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The Paradox of Christian-Based Political Advocacy: A Reply to Professor Calhoun

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The Paradox of Christian-Based Political Advocacy: A Reply to Professor Calhoun

Wayne R. Barnes*

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Professor Calhoun, in his Article around which this symposium is based, has asserted that it is permissible for citizens to publicly argue for laws or public policy solutions based on explicitly religious reasons.¹ Calhoun candidly admits that he has “long grappled” with this question (as have I, though he for longer), and, in probably the biggest understatement in this entire symposium, notes that Professor Kent Greenawalt identified this as “a particularly significant, debatable, and highly complex problem.”² Is it ever. I have a position that I will advance in this

* Professor, Texas A&M University School of Law. I would like to thank Texas A&M University School of Law for its generous research assistance provided for this article. Finally, I wish to thank the Washington and Lee Online Law Review and Professor Samuel Calhoun for their generous invitation to participate in this online symposium, and particularly to Professor Calhoun for stimulating and challenging my thinking greatly on this subject, and serving as an example of a wise and thoughtful scholar and fellow believer. All of the opinions stated in this Article are, of course, my own.

1. See Samuel W. Calhoun, *Separation of Church and State: Jefferson, Lincoln, and Martin Luther King Show it Was Never Intended to Separate Religion from Politics*, 74 WASH. AND LEE L. REV. ONLINE 459 (2018) (hereafter “Calhoun, *Separation of Church and State*”).

2. *Id.* at 1 (citing KENT GREENAWALT, WHEN FREE EXERCISE AND NONESTABLISHMENT CONFLICT 201 (2017)).

article, but I wish to acknowledge at the outset that this is a difficult and complicated issue. It intersects with issues of constitutional law, theology, political theory, jurisprudence, philosophy, law and morality—and that’s just off the top of my head. As soon as one issue is addressed, twelve others raise their head and confound. I am also mindful that Professor Calhoun has been grappling with this issue for far longer than I have. I respect him and his thoughtful treatment of this issue immensely. Part of my trepidation in addressing this subject is that, as will be seen in this response, Professor Calhoun once held a very similar opinion on this issue as me.³ However, he has evolved beyond it,⁴ whereas I (to date) have not.⁵ The structure of this online symposium is that Professor Calhoun will have a chance to respond in writing to the points I make in this Article, and I will then have the opportunity to reflect and respond to his reply. I look forward to the exchange, and I know that I will be enriched for having participated in the dialogue.

Professor Calhoun argues that religious citizens, including Christians, should feel free to openly advocate for laws or public policy issues by explicit resort to religious reasons supporting such laws or policy solutions.⁶ There are three primary parts to Calhoun’s paper, which he argues in support of his thesis: (1) the Founders “never intended to separate religion from politics”; (2) “religion and politics have been continuously intermixed ever since the Founding”; and (3) “no other reasons justify barring faith-based arguments from the public square.”⁷ My intent is to respond briefly to the first and second parts of Calhoun’s Article, but my focus will primarily be on the third part. With respect to

3. See *id.* at 3 n. 6. As he states, Calhoun once adhered to his “non-imposition principle—Christianity itself requires that Christians avoid using law to impose faith-based standards.” *Id.* (citing Samuel W. Calhoun, *Conviction Without Imposition: A Response to Professor Greenawalt*, 9 J.L. & RELIGION 289 (1992)).

4. Calhoun stated in print a decade later that he was “now uncomfortable with the non-imposition principle as originally articulated.” Samuel W. Calhoun, Book Review, 16 J.L. & RELIGION 405, 412 (2001) (reviewing ELIZABETH MENSCH & ALAN FREEMAN, *THE POLITICS OF VIRTUE: IS ABORTION DEBATABLE?* (1993)).

5. See generally Wayne R. Barnes, *Render Unto Rawls: Law, Gospel, and the Evangelical Fallacy*, 24 U. FLA. J.L. & PUB. POL’Y 235 (2014).

6. See Calhoun, *Separation of Church and State*, *supra* note 1, at 3.

7. *Id.*

the first part, and the Founders' intent with respect to separation of religion and politics, I am somewhat of an agnostic. Calhoun may be right here, but it is not my primary concern. Certainly, I do not think the *state* can adopt primarily religious reasons for laws under established constitutional precedent, although that is not again my primary concern. I fully agree with Calhoun's second part, nor could I possibly disagree as the evidence is paramount—indeed, I may add a few more latter-day examples of the ongoing intermixing of religion and politics. I agree it has happened throughout history, continues to happen, and will likely go on happening, regardless of what is said here.

Notwithstanding this reality, I will spend the bulk of my initial response on Calhoun's third part—that “no other reasons justify barring faith-based arguments from the public square.” Here is where Calhoun and I disagree. John Rawls has asserted that political pluralism and the realities of a diverse citizenry dictate against resorting to religious rationales in support of or against any proposed law or public policy solution.⁸ This idea of Rawlsian liberalism is that, “all things being equal, such inaccessible religious arguments should not be made, but rather arguments should only be made by resort to ‘public reason’ which all find to be accessible.”⁹ But, many Christians argue that this wrongly stifles their participation in public debates,¹⁰ and even trivializes their beliefs.¹¹

And, the reality is that many Christians feel as though they have a lot to say about matters of law and public policy, in regard to what is dictated by their religious beliefs. That is, some argue in the public square that some law is needed, because the Bible requires it or says that it is the just and right conclusion on some contested public policy matter. The Bible, of course, is regarded by

8. See JOHN RAWLS, *POLITICAL LIBERALISM* 212–54 (Columbia University Press 1993) (discussing public reason); see also John Rawls, *The Idea of Public Reason Revisited*, 64 U. CHI. L. REV. 765 (1997).

9. Barnes, *supra* note 5, at 236 (citing RAWLS, *supra* note 8, at 212–254).

10. See, e.g., David M. Smolin, *Regulating Religious and Cultural Conflict in a Postmodern America: A Response to Professor Perry*, 76 IOWA L. REV. 1067, 1080 (1991) (“[T]hey exclude certain arguments and convictions—in particular, those which might impinge upon individual autonomy—from public debate and deliberation.”).

11. See generally STEPHEN L. CARTER, *THE CULTURE OF DISBELIEF: HOW AMERICAN LAW AND POLITICS TRIVIALIZE RELIGIOUS DEVOTION* (1993).

many Christians as the authoritative Word of God. Therefore, such Christians are basically saying that “this law is what God requires or says is right.” Professor Calhoun himself is one example of this, as he states in his lead symposium Article: “I believe that unambiguous principles require all Christians to view ‘the wholesale slaughter of preborn life occurring in the United States today . . . [as] nothing less than a moral abomination.’”¹² In short, according to Calhoun, God says abortion is immoral, and so the Christian belief (based on the Bible) says it must be banned or highly regulated. Banning abortion would please God, and allowing it would displease God.

I have already stated that Rawlsian liberalism frowns on such an explicit reference to religious beliefs in a pluralistic society where much of the citizenry does not share the common religious viewpoint. But, I believe there is something additionally wrong with such Christian advocacy, in that it *miscommunicates* the central Christian belief of how to obtain favor with God. That is, when well-meaning Christians like Professor Calhoun advocate to the nation that abortion (or any behavior, such as laws regarding marriage, sexual conduct, civil rights, wealth redistribution, or the environment) must be regulated or banned because such behavior would please God, they are (albeit likely unintentionally) making in part a *theological* claim. That is, as I have stated in my earlier Article, what is potentially being communicated is this: “*One must vote for and/or comply with this advocated law in order to comply with ‘Christian’ behavioral standards of morality, and thus, presumably, to gain greater favor with God.*”¹³

There is a problem with such a claim, and a reason for Christians to not advocate as Calhoun suggests they should be able to. And it is even interesting that Calhoun uses the term “faith-based arguments” here. I know what he means when he uses the term. He means “religious” arguments. And, that accords with the casual vernacular use of the term.¹⁴ But, as both Professor

12. Calhoun, *Separation of Church and State*, *supra* note 1, at 4 n.9 (quoting Samuel W. Calhoun, *Grounding Normative Assertions: Arthur Leff’s Still Irrefutable, but Incomplete, ‘Sez Who?’ Critique*, 20 J.L. & RELIGION 31, 92 n. 331 (2004–2005)).

13. Barnes, *supra* note 5, at 236–37 (emphasis in original).

14. See *Faith-Based*, DICTIONARY.COM, <https://www.dictionary.com/browse/faith-based> (last visited Aug. 26, 2018) (“[A]ffiliated with, supported by, or based

Calhoun and I know, as well as millions of actual fellow Christians, *faith* has a very particular meaning and role within the tenets of Christian orthodoxy. And, it is one that is quite different from *works*, or *behavior*. Law, as it happens, is primarily about regulating the *behavior* of citizens. But, as will be seen, the essence of Christian doctrine is that *faith* is what is required to please God, *not works*. And so religion and Christian faith, I will argue, do not make very good companions to the enterprise of law and politics. The reasons I will discuss are *theological* in nature, and are unique to Christianity, and thus unique to Christians invoking their beliefs for political argumentation. I will therefore have nothing to say about legal arguments from other religious traditions, but much to say about legal arguments based on alleged “Christian” values.

The remainder of this Article will proceed as follows. Part I will briefly respond to Professor Calhoun’s arguments about the Founders’ intent regarding religion and politics. Part II will discuss his claim that religion and politics have intermixed for our entire national history, and will agree with it. Part III will discuss the problems with Christian advocacy for law and politics, especially from within Christian orthodoxy itself and the wrong communication of Christian doctrine when such advocacy is made.

I. The Founders’ Intent Regarding Separation (or Not) of Religion and Politics

In Part I of his Article, Professor Calhoun argues that the Founders did not intend to separate religion from politics. Of course, the oft-repeated phrase that is associated with this belief is “separation of church and state.”¹⁵ The actual text of the First Amendment, insofar as religion goes, is: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”¹⁶ This amendment, the first in the Bill of Rights, applies by its text only to acts of Congress, but of course it has subsequently been held by the United States Supreme Court

on a religion or religious group: [e.g.,] faith-based charities.”) (on file with the Washington and Lee Law Review).

15. See Calhoun, *Separation of Church and State*, *supra* note 1, at 6–7.

16. U.S. CONST. amend. I.

to apply with equal force to the states.¹⁷ However, the First Amendment is a restriction on *government* behavior—this is known, of course, as the “state action doctrine.” Therefore, the First Amendment limitations do not apply at all unless there is state action involved.¹⁸ So, one short answer to this discussion in Part I of Professor Calhoun’s paper is that, the First Amendment (to which Jefferson was referring in his “Wall of Separation” allusion) does not technically apply to *individuals’* political argumentation at all. The United States is a nation of over 300 million citizens.¹⁹ If certain individuals argue for a law based on its support from Christian principles, but many others argue for the law for other assorted reasons, then presumably there is no problem as a matter of Constitutional law. Of course, if the *government* were to pass a law for the stated purpose of furthering Christian principles or values, then the law would be on almost certain fatal Constitutional ground.²⁰ But, historically speaking, Jefferson’s letter doesn’t necessarily serve as a basis for excluding individuals’ political arguments couched in religious terms. I am saying, I suppose, that I don’t have too much quarrel with agreeing with Professor Calhoun that Jefferson’s metaphor is not the strongest basis for excluding *individual* religious arguments for

17. *Everson v. Bd. of Educ.*, 330 U.S. 1 (1947); *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

18. *See, e.g., Nat’l Broad. Co., Inc. v. Communications Workers of America, AFL-CIO*, 860 F.2d 1022 (11th Cir. 1988) (citing *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 349 (1974)) (“The Fourteenth Amendment, and, through it, the First and Fifth Amendments, do not apply to private parties unless those parties are engaged in activity deemed to be ‘state action.’”).

19. *See generally U.S. and World Population Clock*, U.S. CENSUS BUREAU, <https://www.census.gov/popclock/> (last visited Aug. 26, 2018) (on file with the Washington and Lee Law Review).

20. *See Lemon v. Kurtzman*, 403 U.S. 602 (1971)

Every analysis in this area must begin with consideration of the cumulative criteria developed by the Court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion . . . ; finally, the statute must not foster ‘an excessive government entanglement with religion’

law or public policy.²¹ Nor, as will be seen, is it my primary complaint regarding such argumentation.

II. Religion and Politics Have Indeed Been Intermixed Since the Founding

In part II of his Article, Professor Calhoun argues that religion and politics have intertwined since the founding of the Republic.²² He is undoubtedly correct. How could one argue? Calhoun's argument in this section of his paper spends the entire time discussing whether President Lincoln had Christian motivations for working to end slavery in the United States—apparently, there is a spirited debate in the literature about this fact.²³ But whether Lincoln did specifically or not, there is no question that *many* did have Christian motivations, and in fact such motivations were found on either side of the slavery debate. In Lincoln's second Inaugural Address he noted that both pro-slavery and anti-slavery proponents "read the same Bible, and pray to the same God; and each invokes His aid against the other."²⁴ Indeed, pro-slavery Christians had a multitude of scriptures to point to that clearly seemed to tolerate slavery, like Ephesians 6:5: "Slaves, obey your earthly masters with fear and trembling, with a sincere heart, as you would Christ."²⁵ On the other hand, the anti-slavery abolitionists pointed to scripture teaching that man was made in the image of God, and even to more specific texts from the Mosaic

21. As for whether a misinterpretation of Jefferson's metaphor has resulted in a completely incorrect constitutional jurisprudence with respect to prohibited state action, I will confess that I am not ready to argue that point one way or the other, nor am I certain that it is necessary to the issue at hand. Suffice it to say that there are at least two sides to that issue. See generally Daniel L. Dreisbach & John D. Whaley, *What the Wall Separates: A Debate on Thomas Jefferson's "Wall of Separation" Metaphor [A]greement, in the Abstract, That the First Amendment Was Designed to Erect A "Wall of Separation Between Church and State," Does Not Preclude A Clash of Views as To What the Wall Separates*, 16 CONST. COMMENT. 627 (1999).

22. See Calhoun, *Separation of Church and State*, *supra* note 1, at 12–23.

23. See *id.*

24. See David M. Smolin, *The Civil War as a War of Religion: A Cautionary Tale of Enslavement and Emancipation*, 39 CUMB. L. REV. 187 (2009) (citing President Abraham Lincoln, Second Inaugural Address).

25. *Ephesians* 6:5 (ESV).

law in the Old Testament, like Exodus 21:16: “Whoever steals a man and sells him, and anyone found in possession of him, shall be put to death.”²⁶ To take just one voice from that movement, William Lloyd Garrison has been called “the nation’s most eloquent proponent of abolition.”²⁷ As Geoffrey Stone has stated: “Garrison merged the evangelical belief that America stood ‘on a great precipice, ready to plunge into darkness’ with his own charge that slavery was at the very root of the American dilemma. . . . He declared slavery ‘*the bell weather of America’s fidelity to its covenant with God.*’”²⁸ Throughout the argument over abolition, biblical arguments were generously used, including Acts 17:26: “God hath made of one blood all nations of men for to dwell on all the face of the earth.”²⁹ In any event, biblical arguments were frequently made in the slavery debate in the mid-19th century, possibly by Lincoln, but certainly by a multitude of others.

Of course, appeal to Christian morality and biblical standards were not limited to the slavery debate. There are many instances of such appeals, from all parts of the political spectrum. Therefore, during the Prohibition movement to ban the sale of alcohol in the United States, appeal to Christian morality was a large aspect of the argument. The so-called Temperance movement appealed to verses such as Ephesians 5:18: “. . . and do not get drunk with wine, for that is debauchery, but be filled with the Spirit”³⁰ Before women were granted the right to vote by passage of the 19th Amendment in 1920, some Christians argued that women’s suffrage was improper, because of appeals to the Bible. Thus, Susan Fennimore Cooper wrote, in an article in *Harper’s New*

26. *Exodus* 21:16 (ESV).

27. See Geoffrey R. Stone, *The Second Great Awakening: A Christian Nation?*, 26 GA. ST. L. REV. 1305, 1323 (2010).

28. *Id.* (emphasis added).

29. *Id.*

30. Rachel Wedel, *Prohibition and Religion: Mennonite Brethren and the Temperance Movement, 1900–1940s*, CONTEMPORARY MENNONITE SCHOLARSHIP, <https://ml.bethelks.edu/issue/vol-69/article/prohibition-and-religion-mennonite-brethren-and-th/> (last visited Sept. 23, 2018) (citing Ephesians 5:18) (on file with the Washington and Lee Law Review). There were some problems with this line of argument, like the fact that Jesus himself drank wine (and was labeled a drunkard by some for it). See *Luke* 7:34 (“The Son of Man has come eating and drinking, and you say, ‘Look at him! A glutton and a drunkard, a friend of tax collectors and sinners!’”).

Weekly Magazine in 1870, that women should *not* obtain the right to vote along with men, in part because the Christian scriptures

“enjoin . . . the submission of the wife to the husband, and allots a subordinate position to the whole sex while here on earth. No woman calling herself a Christian, acknowledging her duties as such, can, therefore, consistently deny the obligation of a limited subordination laid upon her by her Lord and His Church.”³¹

The civil rights debate of the 1960s included explicit appeals to Christianity, perhaps most notably by Martin Luther King, Jr. As noted by Professor Calhoun in his lead article, King argued for reform in part by pleading with others “to be co-workers with God . . . to make real the promise of democracy.”³² King rebuked Christian ministers who posited that the Christian gospel was not concerned with social and political issues, and disagreed with those who would separate “the sacred and the secular.”³³ As Calhoun notes, King “predicted that one day the South would recognize that protestors ‘were in reality standing up . . . for the most sacred values in our Judaeo-Christian heritage.’”³⁴ Other examples could be given, but it is undeniably clear that the Reverend Martin Luther King drew upon, and explicitly communicated, Christian principles and doctrine in arguing for civil rights laws and reforms.

In more recent years, Christians have continued to argue for legal and political stances, based on explicit appeals to Christian principles or doctrine. And, these appeals have come from all aspects of the ideological spectrum. The following are typical examples from conservative Christian political activists:

- The leader of the conservative Christian group Focus on the Family declared: “most of what those who disagree with us represent leads to death—abortion, euthanasia, promiscuity in

31. Susan Fennimore Cooper, *Female Suffrage: A Letter to the Christian Women of America*, HARPER'S NEW WEEKLY MAGAZINE, June–Nov. 1870, at 439 (available at <http://jfcoopersociety.org/SUSAN/SUFFRAGE.HTML>).

32. Calhoun, *Separation of Church and State*, *supra* note 1, at 23 (citing Martin Luther King, Jr., *Letter from a Birmingham Jail*, in MARTIN LUTHER KING, JR., *I HAVE A DREAM: WRITINGS AND SPEECHES THAT CHANGED THE WORLD* 83, 92 (James Melvin Washington ed. 1992)).

33. *Id.* at 23 (citing KING, *supra* note 32, at 96).

34. *Id.* at 94 (citing KING, *supra* note 32, at 97).

heterosexuality, promiscuity in homosexuality, legalization of drugs. There are really only two choices. It is really that clear. *It's either God's way, or it is the way of social disintegration.*"³⁵ In Pat Buchanan's speech to the 1992 Republican National Convention, he stated:

The agenda that Clinton and Clinton would impose on America: abortion on demand, a litmus test for the Supreme Court, homosexual rights, discrimination against religious schools, women in combat units. That's change, all right. But that's not the kind of change America needs. It's not the kind of change America wants. And it's not the kind of change we can abide in a nation we still call 'God's country.'³⁶

- Jim Daly stated in a Fox News editorial titled *Why the Same-Sex Marriage Experiment Will Not Work*, that he was "naturally, personally opposed to the legalization of same-sex marriage for the simple but profound reason that it *violates and contradicts the sacred text of the Bible*, which I believe to be true and inspired."³⁷

35. JAMES DAVISON HUNTER, *TO CHANGE THE WORLD: THE IRONY, TRAGEDY, AND POSSIBILITY OF CHRISTIANITY IN THE LATE MODERN WORLD* 119 (Oxford University Press 2010) (citing Michael J. Gerson, *A Righteous Indignation: James Dobson—Psychologist, Radio Host, Family-Values Crusader—Is Set to Topple the Political Establishment*, NEWSWEEK, May 4, 1998)) (emphasis added).

36. Patrick J. Buchanan, Address to the Republican National Convention in Houston, Texas, Aug. 17, 1992 (transcript available at <http://www.americanrhetoric.com/speeches/patrickbuchanan1992rnc.htm>) (last visited Aug. 6, 2018) (emphasis added).

37. Jim Daly, *Why the Same-Sex Marriage Experiment Will Not Work*, FOXNEWS.COM (May 24, 2011), <http://www.foxnews.com/opinion/2011/05/24/sex-marriage-experiment-work/> (last visited Aug. 6, 2018) (emphasis added) (on file with the Washington and Lee Law Review). In fairness, Daly did continue by making at least some effort towards justifying the policy choice for non-Christians:

But on what basis should I expect people who don't believe as I do to likewise oppose same-sex marriage? On the basis of logic, reason, common sense and the fact that preservation of traditional marriage is in the best interest of the common good, as evidenced by any number of factors, including reams of social science data and thousands of years of history.

Id.

- Billy Graham published a full-page ad in the 2012 campaign, in several leading national newspapers, including the *USA Today*, the *Washington Post*, and the *New York Times*, that provided as follows:

On Nov. 6, the day before my 94th birthday, our nation will hold one of the most critical elections in my lifetime. We are at a crossroads and there are profound moral issues at stake. I strongly urge you to vote for candidates who support the biblical definition of marriage between a man and a woman, protect the sanctity of life and defend our religious freedoms. *The Bible speaks clearly on these crucial issues*. Please join me in praying for America, that we will turn our hearts back toward God.³⁸

- An ad during the 2012 Presidential election featured an ominous soundtrack and fiery imagery, and included Mike Huckabee solemnly stating:

Christians across the nation will have an opportunity to shape the future for our generation and generations to come. Many issues are at stake, but some issues are not negotiable: The right to life from conception to natural death. Marriage should be reinforced, not redefined. It is an egregious violation of our cherished principle of religious liberty for the government to force the church to buy the kind of insurance that leads to the taking of innocent human life. *Your vote will affect the future and be recorded in eternity. Will you vote the values that will stand the test of fire? This is Mike Huckabee asking you to join me November the 6th and vote based on values that will stand the test of fire.*³⁹

- A 2018 article in the *Washington Post* titled “Despite porn stars and Playboy models, white evangelicals aren’t rejecting Trump. This is why.”, cited statistics

38. David Ward, *Billy Graham Political Newspaper Ad Campaign: “Vote for Biblical Values,”* DESERET NEWS (Nov. 1, 2012), <http://www.deseretnews.com/article/865565802/Billy-Graham-ad-Vote-for-biblical-values.html?pg=all> (last visited Aug. 6, 2018) (emphasis added) (on file with the Washington and Lee Law Review).

39. *Did Mike Huckabee Really Say That You Will Go to Hell if You Vote for Obama?*, THE ERSTWHILE CONSERVATIVE: A BLOG OF REPENTANCE (Oct. 31, 2012), <http://duanegraham.wordpress.com/2012/10/31/did-mike-huckabee-really-say-that-you-will-go-to-hell-if-you-vote-for-obama/> (last visited on Aug. 6, 2018) (emphasis added) (on file with the Washington and Lee Law Review).

showing that those who supported the ideal of the United States as a “Christian nation” were far more likely to have voted for, and to continue supporting, President Trump.⁴⁰ The polling questions, to which the respondents supporting Trump responded favorably, included: (1) “The federal government should declare the United States a Christian nation,” and (2) “The federal government should advocate Christian values.”⁴¹

Although conservative right-wing Christian political argumentation like the above receives a lot of attention, the Christian left has also made explicit appeals to Christian doctrine in support of law and public policy. The paramount historical examples of abolition and civil rights reforms have already been discussed above. But, more recently, a critical moment for igniting the current movement of the Christian Left was George W. Bush’s presidential victory in 2004. “It was only then that the Democratic Party, for many decades tone-deaf to faith, recognized that it would not mobilize the American public and win elections until it learned to use the language and grammar of faith that has always informed the values and beliefs of most Americans.”⁴² The following are typical examples from left-leaning Christian political activists:

- Jim Wallis, founder of the Sojourners organization, has written several books. One of these is *God’s Politics: Why the Right Gets It Wrong and the Left Doesn’t Get It*. The Sojourners website gives the following description:

God’s Politics offers a clarion call to make both our religious communities and our government more accountable to key values of the prophetic religious tradition. Our biblical faith and religious traditions simply do not allow us as a nation to continue to ignore the poor and marginalized, deny racial

40. See Andrew L. Whitehead, Joseph O. Baker & Samuel L. Perry, *Despite Porn Stars and Playboy Models, White Evangelicals Aren’t Rejecting Trump. This is Why.*, WASH. POST (Mar. 26, 2018), https://www.washingtonpost.com/news/monkey-cage/wp/2018/03/26/despite-porn-stars-and-playboy-models-white-evangelicals-arent-rejecting-trump-this-is-why/?utm_term=.278e958ce84e (last visited on Aug. 6, 2018) (on file with the Washington and Lee Law Review).

41. *Id.*

42. HUNTER, *supra* note 35, at 137.

justice, tolerate the ravages of war, or turn away from the human rights of those made in the image of God.⁴³

- Indeed, as Wallis has separately declared, “*God is angry with America* and with the world because of the statistics of poverty.”⁴⁴
- Another Christian Left organization is Evangelicals for Social Action (ESA).⁴⁵ Its website states that “ESA serves as a catalyzing agent for Christ’s shalom via projects focused on cultural renewal, holistic ministry, political reflection and action, social justice and reconciliation, and creation care.”⁴⁶ ESA’s website discusses several issues, one of which is animal rights, which ESA says “as part of God’s creation, as beings created and cared for by God, and as people made in the image of that creative God, it is our responsibility and honor to ensure that animals flourish.”⁴⁷
- An example of an environmental advocacy group with a Christian bent is A Rocha. Its website describes “A Rocha [as] a Christian nature conservation organization, our name coming from the Portuguese for ‘the Rock’, as the first initiative was a field study centre in Portugal.”⁴⁸ A Rocha explains that its environmental advocacy is motivated by Christian ethics, as it states in the explanation of its commitments: “Underlying all

43. Jim Wallis, *President and Founder*, SOJO.NET, <https://sojo.net/biography/jim-wallis> (last visited Aug. 26, 2018) (on file with the Washington and Lee Law Review).

44. HUNTER, *supra* note 35, at 139 (emphasis added) (citing Jim Wallis, public comments, Pentecost 2006: Building a Covenant for a New America, hosted by Sojourners and Call to Renewal, Washington, D.C., June 26, 2006).

45. EVANGELICALS FOR SOCIAL ACTION, <http://www.evangelicalsforsocialaction.org> (last visited on Aug. 6, 2018) (on file with the Washington and Lee Law Review).

46. *ESA’s DNA*, EVANGELICALS FOR SOCIAL ACTION, <https://www.evangelicalsforsocialaction.org/about-esa/> (last visited on Aug. 6, 2018) (on file with the Washington and Lee Law Review).

47. *Animal Protection*, EVANGELICALS FOR SOCIAL ACTION, www.evangelicalsforsocialaction.org/animal-protection/ (last visited on Aug. 6, 2018) (on file with the Washington and Lee Law Review).

48. *Our Values*, A ROCHA, <http://www.arocha.org/en/values/> (last visited on Aug. 6, 2018) (on file with the Washington and Lee Law Review).

we do is our biblical faith in the living God, who made the world, loves it and entrusts it to the care of human society.”⁴⁹

- To come back to Jim Wallis, probably the longest-running and most influential voice of the Christian Left, his 2005 book *God’s Politics: Why the Right Gets it Wrong, and The Left Doesn’t Get It*, has been incredibly important to this movement.⁵⁰ Here are some of the policy prescriptions from his book that he says are mandated by biblical standards:
 - Governmental budgets and tax policies should show compassion for poor families rather than reward the rich. Foreign policies should include fair trade and debt cancellation for the poorest countries. (Matthew 2:34-40, Isaiah 10:1-2).
 - Policies should protect the creation rather than serve corporate interests which damage it. (Genesis 2:15, Psalm 24:1).
 - Policies in the name of citizens should respect international law and cooperation in responding to global threats rather than in preemptive wars of choice. (Matthew 5:9).
 - Governments should tell the truth in justifying war and in other foreign and domestic policies. (John 8:32).
 - National officials should foster change in attitudes and policies which led to the abuse and torture of Iraqi prisoners.
 - National officials should drop the dangerous language of righteous empire in the war on terrorism which confuses the roles of God, church, and nation. They should be alert to perceiving evil in our actions rather than only in our enemies. (Matthew 6:33, Proverbs 8:12-13).
 - Policies on abortion, capital punishment, euthanasia, weapons of mass destruction, HIV/AIDS—and other pandemics—and genocide around the world should obey

49. *Id.*

50. See generally JIM WALLIS, *GOD’S POLITICS: WHY THE RIGHT GETS IT WRONG, AND THE LEFT DOESN’T GET IT* (2005).

the biblical injunction to choose life. (Deuteronomy 30:19).⁵¹

- As pointed out in Professor Calhoun’s lead Article, in February 2018 over one hundred Christian leaders published a full-page advertisement in the *Washington Post* addressing treatment of refugees and immigrants.⁵² The ad, in letter form, urges “just, compassionate and welcoming policies toward refugees and other immigrants.”⁵³ The basis of the plea is that “[t]he Bible speaks clearly and repeatedly to God’s love and concern for the vulnerable, and also challenges us to think beyond our nationality, ethnicity or religion when loving our neighbor.”⁵⁴ The ad also explains that all people are “made in the image of God.”⁵⁵ Hence, as Calhoun rightly observes, the “signers’ Christian faith substantially influenced their policy positions on immigration,”⁵⁶ and, moreover, the theological nature of the appeal was explicitly communicated.

As has been seen, and as Calhoun has agreed, much political argumentation has been set forth explicitly in religious—and, frankly, Christian—terms, throughout our nation’s history. Such appeals have come from either end of the political spectrum, but all of the above examples have been explicitly Christian in their public communication. This is what Professor Calhoun argues to allow, but what I view as actually—and paradoxically—antithetical to Christian doctrine. The next section will explore the reasons this is so.

51. See HUNTER, *supra* note 35, at 145–46 (citing WALLIS, *supra* note 50, at xxiii–xxiv, and also noting that these statements “accompany a list of beliefs published in a newspaper petition [presumably by Wallis]”).

52. See Calhoun, *Separation of Church and State*, *supra* note 1, at 31–32 (citing *Top Evangelical leaders and pastors from all 50 states urge action to help vulnerable immigrants*, WASH. POST (Feb. 7, 2018), at A27).

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.* at 32.

III. *The Expressive Effect of Christian Political Advocacy and Why it is Problematic for Christians*

Professor Calhoun argues that no arguments justify excluding religious-based advocacy in the public square. I agree that no *legal* arguments justify it, but I don't agree that no other arguments justify excluding such advocacy. I think there's a paradox that occurs when well-meaning Christians publicly argue for law and public policy on the basis of explicit religious and Christian rationales. It's *communicating* something to the public, and I think it is—paradoxically—communicating a *false message* about the central tenet and hope of Christian doctrine. So, if I'm right, there is a theological and gospel-oriented reason for Christians to refrain from overt Christian political advocacy in the public square. Not a legal reason, but one rather that comes from within our own religious convictions and beliefs as Christians.

The types of arguments that Christians make, as discussed in the previous section and as acknowledged by Professor Calhoun in his paper, are claiming that certain laws or policy objectives are necessitated because they are dictated by Christian doctrine. Cass Sunstein has pointed out that “there can be no doubt that law, like action in general, has an *expressive* function.”⁵⁷ It would follow that Christians' political advocacy also has an expressive function. What is being expressed to the public when Christians make arguments like those discussed in the previous section—that is, that a certain law or public policy is needed because of some Christian principle? Two things, which I think combine for a third thing.

First, laws are being proposed and advocated for. What is law? As I have noted previously, law “is the body of rules of conduct or action prescribed as binding and enforceable by a controlling authority—in this case, the federal government of the United States or the individual States of the Union.”⁵⁸ Law has the coercive power of the state for its enforcement, and it is focused on actions, or behavior.⁵⁹ So, law is primarily about enforcing peoples' behavior or, one might say, about their *works*.

57. Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PENN. L. REV. 2021, 2051 (1996) (emphasis added).

58. Barnes, *supra* note 5, at 241 (citing “Law,” defined by Merriam Webster).

59. See generally Ekow N. Yankah, *The Force of Law: The Role of Coercion*

Second, Christian principles are being alleged, as the underlying reason for the laws or public policy being advocated. Now, of course, John Rawls would stop here and say that such religious, or “comprehensive” world views, just should not be principally resorted to in political advocacy, simply because they are not readily subject to compromise, and they are not shared by all the populace.⁶⁰ While I agree with this general Rawlsian approach, and believe it overlaps with what I am arguing here, I wish to present an ancillary point strictly from within Christianity *itself*. Christianity is, of course, understood by most as a *religious* doctrine or philosophy. And, what is important about the principles alleged being “Christian” or “religious” ones? The goal of many, if not most, religions is to “answer the questions of how individuals should relate to God and how human beings should relate to one another, in order to be in harmony with God and the Ultimate Purpose of life.”⁶¹ To take it a step further, many religions (and all

in Legal Norms, 42 U. RICH. L. REV. 1195 (2008).

60. See JOHN RAWLS, *POLITICAL LIBERALISM* 63 (Columbia University Press 1993). “Rawls opposes such comprehensive doctrines proclaiming truth, holding that it is perfectly consistent to abstain from seeking to coercively enforce such a doctrine via the mechanism of the state, while simultaneously affirming it as true.” Barnes, *supra* note 5, at 242 (citing Leslie Griffin, *Good Catholics Should be Rawlsian Liberals*, 5 S. CAL. INTERDISC. L.J. 297, 299 (1997)). Other Christian politicians have expressed support for the Rawlsian view, including Mario Cuomo and Barack Obama. *Id.* at 242–43. Obama stated in his 2006 autobiography:

What our deliberative, pluralistic democracy does demand is that the religiously motivated translate their concerns into universal, rather than religion-specific, values. It requires that their proposals must be subject to argument and amenable to reason. If I am opposed to abortion for religious reasons and seek to pass a law banning the practice, I cannot simply point to the teachings of my church or invoke God’s will and expect that argument to carry the day.

BARACK OBAMA, *THE AUDACITY OF HOPE: THOUGHTS ON RECLAIMING THE AMERICAN DREAM* 219 (2006). Cuomo has stated:

I protect my right to be a Catholic by preserving your right to believe as a Jew, a Protestant or non-believer, or as anything else you choose. We know that the price of seeking to force our beliefs on others is that they might some day force theirs on us.

Mario M. Cuomo, *Religious Belief and Public Morality: A Catholic Governor’s Perspective*, 1 NOTRE DAME J.L. ETHICS & PUB. POL’Y 13, 17–18 (1984) (emphasis added).

61. MARY M. SAUER, *A COMPARISON OF WORLD RELIGIONS: ANCIENT TO*

of the monotheistic ones including Christianity), are predominantly concerned with *salvation*. As I stated in my prior article on the subject:

Salvation has different connotations in different religious traditions, but it tends to mean deliverance from the effects of sin; more generally, it means preservation from destruction, or at least “deliverance from danger or difficulty.” Thus, the goal of many, if not most, religions is “salvation or the achievement of some ultimate good or well-being.” For many, this is the main point of religion. A related aspect to most religions is the claim of divine favor for its adherents—salvation being an obvious type of favor bestowed by God. Therefore, the main point of most of the major religions—including Christianity—is obtaining a proper relationship with God, divine favor, and ultimately, redemption and salvation for one’s soul.⁶²

Thus, one of the principle goals of a person professing to be a Christian, and to adhere to “Christian” principles, therefore, is to obtain favor with God and to experience salvation.

I have so far addressed two things that Christian political advocacy is about—i.e., what is being expressed. First, it is about *laws*, which coerce peoples’ behavior. Second, it is also about the alleged *Christian* support for those laws—these advocated laws are said to be justified because they reflect “Christian” (or, at least, biblical) values and doctrines. The combination of these two concepts together, I believe, results in a third thing that is implicitly communicated. That is, there is a realistic possibility of such public Christian political advocacy being interpreted as follows: “*if I behave according to the proposed ‘Christian’ principles being advocated for, I will obtain greater favor with God.*”⁶³ Nor am I the only one to have made this observation in the legal academy. Professor Calhoun, in an Article published over twenty-five years

MODERN-DAY, *Introduction* (2006).

62. Barnes, *supra* note 5, at 241 (citing “Salvation,” defined by Merriam Webster); Peter Byrne, *Religion and the Religions*, in *THE WORLD’S RELIGIONS: THE STUDY OF RELIGION, TRADITIONAL AND NEW RELIGIONS* 16 (Peter Clarke and Stewart Sutherland, eds. 1991 ed.); Gary Gutting, *Does it Matter Whether God Exists?*, N.Y. TIMES OPINIONATOR BLOG (Mar. 22, 2012), <http://opinionator.blogs.nytimes.com/2012/03/22/does-it-matter-whether-god-exists/> (last visited Aug. 27, 2018) (on file with the Washington and Lee Law Review); HECTOR AVALOS, *FIGHTING WORDS: THE ORIGINS OF RELIGIOUS VIOLENCE* (2005); JOHN RAWLS, *POLITICAL LIBERALISM* (Columbia University Press 1993).

63. Barnes, *supra* note 5, at 241 (emphasis in original).

ago (and a position he has since deviated from), made a similar observation when he stated: “Using force to compel compliance with God's standards is harmful in that it . . . perpetuates the ‘cruel delusion,’ at odds with the Christian Gospel, that righteous conduct is the road to a restored relationship with God.”⁶⁴ To paraphrase, what is being publicly communicated is that if citizens comply with certain laws being proposed (i.e., they *behave* in the legally-argued way), it will cohere with *Christian* principles, and thereby gain them favor with God. Or, more simply, if I *do* these things, it will please God. This is a tragically mistaken view of Christianity.

How can this be? The central Christian “gospel” message held by Protestants and Evangelical Christians is, to put it succinctly, comprised of bad news and good news. The bad news is that mankind is inherently out of fellowship with God because of man’s post-fallen, naturally pervasive sinful nature.⁶⁵ And, we cannot just “decide” to please God behaviorally and do so by our actions, because the Scriptures reveal that we cannot do it in our sinful,

64. Samuel W. Calhoun, *Misreading the Judeo-Christian Tradition and the Law: A Response to Professor Smolin*, 15 U. DAYTON L. REV. 383, 398 (1990). This conviction led Professor Calhoun, at the time, to adopt what he coined the “non-imposition principle.” See Calhoun, *Separation of Church and State*, *supra* note 1, at 1 n.1, 3 n.6 (citing Samuel W. Calhoun, *Conviction Without Imposition: A Response to Professor Greenawalt*, 9 J.L. & RELIGION 289 (1992); Calhoun, *Misreading the Judeo-Christian Tradition and the Law*, *supra*). He has since indicated that he has rethought his position, and no longer advocates for Christians to refrain from explicit Christian political advocacy. *Id.* (citing Samuel W. Calhoun, Book Review, 16 J.L. & RELIGION 405, 411-13 (2001) (reviewing ELIZABETH MENSCH & ALAN FREEMAN, *THE POLITICS OF VIRTUE: IS ABORTION DEBATABLE?* (1993)). In part, Calhoun states that he no longer subscribes to the non-imposition principle because he finds it “abhorrent” for “Christians, even if only momentarily, to strip God from their thoughts.” *Id.* at 3 n. 6 (citing Calhoun, Book Review, *supra*, at 412). I believe Professor Calhoun will be expounding upon his new position more thoroughly in his reply to this article, but one thing I will now say is that I do not advocate that Christians strip God and Christian beliefs from their *private* thinking about political and legal issues, but rather only from their *public* communication and advocacy of such issues.

65. See *Romans* 3:23 (ESV) (“All have sinned and fall short of the glory of God.”). See also JOHN R.W. STOTT, *BASIC CHRISTIANITY* 61–80 (2d ed. 1971) (discussing the fact and nature of sin, as well as the consequences of sin); *Westminster Confession of Faith, Chapter VI*, CTR. FOR REFORMED THEOLOGY & APOLOGETICS, www.reformed.org/documents/wcf_with_proofs/index.html (last visited Sept. 23, 2018) (on file with the Washington and Lee Law Review).

fallen state.⁶⁶ Then, how does one please God, or obtain favor with God, according to Christian doctrine?

[T]he means of salvation that God has provided comes in the form of the person of Jesus Christ, and His sacrificial death and resurrection. Evangelical Christians believe that it is only when a person acknowledges his sinful nature, realizes that Christ's death was necessary and on his behalf, and turns to God and repents—that is, [makes a decision] by “faith”—that salvation is achieved, and reconciliation with God can occur.⁶⁷

In the actual words of Scripture,

[I]f you confess with your mouth that Jesus is Lord and believe in your heart that God raised him from the dead, you will be saved. For with the heart one believes and is justified, and with the mouth one confesses and is saved. For the Scripture says, “Everyone who believes in him will not be put to shame.”⁶⁸

So, Christian doctrine requires *belief* in Christ's sacrifice and resurrection. The word for this belief is, of course, *faith*. Faith is what God requires, in order to please God and obtain salvation. This is the barest essence of Christianity in a nutshell. “[W]ithout *faith* it is impossible to please [God], for whoever would draw near to God must believe that He exists and that He rewards those who seek Him.”⁶⁹ Faith is what is necessary to please God—this is merely *cognitive* in essence.⁷⁰ It is, quite notably, *not* behavior, or *works*. Evangelical and Protestant Christian orthodoxy is quite clear on this point. The way to gain favor with God, according to Christian doctrine, is *faith*, not *works*: “For by grace you have been saved *through faith*. And this is not your own doing; it is the gift of

66. See *Romans* 3:23 (“[f]or all have sinned and fall short of the Glory of God . . .”); *Romans* 3:10–12 (“None is righteous, no, not one; no one understands; no one seeks for God. All have turned aside; together they have become worthless; no one does good, not even one.”).

67. Barnes, *supra* note 5, at 237–38 (citing STOTT, *supra* note 65, at 81–106 (discussing the death and salvation of Christ)); *Westminster Confession of Faith, Chapter XI*, CTR. FOR REFORMED THEOLOGY & APOLOGETICS, www.reformed.org/documents/wcf_with_proofs/index.html (last visited Sept. 23, 2018) (on file with the Washington and Lee Law Review).

68. *Romans* 10:9–11 (ESV).

69. *Hebrews* 11:6 (ESV) (emphasis added).

70. *Hebrews* 11:1 (ESV) (“Now faith is the assurance of things hoped for, the conviction of things not seen.”).

God, *not a result of works*, so that no one may boast.”⁷¹ To put it another way, Christians believe that you become reconciled to God simply by believing what God says and trusting Him to do what He says—this is faith. Christians definitively do *not* believe that you can *do* anything, or engage in any *behavior* (not matter how noble or upstanding the behavior)—i.e., engage in any *works*—in order to obtain favor with God.⁷² Rather, we Christians believe that faith, not works, is what is necessary to please God and obtain His favor.

So, what is the problem with Christian political advocacy as described above? *Laws* are being proposed, and law governs behavior, or *works*. These laws, or works, are being advocated as being necessitated by Christian doctrine or principles. In doing so, Christians are telling the public that voting for, and complying with, such laws will be pleasing to God and will obtain His favor—why else bother with advocating for their “Christian” nature? So, in essence, Christians are advocating laws, or works, in order for people to obtain favor with God. They are saying that these legal works will please God. But, as shown above, works (absent faith) do *not* please God. “Without faith it is impossible to please God.”⁷³ Faith pleases God, not just works. Human faith pleases God, not laws of the United States Congress, or any State legislature, nor peoples’ compliance with such laws. As Professor Calhoun said quite rightly over twenty-five years ago, such Christian political advocacy is “at odds with the Gospel.”⁷⁴

71. *Ephesians* 2:8–9 (ESV) (emphasis added).

72. I would be remiss if I discounted works completely in this severely brief account of the Christian doctrine of soteriology. Christians do believe that good works are a *result* of a saving faith. See *John* 14:15 (“If you love me, you will keep my commandments.”); *James* 2:14–17

What good is it, my brothers, if someone says he has faith but does not have works? Can that faith save him? If a brother or sister is poorly clothed and lacking in daily food, and one of you says to them, ‘Go in peace, be warmed and filled,’ without giving them the things needed for the body, what good is that? So also faith by itself, if it does not have works, is dead.

73. *Hebrews* 11:6 (ESV).

74. Calhoun, *Misreading the Judeo-Christian Tradition and the Law*, *supra* note 64, at 398.

Accordingly, when Christians exercise their constitutional rights to argue for “Christian” laws or public policy, I don’t deny they have a *legal* right to do so. They can’t be stopped, and they have a civil right to make such arguments. However, I believe that when they do so, they are giving the wrong message to the public about what Christianity has to say about obtaining favor with God. And, that is the higher calling of Christians,⁷⁵ rather than seeking to impose a legislated morality of works via the secular state. After all, our kingdom is not of this world.⁷⁶

75. *Matthew* 28:19–20 (ESV) (“Go therefore and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, teaching them to observe all that I have commanded you. And behold, I am with you always, to the end of the age.”).

76. *John* 18:36 (ESV) (“Jesus answered, ‘My kingdom is not of this world. If my kingdom were of this world, my servants would have been fighting, that I might not be delivered over to the Jews. But my kingdom is not from the world.’”). See also *Matthew* 22:21 (ESV) (“Then he said to them, ‘Therefore render to Caesar the things that are Caesar’s, and to God the things that are God’s.’”).