

Supplementary Material

Chapter 5: The Jacksonian Era – Individual Rights/Religion/Establishment/Congressional Chaplains

The Debate over Congressional Chaplains

The Continental Congress and each subsequent Congress appointed a chaplain to minister to members and open sessions with a prayer. Congressional chaplains were paid by federal appropriation. Congress also appointed and paid for military chaplains. The national legislature occasionally received petitions calling for federally funded chaplains to be abolished. "The Remonstrance Against the Appointments of Chaplains to Congress" is one example. Some members of Congress also objected to the appointment of chaplains. Petitions on chaplains were routinely sent to the judiciary committees, which usually issued a brief report stating that no action should be taken. Some committees issued more elaborate reports justifying the practice. North Carolina Whig Senator George Badger (1795–1866) produced one of the more extensive justifications for Congressional chaplains. Shortly before issuing this report, Badger was nominated to the U.S. Supreme Court by President Millard Fillmore (the lame duck nomination was tabled by the Democratic Senate).

The "Remonstrance" and Badger Report set out the rival positions on the constitutionality of congressional chaplains. The "Remonstrance" insisted that Congress had no power to appoint chaplains. While the language of the petition is strict separationist, more religious concerns are articulated. The residents of Livingston, Kentucky, were disturbed by priests serving as congressional chaplains. Badger's report emphasized the lack of conflict between chaplains and the constitutional prohibition on an established church. Vermont Whig James Meacham in the House of Representatives dismissed the fear of a union between church and state as "entirely imaginary." The systematic disestablishment of churches in the states and the diversity and jealousy of religious sects to be found in the United States, his report on congressional chaplains claimed, demonstrated that "the tendency of the times is not to a union of church and State, but is decidedly and strongly bearing in the opposite direction. . . . It seems to us that the men who would raise the cry of danger in this state of things, would cry fire on the thirty-ninth day of a general deluge." Besides, Meacham continued, "There never was a deliberative body that so eminently needed the fervent prayers of righteous men as the Congress of the United States."¹

The inhabitants of Livingston were opposed to the congressional decision to pay chaplains out of public funds. Why did Badger claim that this is not a constitutional problem? What did Badger believe are the crucial elements of an establishment? What did the inhabitants of Livingston believe were the crucial elements of an establishment? Do the differences between them seem similar to differences between Whigs and Democrats? If so, why did more Whigs than Democrats in the Jacksonian era support congressional chaplains?

Remonstrance Against the Appointment of Chaplains to Congress, by inhabitants of Livingston County, Kentucky, December 11, 1833²

. . . The people constitute the righteous source of political authority; no power can justly be exercised over them or over their property, but such as is derived from them. The constitution contains a full specification of all the powers that have been delegated by the people to their political representatives; none but civil powers are therein or thereby delegated; their representatives, therefore, not being vested with any ecclesiastical authority, have no right to legislate on religion, nor officially to do

¹ Committee on the Judiciary, *Chaplains in Congress and in the Army and Navy*, 33rd Cong., 1st Sess. (1854), H. Rep. No. 124, 5, 6–7.

² *Executive Documents*, 23rd Cong., 1st Sess., vol. 1, Doc. No. 9 (1833).

or perform, or direct to be done and performed, any ecclesiastical act or ceremony. Hence, it appears, that hiring preachers *officially*, and paying them out of the people's money, are acts of supererogation, unauthorized by the constitution, and transcending the powers delegated to the National Legislature. And again: Your petitioners beg leave to state that, inasmuch as no ecclesiastical authority has been delegated to the National Legislature, it can have no right to create an ecclesiastical office, or to induct any person into an ecclesiastical office, or to exercise any ecclesiastical functions. Consequently, the appointment of Chaplains to the two legislative Houses is an unauthorized act of legislation; an exercise of power not derived from the people, and not authorized by the constitution. They beg leave further to state that the measures in question are rendered doubly obnoxious by the legislative appropriation of public money to pay wages to priests hired to perform public praying. Those individuals of the National Legislature who set a value upon such services, have an undoubted right to purchase them, and pay for them with their own money; but the Legislature has no right to take and expend the public money which has been collected for other and constitutional purposes, in the purchase of services which engross the time and attention due to other objects, and which are desired only by individuals of that body for their individual edification. If the Legislature should enact a law for the express purpose of imposing a direct tax to pay the wages of priests hired to perform prayers among the representatives, such a measure would meet a reception adapted to its unjust object and odious character. And inasmuch as they have no moral or constitutional rights to impose such a tax, so neither have they a right to take money from the Treasury, and thus indirectly to tax the people for the benefit of priests or chaplains, and the support of offices and officials unknown to, and unauthorized by, the national constitution. . . .

*George Badger, Senate Report on Congressional Chaplains (1853)*³

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The clause speaks of "an establishment of religion." What is meant by that expression? It referred, without doubt, to that establishment which existed in the mother country, and its meaning is to be ascertained by ascertaining what that establishment was. It was the connection with the state of a particular religious society, by its endowment, at the public expense, in exclusion of, or in preference to, any other, by giving to its members exclusive political rights, and by compelling the attendance of those who rejected its communion upon its worship, or religious observances. . . . If Congress has passed, or should pass, any law which, fairly construed, has in any degree introduced, or should attempt to introduce, in favor of any church, or ecclesiastical association, or system of religious faith, all or any of these obnoxious particulars—endowment at the public expense, peculiar privileges to its members, or disadvantages or penalties upon those who should reject its doctrines or belong to other communities—such law would be a "law respecting an establishment of religion," and, therefore, in violation of the constitution. But no law yet passed by Congress is justly liable to such an objection. Take, as an example, the chaplains to Congress. . . . Now, in this, no religion, no form of faith, no denomination of religious professors, is established in preference to any other, or has any peculiar privileges conferred upon it. The range of selection is absolutely free in each house amongst all existing professions of religious faith. There is no compulsion exercised or attempted, upon any member or officer of either house, to attend their prayers or religious solemnities. No member gains any advantage over another by attending, or incurs any penalty or loses any advantage by declining to attend. The chaplain is an officer of the house which chooses him, and nothing more. . . .

It is said, indeed, by the petitioners, that if members of Congress wish any one to pray for them, they should, out of their own means, furnish the funds wherewith to pay him, and that it is unjust to tax the petitioners with the expense of his compensation. . . . If carried out to its fair results, it will equally apply to many other accommodations furnished to members of Congress at the public expense. We have messengers who attend to our private business, take checks to the bank for us, receive the money, or

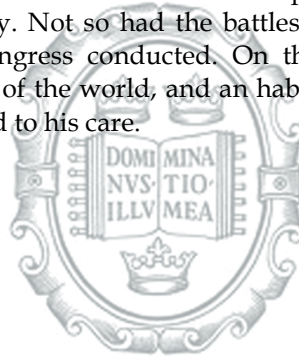
³ Excerpt taken from The Committee on the Judiciary, *Report on the Abolition of the Office of Chaplain*, 32nd Cong., 2nd Sess. (1853), S. Rep. No. 376.

procure bank drafts, and discharge various other offices for our personal ease and benefit, unconnected with the dispatch of any public function. . . . And of those who belong to either house of Congress some have not the means to procure such accommodations for themselves. Where, then, is the impropriety of having an officer to discharge these duties? . . .

...

The whole view of the petitioners seems founded upon mistaken conceptions of the meaning of the constitution. This is evident—if not from what we have said, from this consideration—that, from the beginning, our government has had chaplains in its employment. If this had been a violation of the constitution—an establishment of religion—why was not its character seen by the great and good men who were coeval with the government—were in Congress and in the Presidency when this constitutional amendment was adopted? Our fathers were true lovers of liberty, and utterly opposed to any constraint upon the rights of conscience. They intended, by this amendment, to prohibit “an establishment of religion” such as the English church presented, or anything like it. But they had no fear or jealousy of religion itself, nor did they wish to see us an irreligious people; they did not intend to prohibit a just expression of religious devotion by the legislators of the nation, even in their public character as legislators; they did not intend to send our armies and navies forth to do battle for their country without any national recognition of that God on whom success or failure depends; they did not intend to spread over all the public authorities and the whole public action of the nation the dead and revolting spectacle of atheistical apathy. Not so had the battles of the revolution been fought, and the deliberations of the revolutionary Congress conducted. On the contrary, all had been done with a continual appeal to the Supreme Ruler of the world, and an habitual reliance upon His protection of the righteous cause which they commended to his care.

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