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America's Creed: The Inevitable, Sometimes Dangerous, Mixing of Religion and Politics

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America’s Creed: The Inevitable, Sometimes Dangerous, Mixing of Religion and Politics

David M. Smolin*

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I. Introduction

Political and philosophical theorists have often advocated for the exclusion of some or all religious perspectives from full participation in politics.¹ Such approaches create criteria—such as

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1. See generally, e.g., BRUCE ACKERMAN, SOCIAL JUSTICE IN THE LIBERAL STATE (1980); JOHN RAWLS, A THEORY OF JUSTICE (1971); JOHN RAWLS, POLITICAL LIBERALISM (1993); KENT GREENAWALT, RELIGIOUS CONVICTIONS AND POLITICAL CHOICE 50–56 (1988) (describing various such approaches and noting that “[t]he

public accessibility, public reason, or secular rationale—to legitimate such exclusion.² During the 1990s I argued, as an evangelical Christian,³ against such exclusionary theories, defending the rights to full and equal political participation by evangelical Christians, traditionalist Roman Catholics, and any others who would be restricted by such criteria.⁴

idea that citizens and officials in a liberal democracy should rely on nonreligious bases for judgment is one that finds fairly frequent expression and occasional systematic defense"); Richard Rorty, *Religion as Conversation-Stopper*, COMMON KNOWLEDGE 1, 1–3 (1994); Robert Audi, *The Separation of Church and State and the Obligations of Citizenship*, 18 PHILOSOPHY AND PUB. AFFAIRS 259 (1989); Robert Audi, *The Place of Religious Argument in a Free and Democratic Society*, 30 SAN DIEGO L. REV. 677 (1993). Thomas Nagel, *Moral Conflict and Political Legitimacy*, 16 Philosophy and Pub. Affairs 215, 232 (1987). To read critics of this approach, see generally, e.g., CHRISTOPHER EBERLE, RELIGIOUS CONVICTION IN LIBERAL POLITICS (2002); Philip Quinn, *Political Liberalisms and Their Exclusions of the Religious*, 69 PROCEEDINGS AND ADDRESSES OF THE AM. PHILOSOPHICAL ASS'N 35 (1995); RICHARD JOHN NEUHAUS, THE NAKED PUBLIC SQUARE: RELIGION AND DEMOCRACY IN AMERICA (1984); STEPHEN L. CARTER, THE CULTURE OF DISBELIEF (1993).

2. See *supra* note 1. By contrast, Michael Perry's interesting work derived fallibilism and pluralism as dialogic virtues from his liberal Roman Catholic faith perspective. See MICHAEL PERRY, LOVE AND POWER: THE ROLE OF RELIGION AND MORALITY IN AMERICAN POLITICS (1991). Professor Perry may have been persuaded, perhaps in part by our dialogue, that such virtues might be "positions for which it is sometimes fitting to contend" rather than as grounds to exclude faiths that may lack such virtues. See *id.* at 140; see also David M. Smolin, *Regulating Religious and Cultural Conflict in a Postmodern America: A Response to Professor Perry*, 76 IOWA L. REV. 1067 (1991); Quinn, *supra* note 1, at 47–48.

3. Precisely because I previously participated explicitly as an evangelical Christian on these issues, and this affiliation was noted in academic discussion by other authors, see Quinn, *supra* note 1, at 47–48, it is necessary to mention that I have since become Roman Catholic. I am a rather new Catholic and not yet prepared to take up the mantle of representing Catholic perspectives on politics. Nonetheless, there is a broad continuity to my views, as I was never an anti-Catholic Protestant and am not now an anti-Protestant Catholic. Rather, I perceive that what unifies Christians is more important than what divides us.

4. See Smolin, *A Response to Professor Perry*, *supra* note 2; David M. Smolin, *Cracks in the Mirrored Prison: An Evangelical Critique of Secularist Academic and Judicial Myths Regarding the Relationship of Religion and American Politics*, 29 LOY. L.A. L. REV. 1487 (1996). My arguments included: (1) Excluding persons and perspectives from political dialogue is contrary to core values of inclusion in political liberalism, (2) The Bible and other well-known religious sources are more accessible to the general public in the United States than philosophers like Kant, (3) The academic discourse concerning the exclusion of religion is not based on neutral principles of reason but rather is situated within academic communities and discourses presuppositionally committed to an Enlightenment-based rejection of Christianity and religious authority, (4)

The invitation to respond to Professor Calhoun's excellent essay⁵ is the occasion for me to revisit this topic. Professor Calhoun marshals historical and practical reasons why the constitutional separation of church and state does not mandate separation of religion and politics.⁶ Thus, Professor Calhoun, like me, is arguing for the inclusion of religious arguments as legitimate within public political discussion. In responding, I would like to do more than relitigate the argument for inclusion, although this is necessarily included.

First, this Essay offers explanations for the persistence of academic justifications for excluding religion from politics. One continuing impetus for theories of exclusion is the dominance, in the academy, of intellectual traditions opposed to forms of Christianity grounded in the authority of the Bible and church

Religion is ubiquitous in American politics, including not only "conservative" politicians but also Democratic politicians such as Jimmy Carter, Bill Clinton and Al Gore who publicly connected their religious faith to their political views. *See id.* One danger of playing this role is that it would be wrongly assumed that I supported everything said in the name of evangelical Christianity, which of course I did not and do not. My argument is one of inclusion, not one of agreement.

5. Samuel W. Calhoun, *Separation of Church and State: Jefferson, Lincoln, and Martin Luther King, Jr., Show It Was Never Intended to Separate Religion from Politics*, 74 WASH. & LEE L. REV. ONLINE 459 (2018). As Professor Calhoun notes, *see id.* at 462 n.8, decades ago we had an exchange of views related to differing theological views of religion and politics. *See* David M. Smolin, *The Judeo-Christian Tradition and Self-Censorship in Legal Discourse*, 13 U. DAYTON L. REV. 345 (1988); Samuel W. Calhoun, *Misreading the Judeo-Christian Tradition and the Law: A Response to Professor Smolin*, 15 U. DAYTON L. REV. 383 (1990); David M. Smolin, *The Enforcement of Natural Law by the State: A Response to Professor Calhoun*, 16 U. DAYTON L. REV. 381 (1991). As Professor Calhoun indicates in his current article, his views have changed over the years. *See* Calhoun, *Separation of Church and State*, *supra*, at 460 n.1. Some of my subsequent work focused on clarifying the very different Christian theological understandings of the appropriate Christian roles in relationship to politics. *See* David M. Smolin, *A House Divided? Anabaptist and Lutheran Perspectives on the Sword*, in CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT 370 (Michael W. McConnell et al. eds., 2001); David M. Smolin & Kar Yong Lim, *Living as Christians Under Civil Law: The New Testament Letters, Law, and Politics*, in LAW AND THE BIBLE: JUSTICE, MERCY AND LEGAL INSTITUTIONS 208 (Robert F. Cochran, Jr. & David Van Druenen eds., 2013); David M. Smolin, *Church, State, and International Human Rights: A Theological Appraisal*, 73 NOTRE DAME L. REV. 1515 (1998). However, on the subject of whether an overarching, purportedly secular theory of politics should be exclusionary toward religion, my views have not changed, and I will continue to advocate for inclusion.

6. *See* Calhoun, *Separation of Church and State*, *supra* note 5.

tradition.⁷ A second impetus for such theories of exclusion is the growing role of identity politics within American society and the academy.⁸

Second, the Essay argues that once religion, politics, and human nature are properly understood it becomes clear that it is impossible to truly separate religion and politics. The question is not whether religion will influence politics, but rather how.

Third, the Essay describes the relationships between religion and politics that are most dangerous. Nevertheless, the dangers involved do not create a constitutional violation, nor provide an argument for exclusion.

Finally, I suggest that the Declaration of Independence represents a kind of American political “creed” that itself situates an appropriate relationship between religion and politics. This American creed is broadly inclusive of diverse religious perspectives, particularly as compared to the theorists of religious exclusion. The Essay concludes that academic theories of exclusion, which purport to speak in the name of liberal democracy, are inconsistent with and destructive of American democracy and are symptomatic of flaws in the contemporary academy.

These arguments are intellectually ambitious and contrary to prevalent academic thought, and yet space and time limits preclude me from fully defending them here. At best, all this Essay can do is sketch a series of positions.

7. See *infra* notes 23–24 and accompanying text. The text focuses on Christianity rather than other religions because the discourses I am focused on arose and remain centered primarily in Europe and the United States where Christianity has a prominent historical role. Obviously the question of religion and politics in other regions of the world might instead focus on other religions. This is not to imply that Christianity is merely a “Western” religion—Christianity did not arise in the West, and a majority of Christians today do not live in the West. See Smolin, *Church, State, and International Human Rights*, *supra* note 5, at 1516–17; *The Global Religious Landscape*, PEW RES. CTR. (Dec. 18, 2012), <http://www.pewforum.org/2012/12/18/global-religious-landscape-exec/> (last visited Aug. 25, 2018) (“Of the major religious groups covered in this study, Christians are the most evenly dispersed. Roughly equal numbers of Christians live in Europe (26%), Latin America and the Caribbean (24%) and sub-Saharan Africa (24%).”) (on file with the Washington and Lee Law Review).

8. See *infra* Part IV.

II. Religion, Politics, and the Weight of History

Professor Calhoun makes a clear case that historically and practically religion and politics cannot be, and have not been, completely separated.⁹ At the outset, it is important to understand what he means. Professor Calhoun is not arguing for a theocracy in which a class of priests politically rule in the name of God. He is not arguing that religious institutions should have political power as institutions. He is not arguing that a particular religion, such as his own, Christianity, should have a special place, constitutionally or legally, above other religions. He is not arguing that anyone should have to accept any religion, or religion at all, or any religiously based arguments. He is not arguing that religious believers should generally use religiously-based arguments, and he is acknowledging that sometimes religious believers may find it best to make “secular” arguments.¹⁰

Instead, Professor Calhoun is arguing that it is “appropriate for religious believers to rely upon their faith in advocating solutions to public policy disputes.”¹¹ This claim has two parts. First, it is legitimate for religious believers to derive political beliefs and public policy preferences from their faith.¹² Second, it is legitimate for religious believers to publicly advocate for public policy preferences with explicitly religious arguments.¹³

Calhoun provides examples either of historical icons and causes almost universally embraced across the political divide—Jefferson, Lincoln, and King using religious language for anti-slavery or civil rights advocacy—or else examples designed to appeal to political liberals, such as Democratic party politicians or evangelicals advocating for refugees and immigrants. One would guess that Calhoun omits examples of politically conservative politicians invoking religion because he assumes that this is accepted on the right, or else that the examples would be less

9. See Calhoun, *Separation of Church and State*, *supra* note 5.

10. See *id.*

11. *Id.* at 460.

12. See *id.* at 462 n.6 (“[B]ecause ‘God is the source of reasoning ability,’ I find it ‘abhorrent’ to urge ‘Christians, even if only momentarily, to strip God from their thoughts.’”).

13. See *id.* at 464 (“I do think it’s perfectly fine for religious citizens to openly rely on their faith in advocating solutions to public policy disputes.”).

appealing to his audience. It is the left—which includes the vast majority of law professors and humanities academics—that he needs to persuade. Implicitly, he is saying to the political left in America, “your leaders also invoke religion in the public square—if they can do it, everyone can do it.”¹⁴

Actually, finding examples of religious motivation and rhetoric in politics is a bit like finding samples of salt water in the Pacific Ocean. As to contemporary presidential politics, the degree of religion is not a left-right, or Republican-Democratic divide, as religious influence is ubiquitous. For example, the evangelical Christian faith of both Democratic President Jimmy Carter and Republican President George W. Bush were foundational to their politics and to their political persona.¹⁵ A Methodist upbringing, including its social justice aspects, were significant for almost-President Hillary Rodham Clinton’s long career in law and politics.¹⁶ African-American churches and the social justice aspects

14. For a similar approach from a self-described liberal, see STEPHEN L. CARTER, *THE CULTURE OF DISBELIEF* (1993); see also *Yale Professor a Moderating Voice in Debate Over Church and State: Government: Self-described Liberal Believes that Religion Should be Included in Political Discussion*, L.A. TIMES (Oct. 23, 1993), http://articles.latimes.com/1993-10-23/local/me-48851_1_yale-law-school (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

15. See Betsy Shirley, *The Faith of Jimmy Carter*, AMERICA (Apr. 11, 2018), <https://www.americamagazine.org/arts-culture/2018/04/11/faith-jimmy-carter> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); Andrew R. Flint & Joy Porter, *Jimmy Carter: The Re-emergence of Faith-Based Politics and the Abortion Rights Issue*, 35 PRESIDENTIAL STUD. Q. 28 (2005); Laurie Goodstein, *The 2000 Campaign: Matters of Faith; Bush Uses Religion as Personal and Political Guide*, N.Y. TIMES (Oct. 22, 2000), <https://www.nytimes.com/2000/10/22/us/2000-campaign-matters-faith-bush-uses-religion-personal-political-guide.html> (last visited Aug. 15, 2018) (on file with the Washington and Lee Law Review); Lauren Frances Turek, *Religious Rhetoric and the Evolution of George W. Bush's Political Philosophy*, 48 J. AM. STUD. 975 (2014).

16. See Daniel Burke, *The Public and Private Faith of Hillary Clinton*, CNN, <https://www.cnn.com/2016/10/30/politics/clinton-faith-private/index.html> (last updated Oct. 31, 2016, 9:46 PM) (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); CNN, *Hillary Clinton Speaks on Faith, 2016 Election*, YOUTUBE (Sept. 7, 2017), <https://www.youtube.com/watch?v=zU7A3ivcnXo> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); Hillary Clinton, 2016 Democratic Presidential Nominee, Remarks at Little Rock AME Zion Church in Charlotte, North Carolina, (Oct. 2, 2016) in THE AM. PRESIDENCY PROJECT, (Oct. 2, 2016), <http://www.presidency.ucsb.edu/ws/index.php?pid=119152> (last visited Aug. 25,

of Christianity were formative for Barack Obama.¹⁷ Indeed, Republican President Donald Trump seems to have had the least religiously observant life of any modern American President.¹⁸

Why is there a sustained academic discourse on the legitimacy of religious rhetoric and reasoning in politics, when the phenomena is so widespread? Stephen Carter put the matter very well some twenty-five years ago: “What is needed is not a requirement that the religiously devout choose a form of dialogue that liberalism accepts, but that liberalism develops a politics that accepts whatever form of dialogue a member of the public offers.”¹⁹

What needs explanation and correction, then, is not religion in politics, but academic theories that claim to speak for democratic liberalism and yet are illiberal in their exclusions of religious motivation and reasoning. There are several explanations, which will be explored in the following sections.

2018) (on file with the Washington and Lee Law Review).

17. See Greg Jaffe, *The Quiet Impact of Obama’s Christian Faith*, WASH. POST (Dec. 22, 2015), https://www.washingtonpost.com/sf/national/2015/12/22/obama-faith/?noredirect=on&utm_term=.4cca43b85fb7 (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

18. See David Masci, *Almost All U.S. Presidents, Including Trump, Have Been Christians*, PEW RES. CTR. (Jan. 20, 2017), <http://www.pewresearch.org/fact-tank/2017/01/20/almost-all-presidents-have-been-christians/> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); Maureen Groppe, *First Year of Trump-Pence Brings Bountiful Blessings, Religious Conservatives Say*, USA TODAY (Jan. 19, 2018, 6:00 AM), <https://www.usatoday.com/story/news/politics/2018/01/19/first-year-trump-pence-brings-bountiful-blessings-religious-conservatives-say/1044308001/> (last updated Jan. 19, 2018, 10:33 AM) (last visited Aug. 25, 2018) (“The twice-divorced Trump who bragged about groping women and was one of the least religious, and arguably least religiously articulate men to ever run for the presidency, was an unlikely champion for the religious right.”) (on file with the Washington and Lee Law Review).

19. CARTER, *supra* note 14, at 230. It is important not to take Carter’s comment out of context, which is his response to liberal democratic theories that would exclude religious viewpoints and “trivialize the forces that shape the moral convictions of tens of millions of Americans.” *Id.* at 230–31.

III. Religion is Stupid and So Why Isn't It Dead?

Calhoun quotes book titles that leave little to the imagination: *The God Delusion*, *The End of Faith*, and *god is Not Great: How Religion Poisons Everything*.²⁰

These authors (Richard Dawkins, Sam Harris, and Christopher Hitchens, respectively) are not merely arguing for the separation of religion from politics, but for the extinction of religion.²¹ If religion is a “delusion” “that poisons everything,” the best result is “the end of faith.”²²

From this perspective, separating religion and politics is part of a larger agenda of stigmatizing, isolating, and privatizing religion so it may be safely relegated to the margins and then hopefully die out. This impulse is intellectually connected, in the West, to the Enlightenment tradition, the related schools of sociology steeped in the premises of an inevitable secularization of society, and to intellectual and political movements that defined themselves in opposition to Christianity or traditional religion.²³ From their perspective, Christianity and other similar faiths should have either died or radically morphed centuries ago, since it is self-evident that such forms of religion are irrational, destructive, remnants of a primitive past, and just plain stupid.²⁴

There are innumerable critiques of such an approach, of which the following are just a string of related propositions. Nonetheless,

20. RICHARD DAWKINS, *THE GOD DELUSION* (2006); SAM HARRIS, *THE END OF FAITH: RELIGION, TERROR, AND THE FUTURE OF REASON* (2004); CHRISTOPHER HITCHENS, *GOD IS NOT GREAT: HOW RELIGION POISONS EVERYTHING* (2007).

21. See *supra* note 20 (discussing sources arguing for the exclusion of religion entirely).

22. *Id.*

23. See, e.g., PETER GAY, *THE ENLIGHTENMENT: THE RISE OF MODERN PAGANISM* (1966); Fred Dallmayr, *Rethinking Secularism (With Raimon Panikkar)*, 16 *THE REV. OF POL.* 715, 717–19 (1999) (summarizing perspectives of Comte, Marx, Durkheim, Spencer, Parsons, Almond, and Powell); *Enlightenment*, STAN. ENCYCLOPEDIA OF PHIL. (Aug. 20, 2017), <https://plato.stanford.edu/entries/enlightenment/#> (last updated Aug. 29, 2017) (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

24. See, e.g., GERHARD LENSKI, *THE RELIGIOUS FACTOR* 3 (1961) (“[F]rom its inception sociology was committed to the view that religion in the modern world is merely a survival from man’s primitive past, and doomed to disappear in an era of science and general enlightenment.”).

out of this series of propositions the outlines of a counter-argument may be sketched.

First, the Enlightenment confidence that “reason” could, while rejecting God and tradition, provide “methods of rational justification” to authoritatively distinguish between just and unjust actions long ago collapsed.²⁵ “Reason” of itself is incapable of adjudicating justice or determining “truth” because reason requires adherence to presupposition and rules of reasoning which themselves are not provable by reason.²⁶ Indeed, something related about the limits of logic has been in a sense “proven” mathematically by Godel’s “incompleteness theorem.”²⁷

Second (which follows from the first), it is really a matter of different accounts of reason—as Alasdair MacIntyre’s book title, *Whose Justice, Which Rationality?*, provocatively asserts.²⁸ Religion can be just as rational as purportedly “secular” philosophy, while having different presuppositions and/or rules of reasoning.²⁹

Third, once purportedly secular forms of reasoning take positions on matters such as the existence of God, they cross the line into religious assertion. Hence, the assertion that God is a “delusion” is a religious, rather than secular, statement, in the sense that it cannot be demonstrated by the scientific method nor proven by secular argumentation, even if it can be deemed more or less plausible.³⁰

25. See, e.g., ALASDAIR MACINTYRE, *WHOSE JUSTICE? WHICH RATIONALITY?* 6 (1988). See generally W.T. JONES, *A HISTORY OF WESTERN PHILOSOPHY, KANT AND THE NINETEENTH CENTURY* (1975); W.T. JONES & ROBERT J. FOGELIN, *A HISTORY OF WESTERN PHILOSOPHY: THE TWENTIETH CENTURY TO QUINE AND DERRIDA* (1996).

26. See generally, e.g., MACINTYRE, *supra* note 25; CORNELIUS VAN TIL, *A DEFENSE OF THE FAITH* (1955); JOHN M. FRAME, *A HISTORY OF WESTERN PHILOSOPHY AND THEOLOGY* (2015); JOHN M. FRAME, *APOLOGETICS TO THE GLORY OF GOD* (1994).

27. See, e.g., *Godel’s Incompleteness Theorems*, STAN. ENCYCLOPEDIA OF PHIL. (Nov. 11, 2013), <https://plato.stanford.edu/entries/goedel-incompleteness/> (last updated Jan. 20, 2015) (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

28. See MACINTYRE, *supra* note 25.

29. See *id.* at 146–208 (describing approaches of Augustine and Aquinas).

30. Cf. Nicholas Kardaras, *The Scientific Atheism Fallacy: How Science Declares That God is Dead, But Can’t Prove It*, PSYCHOL. TODAY (June 17, 2011), <https://www.psychologytoday.com/us/blog/how-plato-can-save-your-life/201106/the-scientific-atheism-fallacy-how-science-declares-god-is> (last

Fourth, this propensity of purportedly secular philosophies to make religious assertions is often accompanied by such philosophies increasingly taking the form and function of religion, with their own dogmas, vision of good and evil, and narrative of origins and ends. For example, Marxism has been plausibly labeled a secular religion;³¹ one of the founders of sociology, Auguste Comte, explicitly created a religion of humanity,³² and purportedly “secular” viewpoints related to transhumanism and the “singularity” appear to function similarly to religious beliefs in the lives of some proponents, with “its own eschatology and its own revelations”³³ and “a new kind of quest for an afterlife.”³⁴

Fifth, trying to remove religion from human life is like trying to remove cells from the human body. Human beings inherently seek meaning and purpose and thus tend to ask questions typically viewed as religious. Human beings thus inevitably posit answers to questions about origins and ends (of human life, our individual lives, the universe, the earth, etc.), and of purpose, meaning and value. Abolishing religion would require the abolition of humanity, because human beings are by nature religious.³⁵

visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

31. See, e.g., Anatoly M. Khazanov, *Marxism-Leninism as a Secular Religion*, in *THE SACRED IN TWENTIETH-CENTURY POLITICS* 119 (Roger Griffin et al. eds., 2008); JARON LANIER, *YOU ARE NOT A GADGET* 18 (2010).

32. See *Auguste Comte*, Section 5.3, STAN. ENCYCLOPEDIA OF PHIL. (Oct. 1, 2008), <https://plato.stanford.edu/entries/comte/#RelHum> (last updated May 8, 2018) (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

33. See LANIER, *supra* note 31, at 18.

34. *Id.* at 32.

35. See generally Beth Azar, *A Reason to Believe: Religion May Fill The Human Need for Finding Meaning, Sparing Us from Existential Angst While Also Supporting Social Organization, Researchers Say*, AM. PSYCHOL. ASS'N, <http://www.apa.org/monitor/2010/12/believe.aspx> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); Tim Ross, *Belief in God is Part of Human Nature—Oxford Study*, THE TELEGRAPH (May 12, 2011), <https://www.telegraph.co.uk/news/politics/8510711/Belief-in-God-is-part-of-human-nature-Oxford-study.html> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); Steven Reiss, *Human Nature and God*, THE HUFFINGTON POST (Jan. 8, 2016, 1:11 PM), https://www.huffingtonpost.com/steven-reiss/human-nature-and-god_b_8930822.html (last updated Jan. 8, 2017) (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); KEITH WARD, *RELIGION AND HUMAN NATURE* (1998); VIKTOR FRANKL, *MAN'S SEARCH FOR MEANING* (1946); RUDOLF OTTO, *THE IDEA OF THE HOLY* (1923).

Sixth, since politics concerns the ordering of our common life, human beings typically are going to ask the end in view. Is political life ordered toward happiness, flourishing, rights, equality, virtue, or some other end? Even if one tries to separate political ends as merely temporal and not ultimate, temporal, political ends ultimately must have some relationship to whatever are defined as the ultimate ends. Hence, at least some aspects of politics inherently engage religious questions.³⁶

Seventh, modern history reveals that the secularization theory, which predicts the atrophying and death of religious belief in the modern world, is wildly discordant with the facts.³⁷ As one sociologist of religion notes, “More than 150 years ago Tocqueville pointed out that ‘the facts by no means accord with [the secularization] theory,’ and this lack of accord has grown far worse since then.”³⁸

Based on this analysis, it becomes clear that once the nature of religion, politics, and human beings are brought into view, the complete separation of religion and politics is impossible. One can change the institutional arrangements involved, so that either particular religious organizations or particular religious offices are not formally involved in government—as is accomplished in the First Amendment in the United States Constitution.³⁹ One can construct a realm of politics that is conceived of as “secular,” in opposition to a historically-grounded particular religious institution, such as the Roman Catholic Church in France.⁴⁰ In

36. See, e.g., Bruce Ashford, *Two Reasons Why Religion and Politics Cannot Be Separated*, BILLY GRAHAM EVANGELISTIC ASS'N (May 17, 2016), <https://billygraham.org/story/two-reasons-why-religion-and-politics-cannot-be-separated/> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

37. See Rodney Stark, *Secularization, R.I.P.*, 60 SOC. OF RELIGION 249 (1999); Jeffrey Cox, *Provincializing Christendom: The Case of Great Britain*, 75 CHURCH HIST. 120 (2006); GILLES KEPEL, *THE REVENGE OF GOD: THE RESURGENCE OF ISLAM, CHRISTIANITY AND JUDAISM IN THE MODERN WORLD* (1994).

38. Stark, *supra* note 37.

39. U.S. CONST. amend. I.

40. See, e.g., Robert Zaretsky, *How French Secularism Became Fundamentalist*, FOREIGN POL'Y (April 7, 2016, 4:11 PM), <https://foreignpolicy.com/2016/04/07/the-battle-for-the-french-secular-soul-laicite-charlie-hebdo/> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); *Catholicism in France*, HARVARD DIVINITY SCH., <https://rlp.hds.harvard.edu/faq/catholicism-france> (last visited Aug. 25, 2018) (on

addition, one may try to limit, as much as possible, the ends of politics to temporal, rather than eternal, ends. In the end, however, because human beings are religious beings, and driven by needs for meaning and connection and purpose, what is called “politics” will inevitably be drawn into connection with “religion,” whether denominated as such or not.

IV. Identity Politics and the Academy

There is a seepage—or more likely a flood—of identity politics into the academy in the United States. The vast majority of professors in the legal academy and related areas (such as political science and history), at least outside of some religiously-affiliated schools, identify as liberal, progressive, or otherwise to the left.⁴¹ Translated into partisan political affiliation, that means there are a lot of Democrats and very few Republicans. For example, according to one survey the ratio of Democrats to Republicans at liberal arts schools (excluding military academies) is 12.7:1. 39% of the faculties surveyed were Republican-free—not a single one—and many others had only token Republican representation.⁴² Law faculties are similarly imbalanced.⁴³ Further, the imbalances are

file with the Washington and Lee Law Review).

41. See generally Mitchell Langbert, Anthony J. Quain & Daniel B. Klein, *Faculty Voter Registration in Economics, History, Journalism, Law, and Psychology*, 13 *ECON. J. WATCH* 422 (2016); James Lindgren, *Measuring Diversity: Law Faculties in 1997 and 2013*, 39 *HARV. J. L. & PUB. POL'Y* 89 (2015); Colleen Flaherty, *Evidence of 'Liberal Academe'*, *INSIDE HIGHER ED* (Oct. 3, 2016), <https://www.insidehighered.com/news/2016/10/03/voter-registration-data-show-democrats-outnumber-republicans-among-social-scientists> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); Scott Jaschik, *Professors and Politics: What the Research Says*, *INSIDE HIGHER ED* (Feb. 27, 2017), <https://www.insidehighered.com/news/2017/02/27/research-confirms-professors-lean-left-questions-assumptions-about-what-means> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); Adam S. Chilton & Eric A. Posner, *An Empirical Study for Political Bias in Legal Scholarship*, 44 *J. LEGAL STUD.* 277 (2015); Jonathan Haidt, *Viewpoint Diversity in the Academy*, *RIGHTEOUS MIND*, <http://righteousmind.com/viewpoint-diversity/> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

42. See Mitchell Langbert, *Homogeneous: The Political Affiliations of Elite Liberal Arts College Faculty*, *NATIONAL ASS'N OF SCHOLARS* (Apr. 24, 2018), https://www.nas.org/articles/homogenous_political_affiliations_of_elite_liberal (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

43. See Langbert, *supra* note 41; Lindgren, *supra* note 41; Jonas Blank, *All*

much worse among Assistant Professors than Emeritus Professors, and the imbalances have accelerated even since 2004, indicating sustained momentum toward increasing imbalance.⁴⁴ Further, these stark imbalances create an even greater imbalance as to teaching and research, as more than one-third of liberal professors explicitly indicated a willingness to discriminate against conservative professors in hiring, many others presumably discriminate without being willing to admit it, and hence conservative professors often self-censor and hide their views.⁴⁵

These disparities are generally not treated as matters of concern by educational institutions, and hence very few universities or colleges have any plan to address them.⁴⁶ The extensive institutional commitments to certain forms of diversity, especially race and gender, do not include political, ideological or religious diversity, even though such forms of viewpoint diversity would seem particularly relevant in an educational context.⁴⁷ If the academy is devoted to consideration of different points of view, the absence of perspectives significant in the population and society should be a concern. Instead, most universities and colleges, and their faculties, are content with a range of ideological and political diversity that either excludes or marginalizes viewpoints that represent a significant plurality of the country.⁴⁸

the Right's Moves, HARV. L. TODAY (Apr. 24, 2003), <https://today.law.harvard.edu/feature/rights-moves/> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

44. See Langbert, *supra* note 41.

45. See JON A. SHIELDS & JOSHUA M. DUNN, JR., *PASSING ON THE RIGHT: CONSERVATIVE PROFESSORS IN THE PROGRESSIVE UNIVERSITY* (2016); Yoel Inbar & Joris Lammers, *Political Diversity in Social and Personality Psychology*, 7 *PERSP. ON PSYCHOL. SCI.* 496 (2012).

46. See Michael Hristakopoulos, *Commentary: Political Diversity is a Major Blind Spot for Colleges*, ORLANDO SENTINEL (Oct. 11, 2017, 5:50 PM), <http://www.orlandosentinel.com/opinion/os-ed-college-diversity-politics-20171010-story.html> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); Walter E. Williams, *Colleges Care About Diversity, Except When They Don't*, DAILY SIGNAL (Nov. 22, 2017), <https://www.dailysignal.com/2017/11/22/colleges-care-diversity-except-dont/> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

47. See Haidt, *supra* note 41.

48. See Nathan Honeycutt, *Political Intolerance Among University Faculty Highlights Need for Viewpoint Diversity*, FORBES (Nov. 21, 2016, 12:48 PM), <https://www.forbes.com/sites/realspin/2016/11/21/political-intolerance-among-university-faculty-highlights-need-for-viewpoint-diversity/#495adaf114b5> (last

The context for these disparities is the increasing “fear and loathing” that Americans feel toward one another based on partisan identification.⁴⁹ The partisan divide has transcended and subsumed many other divides in the United States, becoming perhaps the most potent form of division in American society.⁵⁰ Partisan affiliation is understood (even if incorrectly) as a short-hand for other viewpoints and identities, including religious identity. Further, “Americans increasingly dislike people and groups on the other side of the political divide and face no social repercussions for the open expression of these attitudes.”⁵¹ Since there is little or no social sanction for discriminating against, excluding, or indeed loathing people across the partisan divide, ugly aspects of these divisions become an increasingly evident part of American life. It appears that for many excluding persons or viewpoints on partisan or ideological bases is viewed as a legitimate form of virtue signaling to one’s own group, rather than a socially unacceptable form of discrimination. Just as in the past

visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); Richard Vedder, *How to Improve Campus Intellectual Diversity: Have More Outside Speakers*, FORBES (Apr. 9, 2018, 9:00 AM), <https://www.forbes.com/sites/richardvedder/2018/04/09/improving-campus-intellectual-diversity-more-outside-speakers/#299aeb507522> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); *America’s Universities Get “F” Grade in Intellectual Diversity*, AM. COUNCIL OF TR. & ALUMNI (Dec. 12, 2005), https://www.goacta.org/news/americas_universities_get_f_grade_in_intellectual_diversity (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

49. See Shanto Iyengar & Sean J. Westwood, *Fear and Loathing Across Party Lines: New Evidence on Group Polarization*, 59 AM. J. OF POL. SCI., 690 (2014); *Political Polarization in the American Public: Section 2: Growing Partisan Antipathy*, PEW RES. CTR. (June 12, 2014), <http://www.people-press.org/2014/06/12/section-2-growing-partisan-antipathy/> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); AMY CHUA, *POLITICAL TRIBES: GROUP INSTINCT AND THE FATE OF NATIONS* 137–210 (2018).

50. See Milenko Martinovich, *Americans’ Partisan Identities are Stronger than Race and Ethnicity, Stanford Scholar Finds*, STAN. NEWS (Aug. 31, 2017), <https://news.stanford.edu/2017/08/31/political-party-identities-stronger-race-religion/> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); *The Partisan Divide on Political Values Grows Even Wider*, PEW RES. CTR. (Oct. 5, 2017), <http://www.people-press.org/2017/10/05/the-partisan-divide-on-political-values-grows-even-wider/> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

51. See Iyengar & Westwood, *supra* note 49, at 692.

one might burn a witch to demonstrate one's fidelity and loyalty to a group and dogma, and purportedly to protect a community or the vulnerable, today vicious forms of mob social ostracism, whether in social media or in person, has become a commonplace means of demonstrating that one is a good person with the right ideals.⁵² Hate across the partisan divide is thus seen by many as a virtue rather than a vice, so long as you hate the right people—and the right people include a very large proportion of the country.⁵³

Donald Trump as a political phenomenon has accelerated what has become a self-reinforcing cycle of hatred. Trump specializes in demeaning rhetoric, whether of political opponents, media figures, women, Muslims, immigrants, etc. His rhetoric is explicitly provocative, derogatory, inflammatory, and polarizing.⁵⁴ His nomination and election accelerated a climate of fear and hate as he seemingly insulted his way to the Presidency.⁵⁵ In an environment where the left was increasingly intolerant of any kind of speech that questioned its dogmas, Trump somehow got elected President with rhetoric that broke almost everyone's rules of acceptable political speech.⁵⁶ This perhaps has helped confirm

52. See Barrett Wilson, *I was the Mob Until the Mob Came for Me*, QUILLETTE (July 14, 2018), <https://quillette.com/2018/07/14/i-was-the-mob-until-the-mob-came-for-me/> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); JON RONSON, *SO YOU'VE BEEN PUBLICLY SHAMED* (2015).

53. See *U.S. Conservatives Outnumber Liberals by Narrowing Margin*, GALLUP (Jan. 3, 2017), <https://news.gallup.com/poll/201152/conservative-liberal-gap-continues-narrow-tuesday.aspx> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

54. See Kaitlyn Schallhorn, *Trump's Nicknames for Rivals, from 'Rocket Man' to 'Pocahontas'*, FOX NEWS (Aug. 13, 2018), <http://www.foxnews.com/politics/2018/04/17/trumps-nicknames-for-rivals-from-rocket-man-to-pocahontas.html> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); Jennifer Rubin, *Trump's Rhetoric Matters*, WASH. POST (Feb. 6, 2018), https://www.washingtonpost.com/blogs/right-turn/wp/2018/02/06/trumps-rhetoric-matters/?utm_term=.67c1e97e83a6 (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); Patrick Healy & Maggie Haberman, *95,000 Words, Many of Them Ominous, From Donald Trump's Tongue*, N.Y. TIMES (Dec. 5, 2015), <https://www.nytimes.com/2015/12/06/us/politics/95000-words-many-of-them-ominous-from-donald-trumps-tongue.html> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); Chua, *supra* note 49, at 175–76, 187–88.

55. See, e.g., Chua, *supra* note 49, at 175–76, 187–88.

56. See Anthony J. Gaughan, *Five Things That Explain Donald Trump's Stunning Presidential Election Victory*, THE CONVERSATION (Nov. 9, 2016, 8:31

stereotypes on the left that a significant plurality of the country—perhaps a majority—are, in the famous words of then candidate Clinton, a “basket of deplorables.”⁵⁷

A part of identity politics has been the identification of evangelical Christians with the Republican Party. Apart from the reality that white evangelicals disproportionately vote Republican, it turns out that Democrats significantly over-perceive this identification of evangelical Christianity with the Republican Party.⁵⁸ Hence, Democrats assume that almost half of Republicans are evangelicals, which is a significant exaggeration of the actual statistics.⁵⁹ Hence, for many academics evangelicals equals Republicans which equals the political—and in our hyper-partisan environment—moral, enemy. Further, academics in law, the humanities, and social sciences are much less likely to be evangelical Christians than the general public—apart, of course, from certain religiously affiliated universities.⁶⁰

AM), <http://theconversation.com/five-things-that-explain-donald-trumps-stunning-presidential-election-victory-66891> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); Gary Nunn, *Winning Words: The Language That Got Donald Trump Elected*, THE GUARDIAN (Nov. 11, 2016, 4:00 AM), <https://www.theguardian.com/media/mind-your-language/2016/nov/11/winning-words-the-language-that-got-donald-trump-elected> (last updated Feb 9, 2018, 2:01 PM) (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); Rubin, *supra* note 54; Healy & Haberman, *supra* note 54; James Parker, *Donald Trump, Sex Pistol*, THE ATLANTIC (Oct. 2016), <https://www.theatlantic.com/magazine/archive/2016/10/donald-trump-sex-pistol/497528/> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

57. See Domenico Montanaro, *Hillary Clinton's 'Basket of Deplorables,' in Full Context of this Ugly Campaign*, NPR (Sept. 10, 2016, 4:38 PM), <https://www.npr.org/2016/09/10/493427601/hillary-clintons-basket-of-deplorables-in-full-context-of-this-ugly-campaign> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

58. See Douglas J. Ahler & Gaurav Sood, *The Parties in Our Heads: Misperceptions About Party Composition and Their Consequences*, 80 J. OF POL. 964 (2018).

59. See *id.*

60. See Amarnath Amarasingam, *Are American College Professors Religious?*, HUFFINGTON POST (Oct. 6, 2010, 10:10 PM), https://www.huffingtonpost.com/amarnath-amarasingam/how-religious-are-america_b_749630.html (last updated May 25, 2011) (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

Trump winning a majority of white evangelical votes is an unfortunate byproduct of the identity politics under which white evangelicals generally vote Republican. Trump shrewdly made a deal with evangelicals; in exchange for their support he would pick originalist Supreme Court nominees and stop the past practices of turning the federal government against religious traditionalists.⁶¹ Unfortunately, President Obama, a practicing Christian orientated around the social justice aspects of Christianity, had overseen a federal government and political party perceived, with some reason, as increasingly pushing Christian traditionalists to the margins of society.⁶² The academic theories of political exclusion are part of a much larger set of messengers communicating to evangelicals, conservative Roman Catholics, and others that they will be excluded and marginalized if they adhere to their faith. Thus, the legitimacy of full participation by evangelical and/or Roman Catholic religious believers and institutions has been questioned in a widening scope of activities, including the federal judiciary,⁶³ the executive branch of the

61. See Carrie Johnson, *One Year In, Trump Has Kept A Major Promise: Reshaping the Federal Judiciary*, NPR (Jan. 21, 2018, 7:00 AM), <https://www.npr.org/2018/01/21/579169772/one-year-in-trump-has-kept-a-major-promise-reshaping-the-federal-judiciary> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); Ephrat Livni, *What is "Originalism?" Why Trump Wants an Originalist on the Supreme Court*, QUARTZ (July 8, 2018), <https://qz.com/1323253/what-is-originalism-why-trump-wants-an-originalist-on-the-supreme-court/> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

62. See Emma Green, *Democrats Have a Religion Problem*, THE ATLANTIC (Dec. 29, 2016), <https://www.theatlantic.com/politics/archive/2016/12/democrats-have-a-religion-problem/510761/> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); Todd Starnes, *Government Hostility to Religion Spiked Under Obama, New Report Finds*, FOX NEWS (June 29, 2017), <http://www.foxnews.com/opinion/2017/06/29/government-hostility-to-religion-spiked-under-obama-new-report-finds.html> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

63. See Josh Gerstein, *Senators Take Fire Over Questions for Catholic Judicial Nominee*, POLITICO (Sept. 11, 2017, 8:04 AM), <https://www.politico.com/blogs/under-the-radar/2017/09/11/amy-barrett-judicial-nominee-religion-242550> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); Alexandra Desanctis, *Did Durbin and Feinstein Impose a Religious Test for Office?*, NAT'L REV. (Sept. 8, 2017, 5:17 PM), <https://www.nationalreview.com/2017/09/dick-durbin-dianne-feinstein-senators-grill-judicial-nominee-amy-coney-barrett-religion-catholic/> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

federal government,⁶⁴ health care,⁶⁵ adoption services,⁶⁶ the non-profit sector,⁶⁷ the Democratic Party (are pro-lifers welcome in the Democratic Party?),⁶⁸ law schools,⁶⁹ universities,⁷⁰ public accommodations, businesses, and the services industry.⁷¹ While evangelicals and/or Roman Catholics won victories in some of those disputes, the strong negative backlash, closely-divided decisions and increasingly vocal hostility sent the message that any such victories might be just temporary reprieves.

64. See Emma Green, *Bernie Sanders's Religious Test for Christians in Public Office*, THE ATLANTIC (June 8, 2017), <https://www.theatlantic.com/politics/archive/2017/06/bernie-sanders-chris-van-hollen-russell-vought/529614/> (last visited Aug. 25, 2018) (“[T]his nominee is really not someone who is what this country is supposed to be about.”) (on file with the Washington and Lee Law Review).

65. See, e.g., *Miscarriage of Medicine: The Growth of Catholic Hospitals and the Threat to Reproductive Care*, ACLU, <https://www.aclu.org/report/miscarriage-medicine?redirect=religion-belief-reproductive-freedom/miscarriage-medicine-growth-catholic-hospitals-and-threat> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

66. *Discrimination Against Catholic Adoption Services*, U.S. CONF. OF CATH. BISHOPS, <http://www.usccb.org/issues-and-action/religious-liberty/discrimination-against-catholic-adoption-services.cfm> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

67. See *Zubik v. Burwell*, 136 S. Ct. 1557 (2016); *Home*, THE LITTLE SISTERS OF THE POOR, <http://thelittlesistersofthepoor.com/> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

68. See Jennifer Haberkorn, *If You're a Pro-life Democrat . . . You Know You're Standing Alone*, POLITICO (Aug. 3, 2018), <https://www.politico.com/magazine/story/2018/08/03/democrats-abortion-pro-choice-life-219154> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); *Texas Democratic Party Losing Tolerance for Pro-Life Views*, TEXAS RIGHT TO LIFE (May 25, 2018), <https://www.texasrighttolife.com/texas-democratic-party-losing-tolerance-for-pro-life-views/> (last visited Sept. 20, 2018) (on file with the Washington and Lee Law Review).

69. See, e.g., *Christian Legal Soc'y v. Martinez*, 561 U.S. 661, 697 (2010) (rejecting the Christian Legal Society's free speech and expressive association claims after finding the Hastings Law School's policy for registering school organizations as reasonable and viewpoint neutral).

70. See Katie Zavadski, *Christian Colleges Get License to Discriminate from Obama Administration*, DAILY BEAST (Dec. 22, 2015, 1:00 AM), <https://www.thedailybeast.com/christian-colleges-get-license-to-discriminate-from-obama-administration> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

71. See *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014).

Increasingly, the very concept of religious liberty, once a broadly shared value across the political spectrum, has been stigmatized as a code word for prejudice and discrimination insofar as it protects traditionalist Christians.⁷² Supporting Trump was, rightly or wrongly, perceived as a matter of survival, in part because it was understood that the fate of freedom of religion and speech, particularly for traditionalist religious believers, would hinge on the next appointments to the Supreme Court.⁷³ Evangelicals were not fooled into thinking that Trump was one of their own.⁷⁴ This is not to say the votes were justified—personally I did not vote for Trump and find his Presidency destabilizing and offensive. However, this is to say that if you push groups to the margins of society and delegitimize their participation in political, public, and economic life you cannot expect their votes nor control to whom they go for assistance. People do not like to go where they are not welcome and prefer not to vote for candidates and parties that disdain and discriminate against them.

72. See Emma Greene, *Racism Lives on Under the Cover of 'Religious Freedom'*, THE ATLANTIC (June 4, 2014), <https://www.theatlantic.com/politics/archive/2014/06/american-racism-lives-on-under-the-cover-of-religious-freedom/372083/> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); Ian Millhiser, *When 'Religious Liberty' was Used to Justify Racism Instead of Homophobia*, THINK PROGRESS (Feb. 27, 2014, 2:18 AM), <https://thinkprogress.org/when-religious-liberty-was-used-to-justify-racism-instead-of-homophobia-67bc973c4042/> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); Matt Staggs, *The Good Book Gone Bad: On Prejudice and 'Religious Liberty'*, SIGNATURE (Apr. 12, 2016), <http://www.signature-reads.com/2016/04/the-good-book-gone-bad-on-prejudice-and-religious-liberty/> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

73. See Alex Johnson, *What's Behind Evangelical Support for Donald Trump? Less Than You Think*, NBC NEWS (Oct. 16, 2016, 7:45 PM), <https://www.nbcnews.com/politics/2016-election/what-s-behind-evangelical-support-donald-trump-less-you-think-n666146> (last visited Aug. 25, 2018) (“This election is about the Supreme Court and the justices that the next president will nominate . . . Evangelicals are going to have to decide which candidate they trust to nominate men and women to the court who will defend the constitution and support religious freedoms.”) (on file with the Washington and Lee Law Review).

74. See Jonathan Wilson-Hartgrove, *Why Evangelicals Support President Trump, Despite His Immortality*, TIME (Feb. 16, 2018), <http://time.com/5161349/president-trump-white-evangelical-support-slaveholders/> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

Thus, a significant number of scholars and academics most likely view certain prevalent religions in the United States as bad and harmful actors, and largely illegitimate participants in public life.⁷⁵ This appears to be one root of the political and legal theories claiming that political involvement by evangelical Christians, traditionalist Roman Catholics, and other such groups is illegitimate.⁷⁶

V. *Defining the Most Dangerous Ways in Which Religion and Politics May Mix*

Contrary to the above stereotypes, I would suggest it is possible to be more precise about which relationships between politics and religion create the greatest dangers. While the mixing of religion and politics is inevitable and not in itself wrong, several situations create a higher level of risk.

A. *Absence of Religion*

Of course, from a secularist point of view the absence of religion is the safest option, because it frees politics from the perceived dangers of religious influence.⁷⁷

However, if anyone thought that weakening the political and social power of religion would safeguard humankind against state-sponsored inhumanity, the twentieth century should have

75. See, e.g., Erwin Chemerinsky & Michele Goodwin, *Religion is Not a Basis for Harming Others*, 104 GEO. L.J. 1111 (2016); see *supra* notes 20–75 and accompanying text

76. See *supra* notes 20–75 and accompanying text; Emma Green, *Bernie Sanders's Religious Test for Christians in Public Office*, THE ATLANTIC (Jun. 8, 2017), <https://www.theatlantic.com/politics/archive/2017/06/bernie-sanders-chris-van-hollen-russell-vought/529614/> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); Shahid Ali Panhwer & Maha Mussadaq, *Religion and Government Must not Mix in America, Experts Say*, MCCLATCHY (Nov. 8, 2011, 6:20 PM), <https://www.mcclatchydc.com/news/politics-government/article24718585.html> (last updated Nov. 9, 2011, 7:21 AM) (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

77. See Katie Packer Beeson, *The Preacher's Role: Religious Leaders Should Take a Page from Billy Graham and Get out of Politics*, U.S. NEWS (Aug. 25, 2017, 6:00 AM), <https://www.usnews.com/opinion/articles/2017-08-25/religious-leaders-should-stay-out-of-politics> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

settled that question. Secular ideologies have been responsible, immediately upon attaining political power, for horrific atrocities, the murder of millions, and the totalitarian subjugation of entire societies. The hundreds of millions killed in the name of communism and fascism, and the extreme destruction wrought by dictators like Stalin, Hitler, and Pol Pot, should be adequate examples.⁷⁸ Thus, the twentieth century demonstrates that putting secular ideology in the place of religion as a foundation for politics does not reduce the risk of atrocities and totalitarian dystopian visions.⁷⁹ Of course, many learned that lesson from the dark turn of the French Revolution centuries ago, but it was proven on a much larger scale in the atrocities of Hitler, Stalin, and Pol Pot, among others, in the twentieth century.⁸⁰

Indeed, the weakening of traditional monotheistic religion particularly invites atrocities, because in the vacuum created by the “death of God” political ends may be elevated to religious significance. It appears that ideologies such as Marxism and Fascism sometimes function as destructive forms of pseudo religion.⁸¹ Like many religions, they provide a higher end or purpose to which human actions should be orientated, an analysis of the human condition, a criteria and narrative for framing a battle between good and evil, and an historical narrative orientated toward some kind of prophesied ultimate victory of the

78. See, e.g., ALAIN BESANÇON, A CENTURY OF HORRORS: COMMUNISM, NAZISM, AND THE UNIQUENESS OF THE SHOAH (Ralph C. Hancock & Nathaniel H. Hancock trans., 2007); HANNAH ARENDT, THE ORIGINS OF TOTALITARIANISM (1951); PHILIP SHORT, POL POT: ANATOMY OF A NIGHTMARE (2004); *Pol Pot*, HISTORY, <https://www.history.com/topics/pol-pot> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); *Nazi Party*, HISTORY, <https://www.history.com/topics/world-war-ii/nazi-party> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

79. See *supra* note 78.

80. See *supra* note 78; see also EDMUND BURKE, REFLECTIONS ON THE REVOLUTION IN FRANCE (1790).

81. See Shashi Joshi, *Religion and Marxism: Some Theoretical Problems*, 26 ECON. AND POL. WKLY. 2563 (1991); Ludwig von Mises, *Marxism Unmasked: From Delusion to Destruction*, FOUND. FOR ECON. EDUC. (July 1, 2015), <https://fee.org/resources/marxism-unmasked-from-delusion-to-destruction-2/> (last visited Aug. 25, 2018) (providing a transcription of Ludwig von Mises lectures delivered at the San Francisco Public Library from June 23 through July 3, 1952) (on file with the Washington and Lee Law Review); Emilio Gentile, *Fascism as Political Religion*, 25 J. OF CONTEMP. HIST. 229 (1990); ROGER GRIFFIN, FASCISM, TOTALITARIANISM, AND POLITICAL RELIGION (2005).

good. Everything is justified in the name of such ideologies because they admit no ethical or religious system or higher power to which they are accountable. Any means is permissible under the actual practice of such ideologies, because the ends are imperative and must be achieved by human actions.⁸²

I should add that some of the most ethical people I know are atheists, agnostics, or indeed Marxists. However, that does not change the risks when societies are governed by “secular” totalitarian ideologies.

After the nightmares of the two world wars and accompanying atrocities, Europe has reconstituted itself around the values of human rights, democracy, and the rule of law.⁸³ Therefore, some might point to Europe as a demonstration that purely secular values ruling politics can be successful.⁸⁴ However, European systems permit religious influence in politics in ways that completely defy the strict separationist model. For example, Denmark, put forth as the exemplar of a positive secular society,⁸⁵ has an established church, the Evangelical Lutheran Church (ELC);⁸⁶ of course the Church of England is still the state church of England and the Church of Scotland is the national Church of

82. See Bill Flax, *Do Marxism And Christianity Have Anything in Common?*, FORBES (May 12, 2011, 4:58 PM), <https://www.forbes.com/sites/billflax/2011/05/12/do-marxism-and-christianity-have-anything-in-common/#2c8ede346877> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

83. See *Human Rights*, EUROPEAN UNION, https://europa.eu/european-union/topics/human-rights_en (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); *Lessons of Second World War Must Continue to Guide United Nations Work, General Assembly Told During Meeting Marking Seventieth Anniversary*, UNITED NATIONS (May 5, 2015), <https://www.un.org/press/en/2015/ga11641.doc.htm> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

84. See PHIL ZUCKERMAN, *SOCIETY WITHOUT GOD* (2008); PHIL ZUCKERMAN, *LIVING THE SECULAR LIFE: NEW ANSWERS TO OLD QUESTIONS* (2014); Phil Zuckerman, *Secular Societies Fare Better Than Religious Societies*, PSYCHOL. TODAY (Oct. 13, 2014), <https://www.psychologytoday.com/us/blog/the-secular-life/201410/secular-societies-fare-better-religious-societies> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); FLEUR DE BEAUFORT & PATRICK VAN SCHIE, *SEPARATION OF CHURCH AND STATE IN EUROPE* (2012), <http://www.cjg.be/wp-cont/uploads/2015/07/Separation2012.pdf>.

85. See ZUCKERMAN, *SOCIETY WITHOUT GOD*, *supra* note 84.

86. U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, H.R. AND LAB., DENMARK INTERNATIONAL RELIGIOUS FREEDOM REPORT (2017), <https://www.state.gov/documents/organization/281144.pdf>.

Scotland.⁸⁷ Roman Catholic and Protestant schools are directly funded by the government in the Netherlands' system of parental school choice.⁸⁸ Poland, whose population is probably the most religiously observant in Europe, recently officially declared Jesus Christ King of the nation.⁸⁹ Indeed, many, perhaps most, European states have established churches or church-state relationships that would clearly violate the separation of church and state as currently understood in the United States.⁹⁰

Further, the "Christian democratic" movement has been significant in the post-World War II period in Europe, reflected for example in the form of significant, mainstream political parties that often include the word "Christian" in the party name and which were particularly influenced by Catholic social teachings.⁹¹

87. See, e.g., NORMAN DOE, *THE LEGAL FRAMEWORK OF THE CHURCH OF ENGLAND* (1996); *Church of England*, BBC, http://www.bbc.co.uk/religion/religions/christianity/cofe/cofe_1.shtml (last updated June 30, 2011) (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, H.R. AND LAB., *UNITED KINGDOM INTERNATIONAL RELIGIOUS FREEDOM REPORT* (2017), <https://www.state.gov/documents/organization/281218.pdf>.

88. See U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, H.R. AND LAB., *NETHERLANDS INTERNATIONAL RELIGIOUS FREEDOM REPORT* (2017), <https://www.state.gov/documents/organization/281186.pdf>; *Netherlands: System and School Organization*, NAT'L CTR. ON EDUC. AND THE ECON., <http://ncee.org/what-we-do/center-on-international-education-benchmarking/top-performing-countries/netherlands-overview/netherlands-system-and-school-organization/> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

89. See Elisa Meyer, *Poland Declares Christ As King*, WORLD RELIGION NEWS (Dec. 1, 2016), <https://www.worldreligionnews.com/religion-news/poland-declares-christ-as-king> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

90. See C. T. McIntire, *The Shift from Church and State to Religions as Public Life in Modern Europe*, 71 *CHURCH HISTORY* 152 (2002); U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, H.R. AND LAB., *INTERNATIONAL RELIGIOUS FREEDOM REPORT* (2017), <https://www.state.gov/documents/organization/280950.pdf> (including reports on various European nations).

91. See BAREND TENSON ET AL., WILFRED MARTENS CENTRE FOR EUROPEAN STUDIES, *THE CHRISTIAN DEMOCRATIC ORIGINS OF THE EUROPEAN PEOPLE'S PARTY: VALUES AND RELEVANCE FOR POLITICS* (2014), https://www.martenscentre.eu/sites/default/files/publication-files/christian_democratic_origins_of_the_epp-web.pdf; *Germany's Political Parties*, BBC, <http://news.bbc.co.uk/2/hi/europe/4219274.stm> (last updated Sept. 6, 2005) (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); Andre Munro, *Christian Democracy*, BRITANNICA,

More profoundly, the “European” values of human rights, democracy, and the rule of law reflect the influence of Christian doctrines and social teachings, with significant political actors viewing the modern European political project as rooted in values derived from Christianity.⁹² Hence, use of secular terminology does not negate the influence of religion, an influence that casts a long shadow in the heartlands of European Christendom and the continent that contains the Papacy. It is important to remember that the very concept of the separation of church and state is rooted in developments within Christendom, from the middle ages forward, in regards to institutional arrangements within an overtly Christian civilization.⁹³ Hence, the acknowledgement of a “secular” sphere of politics does not necessarily signal a lack of religious influence. Indeed, in the Western Roman Catholic tradition one can even speak of “secular clergy” and “secular institutes.”⁹⁴ Of course, it remains to be seen whether the post-World War II European project will ultimately hold together in its current political form over the long term, but whatever happens, Europe is far from an example of a pure separation of religion and politics.

B. Politics as a Religion

Whether or not people believe in God or a religion, when their politics becomes preeminent over their religion and functions like a religion, risks are created. This can be particularly dangerous for people who are relatively uninvolved in formal religion but passionately concerned with politics. Unfortunately, this problem

<https://www.britannica.com/topic/Christian-democracy> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

92. See John T.S. Madeley, *Christian Democracy and the Origins of European Union*, 37 RELIGION, ST. AND SOC'Y 228 (2009) (reviewing WOLFRAM KAISER, *CHRISTIAN DEMOCRACY AND THE ORIGINS OF EUROPEAN UNION* (Cambridge University Press 2007); Tenson, *supra* note 91).

93. See, e.g., HAROLD J. BERMAN, *LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION* (1983).

94. See *Secular Clergy*, NEW ADVENT, <http://www.newadvent.org/cathen/13675a.htm> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); *Catechism of the Catholic Church*, VATICAN, http://www.vatican.va/archive/ENG0015/_P2A.HTM (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

of politics as religion seems to be increasingly prominent in the United States.⁹⁵ It appears that for many people their politics defines them far more than any religion. Hence, Americans are most divided, and most intolerant, in regard to political difference.⁹⁶ Unfortunately, many seem to treat these political divisions as equivalent to the distinction between good and evil.⁹⁷ To be on the “other side” is to be “of the devil,” metaphorically speaking. And there is little room for tolerating evil.

These kinds of political views are immature, particularly as compared with more mature religious perspectives. Most longstanding religions have had to come to terms with inter-religious relationships in ways that acknowledge the humanity and goodness of those of other faiths, and perceive some positive aspects of other religions, even as they consider their own faith superior.⁹⁸ Indeed, longstanding religions sometimes

95. See David Hulme, *Politics and Religion, Politics As Religion*, VISION (2009), <http://www.vision.org/visionmedia/interviews/emilo-gentile-politics-and-religion/15471.aspx> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); see *supra* notes 47–51 and accompanying text.

96. See Hulme, *supra* note 95.

97. See *id.*; Tim Hains, *Sen. Corey Booker: Supporters of Judge Kavanaugh are “Complicit” in “Evil”*, REAL CLEAR POLITICS (July 25, 2018), https://www.realclearpolitics.com/video/2018/07/25/sen_cory_booker_supporters_of_judge_kavanaugh_are_complicit_in_evil.html (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); Elise Viebeck, *‘Get a Grip’: Republicans Seize on Booker Comment that Kavanaugh Supporters are ‘Complicit’ in ‘Evil’*, WASH. POST (July 26, 2018), https://www.washingtonpost.com/news/powerpost/wp/2018/07/25/get-a-grip-republicans-seize-on-booker-comment-that-kavanaugh-supporters-are-complicit-in-evil/?utm_term=.3bbb2459d2b0 (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); Martinovich, *supra* note 50; Sean J. Westwood et al., *The Tie that Divides: Cross-National Evidence of the Primacy of Partyism*, 57 EUROPEAN J. OF POL. RES. 333 (2018).

98. See, e.g., *Nostra Aetate*, VATICAN, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651028_nostra-aetate_en.html (last visited Aug. 25, 2018) (providing the *Nostra Aetate* provided by Pope Paul VI on October 28, 1965) (on file with the Washington and Lee Law Review); George Varghese Tothamkara, *Church Documents on Interreligious Dialogue*, VINCENTIAN CHARISM AND FORMATION IN ASIA PACIFIC, <https://cccprf.wordpress.com/2011/02/05/church-documents-on-interreligious-dialogue/> (last visited Aug. 25, 2018) (providing a summary of Roman Catholic statements on inter-religious dialogue) (on file with the Washington and Lee Law Review); *Orthodox Rabbinic Statement on Christianity*, CTR. FOR JEWISH-CHRISTIAN UNDERSTANDING AND COOPERATION (Dec. 3, 2015), <http://cjcuc.org/2015/12/03/orthodox-rabbinic-statement-on-christianity/> (last

acknowledge their own shortcomings and ill-treatment of those of other faiths, in acts of apology and reconciliation.⁹⁹ My personal experience, however, is that many otherwise wonderful people who are politically active appear to consider people on the other side of the political divide to be despicable human beings more or less beyond redemption. This personal experience is validated by the studies discussed in Section IV above.

Such immature views of the political other contribute to a toxic social and political climate in the country. They make politics into a battle for survival, as each group seeks to politically and socially marginalize the other. Like racial prejudice, such views involve irrational prejudices which interfere with the normal political processes by which competing interests are imperfectly compromised in view of the greater good.¹⁰⁰ There is no greater good than winning when the other side is simply evil.

visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); *The Gifts and Calling of God are Irrevocable: A Reflection on Theoretical Questions Pertaining to Catholic-Jewish Relations on the Occasion of the 50th Anniversary of "Nostra Aetate"*, VATICAN, http://www.vatican.va/roman_curia/pontifical_councils/chrstuni/relations-jews-docs/rc_pc_chrstuni_doc_20151210_ebraismo-nostra-aetate_en.html (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); *The ACW Letter, A Common Word Between Us and You*, A COMMON WORD, <https://www.acommonword.com/the-acw-document/> (last visited Aug. 25, 2018) (providing a Muslim statement addressed to Christians) (on file with the Washington and Lee Law Review); *Christian Responses*, A COMMON WORD, <https://www.acommonword.com/christian-responses/> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); Darrell Jodock, *A Christian View of Inter-religious Relations*, BEARINGS (June 30, 2016), <https://collegevilleinstitute.org/bearings/christian-view-inter-religious-relations/> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); MIROSLAV VOLFF, *EXCLUSION & EMBRACE: A THEOLOGICAL EXPLORATION OF IDENTITY, OTHERNESS, AND RECONCILIATION* (1996).

99. See, e.g., *Memory and Reconciliation: The Church and the Faults of the Past*, VATICAN (Dec. 1999), http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_con_cfaith_doc_20000307_memory-reconc-itc_en.html (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); *John Paul II*, BBC, http://www.bbc.co.uk/religion/religions/christianity/pope/johnpaulii_1.shtml (last updated April 27, 2011) (last visited Aug. 25, 2018) (describing Pope John II's apologies and actions regarding interreligious relationships) (on file with the Washington and Lee Law Review).

100. See *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 n.4 (1938) (“[P]rejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a

C. Religion as Mere Identity

Religion is particularly dangerous when it becomes intertwined with an ethnic or nationalistic identity, and the accompanying faith, ethics, or teachings are weaker than the merged religious-ethnic/nationalistic identity. In this context, religion may amplify a simplistic us against them mentality, while the religious teachings or ethics that could limit or defuse the accompanying conflict lack influence.¹⁰¹ In these situations, the weakening of the religious elements may do more harm than good, for a “secularized” religion as identity is still quite capable of exacerbating conflict and contains no limiting ethical influence.¹⁰² Hence, to the degree that religions have teachings that emphasize duties to strangers and those outside of the group,¹⁰³ and the human dignity of all including those outside of the group,¹⁰⁴ it is

correspondingly more searching judicial inquiry.”); JOHN HART ELY, *DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW* (1980).

101. See, e.g., Jonathan Fox, *The Rise of Religious Nationalism and Conflict: Ethnic Conflict and Revolutionary Wars, 1945-2001*, 41 *J. OF PEACE RES.* 715 (2004).

102. See Simon Smart et al., *Doesn't Religion Cause Most of the Conflict in the World?*, excerpt from *FOR GOD'S SAKE* (2013), *THE GUARDIAN* (July 1, 2013), <https://www.theguardian.com/commentisfree/2013/jul/02/religion-wars-conflict> (last visited Aug. 25, 2018), (excerpt from Simon Smart):

Yale theologian Miroslav Volf argues that as far as Christianity goes, it will only be violent if it is stripped of its content— thinned out—and infused with a different set of values. The story of Jesus gives absolutely no warrant for violence . . . The answer, Volf argues, to violence perpetrated in the name of the Cross, is not less Christianity but more—Christianity that is not depleted of its meaning but full of its original moral content, which is at its heart non-violent and a force for good. When Martin Luther King Jr. confronted racism in the white church in the South he called on those churches not to become more secular, but more Christian. King knew that the answer to racism and violence was not less Christianity but a deeper and truer Christianity.

103. See, e.g., *Deuteronomy* 10:18-19; *Leviticus* 19:10, 19:33-34; *Matthew* 25:31-46; *Hebrews* 13:1-3; *Catechism of the Catholic Church*, VATICAN, http://www.vatican.va/archive/ccc_css/archive/catechism/p3s1c2a3.htm (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

104. See, e.g., *Genesis* 1:26-27; *Luke* 9:51-56; *Luke* 23:33-34; *Catechism of the Catholic Church*, VATICAN, http://www.vatican.va/archive/ccc_css/archive/catechism/p3s1c2a3.htm (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

ethical resources within the religion itself that are most likely to be credible and useful for alleviating conflict.

D. Trump, Religion, and the Conservative Movement

The first three risk factors pertain to situations where religion, as traditionally conceived, has become weaker and less influential. An example of this, I would suggest, is reflected in the political rise of Donald Trump. Trump and the alt-right are what you get when the political right is not under the strong influence of traditional religion. Politics becomes religion and religion, to the degree it exists, becomes primarily identity, disconnected from the teachings of the religion. America becomes defined in terms of race, language, and culture uprooted from a living religious faith, which can lead to explicit or implicit forms of prejudice, as groups like Muslims, immigrants, migrants, and Mexicans are defined as the dangerous “other.” God is either dead or Santa Clause—there, if at all, merely to affirm our own agendas. Politics then becomes the place of ultimate struggle both to affirm identity, against the evil others, and to survive, and to win. Winning means defeating all those who have forgotten or despised you. If Trump scares you—and he scares me—you will not want a conservative movement disconnected from religion.¹⁰⁵

E. The Substance of Religious Teachings: Means, Ends, and Respect for Humanity

Religions that lack dogmas that limit political ends and/or means, or that lack doctrines of respect toward all of humanity, including those of other faiths, create dangers. For example, if a religion teaches that its ultimate ends may be accomplished through military conquest or political victory, and that those of

105. Cf. Woodlock, *supra* note 102; VOLF, *supra* note 98; Gwenda Blair, *How Norman Vincent Peale Taught Donald Trump to Worship Himself*, POLITICO (Oct. 6, 2015), <https://www.politico.com/magazine/story/2015/10/donald-trump-2016-norman-vincent-peale-213220> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); Paul Matzko, *The Pastor Who Helps Explain Donald Trump*, THE GOSPEL COALITION (Apr. 19, 2017), <https://www.thegospelcoalition.org/reviews/surge-piety-norman-vincent-peale/> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

other faiths are less than human, evil in their essence, and should be defeated, marginalized, or even eliminated, then that religion obviously has become dangerous. Thus, to evaluate whether a religion poses risks in the political sphere, it is necessary to analyze the teachings of the religion. Of course such is complicated, because within a particular religion there may be very different beliefs, particularly as relevant to politics. To give an obvious example, a non-resistant Anabaptist who believes that a Christian cannot be involved in the state, politics, or killing,¹⁰⁶ obviously creates different risks than a Christian who feels responsible to further the kingdom of God through the imposition of a theocracy.¹⁰⁷ As to Christianity, of course, neither of these positions is predominate, although the Anabaptist group is of longstanding significance while the political theocratic position is a tiny group and hence of little political significance.¹⁰⁸ Most Christians in fact reject both the strict separationist, sectarian position of Anabaptism and the theocratic position, requiring them to have rather complex and nuanced viewpoints on the relationship of religion to politics.¹⁰⁹ Thus, particularly as to any major religion,

106. See Smolin, *A House Divided*, *supra* note 5, at 371–74 (describing Anabaptist views); *The Schleithem Confession (1527)*, in 3 JOHN H. LEITH, CREEDS OF THE CHURCHES 281, 287 (1982); Palmer Becker, *What is an Anabaptist Christian?*, MENNONITE MISSION NETWORK (2008), <https://www.mennonitemission.net/Downloads/DL.MissioDei18.E.pdf> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

107. Something close to advocacy of Christian theocracy occurs in the Christian reconstruction or theonomy movement. See, e.g., R. J. RUSHDOONEY, INSTITUTES OF BIBLICAL LAW (1973); GREG BAHNSEN, THEONOMY IN CHRISTIAN ETHICS (1977); GARY NORTH, THEONOMY: AN INFORMED RESPONSE (1991); GARY NORTH, UNCONDITIONAL SURRENDER: GOD'S PROGRAM FOR VICTORY (1981).

108. The Christian Reconstructionist position is a splinter movement within Calvinist or Reformed Christianity, which is strongly rejected by the mainstream of theologically conservative reformed theology. See, e.g., ROBERT GODREY & WILLIAM S. BARKER, THEONOMY: A REFORMED CRITIQUE (1990). While the movement appears to survive, statistically it is a vanishingly small proportion of Christianity and lacks much in the way of denominational or institutional structure.

109. See, e.g., H. RICHARD NIEBUHR, CHRIST AND CULTURE (1951); MICHAEL W. MCCONNELL et al., CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT (2001); Neuhaus, *supra* note 1; Carter, *supra* note 1; Martin Luther King, Jr., *Letter from a Birmingham Jail*, in KING, I HAVE A DREAM: WRITINGS AND SPEECHES THAT CHANGED THE WORLD 84, 92 (James Melvin Washington ed., 1992); *Catechism of the Catholic Church*, VATICAN, http://www.vatican.va/archive/ccc_css/archive/catechism/p3s1c2a3.htm (last

it is important to go beyond stereotypes or extreme examples to focus on the actual groups of significance in the particular context.

I would note that the distinction here is not between what might be called “conservative” or “liberal” theological views. The content of the faith as to means and ends, politics, and the status of those outside of the faith are specific and not indicated by those simplistic labels. An Anabaptist may take a very conservative view of Biblical authority, believe that Christianity is the only true faith in the world and that Anabaptism is the only truly faithful form of Christianity, which would hardly be “liberal” in theological terms, and still hold firmly to views of politics that strongly preclude violence and political involvement.¹¹⁰ Similarly, it is important to distinguish between teachings about, for example, salvation, which may be quite exclusivist in some theological systems, from the more relevant teachings about politics, or human beings as created in the image of God.¹¹¹ Hence, a theological viewpoint that is viewed as “liberal” due to its revisionist approach to scripture and tradition and inclusive teachings regarding salvation, may nonetheless be far more intrusive in its approach to politics if it evidences contempt toward those of other views and understands religion’s purpose as fulfilled completely in creating a certain kind of social order.

F. Exclusion is Not the Answer

visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); *Catechism of the Catholic Church*, VATICAN, http://www.vatican.va/archive/ccc_css/archive/catechism/p3s2c2a5.htm (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); *Encyclical Letter, Laudato Si, On Care for Our Common Home*, VATICAN (2015), http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review); Linda Bordoni, *Pope Francis: ‘Death Penalty Inadmissible’*, VATICAN NEWS (Aug. 2, 2018, 2:49 PM), <https://www.vaticannews.va/en/pope/news/2018-08/pope-francis-cdf-ccc-death-penalty-revision-ladaria.html> (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

110. See, e.g., Smolin, *A House Divided*, *supra* note 5.

111. See, e.g., Green, *Bernie Sanders’s Religious Test for Christians in Public Office*, *supra* note 64; MIROSLAV VOLF, *FLOURISHING: WHY WE NEED RELIGION IN A GLOBALIZED WORLD* 137–60 (2016) (arguing that many religious exclusivists are political pluralists).

Even if a religious, political, or social group poses risks, isolating and marginalizing them outside of the peaceful processes of dialogue, debate, speech, and politics heightens rather than reduces the danger. It is a part of the genius of American democracy to productively channel political divisions and conflicting interests through inclusion and participation in a societal marketplace of ideas.¹¹² In that way, it seems particularly odd that academic theorists of politics should make arguments for exclusion without accounting for the political and social risks that such exclusion, if taken seriously, would significantly worsen the dangers of social unrest. Perhaps this is a sign that the bogeyman of religious strife is not really the point in the United States. We have not had anything like the wars of religion of European history, or the interreligious violence endemic in some societies, despite extensive religious involvement in politics.¹¹³ It appears that what the academic proponents of exclusion actually feared were religious conservatives succeeding through the political process on certain culturally sensitive issues.¹¹⁴ Ultimately, it is the political process of a free society that the academic proponents of exclusion fear and mistrust.

VI. Conclusion: America's Creed

The academic theorists who would restrict full political participation by some religious persons are advocating a strategy of marginalization, silencing, and isolation of significant portions of the population in the United States. However sophisticated the reasoning, the message of exclusion is inconsistent with what holds the United States of America together. Our contemporary society is not a nation based on ethnic identity and/or a great and ancient civilization, as in many East Asian and European states.¹¹⁵

112. See, e.g., THE FEDERALIST NO. 10 (James Madison); JOHN STUART MILL, ON LIBERTY, Chapter 2 (1859); *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Harlan, J., dissenting) (discussing “free trade in ideas”); *Whitney v. California*, 274 U.S. 357 (1927) (Brandeis, J., concurring).

113. See Quinn, *supra* note 1, at 39.

114. See, e.g., MICHAEL PERRY, RELIGION IN POLITICS: CONSTITUTIONAL AND MORAL PERSPECTIVES 82–102 (1997); KENT GREENAWALT, RELIGIOUS CONVICTIONS AND POLITICAL CHOICE 87–97 (1988).

115. See CHUA, *supra* note 49, at 1–57.

Religiously, the United States has deep roots, like Western Europe, in Western Christian civilization. Ultimately, however, the United States is not held together by Christianity or any other single faith, and it is a part of America's creed that all faiths are welcome and included.¹¹⁶ America is held together instead by a political creed that creates a specific relationship between religion and politics.¹¹⁷

America's creed is best expressed in the famous words of the Declaration of Independence:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.¹¹⁸

While it seems presumptuous to analyze such an iconic text, several propositions should be emphasized for present purposes. Humanity is endowed by our Creator with rights and equality, and the purpose of government is to secure those rights.¹¹⁹ Hence, the rights and equality of humankind are recognized by politics, rather than established by politics, as humanity's rights and equality derive from a higher authority above politics.¹²⁰ Religion thus defines the proper purposes and limits of politics.

The purpose of invoking the Creator God is to express that this view of politics is not just an expediency in the shifting sands of changing political and social arrangements, but a permanent understanding of the foundations and purposes of politics, rooted in both whatever is highest and in our shared human nature. It seems most in keeping with the spirit of the text, and its primary

116. See U.S. CONST., amend. I.

117. Cf. JOHN COURTNEY MURRAY, *WE HOLD THESE TRUTHS: CATHOLIC REFLECTIONS ON THE AMERICAN PROPOSITION* (1960); Abraham Lincoln, Gettysburg Address (Nov. 19, 1863); G. K. CHESTERTON, *WHAT I SAW IN AMERICA* 7 (1922) ("America is the only nation in the world that is founded on a creed. That creed is set forth with dogmatic and even theological lucidity in the Declaration of Independence; perhaps the only piece of practical politics that is also theoretical politics and also great literature."); *THE DECLARATION OF INDEPENDENCE* (U.S. 1776); HENRY V. JAFFA, *CRISIS OF THE HOUSE DIVIDED* (1959); HENRY JAFFA, *A NEW BIRTH OF FREEDOM: ABRAHAM LINCOLN AND THE COMING OF THE CIVIL WAR* (2000).

118. See *THE DECLARATION OF INDEPENDENCE* para. 2 (U.S. 1776).

119. See *supra* note 117.

120. See *id.*

authorship by Jefferson, to see the reference to God as an invitation to include whoever or whatever is understood as highest and holy. Hence, not only the Abrahamic monotheist and the Jeffersonian deist, but also the Hindu and the Buddhist, the practitioner of Native American religions, and the “nones” of our nation who generally possess some kind of personal spirituality, are invited to embrace the text, reading their own view of divinity or whatever is of highest spiritual value into the Creator God of the text. The committed atheist may not feel comfortable with the reference to God, but he or she would be invited to affirm that, by whatever they hold highest, the purposes of government are to protect the rights and equality of all people. Indeed, since inclusion—the rights and equality of all human beings—is a part of the creed, the creed is broad enough to include those who do not accept it as a matter of belief, but are willing to live and participate in the society produced by such a creed. Practically and ideologically, this is a creed of inclusion, a creed broad enough to hold together a nation whose identity is not based on race, ethnicity, religious identity, or partisan political persuasion. This creed invites those who have a thicker creed to which they have an appropriately higher loyalty to participate in a national experiment that recognizes that politics is not the highest good; rather, politics is designed to effectuate a society where people can pursue other, higher, more ultimate goods.

This creed does not require agreement on the nature or even existence of God, divine revelation, salvation, life after death, or the ultimate purposes, destiny, and meaning of human life. It is an agreement about the purposes of politics, not the purpose of human life—for it is left to each person and society to determine how to live out the “pursuit of happiness.” The text constitutes a religiously-derived agreement that politics would not try to enforce on the people a single religious vision.

This creed is not a formula for a conflict-free politics. Such anyway would be a foolish ideal. Our constitution and our politics are created for people of fundamentally different values.¹²¹ Hence, the definitions of equality and rights are necessarily going to be

121. See, e.g., *Lochner v. New York*, 198 U.S. 45, 75–76 (1905) (Holmes, J., dissenting) (“[A] [C]onstitution . . . is made for people of fundamentally differing views . . .”); Murray, *supra* note 117.

matters of ongoing debate. Indeed, defining rights and equality in ways that leave room for a sufficient variation of viewpoints and ways of life is the potential Achilles heel of the American creed. We are inherently social beings, and our politics must address how we live together despite those fundamentally different values. However, the means to achieving a decent balance must be through a politics of inclusion rather than exclusion.

This creed invites and assumes a marketplace of religious, philosophical, political and social ideas in free competition with one another.¹²² Religion must compete for its very survival in this marketplace, for in the absence of state-supported religious institutions any particular faith only survives through voluntary participation. The atheist is free to argue that religion is stupid, but the people are allowed to vote with their feet, so to speak, concerning the survival of religion.

Academic theories of exclusion violate the compact and creed that binds America together, by proposing that certain religious groups not be allowed to fully compete and participate in America's marketplace of political, religious, and social ideas. Other than the prejudices and presuppositions endemic in academia, such theories of exclusion would be dismissed as quickly as would a proposal to bar persons of a particular race or secular philosophy from fully participating in politics. Such academic theories of exclusion are free to compete in the marketplace of ideas, but proponents should be aware that creating a self-reinforcing academic discourse of exclusion brings into question the relevancy of the academy. When the academy becomes the bastion and backer of systematic theories of exclusion, it brings its own mission into question. One can hope that the academy, which is so important to the life of an open society like our own, would itself choose to turn away from such theories of exclusion. Perhaps that will only be possible when the academy itself becomes more religiously and intellectually diverse.

122. See *supra* note 109.