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**“At War With Our National Tradition”:
The Politics of Emotion and Conservative Backlash to the Supreme Court,
1954-1983**

*Laurence Florio-Roberts*¹

On a dreary May day in Washington D.C. in 1972, 10,000 people took to the streets despite the drizzle. They were protesting what they saw as an out-of-control Supreme Court that had undermined and betrayed America. They denounced the Court for “banning” God and His word from schools. By reversing the Court’s decision to take God out of schools, the 10,000 protestors believed America could be saved from “the disaster of dope” engulfing the country.² The feeling that the Supreme Court had betrayed and undermined its duty to uphold white supremacy, the alleged religious nature of America, and the Constitution is what compelled most conservatives to anathematize the institution.

This article examines the conservative reaction to five cases: *Brown v. Board of Education* (1954), *Engel vs. Vitale* (1962), *Abington vs. Schempp* (1963), *Roe v. Wade* (1973), and *Bob Jones University vs. United States* (1983). By examining these cases together, the role of emotion in shaping political behavior is evident. We see common rhetorical tropes about the Court’s betrayal of America repeated in all of these cases and how the rhetoric of betrayal and subversion circulated among different factions of conservatism. A caveat for my thesis is that most of my sources came from non-scholars who may have relied on emotional rhetoric more than their scholarly counterparts. However, even if this is true, the words of angry conservatives in journals from the *Atlantic* to the *Christian Beacon* demonstrate an important and understudied thread of anti-Court rhetoric.

The conservative movement emerged in the 1920s in America to combat what it viewed as concerning trends. White supremacists were dismayed at the incipient civil rights movement. Traditionalists were concerned by the spread of secularism, libertarians were frightened by the growth of the state’s power and valorized capitalism,³ and these disparate strands did not happily coexist.

¹ Laurence Florio-Roberts is a senior history major at Central Connecticut State University. Title quote is from *Abington School District v. Schempp*, p. 311.

² “Freedom Rally Adopts 10 Resolutions,” *Christian Beacon*, May 25, 1972, University of Connecticut Special Archives and Collections.

³ For more on resistance to the New Deal by libertarians, see Kimberly Phillips-Fein, *Invisible Hands: The Making of the Conservative Movement from the New Deal to Reagan*, (New York: W.W. Norton, 2009).

Libertarians were upset with traditionalists' use of state power to cultivate morality, while traditionalists saw libertarians as libertines. William Buckley, a Catholic traditionalist, tried to fuse these groups together with a message of anti-communism and a common magazine, *National Review*, founded in 1955.⁴ However, divisions persisted on the right. *National Review* denounced the far-right John Birch Society and radical libertarian Ayn Rand.⁵ As the civil rights movement gained power, blatant white supremacy was seen as unfashionable, even among right-wingers.⁶ Religion divided traditionalists along denominational lines (Catholic vs. Protestant). In the 1950s, conservative Protestantism fractured into two groups: more irenic evangelicals and stridently separatist fundamentalists.⁷ However, an underappreciated aspect that united the right-wing, even as it divided it, was a feeling of betrayal. Books with titles like *None Dare Call It Treason* were popular.⁸ White power advocates constructed narratives about the government's betrayal of soldiers in Vietnam.⁹ Traditionalists believed America had betrayed God.¹⁰ Some right-wingers even accused other factions of betraying "true" conservatism.¹¹ This trope of betrayal would serve to unite the disparate factions of the Right.

Another important aspect of this story is the composition of the Supreme Court from 1954 to 1983. This period bridges both the Warren and Burger Courts. The Warren Court did support liberal policies overall, but there were significant internal factions on the Court. Some members favored

⁴ This summary of the right-wing is derived from Alan Lichtman, *White Protestant Nation: The Rise of the American Conservative Movement*, (New York: Grove Atlantic, 2008); George H. Nash, *The Conservative Intellectual Movement in America: Since 1945*, (Wilmington, DE: Intercollegiate Studies Institute, 1996).

⁵ For more on these "purges" see Nicole Hemmer, *Messengers of the Right: Conservative Media and the Transformation of American Politics*, (Philadelphia: University of Pennsylvania Press, 2016), pp. 87-97.

⁶ Aaron Haberman, "Into the Wilderness: Ronald Reagan, Bob Jones University, and the Political Education of the Christian Right," *The Historian* 67:2 (2005), pp. 244-246 for Reagan's angst at being labeled racist after supporting a pro-segregation academy bill.

⁷ Daniel K. Williams, *God's Own Party: The Making of the Christian Right*, (New York: Oxford University Press, 2010), pp. 2-5.

⁸ Hemmer, *Messengers of the Right*, pp. 167-170.

⁹ Kathleen Belew, *Bring the War Home: The White Power Movement and Paramilitary America*, (Cambridge, MA: Harvard University Press, 2018), pp. 1-3.

¹⁰ John R. Rice, "America and God," *The Sword of The Lord*, 2 July 1965; "The Supreme Court Decision," *Christian Beacon*, 27 June 1963.

¹¹ An example of this is Murray Rothbard, *The Betrayal of the American Right*, (Auburn, AL: Ludwig von Mises Institute, 2007). Rothbard was a radical libertarian associated with racist causes who started this work in 1971 and completed it in 1991.

“judicial restraint,” while others were more liberal.¹² However, conservatives saw the Court as a monolith undermining America. In the early 1970s, President Richard Nixon appointed three new justices to the Court, including Chief Justice Warren Burger. These justices caused a rightward drift on the Court, although how much it drifted right is the subject of scholarly debate.¹³ Despite the shift to the right, conservatives still painted the Burger Court as a subversive monolith.

Few scholarly works provide a broad overview of the right-wing reaction to the Supreme Court in the period from 1945-1983.¹⁴ Despite the paucity of broad overviews on conservative reaction to the Supreme Court, much has been written on the individual cases studied here and the different strands of conservatism.¹⁵ These strands mainly consist of segregationist conservatives and

¹² Laura Kalman, *The Long Reach of the Sixties: LBJ, Nixon, and the Making of the Contemporary Supreme Court*, (New York: Oxford University Press, 2017), pp. 33-40.

¹³ Kalman, *The Long Reach of the Sixties*, pp. 305-306, 424.

¹⁴ Christopher Alan Hickman, “The Most Dangerous Branch: The Supreme Court and Its Critics in the Warren Era” (PhD diss., George Washington University, 2010), ProQuest Dissertations and Theses Global explores the various arguments of critics of the Warren Court. Kalman explores how criticism of the Warren Court affected the confirmation process of Supreme Court justices and Steven Michael Teles explores how neoconservative and free-market activists organized against the Supreme Court from the 1970s to the early 2000s. Steven M. Teles, *The Rise of the Conservative Legal Movement: The Battle for Control of the Law* (Princeton, NJ: Princeton University Press, 2008), p. 2.

¹⁵ For religious conservatism and its reaction to the decisions see Adam Laats, “Our Schools, Our Country: American Evangelicals, Public Schools, and the Supreme Court Decisions of 1962 and 1963,” *Journal of Religious History* 36:3 (September 2012): pp. 320, 322; Daniel K. Williams, *God’s Own Party: The Making of the Christian Right* (New York: Oxford University Press, 2010), pp. 2, 64; William Martin, *With God on Our Side: The Rise of the Religious Right in America* (New York, Broadway Books: 1996), p. 1; Kevin M. Kruse, *One Nation Under God: How Corporate America Invented Christian America* (New York: Basic Books, 2015), p. xiv. For *Roe*, see Daniel K. Williams, *Defenders of the Unborn: The Pro-Life Movement Before Roe v. Wade* (New York: Oxford University Press, 2010), p. 260; Mary Ziegler, *After Roe: The Lost History of the Abortion Debate* (Cambridge, MA: Harvard University Press, 2015), pp. 56-57. For Bob Jones University, see Aaron Haberman, “Into the Wilderness: Ronald Reagan, Bob Jones University, and the Political Education of the Christian Right,” *The Historian* 67:2 (Summer 2005) and Matthew Lassiter, “Biblical Fundamentalism and Racial Beliefs at Bob Jones University” (master’s thesis, University of Virginia, 1994), which are the most comprehensive overviews. Also see Joseph Crespino, *In Search of Another Country: Mississippi and the Conservative Counterrevolution* (Princeton, NJ: Princeton University Press, 2007), p. 4; Joseph Crespino, “Civil Rights and the Religious Right,” in *Rightward Bound: Making America Conservative in the 1970s*, ed. Bruce Schulman and Julian Zelizer (Cambridge, MA: Harvard University Press, 2008), pp. 91, 104-105.

members of the Religious Right.¹⁶ Overall, this article hopes to expand on this work in three directions. First, I hope to explore the role that emotion played in forming postwar conservatism.¹⁷ Second, my writing expands beyond examining criticism of the Court in the Warren era to explore how it persisted into the Burger Court Era. Third, I try to show how appeals to the Constitution by farther right factions of conservatism won them sympathy with more moderate factions and also how extremist conservatives refitted the arguments of mainstream conservatives for their ends.¹⁸ Let us examine these five cases and how “narratives of betrayal” were used by conservatives to oppose them.¹⁹

Segregationist opponents of *Brown* fused constitutional and racist concerns to accuse the Court of betraying the American tradition of segregation. On 17 May 1954, the Supreme Court announced its decision in *Brown v. Board of Education*, striking down segregation in schools and ordering their integration based on the Fourteenth Amendment.²⁰ The case had originated from Topeka, Kansas, but was combined with other cases challenging discrimination in primary and secondary schools brought by the NAACP to overturn the “separate but equal” provision in *Plessy vs. Ferguson* (1896), which had enshrined segregation as the law of the land.²¹ However, white supremacists saw the decision as auguring miscegenation and the “suicide” of the White race.²² Articles in major magazines warned that the Court’s decision undermined white supremacy which supposedly had made America a superpower and that the result of the Court’s betrayal would be the destruction

¹⁶ For segregationist responses to the Court and segregationist politics more generally see George Lewis, *The White South and the Red Menace: Segregationists, Anticommunism, and Massive Resistance, 1945-1965* (Gainesville, FL: University Press of Florida, 2004), Chapter 2 and pp. 63-80; Jeff Woods, *Black Struggle, Red Scare: Segregation and Anticommunism in the South, 1948-1968* (Baton Rouge, LA: Louisiana State University Press, 2004), pp. 54-57; Elizabeth Gillespie McRae, *Mothers of Massive Resistance: White Women and the Politics of White Supremacy* (New York: Oxford University Press, 2018), pp. 168-170.

¹⁷ Gary Gerstle briefly explores this in his discussion of the roots of neoliberalism in *The Rise and Fall of the Neoliberal Order: America and the World in the Free Market Era*, (New York: Oxford University Press, 2022), pp. 108-115, 117-121.

¹⁸ By “extremist” conservatives, I mean, conservatives who adopted blatantly racist and/or antisemitic views. By “mainstream” conservatives, I mean, conservatives who did not openly adopt racist and antisemitic views and/or who coalesced around the *National Review*.

¹⁹ Belew, *Bring the War Home*, p. 1.

²⁰ *Brown vs. Board of Education* 347, U.S. 483 (1954), pp. 494-495, footnote 11.

²¹ James T. Patterson, *Grand Expectations: The United States, 1945-1974*, (New York: Oxford University Press, 1996), pp. 388-389.

²² For an example of “race suicide” rhetoric see Herbert Ravenel Sass, “Mixed Schools and Mixed Blood,” *The Atlantic*, November 1956, p. 459.

of the biological “integrity” of both Blacks and whites.²³ Racism was the crucial component of segregationists’ anti-Court arguments.

Racist language coincided with denunciations of the Court’s alleged usurpation of powers delegated by the Constitution to Congress and the states. An example of this is the Southern Manifesto, the “bible” of “massive resistance” to *Brown*, which alternated between denouncing the Court for undermining white supremacy and declaring *Brown* was “a clear abuse of judicial powers.”²⁴ Strom Thurmond echoed this racialized reading of *Brown* and the Constitution in his speech expounding the Manifesto.²⁵ An appeal accusing the Constitution of defending attacks on *Brown* is that it could appeal to conservatives who professed not to be racist but could agree with the belief that the Court had trampled on the Constitution in *Brown*. For example, Barry Goldwater (a conservative Arizona Senator who would run for President in 1964 and lose to Lyndon B. Johnson), in his 1960 tract defining conservatism, said that it was “just” to desegregate schools but that the Court had gone about it unjustly in *Brown* by interfering in powers reserved to the states in the Constitution.²⁶ Opponents of *Brown* fused racist fears with denunciations of the Court’s betrayal to advance their agenda of “massive resistance” while appealing to libertarians with constitutional arguments.

Not only did segregationists fuse racism and defenses of the Constitution in their attacks on desegregation, but they also fused racism and conservative Protestantism to argue against the civil rights movement. Two examples of this were W.A. Criswell’s (a fundamentalist Southern Baptist pastor) and Bob Jones’ (the founder of the fiercely fundamentalist Bob Jones University [BJU]) denunciations of the civil rights movement. Both these pastors professed not to hate African Americans but said that God ordained segregation. They even praised African Americans for their Christian faith. However, both concurred that it was best for African Americans to practice their faith in segregated churches. Criswell denounced the Court for subverting the God-given freedom of association, which included segregation, while Jones denounced integration as the work of Satan and his minions. Jones used Acts 17:26 as the basis for his sermon. He interpreted the verse as proof that God had ordained segregation. Both pastors also believed that miscegenation was an affront to God

²³ Herbert Ravenel Sass, “Mixed Schools and Mixed Blood,” pp. 45-49; and E. Earle Ellis, “Segregation and the Kingdom of God,” *Christianity Today*, 18 March 1957, p. 7.

²⁴ “The Declaration of Constitutional Principles,” on 12 March 1956, 84th Congress, 1st Session, 1956, *Congressional Record* 102. pt. 4:4460.

²⁵ Thurmond, *The Decision of the Supreme Court*, pt. 4:4461.

²⁶ Barry Goldwater, *Conscience of a Conservative*, (New York: McFadden Capitol Hill, 1960), p. 38 (see pp. 35-38 for Goldwater’s full comments).

Himself.²⁷ These racist beliefs help explain BJU's discriminatory rules, which set them on a collision course with the Internal Revenue Service and show how racism and religion intertwined in attacks on the Court and the civil rights movement.

BJU's rules against interracial dating would be at the center of a clash between fundamentalist Christians and the IRS and Supreme Court. BJU did not attract the attention of the federal government for its racial views until July 1970, when the IRS adopted a new rule based on a District Court case from Mississippi that forbade the government from giving tax exemptions to racially discriminatory private schools.²⁸ The IRS sent a letter to BJU in November informing them of the new rules, but BJU refused to drop their rules against miscegenation and asked the courts for an injunction against the IRS.²⁹ The lower court sided with the school, but the circuit court reversed its decision.³⁰ BJU appealed to the Supreme Court, where they would be partially disappointed by its ruling.

In its 1974 case entitled *Bob Jones University v. Simon*, the Court said that the school could not receive an injunction for something that had not yet happened but allowed the university to file taxes and ask for a refund.³¹ In 1975, the school opened their doors to single African-American students but vowed to keep their anti-miscegenation rules and fight the IRS.³² In January 1976, the IRS officially revoked the university's tax exemption, after which the university filed for a tax refund of \$21. After their refund was denied, the university sued the IRS, and the IRS counterclaimed \$490,000 in back taxes.³³ At the trial for this case, Bob Jones III built on his grandfather's scriptural claims for segregation by invoking the Curse of Ham and the scattering of the nations at Babel.³⁴ The judge for the District Court found his arguments convincing proof that the IRS was violating the First

²⁷ This discussion derives from W.A. Criswell, "An Address By Dr. W. A. Criswell, Pastor, First Baptist Church, Dallas, Texas, To the Joint Assembly" (Wednesday, 22 February 1956), electronically received from Rubenstein Library, Duke University and Bob Jones, "Is Segregation Scriptural? A Radio Address from Bob Jones on Easter of 1960," with an introduction by Justin Taylor, *The Gospel Coalition*, 17 April 1960, published online 26 July 2016.

²⁸ *Bob Jones University v. United States*, 461 U.S. 574 (1983), pp. 574, 578; "Bob Jones: No to IRS?," *Christianity Today*, 1 January 1971, p. 39; Crespino, *Another Country*, p. 259; Haberman, pp. 237-238.

²⁹ *Bob Jones University v. United States*, p. 578.

³⁰ "Most Unusual': Time for a Change"; "Tax Troubles," *Christianity Today*, 7 June 1974, p. 50.

³¹ *Bob Jones University vs. United States*, p. 581; "Tax Troubles," p. 34.

³² *Bob Jones University vs. United States*, p. 580; "Color Change," *Christianity Today*, 29 August 1975, p. 45.

³³ *Bob Jones University vs. United States*, pp. 581-582.

³⁴ "Bob Jones Versus Everybody," *Christianity Today*, 19 February 1982, p. 26.

Amendment. The Court of Appeals disagreed and reversed the lower court's decision.³⁵ The Supreme Court on 24 May 1983 sided with the Court of Appeals against the school, saying that its practice of discrimination barred it from receiving a tax exemption.³⁶ This saga further shows how racism and conservative Protestantism intertwined in some conservatives' crusade against the Court.

Race was not the only factor that motivated backlash to the Court—religion was an even greater catalyst. Conservative Americans had long regarded religion as an integral part of American education.³⁷ During the Cold War years, many states adopted laws mandating prayer and Bible reading in school to differentiate America from the “godless” communists.³⁸ Also, during this time, national leaders, including the Supreme Court, fabricated histories of America as a Christian nation by focusing on selected events in the American past and quotes from famous Americans.³⁹ Thus, on 25 June 1962, it came as a shock to conservative Americans when the Court sided with parents who were put off by this new display of civil religion and ruled a nonsectarian prayer crafted by the New York Board of Regents and recited in classrooms across the state unconstitutional.⁴⁰ Fifty-one weeks later, the Court would strike another blow to America's perceived religious heritage when it barred the reading of the Bible and recitation of the Lord's Prayer in public schools.⁴¹ The uproar over these cases, *Engel v. Vitale* and *Abington School District v. Schempp*, respectively, mostly centered on conservatives' belief that the Court had betrayed America's religious heritage. The arguments against the Court would be echoed by Americans ranging from Justice Potter Stewart, the lone dissenter in both cases, to editorials in religious magazines to the voices of ordinary conservatives. While *Brown* enraged racial conservatives, arguments in *Engel* and *Schempp* upset religious conservatives, a broader constituency in Civil Rights Era America. For example, at least seventy percent of all Americans disapproved of both decisions.⁴² The socio-political context of these decisions can explain the reasons for this broader backlash among religious conservatives.

Many of the arguments accusing the Court of undermining America's faith in God percolated down to religious periodicals and ordinary people from the arguments of Justice Potter Stewart's dissents. Stewart, in both of his dissents, highlighted that throughout American history, religion and

³⁵ *Bob Jones University v. United States*, pp. 582-583.

³⁶ *Bob Jones University v. United States*, pp. 575-576.

³⁷ Laats, “Our Schools, Our Country,” pp. 321-322.

³⁸ Joan DelFattore, *The Fourth R: Conflicts over Religion in America's Public Schools*, (New Haven: Yale University Press, 2004), pp. 67-68.

³⁹ Kruse, *One Nation Under God*, pp. 97-98. The Supreme Court case was *Zorach vs. Clauson* (1952).

⁴⁰ *Engel v. Vitale*, 370 U.S. 421 (1962).

⁴¹ *Abington School District v. Schempp*, 374 U.S. 203 (1963).

⁴² Donald H. Gill, “Will the Bible Get Back Into School?,” *Eternity*, May 1964, p. 9.

government interacted with each other without harm.⁴³ In his dissent in *Engel*, Justice Stewart especially focused on America's religious heritage. He said that the Court had committed a grave error in denying public school students "the opportunity of sharing in the spiritual heritage of our Nation."⁴⁴ He went on to list the different examples of America's religious heritage that had been used in the 1950s to "prove" America was a Christian nation.⁴⁵ He closed his dissent by quoting the Declaration of Independence and implying that the Court had betrayed the "deeply entrenched" "spiritual heritage" of America.⁴⁶ In his dissent in *Schempp*, he implied that the Court's decision was "at war with our national tradition" of revering God in public.⁴⁷ Stewart's dissents laid the foundation for arguments that the Court had betrayed America's spiritual heritage. Other opponents of the Court echoed his arguments. However, not all of them were as restrained in their language as Stewart.

Stewart's colleagues in the legislative branch echoed his arguments about the Court's perceived betrayal of America's religious heritage. Senators and Congressmen after *Engel* and *Schempp* repeated *ad nauseam* their belief that the Court had undermined America's godly history. Eugene Talmadge, a Georgia senator, and his colleague from Virginia, A. Willis Robertson, both took turns denouncing *Engel*. Talmadge argued that the Court had done "incalculable damage" to America's faith in God, which was foundational to American civilization, freedom, and democracy.⁴⁸ Talmadge and Robertson invoked a mythologized view of James Madison to cement their belief that America was a Christian nation and that the Court had undermined its Christian heritage.⁴⁹ The Court's betrayal of religion augured not only the collapse of Christianity in America but of American civilization itself. Strom Thurmond, with characteristic hyperbole, characterized *Schempp* "as another triumph" for anti-Christian forces who were "bent on throwing God completely out of national life."⁵⁰ While Southerners were the most outspoken in their denunciations of the Court, Congressmen from all regions of the country were incensed at what they saw as the Court's destruction of America's sacred religious heritage.⁵¹

⁴³ *Engel v. Vitale*, p. 446; *Abington School District vs. Schempp*, p. 309.

⁴⁴ *Engel v. Vitale*, p. 445.

⁴⁵ *Engel v. Vitale*, pp. 446-450.

⁴⁶ *Engel v. Vitale*, p. 450.

⁴⁷ *Abington School District v. Schempp*, p. 311.

⁴⁸ Senator Talmadge speaking on Distortion of the Constitution by the Supreme Court, 87th Congress, 2nd Session, 1962, *Congressional Record* 108, part 9: 11675.

⁴⁹ Senator Talmadge, 11675.

⁵⁰ "Response to Bible-Prayer Ban," *Christianity Today*, 5 July 1963, p. 47.

⁵¹ For Midwestern responses, see Representative Jensen speaking on Supreme Court Decision on Prayer in Public Schools, *Congressional Record*, 87th Congress, 2nd Session, 1962, volume 108, part 9:

Not only congress members but writers in conservative Catholic, Fundamentalist, and Evangelical magazines accused the Court of betraying America's religious heritage. In fact, the shared rhetoric of betrayal served as an emotional glue binding conservative Catholics and Protestants together, anticipating the Religious Right of the 1970s. *America*, a Jesuit magazine, spoke for many conservatives when it called *Engel* a "stupid" decision "that spits in the face of our history, our heritage, and our tradition as a religious people."⁵² This statement perfectly captured the raw feelings of betrayal and contempt engendered by the Court's decision among conservatives. The *Christian Beacon*, a fundamentalist newspaper, denounced *Schempp* for erasing America's specifically Protestant religious heritage and betraying the Protestant children of the land.⁵³ They also published a cartoon showing the Court violating the separation of powers to trample the Bible.⁵⁴ The periodical made it extremely clear that it regarded the decision as a deep betrayal of Christianity and the Constitution. Another fundamentalist broadsheet, *The Sword of the Lord*, echoed similar arguments against the Court.⁵⁵ They argued that America "would be turned to hell" unless Americans repented for the Court's betrayal of Him.⁵⁶ The evangelical periodical *Moody Monthly* attacked the Court for betraying God and undermining the supposedly Christian "framework" of the nation.⁵⁷ Despite the fierce theological and ideological differences between these three groups of conservative Christians, narratives about the Court's betrayal of God ushering in civilizational collapse connected them together in a shared hatred of the Supreme Court.⁵⁸

While narratives of betrayal united many conservatives, not all conservative Christians agreed that the Court's decision was a betrayal of America. Contributors to *Christianity Today*, the flagship

11720; Representative Roudebush speaking on Supreme Court Decision on Prayer in Public Schools, *Congressional Record*, 87th Congress, 2nd Session, 1962, volume 108, part 9: 11754.

⁵² "Black Monday Decision," *America*, editorial, 7 July 1962, p. 456.

⁵³ "The Supreme Court Decision," *Christian Beacon*.

⁵⁴ "The Supreme Court Decision," *Christian Beacon*.

⁵⁵ Samuel H. Sutherland, "Tragic Effects of the Supreme Court Decision," *The Sword of the Lord*, 15 March 1963.

⁵⁶ Qtd. In Ray Chamberlin, "Prayer and Bible in Public Schools," 17 January 1964. See also Rice, "America and God," *The Sword of the Lord*.

⁵⁷ "The Supreme Court's Crucial Choice," *Moody Monthly*, editorial, September 1962, p. 16; Joe Bayly, "Taking the Bible from the Schools," September 1963, pp. 20-21; "Who is Undermining the Constitution?" *Moody Monthly*, October 1964, p. 2. Bayly and "Who is Undermining..." both used the word "framework."

⁵⁸ For example, just two years before *Engel*, evangelicals and fundamentalists united to denounce Kennedy as a Catholic threat to Protestant American liberties. See Williams, *God's Own Party*, pp. 60-67.

magazine of the evangelical movement, were conflicted. A post-*Schempp* editorial praised the Court for its decision, saying that the government had no business instilling religion in children.⁵⁹ However, to please everyone, the editor also agreed with opponents of the Court that America had a strong religious foundation.⁶⁰ Another article in *Christianity Today* was even more supportive of the Court, dismissing devotionals in school as of no help in the fight against atheism.⁶¹ Other articles echoed arguments against *Engel* and *Schempp*. Some contributors complained that the secular school, instead of the home or the church, was the center of their children's lives.⁶² Joseph Hopkins, an opponent of the Court, painted a dark picture of the Court's decision, saying that the Court's ruling based on an imagined "neutrality" "actually *undermines*" faith in God, not strengthens it, as some supporters argued.⁶³ Letters to the Editor in the Catholic magazine *America* were similarly split. Most supported the Court's decisions as constitutional, with only one letter to the editor denouncing the "secularist zealots" on the Court.⁶⁴ Perhaps lay Catholics supported the Court to prove their Americanness. Evangelical supporters of the Court probably drew on a libertarian strain of Protestant thought that saw government intervention in religion as harming both. Thus, while narratives of betrayal united most conservative Christians, there were always dissident conservatives who did not accept the arguments of their brethren that the Court was subverting America.

Letters to the editor expressed common fears about the Court's secularizing of America, leading to civilizational collapse. In the same issue of *Christianity Today* that reported on *Engel*, there was a letter to the editor written in response to a pre-*Engel* exposé of atheism in schools. The letter writer found it ironic that Americans were fighting atheism in Russia while inculcating atheism in children at home.⁶⁵ This letter shows that fears of atheism in schools and the subversion of America's Christian heritage predated *Engel*. When the Court announced its opinion, it dropped a match on an already unstable situation. Two letters to the editor in the 30 August 1963 issue fulminated against *Schempp*. They complained that the Court's decision augured civilizational collapse and represented a

⁵⁹ "Religion in the Public Schools," *Christianity Today*, editorial, 30 August 1963, p. 31.

⁶⁰ "Religion in the Public Schools," p. 30. I am indebted to Professor Alexandra Maravel for her insight on the author's desire to please everyone.

⁶¹ "Compulsory Devotions Banned; Bible Retains Classroom Value," *Christianity Today*, 5 July 1963, p. 26.

⁶² John Stuart, "Give Me Back My Child!" *Christianity Today*, 30 August 1963, p. 9; Joseph M. Hopkins, "The Fourth 'R,'" *Christianity Today*, 30 August 1963, p. 12.

⁶³ Hopkins, "The Fourth 'R,'" pp.12-13.

⁶⁴ Correspondence, *America*, 28 July 1962, p. 535. "Secularist zealots" comes from James F. King Jr., letter to the editor, *America*, 28 July 1962, p. 535.

⁶⁵ Shem Peachey, letter to the editor, *Christianity Today*, 20 July 1962.

society turned upside down: in their minds, God was kicked out of the schools, and smut was brought in.⁶⁶ Even letters to the editor in secular papers captured the sense of betrayal felt by conservatives. Edwin Johnson, a teacher in DC, wrote a letter to the editor of his local newspaper asking Congress to act after *Engel* to stop the Court before it destroyed “our American heritage” and replaced it with “atheism” in the minds of American children.⁶⁷ This sense of anger was also seen in another letter to the same paper, which accused the Court of betraying America’s religious heritage and making atheism a state religion.⁶⁸ These letters to the editor show that ordinary conservatives agreed with their leaders that the Court had betrayed America’s religious heritage, resulting in the destruction of not only Christianity but of America.

Through an examination of the editorials of Gerald L.K. Smith, editor of the blatantly antisemitic magazine *The Cross and the Flag*, we can see how “extremist” conservatives borrowed narratives from the “mainstream” right and refurbished them for their racist and antisemitic purposes. While other conservatives saw the Court as either part of a Communist plot or amplifying broader societal trends that were undermining God, Smith saw the cases as the work of “the Jews.” However, both mainstream and extremist conservatives operated within a conspiratorial mindset.⁶⁹ In his article released after *Engel*, Smith accused Jewish people of carrying out a “new crucifixion” of Christ by banning prayer from schools.⁷⁰ A month later, he repeated mainstream talking points that the Court had betrayed America’s religious heritage and that “In God We Trust,” America’s motto, was next on the chopping block.⁷¹ Before *Schempp* was issued, he declared in an editorial entitled “Pilate’s Court” that the Court was advancing a Judeo-Bolshevik plot to kill all Christians.⁷² Smith encouraged his readers to follow his example of standing for the “traditions and destiny of Christian America,” even if

⁶⁶ Kathryn T. Bowsher, letter to the editor, *Christianity Today*, 30 August 1963, p. 21; Robert S. Maseroni, letter to the editor, *Christianity Today*, 30 August 1963, p. 21.

⁶⁷ Edwin D. Johnson, letter to the editor, *The Evening Star* (D.C.), 16 August 1962.

⁶⁸ Paul A. Fisher, letter to the editor, *The Evening Star* (D.C.), 16 August, 1962. This letter was written as a response to a pro-*Engel* letter.

⁶⁹ For a similar work examining how Robert Welch’s ideas coincided with those of more “respectable” conservatives, see Edward H. Miller, *A Conspiratorial Life: Robert Welch, the John Birch Society, and the Revolution of American Conservatism*, (Chicago: University of Chicago Press, 2021).

⁷⁰ Gerald L.K. Smith, “The New Crucifixion,” *The Cross and the Flag*, August 1962, p. 2, University of Connecticut Special Archives and Collections.

⁷¹ Gerald L.K. Smith, “Save the Coins,” *The Cross and the Flag*, September 1962, pp. 5-6, University of Connecticut Archives and Special Collections.

⁷² Gerald L.K. Smith, “Pilate’s Court,” *The Cross and the Flag*, July 1963, p. 35.

it meant martyrdom.⁷³ In these editorials, Smith intertwined antisemitism, anti-communism, and ultra-fundamentalism into a diatribe against the Court's betrayal of Christianity. These arguments intersected with conspiratorial tendencies and "respectable" arguments against the Court voiced by mainstream conservatives while also advancing an antisemitic agenda.

"Are We Becoming a Pagan Society?": this was a question posed by an editorialist in a local New Jersey editorial reprinted by the *Christian Beacon*.⁷⁴ It was also a frequently raised question among religious conservatives who concluded that not only was the Court undermining Christianity but that it was either intentionally or inadvertently transmogrifying America into a Communist and/or pagan society. This is another example of the conspiratorial narratives spun by opponents of the Court. They combined fears of secularism and the Court's betrayal of America together and presented them in a conspiratorial frame. Congressional conservatives saw *Engel* as a Communist plot to undermine America's religious heritage and replace it with a Communist dictatorship.⁷⁵ Samuel Sutherland, an evangelical college president, said the decision of the Court made America no better than "God-denying" Russia.⁷⁶ Even William Buckley, head of the mainstream conservative movement, concluded in 1964 that the Court's decisions in *Engel* and other cases constituted it a revolutionary court and implied it was soft on communism.⁷⁷ Conservatives conflated fears of communism and paganism with fears of the Court to create a conspiratorial narrative about the Court's role in destroying Christianity in America and replacing it with communism. Similar narratives would be deployed again in 1973 to fight abortion.

Roe vs. Wade, which legalized abortion in the first trimester of pregnancy while allowing limitations on it in the second and third and overturned the abortion laws of all fifty states, brought conservative fears about the Court's paganizing of America to a fever pitch.⁷⁸ Most of the uproar centered over a paragraph in *Roe* entitled "Ancient Attitudes," where the Court based its abortion decision partially on the precedent of "Roman and Greek law" and "ancient religion."⁷⁹ Despite the

⁷³ Smith, "Pilate's Court," p. 2.

⁷⁴ "Are We Becoming a Pagan Society?" *Courier-Post*, 1 April 1978, reprinted in *Christian Beacon*, 6 April 1978, University of Connecticut Archives and Special Collections.

⁷⁵ Senator Talmadge, 11675; Congressman Schadeberg speaking on Prayer in Our Public Schools Unconstitutional, *Congressional Record*, 87th Congress, 2nd Session, 1962, volume 108, part 9: 11779-11780.

⁷⁶ Sutherland, "Tragic Effects of the Supreme Court Decision."

⁷⁷ Draft of "Mr. Warren's Destructive Court," *National Review*, 27 or 28 June 1964.

⁷⁸ This summary of *Roe* derives from Patrick Allitt, *The Conservatives: Ideas and Personalities Throughout American History*, (New Haven: Yale University Press, 2009), p. 217.

⁷⁹ *Roe v. Wade*, 410 U.S. 113 (1973), p. 130.

section taking up only one paragraph in a fifty-one-page decision, conservatives seized on it as proof that the Court had abandoned its Christian duty to protect the unborn and instead opted to make America into a pagan country. David Noebel, a fundamentalist pro-life activist, devoted a whole chapter in his anti-*Roe* pamphlet to imply that the Court had sided with paganism and undermined Christianity and its emphasis on the “sacredness of life.”⁸⁰ In his introduction, he used Japan as an example of what happens when a country legalizes abortion. Since Japan was not a Christian country (and implicitly, not White either), Noebel implied, it treated the unborn barbarously.⁸¹ “Heathen” Japan was America’s future due to the Court’s ruling.⁸² Nor were fundamentalists like Noebel the only conservatives incensed at the supposed paganizing of America caused by *Roe*. The magazine of the National Association of Evangelicals accused the Court of selectively using history to bolster its decision to replace America’s Christian heritage with paganism.⁸³ *Christianity Today* compared post-*Roe* America to the “pagan world” of St. Paul and concluded that the result of the Court’s decision would be a “multitude of evils,” including government persecution of Christians.⁸⁴ Shared outrage at the apparent betrayal of America’s unborn also helped connect Catholics and Protestants, evangelicals and fundamentalists together in a pro-life coalition fraught with internal divisions, just like shared narratives of betrayal did after *Engel* and *Schempp*.⁸⁵

Conspiratorial narratives of betrayal about the Court’s alleged communism also fueled backlash to the Supreme Court in its decisions in the Bob Jones University cases. After both decisions, Bob Jones III claimed that the Court had made America into a Soviet-style dictatorship.⁸⁶ In fact, conservative commentaries on the 1983 case went beyond vague fear-mongering about a Communist dictatorship to focus on what they perceived as a socialistic redefinition of religious freedom by the Supreme Court. In its opinion, the Court said that BJU was free to teach its religious beliefs but that if

⁸⁰ David A. Noebel, “Abortion: Christian or Pagan?,” pp. 13-20, in *The Slaughter of the Innocent* (Tulsa: American Christian College Publications/Christian Crusade Publications, 1973), p. 20.

⁸¹ For a recent work that explains the racism behind the use of the word “heathen” in American religious history see Kathryn Gin Lum, *Heathen: Religion and Race in American History*, (Cambridge, MA: Harvard University Press, 2022), p. 1.

⁸² Noebel, “Abortion,” p. 5.

⁸³ Floyd Robertson, “Now that Abortion is Legal,” *United Evangelical Action*, Summer 1973, p. 9.

⁸⁴ “Abortion and the Court,” editorial, *Christianity Today*, 16 February 1973, pp. 32-33.

⁸⁵ For example, see Neil J. Young, *We Gather Together: The Religious Right and the Problem of Interfaith Politics*, (New York: Oxford University Press, 2016), pp. 161-165, 168.

⁸⁶ Bob Jones III, “A Special Word from the President,” *Faith for the Family*, July/August 1974, p. 24; Bob Jones III, “Initial Reaction.”

it practiced them, the university would face a “substantial impact.”⁸⁷ BJU’s official pamphlet on the case compared that ruling to the “religious freedom” in Russia, where Communists allowed Christians to believe whatever they wanted but treated them as “second-class citizens” if they practiced their religion.⁸⁸ A fundamentalist newspaper wrote that the Court was following a similar path to what Communists did in Lithuania. First, the government removed tax exemptions for churches and then exorbitantly taxed them until they closed. The author of the piece concluded that “there is now no more religious freedom in the United States than there is in Russia.”⁸⁹ BJU believed that the Court’s attacks on religious freedom were intertwined with its alleged goal of advancing communism.

BJU and its supporters used the language of “religious freedom” to assail the Court. On 24 May 1983, the day the Court ruled against BJU, Bob Jones III gave a fiery address to his students in chapel. He boldly declared that “there is no such thing as a free church in America” and called the decision an “attack on religious freedom.”⁹⁰ After giving his philippic, he told the reporters assembled that the flags at BJU would fly at half-mast to mourn the death of religious freedom.⁹¹ Opponents of the Court used “religious freedom,” an imaginary construct derived from the First Amendment, to link concerns about the undermining of religion in America to fears that the Court was betraying the Constitution. While some conservatives may not have cared very much about the religiosity of America, almost all conservatives worried that the Court was destroying the Constitution. Thus, BJU and its supporters’ arguments could be palatable to a wide swath of conservatives. The opponent’s anger at the case specifically focused on a section of the opinion which said that tax-exempt organizations had to be in accordance with “public policy.”⁹² The author of BJU’s pamphlet attacking the case interpreted that phrase as requiring religious institutions to conform to the government or perish.⁹³ Not only officials at BJU but other fundamentalists accused the Court of betraying religious freedom.

Fundamentalists complained about the Court’s betrayal of the Constitutional guarantee of “religious freedom.” James Crumpton, a Mississippi pastor, said that the Court was “simply betraying

⁸⁷ *Bob Jones University vs. United States*, p. 603.

⁸⁸ *The Bomb and Its Fallout*, p. 8.

⁸⁹ M.L. Moser Jr., “Supreme Court Kills Religious Freedom in the United States.”

⁹⁰ Bob Jones III, “The Initial Reaction of Bob Jones University as Stated in Chapel May 24, 1983,” *Faith for the Family*, July/August 1983, 2A.

⁹¹ Kenneth S. Kantzer, “The Bob Jones Decision: A Dangerous Precedent,” *Christianity Today*, 2 September 1983, p. 14.

⁹² *Bob Jones University vs. United States*, pp. 461-462.

⁹³ *The Bomb and Its Fallout: Bob Jones University vs. the United States: U.S. Supreme Court Decision May 24, 1983* (Greenville, SC: Bob Jones University Press, 1983), p. 5.

the Constitution.” The Constitution guaranteed religious freedom, but the Court undermined the Constitution by creating a counterfeit “religious freedom with a penalty.”⁹⁴ The front page of *The Baptist Challenge* announced the tragic news that “Supreme Court Kills Religious Freedom in the United States.” The article started by quoting the First Amendment, which had “effectively been killed” by the unconstitutional decision.⁹⁵ The *Plains Baptist Challenger* proclaimed that the Court had “mock[ed]” the Constitution and that the government would persecute Christians who disagreed with the government.⁹⁶ Bob Jones III had the most apocalyptic take on the case, arguing in an editorial that it was “abundantly clear” that the Court wanted to “destroy” “your religious freedoms.”⁹⁷ These phrases not only explicitly prove fundamentalists believed the Court had “murdered” religious freedom, but they imply that the Court had violated the Establishment Clause by making religions they agreed with state-sponsored.⁹⁸ Bob Jones III, in his speech after the decision, said the Court had established its “humanistic conscience” as America’s official religion.⁹⁹ E.L. Bynum declared that the Court had established liberal theories as America’s state religion.¹⁰⁰ Fundamentalists believed the Court had undermined a central tenet of the Constitution, religious freedom.

Mainstream conservatives also echoed the charge that the Court had trampled religious freedom. The BJU pamphlet quoted two conservatives who defended the case in conservative periodicals. Pat Buchanan, a former Nixon aide, and the editors of the *Washington Times* complained that the Court had eroded the Free Exercise clause of the First Amendment.¹⁰¹ William Buckley alluded that the Court’s decision demonstrated the “fragil[ity]” of religious freedom in America.¹⁰² Conservatives rallied around BJU in the name of defending religious freedom in the wake of the Court’s ruling against them.

However, the controversy over BJU also alienated some conservatives. In 1982, the Reagan administration announced that it was going to repeal the IRS rules that had been at the center of the

⁹⁴ James W. Crumpton, “Freedom of Religion in the United States!!! How About Bob Jones University???,” *Maranatha!!!*, August 1983 (in possession of Aaron Haberman).

⁹⁵ M.L. Moser Jr., “Supreme Court Kills Religious Freedom in the United States,” *The Baptist Challenge*, July 1983, (in possession of Aaron Haberman).

⁹⁶ E.L. Bynum, “Court Strikes Blow Against Religious Freedom,” *Plains Baptist Challenger*, June 1983, (in possession of Aaron Haberman).

⁹⁷ *The Bomb and Its Fallout*, p. 12.

⁹⁸ See *The Bomb and Its Fallout*, p. 12, p. 19 for use of “murder.”

⁹⁹ Jones III, “Initial Reaction,” 1A.

¹⁰⁰ Bynum, “Court Strikes Blow Against Religious Freedom.”

¹⁰¹ See *The Bomb and Its Fallout*, pp. 22-23 for Buchanan and p. 26 for *Washington Times*.

¹⁰² William F. Buckley, “Court Ignored Central Issue,” *The Greenville Piedmont*, 30 May 1983.

case. However, civil rights leaders, moderate Republicans, and Democrats accused the President of being racist. Stung by such accusations, President Ronald Reagan replaced the bill with a more diluted one that placed Congress, not the IRS, in charge of making rules about the tax-exempt status of schools.¹⁰³ This prompted Bob Jones III to decry Reagan as a “traitor to God’s people.”¹⁰⁴ Just as in *Engel* and *Schempp*, not all conservatives saw the Court as an agent of subversion but as one upholding the Constitution. Despite these dissidents, the emotional power of the betrayal narratives convinced most conservatives by 1983 that the Court was not a branch of government to be respected but an active agent of subversion.

In the years from 1954 to 1983, conservatives carefully crafted a demonology of the Court focusing on what they perceived to be the Court’s destruction and betrayal of America’s racial system, religion, and the Constitution. In selecting the five cases that we studied, I hoped to demonstrate the intertwining arguments advanced by conservatives. By finishing in 1983 with *BJU vs. US*, I tried to show two things. First, this case perfectly displays the intertwining of racist, religion-based, and Constitution-based narratives of betrayal. BJU and its fundamentalist defenders portrayed the Court as trampling on God-given “religious freedom” enshrined in the Constitution and the God-established order of segregation. The notion of religious freedom as a constitutional right appealed to conservatives like Reagan and Buckley, who were put off by the racist doctrines underlying BJU’s rules but professed to be defenders of the “original” Constitution. The appeal to the Constitution also allowed opponents of the Court to portray themselves as populist defenders of the American people’s heritage. Further, I chose to end with Bob Jones because it came just after the Federalist Society was founded in 1982 and before the ramping up of the conservative legal movement described by Steven Teles.¹⁰⁵ By doing this, I hope that other researchers will examine how these tropes of betrayal and subversion changed with the rise of the conservative legal movement and its capture of the Court in the Rehnquist and Roberts years. Another suggestion is to examine how these narratives were used to oppose cases in this era that I was unable to study, such as *Swann vs. Mecklenburg* (1969), which encouraged busing to integrate schools, or *Bakke vs. University of California* (1978), which allowed “affirmative action” in college admissions. A final suggestion for further research would be to see how (if at all) conservative elites manufactured these feelings of betrayal to oppose the Court and, if so, why. What is certain is the enduring power of tropes of betrayal to animate the right-wing, even up to today.

¹⁰³ Haberman, “Into the Wilderness,” pp. 241-246

¹⁰⁴ Qtd. on Haberman, “Into the Wilderness,” p. 246.

¹⁰⁵ Teles, *The Rise of the Conservative Legal Movement*, pp. 138-139.