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# Reconsidering Christianity as a Support for Secular Law: A Final Reply to Professor Calhoun

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# Reconsidering Christianity as a Support for Secular Law: A Final Reply to Professor Calhoun

Wayne R. Barnes\*

## *Abstract*

*This symposium has revolved around Professor Calhoun's article, which posits that it is completely legitimate, in proposing laws and public policies, to argue for them in the public square based on overtly religious principles. In my initial response, I took issue with his argument that no reasons justify barring faith-based arguments from the public square argument. In fact, I do find reasons justifying the prohibition of "faith-based," or Christian, arguments in the public square—and, in fact, I find such reasons within Christianity itself. This is because what is being publicly communicated in Christian political argumentation 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 "works-based" favor with God is a completely incorrect view of orthodox Christian doctrine, which subscribes to salvation by faith alone. Christian-based political argumentation runs counter to the Christian gospel, because it gets itself tangled up into law, or works, as something that can be done in order to gain greater favor with God. It is, in fact, at odds with*

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\*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 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.

*the Gospel. Professor Calhoun, in his reply to my article, has availed himself of this opportunity to demonstrate why his views on overt Christian political advocacy have changed since first holding a position similarly to mine over twenty-five years ago, and that he now believes Christian theology poses no problem to the advocacy he promotes. His first argument is that such advocacy will be seen not as promising eternal favor with God, but merely the staving off of immediate calamity or judgment from God in this life; I question whether this is how such advocacy will be perceived, but caution that this message, too, is quite probably wrong, as well. His second argument is that laws make man conscious of sin and can indeed bring one to faith in God; I point out that the scriptures on consciousness of sin are referencing the Mosaic law handed down directly by God through Moses, not secular laws passed by secular states. His third argument is that God actually decrees good works or behavior by Christians as part of a missional plan to reach unbelievers for the faith; however, I point out that what is sought from the unbelievers is not the replication of the observed works (as is the case with decreed secular law), but rather an encouragement to come to genuine faith in God. I conclude by remaining convinced that overt Christian political argumentation, in Christian terms, is more harmful than beneficial.*

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*I. Introduction*

This symposium has revolved around Professor Calhoun's article, which posits that it is completely legitimate, in proposing laws and public policies, to argue for them in the public square based on overtly religious principles.<sup>1</sup> Although I see no reason that Professor Calhoun's thesis is limited to Christianity in this regard, he rightly points out that I am only coming at this issue from a Christian vantage point.<sup>2</sup> As he and I are both professing Christians, I therefore see this as an "in-house debate." Which is for the good. When those outside the Christian community (such as non-religious political philosophers) have the temerity to tell Christians that they must not argue for law or public policy on the basis of their sincerely held religious beliefs, there is a resistance in some, and a sense that such beliefs are being minimized or even trivialized.<sup>3</sup> But, an in-house debate among Christians is a more palatable way in which to receive opposition in this manner. Thus, David Smolin (one of the participants in this symposium) once stated: "The real limitations on religious persons acting politically must come from within their own religious traditions, or from the practical necessities of operating within a religiously pluralistic society with certain traditions on such matters."<sup>4</sup> The debate that Professor Calhoun and I are engaging in is such a debate from within our shared religious, Christian tradition.<sup>5</sup>

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1. 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. & LEE L. REV. ONLINE 459 (2018) [hereinafter "Calhoun, *Separation of Church and State*"].

2. Samuel W. Calhoun, *If Separation of Church and State Doesn't Demand Separating Religion from Politics, Does Christian Doctrine Require It?*, 74 WASH. & LEE L. REV. ONLINE 565, 585 n.114 (2018) [hereinafter "Calhoun, *Part 2*"].

3. See, e.g., STEPHEN L. CARTER, *THE CULTURE OF DISBELIEF: HOW AMERICAN LAW AND POLITICS TRIVIALIZE RELIGIOUS DEVOTION* (1993) (arguing how to preserve the separation of church and state while embracing citizens' faith).

4. See generally, e.g., David M. Smolin, *Religion, Education, and the Theologically Liberal State: Contrasting Evangelical and Secularist Perspectives*, 44 J. CATHOLIC L. STUD. 99, 106 (2005).

5. In my initial article, I also cited the work of John Rawls, and his position that religious should not generally be made in support of public policy or law in a pluralistic society, because such arguments are "inaccessible" to those citizens who do not share the religious perspective or world view. Wayne Barnes, *The Paradox of Christian-Based Political Advocacy: A Reply to Professor Calhoun*, 74 WASH. & LEE L. REV. ONLINE 489, 491–92 (2018) (citing JOHN RAWLS, *POLITICAL*

In Professor Calhoun's initial article, he argued that Christians should be free to publicly declare Christian, religious support for their support of laws or public policies.<sup>6</sup> His initial article had three main arguments: (1) the Founders "didn't intend to separate religion from politics;" (2) "religion and politics have been intermixed since the founding;" and (3) "no other arguments justify excluding faith-based arguments from the public square."<sup>7</sup> In my initial response, I essentially agreed with Professor Calhoun's first two arguments, insofar as I agreed that they indeed did not provide any compelling justification for barring public Christian political argumentation.<sup>8</sup> I did, however, take issue with his third argument, in that I do find reasons justifying the prohibition of "faith-based," or Christian, arguments in the public square—and, in fact, I found such reasons within Christianity itself.<sup>9</sup>

To briefly restate my position, when Christians advocate for laws or policies dictated by Christian scripture or morality, they are communicating something to the public.<sup>10</sup> They are communicating for the support and adoption of laws. Law is backed by the enforcement mechanisms of the state, and is about enforcement of behavior.<sup>11</sup> Or, in the Christian parlance, *works*.

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LIBERALISM 212–54 (1993) (discussing public reason); *see also* John Rawls, *The Idea of Public Reason Revisited*, 64 U. CHI. L. REV. 765, 766 (1997). However, in this reply (and largely in my initial response as well), I am relying solely on the arguments from within the Christian tradition itself, and so will not further rely on Rawls. Professor Calhoun rightly points out that, in subsequent writings, Rawls sought to make concessions for some religious thought in public political argumentation, as long as it supported the idea of public reason. *See* Calhoun, *Part 2*, at 584–85 (citations omitted).

6. Calhoun, *Separation of Church and State*, *supra* note 1, at 462–64 ("It's perfectly fine for religious citizens to openly rely on their faith in advocating solutions to public policy disputes.").

7. *Id.* at 464, 471, & 480.

8. *See* Barnes, *supra* note 5, at 491 (agreeing with Calhoun's first two points).

9. *Id.* at 491–93.

10. *Id.* at 493; *see also* Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PENN. L. REV. 2021, 2051 (1996) ("[T]here can be no doubt that law, like action in general, has an *expressive* function").

11. Barnes, *supra* note 5, at 504–05 n. 59 (citing Ekow N. Yankah, *The Force of Law: The Role of Coercion in Legal Norms*, 42 U. RICH. L. REV. 1195 (2008) (cited in Wayne R. Barnes, *Render Unto Rawls: Law, Gospel, and the Evangelical Fallacy*, 24 U. FLA. J.L. & PUB. POL'Y 235, 238 n.11 (2013) [hereinafter Barnes,

And secondly, since the laws are argued to be necessitated by Christian doctrine, the public is being told that these laws are favored by the Christian religious view. The goal of Christian belief is to be reconciled to, and ultimately come to be in harmony with, God.<sup>12</sup> The shorthand way to describe this is that Christianity is concerned, from a human perspective, with salvation of one's soul. Taking these two things together—arguing for “laws” that are supported by “Christian” principles—I believe that when Christians engage in explicitly Christian-based political argumentation, they are communicating to the public that behaving according to the proposed “Christian”-favored law or public policy will bring greater favor with God.<sup>13</sup> What else would it mean to add the “Christian” label to it?

What is interesting about this debate is that the Professor Calhoun of twenty-five years ago was in complete agreement with me. As he put it then, “[u]sing 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.”<sup>14</sup> As I paraphrased it in my initial response to Professor Calhoun, “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.”<sup>15</sup>

Professor Calhoun believed then, as I believe now, that such “works-based” favor with God is a completely incorrect view of

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*Render Unto Rawls*]); see also *Law*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/law> (last visited on Jan. 6, 2019) (“[A] rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority.”) (on file with the Washington and Lee Law Review).

12. See MARY M. SAURER, *A COMPARISON OF WORLD RELIGIONS: ANCIENT TO MODERN-DAY*, Introduction (2006) (“[O]ne of the great instincts of human beings is to search for meaning in life.”).

13. Barnes, *supra* note 5, at 490 (citing Barnes, *Render Unto Rawls*, *supra* note 11, at 235).

14. Samuel W. Calhoun, *Misreading the Judeo-Christian Tradition and the Law: A Response to Professor Smolin*, 15 U. DAYTON L. REV. 383, 398 (1990) (emphasis added).

15. Barnes, *supra* note 5, at 507 (emphasis in original).

orthodox Christian doctrine.<sup>16</sup> Our commonly-held scriptures teach that man is naturally in a fallen, sinful state, and thus out of favor with God.<sup>17</sup> This fallen state keeps us from doing anything—from doing any “works”—to earn ourselves back into God’s good favor. We both believe that the Christian gospel teaches that the only way to achieve God’s salvation and ultimate favor with God is through simple faith, or belief and trust, in Christ’s death and resurrection on his or her behalf.<sup>18</sup> Faith, and faith alone, is what is required to gain favor in God’s eyes, according to the Christian scriptures. Works will not do it, but rather only faith will—an essentially cognitive determination. Thus, the scriptures state that “*without 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.”<sup>19</sup> And, “[B]y grace you have been saved *through faith*. And this is not your own doing; it is the gift of God, *not a result of works*, so that no one may boast.”<sup>20</sup> Again, as I put it in my initial response to Professor Calhoun, “Christians definitively do *not* believe that you can *do* anything, or engage in any *behavior* (no[] matter how noble or upstanding the behavior)—i.e., engage in any *works*—in order to obtain favor with God. Rather, we Christians believe that faith, not works, is what is necessary to please God and obtain His favor.”<sup>21</sup>

Ultimately, in my initial response, I concluded that Christian-based political argumentation runs counter to the Christian gospel, because it gets itself tangled up into law, or works, as something that can be done in order to gain greater favor

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16. See Barnes, *Render Unto Rawls*, *supra* note 11, at 262 (arguing against “works-based” faith and noting Calhoun’s agreement).

17. See Barnes, *supra* note 5, at 507 n. 65 (citing *Romans* 3:23 (ESV) (“All have sinned and fall short of the glory of God.”)); JOHN R.W. STOTT, BASIC CHRISTIANITY 61–80 (2d ed. 1971) (describing the presence of sin and its effects and implications); WESTMINSTER CONFSSION OF FAITH, ch. 6, 26 (“Of the fall of man, of sin, and the punishment thereof.”), <http://www.pcaac.org/wp-content/uploads/2012/11/WCFScriptureProofs.pdf>.

18. See Barnes, *Render Unto Rawls*, *supra* note 11, at 237 (citing STOTT, *supra* note 17, at 81–106 (describing Christ’s death and Christian soteriology); WESTMINSTER CONFSSION OF FAITH, *supra* note 17, at ch. 11, 50 (“Of justification.”)).

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

20. *Ephesians* 2:8-9 (ESV) (emphasis added).

21. Barnes, *supra* note 5, at 509.

with God.<sup>22</sup> Because as has just been shown, the Christian gospel definitively says that such works will get a person nowhere towards better standing before God. Passing a secular law, or following such a secular law, will not please God in and of itself. As Professor Calhoun said over twenty-five years ago, this political argumentation is “*at odds with the Gospel.*”<sup>23</sup> That is because it is based on works, when the only way to obtain favor with God is *faith*. And therefore, I concluded, such Christian political argumentation is actually inconsistent with the Christian gospel message, and should then not be promoted in the public sphere, if the goal is to disseminate correct information about Christianity and how people can obtain ultimate favor with God.<sup>24</sup> To insist on proceeding with such Christian political argumentation is to potentially mislead people, and I know that neither Professor Calhoun nor I want to do that.

Professor Calhoun, in his reply to my article, has availed himself of this opportunity to demonstrate why his views on overt Christian political advocacy have changed since first holding a position similarly to mine over 25 years ago.<sup>25</sup> I believe that he has made three primary arguments why my position (and his former position) is not correct.<sup>26</sup> The first argument is that God can bring

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22. See *id.* at 503 (disagreeing with Calhoun’s take on political argumentation).

23. Calhoun, *Misreading the Judeo-Christian Tradition and the Law*, *supra* note 14, at 398 (emphasis added).

24. Barnes, *supra* note 5, at 504–10.

25. Calhoun, *Part 2*, *supra* note 2, at 586–87.

26. Calhoun actually makes an anecdotal argument in a footnote that I will address here. He asks me how my position would impact pastors at a Christian church, wishing to advocate for some law or public policy in Christian terms. Calhoun finds it odd that I would expect him to make no appeals to Christian theology in making his arguments; or, even, to remain silent altogether since everyone knows he is a Christian and what the animating ideals behind his position are anyway. See Calhoun, *Part 2*, *supra* note 2, at 589 n. 135. Calhoun raises a good point, but let me offer a couple of observations. For one, ministers and churches do have to be careful with such explicit advocacy, lest they endanger their 501(c)(3) tax-exempt status with the IRS. See Rev. Rul. 2007-41 (outlining how 501(c)(3) organizations, including churches, can comply with the law prohibiting overt political advocacy of candidates). For another, I wonder why the pastor would overly focus on the passage (or not) of a secular, governmental law at all. Certainly, I am not suggesting the pastor should not be able to opine about whether some activity is “sinful” or “good” in the Biblical sense, but I would hope that the pastor would be careful here, too, with his or her theology. Whether “Act

judgment and consequences against individuals and nations in this life, separate and apart from the question of eternal salvation, and that the message more likely being communicated by Christian activists is that failure to heed God's desires in passing and following laws risks God's wrath in the near term; that is, no arguments about *eternal* favor with God are being made, but rather only *temporary* favor.<sup>27</sup> I will address this argument in Part II below. Professor Calhoun's second argument is that such laws legitimately do play a scriptural role in making man conscious of sin and rebellion against God, and thus are in fact correctly related to achieving eternal salvation from God.<sup>28</sup> I will address this argument in Part III below. Finally, Professor Calhoun's third argument is that God does encourage good behavior as part of His plan, and therefore my insistence on deemphasizing works is in error in relation to the Christian message.<sup>29</sup> I will address this final argument in Part III.

## II. God's Temporal Judgment?

Professor Calhoun's first argument that Christian political argumentation doesn't undermine the Christian gospel message of salvation by faith alone, is that the public arguments will more likely be seen as prescriptions for avoiding divine judgment in *this* life, rather than attaining salvation and avoiding God's ultimate

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X" is disapproved of by God is an issue which can easily be the subject of too much focus. According to Christian theology, *all* of us are fallen sinners, whether we do "Act X" specifically or not. "Act X" is not really the point. "[N]o one does good, not even one." *Romans* 3:12 (ESV) (emphasis added). The pastor would be much better to say, "You are all sinners that need saving faith in Jesus," than to say "Act X is sinful—stop doing Act X so you can gain God's favor." Whether any particular person does Act X is, I believe, not paramount to reconciling the broken relationship between God and man. Rather, accepting Christ's sacrifice on our behalf is, as discussed earlier. That is, again, *faith* is crucial, not *works*. And, even if "Act X" is discussed, I would hope the pastor does not, again, purport to say that God will be pleased simply because a secular law banning "Act X" is passed—much more, I believe, would be necessary to please God. Because this overlaps with my discussion in Part II, I will say no more here.

27. Calhoun, *Part 2, supra* note 2, at 592–94.

28. *Id.* at 592–93.

29. *Id.* at 593–94.

judgment.<sup>30</sup> Calhoun mentions the biblical accounts of God's temporal judgment on nations, recounting the examples of the flood in the time of Noah, and the decimation of Sodom and Gomorrah.<sup>31</sup> He points out that both Thomas Jefferson and Abraham Lincoln apparently believed such divine judgments on America were possible if slavery was not eradicated.<sup>32</sup> As he points out, Lincoln once said specifically that God, "by His divine law, subjects 'nations like individuals . . . to punishments and chastisements in this world.'"<sup>33</sup> Calhoun posits that most people in Lincoln's day likely took his statements as being that America needed to end slavery in order to avoid divinely imposed calamity to the United States in the *near term*, rather than to achieve the eternal salvation of any individual citizens.<sup>34</sup> And, based on this, Calhoun supposes that the reaction of most non-Christian citizens to overt Christian political argumentation is more likely to be this—that behaving according to the advocated "Christian" law will give "greater favor" with God, not in the form of ultimate salvation, but rather only with better "earthly conditions", or blessings, in the here and now.<sup>35</sup> Therefore, Calhoun observes, the ultimate Gospel message will not be undermined, because non-Christians won't believe that God's ultimate favor, or salvation, is at stake.

I suppose the honest answer is that neither of us have done any empirical studies to actually determine non-Christians' perceptions of such advocacy. And, I would never presume to say that God would not ever do such a thing in the year 2018 or beyond. "Our God is in the heavens; He does all that He pleases."<sup>36</sup> So, the first thing I would say is it's possible God could make such a judgment—I don't eliminate the possibility. But, then again, I would want to be extremely careful. There is reason to believe that, since the advent of Christ, this is not God's primary way of

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30. *Id.*, at 592–94.

31. *Id.* at 590.

32. *Id.* at 591–92 (citations omitted).

33. *Id.* at 591 (citing Abraham Lincoln, Proclamation Appointing a National Fast Day (Mar. 31, 1863), in VI THE COLLECTED WORKS OF ABRAHAM LINCOLN, at 155, 156 (Roy P. Basler ed., 1953)).

34. *Id.* at 592.

35. *Id.*

36. *Psalms* 115:3.

handling temporal affairs. Consider the account in Luke where some Galileans had been killed, and their blood mingled by Pilate with sacrifices.<sup>37</sup> Jesus said:

Do you think that these Galileans were worse sinners than all the other Galileans, because they suffered in this way? No, I tell you; but unless you repent, you will all likewise perish. Or those eighteen on whom the tower in Siloam fell and killed them: do you think that they were worse offenders than all the others who lived in Jerusalem? No, I tell you; but unless you repent, you will all likewise perish.<sup>38</sup>

Jesus said, in effect, normally bad things are not a result of some temporal judgment of God; sometimes, bad things just happen in the fallen world. He was cautioning against interpreting such actions as immediate judgment for any behavior, and stressing instead the ultimate need to obtain favor with God by repentance and faith. In short, I will not presume to say that God does not judge nations, but I strongly suspect that the best way for Christians to seek to avoid such an outcome is to proclaim the pure gospel message boldly in the hopes that many people will come to genuine faith in Christ, not to argue for laws to be passed by the legislature.

And, this brings me back to the question of what can people do, according to Christian doctrine, to obtain favor with God? Or, put conversely, if God's immediate, temporal judgment really is a looming possibility, what does it take to stave off such judgment? Calhoun's argument would have us believe that they may well be able to simply do certain external behaviors, i.e., works, and stave off any immediate temporal calamity that God might otherwise be prepared to rain down on him or her immediately. That is, irrespective of any ultimate resolution and salvation from God. And, further, Calhoun says this is how Christian political argumentation is most likely to be interpreted. Is such a message accurate, if in fact that's how it's perceived? I have extreme doubts about it. For one, I think some Christians are far too quick to see God's judgment in any calamity that occurs in the news. Thus, Jerry Falwell infamously blamed the 9/11 attacks as God's judgment for "pagans, abortionists, feminists, 'the gays and the

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37. See *Luke* 13:1 (beginning the story with Jesus being told this account).

38. *Luke* 13:2-5.

lesbians' and the ACLU."<sup>39</sup> Pastor John Hagee reacted to Hurricane Katrina by saying, "I believe that New Orleans had a level of sin that was offensive to God, and they were recipients of the judgment of God for that."<sup>40</sup> As Timothy Hall has observed, "[p]redicting the ruinous consequences of dissent is a favorite pastime of the orthodox."<sup>41</sup>

I suppose I am playing somewhat into Professor Calhoun's hands by admitting that ascribing God's judgment to various natural disasters or other calamities is known to happen in the current age. But, does that mean it's accurate? Does God do this? Again, of course He can do as He pleases. But, consider the exchange between Abraham and God prior to the account of God's destruction Sodom and Gomorrah.<sup>42</sup> Abraham pleaded with God not to destroy the city if He found at least fifty, then forty, then thirty, then twenty, and finally, only ten righteous people in the city.<sup>43</sup> Apparently, as the account goes, God agreed, but then found not even ten, and thus He destroyed the city.<sup>44</sup> But, my point for the moment is that even under this account, God was not quick to rain down destruction on a city or nation, but only when, in His view, it was a 100% lost cause. Note further that this account is from the Old Testament, before the advent of Christ. "Long ago, at many times and in many ways, God spoke to our fathers by the prophets, but in these last days he has spoken to us by his Son [Christ]."<sup>45</sup> Since the advent of Christ, the gospel message is that faith alone is what pleases God. "[W]ithout faith it is impossible to please [God]."<sup>46</sup> And, "by grace you have been saved *through faith*. And this is not your own doing; it is the gift of God, *not a result of*

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39. John Hudson, *Pat Robertson Blames Natural Disaster Victims*, THE ATLANTIC, (Jan. 14, 2010), <https://www.theatlantic.com/technology/archive/2010/01/pat-robertson-blames-natural-disaster-victims/341489/> (last visited Jan. 5, 2019) (on file with the Washington and Lee Law Review).

40. *Id.* Hagee later retracted the statement. *Id.*

41. Timothy L. Hall, "Incendiaries of Commonwealths": *Baptists and Law*, in CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT, 342 (McConnell, et al. eds., 2001).

42. See *Genesis* 18 (pleading for Sodom to be spared).

43. *Genesis* 18:16-33.

44. See *Genesis* 19:24-29 (sparing Abraham).

45. *Hebrews* 1:1-2.

46. *Hebrews* 11:6.

*works*, so that no one may boast.”<sup>47</sup> So, how to stave off God’s judgment in the present age, since the revelation and advent of Christ? Come to *faith* in His sacrificial death and resurrection, as necessary for one’s salvation—this is New Testament Christian teaching.

So, what if Professor Calhoun is correct, and people will most likely perceive overt Christian political argumentation as pleading with people to avoid God’s immediate, temporal judgment, rather than as a means for obtaining ultimate salvation? One, I don’t know that I agree that’s how they will perceive it (although I confess neither of us can know for sure without empirical research).<sup>48</sup> But two, even if that *is* how they perceive it, I would say that, in all realistic likelihood, *that message is probably incorrect also*. That is, to tell people that conforming to some external standard of behavior will gain some immediate favor with God (at least by forestalling immediate calamity), without regard to any good internal motivations, is also likely not correct.<sup>49</sup> “For the Lord sees not as man sees: man looks on the outward appearance, but the Lord looks on the heart.”<sup>50</sup> Mere external behavior, absent the right motivation, may not be certain to obviate God’s wrath on a nation. But further, even assuming God does in His absolute sovereignty judge entire nations, is it likely that merely passing civil legislation is the means to appeasing him? I think there is serious reason to question that conclusion. Such messages, if so perceived by non-Christians, likewise undermine the gospel message of Christianity.

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47. *Ephesians* 2:8-9 (ESV) (emphasis added).

48. For an account of then-Daily Show host Jon Stewart interpreting a political ad as implying damnation for not voting in light with certain “values,” see *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 Jan. 5, 2019) (on file with the Washington and Lee Law Review).

49. I don’t deny, of course, that there may often be natural consequences to unbiblical behavior. Committing adultery, for instance, is likely to cause a great deal of pain to the cheater’s spouse, his children, and can cause negative financial consequences, too, in the event of divorce.

50. 1 *Samuel* 16:7.

### III. Does Secular Law Convict of Sin?

In his second argument, Professor Calhoun cites Romans 3:20, which provides: “Therefore no one will be declared righteous in his sight by observing the law; rather, through the law we become conscious of sin.”<sup>51</sup> As he points out, the first part of this verse is actually directly related to my thesis—that Christian political advocates send the wrong message when they imply that people can obtain God’s favor by passing or complying with a law. This is mere works, and we know that absent faith it is impossible to please God.<sup>52</sup> But, Calhoun observes, the second part of the verse does not discourage contemplation of the law, but rather asserts that we become conscious of sin though the revelation of the law, which can be divinely used to lead on to faith. As Calhoun concludes: “God’s moral law, then, rather than undermining the Gospel, is an indispensable component of that conviction of sin required for recognizing one’s need of a Savior.”<sup>53</sup>

What to say to this? I think (and Calhoun knows this, as he acknowledges in a footnote)<sup>54</sup> that there is a world of difference between the “law” being described in this and other verses, and the political laws we are talking about in this symposium. The law that Paul is talking about in Romans is literally the law handed down directly by God, through Moses—hence, sometimes called the Mosaic Law:

And the LORD said to Moses, “Write these words, for in accordance with these words I have made a covenant with you and with Israel.” So he was there with the LORD forty days and forty nights. He neither ate bread nor drank water. And he wrote on the tablets the words of the covenant, the Ten Commandments.”<sup>55</sup>

And, also in the Old Testament: “Keep the charge of the LORD your God, to walk in His ways, to keep His statutes, His commandments, His ordinances, and His testimonies, according to

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51. Calhoun, *Part 2, supra* note 2, at 592 (citing *Romans* 3:20).

52. See *Hebrews* 11:6 (“But without faith it is impossible to please [God] . . .”).

53. Calhoun, *Part 2, supra* note 2, at 593.

54. *Id.* at 593 n. 161.

55. *Exodus* 34:27-28.

what is written in the Law of Moses.”<sup>56</sup> This law—literally moral, holy law handed down directly from the mind of God—is what Paul is referring to when he says that through such law we become conscious of sin. Should the same effect be ascribed to the secular laws of the State of Texas, or Virginia? Or Congress? Do they come directly from God?<sup>57</sup> The questions answer themselves. God determines what is just and right, and His law is what brings consciousness of sin.<sup>58</sup>

#### IV. Works and Faith

Professor Calhoun’s final argument is that God actually commands good behavior, or works, as part of God’s planned missional outreach to nonbelievers.<sup>59</sup> Specifically: “Live such good lives among the pagans that, though they accuse you of doing wrong, they may see your good deeds and glorify God on the day he visits us.”<sup>60</sup> Calhoun asks: “Why would God command us to live good lives before ‘pagans,’ i.e., unbelievers, if doing so necessarily undermines the Gospel by miscommunicating . . . that [merely] following [Christians’] example [of doing good works] is the way to

56. 1 *Kings* 2:3.

57. Of course, to answer my own question, on one level the answer is, “Yes! Everything comes from God.” See, e.g., *Psalms* 135:6 (“The LORD does whatever pleases him, in the heavens and on the earth, in the seas and all their depths.”); *Proverbs* 21:1 (“The king’s heart is a stream of water in the hand of the LORD; He turns it wherever He will.”); *Matthew* 10:29 (“Are not two sparrows sold for a penny? And not one of them will fall to the ground apart from your Father.”). However, the point for the moment is that God intervened in a much more direct, purposeful, and communicative way with the Mosaic law.

58. Elsewhere, Paul discusses the need to be subject to the governing (secular) authorities of government. Nothing is said in these passages about consciousness of sin derived from such governments’ laws, although Christians are directed to be obedient and subject to them. See *Romans* 13:1-7. This is not to say that God couldn’t use the secular laws of a state to actually convict someone of sin and the need for saving faith, as Calhoun suggests. See Calhoun, *Part 2*, *supra* note 2, at 593 n.161. But, of course, God is infinitely powerful and could use *anything* He decided to, so this doesn’t limit things too much. See, e.g., *Numbers* 22:28 (God spoke to Balaam through the mouth of a donkey); *Luke* 19:40 (Jesus said the rocks would cry out if people did not praise Him).

59. See Calhoun, *Part 2*, *supra* note 2, at 593.

60. *Id.* (quoting 1 *Peter* 2:12).

please God?”<sup>61</sup> In other words, Calhoun is saying that this verse is actually promoting works, not faith, as a way to communicate how to please God; that if the nonbelievers would only replicate the external behavior that observe Christians doing, they would please God.

Reflection on the biblical relationship between faith and works, however, reveals an important distinction that bears on this issue, and how the above verse should be interpreted. Works, or good behavior, are discussed in the scriptures, as the expected and natural outgrowth of genuine faith.

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.<sup>62</sup> But remember, also, that we know that without faith it is impossible to please God; so, this passage is describing the works that should *result* from genuine faith in God.<sup>63</sup> Faith is what *produces and motivates* such pleasing, good works or behavior. It doesn’t mean that works are necessary for salvation, but it is saying that genuine faith should result in good works.<sup>64</sup>

Coming back to the passage cited by Professor Calhoun, notice what it does not say. The verse does not say that Christians should live good lives, so that nonbelievers will replicate such good deeds, i.e., behavior, as a means to get favor with God. Rather, it says that Christians should live good lives so unbelievers “may see your good

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61. *Id.*

62. *James* 2:14-17.

63. *See Hebrews* 11:6.

64. David Guzik, *Study Guide for James 2*, BLUE LETTER BIBLE, [https://www.blueletterbible.org/Comm/guzik\\_david/StudyGuide2017-Jam/Jam-2.cfm](https://www.blueletterbible.org/Comm/guzik_david/StudyGuide2017-Jam/Jam-2.cfm) (last visited Jan. 5, 2019)

James did not contradict the Apostle Paul, who insisted that we are saved not of works (Ephesians 2:9). James merely clarifies for us the kind of faith that saves. We are saved by grace through faith, not by works; but saving faith will have works that accompany it. As a saying goes: faith alone saves, but the faith that saves is not alone; it has good works with it.

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

deeds and *glorify God on the day he visits us.*<sup>65</sup> As commentator David Guzik observes:

This is probably a reference to their ultimate meeting with God, either when they go to meet Him or when He comes to meet them. *The idea is that the Gentiles might be persuaded to become Christians by seeing the lives of other Christians*, and that they would glorify God when they meet Him instead of cowering before His holy judgment.<sup>66</sup>

Therefore, although works are involved, this passage is *not* about encouraging unbelievers to “do works” (i.e., follow the law) in order to gain favor. That, of course, is the error of Christian political argumentation. Rather, the hope is that unbelievers will see the good works, and wonder about what motivated them. Such contemplation and inquiry may lead not primarily to similar works, but rather to *faith*. On the other hand, in Christian political argumentation, what is being communicated is not “consider what would motivate such good behavior reflected in this law, so you will come to *faith*,” but rather “comply with this law, *do the works*, irrespective of your motivation for doing so.” This latter message, again, undermines the gospel message of salvation by faith alone. Unbelievers should not be coercively demanded to do “good works” as a matter of divine mission; rather, they should be guided towards a saving faith in Christ, which (according to Christian theology) will then produce such good works.<sup>67</sup>

I will follow up this last observation with another illustration from scripture, which is perhaps illustrative of the mystery of how the gospel message is supposed to affect the public culture, as opposed to the Christian political argumentation model. In the

65. 1 *Peter* 2:12 (emphasis added).

66. David Guzik, *Study Guide for 1 Peter 2*, BLUE LETTER BIBLE, [https://www.blueletterbible.org/Comm/guzik\\_david/StudyGuide2017-1Pe/1Pe-2.cfm?a=1153012](https://www.blueletterbible.org/Comm/guzik_david/StudyGuide2017-1Pe/1Pe-2.cfm?a=1153012) (emphasis added) (last visited Jan. 5, 2019) (on file with the Washington and Lee Law Review).

67. It is hardly necessary to say that genuine Christians who have saving faith in God do not always do the best job of this. Accounts are legion of Christians behaving badly, from priests molesting children, to evangelical preachers swindling money, to the medieval burnings of supposed witches. Christians are, in fact, not perfect, and there is a complex theology of gradual “sanctification” that occurs to gradually increase in good works throughout a Christian’s life. But, we don’t always get it right in this life. See *Romans* 7:14-20 (demonstrating humankind’s struggle with sin).

19th chapter of Acts, the scriptures indicate that the apostle Paul traveled to the city of Ephesus and began preaching the gospel of Jesus Christ to the city.<sup>68</sup> Paul stayed in the synagogue and preached continuously for three months, and many were persuaded “about the kingdom of God.”<sup>69</sup> And based on this gradual conversion of the citizens of Ephesus, an interesting thing occurred—the business of manufacturing idols to the god Artemis dropped precipitously as the people of Ephesus began converting to Christianity.<sup>70</sup> This caused such a drop in the idol manufacture that some in the business of making the idols—including, notably, a silversmith named Demetrius—began to riot (ostensibly in defense of the great god “Artemis of the Ephesians,” but of course surely also to protect their livelihoods).<sup>71</sup> The thing I want to note in closing is that an evil—the manufacture and worship of idols—was largely diminished in the city of Ephesus. But it was not carried out by Paul and his fellow believers by pushing for political policies or city ordinances banning their sale. To the contrary, the change in the Ephesian culture was accomplished not by political activity, but rather by the conversion and salvation of the people by faith in the gospel message, which changed their *hearts* first, and which then *resulted* in their changed behavior.

### V. Conclusion

I thank Professor Calhoun for inviting me to participate in this symposium, and I value him greatly as a brother in the faith. This Article should not be taken to mean I am infallibly certain of these conclusions. Professor Calhoun and I share our Christian faith in common, and we also share being imperfect, fallen human beings in common. But, I am convinced that overt Christian political argumentation does more harm than good. I do not say that Christians shouldn't participate in politics if they like, but I do believe that their arguments should be carefully distinct from communications of what it takes to please God on a spiritual

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68. See *Acts* 19:1-8.

69. See *Acts* 19:8.

70. See *Acts* 19:23-27.

71. See *Acts* 19:23-34.

level.<sup>72</sup> That dominion belongs to the gospel message of salvation by faith in Christ alone.<sup>73</sup> To entangle secular law into the mix, is to potentially inject a false message that compliance with such law, or works, will gain favor with God.

Like Professor Calhoun, rather than reiterate all the arguments herein, I would like to present words on this subject from two more Christian law professors, on the perils of Christian political argumentation:

Christians could stand to learn the . . . lesson [that Christian moral precepts make for poor secular law]. The New Testament makes abundantly clear that law cannot save souls; salvation must come through other means and from another Source. In the apostle Paul's letters, law is not the mechanism of salvation; rather, law shows the need of it. Paul repeatedly warns Christians about the dangers of converting their faith into a moral code, just as Jesus condemned the Pharisees for doing the same thing to their own faith and thus weighing down the people with burdens too heavy to carry. One might expect professing Christians to be especially attuned to the dangers of legal moralism. Judging from contemporary culture-wars debates, we are not. The heart of the problem is a tendency to confuse God's law with man's. Those of us who believe in a

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72. I should like to have spent more time on an idea, but space does not permit. The idea is that, it is not as though we are stupefied as to the underlying, rational reasons for many of the biblical mandates some Christians would like to see enacted into law. Take abortion. Christians don't need to thunder away in the public political square with passages about being knitted in their mother's womb. Everyone in society agrees killing humans is wrong, in many circumstances (though not all). The societal debate about whether a fetus or embryo is a human being, or even some other life form, worthy of protection—and whether a woman has the right to protect herself from being physically harmed by another being as in other cases of ordinary self-defense or necessity—can occur on a scientific, rational, and pluralistic basis without resort to the Bible. The same with, say, laws on divorce or adultery. If a Christian wanted to argue for laws banning adultery, he or she wouldn't have to quote the Bible to show why adultery is wrong. He or she could simply appeal to everyone's knowledge of the potential negative consequences for family, relationships, and finances (and, of course, would be met by countervailing arguments championing the freedom of citizens to behave as they see fit, within certain limitations). These are, I imagine, the types of arguments that Rawls had in mind as ideal for religious observers to make. See JOHN RAWLS, *POLITICAL LIBERALISM* 212–54 (Columbia University Press 1993) (discussing public reason).

73. See *supra* Part IV (discussing the doctrine of salvation by faith alone).

divine moral law are regularly tempted to try to write that law into our much-less-than-divine code books.<sup>74</sup>

This process of Christian political argumentation serves to confuse the very members of the public to whom it is the church's mission to communicate the gospel message: "After decades of political activism on the part of Evangelical Christians[,] . . . the average person in our country now thinks Evangelicalism is primarily a social and moral movement with no connection to the Evangel-good news."<sup>75</sup> Christians should refrain further from such confusion. We should participate in the political sphere, and engage our community there with good logic and reasons for such proposed laws or public policies. And, we should continue fulfilling the church's mission of spreading the gospel message.<sup>76</sup> But, we should be careful not to confuse these two kingdoms.<sup>77</sup>

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74. David A. Skeel, Jr. & William J. Stuntz, *Christianity and the (Modest) Rule of Law*, 8 U. PA. J. CONST. L. 809, 831–32 (2006) (emphasis added) (footnotes omitted).

75. Tullian Tchividjian, *Politics is Not a Cure-All*, THE CHRISTIAN POST (Nov. 3, 2012), <https://www.christianpost.com/news/politics-is-not-a-cure-all.html> (last visited Jan. 5, 2019) (on file with the Washington and Lee Law Review).

76. See *Matthew* 28:19-20 ("Go therefore and make disciples of all nations, baptizing them in [a] 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.").

77. See *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.'").