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The Story Behind *Vidal v. Girard's Executors*: Joseph Story, The Philadelphia Bible Riots, and Religious Liberty

Jay Alan Sekulow*

Jeremy Tedesco**

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I. INTRODUCTION

In 1844, Supreme Court Justice Joseph Story decided *Vidal v. Girard*¹, one of the Supreme Court's first religion cases with implications for our nation's approach to religious liberty. The case is interesting for two reasons. First, it demonstrates the view of the United States Supreme Court in the nineteenth century regarding an issue that has bedeviled the Court nearly its entire history: The proper role of religion in public schools. In *Vidal*, Joseph Story decided that religion played a vital role in public education, and upheld the use of the Bible and the teaching of Christian moral principles in a city-run school.²

Second, *Vidal v. Girard* presents an opportunity to study how a Justice's personal religious beliefs and the religious controversies of the day are reflected in Supreme Court opinions. The religious controversy of the day—the debate between Catholics and Protestants over the use of the Bible in public schools—and Justice Story's Unitarian beliefs are thoroughly analyzed in this article. As this article shows, this national debate and Justice Story's religious beliefs inescapably impacted the outcome of *Vidal v. Girard*.

II. JOSEPH STORY

In all of Supreme Court history, no Justice has written as prolifically on matters of religion, specifically Christianity's impact "upon public and political law,"³ as Joseph Story. Not only did Story write the opinion in *Vidal v. Girard*, he also wrote extensively off the Court regarding the religion clauses.⁴ Story's *Commentaries on the Constitution of the United States*⁵ references both religion clauses and serves as a foundational work for constitutional jurisprudence. Concerning the role of Christianity in constitutional analysis, Story wrote:

Probably at the time of the adoption of the constitution, and of the amendment to it . . . the general, if not the universal, sentiment in America was, that Christianity ought to receive encouragement from the state, so far as was not incompatible with the private rights of conscience, and the freedom of religious worship.⁶

As will be discussed more fully below, Joseph Story left his Calvinist theology and Congregational church and became a Unitarian while at Harvard.⁷ Story's classmate at Harvard, William Ellery Channing, became

1. *Vidal v. Girard's Ex'rs*, 43 U.S. 127 (1844).

2. *Id.*

3. 3 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1865 (photo. reprint 1991) (1833).

4. *See, e.g.*, 3 *id.*

5. 3 *id.*

6. 3 *id.* § 1868.

7. *See infra* notes 98-103 and accompanying text.

one of the leading proponents of Unitarian theology and had a significant influence on Story's developing theology as well.

Story's rejection of Calvinism and acceptance of Unitarianism requires a few words on how Story's religion of choice fit within the predominantly Protestant, Christian values of the early nineteenth century. The key to understanding Christianity during the post-Revolutionary War period was that it was primarily a public expression, and that Unitarian and Orthodox Christians adopted fairly consistent ethical positions. Historian Jonathan D. Sassi stated: "The Unitarians advocated many of the traditional prescriptions of the Congregational clergy's public Christianity."⁸ Concerning Unitarianism during the post-Revolutionary War period, David Walker Howe wrote: "Enlightenment rationalism was intermingled with Puritan moralism in Unitarian political views."⁹

Two of the distinguishing characteristics of nineteenth century Unitarianism were its adherence to the principles of free inquiry and the resultant diversity of religious opinions within the denomination.¹⁰ This freedom occasioned a clash during the early and mid-nineteenth centuries between the traditional Unitarians and the more progressive Unitarians who were adopting transcendentalism as a theological framework.¹¹

Nevertheless, as late as 1853, some nine years after Joseph Story's death, the American Unitarian Association unanimously adopted a resolution that affirmed Unitarian allegiance to the gospel which read: "Resolved, that the divine authority of the gospel, as founded on a special and miraculous interposition of God for the redemption of mankind is the basis for this association."¹² Joseph Story himself defined and defended his Unitarian beliefs in an 1824 letter to Attorney William Williams.¹³ In this letter, Story discussed the Unitarian beliefs that he developed:

The Unitarians are universally steadfast, sincere, and earnest Christians. They all believe in the divine mission of Christ, the

8. JONATHAN D. SASSI, A REPUBLIC OF RIGHTEOUSNESS: THE PUBLIC CHRISTIANITY OF THE POST-REVOLUTIONARY NEW ENGLAND CLERGY 159 (2001).

9. DANIEL WALKER HOWE, THE UNITARIAN CONSCIENCE 207 (1970).

10. See generally *id.*

11. For an excellent discussion of core "doctrines" of transcendental philosophy, see CONRAD WRIGHT, THREE PROPHETS OF RELIGIOUS LIBERALISM: CHANNING-EMERSON-PARKER 19-46 (1961) (analyzing the seminal sermons delivered by Parker and Emerson regarding the Transcendentalist philosophy). For the classic traditional Unitarian response to transcendentalism, see Andrews Norton, A Discourse on the Latest Form of Infidelity (1839), reprinted in SYDNEY E. AHLSTROM & JONATHAN S. CAREY, AN AMERICAN REFORMATION: A DOCUMENTARY HISTORY OF UNITARIAN CHRISTIANITY 445 (1985).

12. EARL MORSE WILBUR, A HISTORY OF UNITARIANISM, IN TRANSYLVANIA, ENGLAND, AND AMERICA 463 (1945) (quoting Cf. A. U.A., *Twentieth Report*, 1853).

13. 1 LIFE AND LETTERS OF JOSEPH STORY 441-42 (William W. Story ed., Boston, Little & Brown 1851).

credibility and authenticity of the Bible, the miracles wrought by our Saviour and his apostles, and the efficacy of his precepts to lead men to salvation. They consider the Scriptures the true rule of faith, and the sure foundation of immortality.¹⁴

In his letter to Williams, Justice Story also clearly and unequivocally pointed to the primary theological difference between Unitarians and other Christian denominations: "In truth, they principally differ from other Christians in disbelieving the Trinity, for they think Christ was not God, but in Scripture language 'the Son of God.'"¹⁵

A. *Joseph Story: Family, Education, Politics, and the High Bench*

Joseph Story was born on September 18, 1779, in Marblehead, Massachusetts.¹⁶ His father, Elisha Story, was a successful doctor and patriot; he had been among those who threw the English tea into the harbor at the Boston Tea Party.¹⁷ Elisha Story had seven children by his first wife, who died in 1777, whereupon he married Mehitable Pedrick, the daughter of a wealthy merchant.¹⁸ Story was the eldest child of this marriage, and he was followed by ten brothers and sisters.¹⁹ Story greatly admired his father, describing him as "one of the most amiable men I ever knew; kind and indulgent to his children, partaking of all their pleasures, and busy in promoting their innocent amusements. His home was full of cheerfulness."²⁰ Elisha Story was a tolerant man, who even spoke charitably of Roman Catholics, which was "almost a deadly sin" at the time.²¹ Story credited his father's opinions with shaping his love for religious freedom: "I trace back to this source my early and constant hatred of religious persecution, and my love, my inextinguishable love of freedom of opinion and inquiry in matters of religion. They have now become the guiding maxims of my life."²²

Despite the economic depression that was afflicting Marblehead following the Revolution, the relative success of his father's medical practice afforded Story significant free time to employ as he chose.²³ The difficulty of the period left little time for education,²⁴ and Story spent his

14. 1 *id.*

15. 1 *id.* at 442.

16. Autobiographical letter from Joseph Story to William W. Story (Jan. 23, 1831), in *MISCELLANEOUS WRITINGS OF JOSEPH STORY 1* (William W. Story ed., Boston, Little & Brown, 1852) [hereinafter *Autobiography*].

17. *Id.* at 2.

18. *Id.*

19. *Id.*

20. *Id.* at 4.

21. *Id.* at 5.

22. *Id.*

23. *Id.* at 4; see also R. KENT NEWMYER, *SUPREME COURT JUSTICE JOSEPH STORY 17-18* (1985). Most children of the time were required to help out on the farm or with the fishing. *Id.* at 17.

24. *Autobiography*, *supra* note 16, at 7 ("The general poverty, combined with other circumstances, made the resources of education narrow; and few books were to be found, and few scholars were nurtured on its rocky shores.").

early days wandering around his native town, observing the natural beauties of the place "in a reverie of delicious indolence."²⁵ The establishment of a school in Marblehead changed his life, and he was soon learning Latin and Greek grammar.²⁶ At Marblehead Academy, Story first learned to love English literature, a pursuit that remained strong throughout his life.²⁷ Story's parents exhorted him to pursue excellence; his mother once said to him, "Now, Joe, I've sat up and tended you many a night when you were a child, and don't you dare not to be a great man."²⁸ His father likewise instilled within him "an ambition of excellence," which Story heeded, and began "to struggle for distinction as a man."²⁹

In the fall of 1794, Story was preparing to enter Harvard College when he was severely and unjustifiably disciplined by the instructor of the Academy.³⁰ With his father's permission, Story left the school and resolved to enter Harvard following the January break.³¹ He studied diligently, and his uncle took him to Cambridge at the beginning of the break where he learned that he must be examined on the material covered by freshman in the fall semester in addition to the regular entrance examinations.³² Story was devastated and returned to Marblehead in great disappointment.³³ The following day, however, Story determined to spend the six weeks of the break studying the necessary subjects so that he could enter college.³⁴ For the next three weeks, he recited five lessons each morning and five or six more throughout the rest of the day, preparing in the evening for the next day's recitations.³⁵ At the end of the three weeks he had learned the material and spent the remainder of the break perfecting his knowledge.³⁶ He returned to Harvard at the beginning of the spring term, took the examinations, "and without difficulty obtained [his] matriculation."³⁷

Harvard College opened a vast, new world to Story. He later wrote, "I seemed to breathe a higher atmosphere, and to look abroad with a wider

25. *Id.* at 9.

26. 1 LIFE AND LETTERS OF JOSEPH STORY, *supra* note 13, at 22-23.

27. 1 *id.* at 22.

28. 1 *id.* (internal quotations omitted).

29. 1 *id.* at 27 (internal quotations omitted).

30. *Autobiography*, *supra* note 16, at 11-12.

31. *Id.* at 12-13.

32. *Id.* at 13.

33. *Id.*

34. *Id.* at 13.

35. *Id.* at 14.

36. *Id.*

37. *Id.* Writing of his sense of victory at learning the material, Story declared, "The hero who conquers in battle, the orator who triumphs in the senate . . . feels not a more intense delight, than the youth first perceiving, that though born of the dust he is not altogether earth, but that there is something within him of an ethereal and intellectual nature." *Id.*

vision and more comprehensive powers.”³⁸ Story devoted his time to study, and quickly advanced in the class because of his scholarship.³⁹ While other boys used the yard pump to recover from a night in Boston, Story splashed himself with the cold water so that he could squeeze in one more hour of study before retiring for the night.⁴⁰ Story “graduated second in his class behind [William Ellery] Channing,”⁴¹ who became the leading proponent of Unitarianism.⁴² His health suffered in college because of his zeal for books; he later wrote, “I trace back to this cause a serious injury to my health. When I entered college I was very robust and muscular, but before I left I had become pale and feeble and was inclining to dyspepsia.”⁴³

Following graduation, Story returned to Marblehead and began to study law with Samuel Seward, who later became Chief Justice of the Supreme Court of Massachusetts.⁴⁴ Story remained with Seward until he was appointed as a judge in 1801, forcing Story to move to Salem and complete his education with Samuel Putnam.⁴⁵ In July of 1801, Story was admitted to the Essex bar and set out to practice law in Salem.⁴⁶

The study of law at the end of the eighteenth century was tedious work; it required the student first to read *Blackstone’s Commentaries*, followed by *Coke on Littleton*.⁴⁷ Story was shocked to discover that the study of law was nothing but

dry and technical principles, the dark and mysterious elements of the feudal system, the subtle refinements and intricacies of the middle ages of the Common Law, and the repulsive and almost unintelligible forms of processes and pleadings, for the most part wrapped up in black-letter, or in dusty folios.⁴⁸

He often spent fourteen hours a day mastering these books, though *Coke on Littleton* nearly broke him: “[A]fter trying it day after day with very little success, I sat myself down and wept bitterly. My tears dropped upon the book, and stained its pages.”⁴⁹ Story did not surrender; his resolve only hardened. At last, he conquered the book: “When I had completed the reading of this most formidable work, I felt that I breathed a purer air, and that I had acquired a new power. The critical period was passed; I no longer

38. *Id.* at 15.

39. *Id.* at 16.

40. NEWMYER, *supra* note 23, at 25.

41. *Id.* at 28; see also DANIEL WALKER HOWE, *THE UNITARIAN CONSCIENCE: HARVARD MORAL PHILOSOPHY, 1805-1861*, at 17-20 (1988).

42. See generally HOWE, *supra* note 41.

43. *Autobiography*, *supra* note 16, at 16.

44. *Id.* at 18.

45. *Id.*

46. *Id.*

47. See NEWMYER, *supra* note 23, at 40-42.

48. *Autobiography*, *supra* note 16, at 19.

49. *Id.* at 20.

hesitated.”⁵⁰ Story’s persistence and dedication carried him through the intricacies of the law, and prepared him for his work as a lawyer and a judge.

In December 1804, Story married Mary Lynde Fitch Oliver, the daughter of a minister.⁵¹ The marriage abruptly ended in June of 1805 when Mary fell ill and died.⁵² Story was deeply grieved, and his grief only increased when his father died two months later: “I never look back upon this period of my life without feeling a sense of desolation. It left a dark and melancholy train of thoughts behind.”⁵³ Later that year, Story was elected to the Massachusetts legislature.⁵⁴ He served in that body until 1811, interrupted only by serving one session in Congress in 1808-09.⁵⁵ Story was chosen to fill the vacancy that occurred when Jacob Crowninshield, the current representative, died.⁵⁶ He refused to seek reelection to Congress, though he would likely have won if he tried.⁵⁷

Politically, Story was out of place in Massachusetts. He was a Republican, and the state was predominantly Federalist.⁵⁸ Though Story supported the Jefferson presidency, he later alienated Jefferson because of his seemingly anti-Republican positions.⁵⁹ In describing the political climate of the day, Story wrote:

The Republican party then and at all other times embraced men of very different views on many subjects. A Virginia Republican of that day, was very different from a Massachusetts Republican, and the anti-federal doctrines of the former state then had and still have very little support or influence in the latter State, notwithstanding a concurrence in political action upon general subjects.⁶⁰

50. *Id.*

51. *Id.* at 25-26.

52. *Id.* at 26.

53. *Id.* Story went on to say:

I was new to sorrow, full of hope and ambition, with an ardent enthusiasm, and, perhaps, an almost romantic wildness of imagination. All my hopes were at once cut down and crushed. I remained for a long time like one in a painful dream, and there ever since has been at times on my mind a cloud of gloom, which sorrow, probably, always gathers, and which even the very sunshine of life does not wholly dissolve.

Id.

54. *Id.*

55. *Id.* at 29.

56. *Id.*

57. *Id.*

58. *See id.* at 27.

59. Jefferson later called Story a “pseudo-republican.” *Id.* at 33.

60. *Id.* at 27.

Despite his Republican name, Story at times leaned toward Federalist doctrines.⁶¹ He admired George Washington and favored the federal government: "I never wished to bring the government to a mere confederacy of States; but to preserve the power of the General Government given by all the States, in full exercise and sovereignty for the protection and preservation of all the States."⁶² After serving in politics for six years, Story left politics, which he disliked, preferring to return to law.⁶³

In 1808, Story married Sarah Waldo Wetmore, the daughter of a judge.⁶⁴ Sarah had been close friends with Story's first wife and "the esteem and affection, which had begun during his previous marriage, now matured into love."⁶⁵ The early years of their marriage were fraught with sorrow, as they buried three daughters and a son before any of the children had reached the age of seven.⁶⁶

In January 1811, Story was elected Speaker of the House of Representatives of Massachusetts.⁶⁷ He served at this post only until November of the same year, when President James Madison appointed him to the Supreme Court of the United States.⁶⁸ At the age of thirty-two, Joseph Story joined his colleagues in Washington, the youngest Justice ever appointed.⁶⁹ In a letter to Nathaniel Williams, Story described what induced him to accept the appointment:

Notwithstanding the emoluments of my present business exceed the salary, I have determined to accept the office. The high honor attached to it, the permanence of the tenure, the respectability, if I may so say, of the salary, and the opportunity it will allow me to

61. *Id.* ("I was and always have been a lover, a devoted lover, of the Constitution of the United States, and a friend to the union of the States.")

62. *Id.*; see also NEWMYER, *supra* note 23, at 45-72 (describing Story's political career).

63. Story wrote:

I cannot disguise that I had lost my relish for political controversy, and I found an entire obedience to party projects required such constant sacrifices of opinion and feeling, that my solicitude was greatly increased to withdraw from the field, that I might devote myself with a singleness of heart to the study of the law, which was at all times the object of my admiration and almost exclusive devotion.

Autobiography, *supra* note 16, at 30.

64. 1 LIFE AND LETTERS OF JOSEPH STORY, *supra* note 13, at 169.

65. 1 *id.*

66. *Autobiography*, *supra* note 16, at 34. Story described his grief:

I have many agonizing recollections on this subject, and some truly pathetic touches of tenderness to tell, but I have neither the heart nor the power to go over them. You will one day learn how difficult it is to bury our sorrows, when they have struck deep into our souls.

Id. at 34-35.

67. *Id.* at 35.

68. *Id.*

69. HENRY J. ABRAHAM, JUSTICES, PRESIDENTS, AND SENATORS 67 (Rowman & Littlefield Publishers 1999).

pursue, what of all things I admire, juridical studies, have combined to urge me to this result.⁷⁰

As a Justice on the Supreme Court, Story could devote himself to the study of law, an occupation he greatly relished.⁷¹

After serving on the bench for eighteen years, Story added a new labor to his already busy schedule: the teaching of law.⁷² In 1829, his friend Nathan Dane planned to endow a chair at the fledgling Harvard Law School, but only if Story agreed to fill the position.⁷³ Story already served Harvard University on its board of overseers, and as a member of its corporation,⁷⁴ but had declined the Royall Professorship of Law the year before, citing concerns of his health and reluctance to move to Cambridge.⁷⁵ When Dane pressed Story, however, he agreed, and so began a task that provided him great joy over the succeeding years.⁷⁶ Harvard Law School technically began in 1817.⁷⁷ However, for the first twelve years of its existence, the average student body each year was eight; in 1828, the school boasted only one student.⁷⁸ After Story assumed his responsibilities, however, the school blossomed.⁷⁹ In October of 1829, Story wrote to a friend: "We have at present twenty-seven students at Cambridge, with a prospect of more. I perceive that there is a vast labor before me."⁸⁰ During Story's tenure, 956 students graduated from Harvard Law School, many of whom became leaders in business, politics, and at the bar; all carried with them the principles that Story had so fervently taught.⁸¹

As a professor, Story immediately began to write treatises on the subjects he taught.⁸² He wrote eleven volumes on nine subjects,⁸³ including his *Commentaries on the Constitution*, begun in 1829 and completed in 1833.⁸⁴ While the *Commentaries* were criticized in the South, they were widely accepted in the North; some even compared them to *Blackstone's*

70. 1 LIFE AND LETTERS OF JOSEPH STORY, *supra* note 13, at 201.

71. *See supra* note 63.

72. 2 LIFE AND LETTERS OF JOSEPH STORY, *supra* note 13, at 2.

73. 2 *id.* at 2.

74. NEWMYER, *supra* note 23, at 165.

75. 1 LIFE AND LETTERS OF JOSEPH STORY, *supra* note 13, at 533.

76. 1 *id.*

77. 2 *id.* at 23.

78. 2 *id.*

79. 2 *id.*

80. 2 *id.*

81. NEWMYER, *supra* note 23, at 249, 267-68.

82. *Id.* at 281.

83. *Id.*

84. *Id.* at 181.

Commentaries on the Laws of England.⁸⁵ In April of 1833, Story finished an abridged edition for use in colleges and high schools.⁸⁶ Modern scholars have criticized the *Commentaries* as propagandistic, but they served the purpose for which Story wrote them: expounding the Constitution from a conservative, New England perspective, and answering the states' rights claims of Southern scholars.⁸⁷

Story continued in his capacity as Supreme Court Justice until 1845 when he retired because the Court had shifted ideologically and Story did not wish to be in perpetual dissent.⁸⁸ He planned to devote himself fully to teaching at Harvard and writing, but he became ill during the final push to clear his circuit docket.⁸⁹ On September 10, 1845, Joseph Story died. "[H]e breathed the name of God, and this was the last word that ever was heard from his lips."⁹¹

B. Joseph Story's Religious Upbringing and Beliefs

Story grew up in a religious home; he learned the elementary principles of Christianity at a young age.⁹² He described his father as "a religious man, liberal and charitable in all his views. He was an Arminian in principle."⁹³ His uncle, on the other hand, was a fiery Calvinist and was the minister at the church Story attended in his youth.⁹⁴ Story commented on his religious upbringing:

[M]y uncle . . . was much inclined in his preaching to dwell on the terrors of the law, upon man's depravity, and eternal torments; and he felt no scruple in mentioning hell, even to ears polite. My earliest impressions, therefore, of God were those of terror, and not of love – of awe, but not of filial affection; and in my secret devotions I approached him as a being whom I was to propitiate, rather than a parent of whom I was to ask blessings.⁹⁵

85. *Id.* at 181-83.

86. *Id.* at 194.

87. *Id.* at 184. Newmyer comments:

Let us admit that the *Commentaries* were biased toward nationalism and concede that Story's history was one-sided and in some respects as metaphysical as the states' rights school he criticized for its metaphysics – as when it made sovereignty unequivocally descend on the American people in 1776. Yes, the work is flawed by a lack of symmetry and by an excessively florid style. By modern standards it looks like a great beached whale; but in the nineteenth century it swam majestically in the raging seas of constitutional disputation.

Id.

88. *Id.* at 380-81.

89. 2 LIFE AND LETTERS OF JOSEPH STORY, *supra* note 13, at 546-48.

90. 2 *id.*

91. 2 *id.* at 548.

92. NEWMYER, *supra* note 23, at 13.

93. *Autobiography*, *supra* note 16, at 5.

94. *Id.* at 10.

95. *Id.*

The tension between his uncle's harsh religion and his father's loving religion was left to Story's contemplation.⁹⁶ Story wrote fondly of his father's Sunday practice of family prayers: "[A]fter the public afternoon service was over, all the family . . . [was] assembled in one room, and he then read a printed sermon of some English divine, and concluded the day with reading a portion of the new Testament, and with prayer. I still remember those meetings with great pleasure."⁹⁷ The kindness and toleration of his father, as seen in Story's everyday life, profoundly influenced his later religious opinions.

At Harvard, Story firmly settled on Unitarian theology as his personal religious system.⁹⁸ The college was in a whirl of secularist fancy. William Ellery Channing wrote: "The French Revolution had diseased the imagination and unsettled the understanding of men everywhere. The old foundations of social order, loyalty, tradition, habit, reverence for antiquity, were everywhere shaken The authority of the past was gone. The old forms were outgrown, and new ones had not taken their place."⁹⁹ In the midst of this cultural chaos, Story shifted his religious opinions to align more closely with the compassionate and tolerant religion of his father. William Story later described his father's conversion at Harvard as being inspired, in part, by the beauty of the Cambridge countryside as opposed to the "sterile rocks and moaning sea of Marblehead."¹⁰⁰ Walking through the "flower-strewn fields, his heart assumed its natural hue of cheerfulness, and he no longer believed in the total depravity of man."¹⁰¹ Seeing the goodness of God displayed in creation, Story became convinced of divine beneficence.¹⁰² "And from being a Calvinist, he became a Unitarian."¹⁰³

Story's new religion seemingly recognized that no teaching could be heretical. He rejected any notion of bigotry or even proselytism.¹⁰⁴ Instead, he

gladly allowed every one freedom of belief, and claimed only that it should be a genuine conviction and not a mere theologic opinion, considering the true faith of every man to be the necessary exponent of his nature, and honoring a religious life more than a formal creed. *He admitted within the pale of salvation Mahommedan and*

96. NEWMYER, *supra* note 23, at 13.

97. *Autobiography*, *supra* note 16, at 5-6.

98. 1 LIFE AND LETTERS OF JOSEPH STORY, *supra* note 13, at 57.

99. 1 WILLIAM ELLERY CHANNING, MEMOIR OF WILLIAM ELLERY CHANNING 43 (1870).

100. 1 LIFE AND LETTERS OF JOSEPH STORY, *supra* note 13, at 56.

101. 1 *id.*

102. 1 *id.*

103. 1 *id.* at 57.

104. 1 *id.*

Christian, Catholic and Infidel. He believed that whatever is sincere and honest is recognized of God; – that as the views of any sect are but human opinion, susceptible of error on every side, it behooves all men to be on their guard against arrogance of belief; – and that in the sight of God it is not the truth or falsity of our views, but the spirit in which we believe, which alone is of vital consequence.¹⁰⁵

Unitarianism made Story focus increasingly on morality and ethics instead of theology; “[h]e disliked ‘cant & formal ordinances’ and preferred ‘unaffected piety & above all religious charity.’”¹⁰⁶ Story described Unitarians as those who “believe in the divine mission of Christ, the credibility and authenticity of the Bible, the miracles wrought by our Saviour and his apostles, and the efficacy of his precepts to lead men to salvation.”¹⁰⁷ While Unitarians affirm the place of Scripture, they deny the deity of Christ: “[Unitarians] all agree that he was the special messenger of God, and that what he taught is of Divine authority. In truth, they principally differ from other Christians in disbelieving the Trinity, for they think Christ was not God, but in the Scripture language ‘the Son of God.’”¹⁰⁸ One scholar summarizes Story’s beliefs: “[Unitarianism’s] liberal view of salvation appealed to his romantic idealism Unitarian emphasis on a learned clergy . . . corresponded with his faith in the articulate ‘speaking aristocracy.’ Reason was balanced with faith. Life in this world was addressed; life in the next assured.”¹⁰⁹

While Story’s religious opinions were magnanimous, they clearly fell outside the pale of orthodoxy. He believed in the inherent goodness of man, denied the Trinity, as well as the exclusivity of Christ’s atonement.¹¹⁰ Indeed, Story left little room for creeds and confessions, instead emphasizing the sincerity of religious opinion and a moral life.¹¹¹

Story may have embraced heterodox opinions, but he still believed that the principles of Christianity were essential to society. In a letter written in 1801, Story declared: “I verily believe Christianity necessary to the support of civil society, and shall ever attend to its institutions and acknowledge its precepts as the pure and natural sources of private and social happiness. The man who could subvert its influence will never receive countenance from me”¹¹² Years later, a letter from Thomas Jefferson tested Story’s resolve on this point. Jefferson wrote to John Cartwright in the summer of 1824, attacking the idea that the English common law was founded upon

105. 1 *id.* at 57-58 (emphasis added).

106. NEWMYER, *supra* note 23, at 180 (quoting a letter from Joseph Story to Sarah Story (Feb. 23, 1827)).

107. 1 LIFE AND LETTERS OF JOSEPH STORY, *supra* note 13, at 442.

108. 1 *id.*

109. NEWMYER, *supra* note 23, at 180.

110. *Id.* at 29, 180.

111. *Id.*

112. 1 LIFE AND LETTERS OF JOSEPH STORY, *supra* note 13, at 92-93.

Christianity, and daring any man to prove otherwise.¹¹³ The letter was published, and Edward Everett drew it to Story's attention.¹¹⁴ In a letter to Everett, Story wrote: "It appears to me inconceivable how any man can doubt, that Christianity is part of the Common Law of England, in the true sense of this expression, which I take to be no more than that Christianity is recognized as true, and as the established religion of England."¹¹⁵

In his inaugural address as Dane Professor of Law at Harvard Law School, Story began publicly to rebut Jefferson's thesis:

One of the beautiful boasts of our municipal jurisprudence is, that Christianity is a part of the Common Law, from which it seeks the sanctions of its rights, and by which it endeavors to regulate its doctrines. And, notwithstanding the specious objection of one of our distinguished statesmen, the boast is as true, as it is beautiful. There never has been a period, in which the Common Law did not recognize Christianity as lying at its foundations. For many ages it was almost exclusively administered by those, who held its ecclesiastical dignities. It now repudiates every act done in violation of its duties of perfect obligation. It pronounces illegal every contract offensive to its morals. It recognizes with profound humility its holidays and festivals, and obeys them, as *dies non juridici*. It still attaches to persons believing in its divine authority the highest degree of competency as witnesses; and until a comparatively recent period, infidels and pagans were banished from the halls of justice, as unworthy of credit. The error of the Common Law was, in reality, of a very different character. It tolerated nothing but Christianity, as taught by its own established church, either Protestant or Catholic; and with unrelenting severity consigned the conscientious heretic to the stake, regarding his very scruples as proofs of incorrigible wickedness. Thus, justice was debased, and religion itself made the minister of crimes, by calling in the aid of the secular power to enforce that conformity of belief, whose rewards and punishments belong exclusively to God.¹¹⁶

Several years later, Story continued to refute Jefferson's letter. He published an essay entitled *Christianity a Part of the Common Law* in the *American Jurist*, answering Jefferson's arguments point by point.¹¹⁷ In the

113. JAMES MCCLELLAN, *JOSEPH STORY AND THE AMERICAN CONSTITUTION: A STUDY IN POLITICAL AND LEGAL THOUGHT* 118 (1971); NEWMYER, *supra* note 23, at 183.

114. *Id.* at 119.

115. 1 LIFE AND LETTERS OF JOSEPH STORY, *supra* note 13, at 430.

116. 2 *id.* at 8-9.

117. Joseph Story, *Christianity a Part of the Common Law*, 9 AM. JURIST 346 (1833), *reprinted in*

same year, Story wrote a letter to Jasper Adams thanking him for sending a copy of his sermon delivered in Charleston on the relationship between Christianity and civil government.¹¹⁸ Adams had stressed the need for Christianity in civil society, affirming at the same time the need to prevent state recognition of any particular sect of Christianity.¹¹⁹ Adams declared: “No nation on earth, is more dependent than our own, for its welfare, on the preservation and general belief and influence of Christianity among us.”¹²⁰ Adams argued that there are only two ways to govern men, either by force or “by religious and moral principles pervading the community.”¹²¹ He warned that “[w]e must be a Christian nation, if we wish to continue a free nation. We must make our election: – to be swayed by the gentle reign of moral and Christian principle, or ultimately, if not soon, by the iron rod of arbitrary sway.”¹²²

Story agreed with Adams’s sermon: “My own private judgement [sic] has long been, (& every day’s experience more & more confirms me in it,) that government can not long exist without an alliance with religion *to some extent*; & that Christianity is indispensable to the true interests & solid foundations of all free governments.”¹²³ Story likewise distinguished between the establishment of a particular sect as a state religion and the establishment of Christianity in general, recognizing the latter as the only true foundation for “moral obligation or accountability.”¹²⁴ Story excoriated Jefferson’s claim that Christianity is not part of the common law, stating that “a more egregious error never was uttered by able men.”¹²⁵ Story felt compelled to answer Jefferson’s pernicious letter: “It is due to truth, & to the purity of the Law, to unmask their fallacies.”¹²⁶ Speaking of the general state of the nation, Story wrote: “These are times in which the friends of Christianity are required to sound the alarm, & to inculcate sound principles. I fear that infidelity is make [sic] rapid progress under the delusive guise of the freedom of religious opinion & liberty of conscience.”¹²⁷

Story’s harsh criticism of Jefferson and his vigorous defense of Christianity’s place in law and society dispel any doubts as to his theory of

1 LIFE AND LETTERS OF JOSEPH STORY, *supra* note 13, at 431-33. For further discussion of this article, see McClellan, *supra* note 113, at 121-23.

118. Letter from Joseph Story to Jasper Adams (May 14, 1833), in RELIGION AND POLITICS IN THE EARLY REPUBLIC: JASPER ADAMS AND THE CHURCH-STATE DEBATE 115-17 (Daniel L. Dreisbach ed., 1996) [hereinafter RELIGION AND POLITICS].

119. Jasper Adams, The Relation of Christianity to Civil Government in the United States, reprinted in RELIGION AND POLITICS, *supra* note 118, at 39, 40. This sermon was delivered to the convention of the Protestant Episcopal Church of the Diocese of South Carolina on Feb. 13, 1833.

120. *Id.* at 51.

121. *Id.*

122. *Id.* at 52.

123. Letter from Joseph Story to Jasper Adams, *supra* note 118, at 115.

124. *Id.*

125. *Id.* at 116.

126. *Id.* at 117.

127. *Id.*

church/state relations. While he upheld freedom of religion, meaning that anyone could practice his faith according to his conscience, he firmly believed that Christianity was the only true foundation for civil order.¹²⁸ Without Christianity, moral decay would weaken the nation, and threaten to undo all that the Founders had striven so hard to attain.

Story's *Commentaries on the Constitution* corroborate this analysis. When discussing the First Amendment, Story began by positing that "the right of a society or government to interfere in matters of religion will hardly be contested by any persons."¹²⁹ Particularly, "it is impossible for those, who believe in the truth of Christianity, as a divine revelation, to doubt, that it is the especial duty of government to foster, and encourage it among all the citizens and subjects."¹³⁰ Government support of Christianity did not, in Story's mind, violate freedom of conscience: "This is a point wholly distinct from that of the right of private judgment in matters of religion, and of the freedom of public worship according to the dictates of one's conscience."¹³¹ The difficulty is defining the line between encouragement and coercion.¹³²

Story proposed three possible scenarios for government support of religion.¹³³ First, the government could support one religion generally and let anyone freely adopt another religion.¹³⁴ Second, the government could support one particular sect of a religion, again allowing anyone to choose freely another religion.¹³⁵ Third, the government could support one sect of a religion and exclude to varying degrees anyone not a member of that religion from public acknowledgment.¹³⁶ While these three options may not exhaust the possibilities, they framed Story's analysis. He clearly favored the first option which had the support of history: "Now, there will probably be found few persons in this, or any other Christian country, who would deliberately contend, that it was unreasonable, or unjust to foster and encourage the Christian religion generally, as a matter of sound policy, as well as of revealed truth."¹³⁷

128. McCLELLAN, *supra* note 113, at 119.

129. 3 STORY, *supra* note 3, § 1865.

130. 3 *id.*

131. 3 *id.* Story later confirmed his commitment to religious liberty: "The rights of conscience are, indeed, beyond the just reach of any human power. They are given by God, and cannot be encroached upon by human authority, without a criminal disobedience of the precepts of natural, as well as of revealed religion." 3 *id.* § 1870.

132. 3 *id.* § 1866.

133. 3 *id.*

134. 3 *id.*

135. 3 *id.* § 1873.

136. 3 *id.* § 1867.

137. 3 *id.*

According to Story, the Framers embraced a similar understanding.¹³⁸ Speaking of the time in which the Constitution was adopted, Story wrote, “[T]he general, if not universal, sentiment in America was, that Christianity ought to receive encouragement from the state, so far as was not incompatible with the private rights of conscience, and the freedom of religious worship.”¹³⁹ So widespread was this viewpoint, that “[a]n attempt to level all religions, and to make it a matter of state policy to hold all in utter indifference, would have created universal disapprobation, if not universal indignation.”¹⁴⁰ The real purpose of the First Amendment “was, not to countenance, much less to advance Mahometanism, or Judaism, or infidelity, by prostrating Christianity; but to exclude all rivalry among Christian sects, and to prevent any national ecclesiastical establishment, which should give to an hierarchy the exclusive patronage of the national government.”¹⁴¹ The national government was powerless to speak at all on matters of religion; this power was left to the state governments. The goal was to enable “the Catholic and the Protestant, the Calvinist and the Arminian, the Jew and the Infidel, [to] sit down at the common table of the national councils, without any inquisition into their faith, or mode of worship.”¹⁴² The amendment would eliminate the possibility for national religious persecution by “extirpating the power” of the national government over religious issues.

Joseph Story led a remarkable and distinguished life. He was the greatest constitutional scholar of his day. His *Commentaries* are the earliest authoritative interpretation of the Constitution.¹⁴³ In his *Commentaries* and other writings, Story made clear his belief that American society rested on the foundation of Christianity, and that the government had a duty to foster and encourage Christianity, without violating individual conscience, among the people.¹⁴⁴ More importantly, Story was a deeply religious man. As will be seen below, many of the religious values he espoused in his private and extra-judicial writings were reflected in his opinion in *Vidal v. Girard*.¹⁴⁵ Before we address those similarities, however, the second influence on Story’s opinion in *Vidal* must be discussed: the Catholic-Protestant debate over the use of the Bible in public schools.

III. THE GREATER SOCIAL AND HISTORICAL CONTEXT: CATHOLIC-PROTESTANT ANIMOSITY IN THE FIRST HALF OF THE NINETEENTH CENTURY

Vidal v. Girard arose out of a cultural controversy brewing in the schools and eventually overflowing into the streets of Philadelphia. The

138. 3 *id.* §1868.

139. 3 *id.*

140. 3 *id.*

141. 3 *id.* § 1871.

142. 3 *id.* § 1873.

143. See generally 3 *id.*

144. 3 *id.* § 1873.

145. See generally *Vidal v. Girard’s Ex’rs*, 43 U.S. 127 (1844).

controversy pitted Catholics and Protestants against each other in a battle over the proper version of the Bible to use in the public school setting.¹⁴⁶ The Protestant-dominated common schools in Philadelphia generally required Bible readings each day from the King James Version of the Bible.¹⁴⁷ Catholics, who rejected the King James Version, argued that this practice was a violation of their conscience and right to control the religious upbringing of their children.¹⁴⁸ In the summer of 1844, the Philadelphia riots erupted out of this controversy.¹⁴⁹

The Philadelphia Bible controversy, however, was just one (albeit significant) aspect of the much broader debate between Protestants and Catholics that had developed during the first half of the nineteenth century. By the time *Vidal v. Girard* was decided, this debate had taken on a national scope. Anti-Catholic and nativist sentiment focused on the idea that the interests of native inhabitants had to be protected against those of the immigrants.¹⁵⁰ This sentiment had been heating up in America for over twenty years preceding the riots. The swell of European immigration,¹⁵¹ including concentrations of Irish-Catholic immigrants in Philadelphia, New York, and Boston,¹⁵² awoke anti-Catholic sentiment inherent in a new republic infused with Protestantism.¹⁵³ Between 1807 and 1830, the number of Catholic churches and priests increased exponentially,¹⁵⁴ and fervent Catholics considered "their church as the one true church, and . . . prayed . . . that Protestants would some day see the errors of their apostasy."¹⁵⁵ Meanwhile, Protestants and nativists feared the effect of Catholicism on the young democratic society. Contention over trusteeism, which involved whether the control of church property and the appointment of priests should belong to the clergy or to laymen appointed as trustees by the church body,¹⁵⁶ papal conspiracy theories and dissemination of anti-Catholic

146. RAY ALLEN BILLINGTON, *THE PROTESTANT CRUSADE (1800-1860): A STUDY OF THE ORIGINS OF AMERICAN NATIVISM* 143 (Rinehart & Co. ed., 1952) (1938).

147. *See id.* at 144.

148. *Id.*

149. *Id.* at 220.

150. Nativism is "the policy of protecting the interests of native inhabitants against those of immigrants." WEBSTER'S NEW UNIVERSAL UNABRIDGED DICTIONARY 1280 (1996).

151. *See* BILLINGTON, *supra* note 146, at 330.

152. MICHAEL FELDBERG, *THE PHILADELPHIA RIOTS OF 1844: A STUDY OF ETHNIC CONFLICT* 20 (1975).

153. *See* BILLINGTON, *supra* note 146, at 32.

154. *Id.* at 37 (citing J. SALZBACHER, *MEINE REISE NACH NORD-AMERIKA IM JAHRE* (Vienna 1845)).

155. FELDBERG, *supra* note 152, at 86.

156. *See* BILLINGTON, *supra* note 146, at 38; *see also* Vincent P. Lannie & Bernard C. Diethorn, *For the Honor and Glory of God: The Philadelphia Bible Riots of 1840*, 8 *HIST. OF EDUC. Q.* 44, 95 n.1 (1968).

rhetoric;¹⁵⁷ the burning of the renowned Ursuline Convent school in Massachusetts;¹⁵⁸ and the Bible in schools debate¹⁵⁹ all combined to intensify religious and cultural differences between Catholics and Protestants.

Still, concern over the Catholic push for cultural and religious equality through the school Bible issue was at the heart of the schism.¹⁶⁰ This contentious issue played itself out in the classrooms, school boards, and streets of Philadelphia directly preceding and following the Supreme Court's decision in *Vidal*.

A. Early Stages of the Conflict

The conflict between Catholics and Protestants regarding the issue of trusteeism started as early as the 1820s.¹⁶¹ The trusteeism issue impacted the city of Philadelphia, as it did many other cities across the nation.¹⁶² The debate revolved around whether Catholic clergy should be permitted to hold complete control over Church property, a stalwart Roman Catholic doctrine.¹⁶³ Protestants viewed this doctrine as despotic in nature and adverse to democracy.¹⁶⁴ The majority of Protestant church governance was considered democratic in nature; appointment of clergy and control of church property were powers generally retained by the church body as a whole via elections and laymen appointed as trustees.¹⁶⁵ The Catholic hierarchy viewed trusteeism as nothing less than "lay interference with ecclesiastical jurisdiction,"¹⁶⁶ and it became concerned with American church influence on Catholic immigrant divisions.¹⁶⁷ Archbishop Ambrose Maréchal described American trusteeism and the threat it posed to Catholic Church governance in a letter in 1818:

[T]he American people clings with the most ardent love to the civil liberty it enjoys. Again it is a primary . . . principle of civil liberty among them, that absolutely all magistrates, whether high or low . . . should be elected by popular vote. Likewise all sects of Protestants, who constitute the greater part of the people, are ruled by the same principles and accordingly elect or dismiss, at their pleasure, their pastors. Now the Catholics living in their society, are evidently exposed to the danger of admitting the same principles

157. See BILLINGTON, *supra* note 146, at 53.

158. *Id.* at 68.

159. See Lannie & Diethorn, *supra* note 156, at 44.

160. *Id.*

161. *Id.* at 44; BILLINGTON, *supra* note 146, at 38.

162. Lannie & Diethorn, *supra* note 156, at 44; see also BILLINGTON, *supra* note 146, at 38.

163. See 1 ANSON PHELPS STOKES, CHURCH AND STATE IN THE UNITED STATES 808 (1950).

164. See 1 *id.*

165. See BILLINGTON, *supra* note 146, at 38; see 1 STOKES, *supra* note 163, at 812-13 (quoting REV. PATRICK J. DIGNAN, A HISTORY OF THE LEGAL INCORPORATION OF CATHOLIC CHURCH PROPERTY IN THE UNITED STATES, 1784-1932, at 109-10 (1933)).

166. 1 STOKES, *supra* note 163, at 809.

167. See 1 *id.* at 809-12.

of ecclesiastical rule, and by the artifices of impious priests, who cater to their pride, are easily led to believe that they also have the right to elect and dismiss their pastors as they please.¹⁶⁸

The Pope responded in 1822, exhorting the Church to hold firm to Catholic doctrine.¹⁶⁹ By 1830, Catholic clergy had prevailed in Philadelphia in particular.¹⁷⁰ Nevertheless, the staunch Catholic resistance to a seemingly democratic institution had “attracted hostile attention from the entire nation.”¹⁷¹ To most Americans, it seemed as though Catholic doctrines were incompatible with the new republic’s democratic ideals.¹⁷² Best evidenced by Bishop John Hughes’s 1842 letter, trusteeism continued to be at the heart of Protestant-Catholic strife for many years.¹⁷³ Regarding the trusteeism issue, the outspoken Catholic leader in New York wrote:

A system, growing, perhaps, out of the circumstances of the times, has prevailed in this country which is without a parallel in any other nation, or in the whole history of the Catholic Church. That system is, of leaving ecclesiastical property under the management of laymen, who are commonly designated “trustees.” We do not disguise, that our conviction of this system is, that it is altogether injurious to religion¹⁷⁴

A few state legislatures even went so far as to pass (but later repeal) bills making it unlawful for clergy to hold sole control over church property.¹⁷⁵

To confront the issues surrounding anti-Catholicism, Catholic hierarchy met together with lay advisors at Baltimore in 1829 for the “first Provincial Council of Catholicity in America.”¹⁷⁶ The assemblage, which included Roger B. Taney, Attorney General of Maryland at the time¹⁷⁷ and who later served as Chief Justice of the Supreme Court during the time of the Philadelphia riots of 1844, met to discuss several issues.¹⁷⁸ The most important issues on its agenda were trusteeism,¹⁷⁹ the necessity of parochial

168. 1 *id.* at 812-13 (quoting DIGNAN, *supra* note 165, at 109-10).

169. 1 STOKES, *supra* note 163, at 813-14 (citing DIGNAN, *supra* note 165, at 117, 118).

170. See BILLINGTON, *supra* note 146, at 38-39.

171. *Id.* at 39.

172. *Id.*

173. 1 STOKES, *supra* note 163, at 816.

174. 1 *id.* (quoting DIGNAN, *supra* note 165, at 166-67).

175. 1 STOKES, *supra* note 163, at 817.

176. BILLINGTON, *supra* note 146, at 37; see also J. A. BURNS, THE GROWTH AND DEVELOPMENT OF THE CATHOLIC SCHOOL SYSTEM IN THE UNITED STATES 181 (1912).

177. 1 STOKES, *supra* note 163, at 815.

178. 1 *id.*

179. 1 *id.* at 815-16.

schools,¹⁸⁰ and the possibility of Americanizing the Church by replacing foreign born bishops with native bishops in order to ease nativist concerns.¹⁸¹ The Council incited nativist and Protestant fear with its “thirty-eight decrees . . . warning Catholics against ‘corrupt translations of the Bible,’ [and] urging parishes to build parochial schools to save children from ‘perversion’ . . .”¹⁸² The Council, furthermore, proceeded to condemn trusteeism.¹⁸³ Protestants and nativists rose in response to the Catholic resistance to trusteeism, calling it “tyrannical” and “repugnant to our republican institutions.”¹⁸⁴

B. The Protestant-Catholic Debate Becomes a Matter of National Concern

Over the next decade and a half, anti-Catholic rhetoric was disseminated across the nation.¹⁸⁵ Protestant preachers used sermons to spread anti-Catholic messages at revivals;¹⁸⁶ thirty anti-Catholic, Protestant periodicals were formed by 1827,¹⁸⁷ and the New York Protestant Association, formed in 1831, furthered anti-Catholicism through radical debates, including whether Roman Catholicism could coincide with “Civil Liberty.”¹⁸⁸ “[S]ocieties, lecturers, newspapers, magazines, churches, ministers, and a political party had all been enlisted in the cause” to beat back the supposed threat to democracy.¹⁸⁹

Anti-Catholic sentiment among Protestants gained momentum during the 1830s.¹⁹⁰ Papal conspiracy theories were spread by influential men¹⁹¹ and the burning of the well-known Ursuline Convent only intensified anti-Catholic sentiment. The conspiracy theories were not taken lightly. Historian Anson Phelps Stokes wrote on how Protestants viewed such theories:

The pope, assisted by the Roman Catholic rulers of Europe, was seen as trying to capture the Mississippi Valley as the future headquarters of the Church! Two missionary societies—the “Society for the Propagation of the Faith,” formed at Lyons, France, in 1822, and the “Leopold Association” of Austria-Hungary, formed in 1829—because of their active missionary interest in trying to

180. BURNS, *supra* note 176, at 181.

181. BILLINGTON, *supra* note 146, at 37.

182. *Id.* (quoting PETER GUILDAY, *A HISTORY OF THE COUNCILS OF BALTIMORE, 1791-1884*, at 89-95 (1932)).

183. 1 STOKES, *supra* note 163, at 816 (citing DIGNAN, *supra* note 165, at 145, 156).

184. BILLINGTON, *supra* note 146, at 40 (quoting XI AMERICAN CATHOLIC HISTORICAL RESEARCHES 129-132 (1894)).

185. *Id.* at 209-11, 220.

186. *Id.* at 43.

187. 1 STOKES, *supra* note 163, at 818.

188. 1 *id.* at 819.

189. BILLINGTON, *supra* note 146, at 220.

190. *Id.* at 85-116.

191. *See* 1 STOKES, *supra* note 163, at 826.

convert the newly settled West to Catholicism and their large contributions to the cause, were specially feared.¹⁹²

The influential nativist leader Samuel F. B. Morse,¹⁹³ inventor of the telegraph¹⁹⁴ and head of the American Protestant Union,¹⁹⁵ theorized in 1834 and 1835 publications that immigrants were part of the Pope's plan to "convert America."¹⁹⁶ Reverend Lyman Beecher, whose sermons later helped rouse the Massachusetts uprising against the Ursuline Convent, preached much the same in an earlier publication, theorizing that the Pope had plans to subvert the young republic using parochial schools to convert Protestant children.¹⁹⁷ Fears of Catholic conspiracy even impelled Massachusetts and New York organizations in 1838 to petition Congress to confront the supposed problem.¹⁹⁸

The 1830s saw a change from the attacks of the 1820s on Catholicism's theological soundness to Protestant and nativist "attacks on the immoral nature of Catholicism."¹⁹⁹ A common charge was that convents were used for evil.²⁰⁰ Coalescing with the old nativist fears of the effect of Catholicism on democratic society,²⁰¹ these new attacks consisted of publications of ghastly tales of physical, sexual, and mental abuse of nuns and children in convents.²⁰² The publications also theorized that the primary purpose of the convent schools was to convert Protestant children.²⁰³ The new propaganda affected Charlestown, Massachusetts, in particular—the location of the renowned Ursuline Convent school.²⁰⁴ In 1834, after rumors spread of a young nun being abused at the school, the town's anti-Catholic fervor boiled over, resulting in the burning of the convent.²⁰⁵ This had far reaching effects: anti-Catholicism was "elevat[ed]... to a plane of national

192. 1 *id.* at 825.

193. CARLETON MABEE, *THE AMERICAN LEONARDO: A LIFE OF SAMUEL F. B. MORSE* 162-180 (1969).

194. *Id.* at 181-188.

195. 1 STOKES, *supra* note 163, at 829.

196. 1 *id.* at 826; *see also* SAMUEL F. B. MORSE, *IMMINENT DANGERS TO THE FREE INSTITUTIONS OF THE UNITED STATES THROUGH FOREIGN IMMIGRATION, AND THE PRESENT STATE OF THE NATURALIZATION LAWS* (New York 1835). It has been asserted that Morse's initial publication, *Foreign Conspiracy Against the Liberties of the United States*, was a major factor in stirring the later Massachusetts uprising against the Ursuline Convent. MABEE, *supra* note 193, at 164.

197. 1 STOKES, *supra* note 163, at 826.

198. 1 *id.*

199. BILLINGTON, *supra* note 146, at 67.

200. *See id.* at 66-75.

201. *See* 1 STOKES, *supra* note 163, at 819.

202. BILLINGTON, *supra* note 146, at 67.

203. *Id.* at 68.

204. *Id.*

205. *Id.* at 71-75.

importance,²⁰⁶ the attention of the nation was turned to the “No-Popery” movement,²⁰⁷ and no Catholic Church or property was free from threat.²⁰⁸

C. *The Bible in Public Schools Debate in Philadelphia and New York*

Notwithstanding the above points of contention, the issues that most incensed Protestants against Catholics were their plan to establish parochial schools and their campaign against the use of the King James Bible in common schools.²⁰⁹ The movement for a strong parochial school system was authorized at the aforementioned First Provincial Council of Catholicity in Baltimore in 1829.²¹⁰ The purpose of the parochial schools was to preserve Catholic children from anti-Catholicism and Protestant practices;²¹¹ the effort was primarily undertaken in the large eastern cities which contained dense Catholic-immigrant populations.²¹² The Provincial Council reconvened in 1833, organizing an effort to provide Catholic textbooks.²¹³ By the end of the fourth Provincial Council’s assemblage in 1840, it had been firmly decided that Catholic children could no longer be subjected to Protestant religious practices in the public schools.²¹⁴

Philadelphia’s Protestant majority controlled most of the city in the 1830s and early 1840s, including the public school system, which concerned Catholics the most.²¹⁵ It became clear that “public schools in urban America were . . . guilty of evangelizing for Protestantism through a campaign to smear ‘popery.’”²¹⁶ Catholic children were subjected daily to Protestant teachers, prayers, hymns, anti-Catholic texts, and readings out of the Protestant King James Version of the Bible.²¹⁷

As early as 1834, at the insistence of Bishop Francis Patrick Kenrick, Philadelphia school controllers adopted a screening policy to keep sectarian and anti-Catholic texts out of the schools.²¹⁸ Unfortunately, enforcement of the policy was lacking, and the problem was not resolved.²¹⁹ To make things worse, the state legislature passed a law in 1838, making school Bible readings mandatory.²²⁰ While individual teachers choosing to read the King James Version did not please Catholic parents or clergy, the new law

206. *Id.* at 90.

207. 1 STOKES, *supra* note 163, at 824.

208. 1 *id.*

209. *See* BURNS, *supra* note 176, at 181-82.

210. *Id.*

211. *See id.* at 182.

212. 1 STOKES, *supra* note 163, at 823.

213. BURNS, *supra* note 176, at 182.

214. *Id.* at 183 n.6.

215. *See* FELDBERG, *supra* note 152, at 23, 89.

216. *Id.* at 23.

217. *Id.* at 89-90.

218. Lannie & Diethorn, *supra* note 156, at 48.

219. *Id.*

220. *Id.*

mandating it seemed especially malicious.²²¹ The religious inequality unified Philadelphia's Catholic clergymen who pointed out that Catholics, just as Protestants, paid taxes to fund the schools.²²² Bishop Kenrick led the push for equality, focusing foremost on getting the Catholic Douay Bible²²³ admitted in the schools, so that Catholic children would no longer be forced to read the King James Version.²²⁴ Explaining the conundrum, Kenrick later wrote to Philadelphia's school controllers:

[T]eachers shall read and cause to be read, The Bible; by which is understood the version published by command of King James. To this regulation we are forced to object, inasmuch as Catholic children are . . . led to view as authoritative [the King James Version] which is rejected by the Church. . . . [W]e do not ask you to adopt the Catholic version for general use; but we feel warranted in claiming that our conscientious scruples to recognize or use the other, be respected. . . . The consciences of Catholics are also embarrassed by the mode of opening and closing the School exercises which . . . is by the singing of some hymn, or by prayer. It is not consistent with the laws and discipline of the Catholic Church for her members to unite in religious exercises with those who are not of their communion.²²⁵

Kenrick lobbied for admittance of the Douay Version and exclusion of anti-Catholic texts from 1834 until 1840, without much fanfare, until all eyes were turned to the eruption of the school Bible issue in New York.²²⁶

In 1840, the majority of New York City schools were controlled by the Public School Society,²²⁷ a private organization committed to the King James Version of the Bible as a school book and other sectarian practices such as Protestant hymns and prayers. Anti-Catholic texts were also prevalent in the schools under the Society's administration.²²⁸ The Society

221. *Id.* at 48-49.

222. FELDBERG, *supra* note 152, at 89.

223. The Douay Bible is the "English Catholic translation of the Bible." 1 ENCYCLOPEDIA OF RELIGION 1106 (Paul Kevin Meagher et al. eds., 1979). It is called the Douay Bible because it was "produced at the English College, founded in 1568 at Douai, formerly Douay (Belgium), by exiled [Roman Catholic] Oxonian scholars William Allen, Gregory Martin, Richard Bristow, and William Reynolds." *Id.*

224. FELDBERG, *supra* note 152, at 90.

225. Lannie & Diethorn, *supra* note 156, at 56 (quoting FRANCIS KENRICK, LETTER LEDGER 202-04 (1842) (on file with the Philadelphia Archdiocesan Archives)).

226. Lannie & Diethorn, *supra* note 156, at 50.

227. John W. Pratt, *Religious Conflict in the Development of the New York City Public School System*, 5 HIST. OF EDUC. Q. 110, 112 (1965).

228. JOHN R. G. HASSARD, LIFE OF THE MOST REVEREND JOHN HUGHES, D. D., FIRST ARCHBISHOP OF NEW YORK 226 (New York, D. Appleton & Co. 1866).

supported the public schools with privately raised funds as well as substantial state funds distributed to the Society by the New York Common Council.²²⁹ As a result, a portion of Catholic tax dollars was being used to fund Protestant domineered, anti-Catholic schools.²³⁰ Governor William Henry Seward took the issue to the state legislature in January of 1840:

The children of foreigners, found in great numbers in our populous cities and towns, and in the vicinity of our public works, are too often deprived of the advantages of our system of public education, in consequence of prejudices arising from differences of language or religion. . . . I do not hesitate, therefore, to recommend the establishment of schools in which they may be instructed by teachers speaking the same language with themselves and professing the same faith.²³¹

Catholics did not let the opportunity pass. In February, based on the governor's statement, clergy demanded that the New York Common Council provide Catholics with state funding for parochial schools.²³² The Council, undoubtedly influenced by the radical nativist and anti-Catholic effort, refused.²³³ The battle, however, had only begun.

Bishop John Hughes led the Catholic effort in New York for school reform in 1840 under his motto: "[t]he school before the church," while the more generally accepted position was "[t]he school alongside the church."²³⁴ In comparison to Kenrick's situation, Hughes benefited from New York City's Irish immigrant population which was greater than Philadelphia's in proportion to each city's total population.²³⁵ Behind the support and "fanatical spirit of the times,"²³⁶ Hughes lobbied the Common Council to give back to Catholics those Catholic tax dollars used to support the public schools.²³⁷ He argued that Catholic tax dollars should go to fund the few parochial schools rather than the Protestant dominated public schools.²³⁸ Hughes's 1840 *Address of the Roman Catholics to their Fellow-Citizens of the City and State of New York* expressed the Catholic contention regarding the issue: "If the public schools could have been constituted on a principle which would have secured a perfect NEUTRALITY of influence on the subject of religion, then we should have no reason to complain. But this has not been done, and we respectfully submit that it is impossible."²³⁹ "Spread it

229. *Id.* at 225.

230. *Id.* at 225, 230-31.

231. Pratt, *supra* note 227, at 112 (citing II WILLIAM H. SEWARD, WORKS 215 (G. E. Baker ed., New York, Redfield 1853-54)).

232. Pratt, *supra* note 227, at 112.

233. *Id.* at 112-13.

234. BURNS, *supra* note 176, at 13.

235. FELDBERG, *supra* note 152, at 91.

236. BURNS, *supra* note 176, at 18.

237. FELDBERG, *supra* note 152, at 91.

238. HASSARD, *supra* note 228, at 231.

239. *Id.* at 232.

abroad," Hughes preached to New York Catholics in 1841, "that you ask no favor, no preeminence, no boon, from their honors of the Common Council; but that you have rights, and these rights you claim. Let them reserve their favors for those who want them."²⁴⁰

Protestant sermons and newspapers produced passionate opposition to the supposed Catholic effort to take the Bible out of schools and obtain Protestant money. The *American Protestant Vindicator* reported:

They demand of Republicans . . . to give them funds to train up their children to worship a ghostly monarchy of vicars, bishops, archbishops, cardinals, and Popes! They demand of us to take away our children's funds and bestow them on the subjects of Rome, the creatures of a foreign hierarchy!²⁴¹

On the other side, in October of 1842, one Catholic priest went so far as to gather and publicly burn Protestant Bibles distributed by outsiders to his congregation.²⁴²

Ultimately, Hughes's demand for funds was denied.²⁴³ However, through a series of local political maneuvers, the Bishop forced city officials to end school Bible readings in the predominantly Irish-Catholic sectors of the city. Anti-Catholics and nativists became particularly unsettled by Hughes' demonstration of Catholic political influence and predicted Catholic political dominance in the future if no opposition were raised.²⁴⁴ Their fears were not completely unfounded; Hughes' efforts achieved results. By 1844, thirty-one schools in Catholic sectors in New York had successfully displaced Bible readings.²⁴⁵

Bishop Kenrick closely followed the school Bible developments in New York.²⁴⁶ When a Southwark district school teacher was removed in 1842 for not obeying a state law requiring the Protestant Bible to be read in school, Kenrick took advantage of the opportunity and confronted the school board.²⁴⁷ The Bishop demanded Catholic children be allowed to read their own Bibles and pointed out the continued presence of anti-Catholic texts in the schools, despite school board resolutions to the contrary.²⁴⁸ In January of 1843 the school board yielded, permitting Catholic children to not

240. *Id.* at 240.

241. BILLINGTON, *supra* note 146, at 148 (quoting AMERICAN PROTESTANT VINDICATOR, Aug. 5, 1840).

242. *Id.* at 157.

243. *Id.* at 148-49.

244. FELDBERG, *supra* note 152, at 91.

245. I STOKES, *supra* note 163, at 829.

246. See BILLINGTON, *supra* note 146, at 221.

247. FELDBERG, *supra* note 152, at 91-92.

248. *Id.*

participate in school Bible readings and allowing children to use alternative versions of the Bible “without note or comment,” which still excluded the Douay version.²⁴⁹ The school board’s decision was viewed by Protestants as an unwarranted compromise, however, and was not without consequences.²⁵⁰ The *North American*, a popular nativist newspaper, argued:

For years and years the schools have been in operation, planned by Protestants, founded by Protestants, directed by Protestants, and almost wholly supported by Protestants, and now come ‘the Bishop of New York [Hughes]’ and ‘the Bishop of Philadelphia [Kenrick]’ to interfere in the management of them, create confusion within their walls and ‘excitement’ without.²⁵¹

Protestants viewed Kenrick’s efforts as an attempt to divorce faith from education even though his intention was never to completely rid the schools of the Bible: “I do not object to the use of the Bible provided Catholic children be allowed to use their own version.”²⁵² Protestants immediately protested that they, as the longstanding majority, should retain sole authority over public schools.²⁵³

In late February 1844, one last school Bible incident involving a Kensington district school teacher would occur before the outbreak of the riots in Philadelphia.²⁵⁴ Henry Moore, a Protestant and Kensington school director, hastily reported to a packed Methodist church that a teacher, Louisa Bedford, had been ordered by Hugh Clark, another Kensington school director, to stop her classroom Bible reading.²⁵⁵ In truth, Hugh Clark had merely suggested that the teacher temporarily postpone readings after the teacher had complained that Catholic children leaving the room during readings caused too much interruption.²⁵⁶ According to Louisa Bedford’s later testimony, the decision of whether to temporarily postpone Bible readings was clearly left in her hands—it being understood that a later solution to the interruption would be found and Bible readings subsequently resumed, in compliance with state law.²⁵⁷ The truth, however, “was too late to stop the train of consequences.”²⁵⁸

Protestants and nativists were hungry for anything that could be construed against Catholics in the context of the school Bible issue. Consequently, news of the incident and following compromise, as interpreted by Henry Moore and the city’s nativist bloc, was widely

249. Lannie & Diethorn, *supra* note 156, at 57-58.

250. *See id.* at 59-60.

251. *Id.* at 59 (quoting *NORTH AMERICAN*, Jan. 14, 1843).

252. Lannie & Diethorn, *supra* note 156, at 68 (quoting *CATHOLIC HERALD*, Mar. 21, 1844).

253. Lannie & Diethorn, *supra* note 156, at 59.

254. *See* FELDBERG, *supra* note 152, at 93-94.

255. *Id.* at 93.

256. *Id.* at 94.

257. Lannie and Diethorn, *supra* note 156, at 65-66.

258. FELDBERG, *supra* note 152, at 94.

promulgated by religious and nativist newspapers alike.²⁵⁹ The Episcopal Recorder asked, "Are we to yield our personal liberty, our inherited rights, our very Bibles, the special, blessed gift of God to our country, to the will, the ignorance, or the wickedness of these hordes of foreigners, subjects of a foreign despot . . . ?"²⁶⁰ One paper even suggested that the entire public school system was better off wiped out: "The sooner the whole system is leveled to the dust, the better for the common weal."²⁶¹ The riots exploded in Kensington only a few of months after Miss Bedford innocently suspended school Bible readings in her classroom.²⁶²

One last aspect of the Philadelphia Bible riot situation must be addressed before turning to the riots themselves—the establishment in 1843 of the American Republican political party.²⁶³ "[H]atred of Catholicism [and] . . . a fear of the immigrant, not only as a Catholic, but as a menace to the economic, political, and social structure" of America were the two major factors in the creation of this nativist party.²⁶⁴ According to nativist thought, immigrants were synonymous with poverty, mob rule, competition for American jobs, and expansion of the suspected anti-democratic institution of Catholicism.²⁶⁵ Furthermore, immigrants typically voted in blocs whether in support of Democrats or Whigs, which nativists interpreted as control of foreigners by Catholic priests delivering votes in exchange for political favors.²⁶⁶ In retaliation, the American Republican party was officially established in 1843 as a vehicle for nativist ideals.²⁶⁷ Those ideals included: (1) longer waiting periods for naturalization, (2) exclusive federal court jurisdiction over naturalization,²⁶⁸ and (3) the exclusion of foreigners from public office.²⁶⁹ Leaders of the American Republican party in New York wrote about the foreign immigrant to America:

[T]here exists on the continent of Europe, in the heart of its most despotic government, a society protected by the crown of Austria,

259. *Id.*

260. Lannie & Diethorn, *supra* note 156, at 67 (quoting EPISCOPAL RECORDER, March 9, 1844).

261. Lannie & Diethorn, *supra* note 156, at 66 (quoting PRESBYTERIAN, Mar. 16, 1844).

262. Lannie & Diethorn, *supra* note 156, at 72-73.

263. BILLINGTON, *supra* note 146, at 200; *see also* 1 J. THOMAS SCHARF & THOMPSON WESTCOTT, HISTORY OF PHILADELPHIA, 1609-1884, at 663 (Philadelphia, L. H. Everts & Co. 1884).

264. BILLINGTON, *supra* note 146, at 193.

265. *Id.* at 194-99.

266. *Id.* at 198, 200.

267. *Id.* at 200 (quoting ANNA E. CARROLL, THE GREAT AMERICAN BATTLE; OR, THE CONTEST BETWEEN CHRISTIANITY AND POLITICAL ROMANISM 264 (1856)). The American Republican Party referred to here was not a predecessor of the modern Republican Party, but rather was a distinct third part commonly known as the "American" or "Know-nothing" Party. *See generally* CARROLL, *supra*.

268. BILLINGTON, *supra* note 146, at 203.

269. 1 SCHARF & WESTCOTT, *supra* note 263, at 664.

patronized by the most unflinching supporters of civil and religious despotism . . . for the express purpose of exporting to this country, (free America) the abject slaves of their country, who, bound in fetters of civil and religious serfdom, would be incapable . . . of understanding the principles of civil and religious freedom²⁷⁰

Although more subtle in its anti-Catholic rhetoric, historian Ray Allen Billington noted that while the entire purpose of the party was not to attack Catholicism, “it is probable that anti-Catholicism was the most powerful single factor in driving members into the party.”²⁷¹ The editor of the *Native Eagle and American Advocate* articulated the party’s stance best when he wrote that a man “may be a Turk, a Jew or a Christian, a Catholic, Methodist or Presbyterian, and we say nothing against it,” still, “when we remember that our Pilgrim Fathers landed on Plymouth Rock to establish the Protestant religion, free from persecution, we must contend that this was and always will be a Protestant country!”²⁷²

Not surprisingly, American Republicans quickly adopted a position on the school Bible issue.²⁷³ They fought for both recitation of the Bible “without note or comment”²⁷⁴ in schools and separation of church and state.²⁷⁵ While these two goals seem inconsistent to the twenty-first century mind, the two were considered consistent by American Republicans. The phrase “without note or comment” was viewed by Protestants as preserving the nonsectarian status of the Bibles allowed in the schools.²⁷⁶ Separation was “endorsed . . . as a constraint on religious groups but not religious individuals” and viewed as a guard against any “[religious groups] ‘pride of sect’ and ‘desire of propagandism.’”²⁷⁷ As a result, “Protestants increasingly took for granted that separation of church and state forbade public funding for Catholic education of any sort,” legal historian Philip Hamburger wrote, “even as it permitted such funding for nonsectarian Protestant teaching.”²⁷⁸ Hamburger further explained:

[F]rom this perspective, separation allowed the Bible to remain in public schools. The presence of the Bible was desired by many sects and, indeed, by individuals rather than by any one sect. It

270. BILLINGTON, *supra* note 146, at 204 (quoting *Address of the Executive Committee of New York City*, AMERICAN REPUBLICAN, Apr. 26, 1844).

271. BILLINGTON, *supra* note 146, at 216 n.72.

272. FELDBERG, *supra* note 152, at 95 (quoting JOHN HANCOCK LEE, *ORIGIN AND PROGRESS OF THE AMERICAN PARTY IN POLITICS* (Philadelphia, Elliot & Gihon 1855)).

273. See I SCHARF & WESTCOTT, *supra* note 263, at 664 (indicating that the question of the Bible in school was addressed in 1844).

274. *Id.*

275. *Id.*

276. The phrase excluded the Catholic Douay Bible since that version contained notes and commentary. See Lannie & Diethorn, *supra* note 156, at 58. It can be inferred that it was, at least in part, for this reason that American Republicans incorporated the phrase into their resolutions.

277. PHILIP HAMBURGER, *SEPARATION OF CHURCH AND STATE* 276 (2002) (quoting *Freedom of Opinion*, AMERICAN WHIG REVIEW, June 1849, at 54).

278. HAMBURGER, *supra* note 277, at 228.

therefore seemed that Protestants did not act as a church and did not violate the separation of church and state when they formed a majority and placed the Bible in their publicly funded schools.²⁷⁹

As late as 1877, Baptist George C. Lorimer wrote that it was because of the "people" that the Bible was in schools, rather than it being "the result of any union between Protestants and the State; nor was it secured by the political action of one denomination, or of all combined. The Church, as such, did not put it there, and the Church, as such, cannot take it away."²⁸⁰

To many nineteenth century Americans, the United States was a Protestant, Christian nation²⁸¹ and the Bible "without note or comment," which generally consisted of the King James Version since all Protestants accepted its infallibility, was considered non-sectarian.²⁸² In other words, school Bible readings were construed not as an endorsement of one sect over another, but as a democratic decision.

D. The Philadelphia Bible Riots

The confluence of anti-Catholic sentiment and rhetoric, the establishment of the American Republican party, and the growing animosity between Catholics and Protestants over the school Bible issue erupted into violence in Philadelphia in 1844.²⁸³ On May 3 of that year, American Republicans amassed in an antagonistic effort to organize an association in the Third Ward, an Irish-Catholic sector in the Kensington suburb of Philadelphia.²⁸⁴ The group of 300 American Republicans and nativists was quickly broken up by the clubs of angry Irishmen.²⁸⁵ The opposition, however, only provoked the group to gather again in Kensington on Monday, May 6—3,000 strong.²⁸⁶ Leading American Republican figures

279. *Id.*

280. *Id.* at 284 (quoting GEORGE C. LORIMER, *THE GREAT CONFLICT: A DISCOURSE, CONCERNING BAPTISTS, AND RELIGIOUS LIBERTY* 116 (Boston 1877)).

281. On the Christian character of America at the time, Tocqueville wrote in the 1830s that, whether held as a "sincere belief" or not, "Christianity" in the United States "reign[ed] without any obstacle, by universal consent." 1 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 309 (Henry Reeve trans., The Colonial Press 1900) (1835). Tocqueville further concluded:

I do not know whether all the Americans have a sincere faith in their religion, for who can search the human heart? but I am certain that they hold it to be indispensable to the maintenance of republican institutions. This opinion is not peculiar to a class of citizens or to a party, but it belongs to the whole nation, and to every rank of society.

1 *id.* at 310.

282. Lannie & Diethorn, *supra* note 156, at 62-63.

283. 1 SCHARF & WESTCOTT, *supra* note 263, at 663.

284. 1 *id.* at 664.

285. 1 *id.*

286. FELDBERG, *supra* note 152, at 102.

began their nativist harangue at 3:00 p.m. after a flag ceremony.²⁸⁷ One American Republican leader, Lewis Levin, spoke on “immigrant election abuses and religious influence in politics.”²⁸⁸ An abrupt rain forced the rallying throng into the nearby Nanny-Goat Market House where Irish resistance awaited.²⁸⁹ Within the energized crowd a pistol rang out, triggering a volley of rifle shots from Irish houses and the open windows of the Hibernia Hose Company, an Irish fire station across the street.²⁹⁰ A second volley of shots dispersed most of the nativist mob; but a few stayed behind, throwing rocks at the Irish buildings.²⁹¹ Nativists who retreated, however, quickly returned with guns to engage in a guerilla-style street battle.²⁹² Armed with rifles, pistols, stones, and brickbats, nativists turned the adjacent neighborhood into a full-fledged battle zone.²⁹³

Surprisingly, only one young, nativist man was killed on the first day of rioting, although as many as eleven were injured.²⁹⁴ Nonetheless, the brazen use of guns on both sides escalated the controversy to a level never before seen.²⁹⁵ Later the same night, nativists invaded the Irish sector again, wrecking Irish houses from which they had been fired upon earlier in the day and making their way to the Sisters of Charity Catholic seminary.²⁹⁶ Before it could be broken into and torched, the rioters were repelled by gunfire from a group likely defending nearby St. Michael’s Catholic Church.²⁹⁷ Ironically, an innocent spectator was the only one killed on the spot, but another nativist died later.²⁹⁸

The next day, “excitement in the vicinity of the infected districts was tremendous.”²⁹⁹ Outraged by the events of May 6, nativist periodicals and American Republicans broadcasted anti-Catholic propaganda throughout the city.³⁰⁰ The *Native American* ranted, “[t]he bloody hand of the Pope has stretched forth to our destruction. Now we call on our fellow-citizens, who regard free institutions, whether they be native or adopted, to arm. Our liberties are now to be fought for . . .”³⁰¹ A mob of 3,000 nativists answered the call from American Republicans to assemble at the State House.³⁰² Rallying behind the accusation, among others, that Catholics were

287. *Id.* at 103.

288. *Id.*

289. *Id.*

290. 1 SCHARF & WESTCOTT, *supra* note 263, at 664.

291. 1 *id.*

292. 1 *id.*

293. 1 *id.*

294. 1 *id.* at 664-65.

295. FELDBERG, *supra* note 152, at 105.

296. 1 SCHARF & WESTCOTT, *supra* note 263, at 665.

297. FELDBERG, *supra* note 152, at 106.

298. *Id.*

299. PHILADELPHIA PUBLIC LEDGER, May 8, 1844.

300. 1 SCHARF & WESTCOTT, *supra* note 263, at 665.

301. FELDBERG, *supra* note 152, at 108 (quoting NATIVE AMERICAN, May 7, 1844).

302. FELDBERG, *supra* note 152, at 107-08.

trying to rid the public schools of the Bible,³⁰³ the mob again invaded the Irish sector of Kensington and headed for the Hibernia Hose Company where it was welcomed with gunfire from the upper floors.³⁰⁴ The mass of armed rioters was quickly pinned under the Nanny-Goat Market House, seeking cover from bullets shot from the fire station and neighboring houses.³⁰⁵ The tide turned, however, when nativists snuck out and set fire to the houses, forcing Irish gunners into the open. At this point, only "poor marksmanship" kept the body count down.³⁰⁶

By the time the military arrived and the shooting stopped, the Hibernia Hose Company, Nanny-Goat Market House, and approximately thirty Irish houses were in ashes.³⁰⁷ At least six nativists were killed and many were injured on the second day of fighting.³⁰⁸ One Irish spectator was killed.³⁰⁹ John Taggart, an Irish gunman, was arrested, dragged out of jail through the streets, and left for dead, but later recovered.³¹⁰ The second day of riots eclipsed the first in terms of severity, and the *Daily Sun* threw fuel on the fire with its anti-Catholic propaganda:

Armed recruits in aid of the Roman Catholics are pouring in from various neighboring towns! We write at this moment with our garments stained and sprinkled with the blood of victims to Native American rights . . . Yes, we write with our garments sprinkled with the precious life-drops of martyrs to freedom. Men, murdered with ruthless ferocity, because they dare peacefully to erect that flag, which even foreign Despots have been taught to respect.³¹¹

Regrettably, the military left only a couple of companies behind to maintain the peace.³¹²

By Wednesday, May 8, many Irish had evacuated the suburb to hide in the woods north of Kensington.³¹³ Michael Donohoe, pastor of St. Michael's Catholic Church, fled the area because of his earlier promotion of Catholic equality in the common schools.³¹⁴ Meanwhile, the Third Ward was "crowded by hundreds of persons," and groups of nativists began

303. BILLINGTON, *supra* note 146, at 225.

304. FELDBERG, *supra* note 152, at 109.

305. *Id.*

306. *Id.* at 110.

307. 1 SCHARF & WESTCOTT, *supra* note 263, at 666.

308. *See* 1 *id.* at 665.

309. 1 *id.*

310. 1 *id.* at 665-66.

311. Lannie & Diethorn, *supra* note 156, at 75 (quoting DAILY SUN, May 8, 1844).

312. 1 SCHARF & WESTCOTT, *supra* note 263, at 666.

313. FELDBERG, *supra* note 152, at 111.

314. *Id.*

searching Irish houses for gun caches and setting the houses ablaze.³¹⁵ The outnumbered and hesitant military presence could only stand by and weather nativist heckling until reinforcements showed up in the early evening. Even then, the nativists continued their assault on Catholic neighborhoods.³¹⁶ St. Michael's Catholic Church, the nearby Sisters of Charity Catholic seminary, St. Augustine's Catholic Church, and numerous houses were burned to the ground by nativist fire, while the mayor and police presence outside St. Augustine's did nothing to stop the flames.³¹⁷ Kensington school district controller Hugh Clark's house was also endangered and his office vandalized.³¹⁸ The following Sunday, Catholic Churches were closed by order of Bishop Francis Kenrick. The *Pennsylvanian* described the scene:

Sunday in Philadelphia—soldiers marching and counter-marching in the streets, not for display or peaceful purposes, but prepared for actual battle . . . with cutlasses, pistols, boarding pikes, and all the appliances of war . . . Religious toleration enforced . . . charity secured through dread of “grape and cannister.”³¹⁹

Irish buildings in Kensington smoldered in ashes, and the Kensington riots had ended. In all, seven were killed and about twenty-five were wounded.³²⁰ Yet Philadelphia's violence was only half over.

Two months after the Kensington riots, 70,000 to 100,000 Philadelphians assembled for the city's Fourth of July celebration. During the parade, families of the nativists killed in the Kensington riots were displayed for the crowd as a tribute to the supposed martyrs.³²¹ As expected, the day's events sparked nativist passion. On July 5, American Republicans gathered outside St. Philip's Catholic Church in Southwark to protest a rumored cache of Irish guns.³²² A band of nativists subsequently searched St. Philip's, eventually finding nearly ninety loaded Irish guns.³²³ By the next morning, word had gotten out about the gun cache, and nativists squared off with the city's military companies guarding the Church.³²⁴ Nativist Charles Naylor, a lawyer and former Congressman, was arrested by the military and held in the Church after he narrowly prevented the soldiers from firing a cannon into the mob.³²⁵ The nativists pulled out for the night, but vowed violence unless Naylor was released.³²⁶

315. PHILADELPHIA PUBLIC LEDGER, May 9, 1844.

316. See 1 SCHARF & WESTCOTT, *supra* note 263, at 666.

317. 1 *id.*

318. 1 *id.*

319. Lannie & Diethorn, *supra* note 156, at 78 (quoting PENNSYLVANIAN, May 13, 1844).

320. PHILADELPHIA PUBLIC LEDGER, May 14, 1844.

321. FELDBERG, *supra* note 152, at 136-37.

322. *Id.* at 139, 143.

323. 1 SCHARF & WESTCOTT, *supra* note 263, at 669.

324. 1 *id.* at 670.

325. 1 *id.*

326. 1 *id.*

True to their word, nativists reassembled Sunday morning with two cannons from a nearby ship, and anger mounted when it was learned that one of the remaining military forces occupying St. Philip's and detaining Naylor was the Montgomery Hibernia Greens, an Irish-Catholic company.³²⁷ The larger of the two cannons was dragged to the back of the church and fired at the building twice to no avail since cannonballs were unavailable and the gun was only loaded with scrap.³²⁸ The military released Naylor out of fear for their own safety, concerned about the combination of rioters and cannons,³²⁹ but the nativists insisted the Hibernia Greens leave the church too.³³⁰ To oblige the increasing mob, the Greens were reluctantly led out of the church by two other companies.³³¹ One of the Greens fired on the mob for throwing stones, though, and a number of the Greens were chased down, beaten, and one of them killed.³³² Meanwhile, American Republicans took control of the Church and tried to keep the mob at bay, fearing a reoccurrence of the Kensington riots, which were damaging to the party's image.³³³ The attempt at a peaceful resolution was short-lived, however, on account of the arrival of military reinforcements.³³⁴

By evening, reinforcements moved in with cannons to protect the Church and clear the neighboring streets by pushing forward with bayonets fixed.³³⁵ The nativist crowd, over 2,000 strong, did not move quickly enough for the advancing troops, however.³³⁶ The Captain and commanding officers in the rear yelled orders to fire, and soldiers shot into the crowd.³³⁷ Four nativists were killed instantly, a number were seriously wounded, and the Southwark combat began.³³⁸ Troops snuffed the street lights for cover of darkness as nativist gunfire came from all directions, and both sides proceeded to fire cannons.³³⁹ At 11 p.m., the Washington Cavalry was called upon to charge nativist cannons.³⁴⁰ Nativists likely heard the horses coming through, because some of the soldiers were thrown from their horses, tripped by ropes extended across the dark streets.³⁴¹ By 2 a.m., the

327. 1 *id.*328. 1 *id.*329. Lannie & Diethorn, *supra* note 156, at 84.330. See 1 SCHARF & WESTCOTT, *supra* note 263, at 671.331. 1 *id.*332. 1 *id.*333. 1 *id.*334. 1 *id.* at 671-72.335. 1 *id.* at 672.336. 1 *id.*337. 1 *id.*338. 1 *id.*339. 1 *id.*340. 1 *id.*341. FELDBERG, *supra* note 152, at 156.

Cavalry captured the remaining nativist cannons.³⁴² When the smoke cleared, two soldiers were confirmed dead and twenty-three wounded.³⁴³ A Philadelphia newspaper reported ten dead and more than twenty wounded between nativists and bystanders.³⁴⁴

The Philadelphia Bible riots were the culmination of a decades' long controversy brewing between Catholics and Protestants on all manner of theological and social issues. The violence that erupted in Philadelphia was symptomatic of a theological controversy that was affecting the entire nation. The perceived Catholic threat to the Protestant-American way of life had aroused controversy and violence prior to the Philadelphia riots of 1844, just not on so grand a scale. The nuances of this theological and cultural controversy supply the proper context for understanding the Supreme Court's decision in *Vidal*.

IV. THE IMPACT OF STORY'S RELIGIOUS BELIEFS AND THE BIBLE IN SCHOOLS CONTROVERSY ON *VIDAL V. GIRARD*

Having addressed the two primary influences underlying Joseph Story's decision in *Vidal v. Girard*,³⁴⁵ we can now turn to a discussion of that case. *Vidal* was decided on February 27, 1844, just months prior to the first riot in Philadelphia and on the same day that Kensington schoolteacher Louisa Bedford suspended Bible reading in her classroom.³⁴⁶ It involved the same issue of sectarianism and religion in the schools that had been causing city-wide strife in New York and Philadelphia.

The controversy in *Vidal* centered around a will and trust established by Steven Girard, a native of France, who fled to Philadelphia shortly before the Declaration of Independence.³⁴⁷ Girard died a widower with no children and with a massive fortune valued in excess of seven million dollars.³⁴⁸ The will sought to establish a college for "poor white male orphan[s]."³⁴⁹ The trust document provided for the City of Philadelphia to establish and administer the school.³⁵⁰ A specific provision of the trust required that no minister or missionary be allowed to teach at the college.³⁵¹ Specifically, the document stated:

I enjoin and require that no ecclesiastic, missionary, or minister of any sect whatsoever, shall ever hold or exercise any station or duty whatever in the said college; nor shall any such person ever be

342. *Id.*

343. *Id.*

344. *Id.*

345. *Vidal v. Girard's Ex'rs*, 43 U.S. 127 (1844).

346. *Id.*

347. *Id.* at 128.

348. *Id.*

349. *Id.* at 129.

350. *Id.* at 146.

351. *Id.* at 133.

admitted for any purpose, or as a visitor, within the premises appropriated to the purposes of the said college.³⁵²

Girard went on to specify in his will that

[i]n making this restriction, I do not mean to cast any reflection upon any sect or person whatsoever; but, as there is such a multitude of sects, and such a diversity of opinion amongst them, I desire to keep the tender minds of the orphans, who are to derive advantage from this bequest, free from the excitement which clashing doctrines and sectarian controversy are so apt to produce; my desire is, that all the instructors and teachers in the college shall take pains to instil [*sic*] into the minds of the scholars the purest principles of morality, so that, on their entrance into active life, they may, from inclination and habit, evince benevolence towards their fellow-creatures, and a love of truth, sobriety, and industry, adopting at the same time such religious tenets as their matured reason may enable them to prefer.³⁵³

Girard undoubtedly included this provision in his will in recognition of the Bible in schools controversy, and in an attempt to prevent that controversy from affecting the school he desired to establish. Despite this effort, his will ended up the subject of a Supreme Court decision precisely because of the stance it took on the Bible in schools controversy.

Four lawyers presented oral argument before the Supreme Court of the United States, two of whom will be focused on here.³⁵⁴ The Girard family hired Daniel Webster, who had previously served in the Senate and as Secretary of State under Presidents Harrison and Tyler, to press their claim to void the gift.³⁵⁵ Horace Binney was the attorney for the City of Philadelphia.³⁵⁶ He was a Philadelphia native and graduated with honors

352. *Id.* at 133.

353. *Id.*

354. *Id.* at 143.

355. Webster was a close friend of Justice Story. In fact, Story had such tremendous respect for Daniel Webster that he advocated a leadership role for Webster in the emerging Constitutional Nationalist Movement. Story wrote of the need for statesmen: "We have all at risk . . . and we must always keep on board the ship of state, not only a competent crew to work the ship, but the most cautious of the skillful, as well as the truest of the best . . ." Joseph Story, *Statesmen—Their Rareness and Importance*, 7 NEW ENG. MAG. 89, 92 (Aug. 1834). Story thought of his friend Webster as just such a man: "[His mind] is marked by sagacity, caution, accuracy, foresight, comprehensiveness, laborious research, and untiring meditation, as well as by various genius. In short, he possesses that undefinable quality, called WISDOM, in an eminent degree . . ." Joseph Story, *Daniel Webster*, 7 NEW ENG. MAG. 96, 98 (Aug. 1834).

356. CHARLES CHAUNCEY BINNEY, *Horace Binney*, in 4 GREAT AMERICAN LAWYERS 197, 212 (William Draper Lewis ed., photo. reprint 1971) (1908).

from Harvard a year ahead of Justice Story in 1797.³⁵⁷ Many considered his argument in the case the best presented.³⁵⁸ Later that year he was a leader in helping quell the Philadelphia Bible riots.³⁵⁹

Daniel Webster aggressively attacked the clergy prohibition before the Supreme Court. He stated that

[i]n no country in the world is there a body of men who have done so much good as the preachers of the United States; they derive no aid from government, constitute no hierarchy, but live by the voluntary contributions of those to whom they preach. . . . Was there ever an instance before, where, in any Christian country, the whole body of the clergy were [*sic*] denounced?³⁶⁰

He then directly attacked the assertions of his opposing counsel with regard to the requirements of Christian charity:

The object here is to establish a school of learning and shelter; to give a better education. The counsel upon the other side are right in speaking of charity as an emanation of Christianity. But if this be so, there can be no charity where the authority of God is derided and his word rejected.³⁶¹

In arguing that the clergy prohibition was derogatory towards Christianity, Webster asserted that, “[t]he doors of the college are open to infidels. The clause, as it stands, is as derogatory to Christianity as if provision had been made for lectures against it.”³⁶² He concluded:

No fault can be found with Girard for wishing a marble college to bear his name [forever], but it is not valuable unless it has a fragrance of Christianity about it.

The reasons which the testator gives are objectionable and derogatory to Christianity; they assume that a difference of opinion upon some religious tenets is of more importance than a Christian education³⁶³

Despite the forcefulness and likely popularity of Webster’s argument, Horace Binney’s argument would carry the day.

In his argument on behalf of Philadelphia, Binney asserted that the desire of Mr. Girard was to “include the orphan poor of all sects, Jews as

357. *Id.* at 199.

358. *See id.* at 223-224.

359. *Id.* at 237.

360. *Vidal v. Girard’s Ex’rs*, 43 U.S. 127, 173 (1844).

361. *Id.* at 174.

362. *Id.*

363. *Id.* at 175.

well as Christians, and those who had no religion at all.”³⁶⁴ Notably, Binney exploited the unattractiveness of the school Bible issue in making his argument:

If any clergyman was to be admitted, he would of course teach the doctrines of his own church. No two sects would agree. Some would adopt one part of the Bible, some another. If they agreed as to what was to be left out as apocryphal, they would differ about the translation of the rest. The Protestant would not receive the Douay Bible. *See the difficulties that exist in New York about the introduction of the Bible as a school-book.*³⁶⁵

Binney’s argument demonstrates that the underlying national debate on what version of the Bible, if any, should be used in public schools was on the minds of the Justices as they considered how to rule in *Vidal*.³⁶⁶

Binney also argued that the will was not anti-Christian.³⁶⁷ To establish this, he pointed out that the will required “[t]he purest principles of morality . . . to be taught. Where are they found? Whoever searches for them must go to the source from which a Christian man derives his faith—the Bible.”³⁶⁸ Binney also asserted that “laymen must be instructors, and why cannot they teach religion as well as science?”³⁶⁹ According to Binney, Girard’s will did not prevent the teaching of religion at his school; it only sought to ensure that the sectarian strife regarding the proper version of the Bible to use in schools would not affect his school for orphans.³⁷⁰ The arguments presented by both Webster and Binney demonstrate the extent to which the Bible-in-schools controversy impacted the Court’s understanding of the issues involved in *Vidal*.

Like the national debate over religion in the schools, Joseph Story’s religious values also impacted his decision in *Vidal*. Story delivered a unanimous opinion for the Court, upholding the will with the provision prohibiting ministers and missionaries from teaching at the school.³⁷¹ Commenting on the arguments of the case, Story said, “This cause has been argued with great learning and ability.”³⁷² In a letter to his wife, Story discussed the theological nature of the arguments: “I was not a little amused,

364. *Id.* at 153.

365. *Id.* at 153 (transcription of Binney’s oral argument edited and reproduced in the *United States Reports*) (emphasis added).

366. *Id.* at 127.

367. *Id.* at 153.

368. *Id.*

369. *Id.* at 154.

370. *Id.*

371. *Id.* at 127.

372. *Id.* at 183.

with the manner in which . . . the language of the Scriptures, and the doctrines of Christianity, were brought in to point the argument; and to find the Court engaged in hearing . . . expositions of Christianity, with almost the formality of lectures from the pulpit.”³⁷³

In his opinion, Story focused upon the will’s “second injunction and requirement [forbidding ecclesiastical teachers] which has been so elaborately commented on at the bar, as derogatory to the Christian religion . . .”³⁷⁴ Story noted the primary objection to the trust’s enforcement: “This objection is that the foundation of the college upon the principles and exclusions prescribed by the testator, is derogatory and hostile to the Christian religion, and so is void, as being against the common law and public policy of Pennsylvania.”³⁷⁵ Specifically, Girard’s family argued that the will violated the common law of Pennsylvania because Christianity is part of the common law.³⁷⁶ Consistent with the position Story had taken during his feud with Jefferson over the common law,³⁷⁷ Story affirmed that “the Christian religion is part of the common law of Pennsylvania.”³⁷⁸ Yet Story recognized limits to this legal principle:

[W]e are compelled to admit that although Christianity be a part of the common law of the State, yet it is so in this qualified sense, that its divine origin and truth are admitted, and therefore it is not to be maliciously and openly reviled and blasphemed against, to the annoyance of believers or the injury of the public.³⁷⁹

In light of these limits, “[r]emote inferences, or possible results, or speculative tendencies” regarding the effect of Girard’s will were not sufficient to find a violation of this common law principle.³⁸⁰ Instead, “[t]here must be plain, positive, and express provisions, demonstrating not only that Christianity is not to be taught; but that it is to be impugned or repudiated.”³⁸¹ In Story’s view, Girard’s will contained no such provisions.³⁸² To the contrary, it expressly permitted the teaching of the Christian religion, just not by members of the clergy.³⁸³ Story’s opinion that Girard’s will was not derogatory to the Christian religion rested on two determinations. First, a layman was capable of teaching the general principles of Christianity. “Why may not laymen instruct in the general

373. 2 LIFE AND LETTERS OF JOSEPH STORY, *supra* note 13, at 468.

374. *Vidal*, 43 U.S. at 184.

375. *Id.* at 197.

376. *Id.*

377. *See supra* notes 112-127 and accompanying text (discussing Story’s position that Christianity is part of the common law).

378. *Vidal*, 43 U.S. at 198.

379. *Id.*

380. *Id.* at 199.

381. *Id.*

382. *Id.*

383. *Id.* (noting that “[t]he testator does not say that Christianity shall not be taught in the college”).

principles of Christianity as well as ecclesiastics[?] There is no restriction as to the religious opinion of the instructors and officers."³⁸⁴ And second, that Girard's will actually permitted the teaching of the Bible in the school:

Why may not the Bible, and especially the New Testament, without note or comment be read and taught as a divine revelation in the college—its general precepts expounded, its evidences explained, and its glorious principles of morality inculcated? . . . Where can the purest principles of morality be learned so clearly or so perfectly as from the New Testament? Where are benevolence, the love of truth, sobriety, and industry, so powerful and irresistibly inculcated as in the sacred volume?³⁸⁵

Because Story interpreted the will as permitting the teaching of Christian moral principles from the Bible, he concluded that Girard's will was not derogatory to the Christian religion:

Looking to the objection therefore in a mere juridical view, which is the only one in which we are at liberty to consider it, we are satisfied that there is nothing in the devise establishing the college, or in the regulations and restrictions contained therein, which are inconsistent with the Christian religion, or are opposed to any known policy of the state of Pennsylvania.³⁸⁶

Story's determination that Girard's will was not derogatory to the Christian religion was undoubtedly influenced by his personal religious beliefs and values. Story's view that non-clergy could adequately expound the Bible, and specifically the New Testament, found support in his Unitarian theology.³⁸⁷ Story's friend William Channing, in his famous sermon, *Unitarian Christianity*, said, "[W]e regard the Scriptures as the records of God's successive revelations to mankind, and particularly of the last and most perfect revelation of his will by Jesus Christ. Whatever doctrines seem to us to be clearly taught in the Scriptures, we receive without reserve or exception."³⁸⁸ Channing went on to state, however, the importance of the New Testament to Unitarians:

We do not, however, attach equal importance to all the books in this collection. Our religion, we believe, lies chiefly in the New

384. *Id.* at 200.

385. *Id.*

386. *Id.* at 201.

387. See William Ellery Channing, *Unitarian Christianity*, in WILLIAM ELLERY CHANNING SELECTED WRITINGS 70, 71-72 (David Robinson ed., 1985).

388. *Id.*

Testament. The dispensation of Moses, compared with that of Jesus, we consider as adapted to the childhood of the human race, a preparation for a nobler system, and chiefly useful now as serving to confirm and illustrate the Christian Scriptures.³⁸⁹

The Unitarian emphasis on the New Testament as a source of moral principles and guidance found its way into Justice Story's opinion in *Vidal v. Girard*.

Other aspects of Justice Story's religious beliefs are reflected in his decision. Justice Story's son described his father's allegiance to the principle of free inquiry and his belief that "in the sight of God it is not the truth or falsity of our views, but the spirit in which we believe, which alone is of vital consequence."³⁹⁰ These values likely impacted his decision to uphold Girard's will despite its provision against ecclesiastical teachers. Story likely relished the idea of minds left to peruse the New Testament "without note or comment," a position consistent with his religious views.³⁹¹ Young minds properly nurtured and left to read the divine words of God could make the choice, in their theological understanding, to live productive and meaningful lives and would be drawn to God by His precepts. Girard's will embodied this religious perspective.³⁹²

Justice Story's opinion also vindicated his belief that Christianity is an essential support of American society.³⁹³ Girard's will was consistent with Story's commitment to maintaining the influence of Christian religious principles on American culture. Story believed that the "general precepts" and "glorious principles of morality" contained in the Bible would be taught at Girard's school.³⁹⁴ There is little doubt that Story would have invalidated Girard's will if he had found that it "impugned or repudiated" Christianity.³⁹⁵ However, because Story interpreted Girard's will to require the teaching of Christian moral principles, Girard's school promoted Story's Christian vision of American society.

V. CONCLUSION

As Joseph Story's opinion in *Vidal v. Girard* demonstrates, Supreme Court decisions do not occur in a vacuum. Many outside influences,

389. *Id.* at 72 (footnote omitted).

390. 1 LIFE AND LETTERS OF JOSEPH STORY, *supra* note 13, at 56.

391. *See Vidal*, 43 U.S. at 200.

392. *Id.* at 133.

[M]y desire is, that all the instructors and teachers in the college shall take pains to instil [sic] into the minds of the scholars the purest principles of morality, so that, on their entrance into active life, they may, from inclination and habit, evince benevolence towards their fellow-creatures, and a love of truth, sobriety, and industry, adopting at the same time such religious tenets as their matured reason may enable them to prefer.

Id.

393. *See supra* notes 112-27 and accompanying text (discussing Story's view that Christianity is a necessary support of American society).

394. *See Vidal*, 43 U.S. at 200.

395. *See id.* at 199.

including underlying cultural debates and a Justice's personal beliefs and values, can impact the way a case is decided. The national debate over the Bible in public schools impacted the Court's decision in *Vidal*. By including a provision that prohibited ecclesiastical teachers at his school, Girard's will directly implicated the Bible in schools issue, inviting the Court to pronounce its position on the matter. The Court heard the case at a time when the Bible controversy was dividing the nation; Horace Binney even exploited the conflicts between Protestants and Catholics during his argument before the Court.³⁹⁶ The Court's decision, viewed within this context, is revealing. The Court would not permit Christianity to be attacked or reviled, but held that Girard's will did not do so because it permitted the teaching of Christian values and moral principles in a nonsectarian way.³⁹⁷ Thus, despite the civil strife the Bible-in-schools controversy was causing the nation, in 1844 the nation's highest court issued an opinion favoring the use of the Bible in schools, so long as it was used in a nonsectarian manner.

Moreover, Justice Story's Unitarian beliefs found vent in his opinion. Girard's will embodied Story's commitment to free inquiry in religious matters and his distaste for religious doctrine, while simultaneously promoting his belief that Christian moral principles should be taught by the schools. By prohibiting ministers, priests, or other ecclesiastics from teaching, Girard avoided having the students indoctrinated in the religious creeds of a particular sect. At the same time, by requiring that the "purest principles of morality" be taught, Girard permitted the teaching of what Story found most important: Christian moral principles as illuminated by the New Testament. The provision regarding the teaching of moral principles was also consistent with Story's belief that Christianity was an indispensable support of American society. Because Story interpreted Girard's will to require the teaching of Christian moral principles, Girard's school would foster, not inhibit, Christianity among the orphan children served by the school. Thus, Girard's will, as interpreted by Story, served the interests of the nation by allowing the promotion of Christian values.

The broader meaning of *Vidal v. Girard* should not be lost within the intriguing historical aspects of the case. *Vidal* was the Supreme Court's very first case dealing with the role of religion in the public schools, and it laid the foundation for an accommodationist view of the religion clauses. Its emphasis on equality and governmental neutrality toward religion in the public square stands in stark contrast to the current judicial adherence to a misguided view of church-state relations. The Court's decision in *Vidal* seriously undermines the proposition that complete, unyielding separation of church and state is supported by this nation's history. Rather,

396. See *supra* note 365 and accompanying text.

397. See *supra* notes 374-86 and accompanying text.

accommodation of religion, without violating the rights of conscience, is the lesson of *Vidal*, and the lesson of the broader American experience.