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CONVICTION WITHOUT IMPOSITION: A RESPONSE TO PROFESSOR GREENAWALT

*Samuel W. Calhoun**

I. INTRODUCTION

For some time Professor Kent Greenawalt has been struggling with the tough issue of when those with religious convictions may “properly rely on [them] in deciding what public laws and policies to support.”¹ Professor Greenawalt’s thesis is that individuals must resolve many public policy questions for which “publicly accessible reasons” provide an insufficient solution.² Each person is therefore

* Professor of Law, Washington & Lee University School of Law. This article was made possible in part by a grant from the Frances Lewis Law Center. I am deeply appreciative of the help of many people: Randy Bezanson, Bryan Bishop, Alan Button, Jackie Calhoun, Paul Carter, Bob Cochran, Bill Geimer, Kent Greenawalt, Roger Groot, Gwen Handelman, Lyman Johnson, Rick Kirgis, Lash LaRue, Warren Lehman, Uncas McThenia, Ted Melton, David Millon, Brian Murchison, Steve Patterson, Ronnie Range, George Reede, Tom Shaffer, Jim Sloat and Joe Ulrich. I owe a special debt of gratitude to Mark Grunewald, who during all of the phases of this project gave generously of his time and wisdom.

1. Greenawalt, *Religious Convictions and Lawmaking*, 84 MICH. L. REV. 352, 353 (1985). After the Michigan article, Professor Greenawalt continued to explore the issue in *Religiously Based Premises and Laws Restrictive of Liberty*, 1986 B.Y.U. L. REV. 245; *Natural Law and Political Choice: The General Justification Defense - Criteria for Political Action and the Duty to Obey the Law*, 36 CATH. U.L. REV. 1, 27-36 (1986); *Church-State Relations and Religious Convictions*, 35 CLEV. ST. L. REV. 219 (1986-87); and *The Limits of Rationality and the Place of Religious Conviction: Protecting Animals in the Environment*, 27 WM. & MARY L. REV. 1011 (1986). The most complete statement of his thinking appears in K. GREENAWALT, RELIGIOUS CONVICTIONS AND POLITICAL CHOICE (1988). See also Greenawalt, *Religious Convictions and Political Choice: Some Further Thoughts*, 39 DE PAUL L. REV. 1019 (1990).

2. K. GREENAWALT, RELIGIOUS CONVICTIONS AND POLITICAL CHOICE 144-49 (1988). Although he expresses some misgivings, by “publicly accessible reasons” Professor Greenawalt means “secular rational grounds: secular not in the sense of being antireligious but in the sense of not relying on religious assumptions, rational in the sense of resting on reasoned arguments whose force is generally understood.” *Id.* at 56-57.

forced to resort to “personal experiences and commitments of value”³ Since “everyone must inevitably use ‘nonpublic’ reasons . . . people whose experience leads them to religious convictions should not have to disregard what they consider the critical insights about value that their convictions provide.”⁴

I admire Professor Greenawalt’s work greatly and find in it much with which I agree. In two important respects, however, I differ. The first is a matter of perspective. Professor Greenawalt’s goal is to determine when a good member of our liberal democracy would rely on his or her religious convictions.⁵ My goal is to determine when an obedient Christian would do so. Our difference in approach is best shown by Professor Greenawalt’s comments concerning one of his illustrations, Jody. Jody believes that God both “considers the drinking of alcohol to be sinful” and “wishes that organized societies stamp out this practice”⁶ Professor Greenawalt believes that Jody, in seeking laws against the drinking of alcohol, would not be acting like a good, liberal democratic citizen.⁷ He also thinks, however, that Jody’s desire for such laws “makes perfect sense if she has correctly conceived religious truth.”⁸ The question which Professor Greenawalt’s work intentionally avoids is whether Jody’s belief that God wants societies to use law to stamp out sin reflects an accurate view of God.⁹ This is the issue with which I am chiefly concerned. My conclusion, which assumes the existence of the Christian God, is that Jody is wrong.

I also differ from Professor Greenawalt with respect to the circumstances in which one may properly rely upon one’s religious faith in determining whether or not to support a particular law. Professor Greenawalt believes that whenever a choice is to be made between two rationally plausible views, the individual may properly ground his selection upon religious convictions.¹⁰ This is appropriate even if the

3. *Id.* at 145.

4. *Id.* at 144-45.

5. *Id.* at 4.

6. *Id.* at 55.

7. *Id.* at 55-56. Professor Greenawalt does not explicitly state this conclusion. Indeed, he appears to attribute it to the theory of proper citizen conduct that his book criticizes. Nonetheless, I am convinced that Professor Greenawalt himself would view Jody’s conduct as inconsistent with good liberal democratic behavior. *See infra* note 11.

8. *Id.* at 55.

9. *See id.* Professor Greenawalt states that in his approach to such questions he tries “hard to avoid direct claims about theological truth.” *Id.* at 4. His “analysis and conclusions . . . do not depend on the truth or falsity of particular religious positions” *Id.* at 5.

10. Professor Greenawalt does not believe that the good citizen should seek to use law to implement faith-based views “that would be senseless given any rational secular assessment of

person of faith concludes that the rational arguments favoring his faith-based view are weaker than those on the other side.¹¹ I would tell the Christian in this situation to forego seeking any law that would compel compliance with a faith-based precept.¹² I believe that the Christian faith itself requires such forbearance.

My goal in this article will be to explain the two conclusions that

the facts." *Id.* at 204. There thus is a threshold requirement of rational plausibility. *Id.* at 207.

11. *See id.* at 166-67. Professor Greenawalt believes that this choice would be appropriate for two broad categories of issues: borderline questions of status and complex factual judgments. The former category involves disputes about "how much protection, if any, particular entities are thought to warrant." *Id.* at 98. Professor Greenawalt discusses animal rights, environmental ethics and abortion; he concludes that the good liberal democrat may properly ground his public policy choices in his religious convictions despite the absence of independently-compelling secular justification. *See id.* at 166-67. Professor Greenawalt reaches the same conclusion for his second category, wherein he discusses the tough choices to be made concerning the issues of welfare assistance, punishment and military policy. *See id.* at 173-76, 192.

In contrast to the foregoing two categories, Professor Greenawalt believes that there is one situation in which independently-compelling secular justification is required if the person of faith is to act like a good liberal democrat. A good liberal citizen should never seek laws to prevent "a wrong judged purely from a religious perspective . . ." *Id.* at 94. Professor Greenawalt's example involves Sam, who must decide whether to seek a criminal prohibition of homosexual conduct among consenting adults. *Id.* at 90. After evaluating the arguments that rest on commonly accessible reasons, Sam concludes that "the arguments against [prohibition] . . . are far stronger than the arguments in favor of prohibition . . ." *Id.* He, however, "also believes that homosexual acts are sins that God wants stopped." *Id.* Professor Greenawalt believes that if Sam seeks a prohibition due to "the possible sinfulness of sexual activities," he would not be acting as a good liberal democrat. *See id.* at 91. This would be true even if the secular arguments tipped "only weakly against prohibition." *Id.* Only if a person were honestly convinced that the secular arguments for a prohibition outweighed those against would support of a criminal law be consistent "with the proper conception of liberal democracy." *Id.* at 94.

As will become apparent, the faith-based non-imposition standard which I would impose in all situations upon the obedient Christian is essentially identical to the foregoing "good liberal democrat" standard which Professor Greenawalt would apply only when the religious person is seeking to prohibit acts solely because his faith compels him to view them as morally wrong. I am not persuaded that borderline questions of status or complex factual judgments warrant any different treatment. *See infra* notes 107 and 156.

12. Not every faith-based vote contrary to the weight of rational argument would be inappropriate for the Christian. In one of his preliminary articles, Professor Greenawalt uses the illustration of Joseph, who is persuaded "very weakly" by rational arguments "that human beings should not eat the flesh of higher animals, and that the law should prohibit the production and processing of meat for that purpose." *The Limits of Rationality and the Place of Religious Conviction: Protecting Animals and the Environment*, 27 WM. & MARY L. REV. 1011, 1061 (1986). Joseph, however, also believes that the Bible "clearly establishes the moral permissibility of eating meat." *Id.* Professor Greenawalt concludes that it would be entirely appropriate for Joseph to follow his firm religious convictions rather than "uncompelling rational arguments." *Id.* Although the sentence that accompanies this footnote would seem necessarily to imply that I would disagree with Professor Greenawalt's conclusion were Joseph a Christian, the fact is that I would agree with him on these particular facts. A faith-based vote by Joseph not to prohibit the production of meat does not compel anyone to do anything. Rather, it leaves matters in a state of freedom.

I express above. I will do so by articulating a faith-based principle, which I call the non-imposition principle, for evaluating when it is appropriate for one holding faith-based normative propositions to seek their enactment into law. I will then defend the non-imposition principle against several anticipated criticisms.

II. THE NON-IMPOSITION PRINCIPLE

I am a Christian. I believe in God as described in the Bible: “the Creator of the ends of the earth”;¹³ “righteous in all His ways”;¹⁴ “gracious and compassionate, slow to anger and rich in love”;¹⁵ “majestic in holiness, awesome in glory, working wonders”;¹⁶ “mighty in power”;¹⁷ limitless in His understanding;¹⁸ “the blessed and only Ruler, the King of kings and Lord of lords, who alone is immortal and who lives in unapproachable light.”¹⁹ I also believe the Bible to be “God-breathed,”²⁰ that is, “given by inspiration of God.”²¹ I would therefore agree with the Psalmist David that the Bible’s normative propositions are “perfect,” “trustworthy” and “altogether righteous.”²² In sum, I believe that an infinite, infallible God has spoken through the Bible in normative propositions that we can understand. The question then becomes whether I should urge that Biblical principles be enacted into law.²³

In view of my beliefs, the answer initially might seem to be simple. After all, if an infallible God in fact has spoken, surely His pronouncements should be law. The reality is, however, that I would oppose any legal sanction being given to a Biblical command based solely on the command’s presence in the Bible. There is, of course, a practical argument for this conclusion: not everyone shares my be-

13. *Isa.* 40:28.

14. *Ps.* 145:17.

15. *Ps.* 145:8.

16. *Exod.* 15:11.

17. *Ps.* 147:5.

18. *Id.*

19. 1 *Tim.* 6:15-16.

20. 2 *Tim.* 3:16.

21. The Westminster Confession of Faith, ch. 1, ¶ II, printed in *THE WESTMINSTER STANDARDS 4* (Great Commission Publications).

22. *Ps.* 19:7, 9.

23. My thinking on this topic was sparked some years ago by the late Arthur Leff’s article, *Unspeakeable Ethics, Unnatural Law*, 1979 *DUKE L.J.* 1229. Leff’s thesis is that apart from God there is no non-arbitrary grounding for a normative proposition. Since Leff, however, assumed the absence of God, he did not explore the implications for law should God exist.

liefs. While most Americans profess to believe in God,²⁴ fewer actively endeavor to conform their concept of God to the God revealed in the Scriptures. For those who do rely on the Bible, opinions differ on how to interpret Biblical principles. If a particular lawmaking body today happens to agree with me, nothing guarantees that a different body will not disagree. As Governor Mario Cuomo aptly said in his noted 1984 speech at Notre Dame, “[w]e know that the price of seeking to force our beliefs on others is that they might some day force theirs on us.”²⁵

This practical argument, however valid, is not what chiefly motivates me. I refrain from using law to force my religious beliefs on others, not because I am afraid that the tables might be turned someday, but because I view any attempt to impose my faith as fundamentally incompatible with Christianity. For those surprised that an evangelical Christian can believe as I do, it is important to emphasize that people who held similar religious views played a substantial role in establishing the religious liberty that we enjoy today. The most compelling example occurred in Revolutionary Virginia, where in the decade between 1776 and 1786 there was spirited debate concerning the proper relationship between church and state. After describing these Virginia antecedents for the non-imposition principle, I will define the principle more explicitly by giving my view of its scope.²⁶ I will conclude Part II by explaining why the non-imposition principle is an integral part of the Christian faith.

A. Virginia Antecedents for the Non-Imposition Principle

The church-state debate in Revolutionary Virginia, the outcome of which was significant in influencing the approach the nation itself would adopt,²⁷ had its beginnings prior to 1776. By then various dissenting religious groups had already begun protesting against the special position of the Church of England,²⁸ the established church in

24. In 1986, 94 percent said they believed in “God or a Supreme Being.” *Washington Post*, Dec. 14, 1989, at A35, col.5. See K. GREENAWALT, *supra* note 2, at 218-19.

25. Cuomo, *Religious Belief and Public Morality: A Catholic Governor's Perspective*, 1 NOTRE DAME J.L. ETHICS & PUB. POL'Y 13, 16 (1984).

26. Those two subparts will reveal that I consider the scope of the non-imposition principle to be broader than its Virginia antecedents. The more narrow concept of non-imposition which prevailed in Virginia still is properly called an “antecedent” because I believe my position reflects its logical extension.

27. W. MILLER, *THE FIRST LIBERTY: RELIGION AND THE AMERICAN REPUBLIC* 43-44 (1986); T. BUCKLEY, *CHURCH AND STATE IN REVOLUTIONARY VIRGINIA* 6-7 (1977).

28. W. MILLER, *supra* note 27, at 7.

Virginia from the beginning of the colony.²⁹ The debate intensified significantly following the June 1776 passage of the Virginia Declaration of Rights, which in Article 16 declared that "all men are equally entitled to the free exercise of religion"³⁰ Professor William Miller states that this clause produced an "embarrassing enthusiasm" among evangelical Christians.³¹ Lawmakers that Fall were inundated by petitions from Lutherans, Baptists and Presbyterians arguing for "the end of the established church and the equality of all religions"³² "[T]he longest and most carefully worded petition was submitted by the Hanover Presbytery,"³³ which Professor Miller calls "in social position much the strongest of the dissenters"³⁴ While other reasons were given, the petition asserted a religious objection to ecclesiastical establishments (including one for itself): the Gospel does not need "civil aid," as Christ's "weapons are spiritual, and were only designed to have influence on the judgment and heart of man"³⁵

While this outcry by the evangelicals did not lead to disestablishment of the Anglicans, it did produce a law exempting the dissenters from any contributions or taxes to support them.³⁶ The 1776 session was also significant in that there first appeared the idea that would be at the center of debate for the next ten years—"[t]he concept of a general assessment, of taxing everyone for the church or minister of his choice"³⁷ The gist of the argument favoring assessment is revealed in the opening words of the 1784 bill which proposed the measure: "Whereas the general diffusion of Christian knowledge hath a natural tendency to correct the morals of men, restrain their vices, and preserve the peace of society"³⁸ Advocates of assessment believed that public virtue was a prerequisite to effective self-govern-

29. See T. BUCKLEY, *supra* note 27, at 8.

30. *Id.* at 17-19.

31. W. MILLER, *supra* note 27, at 7.

32. *Id.*

33. T. BUCKLEY, *supra* note 27, at 26.

34. W. MILLER, *supra* note 27, at 29-30. It is interesting to note that quite a battle has been waged over the years between the Presbyterians and the Baptists concerning which denomination played the more significant role in the fight for religious liberty in Virginia. See C. JAMES, *DOCUMENTARY HISTORY OF THE STRUGGLE FOR RELIGIOUS LIBERTY IN VIRGINIA* (1971). As one who was raised a Baptist and is now a Presbyterian, I am glad that I can be proud of the efforts of both groups.

35. Presbyterian Memorial of October 24, 1776, *reprinted in* C. JAMES, *supra* note 34, at 222, 224.

36. T. BUCKLEY, *supra* note 27, at 34-35.

37. *Id.* at 35.

38. *Id.* at 188.

ment and that religion was a prerequisite to public virtue. It therefore behooved the state to encourage and support religion.³⁹ This view temporarily swayed the Hanover Presbytery to favor assessment, a “severe jolt to the anti-assessment forces.”⁴⁰ In an October 1784 memorial to the Assembly, the Presbyterians argued that “the existence and welfare of every political combination of men in society” is absolutely dependent upon the support given by religion, with “its happy influence upon . . . morality” and “its tendency to preserve the veneration of an oath . . . which is the cement of the social union.”⁴¹

The assessment controversy culminated in the Fall of 1785, when a “tidal wave of religious petitions” opposing a general assessment “engulfed the Assembly.”⁴² The petition with the most signatures—about 5,000—was penned by an anonymous author whose chief objection to assessment was that it was “contrary to the ‘spirit of the gospel’”⁴³ As in 1776, however, the most significant petition came from the Hanover Presbytery,⁴⁴ which had reversed its position of nine months before.⁴⁵ While the Presbyterians still acknowledged religion’s beneficial influence upon morality (and hence its essential contribution to democratic government), they now argued that Christianity best could accomplish this result “when left to its native excellence and evidence to recommend it, under the all-directing providence of God, and free from the intrusive hand of the civil magistrate.”⁴⁶ Whenever the civil powers had tried to assist Christianity, either by the “sanction of legal terrors” or by “honors and rewards,” the result had been “corruption” and the destruction of “genuine morality.”⁴⁷ A general assessment would not lead the citizenry to cher-

39. See W. MILLER, *supra* note 27, at 24-29.

40. T. BUCKLEY, *supra* note 27, at 92.

41. Presbyterian Memorial of October 1784, reprinted in C. JAMES, *supra* note 34, at 231, 234. See W. MILLER, *supra* note 27, at 29-30. In addition to promoting virtue through religion, an assessment was also viewed as a way to relieve the financial woes of the Presbyterian clergy. See T. BUCKLEY, *supra* note 27, at 92-93.

42. T. BUCKLEY, *supra* note 27, at 144-45.

43. W. MILLER, *supra* note 27, at 39; T. BUCKLEY, *supra* note 27, at 148-49.

44. See W. MILLER, *supra* note 27, at 40; T. BUCKLEY, *supra* note 27, at 175.

45. T. BUCKLEY, *supra* note 27, at 136-37. This reversal reflected the victory of the views of William Graham, the leader of the anti-assessment group within the Presbytery. See *id.* at 93-94. Graham was the president of Liberty Hall College, a predecessor institution to my present employer, Washington and Lee University. *Id.* at 93. It is probable that Graham drafted the Presbytery’s petition to the Assembly. See *id.* at 139 n.56; E. CRAWFORD, AN ENDLESS LINE OF SPLENDOR: PROFILES OF SIX PIONEER PRESBYTERIAN PREACHER-EDUCATORS 33 (1983); C. JAMES, *supra* note 34, at 137.

46. Presbyterian Memorial of August 1785, reprinted in C. JAMES, *supra* note 34, at 236, 237.

47. *Id.*

ish either religion or morality, both of which could be “promoted only by the internal conviction of the mind and its voluntary choice”⁴⁸ The Presbyterian petition ended by urging the adoption of Thomas Jefferson’s bill establishing religious freedom,⁴⁹ which had first been introduced in 1779.⁵⁰ This statute was in fact enacted early in 1786;⁵¹ it prohibited compulsory support for religion and molestation in body or goods on account of one’s beliefs, while affirming the freedom of all men to profess religious opinions without fear of civil disability.⁵²

I do not by any means intend to imply that the faith-based arguments of Christian evangelicals⁵³ were the sole reason for the defeat of general assessment and passage of Jefferson’s statute.⁵⁴ Jefferson, as draftsman, was obviously a factor, but during the legislative battle he was in Paris as Minister to France.⁵⁵ James Madison played a crucial role. He provided political leadership during the struggle⁵⁶ and also made a substantial ideological contribution as the author of the “Memorial and Remonstrance” against the assessment bill.⁵⁷ This document had as its intellectual foundation the “philosophy of natural rights,”⁵⁸ the notion that the domain of “‘conviction and conscience’ ” is by nature beyond the proper jurisdiction of civil society.⁵⁹ While Madison was important, history is distorted to the extent that

48. *Id.* at 237-38. These arguments provide contrary evidence to one scholar’s contention that the Presbyterian petition was confined “largely to rational, secular arguments and to the language of natural religion, rather than employing a rhetoric that invoked Scriptural revelation and the powers of divine grace.” Isaac, “*The Rage of Malice of the Old Serpent Devil*”: *The Dissenters and the Making and Remaking of the Virginia Statute for Religious Freedom*, in *THE VIRGINIA STATUTE FOR RELIGIOUS FREEDOM* 139, 150 (M. Peterson & R. Vaughan, eds. 1988).

49. Presbyterian Memorial of August 1785, reprinted in C. JAMES, *supra* note 34, at 236, 240.

50. T. BUCKLEY, *supra* note 27, at 46.

51. *Id.* at 163.

52. *Id.* at 191.

53. Not all of the evangelicals’ motivations were as pure as their faith-based arguments. The Presbyterians, for example, abandoned their earlier support of assessment in part due to fears that assessment would most help the Episcopalians. W. MILLER, *supra* note 27, at 40-41, 113; T. BUCKLEY, *supra* note 27, at 137-38.

54. Economic conditions also played a part. The people, who had already complained about high taxes, were experiencing such financial difficulties that a new tax to support religion would have been very unpopular. See T. BUCKLEY, *supra* note 27, at 153-55; Isaac, *supra* note 48, at 146-47.

55. W. MILLER, *supra* note 27, at 34; T. BUCKLEY, *supra* note 27, at 174.

56. T. BUCKLEY, *supra* note 27, at 174.

57. *Id.*

58. W. MILLER, *supra* note 27, at 99.

59. *Id.* at 101; see T. BUCKLEY, *supra* note 27, at 131.

his Enlightenment perspective⁶⁰ is touted as the chief font of religious liberty in America.⁶¹ According to Professor Thomas Buckley, the

key to understanding the nature of the religious settlement in Virginia rests with the dissenters, the members of the evangelical churches, for they wrote and signed the overwhelming majority of the memorials which engulfed the legislature that year; and their representatives provided the votes in the Assembly which determined the outcome. Had the evangelicals, and particularly the Presbyterians, opted for the assessment bill, Virginia would have had a multiple establishment of religion instead of Jefferson's bill.⁶²

While it would be historically inaccurate to downplay the role of evangelical Christians in establishing religious liberty, it would also be a distortion to fail to mention another evangelical cause which shows that they may not have realized the full implications of the arguments they had made in their fight against assessment. I refer to their simultaneous call "for laws designed to enforce a style of public morality and life dictated by and expressive of their own particular religious

60. It would be inaccurate to portray Madison as solely influenced by the Enlightenment. His *Memorial and Remonstrance*, for example, included religious arguments against assessment similar to those of the evangelicals (in turn, the evangelical petitions included arguments based on natural rights). See T. BUCKLEY, *supra* note 27, at 131, 179-80. Nonetheless, Professor Miller argues that Madison, who kept "a certain cool distance from all those 'sects,'" was perhaps "as much a man of the Enlightenment" as was Jefferson. W. MILLER, *supra* note 27, at 236. *Contra* Berman, *Religion and Law: The First Amendment in Historical Perspective*, 35 EMORY L.J. 777, 784-87 (1986).

61. Mark DeWolfe Howe argues that the United States Supreme Court has committed precisely this error in its interpretation of the history of the first amendment's establishment clause. See M. HOWE, *THE GARDEN AND THE WILDERNESS* 1-19 (1965). The error is revealed by the Court's premising a rule of constitutional law in Jefferson's metaphor that the first amendment was intended to build "a wall of separation between church and state." See *id.* at 1. Howe believes that by focusing on Jefferson's phrase, the Court conveys the inaccurate idea that the establishment clause has its chief roots in "enlightened rationalism," with a people who shared Jefferson's "deep anxiety that the liberties of individuals would be endangered if a wall of separation did not stand between [churches] and the state." See *id.* at 6-9. The truth, Howe posits, is that the origin of the clause owes more to "a theological theory of disestablishment" than to "the bias of eighteenth-century rationalism." See *id.* at 9, 2. According to this theology, it is the church which needs protection from the government, for "a church dependent on governmental favor cannot be true to its better self." See *id.* at 7-8. The first amendment therefore primarily reflects not Jeffersonian fears, "but rather the evangelical hope that private conscience and autonomous churches, working together and in freedom, would extend the rule of truth." *Id.* at 19.

Howe's conclusion concerning the critical role of religious arguments in the history of the establishment clause finds strong collateral support in the defeat of general assessment in Virginia. I must agree with Howe that religious liberty in the United States is in large part based upon the fact that people of faith, for faith-based reasons, eschewed the grasp for governmental favor which they might have made.

62. T. BUCKLEY, *supra* note 27, at 175. See *id.* at 143, 164; W. MILLER, *supra* note 27, at 39, 52-53, 153, 235.

beliefs."⁶³ An example is a law compelling, through imposition of a fine for noncompliance, the observance of Sunday as a day of rest, which was enacted by the same Virginia Assembly that passed Jefferson's statute.⁶⁴ One well might ask how evangelicals who believed on faith-based grounds that Christianity should not be armed with the "sanction of legal terrors"⁶⁵ could have supported such a law. The inconsistency seems jarring;⁶⁶ it has also been a recurring one in American history. Professor Miller, in describing nineteenth-century Protestantism, writes that a large part of that movement

evidently saw no contradiction to the religious freedom, the Voluntary Way in religion, the separation of church and state that it overwhelmingly and explicitly and even proudly endorsed—regarding itself as a chief bearer and embodiment of that ideal—in the legal requirement that the Sabbath be observed by everybody on Sunday, that all children in the public schools be required to hear Protestant versions of the Lord's Prayer and be read to out of the King James Bible, and much more.⁶⁷

I do see the contradiction and would not support any law that I would view as an effort to impose my faith on others. The key is to determine what "imposing one's faith" means.

B. The Scope of the Non-Imposition Principle

To begin the discussion of the non-imposition principle, it is useful to introduce the thinking of two men in whose tradition, like that of the Presbyterian dissenters in Virginia, I stand: Roger Williams and John Leland. Both endorsed "religious liberty not on grounds of rationalism, indifference, or expediency, nor exclusively of republican government, but on grounds of affirmative religious belief"⁶⁸

Professor Miller describes Roger Williams as our nation's "first

63. T. BUCKLEY, *supra* note 27, at 181.

64. *Id.*; W. MILLER, *supra* note 27, at 49. Imposition of a fine could be thought of as a liberalization of Virginia's laws on the subject, as during earlier times failure to keep the Sabbath resulted in whipping. E. CRAWFORD, *supra* note 45, at 30.

65. *See supra* note 47 and accompanying text.

66. The Supreme Court, in *McGowan v. State of Maryland*, 366 U.S. 420 (1961), disagrees. *McGowan*, which upheld the constitutionality of Sunday "Blue Laws," considered very influential the history of the struggle for religious liberty in Virginia. In commenting on the relationship of the Virginia Assembly's passage of the Sunday labor prohibition to its passage of Jefferson's Statute for Establishing Religious Freedom, the Court suggested that the Assembly's passage of both statutes showed that the former must not have been thought to be inconsistent with the latter. *Id.* at 437-39. To think, however, that one is acting consistently does not guarantee that one is. *See infra* note 150 and accompanying text.

67. W. MILLER, *supra* note 27, at 232.

68. *Id.* at 153-54.

real hero of religious liberty.”⁶⁹ Williams, founder of Rhode Island in 1636,⁷⁰ was “an intense partisan,” holding “orthodox Puritan Christian beliefs”⁷¹ He condemned the Catholic Church and the Church of England, and, in addition, “felt strongly about the defects of many sorts—most or all sorts—of his fellow Puritans.”⁷² He nonetheless insisted on “soul freedom” for all his opponents.⁷³ In such works as *The Bloody [Bloody] Tenent [Tenet], of Persecution, for Cause of Conscience*, Williams promulgated his belief that it was a “pernicious evil” to persecute or coerce anybody because of the person’s religious beliefs.⁷⁴ The even more striking thing about Williams is that, in an age when “partisanship led to . . . persecution,” he acted consistently with his beliefs.⁷⁵ Quakers, some of whom were hanged in Massachusetts, were welcome in Rhode Island.⁷⁶ The colony also was a haven for Jews.⁷⁷

John Leland, while not nearly as well-known as Williams, is described by Professor Miller as one of several “dissenting clergymen who struck mighty blows in the battles for religious liberty”⁷⁸ Although raised in Massachusetts, Leland began his ministry in Virginia, where he was a popular Baptist preacher during the years of the fight over general assessment. He undoubtedly played a part in formulating Baptist opposition to that proposal, but the extent of his involvement is unclear.⁷⁹ It is certain, though, that Leland had a primary role in the successful effort to obtain repeal of the Incorporation Act, which had given the Episcopal Church a privileged position.⁸⁰ Leland also made a significant contribution to ratification of the Constitution and enactment of the Bill of Rights. He initially opposed ratification, chiefly because the proposed Constitution did not sufficiently secure religious liberty. Leland changed his mind, however, and directed his substantial following accordingly, after a celebrated meeting with Madison at which Madison gave assurances that amend-

69. *Id.* at 154.

70. See S. BROCKUMIER, *THE IRREPRESSIBLE DEMOCRAT* 82-90 (1940).

71. W. MILLER, *supra* note 27, at 175.

72. *Id.*

73. *Id.*

74. *Id.* at 171-72.

75. *Id.* at 175.

76. *Id.* at 191-93.

77. *Id.* at 193-95.

78. *Id.* at 154.

79. See Butterfield, *Elder John Leland, Jeffersonian Itinerant*, 62 AM. ANTIQUARIAN SOC'Y PROC. 155, 167-77 (1952).

80. *Id.* at 177-78.

ments to secure essential rights would soon be added.⁸¹ Leland returned to New England in 1790, where he continued his fight for religious freedom by publishing numerous tracts and addresses attacking a variety of perceived infringements: the established Congregational church;⁸² the provision in the 1780 Massachusetts Constitutional establishing a general assessment scheme very similar to the one defeated in Virginia;⁸³ laws enforcing observance of the Sabbath;⁸⁴ and government compensation of Congressional chaplains.⁸⁵ Leland was still active in the struggle as late as his seventy-fifth year, with his opposition to the campaign to persuade Congress to prohibit the carrying of the mails on Sunday.⁸⁶

What, to Roger Williams, would have constituted an imposition of one's faith in violation of his principle of "soul freedom"? For Williams, "liberty of conscience meant . . . that no man should be prevented from worshipping as his conscience directed him," and also "that no man should be compelled to worship against his conscience or to contribute to the support of a worship his conscience disapproved."⁸⁷ Williams, though, would not countenance all forms of worship. Human sacrifice and temple prostitution, for example, could be justifiably prohibited by the state, which had a duty "to punish anyone whose conscience led him to undertake actions against the public safety and welfare."⁸⁸ Williams' concepts both of "actions" and of "public safety and welfare" were broad. Chastity, for example, was properly encouraged by censorship of books (those that were "wanton,' 'immodest,' and 'unclean' ") and by proscriptions concerning dress. The state even had the duty to ensure that men kept their hair at the proper length.⁸⁹

John Leland's basic views were similar to Williams' views. A person's religion or lack of it was not a matter of state concern: "where conscience begins, empire ceases."⁹⁰ The state, though, has a duty to preserve the "lives, liberties and property" of its citizens.⁹¹ It

81. *Id.* at 183-92. See C. JAMES, *supra* note 34, at 154-58.

82. Butterfield, *supra* note 79, at 197-201.

83. *Id.* at 207-10.

84. *Id.* at 236.

85. THE WRITINGS OF JOHN LELAND 293-94 (L. Greene ed. 1969) (hereinafter cited as WRITINGS).

86. Butterfield, *supra* note 79, at 236-40.

87. E. MORGAN, ROGER WILLIAMS: THE CHURCH AND THE STATE 137 (1967).

88. *Id.* at 134; see W. MILLER, *supra* note 27, at 185-86.

89. E. MORGAN, *supra* note 87, at 134-35; W. MILLER, *supra* note 27, at 185-86.

90. WRITINGS, *supra* note 85, at 221, 488.

91. *Id.* at 238.

is difficult to know whether Leland would have agreed with Williams as to the breadth of activities that should be viewed as jeopardizing these interests, thereby justifying state intervention. Some of Leland's words seemingly bespeak a more limited role for the state: it should punish for assaults against life, liberty or property⁹² and "overt acts" of violence.⁹³ Other phrases are susceptible to a broader interpretation: the law can punish those who work "ill toward their neighbors"⁹⁴ and those who disturb "peace and good order."⁹⁵

What help do Williams and Leland provide to one today who tries to discover the line between those situations where legal compulsion would violate the principle of non-imposition and those where it would not? Their views appear roughly to establish the line between *belief* on the one hand and *actions* on the other. Compulsion of beliefs is prohibited, whereas actions may be regulated for the public good. This dichotomy is a familiar one, now probably viewed primarily as a Jeffersonian concept.⁹⁶ The proposition that belief should not be coerced is enormously important, something that we now perhaps take for granted in the United States. I would disagree, however, with Williams and Leland to the extent that they may be understood as confining the non-imposition principle to the category of belief. It is too simplistic to say that one avoids imposing one's faith merely by avoiding coercion of another in his beliefs. Imposition of faith can also occur through coercion of another's actions. Assume, for example, a proposed law to criminalize consensual, heterosexual cohabitation between unmarried adults. I know in my heart that the only reason that would prompt me even to consider supporting such a law is God's condemnation of sexual activity outside of marriage,⁹⁷ *i.e.*, the secular arguments that might be made for the proposal⁹⁸ do not independently convince me of its desirability. Since my faith-based

92. *Id.* at 276, 444.

93. *Id.* at 184, 443.

94. *Id.* at 118, 488.

95. *Id.* at 228.

96. Two of the most famous formulations of the dichotomy are Jefferson's. The earlier appears in his Virginia Statute for Establishing Religious Freedom: "it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order." W. MILLER, *supra* note 27, at 358. The second is in Jefferson's *Notes on the State of Virginia*: "The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbor to say there are twenty gods, or no God. It neither picks my pocket nor breaks my leg." T. JEFFERSON, NOTES ON THE STATE OF VIRGINIA 152 (Harper Torchbook edition, 1964).

97. *See, e.g.*, 1 *Corin.* 6:12-7:9; 1 *The.* 4:3-8; *Hebr.* 13:4.

98. The possible arguments include: (1) prevention of disease; (2) reduction in unwanted pregnancies, thereby reducing the number of abortions and/or the number of children being

view of reality would be the determinative reason for seeking to force others to comply, I cannot escape the conclusion that a vote for the law would be a vote to impose my faith.⁹⁹

The non-imposition standard as I view it, therefore, is personal and subjective. Applying it requires a prayerful heart search by each Christian to evaluate the relative weight of his reasons for seeking laws that implement faith-based precepts. Only if secular reasons, standing alone,¹⁰⁰ justify his support can the Christian do so without imposing his faith.¹⁰¹

raised in single-parent households; and (3) promotion and protection of the institution of marriage.

99. Cf. K. GREENAWALT, *supra* note 2, at 247 (discussed in the context of a possible establishment clause violation). As I have indicated earlier, Professor Greenawalt would conclude that such a vote also would violate the standard of good citizenship in a liberal democracy. See the Sam illustration, *supra* note 11.

100. I am aware that in positing a legal system which would be based solely upon secular reasons that I collide with Professor Leff's thesis that such a system—in the assumed absence of God—would inevitably be arbitrary. See *supra* note 23. Professor David Smolin agrees with Leff as to the effect upon a legal system of excluding God: such a system would be "inherently tyrannical." See Smolin, *The Judeo-Christian Tradition and Self-Censorship in Legal Discourse*, 13 U. DAYTON L. REV. 345, 345-47 (1988). He argues that the only way to avoid tyranny is to base the system upon the objective norms of the Judeo-Christian tradition. See *id.* at 360-62. (Professor Smolin acknowledges, however, that not all Scriptural norms should be enforced through law. *Id.* at 367. Identifying those that should, a task which Professor Smolin left "for another day," would require developing a methodology defined "in terms of what the Judeo-Christian tradition itself says about the use, nature, and function of law" *Id.* Professor Smolin later articulated such a methodology in Smolin, *The Enforcement of Natural Law by the State: A Response to Professor Calhoun*, 16 U. DAYTON L. REV. 381 (1991). The faith-based non-imposition principle is the result of my own thinking on this subject.

This article is not the place to evaluate the conclusions of Professors Leff and Smolin concerning the arbitrariness/tyranny of a legal system which excludes God. If they are correct, there is an obvious tension between their views and the non-imposition principle: the only way to avoid arbitrariness and tyranny is to make a legal system God-based, but to do so constitutes an imposition of faith contrary to what the faith permits. I begin to explore these matters in Calhoun, *Misreading the Judeo-Christian Tradition and the Law: A Response to Professor Smolin*, 15 U. DAYTON L. REV. 383 (1990).

101. The subjectivity of the non-imposition principle means that any resort to state force by a Christian conceivably could constitute an imposition of faith. Suppose, for example, that a Christian works for laws to punish murder. Because of the secular reasons for deterring murder, it might normally be assumed that the Christian's efforts would not violate the non-imposition principle, despite the fact that murder is prohibited by the Ten Commandments. Cf. *McGowan*, 366 U.S. at 442 (no establishment clause violation for a state for secular reasons to prohibit conduct, such as murder, which is coincidentally proscribed by the Ten Commandments). If the individual Christian, however, found the secular reasons unconvincing and sought the law solely to implement God's will, he would be imposing his faith.

Subjectivity, on the other hand, may also mean that some actions which appear to be an imposition of faith in fact are not. Roger Williams's willingness for the state to regulate male hair length is a case in point. See *supra* note 89 and accompanying text. One might assume that this is a clear example of imposition, since those most affected by such a law would probably have been the Quakers, with whom William had serious doctrinal differences. See W.

Returning to Professor Greenawalt's example of Jody,¹⁰² I believe that Professor Greenawalt would agree that only if Jody could meet the non-imposition standard would her vote to prohibit the drinking of alcohol be in accord with good citizenship.¹⁰³ Professor Greenawalt, however, would expect Jody, "given her present insight into transcendent truth," to follow her religious conviction and vote for the prohibition even if the standard were not satisfied.¹⁰⁴ I agree with Professor Greenawalt's assessment. Telling Jody that she is not acting like a good liberal democrat is not likely to change conduct which she views as compelled by her religious faith. What is needed, therefore, is a persuasive challenge to Jody's view of transcendent truth itself, a challenge that I hope to offer through the faith-based non-imposition principle. By showing Jody, were she a Christian, that a prohibition vote lacking independently-compelling secular justification would be incompatible with the faith, I would hope to convince her to refrain from voting.¹⁰⁵

As for Professor Greenawalt's illustration of a believer with a faith-based view weakly supported by rational arguments,¹⁰⁶ it should now be apparent why I would disagree with Professor Greenawalt's conclusion that the believer should vote his belief. Under the non-imposition principle, the Christian can properly work to have his position imposed upon others by law only when he is convinced of the correctness of his faith-based view on independent, secular grounds.¹⁰⁷

MILLER, *supra* note 27, at 186, 191. Williams, however, described "the monstrous haire of women" upon men's heads as an instance "wherein Civility is wronged." 7 THE COMPLETE WRITINGS OF ROGER WILLIAMS 243 (1963). If Williams truly believed that long hair upon men was detrimental to civil order, a sentiment shared by many American parents in the late 1960s, his approval of state regulation would not violate the non-imposition principle. See W. MILLER, *supra* note 27, at 192.

102. See *supra* note 6 and accompanying text.

103. See *supra* note 7 and accompanying text; see also *supra* note 11.

104. See K. GREENAWALT, *supra* note 2, at 55.

105. In Jody's case, refraining from voting would be the appropriate method of following the non-imposition principle. There was presently freedom to drink and it is the prohibitory law that would have restrained freedom. In settings where an existing law already restrains freedom, following the principle would require a vote against the law. See *infra* notes 144-50 and accompanying text. On other occasions, the manner in which a particular issue was presented could allow a Christian, without contravening the non-imposition principle, to vote his faith even when independent secular justification did not exist. See *supra* note 12.

106. See *supra* notes 10 and 11 and accompanying text.

107. As I have stated, Professor Greenawalt does adopt this principle as the standard of good citizenship for situations where religious people seek to prohibit conduct solely because it is viewed as wrong on religious grounds. See *supra* note 11. For borderline questions of status and complex factual judgments, however, Professor Greenawalt's good citizenship standard would not require the person of faith to have independently-compelling secular justification for

C. Why the Non-Imposition Principle Is an Integral Part of the Christian Faith

Because I assert that the non-imposition principle is an integral part of the Christian faith, and therefore should be followed by all Christians, it is my responsibility explicitly to state why I believe this to be true. I stated earlier my belief in the Bible as God's infallible Word.¹⁰⁸ While my task would have been simplified had it done so, the Bible, as a Christian friend has pointed out, nowhere states "Thou shalt not impose thy faith upon another." As to imposition of beliefs, however, the Bible speaks as clearly as if it did contain an explicit proscription, a point seemingly belied by the conduct of some Christians over the centuries. The Bible is clear that one cannot come to faith in Jesus without a transformation of the heart through the enabling power of the Holy Spirit.¹⁰⁹ That human coercion is no proper part of this process is vividly shown by the examples of Jesus and the Apostles, who, rather than using force in spreading the faith, uniformly followed the procedure of proclaiming the message, leaving to the Holy Spirit the role of leading the hearer to acceptance.¹¹⁰

The question remains whether using law to impose conduct contravenes God's will in the same way as imposition of belief. Here, the examples of Jesus and the Apostles cannot provide the answer, for Jesus renounced, and the Apostles did not possess, the power to impose conduct through law. Biblical principles, however, while perhaps not quite so explicitly as with respect to belief, still clearly mandate the extension of the non-imposition principle to conduct.¹¹¹

his public policy choices. *Id.* For the reasons to be given in Subpart C, I would apply the principle across-the-board.

108. See *supra* notes 20-23 and accompanying text.

109. *E.g.*, *John* 3:3-8; 16:5-11; *Rom.* 10:9-13. I do not imply by this that rational thought plays no part in the Christian conversion experience. See K. GREENAWALT, *supra* note 2, at 70-71. In fact, I am convinced that a dispassionate evaluation of the evidence relating to the truth or falsity of Jesus' claims, which undeniably were astonishing, will strongly indicate that His claims are true. For a classic argument to this effect, dedicated to the legal profession by a Harvard Law School Professor of Evidence, see S. GREENLEAF, *THE TESTIMONY OF THE EVANGELISTS EXAMINED BY THE RULES OF EVIDENCE ADMINISTERED IN COURTS OF JUSTICE* (1903). For a more recent popular apologetic work, see J. MCDOWELL, *MORE THAN A CARPENTER* (1977).

110. See, *e.g.*, *John* 10:22-30 (Jesus); *Acts* 2:22-41 (Apostle Peter); 1 *Corin.* 2:1-5 (Apostle Paul).

111. I am aware that in stating the issue in this way I invite a much stronger reaction than if I instead stated that my view is one of a number of permissible Christian responses to the question I pose. Scriptural authority for this kind of flexibility can be found in the New Testament discussions of what constituted proper Christian conduct in several areas that were controversial at the time. See *Rom.* 14 and 1 *Cor.* 10:23-33. The Apostle Paul did not give an explicit command from God as to what conduct was allowed and prohibited. Rather, he wrote

The rationale is much the same as that for not attempting to impose belief. A person could be compelled outwardly to profess faith in Christ, but, as I have indicated, God would not be interested in such a "conversion." Similarly, while some standards of godly behavior perhaps could be compelled through law, the law cannot accomplish what God principally seeks—a people who freely love Him and demonstrate their love through obedience.¹¹² This attitude, like initial faith in Christ, can flow only from a transformed heart.

Someone might argue that more godly behavior in itself is a value that justifies the Christian's reliance upon legal coercion. While God's ultimate objective may be hearts obedient to His will, as an intermediate goal He would rather see a person's conduct conform to His standards, regardless of heart attitude, than see non-conforming conduct. For example, if the proposed cohabitation proscription would in fact deter a person from breaking God's principle that restricts sexual activity to the marriage relationship, such a law would be desirable although God would prefer a person who from faith voluntarily obeyed Him.

I am not persuaded. There is no assurance that attempting to compel godly behavior would result in a net increase in godly behavior. The proposed cohabitation proscription provides a good example. Some people would attempt to evade the law, inevitably leading to lying and deceit. These are also sins before God,¹¹³ which would offset the compelled godly behavior of those who would have lived together but for the law.

The probable psychological effect of the prohibition on those who did obey also must be considered. I would predict that such a law would generate great annoyance and hostility at what would be perceived as an unwarranted interference in one's private affairs. To the extent that it was known that the law's purpose was to implement

that each believer had the freedom to seek God's will and then act in whatever way his conscience dictated, so long as one heeded the admonition not to cause believers holding contrary views to stumble.

I considered whether the appropriateness of extending the non-imposition principle to conduct should be framed according to the foregoing model of believers' freedom. This model, however, is governing only for "disputable matters," *Rom. 14:1, i.e.,* those for which dispositive Biblical authority is lacking. My conclusion concerning the reach of the non-imposition principle is that Scriptural authority, although in some cases indirect, is strong enough to support the assertion that my position should be accepted as a norm of Christian behavior. I of course make no claim of infallibility and fully expect that many Christians will disagree with my views.

112. *E.g., John 14:15, 21, 23-24.*

113. *E.g., Eph. 4:25.*

Christian precepts, these negative feelings would be directed at Christianity itself. This could only impede God's principal goal of wooing people's hearts.

Even if with the passage of time the faith-based origins of the cohabitation proscription were forgotten, so that people would comply without hostility toward Christianity, it is incorrect to think that this would contribute to a society more righteous before God. Christianity teaches that each person has sinned and fallen short of the glory of God, despite the outward "righteousness" of one's conduct.¹¹⁴ The person who wants to live with another outside of marriage, but who refrains from fear of legal sanction, reveals in his heart an example of the sin that initially separates all of mankind from a holy God.¹¹⁵ The heart of the Christian message is that the only way to righteousness before God is through faith in Jesus Christ, who on the cross paid the penalty for sin.¹¹⁶ Emphasis upon human law as the road to righteousness perpetuates a cruel delusion, like the story of Scrooge at Christmastime. Both direct people's attention to their own conduct as the avenue to acceptability before God, when in truth acceptability lies only in trusting Jesus Christ as Savior. Conduct is important, not as the avenue to God, but as the response of a grateful heart to God's provision of the only way to Him—Jesus Christ.¹¹⁷

A fellow Christian might say that my argument ignores such events as the great flood in Noah's day¹¹⁸ and the destruction of Sodom and Gomorrah in Abraham's.¹¹⁹ Each is an example of God's judgment against mankind based upon conduct which was abhorrent to Him.¹²⁰ Each shows that God in His evaluation of human societies does draw distinctions based upon conduct alone.

I fully believe that God judges and punishes nations based upon people's ungodly behavior.¹²¹ This truth, however, does not invali-

114. *E.g.*, *Isa.* 64:6; *Rom.* 3:23.

115. *See, e.g.*, *Isa.* 59:1-8; *Matt.* 5:27-28, *Mark* 7:14-23. Even if the law served an educative purpose, so that a person came to obey it willingly because he believed that the proscribed conduct in fact was immoral, righteousness before God has not been advanced. Sinful attitudes undoubtedly would remain, if not in the area of the relationship between the sexes (although I cannot imagine absolute purity here), then in some other area.

116. *E.g.*, *John* 14:6; *Rom.* 3:21-26; *Gal.* 2:15-16, 21.

117. *E.g.*, *1 Pet.* 1:14-21.

118. *Gen.* 6-7.

119. *Gen.* 18-19.

120. *Gen.* 6:5, 11-13; 13:13; 18:20-21.

121. Francis Schaeffer describes the circumstances in which God's judgment comes in this way:

I imagine myself holding a cup which has water dripping into it. The water does not come quickly, but I keep holding the cup. Gradually the water rises, and at a certain

date the non-imposition principle. There is nothing unusual about holding someone accountable for an act that you could have prevented or more strongly deterred. As a father, I could put bars on my children's windows to prevent their leaving the house at night. My failure to do so does not forfeit my right (and responsibility) to discipline the child who disobeys a rule to stay inside. Similarly, God holds human societies accountable for ungodly behavior even though the principle of non-imposition might be said to contribute to an increase in such conduct¹²² by disallowing the law as a deterrent in situations where there are no independent, secular grounds for the law.

A final Biblical objection to my view might be asserted based upon Old Testament passages suggesting that it is God's will that nonbelievers be coerced into following God's laws regardless of whether the law can be justified on independent, secular grounds. *Leviticus* 24:16, for example, states that anyone, whether alien or native-born, who commits blasphemy must be put to death. While it is true that "alien" most probably refers to those outside the community of faith,¹²³ reliance on such a passage to support imposition of faith-based precepts is misplaced. In the first place, no government today can claim the same relationship with God that Old Testament Israel enjoyed. I share Roger Williams' belief that it "was unique in the history of the world and inimitable . . . [W]hile God had for a time placed both His government and His religion on earth in the safekeeping of the people of Israel, He had never again entered into covenant with any nation. No subsequent government had His sponsorship; none was authorized to act in His behalf."¹²⁴

In addition to the uniqueness of Old Testament Israel,¹²⁵ there is

point it flows over the brim. This is the principle of the judgment of God: Man is in revolt against God, and God waits in longsuffering until every possibility of man's turning back is exhausted. When the iniquity is full, when the cup overflows, God's judgment comes.

F. SCHAEFFER, *JOSHUA AND THE FLOW OF BIBLICAL HISTORY* 66-67 (1976).

122. *But see supra* note 113 and accompanying text.

123. I rely upon my pastor, who cites F. BROWN, *THE NEW BROWN-DRIVER-BRIGGS-GESENIUS HEBREW AND ENGLISH LEXICON* 158 (1978).

124. E. MORGAN, *supra* note 87, at 93. For a more extended treatment of Williams's view of the significance of the Old Testament, see Miller, *Roger Williams: An Essay in Interpretation*, in 7 *THE COMPLETE WRITINGS OF ROGER WILLIAMS* 5-25 (1963).

125. One particularly important manifestation of this uniqueness that is now lacking is the directness of God's guidance to those who exercise governmental authority. *Num.* 15:32-36 shows the significance of this difference. There, Moses and the people were unclear as to what to do with a Sabbath-breaker, despite God's earlier clear command that the penalty was death. *Exod.* 31:14-15; 35:2. It was only when "the Lord said to Moses, 'The man must die,'" that the death sentence was carried out. We have no one like Moses today, a man to whom God

another significant reason for concluding that the Old Testament does not today mandate state enforcement of God's laws of behavior. There are numerous examples in which the Old Testament prescribes death as the penalty for a particular sin, but the New Testament does not, either explicitly or implicitly through failure to mention death as an option.¹²⁶ The New Testament passages suggest that while the conduct proscribed as sinful in the Old Testament is still sinful conduct, Christians are no longer to respond to it in the same way. The most severe worldly penalty which the New Testament describes is to cut off fellowship with the offender.¹²⁷ This is an aspect of church discipline against sin;¹²⁸ it does not invoke the power of the state.¹²⁹

III. DEFENSE OF THE NON-IMPOSITION PRINCIPLE

I anticipate several cogent criticisms of the non-imposition principle. Perhaps the most basic objection is that the distinction between faith-based and secular reasoning will be impossible for Christians to make, rendering the principle meaningless. Even if such a distinction were possible in practice, one can argue that it is objectionable to ask

spoke "face to face." *Num.* 12:8. If even Moses was uncertain as to how to respond, how could we ever decide what punishment sin qua sin deserves?

126. Compare the following verses: *Lev.* 20:11 vs. *1 Cor.* 5:1-13 (man sleeping with his father's wife); *Exod.* 31:14-15; 35:2 vs. *Luke* 6:1-10 (breaking the Sabbath); *Lev.* 20:9 vs. *Eph.* 6:1-3 (child-parent relations); *Deut.* 21:18-21 vs. *Luke* 15:11-32 (child-parent relations).

127. See *1 Cor.* 5:9-13. Verse 13 of this passage is particularly instructive, as it contains the Old Testament quotation, "Expel the wicked man from among you." The New International Version translation cites five Old Testament references for the phrase: *Deut.* 17:7, 19:19; 22:21, 24; and 24:7. All but one use death as the method of expelling the offender. The Apostle Paul gives the phrase the totally new meaning of expulsion from the fellowship.

128. Church discipline of course is pertinent only for church members. They are the only ones to whom the Apostle Paul commands Christians to deny fellowship. *1 Corin.* 5:9-13. Christians are still to associate with non-Christians "who are immoral, or the greedy and swindlers, or idolaters." *Id.* at verse 10. To forbid association would be to require Christians "to leave this world." *Id.*

129. Some may argue that *Romans* 13:1-4 is a clear statement that God has appointed human governments as His agents to punish all ungodliness:

Everyone must submit himself to the governing authorities, for there is no authority except that which God has established Do you want to be free from fear of the one in authority? Then do what is right and he will commend you. For he is God's servant to do you good. But if you do wrong, be afraid, for he does not bear the sword for nothing. He is God's servant, an agent of wrath to bring punishment on the wrongdoer.

The passage does not support the argument suggested. Because it refers to all governing authorities, it necessarily includes authorities which are non-Christian in outlook. A non-Christian government would have no interest whatever in punishing as a "wrong" those activities, such as blasphemy of God, which are clearly contrary to God's law but which would not sufficiently prejudice secular objectives to warrant governmental sanction. It is therefore reasonable to interpret the passage (and the similar passage in *1 Peter* 2:13-14) as referring only to laws which are independently supportable on secular grounds.

Christians to attempt to make it. A final criticism is that in the context in which I discuss the non-imposition principle—seeking laws that would implement Christian precepts—the principle is unnecessary because such activity does not constitute “imposition” in any meaningful sense of the word.

A. Christians Cannot Distinguish Between Faith-Based and Secular Reasoning

Professor Greenawalt argues that the distinction between religious convictions and rational grounds cannot easily be drawn: “many believers do not apprehend how the distinct threads of religious morality fit in the development of their moral and political positions.”¹³⁰ On most issues, the believer’s opinion is based upon a combination of “religious convictions” and “ordinary arguments.”¹³¹ In speaking publicly, however, a believer will often cast his arguments solely in “nonreligious language.”¹³² Consequently, “[i]dentifying the special role his religious convictions play would . . . be particularly difficult”¹³³ In fact, to expect devout believers to “pluck out their religious convictions” in order to consider “how they would think about a critical moral problem if they started from scratch” is “unrealistic in the sense of impossible”¹³⁴

I agree with Professor Greenawalt as to the difficulty of distinguishing in one’s mind between faith-based and secular grounds for one’s opinion. Still, a Christian must try to do so because neither alternative is acceptable. The first is to withdraw completely from secular affairs and take no interest whatever in the laws under which one lives. I do not believe that such extreme detachment from the world is descriptive of God’s plan for all Christians. The other option is to seek laws heedless of whether or not in particular instances one’s stance can be independently substantiated on secular grounds. Be-

130. K. GREENAWALT, *supra* note 2, at 43-44.

131. *Id.* at 44.

132. *Id.* For Professor Greenawalt’s thoughts about the extent to which a believer should publicly express the religious basis of his political positions, see *id.* at 215-30. For my own thoughts on the issue, see Calhoun, *Are Religious Arguments Appropriate in Civil Discourse?*, 9 CHRISTIAN LEGAL SOC’Y Q. 32 (Fall 1988).

133. K. GREENAWALT, *supra* note 2, at 44.

134. *Id.* at 155. Professor Greenawalt’s conclusion is puzzling in view of his position, noted earlier, that the religious person who wants also to be a good liberal democrat *must* separate his secular reasoning concerning laws designed to prohibit certain conduct from his religious conviction that God views the conduct as sinful. See the Sam illustration, *supra* note 11. If to “pluck out” one’s religious conviction in fact is “impossible,” how is this separation to occur?

cause I believe that the non-imposition principle is an integral part of the Christian faith, such obliviousness risks disobedience to Christ.¹³⁵

Making an effort to comply with the non-imposition principle does not, of course, ensure success. Here, I would look to the faith, the source of the obligation, for the resources to fulfill it. This is no different from how Christians try to obey Christ in other areas. To love your enemies,¹³⁶ for example, certainly is no easier than the demands of the non-imposition principle. Yet just as God provides the power to give Christians love beyond their human capacities,¹³⁷ He will guide those who earnestly seek to avoid imposing their faith on others.

Despite a Christian's wholehearted prayerful effort, one still might say that what the non-imposition principle requires literally is impossible: however successful a Christian may be in temporarily excluding conscious religious beliefs from his thinking, assessment of competing rational arguments inevitably will be significantly influenced by his religious beliefs, even if not consciously.¹³⁸ This is undoubtedly true. Imposition to me, however, cannot be based on any subliminal influence of faith. Imposition can occur only when a Christian is explicitly aware that, despite whatever secular arguments may favor a law, he supports the measure only because of how God has spoken concerning the particular issue involved.¹³⁹ If the Christian honestly can say that his faith only confirms what he is confident he would believe apart from faith, there can be no imposition.¹⁴⁰

135. If we assume for the moment the validity of my belief about the importance of the non-imposition principle to Christianity, I believe that Professor Greenawalt would understand my conclusion about the effort required of Christians. In discussing the implications of a principle which would label reliance upon religious convictions inappropriate for the good citizen, Professor Greenawalt rejects an exception for people who, because they have never pondered the matter, are not consciously aware of the ways in which they may be influenced by their faith:

If reliance on religious convictions is really improper, religious believers should make at least minimal efforts to identify their place and respond accordingly. Otherwise unreflective persons could blithely continue to rely on grounds barred to those who think more seriously. Political principles should not contain such incentives to unreflectiveness

K. GREENAWALT, *supra* note 2, at 162; *see id.* at 38.

136. *Matt.* 5:44.

137. *Romans* 5:5.

138. *See* K. GREENAWALT, *supra* note 2, at 152-55.

139. As I have indicated, the limitation that there be explicit awareness is not meant to be, in Professor Greenawalt's phrase, an "incentive to unreflectiveness." The obedient Christian must actively evaluate his stands on political issues to see if there are any for which his faith is determinative. *See supra* notes 135-37 and accompanying text.

140. My test for when an imposition occurs is not as inclusive as Professor Greenawalt's test for determining when one is relying on religious convictions:

I believe that this standard is workable. The best way to apply it is for a Christian to attempt to convince a non-Christian of a law's desirability on rational grounds alone. Consider again a proposed law to criminalize consensual, heterosexual cohabitation between unmarried adults. During my suggested debate, an honest Christian could not help but be aware inside whether he found his own arguments convincing. He would simply know whether "God says sex outside of marriage is wrong"¹⁴¹ were the dispositive element in his thinking. If so, as would be true for me, for the Christian to support the law would be an imposition of faith,¹⁴² even though the non-Christian might find convincing the secular arguments that ultimately were unpersuasive for the Christian.¹⁴³

a person is relying on religious convictions if their abandonment would force him seriously to reconsider the position he takes. If he is now confident of the position he takes and is uncertain what he would think absent the force of the religious convictions, he is presently relying on those convictions to a degree, even though *it is possible* that he would eventually arrive at the same conclusion without them.

K. GREENAWALT, *supra* note 2, at 37. For Professor Greenawalt, being forced "seriously to reconsider" a position is the key. I look not at the mere fact of a reevaluation, but at its aftermath. If the Christian, following a reconsideration from which God's perspective temporarily is excluded, concludes in good faith that his opinion does not change, no imposition can occur.

141. See *supra* notes 97-99 and accompanying text.

142. I discussed earlier Professor Greenawalt's conclusion that a religious person would not be acting as a good liberal democrat if he sought to prohibit acts solely because his faith compelled him to view them as morally wrong. See *supra* note 11. Professor Greenawalt does suggest, however, that a belief in sinfulness might generate a secular, paternalistic justification for a prohibition if the believer were convinced on religious grounds, despite the lack of compelling factual evidence, that living in sin would produce unhappiness and psychological maladjustments. K. GREENAWALT, *supra* note 2, at 91-92. I would not consider this a secular argument. It is not that the believer's conclusion, were he a Christian, is wrong. Living contrary to God's law will inevitably be harmful for anyone, believer and nonbeliever. Professor Norman Anderson is correct when he writes that God's "moral precepts and laws must . . . be regarded as our Maker's instructions for the human creatures he has brought into being, and only in so far as they obey these instructions will they be able to fulfil his beneficent purposes and enjoy the full, happy and satisfying lives which He intended them to live." Anderson, *Public Law and Legislation*, in *LAW, MORALITY AND THE BIBLE* 235 (B. Kaye & G. Wenham eds. 1978). This is true regardless of whether evidence can be produced. Without substantiating evidence, however, the believer's faith would be the only thing leading him to attribute negative worldly consequences to certain behavior. Relying solely on this faith-based view to justify a prohibitory law would be no more secular than relying upon a desire to help protect nonbelievers from God's judgment after death. (This desire, while commendable, would be misdirected to the extent it expressed itself in laws requiring righteous behavior. See *supra* notes 114-17 and accompanying text). Even if persuasive evidence were produced, of course, a Christian might still conclude that the benefits of the law were outweighed by its disadvantages.

143. The key point to avoid an imposition is that the Christian actually be convinced himself by the secular arguments. The mere fact that secular arguments can be made which are convincing to others is not sufficient. Cf. Zimmerman, *To Walk a Crooked Path: Separating Law and Religion in the Secular State*, 27 WM. & MARY L. REV. 1095, 1102 (1986) (no viola-

Two events from my life provide additional support for my belief that a Christian has the ability to distinguish between faith-based and secular reasoning. The first involves my experience in deciding how to vote on a community referendum to determine whether or not to continue enforcing Sunday "Blue Laws."¹⁴⁴ I believed that God had spoken on the sacredness of the Sabbath.¹⁴⁵ If I were a merchant, I knew that I would not open my business on Sunday.¹⁴⁶ I believed that Christians and non-Christians alike who dishonored the Sabbath were disobeying God, but should this mean a vote to require their obedience? At the time of the vote, I had not fully articulated my standard of non-imposition. I did believe, though, that prohibiting someone from working on Sunday would not promote true obedience to God, which must come from a heart submissive to His will. While this would clearly seem to have indicated a vote against the law, I was bewildered as to what to do. On the one hand, I did not want to force people to go through the motions of observing the Sabbath. On the other hand, I was concerned that repeal of the law would result in Christian employees, who might otherwise have observed the Sabbath, being forced to work. I finally decided that my protective impulses toward other Christians did not justify a vote to continue the law.¹⁴⁷ The Bible is clear that being obedient as a Christian will entail a cost.¹⁴⁸ A vote to impose my beliefs on others was too high a price

tion of the establishment clause if religious individuals support laws in part for religious reasons, but also because they believe the laws are "justified convincingly on independent, objective grounds."); Cuomo, *supra* note 25, at 16-17 (free exercise clause protects the right of a believer to propose the implementation of his religious beliefs through law, not for "parochial or narrowly sectarian" reasons, but because he believes the proposal benefits all citizens by fulfilling "a human desire for order, peace, justice, kindness, love or any of the values most of us agree are desirable even apart from their specific religious base or context.>"). Of course, if the non-Christian is not persuaded by the secular arguments and energetically argues the other side, the discussion will help the Christian in his evaluation of the degree to which his opinion on an issue is premised in his faith. It would not be uncommon for a debate to expose as faith-based an opinion that the Christian formerly thought was secularly-based. I therefore view the debate process as an important resource for a Christian seriously interested in complying with the non-imposition principle.

144. I mentioned earlier *McGowan*, 366 U.S. 420, which upheld the constitutionality of Sunday "Blue Laws." See *supra* note 66. It should be apparent that as the non-imposition principle has its source in the faith itself, a Christian is not released from the responsibility of applying it by a Supreme Court finding that a particular law is constitutional. The non-imposition principle operates independently of the Constitution as a constraint on the freedom of Christians to seek implementation of faith-based precepts through law.

145. *E.g.*, *Exod.* 20:8-11.

146. I realize that the fact that I am not a merchant makes reaching this conclusion much easier.

147. My decision was reached only after many conversations with friends, both Christian and non-Christian, in which I openly discussed my struggle.

148. *E.g.*, *Luke* 14:25-35; *2 Tim.* 3:12.

for preventing some Christians from being brought to a test of faith.

I am glad that I voted as I did. In retrospect, I believe that the vote was consistent with the standard of non-imposition. Non-faith reasons certainly exist for making Sunday a day of rest: "a day which all members of the family and community have the opportunity to spend and enjoy together, a day on which there exists relative quiet and disassociation from the everyday intensity of commercial activities" ¹⁴⁹ For me, though, such reasons, of which I was aware at the time of the referendum, did not supplant the feeling that my vote for the law would have been primarily motivated by my desire to see God's teachings concerning the Sabbath be obeyed. Fellow believers who in good faith independently based their vote to enforce the "Blue Laws" on secular grounds did not violate the non-imposition principle. ¹⁵⁰

The second personal experience that I offer as support for the workability of the non-imposition standard is my thinking concerning the abortion controversy. The pivotal question in the debate, requiring an inquiry into the status of the fetus, is whether abortion is the equivalent of taking a human life. Such an inquiry, swirling around such issues as whether potential human life equals human life, the significance of advances in medical technology and whether a fetus experiences pain from abortion, generally ends in "an unproductive impasse." ¹⁵¹ How wonderful it would be if suddenly some new information could be interjected into the debate that would definitively an-

149. *McGowan*, 366 U.S. at 450. As to secular reasons for why Sunday should be this day of rest, rather than some other day, the Court relied on "common knowledge that [Sunday] has come to have special significance as a rest day in this country [I]t would seem unrealistic for enforcement purposes and perhaps detrimental to the general welfare . . . to choose a common day of rest other than that which most persons would select of their own accord." *Id.* at 451-52. See Greenawalt, *The Limits of Rationality and the Place of Religious Convictions: Protecting Animals and the Environment*, 27 WM. & MARY L. REV. 1011, 1020 n.28 (1986).

150. Thus, finally to answer the question whether the evangelicals in the 1786 Virginia Assembly who voted to enforce "Blue Laws" (*see supra* notes 64-66 and accompanying text) were imposing their faith, one would have to have more specific information about their motivation. My strong suspicion is that they did not support the law on independent, secular grounds. The statute's title, for example, was "A Bill for Punishing Disturbers of Religious Worship and Sabbath Breakers." *McGowan* 366 U.S. at 494 n.68 (separate opinion of Justice Frankfurter). Although the Court in *McGowan* discounted similar statutory language in finding Maryland's "Blue Laws" to be constitutional, it relied upon other evidence which suggested that the current purpose of the laws was viewed as secular. 366 U.S. at 445-49. In Virginia in 1786 I am convinced that the "Blue Laws" essentially were viewed as a religious measure. See W. MILLER, *supra* note 27, at 49; T. BUCKLEY, *supra* note 27, at 181-82.

151. Rhoden, *The New Neonatal Dilemma: Live Births from Late Abortions*, 72 GEO. L.J. 1451, 1467 (1984).

swer the question of how the unborn should be viewed. I believe that such information is at hand: the revelation from God through Scripture that from conception He views the unborn as human life.¹⁵² I recognize, of course, that not everyone agrees with my view of what God has said.¹⁵³ For me, though, He has spoken in a way that aligns me with those who want to see legal protection for the lives of the unborn. The issue thus becomes whether I should refrain from seeking such laws because my viewing the unborn as human life is based upon my religious faith.

One might expect that at this point I would apply the non-imposition principle. I shall do so shortly, but first I must reveal a part of my personal history that is relevant to the question of whether in my opposition to abortion I am attempting to impose my faith on others. My initial misgivings about abortion arose from an experience that occurred shortly after my wife became pregnant with our first child. This was at a time in my life when I was in the midst of an extended "falling away" from the Christian commitment of my youth. As part of our preparation for parenthood, we bought the book, *A Child Is Born*.¹⁵⁴ The book contains remarkable photographs of life before birth; it allowed us to follow the growth of our unborn baby. We were amazed at how quickly development occurs. As amazing to us, however, was our emotional response as parents. From the very first, we began to refer to our coming child by name and to discuss him as if he were alive and already with us. We also spontaneously began seriously to entertain the view that abortion, regardless of the fetus's stage of development, was the equivalent of taking a human life. These feelings arose unbidden and were, at least for me, in no conscious way connected with how God might view the unborn, a matter in which I then was not interested.¹⁵⁵

My experience convinces me that one can view an unborn child

152. *E.g.*, *Job* 10:8-12; *Psalms* 139:13-16.

153. Some might not believe in God at all, some might believe in Him but reject the notion that He has spoken through the Bible, and some might accept the Bible as God's Word but disagree with my interpretation.

154. L. NILSSON, M. FURUHJELM, A. INGLEMAN-SUNDBERG, & C. WIRSÉN, *A CHILD IS BORN* (1977).

155. Professor Greenawalt would describe my nonreligious feeling about the unborn child as an example of a personal basis of decision. Such bases "cannot be justified, in the force they are given, in terms of publicly accessible reasons. These bases would include personal perceptions, intuitions, feelings, and commitments, and deferences to the judgments of others that cannot be defended by persuasive reasons of interpersonal force . . ." K. GREENAWALT, *supra* note 2, at 156. In applying his standard of the good citizen, Professor Greenawalt argues that there is no reason to allow reliance on personal bases of decision while disallowing reliance on religious convictions. *Id.* at 156-60.

as a human life from conception apart from religious faith. Because my Christian commitment has now been rekindled, however, this earlier episode does not free me from applying the non-imposition standard to my activist pro-life position.¹⁵⁶ The question is whether the initial non-faith grounding of my misgivings about abortion has been supplanted by a faith-based firm opposition, branding any work to implement my views through law as violative of the non-imposition principle. The answer is “no,” because there are additional compelling non-faith reasons that independently convince me that the unborn child from conception should be treated as a human life.¹⁵⁷ In several talks on abortion to secular audiences, I have tried to persuade them of this fact using only secular arguments. On these occasions, I have not had in the back of my mind the thought that “the only reason I really feel as I do is that God says so.” Rather, I myself find the secular arguments compelling on their own merit. Seeking laws that reflect my views therefore does not violate the non-imposition principle.¹⁵⁸

B. It Is Objectionable to Ask Christians to Distinguish Between Faith-Based and Secular Reasoning

Assuming that it is possible for Christians to distinguish between faith-based and secular reasoning, Professor Greenawalt argues that it would be “positively objectionable” to ask them to do so.¹⁵⁹ To ask

156. As I have previously shown, since abortion involves a borderline question of status, Professor Greenawalt would not require the religious person desiring to be as well a good liberal democrat to have self-sustaining secular reasons for his stand on abortion. *See supra* notes 11 and 107 and accompanying text. Since I, however, view the non-imposition principle as required by the Christian faith, I cannot selectively apply it depending upon the type of issue. I must struggle to live consistently with the faith regardless of the circumstances.

157. Since this article is not primarily concerned with the merits of the abortion controversy, I will not detail those reasons here. I will, however, mention three of the most significant: (1) the fact that late second-trimester abortions sometimes result in live births [*see Rhoden, supra* note 151, at 1452-53 and 1458-59]; (2) the substantial evidence that as early as the end of the first trimester fetuses experience pain during abortions [*see COLLINS, MARZEN & ZIELINSKI, FETAL PAIN AND ABORTION: THE MEDICAL EVIDENCE*, (Pamphlet No. 18, Law and Medicine Series, Legal Defense Fund of Americans United for Life (1984))]; and (3) the “experimentally demonstrated fact” that from conception the human embryo is genetically unique [*see the testimony of Professor Jerome Lejeune in the “frozen human embryo” case, Davis v. Davis, 1989 WL 140495 (Tenn. Cir., Sept. 21, 1989), rev’d, 1990 WL 130807 (Tenn. App., Sept. 13, 1990), aff’d, 1992 WL 115574 (Tenn., June 1, 1992)*]. For a complete discussion of why I believe that fetal personhood should be recognized from conception, *see Calhoun & Sexton, Is It Possible to Take Both Fetal Life and Women Seriously? Professor Laurence Tribe and His Reviewers*, 49 WASH. & LEE L. REV. 437, 453-63 (1992).

158. *See supra* notes 140-43 and accompanying text.

159. K. GREENAWALT, *supra* note 2, at 155.

religious persons to “pluck out their religious convictions”¹⁶⁰ and take a “fresh look”¹⁶¹ demands that they “compartmentalize beliefs that constitute some kind of unity in their approach to life”¹⁶² This would result in “a frustrating alienation of their whole persons from their political characters.”¹⁶³

While I appreciate Professor Greenawalt’s solicitude for those with religious faith, I am not unwilling to ask Christians to take a “fresh look.” This is not a demand to compromise a unified approach to life. A Christian’s chief goal is to submit to the Lordship of Jesus Christ in every area.¹⁶⁴ Because the non-imposition principle is an integral part of Christianity, striving to apply it, not ignoring it, is the only course consistent with the overarching objective of obedience.

The principle does not even ask the Christian to compromise a unified approach in forming his opinions on a particular issue. The proposed heterosexual cohabitation proscription discussed earlier may be used to illustrate the point. Assume a Christian who, while acknowledging the existence of some secular arguments for such a law,¹⁶⁵ concludes that countervailing secular reasons would make the law unwise.¹⁶⁶ Rejecting a prohibitory law does not mean that the Christian believes that it would be right for a couple to live together outside of marriage. In fact, for the obedient Christian, the clear Biblical ban of such activity¹⁶⁷ compels the conclusion that it would be wrong, even if the Christian does not fully understand why God speaks in this way and even though the Christian may see much to recommend the practice. The Christian’s opinion ultimately is conformed to God’s Word, the final arbiter.¹⁶⁸

But will the Christian who refrains from seeking a law to compel godly behavior experience that “frustrating alienation” of his “whole person” from his “political character” that Professor Greenawalt fears? I think not. Obedient Christians do not feel frustrated by the

160. *Id.*

161. Greenawalt, *Religious Convictions and Lawmaking*, 84 MICH. L. REV. 352, 380 (1980).

162. *Id.*; K. GREENAWALT, *supra* note 2, at 155.

163. K. GREENAWALT, *supra* note 2, at 258.

164. *E.g.*, Luke 6:46; Galat. 2:20.

165. *See supra* note 98.

166. These would include the costs of enforcement both in terms of money and invasions of privacy.

167. *See supra* note 97 and accompanying text.

168. Men and women, as creations of God, should humbly submit to the “Maker’s instructions.” *See supra* note 142. When the attributes of mankind are compared to those of God (*see supra* notes 13-19 and accompanying text), it would be startling if we could fully understand all that God has said. *See Rom.* 11:33-36.

fact that they do not use law in an attempt to force people to believe the claims of Jesus. Rather, Christians willingly submit to the Bible's teaching that force would be unavailing and instead strive to follow noncoercive Biblical examples in bearing witness to their faith.¹⁶⁹ In the same way, forbearing to resort to law to coerce godly conduct reflects the obedient Christian's recognition that it is impossible to compel what the Bible teaches is God's chief desire—hearts freely submissive to His standards.¹⁷⁰ Renouncing force prevents frustration by keeping Christians from attempting the impossible and instead directs attention to the many appropriate ways in which they may effectively work to accomplish what God seeks.¹⁷¹ Forbearance to use law will also yield the peace that comes from following God's will.

Another possible objection to asking Christians to give laws a "fresh look" independent of their religious convictions is that it is unfair to do so. As Professor Greenawalt points out, there are many decisions for which the usefulness of rational "interpersonal argument is decidedly limited . . . on the critical questions one must resort to one's own personal sense of life and a reflective view that makes one comfortable."¹⁷² This description includes people with no religious faith. Yet, if one sought a reaction to the phrase "imposition of values" from members of the public, I suspect that their common assumption would be that the values being referred to were religious values.¹⁷³ Imposition of nonreligious values has not aroused nearly the same level of general concern.¹⁷⁴ Most would not think of saying to the nonreligious person: "Before seeking a particular law, you must decide if you can justify the law on rational grounds alone, stripped of the ultimate values to which you normally resort to guide your actions." Can it be fair then to require such a process for Christians?¹⁷⁵

One response to this fairness objection is to argue that people without religious faith should attempt to objectify their thinking

169. See *supra* notes 109-10 and accompanying text.

170. See *supra* note 112 and accompanying text. For other problems arising from the attempt to coerce godliness, see *supra* notes 113-17 and accompanying text.

171. See, e.g., *infra* notes 180-83 and accompanying text.

172. K. GREENAWALT, *supra* note 2, at 109-10. See *id.* at 112-13, 136-37.

173. A current example is the abortion controversy. See *id.* at 120-21.

174. Some, though, have expressed grave concern over nonreligious values being imposed under the rubric of "values neutrality." E.g., Horn, "World Views" and Public Policy, in WHOSE VALUES? 167-68 (C. Horn ed. 1985).

175. See K. GREENAWALT, *supra* note 2, at 144, 176.

about law to the extent possible.¹⁷⁶ Even if this argument were accepted as valid,¹⁷⁷ the fact that the nonreligious never made the effort would not release Christians of their obligation to try. The source of the Christian's obligation is Jesus Christ, not some notion of reciprocity with those who do not share the faith. Any fairness objection, therefore, is for me not persuasive.

C. Seeking Laws That Would Implement Christian Precepts Does Not Constitute Imposition

The "imposition" to which my non-imposition principle has consistently referred has been that of a Christian's seeking laws that would compel others to abide by Christian precepts. A good argument can be made, however, that even an individual Christian's fervent effort to seek enactment of a law that for him has solely a faith-based justification would not constitute any imposition worth talking about. The individual Christian voter is a far cry from a Christian dictator with the power to coerce at least the outward form of a Christian lifestyle. In fact, the typical individual's impact in our complicated political process accurately can be described as infinitesimal. To call such individual activity an imposition of faith is a gross distortion.

One response to this critique is to point out that the United States has thousands of Christians who, if they act in concert, can achieve a greater likelihood of significant impact on the law.¹⁷⁸ I,

176. Professor Greenawalt believes that there are several modern theorists who take this position. *Id.* at 49-56, 156.

177. Professor Greenawalt's basic position is that this effort is not required by his standard of good citizenship. *See id.* at 109-10, 112-13, 136-37. He does, however, recognize some exceptions. For example, one should not seek to prohibit conduct merely because one views it as wrong based upon nonreligious moral values. *Id.* at 94-95. *Cf. supra* note 11 (discusses the same limitation for those with religious values).

178. Professor James Hitchcock argues that even concerted action by religious believers would not be inconsistent with American pluralism. Pluralism is not a system in which diverse groups voluntarily refrain from pushing their own views too hard, lest they tread on the toes of their neighbors.

In reality, pluralism is precisely the opposite. It is of the essence of a pluralistic society that, since there is no commonly accepted standard for what is true or false, every group must push as hard as it can for its own positions. Limits are imposed on this only by other groups pushing equally hard in the other direction. Hitchcock, *Disentangling the Secular Humanism Debate*, in *WHOSE VALUES?* 21, 34-35 (C. Horn ed. 1985). Professor Greenawalt would reject this as an appropriate model for a liberal democracy, which should be more than "a set of procedures for making political decisions" K. GREENAWALT, *supra* note 2, at 11. Rather, the premises of liberal democracy include limitations on what political outcomes are acceptable as well as on what reasons are permissible for supporting acceptable outcomes. *Id.* I disagree with Professor Hitchcock's

however, do not rely on this approach, which makes the existence of an imposition dependent upon the practicalities of implementation. For me, the determinative factor is intent, the individual Christian's objective in voting for a particular law. If the goal is to implement a faith-based concept that lacks independent secular justification, the Christian has violated the non-imposition principle. The motivation is what matters, not the probable outcome.¹⁷⁹

Some may argue that a Christian who attempts to follow my concept of non-imposition will be constrained in ways antithetical to the faith. Christ called his followers to be His witnesses to the ends of the earth.¹⁸⁰ A Christian cannot obey if he is burdened by my overinclusive notion of imposition. Moreover, general application of my principle in effect would bar the Christian world view from the marketplace of ideas, leaving a vacuum to be filled by those who do not share the faith.

The foregoing critique, if valid, would force me to abandon the non-imposition principle.¹⁸¹ I fully agree that Christians are called to be Christ's witnesses. The non-imposition principle, however, is not an impediment to this obligation. The principle does not ask the Christian to forego all involvement in the legal process. It would only disable the Christian from seeking laws which for him have no independently-compelling secular justification.¹⁸²

model for a different reason: to the extent that a Christian's "pushing hard" violates the non-imposition principle, it is incompatible with the faith.

179. Some may be perplexed by this conclusion in view of one of my reasons for believing that the non-imposition principle should be extended to conduct: the likelihood that forced compliance with Christian precepts would generate hostility toward Christianity. See *supra* text following note 113. If there is no likelihood of success in passing such a law, the argument seemingly loses its punch. I believe, though, that significant hostility may be generated against a religious faith by efforts to impose that faith's lifestyle even when those efforts have no chance of success. Imagine, for example, how Christians would react if adherents of the New Age movement worked for a law to compel people to wear crystals. Even if one could envision circumstances in which no hostility would be generated, the non-imposition principle is supported by other significant arguments. See *supra* notes 114-29 and accompanying text.

180. *Acts* 1:8.

181. If following the non-imposition principle precluded a Christian's being a witness for Christ, it would necessarily mean that in my earlier Biblical arguments in support of the principle that I had misinterpreted Scripture. The Bible, as God's infallible Word, does not subject Christians to contradictory commands.

182. The disability does not operate at all to constrain opposition to laws attempting to compel Christians to act in ways contrary to the faith. Faith-based civil disobedience clearly is a Biblical concept. See, e.g., *Dan.* 6 and *Acts* 4:18-20. If society by law attempted to compel me to act contrary to Christianity, I would not comply—even if there were absolutely no secular justification for my refusal. The non-imposition principle is not to the contrary. It does not deal with state attempts to compel Christians to act inconsistently with the faith, but with attempts by Christians to enlist state aid to compel everyone (non-Christians too) to act consistently with the faith.

Even when a Christian cannot in good faith find independent secular justification for a law, there need be no vacuum. For a moment, return to the proposed law to criminalize consensual cohabitation between heterosexual, unmarried adults. If, consistently with the non-imposition principle, I refrain from supporting the law, it does not mean that I must refrain from being a witness for Christ. I can make sure that my own conduct comports with God's view of the sacredness of marriage. In my relationships with my friends, as God leads me, I can with sensitivity communicate His standards of righteous behavior. I can participate in and support the teaching of God's principles in appropriate settings. Finally, and this cannot be overstated, I can examine my life to be certain that I am obeying Christ's commission to make disciples of all nations,¹⁸³ especially the friends and acquaintances whom God has brought into my life. The only truly effective way to promote obedience to the way of life that God prescribes is to be used of God to draw to Himself a people who will voluntarily strive to obey out of love and gratitude.

IV. CONCLUSION

In this article I have articulated a faith-based non-imposition principle and defended it against anticipated criticisms. I wish that I could conclude here. Unfortunately, I must reveal some personal misgivings about the principle caused by a letter from a Christian friend. The letter, referring to my friend's perspective on the abortion controversy, reads as follows:

I don't think I can separate the religious grounds for my belief that a fetus is a human life from the nonreligious. In fact, notwithstanding my majoring in biology, it was not until as a young Christian in college I considered Scripture and spoke with several Christian brothers that I became persuaded of the truth of the matter. The orthodox Christian view on abortion makes sense to me not because of biology, but because of what God's view is as revealed in Scripture. But for God's perspective (as in all things), the balancing of interests, the mother's, fetus's, society's, etc., seems to me a fairly reasonable approach. It is His perspective that makes the difference ultimately.¹⁸⁴

The letter is not disturbing due to its statement that my friend cannot distinguish between the religious and nonreligious grounds for his belief that a fetus is a human life. The excerpt shows that he, in

183. *Matt.* 28:18-20.

184. The letter is in my possession and is used with my friend's permission.

fact, could make the distinction, and that a faith-based reason was dispositive in the formation of his anti-abortion opinion. What troubles me is the effect of applying the non-imposition principle to my friend's situation. Because he plainly states that secular reasons alone were insufficient to ground his pro-life view, to act consistently with my theory I must tell him that it would be inappropriate, for faith-based reasons, for him to seek laws to implement his position. I must do so despite the fact that for me such activity would be permissible due to the independent, secular grounding of my view that the unborn constitute human life.¹⁸⁵ This is deeply troubling advice to give, because it asks my friend to refrain from seeking laws to prevent the taking of what his faith compels him to view as defenseless human life.

The classic response when a carefully-constructed theory threatens to fall apart is for the author to twist and squirm to find an escape hatch. There are possibilities. One is to argue that my friend appropriately could disregard the non-imposition principle here because to proscribe the taking of human life has clear secular justification. Faith was used only to include the fetus within the definition of human life.¹⁸⁶ Without the conclusion that human life is present in the womb, however, there can be no recourse to the secular reasons for protecting it. Because this conclusion for my friend in the final analysis was faith-based, I must conclude that the non-imposition principle is still applicable.¹⁸⁷

Another possible escape is to argue that while the non-imposition principle is important, it properly can be overridden if the stakes are high enough. Freely allowing abortions has resulted in the deaths of millions of unborn human beings. Curtailing the procedure is imperative if one is to obey God, who commands, "[r]escue those being led away to death; hold back those staggering toward slaughter."¹⁸⁸ While this "emergency exception" approach is appealing, particularly

185. See *supra* notes 156-58 and accompanying text.

186. This argument is in essence the basis of Professor Greenawalt's conclusion "that reliance on religious convictions to oppose permissive abortion laws" does *not* violate "the principle of liberalism that the religious convictions of one segment of society should not be imposed on the rest." K. GREENAWALT, *supra* note 2, at 168.

187. Since my friend's evaluation of the secular evidence during his college days, many additional secular arguments have appeared which further substantiate the position that the fetus should be viewed as a human life. If my friend could be convinced now that secular reasons alone justify this perspective, the non-imposition principle would not bar his recourse to law. It would not matter that initially his opinion rested principally on his faith. See *id.* at 36.

188. *Prov.* 24:11.

for the abortion question, I cannot accept it. Recognizing the exception would throw the doors wide open. Different Christians could, on faith-based grounds, believe that an emergency existed in any number of different situations. To justify imposition of faith in each instance is obviously to render the non-imposition principle meaningless. Because I believe the principle itself to be an integral part of the Christian faith, I am unwilling to see this happen.

But can I seriously mean that my Christian friend should stand idly by when he believes that unborn children are being killed? What about God's command to save those about to die? There are many avenues of action still available for the Christian for whom recourse to the law is unavailable due to the non-imposition principle.¹⁸⁹ In my earlier discussion of the proposed cohabitation proscription, I mentioned four types of non-legal involvement: (1) personal example, (2) individual counsel to friends, (3) teaching, and (4) evangelism.¹⁹⁰ All of these methods could appropriately be followed in the abortion setting.¹⁹¹ In addition, the Christian should support efforts to prevent unwanted pregnancy. Included should be an emphasis on God's principle that confines sexual intercourse to the marriage relationship. Finally, the Christian should reach out with God's love to women faced with the decision of whether to abort. It is not enough to say to them, "[a]bortion is the taking of human life. Do not do it. Best of luck with your pregnancy and your life." Rather, realistic alternatives to abortion must be provided.¹⁹²

The non-legal steps that I have outlined are difficult. They call for sustained commitment and sacrifice by Christian people. As an

189. It might be suggested that it is indefensible for the non-imposition principle to override God's clear command to rescue the dying. That command, however, surely is subject to the implicit limitation that the methods of rescue chosen be consistent with the faith. I, for example, share the view of many Christians who believe that the faith does not countenance violence in the fight against abortion. I submit that the non-imposition principle is another constraint on the manner in which the obedient Christian responds to God's command.

190. See *supra* text accompanying note 183.

191. Personal example would include not just refraining from having an abortion oneself, but also one's response in situations where abortion may suggest itself as the easiest way out of a difficult situation. Christian parents, for example, must be willing to stand by their seventeen-year old daughter through her unwanted pregnancy rather than seeking a secret abortion to avoid a scandal.

By including evangelism, I do not imply that one who disagrees with my position on abortion cannot be a Christian. I do believe, however, that Christians who support permissive abortion laws either have misread Scripture or do not give Scripture the central importance in their lives that God commands.

192. One positive result of the abortion controversy has been the mobilization of many fine Christian organizations to do this very thing. If the abortion laws are ever made more restrictive, the demand on these groups could well increase dramatically.

avoidance measure, we may be tempted to deceive ourselves into thinking that the law alone is the answer to the abortion tragedy. Laws severely restricting abortion would help by reducing the number of abortions,¹⁹³ but it is foolish to think that a change in the law would cause abortion simply to disappear. In an important sense, then, it would be beneficial for many Christians to feel constrained by the non-imposition principle to forego law as a way to combat abortion. Such Christians would serve to keep all of those committed to protecting the unborn honest about the magnitude of the task.

My conclusions about what can realistically be expected of law by those who oppose abortion apply more generally to Christians who desire to see God's standards followed in other areas. To the extent that a law can reflect God-spoken precepts without violating the non-imposition principle, I would not oppose using the law to accomplish its independent, secular objectives. If the goal, however, is a society more righteous before God, recourse to law is futile. There is no substitute for Christian people who through their words and lives proclaim God's truth and love to the world. The only hope for a society more righteous before God is God's own power at work in the human heart, not man's power as applied through law.

193. See K. GREENAWALT, *supra* note 2, at 124.

