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Remarks

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MARK WESTON JANIS

What accounts for the “new” 1818 Connecticut Constitution that repudiated the theocracy of the state and disestablished the Congregationalist Church? The answer is proof positive of Professor Richard Kay’s proposition that a constitution, representing the foundation of legal system, is not based on law, but rather on politics, economics, and morality.

Connecticut was one of the last American states to separate church and state, and to provide for religious toleration. The 1818 religiously-tolerant Constitution resulted from three causes. First was the collapse of the political mainstay of the Congregational Church, the Federalist Party, which never recovered public support after sponsoring the Hartford Convention 1814-1815, where New England delegates advocated secession from the United States then engaged in the War of 1812. Second, was the small but growing number of non-Congregationalists in Connecticut, mostly Episcopalians, Methodists, Baptists, and Quakers from neighboring New York, Massachusetts, and Rhode Island, who became the foundation of a new political party, the Toleration Party, advocating freedom of religion, e.g., the right to found independent churches and no longer financially support the then-dominant Congregational Church. Third, was a division within the Congregational Church itself, where a liberal wing, notably Unitarians and Universalists, openly challenged Calvinist doctrines and were willing to join the Tolerationists.

The 1818 Connecticut Constitution, recognizing the right of some though not all non-Congregationalist religions to practice, was the first step to what is now, two centuries later, a religiously tolerant state. Indeed, other faiths, including Catholics and Jews, each out-number Congregationalists in Connecticut, who now total only about two percent of the state’s population.



Connecticut 1818: From Theocracy to Toleration

MARK WESTON JANIS*

This Essay was originally written as a speech delivered on October 10, 2018, to the Connecticut Historical Society in Hartford. The CHS was commemorating the 200th anniversary of the “new” Connecticut Constitution of 1818. It is now revised for publication in the Festschrift for Professor Richard Kay, a renowned expert in constitutional law, and a dear friend and colleague for forty years.

Professor Kay wrote that “since a constitution, by definition represents the foundation of a legal system, there is no ‘higher law’ that tells us how to change its rules.” He added that “the criteria of judgment must be found outside the law—in politics or economics or morality.”¹ The “new” 1818 Connecticut Constitution is, I submit, proof positive of Professor Kay’s observation: founded as it is in the politics, economics, and morality of early 19th century Connecticut.

Many would be surprised to learn that Connecticut had an established religion, the Congregational Church, up until 1818. Before the Revolution of 1776, this was not unusual. Most American colonies originally had an established religion: The Church of England in New York, New Jersey, Maryland, Virginia, North Carolina, South Carolina, and Georgia, and the Congregational Church in Massachusetts, Connecticut, and New Hampshire. All seven Anglican churches were disestablished after the Revolution. Connecticut was one of the last U.S. states to disestablish its official religion. What prompted Connecticut to finally break the link between the State and the Congregational Church? What did Connecticut’s transition from a theocracy to a place of religious toleration actually look like?

Connecticut’s new 1818 Constitution disestablished the Congregational Church and provided for a limited form of religious toleration in its Article 7. The key language read:

It being the duty of all men to worship the Supreme Being, the great Creator and Preserver of the Universe, and their right to render that worship, in the mode most consistent with the dictates of their consciences; no person shall by law be

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¹ RICHARD S. KAY, *THE GLORIOUS REVOLUTION AND THE CONTINUITY OF LAW*, at ix (2014).

compelled to join or support, nor be classed with, or associated to, any congregation, church or religious association. . . . And each and every society or denomination of Christians in the state, shall have and enjoy the same and equal powers, rights and privileges; and shall have power and authority to support and maintain the ministers or teachers of their respective denominations, and to build and repair houses for public worship

Before 1818, Connecticut was a theocracy, where membership in the Congregational Church had at one point been required for those voting for or participating in public office. Although some other Protestant denominations began to build churches in the 18th century, the Congregational Church received state support, and the other permitted churches were regulated by the state. The Congregational Church had been established pursuant to Connecticut's first two constitutions: the Fundamental Orders of 1639 and the royal charter of Charles II in 1662. For almost two centuries, Connecticut's population was overwhelmingly Congregationalist. Its traditional social, religious, and political ways earned it the moniker "The Land of Steady Habits," employed within and outside the State to describe the extraordinary conservative inclination of its population. Perhaps not surprisingly, Connecticut was the last state to abolish its theocratic state.

What was it in 1818 that upset Connecticut's steady habit of a Congregational theocracy? There is, of course, no simple answer, but I would offer three explanations. First, was the precipitous collapse of the Federalist Party after the political disaster of Federalist support for the possible secession of the New England states from the Union, culminating in the Hartford Convention of 1814-1815. The plight in Connecticut of the conservative Federalist party of Washington and Adams opened the political door for the Democratic-Republican Party of Jefferson and Madison, a party much more accepting of religious diversity. Second, was the small but growing migration of non-Congregationalists into the state: especially Episcopalians, Methodists, Baptists, and Quakers from neighboring New York, Rhode Island, and Massachusetts. These non-Congregational Protestants naturally joined forces with the more liberal Democratic-Republicans to form a new party in 1816, aptly termed the Toleration Party, to oppose the heretofore dominant Federalists. Third, was the weakening of hardline Calvinist orthodoxy in the Congregational Church itself, with the growth of the more tolerant adherents to Universalism and Unitarianism. Beginning as strains of Congregationalism, Universalists and Unitarians would soon break away from the established Congregational church, forming their own societies and churches. Discarding the Calvinist doctrine of predestination and eternal damnation for most of humanity, the Universalists and Unitarians

came to believe that all men and women could be saved by God's grace—Episcopalians, Methodists, Baptists, Quakers, and even Roman Catholics, Jews, Muslims, and Hindus. These more liberal Congregationalists weakened the political and religious consensus of Connecticut's Steady Habits. They too were also attracted by the new Toleration Party.

The English Congregational religion was only about forty years old when the first migration of Puritans and Separatists from England to New England began in 1620. Under the tolerant reign of Elizabeth I, these Christian believers were both within and without the English Anglican Church, depending in part on how much a person or a community believed the established church was capable of reform. The fundamental question for these Puritan and Separatist dissenters was whether or not the Anglican Church could eventually rid itself of the vestiges of Roman Catholic belief and ritual. The early Congregationalists were truly people of the book, relying on careful and continuous reading of the Bible to mold their devotions, organize their churches, and promote their commitment to a Christian life. The less tolerant reigns of the Stuart kings—James I and Charles I—drove many Puritans and Separatists out of England, first to the Netherlands, a little later to New England. Theirs was not so much an economic migration, which has accounted for the great part of American immigration, but a religious migration—the desire to set up religious communities, free of the established church of the mother country. More than other dissenting English religious groups, the Congregationalists were Calvinists, believing in predestination. They were fundamentally “low church,” distrustful of religious hierarchies of kings and bishops. Instead, they trusted in their own reading of the Bible, Old and New Testaments, to prescribe religious communities. These New England Congregationalist communities purposefully merged political and the religious institutions, the aim being to further the righteous life of their members.

Up until 1818, during the first two centuries of Connecticut's history, there was, of course, some variety in both religious and political observances within the state. However, there were some features that set Connecticut apart from the other U.S. states. Most notably was the considerable overlap between political and religious jurisdiction. Connecticut's General Court served as both the supreme political and religious authority. The General Court acted, in modern terms, both as the political legislature, executive, and judiciary of Connecticut, and as the presiding religious ecclesiastical body, deciding on what churches could be established and on their proper forms of worship and belief. No town could be established without an officially accepted Congregationalist church. The political philosophy was that of a theocracy. The state and the church were meant to reinforce each other to ensure proper and financially supported Christian communities. Connecticut's political participants were also its religious participants. Voting and control belonged only to those who were

recognized members of their town's official Congregational church or churches. The General Court controlled the local churches, enforcing uniformity and correct Christian and civic values. One is reminded of the old English adage about another denomination: the Church of England is the Tory Party at prayer.

During Connecticut's first century, there was little effective challenge to the predominance of the Congregational Church or Connecticut's quasi-aristocracy, what was called the Standing Order. There were scattered groups of other denominations, notably the Baptists and the Anglicans, but at first the General Court permitted no churches but the Congregationalists. As Connecticut's second century, the 18th century, progressed, there was some liberalization through the controversial certificate process. A local non-Congregationalist group, like the Baptists, could and did apply to their town's justice of the peace for a certificate permitting them to found and support their own church. The certificate system lasted until 1818, but it was not really all that tolerant. Justices could, and did, refuse to recognize congregations of which they disapproved. If there was no church other than a Congregationalist church in a town, then non-Congregationalists were forced to pay for the established church. Moreover, for those who believed in no church, the so-called "Nothings," they were still obliged to pay for their local Congregationalist institution. There was a social stigma in Connecticut to be a "Certificatist" or a "Nothing," and few if any roads were open to them for political office or social standing. Connecticut's educational system was almost entirely in the hands of the Congregational Church, from the lowest to the highest grades. Connecticut's only university, Yale, was founded in 1701 in protest to ever-more tolerant Harvard established in 1636. By 1701 Harvard was already liberalizing its Calvinism and would go all the way later in the 18th century when it became a tolerant, Unitarian institution. Yale remained religiously conservative and true to the Steady Habits of strict Calvinist Congregationalism much longer. Yale hired only Congregationalist faculty, and excluded even Episcopalian, Methodist, and Baptist professors, until after 1818.

The trigger for disestablishment of the Congregationalist Church was the collapse of the Federalist Party after 1815. The first two American Presidents were Federalists—Washington and Adams. Washington's first term, beginning in 1789, coincided with the outbreak of the French Revolution which would shatter Europe for twenty-five years. American politics was divided between the more conservative Federalists, who generally took the side of England during the Napoleonic Wars, and the more liberal Democratic-Republican Party which supported the revolutionary French government. The question was, of course, whether the United States would remain conservatively upholding traditional English values or turn more radical, adopting the new French values

promoting egalitarianism. The third and fourth Presidents—Jefferson and Madison—were both French-leaning Democratic-Republicans. Some Democratic-Republicans were so radical, like Jefferson, that they altogether abandoned the traditional English church, the Anglican Church, or the traditional dissenting churches like the Congregationalists. Jefferson for example, swung between Deism, like many of the French radicals, and American-style Unitarianism. Politically, all four of the first American Presidents did try to stay out of the Napoleonic Wars, hoping to trade with both the English and the French, enriching American merchants, who could make huge profits supplying both sides of the European conflict.

Probably no region of America did so well from American neutrality as New England, whose merchants and merchant shippers did very well, indeed, from selling to both sides of the European conflict. However, that profitable trade and shipping came mostly to an end when President Madison chose to bring the United States into the conflict on the French side in 1812. The War of 1812 was an economic disaster for New England, wreaking havoc on the foreign trade of Connecticut and her neighbors. Moreover, no area suffered as much from English coastal raids and retaliation. The English attacked Connecticut towns like Essex and Stonington.

By the winter of 1814, the Federalists of New England had had enough of the war of the Democratic-Republicans. The Federalist parties of Connecticut and elsewhere called the Hartford Convention which met in the old State House, still standing in downtown Hartford. The Federalists preached and promised the secession of the New England states if the Democratic-Republicans dominating Washington politics did not end what by then was called the War of 1812. The timing could not have been worse. Just as the no-war secession petition of the Hartford Convention was delivered in Washington, it was announced that the Tennessee firebrand, Andrew Jackson (later to be President himself), had won a resounding victory over the British troops in New Orleans. More or less simultaneously, the French Revolutionary Wars finally came to an end with Wellington's defeat of Napoleon at Waterloo.

This finished the Federalist Party. It was viewed as wrong-headed and unpatriotic. In 1816, opponents of the Federalists in Connecticut established a new party, Democratic-Republican in inclination, but tellingly for our story, called the Toleration Party. By 1818, the Toleration Party had captured both the General Court, now usually called the Assembly, and the Governorship. The Tolerationists voted to call a Constitutional Convention which, in 1818, proposed a new Connecticut Constitution, a development explored by Richard Kay in his lecture last month, "Who Are the Constitution-Makers." The continuing support for the old Congregationalist theocracy was demonstrated by the closeness of the popular vote adopting the new Constitution: only 13,918 to 12,364. The

Land of Steady Habits did not wobble by much! And it seems the finances of the Congregational Church were actually improved by its privatization.

Even with the new 1818 Constitution it would be too much to say that Connecticut had become a thorough-going tolerationist state. It seems that the finances of the Congregational Church were actually improved by privatization. Voluntary contributions more than made up for public support, a continuing feature of the American scheme of private churches as opposed to the less well-funded and less well-attended European churches. After 1818, freedom to establish religious congregations was still limited to some Protestant denominations—notably Episcopalian, Methodist, Baptist, Quaker, and Universalist. On a personal note, it is no surprise that my own church, the Universalist Church of Hartford, was gathered in 1821, only three years after the new Constitution. There had been, of course, Universalists in Connecticut before then, but they worshiped within and financially supported the Congregation Church. In 1828, the Connecticut Supreme Court held that a Universalist could not be called as a witness because his oath was not backed up with a belief in eternal damnation, a judgment more or less reversed by statute two years later.

Unitarians also practiced within the Congregationalist churches, but establishment of Unitarian churches or belief in Unitarian principles was prohibited in Connecticut until the 1840s. The Unitarian Church in Hartford dates from 1844. Although there were Jewish residents of the State as early as the 1600s, Jewish congregations would have to wait until 1843 when the Assembly granted them the same rights to assemble as Christians. The first Jewish gatherings were held the same year. There was, apparently, no Roman Catholic Church in Connecticut until the 1820s, when Irish immigration began. Sadly, the 1818 Constitution newly disenfranchised non-white voters. Those Blacks who were already voting in Connecticut lost their franchise until the U.S. Fifteenth Amendment in 1870. The 1818 Convention also sadly voted down a proposal to allow women to vote.

Even so, the 1818 Constitution was an important step forward for religious toleration in Connecticut. The relationship between church and state was disentangled. Henceforth, the Congregational Church and all other churches and religious institutions would have to support themselves. Connecticut residents were able to choose their church. Congregationalists were given no preference for public office or the franchise. The Federalist Party was no longer. Neither was Connecticut's established church. Connecticut became more accepting of non-Congregationalist denominations. Tellingly, Yale's Congregationalist monopoly on higher education in Connecticut was soon history. An Episcopalian college, Trinity, was established in 1823 in Hartford, and a Methodist college, Wesleyan, in 1831 in Middletown. In part because of 1818, Connecticut

became very religiously diverse. It is, for example, the third most Roman Catholic U.S. state—some 46% of the population—and the sixth most Jewish state—3% of the population. Congregationalists—the successors to the State’s Steady Habit tradition—nowadays account for only about 2% of Connecticut’s population.