world was one of constant negotiation and improvisation as fluid social relationships between ethnic groups were shaped and reshaped. The law was one important space for this reimagining. Yet as indigenous peoples became subject to European legal systems and ideas, they were not helpless victims lacking agency. In much the same way that indigenous consumers used their economic power to influence European trade and craftsmanship, indigenous peoples were active participants in new legal systems of classification.³

While there were differences in how individual colonial powers treated and classified indigenous populations, most drew upon ideas of “savagery.” Savagery was understood as the absence of European Christian civilization. From the point of view of European powers, indigenous peoples were often immodestly dressed, possessed confusing gender roles, and engaged in religious practices quite unlike Christianity. Similarly, Native American warfare was depicted as especially brutal and uncivilized. While indigenous savagery was often measured in terms of behaviors, the idea of “race” was linked to physicality and genealogy in important ways. Informed by ideas about “savagery,” the category of “race” developed alongside early legal systems in the western hemisphere.⁴

Early Religio-Racial Systems in Colonial France, Britain, and Spain

European colonial powers established a variety of legal systems in the New World. Each offers insight into how racialized labor forces were legitimated through appeals to religion.

France’s *Code Noir* (“Black Code”; 1685) was an early and comprehensive attempt to organize slavery along racial lines. The code was influenced by both the French monarchy and the institutional Roman Catholic Church. Articles II, III, and IV of the Code Noir required all enslaved persons (and slave owners) to be baptized Catholics, in part because the practice of non-Catholic religions was banned in the French Colonies.⁵ Yet baptism was not a route to freedom for enslaved persons. The Code Noir institutionalized slavery by linking it to race as a form of biologically determined identity. For example, Article LVIII explains that even manumitted slaves must “retain a particular respect for the former masters, their widows, and their children” so that any crime against these

Race, the Law, and Religion in America

individuals would be “punished more severely than if it had been done to another person. We nevertheless declare them free and absolved of any other burdens ...” The Code Noir suggested that freedom from slavery was not a complete break and that something of the slave’s former identity lingered in the newly freed legal entity of the individual. The Code Noir is an early example of how race was understood as a genealogical marker that signaled enslavement or freedom. Even becoming free left a formerly enslaved person with lingering debts that were often codified in law.⁶

In the Spanish colonies, ideas about *limpieza de sangre* (“purity of blood”) and *sistema de castas* (“race/caste system”) informed legal efforts to codify racial ideas and assumptions. Concern over purity of blood began in conflicts in the Iberian Peninsula, as Christians targeted Jews, Muslims, and “heretics” for eradication. Religious purity was wielded by Iberian Christians to delegitimize Jews and Muslims who had recently converted to Christianity. By the time the idea became formalized in New Spain, the measure of one’s devotion to the faith had much to do with their “pure” (or impure) Christian ancestry, since it was widely understood that one’s values and religious beliefs were inherited from one’s parents. In this view, recent converts were less trustworthy than Christians who could prove their religious pedigree over multiple generations.⁷

In New Spain, racial and religious assumptions about human identity and genealogy became codified in law. Certain colonial professions and offices required one to prove their blood purity. Colonial regimes created extensive legal records to help sort people into proper groups based on the supposed purity of their blood. This racial classification scheme was an attempt to order the diversity of human populations who were born of, traveled to, or were kidnapped to the western hemisphere. While the category “impure” was originally limited to Jews, Muslims, and heretics, Africans and their mixed-race descendants were increasingly classified as “impure.” The focus on blood purity, and the *sistema de castas* it helped shape, are another reminder that “New World” ideas of race, religion, and law were hardly new, shaped as they were in powerful ways by European history.⁸

In the British colonies, Virginia issued two important laws with respect to the racial component of slavery in the 17th century. In 1662, the colony adopted the policy of *partus sequitur ventrem*, which held that children inherited their legal status from their mother. This challenged English common law, which usually linked a child’s legal status to his or her paternity. In this new arrangement, children born to an enslaved mother (but fathered by the mother’s owner) would be a slave like their mother rather than a free person like their father. This made it clear that slavery was an inherited status. Five years later, Virginia settled another contentious debate when it outlawed the practice of manumission by baptism, as continued freedom through baptism would have threatened the future of the colony’s racialized labor force. In settling this disagreement, Virginia’s General Assembly hoped “that diverse masters, freed from this doubt, may more carefully endeavor the propagation of christianity by permitting children, though slaves, or those of greater growth if capable to be admitted to that sacrament.”⁹ In the early 18th century, Virginia passed “An act concerning Servants and Slaves” (1705) which organized many of

the colony's existing slave laws, including (in Article XXXVI) those about baptism and inherited enslavement.¹⁰ In this view, slavery was a biologically determined identity immune even to the salvific and regenerative powers theologically attributed to baptism.

Contest Between the Powers at Fort Mose

Competition between these three colonial empires was often negotiated through race, religion, and the law. One striking example is Spanish Florida, an area that bordered British and French territory and offered a remarkable degree of racial and religious intermingling between Native American and African American populations. In 1693, Spain's King Charles II offered partial manumission to escaped British slaves entering Spanish territory, so long as those enslaved persons promised to convert to Christianity. In return, the Africans were used to staff military establishments like Fort Mose, near St. Augustine, which became the first African American self-governing community on the continent.¹¹ For the Spanish, this legal avenue offered a way to weaken southern British colonial possessions (which bordered Spanish Florida) by bleeding them of enslaved labor, as well as contributing to the growth of Catholicism over and against the Protestant British colonies. The British, in return, sought strategic relationships with indigenous peoples like the Muscogulge (who inhabited the land between Spanish and British control), whom they enticed to catch escaped African slaves. In this way, the major powers developed legal mechanisms to selectively employ otherwise oppressed populations when it suited their geo-political or missionizing desires. When Florida became a British possession in 1763, the black inhabitants of Fort Mose withdrew to Cuba with their Spanish superiors.¹²

Race, Religion, and Law in the Antebellum United States

Informed by colonial regimes of racial law, the antebellum United States codified its own system of race classification. The U.S. Constitution was the product of elaborate compromises regarding the existence and future of a racialized, laboring class of human slaves. The Constitution provided legal protections for slave property and reinforced religious ideas that upheld human slavery. The "three-fifths compromise" of the 1787 Constitutional Convention decided that three-fifths of the enslaved population would be counted for purposes of representation and taxation, even as those human beings were not entitled to the legal protections of free persons. At the same time, other constitutional debates turned on issues of religion, race, and law. Concerns about "Turkish" (Islamic) concentrations of power in government led Islam to be used as a symbol for government overreach. Anti-Federalists used the fear of Turkish despotism and Islamic thought to critique those who favored a strong central government. In this view, Islam did not

Race, the Law, and Religion in America

encourage free thought or critical inquiry, preferring instead to rely only upon received revelation. While the Muslim population of the United States in the late 18th century was tiny, these conflicts foreshadowed Islam's place in future debates.¹³

Political debates during the antebellum era continued to be shaped by religious and racial ideas. In the standard paternalistic language that was used to address non-white peoples, U.S. Supreme Court Chief Justice John Marshall wrote in 1831 that the relations between the "Indians" and the United States "resemble that of a ward to his guardian. They look to our Government for protection, rely upon its kindness and its power, appeal to it for relief to their wants, and address the President as their Great Father."¹⁴ People of both indigenous and African descent who found themselves subject to the laws of the United States also found themselves bound by a religious and racial logics that rendered them citizens only when convenient for the federal government. This was particularly evident in the laws and attitudes concerning the continuation of human slavery.

God of Slavery, God of Slaves

Antebellum Christianity offered theological fuel for the continuation of human slavery as well as its abolition, and these contradictions were reflected in the religious practices of enslaved persons. The religious practices of enslaved Africans in the United States were often organized to avoid the surveillance and discipline of slave owners. Much like other forms of human religious practice, American "slave religion" was complex, contradictory, and conditioned by the legal regime under which it existed. Even so, while legislation such as anti-literacy laws was an obstacle to reading the Bible, it did not keep enslaved persons from using Christian theology to carve out an identity for themselves and their families. Similarly, the legal process of incorporation also provided early black churches with legal autonomy they could find in few other places.¹⁵

Antebellum religio-racial logic often trafficked in the idea that the United States was a new Israel, what Sylvester Johnson has termed the American propensity for Israelitic "self-understanding." While African American religious identity was powerfully shaped by the Exodus story—the flight of the Israelites from slavery in Egypt under the protection of Yahweh—it was also influenced by meaningful association with the biblical character Ham and black Americans' own assumed Hamitic identity. After the biblical flood, Noah cursed his son Ham and condemned Ham's descendants to labor for others. European Christians presumed Africans were descended from Ham and his Canaanite progeny. This made for a convenient origin story and justification for equating slavery with dark skin, though skin color is not mentioned in the biblical legend. While this narrative was used by pro-slavery European Christians, the story was also negotiated and reinterpreted within African American religious communities. The "Curse of Ham" thus offered black Christians a way into the exclusionary narrative of the United States as a "New Israel" and its people as "God's chosen"—even if they had to enter through the back door.¹⁶

Race, the Law, and Religion in America

These everyday religious assumptions also informed the work of courtrooms and legislatures. White Americans largely imagined Jesus Christ to be white, for example, and this helped justify a legal system that organized degrees of humanity according to the color of one's skin. African American, Native American, and Hispanic American Christians often sincerely worshipped a blond-haired, blue-eyed "Nordic Jesus" that bore little resemblance to the people who lived in 1st-century Roman Judea. Yet non-white Christians also used Christian theology—even the Christian theology of a Nordic Jesus—to fashion meaningful and righteous condemnations of their conditions. Frederick Douglass, one of America's foremost Christian public intellectuals, wrote in his autobiography *Narrative of the Life of Frederick Douglass, An American Slave* (1845) that "Indeed, I can see no reason, but the most deceitful one, for calling the religion of this land Christianity." Douglass continued:

We have men sold to build churches, women sold to support the gospel, and babes sold to purchase Bibles for the *Poor Heathen! All For The Glory Of God And The Good Of Souls!* The slave auctioneer's bell and the church-going bell chime in with each other, and the bitter cries of the heart-broken slave are drowned in the religious shouts of his pious master. Revivals of religion and revivals in the slave-trade go hand in hand.¹⁷

Douglass's words are a powerful reminder that African American religion—and the religion of other racialized groups in American history—was never separate from legal concerns about the right of persons and their children to live a life free of the bondage, torture, and terrorism that comprised American slavery.¹⁸

Race, Religion, and the Proper Borders of the United States

Discussions of slavery were not the only legal debates informed by enduring ideas of race. As the U.S. federal government tried to balance the slavery question, it simultaneously implemented the Indian Removal Act (1830). Removal's fiercest advocate, President Andrew Jackson, saw the law as both just and moral because indigenous populations were in a state of savagery. By forcibly relocating Native American populations to the west, valuable eastern lands would be available to "civilized" white American settlers. In an 1830 address to Congress, Jackson argued that Removal was ultimately for the good of Native Americans, since it would allow them "to cast off their savage habits and become an interesting, civilized, and Christian community." Christianity and civilization went hand and hand, and it was difficult to be recognized as one without the other. Later in the same address, he points to evidence of pre-Columbian indigenous civilization as evidence of the lack of indigenous civilization generally: "In the monuments and fortifications of an unknown people, spread over the extensive regions of the West, we behold the memorials of a once powerful race, which was exterminated or has disappeared to make room for the existing savage tribes."¹⁹ The classification of "savagery" was so potent that it removed from indigenous peoples not just land but also

their own history. Even as some white Christians protested—recognizing that Indian Removal would surely damage efforts by white missionaries to spread Christianity among indigenous peoples—they could not halt the process of removal.²⁰

Around the same time, shifts in the legal boundaries of the United States led to formative changes for American religion. The U.S.-Mexican War (1846–1848) and its conclusion in the Treaty of Guadalupe Hidalgo (1848) shifted control of California and what would become a half-dozen other western states to the United States. This massive land cession also shifted the fortunes of numerous Spanish-speaking peoples who, under the terms of the treaty, now had a choice between leaving their homes or pledging loyalty to the U.S. government. Most chose to stay, resulting in a southwestern Catholic population that was linguistically, ethnically, and racially foreign in the minds of many European Americans. The contemporary popularity of religious figures like the Virgin of Guadalupe as a kind of multi-ethnic Virgin can be traced to these 19th-century legal changes.²¹

Dred Scott and the Myth of Black Citizenship

Antebellum controversies regarding which racial groups could be truly American culminated in *Dredd Scott v. Sandford* (1857). Scott, an enslaved person owned by John Sanford, sued Sanford for his freedom after being moved through free states that forbade slavery. The U.S. Supreme Court ruled 7–2 that Scott, as a descendant of enslaved peoples, could not be a citizen and thus had no standing to sue. Chief Justice Roger Taney used the language of the Declaration of Independence—in which people are “endowed by their Creator with certain unalienable rights”—to decide that African slaves were excluded from this compact for reasons of religious origin. In so doing, Taney inadvertently made the argument his critics would in later generations:

But it is too clear for dispute that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this declaration, for if the language, as understood in that day, would embrace them, the conduct of the distinguished men who framed the Declaration of Independence would have been utterly and flagrantly inconsistent with the principles they asserted.²²

Relying on a different argument about religious origins, Associate Justice John McLean disagreed. His opinion foreshadowed later changes in American religious understandings of human equality. “A slave is not mere chattel,” McLean wrote in his dissent, “He bears the impress of his Maker, and is amenable to the laws of God and man, and he is destined to an endless existence.” As the antebellum period ended, the U.S. legal system would be tested to see just how many Americans agreed.²³

The Reconstruction of American Citizenship

Struggle for Control of the New Citizen

While the Civil War's aftermath effected drastic legal changes in the place of African Americans through the Constitution's Thirteenth, Fourteenth, and Fifteenth Amendments, the everyday experience of racial and religious minorities often failed to reflect these new developments. Ending slavery did not in and of itself guarantee citizenship, the ultimate measure of American legal equality. The Fourteenth Amendment, which granted citizenship to formerly enslaved persons, was in many ways a more radical notion than the Thirteenth Amendment, which outlawed slavery. Americans who opposed these new rights reimagined U.S. citizenship as a legal gradient rather than a binary of "citizen" or "non-citizen." The classification "citizen" could thus be applied to African Americans without imbuing them with the same legal or theological protections. The tension between "freed person" and "citizen" exposed contradictions in the de facto experience of American equality that remain unresolved more than 150 years after the end of the Civil War.²⁴

The new legal order met with armed resistance, including from the Christian terrorist organization the Ku Klux Klan. The Klan understood itself as upholding a religio-racial order that prized white Anglo Protestantism and stood against African Americans, Jews, and Roman Catholics. They harassed and murdered those who tried to practice their constitutionally enshrined freedoms. The Klan conducted lynchings and other forms of terrorism to enforce what it understood to be the will of God. The KKK's attacks often focused on African American leaders, including those in the clergy. In 1871, Lewis Thompson, an African American and a Methodist minister, defied threats from the Klan to preach in South Carolina. Thompson was attacked, castrated, and murdered. The Klan left his body in a river and threatened those who would help bury him.²⁵

Partly in response to this violent resistance, the U.S. federal government legislated a series of "Enforcement Acts" to secure the rights of racial minorities. This included the Enforcement Acts of 1870 and 1871, popularly known as the Ku Klux Klan Acts, which targeted those who "go in disguise upon the public highway or upon the premises of another for the purpose ... of depriving any person or any class of persons of the equal protection of the law." While the KKK threatened the lives and freedom of racial and religious minorities, it also challenged the exercise of federal power. These new Acts empowered President Ulysses S. Grant to use the U.S. Army to enforce the legal rights of freed people and, in so doing, uphold the power of the federal government. Federal troops helped suppress the Klan, and its members were tried in federal courts. Though this disruption would not prevent the implementation of Jim Crow laws, federal law enforcement helped end the first wave of the Klan's racial terrorism.²⁶

Race, the Law, and Religion in America

Rights for religious and racial minorities expanded slowly. In 1883, the Supreme Court ruled that many of these protections and enforcement powers were unconstitutional. The Court reasoned that while the government may regulate how the government itself treated African Americans, it could not bar discrimination from private individuals. This provided an important foundation for *Plessy v. Ferguson* (1896), a pivotal postbellum Supreme Court case. In deciding whether it was legal for Louisiana to racially segregate its public transportation, the Court ruled that Louisiana's law did not subvert the recently-passed Fourteenth Amendment. Writing for the Court, Justice Brown explained that "The object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but, in the nature of things, it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either." While the Court did not use the phrase "separate but equal" in its ruling, the argument—that segregated public accommodations do not violate the Fourteenth Amendment's Equal Protections Clause so long as the accommodations are equal—became the bedrock for the Jim Crow system of legalized segregation. Drawing upon many of the same ideas that fueled earlier Black Codes, the Jim Crow system ostensibly treated African American citizens as equals when in practice it did not. This system perversely understood unequal treatment based upon skin color as evidence of equal treatment. This system would remain in place until *Brown v. Board of Education* (1954).²⁷

Immigration and the Racial Order

As the 19th century progressed, waves of immigration brought new people to U.S. shores, eliciting changes in the government's approach to racialized labor, which, in turn, led to changes in American religious demographics. The concerns of racial and religious minorities often struggled to find redress during an era in which courts understood themselves to be neutral arbiters of law. In this view, states existed to protect rights rather than "create" new rights. This was a challenge to racial and religious groups that possessed few rights to protect in the first place.²⁸

Federal and state legislation reflected contemporary racial anxieties. The Chinese Exclusion Act (1882) specifically targeted Chinese laborers amid racialized fears that Chinese immigrants lowered wages for white workers and would not adapt to Euro-American society. Other regulations, like the Immigration Act of 1882, looked beyond specific countries to sort desirable from undesirable immigrants. Among the latter category were people from eastern and southern Europe, particularly Jews and Catholics. Jewish immigrants encountered Christian anti-Semitism and critiques of the "Jewish race" that hearkened back to earlier European Christian systems of blood classification like the Spanish idea of *limpieza de sangre*. Roman Catholics faced anti-Catholic attitudes and a legal system that had privileged public displays of Protestantism since the colonial era. Both Jews and Catholics—particularly those of Irish and Italian descent—were often racialized as not fully "white."²⁹

Race, the Law, and Religion in America

Other legal challenges to religious diversity arose at home. Like Jews and Catholics, Mormons encountered legal challenges that were profoundly shaped by larger concerns about race. Racial critiques focused on the distinctive Mormon practice of plural marriage which, when combined with the Church's frontier status and geographic proximity to various ethnic and religious groups, helped fuel racialized depictions of the church as variously black, "savage," "oriental," or "Mohammedan." Like Catholics, Mormons were targeted for their perceived pseudo-Christian and seemingly un-American religious beliefs.

Lacking normative "Christian" claims to civilization, both groups were often dehumanized in popular depictions. Reflecting the concern that increased Catholic immigration would destroy America's public school system, *Harper's Weekly* ran Thomas Nast's "The American River Ganges" (1875), a political cartoon in which a white American man protects schoolchildren from Catholic priests, depicted as crocodiles, threateningly wading ashore from Europe. Another Thomas Nast cartoon depicts a monstrous Mormon turtle and Catholic crocodile perched on the dome of the U.S. Capitol building. The caption asks the viewer: "Religious liberty is guaranteed: but can we allow foreign reptiles to crawl all over us?" Similar fears sometimes led to violence, as was the case with the 1834 burning of the Charlestown Convent in Boston. Fears of Roman Catholic practices, particularly those related to gender and sexuality, led a nativist mob to burn down the Roman Catholic structure, ostensibly to liberate those women held against their will. A decade later, debates about whether Bible reading in public schools should be mandatory—and if so, which version of the holy scriptures should be used—turned into Catholic-Protestant riots that left over a dozen people dead.³⁰

Early National Security Concerns About Religion and Race

American ideas about race and theology produced a racialized vision of citizenship as a gradient in which some citizens could exercise more religious freedom than others. In *Reynolds v. United States* (1878), the Supreme Court addressed the topic of plural marriage. George Reynolds challenged the Morrill Anti-Bigamy Act (1862), arguing that this practice was a religious duty for members of the Church of Jesus Christ of Latter-day Saints and should be protected by the First Amendment. In a unanimous decision, the Court rejected this argument and found that while the First Amendment protects belief unconditionally, it offers no such protections for religious practices. In his opinion, Chief Justice Morrison Waite concluded:

Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or if a wife religiously believed it was her duty to

burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice?³¹

In comparing bigamy to human sacrifice, the Court made clear that the practices of religious minorities would be held to a different standard. The decision in *Reynolds* would have a lasting effect on the legality of minority religious practices.

Around the same time, one such unprotected practice began attracting attention across indigenous communities. The “Ghost Dance” was one part of the complex interplay of tribal identities and practices that shaped indigenous responses to European colonialism. Led by the Northern Paiute prophet Wovoka, indigenous practitioners of the Ghost Dance anticipated an end to white expansion and violence toward indigenous communities as well as increased tribal cooperation. The U.S. federal government grew concerned about the spread of renewed indigenous religious ideas, viewing it as a subversive challenge to the Dawes Act (1887) and other legal instruments designed to seize indigenous land and compel assimilation into Euro-American culture. As the practice spread, the Bureau of Indian Affairs requested reinforcements from the U.S. Army to help maintain order. It was in this context of fear over indigenous religious practices that the U.S. Army massacred over 150 Lakota Sioux at Wounded Knee in 1890. While Wounded Knee was neither the beginning nor the end of the Ghost Dance, it illustrated U.S. government understandings of minority religious practices as potential challenges to U.S. national security.³²

Whether members of the “Mormon race,” the “Jewish race,” or the “savage race,” the dominant Euro-American racial discourse assumed that racial development and religious identity were linked to aptitude for democracy. Taking aim at Mormons, for example, the Republican Party’s 1856 platform promised to “prohibit in the territories those twin relics of barbarism: polygamy and slavery.” People who practiced ostensibly uncivilized customs were presumed by Euro-Americans to be unfit for self-rule, regardless of whether the people in question lived in “Indian Territory” or on another continent. When President Buchanan ordered the U.S. Army west to punish the Mormons in the so-called “Utah War” (1857–1858), he was influenced by fears that idiosyncratic Mormon religious practices would fuel resistance to the federal government. Similar logic governed the United States’ treatment of the Philippines after the Spanish-American War (1898) secured U.S. imperial control of that country. According to Rudyard Kipling’s “White Man’s Burden” (1899), colonized peoples like the Filipinos were “half-devil and half-child” and could only be tamed through “the savage wars of peace.” American assumptions about Filipino racial inferiority and the lingering damage of Spanish Catholic colonial rule echoed this popular sentiment, pushing the U.S. government toward a project of racial and religious “uplift.” President William McKinley explained that “there was nothing left for us to do but to take them all, and to educate the Filipinos, and uplift and civilize and Christianize them, and by God’s grace do the very best we could by them, as our fellow-men for whom Christ also died.”³³

The Immigration Act of 1924 (also known as the Johnson-Reed Act) capped major changes in race, religion, and law in the United States by the early 20th century. It implemented a series of strict quotas for European immigration and restricted immigration from most of Asia. The law reflected fears about increasing racial difference by limiting the entry of groups that were negotiating for fuller recognition of their “whiteness” (such as Italians and Jews) and almost entirely barring the entry of Asian and Arab peoples who were understood as racial undesirables. The geographic nature of the ban meant that the vast majority of Muslims, Buddhists, Hindus, and Sikhs were unable to legally immigrate to the United States. Until the immigration quota system changed in 1965, even the physical presence of diverse racial and religious groups was limited by federal law in powerful ways. Demographic changes were slowed and, as a result, so were the otherwise pluralistic legal changes that might have come from them. The Act extended the racial logic of the Jim Crow system to the international stage, consolidating Anglo-American Christian power at the expense of marginalized groups.

Race, Religion, and Law After the Johnson-Reed Act (1924)

New Movements for Racial and Religious Rights

While the Johnson-Reed Act addressed the immigration of racial and religious minorities to the United States, domestic conversations about racial and religious pluralism continued unabated. The question of whether U.S. citizenship would be linked to a system of racial caste, with tiered legal protections tied to skin color, was left unanswered by the Reconstruction Era. Government promises about a color-blind equality of citizens before the law was undercut by the inability—and in some cases the lack of desire—of government to enforce those promises. In this era, religious groups would play a central role in pushing the federal government to expand and protect the civil rights of religious and racial minorities.

Americans began discussing a new “Tri-Faith” vision of their country that included Protestants, Catholics, and Jews. Importantly, many of these changes were made with security in mind. The threat of fascism in World War II and global communism during the Cold War helped collapse once-prominent distinctions between American Catholics and American Protestants, for example, as the Vatican became reimagined as a bastion of global anti-communism. Yet what was *not* included in most early “Tri-Faith” language was an inclusion of racially and ethnically diverse Americans.³⁴

In the years before and after World War II, American religious minority groups were involved in important legal developments. The Jehovah’s Witnesses, a Christian group that challenged government authority and encouraged interracial community, were

frequent targets of violence, ridicule, and criticism that they were not sufficiently “American.” The Witnesses participated in a stream of Supreme Court cases in the 1930s and 1940s that dramatically expanded the civic and religious rights of minority groups.³⁵ These changes took place during the New Deal and World War II and provided important legal foundation for future changes.

The work of these and other groups set the stage for the landmark *Brown v. Board of Education* (1954) decision that formally desegregated public schools. The case was the product of hard work by the National Association for the Advancement of Colored People (NAACP), a key civil rights organization. Led by figures like future Supreme Court Justice Thurgood Marshall, the NAACP’s Legal Defense and Education Fund worked to achieve racial equality through the judicial system and legislation. Yet while *Brown* weakened legal segregation, the reality on the ground was far more complicated. Desegregation was accomplished haltingly and faced determined resistance. Legal boundaries that separated Americans into religious and racial groups reflected longstanding cultural assumptions about the relative worth of human beings. Leaders in what became known as the civil rights movement recognized the challenge and necessity of changing hearts and minds. In a 1960 interview on *Meet the Press*, the Reverend Dr. Martin Luther King Jr. famously reflected: “I think it is one of the tragedies of our nation, one of the shameful tragedies, that eleven o’clock on Sunday morning is one of the most segregated hours, if not the most segregated hour in Christian America.”³⁶ King recognized the difficulties in changing laws—and enforcing those changes in meaningful ways—while the opinions supporting those laws remained unchanged.

As the civil rights movement strengthened, some Americans resisted this new legal order with violence. Among the most infamous examples was the terror attack on the 16th Street Baptist Church in Birmingham, Alabama. The Ku Klux Klan planted explosives at the historically black church, killing four children and wounding dozens of other people. The attack on the church was part of a larger pattern in which African American religious institutions were targeted as symbols of racial equality. African American churches have historically posed a unique challenge to white supremacy, since African American Christian theology upheld the radical notion of human equality and undercut white supremacy’s claim to transcendent uniqueness. African American houses of worship were understood by both their members and their critics as sources of spiritual and material support during the civil rights movement, linking on-the-ground community organizing with a prophetic tradition dating back to the Hebrew Bible.³⁷

Few have come to embody American Christianity’s prophetic tradition like Martin Luther King Jr. King powerfully linked religion, race, and law in the American imagination, and he indicted American Christians who believed one did not impact the other. On the night before he was assassinated, King gave what became known as his “I’ve Been to the Mountaintop” speech at the Mason Temple in Memphis, the headquarters of the historically black Church of God in Christ. In a speech that repeatedly equated the

Race, the Law, and Religion in America

expansion of legal rights for racial minorities with obedience to God's will, King thundered:

All we say to America is to be true to what you said on paper. If I lived in China or even Russia, or any totalitarian country, maybe I could understand some of these illegal injunctions. Maybe I could understand the denial of certain basic First Amendment privileges, because they haven't committed themselves to that over there. But somewhere I read of the freedom of assembly. Somewhere I read of the freedom of speech. Somewhere I read of the freedom of press. Somewhere I read that the greatness of America is the right to protest for right.³⁸

King was not alone in seeing the struggle for legal equality as a fundamentally religious problem. Another leader and pioneer in the civil rights movement, Fannie Lou Hamer, participated at the 1964 Democratic National Convention, where she argued for integrated state delegations. As part of her testimony, she reflected on the police brutality directed at those African Americans who tried to register to vote back home in Mississippi. Hamer remembered how, after one arrest, her cellmate Ivesta Simpson was beaten by the Mississippi Highway patrol: "They beat her, I don't know how long. And after a while she began to pray, and asked God to have mercy on those people."³⁹ Hamer and Simpson are among the multitude of civil rights leaders and organizers who drew on religious support as they worked to change laws as well as people's minds.

Legislating New Ideas About the Citizen

Countless Americans labored in the civil rights movement and helped compel the federal government to act. As religious organizations like the Southern Christian Leadership Conference (SCLC) engaged in massive demonstrations, including the famous Birmingham campaign, pressure built on the federal government to act. In addition to domestic popular opinion, images and video of police brutality in the southern states reflected poorly on the U.S. global image and was a boon for Soviet propaganda, a fact not lost on the U.S. government. Originally proposed by President John F. Kennedy, the Civil Rights Act faced heavy opposition from southern and segregationist members of Congress. Kennedy's assassination meant that President Lyndon Johnson, a skilled legislative tactician, would lead the federal charge for new civil rights legislation. The Civil Rights Act of 1964 (CRA) and the Voting Rights Act of 1965 (VRA) were among the most important pieces of legislation in American history. Congress claimed its power to legislate these matters largely through the Fourteenth and Fifteenth Amendments, which were themselves passed by Congress to address minority rights during Reconstruction. The CRA legislated sweeping protections, including outlawing discrimination in employment (Title VII) or in public accommodations on the basis of "race, color, religion, or national origin."⁴⁰

Yet the CRA did little to protect voting rights. The ability to vote freely and without coercion was the mark of a fully free and equal citizen. Until that freedom was achieved, American citizenship would remain mired in a system of racial caste. Demonstrations like the Selma-to-Montgomery marches held the Johnson administration accountable for the CRA's weaknesses. In response to the rampant police brutality at those marches, President Johnson called for increased voting protections during a nationally televised address. He ended his televised speech about the bill by saying, "We Shall Overcome," quoting the popular Christian spiritual sung at civil rights marches and demonstrations. President Johnson instructed Acting Attorney General Nicholas Katzenbach to "write me the goddamndest, toughest voting rights act that you can devise."⁴¹ The resulting VRA outlawed literacy tests and other schemes employed to keep racial minorities out of the voting booth. Crucially, the law empowered the U.S. attorney general to oversee changes in voting laws in states that had historically disenfranchised their citizens. The impact was immediate, as African Americans and other racial minorities were able to register and vote under the protection of federal monitors.⁴² The CRA and VRA attempted to fulfill the broken promises of Reconstruction, which were themselves attempts to honor the original promise in America's founding documents.

In addition to the Civil Rights bills, the 1960s also saw major changes in American immigration law. The Hart-Celler Act (1965) ended the national quota system privileging immigrants from northern and western European nations. The effect on American religious demographics was dramatic as immigrants from Africa and Asia could more easily immigrate. The American Muslim population doubled, with Muslim immigrants entering the United States from more than one hundred countries. As was the case in the 19th century, diversifying American religious demographics challenged older, traditional ideas that understood normative American citizens to be Euro-American Christians.⁴³ Americans and their laws would reckon with these changes for the remainder of the century.

Expanding Citizenship After the 1960s

As the Congress, state legislatures, and court systems found themselves grappling with an increasingly pluralist society, other movements began articulating new visions for the relationship between religion, race, and the law. As in other periods in American history, these changes were not linear nor uniformly positive for the religious and racial groups in question. One area that illustrates many of the progress and paradoxes of this period is the legal status of Native American religious practices.

In the latter half of the 20th century, Native Americans continued their efforts for recognition and redress of historic inequalities. One dramatic illustration was the Trail of Broken Treaties, a 1972 cross-country protest march finishing in Washington, D.C. Led by Native American organizations like the American Indian Movement (AIM), the Trail included a twenty-point position paper designed to bring awareness to the failures of the

Race, the Law, and Religion in America

U.S. treaty system with Native American tribes. With religious freedom a prominent concern, the protesters asked Congress to

proclaim its insistence that the religious freedom and cultural integrity of Indian people shall be respected and protected throughout the United States, and provide that Indian religion and culture, even in regenerating or renaissance or developing stages, or when manifested in the personal character and treatment of one's own body, shall not be interfered with, disrespected, or denied.⁴⁴

Like other elements of the civil rights movement, progress was slow and halting. One year later, in the context of local political conflict and frustration with being ignored by the federal government, AIM and other Native American groups seized control of the town of Wounded Knee on the Pine Ridge Indian Reservation in South Dakota. Native American protesters were surrounded by local and federal law enforcement, including the FBI and U.S. Marshals Service. The protest became a seventy-one-day standoff on the same site as the 1890 Wounded Knee massacre, linking contemporary Native American tensions with the federal government to a long history of violence and repression of Native American religiosity.

In addition, indigenous religious practice was sometimes burdened by legislation not specifically targeting Native Americans. Religious rituals that required use of certain animal bones or feathers, for example, might run afoul of endangered species legislation. Similarly, some Native American tribes consumed substances like peyote, a cactus with psychoactive properties. The American Indian Religious Freedom Act (AIRFA) was passed by Congress in 1978 to address such concerns, though it was widely criticized as ineffective. In *Lyng v. Northwest Indian Cemetery Protective Association* (1988), the Supreme Court decided whether the U.S. Forest Service could build roads and harvest natural resources in a California National Forest held sacred by several Native American tribes. Guided by AIRFA, the Court ruled against the tribes by arguing that the Forest Service actions would not violate Native American's First Amendment protections.⁴⁵

The final decade of the 20th century witnessed new legislative protections for minority religious practices. One way in which Native American religious practices had been uniquely undermined was through the collection, study, and display of indigenous material culture in historically white Euro-American museums, sometimes financed with federal dollars. Among the concerns of Native American communities was that disturbing burial sites, unearthing the human remains of their ancestors, and in some cases the buying and selling of Native American bodies were all violations of their religious beliefs and constituted an undue burden on their free exercise of religion.⁴⁶ The Native American Graves Protection and Repatriation Act (NAGPRA; 1990) was designed to aid the return of human remains and sacred objects from holdings in museums and collections to the Native American communities in which they originated.

Race, the Law, and Religion in America

In Oregon, Native American individuals were fired and then denied unemployment benefits for ingesting peyote as part of their religious practice. The Supreme Court upheld this decision in *Employment Division v. Smith* (1990), reasoning that religious belief did not make citizens immune to laws of general applicability. The ruling was widely criticized by religious liberals and conservatives alike and led to the passage of the Religious Freedom Restoration Act (1993), which was designed to protect a wider range of religious activities from government interference. As a result, the U.S. Drug Enforcement Administration classifies peyote as a controlled substance, though now with specific exemptions for “bona fide religious ceremonies of the Native American Church.”⁴⁷

As new legal exemptions were created to protect minority religious practices, other traditional legal exemptions were discarded in light of their perceived damage to religious and racial minority communities. Perhaps the most dramatic example was found at Bob Jones University (BJU). A fundamentalist Christian university, BJU claimed biblical authority to limit black enrollment and prohibit interracial dating and marriage. When the IRS revoked its tax-exempt status, a dispute ensued that culminated in the Supreme Court case *Bob Jones University v. United States* (1983). BJU argued that discrimination was its Christian duty, and thus government action that made this more difficult—such as requiring the religious school to pay taxes— infringed on its First Amendment rights. The Court ruled against BJU, arguing that “The Government's fundamental, overriding interest in eradicating racial discrimination in education substantially outweighs whatever burden denial of tax benefits places on petitioners' exercise of their religious beliefs.”⁴⁸ In a dramatic departure from precedent, the Court ruled that overt, formal racial discrimination—even for religious reasons—would no longer be subsidized by the American taxpayer.

Race, Religion, and the Surveillance State

One consequence of the restrictive pre-1965 federal immigration law was that, for most of the 20th century, most American Muslims were African American members of domestic groups. The Moorish Science Temple of America (founded in Newark, New Jersey, in 1913) and the Nation of Islam (founded in Detroit in 1930) articulated a vision of Islam in conversation with ideas about race, American politics, and African identity. As a result, African American Muslim organizations were often doubly suspicious in the eyes of the U.S. government since they engaged in conversations about “black power” while being recognizably non-Christian.⁴⁹

Malik el-Shabazz, popularly known as Malcolm X, was a leading figure in the Nation of Islam (NOI) during the 1950s and early 1960s. Like the NOI as a whole, Malcolm X stressed black pride and black self-sufficiency and indicted white Christian America for their hypocritical promises of legal equality. FBI Director J. Edgar Hoover was convinced, despite a lack of evidence, that the NOI was a predominantly violent group sympathetic to the Soviet Union. In the FBI's own words, the NOI was worth surveilling “because of their fanatical antiwhite and anti-United States government teachings and beliefs would

be potentially dangerous and likely to seize upon the opportunity presented by a national emergency to endanger the public safety and welfare.” As part of the FBI’s COINTELPRO initiative, the NOI and other black religious organizations deemed subversive were surveilled—often illegally—through wiretaps and other forms of electronic and human surveillance.⁵⁰

To be sure, Christian identity was no protection from government surveillance. Perhaps the most famous Christian leader in American history, the Reverend Dr. Martin Luther King Jr., was systematically targeted for FBI surveillance. While Congress did pass new laws like the CRA and VRA, which were crucial to securing minority rights, other parts of the federal government sought to discredit, subvert, and disrupt groups they deemed a threat to American national security. These examples are an important illustration of the way in which law enforcement agencies—from the FBI to the Mississippi Highway Patrol to Bull Connor’s Birmingham office of Public Safety—understood security to depend on a nation that was normatively white and Christian.⁵¹

Race, Religion, and Law in an Era of Weakening Separationism

Since the September 11, 2001, terrorist attacks, two major trends are evident in the trajectory of race, religion, and law in the United States. First, a wave of judicial deference toward religious groups has resulted in increased legal exemptions for a wide variety of religious organizations in an era of weakened separationism. Second, national security concerns regarding terrorism have resulted in increased suspicion and surveillance of American Muslim populations. The contradictory nature of these two themes reflects larger historical contradictions in the logic of American religion. This tension has been laid bare in the last few decades, as policing religion is understood as necessary for national security while its free exercise remains an essential part of popular American self-understanding.⁵²

In *Church of the Lukumi Babalu Aye v. City of Hialeah* (1993), the Afro-Caribbean religious practice of Santeria and its practice of animal sacrifice was at issue. A Florida town passed ordinances banning animal sacrifices, which the Supreme Court ruled unconstitutional since the laws were designed to target Santeria practitioners specifically and provided no other civic benefit. Cases like *Church of Lukumi Babalu Aye* suggest that this renewed judicial deference to religious organizations also extends to groups without much political power. However, this trend continued over the next two decades to include granting politically powerful religious groups with new exemptions to the law, including to for-profit corporations (*Burwell v. Hobby Lobby*, 2014) and flexibility in employment law (*Hosanna-Tabor Evangelical Lutheran Church & School v. Equal Employment*

Opportunity Commission, 2012). The extent to which these more recent decisions will affect minority religious and racial groups remains unclear.⁵³

After the September 11, 2001, terrorist attacks, American Muslim communities became the center of new discussions around race, religion, and the law. By 2001, the legacy of the 1965 changes to immigration laws meant that many American Muslim families were relatively recent additions to the United States and sometimes lacked the political capital necessary to resist increased government surveillance in the wake of 9/11. This hearkened back to earlier moments in U.S. and colonial history in which Muslims had been racialized and ostracized for their religious and political differences. Organizations like the Council on American-Islamic Relations (CAIR) advocate for Muslim American civil rights concerns in much the same way as earlier religious and racial minority groups.⁵⁴

Emerging in 2013, the Black Lives Matter (BLM) movement linked issues of police brutality and police killings of racial minority Americans to larger systems of racial inequality in American history. BLM is a decentralized organization that advocates for a variety of issues. Unlike the civil rights movement in the mid-20th century, BLM is not led by historically black churches.⁵⁵

Yet challenges to the free exercise of racial and religious minorities remain. As with other moments in the history of religion, race, and law, progress is neither guaranteed nor uniform. In *Shelby County v. Holder* (2013), the Supreme Court struck down key portions of the 1965 Voting Rights Act, which had been the centerpiece of the civil rights movement's legislative victories.

Historically black churches remain potent symbols of both religious and legal promises of human equality and as such remain targets of violence from Americans who object to the new legal order. The 2015 terrorist attack on the Emanuel African Methodist Episcopal Church continued this trend of violence directed against minority American religious and racial groups. Known as "Mother Emmanuel," the church is one of the oldest independent black churches in the United States and part of the African Methodist Episcopal denomination, itself the first denomination of Protestant Christianity founded by people of African descent. The attack, which killed nine African Americans during a prayer service, was committed by an American white supremacist who desired to provoke a "race war." Like the bombing of Birmingham's 16th Street Baptist Church in 1963, Mother Emmanuel was widely known as a symbol for civil rights organizing and African American pride and independence in a city, state, and country with a long and troubled racial history.⁵⁶

Racial classifications have been one popular and powerful way for Americans to separate other Americans into groups. Laws recognized those separations as meaningful distinctions and empowered them with coercive force. "Myths are stories in which some people narrate others," Bruce Lincoln writes, "and at times the existence of those others is itself the product of mythic discourse."⁵⁷ Understanding the storytelling capacity of law

requires an understanding that laws about race or religion are never only about either. These classifications were never separate from other concerns such as class and gender or about who gets to be a citizen.

In some sense, the two trends addressed above—security and free exercise—are not new. Since the implementation of European racial classifications in colonial legal systems, the tension between security—restricting the inappropriate exercise of religion or claiming specifically forbidden religious identities—and the free exercise of religious ideas remains constant. As the attack on Mother Emmanuel illustrates, the history of the United States demonstrates that challenges to laws do not always take place in courts or legislatures. From the plight of Native Americans and other indigenous peoples of the western hemisphere; to the religion of enslaved Africans kidnapped and forced to labor; to the status of Mormons, Catholics, and Jews, legal systems have reflected competing and contradictory ideas regarding religion in public life.

Review of the Literature

In *The Fire Next Time* (1963), the African American author, poet, and social critic James Baldwin reflects that he has

met only a very few people—and most of these were not Americans—who had any real desire to be free. Freedom is hard to bear. It can be objected that I am speaking of political freedom in spiritual terms, but the political institutions of any nation are always menaced and are ultimately controlled by the spiritual state of that nation.⁵⁸

Understanding the relationship between a nation’s “spiritual state” and its “political institutions” is precisely what is called for in studying the relationship between race, religion, and law in American history. It is also incredibly difficult. Historians of the United States, as well as those who study religion in America, have not always been attentive to issues of race, class, and gender. Until recently, comprehensive histories of this relationship were few and far between, and even today this area of study is best informed by the work of multiple disciplines and subfields. Understanding how religious minority groups were organized by class, race, gender, and theological difference is a helpful way to contextualize these group’s relationship to U.S. law. Some work crosses denominational and racial divides to think broadly about these differences, such as R. Laurence Moore’s *Religious Outsiders and the Making of Americans* (1987) and Aziz Rana’s *The Two Faces of American Freedom* (2010).

Some recent work attempts to tell the story of race, religion, and law as part of a unified whole rather than as distinct categories in American history. Sylvester Johnson’s *African American Religions, 1500–2000: Colonialism, Democracy, and Freedom* (2015) is a comprehensive and sophisticated account of how politics, law, and religion shaped the

Race, the Law, and Religion in America

African American experience. Working from the perspective of law rather than religious studies, Gloria J. Browne-Marshall's excellent *Race, Law, and American Society* (2007) tracks how changes in the interrelated economic, social, political, and religious life of American minority groups were shaped by the American legal system. Other work displays this categorical sophistication while focusing on specific groups, such as W. Paul Reeve's *Religion of a Different Color: Race and the Mormon Struggle for Whiteness* (2015), Peter R. D'Agostino's *Rome in American: Transnational Catholic Ideology from the Risorgimento to Fascism* (2004), and Gregory E. Smoak's *Ghost Dances and Identity: Prophetic Religion and Ethnogenesis in the Nineteenth Century* (2006).

The study of African American religions remains a crucial part of this story. Richard Newton's "The African American Bible: Bound in a Christian Nation" (2017) is one example of recent work that powerfully illustrates the centrality African American religious history. In Newton's telling, "America is a strange new world in which some are *bound in* (i.e., the enchained, the castigated, the conquered) just as it can be the promised land where others *are bound for* (i.e., the invigorated, the cheered, the conquerors)."⁵⁹ In other words, the tension between these groups is not a side story—it is the story. Researchers should also consider Albert J. Raboteau's *Slave Religion: The "Invisible Institution" in the Antebellum South* (1978), which shaped the study of African American religion in powerful and enduring ways.

Recent work examining "America in the world" offers important insight on American ideas about religion, race, and law that are exported and applied internationally. Anna Su's *Exporting Freedom: Religious Liberty and American Power* (2016) and Elizabeth Shakman Hurd's *Beyond Religious Freedom: The New Global Politics of Religion* (2015) help flesh out this international dynamic. Similarly, Sylvester Johnson and Steven Weitzman's edited volume *The FBI and Religion: Faith and National Security Before and After 9/11* (2017) demonstrates the role of the U.S. national security state in policing and surveilling domestic minority religious groups.

Studies of the "religious origins" of the United States, as well as the relationship between religion and the First Amendment and the Supreme Court, are also valuable. Useful and representative works include those that survey a variety of topics or large period of time, such as Sarah Barringer Gordon's *The Spirit of the Law: Religious Voices and the Constitution in Modern America* (2010) and Steven K. Green's *The Second Disestablishment: Church and State in Nineteenth-Century America* (2010). Other more narrowly focused studies include Winnifred Sullivan's *The Impossibility of Religious Freedom* (2007), which looks at laws governing a cemetery in Florida to offer larger insight into American religion and law.

The best work, like the contributions above, will continue to embrace the tensions and contradictions in the history of American race, religion, and law.

Links to Digital Materials

The National Archives and Records Administration maintains the **“Our Documents” Project**, which houses digital reproductions and full-text transcripts of many important American legal documents.

The American Presidency Project (hosted by the University of California Santa Barbara) houses thousands of records associated with the presidency, including speeches, memos, and other documents.

Cornell University Law School’s **Legal Information Institute** maintains a database on U.S. law and Supreme Court decisions.

The Oyez Project maintains a database of Supreme Court cases accessible to non-specialists and also tracks contemporary Supreme Court cases.

Records of the Federal Bureau of Investigation (FBI): the FBI maintains a **searchable database**, including collections on:

- **Martin Luther King Jr.**
- **Southern Christian Leadership Conference (SCLC)**
- **Nation of Islam**
- **Malcolm X**

Further Reading

Allison, Robert. *The Crescent Obscured: The United States and the Muslim World, 1776–1815*. Chicago: University of Chicago Press, 2000.

Baker, Kelly J. *Gospel According to the Klan: The KKK’s Appeal to Protestant America, 1915–1930*. Lawrence: University Press of Kansas, 2011.

Blum, Edward J. *Reforging the White Republic: Race, Religion, and American Nationalism, 1865–1898*. Baton Rouge, LA: LSU Press, 2007.

Blum, Edward J., and Paul Harvey. *The Color of Christ: The Son of God and the Saga of Race in America*. Chapel Hill: University of North Carolina Press, 2012.

Browne-Marshall, Gloria J. *Race, Law, and American Society: 1607–Present*. New York: Routledge, 2013.

Chappell, David L. *A Stone of Hope: Prophetic Religion and the Death of Jim Crow*. Chapel Hill: University of North Carolina Press, 2005.

Race, the Law, and Religion in America

Cleve, George William Van. *A Slaveholders' Union: Slavery, Politics, and the Constitution in the Early American Republic*. Chicago: University of Chicago Press, 2011.

Curtis, Edward E., IV. *Black Muslim Religion in the Nation of Islam, 1960–1975*. Chapel Hill: University of North Carolina Press, 2006.

D'Agostino, Peter R. *Rome in America: Transnational Catholic Ideology from the Risorgimento to Fascism*. Chapel Hill: University of North Carolina Press, 2004.

Dinnerstein, Leonard. *Antisemitism in America*. New York: Oxford University Press, 1995.

Foner, Eric. *A Short History of Reconstruction, Updated Edition*. New York: Harper Perennial Modern Classics, 2015.

Glaude, Eddie S. *Exodus!: Religion, Race, and Nation in Early Nineteenth-Century Black America*. Chicago: University of Chicago Press, 2000.

Gordon, Sarah Barringer. **"The African Supplement: Religion, Race, and Corporate Law in Early National America."** *The William and Mary Quarterly* 72.3 (2015): 385–422.

Harvey, Paul. *Bounds of Their Habitation: Race and Religion in American History*. Lanham, MD: Rowman & Littlefield, 2016.

Johnson, Sylvester. *The Myth of Ham in Nineteenth-Century American Christianity: Race, Heathens, and the People of God*. New York: Palgrave Macmillan, 2004.

Johnson, Sylvester. *African American Religions, 1500–2000: Colonialism, Democracy, and Freedom*. New York: Cambridge University Press, 2015.

Johnson, Sylvester A., and Steven Weitzman, eds. *The FBI and Religion: Faith and National Security Before and After 9/11*. Oakland: University of California Press, 2017.

Lears, Jackson. *Rebirth of a Nation: The Making of Modern America, 1877–1920*. New York: Harper Perennial, 2010.

Martínez, María Elena. *Genealogical Fictions: Limpieza de Sangre, Religion, and Gender in Colonial Mexico*. Stanford, CA: Stanford University Press, 2008.

Michaelson, Robert S. "The Significance of the American Indian Religious Freedom Act of 1978." *Journal of the American Academy of Religion* 52.1 (1984): 93–115.

Moore, R. Laurence. *Religious Outsiders and the Making of Americans*. New York: Oxford University Press, 1987.

Newton, Richard. **"The African American Bible: Bound in a Christian Nation."** *Journal of Biblical Literature* 136.1 (2017): 221

Race, the Law, and Religion in America

Peters, Shawn Francis. *Judging Jehovah's Witnesses: Religious Persecution and the Dawn of the Rights Revolution*. Lawrence: University Press of Kansas, 2002.

Raboteau, Albert J. *Slave Religion: The "Invisible Institution" in the Antebellum South*. New York: Oxford University Press, 1978.

Reeve, W. Paul. *Religion of a Different Color: Race and the Mormon Struggle for Whiteness*. New York: Oxford University Press, 2015.

Richter, Daniel K. *Facing East from Indian Country: A Native History of Early America*. Cambridge, MA: Harvard University Press, 2003.

Smoak, Gregory Ellis. *Ghost Dances and Identity: Prophetic Religion and American Indian Ethnogenesis in the Nineteenth Century*. Berkeley: University of California Press, 2008.

Su, Anna. *Exporting Freedom: Religious Liberty and American Power*. Cambridge, MA: Harvard University Press, 2016.

Sullivan, Winnifred. *The Impossibility of Religious Freedom*. Princeton, NJ: Princeton University Press, 2007.

Turner, Richard Brent. *Islam in the African-American Experience*. Bloomington: Indiana University Press, 2003.

Weisenfeld, Judith. *New World A-Coming: Black Religion and Racial Identity During the Great Migration*. New York: New York University Press, 2017.

Notes:

(1.) Jonathan Z. Smith, "Religion, Religions, Religious," in *Critical Terms for Religious Studies*, ed. Mark C. Taylor (Chicago: University of Chicago Press, 1998), 275.

(2.) Bruce Lincoln, *Theorizing Myth: Narrative, Ideology, and Scholarship* (Chicago: University of Chicago Press, 2000), 211.

(3.) Daniel K. Richter, *Facing East from Indian Country: A Native History of Early America* (Cambridge, MA: Harvard University Press, 2003), 175.

(4.) Sean P. Harvey, "Ideas of Race in Early America", *Oxford Research Encyclopedia of American History*, April 5, 2016; Francis Jennings, *The Invasion of America: Indians, Colonialism, and the Cant of Conquest* (Chapel Hill: University of North Carolina Press, 1975), 170; and Jill Lepore, *The Name of War: King Philip's War and the Origins of American Identity* (New York: Vintage, 1999).

(5.) "The Code Noir (The Black Code)," *Liberty, Equality, Fraternity: Exploring the French Revolution*, ed. Jack R. Censer and Lynn Hunt (American Social History Productions, 2001).

- (6.) Sue Peabody and Keila Grinberg, *Slavery, Freedom, and the Law in the Atlantic World: A Brief History with Documents* (Boston: Bedford/St. Martin's, 2007), 35.
- (7.) María Elena Martínez, *Genealogical Fictions: Limpieza de Sangre, Religion, and Gender in Colonial Mexico* (Stanford, CA: Stanford University Press, 2008), 1–17.
- (8.) Martinez, *Genealogical Fictions*, 5.
- (9.) “Negro Womens Children to Serve according to the Condition of the Mother (1662)” *Encyclopedia Virginia*; “An Act Declaring That Baptisme of Slaves Doth Not Exempt Them from Bondage (1667),” *Encyclopedia Virginia*.
- (10.) “An Act Concerning Servants and Slaves (1705),” *Encyclopedia Virginia*.
- (11.) Patrick Riordan, “Finding Freedom in Florida: Native Peoples, African Americans, and Colonists, 1670–1816,” *The Florida Historical Quarterly* 75.1 (1996): 24–43, 31.
- (12.) Riordan, “Finding Freedom,” 26–32; Sylvester Johnson, *African American Religions, 1500–2000: Colonialism, Democracy, and Freedom* (New York: Cambridge University Press, 2015), 135–138.
- (13.) George William Van Cleve, *A Slaveholders' Union: Slavery, Politics, and the Constitution in the Early American Republic* (Chicago: University of Chicago Press, 2011); and Robert Allison, *The Crescent Obscured: The United States and the Muslim World, 1776–1815* (Chicago: University of Chicago Press, 2000), 57.
- (14.) “Cherokee Nation v. Georgia”, *Cornell University Law School Legal Information Institute*.
- (15.) Albert J. Raboteau, *Slave Religion: The “Invisible Institution” in the Antebellum South* (New York: Oxford University Press, 1978), 161, 212; Richard Newton, “The African American Bible: Bound in a Christian Nation”, *Journal of Biblical Literature* 136.1 (2017): 221; and Sarah Barringer Gordon, “The African Supplement: Religion, Race, and Corporate Law in Early National America,” *The William and Mary Quarterly* 72.3 (2015): 385–422.
- (16.) Sylvester Johnson, *The Myth of Ham in Nineteenth-Century American Christianity: Race, Heathens, and the People of God* (New York: Palgrave Macmillan, 2004), 23; Raboteau, *Slave Religion*, 311; and Eddie S. Glaude, *Exodus!: Religion, Race, and Nation in Early Nineteenth-Century Black America* (Chicago: University of Chicago Press, 2000); though looking at a later time period, see also Judith Weisenfeld, *New World A-Coming: Black Religion and Racial Identity During the Great Migration* (New York: New York University Press, 2017).
- (17.) Frederick Douglass, *Narrative of the Life of Frederick Douglass: An American Slave, Written by Himself*, 2d ed., ed. David W. Blight (Boston: Bedford/St. Martin's, 2002), 120.

- (18.) Edward J. Blum and Paul Harvey, *The Color of Christ: The Son of God and the Saga of Race in America* (Chapel Hill: University of North Carolina Press, 2012); and Paul Harvey, *Bounds of Their Habitation: Race and Religion in American History* (Lanham, MD: Rowman & Littlefield, 2016).
- (19.) "Andrew Jackson: Second Annual Message," *The American Presidency Project*, Online by Gerhard Peters and John T. Woolley, December 6, 1830.
- (20.) Blum and Harvey, *The Color of Christ*, 87–93; "Indian Removal Act (1830)", *Library of Congress*.
- (21.) Kristy Nabhan-Warren, "Hispanics and Religion in America", *Oxford Research Encyclopedia of Religion*, 9 August 2017; and John C. Pinheiro, *Missionaries of Republicanism: A Religious History of the Mexican-American War* (New York: Oxford University Press, 2014).
- (22.) "Scott v. Sandford," *Cornell University Law School Legal Information Institute*.
- (23.) Gloria J. Browne-Marshall, *Race, Law, and American Society: 1607–Present* (New York: Routledge, 2013), 7–8; "Scott v. Sandford."
- (24.) Edward J. Blum, *Reforging the White Republic: Race, Religion, and American Nationalism, 1865–1898* (Baton Rouge, LA: LSU Press, 2007).
- (25.) Harvey, *Bounds of Their Habitation*, 102–103; Kelly J. Baker, *Gospel According to the Klan: The KKK's Appeal to Protestant America, 1915–1930* (Lawrence: University Press of Kansas, 2011); and Manfred Berg, *Popular Justice: A History of Lynching in America* (Lanham, MD: Rowman & Littlefield, 2015).
- (26.) Baker, *Gospel According to the Klan*; Eric Foner, *A Short History of Reconstruction, Updated Edition* (New York: Harper Perennial Modern Classics, 2015), 189–197; Berg, *Popular Justice*, 81–86; and "U.S. Senate: Enforcement Act of April 1871."
- (27.) "Plessy v. Ferguson," *Cornell University Law School Legal Information Institute*; and Browne-Marshall, *Race, Law, and American Society*, 11–12.
- (28.) William M. Wiecek, *The Lost World of Classical Legal Thought: Law and Ideology in America, 1886–1937* (New York: Oxford University Press, 2001).
- (29.) Leonard Dinnerstein, *Antisemitism in America* (New York: Oxford University Press, 1995), 58–70; R. Laurence Moore, *Religious Outsiders and the Making of American* (New York: Oxford University Press, 1987); Peter R. D'Agostino, *Rome in America: Transnational Catholic Ideology from the Risorgimento to Fascism* (Chapel Hill: University of North Carolina Press, 2004); "Transcript of Chinese Exclusion Act (1882)", *Our Documents: National Archives and Records Administration*; and "1882 Immigration Act", The University of Washington-Bothell Library.

(30.) Thomas Nast, "Religious Liberty Is Guaranteed: But Can We Allow Foreign Reptiles to Crawl All Over Us?" still image, *Library of Congress Prints and Photographs Online Catalog* (1860); Thomas Nast, "The American River Ganges", *Library of Congress Prints and Photographs Online Catalog*, 1871; Edje Jeter, "Mormon Turtles 2: Thomas Nast and the Catholic Crocodile", *Juvenile Instructor*, February 18, 2015; Edje Jeter, "Devil Fish and Octopuses", *Juvenile Instructor*, June 30, 2013; Jeffrey Wheatley, "On Cephalopods, Religious Contestation, and Railroad Monopolies," *American Society of Church History, History of Christianity*, October 1, 2014; W. Paul Reeve, *Religion of a Different Color: Race and the Mormon Struggle for Whiteness* (New York: Oxford University Press, 2015); Moore, *Religious Outsiders and the Making of Americans*; Tracy Fessenden, "The Nineteenth-Century Bible Wars and the Separation of Church and State," *Church History* 74.4 (December 1, 2005): 784–811, 791; D'Agostino, *Rome in America*; John T. McGreevy, *Catholicism and American Freedom: A History* (New York: W.W. Norton, 2003); and "Burning of the Charlestown Convent," *Boston Evening Transcript*, August 12, 1834, The Gilder Lehrman Center for the Study of Slavery, Resistance, and Abolition.

(31.) "Reynolds v. United States", *Cornell University Law School Legal Information Institute*.

(32.) Jackson Lears, *Rebirth of a Nation: The Making of Modern America, 1877–1920* (New York: Harper Perennial, 2010), 31; and Gregory Ellis Smoak, *Ghost Dances and Identity: Prophetic Religion and American Indian Ethnogenesis in the Nineteenth Century* (Berkeley: University of California Press, 2008), 173.

(33.) Anna Su, *Exporting Freedom: Religious Liberty and American Power* (Cambridge, MA: Harvard University Press, 2016), 14–27; Reeve, *Religion of a Different Color*, 14–19; " 'The White Man's Burden': Kipling's Hymn to U.S. Imperialism", *History Matters*; "Manifest Destiny, Continued: McKinley Defends U.S. Expansionism", *History Matters*; and "Republican Party Platforms: Republican Party Platform of 1856", *The American Presidency Project*.

(34.) Kevin M. Schultz, *Tri-Faith America: How Catholics and Jews Held Postwar America to Its Protestant Promise* (New York: Oxford University Press, 2011); and Will Herberg, *Protestant-Catholic-Jew: An Essay in American Religious Sociology* (Chicago: University of Chicago Press, 1955).

(35.) Shawn Francis Peters, *Judging Jehovah's Witnesses: Religious Persecution and the Dawn of the Rights Revolution* (Lawrence: University of Kansas Press, 2002).

(36.) "The Most Segregated Hour in America—Martin Luther King Jr.," *Meet the Press*, April 17, 1960.

(37.) Blum and Harvey, *The Color of Christ*, 216–217; and David L. Chappell, *A Stone of Hope: Prophetic Religion and the Death of Jim Crow* (Chapel Hill: University of North Carolina Press, 2005).

(38.) Martin Luther King Jr., "I've Been to the Mountaintop," *Stanford University King Encyclopedia*, April 3, 1968.

(39.) Fannie Lou Hamer, "Testimony Before the Credentials Committee, Democratic National Convention," *American Public Media*.

(40.) "Transcript of Civil Rights Act (1964)," *Our Documents: National Archives and Records Administration*.

(41.) Gary May, *Bending Toward Justice: The Voting Rights Act and the Transformation of American Democracy* (New York: Basic Books, 2013), 47–50.

(42.) May, *Bending Toward Justice*; Harvey, *Bounds of Their Habitation*.

(43.) Liyakat Nathani Takim, *Shi'ism in America* (New York: New York University Press, 2009), 21.

(44.) "Trail of Broken Treaties 20-Point Position Paper—An Indian Manifesto," *American Indian Movement*.

(45.) "Lyng v. Northwest Indian Cemetery Protective Association," *Cornell University Law School Legal Information Institute*; and Robert S. Michaelsen, "The Significance of the American Indian Religious Freedom Act of 1978," *Journal of the American Academy of Religion* 52.1 (1984): 93–115.

(46.) "Native American Graves Protection and Repatriation Act," *National Park Service*, November 16, 1990.

(47.) "Title 21 CFR - PART 1307 - Section 1307.31 Native American Church," *U.S. Department of Justice Drug Enforcement Administration*; Winnifred Sullivan, "The World That Smith Made", *The Immanent Frame*, March 7, 2012; and "Employment Division v. Smith", *Cornell University Law School Legal Information Institute*.

(48.) "Bob Jones Univ. v. United States 461 U.S. 574 (1983)," *Justia Law*.

(49.) Richard Brent Turner, *Islam in the African-American Experience* (Bloomington: Indiana University Press, 2003), 71–79; Edward E. Curtis IV, *Black Muslim Religion in the Nation of Islam, 1960–1975* (Chapel Hill: University of North Carolina Press, 2006); and Weisenfeld, *New World A-Coming*.

(50.) Quoted in Edward E. Curtis IV, *Black Muslim Religion in the Nation of Islam, 1960–1975*, 127–129; Karl Evanzz, "The FBI and the Nation of Islam," in *The FBI and Religion: Faith and National Security Before and After 9/11*, eds. Sylvester A. Johnson and Steven Weitzman (Oakland: University of California Press, 2017), 148–167.

(51.) Sylvester A. Johnson, "Dreams and Shadows: Martin Luther King Jr., the FBI, and the Southern Christian Leadership Conference," in *The FBI and Religion: Faith and National Security Before and After 9/11*, eds. Sylvester A. Johnson and Steven Weitzman

(Oakland: University of California Press, 2017), 168–190; and Dianne Kirby, “J. Edgar Hoover, the FBI, and the Religious Cold War,” in *The FBI and Religion: Faith and National Security Before and After 9/11*, eds. Sylvester A. Johnson and Steven Weitzman (Oakland: University of California Press, 2017), 67–84.

(52.) Winnifred Sullivan, “The World That Smith Made.”

(53.) “Church of Lukumi Babalu Aye, Inc. v. City of Hialeah,” *Cornell University Law School Legal Information Institute*; “Burwell v. Hobby Lobby Stores, Inc.,” *Cornell University Law School Legal Information Institute*; and “Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC,” *Cornell University Law School Legal Information Institute*.

(54.) Michael Barkun, “The FBI and American Muslims After September 11,” in *The FBI and Religion: Faith and National Security Before and After 9/11*, eds. Sylvester A. Johnson and Steven Weitzman (Oakland: University of California Press, 2017), 244–246, 249.

(55.) Emma Green, “Black Activism, Unchurched,” *The Atlantic*, March 22, 2016.

(56.) Polly Mosendz, “Dylann Roof Confesses: Says He Wanted to Start ‘Race War’”, *Newsweek*, June 19, 2015.

(57.) Lincoln, *Theorizing Myth*, 211.

(58.) James Baldwin, *The Fire Next Time* (New York: Vintage, 1992), 88.

(59.) Newton, “The African American Bible,” 222.

Michael Graziano

University of Northern Iowa

