

Renewing minds

a journal of Christian thought

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RELIGIOUS LIBERTY

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RENEWING MINDS

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PUBLISHER'S INTRODUCTION

The third issue of our *Renewing Minds* journal focuses on the theme of “Religious Liberty,” a matter that often has moved to the forefront among Baptists over the past four hundred years. Much confusion exists when the subject of religious liberty is discussed. Hopefully, this issue, which includes several significant and substantive articles, will help provide insight and guidance on this important subject. Today, the conversation is not one just for Baptists, if that has ever been the case, but is a topic at the forefront among various Christian traditions, and even some world religions.

Baptists were at the forefront of bringing these important matters to our nation’s conscience in the 18th century. Some of us are perhaps familiar with the pioneering work of Roger Williams and John Clarke in Rhode Island in the 17th century and of Isaac Backus, the great 18th-century leader in New England. Baptists also point to the leadership of John Leland in Virginia in the 18th century and to George Truett in the early decades of the last century.

Religious liberty is the most basic of all of our freedoms, the first freedom. Religious liberty affects one’s civil capacity. It means that we do not seek to unite the church with the state, nor do we seek to enforce any religious teachings by force. George Truett, whose famous 1920 sermon on the Capitol steps in Washington, D.C., was fond of saying that a true Baptist will not use his or her little finger to force someone to become a Baptist against one’s will. Yet, this same person will rise from the bed at midnight to protect

one's right not to be a Baptist against his or her will. Such is a matter between that person and God alone.

Religious liberty calls for Christ-followers to be friends of civil government, while maintaining that churches and Christian entities must be independent of the state. This means that these churches and entities must be sustained and promoted apart from the aid or interference of the government. Advocates of religious liberty ultimately are concerned to keep government from interfering with the work of the churches. Yet, we do not think that a commitment to religious liberty has historically been understood to mean that the Christians or other religious persons should not seek to persuade the state through democratic processes regarding matters of truth and morality. Freedom of religion does not mean freedom from religion.

The articles in this issue wrestle with these issues from a variety of perspectives. We are pleased to welcome the brilliant work of three well-known scholars, Wilfred McClay, Jordan Ballor, and John Witte, to the pages of this issue. Union faculty members Ben Mitchell, Micah Watson, Hunter Baker, and Sharon Evans offer engaging and insightful contributions, echoing some of the themes found in the reprint of the classic sermon from George Truett, the legendary pastor of the First Baptist Church of Dallas. While the Truett piece is clearly shaped by the context and issues from the time period in which it was delivered, the overarching themes are still worthy of consideration.

This issue also includes a number of noteworthy book reviews. I am grateful for the capable editorial team that has worked hard to plan and produce this timely issue. We hope you will find this issue to be a helpful guide for the challenges of our day.

David S. Dockery
Publisher

WHAT'S SO SPECIAL ABOUT RELIGION? FIVE OR SIX ANSWERS

WILFRED M. MCCLAY

The preservation of religious freedom in the United States has become one of the central concerns of many religious believers and some civil libertarians during the past year or so. Some of this renewed interest is traceable to actions of the Obama Administration, such as the controversial mandate promulgated by the Department of Health and Human Services (HHS) requiring religious organizations to provide medical-insurance benefits for interventions, such as artificial contraception and the abortifacient morning-after pill, that violate those organizations' moral teachings. For this and other actions, ranging to the staffing of schools to the rights of homeschooling families, the administration has been subjected to strenuous criticism for a perceived hostility, or at best cavalier indifference, to the cause of religious freedom in the United States.

But beneath the controversy about religious freedom there is an even deeper controversy about the nature and status of religion itself in the American legal and political order. That controversy is nothing new, of course. It runs through much of American history, taking on different guises and embracing different antagonists and issues at different times. But it has achieved a unique importance and potency at this historical moment, when we are more intent than ever upon upholding the principle of neutrality in all things.

Inevitably the question arises: What is so special about religion, that it should receive any such “special privileges”? Why should we treat a church or other religious association differently than we treat any other social club or cultural organization, or treat the rights of a religious adherent any differently that we would treat the expressive liberties of any other individual? Or as law professor Brian Leiter has put it in a recent book, pushing the question to a provocative limit, *Why Tolerate Religion?*

The drive to ask such a question is a fairly recent development in our history, and surely a sign of the growing secularity of so much of our public life. Religious believers, accustomed to a wide range of liberty, will find the question offensive. But they need to take it seriously. There is no denying the fact that, in some sense, religion and religious institutions are not treated according to a principle of strict neutrality. To be sure, the recognition and support of “religion” is something dramatically different from the establishment of a particular religion, a distinction that the First Amendment sought to codify. The fact remains, though, that something like a generic monotheism enjoys a privileged public status in present-day America, even though religious believers often fail to notice it or complain of its thinness and lack of specificity.

Examples abound. One still sees the name of God on the American currency, in the Pledge of Allegiance, in the oaths we take in court, in the concluding words of presidential speeches, and even, it seems, popping up in the 2012 platform of the Democratic party. Chaplains are still employed by the armed services and the Congress, and the latter still duly commences its sessions with the invocation of a prayer. The tax exemption of religious institutions remains intact and seemingly impregnable, at least for the moment. Our most solemn observances, such as the National Day of Prayer and Remembrance in the wake of 9/11, are held in the Washington National Cathedral, and are conducted in a manner that draws heavily on the liturgical and musical heritage of Western Christianity, particularly in its Protestant forms. One could compose a long list of similar examples. We are a long way from being officially secular, even if we may be tending in that direction. And however

much we accept, or claim to accept, a principle of church-state separation, a better description of the way we actually have conducted ourselves would be selective interpenetration.

I

Secular critics worry that privileging religion in any way flies in the face of the principle of separation, and represents an illegitimate coercion of conscience. Some religious believers see merit in these contentions, particularly the second one, in a country where the freedom of the individual is so often taken to be the very sum and essence of religious freedom. Georgetown professor Jacques Berlinerblau's lively and valuable new book *How to Be Secular* is subtitled *A Call to Arms for Religious Freedom*, reflecting a freewheeling understanding of religious freedom that is as jealously protective of atheism and "freedom from" religion as it is of belief.

In addition, there are respectable religious arguments against religion's being granted a privileged status. Some of them are reminiscent of the views of Roger Williams, the great American dissenter, and recall one of the central arguments against any establishment of religion: that installation of a state religion inevitably leads, in the long run, to perfunctoriness, placeseeking, faithlessness, coercion, cooptation, atrophy, and spiritual death. In other words, the establishment of religion is bad for religion. When one looks at the sad and irrelevant state of the empty established churches of Europe today, one sees the power of the argument. The bride of Christ has all too often ended up a kept woman. By contrast, as Alexis de Tocqueville was able to see as early as the 1830s, the American style of religious freedom, far from diminishing the hold of religion, kept it vital and energetic, precisely by making it voluntary. Indeed, many Christians, particularly those drawing on the Anabaptist tradition, would contend that when churches are cut loose from entanglement in the polity and its civil religion, committed only to being a people set apart, they are freed to be more radical, more sacrificial, and more faithful, a living sign of contradiction.

But the example of the HHS mandate shows the limits of this approach, when one is dealing with an act of comprehensive

public policy that is designed to be universal in character. One does not have the option of declaring one's independence from such an all-embracing policy, or opting out of it, for there is nowhere to go and no place to hide. Hence the significance of the Catholic resistance to the HHS mandate. The Church's bishops are not seeking to use public policy to bar Americans from using and paying for contraceptives, or even to bar Catholics from using them. They are opposing the use of government's coercive power to compel Catholic organizations to pay for their use. Making even such a seemingly small accommodation to the long-settled and fundamental religious identity of the Catholic Church—an organization that, ironically, has a long and consistent record in support of the policy of universal health care—was apparently deemed impermissible. The bishops were not the ones insisting that their religious views should dominate public policy.

They are, however, insisting upon being dealt with separately, with respect shown for their particular commitments. They are doing so in a way that presumes religious freedom means, not merely do-what-you-want neutrality, but a kind of deference paid to religion *per se*. And that is precisely the point here at issue. What's so special about religion, that it should be granted such deferential attention? Can arguments for that proposition be adduced that will be compelling, or at least plausible, not only to those who need no persuasion, but to those who do?

II

Let me offer five such arguments in what follows, plus a suggestive coda that perhaps amounts to a sixth. These surely do not exhaust all the possibilities, but begin to suggest some of the reasons why the discussion about religious freedom needs to be placed in a larger and richer context than the sterile logic of abstract neutrality can allow.

First there is what I will call the foundational argument, which points back to our historical roots, and to the animating spirit of the American Founders and the Constitutional order that they devised and instituted. The Founders had diverse views about a variety of matters, very much including their own personal

religious convictions, but they were in complete and emphatic agreement about one thing: the inescapable importance of religion, and of the active encouragement of religious belief, for the success of the American experiment. Examples of this view are plentiful. John Adams insisted that “Man is constitutionally, essentially and unchangeably a religious animal. Neither philosophers or politicians can ever govern him any other way.” And the universally respected George Washington was a particularly eloquent exponent of the view that religion was essential to the maintenance of public morality, without which a republican government could not survive. The familiar words of his Farewell Address in 1796—“of all the dispositions and habits which lead to political prosperity, Religion and morality are indispensable supports”—can be made to stand in for countless others, from John Adams, Benjamin Rush, John Jay, and so on, as an indicative example. That this high regard extended to religious institutions as well as individual religious beliefs is made clear by Washington’s remark, in 1789, that “If I could have entertained the slightest apprehension that the Constitution framed in the Convention, where I had the honor to preside, might possibly endanger the religious rights of any ecclesiastical Society, certainly I would never have placed my signature to it.” If we are looking for a plausible grounding for our deference paid to religion, we can begin with the testimony of the Founders of the American constitutional order itself.

Very well, you may respond, but that was then and this is now. Why, you may ask, should we feel bound by the Founders’ beliefs or their eighteenth-century mentalities? None of the Founders could possibly have envisioned the cultural and religious diversity of America in the 21st century. Their vision assumed a degree of cultural uniformity that would be beyond our power to restore, even if we wanted to. Diversity is the name of the game now.

True enough. But the very fact of that diversity itself leads to a second argument for deference to religion, a pluralistic argument which would seek to protect religion all the more zealously as a source of moral order and social cohesion.

There is a reason why accounts of the history of American immigration and of the history of American religion so often end up relating the very same history. From the mid-nineteenth century on, every new wave of immigration to America brought peoples for whom a set of distinctive religious beliefs and practices formed the core of their identity. Some of the worst examples of religious prejudice in our nation's history come out of the cultural clashes and anxieties of these years. But so too did the idea of pluralism as a central feature of American life. As Richard John Neuhaus and Peter Berger came to formulate it, "This nation is constituted as an exercise in pluralism, as the *unum* within which myriad *plures* are sustained." The persistence of regional, religious, ethnic, and other differences, so long as they are not invidious in character or dependent upon unjust or illegal segregation or restriction, is something to be desired, because it means that the moral communities within which consciences are formed—churches, synagogues, mosques, and the like—remain healthy. Hence in America, the national purpose rightly understood ought to seek, not to undermine particular affinities or purposes, but to strengthen them.

Hence it is essential that religious freedom be understood not only as an individual liberty but also as a corporate liberty, a liberty that applies to and inheres in groups, and defends the integrity and self-governance of such groups. How could it be otherwise, since a religion, like a language, is an inherently social thing, quintessentially an activity of groups rather than the property of isolated individuals? Religious freedom must be understood in this dual aspect, protecting not only the liberty of individuals, but also the liberty of churches and other religious institutions and communities: protecting their freedom to define what they are and what they are not, to control the meaning and terms of their membership, to freely exercise their faith by the way they choose to raise their children and order their community life, seeking to embody their religion's moral self-understanding in lived experience.

There are, of course, limits to this autonomy, as there must be to all liberties and all forms of pluralism. Religious liberty is not a

carte blanche, or an all-purpose get-out-of-jail-card, and its limits cannot be established once and for all by the invocation of some pristine abstract principle. But its essential place in the healthy life of the *plures* should ensure for it a high degree of respect, and set the bar very high for any government action that would have the effect of burdening religion's free exercise. That respect and that high bar have generally been affirmed by the Federal courts and the Congress.

A third argument for religion's special place might be called an anthropological one. Human beings are theotropic by their nature, inclined toward religion, and driven to relate their understanding of the highest things to their lives as lived in community together, both metaphysically and morally. Whether this characteristic can be attributed to in-built endowment, evolutionary adaptation, or some other source, it would seem to be a good thing for the secular order to affirm our theotropic impulses rather than seek to proscribe them or inhibit their expression. Indeed, the vote of public confidence implied by such affirmation naturally engenders a sense of general loyalty to the polity, and bind religious believers affectionately to the secular political project far more effectively than would an insistence upon a rigorously secularist public square. Indeed, the latter course would present the very real danger of producing alienated subcultures of religious believers whose sectarian disaffection with the mainstream could become so profound as to represent a threat to the very cohesion of the nation. Secularists who worry about religion's taking an outsized role in public life would be better advised to give some strategic ground on that issue, and acknowledge the theotropic dimension in our makeup, even if they personally believe it to be a weakness or debility.

A fourth argument might be called the meliorist argument, which would acknowledge religion's special place in American life because of the extensive social good that religious institutions have done, and continue to do, in the world; and because the doing of such good works is an essential part of the free exercise of religion. This argument follows in the footsteps of the Founders, but has taken on a weight of its own, given the vast scope of charitable,

medical, and educational activities still undertaken by religious groups today. Let the Catholic church stand as a powerful example of this. The HHS mandate is so consequential because the Catholic church is so heavily involved in precisely these three areas, as the operator of nearly 7,500 primary and secondary schools, enrolling 2.5 million students, and 630 hospitals (comprising nearly 13% of American hospitals and 15% of hospital beds), 400 health centers, and 1,500 specialized homes, making it the operator of the largest private educational and health-care systems in the country. In addition, Catholic Charities USA is the seventh-largest charity in the nation (the second largest being the religiously oriented Salvation Army).

History, too, would suggest the justice of according religion a central role in the improvement of the country. You won't hear this sort of thing from the noisy New Atheists, but evangelical religious conviction was the chief source of what was arguably the greatest reform movement in American history, the nineteenth-century movement to abolish slavery, and played an essential role in the Civil Rights Movement of the postwar era. And more recently, one can point to a growing body of social-scientific evidence, appearing in the work of writers as diverse as Byron Johnson, Arthur Brooks, Jonathan Haidt, and Robert Putnam, indicating that religious belief correlates very reliably with the fostering of generosity, law-abidingness, helpfulness to others, civic engagement, social trust, and many other traits that are essential to a peaceful, productive, and harmonious society. One must, of course, stipulate that there will always be hypocrites, charlatans, fakes, and abusers in religious organizations, as in all walks of life. But it would appear that, far from religion being a poison, as the late Christopher Hitchens liked to argue, it has, at least in America, been an antidote. It seems counterproductive to downplay its many benefits.

Last but not least, there is an argument that I will call meta-physical. It is often said that religious freedom is the first freedom, since it is grounded in the dignity and integrity of the human person, which requires that each of us be permitted to fulfill our right, and duty, to seek and embrace the truth about our existence,

and live out our lives in accordance with our understanding of that truth. This is, or should be, a universal freedom, because the great questions of human existence are not the exclusive province of professors and savants, but belong to us all. Any good society, committed to the flourishing of its members, should recognize and encourage and support that search. To acknowledge that fact in a public way, with an explicit recognition of the valuable place of religion, is an important declaration about the value a society places on the spiritual and moral life of its members.

III

Of course, much of the preceding paragraph could be warmly embraced by those who think “freedom from religion” should be one of the imperative goals of the moment. But there is a deeper question here, the question of whether this freedom itself, and more generally the liberal individualism we have come to embrace in the modern West, is sustainable absent the Judeo-Christian religious assumptions that have hitherto accompanied and upheld it. The Italian writer Marcello Pera, for example, has argued that it is a dangerous illusion to believe that such ideas as the dignity of the human person can be sustained for long without reference to the deep normative orientation of the Christian faith.

Pera’s concerns had been precisely anticipated by one of the most religiously heterodox figures of early American history, Thomas Jefferson; and we would do well to follow his lead in this respect. On one of the panels decorating the walls of the Jefferson Memorial in Washington appear these searing words: “God who gave us life gave us liberty. Can the liberties of a nation be secure when we have removed a conviction that these liberties are the gift of God? Indeed I tremble for my country when I reflect that God is just, that His justice cannot sleep forever.”

Jefferson was speaking in that passage of the moral scourge of slavery. But the larger point, that the very possibility of liberty itself was reliant upon a willingness to understand it as a gift of God, rather than a dispensation of man, serves as more than a rhetorical device in this context. Even a world-class skeptic like Jefferson

understood that removing the name of God from the foundations of American life could lead to fearful consequences. Which provides yet another reason why maintaining the special status of religion in American life is not merely a reasonable and defensible path, but one of fundamental importance.

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A LAW UNTO THEMSELVES? WHAT PLACE FOR MUSLIM FAMILY LAW IN AMERICA AND OTHER DEMOCRACIES

JOHN WITTE, JR.

In November 2010, Oklahoma voters approved a state constitutional amendment banning the use of Muslim Shari'a and other international laws in its state courts. This was a direct rejoinder to other Western nations allowing Muslim citizens to enforce Muslim marriage contracts in state courts and to resolve family law issues before Shari'a tribunals without state interference. Oklahoma's citizens wanted none of it, and voted to ban the use of Shari'a altogether. Twelve other states are discussing comparable measures.

In January 2012, however, a federal appeals court upheld a lower federal court injunction of Oklahoma's amendment. Singling out a specific religious law for special prohibition, the court of appeals concluded, amounted to blatant religious discrimination that violated the First Amendment Establishment Clause and unjustifiably injured Oklahoma's Muslim citizens. This leaves Oklahoma courts with a stark choice: allow Muslims to use Shari'a to govern their internal religious affairs and the private lives of their voluntary members, or equally prohibit all religious groups from exercising comparable authority - including Christian, Jewish and other religious communities who operate mediation and arbitration centers and maintain internal forms and forums of religious law and discipline.

Oklahoma can likely escape this choice by crafting a more neutrally-phrased constitutional amendment. But deft legal drafting will not end the matter. As American Muslims grow stronger and anti-Muslim sentiment in America goes deeper, constitutional and cultural battles over Muslim laws and tribunals will likely escalate.

Many Shari'a advocates reject America's sexual revolution of the past half century, built on cultural and constitutional ideals of sexual privacy, equality, and autonomy. They reject the easy-in/easy-out system of American family law that has brought ruin to many women and children. They reject America's legal protections for non-marital sex, sodomy, abortion, and same-sex marriage. Distrusting the modern liberal state's capacity to reform its laws of sexuality, marriage, and family life, Shari'a advocates want out. They have two main objectives: to give Muslim individuals the right to opt out of the state's liberal family law into their own religious community's more morally rigorous system; and to give Muslim religious officials the right to operate that system for voluntary members without undue state interference or review. Some advocates want separate Muslim arbitration tribunals that operate alongside the state. Others want independent Shari'a courts akin to those of native American tribes or those of modern day India. Some are pressing for gradual, piecemeal accommodations of Muslim family law, fearing the dominance of one form of Shari'a over another. Others want more rapid and wholesale change in pursuit of what they call "family law pluralism." But the bottom line is the same: to allow Muslim communities to become more of a law unto themselves in the governance of marriage and family life.

For the past decade, law journals, blogs, and conferences have been full of sophisticated papers pressing this case. Readers can get good sampling of the pros and cons of these arguments in two superb new anthologies: Rex Ahdar and Nicholas Aroney, ed., *Sharia in the West* (2010) and Joel Nichols, ed., *Marriage and Divorce in a Multicultural Context* (2012).

The three most prominent arguments for the use of Shari'a family norms and procedures in America and the rest of the West are based on religious freedom, political liberalism, and

non-discrimination. Though each argument seems plausible on the surface, they are all, to my mind, fundamentally flawed.

SHARI'A AND RELIGIOUS FREEDOM

The first argument for Shari'a centers on religious freedom. Both Western constitutional laws and international human rights norms give robust protection to the religious freedom of individuals and groups. Why deny peaceable Muslim citizens the freedom to opt out of state laws on sex, marriage, and family that run afoul of their central faith commandments? Why deny them the freedom to order their domestic lives according to their own religious norms? Doesn't freedom of religion protect a sincere Muslim against court actions on divorce, discipline, or child custody that directly contradict the rules of Shari'a? Doesn't it empower a pious Muslim man to take four wives into his loving permanent care, in imitation of the Prophet, especially since his secular counterpart can live with four women at once and then walk out scot free?

This argument falsely assumes that claims of conscience and religious free exercise must always trump. But this is hardly the case in modern democracies, even though religious freedom is cherished. Even the most sincere and zealous conscientious objectors must pay taxes, register properties, answer subpoenas, obey court orders, answer military conscriptions (even if by non-combat duty), and abide by many other general laws that they may not in good conscience wish to obey. If they persist in their claims of conscience, they must either leave the country or go to prison for contempt. Even the most devout religious believer enjoys no immunity from criminal laws against activities like polygamy, child marriage, female genital mutilation, or corporal discipline of wives. Religious freedom is not a license to engage in crime.

Muslims who are conscientiously opposed to liberal Western laws of sex, marriage, and family are certainly free to ignore them. They can live chaste private lives in accordance with Shari'a and decline to register their religious marriages with the state. Constitutional rights of privacy and sexual autonomy protect that choice, so long as their conduct is truly consensual. But that choice

also leaves their family entirely without the protections, rights, and privileges available through the state's complex laws of marriage and family, marital property and inheritance, social welfare, insurance, and more. And if minor children are involved, the state will intervene to ensure their protection, support, and education, hearing nothing of free exercise objections from parents or community leaders. Western Muslims enjoy the same religious freedom as everyone else, but some of the special accommodations pressed by some Muslim advocates today are simply beyond the pale for most Western democracies.

Even further beyond the pale is the argument that corporate religious freedom gives religious officials the power to govern the sex, marriage, and family lives of their voluntary faithful. Most Western democracies readily allow religious officials to preside at weddings, testify in divorce cases, assist in the adoption of a child, facilitate the rescue of a distressed family member, and the like. Some democracies also will uphold religious arbitration awards and mediation settlements over domestic issues. But that is a long way from delegating full legal power to religious bodies for governing the domestic affairs of their voluntary faithful in accordance with their own religious laws. No democratic state can readily allow a competing sovereign authority to govern such a vital area of life for its citizens. Family law is too interwoven with other public, private, procedural, and penal laws. And too many other rights and duties of citizens turn on a person's marital and familial status. Surely a democratic citizen's status, entitlements, and rights cannot turn on the judgments of a religious authority that has none of the due process and other procedural constraints of a state tribunal.

Some advocates proudly claim that Shari'a provides a time-tested and comprehensive law governing all aspects of sex, marriage, and family life. For some, that's an even stronger strike against its accommodation. Once a state takes the first step down that slippery slope, skeptics argue, nothing can prevent the gradual development of a rival religious law over sex, marriage, and family life, particularly as Muslim communities grow larger and more politically powerful. That was why Oklahoma prohibited the use

of Shari'a altogether. And that's why other common law lands—Australia, Canada, New Zealand, and the United Kingdom—are now pressing for the same restrictions.

SHARI'A AND CLASSICAL LIBERALISM

A second argument for Shari'ah appeals to the philosophical heart of American constitutional law: classical political liberalism. Under classic liberalism, marriage is a pre-political and pre-legal institution; it comes before the state and its positive laws both in historical development and in ontological priority. In his *Two Treatises on Government* (ca. 1690), John Locke called the marital contract “the first contract” and “the first society” to be formed as men and women emerged from the state of nature. Only upon the foundation of stable marriage contracts was the broader social contract built, and thereafter contracts to form governments and other associations. If marriage precedes the state, the argument goes, why should the state get exclusive jurisdiction over it? After all, it was 16th-century Protestants, not the 18th-century Enlightenment that gave the state the power to govern marriage and family life. Before the Protestant Reformation—and in many Catholic lands well after the Reformation, too—the Catholic Church's canon law and church courts governed marriage, family, and sexuality. Moreover, even in Protestant England until 1857, the state delegated a number of marriage and family law questions to church courts. Nothing, evidently, dictates that Western marriage and family law be administered by the state. And nothing in liberalism's contractarian logic requires marital couples to choose the state, rather than their own families or religious communities, to govern their domestic lives—particularly when the state's liberal rules diverge so widely from their own beliefs and practices.

This argument, while clever, is incomplete. It ignores another elementary teaching of classical liberalism: namely, that only the state, and no other social or private association, can hold the coercive power of the sword. In liberal democracies, the people grant to government this coercive power over individuals, but only in exchange for strict guarantees of due process of law, equal protection

under the law, and respect for fundamental rights. A comprehensive system of marriage and family law—let alone the many related legal systems of inheritance, trusts, family property, children's rights, education, social welfare, and more—cannot long operate without coercive power. The law needs police, prosecutors, and prisons; subpoenas, fines, and contempt orders; material, physical, and corporal sanctions. Moral suasion and example, coupled with communal approbation and censure, can certainly do part of the work. But a properly functioning marriage and family law system, in our porous and transient society that guarantees the fundamental right to travel, ultimately requires all these coercive instruments of government. And no religious authority can hold the power of the sword.

SHARI'A AND RELIGIOUS LIBERTY

The third argument for Shari'a family law appeals to norms of religious equality and non-discrimination. After all, many Western Christians have religious tribunals to govern their internal affairs, including some family matters. State courts will respect their judgments, even if their cases are appealed to Rome, Canterbury, or Moscow. No one is talking of abolishing these Christian church courts or trimming their power. No one seems to think these Christian tribunals are illegitimate, even when some of them seem to discriminate against women in decisions about ordination and church leadership. Similarly, Jews are given wide authority to operate Jewish law courts to arbitrate marital, financial, and other disputes. Indeed, in New York State by statute, and in several American states and European nations by custom, courts will not issue a civil divorce to an Orthodox Jewish couple unless and until the Jewish law court, the beth din, issues a religious divorce, even though Jewish law systematically discriminates against the wife's right to divorce. If Christians can have their canon laws and consistory courts, and Jews their Halacha and beth din, then why can't Muslims use Shari'a and Islamic courts?

This argument takes more effort to parry. A useful starting point is the quip of United States Supreme Justice Oliver Wendell

Holmes, Jr.: “The life of the law has not been logic but experience.” Holmes’s adage has bearing on this issue. The current accommodations made to the alternative legal systems of Christians, Jews, First Peoples, and others in the West were not born overnight. They came only after centuries of sometimes hard and cruel experience, with gradual adjustments and accommodations on both sides.

The gradual accommodation of Jewish law is particularly instructive. It is discomfiting but essential to remember that Jews were the perennial pariahs of the West for nearly two millennia, consigned at best to second-class status, and periodically subject to waves of brutality—whether imposed by Germanic purges, medieval pogroms, early modern massacres, or the 20th-century Holocaust. Living in perennial diaspora since the destruction of Jerusalem in A.D. 70, Jews have experienced a wide variety of legal cultures in the West and well beyond. After the third century, the Rabbis developed the important concept of *dina d’malkhuta dina* (“the law of the community is the law”). This meant that Jews accepted the law of the legitimate and peaceful secular ruler who hosted them as the law of their own Jewish community, unless it conflicted with core Jewish laws. This technique allowed Jewish communities to distinguish between indispensable religious laws and more discretionary laws. Over time, they learned which secular laws and practices could be accommodated, and which had to be resisted even at the risk of life and limb. This technique not only led to ample innovation and diversity of Jewish law over time and across cultures. It also enabled the Jews to survive and grow legally even in the face of ample persecution.

In turn, Western democracies—particularly in the aftermath of the Holocaust and in partial recompense for the horrors it visited on the Jews—have gradually come to accommodate core Jewish laws and practices. Today, Western Jews generally get Sabbath day accommodations, access to kosher food, freedom to wear yarmulkes in public places, and recourse to zoning, land use, and building charters for their synagogues, charities, and schools. But all this occurred only in the past two generations, and only after endless litigation and lobbying in state courts and legislatures. At times, even those gains crumble at the edges.

Moreover, Jewish law courts have gained the right to decide some of the domestic and financial affairs of Jews who voluntarily elect to arbitrate their disputes before them. These courts are attractive to Jewish disputants, because they are staffed by highly-trained jurists, conversant with both Jewish and secular law, and sensitive to the bicultural issues being negotiated. Unlike their medieval and early modern predecessors, these modern Jewish law courts leave many issues to the state. They do not claim authority over all of Jewish sex, marriage, and family life, and they have abandoned their traditional authority to impose physical coercion or sanctions. And they claim no authority beyond persuasion to stop a disputant from simply walking out of court and out of the Jewish community altogether.

This story of Jewish accommodation holds three lessons for Shari'a advocates. First, it takes time and patience for a secular legal system to adjust to the realities and needs of new religious groups. The hard-won accommodations enjoyed by modern Jewish law and culture cannot be effortlessly transposed into the Muslim context. These are piecemeal, equitable adjustments to general laws that track the specific needs and experiences of each religious community. Muslims simply do not have the same history of persecution that the Jews have faced in the West. Nor do they have a long enough track record of litigation and lobbying. Concessions and accommodations will come, but only with time, persistence, and patience.

Second, it takes flexibility and innovation on the part of the religious community to win accommodations from secular laws and cultures. Not every religious belief can be claimed as central; not every religious practice can be worth dying for. Over time, and of necessity, diaspora Jewish communities learned to distinguish between what was core and what more penumbral, what was essential and what more discretionary to Jewish legal and cultural identity. Over time, and only grudgingly, Western democracies learned to accommodate the core religious beliefs and practices of Jewish communities. Diaspora Muslim communities in the West need to emulate the Jews. Islamic laws and cultures have

changed dramatically over time and across cultures, and modern day Islam now features immense variety in its legal, religious, and cultural practices. That diversity provides ample opportunity and incentive for Muslim diaspora communities to make the necessary adjustments to Western life, and to sort out what is core and what is more discretionary in their religious lives. Cultural adaptation, not assimilation, is what is needed to earn accommodations from the state.

Third, religious communities, in turn, have to learn to accommodate, or at least tolerate, the core values of their secular host nations if they expect to win concessions for their religious courts and other religious practices. No Western nation will long accommodate, perhaps not even tolerate, a religious community that cannot accept its core values of liberty, equality, and fraternity, or of human rights, democracy, and rule of law. Those who wish to enjoy the freedom and benefits of Western society must also accept the core constitutional and cultural values that make those freedoms and benefits possible.

So far, only a small, brave band of mostly Western-trained Muslim intellectuals and jurists have called for the full embrace of democracy and human rights in and on Muslim terms. These are highly promising arguments. Even more promising are the new political and legal experiments now afoot in the “Arab spring.” It was the early modern revolutions against tyranny that drove the West to develop many of its core democratic and constitutional values that we still cherish. Something similar might eventually emerge from the current revolutions against tyranny in the Arab and broader Muslim world. Over time, Islam might well present a new way of thinking about human rights and democratic government, and a new way of relating law, religion, and the family.

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PRINCIPLE AND PRUDENCE: TWO SHRINES, TWO REVOLUTIONS, AND TWO TRADITIONS OF RELIGIOUS LIBERTY

JORDAN BALLOR

One of the charges often leveled against the Protestant Reformation is that it essentially continued, and on some accounts exacerbated, fundamental problems with the received medieval models of the relationship between church and state. As Lord Acton put it memorably, “From the death of St. Bernard until the appearance of Sir Thomas More’s *Utopia*, there was hardly a writer who did not make his politics subservient to the interest of either Pope or King.” There was nothing approaching a modern doctrine of religious liberty in the views of the major Protestant and Roman Catholic traditions of the sixteenth century.

The reformer Wolfgang Musculus (1497–1563), himself a source for what would come to be known as an Erastian theory of government, described two basic options concerning religious freedom. The first view is identified with the church father Tertullian, and recognizes the fundamental freedom required by true worship. Piety is viewed as, to a significant degree, a matter of internal orientation to God, which cannot be coerced, and therefore is not a matter of concern for the civil magistrate. The second option, however, argues that it is the responsibility of the authorities to uphold both

tables of the Decalogue, the commandments concerning religion as well as civic morals. In this way true religion might be protected from heresy, apostasy, and godlessness. This latter approach, says Musculus, has been “received among Christian magistrates, both the Papists as well as the Evangelicals.”

Musculus, as well as other early modern defenders of enforcement of religious observance, recognized that true faith is ultimately a matter of internal disposition and the individual’s relationship with God. The reformers realized that true religion could not be coerced. But this was not the end of their calculus. They feared the hypocrisy that enforcement of religion would create, but they worried even more about the destructive social and spiritual consequences of an evangelical apostasy. Their judgment that true religion ought to be protected and promoted by the civil authorities was grounded in their principles, but was also an expression of their pragmatic judgment that apostasy was a greater threat than hypocrisy. The hypocrite might be damned by his or her false piety, but the apostate might lead many others astray, thereby endangering not only the tranquility of the commonwealth but also threatening their eternal beatitude.

The reformers’ principled prudential disregard for religious liberty is perhaps best illustrated in the most infamous example of the execution of a heretic of the era, the death of Michael Servetus in Geneva in 1553. Servetus, who had been warned not to enter Geneva, and who was unwelcome in many cities across Europe, was caught as he stayed overnight on his way to Italy. Within months Servetus was condemned for his antitrinitarianism and burned at the stake as a heretic (his nemesis John Calvin had argued for a more merciful beheading). The Servetus affair seems to be the ideal illustration of the disconnect between the religious convictions of the early modern and the contemporary worlds. Where Servetus died as a heretic in the sixteenth century, the historian Marian Hillar claims, “Servetus died so that freedom of conscience could become a civil right in modern society.”

Himself a Reformed pastor, theologian, and educator, Abraham Kuyper denounced Servetus’ execution in no uncertain terms

at the close of the nineteenth century. For Kuyper, the difficulty of defending Calvinism as a source for religious liberty “lies in the pile and fagots of Servetus” and “in the unanimous and uniform advice of Calvin and his epigones, who demanded intervention of the government in the matter of religion.” For his part, Kuyper extolled a doctrine of structural separation represented in the motto, “A free Church in a free State,” and found this, contrary to the presumption of the evidence, to be in fact the only legitimate expression of the fundamentals of Calvinism. “Only the system of a free Church, in a free State, may be honored from a Calvinistic standpoint,” he concluded. As Kuyper would have it, the reformers’ intolerance of dissenting religious beliefs was an imprudent misapplication of their own principles.

The Roman Catholic historian Brad S. Gregory relates a different picture of the legacy of the Reformation with respect to religious liberty than one of simple theocratic heresy-hunting or benign separation of church and state. According to Gregory in his recent work, *The Unintended Reformation: How a Religious Revolution Secularized Society*, the Reformation did foment modern religious liberty, but this inheritance is ambiguous at best: “Today, within the limits of the law, literally anything goes as far as truth claims and religious practices are concerned—an extension and latter-day manifestation of the full range of views produced by the Reformation unfettered.” The result is that rather than theocratic domination of civil affairs, the state has assumed tyrannical control over the phenomenon of religious belief. As Gregory argues, “Whether in Western confessional, liberal, or totalitarian regimes, states control churches: whether they prescribe permit, or proscribe religion, they do so entirely on their terms, exercising an institutional monopoly of power in the public sphere.” The result, claims Gregory, *pace* Kuyper, is that “controlling the churches by disestablishing them freed not only political institutions from churches but also established the institutional framework for the eventual liberation of society from religion.”

Rehearsing a bit of this prehistory of modern ideals of religious liberty, freedom of conscience, and the separation of church

and state is worthwhile because these narratives illustrate the fundamental tensions that have existed from the earliest days of the Christian church. Given the developments since the sixteenth century, we might wonder if there is a secular corollary to that axiom from Richard John Neuhaus, “Where orthodoxy is optional, orthodoxy will sooner or later be proscribed.” Neuhaus wrote this in 1997, and was talking specifically about orthodox doctrine within the context of the church. As he concluded, however, “Almost five hundred years after the sixteenth-century divisions, the realization grows that there is no *via media*. The realization grows that orthodoxy and catholicity can be underwritten only by Orthodoxy and Catholicism.”

As a devotee of neither Orthodoxy nor Catholicism but who is deeply concerned with orthodoxy and catholicity, I am inclined to wonder if Neuhaus’ Law, as it has come to be called, applies only to Protestantism. In fact, given the secularization that both Kuyper and Gregory point to in their own ways, it seems worthwhile to consider whether Neuhaus’ Law might be applicable outside the church, to the liberal political order as such. If so, the recognition that there is no *via media* might well apply to the purported neutrality of the secular state.

The recognition that the idea of a normatively neutral secular state is a myth has not been entirely absent from political discourse over the last two centuries, but it is slowly coming again to the foreground. As the political philosopher Christopher Wolfe observes, “Even democracies shape a way of life (tolerance itself is, after all, a way of life).” Every vision of social life, every political philosophy, every economic theory presumes some basic truths about the human person. These truths may be more or less comprehensive, they may be more or less accurate, but for all that they are no less dependent on particular judgments about human beings. Anthropology, whether more robust or less defined, is a postulate of social philosophy.

This debate about the presence of normative judgments about the human person at the heart of modern liberal order has taken shape in some intriguing ways. In recent years some of this

discussion has focused on the image of the so-called “empty shrine” at the center of the modern liberal order. Writing three decades ago in *The Spirit of Democratic Capitalism*, Michael Novak could highlight the “empty shrine” at the “spiritual core” of “a genuinely pluralistic society” as an intentional and positive phenomenon. “That shrine is left empty in the knowledge that no one word, image, or symbol is worthy of what all seek there,” he says.

By contrast, in a speech delivered earlier this year, George Weigel excoriated the empty shrine as the product of the “secular project,” or in the terms of Henri de Lubac, the “atheistic humanism,” which in the twentieth century “produced, among other things, two world wars and the greatest slaughters in recorded history.” For Weigel, the secular project symbolized by the empty shrine ignores “the deep truth that it takes a certain kind of people, living certain values, to make democracy and the free economy work properly.” The perspectives of Novak and Weigel on the virtues or the vices of the empty shrine are only compatible when we realize that they are, in fact, talking about different shrines.

Novak’s empty shrine is actually more akin to the apostle Paul’s appeal to the altar “to an unknown god” as recorded in Acts 17:23. Just as Paul does not rest content to leave God unknown, Novak does not actually leave the shrine empty. He points to the recognition in the Declaration of Independence that human beings “are endowed with inalienable rights by the Creator.” He refers to the invocation of “the Almighty” by numerous presidents, and to the American motto, “In God we trust.” The purpose of these and other “pointers,” says Novak, “is to protect the liberty of conscience of all, by using a symbol which transcends the power of the state and any other earthly power. Such symbols are not quite blank; one may not fill them in with any content at all. They point beyond worldly power. Doing so, they guard the human openness to transcendence.” In accord with Weigel, Novak argues that the free society is dependent upon people who embody certain virtues and who recognize certain principles. Novak thus refers to a “sacred canopy” with a “practical” rather than a dogmatic or “creedal” character, which “allows for unity in practice, diversity in belief.”

Just as there are in some real sense then two different “empty shrines” to which Novak and Weigel point respectively, there are two different revolutions which characterize the modern approach to liberty, and to religious liberty in particular. Weigel concludes his lecture by pointing positively to the example of Leo XIII, “who created the modern papacy.” As Weigel writes, “What I have called the ‘empty shrine’ at the center of political modernity was, for Leo XIII, the result of a dramatic revolution in European intellectual life in which metaphysics had been displaced from the center of reflection, thinking-about-thinking had replaced thinking-about-truth, and governance had therefore come unstuck from the first principles of justice.” Weigel symbolically relates this reversal to the French Revolution, and specifically “to April 4, 1791, when the French National Constituent Assembly ordered that the noble Parisian church of St. Geneviève be transformed into a secular mausoleum, the Panthéon.”

The difference in the two shrines arises because of the difference in two revolutions. Christian thinkers like Abraham Kuyper, Leo XIII, Edmund Burke, and Lord Acton recognized these critical differences. On the American model, the separation of church and state was based on a kind of principled prudence which respected the place of the church and religious life in society. For the French model, religion was something to be overcome, subsumed, and undermined. There is, in this way, a shrine that is empty because it points to something beyond itself and a shrine that is empty because it allows for nothing to compete with its claims of dominance and allegiance.

What we find in the movement from the sixteenth century to the present day is that there is actually a *via media* between the government enforcement of religious observance typical of the models of medieval and early modern Christendom and the antireligious secularism of the French Revolution and its intellectual and spiritual heirs. This middle way is represented in the institutional liberalism of the American Founding and the sphere sovereignty of Abraham Kuyper. As it turns out this middle way is not, in fact, grounded in the idea that religious liberty is the proper

political response to epistemic doubt concerning divine things. Instead, it is a model grounded in transcendent and normative truths about God and the human person created in his image.

A way in which we might see how civil law regarding religious observance might be limited and yet be consistent with a normative vision of the common good and transcendent truth is found in Thomas Aquinas' principle of prudence. In answering the difficult issue of when to promulgate law, and specifically whether every vice must be legislated against, Aquinas observes that there is a pedagogical aspect to the law. "The purpose of human law is to lead men to virtue, not suddenly, but gradually," says Aquinas. The positive law is constructed in such a way that it is sensitive to the specific cultural, spiritual, and moral character of the people. Thus the law "does not lay upon the multitude of imperfect men the burdens of those who are already virtuous." In this way, the greater matters of religious observance might be deemed prudentially to be something that, when they are enforced by the state, causes rebellion among those who are not sufficiently religiously mature. In this case, warns Aquinas, "the precepts are despised, and those men, from contempt, break into evils worse still." Attempts to coerce true religious observance can be judged more likely to cause such rebellion than to promote righteousness. Such grounds do not in any way deny the reality of spiritual and normative truth and yet respect the limitations inherent in expressions of positive law.

True religious liberty is not then principled in the sense that it is grounded in a principled neutrality, an institutional agnosticism on the part of the state which refuses to recognize any normative truth or attendant claims about the limitations and responsibilities of social life. A religious liberty grounded on a myth of secular neutrality turns out to be imprudent indeed. But a vision of religious liberty grounded on a vision of the limitations of political force, out of respect for the dignity of the human person to respond freely to God and the dictates of conscience, is prudent. The difference between the two versions of religious liberty can be identified by their fruits.

The principled prudential version of religious liberty views the state as a legitimate and necessary authority for civil life. But it also recognizes the legitimacy of other authorities and the need for other structures, like the family and the church. This model of religious liberty is one which recognizes this variegation and the vital role of the mediating structures of civil society. With respect to structures like the family and the church, the state understands itself to have the role of affirmation and support, not one of creation and dominion. As Kuyper speaks of the status of other spheres and structures of social life, “This authority the state does not *confer* but *acknowledges*.”

The other version of religious liberty, the imprudent and absolutist version, views the expression of religious faith only to be valid insofar as the state itself grants permission. Such authority as other spheres may possess is only at the behest of the state, and they are ultimately to be seen as delegated authorities, accountable to the state for their existence and continuance. The kind of liberty enforced by this state does not limit itself to maintaining the relationships between different spheres, but instead insinuates itself into the internal governance of various institutions.

If the only options for ordering religion in society were the models of Christendom, which hold the government responsible for promoting, protecting, and enforcing true religion, on the one hand, and the atheistic drive for freedom from religion masquerading as religious neutrality on the other, then the validity of Neuhaus’ Law to political life would certainly hold true. Given these options, orthodoxy must either be enforced or proscribed. In either case we have a kind of (a)theistic orthodoxy codified in law. But thankfully we have a third option, the option represented by the tradition of religious liberty in the American setting, as distinct from the religious and secular absolutism so common in Europe.

In his lecture, George Weigel draws on the story in Daniel 5 of the hand which appears on the king of Babylon’s wall, writing *Mene, Mene, Tekel, Upharsin*, foreshadowing the imminent downfall of Belshazzar’s kingdom. But it is also worth remembering an encounter that occurs before the kingdom of Babylon gets to that

point. Just two chapters earlier, as recorded in Daniel 3, Belshazzar's father Nebuchadnezzar had attempted to coerce worship of a golden image he had set up. As the text says, at the appointed time everyone "must fall down and worship the image of gold that King Nebuchadnezzar has set up." The punishment for failure to respect the king's wishes would be severe: "Whoever does not fall down and worship will immediately be thrown into a blazing furnace" (Dan. 3:5-6 NIV).

Out of their convictions and in faithfulness to God, Shadrach, Meshach, and Abednego refuse to acquiesce to Nebuchadnezzar's religious policy. When the punishment is carried out, the three Jews are miraculously saved, and Nebuchadnezzar is forced to confess: "Praise be to the God of Shadrach, Meshach and Abednego, who has sent his angel and rescued his servants! They trusted in him and defied the king's command and were willing to give up their lives rather than serve or worship any god except their own God" (Dan. 3:28 NIV). Nebuchadnezzar goes on to grant Jews religious protection from persecution. As we see from this account, biblical faith challenges the state's "divine supremacy" through its promotion of the belief that the state and its rulers are subject to the requirements of God's law and justice.

We are faced then, with two competing and ultimately antithetical visions of religion and society. One is the way that leads to life and the other the way that leads to death. For our society of flourish, we must constantly recall the vital role that religion plays in social life and thereby protect the liberty of religious institutions and individual faith to trust in God and, when necessary, defy the commands of a tyrannous state.

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ROUSSEAU, LOCKE, RELIGIOUS LIBERTY, AND THE HHS MANDATE: REMARKS EXCERPTED FROM THE FORTNIGHT OF FREEDOM

HUNTER BAKER

The need for the special fortnight for freedom rose from recent actions of the government which indicate that religious freedom may be in serious danger. Specifically, the Department of Health and Human Services issued a mandate requiring all employers who offer insurance to provide coverage for contraceptive and abortifacient products and services. The mandate contained no exemption for religious institutions such as universities, charities, and hospitals, which might find difficulty complying for reasons of faith and conscience.

This issue may appear to be a new one, but it is actually very old. The 18th century philosopher Jean-Jacques Rousseau wrote a number of influential books and essays. One of the most notable is *The Social Contract*. In that book, Rousseau has a chapter titled “On Civil Religion.” In the chapter, he observes that ancient cultures traditionally united theology and politics. Each religion was tied to the laws of its state. There could be no conversion other than through conquest. The only missionaries were soldiers. There was nothing to discuss. Force decided religious disputes. There are still quite a few nations that practice the same philosophy today.

Rousseau points to Jesus as the person who disrupted that age-old system. For a time, you had the Christians operating within the context of a pagan empire while simultaneously refusing to accept the emperor worship that held the whole system together. The empire was willing to tolerate a polytheistic festival of religions as long as all would submit to the overarching religion of Rome. The Christians refused. And they were persecuted, terribly persecuted (killed by wild animals, tortured, turned into flaming lanterns), until, improbably, everything changed. Some of the powerful were converted, such as Constantine, and Christians gained first protection and then establishment status. The empire of Rome eventually fell. But the Christian church carried on.

From Rousseau's perspective, Christianity presents a serious problem because there will always be the difficulty of double power since the church will not simply yield to the state. Where there is conflict, the church will go where it believes God is leading it. Rousseau thought such a conflict should be impossible. The state must rule without question. He praised Hobbes for trying to put the two powers back together under the rule of Leviathan in which the state would control religion completely. What is needed, Rousseau wrote, is theocracy such that there is no pontiff other than the prince and no priests other than the magistrate. The only real sin in this new state Rousseau envisioned is intolerance. It is not enough to have theological intolerance and civil tolerance. Theological intolerance cannot be tolerated. Anyone who "dares to say outside the church there is no salvation ought to be expelled from the state . . ."

Rousseau, of course, was one of the great intellectual inspirations for the French Revolution. The French Revolution, so different from the nearly contemporaneous American one, followed Rousseau's logic. The revolutionary leaders carried on a massive campaign against the Catholic church and tried to create a new national civil religion. The method of the secular, statist revolutions has been that if there is to be something like a religious power, it must be a power under the control of the state and its leaders. But like the old pagans, the new pagans have found that the followers

of Jesus Christ are not willing to accept the idea of the state as the supreme power. That resistance to the supremacy of the state has been and should always be one of the marks of the Christian church.

It seems to me that the mandate handed down (in an undemocratic, regulatory fashion) by the government's department of Health and Human Services represents a return of Jean-Jacques Rousseau's political thought in our time. In essence, the state and its rulers are saying that its conception of what is good for human beings is superior to the church's view and it will be made mandatory (even for the church) regardless of the church's objections. The offense is compounded because the state could simply opt to tax the people and provide the services on its own. Instead, it insists that religious institutions *themselves* pay for the contraceptive and abortifacient products and services it rejects. It is not enough that religious organizations have to accept it as passive taxpayers. Instead, they must be forced to directly fund the products and services as part of their employment contracts.

Whether its members realize it or not, the administration is working directly under Rousseau's canopy. It would have been a simple thing to insert a provision into the mandate accommodating objections based on faith and conscience. Employees working for religious employers (especially Catholic ones who are the most affected) hardly represent a large portion of the labor force. But the accommodation has not been made in any meaningful sense. And one has the feeling that the accommodation has not been made because the other side is working from their own view of principle. They are saying, with Rousseau, that what they see as civil and theological intolerance cannot stand. The Catholic church finds itself at odds with the metaphysics of the United States government. Other churches will soon find themselves in similar circumstances if we do not curb the boldness of the government quickly. Though it is in a relatively low key way (low key as opposed to the French Revolution), the government is essentially saying that a particular view of the Catholic church will not be permitted to shape its organizational behavior, even though the church's view does not threaten anyone with harm. Individuals who work for Catholic organizations

could easily work elsewhere. The church does not force anyone to sign a contract of employment.

I have frequently been surprised to find people who should know better supporting the administration and its mandate. What it often comes down to is one's political sympathies. Those who prefer a larger government and believe government is the primary provider for the good of people tend to think the mandate is a just measure. But I have discovered that they are able to see the problem with the mandate when I change the fact situation to one with which they are more sympathetic. Let us imagine a Quaker college with a core conviction regarding pacificism. Let us further imagine that the government were to insist that such a college host an ROTC unit on campus. Given these facts, would you insist that the Quaker college must simply buckle under, ignore its core beliefs, and do what the government says? When I put it that way, I find that supporters of the mandate suddenly understand the problem with the situation the government is putting the church in. If the issue is pacifism rather than sex or reproduction, then the matter of conscientious and spiritual objection becomes more clear. We can be blind to important principles when our particular ox is not being gored.

Criticism of the HHS mandate is aimed at improving our understanding of religious liberty, but I would submit to you that maybe the issue is simply liberty, itself. I recently read an interview between Bart Stupak and Greta van Susteren. If you don't recall, Congressman Stupak and a group of pro-life Democrats held up passage of the president's health care bill because of their concerns about taxpayer money being spent for abortion and because of a desire to make sure that conscience would be protected. After the president signed an executive order aimed at alleviating their concerns, Stupak's group provided the winning margin in the House. Stupak and his group of fellow Congressmen had attempted to protect religious liberty and rights of conscience in the massive piece of legislation, but all that is a faint memory now. What I am suggesting to you is that if we insist on continuing to expand the power we give to the government, then we should not be shocked

and dismayed when we see fundamental rights and freedoms, such as religious liberty, eroded. Where government power increases, freedom is diminished. The relationship is axiomatic. It means that we must be very careful and very sure of what we are doing when we seek to expand the power of the state. It sounds good to solve problems by simply having the government pass a law, but there are often unintended consequences. A laudable attempt at providing health care coverage for more Americans has ended up strengthening the hand of persons or organizations who lack respect for rights and freedoms we cherish.

I have discussed Rousseau's point of view and how it connects directly to the state of mind that issues something like the HHS mandate heedless of the serious problems it creates for individuals and organizations with objections based on faith and conscience. Rousseau, meaning well, *wrote a philosophy fit for totalitarians*. He is remembered for lamenting that man is born free, but is found everywhere in chains. Less often do we hear another thought of his connected to freedom which is that if a citizen finds himself or herself in disagreement with the general will of the nation, then he or she *must be forced to be free!* Freedom for Rousseau means being in step with the general will. That is what the secular statists think they are doing to the Catholic church with the HHS mandate. They are forcing you to be free!

Thankfully, however, America is not a country that has tended to take its cues from Jean-Jacques Rousseau. Far more influential on our shores has been the thought of a man named John Locke. Like Rousseau, Locke reasoned about the nature of the social contract. But he did not conclude that we should end up forced to be free by following the general will. Instead, he said that we have government to make us more truly free, free in a sense that you and I can actually understand and support. In a state of nature, there is still a natural law of right and wrong that exists, but our ability to enforce it is in question. For example, if a seven foot barbarian steals your property and takes your home for his own, you may have the right on your side, but there is doubt as to whether the demands of justice will be satisfied. Locke says that we lose little by creating a state to

protect us from violent or dishonest acts of others when we have a low probability of achieving the same result without a government. In other words, we gain freedom by empowering a state to punish criminal acts. Rather than being *forced to be free*, the government will *use force to protect freedom*.

Locke would not have approved of something like the HHS mandate, which impairs religious freedom. He said that we come out of the state of nature into a civil society with a government to gain what we could not secure in nature. The goal of government is to protect freedom, not to diminish it. The HHS mandate is an exercise of government that reduces freedom. Worse, it is the kind of government act that infringes on freedom of religion and conscience. These are the freedoms we would be least likely to bargain away because they mean the most. A government that infringes on these freedoms is one that is making us worse off rather than better off. It is a government that forces us to be at odds with the entity that is designed to protect us in the exercise of our freedom. It makes an enemy of us (and this is the important part) when we have done nothing that should make it see us as an enemy. The government has engineered a crisis in which churches are more and more likely to be caught between God and Caesar. *This is the last thing a government should be doing to its people when they are committing no wrong.*

The bottom line is that there are certain things that belong to the state and others that don't. The state is an instrument, not some kind of grand end. It is a tool. It is temporary. It is designed to solve a simple problem, which is the problem of restraining evil. The state is designed to serve persons. We are not designed to serve the state. The great French Catholic scholar Jacques Maritain said it best: "The state is made for man, not man for the state."

The United States, traditionally, has been one of the nations that most clearly understands the proper role of the government. We have welcomed the existence and development of many institutions of civil society performing tasks that need not belong to the state. But Rousseau saw a society with two powers of church and state as a liability, something that needed to be destroyed. And the French Revolution accordingly attempted to destroy it. What

Rousseau missed that Locke understood is that when government attempts to rule over too much of life, then there are too many areas in which disagreement can only be settled with the exercise of coercive power, including things such as civil penalties and imprisonment. We should only resort to those things when the stakes are very high. Why would we subject more things to that official (and ultimately punitive) sphere than we must?

Having strong institutions in the society other than the government actually improves the prospects for freedom. The family, the church, the private school, charitable organizations . . . all of these represent alternative allegiances for people. Alternative allegiances help limit the power of the state and to curb its ambitions. A totalitarian state prefers to have only two entities in society. The individual and the state. In that situation, the vision of the state will always be supreme.

When we protest that something like the HHS mandate might eventually have the effect of forcing the church to abandon its efforts in running schools, universities, hospitals, and social services, a pragmatic person might well rethink the whole project out of worry for the loss of all the good religious institutions do. But for people of a certain ideological stripe, when we say the HHS mandate could force the church out of various endeavors, they think silently to themselves, “Good.”

I am not saying these people are villains. They have a big vision for society based on government action. They believe it is for the best. They believe strongly enough in this vision to take an amazingly bold action against the church. But the experience of the 20th century should make us reluctant to agree to these large and ambitious plans. Karol Wojtyla, the man who became Pope John Paul II, lived his life in the service of a church forcibly repressed by first the Nazis and then the Soviets, both of whom carried out their programs in service of their plans for the good for humanity. As a younger man, he made a practice of taking young people out into the country for hiking and canoeing. He wanted to show them that even under totalitarians, one can and should carve out space for a life they do not control. He was teaching

them that the state is not the supreme reality. The supreme reality is the church seeking after the will of God. And that is why Peter and apostles told those who wished to imprison them that “We must obey God rather than men.”

If the church fails to stand up and be counted at this moment, then the HHS mandate will simply be the first of many more such rulings and regulations in the future. We need to protect religious freedom now. The church has never been intended to set its course to fit the prevailing winds of public opinion or the edicts of state. In his profound *Letter From Birmingham Jail*, Dr. Martin Luther King, Jr. wrote that the church must be a THERMOSTAT, not a thermometer. It does not simply reflect public opinion. It sets out to influence public opinion. It means to work a change in people. The church must maintain its freedom to speak and act in a distinctive fashion. When it makes deals with power in order to survive, it accumulates shame and infamy just as the “German Christianity” of the Third Reich did.

I have spent a good bit of time explaining why I think the HHS mandate is fundamentally misguided and violates the basic American understanding of government power. My hope is that if anyone needs convincing that perhaps I have made out a case for restricting government power and resisting the siren call that issues forth every so often telling us that the millennium will come when we have composed the perfect package of government rules and programs. My suggestion is that we all become a great deal more modest in terms of what we expect a government to do so that we can maintain our confidence in our freedoms. The big solutions usually disappoint us. And freedoms do not typically return once they have been surrendered to the state.

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AMERICAN JURISPRUDENCE AND THE RELIGIOUS LIBERTY TEMPTATION

MICAH J. WATSON

While religious liberty has always been a part of the American political and religious story, there is good reason to believe that we are in a particularly acute season of concern for the religious liberty rights of American citizens. Controversial issues such as same-sex marriage and government-mandated contraceptive health care have revealed deeply held differences about how to balance contested governmental interests and individual and communal religious scruples.

Historically these differences were usually tested when the religion being exercised was somewhat unusual, or cut against the grain of the majority culture. Thus many landmark religious liberty cases involve smaller religious sects: Mormons in 1879, Jehovah's Witnesses in the 1940s, Seventh Day Adventists in 1963, and Anabaptists in 1972. Small religious communities often appeal to the courts because they do not have the political influence to protect their interests in the legislature. Larger churches and faith groups do have this influence, or at least they used to.

Some members of these larger Christian denominations and churches may wonder whether their public influence is waning, and if so, what this means for the future of their involvement in

the public square on issues of moral import. Consider for example the HHS contraception mandate and the campaign to publicly recognize and promote same-sex marriage. Suppose a coalition of traditional Catholics, evangelical Protestants, Orthodox Jews and Latter-Day Saints fails to persuade their fellow citizens on the merits of their positions in the political and cultural sphere. Perhaps their best option is to forgo their public advocacy on the controversial topics themselves and instead work to protect their right to follow their religious beliefs within their own communities. If the battle for the larger public approach to an important issue is all but lost, then the next best thing may be to protect the religious liberty and conscience rights of individual citizens and religious groups. We may not succeed in persuading our fellow citizens that marriage is necessarily a union between a man and a woman, this line of thinking goes, but perhaps we can ensure that our churches will not have to conduct same-sex marriages or our parachurch organizations provide domestic partner benefits.

This tactical response to disappointing electoral and policy outcomes is understandable, but ultimately unwise. The same forces that have contributed to momentous changes in the cultural and political realities of marriage and contraception will not lose steam in the face of a religious liberty firewall. To untangle why this is the case we must ask some fundamental questions about what religious liberty means and consider how our constitutional tradition views religious liberty claims vis-à-vis compelling public interests as determined by legislatures and courts. It is to those questions that we turn.

II

What does it mean to be religious? What is a religious action? What does it mean, in the American political context, to freely exercise one's religion, such that we can know what it means to enjoy religious liberty? Religious freedom includes the right to hold whatever beliefs one finds true, but the scope of this freedom must go beyond mere thought to include actions as well. What actions count as religious?

Surely going to church or synagogue would count as genuinely religious, as would reading holy scripture in one's home or teaching the precepts of a religion to one's children. But what about citizens who open a hospital, or a school, in order to fulfill what they see as a scriptural mandate to care for the least of these? What about an Orthodox Jew who wants to rent a spare room but, for religious reasons, does not want to rent to an unmarried couple? What about a self-insuring Catholic charity that cannot in good conscience provide contraception to its employees through its health insurance? What about a family-owned evangelical business who holds the same convictions? Or a religious university that wishes to hire based on its religious scruples?

There are few religious liberty controversies when the liberties exercised take place in private. It is when citizens exercise their religious beliefs in public venues that potential conflicts arise. This brings us back to a previous question as well as two follow-up questions. What does it mean to be religious, what are the limits to religious freedom, and who decides what these limits are?

These questions reveal a tension within any meaningful attempt to protect and promote religious liberty. On the one hand, the Anglo-American religious liberty tradition has eschewed political interference with religion in part because governments are particularly ill-suited for deciding religious matters. On the other hand, some power must be authorized to determine the limits of religious behavior, else religion act as a cover for activities which would otherwise be universally condemned and prohibited. Any healthy regime for religious liberty must avoid heavy-handed governmental oversight and persecution on the one side, without enabling a religion-inspired, anarchic free-for-all on the other.

As with so much in the American political tradition, John Locke plays an important role here as he articulates this tension and provides a solution for it. In *A Letter Concerning Toleration*, Locke used scripture and logic to argue that the government has no role to play in regulating religious behavior and rites, given the proper definitions of what the state and the church are to be about.

Locke puts his rule thusly:

As the magistrate has no power to impose by his laws the use of any rites and ceremonies in any Church, so neither has he any power to forbid the use of such rites and ceremonies as are already received, approved, and practised by any Church; because, if he did so, he would destroy the Church itself: the end of whose institution is only to worship God with freedom after its own manner.

In other words, the magistrate has no competence to rule on religious matters, and thus can't prohibit religious rites merely because they conflict with the magistrate's religious or political priorities. But this rule raises an immediate question that Locke anticipates and answers. What if there arose an odd religion that sacrificed infants, or virgins, or performed sexual rituals as part of its worship? Would not the state have to permit such activities given that they are religious and thus beyond the purview of the magistrate's domain?

I answer: No. These things are not lawful in the ordinary course of life, nor in any private house; and therefore neither are they so in the worship of God, or in any religious meeting. But, indeed, if any people congregated upon account of religion should be desirous to sacrifice a calf, I deny that that ought to be prohibited by a law.

The reason, Locke continues, is that any man who owned a calf would be allowed to slaughter the calf at home for food or whatever non-religious reason that suited his fancy. Locke believed these acts mentioned in the hypothetical—infant sacrifice, ritual sex, etc.—are clearly wrong given the law of nature, and therefore no special religious knowledge is necessary to outlaw them. If a situation arose in which there was a genuine non-religious reason for a prohibition of animal sacrifice, then the religious as well as the non-religious home sacrifice of the cow could be justly prohibited.

Locke's problem is as follows: given that the state has no competency to judge religious matters, the magistrate should not restrict religious practices. Yet, if this is the case, how can the magistrate restrict abhorrent practices done in the name of religion? Locke's answer is that the magistrate can enforce a law that is enacted for non-religious reasons and that law, so long as it is not targeting acts because of their religious character, is legitimate and equally binding on acts regardless of the actor's motivation.

Religious liberty as practiced, then, is bounded by the larger cultural understanding of sound moral judgment as applied to questions of public policy. For Locke, these sound moral judgments were grounded in a robust version of natural law; a natural law that could provide government officials with moral judgments independent of any one particular religious tradition. So long as one's religious practices did not contravene the natural law, one was free to engage in those practices.

III

If this solution sounds at all familiar, it is because it is quite similar to the formulation developed by members of the United States Supreme Court. Consider the problem faced by the Court and Justice Antonin Scalia in a case involving two Native Americans fired for peyote use in *Oregon v. Smith*. At issue in the case was whether the government had any special obligation to ensure its laws did not hamper the free exercise of religion. The previous position of the court was that the Constitution protected religious activity such that laws had to pass a "compelling interest" test if they were found to adversely impact religious exercise, regardless of whether that religious exercise was targeted by the legislation. This test would only apply if the action under consideration, say wearing a yarmulke in military service or peyote, is "central" to a citizen's religion. If a government law or regulation adversely impacted religious activity without serving a compelling governmental interest, then that law or regulation was deemed unconstitutional and the burden was on the government to accommodate the religious exercise in question.

Scalia's decision struck down this prior understanding. Part of the problem of the case, he noted, is that American jurisprudence recognizes the deeply rooted principle previously mentioned: the government is not competent to judge religious matters. Yet, Scalia asked, how could the government avoid looking into religious matters if what counted was the centrality of a given action in a religion?

The alternative, if the government does not look into the centrality of a religious belief, is to allow for just about any action to be exempt from legal oversight if it is claimed as part of a religious practice. This leads to what Scalia called a "private right to ignore generally applicable laws" and, quoting an earlier case, permits any citizen to "become a law unto himself", contradicting "both constitutional tradition and common sense."

The Court's challenge was to make a ruling that kept the government from deciding what is and is not religious while also avoiding declaring a *carte blanche* right to avoid any law if the prohibited behavior could be claimed as religious. The Court's solution was that religious activity was not exempt from a generally applicable law that did not target religious activity as such. The previous interpretive position of the court required the government to show either that its laws did not adversely impact a citizen's religious exercise, or that the rationale for this adverse impact was overwhelmingly compelling. Such a position did not ensure the protection of citizens' free exercise, but it created a significant threshold that the government had to pass in order for the offending law to be upheld. The new paradigm changed this understanding such that the only salient issue was whether the legislation in question specifically targeted a religion or religious practice.

The situations faced by the Supreme Court in the peyote case and considered by John Locke in his *Letter* are not quite identical. Locke is much more concerned with the magistrate enforcing his religious views on the populace whereas the Court is dealing with citizens who might use their religious views to exempt themselves from the oversight, religious or otherwise, of the magistrate. Yet, different as the situations are, there is a common assumption that the government has no competence to judge religious matters and

therefore should refrain from doing so and instead protect the religious liberty of its citizens. The same objection is considered in both instances; namely that if the government is incompetent in religious matters, how can it restrict otherwise illegal acts motivated by religion?

Locke answers that the law of reason provides the epistemic means by which the sovereign can prohibit an immoral practice, while Scalia uses the language of “generally applicable” laws. Both mean that the law cannot target the prohibited practice because it is religious. Yet, and this is the crucial point, both approaches appeal to a wider public understanding of morality as grounding and defining the limits of religious behavior.

IV

We are now able to see the difficulties that contemporary religious conservatives may encounter if they proceed to relinquish the public policy debate in the public square and focus instead on a narrower defense of their religious liberties. For Locke’s solution to the prospect of religious anarchy, echoed and instantiated in American jurisprudence by Scalia and his colleagues, is to frame the limits of religious freedom within the framework of an alternative and overriding source of morality. The contents of this other source of morality is determined, in part, by those very debates in the public square.

Whereas Locke’s source was the natural law, Scalia’s source is the will of the people as expressed in legislative statute. Scalia’s formulation is more procedural than Locke’s, as the law’s purpose must be to secure a governmental interest without explicitly targeting a religious minority or religious practice. Locke assumes the magistrate can appeal to natural law to ascertain the morality of a given practice; Scalia assumes that the legislature, by definition, will pass laws that further some legitimate interest, and thus the Court’s role is not to question the general morality of a given statute but to determine whether it is “generally applicable” or prejudicially narrow.

The tactical move from lobbying for the traditional definition of marriage in the legislature, to carving out religious liberty exemptions to the soon-to-be prevailing expansive view of marriage

is quixotic. Legislatively enacted religious liberty exemptions are as secure as the current make-up of whatever legislature has enacted them. They can be invalidated by a court ruling, changed by a subsequent legislature after an election or two, or merely left unenforced and undefended by an executive branch that finds the exemptions distasteful or not worth the political capital. Moreover, in the case of the marriage debate, the very political judgment that same-sex marriage is inevitable, given the cultural and political headwinds behind it, should give us cause to doubt that future legislatures will find it in their interests to maintain unpopular and putatively bigoted exemptions.

Of course the American tradition of jurisprudence has often seen the courts as the defender of fundamental rights that ought not be subject to the vagaries and shifting winds of popular opinion. Yet the courts are also a doubtful refuge for religious conservatives and their religious liberty claims. For the courts are just as likely, if not more likely, to find that marriage equality is a fundamental right as they are that religious liberty is a fundamental right. Religious conservatives living without statutory exemptions who go to court to protect their religious liberty claims will find themselves on wrong side of Justice Scalia's ruling in *Smith*. Same-sex marriage advocates who go to court to claim that religious liberty exemptions violate their right to equal protection of the laws are more likely to find a sympathetic hearing.

What was true in Locke's formulation and repeated in Scalia's opinions remains true now. The success of religious liberty claims, and the effectual limits of religious liberty, depend on the moral understanding of the larger culture. While maintaining a public witness in both the legislative and cultural arenas does not by any means guarantee a widespread renewal of marriage, abandoning this witness in exchange for religious liberty guarantees diminishes the likelihood of enjoying either.

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RIGHTS OF CONSCIENCE IN HEALTHCARE

SHARON J. EVANS

A couple months ago I ate lunch with a friend who has been a faculty member and nurse for more than 30 years. Recently, her husband took a job as a faculty member at a state university and she applied for a part-time position as a nurse in their university clinic. After volunteering for a few weeks, she discovered that she would be required to dispense “morning-after” pills on a routine basis. She objected to this on the grounds of her Christian faith and was promptly told that the university would not hire her if she would not dispense the pills. This is just one example of the many conscientious objections that frequently arise in healthcare.

Unfortunately, due to technological advances and our rights-based culture, these objections may become more common over time. For situations like this, the conscience clause was created to protect health care workers from discrimination, punitive action, or job loss because they would not perform a particular act that was against their beliefs (Feder, 2005). In order to appreciate fully the conscience clause and its ramifications, this article defines and explains the development of the conscience clause and then examines how potential restriction or elimination of the conscience clause will negatively impact healthcare and our personal freedoms.

DEFINITION OF CONSCIENCE

My first exposure to the word “conscience” came from Jiminy Cricket in the Disney film *Pinocchio* when he sang of the need for Pinocchio to “always let your conscience be your guide” (Disney, 2012). The words of the song instruct Pinocchio to avoid “temptation” and “take the straight and narrow path” by following his conscience (Disney). To Christians, these are words with obvious spiritual overtones. Yet with respect to conscience and the conscience clause, some claim that it is necessary to separate religion from the idea of conscience. For example, Lynch (2008) argues that we weigh religious beliefs and associations too heavily and inappropriately narrow the issues surrounding the conscience clause when secular moral beliefs and professional ethics are just as important. She also suggests that philosophical definitions of conscience are too restrictive, true conscience may have different intensities, and that normative correctness should be our primary guide. She urges that we should focus on the legal facts related to the conscience clause, not on the philosophical underpinnings. However, the very nature of the word conscience directly contradicts her arguments about how the medical community defines it. Exploring each of these arguments separately will help clarify the issues.

SEPARATE RELIGION FROM CONSCIENCE

According to Merriam-Webster’s dictionary (2013), conscience is “the sense or consciousness of the moral goodness or blameworthiness of one’s own conduct, intentions, or character together with a feeling of obligation to do right or be good.” As a Christian, my religious beliefs define right and wrong and motivate me toward right action. Although laws and professional codes may serve as guides, I determine the rightness or wrongness of those laws and codes through the lenses of my Christian beliefs and virtues. According to Genesis 1-2, humans are made in the image of God, and as such, we have an awareness of right and wrong. St. Paul makes this point explicit in Romans 2:14 and 15:

For when Gentiles who do not have the Law [the Bible] do instinctively the things of the Law, these, not having the Law, are a law to themselves, in that they show the work of the Law written in their hearts, their conscience bearing witness and their thoughts alternately accusing or else defending them (NASB).

Therefore, the conscience is rooted in that image of the one true God that is within all individuals (written in their hearts). For Christians, Scripture and the Spirit of God guide the conscience, therefore many Christians understand conscience to be associated with the activity of the Holy Spirit. The Holy Spirit is the Counselor whom Christ sent to guide us into all truth, teach us to abide in Him, to understand His love, and to keep His commandments (John 14:16-20). The Holy Spirit discloses the spirit of God to us through our spirit (John 14:21).

At the same time, Scripture reminds us that we can be deceived. According to Proverbs 14:12 “There is a way which seems right to a man, but its end is the way of death” (NASB). The only way of knowing what is truly right is to have a standard on which to rely that goes beyond our human conscience. That standard is the revelation of God in the scriptures of the Old and New Testament, illumined by the work of the Holy Spirit in the mind of the believer. As a Christian, therefore, it is not possible to separate my conscience from my religion because my religious beliefs inform and guide my conscience. People who do not rely on the Bible or the Holy Spirit to guide them turn to themselves and/or to codes and laws for the standard of determining right or wrong. Let us examine those concepts.

HISTORY OF LAW

What is the origin of law? Societal morals originate law. The traditions and beliefs of right and wrong in human conduct, primarily based on religion, define morality. Opinions or preferences should not determine moral standards. This morality, when widely shared, creates a stable community as people use their collective con-

sciences to enact laws to govern the community. The law is then the minimum standard by which all people in a society are bound, but this normative morality is the basest of morality. Consequently, any change could potentially undermine the social moral consensus.

When people abandon absolute moral standards, previously unacceptable behavior is seen as acceptable. These changes lead to the creation of new “rights” that people use to challenge the beliefs and practices of those who still adhere to the previously accepted standard. When the majority turns these new rights into law, the government potentially infringes on the conscience of those who believe otherwise. Therefore, decisions of conscience require a stronger foundation than the law.

Morality is that higher standard that helps form our ethical standards of conduct. Contrary to Lynch’s argument, moral philosophy drives ethics because ethics is the systematic study of moral conduct and moral judgment (Husted & Husted, 2001). “It is a system of standards to motivate, determine, and justify actions directed to the pursuit of vital and fundamental goals” (Husted & Husted). Professional codes of ethics, like the nursing code of ethics, are more likely to be right because of their moral foundation (as opposed to legal foundation). The code of ethics is then the normative morality for the nursing profession that guides nurses who face ethical dilemmas. Nevertheless, people are fallible and therefore ethical codes are fallible. Even if an entire profession comes together and unanimously votes to enact a particular code, that fact alone does not make the code right.

Who is to say what is absolutely moral or absolutely right or wrong? Do absolutes exist? If one says, yes, there are absolutes in life, one has made an absolute statement. If one says no, there are no absolutes in life, one has still made an absolute statement. Hence, just by logic, there are absolutes of some sort. Similarly, there are moral absolutes. If there was not, we would have chaos because every individual would do whatever they thought was right. That is why laws exist. As we know, some laws are conditional or situational. Is it wrong to take the life of another human being? Morally, yes, murder is absolutely wrong. You cannot murder

another person without having it negatively affect you physically, psychologically, spiritually, and socially. Whether killing is legal or not depends on the situation. Legally, you may be protecting your household, or fighting in a war, in which case it might be conditionally acceptable to kill.

According to the law, what is the difference between killing and murder? Murder is the taking of another life with malicious intent. One of the principles of the law is that if you can show intent then the legal punishments are always more extreme. Murder is always absolutely wrong. It is wrong because it is based on the moral intent of the individual. Knowing that there are absolutes, the conundrum of where to turn to define those absolutes must be faced. The law should not be that standard because it is the lowest common denominator; not the best standard of what is ethical behavior in healthcare.

To accept governmental control of ethical behaviors in healthcare is at best to accept the basest of social mores. Therefore, professional organizations use ethical codes instead. But since ethical codes in healthcare cannot encompass what all individuals believe, the conscience clause protects individuals from having to act against their own values and beliefs. The ethics of healthcare cannot be systematized sufficiently to adjust to all situations because no two situations are ever the same (Mitchell, 2012). That is why we must retain the right for each individual, be they healthcare workers or patients, to make a decision based on their beliefs, within reason, or to opt out of procedures or behaviors that violate their beliefs.

HISTORY OF CONSCIENCE CLAUSE

The conscience clause in health care is a legal clause that allows individual healthcare workers to voice a conscientious objection to some action or procedure performed in healthcare. It is difficult to determine the precise time in history that conscientious objection began in the United States but according to Landskroener (1991) the principle of conscientious objection dates from colonial times when militias exempted conscientious objectors from military service. Most objected to the killing of any person, even in war,

because their religious beliefs led them to believe it was murder. This is pertinent to healthcare today because some of the actions that healthcare workers are asked to do—such as destroying fertilized embryos, prescribing, filling, or administering drugs that are abortifacient, and abortions—are equal to murder.

There are other pertinent examples of conscientious objection. In 1922, Oregon mandated that all parents send their children ages eight to sixteen to public school (O’Scaannlain, 2007). In the case of *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, the Society of Sisters, acting on behalf of the children’s parents, indicated that the law infringed on the parents’ religious right of conscience to raise a child according to their own beliefs. The Supreme Court of the United States agreed ruling that the act violated the “liberty of parents and guardians to direct the upbringing and education of children under their control” (O’Scaannlain, para. 3). Religious conscience, to freely educate a child based on the moral beliefs of the parents, is part of the parental rights of liberty.

In 1942, the West Virginia Board of Education required all public school children to salute the American flag and expelled noncompliant children (Oyez, n.d.). Children who were Jehovah’s Witnesses refused to salute the flag because to them it was idolatry. In *West Virginia Board of Education v. Barnette*, the Supreme Court ruled that this was a violation of first amendment rights. In writing for the majority, Justice Robert Jackson wrote “if there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” (Oyez, para. 3). Decisions of conscience in healthcare should not be determined by a politician. Religious conscience is part of the healthcare workers’ rights of liberty, to practice their employment in a manner consistent with their moral values.

These cases of conscientious objection demonstrate a consistent pattern established over hundreds of years that government has never forced someone to act against their own beliefs.

Since *Roe v Wade* (1973) this principle has been applied to healthcare

practice. *Roe v. Wade* reflected the philosophy that our bodies are ours to treat as we wish, as are those of our children (or unborn children), which has had deleterious consequences including increases in abortions, addictions, crimes of perversion, abuse, negligence, violence, suicide, and homicide. The very words we use have changed as the unborn baby became a fetus, and the fetus became a byproduct of conception. Scriptural teaching patently opposes this philosophy because we are created in the image of God.

The 1960s also began a paradigm shift from one of not-for-profit organizations to for-profit healthcare companies. The practice of medicine became the business of healthcare. The patient became the client. This had adverse social consequences. Instead of seeking and following a healthcare provider's advice, clients negotiate their care and shop around until they find a doctor that does what they want. Instead of being able to trust the doctor to do what is best, people wonder if the doctor orders the procedure for financial gain. It is an era where the worth of a single life has decreased. The integrity of the individual is no longer valued. Prior to *Roe v. Wade*, the majority of society valued the life of the baby over the personal freedoms of the mother, therefore objectionable procedures, like abortion, were illegal and a conscience clause was not necessary.

The development of the term conscience clause for healthcare occurred following *Roe v. Wade* in 1973 (Feder, 2005; Lynch, 2008). In response to *Roe v. Wade*, proponents of religious liberty convinced Congress to pass the Church Amendment, named for its sponsor Senator Frank Church (D-Idaho), which "states that public officials may not require individuals or entities who receive certain public funds to perform abortion or sterilization procedures or to make facilities or personnel available for the performance of such procedures if such performance 'would be contrary to [the individual or entity's] religious beliefs or moral convictions.'" (Feder). In 1976, Congress also passed, as it has every year since, the Hyde Amendment which prevents government run healthcare entities and entities receiving government funding from funding abortion services (National Right to Life Committee, 2008).

Besides the national laws, between 1973 and 1979 almost every state passed some form of conscience clause protecting healthcare workers or entities from repercussions due to refusal to act against their own convictions (Feder). Then in the 1990s, abortion advocates pressured medical schools to require students and residents to learn to perform abortion procedures (Chervenak & McCollough, 1990; McCullough, Steinauer, DePineres, Robert, Westfall, & Darney, 1997; Westhoff, 1994) to guarantee the right to abortion would always be available. However, pro-life medical students requested protection of their rights to refuse to learn to do the abortion procedure if it was against their conscience.

This produced more national attention on the conscience clause, which resulted in the Bush administration successfully supporting the Hyde/Weldon Conscience Amendment in 2004 (National Right to Life Committee, 2004). The language of this amendment protected any health care worker, organization, insurance company, health care facility or associated company that received federal funding from being forced to provide medical care or services that contradicted their own personal or corporate beliefs (National Right to Life Committee, 2004). These revisions clarified that all individual healthcare workers have a personal, federal, right to protection from being forced to perform healthcare acts of any type that go against their conscience. This is necessary since medical advances in pharmacology now allow us to abort a baby just by the mother swallowing a pill.

Nurses or pharmacist who object to dispensing or administering these medications were not necessarily protected by the Church Amendment because courts could potentially construe that administration of a pill is not a surgical procedure. In addition, the Church Amendment does not address procedures like genetic testing to find out if a baby is likely to have a specific disease. Conscientious objections to this testing occur because the results may lead to a decision to have the baby aborted.

IMPLICATIONS

We are now entering a new era in healthcare. For the first time

in the history of the United States there is a national healthcare system that will be fully in effect beginning in 2014 (H.R. 3590, 2010). The danger is that with increased governmental control, individual rights may be diminished. The recent governmental activities concerning the conscience clause are evidence of such. In February of 2011, the Obama administration revised the Hyde/Weldon Conscience Amendment back to provide conscience protections only for physicians and nurses who do not want to perform abortion or sterilization procedures. Matters of conscience should not and cannot be limited to just a couple specific procedures. According to the Obama Administration, this adequately protects the healthcare workers right of conscience. However in 2004, Catherina Cenzone-DeCarlo, a nurse at Mt. Sinai Hospital in New York, refused to participate in an abortion procedure on religious grounds but was coerced by the hospital into assisting with a second-trimester abortion. She brought suit because her right of conscience was violated, but the court dismissed the case because the Church Amendment does not allow individuals to sue to protect their rights (James, 2011). Clearly, the Obama administration was incorrect. Current laws do not protect rights of conscience, even in the case of the abortion procedure.

The healthcare profession is in an era of increasing ethical dilemmas. To say that matters of conscience relate only to abortion is ludicrous. The Obama Administration's revisions to the conscience clause is a radical change to the longstanding tradition of not forcing someone to act against their own beliefs. To remove these rights from healthcare workers at this crucial hour, is problematic. Opponents indicate that if healthcare workers do not provide the service that the patient requests, then the patient may be forfeiting his/her rights. Yet, there are not easily identifiable instances of a patient forfeiting his rights. In this country, there are plenty of healthcare services available in a timely fashion so that a patient may be inconvenienced, but never forfeit, his/her rights at the cost of the healthcare worker's conscience.

Many healthcare workers who enter the profession do so implicitly because of their moral beliefs and their desire to help

humankind. The idea of telling those who have conscientious objections to certain acts or procedures that they should not go into that profession is yet another way of taking away individual rights. It is discrimination. This may seem far-fetched, yet look at the opening paragraph of this article; it is already happening. The moral ramifications of removing people of faith, particularly Christian faith, from the healthcare profession are unimaginable, or to be more precise, unconscionable. The result would be a business just as willing to kill as to assist someone to live.

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BAPTISTS, CONSCIENCE, AND THE MORAL MARKETPLACE

C. BEN MITCHELL

Catholic Archbishop Timothy Cardinal Dolan has charged that the Obama administration's 2012 contraception mandate "is egregiously unfair, and as such, it cuts against the grain of what it means to be American."¹ He certainly seems to have history on his side. After all, it was Roger Williams (c. 1603-1683) the founder of Providence foundation—which later became Rhode Island—who called the violation of someone's conscience "the rape of the soul." Williams was banished from the Massachusetts Bay Colony because he left the established church of the colony, believing instead, that the sanctity of the human conscience demanded a free church in a free state. In 1644, he published his desideratum, *The Bloudy Tenent of Persecution, for the Cause of Conscience, Discussed in A Conference Between Truth and Peace, Who, In All Tender Affection, Present to the High Court of Parliament, (as the Result of Their Discourse) These (Among Other Passages) of Highest Consideration*. In this manifesto he accused British Parliament—through its mandate of religious uniformity—of committing "a greater rape, then [sic] if they had forced or ravished the bodies of all the women in the World."² Although he may be accused of overblown rhetoric, he was making a point he did not want to be misunderstood, viz., forcing a person through the power of the state to violate his or her own conscience was a monstrous harm.

Williams was not alone in his advocacy for liberty of conscience. Baptists in England and America were also vocal apologists for religious liberty and freedom of conscience for every person. According to one historian, “Baptists did not turn toward the idea of ‘a free conscience.’ They began in the seventeenth century screaming and agitating for liberty of conscience.”³ They valued religious freedom because they had suffered the pain of persecution in the jail cells, stockades, and whipping posts of Europe.

Thomas Helwys (c 1575-1615), for instance, co-founded the first Baptist church on English soil in the early 17th century in Spitalfields, London. In 1612, he published *A Short Declaration of the Mystery of Iniquity* arguing for liberty of conscience and forwarding a copy to King James I. In his inscription he wrote: “The king is a mortal man and not God, and therefore hath no power over the immortal souls of his subjects to make laws and ordinances for them and to set spiritual Lords over them.” Both Helwys and his wife, Joan, suffered for the cause of conscience and Thomas died in Newgate Prison at the age of 40.

Like Roger Williams, Obadiah Holmes (1607-1682) was also banished from Massachusetts because of his Baptist beliefs, settling in Newport, Rhode Island. In 1651, Holmes and two friends, John Clarke and John Crandall, traveled back to Massachusetts to visit an aged and blind friend. After receiving Christian communion in the friend’s home, they were arrested for unlawful worship. They were convicted and sentenced to either a fine or whipping.

Clarke and Crandall paid their fines or let friends pay it for them. Holmes, however, refused to pay, nor would he allow anyone to pay it on his behalf. He thus remained in prison. The law required that alternative to payment be exacted, namely; the guilty party was to be “well whipped.” On 6 September 1651, Obadiah Holmes, a Baptist glassworker, was beaten with thirty stripes. As his clothes were being stripped from his back, Holmes declared, “I am now come to be baptized in afflictions by your hands, that so I may have further fellowship with my Lord. [I] am not ashamed of His sufferings, for by His stripes am I healed.” One commentator says he was whipped “unmercifully.” Yet following his beating, Holmes turned to the

magistrates and said, “You have struck me with roses.” Governor Jenks observed that “for many days, if not some weeks, he could take no rest but upon his knees and elbows, not being able to suffer any part of his body to touch the bed whereupon he lay.”

Speaking of his punishment later, Holmes testified, “As the strokes fell upon me I had such a spiritual manifestation of God’s presence as the like thereof I never had nor felt, nor can fleshly tongue express; and the outward pain was so removed from me that indeed I am not able to declare it, yea, and in a manner felt it not, although it was grievous, as the spectators said, the man striking with all his strength (yea, spitting in his hand three times, as many affirmed) with a three-corded whip, giving me therewith thirty strokes.”

Because early Baptists were preachers before they were professors, much of what they had to say about liberty of conscience was couched in sermons. But these were sermons very unlike what most of us have ever heard in our lifetimes. For instance, John Leland (1754-1841), was a Baptist minister in both Massachusetts and Virginia. He preached in Orange County, Virginia from the nation’s founding in 1776 to 1791. During that time he became friends with James Madison, Thomas Jefferson, and other American founders. Part of a campaign promise Madison made to Leland and several other Baptists led to the adoption of the Bill of Rights as amendments to the Constitution, especially the free exercise clause of the First Amendment: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” In a sermon preached in 1791, Leland declared,

The word conscience signifies common science, a court of judicature which the Almighty has erected in every human breast; a *censor morum* [moral judge] over all his actions. Conscience will ever judge right when it is rightly informed, and speak the truth when it understands it. But

to advert to the question—"Does a man upon entering into social compact surrender his conscience to that society to be controlled by the laws thereof, or can he in justice assist in making laws to bind his children's consciences before they are born?" I judge not, for the following reasons:

1. Every man must give an account of himself to God, and therefore every man ought to be at liberty to serve God in that way that he can best reconcile it to his conscience. If government can answer for individuals at the day of judgment, let men be controlled by it in religious matters; otherwise let men be free.

2. It would be sinful for a man to surrender that to man which is to be kept sacred for God. A man's mind should be always open to conviction, and an honest man will receive that doctrine which appears the best demonstrated; and what is more common than for the best of men to change their minds? Such are the prejudices of the mind, and such the force of tradition, that a man who never alters his mind is either very weak or very stubborn. How painful then must it be to an honest heart to be bound to observe the principles of his former belief after he is convinced of their imbecility? and this ever has and ever will be the case while the rights of conscience are considered alienable.

3. But supposing it was right for a man to bind his own conscience, yet surely it is very iniquitous to bind the consciences of his children; to make fetters for them before they are born is very cruel. And yet such has been the conduct of men in almost all ages that their children have been bound to believe and worship as their fathers did, or suffer shame, loss, and sometimes life; and at best to be called dissenters, because they dissent from that which they never joined voluntarily. Such conduct in parents is worse than that of the father of Hannibal, who imposed an oath upon

his son while a child never to be at peace with the Romans.

4. Finally, religion is a matter between God and individuals, religious opinions of men not being the objects of civil government nor any ways under its control.

Another, slightly more recent example, comes from the famous Texas Baptist, George W. Truett (1867-1944), whose sermon preached in the nation's Capitol is included *in toto* this issue. Truett was pastor of First Baptist Church, Dallas from 1897, until his death in 1944. In the shadow of World War I, on Sunday, May 16, 1920, during the annual meeting of the Southern Baptist Convention held in Washington, D.C., Truett spoke from the steps of the Capitol to 10,000-15,000 people. J. B. Gambrell, then president of the Southern Baptist Convention, said of Truett's sermon, "Since Paul spoke before Nero, no Baptist speaker ever pleaded the cause of truth in surroundings so dignified, impressive and inspiring."

What did Truett say with such prophetic boldness? He called to his hearers: "in the shadow of our country's Capitol, compassed about as we are with so great a cloud of witnesses, let us today renew our pledge to God, and to one another, that we will give our best to church and to state, to God and to humanity, by his grace and power, until we fall on the last sleep."

For Truett, the "best" that Baptists could give to their country was to work tirelessly to preserve religious liberty and the separation of church and state.

Indeed, the supreme contribution of the new world to the old is the contribution of religious liberty. This is the chiefest contribution that America has thus far made to civilization. And historic justice compels me to say that it was pre-eminently a Baptist contribution. The impartial historian, whether in the past, present or future, will ever agree with our American historian, Mr. Bancroft, when he says: "Freedom of conscience, unlimited freedom of mind, was from the first the trophy of the Baptists." And such

historian will concur with the noble John Locke who said: “The Baptists were the first propounders of absolute liberty, just and true liberty, equal and impartial liberty.” Ringing testimonies like these might be multiplied indefinitely. . . .

These texts remind us that, on the one hand, what professors Daniel Dreisbach and Mark David Hall have called “the sacred rights of conscience,” were secured at a tremendous price. On the other hand, they remind us that, as Truett said, although it was largely “a Baptist achievement,” it was for the common good. So, although the protection of liberty of conscience may have been an achievement of a particular religious group during a particular moment in history, its benefits accrued then, and now, to everyone. Thus, in his own folksy way Mark Twain declared, “It is by the goodness of God in our country we have those three unspeakably precious things: freedom of speech, freedom of conscience, and the prudence never to practice either of them.”

Although conflicts of conscience are episodic and relatively limited, they are becoming increasingly frequent as our society becomes more pluralistic. For instance, several years ago in Minneapolis, Minnesota, approximately two-thirds of taxi drivers were Muslims from Somalia. Some clerics maintain that the Koran’s prohibition against consuming alcohol extends to transporting alcohol. Thus, some Muslim cab drivers at the Minneapolis airport refused to transport passengers visibly carrying alcohol from the duty-free airport stores. This was presumably based on religious conscience.

In April 2007, the Minnesota Airports Commissioners unanimously decided that a taxi driver must transport passengers carrying alcohol or face a thirty day suspension. A subsequent refusal would result in a two-year suspension. The Minnesota Court of Appeals heard the case and in September 2008 ratified a lower court’s ruling on the grounds that the drivers did not suffer irreparable harm. Is this really the best we can do? Must every appeal to conscience result in endless trials? As one commentator says, this seems like an “unenlightened, unimaginative resolution of the dispute.”⁴

INEVITABLE CONFLICTS OF CONSCIENCE IN HEALTH CARE

Turning to health care, recent controversies over the refusal of physicians and pharmacists to prescribe emergency and other contraceptives have ignited an on-going debate. University of Chicago physician-ethicist Farr Curlin and colleagues point out that historically doctors and nurses have not been required to participate in procedures that violated their consciences, e.g., to participate in abortions or assist in suicides.⁵ In fact, legislation in states where those practices are legal have, more often than not, included conscience clauses to protect health care professionals. Ironically, in some cases those protocols require physicians to refer patients to another doctor who will perform a procedure they find unconscionable (perhaps better characterized as a conscience clause without a conscience!).

More recently, controversies over emergency contraceptives have led some to criticize the existence of these conscience clauses. For instance, Alta Charo, the out-spoken professor of law and bioethics at the University of Wisconsin at Madison, suggests “that the conflict about conscience clauses ‘represents the latest struggle with regard to religion in America,’ and she criticizes those medical professionals who would claim an ‘unfettered right to personal autonomy while holding monopolistic control over a public good.’”⁶ Even more stridently, Oxford ethicist Julian Savulescu has ranted, “a doctor’s conscience has little place in the delivery of modern medical care . . . if people are not prepared to offer legally permitted, efficient, and beneficial care to a patient because it conflicts with their values, they should not be doctors.”⁷ Nevermind that most of these ethicists would affirm physicians who invoke the conscience exception to participating in capital punishment or war.

What Curlin, et al., demonstrate empirically is that physicians themselves are divided about the role of conscience in clinical practice. In their study of more than one thousand physicians (n=1144), they found that most physicians believe it is ethically permissible for doctors to explain their moral objections to patients. Sixty-three percent thought that explaining their moral objections to certain procedures was not a violation of the physician-patient relationship.

Eighty-six percent believed that doctors are obligated to present all options to patients, even those the doctor thinks are morally dubious and 71% thought they should refer a patient to another clinician who does not object to the procedure. Furthermore, 52% reported objections to abortion for failed contraception and 42% objected to prescribing contraception for adolescents without parental consent.

Curlin and colleagues suggest that conflict about the role of conscience in health care might be understood “in the context of perennial debates about medical paternalism and patient autonomy.”⁸ They rightly worry that, if their results are accurate, in many cases a patient’s right to informed consent is jeopardized by physicians’ refusal to provide information about medical procedures they themselves find problematic but are nonetheless consistent with standards of care. “If physicians’ ideas translate into their practices,” they say, “then 14% of patients—more than 40 million Americans—may be cared for by physicians who do not believe they are obligated to disclose information about medically available treatments they consider objectionable. In addition, 29% of patients—or nearly 100 million Americans—may be cared for by physicians who do not believe they have an obligation to refer the patient to another provider for such treatments.”⁹ *So it is becoming increasingly important that we understand what we are claiming when we claim protection of freedom of conscience.*

What do we say, for instance, when under invocation of conscience:

- a lab tech refuses to dispose of frozen embryos at a fertility clinic?
- a cardiologist refuses to deprogram a dying patient’s ICD or pacemaker?
- a respiratory tech refuses to turn off a ventilator?
- a physician refuses to prescribe Viagra to a widower?
- an administrator refuses to approve funds for research she finds morally objectionable?
- under a regime of legalized assisted-suicide, a physician in Oregon, Washington, or Montana refuses to prescribe a lethal overdose requested by a patient?

H. Tristram Engelhardt, Jr., has famously argued that we live in a society of moral strangers who lack a shared, content-full, morality.¹⁰ Whether or not the situation is quite as dire as he suggests, Engelhardt is obviously correct in pointing out that we live in a pluralistic culture. When it comes to life, health, illness, disease, aging, disability, death—and many other existential aspects of our experience as human beings—we have diverse beliefs, values, and concerns. This complex of beliefs, values, and concerns both shape and reflect our individual consciences.

Generally speaking, conscience may either function judicially or legislatively. Our judicial conscience is that faculty of our moral psychology that may evoke guilt when we do something we believe to be wrong, as when we speak of “pangs of conscience.” But conscience may also be legislative when it informs our decision making prior to acting. So we sometimes say, “let conscience be your guide” when making decisions. My guess is that our legislative consciences would lead some of us to different answers to the questions above than others of us.

CONSCIENCE, THE COMMON GOOD, AND THE MORAL MARKETPLACE

However diverse our consciences may be, we also need a distinction between idiosyncratic—or what I might call solipsistic conscience—and other conceptions of conscience. University of St. Thomas School of Law professor Robert Vischer quite convincingly argues that with respect to the protections of the state, conscience is not a lone, renegade “black box,” as though when someone says, “my conscience tells me thus or so” we cannot inquire further. Conscience claims should not serve as a political trump card. When someone invokes “conscience” as a reason for either acting or refusing to act, we must distinguish between one’s individual, atomistic, idiosyncratic reasons and a genuine appeal to conscience, says Vischer. In other words, there is a difference between individual preferences and conscience. “Conscience,” he argues, “should not be used as legal shorthand for an individual’s liberty from government coercion on matters pertaining to her core moral convictions.

The cause of conscience encompasses individual liberty from state coercion, to be sure, but it should not be defined solely as such.”¹¹

Conscience, Vischer maintains, corresponds to our social nature, and is not merely an expression of our personal identity. If taken seriously, it requires the maintenance of venues where the dictates of conscience can be discerned, articulated, lived out, and can flourish. Says Vischer,

Its [conscience’s] claims are formed, articulated, and lived out along paths that transcend the individual. The vibrancy of conscience thus depends on more than the law’s protection of individual autonomy; it also depends on the vitality of associations . . . against which the right of conscience is currently being invoked. Put simply, if our society is to facilitate an authentic and robust liberty of conscience, it cannot reflexively favor individual autonomy against group authority; it must also work to cultivate spaces in which individuals come together to live out the shared dictates of conscience.¹²

He goes on,

Conscience, by its very nature, directs our gaze outward, to sources of formation, to communities of discernment, and to venues for expression. When the state closes down avenues by which persons live out their core beliefs—and admittedly, some avenues must be closed if peaceful coexistence is to be possible—there is a cost to the continued vitality of conscience.¹³

One important example he provides is the Civil Rights Act of 1964 which prohibits discrimination based on race by employers and places of public accommodation, including restaurants, schools, and hotels. Some readers are old enough to remember the social turmoil, especially in the South, over the legislation. Essentially, the government imposed “a collective vision of racial equality on public

and private actors alike.”¹⁴ Despite any individual’s or any group’s appeal to conscience, the state mandated compliance with the law.

Vischer makes an interesting observation. Though he agrees it was necessary in this case, he wonders whether the Civil Rights Act “short-circuited” the bottom-up conversation over the common good by imposing a top-down solution, enshrining one set of claims as binding law, and effectively shutting down the moral marketplace. Again, ultimately, he says, enforcement of the Civil Rights Act was the right thing to do. But lawmakers must carefully calculate the costs of making such decisions.

The point is that figuring out how best to protect conscience without jeopardizing the common good, the law must pay attention to the substance of conscience’s claims and to their impact on the state’s legitimate pursuit of the common good The basis and content of conscience’s claims matter, not because they provide bright-line boundaries of legitimacy, but because protecting conscience in a pluralistic democracy is a messy business, requiring ongoing conversations that are nuanced, widely engaged, and substantive. These may be obvious points with which few will disagree (I hope), but our legislatures and courts must work to identify and articulate more carefully the relationship between a proposed state incursion on conscience and the common good.¹⁵

To complicate matters, as Dan Sulmasy, Professor of Medicine and Ethics in the Department of Medicine and the Divinity School at the University of Chicago, has opined, health care institutions are also moral agents.¹⁶ That is, health care institutions, like hospitals, nursing homes, pharmacies, and the like, are more than mere aggregates of persons. They are, Sulmasy says, organizations with identifiable purposes and identity. “Almost all have explicit mission statements. They act intentionally. They make decisions for which they may receive praise or blame. They have recognized institutional structures by which the decisions of some (e.g., the Board of

Trustees, the CEO, the Dean of the School of Nursing, or the Chair of Medicine) count as the decisions of the institution.”¹⁷

And if health care institutions are moral agents, they too must be understood to have consciences. So, institutional conscience—with its fundamental commitment to act consistently with its conception of morality—must also be respected by the law. Messy business made yet messier.

This is not how things worked in Chicago under former Illinois Governor Rod Blagojevich. In 2005, the governor ordered all pharmacies serving the public to dispense “all FDA-approved drugs or devices that prevent pregnancy . . . without delay, consistent with the normal timeframe for filling any other prescription.”¹⁸ In Blagojevich’s words, “Filling prescriptions for birth control is about protecting a woman’s right to have access to the medicine her doctor says she needs. Nothing more. Nothing less. We will vigorously protect that right.”¹⁹ Nevermind the rights of conscience of pharmacists or the pharmacy as a moral agent. “Efforts by pharmacy chains to carve out their own policies on the issue were immediately squelched,” observes Robert Vischer.²⁰ As syndicated columnist Ellen Goodman expressed it, “the pharmacist’s license [does] not include the right to dispense morality.”²¹

Draconian policies often result in other harms. For instance, I recently learned of a practice apparently common in my region. It is the pharmacy analogue to the “slow code” in a hospital. In a slow code, even though hospital policy may require that when a code is announced on the loudspeaker, signaling that a patient is having a heart event, all personnel in the area are to respond to the patient in trouble, everyone knows that if doctors, nurses, and others do not think the patient should be resuscitated, they move very slowly toward the patient’s bedside; hence, a slow code. Similarly, when some pharmacists in my region receive calls asking if they have emergency contraceptives they find morally problematic, they ask the caller to hold a moment, they put down the phone, picking it up after the appropriate lapse of time and say: “No, I’m sorry, we’re out of that.” Of course, they had the drugs in stock, but they gamed the system, deceived the client—and, I would argue, potentially

harm their own souls by instituting a practice of lying—albeit, in order not to commit what they think is a greater evil. Although I may personally applaud their ingenuity, I think it’s a bad practice to formalize. Bad policies that leave no room for conscientious objections, encourage professionals to become mendacious.

Vischer would say, in this case, that “pitting one form of individual liberty against another form of individual liberty ignores the institutional liberty that is essential for the long-term flourishing of conscience.” Conscience is invoked to justify legislation that would enable individual pharmacists to refuse to fill prescriptions that violate their moral judgments. Similarly, conscience is invoked to justify legislation that would enable individuals to compel pharmacists to fill any legally obtained prescription. This is an irresolvable impasse.

Instead, for the sake of the common good we should appeal to the moral marketplace for remedy. In other words, in a free-market democracy, we should allow pharmacies (and hospitals) the opportunity to build moral claims into their corporate identities and let the market sort it out. Pharmacists will then be able to integrate their personal beliefs with their professional calling. In our setting, except in very rare situations, patients will be able to access the drugs or procedures they want. Pharmacies would be required only to make their policies known to prospective patients (in the same way some states require restaurants to post nutritional values).

Where genuine access problems exist, the state might be justified in instantiating other remedies. But these will be the exception rather than the rule. “If we value a society with morally distinct institutions,” says Vischer, “we must discern between market-driven inconvenience and market-driven lack of access. The latter warrants state intervention; the former does not.”

In a lovely expression, Vischer states, “Rather than making all pharmacies morally fungible via state edict, the market allows the flourishing of plural moral norms in the provision of pharmaceuticals.” Furthermore, and as importantly, the sanctity of conscience would be protected. No one would be forced to fill prescriptions that they find morally repugnant or feel they are morally complicit in evil.

Admittedly, following this scheme would require some major overhauling of our health care system, not least in the arena of third-party payment. But the last time I checked, our system needed some overhauling.

(Endnotes)

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BAPTISTS AND RELIGIOUS LIBERTY

GEORGE W. TRUETT

An address delivered from the East Steps of the National Capitol at Washington, D.C., on Sunday, May 16, 1920, in connection with the Annual Session of the Southern Baptist Convention, and at the request of the Baptist Churches of Washington.

FOREWORD

This address was arranged for weeks before the Southern Baptist Convention met in Washington. Washington City Baptists are directly responsible for it. The speaker, Dr. George W. Truett, pastor First Baptist Church, Dallas, Texas, was chosen by a representative group of Baptists to deliver the address. It was delivered to a vast audience of from ten to fifteen thousand people from the east steps of the National Capitol, three o'clock Sunday afternoon, May 16, 1920. It was not a Convention session, though the Convention was largely represented in the audience by its members.

Since Paul spoke before Nero, no Baptist speaker ever pleaded the cause of truth in surroundings so dignified, impressive and inspiring. The shadow of the Capitol of the greatest and freest nation on earth, largely made so by the infiltration of Baptist ideas through the masses, fell on the vast assembly, composed of Cabinet members, Senators and members of the Lower House, Foreign Ambassadors, intellectuals in all callings, with peoples of every religious order and of all classes.

The subject was fit for the place, the occasion and the assembly. The speaker had prepared his message. In a voice clear and far-reaching he carried his audience through the very heart of his theme. History was invoked, but far more, history was explained by the inner guiding principles of a people who stand today, as they have always stood, for full and equal religious liberty for all people.

There was no trimming, no froth, no halting, and not one arrogant or offensive tone or word. It was a bold, fair, thorough-going setting out of the history and life principles of the people called Baptists. And then, logically and becomingly, the speaker brought his Baptist brethren to look forward and take up the burdens of liberty and fulfill its high moral obligations, declaring that defaulters in the moral realm court death.

His address advances the battle line for the denomination. It is a noble piece of work, worthy the wide circulation it is sure to receive. Intelligent Baptists should pass it on.

A serious word was said in that august presence concerning national obligations as they arise out of a civilization animated and guided by Christian sentiments and principles. As a nation we cannot walk the ways of selfishness without walking down hill. I commend this address as the most significant and momentous of our day.

J.B. Gambrell

President Southern Baptist Convention, 1917-1920

SOUTHERN BAPTISTS count it a high privilege to hold their Annual Convention this year in the National Capitol, and they count it one of life's highest privileges to be the citizens of our one great, united country.

*Grand in her rivers and her rills.
Grand in her woods and templed hills;
Grand in the wealth that glory yields,
Illustrious dead, historic fields;*

*Grand in her past, her present grand,
In sunlit skies, in fruitful land;
Grand in her strength on land and sea.
Grand in religious liberty.*

It behooves us often to look backward as well as forward. We should be stronger and braver if we thought oftener of the epic days and deeds of our beloved and immortal dead. The occasional backward look would give us poise and patience and courage and fearlessness and faith. The ancient Hebrew teachers and leaders had a genius for looking backward to the days and deeds of their mighty dead. They never wearied of chanting the praises of Abraham and Isaac and Jacob, of Moses and Joshua and Samuel; and thus did they bring to bear upon the living the inspiring memories of the noble actors and deeds of bygone days. Often such a cry as this rang in their ears: "Look unto the rock whence ye are hewn, and to the hole of the pit whence ye are digged. Look unto Abraham your father, and unto Sarah that bare you: for I called him alone, and blessed him, and increased him."

THE DOCTRINE OF RELIGIOUS LIBERTY

We shall do well, both as citizens and as Christians, if we will hark back to the chief actors and lessons in the early and epoch-making struggles of this great Western democracy, for the full establishment of civil and religious liberty—back to the days of Washington and Jefferson and Madison, and back to the days of our Baptist fathers, who have paid such a great price, through the long generations, that liberty, both religious and civil, might have free course and be glorified everywhere.

Years ago, at a notable dinner in London, that world-famed statesman, John Bright, asked an American statesman, himself a Baptist, the noble Dr. J. L. M. Curry, "What distinct contribution has your America made to the science of government?" To that question Dr. Curry replied: "The doctrine of religious liberty." After a moment's reflection, Mr. Bright made the worthy reply: "It was a tremendous contribution."

SUPREME CONTRIBUTION OF NEW WORLD

Indeed, the supreme contribution of the new world to the old is the contribution of religious liberty. This is the chiefest contribution that America has thus far made to civilization. And historic justice compels me to say that it was pre-eminently a Baptist contribution. The impartial historian, whether in the past, present or future, will ever agree with our American historian, Mr. Bancroft, when he says: "Freedom of conscience, unlimited freedom of mind, was from the first the trophy of the Baptists." And such historian will concur with the noble John Locke who said: "The Baptists were the first propounders of absolute liberty, just and true liberty, equal and impartial liberty." Ringing testimonies like these might be multiplied indefinitely.

NOT TOLERATION, BUT RIGHT

Baptists have one consistent record concerning liberty throughout all their long and eventful history. They have never been a party to oppression of conscience. They have forever been the unwavering champions of liberty, both religious and civil. Their contention now, is, and has been, and, please God, must ever be, that it is the natural and fundamental and indefeasible right of every human being to worship God or not, according to the dictates of his conscience, and, as long as he does not infringe upon the rights of others, he is to be held accountable alone to God for all religious beliefs and practices. Our contention is not for mere toleration, but for absolute liberty. There is a wide difference between toleration and liberty. Toleration implies that somebody falsely claims the right to tolerate. Toleration is a concession, while liberty is a right. Toleration is a matter of expediency, while liberty is a matter of principle. Toleration is a gift from God. It is the consistent and insistent contention of our Baptist people, always and everywhere, that religion must be forever voluntary and uncoerced, and that it is not the prerogative of any power, whether civil or ecclesiastical, to compel men to conform to any religious creed or form of worship, or to pay taxes for the support of a religious organization to which they do not believe. God wants free worshipers and no other kind.

A FUNDAMENTAL PRINCIPLE

What is the explanation of this consistent and notably praiseworthy record of our plain Baptist people in the realm of religious liberty? The answer is at hand. It is not because Baptists are inherently better than their neighbors—we would make no such arrogant claim. Happy are our Baptist people to live side by side with their neighbors of other Christian communions, and to have glorious Christian fellowship with such neighbors, and to honor such servants of God for their inspiring lives and their noble deeds. From our deepest hearts we pray: “Grace be with all them that love our Lord Jesus Christ in sincerity.” The spiritual union of all true believers in Christ is now and ever will be a blessed reality, and such union is deeper and higher and more enduring than any and all forms and rituals and organizations. Whoever believes in Christ as his personal Saviour is our brother in the common salvation, whether he be a member of one communion or of another, or of no communion at all.

How is it, then, that Baptists, more than any other people in the world, have forever been the protagonists of religious liberty, and its compatriot, civil liberty? They did not stumble upon this principle. Their uniform, unyielding and sacrificial advocacy of such principle was not and is not an accident. It is, in a word, because of our essential and fundamental principles. Ideas rule the world. A denomination is moulded by its ruling principles, just as a nation is thus moulded and just as individual life is thus moulded. Our fundamental essential principles have made our Baptist people, of all ages and countries, to be the unyielding protagonists of religious liberty, not only for themselves, but for everybody else as well.

THE FUNDAMENTAL BAPTIST PRINCIPLES

Such fact at once provokes the inquiry: What are these fundamental Baptist principles which compel Baptists in Europe, in America, in some far-off seagirt island, to be forever contending for unrestricted religious liberty? First of all, and explaining all the rest, is the doctrine of the absolute Lordship of Jesus Christ. That doctrine is for Baptists the dominant fact in all their Christian experience, the nerve center of all their Christian life, the bedrock of all their

church policy, the sheet anchor of all their rejoicings. They say with Paul: "For to this end Christ both died, and rose, and revived, that he might be Lord both of the dead and living."

THE ABSOLUTE LORDSHIP OF CHRIST

From that germinal conception of the absolute Lordship of Christ, all our Baptist principles emerge. Just as yonder oak came from the acorn, so our many-branched Baptist life came from the cardinal principle of the absolute Lordship of Christ. The Christianity of our Baptist people, from Alpha to Omega, lives and moves and has its whole being in the realm of the doctrine of the Lordship of Christ. "One is your Master, even Christ; and all ye are brethren." Christ is the one head of the church. All authority has been committed unto him, in heaven and on earth, and he must be given the absolute pre-eminence in all things. One clear note is ever to be sounded concerning him, even this, "Whatsoever he saith unto you, do it."

THE BIBLE OUR RULE OF FAITH AND PRACTICE

How shall we find our Christ's will for us? He has revealed it in his Holy Word. The Bible, and the Bible alone, is the rule of faith and practice for Baptists. To them the one standard by which all creeds and conduct and character must be tried is the Word of God. They ask only one question concerning all religious faith and practice, and that question is, "What saith the Word of God?" Not traditions, nor customs, nor councils, nor confessions, nor ecclesiastical formularies, however venerable and pretentious, guide Baptists, but simply and solely the will of Christ as they find it revealed in the New Testament. The immortal B.H. Carroll has thus stated it for us: "The New Testament is the law of Christianity. The New Testament always will be all the law of Christianity."

Baptists hold that this law of Christianity, the Word of God, is the unchangeable and only law of Christ's reign, and that whatever is not found in the law cannot be bound on the consciences of men, and that this law is a sacred deposit, an inviolable trust, which Christ's friends are commissioned to guard and perpetuate wherever it may lead and whatever may be the cost of such trusteeship.

EXACT OPPOSITE OF CATHOLICISM

The Baptist message and the Roman Catholic message are the very antipodes of each other. The Roman Catholic message is sacerdotal, sacramentarian, and ecclesiastical. In its scheme of salvation it magnifies the church, the priest, and the sacraments. The Baptist message is non-sacerdotal, non-sacramentarian, and non-ecclesiastical. Its teaching is that the one High Priest for sinful humanity has entered into the holy place for all, that the veil is forever rent in twain, that the mercy seat is uncovered and opened to all, and that the humblest soul in all the world, if only he be penitent, may enter with all boldness and cast himself upon God. The Catholic doctrine of baptismal regeneration and transubstantiation is to the Baptist mind fundamentally subversive of the spiritual realities of the gospel of Christ. Likewise, the Catholic conception of the church, thrusting all its complex and cumbrous machinery between the soul and God, prescribing beliefs, claiming to exercise the power of the keys, and to control the channels of grace—all such lording it over the consciences of men is to the Baptist mind a ghastly tyranny in the realm of the soul and tends to frustrate the grace of God, to destroy freedom of conscience, and to hinder terribly the coming of the Kingdom of God.

PAPAL INFALLIBILITY OR THE NEW TESTAMENT

That was a memorable hour in the Vatican Council, in 1870, when the dogma of papal infallibility was passed by a majority vote. It is not to be wondered at that the excitement was intense during the discussion of such dogma, and especially when the final vote was announced. You recall that in the midst of all the tenseness and tumult of that excited assemblage, Cardinal Manning stood on an elevated platform, and in the midst of that assemblage and holding in his hand the paper just passed, declaring for the infallibility of the Pope, he said: "Let all the world go to bits and we will reconstruct it on paper." A Baptist smiles at such an announcement as that, but not in derision and scorn. Although the Baptist is the very antithesis of his Catholic neighbor in religious conceptions and contentions, yet the Baptist will whole-heartedly contend that his Catholic neighbor

shall have his candles and incense and sanctus bell and rosary, and whatever else he wishes in the expression of his worship. A Baptist would rise at midnight to plead for absolute religious liberty for his Catholic neighbor, and for his Jewish neighbor, and for everybody else. But what is the answer of a Baptist to the contention made by the Catholic for papal infallibility? Holding aloft a little book, the name of which is the New Testament, and without any hesitation or doubt, the Baptist shouts his battle cry: "Let all the world go to bits and we will reconstruct it on the New Testament."

DIRECT INDIVIDUAL APPROACH TO GOD

When we turn to this New Testament, which is Christ's guidebook and law for his people, we find that supreme emphasis is everywhere put upon the individual. The individual is segregated from family, from church, from state, and from society, from dearest earthly friends or institution, and brought into direct, personal dealings with God. Every one must give account of himself to God. There can be no sponsors or deputies or proxies in such vital matter. Each one must repent for himself, and believe for himself, and be baptized for himself, and answer to God for himself, both in time and in eternity. The clarion cry of John the Baptist is to the individual. "Think not to say within yourselves, We have Abraham to our father: for I say unto you, that God is able of these stones to raise up children unto Abraham. And now also the ax is laid unto the root of the trees: therefore every tree which bringeth not forth good fruit is hewn down, and cast into the fire." One man can no more repent and believe and obey Christ for another than he can take the other's place at God's judgment bar. Neither persons nor institutions, however dear and powerful, may dare to come between the individual soul and God. "There is ... one mediator between God and men, the man Christ Jesus." Let the state and the church, let the institution, however dear, and the person, however near, stand aside, and let the individual soul make its own direct and immediate response to God. One is our pontiff, and his name is Jesus. The undelegated sovereignty of Christ makes it forever impossible for his saving grace to be manipulated by any system of human mediation whatsoever.

The right to private judgment is the crown jewel of humanity, and for any person or institution to dare to come between the soul and God is a blasphemous impertinence and a defamation of the crown rights of the Son of God.

Out of these two fundamental principles, the supreme authority of the Scriptures and the right of private judgment, have come all the historic protests in Europe or England and America against unscriptural creeds, polity and rites, and against the unwarranted and impertinent assumption of religious authority over men's consciences, whether by church or by state. Baptists regard as an enormity any attempt to force the conscience, or to constrain men, by outward penalties, to this or that form of religious belief. Persecution may make men hypocrites, but it will not make them Christians.

INFANT BAPTISM UNTHINKABLE

It follows, inevitably, that Baptists are unalterably opposed to every form of sponsorial religion. If I have fellow Christians in this presence today who are the protagonists of infant baptism, they will allow me to say frankly, and certainly I would say it in the most fraternal, Christian spirit, that to Baptists infant baptism is unthinkable from every viewpoint. First of all, Baptists do not find the slightest sanction for infant baptism in the Word of God. That fact, to Baptists, makes infant baptism a most serious question for the consideration of the whole Christian world. Nor is that all. As Baptists see it, infant baptism tends to ritualize Christianity and reduce it to lifeless forms. It tends also and inevitably, as Baptists see it, to secularizing of the church and to the blurring and blotting out of the line of demarcation between the church and the unsaved world.

And since I have thus spoken with unreserved frankness, my honored Pedobaptist friends in the audience will allow me to say that Baptists solemnly believe that infant baptism, with its implications, has flooded the world, and floods it now, with untold evils. They believe also that it perverts the scriptural symbolism of baptism; that it attempts the impossible tasks of performing an

act of religious obedience by proxy, and that since it forestalls the individual initiative of the child, it carries within it the germ of persecution, and lays the predicate for the union of church and state, and that it is a Romish tradition and a corner-stone for the whole system of popery throughout the world.

I will speak yet another frank word for my beloved people, to our cherished fellow Christians who are not Baptists, and that word is that our Baptist people believe that if all the Protestant denominations would once for all put away infant baptism, and come to the full acceptance and faithful practice of New Testament baptism, that the unity of all the non-Catholic Christians in the world would be consummated, and that there would not be left one Roman Catholic church on the face of the earth at the expiration of the comparatively short period of another century.

Surely, in the face of these frank statements, our non-Baptist neighbors may apprehend something of the difficulties compelling Baptists when they are asked to enter into official alliances with those who hold such fundamentally different views from those just indicated. We call God to witness that our Baptist people have an unutterable longing for Christian union, and believe Christian union will come, but we are compelled to insist that if this union is to be real and effective, it must be based upon a better understanding of the Word of God and a more complete loyalty to the will of Christ as revealed in His Word.

THE ORDINANCES ARE SYMBOLS

Again, to Baptists, the New Testament teaches that salvation through Christ must precede membership in his church, and must precede the observance of the two ordinances in his church, namely, baptism and the Lord's Supper. These ordinances are for the saved and only for the saved. These two ordinances are not sacramental, but symbolic. They are teaching ordinances, portraying in symbol truths of immeasurable and everlasting moment to humanity. To trifle with these symbols, to pervert their forms and at the same time to pervert the truths they are designed to symbolize, is indeed a most serious matter. Without ceasing and without wavering,

Baptists are, in conscience, compelled to contend that these two teaching ordinances shall be maintained in the churches just as they were placed there in the wisdom and authority of Christ. To change these two meaningful symbols is to change their scriptural intent and content, and thus pervert them, and we solemnly believe, to be the carriers of the most deadly heresies. By our loyalty to Christ, which we hold to be the supreme test of our friendship for him, we must unyieldingly contend for these two ordinances as they were originally given to Christ's churches.

THE CHURCH A PURE DEMOCRACY

To Baptists, the New Testament also clearly teaches that Christ's church is not only a spiritual body but it is also a pure democracy, all its members being equal, a local congregation, and cannot subject itself to any outside control. Such terms, therefore, as "The American Church," or "The bishop of this city or state," sound strangely incongruous to Baptist ears. In the very nature of the case, also, there must be no union between church and state, because their nature and functions are utterly different. Jesus stated the principle in the two sayings, "My kingdom is not of this world," and "Render therefore unto Caesar the things which are Caesar's and unto God the things that are God's." Never, anywhere, in any clime, has a true Baptist been willing, for one minute, for the union of church and state, never for a moment.

Every state church on the earth is a spiritual tyranny. And just as long as there is left upon this earth any state church, in any land, the task of Baptists will that long remain unfinished. Their cry has been and is and must ever be this:

*Let Caesar's dues be paid
To Caesar and his throne;
But consciences and souls were made
To be the Lord's alone.*

A FREE CHURCH IN A FREE STATE

That utterance of Jesus, "Render therefore unto Caesar the things

which are Caesar's, and unto God the things that are God's," is one of the most revolutionary and history-making utterances that ever fell from those lips divine. That utterance, once and for all, marked the divorcement of church and state. It marked a new era for the creeds and deeds of men. It was the sunrise gun of a new day, the echoes of which are to go on and on and on until in every land, whether great or small, the doctrine shall have absolute supremacy everywhere of a free church in a free state.

In behalf of our Baptist people I am compelled to say that forgetfulness of the principles that I have just enumerated, in our judgment, explains many of the religious ills that now afflict the world. All went well with the early churches in their earlier days. They were incomparably triumphant days for the Christian faith. Those early disciples of Jesus, without prestige and worldly power, yet aflame with the love of God and the passion of Christ, went out and shook the pagan Roman Empire from center to circumference, even in one brief generation. Christ's religion needs no prop of any kind from any worldly source, and to the degree that it is thus supported is a millstone hanged about its neck.

AN INCOMPARABLE APOSTASY

Presently there came an incomparable apostasy in the realm of religion, which shrouded the world in spiritual night through long hundreds of years. Constantine, the Emperor, saw something in the religion of Christ's people which awakened his interest, and now we see him uniting religion to the state and marching up the marble steps of the Emperor's palace, with the church robed in purple. Thus and there was begun the most baneful misalliance that ever fettered and cursed a suffering world. For long centuries, even from Constantine to Pope Gregory VII, the conflict between church and state waxed stronger and stronger, and the encroachments and usurpations became more deadly and devastating. When Christianity first found its way into the city of the Caesars it lived at first in cellars and alleys, but when Constantine crowned the union of church and state, the church was stamped with the spirit of the Caesars. Soon we see a Pope emerging, who himself became

a Caesar, and soon a group of councilors may be seen gathered around this Pope, and the supreme power of the church is assumed by the Pope and his councilors.

The long blighting record of the medieval ages is simply the working out of that idea. The Pope ere long assumed to be the monarch of the world, making the astounding claim that all kings and potentates were subject unto him. By and by when Pope Gregory VII appears, better known as Hildebrand, his assumptions are still more astounding. In him the spirit of the Roman church became incarnate and triumphant. He lorded it over parliaments and council chambers, having statesmen to do his bidding, and creating and deposing kings at his will. For example, when the Emperor Henry offended Hildebrand, the latter pronounced against Henry a sentence not only of excommunication but of deposition as Emperor, releasing all Christians from allegiance to him. He made the Emperor do penance by standing in the snow with his bare feet at Canossa, and he wrote his famous letter to William the Conqueror to the effect that the state was subordinate to the church, that the power of the state as compared to the church was as the moon compared to the sun.

This explains the famous saying of Bismarck when Chancellor of Germany, to the German Parliament: "We will never go to Canossa again." Whoever favors the authority of the church over the state favors the way to Canossa.

When, in the fulness of time, Columbus discovered America, the Pope calmly announced that he would divide the New World into two parts, giving one part to the King of Spain and the other to the King of Portugal. And not only did this great consolidated ecclesiasticism assume to lord it over men's earthly treasures, but they lorded it over men's minds, prescribing what men should think and read and write. Nor did such assumption stop with the things of this world, but it laid its hand on the next world, and claimed to have in its possession the keys of the Kingdom of Heaven and the kingdom of purgatory so that it could shut men out of heaven or lift them out of purgatory, thus surpassing in the sweep of its power and in the pride of its autocracy the boldest and most presumptuous ruler that ever sat on a civil throne.

ABSOLUTISM VS. INDIVIDUALISM

The student of history cannot fail to observe that through the long years two ideas have been in endless antagonism—the idea of absolutism and the idea of individualism, the idea of autocracy and the idea of democracy. The idea of autocracy is that supreme power is vested in the few, who, in turn, delegate this power to the many. That was the dominant idea of the Roman Empire, and upon that idea has found world wide impression in the realms both civil and ecclesiastical. Often have the two ideas, absolutism versus individualism, autocracy versus democracy, met in battle. Autocracy dared, in the morning of the twentieth century, to crawl out of its ugly lair and proposed to substitute the law of the jungles for the law of human brotherhood. For all time to come the hearts of men will stand aghast upon every thought of this incomparable death drama, and at the same time they will renew the vow that the few shall not presumptuously tyrannize over the many; that the law of the jungle shall be given supremacy in all human affairs. And until the principle of democracy, rather than the principle of autocracy, shall be regnant in the realm of religion, our mission shall be commanding and unending.

THE REFORMATION INCOMPLETE

The coming of the sixteenth century was the dawning of a new hope for the world. With that century came the Protestant Reformation. Yonder goes Luther with his theses, which he nails over the old church door in Wittenberg, and the echoes of the mighty deed shake the Papacy, shake Europe, shake the whole world. Luther was joined by Melancthon and Calvin and Zwingli and other mighty leaders. Just as this point emerges one of the most outstanding anomalies of all history. Although Luther and his compeers protested vigorously against the errors of Rome, yet when these mighty men came out of Rome—and mighty men they were—they brought with them some of the grievous errors of Rome. The Protestant Reformation of the Sixteenth century was sadly incomplete—it Luther and his compeers grandly sounded out was a case of arrested development. Although the battle cry of justification by faith alone, yet they

retained the doctrine of infant baptism and a state church. They shrank from the logical conclusions of their own theses.

In Zurich there stands a statue in honor of Zwingli, in which he is represented with a Bible in one hand and a sword in the other. That statue was the symbol of the union between church and state. The same statue might have been reared to Luther and his fellow reformers. Luther and Melancthon fastened a state church upon Germany, and Zwingli fastened it upon Switzerland. Knox and his associates fastened it upon Scotland. Henry VIII bound it upon England, where it remains even till this very hour.

These mighty reformers turned out to be persecutors like the Papacy before them. Luther unloosed the dogs of persecution against the struggling and faithful Anabaptists. Calvin burned Servetus, and to such awful deed Melancthon gave him approval. Louis XIV revoked the Edict of Nantes, shut the doors of all the Protestant churches, and outlawed the Huguenots. Germany put to death that mighty Baptist leader, Balthaser Hubmaier, while Holland killed her noblest statesman, John of Barneveldt, and condemned to life imprisonment her ablest historian, Hugo Grotius, for conscience' sake. In England, John Bunyan was kept in jail for twelve long, weary years because of his religion, and when we cross the mighty ocean separating the Old World and the New, we find the early pages of American history crimsoned with the stories of religious persecutions. The early colonies of America were the forum of the working out of the most epochal battles that earth ever knew for the triumph of religious and civil liberty.

AMERICA AND RELIGIOUS AND CIVIL LIBERTY

Just a brief glance at the struggle in those early colonies must now suffice us. Yonder in Massachusetts, Henry Dunster, the first president of Harvard, was removed from the presidency because he objected to infant baptism. Roger Williams was banished, John Clarke was put in prison, and they publicly whipped Obadiah Holmes on Boston Common. In Connecticut the lands of our Baptist fathers were confiscated and their goods sold to build a meeting house and support a preacher of another denomination. In old Virginia,

“mother of states and statesmen,” the battle for religious and civil liberty was waged all over her nobly historic territory, and the final triumph recorded there was such as to write imperishable glory upon the name of Virginia until the last syllable of recorded time. Fines and imprisonments and persecutions were everywhere in evidence in Virginia for conscience’ sake. If you would see a record incomparably interesting, go read the early statutes in Virginia concerning the Established Church and religion, and trace the epic story of the history-making struggles of that early day. If the historic records are to be accredited, those clergymen of the Established Church in Virginia made terrible inroads in collecting fines in Baptist tobacco in that early day. It is quite evident, however, that they did not get all the tobacco.

On and on was the struggle waged by our Baptist fathers for religious liberty in Virginia, in the Carolinas, in Georgia, in Rhode Island and Massachusetts and Connecticut, and elsewhere, with one unyielding contention for unrestricted religious liberty for all men, and with never one wavering note. They dared to be odd, to stand alone, to refuse to conform, though it cost them suffering and even life itself. They dared to defy traditions and customs, and deliberately chose the day of non conformity, even though in many a case it meant a cross. They pleaded and suffered, they offered their protests and remonstrances and memorials, and, thank God, mighty statesmen were won to their contention. Washington and Jefferson and Madison and Patrick Henry, and many others, until at last it was written into our country’s Constitution that church and state must in this land be forever separate and free, that neither must ever trespass upon the distinctive functions of the other. It was pre-eminently a Baptist achievement.

A LONELY STRUGGLE

Glad are our Baptist people to pay their grateful tribute to their fellow Christians of other religious communions for all their sympathy and help in this sublime achievement. Candor compels me to repeat that much of the sympathy of other religious leaders in that early struggle was on the side of legalized ecclesiastical

privilege. Much of the time were Baptists pitiaibly lonely in their age-long struggle. We would now and always make our most grateful acknowledgment to any and all who came to the side of our Baptist fathers, whether early or late, in this destiny-determining struggle. But I take it that every informed man on the subject, whatever his religious faith, will be willing to pay tribute to our Baptist people as being the chief instrumentality in God's hands in winning the battle in America for religious liberty. Do you recall Tennyson's little poem, in which he sets out the history of the seed of freedom?

*Catch its philosophy:
Once in a golden hour
I cast to earth a seed,
Up there came a flower,
The people said, a weed.
To and fro they went,
Through my garden bower,
And muttering discontent,
Cursed me and my flower.
"Then it grew so tall,
It wore a crown of light,
But thieves from o'er the wall,
Stole the seed by night.
Sowed it far and wide.
By every town and tower,
Till all the people cried,
'Splendid is the flower.'
Read my little fable:
He who runs may read,
Most can grow the flowers now,
For all have got the seed.*

Very well, we are very happy for all our fellow religionists of every denomination and creed to have this splendid flower of religious liberty, but you will allow us to remind you that you got the seed

in our Baptist garden. We are very happy for you to have it; now let us all make the best of it and the most of it.

THE PRESENT CALL

And now, my fellow Christians, and fellow citizens, what is the present call to us in connection with the priceless principle of religious liberty? That principle, with all the history and heritage accompanying it, imposes upon us obligations to the last degree meaningful and responsible. Let us today and forever be highly resolved that the principle of religious liberty shall, please God, be preserved inviolate through all our days and the days of those who come after us. Liberty has both its perils and its obligations. We are to see to it that our attitude toward liberty, both religious and civil, both as Christians and as citizens, is an attitude consistent and constructive and worthy. We are to "Render therefore unto Caesar the things which are Caesar's and unto God the things that are God's." We are members of the two realms, the civil and the religious, and are faithfully to render unto each all that each should receive at our hands; we are to be alertly watchful day and night, that liberty, both religious and civil, shall be nowhere prostituted and mistreated. Every perversion and misuse of liberty tends by that much to jeopardize both church and state.

There comes now the clarion call to us to be the right kind of citizens. Happily, the record of our Baptist people toward civil government has been a record of unfading honor. Their love and loyalty to country have not been put to shame in any land. In the long list of published Tories in connection with the Revolutionary War there was not one Baptist name.

LIBERTY NOT ABUSED

It behooves us now and ever to see to it that liberty is not abused. Well may we listen to the call of Paul, that mightiest Christian of the long centuries, as he says: "Brethren, ye have been called unto liberty; only use not your liberty for an occasion to the flesh, but by love serve one another." This ringing declaration should be heard

and heeded by every class and condition of people throughout all our wide stretching nation.

It is the word to be heeded by religious teachers, and by editors, and by legislators, and by everybody else. Nowhere is liberty to be used "for an occasion to the flesh." We will take free speech and a free press, with all their excrescences and perils, because of the high meaning of freedom, but we are to set ourselves with all diligence not to use these great privileges in the shaming of liberty. A free press—how often does it pervert its high privilege! Again and again, it may be seen dragging itself through all the sewers of the social order, bringing to light the moral cancers and leprosies of our poor world and glaringly exhibiting them to the gaze even of responsive youth and childhood. The editor's task, whether in the realm of church or state, is an immeasurably responsible one. These editors, side by side with the moral and religious teachers of the country, are so to magnify the ballot box, a free press, free schools, the courts, the majesty of law and reverence for all properly accredited authority that our civilization may not be built on the shifting sands, but on the secure and enduring foundations of righteousness.

Let us remember that lawlessness, wherever found and whatever its form, is as "the pestilence that walketh in darkness" and "the destruction that wasteth at noonday." Let us remember that he who is willing for law to be violated is an offender against the majority of law as really as he who actually violates law. The spirit of law is the spirit of civilization. Liberty without law is anarchy. Liberty against law is rebellion. Liberty limited by law is the formula of civilization.

HUMANE AND RIGHTEOUS LAWS

Challenging to the highest degree is the call that comes to legislators. They are to see to it continually, in all their legislative efforts, that their supreme concern is for the highest welfare of the people. Laws humane and righteous are to be fashioned and then to be faithfully regarded. Men are playing with fire if they lightly fashion their country's laws and then trifle in their obedience to such laws. Indeed, all citizens, the humblest and the most prominent alike, are

called to give their best thought to the maintenance of righteousness everywhere. Much truth is there in the widely quoted saying: "Our country is afflicted with the bad citizenship of good men." The saying points its own clear lesson. "When righteous are in authority, the people rejoice, but when the wicked bear rule, the people mourn." The people, all the people, are inexorably responsible for the laws, the ideals, and the spirit that are necessary for the making of a great and enduring civilization. Every man of us is to remember that it is righteousness that exalteth a nation, and that it is sin that reproaches and destroys a nation.

God does not raise up a nation to go strutting selfishly, forgetful of the high interests of humanity. National selfishness leads to destruction as truly as does individual selfishness. Nations can no more live to themselves than can individuals. Humanity is bound up together in the big bundle of life. The world is now one big neighborhood. There are no longer any hermit nations. National isolation is no longer possible in the earth. The markets of the world instantly register every commercial change. An earthquake in Asia is at once registered in Washington City. The people on one side of the world may not dare to be indifferent to the people on the other side. Every man of us is called to be a world citizen, and to think and act in world terms. The nation that insists upon asking that old murderous question of Cain, "Am I my brother's keeper?" the question of the profiteer and the question of the slacker, is a nation marked for decay and doom and death. The parable of the Good Samaritan is Heaven's law for nations as well as for individuals. Some things are worthy dying for, and if they are worth dying for they are worth living for. The poet was right when he sang:

*Though love repine and reason chafe,
There comes a voice without reply,
'Tis man's perdition to be safe,
When for the truth he ought to die.*

THINGS WORTH DYING FOR

When this nation went into the World War a little while ago, after

her long and patient and fruitless effort to find another way of conserving righteousness, the note was sounded in every nook and corner of our country that some things in this world are worth dying for, and if they are worth dying for they are worth living for. What are some of the things worth dying for? The sanctity of womanhood is worth dying for. The safety of childhood is worth dying for; and when Germany put to death that first helpless Belgian child, she was marked for defeat and doom. The integrity of one's country is worth dying for. And, please God, the freedom and honor of the United States of America are worth dying for. If the great things of life are worth dying for, they are surely worth living for. Our great country may not dare to isolate herself from all the rest of the world, and selfishly say: "We propose to live and die to ourselves, leaving all the other nations with their weaknesses and burdens and sufferings to go their ways without our help." This nation cannot pursue any such policy and expect the favor of God. Myriads of voices, both from the living and the dead, summon us to a higher and better way. Happy am I to believe that God has his prophets not only in the pupils of the churches but also in the schoolrooms, in the editor's chair, in the halls of legislation, in the marts of commerce, in the realms of literature. Tennyson was a prophet when in "Locksley Hall," he sang:

*For I dipt into the future,
far as human eye could see,
Saw the heavens fill with commerce,
argosies of magic sails,
Pilots of the purple twilight,
dropping down with costly bales;
Heard the heavens fill with shouting,
and there rain'd a ghastly dew
From the nations' airy naives
grappling in the central blue;
Far along the world-wide whisper
of the south-wind rushing warm,
With the standards of the people*

*plunging thro' the thunder-storm.
Till the war drum throb'd no longer,
and the battle-flags were furled
In the Parlament of man,
the Federation of the world.*

A LEAGUE OF NATIONS

Tennyson believed in a league of nations, and well might he so believe, because God is on his righteous throne, and inflexible are his purposes touching righteousness and peace for a weary, sinning, suffering, dying world. Standing here today on the steps of our nation's Capitol, hard by the chamber of the Senate of the United States, I dare to say as a citizen and as a Christian teacher, that the moral forces of the United States of America, without regard to political parties, will never rest until there is a worthy League of Nations. I dare to express also the unhesitating belief that the unquestioned majorities of both great political parties in this country regard the delay in the working out of a League of Nations as a national and world-wide tragedy.

The moral and religious forces of this country could not be supine and inactive as long as the saloon, the chief rendezvous of small politicians, that chronic criminal and standing anachronism of our modern civilization, was legally sponsored by the state. I can certify all the politicians of all the political parties that the legalized saloon has gone from American life, and gone to stay. Likewise, I can certify the men of all political parties without any reference to partisan politics, that the same moral and religious forces of this country, because of the inexorable moral issues involved, cannot be silent and will not be silent until there is put forth a League of Nations that will strive with all its might to put an end to the diabolism and measureless horrors of war. I thank God that the stricken man yonder in the White House has pleaded long and is pleading yet that our nation will take her full part with the others for the bringing in of that blessed day when wars shall cease to the ends of the earth. The recent World War calls to us with a voice surpassingly appealing and responsible. Surely Alfred Noyes voices the true desire for us:

*Make firm, O God, the peace our dead have won
 For folly shakes the tinsel on its head,
 And points us back to darkness and to hell,
 Cackling, "Beware of visions," while our dead
 Still cry, "It was for visions that we fell."
 They never knew the secret game of power,
 All that this earth can give they thrust aside,
 They crowded all their youth unto an hour,
 And for fleeting dream of right, they died.
 "Oh, if we fail them in that awful trust,
 How should we bear those voices from the dust?"*

THE RIGHT KIND OF CHRISTIANS

This noble doctrine and heritage of religious liberty calls to us imperiously to be the right kind of Christians. Let us never forget that a democracy, whether civil or religious, has not only its perils, but has also its unescapable obligations. A democracy calls for intelligence. The sure foundations of states must be laid, not in ignorance, but in knowledge. It is of the last importance that those who rule shall be properly trained. In a democracy, a government of the people, for the people, and by the people, the people are the rulers, and the people, all the people, are to be informed and trained.

My fellow Christians, we must hark back to our Christian schools, and see to it that these schools are put on worthy and enduring foundations. A democracy needs more than intelligence, it needs Christ. He is the light of the world, nor is there any other sufficient light for the world. He is the solution of the world's complex questions, the one adequate Helper for its dire needs, the one only sufficient Saviour for our sinning race. Our schools are afresh to take note of this supreme fact, and they are to be fundamentally and aggressively Christian. Wrong education brought on the recent World War. Such education will always lead to disaster.

Pungent were the recent words of Mr. Lloyd George: "The most formidable foe that we had to fight in Germany was not the arsenals of Krupp, but the schools of Germany." The educational

center of the world will not longer be in the Old World, but because of the great war, such center will henceforth be in this New World of America. We must build here institutions of learning that will be shot through and through with the principles and motives of Christ, the one Master over all mankind.

THE CHRISTIAN SCHOOL

The time has come when, as never before, our beloved denomination should worthily go out to its world task as a teaching denomination. That means that there should be a crusade throughout all our borders for the vitalizing and strengthening of our Christian schools. The only complete education, in the nature of the case, is Christian education, because man is a tripartite being. By the very genius of our government, education by the state cannot be complete. Wisdom has fled from us if we fail to magnify, and magnify now, our Christian schools. These schools go to the foundation of the life of people. They are indispensable to the highest efficiency of the churches. Their inspirational influences are of untold value to the schools conducted by the state, to which schools also we must ever give our best support. It matters very much, do you not agree, who shall be the leaders, and what the standards in the affairs of civil government and in the realm of business life? One recalls the pithy saying of Napoleon to Marshal Ney: "An army of deer led by a lion is better than an army of lions led by a deer." Our Christian schools are to train not only our religious leaders but hosts of our leaders in the civil and business realm as well.

The one transcending inspiring influence in civilization is the Christian religion. By all means let the teachers and trustees and student bodies of all our Christian schools remember this supremely important fact, that civilization without Christianity is doomed. Let there be no pagan ideals in our Christian schools, and no hesitation or apology for the insistence that the one hope for the individual, the one hope for society, from civilization, is in the Christian religion. If ever the drum beat of duty sounded clearly, it is calling to us now to strengthen and magnify our Christian schools.

THE TASK OF EVANGELISM

Preceding and accompanying the task of building our Christian schools, we must keep faithfully and practically in mind our primary task of evangelism, the work of winning souls from sin unto salvation, from Satan unto God. This work takes precedence of all other work in the Christian program. Salvation for sinners is through Jesus Christ alone, nor is there any other name or way under heaven whereby they may be saved. Our churches, our schools, our religious papers, our hospitals, every organization and agency of the churches should be kept aflame with the passion of New Testament evangelism. Our cities and towns and villages and country places are to echo continually with the sermons and songs of the gospel evangel. The people, high and low, rich and poor, the foreigners, all the people are to be faithfully told of Jesus and his great salvation, and entreated to come unto him to be saved by him and to become his fellow workers. The only sufficient solvent for all the questions in America—individual, social, economic, industrial, financial, political, educational, moral and religious—is to be found in the Saviourhood and Lordship of Jesus Christ.

*Give is a watchword for the hour,
A thrilling word, a word of power;
A battle cry, a flaming breath,
That calls to conquest or to death;
A word to rouse the church from rest,
To heed its Master's high behest,
The call is given, Ye hosts arise;
Our watchword is Evangelize!
The glad Evangel now proclaim,
Through all the earth in Jesus' name,
This word is ringing through the skies,
Evangelize! Evangelize!
To dying men, a fallen race,
Make known the gift of Gospel Grace;
The world that now in darkness lies,
Evangelize! Evangelize!*

A WORLD PROGRAM

While thus caring for the homeland, we are at the same time to see to it that our program is co-extensive with Christ's program for the whole world. The whole world is our field, nor may we, with impunity, dare to be indifferent to any section, however remote, not a whit less than that, and with our plans sweeping the whole earth, we are to go forth with believing faith and obedient service, to seek to bring all humanity, both near and far, to the faith and service of him who came to be the propitiation for our sins, and not for ours only, but also for the sins of the whole world.

His commission covers the whole world and reaches to every human being. Souls in China, and India, and Japan, and Europe, and Africa, and the islands of the sea, are as precious to him as souls in the United States. By the love we bear our Saviour, by the love we bear our fellows, by the greatness and preciousness of the trust committed to us, we are bound to take all the world upon our hearts and to consecrate our utmost strength to bring all humanity under the sway of Christ's redeeming love. Let us go to such task, saying with the immortal Wesley, "The world is my parish," and with him may we also be able to say, "And best of all, God is with us."

A GLORIOUS DAY

Glorious it is, my fellow Christians, to be living in such a day as this, if only we shall live as we ought to live. Irresistible is the conviction that the immediate future is packed with amazing possibilities. We can understand the cry of Rupert Brooke as he sailed from Gallipoli, "Now God be thanked who hath matched us with this hour!" The day of the reign of the common people is everywhere coming like the rising tides of the ocean. The people are everywhere breaking with feudalism. Autocracy is passing, whether it be civil or ecclesiastical. Democracy is the goal toward which all feet are traveling, whether in state or in church.

The demands upon us now are enough to make an archangel tremble. Themistocles had a way of saying that he could not sleep at night for thinking of Marathon. What was Marathon compared to a day like this? John C. Calhoun, long years ago, stood there and

said to his fellow workers in the National Congress: "I beg you to lift up your eyes to the level of the conditions that now confront the American republic." Great as was that day spoken of by Mr. Calhoun, it was as a tiny babe beside a giant compared to the day that now confronts you and me. Will we be alert to see our day and be faithful enough to measure up to its high demands?

THE PRICE TO BE PAID

Are we willing to pay the price that must be paid to secure for humanity the blessings it needs to have? We say that we have seen God in the face of Jesus Christ, that we have been born again, that we are the true friends of Christ, and would make proof of our friendship for him by doing his will. Well, then, what manner of people ought we to be in all holy living and godliness? Surely we should be a holy people, remembering the apostolic characterization, "Ye are a chosen generation; a royal priesthood, an holy nation, a peculiar people; that we should shew forth the praises of him who hath called you out of darkness into his marvelous light: which in time past were not a people, but are now the people of God."

Let us look again to the strange passion and power of the early Christians. They paid the price for spiritual power. Mark well this record: "And they overcame him by the blood of the Lamb, and by the word of their testimony; and they loved not their lives unto the death." O my fellow Christians, if we are to be in the true succession of the mighty days and deeds of the early Christian era, or of those mighty days and deeds of our Baptist fathers in later days, then selfish ease must be utterly renounced for Christ and his cause and our every gift and grace and power utterly dominated by the dynamic of his Cross. Standing here today in the shadow of our country's Capitol, compassed about as we are with so great a cloud of witnesses, let us today renew our pledge to God, and to one another, that we will give our best to church and to state, to God and to humanity, by his grace and power, until we fall on the last sleep.

If in such spirit we will give ourselves to all the duties that await us, then we may go our ways, singing more vehemently than

our fathers sang them, those lines of Whittier:

*Our fathers to their graves have gone,
Their strife is passed, their triumphs won;
But greater tasks await the race
Which comes to take their honored place,
A moral warfare with the crime
And folly of an evil time.
So let it be, in God's own sight,
We gird us for the coming flight;
And strong in Him whose cause is ours,
In conflict with unholy powers,
We grasp the weapons He has given,
The light and truth and love of Heaven.*

George W. Truett (1867-1944) was pastor of First Baptist Church, Dallas, Texas for nearly 50 years and was president of the Southern Baptist Convention from 1927-1929. The George W. Truett Library has been published in four volumes by Baker Book House.

BOOK REVIEWS

No Establishment of Religion: America's Original Contribution to Religious Liberty

T. Jeremy Gunn and John Witte, Jr., editors
New York: Oxford University Press, 2012
415 pages, \$99.00 cloth, \$35.00 paper

Reviewed by: Mark A. Noll

The editors of this sterling collection recruited an all-star lineup of contributors to explain, apply, and (in good lawyerly fashion) argue about the guarantee in the First Amendment of the U.S. Constitution that “Congress shall make no law regarding an establishment of religion.” The questions receiving fullest attention are the following: What did “establishment” mean in the eighteenth century? What did the first U.S. Congress and the state ratifying conventions intend when they approved the First Amendment? What are the contemporary implications of controversies surrounding the 1876 Blaine Amendment, which if passed would have prohibited public funding of “sectarian” schools while allowing “nonsectarian” practices in public schools like reading from the King James Version of the Bible? How wise was the famous *Everson* decision of 1947 that applied (“incorporated”) the First Amendment to the states, established a strict principle of church-state separation, but allowed the New Jersey law to stand that provided publically funded bus transport to students attending Catholic schools? And how has recent understanding of “no establishment” been shaped by the Supreme Court’s *Zelman* decision of 2002 that allowed parents,

under specified conditions, to use state-funded vouchers for their children's education, even at parochial schools?

Historians, legal scholars, political scientists, jurists, legislators, and an interested general public should all benefit from this book. All of the contributions merit close reading, including those on the relation of constitutional separation to general questions of religion in public life (T. Jeremy Gunn), the understandings of "establishment" in the eighteenth century that the First Amendment did and did not intend to prohibit (Michael McConnell), the legislative and judicial record in the early national period (separate essays by Mark McGarvie and Daniel Driesbach), the Puritan contribution to the Establishment Clause (David Little), the influence of colonial New York, especially its Jewish inhabitants, on the First Amendment (Paul Finkelman), the much-debated role of Thomas Jefferson and James Madison in defining the meaning of "no establishment" (Ralph Kethcam), the influence of the Continental Congress in moving toward the First Amendment (Derek Davis), and the way that notions of "Christian America" confuse efforts to understand the meaning of "no establishment" (Martin Marty).

For my particular historical interests, four of the essays stand out as the best of the best. Carl Esbeck's meticulous examination of the legislative history behind the final wording of the First Amendment allows him to speak authoritatively about recent efforts to apply "original intent" to contested contemporary questions. For Esbeck, responsible historical investigation must conclusively rule out both "nonpreferentialism" (that government can support religious matters if done without distinction among different religious groups) and a limitation of "no establishment" to just protecting liberty of conscience. Esbeck's careful investigation also predisposes him against the notion that the main intent of the clause was to establish a principle of federalism (sorting out relations between state and national governments), while leading him to support a "jurisdictional" interpretation (an intention to manage relations between government and church authorities). Steven Green's chapter on nineteenth-century judicial decisions, mostly on the state level, augments the very impressive works he

has recently published (*The Second Disestablishment: Church and State in Nineteenth-Century America* [2010] and *The Bible, the School, and the Constitution: The Clash that Shaped Modern Church-State Debate* [2012]). His contention, after wide-ranging citations including the Blaine Amendment debates, is that nineteenth-century jurisprudence pointed directly to the strong separationist conclusion of *Everson*. Thomas Berg, by contrast, uses an even more painstaking examination of contemporary arguments surrounding the Blaine Amendment, along with a careful investigation of the legal history between Blaine and *Everson*, to conclude the opposite: *Everson's* strict separationism ignored the implications of the twentieth-century welfare state (with massively more direct government assistance to individuals) and pushed separationism to unjust and poorly grounded conclusions.

The reasons why two exquisitely expert legal historians like Green and Berg could differ so dramatically are explained most skillfully in Kent Greenawalt's chapter devoted to "fundamental questions about the original understanding of the establishment clause." As in his two recently published volumes (*Religion and the Constitution, Vol. 1: Free Exercise and Fairness* [2006] and *Vol. 2: Establishment and Fairness* [2008]), Greenawalt patiently unpacks many of the assumptions and carefully examines the logic of argument behind the main positions interpreting the history and applications of the "no establishment" clause. Greenawalt's approach is as helpful as it is refreshing, not necessarily because his conclusions carry dispositive force, but because the steps by which he comes to those conclusions are so clear, self-conscious, and transparent. Agree or disagree, all who read Greenawalt carefully are in the very best position to both trace the history and understand current contentions about what the "no establishment" clause did and should mean. His chapter provides a superb summation for a superb book.

Mark A. Noll

Francis A. McAnaney Professor of History
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The Founding Fathers and the Debate Over Religion in Revolutionary America

Matthew L. Harris and Thomas S. Kidd, editors

New York: Oxford University Press, 2012

196 pages, \$19.95 paper

The Sacred Rights of Conscience: Selected Readings on Religious Liberty and Church-State Relations in the American Founding

Daniel L. Dreisbach and Mark David Hall, editors

Indianapolis, Indiana: Liberty Fund, 2009

xxxiv + 672 pages, \$14.50 paper

Reviewed by: D. Keith Bates

Eager to gain credibility for their church-state positions, the politicians, preachers, and activists who participate in present-day debates frequently enlist the Founders as allies of their cause. Convinced that the Founders intended the “wall of separation” to divide religion from politics, secularists often characterize the Founders as men whose private spirituality had no effect upon their public duties. Conversely, vast numbers of Christian fundamentalists and evangelicals who are concerned about the supposed moral collapse and spiritual drift of America frequently call for the restoration of the godly heritage that they believe the Founders left for posterity. While the advocates of these antithetical positions may be passionate, the historical narratives that undergird their causes ignore the complexity that defined the religio-political beliefs and practices of the Founders. Concerned about the distortion of the historical record, historians Matthew Harris and Thomas Kidd and constitutional scholars Daniel Dreisbach and Mark David Hall call upon the readers of their respective document collections to step back from present-day perspectives so that they can understand church-state debates in light of the context of the revolutionary generation.

In the brief but insightful introduction of *The Founding Fathers and the Debate Over Religion in Revolutionary America*, Harris and Kidd describe the Founders’ journey to define church-state rela-

tions as arduous. Explaining the essence of the conflict, Harris and Kidd aver: “The Founders struggled to find a balance between ensuring religious freedom and honoring the important place of religion in American society” (6). Adding to the complexity of these issues, the editors contend, was the fact that the Founders often acted in unexpected ways. Thomas Jefferson, for example, may be known as the chief promoter of the “wall of separation” metaphor, but he also routinely invited pastors to preach in Sabbath services held in the halls of Congress.

Harris and Kidd divided the fifty-three documents included in their book into six topics—namely, Religion and the Continental Congress, Religion and State Governments, Constitution and Ratification, Religion and the Federal Government, Disestablishment and the Separation of Church and State, and The Founding Fathers’ Own Views on Religion. Present within these sections are documents such as James Madison’s *Memorial and Remonstrance*, the First Amendment to the Constitution, and the Virginia Declaration of Rights that are standard components of edited works on religious liberty. Harris and Kidd also included letters and public documents that, though they typically receive scant attention from historians, illustrate how difficult it was for the Founders to define the parameters of religious liberty. Among these documents are proclamations on religion from state constitutions, letters from ministers lamenting the “godless” Constitution, debates about the religion clauses of the First Amendment, and excerpts from the writings of nine different Founders regarding their personal religious views. To be sure, the decision to focus primarily upon public documents and the writings of high-profile Founders means that Harris and Kidd did not include a number of perspectives from the revolutionary era in their work. In fact, the book contains only one entry from a woman and no documents from African American or Native American representatives. While the absence of these perspectives is regrettable, there is a benefit to the select nature of this document collection—namely, Harris and Kidd have crafted a work that is at once readable and informative. Indeed, even non-specialists who read their book will be able to comprehend the key

questions about the place of religion in American life without feeling overwhelmed by copious amounts of data.

In contrast to the conciseness of Harris and Kidd's work, the massive collection of documents compiled by Dreisbach and Hall will not appeal to those who have only a casual interest in the subject of religious liberty. But Dreisbach and Hall make up for the lack of brevity in *The Sacred Rights of Conscience* with an impressive aggregation of public writings that covers the subject of church-state relations from a number of different angles. Thus, while it takes a great deal of time and energy to read through all of the documents contained in *The Sacred Rights of Conscience*, persistent readers will find that the book provides them with a solid foundation of knowledge about the political debates and legal precedents that shaped America's religio-political practices.

Dreisbach and Hall set the tone for their work in their thought-provoking introduction when they argue that the Founders only arrived at solutions to the various church-state dilemmas through extensive dialogue. They support this assertion by providing documents that delve deep into the specific details of the Founders' ideas and practices. In dealing with Thomas Jefferson's "Wall of Separation" metaphor, for example, Dreisbach and Hall set the context for Jefferson's famous letter to the Danbury Baptists by beginning this section of their book with writings from Richard Hooker and Roger Williams, theologians who used the "wall" metaphor at least 150 years before Jefferson incorporated the phrase into his writings. Employing their own Constitutional expertise, Dreisbach and Hall also include Supreme Court rulings from cases that confirmed "the prominence of Jefferson's figurative language in church-state jurisprudence" (532). As is the case with the section on Jefferson, the massive number of documents published in *The Sacred Rights of Conscience* provides serious students of religious liberty—whether they are examining these debates in an undergraduate or graduate classroom or conducting private research—with essential resources for discovery.

While the topics addressed in *The Founding Fathers and the Debate Over Religion in Revolutionary America* and *The Sacred Rights*

of Conscience have obvious contemporary relevance, these volumes have tremendous value because the editors insist that their readers interpret these debates within the context of the late-eighteenth and early-nineteenth centuries. Moreover, by selecting documents that present a variety of views about church-state relations, the editors make it unmistakably clear that the Founders' religio-political debates were filled with nuance and complexity. In all, these works are valuable contributions to ongoing discussions about religious liberty, especially because they strive to correct the flawed and incomplete historical narratives frequently embraced by present-day church-state activists.

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Forgotten Songs: Reclaiming the Psalms for Christian Worship

C. Richard Wells and Ray Van Neste, editors
Nashville, Tennessee: B&H Academic, 2012
256 pages, \$19.99 paper

Reviewed by: Mark S. Gignilliat

Children need to be taught what to say. Christians also need “speech-coaching” when it comes to addressing God. This collection of essays edited by Ray Van Neste and C. Richard Wells is calling churches back to the Psalter for Christian speech-coaching. Made possible by a grant from the Calvin Institute for Christian Worship, the essays in this volume are the product of a series of lectures and events dealing with the Psalms at Union University in 2008. The recent devastation on Union’s campus due to a tornado made the conference especially appropriate given the university’s shared trial.

This volume is inviting because of the range of topics addressed by its authors. All the chapters are accessible to readers, lay and clergy alike. At the same time, the chapters address matters across a wide spectrum of topics, ranging from more technical academic engagement (e.g., John Collins and Ray Van Neste on the significance of the Psalter in the Christian canon) to pastoral advice on how to incorporate the Psalter into Christian worship—without getting fired!—(James Grant’s chapter) to the Psalms in pastoral counseling (Richard Wells). In other words, the potential for the Psalms to shape Christian thinking, worship and life before God is packaged together for the reader in a holistic fashion. One can only hope the vision on offer in this volume has a broad hearing among churches whose liturgical instincts have displaced this ancient, Christian tradition.

Speaking of long-standing Christian practices, several matters in this volume arrested the attention of this reviewer. Van Neste’s pathos for this project was evident in an anecdote he shared in the introduction. He introduced the practice of Psalter singing to his family. The chapters by Blaising and Bond demonstrate how within the earliest history of the church down through the Reformation and beyond it was second nature for Christians in public and family

worship to do so. Moreover, Van Neste concludes his chapter on the Psalter in the New Testament with this beautiful turn of phrase: “Jesus died with the psalms on his lips, and the early church was birthed making its first key decision by appeal to the psalms, preaching its first sermon from the psalms, and praying, the psalms in its first prayer meeting after Pentecost” (p. 50). The haunting question from the evidence amassed in the Christian canon and the church’s habitual practices is: how, indeed, did the psalms become “Forgotten Songs?” The pastoral energy emanating from this volume could prove an antidote to the problem for those willing to hear.

Justin Wainscott provides a helpful appendix including several examples of metered psalms for those unaccustomed to singing the Psalter. Pastors, students, and lay readers will find in J. Michael Garrett’s bibliographic essay a treasure trove of resources for those wishing to broaden and deepen their reading and study of the Psalter. Certain matters in the volume could be quibbled with here or there. Collins mentions the five-book structure of the Psalter and its possible mirroring of the Pentateuch, but then does not make much of the Psalms as Torah. Gerald Wilson’s ground-breaking work is relegated to a footnote, again with the canonical shaping of the Psalter receiving a nod but without critical engagement with what is hermeneutically on offer here.

But these are quibbles. This volume is a gift to churches and Christians alike. But I think the volume is especially (and rightfully!) concerned about the former. Private Christian devotional practice has long included the Psalter—my mother, for example. But corporate worship suffers from biblical and ecclesial malnutrition when the Psalter is relegated to the individual at the expense of the corporate. This volume can hold the hand of many local churches as they plot their way back to the Psalter for spiritual benefit of corporate worship.

Mark S. Gignilliat

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Liberal Arts for the Christian Life

Jeffrey C. Davis & Philip G. Ryken, editors

Wheaton, Illinois: Crossway, 2012

318 pages, \$17.99 paper

Reviewed by: Gene C. Fant, Jr.

The current scrutiny afforded the liberal arts by pundits is white-hot precisely because this approach to learning has been declared stone-cold dead. The sentiment is not new, however, as even a century ago, Booker T. Washington lampooned such pretentious, hoity-toity students who were above hard work. Washington's image has been repeated widely in our age: the liberal arts are dead or are, at a minimum, a dead end that is disconnected from the economic realities of our age.

Jeffrey C. Davis and Philip G. Ryken assert a welcome antidote to this image. Connecting the liberal arts with both the Christian faith and with life writ-large is intriguing enough, but the occasion of the volume is even more riveting: it honors the illustrious career of Wheaton College's Professor of English Leland Ryken. For those of us who know Leland, his heritage as a farmer's son and his research into Puritan concepts of work yield a compelling vision of liberal education.

Liberal Arts collects the thoughts of some of Wheaton's brightest minds, and the contributor's list reads like a Who's Who list: Alan Jacobs, Roger Lundin, Jill Pela'ez Baumgaertner, James Wilhoit, Read Schuchardt, and Duane Litfin, among others. The lead essay, however, is from Master Leland himself, "The Student's Calling," which demands that educators and students alike recover the classic notion of vocation. Rooted in the theological truth that humankind is responsible directly to God, vocation demands diligence and a thorough understanding of divine authority: "God calls Christians to make his will prevail in every [emphasis added] area of life" (17). This means that education is preparation for a divine appointment; there is no such thing as disposable learning.

From this opening charge emerges not a defense of the liberal arts, but rather a vigorous application of them through various

lenses. The first section outlines the foundational understandings that follow, identifying the latent tensions between Christian and pagan ways of knowing that have dogged the church since its earliest days. By highlighting the roles of the citizen and the skeptic, the essays (by Davis, Richmond, and Blumhofer) arc toward the theological elements that were crucial to the expansion of the United States in its earliest days. The story of American education is the story of Christian liberal arts education, at least in a cultural sense.

The second section details theological convictions that must be part of a truly Christian approach to learning, for a complete integration of faith and learning must move beyond mere pietism to an intellectually fulsome framework for thinking about the important questions of life. These essays are essential reading for anyone who wishes to understand more than a few bon mots about the enterprise of Christian thinking. These solid introductions explore the doctrine of humanity (Lundin), thoroughly Christocentric thought (Greenman), redemptive vision (Martindale), and fulsome love (Litfin).

The third section outlines practical applications of these theological foundations. By examining the most basic of intellectual activities, the reader is prepared for the disciplinary activities addressed in the next section. The skills of habit (Mead), reading (Jacobs), writing (Coolidge), listening (Chase), character cultivation (Wood), and work (Ivester) all combine to prepare learners for the truly hard labor of disciplinary preparation, not merely for professional careers but for life in general.

The fourth section delves into disciplinary understandings of how these skills may yield fruit that will provide succor for a life of godly service. While the editors provide a caveat that disciplinary distinctions are something of a violation of the spirit, if not the letter, of liberal learning, they provide such viewpoints that help to illustrate the various ways in which application works. In turn, the selections explore the natural sciences (Chappell), social sciences (Allen), humanities (Baumgaertner), music (Wilder), the visual arts (Walford), and theater (Lewis).

The final section examines the goals of applied liberal learning, asking the basic question championed by Francis Shaeffer:

“How then shall we live?” The essays touch on topics familiar to most students: social media (Schuchardt), the body (Walkters), personal formation (Wilhoit), lifelong learning (Augustine), global engagement (Townsend), and the consummation of all things in eternity (Philip Ryken, appropriately providing a bookend to his father’s opening essay).

For an era where attention spans continue to shrink, *Liberal Arts’* selections are brief and pithy, avoiding the temptation to become either precious or obscure, but providing helpful introductions to the topics. On the other hand, the selections tend to whet one’s appetite more than slake it, but perhaps this is strategic in that they spur further thought and interest in more in-depth considerations.

Gene C. Fant, Jr.

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Political Thought: A Student's Guide

Hunter Baker

Wheaton, Illinois: Crossway, 2012

118 pages, \$11.99 paper

Reviewed by: John D. Basie

As the title suggests, this introductory text is intended for the beginner in political thought. Having worked as an attorney in public policy as well as a professor in a university setting, author Hunter Baker is well equipped to relate theoretical concepts to the college-age set and help them understand the practical implications of those concepts. His goal is two-fold. First, he introduces the reader to the basic concepts and major figures of political thought. Second, and consistent with the series of which this book is a part, he offers Christian analyses of those concepts in the hope that readers will better understand how political thought fits into a fully-orbed, robust Christian worldview.

Baker begins by asking the reader to imagine the nature of the family unit. Since almost everyone has a basic understanding of the nuclear family unit, his strategy is to help students understand the main issues in politics. What we experience in our families helps us to understand a key idea in political thought, namely *ordered liberty*. Families have rhythms built into their fabric that permit individual liberty to a greater or lesser degree.

From there Baker moves on into a brief survey and analysis of the state of nature and social contracts, along with the major thinkers associated with these concepts. Each thinker's main emphasis is drawn out through the analysis, including liberty (Locke), equality (Rousseau), order (Hobbes), and justice (John Rawls). Baker then spends the next few chapters explaining each concept and drawing relevant implications for his student audience as they seek to become contributing members of the body politic. One very helpful distinction that he makes in his treatment of justice is the distinction between horizontal and vertical justice. The former, according to Baker, is "justice in terms of the relationships and arrangements between human persons," whereas the latter is "justice...concerned

with the acknowledgement of God” (71). Another important distinction he articulates is the notion of horizontal justice based on civil rights versus horizontal justice based on equality of conditions. He then devotes thought to the strengths of each position, noting at the end of the section that in our current political climate “we have combined social welfarism with social laissez-faire” (81).

In the latter part of the work, Baker gives attention to what constitutes good politics. He draws on the thinking of Augustine in claiming, “justice means that we don’t rule over other human beings as though they were irrational animals” (87). This means treating human beings as the image-bearers that they are. Borrowing from John Locke, Baker argues that this does not mean that government ought not restrain and appropriately punish evildoers whose actions identify themselves more with animals than with human beings. By contrast, “those who do not commit wrongs should be free and uncoerced” (89). That they are uncoerced means that they enjoy ordered liberty, one of Baker’s main themes in the book.

Although Baker clearly articulates a Christian worldview perspective throughout each chapter, he concludes the book with a treatment of the specific Christian contribution to political thought. He briefly canvasses Augustine, Aquinas, and Martin Luther King, Jr. as he makes the case for “persuasion and civility, not some strict test of secularity” in drawing the boundaries of proper and virtuous political discourse. A claim in the book’s concluding paragraph sums up the greatest Christian contribution to political thought, namely, that Christianity has placed a high emphasis on the “irreducible worth and dignity of human beings while also soberly insisting upon their sinful nature. As a result, Christians would see people free but not too powerful” (114).

Baker effectively accomplishes his two-fold task of canvassing major themes in political thought and bringing a Christian worldview to bear on them. This work fills a void in the spectrum of introductory texts on political thought. The book’s simplicity combined with a review and analysis of the major categories of political thought from a Christian perspective make it truly unique and enjoyable to read. Furthermore, Baker’s appropriately informal

style makes the ideas more accessible to millennials. The ideas in the book also provide a healthy challenge to the entitlement mentality that typifies advocates of big government. Millennial generation college students are more vulnerable to this kind of thinking than previous generations from this reviewer's experience, and it is one reason that Baker's contribution is a refreshing addition to the literature on political thought.

John D. Basie

Director

IMPACT 360

A Theology of Higher Education

Mike Higton

New York: Oxford University Press, 2012

284 pages, \$150.00 hardback

Reviewed by: C. Ben Mitchell

By all accounts higher education—including Christian higher education—is in crisis. In *A Theology of Higher Education*, Mike Higton offers a Christian theological account of higher education, showing that the DNA of the university as a species contains uniquely Christian traits. Higton is Academic Co-Director of the Cambridge Inter-faith Programme and Senior Lecturer in Theology at the University of Exeter, so he is well situated to offer this analysis, not least because of the explosive push-back being felt in the Oxbridge context. Instead of turning the book into “a diatribe, or into a melancholy, long withdrawing roar of retreating academic faith” (2), Higton crafts an argument meant to rehabilitate confidence in university education by celebrating what it does well, or could do better.

Part I of the volume traces the evolution of the university through the histories of the universities of Paris, Berlin, Oxford, and Dublin. Typically, the tale of these great universities is construed as the shedding of the constraints of religious orthodoxy in favor of the emancipation reason offers, the triumph of reason over tradition and freedom over authority. Higton contests this myth, arguing instead that in genesis of the university, “reason emerges *not over against* Christian devotion, but *as a form* of Christian devotion” (13, emphasis original). Practices at the University of Paris, for example, could only make sense in the context of certain theological assumptions. “It was assumed that to discover that harmonious ordering was not simply an intellectual game, but one of the means (or part of the means) for discovering the good ordering of human life before God, including the good ordering of the social life. It was assumed, moreover, that this discovery of good order was possible only through a certain kind of conformity to it: the good ordering of the scholar’s life in humility, piety, and peace—and this both as

a prerequisite to learning, and as something deepened and established *through* learning” (41-42, emphasis original).

Following his exegesis of the history of the universities under examination, Higton brings his account in conversation with contemporary theological voices. Thus, chapter 4, becomes a bridge between the historical interpretation and the contemporary application. This chapter engages the familiar, if diverse, views of the university offered by George Marsden, Dallas Willard, Nicholas Wolterstorff, Steve Holmes, Stanley Hauerwas, Dan Hardy, David Ford, Roman Williams, and Timothy Jenkins.

In Part II of this volume, Higton explores several Christian aspects of university education against the backdrop of his own Anglican theological tradition. Learning, he argues, is a form of discipleship. Likewise, learning for the Christian is a form of participation in the cross and resurrection, in so far as it breaks and remakes us as we cultivate the fruit of the Spirit. Christians are even able to learn from non-Christians. So he says, “Christians are called to a practice of hospitality, to welcoming the stranger not as an exercise of our own generosity but as a recognition of God’s own generosity in giving the stranger to us, and the stranger’s generosity in allowing himself to be welcomed. We can expect to learn (and to go on learning) from any stranger, precisely to the extent that the stranger is one of God’s creatures—as so, whether the stranger knows it or not, a participant in the infinite generosity of God” (167-168).

In the following four chapters, Higton offers a new vision of the university: the virtuous university, the sociable university, the good university, and the negotiable university. “All these claims involve both an affirmation of what universities are already, at their best, and a desire to work on those universities until they become better at what they properly do” (255).

As a person who has taught at a large state university, two seminaries, and now, a private Christian liberal arts university with attendant professional schools, I resonate deeply with nearly everything Higton says. University life, even in the most secular of universities, can be a place for intellectual discipleship and

spiritual formation in the lives of both students and faculty. For the Christian, one's theological assumptions make it so, especially the affirmation that "all truth is God's truth." Faculty may live faithfully in many of those contexts without fear of reprisal.

The challenge in some contexts is how to participate in one's academic guild(s) without forsaking certain theological commitments. Philosophical naturalism is so virulent in some university departments that it is nearly impossible to achieve promotion and tenure without submitting to its tyranny. Nevertheless, where universities genuinely appreciate diversity among faculty, and where Christian faculty members do good work, higher education can be a very satisfying calling.

This is a very important book, not least for faculty development. I fear that the cost will render it inaccessible to many who would profit from its argument. Hopefully, Oxford University Press will issue a more reasonably priced paperback version soon.

C. Ben Mitchell
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Evermore: Edgar Allan Poe and the Mystery of the Universe

Harry Lee Poe

Waco, Texas: Baylor University Press, 2012

xvii + 222 pages, \$24.95 hardback

Reviewed by: Philip Edward Phillips

In this book, Harry Lee Poe reevaluates Edgar Allan Poe's life and explores questions central to his thinking and writing, especially his interest in unity. Poe's philosophical prose-poem, *Eureka* (1848), occupies center stage in this informative and provocative study of Poe and the universe. In *Eureka*, Poe "proposes the Big Bang theory, speculates about what we call black holes, rejects the scientific understanding of the universe through which gravity works, and declares that time and space are one thing, all the while constructing a theology of creation and a philosophical answer to the problem of suffering" (ix-x). Writing for a broad audience, the author offers a highly readable and engaging treatment of Poe's lifelong engagement with the human "problems" of suffering, Beauty, Love, justice, and the universe itself. A descendent of Poe's cousin, William Poe, Harry Lee Poe approaches his subject with sympathy, and, as a Poe scholar, with considerable literary-historical expertise.

The first chapter addresses popular perceptions and misperceptions of Poe, the most heinous of which is Rufus Griswold's infamous *Memoir*, in which he promulgated malicious slanders about his life. Rather than dwelling on the many misfortunes in Poe's life, Harry Lee Poe highlights how Poe thought about the negative problem of suffering alongside "the positive problems of Love and Beauty," which are central topics of concern in his works (1-2). While popular audiences associate Poe with death, horror, and the gothic, the author justly argues that Poe's central interest in his artistic work is unity. In *Eureka*, for example, "Poe concluded that suffering, Beauty, Love, and justice come together in a meaningful and rational way in the unity of effect intended by the 'author' of the universe" (2). The artist's imagination bridges the divide between "matter and spirit" as well as the "frontier of death" (2). Poe posited

God as the source of creation and the universe as God's perfect plot in *Eureka*, which he considered to be his greatest work.

Poe's understanding of the "problem" of Beauty developed over the course of his entire career. According to the author, it was "realized in *Eureka*, in which [Poe] describes Beauty in relation to math, physics, and the cosmos. Poe realized that Beauty involves more than merely an emotional response to some stimulus but constitutes a cognitive criterion for judgment and response" (80). Poe's desire for greater perfection in his writing—as evidenced by his revisions of such works as "To Helen"—paralleled his search for the ideal, for Beauty, for order—in art and in the universe. According to Harry Lee Poe, "Beauty constituted to Poe evidence that human experience is not bound by time but belongs to eternity" (83). But the questions remain concerning the preservation of individual identity throughout eternity.

According to Harry Lee Poe, Poe proposed the original Big Bang theory at a time when the world was not ready to accept it. As he puts it, Poe "believed he had unraveled a mystery that comprehended a unity to the universe. Beauty and Truth, science and religion, mathematics and poetry, matter and spirit all had an intertwining relationship" (134). And Poe reached that conclusion through his imagination.

But what of other "problems," such as suffering in the world? According to *Eureka*, the universe will expand, then contract to return ultimately to its primal nothingness. In returning to God, all individuality is absorbed into God, a prospect that is both exhilarating and frightening. The rhythm of an expanding and contracting universe parallels Poe's theory of poetry in "The Philosophy of Composition" as the "rhythmical creation of beauty." For Poe, the universe is God's plot, which expands and contracts like a beating heart. This conception of the universe provided Poe (at least temporarily) with a solution to the problem of suffering. The author notes that, like young C.S. Lewis, Charles Darwin, and the Buddha, Poe resolved that "some sort of deity existed, but not one who stood too close or could actually make a difference" (162). It makes sense, then, that such a solution would

not be sufficient for one who lost all the meaningful women in his life — his mother, the mother of a childhood friend, and his beloved wife, Virginia—to early deaths. Although many read Poe as a macabre writer, in the author's view, Poe hated death. Indeed, Poe focused instead on "attraction" and revised his conception of God to include "the continuity of human consciousness beyond death. In the end, the problem of Love seems to have overcome the problem of evil" (162-3). Following the death of his wife and his subsequent debilitating grief, Poe reached the view that "individual identity continues so that people may know and love each other, for without individual identity, Love does not occur. Love requires relationship, even for God" (163).

Poe's conclusion, then, requires another layer of understanding in respect to the deity, which Harry Lee Poe reserves for his cleverly-titled postscript, "Ex Poe's Facto." Poe was not a habitual churchgoer, except in his childhood, when he attended St. John's Episcopal Church in Richmond. However, in his final year, Poe "signed the pledge" at a Sons of Temperance Meeting. The author notes that many scholars fascinated with Poe's mysterious final days have overlooked the potential significance of this pledge. Poe did not merely pledge to abstain from alcohol but he made a public profession of faith in the evangelical tradition. Perhaps Poe took this step to convince the widowed Elmira Shelton (his boyhood sweetheart) to marry him, or perhaps Poe had a "conversion experience." Harry Lee Poe suggests the latter in his reading of the event, arguing that Poe hoped for "the continuation of personal identity beyond death" (171). For Poe, then, the expansion and contraction of the universe, which he conceived in *Eureka*, intimated that there is "something else." Poe came to believe that "Love, Beauty, and justice all point beyond themselves in the physical world to their eternal origin, and by these means, God draws people toward him" (175). Harry Lee Poe "cannot say" if Poe concluded that *Eureka's* "philosophical and theological concerns are satisfied in Jesus Christ" so that Poe, in good conscience, could have "affiliated with an evangelical Christian organization" (175), but he makes a credible case worthy of consideration.

While *Evermore* offers an extended exploration of Poe's conception of the universe, it provides much more in its reevaluation of Poe's life, his concern with perennial human problems, and his view of God. I recommend this book to anyone interested in philosophical and theological approaches to one of America's most widely-recognized but least-understood authors.

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What Motivates Cultural Progressives?: Understanding Opposition to the Political and Christian Right

George Yancey and David A. Williamson
Waco, Texas: Baylor University Press, 2012
280 pages, \$34.95 hardback

Reviewed by: Hunter Baker

In his provocative book *The Decline of the Secular University*, John Somerville urged scholars to engage in the critical study of secularism in the same way analysts of religion have studied (primarily) Christianity. When I wrote *The End of Secularism*, I responded specifically to Somerville's call. What is secularism? What case would its advocates make for it? Does that case stand up? Can we say anything about secularists as a group? Can their program be seen as something more than simply a proposed service to humanity? In other words, are secularists working toward that which they find comfortable as much or more than they are working toward the betterment of mankind?

George Yancey and David A. Williamson take the project of studying secularists to a new level. Referring to their class of subjects as "cultural progressives," the pair of sociologists gathered an impressive amount of qualitative research on the nature of individuals who ardently oppose the "Christian right." By treating those who wish to confine and reduce Christian influence as subjects of analysis in the same way that has been done to Christian activists, the investigators break up some of the "gorillas in the mist" aura around religious conservatives. It turns out that everyone can be studied and have their motives carefully parsed.

The results of their study are interesting. In some ways the survey data reinforce what you always knew about cultural progressives. They see themselves as the guardians of reason over against the knuckle-dragging primitives who continue to arrange their lives around an arcane book. But there is much more to be said. For example, the authors noted that cultural progressives tended to be whiter, wealthier, better educated (in terms of academic degrees),

and more male than the populace at large. I found myself thinking of Hugh Hefner with a master's degree.

Their feelings about members of the Christian right could be received largely as an indictment of Christians (as was the intention of the *UnChristian* book which looked at young people a few years ago), but their responses could also serve as grounds for criticism of the progressives. Certain themes in the comments aimed at members of the Christian right emerge. It turns out that some cultural progressives are so offended by the presence of Christian conservatives, they would likely move from a neighborhood where they were aware of their presence. The attitude bears a strange resemblance to that of whites who fled the presence of African-Americans in the neighborhood. In addition, many cultural progressives responded to questions about positive attributes about their opponents by saying that they could not risk saying anything good about them. The virtue of intellectual charity appears to be almost entirely absent. Of course, that is the nature of the dispute, is it not? If one feels that he is battling with benighted morons just a few clicks from burning witches, then it may be expected that the level of enmity would be so great.

The authors hasten to explain that they have not produced a probability study. In other words, the respondents were not sifted out from a massive random survey. Rather, the authors approached culturally progressive organizations with many members and asked for their help in finding participants for their written questionnaires. The questions were open-ended, which allowed those who replied to be highly specific about their thoughts and feelings. In order to distill the responses in a way that is manageable for readers, the authors chose the responses which were the most articulate and representative for direct presentation. However, they used all of the responses from over 3,500 survey takers in their work of classification. While one might complain that the answers are from self-selected individuals, the criticism can be blunted by the fact that the authors did not seek to take the temperature of Americans at large. Rather, the thrust of their effort was to gain information from those Americans who feel most strongly that the Christian

right must be stopped, contained, and marginalized. For that type of study, the methodology employed works well and, as the authors point out, is highly likely to be reinforced by further studies.

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The Liberal Arts: a Student's Guide

Gene C. Fant, Jr.

Wheaton, Illinois: Crossway, 2012

128 pages, \$11.99 paper

Reviewed by: David Lyle Jeffrey

The series in which this volume appears (*Reclaiming the Christian Intellectual Tradition*) is a welcome contribution to intra-mural reflection on the task and challenges of creating a distinctive approach to liberal education in a Christian context, and the series has already produced some substantial reflections by scholars whose commitment to evangelical perspectives on that tradition and its contemporary practice is evident. The series has produced four volumes prior to this one, and each of them is worthy, each of value not only to students in Christian liberal arts colleges, but also to parents of those students and those who are supporters of such colleges and their mission.

This particular volume, by a member of the faculty at Union University, attempts a wide ranging and integrative survey of the way in which the principal traditional disciplines in any such a program of Christian higher education may function synthetically. How can practitioners of these disciplines conceive of their work as a joint enterprise, contributing to a rich and general appreciation of Christian tradition and contemporary practice in relation to achieving the goals of such education? Fant's survey contains many useful insights and provocative nodes for future reflection and development in the Christian educational enterprise. Some of these, he suggests, invite a consideration of the ironies which attend upon the history which we inherit from our non-Christian predecessors.

One of these is surely that fact that in the classical world, where education for those of the upper classes who were in distinctive ways free to pursue an education for leadership in the city-state, was relegated to teachers who were themselves slaves. This irony may have been in the mind of that great teacher of the Church, St. Paul, when he presented himself in his letters as, in effect, a slave of Christ. But this point raises perdurable questions for the way

in which the churches since then have regarded those who would teach their children. More could be said about this, but aspects of this irony clearly remain, if in an altered form, in our own time.

Dr. Fant rightly regards the cultivation of a ‘certain wisdom,’ distinct from what the world counts as wisdom, as somehow essential to the achievement of a Christian liberal education which is not merely a sub-cultural imitation of secular education. That is to say, a Baconian predilection for instrumental reason, or a Cartesian notion that all of the disciplines somehow compose a sufficient wisdom, are not a model for what we, as Christian educators, should set out to accomplish, though an understanding of the normative status of instrumental reason and the superstitions attendant upon the ‘expertise’ of secular learning are a necessary component of Christian learning, if only as an instructive contrary. Particularly valuable here are Fant’s reminders that Christian learning must not be devoted to any species of “self-actualization” or inherent forgetfulness that Christian liberal education frees only to the degree that it liberates us from the self-preoccupation and narcissism of our general culture, since self-regarding constructions of educational purpose are actually an initiation into slavery of the darkest, most deterministic kind. The acquisition of information—even important information—must not be imagined to be an equivalent to an inculcation in wisdom.

This little volume is a general survey—perhaps unavoidably so—but it strikes me that Fant’s many insights might be sharpened into a more rigorous argument for a view of education that, in fundamental ways, must be philosophically more contrastive to the secular sources on which we draw than simply a learned adequation of those sources, however well intended. The role of Scripture—of revelation—as catalyst for integration is obviously critical in this regard.

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Dust and Breath: Faith, Health and Why the Church Should Care about Both

Kendra G. Hotz and Matthew T. Mathews

Grand Rapids, Michigan: Wm. B. Eerdmans Publishing Company, 2012
128 pages, paperback, \$14.00

Reviewed by: Carla D. Sanderson

Dust and Breath encourages churches to take up the cause of meeting healthcare needs in their community for the sake of the gospel of Jesus Christ. Utilizing patient care stories from the 25-year history of Memphis, Tennessee's Church Health Center, theologians Kendra Hotz and Matt Mathews illustrate biblical truth and apply it to the healthcare crisis of our day. Much like Raymond J. Bakke in *A Theology as Big as the City* (1997) and Steve Corbett and Brian Fikkert in *When Helping Hurts* (2012), Hotz and Mathews lay the biblical and theological foundations for why we must care about what is happening in our cities and communities, especially the health disparities found there. With real-world patient experiences lifted from the journal of the Center's founder Scott Moats, MD, they show how present realities can be viewed in light of what we are taught in scripture.

The creator God made our bodies from the dust of the earth and breathed into us life, and it is in Him that we live and breathe and have our being (Acts 17:28). We are body and soul together, whole persons who have been given agency by God to make choices and shape the direction of our lives. A good God created our personhood and intended for us companionship, a healthy environment, meaningful work, and the enjoyment of Sabbath. We were created as finite beings where life has a beginning and an end. When sin entered the world, everything changed.

Dust and Breath reminds us that disease is the result of sin and that health is far more than the absence of disease. Pain and suffering are real, and we are free to lament them, but God has not left us to walk through this fallen world alone. The storyline of the Bible teaches us to trust that God's goodness will ultimately prevail and that we can find peace in the midst of every valley.

Hotz and Mathews offer a particularly helpful warning against self-righteousness when thinking about the relationship between sin and health. Sinful behaviors can lead to health problems, but disease is a manifestation of the brokenness that is part of the human condition affecting us all. We “judge not” in the church nor in the clinic. The hearts of all men and women are prone to wander, and the consequences of sin impact not just health but also families, work and witness.

At the heart of *Dust and Breath* is the profound message that poverty is also a result of sin. We live in a time of crisis. A history of racially-biased social and institutional structures has led to educational, economic, and health disparities; in the case of Memphis these disparities are primarily among African Americans. Access and resources are strong social determinates of health. Poverty works in multiple and interlocking ways to compromise health and leave its victims vulnerable to disease.

The story of Church Health Center is one physician’s call to do something about it. Serving as both associate pastor of an urban church and director of the Church Health Center located across the street, Dr. Scott Moats has given his life and career to treating disease and caring deeply about the whole person in his care. And he has been joined by hundreds of volunteers, Christians who have undone the reductionist models that have the church attending to souls, but not bodies and healthcare to bodies, but not souls. With a commitment to personhood, Church Health Center’s theme is “discover wholeness in body and spirit.”

The Church Health model is comprehensive, going beyond disease treatment to create environmental, nutritional and educational structures that foster health. Further, the model fosters community, sometimes referred to as social capital or collective efficacy, a model rightly reflecting what Martin Luther King, Jr. called “the beloved community.” Most significantly, the Church Health model is replicable in a nation searching for workable solutions to its healthcare crisis. The early church continued to bear the good news of Jesus AND heal the sick, support widows and orphans, and renew communities of faith.

Church Health Center is a reminder that the model of the early church is replicable, too.

Carla D. Sanderson

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Union University

The Anticipatory Corpse: Medicine, Power, and the Care of the Dying

Jeffrey P. Bishop

Notre Dame, Indiana: University of Notre Dame Press, 2011

xv + 411 pages, \$35.00 paper

Reviewed by: C. Ben Mitchell

Some critiques take the form of smoldering reflections, others are explosive provocations. This book is the latter. Its author, Jeffrey Bishop, is exquisitely placed to offer the critique. He is simultaneously a medical doctor, an ethicist, and a philosopher. He heads the Albert Gnaegi Center of Health Care Ethics at Saint Louis University. His winsome personality should not disguise the radical nature of his critique.

Contemporary medical education, the author maintains, perpetuates the culture of the corpse, the culture of death. “It is not odd that [medical students’] first patient is dead, literally a patient beneath the dissecting knife . . . So the medical study of life originates with a decontextualized dead body; the body of the dead cadaver represents the bodies of the living . . . The great paradox in all of this, and the subject of this book, is that death serves as the cultural and political motivator for medicine. Indeed, one could claim that medicine—Western medicine, at least—is founded in a dream as old as humanity itself: to defer death” (14-17).

In medicine, “the dead body is the epistemologically normative body, and medicine’s metaphysics is one dominated by efficient causation—the animation of dead matter” (23). Thus, the author’s thesis is that “medicine has pulled the dead body out of community, stripped it of its communal significance, and found the ground of its knowledge in the dead, decontextualized, and ahistorical body” (27). The remainder of the book traces the implications of this thesis for truly human medicine.

Bishop subjects medicine to a deep analysis through Foucault’s, *Birth of the Clinic*, as the lens. In the evolution of medicine, diseases, claims Foucault, were defined independently from the body in which they were found. Over time, a new

priesthood emerged as physicians donned their own vestments, occupied their sacred place at the bedside, all of this taking place in the sanctuary of the clinic. Medicine gained new powers in the emerging biopolitical context.

Consequently, these epistemological and metaphysical shifts have reshaped the way we think about the role of medicine in the care for the dying, according to Bishop. Today, patients are the sovereign choosers and physicians have become the mediators who employ medicine's techniques and technologies to prolong life indefinitely. "On this logic, a death is a good death only if it's chosen" (280). To complicate matters further, dichotomies dominate: vitalism on the one hand, or radical individualism on the other. "For social conservatives, bare life is deserving of the good life; for social liberals, the possibility of the good life is the condition for deserving bare life" (282). "A good death can only be known as good if it can be assessed by those who know death, who have measured it, and who have seen it deep within the dead body—and within the living body. Medicine cannot let the dying be" (284).

Bishop does not end his lament in pessimism. His final chapter, "Anticipating Life," modestly offers a radical proposal for reforming medicine. Bishop argues for what he calls an embodied holism in medicine, where patients and their bodies are not dissected from their lives, communities, projects, health, or illness. He calls all of us—physician or not—to rehabilitate the theology of "being-there-with-others and suffering-there-with." The entailments of doing so would profoundly change the way we care for the dying.

As has been said, this is a provocative and very important volume. It is beautifully written, carefully argued, and ably supported by endnotes, bibliography, and index. Because of its profundity, it is slow going in places. Bishop's philosophical analysis is not easy, but it is brilliant. Having said that, there is enough light in the non-philosophical portions of the book to illumine everyone. Physicians, nurses, pharmacists, and other caregivers should read this volume. But so should pastors, chaplains, clinical

social workers. Its greatest benefits might be discovered in an interdisciplinary discussion where a community could reimagine a truly human view of death and dying.

C. Ben Mitchell

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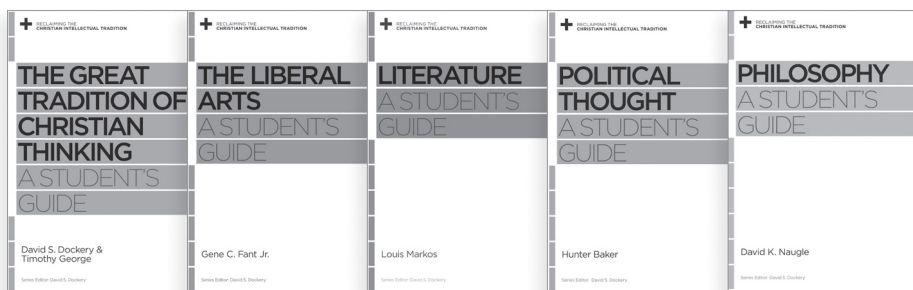
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Introducing the Reclaiming the Christian Intellectual Tradition Series

edited by David S. Dockery and Timothy George

This new series is designed for Christian students and others associated with college and university campuses. Editor David S. Dockery, president of Union University, and other experts demonstrate that vibrant, world-changing Christianity is not anti-intellectual; instead, it assumes a long tradition of vigorous Christian thinking and a commitment to the integration of faith and scholarship as essential to the preparation of a next generation of leaders in the church, the academy, and the world.

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