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Illiberal Liberalism:  
Liberal Theology, Anti-Catholicism, & Church Property*

PHILIP HAMBURGER**

Liberalism has long been depicted as neutral and tolerant. Already in the eighteenth-century, when Englishmen and Americans began to develop modern conceptions of what they called "liberality," they characterized it as elevated above narrow interest and prejudice. Of course, liberality or what now is called "liberalism" can be difficult to define with precision, and there have been divergent, evolving versions of it. Nonetheless, liberalism has consistently been understood to transcend narrow self-interest or bigotry. Accordingly, many Americans have confidently believed in it as a neutral, tolerant, and even universalistic means of claiming freedom from the constraints of traditional and parochial communities.

Yet liberalism has not always seemed entirely neutral, tolerant, or universalistic. Initially, in the eighteenth century, liberality was often asserted on behalf of minorities (including slaves and religious dissenters). It was employed to undermine the limitations of traditional English and American society and to establish broader, more liberal relationships and ideals. In these early circumstances, liberality often seemed the epitome of an elevated, cosmopolitan neutrality and tolerance. Later, however, liberality evolved into the shared assumption of a majority increasingly indifferent to its smaller communities and affiliations. In these circumstances, the illiberal potential of liberality became ever more apparent.

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The illiberal dangers of liberalism may have been connected with its theological origins and tendencies. Certainly, the liberality that became so popular in nineteenth-century America was often, directly or indirectly, theological. Since the early eighteenth-century, and especially in the nineteenth, liberal ideals were often associated with liberal theology. Far from merely a chapter in the application of liberal ideals, liberal theology contributed much to the character of liberality, sometimes giving it a theological tenor, and, more concretely, bequeathing it an emphasis on individual mental independence—an intellectual freedom that was assumed to be diametrically opposed to Catholicism. Eventually, all of these elements—the theological tone, the focus on mental independence, and the suspicions of Catholicism—became predictable aspects of liberalism.

Whether an idea can ever entirely escape its parochial or other narrow origins is not altogether clear. Perhaps liberalism will eventually elude its history. Even if it does, however, there is reason to question whether any one human concept, even one as broad as liberalism, can avoid a sort of partiality.

To illustrate the illiberal potential of liberalism, whether theological or political, this essay briefly examines a few of the theologically intolerant strains in nineteenth-century American liberality: first, in liberal theology itself; second, in nativist critiques of Catholicism; third, and most concretely, in the nativist assault on Catholic church property in New York. Although liberality was not always or even typically taken to intolerant extremes, these three features of nineteenth-century liberality suggest how, when pursued by a powerful majority, liberal ideals and, more broadly, liberalism could themselves become a threat to freedom.

LIBERAL THEOLOGY

From the time of their earliest evolution, modern liberal ideals had a prominent role in theology. Already in the eighteenth century and, most dramatically, in the nineteenth, a theology developed that was self-consciously "liberal." Nonetheless, this theology did not entirely escape the risks of illiberality.

Liberal theology elevated each individual's intellectual freedom over the authority of church creeds and what seemed to be their inessential doctrines. Already in early eighteenth-century Britain, some Protestants worried that doctrinaire, unreasoned claims of authority on behalf of

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2. This was also true of England, albeit to a lesser degree than America in the nineteenth century, during which, at varying times, England had political parties that called themselves "liberal."
sectarian creeds discouraged Christians from fully exercising their individual mental freedom and thus inhibited them from sensing their own beliefs. From this point of view, clerical expectations of conformity to a creed—even expectations of purely voluntary adherence—undermined the mental independence of individuals. Moreover, it subjected them to the inessential, merely human doctrines that religious creeds seemed almost necessarily to adopt. Accordingly, it appeared necessary for individuals to adopt their beliefs freely rather than merely in deference to the creed and clergy of their church, whichever it might be. On behalf of this mental freedom from the conventions of Christian churches, some British Protestants (such as a Scottish Presbyterian, William Wishart, in 1732) called for “a liberal piety” and its “rational sense of Good.”

In 1773, the English poet, Percival Stockdale, celebrated the progress of this liberal Christianity in verse:

Within the hallowed space of Christian ground,
Candid and liberal priests there can be found;
Who strive to keep their simple flock in awe,
Of Christ’s example, of his moral law; . . . .
Who urges morals, and relaxes creeds;
Who makes the cause of human kind his own.

Of course, numerous Americans adopted such sentiments. Unitarians in particular rejected the details of Trinitarian theology and emphasized what they considered a mentally free attachment to the shared, essential characteristics of Christianity. As an American opponent of liberal theology mockingly declared in 1792, under the pseudonym Eliphaz Liberalissimus: “I believe there is only one thing in religion essential; and that is to believe that nothing is essential.” According to Liberalissimus, this was the first article of “a liberal man’s confession of faith.”


4. THE POETICAL WORKS OF PERCIVAL STOCKDALE 31 (1810).

5. ELIPHAZ LIBERALISSIMUS [ASHBEL GREEN], A LETTER TO THE PREACHER OF LIBERAL SENTIMENTS, CONTAINING AMONG OTHER IMPORTANT MATTERS, A LIBERAL
In the last half of the eighteenth century, liberal sentiments became widely familiar in popular politics. In 1774, Congress itself observed the importance of "liberal sentiments on the administration of Government." Americans felt the significance of such sentiments particularly during the 1780s, when many of them sought to form a stronger central government that could overcome what they perceived as illiberal local prejudice and interest. By "adopting a liberal and generous policy like this," many in America hoped that they would "make ourselves as a NATION." They wanted "a great, liberal and energetic government." As Washington wrote to Madison in 1786, America needed "a liberal, and energetic Constitution." Amid this liberality of the 1770s and 1780s, opponents of slavery found it "agreeable to observe" that their assemblies, such as that of Virginia, "possess such Liberal sentiments," and, further north, a newspaper writer anticipated that "negroes" might benefit from "the known liberality of sentiment" that "is so much the character of our judges." In this, they would have a long wait. Nonetheless, their hopes suggest how quite diverse Americans could have hopes of participating in what Joel Barlow called "the liberal, universal cause." Some went so far as to assume that liberality had thus far prevailed mostly in politics, as when, in 1784, the convivial party celebrating July Fourth in Portsmouth drank to the toast—their ninth of the evening—"May the citizens of America be no less distinguished for their religious than for their politically liberal

MAN'S CONFESSION OF FAITH 20 (1792).


7. To the Honorable Legislature of the State of New York, in Senate and Assembly Convened, in N.Y. PACKET, Mar. 7, 1785, No. 469. In 1786, Charles Pinckney argued (with support from John Cleves Symmes) that all but two states, "[c]onvinced of the importance of the federal government," had "liberally dedicated to its support a part of the advantages derived from its establishment," and they hoped that "their example may induce the legislatures of New York and Georgia to adopt the same liberal conduct." JOURNALS OF THE CONTINENTAL CONGRESS 52 (Feb. 7, 1786).


11. JOEL BARLOW, THE VISION OF COLUMBUS 179 (Book VI) (1787).
sentiment.” More typically, however, Americans understood that liberality was a pervasive sentiment of general application. Such was the “philosophic and liberal discernment which prevails in America at present”—“the liberal way of thinking that is daily more and more predominant in the present age.”

In nineteenth-century America, liberal sentiments reacquired a distinctively theological significance. Although in Europe—especially England and Spain—political parties would form around liberal ideals, in America a theological party, the Unitarians, became the most notable advocate of liberal sentiments. The Unitarians undertook a religious revolution, largely from within the Congregational churches of New England, by rejecting Trinitarian and other Congregational doctrines as the elements of a human creed and as an imposition upon the mental independence of individuals. No longer much fearing the state and its threat to liberty, Unitarians worried more about the danger to liberty from doctrinaire fellow Christians, whose sectarian opinions seemed a greater threat than oppressive laws. As explained by the most prominent advocate of liberal Christianity, William Ellery Channing:

There are countless ways by which men in a free country may encroach on their neighbors' rights. In religion the instrument is ready made and always at hand. I refer to Opinion, combined and organized in sects, and swayed by the clergy. We say we have no Inquisition. But a sect, skilfully organized, trained to utter one cry, combined to cover with reproach whoever may differ from themselves, to drown the free expression of opinion by denunciations of heresy, and strike terror into the multitude by joint and perpetual menace,—such a sect is as perilous and palsyng to the intellect as the Inquisition.

Fearing that individuals would “lose themselves in masses,” “identify themselves with parties and sects,” and “sacrifice individuality,” Channing urged an “Inward” or mental freedom from “the bondage of habit,” from the slavery of “precise rules” and from anything through which the “mind” might be “merged in others.” Channing was seconded by many others,
such as Bernard Whitman, who more concretely argued that “the use made of human creeds by the leaders of the orthodox denomination is subversive of free inquiry, religious liberty, and the principles of Congregationalism.”

The Unitarians rapidly gained sufficient adherents to dominate many Congregational institutions, including numerous Congregational churches. According to old Congregational and legal traditions in Massachusetts, a majority within a church could alter the church’s doctrinal requirements. By these democratic means, Unitarians could take over Congregational churches and acquire these for their own ideals. It was campaign for control that prompted some Congregationalists and Baptists to place title to their churches within trusts dedicated to their own traditional doctrines—this seeming to be the only means of preserving their property for what they understood to be their religion.

1. D. Huntington, *An Intolerant Spirit, Hostile to the Interests of Society*, A SERMON 10-11 (Boston 1822). Of course, this liberal theology was hardly original. For example, almost a century earlier, William Dudgeon had written that “Persecution” included “the least uneasiness given to our neighbor upon account of different belief.” *A Catechism Founded upon Experience and Reason* (1739), in *William Dudgeon, The Philosophical Works* 190 (1765).

15. *Bernard Whitman, Two Letters to the Reverend Moses Stuart: On the Subject of Religious Liberty* 2 (2nd ed., Boston 1831). Observing the breadth and importance of these tendencies, Emerson wrote of “all the soul of the soldiery of dissent” who “call in question the authority of the Sabbath, of the priesthood, and of the church.” R.W. Emerson, *New England Reformers, in Essays: Second Series* 243 (Boston 1844). Drawing upon such developments, the New Haven Congregationalist minister, Leonard Bacon, preached in 1858 that: “By whatever method, in whatever form, we substitute for the action of truth upon the mind... the decision of an authority that must not be questioned... we establish... a spiritual despotism adverse to all liberty, and tending to infinite corruption.” *Leonard Bacon, The Growth of the Kingdom of Heaven: A Discourse Before the Congregational Board of Publication* 14-16 (Boston 1858).

16. *Sydney E. Ahlstrom, A Religious History of the American People* 397 (1972); Marc M. Arkin, *Regionalism and the Religion Clauses: The Contribution of Fisher Ames*, 47 BUFFALO L. REV. 763 (1999). Contributing to this process, “was the 1820 ‘Dedham decision’ of the Massachusetts Supreme Court. Written by Chief Justice Isaac Parker, a Unitarian, it held that the larger parish or religious society had the legal power to call a minister and retain control of the property, even if a majority of the communicant membership of the church were opposed. With this precedent on record, a great many of the old territorial parishes of eastern Massachusetts moved into the Unitarian fold.” *Id.* As a result, it was the Congregationalist who had to insist: “The church and the town or parish... are DISTINCT BODIES. The one is an ecclesiastical body, the other is a civil body.” REVIEW OF A PAMPHLET ON THE TRUST DEED OF THE HANOVER CHURCH 18-19 (Boston 1828), reviewing THE RECENT ATTEMPT TO DEFEAT THE CONSTITUTIONAL PROVISIONS IN THE FAVOR OF RELIGIOUS FREEDOM, CONSIDERED IN REFERENCE TO THE TRUST CONVEYANCES OF HANOVER STREET CHURCH, BY A LAYMAN (Boston 1828).

17. This mode of conveyance was adopted in Boston in a series of Congregational
At the same time that Unitarians struggled for control of the New England churches, liberal tendencies in theology reached beyond Unitarianism to become part of the internal dynamics of every Protestant denomination. Among the Baptists, for example, the Rev. William Staughton devoted his 1819 circular letter to “the subject of LIBERALITY,” urging that “[l]iberality of sentiment is a generous disposition a man feels towards another who is of a different opinion from himself; or as one defines it ‘that generous expansion of mind which enables it to look beyond all petty distinctions of party and system, and in the estimation of men and things, to rise superior to narrow prejudices.’” In this sense, a liberal Christian “has adopted sentiments of his own,” and, by the same token, Staughton hoped that “[t]he liberal Christian will allow others to think and believe for themselves.”

Much later, in 1877, the Scottish-born Baptist preacher, George Lorimer, would look back and complain about the ways in which religious liberty had been taken beyond a freedom from the state:

For half a century or longer, and especially in our day, efforts have been made to give it a wider, and, in some cases, a misleading application. . . . There is a tendency, more wide-spread than is generally supposed, to complain that articles of faith cramp intellectual liberty, and that the laws and rules of religious communities restrict unduly inclination and action. In the name of liberty, . . . fixity is unfixed, and the solidities of Christian societies reduced to a state of flux.

18. MINUTES OF THE APPOMATTOX ASSOCIATION, HOLDEN AT UNION HILL MEETING-HOUSE, CAMPBELL COUNTY, MAY 1ST, 2D AND 3RD, 6-9 (Lynchburg, Va. 1819). For another point of view, condemning “that candor and liberality, which place only a small value on truth,” see MINUTES OF THE OTSEGO BAPTIST ASSOCIATION, CONVENED IN THE MEETING-HOUSE IN WESTERN COUNTY OF ONEIDA, STATE OF NEW-YORK, ON THE 1ST AND 2D OF SEPT. 1819, 6 (1819).
This rejection of church government in "the name of liberty" was an "evil . . . not confined to any particular denomination." On the contrary: "It shows itself among the Presbyterians and Episcopalians, as distinctly as among the Congregationalists and Baptists." In such ways, liberal ideals came to dominate American religion, reaching through large segments of the Protestant churches, the Catholic Church, and even Judaism.

In their defense of liberty from claims of authority, many liberals, especially Unitarians, distinguished between religion and the theology that threatened it, arguing that theology led, ineluctably, to an intolerance of other views and thus to persecution. For example, in 1822, the Rev. Huntington argued against the "exclusive spirit" and "dividing lines" of those whose theological opinions were not so universalistic and liberal as to acknowledge the verity of liberal religion. He declared that they had an "Intolerant Spirit, Hostile to the Interests of Society." In the 1840s, summarizing the stance taken by Channing, his close associate, Ezra S. Gannett, eulogized that: "He stood by the Protestant principle of private judgment, and defended it against theological violence." Later, in the 1870s, when members of the

19. GEORGE C. LORIMER, THE GREAT CONFLICT: A DISCOURSE, CONCERNING BAPTISTS, AND RELIGIOUS LIBERTY 127-129 (New York 1877). Focusing on more recent manifestations of such tendencies, the Rev. A. H. Granger—pastor of the Fourth Baptist Church in Providence—preached against John Stuart Mill and in defense of "creed-statements," arguing: "A church adopting certain articles as expressing its convictions on essential doctrines, and separating itself from those who do not subscribe to the same confession of faith, does thereby trench on no one's private rights, touch no one's inner life. Membership in a church, is voluntary, never compulsory. The constitution of a church must not be confounded with that of a state. This remark would be superfluous if men of intelligence even did not persist in likening the action of a church in withdrawing from doctrinal dissentients to that of the Puritans in banishing Roger Williams from their jurisdiction. In the very act of contending for the broadest liberty of thought and of worship, our fathers claimed for themselves the right to separate from those whose opinions they deemed inimical to the truth, or subversive of scripture teaching. They strongly insisted on their right thus to withdraw. This was their liberty." REV. A. H. GRANGER, HISTORY OF THE RHODE ISLAND BAPTIST STATE CONVENTION (1825-1875) 43, 45 (Providence 1875).

20. HUNTINGTON, supra note 14, at 15, 17. Even a minister who distanced himself from "liberal" theology, Charles Lowell, could preach a sermon entitled Theology, and not Religion, the Source of Division and Strife in the Christian Church, in which he contrasted the science of theology, which was divisive, with religion, which was a unifying "internal principle" with "its seat in the heart." CHARLES LOWELL, THEOLOGY, AND NOT RELIGION, THE SOURCE OF DIVISION AND STRIFE IN THE CHRISTIAN CHURCH, A SERMON 16 (Boston 1829).

National Liberal League took their liberal theology so far as to reject all distinct religions, including all Christianity and even Unitarianism, they worried that, "So long as the identification of religion with a certain determinate form of faith obtains (as with us Christianity, Bible, etc.), so long, the power of religious sentiment being what it is, there will be a strong tendency to the narrow, exclusive and intolerant spirit."^{22}

Almost uniformly, these advocates of liberal ideals associated the intolerance of theological claims of authority with hierarchy and, at least by implication, with Popery. The Rev. Huntington asked: "In all these means, which are used for controlling the right of private judgment, do we not perceive the shattered remnants of the machinery of a once formidable and most mischievous hierarchy?"^{23} Taking this perspective to an extreme of anti-Christian sentiment, Francis Ellingwood Abbot—the founder of the National Liberal League—held that "he is the most consistent 'Christian' who submits to the theological and ecclesiastical rule of Rome," and that "[i]t follows, therefore, no one thoroughly imbued with the modern spirit of liberty is really a Christian: and ought not to claim the Christian name."^{24} Conjuring up fears of Rome's "theological and ecclesiastical rule," liberals assailed the theology of those less liberal than themselves, claiming that, in its claims of religious authority and exclusive truth, it was intolerant.

In taking such positions, theological liberals emphasized that they were not partisan. In 1815, when William Ellery Channing and his associates already comprised a formidable theological party, Channing rejected the label "Liberal Christians" on the ground that this would be illiberal. He recognized that "the appellation . . . cannot well be avoided," but he protested:

I have never been inclined to claim this appellation for myself or my friends, because as the word liberality expresses the noblest qualities of the human mind,—freedom from local prejudices and narrow feelings, the enlargement of the views and affections,—I have thought that the assumption of it would savor of that spirit which has attempted to limit the words of orthodox and evangelical to a particular body of Christians.^{25}

24. What is Free Religion?, in 1 (No. 3) INDEX (Jan. 15, 1870).
25. William W. Fenn, *The Revolt Against the Standing Order, in Religious History of New England: King's Chapel Lectures* 116-17 (1917), quoting a letter
In their own minds, theological liberals transcended not only theology but also the narrowness of sect or party. Ironically, however, liberals often seemed theologically intolerant. Although the opponents of liberal theology appeared intolerant on account of their moral certitude and their censoriousness, liberal theologians often shared these traits, and as liberals became more numerous, they seemed to grow all the more dogmatic. Confident in the truth of their beliefs, and zealous in advocating them, liberals could be at least as overbearing in their expectations of conformity and their revulsion against dissent as any American Christians. Certainly, in the 1820s, Congregationalists felt that the "reign of misnamed liberal opinions" subjected them to "bitterness and invective" and that some of their Unitarian opponents were "under the influence of a highly excited feeling of anger." Liberal Christians often recognized that such complaints had merit. In 1855, a prominent Unitarian, the Rev. Henry W. Bellows, counseled against "vindicativeness on our part." Similarly, in the 1870s, when the liberals in the National Liberal League regularly inveighed against an intolerant Christianity, they worried about their own reputation for censoriousness. "Liberals are the last class of people that should be bigotted." Yet liberals felt they needed to remind themselves of this: "Above all things, let a spirit of liberality toward the opinions of others be duly exercised. Let a proper respect for the views of our fellows be generously maintained." It was "neither possible nor desirable that all should arrive at the same conclusions—that all should think alike as to all theological, scientific and philosophical subjects." Therefore, "[a]bove all things, let liberals not become bigots, and demand that others shall think precisely as they do."29

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26. REVIEW OF A PAMPHLET ON THE TRUST DEED OF THE HANOVER CHURCH 5-6 (Boston 1828). The reviewer expostulated that the Recent Attempt was written "by a man who avows himself to be a LIBERAL Christian." Id. at 8.

27. BELLOWS, supra note 25, at 11.


29. Id. at 9-10. Some Liberals achieved a freedom from dogma—at least other
LIBERAL ANTI-CATHOLICISM

Liberal theology reached its most intolerant in its clash with Catholicism, for Catholicism seemed the very definition of illiberality. Not all anti-Catholicism was liberal nor was even based on liberal principles. Nonetheless, much anti-Catholicism—whether that which flourished among theological liberals, among other Protestants, or among nativists—drew upon liberal conceptions of individual independence and mental freedom.

Although Protestants disagreed over liberal theology, they found common cause in their assault upon the illiberality of the Catholic Church. The way in which the attack on Catholic illiberality unified Protestants may be illustrated by the stance taken by Presbyterians. Although the Presbyterians remained further from liberal principles than any other major denomination, they quickly associated themselves with the campaign against the theologically illiberal characteristics of the Catholic Church.3 Presbyterians themselves felt vulnerable to charges of illiberality on account of their adherence to a relatively orthodox Calvinism and on account of their reputation for intolerance. They had been notoriously harsh toward their fellow Protestants in seventeenth-century Britain, and, in nineteenth-century America, their opponents rarely lost an opportunity to suggest that the Presbyterians still longed for oppressive power. Presbyterians resented these accusations of illiberality and responded by joining and sometimes leading Protestant accusations that Catholics were anti-liberal and thus anti-American. In this way, Presbyterians identified with fellow Protestants by deflecting the accusation of illiberality against the Catholic Church. For example, already in 1835, the Rev. John Breckenridge contrasted Catholicism people’s dogma—in a town of their own, Liberal, Missouri. Founded in 1881, by G. H. Walser, “for the use and occupation of Freethought and Liberal-minded people,” it had grown by 1885 “to an active business town of five hundred inhabitants, all of whom are honest, sober, and industrious; and, too, absolutely free from church dogmatisms and political serfdom of all kinds.” Such, at least, was how they advertised themselves. Indeed, “The people of Liberal pride themselves in the fact that they have practically demonstrated to the world that Freethought and free expression do not tend to a lower grade of humanity; that the happiest and best community is that one which is the freest from the dogmas of religion; THAT MAN’S SAVIOR MUST BE MAN ALONE.” The Town of Liberal, an advertisement in THE TRUTH SEEKER ANNUAL AND FREETHINKERS’ ALMANAC 96 (New York, Truth Seeker, 1885).

with the “Americanism” of Protestants, repeatedly declaring that the “Roman Catholic Church in America is anti-American and anti-liberal.” “The papal system cannot become liberal, and they [Catholics] will not renounce it; and here we join issue—here we fix our final opposition to it, as anti-American, as well as anti-Christian.”31 Such sentiments united Protestants of various denominations. Astonished at the illiberality of the theologically-liberal assaults on Catholicism, Rabbi Isaac Wise observed: “The liberality of the Protestant churches is something unknown and strange.”32

The perception that Catholicism threatened a liberal, individualistic conception of authority laid the intellectual foundation for much of the nativist movement, through which Americans transformed their conceptions of their national identity.33 In the name of “Americanism,” the nativists assailed the Catholic Church for seeking temporal power—an accusation nativists substantiated by pointing to the extravagant claims of the Pope and some Catholic clergy. More fundamentally, however, nativists also condemned the Catholic Church for asserting its religious authority over its own adherents, thus, allegedly, depriving them of the mental freedom necessary for American citizenship. For example, the nativist editor and politician, Thomas Whitney, suggested that Catholics should be denied suffrage. “The individual who places his conscience in the keeping of another, divests himself of all individuality, and becomes the creature, the very slave of his conscience-keeper. In

31. JOHN HUGHES & JOHN BRECKENRIDGE, DISCUSSION OF THE QUESTION, IS THE ROMAN CATHOLIC RELIGION, IN ANY OR IN ALL ITS PRINCIPLES OR DOCTRINES, INIMICAL TO CIVIL OR RELIGIOUS LIBERTY? AND OF THE QUESTION, IS THE PRESBYTERIAN RELIGION, IN ANY OR IN ALL ITS PRINCIPLES OR DOCTRINES, INIMICAL TO CIVIL OR RELIGIOUS LIBERTY? 301, 337 (Baltimore, John Murphy & Co., 1869). See also id. at 236. Similarly, in 1843, Thomas Smyth rejected charges of Presbyterian “illiberality, bigotry, and exclusiveness” by writing a volume that contrasted the “liberality” of Presbyterianism to the “illiberality” of the Papacy. THOMAS SMYTH, ECCLESIASTICAL REPUBLICANISM; OR THE REPUBLICANISM, LIBERALITY, AND CATHOLICISM OF PRESBYTERY, IN CONTRAST WITH PRELACY AND POPYERY 202 (Boston 1843). He even argued that presbyterians distinguished themselves among Protestants by their “superior liberality.” Id. at 231. Indeed, “there can be no greater liberality, nor any protest against... intolerance, more powerful than that delivered in the standards of our church.” Id. at 234. Recognizing that such a statement might seem odd to Unitarians, he explained that “[t]he presbyterian church is at once liberal and orthodox.” Id. at 239.


every sense, moral, social, and religious, he becomes a mere instrument, and as a natural consequence his whole being, his happiness or misery, his successes and defeats, his condition and circumstances, all are made dependent on the will or caprice of another.” Divested of individuality, Catholics lacked the essential qualification for voting: “The exercise of the right of suffrage is, in its legitimate sense, an intellectual act; and the conferring of that right upon minds like these—minds incapable of understanding the purport or power of the ballot—seems little less than an act of madness or imbecility.”34 In short, not only the Catholic Church’s claims of temporal power but also its internal doctrines, discipline and structure of authority—which, in America, were entirely voluntary—seemed to threaten the “inward” individual freedom or individual authority, upon which, in the liberal and, especially, the nativist perspective, both Protestantism and American freedom depended. Liberal theology had become a central tenet of Americanism, and, for deviating from it, Catholics merited losing their right to vote.

With no sense of irony, the advocates of Americanism condemned what they considered the stultifying, unchanging uniformity of Catholicism and celebrated what they saw as the evolving diversity of America’s overwhelmingly Protestant majority. “Junius Americus” argued that Protestantism and Catholicism were “essentially opposite... The former admits diversity of opinions, and freedom in the enjoyment of

34. THOMAS R. WHITNEY, AN ADDRESS DELIVERED... AT HOPE CHAPEL... ON THE OCCASION OF THE SEVENTH ANNIVERSARY OF ALPHA CHAPTER, ORDER OF UNITED AMERICANS 10 (New York 1852). He also wrote: “These qualifications are rarely found in one trained to submission, and imbued with a sense of his own inferiority. Such a man, coming from the twilight of bondage into the broad meridian of freedom, is dazzled with the unaccustomed glory that surrounds him. His confused senses cannot endure the light. He is lost, bewildered. He can neither comprehend nor realize his new position. Accustomed to cringe in the presence of his “betters,” he looks in vain for a living shrine that will accept the homage of his bended knee.” THOMAS R. WHITNEY, A DEFENCE OF THE AMERICAN POLICY 129 (1856). He asked: “Is such a man in a condition to exercise the right of suffrage side by side with the free-born, and free-cultured intelligence? Should the vote of such a man be permitted to neutralize and render nugatory the vote of the most enlightened mind in the nation? Such is its effect.” Id. at 130. James Putnam—State Senator from Erie—argued: “If he surrender a portion of his franchise to his spiritual teacher, he will soon be prepared to surrender all his judgment, all his political individuality, to the same ambition.” ECCLESIASTICAL TENURES, SPEECH OF JAMES O. PUTNAM, OF BUFFALO, ON THE BILL, PROVIDING FOR THE VESTING OF THE TITLE OF CHURCH PROPERTY IN LAY TRUSTEES, DELIVERED IN THE SENATE OF NEW YORK, JANUARY 30, 1855, 21 (Albany 1855).
those opinions: the latter demands that there shall be but one faith.”

The uniformity desired by the Catholic Church seemed to threaten the individualistic diversity increasingly celebrated by Protestants and nativists, and therefore many of these nativists and other Protestants demanded that the Catholic minority conform to the popular Protestant vision of Protestant variety. The Presbyterian minister, the Rev. John Breckenridge, blasted the Catholic Church as “the only church in America in which perfect uniformity prevails; and whose members all speak one language and breathe one spirit. The agitated and heterogenous mass of protestantism can never feel, think, or act together; though each of the thousand and one sects were ever so well disposed to govern the nation.” Breckenridge pointed to “the consolidated character” of the Catholic Church, “its full and formal unity everywhere and always; and the uniformity of its doctrines.” He contrasted this with “the utter and hopeless division of Protestants; the number of their sects and parties . . . ; the varieties of their opinions on every possible subject touching the revelation of God; and in a word the hopeless distractions and dissimilitudes of protestantism.” In such ways, in opposition to Catholicism, nativists and their clerical allies expanded liberal ideas into a conception of American Protestant diversity. Responding to this political development of their ideas, some theological liberals, such as the Unitarian minister, Henry W. Bellows, found common cause with nativists and joined them in celebrating the “liberal Christianity” of America, where “theology is so vacillating and progressive.”


36. Hughes & Breckenridge, supra note 31, at 470, 472, 537. He continued: The system is so constructed in its doctrines, institutions, and discipline, as to receive a man into bondage when he comes in to the world; to lead him through life in bondage; and send him out of the world bound hand and foot, dependent on priestly acts and intentions whether he be saved or lost, and whether if he get into purgatory and not into hell, he shall stay there a long or a short time, before he rises to Heaven! . . . An illustration of the system supported by them is very important—in proof that the Roman Church is the enemy of liberty. Id. at 537. Moreover: “In the Papal Church, baptism, which is a brand of slavery for life, is at the same time made absolutely necessary to salvation; so that none can be saved without it; no, not even the dying infant; and those babes who die without it are forever lost.” Id. at 470. Similarly, “AURICULAR CONFESSION, which is required in the Roman Church, in order to [attain] salvation, is in the highest sense an INVASION of personal liberty.” Id.


38. Bellows, supra note 25, at 5-6. For more on the relation of this Christianity to progress, see id. at 9. Similarly, the founder of the National Liberal League, Francis Ellingwood Abbot, sought the “universal element” in religion, not in any one religion, but in a “UNITY IN DIVERSITY OF ALL RELIGIONS.” Francis Ellingwood Abbot,
this perspective, American Protestantism was non-dogmatic, diverse, and mutable, and therefore was free and could progressively approach the truth.

Particularly in the wake of the mid-century nativist movement, theological liberals felt that their religious beliefs were the foundation of all that was American. Bellows wrote: "It is a name that ought to be peculiarly descriptive of the American patriot, the American thinker, the American Christian,—'the liberal.'" Thus, "[t]he founders, sustainers, propagandists of civil and religious liberty, should of course be liberals." In contrast, the "timid and backward looking" citizen, whom Bellows described as "afraid of liberty," was "to the extent of his honest fears and misgivings, denationalized, self-alienated, and belong[ed] in the other hemisphere." Joining nativists in blurring the distinctions between theology and politics, Bellows declared that "the Christianity of America" was "characteristically liberal" and that, similarly, "notwithstanding the great blots upon our civil and social liberty, the politics of America is characteristically liberal."  

39. BELLOWS, supra note 25, at 3-4. These included those who were "anxious to creep out of the wind and sun of God's broad daylight, into some nicely ceiled house that Calvin, or Luther, or Wesley, or Edwards built." Id. at 4.

40. Id. at 5. Drawing upon the full sweep of American history within his liberal vision, Bellows even wrote: "The early settlers "were liberals in politics, in religion." Id. at 4.
In such ways, the political applications of liberal sentiments acquired some of the traits of liberal theology. In the eighteenth century, "liberal sentiments on the administration of Government" or "political liberality of sentiment" had typically been quite secular.41 In the mid-nineteenth-century, however, as nativists adopted theologically-liberal conceptions of individual independence and as theological liberals adopted the nativist belief that such independence was characteristically American, the liberal ideals applied to American politics acquired some of the features of liberal theology, including an emphasis upon individual mental independence and a fiercely partisan, even theological, tenor.42

From the theologically-liberal perspective underlying much of nativism, some Protestant Americans proposed astonishingly intolerant remedies against their least popular white minority. The extremes to which some Protestants took their ideals may be illustrated by an 1870 proposal by Judge Elisha P. Hurlbut. This former judge of the New York Supreme Court and future Vice President of the National Liberal League feared that "even the most liberal of American Catholics, so liberal, indeed, as to have fallen into decay with the Roman priesthood in this country," still deferred to their "potentate." Accordingly, Hurlbut desired federal laws prohibiting "any foreign hierarchical power in this country, founded on principles or dogmas antagonistic to republican institutions." He justified his proposal by explaining: "There is a distinction to be taken between religious opinion and worship on the one hand, and organizations and practices in the name of religion on the other." Rather than oppose religious liberty, he merely rejected a type of religious organization. The "theocracy" of such a group was "a fungus of religion," of which he concluded: "It may be eradicated without hurting religion itself. Restraint of theocracy is the way to religious health and freedom." He added: "I feel no difficulty therefore in asserting that we can sever the connection between the Roman pontiff and the dignitaries of the Catholic Church in America, not only without violence to sound principles, but to the advantage of the state, and to the Church itself, which might then become truly Catholic, and command the respect of an age of light and liberty."43 This was but one of a series

41. A Letter to the Inhabitants of the Province of Quebec (Oct. 26, 1774), in A DECENT RESPECT FOR THE OPINIONS OF MANKIND, CONGRESSIONAL STATE PAPERS 1774-1776, 63 (1975); N.Y. INDEP. J., July 24, 1784, No. 68.

42. Of course, the partisanship and the emphasis upon individual independence had also been evident in the writings of varied Jeffersonians beginning already in the late 1790s, but these came to be closely associated with liberal ideals only gradually—to some extent under President Jackson, and much more clearly during the ascendency of the nativists.

43. ELISHA P. HURLBUT, A SECULAR VIEW OF RELIGION IN THE STATE AND THE
of nineteenth-century proposals to destroy the internal authority of the Catholic Church. More practicably, many Americans pursued their Protestant and nativist sentiments by torching Catholic churches and by attacking and even shooting Catholics. Yet few of these violent
attempts to make the Catholic Church conform to the principles of Protestant Americanism posed a greater threat to the Church than an 1855 statute concerning church property.

**CHURCH PROPERTY**

The full measure of the nativists’ aspirations to liberalize the minds of their fellow Americans became evident in New York’s 1855 church property statute. Already in the 1840s, Protestants in New York had made clear their desire to liberate Catholic children from the bondage of Catholic superstition by requiring students in New York City’s publicly-funded schools to read the Protestant Bible and other Protestant books. In the 1850’s, however, nativists went a step further. They passed a law designed to deprive the Catholic Church’s hierarchy of control over its church property—a law they hoped would liberate individual Catholics from the authority of their clergy.

Church property had long been a most delicate matter, for it raised questions about a church’s authority over its own members. By providing forms or modes in which religious societies could hold their property, American law often protected churches in their rights of property and association. In addition, however, by shaping and limiting the forms of holding property, the law almost inevitably affected a church’s control over its property and thus also its internal governance or discipline. Although the law thereby did not necessarily establish religion, it undoubtedly affected the capacity of churches to maintain their beliefs.

One form of holding property was incorporation. The incorporation of commercial and religious associations had long been a conduit for granting special financial privileges—the privileges for economic prosecution... and are ready to petition the Governor that sentence may not be executed upon him... I do not understand this. I do not see why the advocates of religious liberty should be so much alarmed in the one case, and so little disturbed in the other.” S. K. LOTHROP, THE NATURE AND EXTENT OF RELIGIOUS LIBERTY, A SERMON PREACHED AT THE CHURCH IN BRATTLE SQUARE, JUNE 17, 1838, 16-18 (Boston 1838). Of course, unlike the Catholics, Kneeland was threatened by the state. Yet Channing and other Unitarians had emphasized the greater danger to religious freedom from oppressive opinions, leaving the Unitarians singularly vulnerable to criticism.

Incidentally, Harriet Martineau’s role in eliciting the Kneeland petition is recorded in her Autobiography. After she was exposed to the contempt of many Bostonians for her public appearances against slavery, she asserted her “rights of thought and speech” in private discussions, and she viewed Channing’s petition for the pardon of Kneeland to be a “clear consequence of my conversation and experience.” HARRIET MARTINEAU’S AUTOBIOGRAPHY 359 (Maria Weston Chapman ed., Boston 1879). For the petition, see id. at 557.
corporations being condemned as monopolies and for those religious organizations being denounced as establishments of religion. Accordingly, the incorporation of religious societies seemed suspect to many American denominations. Some dissenters took their opposition to establishments to the point of rejecting the incorporation of even voluntary or unestablished religious groups on the ground that incorporation was an assertion of human authority over religion. The incorporation of religious groups could seem particularly problematic in America, where incorporation was accomplished by statute rather than by charter and where dissenters often demanded that there be no laws respecting religion. For example, in the 1780s, when Anglicans in Maryland and Virginia sought statutes of incorporation to preserve their existing property rights in their churches, dissenters in each state successfully opposed what they perceived as attempts to create new establishments. In the nineteenth century, to avoid establishing religion, and to avoid creating opportunities for Catholics, the legislature of Virginia persistently refused to enact any secure mode of holding church property until 1842, when it finally protected very limited amounts of church property held by trustees. It still refused, however,

45. For an extensive late eighteenth-century British attack on incorporation, which assumed that all incorporations of ecclesiastical societies would be employed to grant special privileges, see WILLIAM GRAHAM, A REVIEW OF ECCLESIASTICAL ESTABLISHMENTS IN EUROPE (Windham, Conn., 1808).


47. For Maryland, see 2 THE WORKS OF WILLIAM SMITH 509, 509-23 (Philadelphia 1803). As late as 1788, Anglicans hoped for a general incorporation statute, but it too failed. See NORMAN K. RISJORD, CHESAPEAKE POLITICS 1787-1800, 484-85 (1978). For Virginia, see Thomas E. Buckley, S.J., supra note 47. The Virginia Act of 1784 incorporated the minister and vestry of each parish and was repealed in 1787. Id. Madison himself acknowledged (with respect to the Episcopal Church) that "the necessity of some sort of incorporation for the purpose of holding & managing the property of the church could not well be denied." Letter from James Madison to Thomas Jefferson (Jan. 9, 1785), in 8 PAPERS OF JAMES MADISON 228, 228-29 (Chicago: Univ. of Chicago Press, 1973).

48. Buckley, S.J., supra note 46, at 469 & 477. The dangers of a lack of incorporation were considerable. Already in the eighteenth century, a Presbyterian leader of the dissenters, William Tennent, explained: "[T]he law, by incorporating the one Church, enables it to hold estates, and to sue for rights; the law does not enable the others to hold any religious property, not even the pittances which are bestowed by the hand of charity for their support. No dissenting Church can hold or sue for their own property at common law. They are obliged therefore to deposit it in the Hands of Trustees, to be held by them as their own private property, and to lie at their mercy. The
to incorporate churches, leading some Baptists in 1846 to complain that "even 'Free Masons and Odd Fellows' held rights denied to Christian groups." 49

In most states, however, anti-incorporation sentiments were not so extreme or pervasive. Numerous dissenters had opposed incorporation while it was granted unequally, but, as they acquired equal rights, many such dissenters, albeit not all, abandoned their opposition to incorporation. In some states, such as Connecticut and Massachusetts, where Congregationalists continued to be established well into the nineteenth century, the legislatures occasionally incorporated Protestant organizations with special acts. 50 In contrast, however, in other states, such as New York and Ohio, the legislatures passed general incorporation statutes that permitted religious societies to obtain the benefits of corporate status without depending upon legislative discretion. In particular, New York's legislature passed its general incorporation statute in 1784 and revised it in 1813. 51

consequence of this is, that too often their funds for the support of religious worship, get into bad hands, and become either alienated from their proper use, or must be recovered at the expense of a suit in chancery." WILLIAM TENNENT, ON THE DISSENTING PETITION: DELIVERED IN THE HOUSE OF ASSEMBLY, CHARLES-TOWN, SOUTH CAROLINA, JAN. 11, 1777, 9 (Charleston 1777).

49. Buckley, S.J., supra note 46, at 463.

50. In Massachusetts, for example, notwithstanding protests by Backus, Stillman, and varied Baptist associations, "an increasing number of Baptist societies in Massachusetts sought and obtained incorporation from the General Court after 1791, and in 1810, when the Supreme Court of Massachusetts made its definitive ruling that no congregation could obtain its share of religious taxes unless it was incorporated, the assembly was flooded with Baptist applicants." WILLIAM G. MCLoughlin, 2 NEW ENGLAND DISSENT 1318 (1971). In the nineteenth century, Massachusetts regularly incorporated Protestant congregations in ways that recognized the different internal lines of authority and structures of governance of different denominations. See REVIEW OF A PAMPHLET ON THE TRUST DEED OF THE HANOVER CHURCH 20-24 (Boston 1828). For details of the denial of an act of incorporation to a Catholic institution in Massachusetts, see generally REMARKS ON THE PETITION FOR AN ACT INCORPORATING THE COLLEGE OF THE HOLY CROSS (from Brownson's Quarterly Review) (Boston 1849).

51. To Enable All the Religious Denominations in this State to Appoint Trustees, Who Shall Be a Body Corporate, for the Purpose of Taking Care of the Temporalities of their Respective Congregations, (April 6, 1784), Sessions Acts, Chpt. 18; An Act to Provide for the Incorporation of Religious Societies (April 5, 1813), Sessions Acts, Chpt. 105. In contrast to New England, where incorporation remained the path to establishment privileges, in New York it was reduced to the ordinary means by which churches held property. In the words of Noah Webster: "Before the revolution, the government of New York ... was illiberal in the preference given to the episcopal church, no other denomination of Christians being able to obtain any corporate establishment. The same illiberal preference was discoverable in the institution and government of the college, now called Columbia college, in which dissenters of any
New York's general incorporation statute stipulated that only individual congregations could incorporate and that they had to place their property in the hands of lay trustees—both of which requirements were designed to limit the wealth, the power and, ultimately, the internal authority and influence of the clergy. In its formal structure, this system of lay trustees required in church government the devolved authority Americans had recently adopted in their secular governments. Yet it also, in a far more radically Protestant fashion, undermined the clerical authority that might stand in the way of the progressive liberalization of theology.


53. An 1855 article explained:

To obtain corporate powers, the members of the congregation have only to assemble and elect trustees, and file in the office of the clerk of the county a certificate of their doings. The trustee thereupon, by their corporate name, become empowered to hold property, both real and personal, and exercise in all respects the management of it, except that they cannot dispose of it without the order of a competent court to that effect. The trustees are divided into classes and elected at stated intervals. The statute prescribes who may vote on the election of trustees. They must have been stated attendants on divine worship in that particular church or congregation, at least one year before the election, and have contributed to its support according to the uses of the society. It is not necessary that they should be church members to constitute them voters.

The trustees thus elected have the exclusive control of the temporal affairs of the congregation, except that they cannot fix the salary of the pastor without a concurring vote of the majority of those qualified to elect trustees, given at a meeting called for the purpose.

Under these statutory provisions, the property and revenues of a church corporation are subject to such direction as may be given by the voting members of the congregation, through the medium of their trustees, even if that should be inconsistent with the doctrines which the church was at first established to defend. A Presbyterian congregation may, by the voice of a majority of pew holders become Unitarian or Universalist, and apply its funds to the support of a minister of one of those denominations, except in cases where they may have been originally granted or devined on condition of being applied to sustain particular
By controlling the use of their church, lay trustees could resist their
clergy on any number of matters, including doctrine and discipline, and
therefore, even though most lay trustees had no such ambitions, the very
existence of such trustees was potentially destructive of any church that
hoped to preserve its doctrines or the authority of its clergy. This
democratizing and Protestantizing structure of church ownership had the
particular advantage of creating obstacles for the Catholic Church. By
the early nineteenth century, as lay Catholics became numerous, and
especially as they felt the attractions of independence, some Catholic lay
trustees—most notably at the Church of St. Louis in Buffalo—resisted
their bishops and called into question the hierarchical structure,
discipline, and authority of the Catholic Church. The Baltimore
Provincial Council of 1829 had required episcopal control of new church
doctrines. Indeed, four of the Judges of the Court of Appeals held in the case of
Dr. Bullions, recently decided after a long litigation, "that the trustees of a
religious corporation in this State cannot receive a trust limited to the support of a
particular faith, or a particular class of doctrines, for the reason that it is
inconsistent with those provisions of the statute which give to the majority of the
corporations, without regard to their religious tenets, the entire control over the
revenues of the corporation."

Tenure of Church Property, in 30 ARGUS (Albany, N.Y., Jan. 11, 1855). Although the
author of this article alluded to Presbyterians when illustrating the risks of lay trustees as
organized under New York's general incorporation statutes, Presbyterians, like most
other Protestants, faced no such dangers. For example, a statute of 1822 provided that:
"the minister or ministers and elders and deacons... of every reformed Presbyterian
church or congregation,... shall be the trustees for every such church or congregation."

An Act Supplementary to the Act Entitled, "An Act to Provide for the Incorporation of

Unlike in other states, in New York, a common-law trust could not be used to escape
these dangers of lay trustees. "The law, with reference to the power of majorities in
single church organizations, is different in New York... A trust for the support of a
specified faith, doctrine and government cannot be made in New York so as to prevent a
majority of the members of the church and corporation from affecting changes in the
mode of worship. See Gram v. The Prussian, etc. German Society, 36 N.Y. 161 (1867).

But this anomalous condition is due to the independent nature of individual churches
under the New York incorporation laws." American 'Church and State', in THE

More broadly, Glenn Miller observes of American church property laws: "The laws
relating to the holding of church property encouraged a congregational form of church
depoly, but they had other effects as well. Theologically, such laws encouraged the
American movements toward various forms of doctrinal modernization. The courts
consistently ruled that the theology of the majority of a congregation was normative for
that congregation." GLENN T. MILLER, RELIGIOUS LIBERTY IN AMERICA 95 (1976). He
further observes: "The historical interpretation of religion, which stresses the changes
that faiths undergo in different circumstances, became—in effect—part of the law. This
made it easier for change to take place." Id. at 96.

54. DIGNAN, supra note 50, at 160-61, 163, 168-71.
property, and, as the bishops encountered resistance to their authority from lay trustees, they became increasingly concerned. Some bishops pointed out that lay trustees could subvert the capacity of any religious society with a non-democratic church government to discipline its members and thus adhere to its beliefs. As Bishop Hughes protested in 1842: “Every religious denomination in this country, being obedient to the laws thereof, has a right to regulate, according to its own rules, the questions of ecclesiastical discipline appertaining to its Government. Deny this right, and you destroy religious liberty.”

Other churches in New York State had also understood that a uniform imposition of lay trustees threatened their internal discipline and thus their very existence, and therefore many had obtained special legislation exempting them from this requirement of the 1784 general incorporation law. For example, the Episcopalians, the Presbyterians, the Methodists, the Dutch Reformed Church, and the Quakers had at various times secured statutes excusing them in a manner that accorded with their own doctrines and structures of authority. Hughes explained that “the

55. Bishop Hughes’ Apology for his Pastoral Letter (Nov. 1842), in 1 COMPLETE WORKS OF THE MOST REV. JOHN HUGHES 328 (New York 1865). Similarly, in 1828, after Unitarians had seized control of so many Congregational churches, a Congregationalist had asked: “And what, on these principles, becomes of our religious freedom? What is religious freedom? It is the right and privilege in every member of the community to adopt what religious opinions and attach himself to what religious denomination he pleases . . .; and the right and privilege in every religious denomination of inculcating their peculiar sentiments and maintaining their peculiar order of ecclesiastical discipline.” REVIEW OF A PAMPHLET ON THE TRUST DEED OF THE HANOVER CHURCH 26-27 (Boston 1828). See also id. at 35-36.

56. BROOKSIANA; OR THE CONTROVERSY BETWEEN SENATOR BROOKS AND ARCHBISHOP HUGHES, GROWING OUT OF THE RECENTLY ENACTED CHURCH PROPERTY BILL, WITH AN INTRODUCTION BY THE MOST REV. ARCHBISHOP OF NEW YORK 196 (New York 1855). In the early nineteenth century, when many feared the authority of religious groups over their congregations, even Protestant attempts to give stability to doctrine by placing control over church property in the hands of the clergy could provoke concern for “internal” religious liberty. Particularly in Boston, in the controversies over Unitarianism, many feared for the freedom of persons who dissented from the doctrine of a congregation but did not want to depart and thereby give up their rights in it, whether relating to pews, burial, or governance. For example, the creation of a trust placing the rights to the Hanover Street Church of Boston in clerical hands provoked complaints that the clergy had invented a “new mode of binding consciences.” A LAYMAN [JOHN LOWELL], THE RECENT ATTEMPT TO DEFEAT THE CONSTITUTIONAL PROVISIONS IN FAVOR OF RELIGIOUS FREEDOM, CONSIDERED REFERENCE TO THE TRUST CONVEYANCES OF HANOVER STREET CHURCH 15 (Boston 1828). These Unitarian complaints, however, were minimal compared to the onslaught unleashed against Catholics in subsequent
principle hitherto adopted and universally acted upon... has been that each denomination should either use a general enactment, such as the law of 1784 in this State, or solicit, at the hands of the Legislature, such special enactment as might enable them, consistently with the requirements of the Constitution, to manage the external affairs of their communion as a religious body according to their respective symbols of faith."57 In this way, the other churches had escaped "the crude enactments of the law of 1784."58

To avoid the problems of authority created by lay trustees, and to conform to the Catholic Church Councils that demanded clerical ownership, Hughes eventually attempted, in the 1840s, to have the various properties of the Catholic Church in New York placed in trusts held by himself or other bishops.59 Looking back in 1855, the Albany Argus explained: "Of late years, the Catholic churches in this State are quite generally in the habit of vesting the title of their church property in their bishops." Yet, "in the absence of any law regulating titles thus held," there was "great hazard that by the sudden death of a bishop without a will the property might be divested from its intended use, to his heirs at law," and therefore "the Catholics both lay and clerical, have felt anxious for some legislation legalizing and guarding against such a contingency."60 To avoid these risks of their unauthorized, episcopal

57. The Church Property Controversy, in 2 COMPLETE WORKS OF THE MOST REV. JOHN HUGHES 550 (New York 1865). In the ellipses were the words: "if we except the Church Property Bill as it is commonly called." Id. Hughes also declared: "We say candidly, that this system is entirely out of keeping with the principles of religious belief and of ecclesiastical discipline peculiar to our faith. Nor do we know any denomination, except the Congregationalists, to whom it is applicable or by whom it is desired. Neither is it of much consequence to Catholics, that wherever it has existed some of the clergyman of other denominations have complained of it bitterly, as authorizing a despotism of the laity, controlling their freedom in the 'Ministration of the Word,' if not of the sacraments." Id. at 575.

58. Id. at 570.

59. For an unfriendly account of the details of these trusts, see W.S. TISDALE, THE CONTROVERSY BETWEEN SENATOR BROOKS AND "+JOHN", ARCHBISHOP OF NEW YORK, GROWING OUT OF THE SPEECH OF SENATOR BROOKS ON THE CHURCH PROPERTY BILL (New York 1855). More generally, see DIGNAN, supra note 52. Hughes was also concerned about other dangers of lay trustees, including their mismanagement and improvidence, but this seems to have been less his reason for seeking control of the churches than the cause of his success in getting the trustees in New York City to acquiesce. PATRICK W. CAREY, PEOPLE, PRIEST, AND PRELATES: ECCLESIASTICAL DEMOCRACY AND THE TENSIONS OF TRUSTEEISM 89 (1987).

60. Tenure of Church Property, in 30 ARGUS (Albany, N.Y., Jan. 11, 1855). As late as 1875, Justice William Strong observed the Catholic arrangement of having "the title to the churches, school-houses, and cemeteries... held by the bishop, who transmits
trusts, some Catholics who were allied with Bishop Hughes proposed a statutory amendment to the Acts of 1784 and 1813—an amendment authorizing the incorporation of churches, including Catholic churches, without lay trustees. Although these Catholics failed to get such legislation in 1852, they tried again in 1853.61

In response, nativist politicians not only challenged the Catholic proposal but also put forth an alternative bill that would have forced Catholics to chose between lay trustees or confiscation. The nativists were encouraged by divisions within the Catholic Church. In particular, it by will to his successor in office. . . . [S]uch is the tenure of most Roman Catholic churches in the country. The title to the real estate resides in the bishop of the diocese.” WILLIAM STRONG, TWO LECTURES UPON THE RELATIONS OF CIVIL LAW TO CHURCH POLITY, DISCIPLINE, AND PROPERTY 110 (New York 1875).

61. CAREY, supra note 59, at 53. Incidentally, Hughes became Archbishop of New York in 1850. The Catholic bill stated: “The People of the State of New York, represented in Senate and Assembly do enact as follows: Sec. 1. Any officer or officers, person or persons, being citizens of this State, who, according to the usage and discipline of the Roman Catholic or any Protestant church, may be designated to represent any Roman Catholic or any Protestant congregation or society in holding and managing the temporalities thereof, may become incorporated as the trustee or trustees of such congregation or society in the mode prescribed in the second section of the act entitled “An act to provide for the incorporation of religious societies,” passed April fifth, eighteen hundred and thirteen, as a corporation, sole or aggregate, as the case may be, and as such shall possess the same powers and rights, and be subject to the same restrictions, liabilities and conditions in all respects as the trustees of any Dutch Reformed church or congregation incorporated under said section. But nothing in this act contained shall be construed to divest any trustee or board of trustees now existing under any law of this State, or of the title or control of any of the temporalities of any Roman Catholic or Protestant church, congregation or society now existing except by the vote of a majority of the male members above twenty-one years of age, of such church, congregation or society, given at a public meeting called to consider such question in the manner that notices for the election of trustees is required to be given by the third section of the above mentioned act. § 2 This act shall take effect immediately.” An Act to authorize the incorporation of Roman Catholic congregations or societies, in REMARKS OF MR. BABCOCK, OF ERIE, ON THE ROMAN CATHOLIC CHURCH PROPERTY BILL IN THE SENATE, JUNE 24, 1853, UPON THE MOTION TO STRIKE OUT THE ENACTING CLAUSE OF THE BILL (Albany State Register—Extra) 11-12 (Albany 1853). The bill of the previous year was introduced Feb. 3, 1852. Id. at 1. See also RAY A. BILLINGTON, PROTESTANT CRUSADE 297 (1938).

The Catholics’ legal strategy differed quite markedly from that of the Protestants of Boston—Congregationalists and Baptists—who had earlier sought to preserve their church property for their own denominations by placing their churches in trusts. Whereas the Protestants had employed trust conveyances that specified the religious doctrines of the ministers who could be chosen, the Catholic Church in New York sought merely the right to incorporate with trustees of their own choice.
these Protestants found allies in the Catholic lay trustees of the Church of St. Louis in Buffalo, who resented Hughes’ attempt to secure episcopal control of their church buildings and sought to preserve their Americanized mode of self-government. Expanding upon the complaints of the dissentient trustees, nativists politicians in New York began a campaign to free Catholics from either their clergy or their property. In 1853, Senator William Babcock of Erie led the assault. Babcock aroused the fears of Protestants by arguing that the Catholic bill was “the first formidable demonstration made in the legislature of this State to revive . . . encroachments of the ecclesiastical power upon civil rights.” In contrast, Babcock would preserve “the supremacy of the laity” with the nativist bill, which would prevent any cleric from succeeding to any interest in property that had been given to Catholic clergymen or held in trust for them. The first section of Babcock’s bill stated simply: “No grant or devise of real or personal estate to, nor any trust of such estate for the benefit of any person and his successors in any ecclesiastical office, or to or for any person, by the designation of any such office, shall vest any estate or interest in any successor of such person”—the design being to force Catholics to put their church property in the hands of lay trustees or to risk losing it by escheat.

In the words of the Albany Atlas, Babcock’s “movement” was “aggressive.” It would have “operated to confiscate the religious property of Catholics, to the amount of millions of dollars.” Babcock responded that his movement was neither aggressive nor confiscatory, for “[i]t leaves vested rights untouched, and could only operate to make

62. CAREY, supra note 59, at 53. The Church of St. Louis had been held by lay trustees since 1838. The congregants, of mostly French and German origin, had long quarreled with the Catholic hierarchy, which was increasingly Irish. The continuing controversy, which Babcock and Putnam held up as an illustration of the value of lay trustees, clarified for Catholic bishops the dangers of this system of holding church property.

63. REMARKS OF MR. BABCOCK, supra note 61, at 3. For similar efforts to impose lay trustees on Catholics in other states, see CAREY, supra note 59, at 53.

64. REMARKS OF MR. BABCOCK, supra note 61, at 4 (quoting the Atlas of Saturday, June 18, 1853). He also said: “It is urged with zeal, that this bill is required to cure existing evils; that much of this property is already in the hands of bishops without adequate protection of law; that they will continue to accumulate it in their hands, and it is well to legalize their acts. To all this I have a short answer: The evils are of their own creation, with the assent of their people. When the people are sufficiently awake to their magnitude they will rectify them. . . . No sir; it is better that the property held by the bishops should remain as it is, exposed to all the hazards of unfaithfulness on their part; to the hazards of illegal trusts, and defective execution of wills. They are but the risks and penalties that the law attaches to all attempts to defeat its objects or evade its requirements.” Id. at 10-11.

718
future grants and devises conform to the established laws of the State”—an explanation that was true as far as it went but that said nothing about the bill’s effect upon the estates and interests that would not vest “in any successor” of existing clerical owners, trustees, or beneficiaries. Presumably, these would escheat. Other, Protestant churches, which had obtained special treatment under the “established laws,” did not face this risk. Accordingly, some Senators condemned Babcock’s bill as “the very quintessence of intolerance and illiberality.” Babcock himself clearly understood that his bill might deprive Catholics of their constitutional and other legal rights, and he equivocated that “[w]hile our constitution and laws guarantee religious equality and perfect freedom of thought to all, they contain the element of self-preservation by restraining acts repugnant to the object of their existence.” Eventually, however, he relented in his pursuit of the bill, for he did not yet have a majority, and his immediate goal was to prevent passage of the Catholic property bill that would have given Catholics the security of incorporation without lay trustees.

In 1855, at the height of the anti-Catholic fervor in America, Senator James O. Putnam of Buffalo and some nativist colleagues revived the dispute about church property. As in 1853, the lay trustees of the Church of St. Louis encouraged the nativists and gave them political cover by petitioning that church property should be protected by legislation from any episcopal control. Of course, Putnam and his fellow nativists in the legislature were all too happy to assist. In particular, Putnam introduced yet another bill requiring Catholics to adopt lay trustees of the sort permitted by the 1784 Incorporation Act.

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65. Id. at 4. See also id. at 6.
66. Id. at 4 & 11.
67. CAREY, supra note 59, at 55.
68. The bill expressly stipulated that church property not incorporated with lay trustees would eventually escheat. With rather less clarity, the bill seems, at least on the face of the matter, to have assumed that the State would hold the property only until the congregation incorporated with lay trustees. An Act in Relation to Conveyances and Devises of Personal and Real Estate for Religious Purposes (April 9, 1855), Sessions Acts, ch. 230, §§ 2-5. According to the N.Y. Herald, “his bill declares that ‘no grants, conveyances, devises or leases of real estate, &c., appropriated to religious purposes, shall vest any right, &c., in the grantee, &c.,’ unless the grant be made to a corporation organized under the general act. With grants heretofore made, the Legislature of course cannot interfere, and whatever happens Archbishop Hughes and the Bishop of Albany will hold their present estate for life. But on their demise, should the bill pass, the property will go to the corporations chosen by the congregations, and not to their
A Whig who had become a member of the nativist National American Party, Putnam believed that the 1784 Act manifested a "jealousy of the power of the priesthood" and "secured the rights of conscience and the freedom of worship." Indeed: "It was a practical embodiment of the American sentiment: 'A PRIEST FOR THE PEOPLE, AND NOT, THE PEOPLE FOR A PRIEST.'" 69

Like Babcock, Putnam justified his bill by suggesting that, because of the temporal claims of the Catholic Church, the State had to regulate church property on grounds of self-defense. "Property is power," and the state "has a positive interest in retaining that element of influence in hands where its possession will lead to attachment and fealty to its government." 70 Babcock, Putnam, and other advocates of lay trustees argued that clerical authority within the Catholic Church was a threat to successors." On this, the N.Y. Herald editorialized: "There can be but little question of the propriety of the change. It has never answered to vest church property in priests. The popular prejudice against the thing is too general and too deep rooted to rest on a slender basis. All experience teaches that priests are only too apt to identify themselves with the Deity whose ministers they are, and thus come naturally to regard property set apart for His service in the same light as if it were appropriated for their own. This cannot be done without great risk of injury to the rights of the real owners."

Indeed, the N.Y. Herald anticipated that Hughes could not even give away his property—that it would necessarily escheat: "But there is another reason—and apparently a quite conclusive one—why the church property should not be vested in the Bishops and Archbishop. By the laws of the land, John Hughes cannot devise, bequeath, or give a title to any real property whatsoever in this State. He may have declared his intention of becoming a citizen, and gone through all the forms necessary to naturalization; but it is notorious that he has not renounced allegiance to all foreign Potentates, for he owes allegiance at this moment to the Pope. This allegiance is due from all the Catholic clergy, in virtue of their office; and the day they renounce it, they cease to be priests or bishops as the case may be. If therefore Archbishop Hughes has renounced allegiance to that foreign Potentate the Pope, he is no longer rightfully an Archbishop of the Roman Catholic Church and certainly has no right to hold the property of the congregation of that faith. If he has not renounced allegiance to the Pope, he stands in the light of any other alien, and at his death property held in his name escheats to the State. This is the predicament in which Catholics in this and the Albany diocese now find themselves." It was a predicament that gave the N.Y. Herald pleasure: "Mr. Putnam's bill is designed to relieve them, and under the circumstances there does not seem to be any question but it must succeed in becoming a law. The heads of the church may lose property thereby, but what of that? In the universal joy diffused by the recent decision at Rome on the immaculate conception of the Virgin, a trifling loss of lands and houses will not be felt. What the clergy have lost in real estate, the church has gained in doctrine; and surely points of belief are worth more than acres." Church Property Question, in N.Y. Herald, Jan. 25, 1855.

69. ECCLESIASTICAL TENURES, SPEECH OF JAMES O. PUTNAM, OF BUFFALO, ON THE BILL PROVIDING FOR THE VESTING OF THE TITLE OF CHURCH PROPERTY IN LAY TRUSTEES, DELIVERED IN THE SENATE OF NEW YORK, JANUARY 30, 1855, 6 (Albany 1855).

70. Id. at 21-22.
those outside of the Church, and that therefore the security of the state required the destruction of authority within the Catholic Church. Translating such years into a stance of solicitude for the clergy, Putnam declared: "The purity of the clergy depends upon their separation from the secularizing tendencies of politics and power. There can be no just respect for that office, when associated with secular affairs." Of course, the secular affairs from which Putnam wished to separate the Catholic clergy included not only political matters but also, most immediately, their property and influence in their own church.

Babcock and Putnam aimed to Protestantize the Catholic Church and thereby eliminate its threat to the individual independence they associated both with American political institutions and the underlying moral character of American citizens. Babcock hoped that lay trustees would have the same effect as publicly funded schools, which inculcated "non-sectarian" or generically Protestant ideals. In particular, he expected lay trustees, like publicly funded schools, to liberate Catholics from their old-fashioned beliefs and deference, making them mentally independent and thus capable of self-government in the manner of Protestants.

Many good men feel alarm at the inundations of foreign immigrants that are yearly precipitated upon our shores—men ground down by the degradations of tyranny in Europe—unaccustomed to self-government, and unacquainted with our institutions, to exercise in a short time the privileges of citizens, and liable to become the tools of demagogues or victims of their own ignorance. But give them the Bible—the Douay Bible, if you please, and our common schools, and I do not fear the result. They will rapidly become educated in republican

71. ECCLESIASTICAL TENURES, SPEECH OF JAMES O. PUTNAM, supra note 69, at 22. When the bill was enacted, the N.Y. Herald looked forward to the possibility that Hughes and his fellow Catholics would defiantly refuse to name lay trustees and that therefore, "the Attorney General will be bound forthwith to proceed against the tenants of the property with a view to its escheat to the State. If, therefore, they obey the Archbishop and not the law, it is not impossible but the State may find itself two or three millions richer one of these fine days—a consummation by no means to be despised at a time when canal mismanagement has reduced us to a state of quasi-bankruptcy. It is supposed that Archbishop Hughes holds titles to property belonging to the church and worth from a million to a million and a half: that the Bishop of Buffalo is the nominal owner of half a million worth, and that as much is held in the name of the Bishop of Albany. If the Roman Catholics do not take the measures prescribed by law for securing this property, or if they allow the Archbishop to make legal experiments with it, they may find, sooner than they expect, that the State has relieved them of the trouble of caring for it." ARCHBISHOP HUGHES AND THE ROMAN CATHOLIC CHURCH PROPERTY, N.Y. HERALD, Apr. 14, 1855.
institutions. They will learn that they are clothed with privileges and responsibilities, which were unknown to them in their father-land.

Catholics were already acquiring the Protestant mental freedom and individual independence of Americans: "They learn to despise king-craft and priest-craft. Their children become educated in our schools side by side with the children of the Puritans. They associate upon terms of perfect equality, assimilate in their tastes and habits, and blend in forming a harmonious whole." Like publicly funded schools, Babcock's and Putnam's church property bills attempted to assimilate Catholic children to the devolved authority of Protestant America. Putnam complained about the "Catholic Priesthood of this country," who were "generally foreigners, educated in the most absolute doctrines of Papal supremacy, who have no faith in human progress, who regard the doctrine of individual independence as heresy." In opposition to their authority, Putnam encouraged "those who, cherishing Catholic religion, would mould its policy to the theory of our government, and would submit their system of rule to that modification which it must receive, from contact with institutions like ours." In particular, he worried that, through clerical control of church property, each Catholic was made "the slave of the priesthood," and therefore he aimed to inculcate a "consciousness of that independence of spiritual control, which proprietorship in sacred places creates." Churches had to conform to the organizational principle of the nation, and therefore, "to prevent that undue influence of the priesthood over the people which is alike incompatible with the personal freedoms of the citizen, and with the safety of the State," New York had "engrafted the popular element upon the system of rule in church property."

Although Catholics complained that Senator Putnam's "Bill Against Catholics" was a form of "confiscation," Putnam and his nativist allies obtained its enactment. Fortunately for Catholics, what the legislature

72. REMARKS OF MR. BABCOCK, supra note 61, at 10.
73. ECCLESIASTICAL TENURES: SPEECH OF JAMES O. PUTNAM, supra note 69, at 27 & 13.
74. Id. at 21.
75. Id. at 12.
76. BROOKSIANA, supra note 56, at 37; An Act in Relation to Conveyances and Devises of Personal and Real Estate for Religious Purposes (April 9, 1855), Sessions Acts, Chpt. 230; related statutes passed in other states; see also DIGNAN, supra note 50, at 197-200.

Hughes argued that, "if the acquisition of wealth by religious denominations is sufficient to excite the jealousy of the State, the investigation should extend to all denominations, and not be exceptionally restricted to one." Id. According to Hughes, Putnam's bill was "the first statute passed in the legislature of New York since the
in its wisdom enacted, the executive branch in its wisdom made no attempt to enforce. Soon, the South and its more than mental servitude distracted Americans from the threat posed by Catholicism, and, in 1862, New York’s legislature repealed Putnam’s church property statute. In the following year, it even allowed Catholics to incorporate their churches with a majority of clerical trustees and a minority of lay trustees appointed by the clerics—thus finally allowing Catholics the same sort of exemption that Protestant denominations had enjoyed without controversy.

Nonetheless, while Putnam’s 1855 statute remained on the books, it threatened the religious liberty and even the existence of the Catholic Church in New York, thus revealing much about the risks of demands for conformity to majority expectations of individual independence. Nativists adopted this and other theologically-liberal ideals in their revolution which has for its object to abridge the religious and encroach on the civil rights of the members of one specific religious denomination.” Id. at 196. Sarcastically, Hughes justified Putnam’s bill: “The Legislature does not propose to confiscate their church property, but only to take the management of it out of their hands. It proposes to furnish them, and to force upon them, a wiser, juster, and therefore better code of ecclesiastical discipline for the management of their church property, than their Church has provided for them. But still it does not go to the length of confiscation.” COMPLETE WORKS OF THE MOST REV. JOHN HUGHES 575 (New York 1865).

Catholics and other opponents of Putnam’s church property bill had an opportunity to reveal Putnam’s prejudice when the New York Senate considered the dangers arising from the accumulation of wealth by Protestant institutions, particularly Trinity Church. Crosby dryly observed that he “was surprised” that Putnam and an ally “had not participated in this discussion .... When we had ‘Babylon’ up before us the other day, they had ably denounced church accumulations, but now, when a Protestant church passed under review, they were quiet.” Switching to a more sarcastic tone, he mimicked Putnam’s anti-Catholic language in the church-property debates: “He [i.e., Crosby] thought the Trinity corporation exercised great influence over its own religious denomination in consequence of its wealth. It was contrary to the spirit of our Republican institutions—contrary to the spirit of christianity, that churches should be allowed to accumulate large temporal possessions.” ARGUS (Albany, N.Y., Feb. 1, 1855).

77. BILLINGTON, supra note 61, at 299. The struggles over church property, however, continued in other ways. See DIGNAN, supra note 50, at 196.


denunciations of Catholicism and in their anti-Catholic assertions of American identity, and on this theologically-liberal foundation, nativists enacted the 1855 church property act, hoping that its requirement of lay trustees would liberate Catholics from their deferential beliefs, from their clergy, and, ultimately, from their church.

CONCLUSION

The three topics discussed here—liberal theology, the aspirations of anti-Catholic nativists, and the legislation against clerical control of Catholic church property—suggest some of the ways in which nineteenth-century liberality was often somewhat narrow, partisan, and intolerant. Although neutrality and tolerance are often said to be liberal traits, they clearly are not always the dominant qualities or consequences of a liberal perspective.

Most strikingly, many nineteenth-century Americans opposed the internal authority of the Catholic Church by emphasizing liberal principles of individual independence or mental freedom. Indeed, as anti-Catholic Americans acquired political power, they frequently made bullying demands upon Catholics to conform to increasingly popular liberal ideals. For example, nativists and theological liberals espoused their version of diversity in their desire to homogenize Catholics. They hoped to dissolve the group diversity of Catholics within the individualistic diversity they attributed to Protestant Americans, and they hoped that they thereby could replace the conformist tendencies of the Catholic minority with those of a diverse Protestant majority. Nativists revealed the full intolerance of their liberal ideals when they used New York's 1855 church property act to democratize the Catholic Church and reshape it in accord with the majority's narrow, theologically-liberal vision of American ideals. It was in this context that Rabbi Isaac Wise complained about the "liberality" that seemed so "unknown and strange."80

Thus, liberalism seems to have been a mixed blessing. To the extent individuals have lived in un-emancipated world of confined communities, subject to narrow sets of traditional relations and narrow conceptions of these, liberal ideals have offered a means of escaping the subjugation of unvaried, parochial circumstances. Yet, in a world of multiple, layered types of human relations, in which each type provided some refuge from the claims and costs of the others, any attempt to impose or even rely upon a single kind—even if it was liberal—has threatened to create yet

80. Politics, supra note 32, at 12.
another version of the old subjugation to a relatively uniform set of relations. If only by freeing Americans from their other types of relations and ideals, liberalism offered Americans a substantial degree of liberty. By the same token, however, when liberalism became a demand for complete conformity to the ideals and relations typical of broader societies and affiliations, and when it thereby threatened to eliminate the other, more traditional types, it became itself a threat to the freedom that can only be enjoyed amid a balance of different kinds of relationships and aspirations. In such ways, liberalism could become illiberal.