Washington and Lee Law Review Online

Volume 74 | Issue 2 Article 14

10-11-2018

Church History, Liberty, and Political Morality: A Response to Professor Calhoun

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I. Introduction

No character in a Socratic dialogue is as boring as a yes-man. It is with regret, then, that I confess to general agreement with Professor Calhoun's address. Although I cannot repay my invitation to write this response by challenging Calhoun, however, I believe I can do so by approaching the subject of his address from a different angle.

Although Professor Calhoun and I are both Christians, Calhoun's talk was structured so as to be of roughly equal relevance to any religious tradition. At the same time, Calhoun's survey of history was focused solely on the United States, and therefore on the political controversies of the last few centuries. To complement Calhoun's address, I propose to narrow the scope of the discussion to Christianity and, in addition, broaden it to encompass two millennia of church-state relations and first principles of political morality.

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I approach the topic this way for two reasons: first, because I see the universal Christian church as a single body extended through time, and, second, because Christianity is a worldview which speaks to every area of human existence. Christians believe that Christ established a kingdom which "shall never be destroyed . . . it shall stand forever."[1] Likewise, all of human life must be centered upon God, for "from him and through him and to him are all things."[2] I am therefore concerned with the questions of what influence the church has had on public policy over the course of its whole existence—and whether any competing set of principles can hope to challenge Christian belief.

One of the most compelling themes of Professor Calhoun's address was that a religiously informed political philosophy can, and should be, appealing on its face. Does the application of religion to politics, Calhoun asked the audience, "enrich our democracy or harm it?"[3] Through his historical examples—which focused on the evangelical roots of abolitionism—Calhoun showed that a comprehensive Christian ethic is not only rational, but desirable. For instance, Calhoun asked the audience whether New England clergy should have refrained from condemning the expansion of slavery as a great moral wrong.[4]

Calhoun's question suggests two arguments. First, it would be illogical for Christians to believe that slavery is a sin but remain silent about its practice—or to conceal their religious motives in opposing it. Second, unless one supports slavery, then it would be odd to suggest that William Wilberforce should have preferred to remain quiet rather than root his abolitionism in his Christian faith.[5] I will underscore Calhoun's point by showing that, for

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1. *Daniel* 2:44.

2. *Romans* 11:36.

3. Samuel W. Calhoun, *Separation of Church and State: Jefferson, Lincoln, and the Reverend Martin Luther King, Jr., Show It Was Never Intended to Separate Religion from Politics*, 74 WASH. & LEE L. REV. ONLINE 459, 488 (2018).

4. *Id.* at 488

5. William Wilberforce was a prominent and successful evangelical abolitionist in Britain. *See History: William Wilberforce (1759–1833)*, BBC, http://www.bbc.co.uk/history/historic_figures/wilberforce_william.shtml (last visited Aug. 25, 2018) (*"*Wilberforce was a deeply religious English member of parliament and social reformer who was very influential in the abolition of the slave trade and eventually slavery itself in the British empire.") (on file with the Washington and Lee Law Review).

thousands of years, Christians have advanced human liberty through the explicit application of their faith to politics and law. A handful of examples, taken from various eras of church history, will illustrate my point.

II. Religion and Politics Throughout History

Saint Ambrose barring Theodosius from Milan Cathedral, A. van Dyck, 1619–1620

In 390 AD, during the Christian era of the Roman Empire, the Emperor Theodosius responded to an uprising in Thessalonica by rashly ordering a massacre of the population.[6] "Multitudes were mowed down like ears of grain in harvest-tide," wrote the historian Theodoret; "It is said that seven thousand perished."[7] At the time, Aurelius "Ambrose" Ambrosius, Archbishop of Milan—known today as the mentor of Augustine—was the most prominent leader of the church.[8] When Theodosius went to the cathedral at Milan to receive communion, Ambrose protested the massacre by personally blocking the emperor from entering[9]—an event that has been powerfully illustrated by Anthony van Dyck.[10]

Ambrose was driven by his belief in the sovereignty of God—and the dependence and fallenness of all human beings. Though Theodosius was wearing purple robes, Ambrose reasoned, his

6. Theodoret, *Ecclesiastical History (Book V)* 5.17, NEW ADVENT, http://www.newadvent.org/fathers/27025.htm (last visited on Aug. 23, 2018) (on file with the Washington and Lee Law Review).

7. *Id.* at 5.17.

8. *Id.*

9. *Id.*

10. Anthony van Dyck, *Saint Ambrose barring Theodosius from Milan Cathedral* (1619–1620).

clothes adorned a body made of dust.[11] "You are a sovereign, Sir, of men of like nature with your own, and who are in truth your fellow slaves," argued Ambrose, "for there is one Lord and Sovereign of mankind, Creator of the Universe."[12] At Christmas, Theodosius again attempted to enter the cathedral—this time at the urging of his chief of staff, Rufinus. In response, Ambrose denounced both men to their faces, telling Rufinus that "your impudence matches a dog's" and calling Theodosius a "tyrant."[13] "You are raging against God," he told Theodosius, "you are trampling on his laws."[14] In order to gain admittance, Theodosius was forced to declare a suspension of capital punishment for thirty days and to prostrate himself on the ground.[15] Using the words of King David, Theodosius prayed "[m]y soul cleaves unto the dust, quicken thou me according to your word."[16]

The paradox behind the Emperor's prayer—that a man might rule the world and yet be a penitent vassal—was a notion unparalleled in imperial history. The idea of the supreme emperor had survived the unchecked depravities and massacres of Caligula, Caracalla, and Diocletian. It must have been wondrous to behold an Emperor bowed by the mere spiritual authority of a bishop—a man who cannot have been armed with anything more than a crosier and a choir. Even so, Ambrose wrote of the incident that "I have preferred to be somewhat wanting in duty rather than in humility"[17]—suggesting that, if he had been a more dutiful Christian, he would have been even more zealous in his defiance. This otherworldly fury and force is exactly what we would expect to see if Christianity is true: a suggestion that, in the church, God had ignited a singular fire in the midst of human affairs.

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11. *See Ecclesiastical History*, *supra* note 6, at 5.17 ("We must not because we are dazzled by the sheen of the purple fail to see the weakness of the body that it robes.").

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.; Cf. Psalm* 119:25.

17. Ambrose, *Epistles 51*, NEW ADVENT, http://www.newadvent.org/fathers/340951.htm (last visited Aug. 23, 2018) (on file with the Washington and Lee Law Review).

As if answering Professor Calhoun's address directly, Ambrose explained his actions in a letter. Having heard of the massacre, he could not "close [his] ears with wax."[18] "Should I keep silence?," Ambrose asked.[19] "But then my conscience would be bound, my utterance taken away, which would be the most wretched condition of all."[20] Ambrose then cited *Ezekiel* 3:18, which reads "If I [God] say to the wicked, 'You shall surely die,' and you give him no warning . . . that wicked person shall die for his iniquity, but his blood I will require at your hand."[21]

Although the Roman Empire eventually fell, the church—and its power to subdue oppressive rulers—did not. In G.K. Chesterton's words, once the ship of Europe had sunk, it soon "came up again: repainted and glittering, with the cross still at the top."[22] Nor did Christian political influence remain limited to rulers as conscientious as Theodosius.

Even the Frankish Queen Fredegund—known for assassinating several of her own family members and trying to murder her daughter with her bare hands[23]—was susceptible to its power. In 580 AD, Fredegund's sons fell ill and died.[24] Believing that God was punishing her for her cruelty, Fredegund gathered up and burned the registers she had used to assess crippling taxes against the poor.[25] According to historian Paul Freedman, the Frankish royals believed that "the poor, the widow, the orphans—the people that they have oppressed—have a kind of power of vengeance by mobilizing this supernatural force."[26] Fredegund then convinced her husband, Chilperic, that God would give them

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18. *Id.*

19. *Id.*

20. *Id.*

21. *Ezekiel* 3:18.

22. G.K. CHESTERTON, ORTHODOXY 212–213 (Catholic Answers ed. 2014) (1908).

23. JANA K. SCHULMAN, THE RISE OF THE MEDIEVAL WORLD 500–1300: A BIOGRAPHICAL DICTIONARY 146 (2002).

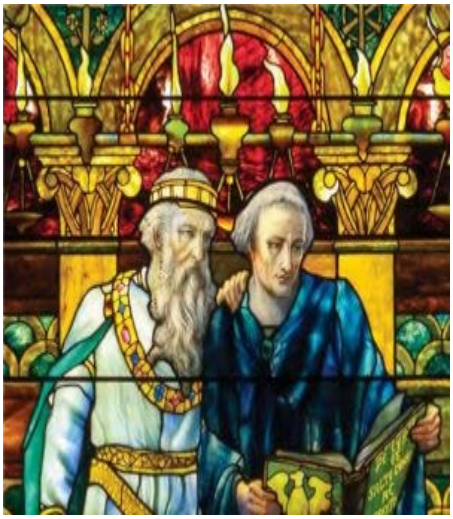
24. *Id.*

25. *Id.*

26. Paul Freedman, *Lecture 11—Frankish Society*, YALE U., https://oyc.yale.edu/history/hist-210/lecture-11 (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

a new son if he stopped assessing new taxes.[27] Chilperic complied, and Fredegund gave birth to a future king, Clothar the Great.[28]

Fredegund's repentance differs from the Emperor's not only because of her greater fondness for killing, but because—so far as I know—Fredegund did not have an Ambrose to correct her. In the darkness of Fredegund's tragedy, Christianity itself may have stood as her strange and surprising conscience—speaking for the voiceless even without a living voice to proclaim it. Certainly, there are countless verses in the Bible that may have moved her—too many to list them all here. Yet it is hard not to imagine that Fredegund had in mind the words of the prophet Amos: "Therefore because you trample on the poor and you exact taxes of grain from him, you have built houses of hewn stone, but you shall not dwell in them; you have planted pleasant vineyards, but you shall not drink their wine."[29]



Stained glass window depicting the friendship of Charlemagne and Alcuin, Lafayette College.

We can see that the church's power influenced a wide range of rulers. Perhaps no medieval Christian ruler has commanded so much attention as Charlemagne. Crowned Holy Roman Emperor in 800 AD, Charlemagne single-handedly created a superstate that promised to reunify Europe—an achievement that would not be rivaled until Napoleon's conquests one thousand years later. Like Theodosius before him, Charlemagne was capable of both thoughtful introspection and rash violence. On the one hand, Charlemagne favored decentralized power, promoted education, and encouraged care for the poor. On the other hand, he sometimes

27. SCHULMAN, *supra* note 23, at 146.
28. *Id.*
29. *Amos* 5:11.

fell short of his own ethics—as when he forced the pagan Saxons to convert at the point of a sword.[30] When this happened, however, the church—once again—was ready to admonish and restrain the coercive use of governmental authority.[31] Alcuin, the foremost Christian thinker of his age and a close associate of Charlemagne, demanded an end to forced conversions. "Faith arises from the will, not from compulsion," he wrote.[32] "You can persuade a man to believe, but you cannot force him. You may even be able to force him to be baptized, but this will not help to instill the faith within him."[33]

The powerful example of Ambrose illuminated even the High Middle Ages. In 1075, one of Charlemagne's successors—the Holy Roman Emperor Henry IV—resisted a push to end government control of internal church appointments.[34] Pope Gregory VII responded by excommunicating Henry IV in 1076.[35] In defending the excommunication, Gregory cited *Ezekiel* 3:18—the same verse cited by Ambrose almost 700 years earlier.[36] This

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30. *See* Thomas Shahan & Ewan Macpherson, *Charlemagne*, NEW ADVENT, http://www.newadvent.org/cathen/03610c.htm (last visited Sept. 20, 2018) ("Education, for aspirants to the priesthood at least, was furthered by the royal order of 787 to all bishops and abbots to keep open in their cathedrals and monasteries schools for the study of the seven liberal arts and the interpretation of Scriptures.") (on file with the Washington and Lee Law Review).

31. *See id*. ("At any rate, the 'Saxon Capitulary' . . . of 781 obliged all Saxons not only to accept baptism (and this on the pain of death) . . . .").

32. *Alcuin: "Epistles 110, 113" on Faith by Will, Not Compulsion (765 CE)*, GEO. U. BERKLEY CTR. FOR RELIGION, PEACE & WORLD AFFAIRS, https://berkleycenter.georgetown.edu/quotes/alcuin-epistles-110-113-on-faith-by-will-not-compulsion-765-ce (last visited Aug. 25, 2018) (on file with the Washington and Lee Law Review).

33. *Id*.

34. *See Conflict of Investitures*, NEW ADVENT, http://www.newadvent.org/cathen/08084c.htm (last visited Sept. 20, 2018) ("Ignoring the prohibition of Gregory, as also the latter's effort at a mitigation of the same, Henry continued to appoint bishops in Germany and in Italy.") (on file with the Washington and Lee Law Review).

35. *See* Klemens Löffler, *Conflict of Investitures*, NEW ADVENT, http://www.newadvent.org/cathen/08084c.htm ("At the next Lenten Synod in Rome (1076) Gregory sat in judgment upon the king, and in a prayer to Peter, Prince of the Apostles, declared: 'I depose him from the government of the whole Kingdom of Germany and Italy, release all Christians from their oath of allegiance, forbid him to be obeyed as king . . . and as thy successor bind him with the fetters of anathema.'")

36. EPHRAIM EMERTON, THE CORRESPONDENCE OF POPE GREGORY VII:

excommunication proved so debilitating that, in the famous "Road to Canossa" incident, Henry IV personally traveled to Italy to beg Gregory's forgiveness, accompanied by only a few bodyguards.[37] In a gesture that should seem familiar, Henry waited outside the fortress at Canossa, barefoot and dressed in sackcloth, for three days. Gregory, satisfied with his repentance, invited Henry inside and received him back into the church.[38]

From the standpoint of our age, when it is often believed that separating church and state means separating religion and politics, the story of Canossa is particularly ironic. It was precisely Gregory's Christian conception of politics that motivated him to protect the church from state interference—and, in doing so, serve as the state's conscience.

From these examples, we can see that many of the of church's humane achievements now stand unacknowledged. Likewise, the church opposed many of the abuses that are now usually misattributed to it. The Spanish conquest of the Americas, for example, is often thought to have been driven as much by evangelical fervor as by greed. In reality, it was church leaders—especially the Dominicans—who were the foremost critics of Spanish atrocities against American Indians.[39]

In 1550, the Dominican reformer Bartolomé de las Casas successfully persuaded the Holy Roman Emperor to put his conquests on hold pending the outcome of a theological debate in

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SELECTED LETTERS FROM THE REGISTRUM 101 (1932).

37. Conflict of Investitures, NEW ADVENT, http://www.newadvent.org/cathen/08084c.htm

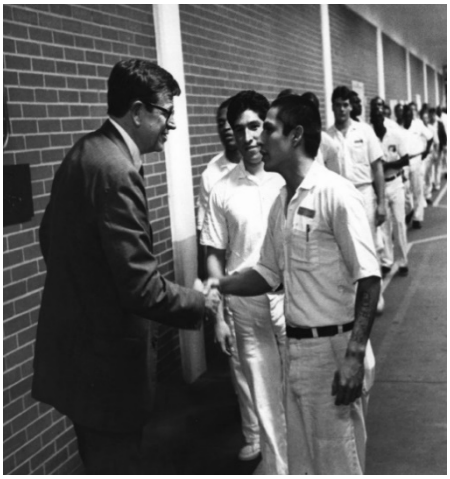
> He was finally admitted to the papal presence, and pledged himself to recognize the mediation and decision of the pope in the quarrel with the princes, and was then freed from excommunication (January, 1077). This famous event has been countless times described, and from very divergent points of view. Through Bismarck, Canossa became a proverbial term to indicate the humiliation of the civil power before the ambitious and masterful Church.

(last visited Oct. 7, 2018) (on file with the Washington and Lee Law Review).

38. PATRICK J. GEARY, READINGS IN MEDIEVAL HISTORY 572 (4th ed. 1974).

39. Paolo G. Carozza, *From Conquest to Constitutions: Retrieving a Latin American Tradition of the Idea of Human Rights*, 25 HUMAN RIGHTS Q. 281, 290 (2003), https://www.umass.edu/legal/Benavides/Fall2005/397U/Readings%20Legal%20397U/4%20Paolo%20Carozza.pdf ("At the time, the foremost critics of Spanish brutality in the Indies were the friars of the Order of Preachers (also known as Dominicans, after their founder St. Dominic.)").

the Council of the Indies.[40] The historian Lewis Hanke writes that "[p]robably never before or since has a mighty emperor . . . ordered his conquests to cease until it was decided if they were just."[41] Casas' example is so striking, in fact, that some have attempted to detach him from church history and reimagine him as a secular Enlightenment thinker. Although Casas believed himself to be propounding the traditional Christian position, the argument goes, he was in fact preempting Rousseau.[42] This position demonstrates a dismissive ignorance of the church history already discussed. In appealing to Christianity to oppose imperialism, Casas was walking a millennia-old path already trodden—in the classical and middle ages—by Ambrose and Alcuin. It is far less likely that Casas was a closet secularist than that he was influenced by a savior who said "I came to cast fire on the earth, and would that it were already kindled."[43]



Charles Colson ministering to prisoners

As Professor Calhoun has already discussed the role of Christianity in the abolitionist movement, I will conclude my list with a contemporary example. In 2014, Congress established the bipartisan Charles Colson Task Force on Federal Corrections,[44] which recommended, among other things, increasing the safety of American prisons in order to promote rehabilitation.[45] The name of the task force was fitting, as Charles Colson, until

40. DAVID KEANE, CASTE-BASED DISCRIMINATION IN INTERNATIONAL HUMAN RIGHTS LAW 82–83 (2007).

41. *Id.* at 80.

42. *Id.* at 83–84.

43. *Luke* 12:49.

44. Steve Rempe, *A Proposal for Change*, PRISON FELLOWSHIP, https://www.prisonfellowship.org/2016/01/charles-colson-task-force-on-federal-corrections/ (last visited Aug. 28, 2018) (on file with the Washington and Lee Law Review).

45. *Id.*

his death in 2012, was one of America's foremost Christian leaders as well as its most effective advocate for criminal justice reform. Colson, whose championing of liberty was not limited to prisons, put the historic Christian position well: "it is crucial that the church be engaged politically—not to exercise power but to protect constitutionally guaranteed freedoms."[46]

Having surveyed church history, I will now respond to one of the most common accusations currently heard against Christianity's historic influence on public policy. The argument, often associated with Nietzsche and other secular elements of the political right, is that Christian morality—with its transcendent valuation of human dignity—in fact gave rise to the most naïve excesses of the Enlightenment, and so led to the bloody totalitarianism of the 20th century. That this is nearly the opposite of the argument made by secular devotees of Casas is unsurprising: as Chesterton once observed, it has often seemed as if "any stick was good enough to beat Christianity with."[47]

The Nietzschean narrative has become so common that I have even heard some Christians grudgingly acknowledge, as an unpleasant fact beyond dispute, that Marxism is an illegitimate child of the Christian faith. Nothing could be further from the truth. In the first place, one should note that each of the historical examples discussed above amounted to a restraint on governmental power, not an assertion of it. More fundamentally, however, Christianity—unlike Marxism—has never known a concept of equality as *good in and of itself*.[48]

Helping others is, of course, central to the Christian life—"as you did not do it to one of the least of these, you did not do it to me."[49] Yet this duty to care for others in no way suggests that uniformity of position or role is desirable. Chesterton, as usual, put the matter most succinctly:

> That all men should live in equally beautiful houses is a dream that may or may not be attained. But that all men should live in the same beautiful house is not a dream at all; it is a nightmare. That a man should love all old women is an ideal

46. CHARLES COLSON, THE SKY IS NOT FALLING 191 (2011).

47. CHESTERTON, *supra* note 22, at 122–23.

48. *See infra* notes 56–57 and accompanying text.

49. *Matthew* 25:45.

> that may not be attainable. But that a man should regard all old women exactly as he regards his mother is not only an unattainable ideal, but an ideal which ought not to be attained.[50]

Far from prizing egalitarianism in the modern, Marxist sense, Christianity upholds variety of position and role as a thing of intrinsic value. Paul writes that "there is one body, but it has many parts . . . If the whole body were an eye, how could it hear? If the whole body were an ear, how could it smell?"[51] It is variety that gives rise to the beauty of complementarity, and so it is variety—and not the deadening sameness of totalitarianism—that reflects the nature of a fundamentally relational God. The New Testament makes this apparent in, among other areas, its picture of marriage: "For the husband is the head of the wife even as Christ is the head of the church, his body, and is himself its savior . . . Husbands, love your wives as Christ loved the church and gave himself up for her."[52] In this way, the complementarity of the Christian social order models the interpersonal aspect of God.

The Jacobins drowned thousands of Christian men and women in the Loire. Jean-Baptiste Carrier, who oversaw the executions, said "Never have I had so much amusement as in seeing the last grimaces of priests as they die."

The Nietzschean argument also reflects an ignorance of totalitarianism's development. Historically, totalitarianism emerged less as a distortion of Christianity than as a conscious inversion of it. As a definite ideology, Western totalitarianism was not conceived until the Renaissance. It was then carried to term by thinkers like Thomas Hobbes, who—at the same time—began to conspicuously shuffle God out of political philosophy. Once its gestation was complete, totalitarian power burst suddenly onto the plane of history, fully formed, in the guise of the

50. CHESTERTON, *supra* note 22, at 174.
51. *1 Corinthians* 12:12-17.
52. *Ephesians* 5:23-25.

Jacobins—who quickly repaid their supposed debt to Christianity by publicly drowning clergy in the Loire.[53]

This timing is not a coincidence. If the Christian church had been capable of producing totalitarianism under its own power, it had over a thousand years to do so. As soon as the literati of Europe had rejected classical and medieval Christianity, however, the omnipotent state was elevated to the status of a quasi-Christ—or, from the Christian perspective, an anti-Christ. In Chesterton's words, "once abolish the God, and the government becomes the God."[54]

III. Religious and Secular Political Morality

Thus far, I have argued that Christianity has had a broadly constructive influence on Western politics and, additionally, has not been harmful in some of the ways commonly alleged. Reaching still further back to first principles of political morality, I will now go on the offensive against those who would urge that "religion has no place in politics," as if this were a neutral axiom of all civilized society.[55] I will argue that this maxim is either incoherent, or else it is an expression of arbitrary bias against religion.

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53. Thomas Woods, *Episode 12—The Anti-Catholic Atrocities that History Forgot*, THE CATHOLIC CHURCH: BUILDER OF WESTERN CIVILIZATION, https://www.youtube.com/watch?v=5bILhhHCK-4 (last visited Sept. 6, 2018). Note that, while Woods' lecture is a good introduction to the Drownings at Nantes, its title is somewhat misleading. These state-sanctioned murders were part of a French campaign to exterminate Christianity in general—known as "dechristianization"—that ultimately led to the creation of an atheistic "Cult of Reason." La fête de l'Être suprême (1794), ENCYCLOPEDIA OF THE AGE OF POLITICAL REVOLUTIONS AND NEW IDEOLOGIES 1760–1815 237 (2007).

54. G. K. CHESTERTON, CHRISTENDOM IN DUBLIN Ch. III (1932).

55. *See, e.g.*, Teresa Wiltz, *"Oh Lord, Can't We Keep Religion Out of Politics?"*, THE GUARDIAN (Oct. 14, 2013, 12:43 PM), https://www.theguardian.com/commentisfree/2013/oct/14/keep-religion-out-politics ("Religion has no place in politics—and it certainly has no place in the US supreme court. Religion, or the lack thereof, is such a deeply, deeply personal thing."); *Cf.* Barack Obama, *Obama's 2006 Speech on Faith and Politics*, N.Y. TIMES (June 28, 2006), https://www.nytimes.com/2006/06/28/us/politics/2006obamaspeech.html (last visited July 22, 2018) ("[S]ecularists are wrong when they ask believers to leave their religion at the door before entering into the public square.") (on file with the Washington and Lee Law Review).

First, consider an example I gave during the panel discussion following Professor Calhoun's talk. I favor a government of strictly limited powers, in part, because I believe in the Christian doctrine of Original Sin. Because human beings are predisposed to evil, political power will inevitably be abused, and should be restricted.[56] If one insists, in response, that "religion has no place in politics," what exactly would this mean?

One possible interpretation might be simply that, whether or not I am warranted in believing in Original Sin, I should not derive a political conclusion from a religious belief. The first problem with this assertion, of course, is that it would be nonsense. It is not logically possible to sincerely hold a belief while mentally cordoning it off from the rest of one's mind. Doing so would be like believing yourself to be a skilled public speaker, but not concluding that you are actually capable of giving an effective speech. This makes the statement that "religion has no place in politics" a meaningless cacophony of words. If it expresses anything at all, it is a demand that religious people adopt a sort of compulsory schizophrenia.

The second problem with this assertion is that it suggests that some beliefs, although warranted, must never be the basis of any practical conclusions. The absurdity of this suggestion is, if possible, even more obvious. No one would assert that a warranted belief that immunotherapy will cure cancer, that one's beverage is poisoned, or that a bridge on the road ahead has collapsed, cannot be the basis of any practical change in behavior. Mental separationism, as we have interpreted it, therefore appears to inexplicably quarantine some warranted beliefs—especially those concerning the origin of the universe and human existence, their purpose and destiny, and our essential condition—as "religious" and therefore disfavored.

This brings us to a second possible interpretation: that mental separationism is simply an assertion that all religious beliefs are false; in other words, an assertion of atheism or agnosticism. In one sense, of course, it is logical for any atheist to support this kind of separationism. I myself hold an equivalent position: I believe that atheism is a false belief, that false beliefs should not inform

56. This teaching is made clear in, among other places, *Judges* 9:8-15 and *1 Samuel* 8.

public policy, and that atheism should therefore not inform public policy. Any atheist would argue that religion should not inform public policy for the same reasons. In a more important sense, however, this interpretation makes all modern talk of a "wall of separation" an extravagant dishonesty.[57] It would be bizarre to present my belief that atheism is false as a mutual "wall of separation" between atheism and the state—when, in fact, I wish to detach atheism from politics for the very reason that I think nobody should be an atheist in the first place.

Insofar as this interpretation is what separationists actually mean, then phrases like "religion has no place in politics" are nothing more than devices to willfully obscure their true position—and they should be identified as such.[58] Theists are happy to assert our own position straightforwardly; we resist atheistic arguments in politics because we have concluded that atheism is not true. If atheists are to discourse with religious believers, then they should adopt the same candor—and should not attempt to frontload the discussion with tricks.

Then-Senator Barack Obama delivering his 2006 "Call to Renewal" speech.

Whatever they mean, seperationists clearly do not assert that *no moral premises* can inform politics. As Professor Calhoun noted, then-Senator Obama made this point well in 2006: "To say that men and women should not inject their 'personal morality' into public policy debates is a practical absurdity. Our law is by definition a codification of morality. . . ."[59] Anyone who publicly advocates laws against murder, in other words, is assuming some approximation of the moral belief that murder is wrong.

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57. *See* Calhoun, *supra* note 3, at 465 (discussing the "wall of separation" and crediting Thomas Jefferson for this metaphor).

58. Wiltz, *supra* note 55.

59. Barack Obama, *Obama's 2006 Speech on Faith and Politics*, N.Y. TIMES (June 28, 2006), https://www.nytimes.com/2006/06/28/us/politics/2006obamaspeech.html (last visited July 22, 2018) (on file with the Washington and Lee Law Review).

Secularists who seek to categorically exclude religious premises from politics, then, are asserting that, when they use moral premises to promote certain policies, these premises stand on stronger ground than religious ones. Although there is not space here for a comprehensive apologetic for Christian morality, I will conclude this response by arguing that secularists are no more justified in using their own moral premises in policy arguments than are religious believers. No secular account of political morality—neither a quasi-morality of personal taste, nor a Platonic belief in nontheistic moral realism—can provide premises which are more tenable than theistic ones. This means that mental separationism expresses, not only a bias against religious belief, but an arbitrary bias.

Of course, it is conceivable to punish murderers and other criminals, for example, without any coherent justification at all. One could act in the world while remaining silent, or simply refuse to provide a justification—perhaps by announcing that you are doing the things you want to do. This was essentially the course chosen by Justice Oliver Wendell Holmes, a nihilist who rejected the existence of moral values and duties.

Although Justice Holmes might seem to have expressed moral positions, he clearly explained that these were actually nothing more than expressions of his personal taste. "I can't help preferring port to ditch-water, but I see no grounds for supposing that the cosmos shares my weakness," he said.[60] Holmes equated moral problems with the question "Do you like sugar in your coffee or don't you? . . . So as to truth."[61] Or, more explicitly:

> The world has produced the rattlesnake as well as me; but I kill it if I get the chance, as also mosquitos, cockroaches, murderers, and flies. My only judgment is that they are incongruous with the world I want; the kind of world we all try to make according to our power. [62]

Holmes was quite willing to grant that he had no justification for executing a murderer. The murderer's preference for murder

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60. Samuel W. Calhoun, *Grounding Normative Assertions: Arthur Leff's Still Irrefutable, But Incomplete, "Sez Who?" Critique*, 20 J.L. & RELIGION 31, 40 n.70 (2004–2005).

61. *Id.*

62. *Id.*

really carries no less authority than Holmes' own preference for killing him—except that people with these two preferences sometimes differ in raw power. If murderers were to become judges, then non-murderers could be executed with the same authority.

While either kind of execution is possible, neither Holmes nor a pro-murder judge would have any basis for using his personal tastes as a premise in a public policy argument. A robber may well feel that he is justified in robbing others at gunpoint by the fact that he wants to do so. But—as the robber impliedly recognizes by brandishing a weapon—this fact can no more support a conclusion about what other people ought to do than can the hooting of an orangutan.

Nihilists in the vein of Justice Holmes often argue that many persons share certain broad, primary tastes, and that most moral reasoning can be replaced with discussions about how best we might jointly realize these primary tastes. To illustrate this idea, we might picture an imaginary congress of humanity, at which someone proposes a motion: "Whereas all of us wish not to be murdered or raped, be it resolved that none of us shall murder or rape." Putting the glaring impracticality of this nebulous concept to one side,[63] a nihilist's quasi-moral reasoning would be almost as

63. The most obvious practical difficulty with this concept is that it will do nothing at all to dissuade someone who would opportunistically commit murder or rape only when he could confidently do so without consequences for himself. The history of warfare indicates that this category includes, at minimum, a great many people—even if willful self-ignorance prevents human beings from recognizing the fact. In the 1960s, Stanley Milgram measured the human capacity for evil when he asked subjects to administer increasing electric shocks to another subject in a nearby room. The other subject—actually an actor—would express discomfort, scream for the experiment to stop, and finally fall silent and apparently die. In Milgram's experiment, 65% of subjects complied fully with the experiment, eventually administering three 450-volt shocks to an apparently lifeless body. Yet, when Milgram described his experiment to other people—and asked them what they would have done—100% of those surveyed claimed they would have defied the experiment. *Cf.* MICHAEL HUEMER, THE PROBLEM OF POLITICAL AUTHORITY 108 (2013). Queasier nihilists often respond to arguments of this kind with indignant assurances of their own subjective goodness. Penn Jillette, for example, states "my answer is: I do rape all I want. And the amount I want is zero. And I do murder all I want, and the amount I want is zero." Interview by Ron Bennington with Penn Jillette (Apr. 2012). In this way, their self-image is based in part on a naïve denial of the fact that human beings are "by nature children of wrath" and that "nothing good dwells in us, that is, in our flesh." *Ephesians* 2:3; *Romans* 7:18. Nihilists with sturdier stomachs will concede,

politically useless as it is transparently unsatisfying. A friendly nihilist might at least have some persuasive authority when his primary tastes are shared by others. But if his countrymen began to acquire a primary taste for a fatherland populated by pureblooded Aryans, for example, he could only express frustration. The kindly nihilist's best argument would sound something like: "But my tastes are the tastes that I have."

To take a more specific example, suppose Justice Holmes' own preference for a eugenically pure society, free of "imbeciles," was akin to his preference for drinking wine rather than ditch-water.[64] In this case, no one could persuade him to abandon it without first persuading him to abandon nihilism. A eugenicist holds incorrect moral premises which must be replaced. Yet a nihilist's deepest premises cannot be replaced by any kind of argument, since he views all moral premises the way he views his taste for black coffee. The nihilist's imagined social contract, then, cannot even be the basis for a quasi-philosophy of ethics that is of any lasting use in public policy discussions.

Carrie Buck, left, the plaintiff in Buck v. Bell*, a landmark case in which Justice Holmes upheld the forced sterilization of those he deemed unfit.*

Although Holmes' nihilism is common among lay atheists, it is rare among their academic counterparts. One alternative to nihilism is found in Plato's Forms, which are said to exist objectively—that is, they are not mere preferences—but are decidedly not anchored in a personal God. In the modern United States, students and academics in philosophy departments commonly adopt a similar, Marxist account of nontheistic moral realism. Although it is rare for modern philosophers to actually use the term "Forms" to describe moral

more persuasively, that this consequence of nihilism does not make nihilism untrue.

64. Buck v. Bell, 274 U.S. 200, 207 (1927).

duties, a Marxist sees these duties as transcending human preferences while also having a non-personal source. The idea of a Platonic Form is both the best and the only conceivable way to describe this source.[65]

In the first place, we should note that the modern philosopher's rejection of God now carries with it a curious arbitrariness. Modern proponents of the Forms deny God's existence—presumably because they feel there is insufficient evidence that God exists—yet have no trouble believing that our moral duties come from an invisible metaphysical cloud. It has now become so common for philosophers to be both atheists and moral realists that Christian philosophers rarely criticize their secular colleagues for this apparent hypocrisy—perhaps because atheistic Platonism had acquired an "Emperor's new clothes" aura of academic respectability.

The arbitrariness of Platonic atheism poses further problems. First, even if the Forms existed, there is no reason to think that humans could correctly perceive them. The Christian philosopher Alvin Plantinga has noted that, if our brains have come into being without God or anything like him, then we have very little reason to think that we have correct beliefs.[66] For any given situation, thousands of false belief-desire combinations might move our body parts in the ways required for us to survive and reproduce. In fact, if humans have no transcendent minds, then our consciousness is merely a side-effect of the machinery of our brains: our beliefs may be irrelevant to our actions and not adaptive at all.

Again, even supposing we could perceive impersonal Forms, why is it that these abstractions happen to correspond to human beings? Without some kind of theism, it is an accident that humans exist at all. We are, as the philosopher Democritus thought, collocations of atoms in a void. It would be suspiciously convenient if transcendent Forms were waiting all along to provide moral duties to accidental collections of particles. For the theist, this

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65. PLATO, THE REPUBLIC OF PLATO 189 (Allan Bloom trans., Basic Books 2d ed., 1991) ("the good isn't being but is still beyond being, exceeding it in dignity and power.").

66. Alvin Plantinga, *An Evolutionary Argument Against Naturalism*, REASONS FOR GOD, http://www.reasonsforgod.org/wp-content/uploads/2012/09/An-Evolutionary-Argument-Against-Naturalism.pdf (last visited Aug. 28, 2018) (on file with the Washington and Lee Law Review).

problem vanishes: God-ordained duties correspond to us because God created us. In the words of Yale law professor and nihilist Arthur Leff, "A God-grounded system has no analogues. Either God exists or He does not, but if He does not, nothing and no one else can take His place."[67]

Nor, I submit, has any force in history exercised so beneficial an influence on public policy as Christianity. Christianity can be "known by its own fruit"[68]—fruit which warrants experimentally trying Christianity, "that by testing you may discern what is the will of God, what is good and acceptable and perfect."[69] Even if I have not revealed anything in Christianity that is intriguing, however, I hope at least to have suggested the outline of a worldview which merits intellectual regard—one which is capable of speaking productively to public policy and which cannot, in all fairness, be barred from doing so.

67. Calhoun, *supra* note 60, at 36.

68. *Luke* 6:44.

69. *Romans* 12:2.