

Dead Students, An American Story and Answer: A Sociological Analysis of Fundamentalism Explaining The Legalization of Religious Textualism

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I. INTRODUCTION: A STORY AND SOME ANSWERS

On April 20, 1999, two Columbine, Colorado high school students invaded their high school with guns and bombs, murdering twelve fellow students and a teacher. The two murderers subsequently committed suicide.¹ Such an event should be notorious. The mass murder of high school students at school should create shock in a surrounding community, throughout a nation, and even the world. Murder should cause shock, even though murder occurs consistently and periodically.² Some murders result in stories about murder.³ The Columbine High School murders resulted in a story about an America that is about to start a new century and millennium in a very negative way.

The Columbine High School story about America told by some members of the United States House of Representatives is a saga of an American nation in deep trouble, because America's children remain threatened not just by the violence of other children. According to the saga, America's children constitute the nation's finest resource, a valuable national treasure.⁴ What threatens the nation's finest resource and its national treasure by logical necessity threatens the core future of American survival. Most American children are good people instilled with the best values.⁵ However, those children face two destructive

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1. See MARK OBMASCIK, *Bloodbath Leaves 15 Dead, 28 Hurt*, THE DENVER POST, APR. 21, 1999, available at <http://www.denverpost.com/news/shot0420a.htm>.

2. See CRIME IN THE UNITED STATES, UNIFORM CRIME REPORTS 16 (1997).

3. See, e.g., TRUMAN CAPOTE, *IN COLD BLOOD* (1965); DOMINICK DUNNE, *ANOTHER CITY, NOT MY OWN: A NOVEL IN THE FORM OF A MEMOIR* (1997); ALAN DERSHOWITZ, *REVERSAL OF FORTUNE: INSIDE THE VON BULOW CASE* (1986); ROBERT BROWNING, *THE RING AND THE BOOK* (1971); LUIS VALDEZ, *ZOOT SUIT* (1992); DAVID STOUT, *CAROLINA SKELETONS* (1988).

4. See 145 CONG. REC. H4364 (daily ed. June 16, 1999) (statement of Rep. McCollum).

5. See *id.*

threats. On one level, America's children remain at "ground zero" of an epidemic of violence.⁶ A growing and alarming number of disturbed, rejected, and isolated children turn to violence, placing all of America's good children and the nation's precious resources and treasure at risk.⁷ This story of American youthful tragedy and disaster, by implication, turns back onto itself by utilizing the violence of Littleton and other school violence as examples of this nation's threatening story.⁸ The best of America faces a threat from a sinister youthful force within its best resource. That is not the end of the story.

A second plot exists on another level of the story, a much more subtle level. All the good children not only face extinction and injury through physical violence, but they face conversion into bad children who then in turn threaten the remaining good children. All children face a sinister enemy, "negative influences" that act on children and their families.⁹ Implicitly, in this American story of impending national disaster, all children risk corruption from root causes of violence, including parental inattention, lack of discipline, school over-crowding, media and internet violence, and a broken juvenile justice system.¹⁰ Horrific words and actions in contemporary music, television, movies and day-to-day conversation threaten children.¹¹ Broken homes, self-centered and indulgent parents, the demeaning human imagery of Darwinian evolution in which humans evolve from animals, and a United States President who acts immorally and breaks the law surround our children.¹² The bad influences must be counteracted by children learning right and wrong.¹³ The story implies that America's children fail to learn right and wrong. After all, learning right and wrong would be difficult when "... we treat our children as pets and our pets as children."¹⁴ The story is a particularly negative one. America faces dire times because American children and parents threaten the core future of America.¹⁵

This negative story about America's fallen youth and families demands a national response in order to combat the threats detailed in the story. As one observer of the storytelling noted, "[t]he American

6. *Id.* at H4371 (statement of Rep. Fowler).

7. *See id.* at H4364 (statement of Rep. McCollum).

8. *See id.* at H4367 (statement of Rep. Rogan).

9. *Id.* at H4371 (statement of Rep. Fowler).

10. *See id.* at H4365 (statement of Rep. McCollum).

11. *See id.* at H4370 (statement of Rep. Rothman).

12. *See id.* at H4366 (statement of Rep. DeLay quoting from a letter to a newspaper read on a radio show by Paul Harvey).

13. *See id.* at H4370 (statement of Rep. Hutchinson).

14. *Id.* at H4366 (statement of Rep. DeLay).

15. *See id.* (statement of Rep. Frank). One observer responded to elements of the story by saying, "... I have not heard such an angry denunciation of the American people since the SDS (Students for a Democratic Society) used to pick at me 30 years ago." *Id.*

people now deserve and expect reform.”¹⁶ In fact, in response to the Littleton high school shooting, a number of proposed reforms received political support. The negative story about contemporary American youth and their enemies came from a portion of the congressional debate concerning the proposed Consequences of Juvenile Offenders Act of 1999,¹⁷ which would provide federal funds to the states for juvenile justice programs. The proposed act created block grants to the states for a variety of purposes, including building juvenile detention facilities, hiring, and information systems.¹⁸ States became eligible for grants when the states enacted laws that provided for a system of graduated juvenile punishments.¹⁹

The Consequences of Juvenile Offenders Act of 1999 acted as a magnet for a variety of proposed reforms to counteract the demons in the story spun out of the Littleton, Colorado high school murders. Those proposed reforms and antidotes to the evil American children problem included a restorative justice program that required juvenile offenders to make reparations to the community and the victims,²⁰ hotlines to report suspicious and criminal conduct of juveniles,²¹ enhanced federal court jurisdiction over juvenile criminal offenders,²² limiting access of juveniles to firearms by increasing the penalties for juveniles possessing firearms,²³ restricting the sale of sexual or violent material to children,²⁴ prohibiting the recruitment of gang members,²⁵ empowering states to display the Ten Commandments on public school property,²⁶ and discouraging the American entertainment industry from utilizing violent imagery.²⁷

The response to the Littleton, Colorado high school murders or other school violence²⁸ did not have to involve a broad based story about the threat of evil to America’s children. The sad and tragic events at Littleton and other schools could be seen as sporadic, isolated events involving troubled children.²⁹ The need for an overarching

16. *Id.* at H4365 (statement of Rep. Conyers who was not directly involved in the Littleton storytelling. His comment was ambiguous, as he favored a narrow set of juvenile justice reforms).

17. *See* H.R. 1501, 106th Cong. (1st Sess. 1999).

18. *See id.* at § 2.

19. *See id.*

20. *See* 145 CONG. REC. H4376-77 (daily ed. June 16, 1999) (Part A amendment No. 2 offered by Rep. Hutchinson).

21. *See id.* at H4380 (statement of Rep. Stupak).

22. *See id.* at H4382.

23. *See id.* at H4384.

24. *See id.* at H4399.

25. *See id.* at H4432-33.

26. *See id.* at H4457-58.

27. *See id.* at H4477.

28. In the years prior the Littleton murders, violence also occurred at other high schools such as at Conyers, Georgia. *See id.* at H4365 (statement of Rep. Souder quoting from the GEORGETOWN JOURNAL, Winter 1997).

29. Certainly, this author sees the events in Littleton that way. The author wonders whether these sad and tragic events have become seen as part of a mysterious, societally based pattern

remedy to the events does not seem apparent. Murders occur on a daily basis, in the United States,³⁰ but most are resolved through prosecution under state criminal statutes.³¹ The story and answers that followed the Littleton, Colorado school murders bear review. A variety of proposed answers grew out of the incident.³² One particular answer bears close review and analysis.

The proposal to empower the states to post the Ten Commandments on the walls of public school property seems unusual. The American states possess criminal codes that clearly punish murder as a heinous crime.³³ Posting the Ten Commandments on a wall seems to add little to the force of state law often empowered to impose the death penalty.³⁴ In addition, posting anything on a wall seems like a weak remedy to murder. One wonders how many students pay attention to what is already posted on school walls and notice boards. Adding the Ten Commandments to course assignments, and party notices seems to trivialize a core religious document.

This article examines the idea of posting the Ten Commandments in public schools. America feels so traumatized by an event that it creates a whole story about its evil youth and turns to Judaism and the most basic Jewish religious principles to remedy the evil youth problem. This article analyzes why America, a country with a vast majority of Christian believers,³⁵ would turn to a core Jewish legal text as an answer to the perception that the nation's valued resource is being squandered.³⁶ This article utilizes the work of sociologist Martin Riesebrodt to understand why a United States congressman could convince his peers to empower the states to post the Ten Commandments on school house walls.³⁷ The article examines a theoretical problem with Riesebrodt's thinking when applied to an American legal context.³⁸ The article also analyzes why a religious

because of how the mass media treat the events. One wonders how the American public would view sporadic school violence if no readily available mass media with nationwide news gathering ability existed. The mass media focused intensively on Littleton for a sustained period of time. See GINGER CASEY, *Beyond Total Immersion*, AM. JOURNALISM REV., July/August 1999, available at <http://ajr.newslink.org/ajrgingja99.html>.

30. The Federal Bureau of Investigation conceptualizes the constancy of crime by developing a crime clock which measured one murder every 29 minutes. See CRIME IN THE UNITED STATES, UNIFORM CRIME REPORTS 6 (1997).

31. See, e.g., FLA. STAT. ch. 782.04 (1997).

32. For further discussion on proposed answers to Littleton incident see *supra* notes 20-27 and accompanying text.

33. See, e.g., FLA. STAT. ch. 782 (1997).

34. See, e.g., FLA. STAT. ch. 921.141 (1997).

35. See MARTIN B. BRADLEY, ET AL., CHURCH AND CHURCH MEMBERSHIP IN THE UNITED STATES 1990, AN ENUMERATION BY REGION, STATE AND COUNTY BASED ON DATA REPORTED FOR 133 CHURCH GROUPINGS 1-3 (1992).

36. DEUTERONOMY 5 (The Torah).

37. For further discussion regarding the application of Ten Commandments to American legal context see *infra* notes 40-42 and accompanying text.

38. For further discussion on understanding the posting of Ten Commandments on school

textual approach to resolving public policy problems will ultimately fail in America, a country with a vast majority of Christians.³⁹

II. DEVELOPING AND TESTING A MODEL OF THE FUNDAMENTALIST WORLD VIEW

Envisioning that placing a copy of a traditional religious text, such as the Ten Commandments, on a school wall as an antidote to evil or morally deteriorating children, assumes that such a traditional religious text would have great power to overcome a modern social problem. This vision implies that traditional religious texts possess something that is missing from the modern schoolhouse. In an age permeated by scientific thinking,⁴⁰ it is hard to understand how policy makers could propose traditional religious texts as a part of a law based answer to a perceived social evil or problem. After all, social scientists have studied juvenile violence.⁴¹ Legislatures have created extensive and expensive juvenile justice systems.⁴² The use of traditional religious texts in legislating remedies to social problems seems antiquated and trivial. Religious textualism in modern American lawmaking also seems to fly in the face of the federal constitutional separation of church and state.⁴³ Religious textualism seems out of place in modern American policy making. German sociologist Martin Riesebrodt provides an analytical model for examining why modern American lawmakers would consider using the Ten Commandments as part of a legislative resolution to juvenile violence.⁴⁴

A. Studying Fundamentalism: The Method and the Patriarchal Answer

Martin Riesebrodt recognized in the late Twentieth Century a resurgence of religious fundamentalism around the world.⁴⁵ Riesebrodt determined to utilize sociological analysis to study the social bases for religious fundamentalist movements.⁴⁶ Missing from sociological understanding and the study of religious fundamentalism were comparative studies of different fundamentalist movements in different cultures.⁴⁷ Riesebrodt decided to test whether such a comparison of

walls see *infra* notes 143-245 and accompanying text.

39. For further discussion on analyzing a religious textual approach to resolving public policy problems see *infra* notes 246-307 and accompanying text.

40. See generally, MERLE CURTI, *THE GROWTH OF AMERICAN THOUGHT* (1964).

41. See e.g. MARVIN WOLFGANG, ET AL., *DELINQUENCY IN A BIRTH COHORT* (1972).

42. See e.g. FLA. STAT. ch. 985 (1997).

43. See *Stone v. Graham*, 449 U.S. 39 (1980).

44. See MARTIN RIESEBRODT, *PIOUS PASSION, THE EMERGENCE OF MODERN FUNDAMENTALISM IN THE UNITED STATES AND IRAN* (1990) (Translated from German to English by Don Reneau).

45. See *id.* at 1-2.

46. See *id.* at 2-9.

47. See *id.* at 4-5.

fundamentalist movements would meaningfully help social scientists understand the bases and dynamics of religious fundamentalism. Specifically, he wanted to know whether different fundamentalist movements shared similar social and ideological characteristics.⁴⁸ Riesebrodt sought to develop a new sociological conceptualization of religious fundamentalism by utilizing a comparative approach.⁴⁹ To construct this novel methodology, Riesebrodt studied two fundamentalist movements from two different religious traditions, cultures, and eras. Riesebrodt compared American Protestant fundamentalism from 1910 to 1928 with Shi'ite fundamentalism in Iran in the 1960's and 1970's.⁵⁰ Riesebrodt found a shared social theme in these two disparate movements.⁵¹

Riesebrodt's comparison between earlier American fundamentalism and later Iranian fundamentalism indicated strongly that religious fundamentalism finds a basis in radical patriarchy.⁵² Fundamentalism grows out of a tension between traditional and modern social structures. The erosion of the patriarchally dominated family results from the rise of modern complex social enterprises such as the modern bureaucratic state and modern business organizations.⁵³ This tension between tradition and modernity involves not only a shift in sexual roles of males and females, family change and a new sexual morality,⁵⁴ but equally important is the change in basic relations between people and their community institutions.

Modernity involves a depersonalization of human relations, and that depersonalization represents a radical redefinition of human relations away from a personalized family based traditional relationship system. The patriarchally dominated family represents that traditional personalistic approach to relationships.⁵⁵ Riesebrodt provided the welfare system as an example of the shift from patriarchalist personalism to modern impersonalism when he wrote, "patriarchal charity, coupled with social control, is supplanted by bureaucratically organized welfare."⁵⁶ Fundamentalist religion serves as a protest movement against the modern weakening of traditional patriarchal structure, power and order.⁵⁷ Fundamentalism seeks to restore

48. *See id.* at 5-7.

49. *See id.* at 9.

50. *See id.* at 5.

51. *See id.* at 9.

52. *See id.* at 196-208.

53. *See id.* at 202.

54. *See id.*

55. *See id.* at 202-03.

56. *Id.* at 203.

57. *See id.*

traditional patriarchal social relationships including traditional personalism.⁵⁸

B. Fundamentalism: A World View

For Martin Riesebrodt, fundamentalism becomes an all-encompassing system of belief. Fundamentalism represents more than a sacred textual interpretive methodology requiring that “anything that can be taken literally and historically must be so taken.”⁵⁹ Fundamentalism also is more than Christian conservative beliefs in such religious fundamentals as “the inerrancy of the Bible, the Virgin Birth of Christ, belief in his literal Second Coming, and other articles of faith”⁶⁰ Riesebrodt conceived fundamentalism as a general attitude toward the world, a type of world view.⁶¹ Riesebrodt identified two types of fundamentalism, charismatic and rationalist.⁶² He reserved most of his analysis for rationalist fundamentalism, or what he conceived of as “a rational fundamentalism of world mastery.”⁶³ Fundamentalism is a social protest movement⁶⁴ aimed at political change by revolution or reform.⁶⁵ Rationalist fundamentalism possesses a specific way of viewing the world.

Riesebrodt constructed a complex thinking pattern for rationalist and charismatic fundamentalists.⁶⁶ However, three elements of rationalist fundamentalist thinking stand out. First, fundamentalists envision a societal fall from a much better past. Such a vision involves a belief in a past golden age, a past utopia in which people lived in an ideal social order.⁶⁷ An erosion of faith and moral values in the contemporary world resulted in the fall from the golden past. People turned their backs on the original values imbued in the words of God.⁶⁸ Fundamentalists sought a return to the ideal original order created by God⁶⁹ and to do so, fundamentalists must reject the contemporary social order.⁷⁰ Second, rationalist fundamentalists sought to recapture the golden past through a social movement and political program.⁷¹

58. *See id.* at 200-01.

59. DOMINIC CROSSAN, WHO KILLED JESUS? EXPOSING THE ROOTS OF ANTI-SEMITISM IN THE GOSPEL STORY OF THE DEATH OF JESUS 38 (1996).

60. MARTIN E. MARTY, PILGRIMS IN THEIR OWN LAND: 500 YEARS OF RELIGION IN AMERICA 382 (1984).

61. *See* RIESEBRODT, *supra* note 44, at 16.

62. *See id.* at 18-19.

63. *Id.* at 72 and 176.

64. *See id.* at 39.

65. *See id.* at 18.

66. *See id.* at 16-20.

67. *See id.* at 16.

68. *See id.* at 47.

69. *See id.* at 16.

70. *See id.* at 17-18.

71. *See id.* at 18.

Rationalist fundamentalists represented a mobilized traditionalism.⁷² The politicization of the movement meant that the forces of religious originalism became engaged against modernist opposition forces. This engagement took on a hyper-dramatic tone. Riesebrodt described it as “[t]he conflict between modernists and fundamentalists is embedded in the universal drama of the struggle between God and Satan”⁷³ A critical component of the rationalist fundamentalist world view involved such a Manichaeian dualism.⁷⁴ Last, rationalist fundamentalism involved a compulsive legalism. For fundamentalists, only one morality existed, and that morality was statutorily based. Only the holy texts revealed by God possess legitimate law that can save the contemporary society from its fall from the ideal past.⁷⁵ The political and legal systems must be devoted to realizing divine textual law in favor of “a total religious statutory ethic.”⁷⁶ The Manichaeian nature of the political and legal struggle implies that alternative values of law lose legitimacy and must cede to the fundamentalist rationalistic view of divine textual law.⁷⁷ Riesebrodt summed up this aspect of the rationalist fundamentalist world view when he wrote, “[t]he ideal order in the future is the theocratic republic, the realization of divine law.”⁷⁸

C. Causes of Fundamentalism: Urbanization

Riesebrodt found a correlation between urbanization and industrialization and the rise of modern religious fundamentalism. In the United States in the early Twentieth Century, the cities of the North, Midwest and Southern California served as the centers of fundamentalism.⁷⁹ During the same time period, the American South had little involvement in the national American fundamentalist movement.⁸⁰ Fundamentalism encompassed all urban socioeconomic groups,⁸¹ and not just recent rural migrants to the city.⁸² Cities experienced economic transformation in the late Nineteenth and early Twentieth Centuries. The nationalization and internationalization of markets combined with the rise of large industrial plants, corporations and unions to create an impersonal economy that challenged traditional patriarchal and personalistic economic relations. Fundamentalism grew

72. See *id.* at 177.

73. *Id.* at 200.

74. See *id.* at 199-200.

75. See *id.* at 181.

76. See *id.* at 182.

77. See *id.* at 199-200.

78. *Id.* at 200.

79. See *id.* at 75.

80. See *id.* at 72.

81. See *id.* at 82.

82. See *id.* at 84.

partially as a reaction to the shift from personalistic economic relations to impersonal and industrialized market forces.⁸³ In addition, cities became highly culturally pluralistic. In the American context, immigrants created a new diversity that impacted culture.⁸⁴ The political system transformed in response to the new urban demographic and cultural diversity.⁸⁵

In all these changes, religious traditionalists suffered a loss of prestige. First, two sociomoral milieus arose according to Riesebrodt. A modernist milieu formed to challenge a traditionalist one, and the new modernist milieu challenged the prestige of the traditionalists. New ways of thinking and behaving challenged more traditional ways. Traditionalist views shared the cultural limelight with modern views, threatening the prestige of those who held fast to the older ways.⁸⁶ Since the new immigrants and the new modernist cultural forms transformed politics, the traditionalists also lost prestige in the political arena.⁸⁷ The new impersonal and industrialized market system undermined the prestige of those who adhered to traditional patriarchal, personalistic economic relations.⁸⁸ Urbanization created a type of cultural competition between traditional and modernist milieus. The urban environment created competitive alternatives to religious traditionalist thinking and behavior. Such competition threatened religious traditionalists, because their children faced the temptations of the open, urban, social, cultural, political and economic market places. Religious tradition became weakened as a future religious movement as the children of religious traditionalists faced the temptation of urban modernism.⁸⁹ That is why religious traditionalists mobilized into a fundamentalist movement politically and legally to conjure up the mythical past.⁹⁰

D. Testing Riesebrodt in the Context of American Constitutionalism

Riesebrodt's model of fundamentalism as an outcry of industrialization and urbanization should be testable in the context of law and law development. After all, law should reflect cultural transformation.⁹¹ Riesebrodt examined the American historical period

83. *See id.* at 97-99.

84. *See id.* at 93-94.

85. *See id.* at 95-96.

86. *See id.* at 94.

87. *See id.* at 96.

88. *See id.* at 98.

89. *See id.* at 192-93.

90. *See id.* at 8.

91. *See generally* WILLIAM CHAMBLIS AND ROBERT SEIDMAN, *LAW, ORDER, AND POWER* (1971); DAVID M. SPEAK, *LIVING LAW, THE TRANSFORMATION OF AMERICAN JURISPRUDENCE IN THE EARLY TWENTIETH CENTURY* (1979); EDWARD W. STEVENS, JR., *LITERACY, LAW, AND SOCIAL ORDER* (1988).

at the very end of the Nineteenth Century and the beginning of the Twentieth Century.⁹² As a result, American law, including American constitutional law, should evidence signs of Riesebrodt's urbanization and social diversification challenging religion during the last half of the Nineteenth Century.

Certainly, Riesebrodt's model for the development of rationalist religious fundamentalism at the start of the Twentieth Century should find historical support in the American legal system in the decades before the start of Twentieth Century. Urbanization and industrialization should be far enough along by the 1890's to see in American constitutional law the stresses faced by American religion. Two cases help test Riesebrodt's sense of growing historical tensions. *The Church of the Holy Trinity v. United States*⁹³ provides a general overview of religion in relation to changing social conditions in the early 1890's. The Church of The Holy Trinity in New York contracted with an English clergyman to move from England to New York to become rector and pastor of the church.⁹⁴

The United States government alleged that the contract between the church and the pastor violated a federal statute, which provided that no person or entity in the United States could prepay transportation or in any way encourage the immigration of any alien for the purpose of performing labor or service of any kind.⁹⁵ A federal trial court in New York found that the Holy Trinity's employment contract violated the immigration law prohibition against importing alien labor to work in the United States,⁹⁶ but the United States Supreme Court reversed the decision of the trial court.⁹⁷ The Supreme Court found that Congress intended that the Act apply only to manual laborers and not to professional workers.⁹⁸

*The Late Corporation of the Church of Jesus Christ of Latter-Day Saints v. United States*⁹⁹ provides a more focused view of the tensions facing American religion at the start of the 1890's. The United States government sought to enforce the Congressional annulment of the corporate charter of the Church of Jesus of Latter-Day Saints by seizing the property of the church.¹⁰⁰ In 1887, Congress passed a law¹⁰¹

92. See RIESEBRODT, *supra* note 44, at 71-83.

93. 143 U.S. 457 (1892).

94. See *id.* at 457-58.

95. See Alien Contract Labor Law, ch. 164, 23 STAT. 332, 77 (1885) (current version at 8 U.S.C. § 1552 (1994)).

96. See *Holy Trinity*, 143 U.S. at 458.

97. See *id.* at 472.

98. See *id.* at 463.

99. 136 U.S. 1 (1890).

100. See *id.* at 8.

101. See ch. 397 24 STAT. 635 (1887).

annulling the Utah territorial acts incorporating the Mormon Church.¹⁰² The act also required the Attorney General of the United States to pursue a court proceeding to escheat church property to the United States for the purpose of benefiting the schools in the Utah Territory.¹⁰³ The general context for Congress' actions was the prohibition of polygamy.¹⁰⁴ The United States Supreme Court affirmed the court below,¹⁰⁵ finding that Congress possessed the power to annul the church's corporate charter,¹⁰⁶ and seize the church's assets for use in supporting a territorial school system.¹⁰⁷

Both cases provide some historical support for Riesebrodt's model that American religion faced social challenges from the social changes occurring in the late Nineteenth Century in the United States.¹⁰⁸ The *Holy Trinity* Court made a distinction between manual laborers and professional workers.¹⁰⁹ However, the distinction evidenced a far greater implicit dichotomy constructed by the Court between unwashed immigrant laborers and the strength of Christian tradition in America. The Court analyzed the intent of Congress in passing the immigration labor restriction law, and the Court found that Congress intended to discourage the importation of "an ignorant and servile class of foreign laborers . . ." who caused a "breakdown . . ." in the American labor market.¹¹⁰ The Court went on to discuss Congressional committee findings about foreign laborers and in doing so characterized these laborers as from the "lowest social stratum [who] . . . live upon the coarsest food, and in hovels . . ." ¹¹¹ These people would not be "a desirable acquisition to the body politic."¹¹²

The *Holy Trinity* Court then proceeded to justify the admission of a Christian clergyman to the United States by finding that Congress could not have intended for the legislation discouraging the immigration of ignorant, servile, and lonely paupers to be anti-religious. For six pages of reporter space, the Court extolled the virtues of the Christian religion in the American historical context.¹¹³ Not only did Christianity play a vital role in the founding of America,¹¹⁴ but the Declaration of Independence¹¹⁵ and the original state constitutions¹¹⁶ incorporated a

102. *See id.* at § 13.

103. *See Latter-Day Saints*, 136 U.S. at 5-7.

104. *See id.* at 66.

105. *See id.* at 42-46.

106. *See id.* at 64-65.

107. *See id.*

108. *See The Church of the Holy Trinity v. U.S.*, 143 U.S. 457, 458 (1892).

109. *See id.*

110. *Id.* at 463.

111. *Id.* at 465.

112. *Id.*

113. *See id.* at 465-71.

114. *See id.* at 466-67.

115. *See id.* at 467-68.

recognition of the importance of God, religion and Christianity to the emerging American nation.¹¹⁷ Overall, the Court declared that the United States is a Christian nation and that much of American charity existed under Christian auspices.¹¹⁸ The *Holy Trinity* Court communicated with two symbols, one the invading pauper laborer undermining and challenging the existing economic structure, hurting American workers,¹¹⁹ and the other the central place of Christian religion in the development of American society.¹²⁰ The invading immigrants threatened American society while the Christian religion strengthened American society. Certainly, this constitutional view of the American social structure in the 1880s and 1890s bolsters Riesebrodt's model of religious flux in the context of urban social change in an emerging industrial economy.¹²¹ The *Holy Trinity* Court creates the image of threatening immigrants up against the saving grace of American Christianity.

The *Latter-Day Saints* Court asserted that Congress fought the scourge of polygamy, when Congress and the Attorney General sought to repeal the church charter and seize church property.¹²² At the same time, the Supreme Court in its statement of the case¹²³ acknowledged that the trial court found that the Church of Jesus Christ of Latter-Day Saints existed to spread the spiritual principles of the church and provide charity under those church principles.¹²⁴ The trial court also found that the doctrine of polygamy was only one of many church doctrines and that no more than twenty percent of church members engaged in polygamy.¹²⁵ The Supreme Court stated that laws existed to prohibit bigamy,¹²⁶ yet the Court supported governmental actions to destroy a church corporation and seize church property for general public use. The Court failed to focus on any church doctrine other than polygamy, and the Court failed to acknowledge the spiritual church life of the eighty percent of Mormons who did not practice polygamy. Instead the Court proceeded to excoriate Mormonism. Focusing on the narrow polygamy doctrinal context, the Court wrote about Mormonism in terms like "[i]t is contrary to the spirit of Christianity"¹²⁷

The Supreme Court discussed the history of Mormonism with

116. *See id.* at 468-69.

117. *See id.* at 467-70.

118. *See id.* at 471.

119. *See id.* at 463-4.

120. *See id.* at 465-72.

121. *See* RIESEBRODT, *supra* notes 79-90 and accompanying text.

122. *See* *The Church of Jesus Christ of Latter-Day Saints v. U.S.*, 136 U.S. 1, 46 (1890).

123. *See id.* at 3-32.

124. *See id.* at 26.

125. *See id.* at 27.

126. *See id.* at 50.

127. *Id.* at 49.

disdain. The Mormons had defied governmental authority, attempted to establish “an independent community” and attempted to drive non-believers from the Utah Territory.¹²⁸ The Court characterized the church as “a contumacious organization.”¹²⁹ The Court justified seizure of property by asserting that Mormon leaders misused church property, and the seized assets would be used by the Federal Government for the benefit of the community in projects such as schools.¹³⁰ Even in extolling the redistribution of church assets, the Court implied a distinction between acceptable religion and morality and Mormonism. The Court noted that schools and education had been considered by the Continental Congress as necessary for the promotion of religion and morality.¹³¹ The Supreme Court allowed the Federal Government to seize church property for the purpose of establishing public schools to teach about religion and morality. The *Latter-Day Saints* case also provides support to Riesebrodt’s thesis that social change in America challenged traditional American religion causing traditionalists to organize a fundamentalist religious movement.¹³² In the Nineteenth Century, America served as the breeding ground for new religions, including Mormonism.¹³³ The Latter-Day Saints evidenced the tension between a new American religion and its novel doctrine and established traditional Christianity. Riesebrodt focused his attention on religious tension in Northeast urban centers and California.¹³⁴ Mormonism in Utah would seem to be out of step with Riesebrodt’s model, yet much of the factual focus in *Latter-Day Saints* involved property in an emerging city, Salt Lake City.¹³⁵ In addition, even in 1890, thirty-six percent of Utah’s population lived in an urban region,¹³⁶ while the United States generally had thirty-five percent of its population living in urban environments.¹³⁷ Even Minnesota, one of Riesebrodt’s examples of rapid urbanization,¹³⁸ had only thirty-four percent of its population living in urban centers.¹³⁹

American constitutional law provides some support to Riesebrodt, who attempts to limit the application of this thesis. He reminded his

128. *Id.*

129. *Id.* at 63-64. Contumacious means perversely resisting authority and being stubbornly disobedient, rebellious, and irreconcilable. WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 497 (3d ed. 1993).

130. *See Latter-Day Saints* at 50.

131. *See id.* at 65.

132. *See* RIESEBRODT, *supra* notes 45-90 and accompanying text.

133. *See* MARTY, *supra* note 60, at 200-01.

134. *See* RIESEBRODT, *supra* note 44, at 75.

135. *See Latter-Day Saints*, 136 U.S. at 15.

136. DONALD B. DODD, HISTORICAL STATISTICS OF THE STATES OF THE UNITED STATES, TWO CENTURIES OF THE CENSUS, 1790-1990, 90 (1991).

137. *See id.* at 104.

138. *See* RIESEBRODT, *supra* note 44, at 75.

139. *See* DODD, *supra* note 136, at 48.

readers that “results presented . . . refer exclusively to the comparison between Protestant fundamentalism in the United States in 1910-1928 and Shi’ite fundamentalism in Iran in 1961-1979.”¹⁴⁰ Riesebrodt refused to make any claims as to validity beyond the one narrow comparison in the study, stating that the results “must be tested in other cases . . .”¹⁴¹ However, Riesebrodt broke his own limits by discussing the growth of American fundamentalism in the 1970s and 1980s. He observed in the 1970s and 1980s the development of a neopatriarchal alliance of conservative Protestants, Catholics, Jews and Mormons.¹⁴² Hence, it seems appropriate to apply Riesebrodt’s model to the use of original religious texts by American policy makers close to the start of the Twenty-first Century.

III. APPLYING THE FUNDAMENTALIST MODEL: DEBATING THE TEN COMMANDMENTS

In the midst of deliberations concerning the Consequences of Juvenile Offender Act of 1999,¹⁴³ an amendment was introduced to empower state governments to display the Ten Commandments on public property.¹⁴⁴ The Amendment was titled “Rights to Religious Liberty.”¹⁴⁵ The Amendment began with a series of congressional findings concerning the role of God in American law and the nature of states’ rights. The findings declared that the Declaration of Independence, the United States Code and state constitutions recognized God as the source and endower of liberty.¹⁴⁶ In addition, the First Amendment to the United States Constitution secured religious freedom and applied to the states under the Fourteenth Amendment to the United States Constitution.¹⁴⁷ Next, the Tenth Amendment reserved powers to the states,¹⁴⁸ while Section 5 of the Fourteenth Amendment empowered Congress to enforce the Fourteenth Amendment.¹⁴⁹ The findings stated that Congress possessed the power to constitute tribunals inferior to the Supreme Court.¹⁵⁰ The crux of the findings involved a recognition that “[d]isputes and doubts have arisen with respect to public displays of the Ten Commandments and to other

140. RIESEBRODT, *supra* note 44, at 206.

141. *Id.*

142. *Id.* at 205.

143. See H.R. 1501, 106th Cong. (1st Sess. 1999).

144. See 145 CONG. REC. H4457-8 (daily ed. June 16, 1999) (amendment No. 28, Part A, of House Report 106-86).

145. *Id.*

146. See *id.* at H4457.

147. See *id.* at H4457-58.

148. See *id.* at H4458.

149. See *id.*

150. See *id.*

public expressions of religious faith.”¹⁵¹

In light of these disparate findings, the amendment provided that power to display the Ten Commandments on property owned or administered by state governments and their political subdivisions remained among the powers reserved to the states.¹⁵² The structure of the wording of the Ten Commandments display provision paralleled the wording of the Tenth Amendment. By the use of the words “power,” “reserved” and “states,” the proposed amendment implied that the power of the states to display the Ten Commandments constituted a power not delegated to the United States by the Constitution nor prohibited to the States.¹⁵³ Somehow the combined effect of the legislative findings and the Ten Commandments display proposal provided the states with power to display religious symbolism while at the same time restricting state involvement in religion by the First and Fourteenth Amendments. This seeming contradiction was resolved implicitly by a further proposal involving the expression of religious faith.

A second section of the proposed amendment sought to secure expression of religious faith.¹⁵⁴ The proposed amendment provided that the expression of religious faith by individuals on property owned or administered by the states and their subdivisions constituted a right protected by the Establishment and Free Exercise clauses of the First Amendment.¹⁵⁵ In addition, no state could deprive anyone of the right to express religious faith without due process of law.¹⁵⁶ The seeming contradiction between reserved state powers, not possessed by the United States, and the First Amendment restriction of state involvement with religion, created by the Ten Commandments display provision, read with the congressional findings, implicitly evaporated. The Ten Commandments could be posted without federal interference on state property, because the right of individuals to do so remained protected by the First Amendment. In addition, state governments became restricted in opposing such individual decisions. For instance, presumably if a school principal desired to place the Ten Commandments in a school house hall, such activity would be protected. Oddly, this created another internal contradiction within the proposed amendment. On one hand, the amendment purported to empower states to display the Ten Commandments. On the other hand,

151. *Id.*

152. *See id.*

153. *See* U.S. CONST. amend. X.

154. *See* 145 CONG. REC. H4458 (daily ed. June 16, 1999) (amendment No. 28, Part A, of House Report 106-86).

155. *See id.*

156. *See id.*

individuals and not the state, possessed the right to do so.

Even the states remained restricted in stopping people from posting the Ten Commandments on public facilities. The wording parallelism between the Ten Commandments display proposal and the Tenth Amendment appeared misleading. The words "power," "reserved" and "states" appeared in both the Ten Commandments proposal and the Tenth Amendment. However, the Ten Commandments proposal really empowered individuals and not the states. The Ten Commandments proposal implied that the power to display the Ten Commandments not only failed to be delegated to the United States by the Constitution, but also failed to be possessed by the states as a result of the First Amendment. Hence, only the people possessed such power. Unlike the Tenth Amendment which ultimately states "or to the people,"¹⁵⁷ the Ten Commandments proposal never mentioned "the people" as the true possessors of the power to express religious belief.

The Ten Commandments display proposal became known as the Ten Commandments Defense Act.¹⁵⁸ The sponsors¹⁵⁹ of the Act intended that the Ten Commandments display proposal complement a congressional resolution from 1997 which also protected the Ten Commandments.¹⁶⁰ The earlier House resolution provided that the Ten Commandments should be permitted for public display including in courthouses and government offices.¹⁶¹ The 1999 Ten Commandments display proposal seemed aimed at constitutional litigation. The last section of the proposal required that federal courts exercise their judicial power in accord with rights to display the Ten Commandments guaranteed by the proposal.¹⁶² In addition, the 1997 resolution was debated in the context of litigation involving an Alabama State judge who displayed the Ten Commandments in his courtroom.¹⁶³ Also, one opponent of the 1999 proposal argued that the proposal would be unconstitutional in light of an earlier Supreme Court ruling,¹⁶⁴ *Stone v. Graham*.¹⁶⁵

The context of the 1999 Ten Commandments display proposal involved the April, 1999 school shootings in Littleton, Colorado.¹⁶⁶ This

157. U.S. CONST. amend. X.

158. See Congressman Robert Aderholt, TEN COMMANDMENTS DEFENSE ACT AMENDMENT PASSES OVERWHELMINGLY (June 17, 1999), available at <http://www.house.gov/aderholt/10one.htm>.

159. See 145 CONG. REC. H4457 (daily ed. Jun. 16, 1999) (statement of Rep. Aderholt).

160. See Aderholt, *supra* note 158.

161. See H.J.R. RES. 31, 105th Cong. (1997).

162. See 145 CONG. REC. H4458 (daily ed. June 16, 1999) (amendment No. 28, Part A, of House Report 106-86).

163. See 143 CONG. REC. H715-16 (daily ed. Mar. 4, 1997) (statement of Rep. Canady).

164. See 145 CONG. REC. H4458 (daily ed. June 16, 1999) (statement of Rep. Scott).

165. See 449 U.S. 39 (1980).

166. See 145 CONG. REC. H4458 (daily ed. June 16, 1999) (statement of Rep. Aderholt).

context implied that the proposal aimed to introduce copies of Ten Commandments in schools where individuals desired to post the Ten Commandments. Such an aim appeared to run head long into the per curiam opinion in *Stone*.¹⁶⁷

In *Stone*, a Kentucky statute required that a durable, permanent copy of the Ten Commandments be displayed in each public elementary and secondary school classroom in Kentucky.¹⁶⁸ The copies of the Ten Commandments would be purchased with funds from voluntary contributions made to the state treasury.¹⁶⁹ Each copy must have a notation on it reminding readers of the secular role of the Ten Commandments as the fundamental legal code of Western Civilization and American common law.¹⁷⁰ Utilizing the three part test from *Lemon v. Kurtzman*,¹⁷¹ the *Stone* Court held the Kentucky statute unconstitutional in violation of the Establishment Clause of the First Amendment.¹⁷² The Court found that the Kentucky statute possessed no secular legislative purpose. Instead, the Court asserted, “[t]he pre-eminent purpose of posting the Ten Commandments on schoolroom walls is plainly religious in nature.”¹⁷³ The Court noted that the Ten Commandments included more than just secular injunctions against stealing and murder, but also listed religious duties.¹⁷⁴ For the Court, the Ten Commandments served as a sacred text for Christianity and Judaism.¹⁷⁵ The private financing of the copies mattered little to the Court, because “[t]he mere posting of the copies under the auspices of the legislature provides the official support of the state . . .” that the Establishment Clause prohibited.¹⁷⁶

Stone creates insurmountable problems for the 1999 Ten Commandments Defense Act Amendment. Even though the Ten Commandments display proposal ultimately empowered private individuals to post the text on schoolhouse and other state and local public property,¹⁷⁷ still the provision empowered state governments to act. It seems hard to escape the fact that “state auspices” would exist, especially since the provision utilizes Tenth Amendment language

167. See *Stone*, 449 U.S. 39.

168. See KY. REV. STAT. ANN. § 158.178 (1) (Michie 1996).

169. See KY. REV. STAT. ANN. § 158.178 (3).

170. See KY. REV. STAT. ANN. § 158.178 (2).

171. 403 U.S. 602 (1971). The test was: “[f]irst, the statute must have a secular legislature purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion. . . ; finally the statute must not foster an excessive government entanglement with religion.” *Id.* at 612-13.

172. See *Stone v. Graham*, 449 U.S. 39, 40-41 (1980) (*reh’g denied* Jan. 12, 1981).

173. *Id.* at 41.

174. See *id.* at 41-42.

175. See *id.* at 41.

176. See *id.* at 42.

177. For further discussion of empowerment of individuals and states to display Ten Commandments see *supra* notes 155-157 and accompanying text.

empowering the states such as “powers,” “reserved” and “states.”¹⁷⁸ The Ten Commandments could not escape the basic religious characterizations of the Stone Court. As one opponent of the 1999 Ten Commandments display proposal argued, the Ten Commandments require that “Thou shalt have no other Gods before Me”¹⁷⁹

Even in the face of *Stone*, members of Congress sponsored and supported a provision that would allow the states, and individuals under the auspices of state government, to post the Ten Commandments in publicly owned and maintained properties, especially public schools. Such an exercise seems like legislative futility. In addition, such an exercise seems frivolous. Children killing children in Littleton, Colorado and elsewhere seems to call for something more than the posting of some rules, even revered, religious ones such as the Ten Commandments. The examination of what would motivate a United States Congressperson in 1999 to undertake such a task seems like a fruitful cause, if only to understand legislative law making futility. The Riesebrodt fundamentalism model helps to explain why a proposal to empower the states to display the Ten Commandments could be taken legislatively serious.¹⁸⁰

A. *The Debate: The Fall of America*

The debate concerning the 1999 Ten Commandments display proposal involved two very different stories provided by the proponents of and opponents to the proposal. The proponents of the amendment told a fairly coherent story about the destruction of America’s youth and the need for a remedy to that destruction that transcended contemporary life. On the other hand, the opponents to the proposal told a less coherent story about threats to constitutionalism, American diversity and the autonomous family.

1. *The Proponents’ Story: Following Riesebrodt’s Model*

The proponents of the amendment utilized rhetoric that fit well within Riesebrodt’s model for fundamentalist thinking.¹⁸¹ The proponents indulged in deep pessimism about contemporary American society. One proponent said it starkly when he opened his remarks with, “[w]e have awoken to a day in which hatred is overlooked, violence is glorified and random acts of indecency are tolerated.”¹⁸² Riesebrodt described this pessimism as “a profound experience of

178. See 145 CONG. REC. H4457-58 (daily ed. June 16, 1999) (amendment No. 28, Part A, of House Report 106-86).

179. *Id.* at H4459 (statement of Rep. Nadler).

180. For further discussion of empowering states see *supra* notes 45-90 and accompanying text.

181. See *id.*

182. 145 CONG. REC. H4458 (daily ed. June 16, 1999) (statement of Rep. Hayes).

crisis.”¹⁸³ Society has fallen away from a much better past, experiencing a “[m]ythical regress.”¹⁸⁴ This fall from grace in America involved a 1990’s generation of youth that fails to understand the difference between right and wrong. Some of this new generation has abandoned treasuring human life.¹⁸⁵ The tragic, murderous events at Littleton, Colorado in April, 1999 paint the picture of schools infested with terror by children who kill other children because children today fail to understand the basic principles of humanity. Modern America suffers from a surge toward a violent culture.¹⁸⁶ Moral influence has been sucked out of the American system.¹⁸⁷

The fall of contemporary society gets contrasted with a mythical original order. Riesebrodt characterized this lost past as a “[g]olden [a]ge;” “an ideal original order.”¹⁸⁸ The proponents of the Ten Commandments display proposal identified an earlier America where “[t]he founders wisely realized that in a free society it is imperative that individuals practice forbearance, respect and temperance.”¹⁸⁹ America originally was based on “a simple principle of trust in God.”¹⁹⁰ In better times, America possessed one room school houses where moral lessons and discipline constituted portions of each day’s lessons.¹⁹¹ A gulf exists between the degradation of today’s youth and the moral American past. That gulf must be bridged.

Today, schools forbid children from praying, faculty fail to discipline children and juvenile violence rises like a tide.¹⁹² A way must be found to overcome the violence. Riesebrodt identified the bridging of the gap between the negative present and the better past as a return to “divine statutory prescriptions.”¹⁹³ The golden age can be recreated “through a return to its principles of order as handed down verbatim.”¹⁹⁴ The Ten Commandments represent a timeless code that could instill ageless values in students exposed to the Ten Commandments.¹⁹⁵ In fact, the Ten Commandments reflect the lost values of forbearance, respect and temperance of the American past.¹⁹⁶ The Ten Commandments constitute the cornerstone of Western Civilization, the basis of the American legal system, the backbone of American values

183. RIESEBRODT, *supra* note 44, at 16.

184. *Id.* at 17.

185. *See* 145 CONG. REC. H4458-59 (daily ed. June 16, 1999) (statement of Rep. Hayes).

186. *See id.* at H4458 (statement of Rep. Aderholt).

187. *See id.* at H4460 (statement of Rep. Souder).

188. RIESEBRODT, *supra* note 44, at 16.

189. 145 CONG. REC. H4458 (daily ed. June 16, 1999) (statement of Rep. Aderholt).

190. *Id.* at H4459 (statement of Rep. Hayes).

191. *See id.*

192. *See id.* (statement of Rep. Barr).

193. RIESEBRODT, *supra* note 44, at 16.

194. *Id.*

195. *See* 145 CONG. REC. H4459 (daily ed. June 16, 1999) (statement of Rep. Hayes).

196. *Id.* at H4458 (statement of Rep. Aderholt).

and the nature of American society.¹⁹⁷ Allowing state governments to display the Ten Commandments in public facilities, especially schools, would bring a return of the central faith of America.¹⁹⁸

The proponents of the Ten Commandments display amendment intend to save a contemporary generation of young people from their downfall. The sponsor of the Amendment described his efforts as “not just about the display of the Ten Commandments. It is also about our Nation’s children”¹⁹⁹ Riesebrodt observed that fundamentalism arose as a movement in a context where “[t]he modern milieu gained increasing influence over curricula and the control of educational institutions.”²⁰⁰ Fundamentalism grew to preserve the transmission of traditional values to a young generation that faced a variety of value choices. Traditional values faced competition from a variety of modern, alternative consumer and leisure-time behaviors.²⁰¹ The proponents of the Ten Commandments display amendment complained, “[a]nything goes pretty much in the schools as long as it is not the Ten Commandments.”²⁰² Anything includes Marilyn Manson T-shirts, advertisements for rock concerts, posters from Hindu and Mexican milieu and prayers from Indian faiths.²⁰³ The proponents of the Ten Commandments display amendment found it hard to understand why anyone would oppose allowing the Ten Commandments to serve as a counter weight to negative cultural influences.

For the backers of the Ten Commandments amendment, the Ten Commandments represented an absolute form of good, a central faith and part of American culture.²⁰⁴ This vision of the absolute goodness and utility of the Ten Commandments lends itself to Manichaen imagery. Riesebrodt identified a fundamentalist dramatization in which “[t]he conflict between modernists and fundamentalist is embedded in the universal drama of the struggle between God and Satan, the powers of light and darkness.”²⁰⁵ Such a drama makes sense given the world view of the fundamentalist, who yearns for a return to a mythical pure past from the regress into evil suffered in modern times.²⁰⁶

Proponents of the Ten Commandments display amendment indulged in viewing the opposition as pandering to negative social forces. One proponent claimed to be incredulous in the face of

197. *See id.*

198. *See id.* at H4460 (statement of Rep. Souder).

199. *Id.* at H4458 (statement of Rep. Aderholt).

200. RIESEBRODT, *supra* note 44, at 192.

201. *See id.* at 193.

202. 145 CONG. REC. H4460 (daily ed. June 16, 1999) (statement of Rep. Souder).

203. *See id.*

204. *See id.*

205. RIESEBRODT, *supra* note 44, at 200.

206. For further discussion of fundamentalist view see *supra* notes 59-78 and accompanying text.

opposition to posting the Ten Commandments. He asked, “[d]o some truly believe that teaching our children that lying, stealing, and killing is wrong?”²⁰⁷ In addition, opposition members of the House of Representatives became characterized as vehemently defending the distribution of pornography, filth and violence to America’s children.²⁰⁸ This Manichaen demonization became interconnected with a basic theme underlying fundamentalism, the traditional patriarchal discomfort with the impersonal nature of modernist social thinking and social elites.²⁰⁹ Fundamentalism stands as a protest against impersonal large scale or organizational operations and bureaucracies.²¹⁰ A proponent of the Ten Commandments amendment identified the impersonal social forces motivating opposition to the Ten Commandments as special interests.²¹¹ First, the trial lawyers have paid for the Ten Commandments to be kept away from America’s school children.²¹² Second, many in the Democratic Party have been bought by the trial lawyers so that the Ten Commandments remain away from children.²¹³ Last, the trial lawyers and intimidating federal bureaucrats have dictated school policies that allow violent videos made by students in preference to wall posters that command “Thou shalt not kill.”²¹⁴ Overall, the proponents of the Ten Commandments provided a relatively coherent message about the struggle of the pure American past against the contemporary forces against God’s law. The message centered on a vision of law based on original, God given legal texts, which needed to be disseminated to a new generation to save that generation from competing, corrupting new imagery in videos and music. The opposition to the display of the Ten Commandments in schools also possessed a message, but that message lacked the coherence of the proponents.

2. The Disparate Message of the Opposition

The opposition message lacked coherence and cohesiveness. The message included a variety of disparate communications and images. The opponents also possessed a vision of America, but this vision had nothing to do with a war between the pure past and the impure present. The opponents saw America as religiously diverse, and the underlying basis of American religious diversity involved religious equality where no one religion took precedence in American law and public life over

207. 145 CONG. REC. H4459 (daily ed. June 16, 1999) (statement of Rep. Hayes).

208. *See id.*

209. *See* RIESEBRODT, *supra* note 44, at 197.

210. *See id.* at 202-03.

211. *See* 145 CONG. REC. H4459 (daily ed. June 16, 1999) (statement of Rep. Barr).

212. *See id.*

213. *See id.*

214. *Id.*

any other religion.²¹⁵ The flip side of diversity for the opponents was divisiveness. The Ten Commandments display proposal represented an attempt to divide the American people into religious camps. One opponent reminded the House of Representatives that though the Hebrew words may be the same in all versions of the Ten Commandments, “the translations are very different, reflecting different religious traditions and different religious beliefs.”²¹⁶ This same opponent worried that different public buildings would display different denominational versions of the Ten Commandments depending on which religion possessed a majority around the public building in which the version of the Ten Commandments was displayed.²¹⁷

On another tack, other opponents worried about America’s families. For these opponents, the Ten Commandments display proposal represented a threat to families and childhood autonomy. Children must learn their religious belief system from their parents and the public posting of the Ten Commandments represented interference in the parents’ abilities to teach their children about their own conception of God and religion.²¹⁸ In addition, children should be provided their own opportunity to choose their own religious beliefs free of public, official interference.²¹⁹ Another opponent worried about governmental, official interference in religious life, but from a vantage point unrelated to children and families. Taking a view similar to one taken in early American history by Rhode Island pioneer Roger Williams,²²⁰ this opponent worried that the display of the Ten Commandments served as an official endorsement of Christianity, and that such an implicit “[s]tate establishment of religion, like a bear, hugs the saints, but corrupts Christianity.”²²¹

Diversity and divisiveness possess some commonalities, but they differ from concerns about religious education for children within the family structure, the rights of children to choose their own religious beliefs free from official interference and the potential corruptibility of Christianity by an official display of the Ten Commandments that somehow benefits Christianity. The only commonality that became superimposed over these disparate themes was the United States Constitution. Religious diversity not only implicitly represented the nature of American social life, but diversity of religions served as a

215. See *id.* at H4458 (statement of Rep. Scott).

216. *Id.* at H4459 (statement of Rep. Nadler).

217. See *id.*

218. See *id.* at H4460 (statement of Rep. Waters).

219. See *id.* (statement of Rep. Jackson Lee).

220. See MARTY, *supra* note 60, at 75-80.

221. 145 CONG. REC. H4460 (daily ed. June 16, 1999) (statement of Rep. Edward quoting from the Eighteenth Century Baptist leader, John Leland).

cornerstone of American constitutional rights.²²² Concerns about the social divisiveness of the public display of the Ten Commandments in public buildings was voiced in the context of concerns about congressional usurpation of judicial power to interpret the First Amendment.²²³ Government imposition of religious beliefs on families flew in the face of the Constitution,²²⁴ as did government imposition of religious beliefs on children.²²⁵ Utilizing official endorsement of Christianity to corrupt Christianity deserved religious liberty and the Bill of Rights.²²⁶ The Constitution served as a common bedrock of the opponent's analyses, but the opponents never developed a coherent connection between their concerns and the Constitution. Somehow, the Constitution served as a positive but vague symbol of diversity, familial autonomy and Christian integrity. This symbolism only lightly implied a Manichaenism similar to that evidenced by the proponents of the Ten Commandments display amendment. The Constitution represented a purity, a goodness, but it was hard to understand the nature of the implicit evil opposition. The display of the Ten Commandments represented a negative, but vague official oppression.

*B. The Carriers of Fundamentalism: The Ten Commandments
Displayers*

The core of Martin Riesebrodt's analysis of the rise of modern religious fundamentalism involved the study of the carriers of fundamentalism.²²⁷ This became central to his task, because Riesebrodt challenged a traditional misconception that fundamentalism recruited members from the uneducated populations of small towns and rural areas. In the American context, that misconception involved small towns and rural areas in the Midwest and South.²²⁸ Riesebrodt argued that fundamentalism possessed urban roots.²²⁹ Riesebrodt went so far as to investigate the membership of specific churches where fundamentalist leaders preached.²³⁰ In the American context, fundamentalism possessed a strong urban base in the cities of the American North, Midwest and Southern California. Riesebrodt's findings about the carrier base of fundamentalism supported a correlation between urbanization and industrialization and the origins of fundamentalism. Riesebrodt found that in America, fundamentalism

222. *See id.* at H4458 (statement of Rep. Scott).

223. *See id.* at H4459 (statement of Rep. Nadler).

224. *See id.* at H4460 (statement of Rep. Waters).

225. *See id.* (statement of Rep. Jackson Lee).

226. *See id.* (statement of Rep. Edwards).

227. *See* RIESEBRODT, *supra* note 44, at 71-85, 147-63, 184-90.

228. *See id.* at 71.

229. *See id.* at 186-90.

230. *See id.* at 77-84.

originated and grew in an “area roughly bounded by Boston, Chicago, Saint Louis, and Baltimore, the core region of rapid urbanization, industrialization, and mass immigration, and in other rapidly growing cities, such as Los Angeles and Minneapolis.”²³¹

The geographic distribution of the carriers of fundamentalism mattered to Riesebrodt, because that distribution indicated the cultural sources and nature of fundamentalist growth. In following Riesebrodt’s geographic sensitivity, an observer of fundamentalism in the late 1990s and the new millennium would want to gauge geographic patterns as tangible manifestations of fundamentalist political action such as the 1999 Ten Commandments display amendment. Certainly, proponents of the amendment reflected well the analytical model of the fundamentalist world view posited by Riesebrodt,²³² and the geographic distribution of these proponents and the members of the House of Representatives who voted in favor of the amendment should provide some indication of the geographic sources of religious fundamentalism in modern America.²³³

Nine members of the United States House of Representatives joined the debate over the Ten Commandments display amendment.²³⁴ The geographic distribution of both proponents and opponents remained uneven. Seven of the nine house debaters represented districts in the American Sunbelt including the South, Southwest and California.²³⁵ Even within the Sunbelt, an imbalance existed. Six of the seven Sunbelt debaters came from the American South, including Texas.²³⁶ Only one representative came from a northeastern state,²³⁷ and one other came from a midwestern state.²³⁸ Four of the nine House debaters served as proponents of the Ten Commandments amendment.²³⁹ Three of these four House members represented the American South.²⁴⁰ One represented a midwestern state.²⁴¹

Voting patterns for the Ten Commandments display proposal also reflected a geographic imbalance. State delegations provided uneven

231. *Id.* at 75.

232. For further discussion of view posited by Riesebrodt, see *supra* notes 181-214 and accompanying text.

233. See 145 CONG. REC. H4486-87 (daily ed. June 17, 1999).

234. See *id.* at H4458-61 (daily ed. June 16, 1999). The nine members of the House of Representative were: Robert B. Aderhold (R-Ala.), Bob Barr (R-Ga.), Chet Edwards (D-Tex.), Robin Hayes (R-N.C.), Sheila Jackson-Lee (D-Tex.), Jerrold Nadler (D-N.Y.), Robert C. Scott (D-Va.), Mark Souder (R-Ind.), and Maxine Waters (D-Cal.). See *id.*

235. See *id.*, Alderholt (R-Ala.), Barr (R-Ga.), Edwards (D-Tex.), Hayes (R-N.C.), Jackson-Lee (D-Tex.), Scott (D-Va.), and Waters (D-Cal.).

236. See *id.*, Aderholt (R-Ala.), Barr (R-Ga.), Hayes (R-N.C.), Edwards (D-Tex.), Jackson-Lee (D-Tex.), and Scott (D-Va.). See *id.*

237. See *id.* Nadler (D-N.Y.). See *id.*

238. See *id.* Souder (R-Ind.). See *id.*

239. See *id.*, Aderholt (R-Ala.), Barr (R-Ga.), Hayes (R-N.C.), and Souder (R-Ind.). See *id.*

240. See *id.*, Aderholt (R-Ala.), Barr (R-Ga.), and Hayes (R-N.C.). See *id.*

241. See *id.* Souder (R-Ind.). See *id.*

levels of support for the amendment depending on geographic location. The voting data point to three types of state delegations.²⁴² First, the House delegations in twenty-five states provided solid support for the proposed amendment.²⁴³

Table 1 - Supportive Delegations

Alabama	
Arizona	Mississippi
Arkansas	Missouri
Colorado	Nebraska
Florida	New Hampshire
Georgia	North Carolina
Idaho	Ohio
Illinois	Oklahoma
Indiana	South Carolina
Iowa	Tennessee
Kansas	Utah
Kentucky	Texas
Louisiana	West Virginia

Second, the House delegations in six states fell into a neutral category where the vote was a close one.²⁴⁴

Table 2 - Neutral Delegations

Michigan
Nevada
Pennsylvania
Virginia
Washington
Wisconsin

Last, the House delegations in twelve states provided solid opposition against the proposed amendment.²⁴⁵

Table 3 - Opposing Delegations

California	Minnesota
Connecticut	New Jersey
Hawaii	New Mexico

242. *See id.* The author identified four categories of state delegations, but the author found one category meaningless and discounted the states in the category. Where a state elected only one member of the House of Representatives, one vote was cast for that state. The author saw no meaning to one state-wide vote being cast, because one member voting said little about that state's attitude toward the amendment. At least where states have two or more members of the House of Representatives, a pattern of voting emerges. Hence, the author discounted the following states: Alaska, Delaware, Montana, North Dakota, South Dakota, Vermont, and Wyoming. *See id.*

243. *See id.* The author considered a state delegation as providing solid support where sixty percent or more of the delegation voted in favor of the proposed amendment. *See id.*

244. *See id.* The author considered a state delegation as neutral where between forty-one percent and fifty-nine percent of the delegation voted in favor of the proposed amendment. *See id.*

245. *See id.* The author considered a state delegation as solidly opposing the amendment where forty percent or fewer of the delegation voted in favor of the proposed amendment. *See id.*

Maine

Maryland

Massachusetts

New York

Oregon

Rhode Island

As with the debates of the proposed amendments, the State delegations in favor of the amendment tended to be southern, or southwestern with additional support coming from the Midwest. Opposition tended to be northeastern or western. When looking at the home states of the debaters and the voters, the American South seemed to play a major role in the political debate concerning the Ten Commandments. The Midwest also seemed to have an interest in the topic. The Ten Commandments display proposal indicates support for religious fundamentalism in the American South, Midwest and Southwest. The Ten Commandments debate and vote provides an opportunity to analyze both Riesebrodt's thinking about fundamentalism, the potential impact of fundamentalism on American law and legalism in the new millennium and the rhetorical tactics of those who oppose fundamentalist, textual legalism.

IV. LOOKING INTO AMERICA'S LEGAL FUTURE: TESTING RIESEBRODT, TESTING FUNDAMENTALISM AND RATIONALIZING THE OPPOSITION

The debate in the United States House of Representatives in June, 1999 concerning whether state governments should be authorized to display the Ten Commandments in public buildings provided evidence that Riesebrodt's social and ideological model of fundamentalist legal textualism possesses validity and merit. The proponents of the Ten Commandments display proposal utilized ideological rhetoric that fit well into Riesebrodt's patriarchalist world view model.²⁴⁶ Those proponents viewed the contemporary American social condition with stark, negative characterizations while viewing the American social past in a much more favorable light.²⁴⁷ However, the Ten Commandments debate in the context of Riesebrodt's sociological model raises three issues involving Riesebrodt, the nature of American religious fundamentalism and the legislative opposition to American fundamentalism.

A. The Carriers of the Ten Commandments Ideology and Riesebrodt's Model

Geography played an important role in Riesebrodt's analysis of the genesis of religious fundamentalism. Riesebrodt asserted, "it can be

246. See RIESEBRODT, *supra* note 44, at 197-208.

247. See *supra* notes 181-214 and accompanying text.

unambiguously established that the stronghold of fundamentalism was not the small town as the gathering place of the American hinterland but the big city.”²⁴⁸ Riesebrodt noted that the big cities in America’s midwestern, northern and far western regions served as the homes of the fundamentalist movement. Riesebrodt asserted, “[t]his regional distribution clearly supports the correlation of urbanization and industrialization with the genesis of the fundamentalist protest movement.”²⁴⁹ Riesebrodt found that rural America provided little support for the growth of fundamentalism. He utilized as an example of the fundamentalist weakness of the rural area, the Lutherans who were primarily rural based and who failed to participate in fundamentalist activism.²⁵⁰ Riesebrodt also identified what he characterized the “Old South” as another region where the residents including the Southern Baptists were not attracted to fundamentalism.²⁵¹

The Ten Commandments debate raises questions about the validity of Riesebrodt’s geographical insights and therefore his whole model. The sponsor and proponents of the Ten Commandments display amendment more often than not came from the American South.²⁵² The involvement of Southern House members in the Ten Commandments issue suggested a tension in the American South about religious legal textualism.²⁵³ In addition, voting support for the amendment came from the South, farm-belt states such as Nebraska and Iowa, and the Mountain West.²⁵⁴ The Southern and farm areas’ support for the Ten Commandments calls into question Riesebrodt’s thesis that religious fundamentalism is an urban, industrial phenomenon. Possibly, Riesebrodt was correct when he wrote toward the end of his study, “I have repeatedly pointed out that the results presented here refer exclusively to the comparison between Protestant fundamentalism in the United States in 1910-1928 and Shi’ite, fundamentalism in Iran in 1961-1979.”²⁵⁵

A cursory overview of contemporary demographic statistics indicates that Riesebrodt’s model possesses validity even in the face of the Southern-farm state coalition supporting the Ten Commandments display amendment.²⁵⁶ The areas represented by members of the House of Representatives who supported the display of the Ten

248. RIESEBRODT, *supra* note 44, at 73.

249. *Id.* at 75.

250. *See id.* at 74.

251. *See id.* at 72-73.

252. *See* 145 CONG. REC. H4458-87 and H4458-61 (daily ed. June 17, 1999).

253. *See id.*

254. *See id.*

255. RIESEBRODT, *supra* note 44, at 206.

256. *See id.* The author is neither a sociologist nor a demographer and can provide no more than a cursory overview of the demographic data. *See id.*

Commandments experienced a fair amount of urbanization during the decades between 1960 and 1990. What was critical to Riesebrodt was the process of urban growth. He used the term "urbanization," and referred to the region supporting fundamentalist growth as "[t]he core region of rapid urbanization, industrialization and mass immigration"²⁵⁷

Urbanization even in areas traditionally considered rural would evidence the existence of a critical factor that supports the growth of fundamentalist movements. Between 1960 and 1990, the percent of urban population in relation to total population of the United States increased from seventy percent to seventy-five percent.²⁵⁸ The twenty-five states whose congressional delegations supported the display of the Ten Commandments on an average increased their percent of urban population from fifty-nine percent in 1960 to sixty-five percent in 1990, indicating that those states urbanized in tandem with the rest of the country.²⁵⁹ Some states experienced high urbanization such as North Carolina, increasing from forty percent in 1960 to fifty percent in 1990,²⁶⁰ Nebraska, increasing from fifty-four percent in 1960 to sixty-six percent in 1990,²⁶¹ and Arizona, increasing from seventy-five percent in 1960 to

257. *Id.* at 75.

258. See 1996 STATISTICAL ABSTRACT OF THE UNITED STATES 43.

259. See *id.* The author derived the averages by adding the percentages for all of the states in the following table and dividing by the number of states presented.

<u>STATE</u>	<u>1990 PERCENT URBAN</u>	<u>1960 PERCENT URBAN</u>
Alabama	60	55
Arizona	88	75
Arkansas	55	43
Colorado	82	74
Florida	85	74
Georgia	63	55
Idaho	57	48
Illinois	85	81
Indiana	65	62
Iowa	61	53
Kansas	69	61
Kentucky	52	45
Louisiana	68	63
Mississippi	47	38
Missouri	69	67
Nebraska	66	54
New Hampshire	51	58
North Carolina	50	40
Ohio	74	73
Oklahoma	68	63
South Carolina	55	41
Tennessee	61	52
Texas	80	75
Utah	87	75
West Virginia	36	38

The 1990 data came from 1996 STATISTICAL ABSTRACT OF THE UNITED STATES 43. The 1960 data came from DODD, *supra* note 136, at 1-104.

260. See Dodd, *supra* note 136, at 68.

261. See *id.* at 56.

eighty-eight percent in 1990.²⁶² The states whose delegations opposed the display of the Ten Commandments also experienced urbanization between 1960 and 1990,²⁶³ but those states on an average were seventy-five percent urbanized in 1960²⁶⁴ while the states whose Congressional delegates supported the display of the Ten Commandments on an average were fifty-nine percent urbanized in 1960.²⁶⁵ The impact of urbanization logically would seem to be greater in places which began as less urban. The states supporting the display of the Ten Commandments began as less urban in 1960. Again, it would make sense that urbanization would have a greater impact than in those places that were already relatively highly urbanized in 1960.

The urbanization of regions supporting the Ten Commandments provides cursory evidence that Riesebrodt's model possesses validity outside the focused historical movements he studied. However, Riesebrodt could still be correct when he stated that his results "must be tested in other cases, and, no doubt, modified accordingly."²⁶⁶ Riesebrodt acknowledged that in the periods he studied, industrialization and mass immigration served in addition to urbanization as factors contributing to the rise of fundamentalism.²⁶⁷ In the last half of the Twentieth Century new forces in American social life have matured. Two such forces became the subject of debate at the same time that the display of the Ten Commandments was debated by the House of Representatives. First, the entertainment industry received a critical appraisal from the House of Representatives for producing too much violent imagery at too great a pace.²⁶⁸ Second,

262. *See id.* at 7.

263.

<u>STATE</u>	<u>1990 PERCENT URBAN</u>	<u>1960 PERCENT URBAN</u>
California	93	87
Connecticut	79	78
Hawaii	89	77
Maine	45	51
Maryland	81	73
Massachusetts	84	84
Minnesota	70	62
New Jersey	89	89
New Mexico	73	66
New York	84	85
Oregon	71	62
Rhode Island	86	86

The 1990 data came from 1996 STATISTICAL ABSTRACT OF THE UNITED STATES 43. The 1960 data came from DODD, *supra* note 136, at 1-104.

264. *See* DODD, *supra* note 136, at 1-104. The author derived the average by adding the percentages for all the states in the table in *supra* note 263 and dividing by the number of states listed in the table.

265. *See* DODD, *supra* note 136, at 1-104. The author derived the average by adding the percentages for all the states in the table in note 259 *supra* and dividing by the number of states listed in the table.

266. RIESEBRODT, *supra* note 44, at 206.

267. *Id.* at 75.

268. *See* 145 CONG. REC. H4477-84 (daily ed. June 17, 1999).

Congress focused on filtering and blocking harmful materials on the Internet from children.²⁶⁹ Possibly, urbanization reflects only a narrow view of a broader cultural modernization of image making and idea sharing that causes religious traditionalist to mobilize.

The continuing urbanization of America and the continuing maturation of modern image making and idea sharing institutions such as the entertainment industry and the Internet create negative implications for the future of religious legal textualism in American constitutional and statutory law. The areas that Riesebrodt identified as originally supporting fundamentalism in the early Twentieth Century²⁷⁰ opposed enacting religious legal textualism into American law at the end of the Twentieth Century.²⁷¹ Those areas are now highly urbanized,²⁷² and California serves as home to much of the American entertainment industry.²⁷³ This bodes poorly for the future of religious fundamentalism, if the South and Farmbelt continue to urbanize and the entertainment industry and Internet become staples throughout the country, because those areas would no longer possess the social tensions to fuel fundamentalism, just as the areas that originally supported fundamentalism have reached a level of urbanization where they no longer support fundamentalism.

B. The Problem with American Christian Fundamentalism: A Lack of Law

The core of Riesebrodt's model of fundamentalism is law. American society suffers from a crisis of moral degradation, having fallen away from an earlier ideal original order, a golden age utopia.²⁷⁴ This tension between modern cultural degradation and the utopian past involves a Manichaeian drama reflecting a dramatic struggle between God and Satan, good and evil.²⁷⁵ The way back from contemporary American social and moral corruption to the utopian future of the pure American past becomes embedded in law and legalism. According to the fundamentalist world view, a return to the principles of divine order practiced in a purer and earlier America involved adherence to laws handed down by a higher source in writing.²⁷⁶ Riesebrodt characterized this adherence to some type of original religious text as "[t]he ideal

269. See *id.* at H4536-9.

270. See RIESEBRODT, *supra* note 44, at 73-5.

271. See note 263 *supra* and accompanying text.

272. See notes 236-264 *supra* and accompanying text.

273. See MICHAEL J. WOLF, THE ENTERTAINMENT ECONOMY, HOW MEGA-MEDIA FORCES ARE TRANSFORMING OUR LIVES 86-88 (1999).

274. See RIESEBRODT, *supra* note 44, at 16.

275. See *id.* at 199.

276. See *id.* at 47.

order in the future is the theocratic republic, the realization of divine law."²⁷⁷ America must return to divine statutory prescriptions, and this statutory ethic requires literal interpretation of an original legal text.²⁷⁸ In his historical study of American Christian fundamentalism, Riesebrodt found evidence that Christian fundamentalists believed the Bible served as the rock foundation of American constitutionalism.²⁷⁹

Riesebrodt studied American Christian fundamentalism after the turn of the Twentieth Century.²⁸⁰ Though Riesebrodt observed in the 1980s a fundamentalist coalition involving Christians and Jews,²⁸¹ any religious, legal textualism would by the nature of American religious demographics be Christian. The vast majority of Americans are Christians,²⁸² and Jews represent only a small minority of Americans.²⁸³ The Ten Commandments display debate and support for display of the Ten Commandments centered in the American South and farm areas of the Midwest and Mountain states.²⁸⁴ These areas include relatively few Jews.²⁸⁵ The 1999 Ten Commandments debate involved a Christian desire to return to a purer America reflected in the religious, legal textualism of the Ten Commandments, and this 1999 debate underscores a basic weakness in American Christian fundamentalism.

American Christian fundamentalism will fail as a political movement that meaningfully influences American law in order to recapture a pure American past for the American future. In order to succeed in combating contemporary social degradation and corruption, American Christian fundamentalism must try either to enact or to empower through law a traditional religious legal text. Christianity will fail at such a task, because Christianity possesses no such God given, written legal text. In fact, Christianity originated in a context that devalued or depreciated law and legalism. The Christian Testament is not a legal text.²⁸⁶ For Christians and the Christian Testament, law is replaced by the Crucifixion and gives way to the mystery of Grace.²⁸⁷

277. *Id.* at 200.

278. *See id.* at 16.

279. *See id.* at 51.

280. *See id.* at 5.

281. *See id.* at 205.

282. *See* 1990 CHURCHES AND CHURCH MEMBERSHIP IN THE UNITED STATES 1-3.

283. *See id.* at 3. Jews represent only 2.4% of the total American population, while most other churches listed in the 1990 membership study are Christian denominations. *Id.* at 1-3 and XVIII-XX. Judaism only dominated in 1990 in two American counties, while Baptists predominated in 1322 counties, Catholics in 959 counties, Lutheran in 266 counties and Methodists in 249 counties. *Id.* at XVII.

284. For further discussion of support for display of Ten Commandments see *supra* notes 234-245 and accompanying text.

285. *See* 1998-99 JEWISH COMMUNITIES OF THE WORLD 30-36 (1998).

286. *See id.* The author uses Christian Testament instead of the New Testament. The author is Jewish and understands the Old Testament as the Torah. Hence, "New" and "Old" possess little meaning for the author, "newer" and "older" would make more sense to the author.

287. *See* ALAN W. WATTS, MYTH AND RITUAL IN CHRISTIANITY 95 (1954).

Instead of the observance of law, Christianity found its basis on “the law of love” from the Holy Spirit and in the hearts of Christian believers.²⁸⁸ Instead of law, the Ethics of Jesus became critical to Christianity in addition to the Christian tenets of the Incarnation, Atonement and Trinity.²⁸⁹ Again, the love of Jesus formed the core of Christianity.²⁹⁰ For Christianity, law and faith involve an antithetical relation, and “[i]t is therefore a common Christian theological motif to set the law pejoratively in contrast to faith.”²⁹¹

The Ten Commandments debate of 1999 certainly provides evidence for the weakness of Christian religious legal textualism. The debate focused on the core legal basis of the Torah, and the Ten Commandments.²⁹² Jewish law was first given to Moses and provided a core link to subsequent Jewish law.²⁹³ Though the Pentateuch and other law in the Torah represents one element of Judaism, legalism is basic to Judaism and the Torah.²⁹⁴ Judaism and Christianity appear to stand in opposition to each other in reference to legalism. As two observers wrote, “while Judaism was based on observance of the law, Christianity was based on the law flowing from the Holy Spirit”²⁹⁵ Even so, in the late Spring, 1999, American Christians turned to the Torah, specifically the Ten Commandments, as the literalist text to force America’s wayward and violent children back to an earlier purity. A lack of legalist textual tradition weakens Christian fundamentalist legislative action. If the Bible serves as the foundation of American constitutional government for Christian fundamentalists,²⁹⁶ the Christian Testament, based on a historical devaluation Torah Law,²⁹⁷ will be a hindrance to American Christian fundamentalists. The non-legal nature of Christian theology provides Christian fundamentalists with few literalist, textual options for recreating a purer America.

C. The Opposition To Displaying The Ten Commandments: A Need to Unify a Disparate Story

The rhetoric used by the opposition to the Ten Commandments lacked the unity of world view and rhetoric of those who supported the

288. THOMAS MCGONIGLE & JAMES F. QUIGLEY, A HISTORY OF CHRISTIAN TRADITION, FROM ITS JEWISH ORIGINS TO THE REFORMATION 129 (1988).

289. See HUSTON SMITH, THE RELIGIONS OF MAN 439 (1958).

290. See *id.* at 441.

291. SAMUEL SANDMEL, TWO LIVING TRADITIONS, ESSAYS ON RELIGION AND THE BIBLE 57 (1972).

292. See DEUTERONOMY 5 (The Torah).

293. See HOWARD CLARK KEE, THE ORIGINS OF CHRISTIANITY, SOURCES AND DOCUMENTS 155 (1973).

294. See SOLOMON SCHECHTER, ASPECTS OF RABBINIC THEOLOGY, MAJOR CONCEPTS OF THE TALMUD 117 (1961).

295. MCGONIGLE & QUIGLEY, *supra* note 288, at 129.

296. See RIESEBRODT, *supra* note 44, at 51.

297. See SANDMEL, *supra* note 291, at 57-58.

display of the Ten Commandments. The opposition message was a disparate one focusing on the religious diversity of America, the potential social divisiveness of religious disagreements, the corruption of Christianity by government interference in religion and the primacy of the family in educating children about religious beliefs.²⁹⁸ These concerns failed to reflect an antagonism toward religion. On the contrary, these concerns reflected anxiety about the weakening of religiosity by government involvement in religious affairs. As one opponent of displaying the Ten Commandments asserted, “[a]s far as I am concerned, I teach my child that God is God.”²⁹⁹ Her point was simple. She sought to practice the religion she chose to practice, and she desired the same for her child. State governments should possess no role in interfering with her religiosity and religious education.

A unifying theme in the opposition rhetoric was the United States Constitution.³⁰⁰ However, the connection between the Constitution and concerns about religious diversity, divisiveness and family religious education remained elusive and vague. Somehow imposing religious education on a child was unconstitutional.³⁰¹ No real connection existed. The connection existed by implication, at best. The Ten Commandments display proposal undermined religious tolerance and was “blatantly unconstitutional.”³⁰² Again, the connection remained one by implication.

The implicit connection between the Constitution and the disparate concerns about the display of the Ten Commandments weakened the opponents’ argument. That weakness became emphasized by the more unified world view of the proponents of the display amendment.³⁰³ The opponents need to find a compelling unifying force to make their arguments against the display of the Ten Commandments more understanding and persuasive. Possibly, an appeal to constitutional history would provide a unifying theme. Certainly, *The Late Corporation of the Church of Jesus Christ of Latter-Day Saints v. United States*³⁰⁴ could provide a basis for a discussion about the dangers of government interference in religious affairs and belief. In the name of suppressing one belief and practice shared by a minority of religious adherents,³⁰⁵ the United States Government sought to repeal

298. For further discussion of religious diversity see *supra* notes 215-226 and accompanying text.

299. 145 CONG. REC. H4460 (daily ed. June 16, 1999) (statement of Rep. Waters).

300. For further discussion of opposition rhetoric see *supra* notes 222-26 and accompanying text.

301. See 145 CONG. REC. H4460 (daily ed. June 16, 1999) (statement of Rep. Waters).

302. *Id.* at H4458 (statement of Rep. Scott).

303. For further discussion of disparate display of the Ten Commandments see *supra* notes 181-214 and accompanying text.

304. 136 U.S. 1 (1890).

305. See *id.* at 27.

the charter of a religious entity³⁰⁶ and to seize many of the assets of the church.³⁰⁷ Certainly, such a move by any government, including the United States Government possesses dire implications for religious diversity, divisiveness and family life. Though the modern legislator would want to condemn polygamy, that same legislator would want to caution her fellow legislators in taking what seems like expedient action in contemporary terms that could undermine religiosity and spirituality for a large number of Americans and their families. Such a message would give life to arguments against legitimating through law traditional religious texts even when those texts are considered sacred by many Americans.

V. CONCLUSION

Riesebrodt constructed a world view model of religious fundamentalism based on a study of early Twentieth Century Protestant fundamentalism and Shi'ite fundamentalism in Iran in the 1970s.³⁰⁸ That model appears to apply well to the 1999 debate about displaying the Ten Commandments.³⁰⁹ That model also appears to possess sociological validity at the start of the Twenty-first Century, because evidence exists that significant urbanization occurred in those states which supported the display of the Ten Commandments.³¹⁰ The implications for religious fundamentalism in America in the Twenty-first Century are negative ones. Religious fundamentalism will have a hard time enacting literalist, religious, textualism into law in America. First, any continued urbanization in America will eventually undermine the social tensions that support the growth of fundamentalism. The level of urbanization can increase to a point where more urbanization seems to have little social effect.³¹¹ In addition, Christians fail to possess the theological tools to recreate a pure past through literalist, religious legalism. Christianity tends to avoid legalism and possess no sacred text that is legalistically based.³¹² The Ten Commandments display debate showed how proponents of religious, legal textualism had to fall back to the Torah.³¹³ Last, the opponents of religious legal textualism possess no coherent and cohesive worldview and rhetoric to counter the rhetoric of those in favor of incorporating religious texts into American law and public policy. The opponents should consider utilizing a more

306. See *id.* at 9.

307. See *id.* at 15.

308. See RIESEBRODT, *supra* note 44, at 5.

309. For further discussion see *supra* notes 181-226 and accompanying text.

310. For further discussion see *supra* notes 258-265 and accompanying text.

311. For further discussion see *supra* notes 264-265 and accompanying text.

312. For further discussion see *supra* notes 274-297 and accompanying text.

313. For further discussion see *supra* notes 292-295 and accompanying text.

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compelling rhetorical force.³¹⁴

314. For further discussion see *supra* notes 303-307 and accompanying text.