ABSTRACT

Supreme Court Jurisprudence and the Religious Right:
Criticism and Commentary Regarding Scripturally Supported Church-State Separation

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The Religious Right is the most influential religio-political movement in the United States in the last thirty years. Its ideological support comes largely from Francis Schaeffer, a Christian apologist who wrote against the influence of secular humanism in Western society and encouraged Christians in America to become politically active in order to stop abortion. Because of the Religion Clauses of the First Amendment to the Constitution, there has been much discussion from a political perspective about the role of religion in politics that argues that religion should not be used to justify legislation. In response, there has been both political and religious criticism of the removal of religion from public square. However, there has not been much said in defense of the principles of church-state separation that has attempted to draw these principles directly from a wide range of scriptures.

This dissertation examines both Supreme Court jurisprudence and the Bible to establish whether there are common principles between the two. By focusing on the freedom of conscience and the non-imposition of morality, there is a way to interpret the

biblical text to be in support of the general principle of separation of church and state and more specifically against the use of specifically Christian justifications as the basis for particular types of moral legislation.

After establishing the principles scripturally and its commonality with the principles of Supreme Court jurisprudence, there is a criticism of Francis Schaeffer and the Religious Right. It seems that while the Religious Right may be correct in its biblical analysis of certain moral issues like abortion and same-sex marriage, that question is not the most important question. Instead, the question should be whether advocating for the use of coercive legislation in order to ensure morally correct behavior is the type of tactic a Christian should use upon examination of the principles within the Christian text. The weight evidence seems to suggest that the answer is no. However, this does not suggest that the Christian is to privatize his faith or have no effect on society. It is only the method that should change.

Supreme Court Jurisprudence and the Religious Right:
Criticism and Commentary Regarding Scripturally Supported Church-State Separation

by

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A Dissertation

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TABLE OF CONTENTS

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CHAPTER ONE

Introduction

Over the last thirty-five years the Religious Right has had an indelible effect on the American political landscape.[1] The conservative religious groups that make up this unofficial conglomeration actively promoted a political agenda based in their particular view of right and wrong based in their Christian beliefs. Because of their efforts to promote their beliefs politically, they accomplished several electoral and political victories. For example, the organizations involved in the Religious Right successfully defeated the Equal Rights Amendment in the late 1970s and early 1980s.[2] During the 1970s and 1980s conservative evangelicals and those who would eventually form the Christian Right helped to elect President Jimmy Carter, President Ronald Reagan twice, and helped to elect President George H.W. Bush.[3] In the 1980s the Moral Majority, led

[1] This grouping of social organizations, political action groups, and para-church organizations has been known as the Religious Right and the Christian Right in academic literature. This dissertation will use the terms interchangeably.

[2] Erling Jorstad, *The New Christian Right 1981-1988; Prospects for the Post-Reagan Decade*, (Lewiston, NY: The Edwin Mellen Press, 1987), 82-83.

[3] Erling Jorstad, *The Politics of Moralism: The New Christian Right in American Life*, (Minneapolis, MN: Augsburg Pub. House, 1981), 100; Erling Jorstad, *Holding Fast/Pressing On, Religion in America in the 1980s*, (New York: Greenwood Press, 1990), 64; Richard V. Pierard, "Religion and the 1984 Election Campaign," *Review of Religious Research* 27, No. 2 (Dec., 1985): 100; A. James Reichley, "Religion and the Future of American Politics," *Political Science Quarterly* 101, No. 1 (1986): 26-27; Daniel K. Williams, *God's Own Party: The Making of the Christian Right*, (Oxford: Oxford Univ. Press, 2010), 221.

by Jerry Falwell, was the most prominent of the para-church groups that were at the forefront of the conservative religious political movement.[4]

Jerry Falwell dissolved the Moral Majority in 1989, and the Christian Coalition dominated the Christian Right in the 1990s.[5] This group, founded in 1989 by Pat Robertson and Ralph Reed, was not as successful on the presidential stage, but was much more successful at other levels of government.[6] The Christian Coalition was largely a grassroots movement, and so the majority of its success was in local and state politics. Despite that, it was instrumental in establishing the Republican majority in Congress in 1994.[7]

In the first decade of the new millennium, the Religious Right became more issue-based as opposed to being dominated by any particular advocacy group. While abortion continued to be a central issue, the rising number of states allowing homosexual unions and same-sex marriages gave the Religious Right a new rallying point.[8] It was also successful once again on the presidential level, aiding in the election of George W. Bush

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[4] Clyde Wilcox, *God's Warriors: The Christian Right in Twentieth-Century America*, (Baltimore: The Johns Hopkins Univ. Press, 1992), 95; Glenn H. Utter and James L. True, *Conservative Christians and Political Participation: A Reference Handbook*, (Santa Barbara, CA: ABC-CLIO, 2004), 67.

[5] Utter and True, 68; William Martin, *With God on Our Side: The Rise of the Religious Right in America*, (New York: Broadway Books, 1996), 317; Justin Watson, *The Christian Coalition: Dreams of Restoration, Demands for Recognition*, (New York: St. Martin's Press, 1997), 52-54.

[6] Williams, 232.

[7] Ibid., 233.

[8] John C. Green, Kimberly H. Conger, and James L. Guth "Agents of Value: Christian Right Activists in 2004," in *The Values Campaign? The Christian Right and the 2004 Elections*, eds., John C. Green, Mark J. Rozell, and Clyde Wilcox, (Washington, DC: Georgetown Univ. Press, 2006), 22.

in 2000 and in 2004.[9] The issue of same-sex marriage was important in both 2004 and 2008, when many states held referenda to define marriage as between one man and one woman.[10]

Regardless of rhetorical rationales, the Religious Right based its political goals on the idea that American laws are and should be based on Judeo-Christian principles. Because of evangelical Christian views on when life begins, the Religious Right argued that abortion should be illegal. Furthermore, from its perspective, homosexual activity is understood to be an abomination according to the Bible; therefore, homosexuals should not be allowed the rights of civil marriage. Those on the political and Christian Left have often countered these arguments with the judicial doctrine of separation of church and state. They have argued that American laws should not be based explicitly on Christian beliefs because it would be an establishment of religion, which is prohibited by the Constitution.[11]

The separation of church and state is a well-established principle in Supreme Court jurisprudence, and has been applied to both of the Religion Clauses of the First Amendment. The phrase "separation of church and state" is not found in the Constitution

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[9] Esther Kaplan, *With God on Their Side: George W. Bush and the Christian Right*, (New York: The New Press, 2005), 76; Williams, 261.

[10] Charisse Jones, "Issues: 11 States Nix Gay Marriage; Calif. OKs Stem-Cell Work," *USA Today*, Nov. 5, 2004; Jay Hamburg, "Florida Bans Same-Sex Marriage," *Orlando Sentinel*, Nov. 6, 2008; Jessica Garrison and Dan Morain, "Backers Focused Prop 8 Battle Beyond Marriage," *Los Angeles Times*, Nov. 6, 2008.

[11] For examples of these arguments, see Rita Nakashima Brock, "The Fiction of Church and State Separation: A Proposal for Greater Freedom of Religion," *Journal of the American Academy of Religion* 70 Issue 4, (Dec. 2002): 856; Elisabeth Divine Reid, "Thou Shalt Honor the Establishment Clause: The Constitutionality of the Faith-Based Initiative," *Hamline Journal of Public Law & Policy* 28 Issue 2, (Spring 2007): 435.

explicitly, but was used by Thomas Jefferson in the now famous letter to the Danbury Baptists Association in 1802.[12] In 1896, the Court applied the phrase to a case involving the free exercise clause in *Reynolds v. US*.[13] The principle came to prominence jurisprudentially when Justice Hugo Black used it in his opinion in *Everson v. Board of Education*, an establishment clause case in 1947.[14]

When examining the Supreme Court's jurisprudence, two main principles are apparent. The first principle is that the Court seeks to protect the freedom of conscience of the citizen. The Court struggles with this concept, at times extending it to protect the actions of citizens and at other times supporting the ability of the state to promulgate law and order. The second principle found in the jurisprudence is the idea that religiously based modes of morality should not be imposed legislatively on those who disagree. This dissertation will show that there is commonality between these same judicial principles that undergird the separation of church and state and principles expressed in the Bible. Furthermore, the ideology of the Religious Right, as evidenced in the scholarship of Francis Schaeffer and the legislative political advocacy of the Religious Right on the issues of abortion and gay marriage, actually contradicts these biblical and judicial principles, despite the religious impetus of their advocacy.

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[12]Thomas Jefferson to Messrs. Nehemiah Dodge, Ephram Robbins, and Stephen S. Nelson, a Committee of the Danbury Baptist Association in the State of Connecticut (January 1, 1802); reprinted in *Jefferson: Political Writings*, ed. Joyce Appelby & Terence Ball (Cambridge Univ. Press, 1999), 396–97.

[13] *Reynolds v. US*, 98 U.S. 145, 164 (1896).

[14] *Everson v. Board of Education*, 330 U.S. 1, 16 (1947).

Background of Study

This dissertation merits development because the question of religious engagement in politics is debated vigorously from the political perspective, but this question is not adequately addressed from a religious perspective of Protestant Christianity that is supportive of a politically liberal idea of church-state separation. For many churches of both conservative and progressive stripes, the intellectual debate seems to revolve around what particular issues churches should or should not support.[15] There are several religious theories that support the idea of Christian groups being involved in politics. Prominent among them recently is dominionism, the theory that Christians must seek dominion over various aspects of society.[16] Conservative Christians have been a dominant force in politics since the advent of the Religious Right in the 1980s and have been staunch advocates of traditional marriage and personhood rights for the unborn, among other issues.[17] Progressive Christians have recently become more politically

[15] Darryl Hart, *A Secular Faith: Why Christianity Favors the Separation of Church and State*, (Chicago: Ivan R. Dee, 2006), 209-40.

[16] Dominionism is a theology which states that Jesus will not return to the Earth until Christians have taken over governmental and social institutions. These institutions include schools, government, media, scientific endeavors, and the arts. John L. Comaroff, "Reflections on the Rise of Legal Theology Law and Religion in the Twenty-First Century," *Social Analysis* 53 Issue 1, (Spring 2009): 201.

[17] Some of those other goals included: opposition to proponents of the nuclear freeze agenda, opposition to those seeking to convince stockholders to divest of investments in South Africa, elimination of social welfare programs such as Head Start, food stamps, and school lunches, support for the goals and initiatives of the National Rifle Association, and opposition to giving the Republic of Panama full control of the Panama Canal. Jorstad, 7-8.

active, becoming involved in the Occupy Movement and calling for better treatment of the poor.[18]

However, there does not seem to be as much discussion of the foundational issue of whether Christian churches should be involved in legislative politics regarding particular moral questions in the first place, and if so, how that interaction should take place. Christian conservatives often presume that the answer to such questions is an unequivocal yes, and that the question of how that involvement should occur is largely irrelevant. This dissertation will describe the scriptural principles that can undergird an ethic by which a Christian church could both uphold its own rights of conscience and belief while at the same time being supportive of those rights for others. The ethic proposed here will not only be in line with Christian principles, but will be supportive of the American democratic experiment as well.

Furthermore, there is very little scholarship that attempts to address the biblical verses that might be related to this issue. Much of the scholarship from a liberal Christian point of view is issue-based, as opposed to asking the question of how Christian institutions should engage with secular governments. In fact, it could be argued that much of the scholarship written from a conservative Christian perspective is also issue-based, concerned with the proper formation of a family or the rights of the unborn. There are also several works that are written from a political perspective, arguing either for or against the benefit of having religious voices in the public square.[19]

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[18] Jay Lindsay, "Religion Claims Its Place in Occupy Wall Street," *Yahoo News*, http://news.yahoo.com/religion-claims-place-occupy-wall-street-171204904.html (accessed May 25, 2014).

[19] A sample of these works will be mentioned in the Literature Review.

Limitations

First and foremost, this dissertation is limited in certain respects because of the history and perspective of the author. I write from the perspective of an African-American Seventh-day Adventist. While I make no claim to speak for the entirety (or even the majority) of either of these groups, the culture and history of these groups respectively informs my analysis. The Adventist Church has had a long history of concern and advocacy on issue of religious liberty, not only as an internal matter but also in ways that have affected the course of jurisprudence in this country.[20] The history of African-Americans in this country has an undeniable emphasis on freedom that also informs this work for me.

This dissertation makes several assumptions, and therefore is limited by those assumptions. I am assuming in this dissertation that it is politically, constitutionally, and democratically proper for religious groups to be involved in public political debates, and even that it may be proper in these ways for Christian religious groups to propose, advocate for, and support legislation that inculcates their particular beliefs into the American framework. However, I also acknowledge that I am working from a unique Christian perspective that presupposes that America is not a Christian nation, that it was not created to be one, and that it should not attempt to be. Therefore, the attempts by Christians of any political stripe to inculcate particular tenets of their faith are at least worrisome to me; if not a total anathema.

Because so much of the scholarship on this issue is written from a political viewpoint, (i.e., the legitimacy of religious voices in the public square) there could be a

[20] For example, see *Sherbert v. Verner*, which will be discussed in more detail in Chapter 2.

concern that this thesis will be applied and criticized beyond its bounds. Many authors have criticized the idea that religious voices should be left out of the public debate, or that laws cannot be based on explicitly religious grounds.[21] While those arguments have legitimate democratic concerns that they are attempting to address, this thesis attempts to answer those concerns in a different way. It is undemocratic to abstractly restrict any particular voices from the political debate.[22] However, it is not undemocratic for any particular group to decide that it will not use its voice in a certain way about certain issues. The goal of this dissertation is to propose principles from scripture that can form the basis of a biblical hermeneutic for Christian groups to be more careful about their modes of political engagement on certain issues. It will not make an abstract political statement about what groups should or should not be allowed to say in the public square.[23]

Similarly, there may also be a desire to apply this theory to other religious political movements in American history. Movements like the abolitionist movement of the Nineteenth Century that led in part to the end of American slavery or the Civil Rights Movement that led to the end of legal racial segregation could certainly be analyzed in the same way. However, it would not do justice to any of those movements to attempt to

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[21] For an example of an argument for the removal of religion from the public square see Robert Audi and Nicholas Wolterstorff, *Religion in the Public Square: The Place of Religious Convictions in Political Debate*, (Lanham, MD: Rowman & Littlefield Pub. Inc., 1997), 6-8.

[22] See Jeffrey Stout, *Democracy and Tradition*. (Princeton, NJ: Princeton Univ. Press, 2004), 63-91; Stephen Carter, *The Culture of Disbelief: How American Law and Politics Trivialize Religion,* (New York: Anchor Books, 1994), 213-32.

[23] For an interesting discussion of religion in the public square, see Richard Neuhaus, *The Naked Public Square* (Grand Rapids, MI: William B. Eerdmans Pub. Co., 1984).

engage in an analysis of every major American religious political movement here. As such, this dissertation is limited to a discussion of the biblical basis for legislative political activity promulgated by Francis Schaeffer and adopted by the Religious Right.

Moreover, this dissertation is not dogmatic in its thesis. Therefore, while I believe strongly in the thesis itself, this dissertation does not explicitly cast any moral aspersions on those who advocate other ethical positions with respect to Christian political involvement, nor does it attempt to argue that there are no reasonable answers to this question other than what is presented in this dissertation. This dissertation will present the evidence for a biblical ethic of separation and apply it to issues within the American political context.

Based on the issue of acceptable arguments in the public square, there is also a significant question as to where this argument would apply. The thesis of this dissertation is that it is at the very least biblically problematic for the Christian Right to assert their ideology legislatively in the public square on these particular issues. It would be contradictory to the foundation of this thesis to assert that the political theology proposed by this dissertation was a politically viable argument. As such the audience for this dissertation is strictly a Christian religious audience.

Furthermore, this dissertation does not seek to draw any conclusions regarding the origin of the commonality of principles in the constitutional jurisprudence and the Bible itself. It could be argued that the constitution is based on biblical principles. Regardless, this dissertation only seeks to point out the commonality of biblical principles to the jurisprudence related to religion to show that there is a way to look at both in support of each other in a way that the Religious Right has largely eschewed, and has actively

argued against. Moreover, this dissertation is not making any argument about the constitutional limits of action in accordance with conscience. In fact, no argument is being made with regard to the constitutionality of any particular action or mode of religious political activity.

Finally, this dissertation is primarily focused on Francis Schaeffer's ideology and its effect on the Religious Right. There are other people involved in the Religious Right who espoused theories of religious political engagement.[24] However, no one has had an influence on the ideology of the Religious Right like Schaeffer. While other works may be cited, the primary understanding of Christian political engagement and the critique of those theories will be addressed to Schaeffer's ideas. While there may be sections of Schaeffer's argument that can be described as secular, Schaeffer's theology of political engagement is founded on the belief that Christian principles should form the foundation of society and espoused in society's laws. This dissertation is critical of the political theology at the root of Schaeffer's argument, without making any particular objections to what may seem to be secular outgrowths that stem from those theological roots.

Literature Review

There are several different authors who informed my engagement with the topic of this dissertation. The first scholar I noticed who made biblical arguments regarding the separation of church and state was Dr. James Wood. This dissertation will largely be in reference to his work in this area. His bibliography, *Church and State in Historical*

[24] Ralph Reed's book, *Active Faith*, is just one example. Ralph Reed, *Active Faith: How Christians are Changing the Soul of American Politics*, (New York: The Free Press, 1996).

Perspective, was invaluable as a scholarly foundation for this work.[25] While he dealt with several of the same themes at a more general level, this thesis will give an expanded treatment to some of the same ideas he expressed in his work.

In his book, *A Secular Faith – Why Christianity Favors the Separation of Church and State*, Darryl Hart asks a question that is quite close to the theme of this dissertation. He writes, "Instead of asking what role is permissible for Christians and their religious institutions in a liberal democracy, this book begins with a very different question: What does Christianity require of its adherents politically?"[26] Hart argues that the basic teachings of Christianity cannot solve America's political squabbles, and thereby the dilemma of how to relate Christianity to American politics is reduced, if not eliminated.[27] While I agree with much of Hart's analysis, this thesis will move in a slightly different direction by focusing more on the biblical text and applying principles from it to current political issues, as opposed to the historical analysis present in Hart's work. Similarly, Peter Berger discusses the ethic of faith and its effect on political activity from a sociological perspective in his book, *The Noise of Solemn Assemblies*.[28] Dr. Berger also asks a question very close to the question at issue in this dissertation – how faith should affect (or not affect) the political process. However, he does not fully address the many

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[25] James E. Wood, Jr., *Church and State in Historical Perspective: A Critical Assessment and Annotated Bibliography*, (Westport, CT: Praeger, 2005).

[26] Hart, 11.

[27] Ibid.

[28] Peter Berger, *The Noise of Solemn Assemblies: Christian Commitment and the Religious Establishment in America*, (Garden City, N.Y.: Doubleday and Co. Inc., 1961).

theological bases for the argument for the ethic of faith and obviously cannot relate it to current political issues.

Other authors have been critical of religious political activity from a religious perspective. In 1999, Cal Thomas and Dr. Ed Dobson wrote *Blinded By Might*, a book that argued that evangelicals were seduced by political power and needed to refocus on the foundational principles of Christianity.[29] Thomas and Dobson argued, amongst other things, that the Moral Majority and other organizations like it became too broad and that they had settled for acquiring political power instead of using spiritual power, which, the authors felt, was actually the better power. The authors used some biblical analysis to support their case. However, they did not do what this dissertation will do, which is to suggest an actual ethic of separation that can be supported scripturally.

In *Christians and Politics Beyond the Culture Wars*, a series of authors provide their thoughts about the creation of a Christian public theology and the role of Christians in the public square. Two authors are worthy of particular examination. In his essay, "From Despair to Mission: Toward a Christian Public Theology for the New Millennium," David P. Gushee engages in a fair amount of scriptural analysis, of the type that will occur in this dissertation. Gushee focuses almost primarily on the New Testament, but comes to very similar conclusions about what the Bible says about political activity.

Gushee states, "There is a space for Christian engagement with government and its policies… yet it is a matter of putting first things first to note that Jesus established

[29] Cal Thomas and Ed Dobson, *Blinded By Might: Can the Religious Right Save America?* (Grand Rapids, MI: Zondervan Pub. House, 1999), 40, 53-54, 95.

evangelism and disciple making as the primary means for the accomplishment of the church's task until he returns."[30] While this statement is not the central idea of this dissertation, it is the idea that is the natural conclusion of the biblical analysis conducted herein.

An example of an author of whom this dissertation would be critical is Ronald Sider. In his essay "Toward an Evangelical Political Philosophy," Sider attempts to identify both the methodology as well as the paradigms and principles that should be involved in an evangelical political philosophy.[31] Some of the principles, such as religious freedom and a respect for individuality, are held in common with the ideas advocated here. However, the system advocated by Sider is founded on the idea that Christians have a religious responsibility to create a polity that reflects Christian values, the very position that this dissertation critiques.

Some of the authors who critiqued the removal of religion from the public square are worthy of note here. Stephen Carter's work, *The Culture of Disbelief* and Jeffrey Stout's book, *Democracy and Tradition*, propose good arguments for the inclusion of religious beliefs in the public square and establish a serious critique to the Rawlsian arguments in favor of the removal of subjectivity and the appeal to the original position.[32]

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[30] David P. Gushee, "From Despair to Mission: Toward a Christian Public Theology for the New Millenium," in *Christians and Politics Beyond the Culture Wars: An Agenda for Engagement*, ed. David P. Gushee (Grand Rapids, MI: Baker Books, 2000), 36. Stanley Hauerwas makes a similar argument in *After Christendom*. Stanley Hauerwas, *After Christendom: How the Church Is to Behave If Freedom, Justice, and a Christian Nation Are Bad Ideas*, (Nashville, TN: Abingdon Press, 1991), 43-44.

[31] Ronald Sider, "Toward an Evangelical Political Philosophy," in *Christians and Politics Beyond the Culture Wars: An Agenda for Engagement*, ed. David P. Gushee (Grand Rapids, MI: Baker Books, 2000).

[32] Stout, 63-91; Carter, 213-32.

Carter also proposes the underlying concept of this dissertation in arguing that religious arguments should be dealt with theologically. These books are significant because they outline the context in which the thesis of this dissertation becomes necessary. The force of these arguments highlights the fact that if the role of the Christian church in American politics is to change while preserving the integrity of the democratic system, it must be accomplished from a theological perspective as opposed to a political one.[33]

Naturally there have been those who have defended conservative religious political activity on biblical grounds. In *Active Faith*, Ralph Reed, then Executive Director of the Christian Coalition, creates what he calls a "new political theology of political activism."[34] In it he establishes the idea that people of faith should use the political system whenever possible to address social evils.[35] He also promotes citizenship as a spiritual obligation and that Christians should assert their full rights as American citizens. Reed also cites some biblical evidence that will also be cited in this dissertation,

[33] There are several other works that make these arguments, at times using scripture as well. Two notable examples are Leo Pfeffer's work, *Church, State, and Freedom*, rev. ed, (Boston: Beacon Press, 1967), and more recently by Richard Neuhaus in *The Naked Public Square* (Grand Rapids, MI: William B. Eerdmans Pub. Co., 1984). The goal that I state here is also the stated goal of Luke Bretherton's book, *Christianity and Contemporary Politics: The Conditions and Possibilities of Faithful Witness*, (Malden, MA: Wiley-Blackwell, 2010). Bretherton, however, examines the issue in an entirely different way, examining the ways that faith groups have navigated these understandably complicated issues to express their faith within the political context. Also, John Howard Yoder's work, while having the same goals, will have significant points of commonality and departure with the ideas expressed in this dissertation. See John Howard Yoder, *The Christian Witness to the State,* (Newton, KS: Faith and Life Press, 1964).

[34] Reed, 255.

[35] Ibid., 256.

such as the examples of Joseph and Esther.[36] While there will be some elements of Reed's theology that will be echoed in this work, Reed's theology is premised on the idea that Christian churches should organize in order to establish Christian ideas of right and wrong through legislation, which is the opposite of the thesis of this dissertation.

The book *God and Politics*, edited by Gary Scott Smith, presents four different theories on Christian involvement with politics.[37] The four positions are Theonomy, Principled Pluralism, Christian America, and National Confessionalism.[38] While Principled Pluralism may have the most in common with the ideas presented in this dissertation, each of the theories can be described as at odds with the theory presented herein. The Theonomy, Christian America, and National Confessionalism positions are explicitly based on the idea that governments should be in line with Christian morality. The differences between the theories themselves are differences of mode and degree.

There are some works that are related to the supporting elements of this dissertation that are worthy of mention. Much of this dissertation is a criticism of the Religious Right, and there are several authors who have shaped my view of this prominent evangelical movement. Clyde Wilcox and Carin Robinson's *Onward Christian Soldiers*, as well as Daniel K. Williams' *God's Own Party* were invaluable texts in establishing the events and parameters of the movement.[39] Randall Balmer's *God in the*

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[36] Reed, 257.

[37] Gary Scott Smith, ed., *God and Politics: Four Views on the Reformation of Civil Government*, (Phillipsburg, NJ: Presbyterian and Reformed Pub. Co., 1989).

[38] The proponents of these positions are Greg L. Bahsen, Gordon J. Spykman, Harold O.J. Brown, and William Edgar respectively.

[39] See Clyde Wilcox and Carin Robinson, *Onward Christian Soldiers? The Religious Right in American Politics*, (Boulder, CO: Wetsview Press, 2011).

White House and *No Longer Exiles*, edited by Michael Cromartie, are essential to understanding and challenging the popular notion of the role of abortion in the formation of the Religious Right.[40] Finally Martha Nussbaum's book, *From Disgust to Humanity*, discusses the Christian Right's aversion to gay rights and same-sex marriage as part of what she calls the "politics of disgust."[41] She describes the respect given in American society to religious belief and argues that the same respect of moral self determination should be accorded to homosexual sexual identities as well. While her perspective is political, there are commonalities in this work between her focus on constitutional law and also her understanding of the common principles of freedom of conscience found in both law and the Christian religion.

Methodology

My dissertation will establish its thesis regarding separation of church and state in the Bible by first tracing a history of the phrase "separation of church and state" in American jurisprudence. Different types of cases will be examined that pertain to both the Free Exercise Clause and the Establishment Clause. The goal will be to ascertain the principles that undergird our understanding of the separation of church and state.

Then there will be a discussion of the presence of a similar concept in the pages of Scripture. This discussion will be based on an analysis of stories and pericopes in the Bible that highlight principles such as the delineation of responsibilities amongst

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[40] See Randall Balmer, *God in the White House: How Faith Shaped the Presidency from John F. Kennedy to George W. Bush*, (New York: HarperOne, 2008) and Michael Cromartie, ed., *No Longer Exiles: The Religious Right in American Politics*, (Washington, DC: Ethics and Public Policy Center, 1993).

[41] Martha Nussbaum, *From Disgust to Humanity: Sexual Orientation and Constitutional Law*, (New York: Oxford Univ. Press, 2010), xiii.

religious and political figures, the freedom of conscience, and the Christian's relationship with the state in the New Testament. The analysis will be based on a hermeneutic that is a combination of several different hermeneutical theories and will be described in greater detail in Chapter 3. The goal of this section will be to show the commonality between the principles of the Supreme Court in relation to the separation of church and state and the principles that the Bible espouses.

Finally, the dissertation will turn to the modern American political context in order to describe the ideological underpinnings of the Religious Right and to apply this biblical ethic to two recent religio-political issues. There will first be a thorough examination of Francis Schaeffer's theology as well as his beliefs with respect to religious political activity. Schaeffer was chosen because, as will be shown, his theological work motivated many of the progenitors of the Religious Right. I chose two issues for this dissertation, abortion and same-sex marriage. I chose these issues because they are current topics that involve very strong religious opinions and advocacy, yet they also have a history of debate and critique that can be examined. The methodology for these sections will consist of a general history of the issue, focusing on religious political involvement in particular. Then the biblical ethic of separation will be applied in order to critique the religious political involvement.

The basic question I am trying to answer is: although religious groups are able to do so politically, can a scripturally-based, biblical argument be made for an ethic of church-state separation that should at least give religious groups pause before entering the public square to advocate for the type of coercive legislation that espouses their beliefs

and values?[42] I believe the answer to be in the affirmative and that this dissertation will further the scholarly dialogue and debate about the proper role of religious groups in the public square from a religious point of view.

Chapter Outline

The first chapter of the dissertation will articulate the thesis that there is textual evidence for an ethical principle of the separation of church and state, that this principle can be found in both the Supreme Court jurisprudence and an interpretation of certain scriptures in the Bible, and that this ethical principle is applicable to current American political issues. Furthermore, it will outline the content of the different chapters of the dissertation.

The second chapter will be a discussion of the separation of church and state in the American legal realm. It will examine the jurisprudence of the Supreme Court under both the Free Exercise Clause and the Establishment Clause of the First Amendment. From these cases the principles of freedom of conscience and the non-imposition of morality will be established. The purpose of this chapter is to delineate the secular concept of separation of church and state and its undergirding principles in order to compare it with the biblical ethic that is the subject of this thesis.

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[42] The use of the term "coercion/coercive" and the phrase "coercive legislation" will be used repeatedly in this dissertation. In his book *Love and Power: The Role of Religion and Morality in American Politics*, Michael J. Perry outlines what coercion is and gives political considerations for why religious communities should be wary of its use. According Perry coercion involves forcing members of the community to make choices they do not want to make. Perry ties this to legislation, raising the concern that coercive legislation not subvert individual conscientiousness. For a fuller discussion on the negative effects of coercion see Michael J. Perry, *Love and Power: The Role of Religion and Morality in American Politics*, (New York: Oxford Univ. Press, 1991), 132-36.

The third chapter will move to a discussion of an ethic of church-state separation in the biblical text. Several verses will be examined analytically and contextually that outline examples that allude to the separation of religion from government as well as principles of freedom of conscience and the non-imposition of morality. In this chapter a biblical ethic of separation will be fully outlined.

The fourth chapter will look at the theology and hermeneutics of Francis Schaeffer. The chapter will outline Schaeffer's overall theological framework, and specifically examine his thoughts on Christians' participation in politics in America. The chapter will also summarize how Schaeffer, both during and after his life, influenced the movement that became known as the Religious Right. Finally, the chapter will include a criticism of Schaeffer's ideas based on the concepts established in Chapter Three.

Chapters Five and Six will be an examination of how the scriptural ethic of separation outlined in Chapter Three would affect current American political issues. The issues examined will be abortion and same-sex marriage. In each chapter a history of the issue will be given, as well as the arguments raised by the Religious Right, and any notable criticism. The ethic of separation will then be applied to these political issues to determine how it would change the role of the church both in politics and in society generally.

The seventh and final chapter will summarize the dissertation and also address more generally the role of the Christian church in society. This discussion will address how the ethic of separation examined in this dissertation would help to further the American democratic experiment while at the same time allowing the church to exercise the rights it enjoys under the U.S. Constitution.

CHAPTER TWO

The Principles Behind the Separation of Church and State

Introduction

The phrase "separation of church and state" is the mantra that is commonly understood to explain the basic relationship between religion and politics in America, at least as far as our governmental institutions are concerned. This phrase, however, cannot be found in the Constitution. It became part of the legal (and public) lexicon through a long history of Supreme Court jurisprudence. While many legal scholars focus on the fact that the phrase is commonly used in cases involving the Establishment Clause, the phrase also has a brief history in Free Exercise cases as well.

As with any simplistic phrase, the words "separation of church and state" do not fully convey the nuance involved in the constitutional understanding of the relationship between government and religion. This chapter will examine some of the Supreme Court cases in the area of religion to discover the seminal issues in this area of the law and also to determine some of the principles involved in guiding the Court when it adjudicates cases under the rubric of the separation of church and state.

Cases Under the Free Exercise Clause

Reynolds v. U.S.

While the principle of the separation of church and state is most often cited in jurisprudence related to the Establishment Clause, the phrase has also been cited in reference to the Free Exercise Clause as well. *Reynolds v. U.S.* was one of the first

Supreme Court cases to take up the issue of free exercise.[1] In 1862, President Lincoln signed the Morrill Anti-Bigamy Act into law, with support from both Republicans and Democrats.[2] There was a belief among some Mormons that the Morrill Act was unconstitutional based on their religious beliefs regarding polygamy.[3] In the summer of 1874, Mormon leaders, in conjunction with the U.S. Attorney General in Salt Lake City arranged a test case. George Reynolds, personal secretary to Brigham Young and married to two women, was chosen as the guinea pig. [4] Reynolds was surprisingly hard to convict. His first conviction was not assured until his second wife was subpoenaed, and then that conviction was overturned because the jury was improperly constituted.[5] He was finally convicted a year later and the case made its way to the Supreme Court.

In his opinion for the Court, Chief Justice Waite frames the issue that the Court is deciding; at least so far as First Amendment issues are concerned.

> [T]he question is raised whether religious belief can be accepted as a justification of an overt act made criminal by the law of the land. The inquiry is not as to the power of Congress to prescribe criminal laws for the Territories, but as to the guilt of one who knowingly violates a law which has been properly enacted if he entertains a religious belief that the law is wrong.[6]

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[1] *Reynolds v. U.S.* 98 U.S. 145 (1896).

[2] Malise Ruthven and Peggy Fletcher Stack, "The Mormons' Progress," *The Wilson Quarterly* (1976-), 15, no. 2 (Spring, 1991): 22-47, 33.

[3] James L. Clayton, "The Supreme Court, Polygamy and the Enforcement of Morals in Nineteenth Century America: An Analysis of Reynolds v. United States," in *Conscience and Belief, The Supreme Court and Religion*, Kermit L. Hall, ed. (New York: Garland Publishing Inc., 2000), 49.

[4] Ibid.

[5] Ibid.

[6] *Reynolds v. U.S.,*162.

Waite answers this question by citing the historical record of the debate over the religion clauses in the Constitution. The Chief Justice cites Thomas Jefferson extensively. Included in the quotations from Jefferson is his now famous letter to the Danbury Baptist Association in which he said,

> I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion or prohibiting the free exercise thereof,' thus building a wall of separation between church and State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore man to all his natural rights, convinced he has no natural right in opposition to his social duties.[7]

Based on this quote from Jefferson, Chief Justice Waite establishes the principle that the government cannot regulate against thought, but can regulate against "actions which were in violation of social duties or subversive of good order."[8] Waite then proceeds to establish that polygamy is an action that fulfills this principle by referring to the practice of polygamy as "odious" and as a practice that was normally restricted to Asians and Africans.[9] As a practical matter, Waite posited that allowing those who have a religious motivation to run afoul of the law would create instability.

> [T]he only question which remains is, whether those who make polygamy a part of their religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do, must be acquitted and go free.[10]

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[7] *Reynolds v. U.S.,*164.

[8] Ibid.

[9] Ibid.

[10] *Reynolds v. U.S.,* 166.

The court ruled that Congress had the ability to legislate conduct and that Reynolds' religious beliefs did not supersede his responsibility to follow the laws of the land. On this basis Reynolds' conviction for polygamy was upheld.

Although this decision did not protect the rights of the minority religion at issue, it is important to note that this is the first time that the phrase "separation of church and state" is cited in Supreme Court jurisprudence. Moreover, the Court is also attempting to wrestle with the line between protection of minority rights and necessary government intrusion. While much has changed in the political landscape since 1878, the issues that the Court must deal with in the realm of religion are largely the same.

Sherbert vs. Verner

Adele Sherbert was a Seventh - day Adventist who worked at a textile mill in South Carolina.[11] As a Seventh-day Adventist, Sherbert believed that Saturday is the Sabbath and is a day of rest from secular work. Therefore, Sherbert refused to work when the textile mill expanded its workweek to include Saturdays.[12] She was discharged from her job and was unable to find another job because of her religious beliefs.[13] Sherbert then applied for unemployment benefits and was rejected because it was determined that she was fired for just cause.[14] Sherbert was caught between religious loyalty and financial

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[11] Ronald B. Flowers, Steven K. Green, and Melissa Rogers, *Religious Freedom and the Supreme Court*, (Waco, TX: Baylor Univ. Press, 2008), 146.

[12] Ira C. Lupu, "Where Rights Begin: The Problem of Burdens on the Free Exercise of Religion," *Harvard Law Review*, 102, no. 5 (Mar., 1989): 941.

[13] Alfred G. Killilea, "Privileging Conscientious Dissent: Another Look at *Sherbert v. Verner*," *Journal of Church and State*, 16, no. 2 (Spring 1974): 201.

[14] John Witte, Jr., and Joel A. Nichols, *Religion and the American Constitutional Experiment,* 3rd ed., (Boulder, CO: Westview Press, 2011), 152.

need. She could either exercise her religious beliefs and not receive a benefit that was hers as a civil right, or she could forego her religious beliefs, but receive gainful employment. Sherbert lost her case at every judicial level. The South Carolina Supreme Court stated that the statute that governed Sherbet's case "place[d] no restriction upon appellant's freedom of religion, nor does it in any way prevent her in the exercise of her . . . religious beliefs in accordance with the dictates of her conscience."[15] Sherbert argued before the Supreme Court that the inability to act on her beliefs in this manner was a violation of her religious rights.

In a 7-2 decision in 1963, the Supreme Court agreed with Ms. Sherbert. Justice Brennan, writing for the Court, stated that, "[N]ot only is it apparent that appellant's declared ineligibility for benefits derives solely from the practice of her religion, but the pressure upon her to forego that practice is unmistakable."[16] After establishing that there was a burden on Ms. Sherbert's religion, Justice Brennan turns to the question of whether South Carolina had a "compelling state interest" in infringing on Ms. Sherbert's religious beliefs.[17] The state argued that allowing Sherbert to circumvent the rules would open the door to spurious claims which would dilute the funds and rob employers of the ability to schedule necessary Saturday work.[18] The Court found that this argument had not been made on the state level, and also that even if they could prove this claim, it was still incumbent of the state to show that no alternative measures could solve that problem

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[15] *Sherbert vs. Verner*, 374 U.S. 398, 401 (1963).

[16] Ibid., 404.

[17] *Sherbert vs. Verner*, 406.

[18] Ibid., 407.

without infringing on First Amendment rights.[19] Based on the findings that the state infringed on Ms. Sherbert's rights and that it did so without a compelling state interest, the Court ruled that Ms. Sherbert could not be denied her unemployment benefits.

The effect of the *Sherbert* case was unmistakable. The creation of the "compelling state interest test" reversed the understanding of free exercise that had been established in *Reynolds*. The *Sherbert* case now allowed laws to be deemed unconstitutional even when they posed unintentional burdens on someone's conscience.[20] Furthermore, "Sherbert was the first clear, succinct, and complete statement of what constitutional lawyers have come to mean by the phrase "strict scrutiny."[21] In the *Reynolds* case, the Court was concerned about stability in the system. The free exercise clause was viewed as something that could create massive legal exemptions if taken to its logical conclusion. In *Sherbert*, the Court's focus shifted from legislative and societal stability to the protection of minority rights, and the litmus test of a violation became the effect on the person, not the abstract effect on society.[22] While there is not a specific mention of the separation of church and state, the principle seems to be present in this case. The Court in *Sherbert* attempts to create a space where the laws and benefits of the state will not be denied based on the religious beliefs of the petitioner, removing the influence of the state from the religious conscience of the individual.

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[19] Ibid.

[20] Killilea, 198.

[21] Stephen A. Siegel, "The Origin of the Compelling State Interest Test and Strict Scrutiny," *The American Journal of Legal History*, 48, no. 4 (Oct., 2006): 355-407, 380.

[22] Lupu, 492; Killilea, 198.

Oregon v. Smith

The case of *Employment Division of Oregon v. Smith*, decided in 1990, refers to *Reynolds v. U.S.* as it implicitly reestablishes the rationale of *Reynolds* in the realm of Free Exercise jurisprudence.[23] Petitioners Alfred Smith and Galen Black were employed at a drug rehabilitation center.[24] As a condition of their employment, they were prohibited from using any of the drugs on Oregon's list of dangerous drugs, which included the drug peyote.[25] Accordingly, they were fired from their jobs when it was discovered that they ingested peyote as part of religious services with a Native American Church.[26] They applied for unemployment compensation, and the state denied them this service because they were fired for work-related misconduct.[27] Smith and Black relied on the *Sherbert* decision among others, claiming that the state violated their right of free exercise.

Unlike *Sherbert*, the Court did not rule in favor of the religious minority. In a decision written by Justice Scalia, the Court not only ruled against Smith, but effectively overruled *Sherbert* and the compelling state interest test, despite the fact that none of the parties asked the Court to consider the constitutionality of the compelling state interest test. It is common practice that if the Court is considering a rationale not argued by the

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[23] *Employment Div. v. Smith*, 494 U.S. 872 (1990).

[24] Witte, Jr., and Nichols, 159.

[25] Flowers, Green, and Rogers, 209.

[26] Kent Greenawalt, *Religion and the Constitution, Vol. 1 Free Exercise and Fairness*, (Princeton: Princeton Univ. Press, 2006), 76.

[27] Michael W. McConnell, "Free Exercise Revisionism and the Smith Decision," *The University of Chicago Law Review*, 57, no. 4 (Autumn, 1990): 1111.

parties, it asks the parties to brief the issue in question and calls for a new argument.[28] However, Scalia spends a lot of time attempting to prove that this is not that drastic of a change at all. He states, "We have never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate."[29] Scalia reaches back to *Reynolds* in order to support his position in this matter.[30] He then goes on to distinguish *Sherbert* and the compelling state interest test as a rule that can be applicable in the realm of unemployment compensation, but not in the instant case.[31] In place of the compelling state interest test, Scalia establishes the standard "that the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)."[32] Scalia ends the opinion by making two points. First, Scalia stresses that the logical conclusion of the compelling state interest test is anarchy, a danger which is multiplied by the diversity of our society. The possibility of anarchy is undesirable and should be avoided.[33] Finally, Scalia says that religious minorities and others who are seeking to protect their rights are not without redress. Their realm for relief is the realm of the legislature, and while

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[28] Douglas Laycock, "The Remnants of Free Exercise," *The Supreme Court Review*, 1990 (1990): 36.

[29] *Employment Div. v. Smith*, 878-79.

[30] Ibid.

[31] *Employment Div. v. Smith*, 884.

[32] Ibid.

[33] *Employment Div. v. Smith*, 888.

religious minorities may find the legislative process unfriendly, that disadvantage is preferred to the alternative.[34]

Scalia reasserts, in new terms, the standard first established in *Reynolds*. While religious minorities do not seem to have much recourse under this system, there is still a form of separation of church and state that is being advocated here. It seems that what concerns Scalia about the separation of church and state is the not the result but the intent of the makers of the law. If there is evidence that the law is not valid or neutral, and that the legislature at issue targeted a religious group specifically, then that law should be struck down. Such a case occurred in 1993, just three years after Scalia's opinion in *Smith*.

Church of the Lukumi Babalu Aye v. Hialeah

In 1993 the Supreme Court decided the case of *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*.[35] The Church of Lukumi Babalu Aye practiced the Santeria religion, a combination of the traditional African religion of the Yoruba and elements of Roman Catholicism.[36] One of the particularly meaningful rituals of the religion is animal sacrifice.[37] In April of 1987 the Church of Lukumi Babalu Aye leased land in Hialeah, Florida and announced plans to build a church there.[38] In response to concerns raised by members of the community, the Hialeah city council held an emergency public session.

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[34] Ibid., 890.

[35] *Church of Lukumi Bablu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993).

[36] Ibid., 524.

[37] Ibid.

[38] *Church of Lukumi Bablu Aye, Inc. v. Hialeah*, 525-26.

At that session the city council adopted a resolution that stated their commitment "to a prohibition against any and all acts of any and all religious groups which are inconsistent with public morals, peace, or safety"[39] To that end, the council also approved an emergency ordinance that incorporated Florida's animal cruelty laws. Moreover, Hialeah's city attorney sought the counsel of the Attorney General of Florida in order to determine whether the city could outlaw religious animal sacrifice. Once the Attorney General gave his approval, the City Council then adopted three more ordinances that defined sacrifice, outlawed the practice, and prohibited the slaughter of animals outside of areas zoned for such purposes.[40] In response the church filed suit claiming a free exercise right to continue the religious practice at issue.[41]

The District Court ruled in the city's favor, despite the fact that it did not find that the ordinances were religiously neutral.[42] The Court ruled instead that the ordinances did not explicitly target religious conduct and that laws regulating religious conduct are constitutionally valid when the religious conduct is contrary to public health and welfare.[43] The District Court also found four compelling interests on the part of the city. First, that animal sacrifices were a viable health risk. Second, there could be emotional injury to children who witnessed animal sacrifices. Third, the city had a compelling interest in protecting the lives of animals. Fourth, the Court found that the city's interest

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[39] *Church of Lukumi Bablu Aye, Inc. v. Hialeah*, 526.

[40] Ibid., 527-28.

[41] Ibid., 528.

[42] Ibid., 528-29. The District Court decision in this case was decided before the *Smith* decision.

[43] Ibid., 529.

in regulating the slaughter of animals to the proper zoned areas to be compelling.[44] The church appealed the decision and the Court of Appeals for the Eleventh Circuit upheld the lower court's decision.[45]

The Supreme Court however, disagreed and ruled in favor of the Church of Lukumi Babalu Aye. The Court determined that the language of the ordinances had the potential to be facially neutral, but that it was clear from other elements of the record that the goal of the city council was to prohibit the religious practices of the Santeria. Justice Kennedy wrote, "It is a necessary conclusion that almost the only conduct subject to [the] Ordinances… is the religious exercise of Santeria church members. The texts show they were drafted in tandem to achieve this result."[46] The Court also found that the city could address its concerns by passing other laws without the prohibition on this particular exercise.[47] Furthermore, the ordinances did not address all actions that would fall under the city's stated concerns.[48] Based on these findings the Court found the ordinances at issue to be neither neutral nor generally applicable, as the recent Smith standard demanded. Considering that the Court did not find the interests offered by the city to be sufficiently compelling, the ordinances were struck down.

One of the main principles of this case can be found in a statement of Justice Kennedy near the beginning of the Court's opinion. In reference to the religious practices

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[44] Ibid., 529-30.

[45] *Church of Lukumi Bablu Aye, Inc. v. Hialeah*, 530.

[46] Ibid., 535.

[47] Ibid., 538.

[48] Ibid., 543.

of the Santeria Justice Kennedy wrote, "Although the practice of animal sacrifice may seem abhorrent to some, religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection."[49] Not only is freedom of conscience protected, but there is also a free exercise protection from any governmental entity that seeks to impose its religious values on others.

The cases that relate to the separation of church and state in Free Exercise jurisprudence are primarily concerned with one major issue – protection of the freedom of conscience and the ability to act on those beliefs. The Supreme Court, however, has not always been clear about where the line between thought and actions is. In *Reynolds*, the Court was very clear that there was very little protection for actions based on religious conscience, despite the fact that the freedom to believe as one wished was totally protected. The Court said almost the complete opposite in *Sherbert*, granting action based on religious belief the highest judicial protection. For all intents and purposes that decision was overruled by *Smith*, in which Scalia sent religious minorities to the legislature for redress of their grievances. Despite that ruling, the Court finds for a religious minority when it is clear that religious animus is at the root of legislation, as in the *Hialeah* decision. Regardless of the Court's particular ruling at the time, its concern for freedom of conscience and the ability to act is paramount, not only in Free Exercise cases, but also in Establishment Clause cases as well.

[49] *Church of Lukumi Bablu Aye, Inc. v. Hialeah*, 531. (Internal citations omitted.)

Cases Under the Establishment Clause

Aid to Church-Related Schools and the Lemon Test

Under the jurisprudence of the Establishment Clause, the concept of the separation of church and state is much more apparent. The first instance of its use is found in the case *Everson vs. the Board of Education of the Township of Ewing*.[50] At issue in the case was a New Jersey statute that authorized local school districts to make rules for the transportation of children to and from school. Under the power granted by this statute, the Board of Education in Ewing allowed parents to be reimbursed for the costs of transportation incurred by the parents in transporting their children to and from school on the public bus system. As a result, parents were reimbursed with state funds despite the fact that their children were using the bus system to attend Catholic schools in the area. A taxpayer in the township sued, arguing that the system forced taxpayers to support religious schools, and that this was a violation of the Establishment Clause.[51]

The Supreme Court ruled in favor of the Board of Education, despite the fact that the rhetoric of the opinion did not seem to justify such a result. Justice Black, who drafted the Court's opinion, established the overarching rubric by which future Establishment Clause cases would be judged. In defining what the Establishment Clause prohibits, Justice Black included the idea that the state cannot "pass laws which aid one religion, aid all religions, or prefer one religion over another."[52] In this definition, Justice Black also cites *Reynolds'* use of Jefferson and the "wall of separation between church and

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[50] *Everson v. Board of Education of the Township of Ewing*, 330 U.S. 1 (1947).

[51] Ibid., 3-4.

[52] Ibid., 15.

State." But the Court goes beyond a simple citation. The Court goes on to say, "The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach."[53] However, the Court found that New Jersey had not breached the wall because to offer the reimbursement to public school parents and not parochial school parents could be the state hampering the free exercise of the religious parents in the state on the basis of their religion.[54]

This case is one of the first in which we see the Court attempting to wrestle with the supposed tension between the Free Exercise Clause and the Establishment Clause. The Court does seek to protect the consciences of the citizenry as it delineates the ways in which the state can violate the Establishment Clause. At the same time, the freedom to act on that conscience is also protected because the Court is careful to not exalt those who do not attend religious schools above those who do. While the Court allows the exemption here, it is not without stern language about the necessity of keeping the state out of religious affairs. The Court will come to rule that the converse is true as well.

The case of *Lemon v. Kurtzman*, decided in 1971, furthered *Everson* by establishing a test for when a state action runs afoul of the Establishment Clause.[55] At issue in this case were two state statutes, one in Pennsylvania and one in Rhode Island. Both states established very similar programs to provide financial support for non-public elementary and secondary schools. The program in Pennsylvania allowed for the reimbursement of teachers' salaries and costs for those teachers that taught secular

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[53] Ibid., 18.

[54] *Everson v. Board of Education of the Township of Ewing*, 16.

[55] *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

subjects.[56] In Rhode Island, the state paid teachers a supplement up to 15% of their salary directly.[57] As in *Everson*, taxpayers brought suit claiming that the statutes violated both the Establishment and Free Exercise clauses.[58]

The Court ruled that both statutes were unconstitutional. In doing so, the Court created a three part test for Establishment Clause violations, which it found by streamlining criteria that the Court used in deciding previous cases.[59] According to the Court in *Lemon*, a state law violates the Establishment Clause if it does not pass these criteria: "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."[60] The Court found that the statutes at issue in this case did not have a religious purpose. However, the Court did not reach the second criteria because it found that there was excessive entanglement between the government and religion in both cases.[61] The Court found that the close connection between the schools and churches in the area made the Court uncomfortable. Furthermore, the Court found that it would be difficult for teachers to remain religiously neutral, even if the teachers taught secular subjects. Because of this, the amount of

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[56] Ibid., 606-07.

[57] *Lemon v. Kurtzman*, 607.

[58] Lemon specifically was the name of a parent of a child attending a public school in Pennsylvania. Ibid., 611.

[59] Ibid., 612.

[60] Ibid., 612-13. (Internal citations omitted.)

[61] Ibid. 613-14.

oversight the state would have to conduct in order to ensure the proper functioning of the program would be enough to create an excessive entanglement.[62]

The Court's decision in *Lemon* addresses the need of the Court to create a rubric by which to adjudicate these cases. In each of the three steps of the *Lemon Test* the Court upholds the principles of freedom of conscience for religious and irreligious people alike, as well as a desire to avoid the imposition of religiously-based morality. The first test, that the law in question not have a religious purpose is in line with the analysis of the Establishment Clause in *Everson*, but it also is cognizant of the fact that laws with a religious purpose would impose a religiously-formed concept of morality on those who may not adhere to those particular religious beliefs. The second test, that the law not have the primary effect of advancing religion is also in line with the same principles as the first test, but it goes further in order to remove even the imprimatur of religious influence in the laws we create. Finally, the test of excessive entanglement is actually a protection of the church from the state. The Court established this aspect of the *Lemon* test in order to ensure that the state was not involved in the affairs of the church so that the church as an institution can have the freedom to adjudicate its affairs as it pleases.[63]

The Court's decision in *Agostini v. Felton* made a significant change to the three-part test the Court created in *Lemon*.[64] The practice at issue was a New York policy that

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[62] Ibid. 615-16.

[63] The case of *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission* 565 U.S. ____ (2012) is a current example of this principle. In that case the Supreme Court reaffirmed the ability of church institutions to hire and fire their religious employees, even in the face of evidence of possible discrimination.

[64] *Agostini v. Felton*, 521 U.S. 203 (1996).

sent public school teachers to parochial schools to teach disadvantaged children. In a previous case, *Aguilar v. Felton*, the Court ruled that the way the state enacted the policy with respect to parochial schools violated the Establishment Clause. At the time the Court found that the practice of having public school teachers teach at parochial schools gave the imprimatur of entanglement and disallowed the program in that form. Twelve years later, the parties represented the case, arguing that Supreme Court decisions in the interim changed the landscape of Establishment Clause law and that the program no longer violated that clause. The Court agreed.[65]

The Court found that the circumstances that it decided gave proof of excessive entanglement were no longer plausible. In *Aguilar* the Court felt that the presence of state employees on the grounds of parochial schools constituted a symbolic connection between church and state. In the case of *Zobrest v. Catalina Foothills School District*, however, the Court reversed its position, finding that the use of a state employed language interpreter at a parochial school did not violate the Establishment Clause.[66] As such, the Court could not allow the presumption given in *Aguilar* to stand. Furthermore, the Court ruled in *Aguilar*, as it had in several cases before it, "that all government aid that directly assist[ed] the educational function of religious schools [was] invalid."[67] In *Witters v. Washington Dept. of Servs. For Blind*, the Court ruled that there was no Establishment Clause violation when the state issued a grant to a blind person who the state knew would use the funds for religious training. The Court found that because the

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[65] *Agostini v. Felton*, 208-09.

[66] *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1 (1993).

[67] *Agostini v. Felton*, at 225.

grant was made available on equal terms to everyone and that there was no regard for the institution that was going to be affected. This ruling directly undercut the previous stance of the Court because in *Witters* the grant at issue was going to directly assist the educational function of the school.[68] Granting the fact that they allowed the use of state funds in *Witters*, the Court could no longer work from the presumption that direct assistance to a religious school because of some form of government aid was per se in valid.

The Court went further in *Agostini* by also making fundamental changes to the three part test that it established in *Lemon*. The Court discovered that "the factors that we use to assess whether an entanglement is 'excessive' are similar to the factors that we use to examine effect."[69] In both instances the Court "looked to the character and purposes of the institutions that are benefited and the nature of the aid that the State provides."[70] As a result the Court subsumed the third part of the *Lemon* test into the second and treated excessive entanglement "as an aspect of the inquiry into a statute's effect.[71] *Agostini* has had the effect of lessening the Supreme Court's use of the *Lemon* test, but *Lemon* has never been explicitly overruled, and lower courts still tend to use it as a starting point in decisions regarding the Establishment Clause.[72]

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[68] *Witters v. Washington Dept. of Services for the Blind*, 474 U.S. 481 (1986).

[69] *Agostini v. Felton*, 232.

[70] Ibid.

[71] Ibid., 233.

[72] Witte and Nichols, 186.

In the case of *Zelman v. Simmons-Harris*, the Supreme Court upheld the free exercise right of private choice when it is in conflict with a potential Establishment Clause violation.[73] The state of Ohio established a program for financial assistance for parents with children in the Cleveland City School District. In short, the program provided tuition aid for students in kindergarten through third grade that expanded each year through eighth grade. It allowed for parents to send their child to any public school or private school that the parents chose. The private schools involved in the program had to agree not to discriminate based on race, ethnicity or religion, or teach or advocate any unlawful behavior based on those criteria.[74] After three years of the program, 82% of the private schools involved in the program were religiously affiliated. Moreover, of the more than 3700 students in the program, 96% of them enrolled in religiously affiliated schools.[75] A group of Ohio taxpayers brought suit, arguing that the program violated the Establishment Clause. The lower courts involved in the case ruled in favor of the taxpayers, finding in conjunction with the *Lemon Test* that the program had the primary effect of advancing religion.[76]

The Court disagreed and ruled in favor of the state. Relying on cases such as *Agostini v. Felton*, the Court solidified a distinction between the state attempting to establish a religion or certain religious activity, and state aid to a certain class of people which then finds its way to religious institutions. The facts of the *Zelman* case, according

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[73] *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002).

[74] *Zelman v. Simmons-Harris*, 644-45.

[75] Ibid. 647.

[76] *Zelman v. Simmons-Harris*, 648.

to the Court, clearly fell into the latter category. The Court said, "where a government aid program is neutral with respect to religion, and provides assistance directly to a broad class of citizens, who, in turn, direct government aid to religious schools wholly as a result of their own genuine and independent private choice, the program is not readily subject to challenge under the Establishment Clause."[77] The Court found that the Ohio program was neutral with respect to religion and that the government funds only found their way to religious institutions because of the private choice of the parents, and not through any particular action of the government.

The issues of the free exercise clause and the establishment clause are issues that ask the Court to balance two very important concerns. First, the Court has to weigh the private decisions of conscience, and the ability to act on those decisions. Second, the Court must consider the use of the government to impose religious values on elements of society, including through the use of government funds. The Court's decision in *Zelman* is an example of the Court reasserting its belief in the freedom of conscience and the realm of private decision. Despite the fact that at this particular point the issue of excessive entanglement is not officially a part of the Court's thinking, the Court in this case ruled that there was no excessive entanglement or primary effect when the intervention of the conscience by the citizen is the cause of government funds going to religious institutions.

Religion in Public Schools

The same principles that the Court uses to decide cases involving state support can be found in cases where forms of religious teaching and practice occurs in public

[77] *Zelman v. Simmons-Harris*, 652.

schools. One of the first examples of this is the case of *McCollum v. Board of Education*, decided in 1948.[78] In Champaign, IL, a religious group made up of Jews, Catholics, and Protestants received permission from the local school board to provide religious instruction in the public schools of that town. The classes were held for students between fourth and ninth grade, and only for those students whose parents granted permission. The classes were held at no expense to the schools themselves, and did not use public school teachers. The school, however, held the classes on school grounds. Students not involved in the religious instruction were removed from the classroom and taken to another area in the school to continue their regular studies. Attendance was mandatory for those students involved in the program.[79]

Citing *Everson*, the Court ruled against the Board of Education and found the program to be a violation of the Establishment Clause. The Court found that not only was it a problem for the religious group to use the public school building to disseminate religious doctrine, but the state afforded the different religious groups "an invaluable aid" because of the fact that the students are required by law to attend school, and thereby become privy to the religious instruction being offered.[80] The Court decided that in the spirit of *Everson*, the "wall between church and state…must be kept high and

[78] *McCollum v. Board of Education*, 333 U.S. 203 (1948).

[79] *McCollum v. Board of Education*, 207-09.

[80] *McCollum v. Board of Education*, 212.

impregnable."[81] The Court ultimately found that the program established in Champaign was "not a separation of church and state."[82]

New York City attempted to create a system for release time religious instruction in the case of *Zorach v. Clauson*.[83] New York City's program was different from the program at issue in *McCollum* in that the students left school grounds during the school day in order to receive religious instruction. Students participated in the program with their parents' permission. Students not involved in the program stayed in their classrooms, and the churches involved gave weekly reports to the school, ensuring that students who were leaving actually attended the religious classes. Taxpayers in New York sued, arguing that this was a clear violation of the Establishment Clause and that there was no major distinction between this program and the program at issue in *McCollum.* The taxpayers saw that the influence of the school was in support of this religious program, that the public school teachers were helping to administer it and that without school cooperation that program would not be successful.[84]

Unlike *McCollum*, the Court upheld the New York City program as constitutional. The Court found that there was no coercion involved in this program in terms of getting students into religious classrooms. The school in this instance remained neutral and only released those children whose parents requested it.[85] While the Court upheld the principle

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[81] Ibid.

[82] Ibid.

[83] *Zorach v. Clauson*, 343 U.S. 306 (1952).

[84] *Zorach v. Clauson*, 307-10.

[85] Ibid., 311-12.

of separation of church and state it also found that to not allow the state to cooperate with religious institutions in order to allow citizens to practice their faith would be showing "a callous indifference to religious groups."[86] The state could not coerce anyone to take religious instruction, but it could make it easier for students to receive such instruction.

The state of New York was also the site for *Engel v. Vitale*, the first case where the Supreme Court addressed school prayer.[87] The Board of Education of the Union Free School District No. 9 in Hyde Park, New York sanctioned a prayer to be said aloud in class each morning in the presence of a school teacher. The prayer read, "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers, and our Country."[88] The parents of ten of the pupils in the district sued claiming that the prayer was contrary to the beliefs and practices of their families. The state argued that because the prayers were based on the nation's spiritual heritage and were nondenominational then there was no violation of the Establishment Clause.[89]

The Supreme Court disagreed and ruled school mandated prayer unconstitutional. The Court described the school district's policy as "wholly inconsistent with the Establishment Clause," and found that it breached the wall of separation between church and state.[90] To bolster its decision, the Court cited the history of the founding of this country, with special emphasis on the fact that many colonists came to America in order

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[86] *Zorach v. Clauson*, 314.

[87] *Engel v. Vitale*, 370 U.S. 421 (1962).

[88] Ibid., 422.

[89] *Engel v. Vitale*, 423.

[90] Ibid., 424-25.

to escape religious persecution. Furthermore, the Court criticized those colonists for legislatively establishing their own faiths after being "strenuously opposed [to] the established Church of England."[91] The Court then said, "The First Amendment was added to the Constitution to stand as a guarantee that neither the power nor the prestige of the Federal Government would be used to control, support or influence the kinds of prayer the American people can say -- that the people's religions must not be subjected to the pressures of government for change each time a new political administration is elected to office."[92] Justice Black, who wrote the decision for the Court, was careful to point out that the Court's decision was not an attack on religion or prayer. Instead, Justice Black believed that the drafters of the Constitution added the First Amendment to end governmental control over religion and prayer, but not because they viewed either as a negative. He wrote, "It is neither sacrilegious nor anti-religious to say that each separate government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves and to those the people choose to look to for religious guidance.[93]

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[91] *Engel v. Vitale*, 427.

[92] *Engel v. Vitale*, 429-30.

[93] Ibid., 435. In subsequent years the Supreme Court has reaffirmed its stance on school led prayer under several different circumstances. In *School Dist. Of Abington Tp. V. Schempp*, the Court ruled against the reading of Bible verses and the recitation of the Lord's prayer, despite the fact that the school allowed students to be excused from participating. 374 U.S. 203 (1963). In *Wallace v. Jaffree*, the Court struck down an Alabama statute that allowed for a period of silence for meditation or voluntary prayer. The Court decided that the statute did not pass the first test of *Lemon*, in that it did not have a secular purpose. 472 U.S. 38 (1985). The Court deemed prayers by religious officiants at graduations unconstitutional in *Lee v. Weisman*. The Court found that the school's supervision of the graduation exercises placed pressure on students to participate in the religious ceremony and that pressure violated the Establishment Clause. 505 U.S. 577 (1992). Finally, The Court ruled against student led prayer in *Santa Fe ISD v. Doe*.

Public Displays of Religion

One of the areas of Establishment Clause law where the Supreme Court has been somewhat forgiving is the area of public displays that involve religion. One of the first cases to address this particular concern was *Lynch v. Donnelly*.[94] The facts of this case involved a crèche display that was erected in Pawtucket, RI during every Christmas season. In addition to the crèche, the town display contained other symbols of Christmas such as a Christmas tree, a Santa Clause house, reindeer, and a banner reading "Seasons Greetings." All of the items in the display were owned and maintained by the town. Residents of the town, (some of whom were affiliated with the Rhode Island American Civil Liberties Union), brought suit claiming that the inclusion of the crèche in the display was a violation of the Establishment Clause.[95] The District Court agreed with the residents, finding that the inclusion of the crèche was a sign that the town "tried to endorse and promulgate religious beliefs." The lower court found that the town violated all three elements of the *Lemon* test. First, it ruled that the religious nature of the crèche implied a religious purpose for the display. Second, the inclusion of the crèche had the primary effect of advancing religion because the presence of the crèche granted a

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The school district argued that there were several reasons why its situation was different from the circumstances in *Lee*. First, the students got to choose whether the prayer would be given and second, that football games are voluntary extracurricular events, unlike a graduation. The Court found both arguments unpersuasive. While the students made a choice, it was the state that presented them with that choice, and that in itself was improper. Furthermore, the fact that the vote was not unanimous proved that some students were uncomfortable with the prayer. Second, the Court found that some students would have to attend the games, some even for class credit. Therefore, the game was not totally voluntary. Considering the elements of coercion involved as well as the lack of a secular purpose, the Court ruled against the school district. 530 U.S. 290 (2000).

[94] *Lynch v. Donnelly*, 465 U.S. 668 (1984).

[95] Ibid., 671.

substantial benefit to religion in general. Third, while the District Court could find no administrative entanglement between religion and government, it ruled that the political divisiveness engendered by the display led to entanglement.[96]

The Court reversed the decision of the District Court, noting that although the separation of church and state is the rubric of choice and that the Court must prevent unnecessary intrusion, total separation of church and state is not possible. The Court described the problem as an "inescapable tension" and noted that "In our modern, complex society . . . an absolutist approach in applying the Establishment Clause is simplistic, and has been uniformly rejected by the Court."[97] Using the *Lemon* test, the Court found that there was neither a religious purpose to the state action here, nor the primary effect of advancing religion. Instead the Court opined that the secular purpose of the display was simply to celebrate the Christmas holiday and depict elements of its origins.[98] Turning to the issue of primary effect, the Court reasoned that if this crèche had the primary effect of advancing religion, its effect could not be greater than several of the programs and state actions that the Court sanctioned in the past.[99] Finally the Court agreed with the District Court that there was no administrative entanglement between church and state resulting from the display of the crèche, but rejected the District Court's

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[96] *Lynch v. Donnelly*, 671-72.

[97] *Lynch v. Donnelly*, 672, 678.

[98] Ibid., 680-81.

[99] Such programs and actions would include: public money for textbooks, transportation of students to church-sponsored schools, federal grants for building at religious colleges, Sunday closing laws, and legislative prayers. *Lynch v. Donnelly*, 681-82.

argument that any political divisiveness caused by the display could alone satisfy the excessive entanglement standard.[100]

The more recent disputes about religious displays on public land are not about crèches, but pertain to Ten Commandment monuments. On the same day in 2005, the Supreme Court rendered two opposite 5-4 decisions in reference to two separate Ten Commandment monuments. In *Van Orden v. Perry*, the Court ruled that the Ten Commandments monument at issue did not violate the Establishment Clause.[101] The case involved a monument park that surrounds the Texas State Capitol. On those 22 acres there are 17 monuments and 21 other historical markers. Amongst these monuments is a replica of the Ten Commandments, which the Fraternal Order of the Eagles of Texas gave to the state in 1961. A citizen of Texas, Thomas Van Orden, sued the state in 2001 arguing that that monument violated the Establishment Clause and sought an injunction

[100] Ibid., 683. A similar case, *County of Allegheny v. ACLU,* created a complex 5-4 decision from the Court. In this case the ACLU sued in reference to two displays in Pittsburgh. One was a crèche placed in the main staircase of the county courthouse, which was donated by a Roman Catholic organization and a banner proclaiming, "Gloria in Excelsis Deo." The second display was of an 18-foot menorah and a Christmas tree. The sign at the foot of the tree was of the mayor's name and contained a declaration of the city's "salute to liberty." The Supreme Court ruled that the crèche was a violation of the Establishment Clause but the display of the Christmas tree and the menorah was not. The main opinion was written by Justice Blackmun, but the majority could only agree that the essential principle of the second part of the *Lemon* test is that the government is prohibited "from appearing to take a position on questions of religious belief." Furthermore, the crèche violated the Establishment Clause because it endorsed a blatantly Christian message and there was nothing in the display that detracted from that message. In a section of the opinion that only he signed onto, Justice Blackmun excused the menorah and Christmas tree display because of the display's physical setting, the fact that the two faiths were together in the display, and the sign saluting liberty. 492 U.S. 573 (1989)

[101] *Van Orden v. Perry*, 545 U.S. 677 (2005).

for its removal.[102] In a plurality opinion, Chief Justice Rehnquist opined that a religious message in and of itself does not necessarily create an Establishment Clause violation.[103] It is possible to simply recognize the role of God in the history of our nation, and Chief Justice Rehnquist cited many examples, including representations of Moses and the Ten Commandments in the very courtroom where the Supreme Court presides.[104] Furthermore, Chief Justice Rehnquist found that the display at issue in this case was passive enough to pass constitutional muster. Apparently Mr. Van Orden walked by the monument for years before he decided it was a problem. Also, it was clear that the state of Texas used its Capitol grounds to pay tribute to several different aspects of the state's political and legal history, of which the Ten Commandments are a small part. This gave the monument itself a political and secular message as well as its religious one, and therefore the Court could not rule that the monument violated the Establishment Clause.[105]

The Court, however, did not allow the monument that led to *McCreary County v. ACLU*.[106] A different set of 5 justices ruled that this monument did violate the Establishment Clause.[107] In the summer of 1999 two counties in Kentucky erected Ten

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[102] Ibid., 677-79.

[103] While Justice Breyer voted with the majority, he did not sign on to the plurality opinion. The plurality opinion was supported by Chief Justice Rehnquist, along with Justice Scalia, Justice Kennedy, and Justice Thomas.

[104] *Van Orden v. Perry*, 685.

[105] Ibid., 688.

[106] *McCreary County v. ACLU*, 545 U.S. 844 (2005).

[107] On this decision, the majority was made up of Justice Souter, Justice O'Connor, Justice Breyer, Justice Ginsburg, and Justice Stevens.

Commandments monuments in their courtrooms. Later that year, the ACLU brought suit seeking an injunction against the monuments claiming that the monuments were violations of the Establishment Clause. Before the lower court could address the injunction, the counties each expanded the display to include other documents, each of which either was religious in nature or had some religious element that the display highlighted. The District Court eventually ruled that the displays be removed because the displays lacked a secular purpose as required by the *Lemon* test. As a result, the counties each installed a third display in which the Ten Commandments were now surrounded by eight other documents and the entire display was entitled "The Foundations of American Law and Government Display." The ACLU supplemented its suit and the District Court again ruled in its favor, finding that the counties newfound secular purposes did not stand up as genuine in light of the history of the case. The Supreme Court agreed.[108] Beginning with the premise that it is a violation of the Establishment Clause when it acts with the "predominant purpose of advancing religion," the Court found that the secular purpose offered by the state cannot be a sham or secondary to a religious objective.[109] Moreover, the Court decided that it was proper to look at the entirety of the factual record and the history of the case in order to determine the motives of the government in a particular matter. The Court reasserted the idea that the Establishment Clause requires that governments remain neutral on questions of religion, and it ruled against the counties in this case because they were clearly not neutral.[110]

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[108] *McCreary County v. ACLU*, 845-53.

[109] Ibid., 858-59.

[110] *McCreary County v. ACLU*, 864, 869.

Religious Tests and the Definition of Religion

In addition to free exercise and establishment clause concerns, the Court also supports the right of people to believe as they wish and not be subject to either forced participation or prohibition from government activities because of their beliefs. For example, in *Torcaso v. Watkins* the Court ruled against religious tests for government positions.[111] Mr. Torcaso was appointed as Notary Public by the governor of Maryland. Mr. Torcaso was not allowed to accept the commission because he would not declare a belief in God. At the time Article 37 of the Declaration of Rights in the Maryland Constitution stated that there was no religious test for public office "other than a declaration of belief in the existence of God."[112] The blatant statement within the Maryland Constitution made this a rather easy decision for the Court. Justice Black stated in the Court's opinion, "There is, and can be, no dispute about the purpose or effect of the Maryland Declaration of Rights requirement before us -- it sets up a religious test which was designed to, and, if valid, does, bar every person who refuses to declare a belief in God from holding a public "office of profit or trust" in Maryland."[113] Although the Court recognized that there was historical precedent for these laws, it also found that a long history of Supreme Court jurisprudence clearly showed that the Court found such requirements unconstitutional. The fact that the holding of public office was not an

[111] *Torcaso v. Watkins*, 367 U.S. 488 (1961).

[112] Ibid., 489.

[113] *Torcaso v. Watkins*, 489-90.

obligation did not justify the use of unconstitutional criteria to determine who could hold public office.[114]

In addition to the fairly clear case of religious tests, the Supreme Court also ruled in the much murkier area of the definition of religion. This issue arose in the context of military service. In *U.S* v. *Seeger*, the Supreme Court overturned two convictions for refusal to be inducted into the armed forces.[115] The successful petitioners, Seeger and Jakobson claimed that they should be covered under the Universal Military Training and Service Act (UMTSA).[116] Under the UMTSA, conscientious objectors would be exempt from combat if they could prove that their objection was based on a religious belief. The act defined religious belief as "an individual's belief in relation to a Supreme Being involving duties superior to those arising from any human relation, but [not including] essentially political, sociological, or philosophical views or a merely personal moral code."[117] The court convicted Seeger and Jakobson because they would not specifically affirm a belief in a "Supreme Being," which was necessary to avoid combat. When asked to attest to his belief in a Supreme Being on the required form, Seeger left that question unanswered. He argued that his unwillingness to answer the particular question did not

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[114] Ibid., 496.

[115] *U.S. v. Seeger*, 380 U.S. 163 (1965). Significant portions of the summaries of both *United States v. Seeger* and *Welsh v. United States* were presented at the Southern Political Science Association Conference in 2013 in the paper, "The *Necessary Divorce: Separation of Legal 'Marriage' and Religious 'Marriage'"* by Jason Hines and Brenda Norton.

[116] *U.S. v. Seeger,* 164-65. There was a third petitioner, Forest Peter, whose exemption was also granted, but he admitted that his beliefs could be called a belief in a Supreme Being and so the particular facts of his case are not relevant here. Ibid. 188.

[117] *U.S. v. Seeger,* 165.

preclude him from "a religious faith in a purely ethical creed."[118] Similarly, Jakobson believed that the concept of god was not strictly left to the vertical relationship with a higher being, but could also be found in a horizontal relationship with man and the Earth. In ruling the Court was intentional in attempting to "embrace[] the ever-broadening understanding of the modern religious community."[119] Citing the statute's reference to "religious training and belief," the court stated that test of the statute could be satisfied by "A sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by … God."[120] The Court found that this type of definition would provide equal treatment for all those who religiously object to military service.

Five years later the Court returned to the question it addressed in *Seeger*. In *U.S.* v. *Welsh*, the Court dealt with a state of ethical belief that was clearly irreligious.[121] In order to attain the status of conscientious objector, applicants were required to sign a statement which read, "I am, by reason of my religious training and belief, conscientiously opposed to participation in war of any form."[122] In *Seeger*, Seeger struck the words "training and" and placed quotations around the "religious" before signing the form.[123] Elliot Welsh, the petitioner in this case, struck the words "my religious training

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[118] Ibid., 166.

[119] *U.S. v. Seeger,* 168.

[120] Ibid., 176, 180.

[121] *U.S. v. Seeger,* 398 U.S. 333 (1970).

[122] Ibid., 336-37.

[123] *U.S. v. Seeger,* 337.

and" before signing.[124] In this case, Welsh made a much more explicit statement that his beliefs were not religious. The government attempted to argue that because the petitioner himself would not describe his beliefs as religious, then he should not receive the status of conscientious objector based on religious belief.[125] The Court disagreed. The Court extended the holding of *Seeger*, ruling that in order for an objection to be religious within the meaning of the statute it had to "stem from the registrant's moral, ethical, or religious beliefs about what is right and wrong and that these beliefs be held with the strength of traditional religious convictions."[126] The Court found that Welsh's interpretation of his own beliefs was irrelevant to the question of religion as addressed by the Court. The Court only requires that the beliefs hold the place of religion in the life of the claimant, and those beliefs will be deemed religious as far as the Court is concerned. Welsh would not necessarily know the expansive nature of the Court's view of religion, and therefore his self-description is not as important as a determination of the importance and centrality of his beliefs to him as a person.[127]

Conclusion

Throughout the Supreme Court's church-state jurisprudence, there seems to be two main issues that concern the Court – freedom of conscience and the imposition of

[124] Ibid.

[125] *U.S. v. Seeger,* 341.

[126] 398 U.S. at 334.

[127] 398 U.S. at 341.

particular religiously based moral principles on those who disagree.[128] The first principle, freedom of conscience and the ability to act on those beliefs, is seen most clearly in the cases involving the Free Exercise Clause. It should be noted that the Court has vacillated over the years in regards to its position on the citizen's ability to act on their religious conscience in contravention of the law. Despite the fact, the Court wrestles with this question and at times has granted wide latitude for religious action. In reference to Establishment Clause jurisprudence, protection for the freedom of conscience and the ability to act is also noted, especially in cases like *Seeger* and *Welsh*. In those cases, freedom of conscience was protected even for "religions" that are atypical, and the ability to abstain from combat based on those beliefs was upheld as well.

The second principle is the Court's desire for the government to abstain from imposing a particular religiously based morality on those who disagree. Whether in the realm of financial support for religious institutions, differing modes of religious observance in the classroom, or public displays of religion, the Court routinely rules against compelling others to either financially support religious institutions, participate in religious practices, or receive messages from the government that seem to support any particular faith. Principles of non-imposition can be seen in Free Exercise cases as well, as one of the main issues of the *Hialeah* case was the impression that the city was imposing their moral standards on a religious minority whose religious rites the city

[128] The recognition of these two principles are not foreign to the discussion of church-state issues. For example, Michael and Julia Mitchell Corbett essentially outline these two principles in their discussion of the separation of church and state, although the non-imposition of religious morality is described as a humanistic principle. Michael Corbett and Julia Mitchell Corbett, *Politics and Religion in the United States*, (New York: Garland Publishing, Inc., 1999), 18, 21.

found morally repugnant. The question now is whether similar principles can be found in the Bible as well.

CHAPTER THREE

A Biblical Ethic for Church and State, Freedom, and Morality[1]

Introduction

The Supreme Court in broad strokes has outlined two major principles that guide its thinking with regard to the intersection between religion and the law. The first is freedom of conscience, or the ability for the citizen to determine (and in most cases act on) their beliefs. The second principle is the idea that the laws of the country cannot have an explicitly religious impetus or purpose. In America's jurisprudential order, these principles more generally are called the separation of church and state.

While there is no conclusive evidence that the Religion Clauses of the First Amendment or the jurisprudence occurring thereafter based on those clauses came directly from or were influenced by the Bible, there does seem to be considerable evidence of commonality between ideas and principles outlined in the Bible and the same concerns raised by the Supreme Court when wrestling with the thorny questions of the role of religion in our modern society. This chapter will outline those points of commonality, using evidence from the biblical record.

The Question of Hermeneutics

"Hermeneutics can be defined as the study of the activity of interpretation and practically as the act of bringing the meaning of the text to bear in one's present

[1] The bulk of this chapter was researched and written for my Master's Thesis. Jason A. Hines, 2014. The Ethical Viability of Church Support of Moral Legislation. Master's thesis, Andrews University.

context."[2] There are several different modes and methods of biblical interpretation, some of which will have considerable bearing on the scriptural analysis done here. One of those methods is the grammatico-historical method. Craig L. Blomberg sees the grammatico-historical method as having three main elements. The first is historical criticism as cultural analysis. Quite simply, this element is the examination of the context in which the author wrote, so as to ascertain as much as possible what the author's words meant to the people who first read them.[3] Without this analysis, the modern reader can easily come to address the texts as if they were written in modern times, with modern understandings and social sensibilities.[4] The second element of the grammatico-historical method is historical criticism as tradition-critical analysis. This element is included because historians are cognizant of the difference between the practice of recording thoughts and ideas from the time the Bible was written to today.[5] Because of the scarcity of resources for writing, the manner of finally getting words and events transcribed was an elongated process, where events and teachings were recorded several years after they occurred.[6] Scholars attempt to account for this under tradition criticism by engaging in form, source, and redaction criticism. Form criticism studies the period of time between when the original events and the time when those events were finally transcribed. Source

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[2] Jeannine K. Brown, *Scripture as Communication: Introducing Biblical Hermeneutics*, (Grand Rapids, MI: Baker Academic, 2007), 20.

[3] Craig L. Blomberg, "The Historical-Critical/Grammatical View," in *Biblical Hermeneutics:Five Views*, Stanley F. Porter and Beth M. Stovell, eds., (Downers Grove, IL: IVP Academic, 2012), 30.

[4] Ibid.

[5] Ibid., 31-32.

[6] Ibid., 32.

criticism analyzes the written sources that were used to produce the document being analyzed. Redaction criticism studies the distinct theological or ideological concepts that the writer of the text introduced himself. This study involves a focus on what the author may have added to the final text himself or what the final author chooses to highlight from the source material.[7] The last element of the grammatico-historical method is the use of grammatical methods to interpret the text. This element is self explanatory in that it is the examination of the meanings of words, analysis of grammar, and sentence structure used in the work in question. This is particularly essential because the Bible was written in ancient languages that are no longer used. The first step in biblical analysis is making sure that the text is understood as it was written.[8]

Another method of biblical interpretation is the redemptive-historical view. According to Richard B. Gaffin, Jr. the redemptive-historical approach to Scripture has six elements. The first is that God's special revelation is distinct from but in the context of His general revelation in nature and history, and that God's special revelation has two basic modes: deed revelation and word revelation.[9] The Bible is word revelation, but it is also a record of God's deed revelation. The second element is that redemption is historical. This redemption is a series of events "that together constitute an organically unfolding whole."[10] The third element of this view is the belief that Jesus Christ is the

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[7] Blomberg, 34.

[8] Ibid., 37.

[9] Richard B. Gaffin, Jr., "The Redemptive-Historical View," in *Biblical Hermeneutics:Five Views*, Stanley F. Porter and Beth M. Stovell, eds., (Downers Grove, IL: IVP Academic, 2012), 91.

[10] Ibid.

culmination of the history of redemption. Christ's death and resurrection is the consummation of redemptive history.[11] The fourth element of the redemptive-historical view is that the subject matter of revelation is redemption. In this view, verbal revelation is always pointed towards God's role in history as creator and redeemer.[12] The fifth element is that Scripture itself is a revelation. Because of this, the canon itself is central. It is the only access that we as human beings have to the history of redemption. Only the canonical books can be trusted, and they provide the outer limits of our knowledge of the history of redemption.[13] The last element of the redemptive-historical view is that revelation itself is an interpretation of redemption, and therefore any interpretation of Scripture as it relates to redemption is by nature derivative.[14]

As a practical matter the redemptive-historical view does give attention to the authors of the text, but not because the authors in and of themselves are crucial to the scriptural analysis. Neither is the focus on authors to diminish in any way the idea of God as the author of scripture. Instead, the focus on the differences that the authors bring to their role in God's revelation only serves to highlight the unity and coherence of the revelation itself.[15] In addition the redemptive-historical view is primarily concerned with fidelity to *sola Scriptura* as a fundamental hermeneutical proposition.[16] Finally, there is

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[11] Gaffin, Jr. 92.

[12] Ibid.

[13] Ibid., 93.

[14] Ibid.

[15] Ibid. 96.

[16] Ibid., 97.

continuity between the reader today and the New Testament writers.[17] Readers today, as those who heard these texts in New Testament times, share a concern for the same subject matter, the same history of redemption, and live within the same time period between Christ's first and second advents.[18] Both groups are involved in the same process – interpreting the words that God has left, both the Old and New Testaments. Both groups believe that this interpretation is necessary for the life of the church.

By contrast, the canonical view of Scripture is slightly different from the other approaches mentioned here. Instead of espousing any particular methodological approach, the canonical view is primarily concerned with a commitment to the canon of the text and with the practices in regard to the text engaged in by faithful readers.[19] According to Robert W. Wall, there are five approaches involved in a canonical view of Scripture that faithful readers of the text presume. First, readers approach the Bible as a human text. There is a recognition that biblical texts have human agency and a historical context. However, the goal of exegesis under this view is not to discover what the scripture meant to the original audience. Rather, the goal of exegesis is to come to a consensus of what the text means for the present community of believers.[20] At the same time, this does not mean that the meaning of a text must be static. The goal of exegesis is to discover what these texts mean in plain sense so that believers can know what to

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[17] Ibid.

[18] Gaffin, Jr. 97-98.

[19] Robert W. Wall, "The Canonical View," in *Biblical Hermeneutics:Five Views*, Stanley F. Porter and Beth M. Stovell, eds., (Downers Grove, IL: IVP Academic, 2012), 111.

[20] Ibid., 113.

believe and how to behave.[21] Next, the Scripture is approached as a sacred text. The Bible is seen as a sanctified book that is used for holy purposes.[22] As such, the goal of exegesis is to give teachers the material to shape their church's understanding of the Bible and its application.[23] Furthermore, because the Bible is a sacred text, the social history of interaction with the texts in the faith community is critical. The sacred lessons that have been learned in the past should not be forgotten, and that theological stability is vital to any faith community.

Those who espouse the canonical view also approach Scripture as a single text. They believe that the biblical canon was divinely ordained. Because of that belief, the separate books of the Bible can be read in conjunction with one another, aiding in translation.[24] Reading these books as one also helps to create linguistic and thematic connections that help believers to come to theological understandings.[25] The Scripture is also approached as a shaped text. It is understood that the shaping and grouping of the texts in the canon is purposeful. Each collection in Scripture serves a purpose and works in harmony with other sections of Scripture. The canon was created based on what the church felt was the best set of texts to teach and train believers.[26] Moreover, the

[21] Wall, 114.

[22] Ibid.

[23] Ibid., 115.

[24] Ibid., 116-17.

[25] Ibid., 117.

[26] Ibid.

placement of the books within the canon also has theological benefit.[27] Finally the Scripture is also the church's text as a community. There are some biblical practices that only apply in group settings. Furthermore, the ability and authority of the biblical interpreters within the community benefit from the ideas and thoughts of all the other believers.[28]

It should be noted that there are those who believe that the Bible is not supposed to be interpreted, but only to be read and followed. Merold Westphal coined the term "naïve realism" for this belief. Naïve realism is based on the assumption that the real world exists independent of what we as human beings may think about the world. Moreover, this reality that exists is a reality that we can know and understand exactly as it is, at least some of the time. Because of this there can be an immediacy of understanding from object (the Bible) to subject (the reader), without any mediating input from the subject, including the presuppositions of the subject, or any initial context of the object. From this, naïve realists can claim that they are free from bias or prejudices. The Bible becomes a text that where we can "just see" what the text means, and that interpretation of the text implies a subjective bias will be inserted into the interpretation.[29] For example, if Leviticus says that lying with a man as with a woman is an abomination, then it is so, regardless of the context in which that statement was made, or how the definition of those words or actions may have changed from the time the text was written till now. Westphal suggests two main reasons for why naïve realism is an attractive

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[27] Wall, 120.

[28] Ibid., 121.

[29] Merold Westphal, *Whose Community? Which Intepretation? Philosophical Hermeneutics for the Church*, (Grand Rapids, MI: Baker Academic, 2009), 20.

hermeneutical framework. First, it satiates the desire to preserve our notions of truth as correspondence. Here we assume that the text is eternally and unambiguously true and real. The question then turns to whether what the person engaging the text believes corresponds to the text itself.[30] So long as what is said is in line with what the text says then it must be the truth, with no further examination necessary. Second, naïve realism allows one to preserve the idea of objectivity. The claim of objectivity and intuitive understanding of the Bible helps to avoid the question of how tradition plays a role in how one interprets the text. If people were to just accept that the particular religious traditions color the way they read texts, then there would be an implicit acceptance of relativism, or at least that if relativism applies to every other tradition, it must also apply to whatever particular tradition the reader holds as well. Naïve realism solves this problem by giving the appearance of objectivity.[31]

The interpretive system used to fashion the biblical arguments in this chapter is an amalgamation of many of these hermeneutical systems. This system is first founded on a redemptive-historical view of scripture in that the Bible is treated as the revelation of God that has had and should continue to have meaning for the faith and practice of Christianity. At the same time, this system also has elements of the grammatico-historical method. It is essential to be critical of the traditions and interpretations that have been built up around texts over time. Finally, there is also a strong emphasis on the canon of the Bible as relevant. While the canon is not crucial for its own sake, it is necessary to attempt to draw as much evidence as applicable and possible from the entirety of the text.

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[30] Westphal, 21.

[31] Ibid., 22.

In this sense, the system in use here is in line with Gordon Fee's attempt to establish what he calls a specifically evangelical hermeneutic.[32] Fee attempts to carve out a space that he calls the "radical middle," in which the Bible's human and divine elements are held in tension with one another.[33] According to Fee, holding to this middle position presents the question of how to reconcile the ambiguities of the text. While there is a desire to remove all ambiguities and create infallible missives from God, the only infallibility Fee acknowledges is the intent of the text itself. Fee believes that evangelicals can go no further in asserting infallibility because God gave His word in a "historically particular circumstance," thereby locking in ambiguity.[34]

The historical ambiguity of Scripture also creates a necessary amount of accommodation.[35] The question is not whether there is accommodation in the analysis of scripture, but how much there should be and what kinds of accommodation should be allowed.[36] The final factor Fee identifies is that there is diversity within the essential unity of scripture. The diversity stems from its humanity, the unity from its divine authority.[37] The unity within scripture allows for the idea that the Bible can interpret itself. The acceptance of accommodation, ambiguity, and diversity should lead to an

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[32] Gordon D. Fee, *Gospel and Spirit: Issues in New Testament Hermeneutics*, (Peabody, MA: Hendrickson Publishers, 1991), 30.

[33] Ibid., 35.

[34] Ibid., 33.

[35] Ibid.

[36] Ibid., 34.

[37] Ibid.

interpretation of Scripture that supports freedom of conscience and the allowance of moral self-determination. What follows is an example of that hermeneutic in use.

The Bible and the Separation of Church and State

Separation of Church and State in a Theocracy?

Biblically, Old Testament Israel provides a unique example with which to test the principles of church-state separation. Old Testament Israel was a theocracy – a nation-state that was explicitly established by God (Ex 19:3-6). An examination of the biblical data appears to support, at least to some extent, the idea of the separation of church and state even in theocratic Israel. This mode of separation would not have all the elements of the modern concept of church-state separation. However, there seems to be an example where it can be argued that the principle of separation of church and state between the state of Israel (the king) and the church of Israel (the priests and prophets) existed in the Old Testament era.

2 Chronicles records what can be described as a direct example of the separation of church and state in Israel's theocracy. In 2 Chronicles 26, King Uzziah is lauded as a king that sought God, was successful in war against the Philistines, and started building projects in Israel (2 Chr 26:4-15).[38] However, the Bible then records that Uzziah's pride

[38] Scholars believed that the two volumes of the book of Chronicles were written and then revised by priests, or at least someone who was in favor of the priests and a supporter of the temple, about a generation after the books were originally written. With respect to the story of Uzziah recorded in chapter 26, there are some questions of authenticity considering that the summary of Uzziah's reign in 2 Kings is quite brief, and the fact that the strict demarcation of royal and priestly roles seems more apropos for the post exilic period than the setting of the story. However, in general terms there seems to be some support for the authenticity of the text. The length of Uzziah's reign lends credence to the idea that the summary in 2 Kings could not be the entirety of record of his time as ruler. Moreover, there is some evidence that the author of Chronicles had access

caused him to act "corruptly." (2 Chr 26:16) Uzziah, in his pride, attempted to burn incense in the temple (Ibid.). Uzziah was opposed by the priests of the temple, who made it clear how Uzziah violated the principle of the separation of church and state: "It is not for you, Uzziah, to burn incense to the LORD, but for the priests, the sons of Aaron who are consecrated to burn incense. Get out of the sanctuary, for you have been unfaithful and will have no honor from the LORD God." (2 Chr 26:18) Uzziah's prideful crime was that he, as king, engaged in an activity that was only meant for the spiritual leaders of Israel, the priests.[39] Furthermore, Uzziah received punishment for his crimes. Because he dared to burn incense, a responsibility that belonged to the priests, Uzziah was smitten with leprosy (2 Chr 26:19). The severity of the punishment appears to suggest that God was displeased with Uzziah's pride and his encroachment upon a particular duty of the priests. Uzziah's leprosy was not a temporary punishment. Instead, "King Uzziah was a leper to the day of his death." (2 Chr 26:21) These events lend credence to the idea that in certain circumstances God recognized some form of separation between church functions and state functions in Israel.

On the other hand, kings performed priestly functions on special occasions. For example, King David performed burnt offerings, peace offerings, and pronounced a blessing on the people of Israel when the ark returned to Jerusalem (2 Sam 6:18). David's

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to extra-biblical sources. H.G.M. Williamson, *New Century Bible Commentary; 1 and 2 Chronicles*, (Grand Rapids, MI: Wm B. Eerdmans Pub. Co., 1982), 16-17, 333, 338-39; Ralph W. Klein, *2 Chronicles: A Commentary*, (Minneapolis: Fortress Press, 2012), 4.

[39] Martin J. Selman, *2 Chronicles A Commentary*, (Leicester, England: Inter-Varsity Press, 1994), 470-71; John Jarick, *2 Chronicles*, Sheffield, England: Sheffield Phoenix Press, 2007), 154-55. While other kings burnt offerings and made sacrifices, the golden incense altar was in a part of the temple where only the priests had access. Klein, 377; Andrew E. Hill, *The NIV Application Commentary: 1 & 2 Chronicles*, (Grand Rapids, MI: Zondervan, 2003), 552.

son Solomon also performed a sacrifice at the dedication for the new temple. Recorded in both 2 Chronicles 7 and 1 Kings 8, Solomon conducted a peace offering sacrifice of twenty-two thousand oxen and one hundred twenty thousand sheep (2 Chr 7:5). King Solomon also offered the grain offering and the burnt offering that consecrated the middle of the temple court (1 Kgs 8:64).[40]

The Negative Results of Church-State Integration

While the Bible gives some affirmative evidence of the principle of separation between religion and the state, corroborating evidence of this principle can be found in the negative consequences that occurred when religion and politics come together in the Bible. This section will briefly examine these instances.

Daniel 3 relates the story of Shadrach, Meshach, and Abednego. Nebuchadnezzar had an image of gold erected in the plain of Dura (Dan 3:1). He called for a dedication service for the image and invited every political figure in the kingdom. The list of the political figures is notable for its extensiveness and because of the event that these dignitaries were attending. Nebuchadnezzar invited "the satraps, the prefects and the governors, the counselors, the treasurers, the judges, the magistrates and all the rulers of the provinces." (Dan 3:2) Nebuchadnezzar then issued the command that all the dignitaries worship the image when the music played (Dan 3:4b-5). This was a government-sponsored worship service. In this situation, there was no freedom of conscience that would allow objectors to refrain from worship. Instead, those who

[40] In addition to these special occasions, Dale Launderville surmises based on Ps. 20 that kings also made sacrifices before going off to war, as a function of their role as military commander. Dale Launderville, *Piety and Politics: The Dynamics of Royal Authority in Homeric Greece, Biblical Israel, and Old Babylonian Mesopotamia*, (Grand Rapids, MI: Wm. B. Eerdmans Pub. Co., 2003), 328.

refused to worship were to be punished by death in the fiery furnace (Dan 3:7). Shadrach, Meshach, and Abednego challenged the king and were spared by God's supernatural intervention (Dan 3:12, 25). Thus a union between religion and government was formed by attempting to encroach upon the consciences of those dignitaries in the area of religious worship. Here, the union between religion and government in place at the time of King Nebuchadnezzar led to the persecution of those who were faithful to their own God.[41]

Daniel 6 presents us with another example regarding the combination of religion and government. The commissioners, intending to trap Daniel for his peculiar religious beliefs, presented a law to King Darius. For thirty days, no one was to "petition" any being other than the king (Dan 6:7). Those who violated this command were to be thrown into a den of lions. Daniel ignored the law and was thrown into the den of lions (Dan 6:10-11, 16, 22). After Daniel's miraculous rescue, the king acknowledged God (Dan 6:26).[42] Once again the effect of this blending of religion and politics is negative.[43]

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[41] The ultimate result, proof of God's authority, was positive. However, the positive nature of this ultimate outcome does not excuse the negative aspects of Nebuchadnezzar's attempt to force worship. Nebuchadnezzar's final proclamation in Dan 3:29 results in a transfer of one form of oppression for another. This is not to say that some form of religious liberty existed in the Babylonian Empire. Rather, it is the lack of religious liberty that led to persecution of these men in this story, and possibly others even after these supernatural events. Sharon Pace, *Daniel*, (Macon, GA: Smyth & Helwys Pub. Inc., 2008), 108-09.

[42] Interestingly, there is another similarity between the circumstances of Daniel 3 and Daniel 6. Both kings proceed to encroach upon the consciences of their subjects by requiring worship to the Israelite God as well (Dan 3:29 and 6:26).

[43] As with the story of Shadrach, Meshach, and Abednego, the argument can be made that the ultimate lessons of the events described are positive. However, any ultimately positive outcome cannot absolve or justify the negative actions resulting from the church-state union.

Similar to Daniel 3, the state infringes on the realm of the church, which is worship. In Daniel 6 the form of intrusion was not a politically instigated worship service, but a law that determined an element of morality in an area that belonged to the consciences of each individual. The persecution of God's people is once again a result of the state encroaching on the bounds of religion.

There is an example of a church-state union in the New Testament as well, but it is of a different type than those discussed previously. Matthew 27:1-2 describes the circumstances by which Jesus was condemned to death.[44] Prior to His crucifixion, Jesus was condemned first by the chief priests and elders of the people, a religious decree (Matt 27:1). However, the religious leaders did not have sufficient power to condemn Jesus to death. Therefore, the chief priests and elders sent Jesus to Pilate, a representative of the state, to have Jesus sent to death for a political crime, despite the fact that no such determination had been made (Matt 27:2, 26).[45] This is also an example of a church-state union although it is different from the church-state unions examined in Daniel. Instead of the state attempting to control religious belief and worship activities, the state is the unwitting accomplice of the church to accomplish the church's religious goals. While it is true that the Romans crucified Jesus because of accusations of treason, Jesus was only turned over to the government because the Jews were not permitted to put anyone to death, and they wanted to execute Jesus for the religious crime of blasphemy (Luke 23: 2;

[44] A similar situation occurred in the life of Paul as well (Acts 24:1).

[45] Robert H. Mounce, *Matthew*, Ed. W. Ward Gasque, (Peabody, MA: Hendrickson Pub., 1991), 252; R. T. France, *The Gospel According to Matthew: An Introduction and Commentary*, (Leicester, England: IVP, 1985), 384.

John 18:31; Matt. 26:65-66).[46] Whether the issue is the government forcing a particular type of worship, or restricting the worship of its citizens, or the church seeking to use the power of the state to accomplish its ends, there are biblical examples of the negative consequences for citizens who seek to exercise their conscience when church and state are intertwined.

The Relationship Between the Church and the State in the New Testament

Related to the principle of the separation of church and state is the question of how the Christian church should relate to the state in society. There are several texts that give counsel on how Christians and the church should relate to the state. We turn to those texts now.

The first example is found in Matthew 22:15-22. In this pericope, the Pharisees attempted to trap Jesus by forcing Him to make a political statement, asking Him if it is right to pay taxes to Caesar (Matt 22:17). This question places Jesus in a philosophical and political quandary. If He says yes, He will upset those Jews who want a messiah who would free them from the oppression of the Romans.[47] If He says no, then He will be advocating for Jews to violate the laws of the ruling power.[48] Jesus responds to their question with three questions of His own. With the first question He makes it clear that He understands the true intent of their query: "You hypocrites, why are you trying to trap

[46] It also seems that Rome, in the form of Pilate, had no interest in punishing Jesus either (Matt 27:4, Luke 23:4).

[47] Floyd V. Filson, *A Commentary on the Gospel According to St. Matthew*, (London: Adam & Charles Black, 1960), 234-35; Ed Glasscock, *Moody Gospel Matthew Commentary*, (Chicago: Moody Press, 1997), 431.

[48] Filson, 234-35; Glasscock, 431.

me?" (Matt 22:18) After requesting a coin, He asks, "Whose portrait is this? And whose inscription?" (Matt 22:19) They give the obvious answer that Caesar's face is on the coin. Christ's response then splits the difference, and says in response, "Give to Caesar what is Caesar's, and to God what is God's." (Matt 22:21) This statement undergirds many principles that Christians and the church can use today. First, the statement implies that there are rights and responsibilities that legitimately belong to the state.[49] If something, like taxes, rightfully belongs under the purview of the state, then Christians should be submissive to the state in that area.[50] Second, Christ is also implying that the things that belong to God should not be given to the state.[51] By making this statement Jesus implies that while Caesar does deserve some things, the conscience and the Christian's primary allegiance belong to God.[52] Interestingly, an implied separation of church and state is also to be found in this pericope.[53] Jesus does not imply that there is an overlap between the things that belong to the state and the things that belong to God. Instead, there seems to be a demarcation between what belongs to Caesar and what belongs to God, and that separation is to be respected.[54]

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[49] France, 315-16; Frederick Dale Bruner, *Matthew, Vol.2, Matthew 13-28,* (Dallas: Word Pub., 1990), 783-84.

[50] Glasscock, 432; Frederick Dale Brunner, *Matthew, A Commentary, Vol. 2*, (Dallas: Word Publishing, 1990), 783; Mounce, 208; Curtis Mitch and Edward Sri, *The Gospel of Matthew*, (Grand Rapids, MI: Baker Academic, 2010), 286.

[51] Brunner, 784.

[52] Brunner, 784.

[53] W.A. Criswell, *Expository Notes on the Gospel of Matthew*, (Grand Rapids, MI: Zondervan Pub. House, 1961), 126.

[54] Ibid. In *The Politics of Jesus*, John Howard Yoder presents a different picture of this particular event, implying that Jesus' statement here is not necessarily supportive of

While the pericope in Matthew 22 seems straightforward, Romans 13:1-7 is a controversial text on the issue of how the church should relate to the state. Some scholars use this text to justify political action for the church. A closer examination of this passage is necessary to answer the question of how the church should relate to the state. This pericope can be divided into two smaller sets of verses. Romans 13:1 states, "Every person is to be in subjection to the governing authorities." Paul's counsel is to be submissive to the government, not to attempt to have the government work in conjunction with the church. Paul's audience is the church; not the government. The ethic that Paul is expressing in these verses is for the Christian community, not for the non-Christian state.[55] These verses are about the responsibility the Christian has towards the state; not about the role the government has in God's work. Therefore, when Paul says that the government is a "minister of God to you for good," or that the government is "an avenger who brings wrath on the one who does evil," he does not appear to place any responsibility on the church to inform the government of good and evil (Rom 13:4).[56] Rather, Paul is counseling the church on its behavior by admonishing church members to

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the idea that Caesar's realm and God's realm are separated. Rather, the very fact that the question would arise implies for Yoder the idea that the demands of the two realms compete and overlap, and that there is a need for them to be disentangled. John Howard Yoder, *The Politics of Jesus: Vicit Agnus Noster*, 2nd Ed., (Grand Rapids, MI: William B. Eerdmans Pub. Co., 1994), 44-45. Greg Bahsen asserts that the principle to gain from this story is that there are limits to Caesar's (the State's) power, and when the state crosses its proper boundaries it loses legitimacy. Greg L. Bahsen, "The Theonomic Position," in *God and Politics, Four Views on the Reformation of Civil Government, Theonomy, Principled Pluralism, Christian America, National Confessionalism*, ed. Gary Scott Smith, (Phillipsburg, NJ: Presbyterian and Reformed Pub. Co., 1989), 44.

[55] Ben Witherington, III and Darlene Hyatt, *Paul's Letter to the Romans, A Socio-Rhetorical Commentary*, (Grand Rapids, MI: Wm. B. Eerdmans Pub. Co., 2004), 308.

[56] Leon Morris, *The Epistle to the Romans*, (Grand Rapids: Wm. B. Eerdmans Pub. Co., 1988), 459.

refrain from evil because they may find themselves in trouble with the earthly government as well as with God.[57] Paul's main point is this: Christians should subject themselves to the government because Christians will be living by God's standard regardless of the laws of the state.[58] In the first set of verses in this pericope (Rom 13:1-5), Paul did not speak of the church attempting to exert influence on the state, but actually the church being in submission to the state. The second section of the pericope (Rom 13: 6, 7), deals with the rendering of taxes. Paul advises that Christians should pay taxes and then makes a statement reminiscent of Christ's statement in Matthew: "Render to all what is due them: tax to whom tax is due; custom to whom custom; fear to whom fear; honor to whom honor." (Rom 13:7) By making this statement, Paul continues to assert respect for government.[59] This statement puts civil government in its proper place as worthy of respect, but under the auspices of God Himself.[60]

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[57] Oscar Cullman, *The State in the New Testament*, (New York: Charles Scribner's Sons, 1956), 57-58.

[58] Based on other statements in the New Testament, Paul is most likely not making this statement as an absolute principle. Paul would probably not suggest that Christians submit to government in instances where the government is advocating anti-Christian behavior (Acts 5:29). William Hendriksen, *New Testament Commentary, Exposition of Paul's Epistle to the Romans, Vol. II, Chapts. 9-16*, (Grand Rapids, MI: Baker Book House, 1981), 433.

[59] Morris, 466-67.

[60] Harold O.J. Brown presents a contrary view of Rom 13: 1-7. According to Brown, Romans 13 grants the civil government legitimacy, but only when it rewards good and punishes evil. In the opposite case, Christians then have a duty to oppose or depose that government. Furthermore, because Christians are the ones who know what true justice is, they should seek to persuade the government to follow their understanding of justice by "promoting biblical values through the democratic process." Harold O.J. Brown, "The Christian America Position," in *God and Politics, Four Views on the Reformation of Civil Government, Theonomy, Principled Pluralism, Christian America, National Confessionalism*, ed. Gary Scott Smith, (Phillipsburg, NJ: Presbyterian and Reformed Publishing Company, 1989), 139.

In 1 Timothy, Paul gives Timothy guidance that takes a very positive stance toward government. He writes, "First of all, then, I urge that entreaties and prayers, petitions and thanksgivings, be made on behalf of all men, for kings and all who are in authority, so that we may lead a tranquil and quiet life in all godliness and dignity." (1 Tim 2:1, 2) Paul connects praying for those in authority with living a peaceful and quiet life and with being able to do so with godliness and holiness.[61] In giving this counsel, Paul most likely is being realistic and pragmatic. He may have felt that praying for those in authority would be of benefit to the church in protecting its ability to worship and avoid persecution.[62] It is also possible that Paul is speaking from a spiritual perspective. He probably feels that there is an actual spiritual component to praying for political leaders. Regardless of what Paul believes, this much is clear – he does not want the Christian church to have an antagonistic relationship to those in political power.[63] Instead, Paul desires for the Christian church to live at peace with those around it, that godliness and holiness will be the principles by which Christians live, and that Christians should pray for everyone, even leaders who may not support the church and its message.[64]

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[61] Richard C. Blight, *An Exegetical Summary of 1 Timothy*, (Dallas: SIL International, 2009), 98.

[62] Ibid.; John MacArthur, Jr., *The MacArthur New Testament Commentary, 1 Timothy*, (Chicago: Moody Press, 1995), 65-66; Thomas D. Lea and Hayne P. Griffin, Jr., *The New American Commentary, Vol. 34: 1, 2 Timothy, Titus*, (Nashville, TN: Broadman Press, 1992), 87-88.

[63] Blight, 97; MacArthur, Jr., 65-66.Scholars have also noted that these verses are in keeping with Paul's advice in Rom 13:1-7. Gordon D. Fee, *1 and 2 Timothy, Titus*, Ed. W. Ward Gasque, (Peabody, MA: Hedrickson Pub., 1988), 64; Lea, 68.

[64] In *The Christian Witness to the State*, Yoder uses 1Timothy 2 and Romans 13 to support the idea that the function of the state is "a part of the divine plan for the

In 1 Peter 2, Peter makes a statement that is similar to Paul's in Rom 13, but Peter is more direct. Peter counsels Christians to "Submit . . . to every authority instituted among men. . . .For it is God's will that by doing good you should silence the ignorant talk of foolish men." (1 Pet 2:13, 15)[65] Peter counsels the Christian to submit to the state so that the church will not be brought into disrepute.[66] As with Romans 13, this does not appear to be a statement about the church exhibiting influence over the state, but rather how the church should behave in a world that is not theocratic. Peter also warns that Christians should not use their "freedom as a cover-up for evil." (1 Pet 2:16) Like Paul, he does not want Christians to lose their zeal for the gospel and for the moral precepts provided by God.[67] Peter's counsel does not stop the church from continuing to be a moral voice in society. This is the cause for which the church has been established, and the church should continue to do that, even though Peter is advising that the church be submissive to all in authority.[68] Peter ends this particular section of his letter with an

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evangelization of the world." Yoder justifies a Christian witness to the state based on this understanding of the texts. However, Yoder goes on to say, "The wielding of the sword is always an expression of a degree of unbelief, and the church that blesses this undertaking is always marked by a measure of apostasy." John Howard Yoder, *The Christian Witness to the State*, (Newton, KS: Faith and Life Press, 1964), 13, 77.

[65] "[O]ur beloved brother Paul, according to the wisdom given him, wrote to you, as also in all his letters, speaking in them of these things, in which are some things hard to understand, which the untaught and unstable distort, as they do also the rest of the Scriptures, to their own destruction." (2 Pet 3:15,16) Peter may have been seeking to address the same issue as Paul in order to clarify Paul's words, which Peter admits, may be "hard to understand."

[66] J. Ramsey Michaels, *Word Biblical Commentary, Vol. 49, 1 Peter*, (Waco, TX: Word Books, 1988), 127.

[67] I. Howard Marshall, *1 Peter*, (Downers Grove, IL: IVP, 1991), 85.

[68] Michaels, 128-29.

exhortation: "Show proper respect to everyone: Love the brotherhood of believers, fear God, honor the king." (1 Pet 2:17) Peter expects these new Christians to respect everyone, including their secular leaders. However, the Christian's primary duty is to fear God above all.[69]

The Bible and Freedom of Conscience

While the Christian's first duty is to fear God, this duty should come from a free mind and conscience.[70] There are several biblical passages that highlight freedom of conscience, which implies how critical the concept is to any biblical ethic. Each of the biblical stories examined in this section emphasize the right of people to choose their morality for themselves without coercion.

The first example where free choice is a central element is the Fall of Lucifer.[71] Lucifer decided in his heart that he would be "like the Most High." (Isa 14:14) God could

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[69]Michaels, 131.

[70] As the following section will show, choice is an integral part of the biblical record. Furthermore, it can be argued that for Christian to compel others to follow God's law violates the very system that God established, "claim[ing] a knowledge of God that we can never attain." Charles B. Casper, "A Theological and Biblical Reflection on Religious Liberty," Church & Society 76 no 5 May-June 1986, 33.

[71] The story of the Fall of Lucifer can be found in two places in the Bible – Isa 14:12-14 and Rev 12:7-9. In reference to Isaiah, while the story is an analogy to the king of Babylon, scholars differ over whether the story of Lucifer is a reference to the fall of Satan. Church fathers Tertullian and Gregory the Great were among the first to connect Isaiah 14:2-14 with Jesus' statement about the fall of Satan in Luke 10:18. While some scholars would describe this connection as "unfounded," others find "an element of truth in the idea." Gary V. Smith, *The New American Commentary: Isaiah 1-39, Vol.* 15A, (Nashville, TN: B & H Pub. Group, 2007), 314 n. 94; J. Ridderbos, *Isaiah*, Trans. John Vriend, (Grand Rapids, MI: Regency Reference Library, 1985), 142. Scholars also debate whether the story in Revelation refers to the defeat of Satan after the crucifixion of Christ or whether it is a pre-cosmic attempt by Satan to displace God. While the majority of scholars see this event as taking place during the last days of tribulation, other scholars describe the telling of this story as an interlude that explains the present circumstances of

have forced Lucifer to believe differently. If He had done so, the Earth would avoid all of the negative ramifications that came from Lucifer's choice, including the death of Christ Himself. Intimately connected with the Fall of Lucifer is the story of the Fall of Humanity. Like the Fall of Lucifer, the Fall of Humanity is a narrative that centers on moral choice. Although God previously told Adam and Eve not to eat from the Tree of Knowledge of Good and Evil, Eve chose to do otherwise (Gen 2:16, 17). Adam, who had explicitly been told the command, also ate the fruit. They each made their decision with full knowledge of the consequences. God allowed them to make this decision with no interjection on His part.

Joshua 24 is another example of an affirmation of the God-given right to free choice. Joshua, in his final address to the children of Israel, presented them with a stark choice:

> But if serving the LORD seems undesirable to you, then choose for yourselves this day whom you will serve, whether the gods your forefathers served beyond the River, or the gods of the Amorites, in whose land you are living. But as for me and my household, we will serve the LORD." (Josh 24:15)

Joshua did not impose his choice on the other Israelites. He made his decision known, but also made it clear that they could choose a different path.[72] Joshua, as the leader, was

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John's original readers. Paige Patterson, *The New American Commentary, Vol. 39, Revelation*, (Nashville, TN: B & H Pub. Group, 2012), 266-67; Robert Mounce, *The Book of Revelation*, (Grand Rapids, MI: Wm. B. Eerdmans Pub. Co., 1998), 235; Gordon D. Fee, *Revelation*, (Eugene, OR: Cascade Books, 2011), 168; Stephen S. Smalley, *The Revelation to John: A Commentary on the Greek Text of the Apocalypse*, (Downers Grove, IL: IVP, 2005), 323.

[72] David M. Howard, Jr., *The New American Commentary, Vol. 5: Joshua*, (Nashville, TN: B & H Pub., 1998), 436; Dan G. Kent, *Layman's Bible Book Commentary, Vol. 4: Joshua, Judges, Ruth*, (Nashville, TN: Broadman Press, 1980), 82; James Burton Coffman, *Commentary on Joshua*, (Abilene, TX: ACU Press, 1988), 266.

doing the same thing for the Israelites that God did for all humanity. While His moral code is attainable from the biblical text, He also allows each person to go his or her own way if they so choose.

This same principle of choice can be seen at other points in the history of the Jewish state in the Old Testament. In 1 Samuel 8 the Israelites requested a king in order to be like other nations (1 Sam 8:5). In response, God said to Samuel, "Listen to all that the people are saying to you; it is not you they have rejected, but they have rejected me as their king." (1 Sam 8:7) Although the people of Israel rejected God, He did not force them to keep Him as their ruler. In 1 Kings 18:21, Elijah asked the question, "How long will you waver between two opinions? If the LORD is God, follow him; but if Baal is God, follow him." As the prophet of God, Elijah respected the right of the Israelites to choose whom they will follow. While God does not desire people to make wrong decisions, this verse implies that God is more interested in having people make a decision than in whether it is the correct decision. God respects the right to choose so much that He would prefer a wrong decision to no decision at all.[73] God requests the same thing for each person that He did for the Israelites on Mt. Carmel. There is biblical evidence that God provides humanity with evidence of His sovereignty and then allows each person to make the decision about which way they will go.

The events of Daniel 3 and 6, previously discussed, allude to problems when church and state are integrated and indicate God's approval for those who choose to make their own decision despite the punishment. Shadrach, Meshach, and Abednego exercised their God-given freedom to object to the worship service they were forced to attend.

[73] Simon, J. DeVries, *Word Biblical Commentary, Vol. 12, 1 Kings, 2nd Ed.* (Nashville: Thomas Nelson Publishers, 2003), 228.

Daniel exercised his God-given freedom to continue to worship despite the fact that a law had been passed prohibiting his right to do so. God honored their faith and their decisions to exercise the freedom He gave them by sparing their lives. God gives the same freedom to each human being.

To be fair, there are several instances in the Bible where God punishes people and nations. For example, in references made previously, Lucifer was expelled from Heaven, and Adam and Eve were removed from the Garden of Eden. There are also several instances of God punishing the nation of Israel. One such example is the Babylonian captivity that led to the stories of people mentioned in this chapter like Daniel, Shadrach, Meshach, Abednego, and Esther.[74] There are also several examples of God punishing foreign nations like the Canaanites, Sodomites, and the residents of Gomorrah.[75] While these situations seem to be counterexamples to the argument of this particular principle, a closer examination finds them to not be analogous to the religio-political activity discussed in this dissertation. First, many of the examples involve people whom God has direct control over. Lucifer, Adam and Eve, and the nation of Israel are examples of such. In these instances, God is asserting His power over His people who have subjugated themselves to His rule. The same is not the situation in America, where no such theocratic assent has taken place.[76] Second, many of the examples in regard to foreign

[74] An example of this can be found in Jer. 25:9-12.

[75] An example of God's statement of punishment against the Philistines can be found in Ezek 25:15. The story of Sodom and Gomorrah can be found in Gen 18:20-33.

[76] Some of the Founding Fathers, like Jefferson and Madison, were concerned about the intermingling of church and state because of the use of religion by the state to restrict the freedom of conscience. However, in the pre-Revolutionary War period, Separatists like Solomon Paine argued that comingling church and state was theologically

nations represent God's punishment for actions already taken in freedom. God's punishment (or the threat thereof) is not an attempt to coerce the conscience to live by God's precepts. Finally, God's prerogative to punish is not automatically transferrable to Christians by virtue of their beliefs. Therefore, the fact that God has the ability to punish people for sinful actions does not mean that Christians automatically have the ability to do the same.

The Imposition of Morality

Nebuchadnezzar in Daniel 3 (and the king's advisors in Daniel 6) attempt to impose religious beliefs on society. Their actions raise the broader question of whether churches should follow their example by seeking to impose their morality on society as well.[77] While the Bible does not explicitly address this question, there are examples of Israelites in the Bible who were politically active in societies that had different religious structures. It is possible to learn from their example about how Christians should relate to their government.[78]

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wrong as well. Edwin S. Gaustad, *Neither King Nor Prelate: Religion and the New nation 1776-1826*, (Grand Rapids, MI: Wm. B. Eerdmans Pub. Co., 1993), 31, 41-44.

[77] As mentioned in Chapter 1, this dissertation presupposes that America is not a Christian nation. For more on this contentious question, see Richard T. Hughes, *Christian America and the Kingdom of God*, (Chicago: Univ. of IL Press, 2009) and Robert N. Bellah, *The Broken Covenant: American Civil Religion in Time of Trial*, (Chicago: Univ. of Chicago Press, 1992).

[78] There are examples of instances when the Israelites imposed their morality on other cultures. The campaign to take over Canaan recounted in Joshua and many of the stories in the book of Judges are examples of this. However, these situations are not analogous to the situation Christians currently find themselves in today in America. Biblical Israel as a nation-state at the time was operating under an explicit covenant with God, a status that is unsupported today. Leaders like Ezra and Nehemiah used some coercion with regard to the worship of God, but that coercion was used against other Israelites who were a part of the covenant with God.

Joseph is an example of a believer who was politically active in an empire that worshipped other gods. After spending time in an Egyptian prison, Joseph found himself a ruler in Egypt, second only to Pharaoh (Gen 41:40, 44). Pharaoh gave all this power to a man who was ready to acknowledge his God in the presence of these Egyptians (Gen 41:16, 25, 32). Joseph had the ability to turn Egypt into a nation that honored the Hebrew God. However, the Bible records no such action on the part of Joseph: he went about his work in helping Egypt survive the famine, and brought his family to live with him while he ruled there. Joseph never forgot God, giving his children names that honored the Old Testament deity (Gen 41:51, 52).[79] Joseph seemed content to worship the Hebrew God without imposing that belief on others.

Amongst the Hebrews in captivity, Daniel had the longest term of service in foreign governments. Daniel served in at least three kingdoms that spanned two empires. There are several instances when Daniel, Shadrach, Meshach, and Abednego had to protect their right to live as their consciences dictated. In addition to the situations addressed previously, Daniel and his friends also wanted to continue a Hebrew diet and not eat the King's food (Dan 1:8). In each of these cases, Daniel and his friends sought or needed religious accommodations for themselves, but they did not attempt to impose their morality or their religious dictates on anyone else. At the same time, Daniel and his friends were not shy about speaking religious truth to secular powers. In Dan 2, Daniel makes it clear to Nebuchadnezzar how he was able to interpret the King's dream: "As for the mystery about which the king has inquired, neither wise men, conjurers, magicians nor diviners are able to declare it to the king. However, there is a God in heaven who

[79] It should be noted though that when Joseph died, his burial was conducted according to Egyptian customs. (Gen 50:26)

reveals mysteries, and He has made known to King Nebuchadnezzar what will take place in the latter days." (Dan 2:27, 28) In their defense, Shadrach, Meshach, and Abednego replied:

> O Nebuchadnezzar, we do not need to give you an answer concerning this matter. If it be so, our God whom we serve is able to deliver us from the furnace of blazing fire; and He will deliver us out of your hand, O king. But even if He does not, let it be known to you, O king, that we are not going to serve your gods or worship the golden image that you have set up (Dan 3:16-18).

After spending the night in the lions' den, Daniel explained how he was spared, giving credit to God for his safety (Dan 6:22). If these men did not attempt to impose their morality, it was not because they were afraid to witness to God's sovereignty. Furthermore, in two of these instances, the kings decreed that the God of Heaven should be worshipped. In Dan 3:29, Nebuchadnezzar promises death and destruction to anyone "that speaks anything offensive against the God of Shadrach, Meshach, and Abednego."[80] In Dan 6:26, King Darius makes a decree that "men are to fear and tremble before the God of Daniel." The example of these men was a tremendous witness to those in power.

The story of Esther is different from the examples previously cited because she was a queen, a position without much political power. Despite this, she exercised what influence she had in order to save her people. Her actions saved her people and eventually elevated her cousin Mordecai to second in command under the King.

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[80] Adventist Ellen G. White said of this event, "It was right for the king to make public confession, and to seek to exalt the God of Heaven above other gods; but in endeavoring to force his subjects to make a similar confession of faith and to show similar reverence, Nebuchadnezzar was exceeding his right as a temporal sovereign. He had no more right, either civil or moral, to threaten men with death for not worshipping God, then he had to make the decree consigning to the flames all who refused to worship the golden image. God never compels the obedience of man. He leaves all free to choose whom they will serve." Ellen G. White, *Prophets and Kings*, (Nampa, ID: Pacific Press Pub. Assoc., 1917), 510-11.

Although Esther and Mordecai had the ability to pass laws, there is no evidence in the biblical record that they used their power to transform the Medo-Persian Empire into a realm that followed the laws of the Hebrew God. Furthermore, while they sent out decrees to the ends of the empire regarding Jews and the celebration of Purim, the Bible does not record the imposition of this holiday on those who were not Jewish (Esth 9:20-22). Here, as in the other examples cited, people of God who had positions of power never took advantage of their authority to impose their own beliefs. Instead, they were able have a positive influence in the empires where they lived, and at the same time worshipped God according to the dictates of their own consciences.[81]

Common Ties Between the Bible and Supreme Court Jurisprudence

Although accomplished through vastly different means, the Supreme Court seems to address many of the same concerns raised in the Bible. There is at least a circumstantial case for the separation of church and state in theocratic Israel. Similarly, the Supreme Court time and again has used the idea of a separation between religion and government as its guiding principle. Much of the establishment clause jurisprudence is based on this idea, and the *Lemon* test is the Supreme Court's attempt to fashion a rubric in order to operationalize this principle. Moreover, the establishment clause jurisprudence is also an example of an attempt to curtail the use of government coercion to impose religious forms of morality on non-adherents. This principle in the Establishment Clause jurisprudence, found in cases like *McCollum v. Board of Education* and the public

[81] There is an interesting parallel to these situations from the time of the early church. The *Didache* records a prohibition on abortion, but there is little evidence that Christians of this age were to attempt to make their particular rule the rule of law for the Roman Empire. *Didache*, 2.2.

display cases, is similar to the biblical principles found in Daniel and in the story of Joseph, where those with the ability to coerce worship of the Hebrew God did not choose that option.

There is also evidence in the Bible that shows respect for freedom of conscience and moral self-determination. At different points, religious leaders in Israel support the right of the Israelites to no longer follow God, if that is their decision. There is a parallel between those principles found in Scripture and the free exercise jurisprudence of the Supreme Court. Not only does the Court respect the freedom of conscience and belief; this protection even extends to the very definition of religion itself.

John Calvin's Views on Church-State Relations

Having outlined a biblically based view on the church's interaction with the state and the role of the church in political activity, it is necessary to situate this view within a more established view on the subject. Prior to the Reformation, the traditional Western Christian view of church-state relations was that the authorities of the church had moral authority over political institutions.[82] This gradually changed during the late medieval times when growing nationalistic tendencies propelled the emerging European nation-states to gradually assert their independence from the authority of the church in political matters.[83] By challenging the authorities of the church on doctrinal issues, the sixteenth

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[82] John H. Redekop, *Politics Under God* (Scottsdale, PA: Word Publishing, 2007), 43.

[83] Greg Foster, *The Contested Public Square: The Crisis of Christianity and Politics* (Downers Grove, IL: IVP Academic, 2008), 110; Harold J. Berman, *Law and Revolution II: The Impact of the Protestant Reformations on the Western Legal Tradition* (Cambridge, MA: Belknap Press, 2003), 29, 201-03; Ross William Collins, *A History of Medieval Civilization in Europe* (Boston: Ginn & Co., 1936), 758-60.

century Reformation became part of the movement that would eventually redefine the church-state relationship. John Calvin is the most appropriate person with which to compare these ideas. Francis Schaeffer was theologically trained in the Reformed Calvinist tradition, and so his ideas on the relationship between the church and the state were likely influenced by Calvin.[84]

Calvin taught that there were two kingdoms: the realm of Christ, and civil government, which was a human system of governance. [85] He believed that while these two kingdoms were far removed from each other, there was a possibility of some kind of interaction between them. [86] This interaction, however, could only be to the advantage of the church. While civil government's intervention into the matters of the church (such as church activities and worship practices) was unacceptable, the church could - indeed had the duty to - influence government. [87] For this reason, Calvin rejected any notion of a separation of church and state as understood in modern times. While church and state are distinct institutions, Calvin believed they functioned as a unified whole with the state working in the service of the church.[88] Unless the church played a central role in the

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[84] Barry Hankins, *Francis Schaeffer and the Shaping of Evangelical America*, (Grand Rapids, MI: William B. Eerdmans Pub. Co., 2008), 12, 13.

[85] Douglas F. Kelly, *The Emergence of Liberty in the Modern World: The Influence of Calvin on Five Governments from the 16th Through 18th Centuries* (Phillipsburg, NJ: Presbyterian and Reformed, 1992), 15.

[86] John Calvin, "Of Civil Government," quoted in Harro Höpfl, ed., *Luther and Calvin on Secular Authority* (Cambridge: Cambridge University Press, 1991), 48.

[87] Ibid., 51.

[88] Calvin, 47.

affairs of civic government, its success was far from guaranteed.[89] In fact, Calvin stated that "no polity can be well constituted, unless it makes duties owed to God its first concern, and that for laws to attend only to the well-being of men, while disregarding what is owed to God, is an absurdity."[90]

While having no authority to intervene in church affairs, the state was divinely mandated by God to protect (and support) religious establishment. According to Calvin, the government could assist the church through two complementary means: First, government should concern itself with the spiritual condition of the citizenry. Calvin considered civil government to be a necessary aid for humanity's "pilgrimage on earth" and that no one was to deprive man of the godly benefits of civil government.[91] In his discussion on Calvinism, Thomas G. Sanders described Calvin's beliefs on the role of government:

> The civil government . . . should act in terms of the will of God, seeking God's Word how best the political order could contribute to the salvation of its citizens, as well as providing an orderly and beneficial temporal setting for their daily life."[92] Second, the government should be a defender of the church. Calvin believed that "the end of secular government, however, while we remain in this world, is to foster and protect the external worship of God, defend pure doctrine, and the good condition of the Church.[93]

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[89] Ibid.

[90] Ibid., 58.

[91] Ibid., 49-50.

[92] Thomas G. Sanders, *Protestant Concepts of Church and State*, (New York: Holt, Rinehart and Winston, 1964), 227.

[93] Calvin, "Of Civil Government," 49.

Thus, while he did not believe in passing laws pertaining to particular worship styles, Calvin believed that public denigration of Christianity should be outlawed to protect the reputation of the church.[94]

Calvin found support for his views on the relationship between church and state in the New Testament. In Romans 13:1-7, for example, Paul suggests that Christians should submit themselves to secular authorities.[95] Calvin interpreted these verses as supportive of church influence over the state. According to Calvin, if governments exist by divine ordinance and are endowed with the power to coerce then the powers of such institutions could be used to support God's work.[96] As such, Calvin's teachings on the relationship between church and state only slightly departed from the medieval Roman Catholic approach and could be viewed as endorsing a theocratic form of government.[97] In such a system, the church enjoys significant influence over the affairs of the state.

Critique of Calvin

Calvin used Rom 13:1-7 to support his argument regarding the influence of the church on the state. His analysis, however, is misguided because the idea Calvin

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[94] Ibid., 50; R. H. Murray, *The Political Consequences of The Reformation: Studies in Sixteenth Century Political Thought* (London: Ernest Benn, 1926), 97-98; Kelly, *The Emergence of Liberty in the Modern World,* 26.

[95] In his work, "Of Civil Government," Calvin mistakenly referenced this text as being from Rom 13:14. Calvin, "Of Civil Government," 52.

[96] Ibid., 52; G. Joseph Gatis, "The Political Theory of John Calvin," *Bibliotheca Sacra* 153 (October-December 1996): 460, 466.

[97] Redekop, *Politics Under God*, 50. Calvin's views are considered theocratic because of Calvin's emphasis on God's transformative work in all elements of creation, His sovereignty in both the church and the state, and the need for a Christian state. Murray, *The Political Consequences of The Reformation*, 89, 95.

extrapolates is not in the actual text. In Rom 13:1-7 Paul talks about submission to governmental authorities, not the idea that the church should control or influence government. Furthermore, Calvin's role in the Reformation provides a critique against his use of Rom 13:1-7. If Calvin's argument is correct, then he should have committed his will to the Catholic Church because, as Paul wrote, "there is no authority except from God, and those which exist are established by God. Therefore whoever resists authority has opposed the ordinance of God; and they who have opposed will receive condemnation upon themselves."[98] Because Calvin did not submit to the religious and political authority of the Catholic Church despite Paul's statement in Rom 13, then it is most likely that Calvin would not support the idea that all power should be submitted to without question.[99] Rather, it seems that he is arguing that when the government is correct it should be supported and when it is not, people have the right to break away, as he did. However, Calvin gives little guidance on how to decide whether or not government is correct. His argument is based on a foundation that cannot be supported.

Conclusion

Unfortunately, the Bible is not explicit on the subject of whether or not the church should lobby the state to legislate (or enforce) particularly Christian morals. Despite this, there is biblical evidence to support the idea that Christians should be careful in terms of how they relate to their government. More cogently, there is evidence to support a biblical principle that Christians should not force their ideas on others and that human beings have the freedom to make their own decisions about morality.

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[98] Rom 13:1b-2.

[99] It is also doubtful whether Paul meant that either.

While the Bible does not expressly state that there is separation between the church and the state, there is at least some evidence that at certain times God punished kings in Israel for performing religious functions. Uzziah was stricken with leprosy because he burned incense in the temple, which was the sole responsibility of the priests. In addition to these direct examples, the Bible also shows that the results of religious laws of the state and other church-state unions are negative. Twice in the book of Daniel we see Daniel and his friends suffer punishment for exercising their consciences with regard to religious worship. The most damning evidence is the fact that the crucifixion of Jesus was the result of the Jewish leaders surreptitiously using the power of the Roman state to accomplish their goals.

The Bible also provides suggestions on how the church should relate to the state. This counsel is largely found in the New Testament. The narrative of Christ's words (to "render unto Caesar") and the advice of Peter and Paul support the idea that the church and its members are to be submissive to the government, while realizing that their first duty is to the God. Some have used these texts to justify religious intrusion into the realm of politics and support for moral legislation. However, the texts do not support the weight of that argument. Instead, the texts support the idea that Christians answer to a higher power and should submit to government up to the point where the government comes in conflict with the Christian's duty to God.

God has given each human being the freedom to choose one's own morality. While people must live with the consequences of their actions, God does not remove the ability to choose. According to the Bible, God Himself suffered because of His defense of each individual's right to choose. God did not force Lucifer to believe differently,

although He knew the damage it would cause. God did not constrict Adam and Eve, even though He knew that Jesus would eventually have to sacrifice Himself in order to redeem humanity. God did not force Israel, although they were rejecting Him as their king. These biblical narratives provide evidence for the idea that God supports the right of individuals to make incorrect decisions.

There is also evidence that even when God's people find themselves in positions of power in foreign societies, they should not use their power to transform society through compulsion. Joseph, Daniel, Esther, and Mordecai were all in positions of power in societies that did not acknowledge the Hebrew God. They gave advice to their kings and leaders, and in some cases saved their societies from social upheaval and ruin. Each of these people was also willing to testify to their belief in God, even on pain of death. However, at no time did any of these people seek to have others in the society live as they did, and especially not through ordering people to worship God.

American evangelical leader and advocate Francis Schaeffer posited a very different view of Scripture. The results of his methods of biblical interpretation led to a belief in Christian involvement in politics that undergirded the growth of the Religious Right. The next chapter will discuss his ideas and how they influenced the Religious Right, and critique his ideas based on the foregoing analysis.

CHAPTER FOUR

The Religious Right and Francis Schaeffer's Church-State Theology

Introduction

Over the last forty years, leaders of the conservative evangelical movement have become increasingly involved in politics. Names like Jerry Falwell, Pat Robertson, Tim LaHaye, and Ralph Reed are familiar not only in religious circles, but to the general public as well. Less familiar to the general public is the role of Francis Schaeffer to the Religious Right. Schaeffer is perhaps the most significant theologian of the Religious Right and many evangelical leaders and conservative politicians have cited Schaeffer as influential on their beliefs regarding the intersection of religion and politics.[1]

Schaeffer as a theologian offers an apologetic of the inerrancy of Scripture and wants to reestablish the idea that the Bible speaks to all aspects of existence.[2] Therefore, it is reasonable to question whether Schaeffer's statements about the intersection of religion and politics can withstand criticism based on the principles established in the previous chapter. In order to answer this question, this chapter will introduce the

[1] Schaeffer is described as a "primary force" in getting Evangelicals involved in politics, and the list of figures in the Evangelical movement who have been influenced by Schaeffer includes Jack Kemp, Chuck Colson, Randall Terry, Cal Thomas, Harold O.J. Brown, and Timothy George. See Chuck Colson and Timothy George, "Flaming Truth," *Christianity Today*, February 1, 2012, 45; Graham G. Dodds, "Crusade or Charade? The Religious Right and the Culture Wars," *Canadian Review of American Studies* 42, no. 4 (2012): 278; Michael Hamilton, "The Dissatisfaction of Francis Schaeffer," *Christianity Today*, March 3, 1997, 22.

[2] Barry Hankins, *Francis Schaeffer and the Shaping of Evangelical America*, (Grand Rapids, MI: William B. Eerdmans Pub. Co., 2008), 2; L.G. Parkhurst, Jr., *Francis & Edith Schaeffer*, (Minneapolis, MN: Bethany House Pub., 1996), 143-46.

Religious Right and examine Schaeffer's theological assumptions and views; especially how these relate to government, laws, church-state interaction, and his influence on the Religious Right. Finally, Schaeffer's views on the intersection of religion and politics will be compared and contrasted with the principles described in the previous chapter.

The Religious Right

Clyde Wilcox and Carin Robinson in their book, *Onward Christian Soldiers? The Religious Right in American Politics*, provide a succinct definition of the Religious Right. The Religious Right is defined as, "[A] social movement that attempts to mobilize evangelical Protestants and other orthodox Christians into conservative political action."[3] The Christian Right began in the late 1970s but its roots can be found in the social upheaval of the 1960s and 1970s.[4] In response, Gary Jarmin founded Christian Voice in California in 1978.[5] This group was a conglomeration of groups that were against homosexuals, pornography, and abortion. Even more prominent than Christian Voice was the group founded by the Reverend Jerry Falwell in 1978, the Moral Majority.[6] The group claimed to establish chapters in all fifty states, a membership of over 4 million, and

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[3] Clyde Wilcox and Carin Robinson, *Onward Christian Soldiers? The Religious Right in American Politics, 4th ed.*, (Boulder, CO: Westview Press, 2011), 8.

[4] Watson, Justin, *The Christian Coalition: Dreams of Restoration, Demands for Recognition*, (New York: St. Martin's Press, 1997), 19.

[5] Clyde Wilcox, *God's Warriors: The Christian Right in Twentieth-Century America*, (Baltimore: The Johns Hopkins Univ. Press, 1992), 95; Erling Jorstad, *The Politics of Moralism: The New Christian Right in American Life*, (Minneapolis, MN: Augsburg Pub. House, 1981), 75.

[6] Ibid.

an active donor list of 2 million.[7] After some electoral success in the 1980s, Falwell disbanded the Moral Majority in 1989. [8]

The same year that the Moral Majority disbanded, Pat Robertson and Ralph Reed started the Christian Coalition.[9] This organization was established to focus more on grassroots principles.[10] The Christian Coalition organized as a system of state affiliates and local chapters.[11] The organization grew quickly, starting with a membership of 25,000.[12] By the end of the first year the organization had more than doubled in size to 57,000 members.[13] When Ralph Reed left the Christian Coalition in 1997, the membership numbered at 1.9 million.[14]

In 1992, Ralph Reed informed the Republican Party that it needed a more pro-family agenda if it wanted to hold on to the evangelical political base in the upcoming

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[7] Ibid., Wilcox, 96. Several other groups were formed in the late 1970s and 1980s. Religious Roundtable and Concerned Women for America were founded in 1979. The Freedom Council was formed in 1981, the American Coalition for Traditional Values was formed in 1983, the American Freedom Council was founded in 1987, and the Family Research Council was founded in 1988. Matthew C. Moen, *The Transformation of the Christian Right*, (Tuscaloosa, AL: The Univ. of Alabama Press, 1992), 66.

[8]Glenn H. Utter and James L. True. *Conservative Christians and Political Participation: A Reference Handbook*, (Santa Barbara, CA: ABC-CLIO, 2004), 68.

[9] Ruth Murray Brown, *For A Christian America: A History of the Religious Right*, (Amherst, NY: Prometheus Books, 2002), 186.

[10] Watson, 52.

[11] Ibid., 53.

[12] Utter and True, 69.

[13] Watson, 54.

[14] Ibid., 54.

election.[15] While the Republican Party lost the White House in 1992, they had some success during the 1990s on the local level. By 1994, the Christian Coalition held control of eighteen state Republican parties.[16] Including those states, the Christian Coalition had "substantial influence" in a total of thirty states.[17] That influence led to the Republican Party controlling both houses of Congress for the first time in forty years.[18] Seventy-five percent of the evangelical vote went to Republican candidates.[19]

The Christian Right was reenergized with the advent of George W. Bush as a leading candidate for the 2000 presidential election.[20] Bush was the type of candidate that evangelicals could support. He had an authentic "born-again" experience with evangelist Arthur Blessit and Billy Graham that helped him control his drinking problem and save his marriage.[21] Bush was successful in his campaign by managing the expectations of the evangelical base while projecting a broader message simultaneously.[22] For example, in the South Carolina primary, Bush spoke at Bob Jones University, sent a direct mailer warning voters that McCain was not pro-life, and used a Bob Jones university professor

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[15] William Martin, *With God on Our Side: The Rise of the Religious Right in America*, (New York: Broadway Books, 1996), 325.

[16] Williams, 232.

[17] Hopson and Smith, 5.

[18] Williams, 233.

[19] Matthew Moen, "The Evolving Politics of the Christian Right," *PS: Political Science and Politics*, Vol. 29, No. 3, (Sept. 1996): 462.

[20] Wilcox and Robinson, 52.

[21] Williams, 246

[22] Esther Kaplan, *With God on Their Side: George W. Bush and the Christian Right*, (New York: The New Press, 2005), 76.

to spread the rumor that McCain might have fathered an illegitimate child.[23] However the perception of Bush was of warmth, compassion, and multiculturalism by the time he accepted the nomination at the Republican Convention.[24] Like Reagan and Bush before him, the support of evangelicals was crucial to Bush's victory in 2000. Seventy-five percent of evangelicals voted for Bush.[25] Karl Rove surmised that Bush's margin of victory would have been higher if not for low turnout amongst evangelicals.[26]

The September 11 attacks changed the tenor of President Bush's first term, and he was unable to address much of the Religious Right's agenda. However, he was able to sign into law the Partial-Birth Abortion Act in 2003.[27] Despite the lack of results from the White House, the New Christian Right found a galvanizing issue in the Supreme Court decision in Massachusetts in 2003 that recognized gay marriage as constitutional.[28] The Religious Right helped to put marriage initiatives on the ballot in eleven states and led grassroots efforts for their success.[29] Religious Right organizations, energized by a new fight, led mobilization efforts such as the "I Vote Values" campaign to register new

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[23] Kaplan, 77.

[24] Ibid., 76.

[25] Ibid., 74.

[26] Wilcox and Robinson, 53.

[27] Williams, 253.

[28] Wilcox and Robinson, 53.

[29] John C. Green, Kimberly H. Conger, and James L. Guth "Agents of Value: Christian Right Activists in 2004," in *The Values Campaign? The Christian Right and the 2004 Elections*, eds., John C. Green, Mark J. Rozell, and Clyde Wilcox, 22-55. (Washington, DC: Georgetown Univ. Press, 2006), 22.

evangelical voters.[30] With more registered voters who were eager to come to the polls to vote against gay marriage, 78% of evangelical voters voted for Bush in 2004 and the total number of evangelicals who voted increased by 3.5 million over the total number in 2000.[31]

The Religious Right became disenchanted with the Bush administration in its second term. In 2005, President Bush nominated Harriet Miers to the Supreme Court.[32] The Bush administration sought support from leaders of the Religious Right, but then it was discovered that Miers might be supportive of gay rights and abortion rights.[33] Furthermore, the Federal Marriage Amendment, which was the centerpiece of the Religious Right's fight to define marriage, came up for a vote in 2006 and was rejected.[34] These issues led to a decline in the influence of the Religious Right towards the end of the first decade of the twenty-first century.

Francis Schaeffer

Biography

Francis Augustus Schaeffer IV was born on January 30, 1912 in Germantown, PA. After college Schaeffer enrolled at Westminster Seminary, but was there for only two years. Several faculty, including Carl McIntire and Dr. A.A. McRae split from Westminster and eventually formed Faith Seminary, where Schaeffer enrolled as their

[30] Ibid.; Williams, 260.

[31] Williams, 261.

[32] Williams, 265.

[33] Wilcox and Robinson, 54; Williams, 266.

[34] Williams, 263.

first student.[35] This split also created a new denomination, the Bible Presbyterian Church, and Schaeffer became the first minister the church ordained. Schaeffer received his ministerial degree from Faith Theological Seminary in 1938.[36]

In 1955, Schaeffer and his wife Edith founded an independent faith mission in Champery, Switzerland called L'Abri.[37] The mission was established for people of all different backgrounds to come and learn more about Schaeffer's hyper-intellectualized approach to Christianity. Schaeffer devoted his life to evangelism and in 1965 he conducted a series of lectures at Wheaton College that eventually became the book *The God Who is There*.[38] Schaeffer was also a visiting lecturer at both Covenant Theological Seminary in St. Louis and the Theological Academy in Switzerland. After an extensive career speaking and writing, Schaeffer died on May 15, 1984 from lymphatic cancer.[39]

Schaeffer's Theological Views

The majority of the substance of Schaeffer's theological views can be found in three of his books – *The God Who is There*, *Escape from Reason*, and *He is There and He*

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[35] The seminary split over theological disagreements about three issues – Calvinism, temperance, and premillennialism. Hankins, 13.

[36] Hankins, 12-13.

[37] Hankins, 57; Parkhurst, Jr., 88

[38] Hamilton, 27; Hankins, 75-76. Schaeffer spoke at several colleges and universities, including Harvard, Yale, Princeton, Helsinki University, Hong Kong University, and the University of Malaya. He also faithfully corresponded by letter to those who would write to him for counsel and guidance on very difficult spiritual and life questions. Parkhurst, Jr., 106. For many examples of Schaeffer's letters, see Francis Schaeffer, *The Letters of Francis Schaeffer: Spiritual Reality in the Personal Christian Life*, ed. Lane T. Dennis (Westchester, IL: Crossway Books, 1985).

[39] Parkhurst, Jr., 131.

is Not Silent.[40] A crucial element of Schaeffer's theology is the belief that around the turn of the twentieth century, humanism and rationalism slowly supplanted Christian principles as the guiding basis for Western society and culture. Schaeffer defined humanism/rationalism as "the system whereby man, beginning absolutely by himself to rationally build out from himself, having only man as his integration point, to find all knowledge, meaning and value."[41] Schaeffer makes it a point to distinguish rationalism from the rational, which is the fact that "things about us are not contrary to reason, or man's aspiration to reason is valid."[42] As a result, Schaeffer establishes the Judeo-Christian position as rational, but also as the antithesis of the principles of rationalism that he sees as taking hold in the coming postmodern society.[43] In Schaeffer's view, relativistic thinking usurped the place of the moral absolutes and rational principles of the Bible as the foundation of modern times.

Schaeffer believed that the Bible is both inerrant and infallible. In *Escape from Reason*, Schaeffer attempts to logically prove that the Bible resolves every question. For Schaeffer it is important that Christians, "have the Scriptures speaking true truths both about God Himself and about the area where the Bible touches history and the cosmos."[44] A belief in the Bible as God's word allows for four central facts according to Schaeffer.

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[40] Francis A. Schaeffer, *Genesis in Space and Time*, (Downers Grove, IL: IVP, 1972), 162.

[41] Francis A. Schaeffer, *The God Who is There*, (Downers Grove, IL: IVP, 1968), 17.

[42] Ibid.

[43] Francis A. Schaeffer, *The God Who is There*, (Downers Grove, IL: IVP, 1968), 17.

[44] Schaeffer, *Escape from Reason*, 82-83.

First, that the God who is in control of everything is a good God. Second, that there is the hope of a solution for the dilemma of man's existence.[45] Third, there is a sufficient basis for morals found in the Bible, and finally, that there is an adequate reason for fighting evil.[46]

In *Escape from Reason* Scaheffer focuses on the idea that if Christ is Lord over every aspect of life, than He must be Lord over the intellectual life of Christian as well. Therefore, Christ must be Lord over our rational and reasoned thought. In conjunction with the principle of Christ's Lordship, Schaeffer also argues against unrestrained freedom. "Any autonomy is wrong," Schaeffer writes, "If…we mean [being] free from the content of what God has told us."[47] What God told us gives us the only possibility for freedom for humans as finite beings.[48] Schaeffer warns us that autonomy divorced from God leads to a society where not only God disappears, but the essence of humanity and freedom itself as well.[49]

The Lordship of Christ in every aspect of life for the Christian is also foundational to Schaeffer's theology as it pertains to the intersection of religion and government.[50]

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[45] Schaeffer defines humanity's dilemma as the ability to perform great acts of either good or evil. Schaeffer, *The God Who is There*, 100.

[46] Schaeffer, *The God Who is There*, 106-07.

[47] Schaeffer, *Escape from Reason*, 84.

[48] Ibid.

[49] Schaeffer, *Escape from Reason*, 40, 84.

[50] Francis Schaeffer, *How Should We Then Live? The Rise and Decline of Western Thought and Culture*, (Old Tappan, NJ: Fleming H. Revell Co.), 256; Francis Schaeffer, *A Christian Manifesto*, (Westchester, IL: Crossway Books, 1981), 10. Schaeffer also makes this statement twice in his book *The Great Evangelical Disaster*, and also extends the argument to abortion in the book and film, *Whatever Happened to the Human Race*,

Schaeffer first addresses the subject directly in *How Should We Then Live.* In this book, Schaeffer is interested in why the world has become the way that it is and questioned whether the world must inevitably function the way that it now functions. In order to address the question, Schaeffer begins by outlining the three lines of inquiry that he deems to be of importance – philosophy, science, and religion.[51]

In the Reformation, the return of biblical Christianity gradually brought more political freedom as well. Schaeffer believed that the return to biblical teaching found in the Reformation gave humanity freedom but with consistent values that had gained and shared consensus.[52] The Bible became the basis of law and was emphasized in works like Samuel Rutherford's *Lex is Rex*. Schaeffer posits that Rutherford's work had a great influence on the United States Constitution through John Witherspoon and John Locke.[53]

Furthermore, Schaeffer believed that the result of humanity seeking to be morally self-reliant was a morality that is not grounded in any objective standard. The will of the people, even if abhorrent, becomes the basis for law. When that happens, law becomes arbitrary, and Schaeffer uses the case of *Roe v. Wade* as his primary example. Instead of the law regarding abortion being related to the objective standard of the Christian beliefs about when life begins, the ruling in *Roe* was based on, according to Schaeffer, misguided notions of humanism and individual rights. Schaeffer believed that freedom became destructive once it was removed from the Christian consensus that Schaeffer

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which will be more fully examined in chapter 5. Schaeffer, *The Great Evangelical Disaster,* 11, 119.

[51] Schaeffer, *How Should We Then Live?*, 20.

[52] Schaeffer, *How Should We Then Live?*, 105.

[53] Ibid., 109.

believed birthed that freedom. When that consensus was removed, Schaeffer believed that a manipulative authoritarianism would take its place.[54] Schaeffer makes it clear that he thinks the best (and only) solution is the reaffirmation in society of God's revelation in the Bible and His revelation in Christ. He also makes it clear that this can take place so long as believers influence the consensus, and that they do not need a majority in order to be successful.[55]

Schaeffer gave his most thorough treatment of the subject in *A Christian Manifesto*. In the preface, Schaeffer sets out the question as, "What is the Christian's relationship to government, law, and civil disobedience?"[56] Schaeffer begins with the premise that while "True spirituality covers all of reality," and that "the Lordship of Christ covers all of life and all of life equally," there has been a shift from a vaguely Christian worldview to an impersonal, chance-based view of reality.[57] God, as the foundation for morality, must be the basis for the law. Schaeffer states, "The base of law is not divided, and no one has the right to place anything, including king, state, or church, above the content of God's law."[58] Therefore, the law should not include anything that is not directly or specifically in line with God's law, regardless of the will of the people. Furthermore, Schaeffer advocates for religious freedom and touts its benefits not only for

[54] Ibid., 245.

[55] Ibid., 252.

[56] Schaeffer, *A Christian Manifesto*, 10.

[57] Ibid., 17-19.

[58] Ibid., 29.

Christians, but for all religions as well. He then says that it will be the responsibility of Christians to show that Christianity is true in "the marketplace of freedom."[59]

Schaeffer then chastises Christian lawyers and theologians for not objecting as new definitions of pluralism and acceptable morality are espoused and accepted in the public square.[60] However, he does laud the Moral Majority for its strong stand for biblical principles.[61] He writes,

> [T]hey have certainly done one thing right: they have used the freedom we still have in the political arena to stand against the other total entity. They have carried the fact that law is King, is above the lawmakers, and God is above the law into this area of life where it always should have been. And that is a part of true spirituality.[62]

He goes on to say that if all Christians are not doing the same type of thing that the Moral Majority is doing then they are not showing the Lordship of Christ in the totality of their lives.[63]

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[59] Ibid., 46.

[60] In reference to the debate over religion in the public square, Schaeffer critiques the current definition of the separation of church and state for the removal of the influence of religion in civil government. Schaeffer espouses the argument that the concept of separation used today is "totally reversed from its original intent," and that the Founding Fathers understood that the system of law they created was based on Judeo-Christian principles, including the Ten Commandments. Schaeffer, *A Christian Manifesto*, 36-38.

[61] At the time Schaeffer wrote *A Christian Manifesto*, the Moral Majority had existed for approximately three years, founded by Jerry Falwell in 1978. A more in depth discussion of Schaeffer's influence on Falwell will be discussed in this chapter. Justin Watson, *The Christian Coalition: Dreams of Restoration, Demands for Recognition*, (New York: St. Martin's Press, 1997), 19; Clyde Wilcox, *God's Warriors: The Christian Right in Twentieth-Century America*, (Baltimore: The Johns Hopkins Univ. Press, 1992), 95; Erling Jorstad, *The Politics of Moralism: The New Christian Right in American Life*, (Minneapolis, MN: Augsburg Pub. House, 1981), 75.

[62] Schaeffer, *A Christian Manifesto*, 61.

[63] Ibid., 62.

Schaeffer supports his position biblically by citing three texts. First he cites Matthew 22:21, "Then render to Caesar the things that are Caesar's; and to God the things that are God's."[64] Schaeffer references this text in order to answer the question of whether God has established the state as autonomous from Himself and whether the Christian is to obey the state at all costs. Using Matt 22:21, Schaeffer makes the point that God and Caesar are not equal, but that God is above Caesar. Therefore, "civil government, as all of life, is under the Law of God."[65] Therefore, when any office demands something that is contrary to the moral law of God, Schaeffer believes they are acting in violation of their authority and are not to be obeyed.

Schaeffer then cites Romans 13:1-4 and 1 Peter 2:13-17 for the similar proposition that government's authority is not autonomous authority but power that is delegated from God. Schaeffer describes the role of the state according to Paul as being "an agent of justice, to restrain evil by punishing the wrongdoer, and to protect the good in society."[66] Schaeffer postulates that when the state does the opposite, it no longer has any claim to God's delegated authority.[67] Peter makes a very similar statement in 1 Peter 2:13-17 when he describes governors as "sent by [God] for the punishment of evildoers

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[64] A more thorough discussion of Matt 22:21 is in the previous chapter.

[65] Schaeffer, *A Christian Manifesto*, 90.

[66] Ibid., 91.

[67] Schaeffer, *A Christian Manifesto*, 91. Schaeffer's view of the relationship between church and state echoed the beliefs of John Calvin. See John Calvin, "On Civil Government," quoted in Harro Hopfl, ed. *Luther and Calvin on Secular Authority* (Cambridge: Cambridge University Press, 1991), 52; G. Joseph Gatis, "The Political Theory of John Calvin," *Bibliotheca Sacra* 153 (October-December 1996), 460, 466. Schaeffer spent his years in seminary at Westminster Seminary and Faith Seminary, both Reformed Calvinist institutions. Hankins, 12-13.

and the praise of those who do right." Schaeffer states that the whole structure falls apart when the state does not punish wrongdoers and "praise those who do right." Schaeffer defines tyranny as ruling without the sanction of God and so any government becomes tyrannical whenever it does not follow the roles defined for it in the Bible.[68]

Interestingly enough, Schaeffer also gives political advice to Christians that the modern iteration of religious conservatives seemed not to heed. First, Schaeffer warns against being identified with one particular political party.[69] It seems Schaeffer would not be pleased with the strong ties between evangelicals and the Republican Party.[70] Second, Schaeffer warns that Christians' political activism should not lead to a theocracy, nor should it bring about the confusion of God and country.[71] This is not only a current critique but it seems that Schaeffer had misgivings about some of the leaders of the evangelical movement even at that time. Hankins notes that while Schaeffer may have privately held reservations about the Religious Right, publicly he became associated with them. Hankins writes,

> By training, experience, or temperament, he was unaccustomed to taking mediating positions…. Try as he might to distinguish himself from

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[68] Schaeffer, *A Christian Manifesto*, 91, 100. For two chapters in *A Christian Manifesto*, Schaeffer discusses civil disobedience as a tactic and advocates for civil disobedience and the use of force as a last resort. Because of the scope of this dissertation, his views on this subject are not important here. Schaeffer, *A Christian Manifesto*, 103.

[69] Schaeffer, *A Christian Manifesto*, 78.

[70] According to polling conducted by the Pew Research Center, in 2011 seventy percent of White Evangelicals either considered themselves Republicans or leaned Republican. Pew Research Center, "Trends in Party Identification of Religious Groups," http://www.pewforum.org/2012/02/02/trends-in-party-identification-of-religious-groups/ (accessed August 26, 2013).

[71] Schaeffer, *A Christian Manifesto*, 121.

> Falwell, the Moral majority, and theocracy, he did not succeed in carving out a political stance that was distinct from the Christian Right. Rather, he became the movement's intellectual guru.[72]

Schaeffer's Influence on the Religious Right

Despite some of these central departures from his ideas, Schaeffer had an indelible impact on many leaders of the conservative evangelical political movement. Conservative Christian leaders like Tim LaHaye and the Reverend Jerry Falwell have been explicit in their reliance on Schaeffer's ideas. In an interview conducted in 1982, LaHaye said that Schaeffer was a mentor to current leaders in the Religious Right.[73] He also credits Schaeffer with being the catalyst for his own work on humanism, and dedicates his book, *The Battle for the Mind*, to Schaeffer.[74]

Falwell's development into a leader in the Religious Right was an odd and surprising development for him, as he started out as a preacher who was generally opposed to mixing religion with politics. He criticized ministers who were involved in the Civil Rights Movement during the 1960s and said that the job of Christians was to "preach the Word" not "reform the externals."[75] Falwell's thinking changed when he met Francis Schaeffer. Former ghostwriter Mel White said of their relationship that Schaeffer "convinced Jerry there was no biblical mandate against joining with 'nonbelievers' in a

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[72] Hankins, 204.

[73] John Leland Berg, "An Ethical Analysis of Selected Leaders and Issues of the New Religious Right," (PhD diss., Baylor University, 1985), 127-28.

[74] Furthermore, Falwell cites LaHaye for his understanding of humanism in a book he edited entitled *The Fundamentalist Phenomenon*. Berg, 128; Tim LaHaye, *The Battle for the Mind*, (Old Tappan, NJ: Fleming H. Revell, 1980), 5.

[75] Cathy Young, "Jerry Falwell's Paradoxical Legacy," *Reason* 39, no. 4 (Aug/Sep 2007): 19.

political cause."[76] This generally affected Falwell's thinking on the intersection of religion and politics and his group, Moral Majority, had a more ecumenical base because of this conviction. Jerry Falwell's Old Time Gospel Hour distributed 62,000 copies of *A Christian Manifesto*, and invited Schaeffer to speak to students at Liberty Baptist College (now Liberty University) on several occasions. Moreover, Falwell specifically mentioned *A Christian Manifesto* on his television program saying that the book "was probably the most important piece of literature in America today."[77]

Frank Schaeffer, Francis Schaeffer's son, also discusses his father's effect on the Religious Right in his book *Crazy for God: How I Grew Up as One of the Elect, Helped Found the Religious Right, and Lived to Take All (or Almost All) of It Back* . In the preface of the book, after describing some of the negative responses he received when he left the Republican Party, he says that he and his father, "contributed mightily to the creation of the right-wing/evangelical/Republican subculture that was attacking [him]."[78] He also noted how the leaders of the Religious Right organizations gained something from being associated with Schaeffer. He comments, "Empire builders like Robertson, Dobson, and Falwell liked rubbing up against (or quoting) my father, for the same reason that popes liked to have photos taken with Mother Teresa."[79]

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[76] Ibid., 20.

[77] Ronald A. Wells, "Schaeffer in America," in *Reflections on Francis Schaeffer*, ed. Ronald W. Ruegsegger (Grand Rapids, MI: Academie Books, 1986), 234.

[78] Frank Schaeffer, *Crazy for God: How I Grew Up as One of the Elect, Helped Found the Religious Right, and Lived to Take All (or Almost All) of It Back*, (New York: Carroll & Graf Pub., 2007), 4.

[79] Ibid., 297.

Despite Schaeffer's call to not be wed to any one political party, it seems that he was unable to follow his own counsel. In *Crazy for God,* Frank Schaeffer describes the change that took place over the course of a series of lectures called the *Whatever Happened to the Human Race?* tour. Schaeffer says that debates that took place over the course of the tour became increasingly personal. At first, the Schaeffers were discussing alternatives to abortion, but at some point they became more adamant about evangelicals becoming more politically active. This included "calling for civil disobedience, the takeover of the Republican Party, and even hinting at overthrowing our 'unjust pro-abortion government.'"[80]

Schaeffer was not only a source of inspiration for leaders of the religious right, but he also played an active role in its leadership. For example, Francis and Frank Schaeffer were instrumental in the founding of the Rutherford Institute along with Pat Robertson.[81] The Schaeffers also made frequent appearances on Pat Robertson's show *The 700 Club.*[82] Robertson has also said that *A Christian Manifesto* is one of his favorite books.[83]

Schaeffer's influence continues to be felt today, even in the halls of government. Barry Hankins, author of *Francis Schaeffer and the Shaping of Evangelical America* states in his introduction, "It is hard to find an evangelical from the Northern or Midwestern United States between the ages of fifty and seventy who was not influenced

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[80] Schaeffer, *Crazy For God*, 293.

[81] Ibid., 315.

[82] Ibid., 317.

[83] Hamilton, 29.

by Francis Schaeffer."[84] One example of this statement is Michele Bachmann, a Republican representative from Minnesota. Representative Bachmann and her husband first encountered Schaeffer as undergraduates at Oral Roberts University where they saw the series of films, *How Should We Then Live?,* which the *New Yorker* described as "life-altering" for the couple. In 2005 Bachmann told the Minneapolis *Star Tribune* that she was reading *Total Truth: Liberating Christianity from its Cultural Captivity*, written by Nancy Pearcey, a former student of Schaeffer's. On the campaign trail Bachmann asked whether people knew about *How Should We Then Live*, and then explained the effect of Schaeffer's work –

> That also was another profound influence on Marcus's life and my life, because we understood that the God of the Bible isn't just about Bible stories and about Bible knowledge, or about just church on Sunday. He is the Lord of all of life. Every bit of life, including sociology, theology, biology, politics. You name the area and walk of life. He is the Lord of life. And so, as we went back to our studies, we looked at studying in a completely different light. Not for the purpose of a career but for a purpose of wondering, How does this fit into creation? How does this fit into the code and all of life that is about to come in front of us? And so we had new eyes that were opened up as we understood life now from a Biblical world view.[85]

The lesson that Bachmann says that she has learned from Schaeffer is that Christian principles have a greater purpose and meaning that goes beyond religion itself and that

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[84] Hankins, xi.

[85] Ryan Lizza, "Leap of Faith," *New Yorker* 87, no.24 (August, 15, 2011): http://ehis.ebscohost.com.ezproxy.baylor.edu/ehost/detail?sid=d3981981-4d93-4327-abd9-46ab54e31dbd%40sessionmgr111&vid=3&hid=106&bdata=JnNpdGU9ZWhvc3QtbGl2ZSZzY29wZT1zaXRl#db=a9h&AN=64381974 (accessed August 13, 2013).

those principles should be brought to bear on whatever professions people are called to do.[86]

Criticism of Schaeffer's Theology

Schaeffer only addresses the topic of this dissertation – how Christians should relate to the state, government, and laws in a perfunctory manner. Because of this, it appears that Schaeffer makes statements that can be construed as contradictory. For example, in *Escape from Reason*, Schaeffer says that human beings must have the ability to reject God by their own free choice. In *A Christian Manifesto,* he explicitly states, "No one should decide for another."[87] Yet, he is also explicit that "every Christian ought to be praying and working to nullify the abominable abortion law."[88] A nullification of such a law would be a group of people advocating the removal of choice from others as to what to do with their bodies or deciding for them the very personal question of when they believe that life begins. Schaeffer seems to take umbrage with the fact that people are exercising the system exactly the way God intended, but the outcomes are not as Schaeffer would like them to be expressed. People, using the free choice given them by God, are choosing to live without Him and determine truth for themselves. From a Christian perspective people making this choice is incredibly unfortunate. However, disappointment at the decisions of others does not give Christians the right (or the

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[86] Ryan Lizza, "Leap of Faith," *New Yorker* 87, no.24 (August, 15, 2011): http://ehis.ebscohost.com.ezproxy.baylor.edu/ehost/detail?sid=d3981981-4d93-4327-abd9-46ab54e31dbd%40sessionmgr111&vid=3&hid=106&bdata=JnNpdGU9ZWhvc3QtbGl2ZSZzY29wZT1zaXRl#db=a9h&AN=64381974 (accessed August 13, 2013).

[87] Schaeffer, *A Christian Manifesto,* 108.

[88] Schaeffer, *A Christian Manifesto,* 73.

justification) to attempt to influence this system by using coercion through intrusive government legislation.

Conclusion

Unfortunately for Francis Schaeffer, he never was able to control the way evangelicals used his words and ideas to lend gravitas to their own beliefs about the role of religion in politics. It is clear that leaders in the conservative evangelical movement, both now and then, use his ideas to support a level and mode of cultural engagement that he would probably not support. However, his good intentions do not leave him above reproach. The principles he supported and the level of political engagement for which he advocated are legitimately the foundation for the gradual overreaching of the conservative evangelical movement that we see today.

However it is not enough to simply criticize Francis Schaeffer and the Religious Right for their methods. Using two examples, gay marriage and women's reproductive issues, this dissertation will make positive suggestions about how religion can influence culture without using the coercion inherent in politics and legislation in order to accomplish Christian ends.

CHAPTER FIVE

Abortion, the Religious Right, and a Possible Way Forward

Introduction

The Religious Right began as a movement in the late 1970s and at least part of its genesis was in response to the Supreme Court's decision in *Roe v. Wade*.[1] To this day, abortion remains a critical element of the political agenda for the conservative evangelical movement. Over the last four decades, the Religious Right has taken a number of steps on the federal level to attempt to reverse, or at least to undermine, the ability of a woman to choose to terminate her pregnancy. With regard to the judiciary, leaders of the Religious Right supported cases where there was the potential for *Roe* to be overturned and attempted to influence the placement of justices on the Supreme Court. In the legislature, they supported movements for a pro-life amendment to the Constitution and provided support for a legislative amendment to ensure that no government funds were used to fund abortions. In the last decade, the support of the Religious Right was crucial to the passage of a partial birth abortion ban. The Religious Right also held influence in the executive branch of government as well, influencing the presidencies of Carter, Reagan, George H.W. Bush, and George W. Bush, with various degrees of success.

Francis Schaeffer was the thinker who lent credence to the Religious Right's crusade against abortion, and his ideas led to the increase of political activity by religious

[1] Erling Jorstad, *The New Christian Right 1981-1988; Prospects for the Post-Reagan Decade*, (Lewiston, NY: The Edwin Mellen Press, 1987), 5.

conservatives. His ideas about political involvement were largely borne in the context of the burgeoning pro-life movement following *Roe v. Wade*. His writings inspired many of the first generation of Religious Right leaders to become involved in political advocacy, including Jerry Falwell and Pat Robertson. As stated previously, that influence still remains to this day. Moreover, the same hermeneutical principles that justified political action on abortion undergird the Religious Right's political opposition to gay marriage as well. Abortion is the prime example available to critique Schaeffer's theological views and hermeneutical process. This chapter will examine the history of abortion after *Roe* in each of the three branches of the federal government, the actions of the Religious Right that sought to impede the pro-choice movement, and how the hermeneutic established in this dissertation stands as a critique of the Religious Right's political activity on this issue.

Abortion After Roe

The Judiciary

Roe v. Wade. In the case of *Roe v. Wade*, the Supreme Court established the right for a woman to decide to terminate her pregnancy, within certain restrictions.[2] The case

[2] *Roe v. Wade*, 410 U.S. 113 (1973). While this section will focus on the history of abortion rights from the *Roe v. Wade* case and forward, a brief history of abortion law before *Roe* is warranted. By the early twentieth century in America, laws were on the books in all but one state that prohibited abortion, except in the case of harm to the mother. The enforcement of this provision was left mostly to the physician and the patient, and so safe and legal abortions could be had if a woman could find a doctor willing to perform one. The drastic shift came when doctors became associated with hospitals after World War II. The systemic oversight of hospitals resulted in a drastic reduction in the availability of abortions, and it was at this point that illegal "back-alley" abortions increased in order to make up for the difference. Prior to the 1950's though, there was no movement to change anti-abortion laws. The push for change actually came

arose when a young woman, identified as Roe, brought a class action suit that challenged Texas' laws criminalizing abortion.[3] Roe, whose real name was Norma McCorvey, was a single mother who became pregnant and sought an abortion.[4] She resided in Texas which only allowed abortions when the life of the mother was at risk. McCorvey had the child and gave the child up for adoption. *Roe* was not a normal test case. It had not been prearranged and was not part of any sort of larger women's rights movement.[5]

Roe argued that the laws at issue violated her right to privacy under the First, Fourth, Ninth, and Fourteenth Amendments.[6] In the District Court, Roe was successful, and the Court ruled that the abortion statutes at issue were void as vague and overbroad. As the case reached the Supreme Court, there were two issues to be resolved. First, there was the technical issue of whether Roe had standing to sue in this case and second, the substantive issue of whether it violated the Constitution for Texas to outlaw abortions.[7]

There was a significant argument that Roe's case was moot because she was not pregnant at the time the case was heard or at the time the decision was rendered. The defendant argued that there could be no justiciable legal issue if Roe was "no longer

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from medical professionals who sought the allowance of abortions in cases of fetal deformity, rape or incest, and the mental health of the mother, in addition to the previous exception. Barbara Hinkson Craig and David M. O'Brien, *Abortion and American Politics*, (Chatham, NJ: Chatham House Publishers, Inc., 1993), 40-41.

[3] *Roe v. Wade*, 113.

[4] Dallas A. Blanchard *The Anti-Abortion Movement and the Rise of the Religious Right: From Polite to Fiery Protest*, (New York: Twayne Publishers, 1994), 28-29.

[5] Craig and O'Brien, 5.

[6] *Roe v. Wade*, 120.

[7] Ibid., 113-14.

subject to any 1970 pregnancy," and therefore the case should be rendered moot.[8] The Court disagreed. Under the defendant's logic, no case involving pregnancy issues could be adjudicated because "the normal 266-day human gestation period is so short that the pregnancy will come to term before the usual appellate process is complete."[9] The Court found that because of this fact pregnancy is a justification for a finding of non-mootness because pregnancy is "capable of repetition, yet evading review."[10]

As for the substantive issue of whether Roe could terminate her pregnancy, the Court addressed the question in several ways, examining ancient attitudes towards abortion, the mention of abortive procedures in the Hippocratic Oath, and abortion in common law, English law, and American law.[11] The Court also noted that the state did have a legitimate interest in abortion procedures, both to protect the life of the mother and to ensure that the procedure is done safely for the patient, but also to protect prenatal life. However, the interest in prenatal life could not override privacy concerns involved in the pregnant woman's decision to terminate her pregnancy. The Court said, "This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy."[12]

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[8] *Roe v. Wade*, 124.

[9] Ibid., 125.

[10] Ibid.

[11] Ibid., 130-39.

[12] Ibid., 153.

The Court did not find that the right of a woman to terminate her pregnancy was absolute.[13] It ruled that the right of privacy that allowed for the termination of pregnancy was not unqualified and had to be balanced with "important state interests in regulation."[14] To that end, the Court established a system that determined when state interests in patient and prenatal health could take precedent over the privacy rights of the mother. The Court deemed that after the first trimester "a state may regulate the abortion procedure to the extent that the regulation reasonably relates to the preservation and protection of maternal health."[15] This meant that prior to the end of the first trimester, the decision about whether to have an abortion would be solely between the patient and the doctor.[16] The Court then decided that subsequent to viability, the state's interest in prenatal health would allow them to regulate and even outlaw abortion, except in instances where the life or health of the mother was at stake.[17] In reality, the Court created a trimester system. In the first trimester, the state could not regulate abortion at all. In the second trimester, the state had limited power to regulate abortions, but only in regard to the woman, not in regard to the life of the fetus. In the third trimester, however, the state could now regulate to protect the life of the fetus based on the fact that the fetus was at or near the stage of viability.[18]

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[13] Blanchard, 29.

[14] *Roe v. Wade*, 154.

[15] Ibid., 163.

[16] Ibid.

[17] Ibid., 164-65.

[18] Blanchard, 29.

At several points throughout the opinion the Court alluded to the fact that there were those who would disagree with this decision on moral grounds. The Court was clear, however, that the difference of moral opinion could not be a deciding factor in the adjudication of this particular case. Citing Justice Holmes in his dissent in *Lochner v. New York,* the Court said, "[The Constitution] is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States."[19]

Harris v. McRae. The Supreme Court decided on the constitutionality of the Hyde Amendment in the case of *Harris v. McRae* in 1980.[20] The Hyde Amendments were riders attached to congressional appropriation bills stating that Medicaid funds could not be used to provide abortions. The amendment was debated and passed many times in the late 1970s and early 1980s. A woman from New York, Cora McRae, filed a suit on behalf of herself and other poor women who could not get abortions because of the funding restrictions. The District Court agreed with her, finding that the Hyde

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[19] *Roe v. Wade*, 117 (internal citations omitted).

[20] In between *Roe* and *McRae*, there are some other cases of note. Advertising of abortion services was deemed constitutional in *Bigelow v. Virginia* (1975). In *CT v. Menillo* in 1975, the Court ruled that only physicians could perform abortions. The Court held in three cases in 1977 that the government could refuse to fund or perform abortions in public hospitals. In 1979, the Court ruled that requiring a physician to predict the viability of a fetus was too vague. In *Belotti v. Baird (II)* that same year, the Supreme Court allowed for minors to have abortions so long as either a judge or her parents consented to the procedure. Dan Drucker, *Abortion Decisions of the Supreme Court, 1973 through 1989: A Comprehensive Review with Historical Commentary*, (Jefferson, NC: McFarland & Company, Inc., Pub., 1990), 66; Blanchard, 34-35.

Amendment was unconstitutional because it ran afoul of both the First Amendment and the Fifth Amendment. The judge ruled that her right to freedom of religion and conscience was violated, as well as her right to privacy, due process, and equal protection. The judge placed a stay on the Hyde Amendment and when the Supreme Court refused to lift the stay, the government was forced to cover medically necessary abortions. In the interim, the Supreme Court ruled in favor of the states' ability to withhold Medicaid funds. The Supreme Court then remanded the *McRae* case back to the District Court for reconsideration under these new circumstances. The District Court again ruled to strike down the Hyde Amendment. When the Supreme Court heard the case again, it voted 5-4 to uphold the Hyde Amendment. The Court found that the federal government had a legitimate interest in promoting childbirth and withholding funds for abortion, even in cases where there would be harm to the mother. The ruling in this case effectively ended any debate regarding whether federal funds could be used for abortions.[21]

Webster v. Reproductive Health Services. One of the first major cases where the Supreme Court reconsidered *Roe* was *Webster v. Reproductive Health Services*, decided in 1989.[22] In this case abortion providers and health professionals sued challenging the constitutionality of abortion regulations in Missouri.[23] In 1986, Missouri enacted a statute that amended the laws regarding abortion. The plaintiffs in this suit challenged five of the

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[21] Marie Costa, *Abortion: A Reference Handbook, 2nd Ed.*, (Santa Barbara, CA: ABC-CLIO, 1996), 117-18)

[22] *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989).

[23] Ibid., 490.

twenty provisions of the law before the Supreme Court. The provisions were the preamble, in which the legislature found that life begins at conception and that all state laws provide rights for unborn children the same rights as living persons. There was also a prohibition on the use of public employees (or facilities) to perform an abortion, excepting those in which harm to the mother was a concern, a prohibition on the use of public funds, facilities, or personnel to encourage or counsel for elective abortions, and a requirement that a physician ascertain the viability of a fetus in cases where an abortion after twenty weeks was being considered.[24] The District Court found for the plaintiffs and the Court of Appeals affirmed that decision.[25]

The Supreme Court reversed the decisions of the lower courts. The Supreme Court overruled the decisions of the lower courts with regard to the two provisions in the preamble, finding that the preamble itself had no bearing on the regulation of abortions in the state. Furthermore, the Court in previous decisions found that its holding in *Roe* did not preclude a state from "mak[ing] a value judgment favoring childbirth over abortion."[26] Because the Court read the provisions of the preamble as value judgments as opposed to actual regulations, it decided that there was no reason to decide on the constitutionality of the expression of a value judgment.

With regard to the provisions of the statute that prohibited public employees or the use of public facilities in performing elective abortions, the Court focused on the prohibition of choice, rather than the prohibition of outcomes. The Court found that the

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[24] *Webster v. Reproductive Health Services*, 501.

[25] Ibid., 490.

[26] Ibid., 491 (internal citations omitted).

Due Process Clause of the Constitution did not necessarily confirm any right to government aid, only the protection of ability to choose to have an abortion on the part of the mother. The fact that the state will not allow someone to receive an elective abortion at a public facility, "places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy."[27] Furthermore, the Court in other cases found it constitutional for states to refuse to fund abortions, and the Court found in this case that "it strain[ed] logic to reach a contrary result for the use of public facilities and employees."[28]

The same logic applied to the provision of the law that prohibited the use of public funds, employees, or personnel to counsel or encourage elective abortions. By the time the case reached the Supreme Court, the only element of this provision of the statute that was at issue was the use of public funding.[29] As that was the case presented to the Court, it was well within the bounds of the Court's previous decisions that allowed for states to prohibit the use of public funding for abortions.

Finally, the Court came to a consensus on the decision that the provision of the statute allowing for viability tests for abortions that may be after twenty weeks should be upheld, but a majority could not agree on the rationale for that decision. The statute itself read,

> Before a physician performs an abortion on a woman he has reason to believe is carrying an unborn child of twenty or more weeks gestational age, the physician shall first determine if the unborn child is viable by

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[27] *Webster v. Reproductive Health Services*, 509 (internal citations omitted).

[28] Ibid., 509-10.

[29] The state did not appeal the elements of the statute regarding public facilities or personnel. Ibid., 512.

> using and exercising that degree of care, skill, and proficiency commonly exercised by the ordinarily skillful, careful, and prudent physician engaged in similar practice under the same or similar conditions. In making this determination of viability, the physician shall perform or cause to be performed such medical examinations and tests as are necessary to make a finding of the gestational age, weight, and lung maturity of the unborn child and shall enter such findings and determination of viability in the medical record of the mother.[30]

Focusing on the second sentence of the provision the Court of Appeals read the statute to imply that specific tests would have to be performed that would increase the cost of the abortion and could potentially harm the mother and the fetus. For these reasons, the Court of Appeals struck down the provision. Four members of the Supreme Court disagreed with this analysis of the statute.[31] Instead the plurality of the Supreme Court determined that the viability testing provision of the law required the tests that would be useful to determining viability and by definition tests that harm the fetus or the mother would not be allowed. While the Court technically upheld *Roe*, it also undercut the trimester system established in *Roe*. By upholding the regulations passed in Missouri, the Court effectively ruled that states could regulate abortions, even in the first trimester.[32]

Planned Parenthood of Southeastern Pennsylvania v. Casey. Like Webster, *Planned Parenthood of Southeastern Pennsylvania v. Casey* is another Supreme Court

[30] *Webster v. Reproductive Health Services*, 513.

[31] Ibid., 495.

[32] Blanchard, 35. There was also some evidence in the dicta of the various opinions in the case that some members of the Court wanted to reconsider the privacy rationale that undergirded *Roe*. However, the Court did not address this issue explicitly. Costa, 124.

decision dealing with state statutes meant to regulate abortion.[33] In this case however, most of the regulations at issue were added requirements for the actual patients, as opposed to restrictions on public funds and institutions. In 1982, the Commonwealth of Pennsylvania passed the Pennsylvania Abortion Control Act. Amongst its provisions the law also required that a patient give informed consent to the procedure and that she be given certain information at least twenty-four hours before the procedure. The statute also required consent from the parent of a minor and spousal notification for a married woman. Finally, there was a medical emergency clause that excused compliance with the requirements of the act, and reporting requirements for facilities providing abortions. Before the law took effect, the State was sued by abortion providers and doctors. The District Court in this matter deemed all the provisions at issue unconstitutional. The Court of Appeals, however, upheld all the provisions except the spousal notification requirement.[34]

In a complex decision, the Supreme Court essentially affirmed the decision of the Court of Appeals.[35] A majority of the Court agreed that with the exception of the spousal notice requirement, the provisions of the statute were constitutional. The Court found that, with regard to the notice requirement, an undue burden was created by the notice provision. The Court ruled that the father's interest in the welfare of the fetus was not

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[33] *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, (1992).

[34] Ibid., 833.

[35] The primary authors of the opinion, Justices O'Connor, Kennedy, and Souter, also sought to do away with the trimester framework in *Roe.* Instead, they believed that the line should be at viability, and that once the fetus was viable, the state had an interest in protecting that life. These three justices were the only ones who supported such a drastic change, however. Costa, 128.

equal to the mother's liberty, and that in many cases the reason wives do not inform husbands of an abortion is because of some sort of marital discord, often involving spousal abuse.[36] Justice Blackmun believed that all the regulations were unconstitutional. A minority of Chief Justice Rehnquist, Justice White, Justice Scalia, and Justice Thomas not only believed that the provisions of the statute were constitutional, but that abortion is not a constitutionally protected liberty and could be legally proscribed.[37] For this reason, the Court reestablished that *Roe* was good law. Citing the rule of stare decisis, the Court found that a woman's right to choose an abortion superseded the state's interests before viability.[38] For the Court it was crucial to remain consistent, and there had not been any factual changes that warranted a rescinding of the right of privacy granted by *Roe*. For the Court upholding the fundamental premises of *Roe* was about more than the particular rights at issue. The legitimacy of the Court's judicial power is based in its consistency and its ability to be unbowed by the divisive nature of the contentious issues with which the Court must wrestle. The Court loses its legitimacy when it overturns cases either too frequently or under circumstances when there would be the implication, "that justifiable reexamination of principle had given way to drives for particular results in the short terms."[39] The Court felt that the drive to overturn *Roe* in this case was an example of the latter.

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[36] *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 892.

[37] Ibid., 841.

[38] Ibid., 834.

[39] Ibid., 866.

Gonzales v. Carhart. The case of *Gonzales v. Carhart* was a challenge to the Partial-Birth Abortion Ban Act of 2003.[40] The legislation at issue in this case was a federal ban on what became known as an intact partial birth abortion.[41] Planned Parenthood and a number of doctors filed lawsuits claiming that the law was unconstitutional. The District Court agreed, ruling that the law posed an undue burden on women attempting to get an abortion in the second trimester, that the legislation was void for vagueness, and that in order to be constitutional based on prior decisions, the law needed to have an exception for the health of the mother.[42] The Court of Appeals affirmed the decision of the District Court for the same reasons and found the law to be unconstitutional on its face.[43]

The Supreme Court overruled the decision of the Court of Appeals. Looking back at the logic of *Planned Parenthood v. Casey*, the Court found that the central premise of that decision was that "the government has a legitimate and substantial interest in preserving and promoting fetal life."[44] The Court ruled that this premise would be overturned if the Court affirmed the decision of the Court of Appeals. The Court also noted that the *Casey* decision undermined the trimester framework established in *Roe*, and that the new standard for promoting fetal interests was viability.[45] This allowed the

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[40] *Gonzales v. Carhart*, 127 S.Ct. 1610 (2007).

[41] Ibid., 1629.

[42] Ibid., 1625.

[43] Ibid., 1625-26.

[44] Ibid., 1626.

[45] Ibid., 1626-27.

Court to confirm the principle that before viability, the state "may not prohibit any woman from making the ultimate decision to terminate her pregnancy."[46] However, the Court did not think that the law at issue violated any of the principles of previous cases. The Court found first that the law was not vague. Instead, the statute very specifically defined what actions were prohibited by the law, including an intent factor that could be seen as protective for doctors who might be unclear about what the law allowed.[47] Second, the Court ruled that there was not an undue burden because the statute did not outlaw all partial birth abortions. Instead, it only outlawed intact partial birth abortions, where an overt act was committed after the partial birth that killed the fetus.[48] Finally, the Court found that the law at issue was not facially invalid because it did not present a substantial obstacle to abortion previability.

The Legislature

In the wake of *Roe*, legislators proposed several initiatives to undercut the Supreme Court's decision. Those measures included: constitutional amendments, bills to define "person" in the Constitution to include fetuses, bills to restrict federal funding for abortion, and conscience clauses to protect medical personnel from assisting or performing abortions. None of these measures were successful immediately following *Roe*, but there have been varying degrees of success in restricting abortion over the past forty years.[49]

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[46] *Gonzales v. Carhart*, 1626 (internal citations omitted).

[47] Ibid., 1627.

[48] Ibid., 1629.

[49] Craig and O'Brien, 103-04.

The first major congressional legislation dealing with abortion was a ban on spending Medicaid funds on abortion which passed in 1976.[50] An expanded notion of this first law, which banned the use of federal funds to pay for or support abortions for any reason became known as the Hyde Amendment, named after Henry Hyde, a Republican Senator from Illinois.[51] Hyde first proposed it as a rider to the Labor-Health, Education, and Welfare Appropriations Bill in 1976, and it was passed with an exception for the life of the mother.[52] In 1977, however, even more exceptions were added, including rape and incest as well as the determination of two physicians on whether the pregnancy was harmful to the mother.[53] Year after year there were protracted debates over the language of the Hyde Amendment. Finally, in 1981, the language was settled to cover funding for abortion only to save the mother's life. The amendment remains in effect.[54]

Members of Congress also sought to prohibit abortions by proposing constitutional amendments. For example, in 1981, at least eighteen constitutional amendments banning abortion were proposed.[55] One such amendment, authored by Utah Senator Orrin Hatch, actually made it to a vote in 1983 after a long legislative battle. The amendment, which in its final form simply stated that the right to an abortion was not

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[50] Craig and O'Brien, 109.

[51] Ibid., 118.

[52] Ibid., 119

[53] Ibid., 125-27; John Jefferson Davis, *Abortion and the Christian: What Every Believer Should Know*, (Phillipsburg, NJ: Presbyterian and Reformed Pub. Co., 1984), 86.

[54] Craig and O'Brien, 113; Davis, 87.

[55] Craig and O'Brien, 140.

granted by the Constitution, failed to pass 49-50.[56] The human life amendment continues to be a part of the Republican platform. Senator Paul Ryan, when running for Vice President with Mitt Romney in 2012 was explicit about the amendment being part of his agenda.[57]

In 2003, Congress passed a ban on partial birth abortions, the first time Congress criminalized a specific abortion technique. The billed passed in the Senate by a 64-34 margin, with bipartisan support that was somewhat surprising. Under President Clinton Congress twice passed a partial birth abortion ban, but President Clinton vetoed the legislation on both occasions.[58] Legislative issues regarding abortion have now moved to the state level. From 2010-2012 states introduced 200 reproductive health provisions and those have been mostly restrictions, including Texas and Louisiana who have mandated ultrasounds prior to performing an abortion.[59]

The Executive Branch

The first presidential election where abortion was a major issue was the election in 1976. President Ford was known to be ambivalent about *Roe*, stating that he believed the Court had gone too far.[60] His wife however, was known to be in support of abortion

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[56] Craig and O'Brien, 146; Davis, 91.

[57] Kathleen Parker, "What the *#@% is Wrong with Republicans?" *Newsweek*, 160, Issue 10, Sept. 3, 2012.

[58] Debra Rosenberg, "A Firefight Over Abortion," *Newsweek*, Vol. 142, Issue 18, Nov. 3, 2003.

[59] Kathleen Parker, "What the *#@% is Wrong with Republicans?" *Newsweek*, 160, Issue 10, Sept. 3, 2012.

[60] Craig and O'Brien, 159.

rights for women.[61] Moreover, Ford opposed any constitutional amendment to overturn *Roe*. Ford publicly stated his opposition to abortion, but then vetoed the 1977 appropriations bill which contained the Hyde Amendment.[62] Carter, by contrast, was personally opposed to the Court's decision in *Roe*, as well as federal funding.[63] He, like Ford, was against a constitutional amendment. However, Carter moderated his position in support of an amendment as the election drew near.[64]

Ford lost his bid for the presidency for many reasons, but abortion was the most visible among them.[65] Although it has been perceived that Carter won the 1976 election because of a majority of evangelical support, Ford won fifty-one percent of the evangelical vote.[66] However, evangelicals were excited by Carter's election because of his public religious faith.[67]

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[61] Ibid., 160

[62] Ibid., 163.

[63] Andrew Flint and Joy Porter, "Jimmy Carter: The Re-emergence of Faith-Based Politics and the Abortion Rights Issue," *Presidential Studies Quarterly* 35, Issue 1, (March 2005): 37.

[64] Craig and O'Brien, 162.

[65] Ibid., 164.

[66] Daniel K. Williams, *God's Own Party: The Making of the Christian Right*, (New York: Oxford Univ. Press, 2010), 132. See A. James Reichley, "Religion and the Future of American Politics," *Political Science Quarterly* 101, No. 1 (1986): 26 and Seth Dowland, "Family Values and the Formation of the Christian Right Agenda," *Church History* 78, No. 3 (September 2009), 606 for examples of authors who ascribe Carter's victory in 1976 to evangelical Support. In *God in the White House*, Randall Balmer recounts how Carter's evangelical support frayed even before the 1976 election. Randall Balmer, *God in the White House: A History – How Faith Shaped the Presidency from John F. Kennedy to George W. Bush*, (New York: HarperOne, 2008), 91-92.

[67] Williams, 132.

Carter's presidency did not do much to advance the cause of either the pro-life or pro-choice movements. He continued to proclaim his personal stance against abortion, but that personal stance did not translate into political agency. His administration was not involved in the yearly debates over the Hyde Amendment.[68] When Carter was in office, he did name a pro-life Catholic, Joseph A. Califano, as his Secretary of Health, Education, and Welfare. However, it should also be noted that during the campaign season Carter also made it clear that he would consider himself bound by *Roe* and that he would remain, "within the framework of the decision of the Supreme Court."[69] Because of the importance of the issue of abortion for evangelicals, Carter's unwillingness to actively work against *Roe* alienated evangelicals as a group.[70] Carter also did not help himself by appointing Margaret Costanza, a pro-choice advocate, as a presidential assistant.[71]

Carter remained true to his personal convictions when it came to the Hyde Amendment, asking that the measure be strictly enforced, despite the fact that it meant that poor people on Medicaid would not be able to afford abortions. Carter felt that using federal funds to pay for abortions would encourage the use of abortion as a general contraceptive.[72] Unfortunately for the Carter Administration, the stark reality of his personal views led to dissension in the White House, and Costanza eventually left her

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[68] Craig and O'Brien, 164.

[69] Flint and Porter, 38.

[70] Ibid.

[71] Ibid., 39.

[72] Flint and Porter, 39.

position. Carter replaced her with Dr. Sarah Weddington, who had been lead attorney in the *Roe* case. Leaders of the Religious Right felt used, especially since they provided President Carter with a suitable list of replacements at President Carter's request.[73] Carter's position on abortion seemed to be middle of the road – he did not want to actively call for the suppression of abortion rights, but he did not want to governmentally fund abortion either. This nuanced position was not satisfactory to anti-abortion conservatives.[74]

By the time the election of 1980 came, President Carter's seeming equivocations on the issue of abortion frustrated those in both the pro-life and pro-choice camps. The candidates for the election, on both sides of the aisle, attempted to downplay the importance of abortion as a political issue with one exception – Ronald Reagan.[75] Reagan was the only candidate who took a strong pro-life stance.[76] He endorsed a constitutional amendment to overturn *Roe* and promised to appoint pro-life judges to the bench.[77]

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[73] Ibid., 41.

[74] Ibid., 42.

[75] Craig and O'Brien, 165.

[76] Daniel Williams describes Reagan as having to "make amends" with Evangelicals by advocating a strong pro-life position. In 1967, when Reagan was the Governor of California, he signed the Beilenson Bill, which allowed for abortions in cases of rape, incest, or harm to the life of the mother. Williams, 113, 188. Randall Balmer proposed that Reagan changed his position on abortion because he detected a political advantage in doing so, and notes that for all of Reagan's rhetoric on abortion, the subject is not mentioned in Reagan's autobiography. Balmer, however, also notes that it is more likely that Reagan and Evangelicals were appalled by the concept of abortions on demand after *Roe.* Balmer, 114-15.

[77] Craig and O'Brien, 169.

President Reagan changed the tone of the debate on abortion during his presidency. In addition to the promises he made on the campaign trail, Reagan changed the abortion debate by rejecting the difference between private and public morality, using the executive branch to put pressure on the Supreme Court to overturn *Roe*, and enacting regulations to restrict the availability of abortions.[78] In 1983, President Reagan wrote an article for *The Human Life Review*. It was eventually published as a book, *Abortion and the Conscience of a Nation*. In the book President Reagan reiterated his firm stance as pro-life and marshaled support from Mother Theresa. Furthermore, he likened the allowance of abortion by the Supreme Court to the landmark Dred Scott decision. He also restated his support for legislation like the Respect for Human Life Act, and also for a constitutional amendment that would outlaw abortion.[79] President George H. W. Bush continued many of Reagan's policies during his term of office, including pushing for a constitutional amendment to ban abortion and vetoing appropriations bills that attempted to expand funding for abortions.[80]

Three days after his inauguration, President Bill Clinton ordered the end of five pro-life policies, including the restriction on abortion counseling at federally funded clinics.[81] During the Clinton administration, it was believed that abortion rights activists could pursue a more expansive agenda. However, they were defeated in opposing the Hyde Amendment, passing a Freedom of Choice Act, and in passing universal healthcare.

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[78] Ibid., 165.

[79] Ronald Reagan, *Abortion and the Conscience of a Nation*, (Nashville, TN: Thomas Nelson Publishers, 1984), 30-31.

[80] Craig and O'Brien, 191-92.

[81] Saletan, 218.

When the Democrats lost control of both houses of Congress and the majority of governors in the country, any hope of an expansive liberal agenda was lost.[82] However, conservatives had also tempered their abortion agenda as well. Instead of pushing for a constitutional amendment to ban abortion, conservative candidates modified their goals to restricting public funding and ensuring parental notification and consent for abortions for minors.[83] Also, pro-life activists created a distinction between abortion in the womb and partial birth abortion, which gave them the ability to pass a ban on the latter while feigning support (or at least acquiescence) for the former.[84]

As President, George W. Bush made very few challenges to abortion. He made it clear that he would not seek to overturn *Roe* or *Casey*.[85] However, President Bush supported legislative efforts to curtail abortion, such as the 2003 Partial Birth Abortion Ban Act, which he mentioned in his State of the Union Address.[86] He also promised to sign the bill before it made its way through Congress.[87] Bush also put negative pressure on Congress to limit abortion. After the 2006 elections, Bush sent letters to the

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[82] Ibid., 229.

[83] Ibid.

[84] Ibid., 233-34.

[85] Ibid., 265.

[86] O. Carter Snead, "Public Bioethics and the Bush Presidency," *Harvard Journal of Law & Public Policy* 32, Issue 3, (Summer 2009): 895, 898.

[87] Michael McCarthy, "US Senate Passes Bill Banning 'Partial-Birth Abortion,'" *The Lancet* 361, (March 22, 2003): 1021.

Democratic leaders of the House and the Senate threatening vetoes of any law that weakened regulation of abortion.[88]

The Religious Right's Role in the Pro-Life Movement and a New Way Forward

Evangelical Christians use several Bible verses to support their pro-life position. First, there is the commandment against killing found in Exodus.[89] Second, David in the Psalms says that God's eyes have seen his "unformed substance."[90] Evangelicals take this to mean that every human being exists in God's eyes even before they are conceived in the womb.[91] The use of the Bible as the foundation for their political position by nature means that they are asking Americans to use their biblical rationale in order to support public policy, and they do so explicitly.[92] Pastor Charles Swindoll wrote the book *Sanctity of Life* in 1990 with the express purpose of encouraging political involvement and to show the biblical basis for the pro-life position.[93]

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[88] Snead, 895.

[89] Gary Leber, "We Must Rescue Them," in *The Ethics of Abortion: Pro-Life vs. Pro-Choice*, eds. Robert M. Baird & Stuart E. Rosenbaum, (Buffalo: Prometheus Books, 1993), 138; Stephen Tu, *Pro-Life Pulpit: Preaching and the Challenge of Abortion,* (Eugene, OR: Wipf & Stock, 2011), 18.

[90] Ps 139:13-16; Stephen Tu, *Pro-Life Pulpit: Preaching and the Challenge of Abortion,* (Eugene, OR: Wipf & Stock, 2011), 20-21.

[91] Furthermore, Christians involved in the pro-life movement felt that Jesus' command to care for the least among them included the unborn. William Gouveia, Jr., "Contract and Covenant in American Politics: Religion in the Abortion & Abolition Debates," *Human Life Review* 35 Issue 4, (Fall 2009): 29-40, 32.

[92] Leber, 139

[93] Charles R. Swindoll, *Sanctity of Life: the Inescapable Issue*, (Dallas: Word Publishing, 1990), 5-7.

Sandra Sweeney Silver, a student of Francis Schaeffer, gives a full treatise on the biblical argument against abortion in her book *Abortion: A Biblical Consideration*. She not only cites Psalm 139, but several other verses that she believes argue against abortion. She posits that the idea that the debate over abortion rests on the question of who owns the fetus. She cites several Bible verses to show that it is God who owns the child.[94] Once she establishes the idea of ownership, she then uses the Bible to support the theory that "God knows and has a purpose for every child who is conceived or will be conceived."[95] In the midst of the argument she also theorizes that America was founded under God and that the laws were meant to reflect the morality of the Bible.[96] Because America is based on God's laws, it is in danger of incurring God's judgment because it allows the murder of unborn children.[97] Silver says that America can be redeemed if those who are for abortion change their ways and ask forgiveness.[98]

At the dawn of the Religious Right Movement, abortion (along with feminism and homosexuality) were seen as three prongs of an attack on the family, which the Religious Right viewed as the fundamental institution of society.[99] Abortion is often seen as the galvanizing interest of the Religious Right, and the Supreme Court's decision in *Roe* was

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[94] As examples she cites Ex 19:5, Lev 25:23, Rom 14:8, and Ezek 18:4. Sandra Sweeney Silver, *Abortion: A Biblical Consideration*, (Bloomington, IN: 1st Books Library, 2002), 15-16.

[95] Ibid., 25.

[96] Ibid., 44.

[97] Ibid., 59.

[98] Ibid., 80-81.

[99] Dowland, 607.

the galvanizing event. Jerry Falwell said that the outcome of the *Roe* case gave him "a growing conviction that I would have to take my stand."[100] He also said that the decision in *Roe* led him to the belief that "it was my duty as a Christian to apply the truths of Scripture to every act of government."[101]

Prior to the Supreme Court's decision in *Roe*, evangelicals tended to support therapeutic abortions. In 1968, *Christianity Today* published an article that supported therapeutic abortion, and Falwell said nothing about abortion publicly until 1975.[102] Evangelicals supported a limited right to abortion for two reasons. First, abortion was justified as a privacy issue, a concern evangelicals were likely to share. Evangelicals had been wary of government intrusion into religious liberty concerns since as early as the 1925 Scopes Trial.[103] Second, evangelicals were reticent to support the pro-life movement because Catholics were at the forefront of the movement's leadership. Because of the historic animosity between Catholics and Protestants, evangelicals felt uncomfortable joining them in a shared political cause.[104]

After *Roe*, however, the evangelicals who would become Religious Right activists felt that the allowance of abortion ripped away at the nation's moral fabric. Jerry Falwell stated, "I sincerely believe that Satan has mobilized his own forces to destroy America by negating the Judeo-Christian ethic, secularizing our society, and devaluing human life

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[100] Dowland, 610.

[101] Ibid. 615.

[102] Dowland, 610; Williams, 114.

[103] Dowland, 611.

[104] Ibid., 611-12.

through the legalization of abortion and infanticide…God needed voices raised to save the nation from inward moral decay."[105] Falwell, in part, founded the Moral Majority in order to combat the evils of abortion in America.[106] The Moral Majority was at the forefront of the Religious Right's anti-abortion movement in the late 1970's and 1980's.[107] The group sent mailers to districts of pro-choice congressman denouncing them, and created scorecards to grade legislators on their pro-family positions. Lobbyists made it clear that votes against Moral Majority positions on pro-life issues would result in negative campaigns against legislators.[108]

One of the more well-known and militant anti-abortion organizations is Operation Rescue. It was founded in 1986 by Randall Terry, who claimed to be inspired by the works of Francis Schaeffer. Operation Rescue's membership is primarily Protestant fundamentalists, and its primary mode of protest is clinic blockades. During the 1980s, Terry held a considerable amount of influence, gaining support from the New Jersey

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[105] Michele McKeegan, *Abortion Politics*, (New York: The Free Press, 1992), 17.

[106] Ibid., 21. Paul Weyrich and Ed Dobson present a different picture about the role of abortion in the formation of the Moral Majority. Weyrich says that it was not abortion or school prayer that galvanized Christian conservatives, but rather "the federal government's moves against Christian schools." Ed Dobson supports that view, citing that it was the "perceived threat... of what the government was going to do to Christian schools that prompted the activism." Michael Cromartie, ed. *No Longer Exiles: The Religious New Right in American Politics*, (Washington, DC: Ethics and Public Policy Center, 1993), 25-26, 52.

[107] At the time of the founding of some of the main organizations of the Religious Right, other denominations did not agree with their methods and goals. The Fundamentalist Baptist Fellowship condemned the Moral Majority and Religious Right organizations were accused of advocating for a theocracy as opposed to a democratic society. McKeegan, 27.

[108] Craig and O'Brien, 52.

Catholic Bishops organization and gaining an audience with the Pope along with representatives of eight other anti-abortion groups.[109]

In 2001, several Religious Right groups engaged in an effort to influence the choice of Supreme Court nominees by the Bush administration. These groups wanted a nominee who was stridently pro-life. The groups spent $2 million dollars for a campaign called Shake the Nation, which had plans to run anti-abortion ads and encourage supporters to send baby rattles to members of Congress. There were twenty-three organizations that were a part of the campaign, including The Eagle Forum, the Family Research Council, Focus on the Family, Concerned Women for America, and the Traditional Values Coalition.[110]

The Religious Right was also very involved in the debate over partial-birth abortions. In fact, the term partial-birth abortion comes from the Christian Coalition.[111] When the bill was signed by President Bush, the influence of the Religious Right was evident, with many Religious Right dignitaries seated in the front row. Included amongst the religious leaders in attendance were Dr. Adrian Rogers, former head of the Southern Baptist Convention; the Rev. Lou Sheldon, chairman of the Traditional Values Coalition; the Rev. Jerry Falwell, founder of the Moral Majority; Janet Parshall, an Evangelical radio talk show host; and Jay Sekulow, Chief Counsel for Pat Robertson's American Center for Law and Justice. President Bush promised these leaders that his administration

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[109] Blanchard, 65-67.

[110] Editor, "Religious Right Groups Demand Litmus Test for Supreme Court," *Church & State* 54, Issue 9, (October 2001): 17.

[111] Deborah R. McFarlane, "Reproductive Health Policies in President Bush's Second Term: Old Battles and New Front in the United States and Internationally," *Journal of Public Health Policy*, 27 Issue 4, (2006): 412.

would support the ban if it should be challenged in Court.[112] More recently Religious Right groups have threatened to remove support from Republican presidential candidates if they did not support their pro-life agenda. For example, then Focus on the Family chairman James C. Dobson and other leaders vowed to withdraw support in 2007 if Rudy Giuliani won the Republican nomination.[113]

The incendiary issue of abortion was what led Francis Schaeffer into the world of political advocacy. Schaeffer believed that secular humanism was an evil that was taking over the world. His main piece of evidence of the dangers of secular humanism was *Roe v. Wade* and legalized abortion.[114] Schaeffer and Dr. C. Everett Koop produced a film and companion book about the evils of abortion entitled *Whatever Happened to the Human Race?*[115] The book begins with the conclusion Schaeffer establishes in *How Should We Then Live* – that Judeo-Christian morals were at one point the consensus of society and that since the shift away from that consensus, society has lost any meaningful moral foundation.[116] This loss of moral underpinning has led to the legalization of abortion in their view, and a low view for the sanctity of human life.[117] Schaeffer and Koop highlight

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[112] Editor, "Religious Right Leaders Join President Bush at Bill-Signing Ceremony," *Church & State* 56 Issue 11, (Dec 2003): 14.

[113] Rob Boston, "Party Poopers? James Dobson, Religious Right Allies Threaten to Dump GOP if Presidential Nominee Fails 'Family Values' Test," *Church & State*, 60 Issue 10, (Nov. 2007): 4-7, 4.

[114] James Risen and Judy L. Thomas, *Wrath of Angels: The American Abortion War*, (New York: Basic Books, 1998), 121.

[115] Risen and Thomas, 122; Dowland, 612.

[116] Francis Schaeffer and C. Everett Koop, *Whatever Happened to the Human Race?* (Old Tappan, NJ: Fleming H. Revell Co., 1979), 20.

[117] Ibid.

this point repeatedly arguing that it is a Judeo-Christian base for society that provides a foundation for the intrinsic dignity of every human being.[118]

Schaeffer and Koop also promote the idea that the loss of Christian consensus in society led to the removal of the basis from which we treat people with dignity. This not only has an effect on the issue of abortion, but also in euthanasia, as society has begun to consider human beings at both ends of the chronological spectrum to be not as worthy of living. Schaeffer says that the Christian consensus as the basis for law has now been replaced with a "sociological" basis for law, where there is no objective standard by which to judge the law, only the will of the influential at that particular period in history.[119]

At several points in both the book and the film, Schaeffer and Koop compare abortion and infanticide to slavery and the Holocaust, arguing that in the same way that the unborn have been declared non-persons, African-Americans and Jews were at one point legally declared non-persons as well.[120] In the film, the analogy is raised not only to compare African-Americans to infants, but also to raise a critical point about sociological law. Schaeffer also sees a parallel between the *Dred Scott* decision, which ruled that African-Americans had no rights, and the *Roe* decision, which ruled fetuses as having no

[118] Schaeffer and Koop, 87.

[119] Ibid., 24-25.

[120] Ibid., 81, 106-07. Regardless of its import to Schaeffer's argument regarding abortion, there is no need to address or repudiate this element of Schaeffer's argument in this work. As previously stated, the goal of this dissertation is to address and critique Schaeffer's political theology, of which this analogy is only tangentially connected.

rights. *Dred Scott* is proof, Schaeffer says, that the Supreme Court can get decisions wrong.[121]

Schaeffer argues that abortion is not a personal private matter but "concern the whole human race equally," and therefore there is a responsibility for the issues to be addressed in that way.[122] To that end, Schaeffer says in the final chapter of *Whatever Happened to the Human Race* that in relation to laws Christians, "must know what those laws are and act responsibly to help change them if they do not square with the Bible's concepts of justice and humanness. The biblical answers have to be lived and not just thought."[123] To Schaeffer and Koop's credit, they argue that if they're promoting a pro-life stance, those who agree must "be willing to share in the consequences which our advice brings."[124] For Schaeffer this would include financial and other support for unwed mothers.[125]

In *A Christian Manifesto*, Schaeffer advocated for the use of civil disobedience in order to protest abortion.[126] This book had an effect on almost every Protestant fundamentalist during the 1980s.[127] Jimmy Draper, who was president of the Southern Baptist Convention from 1982-1984 said of Schaeffer, "[He] was the first one to say, hey,

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[121] Francis Schaeffer and C. Everett Koop, *Whatever Happened to the Human Race*, DVD, directed by Francis Schaeffer V (Worcester, PA: Vision Video, 1979).

[122] Schaeffer and Koop, 68.

[123] Ibid., 191.

[124] Ibid., 114.

[125] Ibid., 113-14.

[126] Risen and Thomas, 122.

[127] Risen and Thomas, 126; Dowland, 613.

listen, there's a war going on with our culture, and our worldview's in danger, and we need to stand for the things that God has revealed to us."[128] Schaeffer also influenced evangelicals to overcome their theological differences with other denominations, namely Catholicism, in the name of a common cause. Schaeffer advocated co-belligerence, or cooperation with non-evangelicals, due to the importance he gave to the issue of abortion.[129] Falwell was among the first to popularize Schaeffer's call to political action on the issue of abortion, and he accepted the tactic of co-belligerence as well.[130] The influence of Schaeffer's ideas led Falwell to meet with Paul Weyrich (a Catholic) and Howard Phillips (a Jew) in order to found the Moral Majority in 1979.[131] The political connection was complete when President Reagan was able to convince Falwell and other Religious Right leaders that he would be able to lead the fight against *Roe* from the White House.[132]

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[128] Dowland, 613.

[129] Ibid..

[130] Dowland, 613; Risen and Thomas, 127. As stated previously, Falwell's political advocacy on abortion was a change from his previous reticence to be vocal about this issue. Furthermore, the very idea of religious leaders being politically active was also a change of heart for him. During the Civil Rights Movement, Falwell criticized ministers like Dr. Martin Luther King, saying that Christians were called to "preach the word," and not "reform the externals." Cathy Young, "Jerry Falwell's Paradoxical Legacy," *Reason*, Vol. 39 Issue 4, (Aug/Sep2007): 19-21.

[131] Dowland, 614.

[132] Risen and Thomas, 130. It should be noted that this political alliance was formed around the time of potential political upheaval amongst evangelicals. As the nation was affected by the Civil Rights Movement, so were evangelicals. This, plus increased levels of education, led to some evangelicals moving politically to the left during the late 1960's and early 1970's. Robert Wuthnow, *The Restructuring of American Religion: Society and Faith Since World War II*, (Princeton: Princeton Univ. Press, 1988), 188-89.

The fact that the impetus for the Religious Right's political advocacy on the issue of abortion is grounded in a biblical belief about the beginning of life is clear. The criticism of their religiously based political activity is not a criticism of their beliefs. That would be a misguided critique, whether from a democratic or religious perspective. However, if Schaeffer and others in the Religious Right are claiming to be living according to a biblical ethic, the question should not be what the Bible says about when life begins. Instead the question should be what the Bible says about political activity and political advocacy.

There appear to be two broad principles from Scripture that undercut a political movement to codify a Christian definition regarding the beginning of life. First, there is little biblical evidence that supports the idea of Christians using the force of law to impose their ideas of morality on a larger society. The instances in the Bible where people impose their religious values often suppress actual spirituality.[133] Moreover, when individual Jews gained political power in societies that were not Hebrew, there is no evidence that they used their political power in order to force their values on people unwilling to follow them.[134] Instead Christians in the New Testament are called to respect and be submissive to governmental leaders, with the exception of when those commands cause them to violate the laws of God.[135]

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[133] Examples of this principle can be found in the stories of Shadrach, Meshach, and Abednego as well as Daniel in the lions' den, discussed in Chapter 3.

[134] For example, see the stories of Joseph, Daniel, and Esther discussed in Chapter 3.

[135] For example, see Romans 13:1-7, 1 Timothy 2:1, 2, and 1 Peter 2:13-17.

Second, the Bible also supports the freedom of conscience. From Adam and Eve people have had the freedom to decide whether to believe and do what God says. When dealing with a complex issue like the question of when personhood begins, people should have the freedom to decide for themselves what they believe.[136] This general principle has been borne out in the biblical record as well. God does not even force Himself on His chosen people, giving them opportunities to decide for themselves whether they want to continue to follow His precepts.[137]

This does not mean that Christians must shrink from society and not attempt to make meaningful social changes. It is not the goal that is problematic, but the proscribed method. There are several ways that Christians can help ameliorate this issue without using the force of law. Churches can establish organizations that provide needed assistance to single parents. They can provide helpful counseling that aligns with their

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[136] Although personhood is the proper term here, it should be noted that there is not necessarily a consensus on when life begins either. In a document produced by the Center for Reproductive Rights, the group cites four different definitions for the beginning of life amongst religions alone. The group also asserts that there is no medical or scientific consensus on when human life begins. Center for Reproductive Rights, Whose Right to Life? Women's Rights and Prenatal protections under Human Rights and Comparative Law, http://reproductiverights.org/sites/crr.civicactions.net/files/documents/RTL_3%2014%2012.pdf (accessed August 25, 2014). Furthermore, the question of medical or scientific consensus is irrelevant when dealing with beliefs of the conscience. For example, in the recent Supreme Court case, *Burwell v. Hobby Lobby*, the Green family that owns Hobby Lobby asserted that because their religious beliefs determined certain drugs to be abortifacients, they did not want to supply them in insurance plans for their employees, despite the fact that the scientific community was in consensus that some of the drugs on the Greens' list were not abortifacients. The Court did not even address the question because the standard is the sincerity of the Greens' religious beliefs, not the objective truth of those beliefs. Robin Abcarian, 2014, The craziest thing about the Supreme Court's Hobby Lobby decision, *Los Angeles Times*, June 30 http://www.latimes.com/local/abcarian/la-me-ra-craziest-thing-about-hobby-lobby-20140630-column.html (accessed August 25, 2014).

[137] Josh. 24:15 is an example of this concept.

beliefs about sexual activity outside of the confines of marriage. There are many ways to have an influence on society and respect the freedom of conscience of everyone to chart their own moral course.

Conclusion

The Religious Right as a political movement came to be largely in response to abortion. Abortion to this day is a major issue for the Religious Right, and over the last forty years they have attempted every political avenue at the federal level to accomplish the goal of abolishing abortion. Leaders of this religious political movement have supported legislation to curtail abortion rights, supported presidential candidates they believed would enact their policies, and have attempted to influence courts as well. These tactics have met with varying degrees of success. Their influence helped to pass the Hyde Amendment and the Partial-Birth Abortion Ban Act of 2003. Much to their chagrin, Religious Right leaders and conservative politicians were not able to pass a constitutional amendment that would ban abortion. While the Supreme Court protected the central constitutional right established in *Roe*, the Court curtailed an expansive definition of the seminal case's holding.

Francis Schaeffer's ideas formed the ideological base of the Religious Right and were a reaction to constitutionally protected abortion. Schaeffer believed that the consequences of secular humanism had gone too far, and the time had come for Christians to stand up against what he viewed as a societal callousness to even life itself. Schaeffer believed that political action and even civil disobedience were necessary tools in order to reestablish a culture that was more in line with God's teachings. His ideas spawned a movement of like-minded Christians. However, there is a significant question

of whether their zealousness for right ends led them to improper means. Biblical evidence exists that calls those methods into question. If God is not a God of force, and if legislation by its very nature is coercive, then the use of legislation to coerce those who do not believe to follow God's precepts is at the very least creates an ethical problem for Christianity.

Abortion, however, was not the only biblically moral issue that the Religious Right would wrestle with over the years. Another issue would come that would take abortion's place as the most prominent issue that the Religious Right would fight against. As the LGBT community began to coalesce and fight for equal rights in society, the issue of gay marriage would come to the forefront, and the Religious Right would have to respond.

CHAPTER SIX

Same-Sex Marriage, the Religious Right, and the Hermeneutic of Freedom

Introduction

Although the anti-abortion element of the Religious Right is never far removed from prominence on the agenda, in the last twenty years a new issue has come to the forefront. Starting in the 1990s "same-sex marriage" became a contested issue for this nation and, as such, for the Religious Right as well. The Religious Right (from its earliest beginnings) was against the extension of civil rights generally to the LGBT community.[1] Therefore, it was to be expected that there would be stringent opposition of the extension of the civil and legal right of marriage to this community as well.

The Religious Right employed a variety of political tactics to address this issue that involved all three branches of government. They were the driving force behind the proposal of legislation (which passed) and a constitutional amendment (which did not). The movement also became more involved in electoral politics at the local level, proposing referenda that would outlaw gay marriage. They also attempted to use judicial means as well, filing cases in order to protect what they called "traditional marriage."

By the time same-sex marriage became a widely debated political issue, Francis Schaeffer had been dead for almost two decades. However, the same hermeneutical principles that justified political action on abortion undergird the Religious Right's political opposition to gay marriage as well. Therefore, the Religious Right's

[1] Erling Jorstad, *The New Christian Right 1981-1988; Prospects for the Post-Reagan Decade*, (Lewiston, NY: The Edwin Mellen Press, 1987), 6.

involvement on this issue is worthy of criticism in light of the hermeneutic of freedom of conscience and the non-imposition of morality established in this dissertation. This chapter will examine the history of the same-sex marriage movement, the actions of the Religious Right that sought to impede that movement through legislation, and how the hermeneutic established in this thesis stands as a critique of the Religious Right's political activity.

The History of Same-Sex Marriage in America

Same-Sex Marriage in the 1990's - Hawaii and the Federal Countermove

Although early gay rights advocates raised the marriage issue in the 1950s and there were some legal cases filed in the 1970s, the same-sex marriage movement truly begins in 1993, the first time an American court ruled that denial of the civil marriage right based on the sex of the parties was discrimination.[2] In December of 1990, three couples applied for marriage licenses in Hawaii.[3] The Department of Health in Hawaii refused to grant marriage licenses to the couples based solely on the fact that the partners were of the same sex.[4] The plaintiff couples sued pursuant to the Hawaii State Constitution, arguing that the denial of marriage licenses was a violation of privacy, equal protection, and due process. Moreover, the plaintiffs averred that they had suffered injuries because of this denial and that the parties had no redress for the injuries that they

[2] Andrew Sullivan, "Hawaiian Aye," *The New Republic*, December 30, 1996, 15.

[3] *Baehr v. Lewin*, 852 P.2d 44 (HI Sup. Ct., 1993), 49.

[4] Ibid., 49-50.

had suffered.[5] The state responded by filing a motion to dismiss, making several arguments that essentially stated that Hawaii had no obligation to allow same-sex marriages.[6] The circuit court granted the State's motion and dismissed the plaintiffs' complaint with prejudice.

The couples appealed and the Hawaii Supreme Court ruled in their favor. As a legal matter, the Court found that the lower court made several improper conclusions of fact that caused them to wrongly rule in the State's favor.[7] Turning to the plaintiffs' substantive arguments, the Court concluded that the right to privacy argued by the plaintiffs did not include a fundamental right to same-sex marriage because the fundamental right of marriage granted by the U.S. Constitution did not contemplate same-sex marriages.[8] However, the Court decided that the marriage law in Hawaii did discriminate against same-sex couples. Because this discrimination was present, there was a legitimate question whether the law violated the equal protection clause of the State Constitution.[9] The Court also found that sex is a suspect category with regard to

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[5] *Baehr v. Lewin*, 50.

[6] The State argued that: Hawaii's marriage laws were made with the intention of only recognizing the relationship between a man and a woman; the plaintiffs had no right to enter into homosexual marriages because heterosexual marriage is the only legally recognized right; the State marriage laws do not burden or penalize homosexuals private relationships; the State has no obligation to give state approval to homosexual unions; the State's marriage laws are created to protect the basic family unit and State moral values that do not burden the plaintiffs; homosexuals are not a suspect class deserving of any heightened judicial protection; and even if homosexuals are a suspect class, the State's laws do not burden the class in any way that requires the laws to be changed. Ibid., 51-52.

[7] Ibid., 54.

[8] Ibid., 56.

[9] Ibid., 60.

questions of equal protection under the law. Therefore, the Hawaii Supreme Court ruled that Hawaii's marriage law was unconstitutional unless the State could prove that it had a compelling interest in discriminating against same-sex couples, and that the statute was narrowly construed to accomplish its task.[10]

In 1996 the Hawaii Circuit Court, in a decision by Judge Kevin S. C. Chang, ruled that the State of Hawaii did not have a compelling interest in restricting marriage by sex. Unfortunately for proponents of "traditional" marriage, the State's own witnesses conceded that gay and lesbian parents could raise, "happy, healthy, and well-adjusted" children. The court found even less support for the idea that marriage should be defined by its potential procreative elements.[11] Groups associated with the Religious Right criticized the ruling of Judge Chang. Jay Sekulow of the American Center for Law and Justice said that, "there is no legal or moral reason" to change the definition of marriage as between a man and a woman which, "has been around for more than 6,000 years and has served all cultures well."[12] Robert Knight, then director of cultural studies at the Family Research Council called the decision, "a case of judicial tyranny by another activist judge… It's nothing short of lawlessness."[13]

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[10] *Baehr v. Lewin*, 67; Mary Lou Killian, "The Politics of Gay and Lesbian Marriage: States in Comparative Perspective, Case Study I: Hawaii," (paper presented at the annual meeting of the American Political Science Association, Boston, MA, August 28, 2002),10; Robert M. Baird and Stuart E. Rosenbaum, eds., *Same-Sex Marriage: The Moral and Legal Debate*, 2nd ed. (Amherst, NY: Prometheus Books, 2004), 10.

[11] Killian, 12.

[12] Mark Hansen, "More Battles Ahead Over Gay Marriages," *ABA Journal*, February 1997, 24.

[13] Ibid.

However, while the gay marriage movement won judicially it lost legislatively. Supported by groups like Hawaii Family Forum (a group associated with James Dobson's Focus on the Family), conservatives at least gained the perception of increased influence after the 1996 elections.[14] In 1997, they were able to get gay marriage on the ballot as a State constitutional amendment question. Several religiously affiliated groups sent financial resources to Hawaii in support of the ballot question, which was worded so that a "yes vote" meant that gay marriage would be denied.[15] In 1998, the citizens of Hawaii overwhelmingly voted to approve a constitutional amendment "specifying that the Legislature shall have the power to reserve marriage to opposite-sex couples."[16] Because the Hawaii anti-gay marriage amendment passed before the Hawaiian Supreme Court entered an official ruling on the appeal of the 1996 decision, the lawsuit was considered moot.[17]

The proposal of the Defense of Marriage Act (DOMA) was a Religious Right and conservative countermove to the progress being made in Hawaii. Republicans and religious conservatives said so without equivocation.[18] Rev. Lou Sheldon, Chairman of the Traditional Values Coalition, said that the advancement of DOMA, "would have

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[14] Killian, 12.

[15] Ibid., 13.

[16] The final tally for the vote was 69% to 29% in favor of amending the state constitution to ban gay marriage. Ibid., 12-14.

[17] Dawnetta Miller, "LGBT Social Movement History: From 1990 Efforts in Hawaii to Marriage Equality in Massachusetts to the Approval of the 2004 Anti-Marriage Constitutional Amendments," (PhD diss., University of Texas at Dallas, 2013), 61; Baird and Rosenbaum, 10.

[18] Miller, 54; Cassandra Burrell, "Same-Sex Marriage Issue Heats Up as Hawaii Case Advances," *The Record* (Hackensack, NJ), June 30, 1996.

never happened if the homosexuals had not attacked marriage."[19] Rep. Bob Barr, a Republican from Georgia stated even more explicitly that DOMA was, "a reactive piece of legislation… a reaction to the aggressive agenda of the homosexual extremists."[20] He also said that it was important for Congress to quickly pass this law in order to forestall whatever gains the gay marriage movement may make in Hawaii.[21]

DOMA was the first federal law to define marriage as a union between one man and one woman.[22] This restrictive definition would work to bar same-sex marriages from federal benefits, even if a state allowed gay marriage within their jurisdiction.[23] DOMA was promoted by a coalition of religious groups, including the Family Research Council.[24] Clinton signed the bill into law in September of 1996.[25] Although DOMA was passed by large bipartisan majorities and signed into law by a Democratic president, it was clear that DOMA meant more to religious conservatives and the Republican Party. The bill was proposed and promoted by religious and political conservatives, and the

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[19] Cassandra Burrell, "Same-Sex Marriage Issue Heats Up as Hawaii Case Advances," *The Record* (Hackensack, NJ), June 30, 1996.

[20] Ibid.

[21] Ibid.

[22] Kim A. Lawson, "Clinton Signs Law Backing Heterosexual Marriage," *Christianity Today*, October 28, 1996, 80; Burrell, "Same-Sex Marriage Issue Heats Up as Hawaii Case Advances."

[23] Cassandra Burrell, "Same-Sex Marriage Issue Heats Up as Hawaii Case Advances"; Craig A. Rimmerman, "The Presidency, Congress, and Same-Sex Marriage," in *The Politics of Same-Sex Marriage*, eds. Craig A. Rimmerman and Clyde Wilcox, 273-90 (Chicago, Univ. of Chicago Press, 2007), 276-77.

[24] Lawson, 80.

[25] Ibid., 84.

Republicans made DOMA a part of their official Party platform, while no mention of the legislation could be found in the Democratic Party's platform.[26]

After the events in Hawaii, the issue of same-sex marriage became increasingly emphasized by the Religious Right. They made the issue a central theme in the primaries that preceded the 2000 election. In August of 1999, six of the GOP primary candidates signed on to a document promoted by Religious Right groups that opposed gay adoption and domestic partner benefits (among other issues).[27] In the years after the 2000 election, these groups used several different arguments and tactics in order to argue against gay marriage. These ranged from comparing the allowing of gay marriage to 9/11, to arguing that religious conservatives would be forced to accept gay marriage, to the idea that gay marriage would lead to incest, polygamy, pedophilia, and bestiality.[28]

Massachusetts and the Response in 2004

There were events in 2003 that led to the resurgence of the gay marriage movement and raised the ire of the Religious Right.[29] Although not specifically related to gay marriage, the Supreme Court's decision in *Lawrence v. Texas* upset religious

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[26] Miller, 60.

[27] Sean Cahill, "The Anti-Gay Marriage Movement" in *The Politics of Same-Sex Marriage*, eds. Craig A. Zimmerman and Clyde Wilcox, (Chicago: Univ. of Chicago Press, 2007), 169.

[28] Ibid.,171-76.

[29] It should be noted that in 2000, the state of Vermont allowed civil unions between gay couples. The legislature passed this law in response to a ruling by the Vermont Supreme Court finding that the State discriminated against same-sex couples. Moreover, marriage licenses were also being granted in San Francisco. Miller, 66; David E. Campbell and J. Quin Monson, "The Religion Card: Gay Marriage and the 2004 Presidential Election," *Public Opinion Quarterly* 72, No. 3, Fall 2008, pp. 399–419, 400.

conservatives. In this decision, the Supreme Court overruled its decision in *Bowers v. Hardwick* and invalidated a Texas law that criminalized sodomy.[30] In *Bowers*, the Court construed the central question of the case as whether there was a fundamental right to engage in certain types of sexual conduct.[31] On that basis, it upheld the statute at issue in that case. In *Lawrence*, the Court rephrased the questions to whether the parties in this case, "were free as adults to engage in private conduct in the exercise of their liberty under the Due Process Clause."[32] The Court found that the criminalization of sodomy and the prosecution of gay people on that basis was an attempt to control a personal relationship that individuals were allowed to enter into in privacy. Specifically the Court concluded that "[t]he liberty protected by the Constitution allows homosexual persons the right to choose to enter upon relationships in the confines of their homes and their own private lives and still retain their dignity as free persons."[33] Borrowing from Justice Stevens's dissent in *Bowers*, the Court also stated that the question of whether the State's governing authority found the particular practice morally acceptable was irrelevant in determining the constitutionality of the law and that decisions concerning intimacy in physical relationships, even when the results of those decisions cannot produce offspring, are also protected by due process.[34]

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[30] *Lawrence v. Texas*, 539 U. S. 558 (2003).

[31] *Bowers v. Hardwick*, 478 U.S. 186, 190 (1986).

[32] *Lawrence v. Texas*, 558.

[33] Ibid.

[34] Ibid., 560.

In the same year, the Supreme Judicial Court of Massachusetts took up the question of whether the prohibition of same-sex marriage violated the State Constitution.[35] Seven couples filed suit seeking the right to marry in the Commonwealth. The Court ruled in the couples' favor finding that, "barring an individual from the protections, benefits, and obligations of civil marriage solely because that person would marry a person of the same sex violates the Massachusetts Constitution."[36] The Court first discussed the civil marriage itself, finding it to be, "a wholly secular endeavor" that "bestows enormous private and social advantages on those who choose to marry."[37] Citing the Supreme Court case *Zablocki v. Redhail*, the Supreme Judicial Court of Massachusetts adopted the standard that, "laws may not interfere directly and substantially with the right to marry."[38] The Court also analogized the plight of the gay community to the prohibition on miscegenation that was ruled unconstitutional by *Loving v. Virginia* (1967).[39] The Court found that, as was true in *Loving*, the statute in this case deprived citizens of the marriage right because of a single trait – race in *Loving*, sexual orientation in this case. The Court said in its opinion, "As it did in … *Loving*, history must yield to a more fully developed understanding of the invidious quality of the discrimination."[40] Finally, to address some of the more common conservative arguments

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[35] *Goodridge v. Dept. of Pub. Health*, 798 N.E.2d 941 (Mass. 2003).

[36] Ibid., 969.

[37] *Lawrence v. Texas*, 954.

[38] Ibid., 957 (internal citations omitted).

[39] *Loving v. U.S.*, 388 U.S. 1 (1967).

[40] *Lawrence v. Texas*, 958.

the Court stated that the allowance of civil marriage for the plaintiffs would not threaten heterosexual marriage nor the institution of marriage as a whole. "If anything, extending civil marriage to same-sex couples reinforces the importance of marriage to individuals and communities."[41] These events, including the Mayor of San Francisco performing same-sex marriages in that city, led to the issue of gay marriage receiving increased media attention.[42]

In January of 2004, James Dobson and Richard Land went to Karl Rove, a chief strategist for President George W. Bush, with an ultimatum – if President Bush wanted support from conservative evangelicals in 2004 he would have to support the Federal Marriage Amendment (proposed late in 2003). [43] Representative Marilyn Musgrave introduced a marriage amendment in the House of Representatives and Senator Wayne Allard introduced the amendment in the Senate. It read, "Marriage in the United States shall consist only of the union of a man and a woman." The amendment gained wide bipartisan support, with 100 co-sponsors in the House of Representatives along with three Republican sponsors in the Senate.[44]

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[41] *Lawrence v. Texas*, 965.

[42] David E. Campbell and J. Quin Monson, "The Case of Bush's Reelection: Did Gay Marriage Do It?" in *A Matter of Faith: Religion in the 2004 Presidential Election*, ed. David E. Campbell, (Washington, D.C.: Brookings Institution Press, 2007), 120-41, 123-24.

[43] Daniel K. Williams, *God's Own Party: The Making of the Christian Right*, (New York: Oxford Univ. Press, 2010), 256.

[44] Rimmerman, 281.

Bush came out in full support of the amendment in February.[45] In June of 2004, Dobson, Land, and Gary Bauer started a new organization, the Arlington Group, whose goal was to unite different Christian Right groups in order to more effectively lobby for the Federal Marriage Amendment. Many groups became involved in the counter-move of promoting a constitutional amendment defining marriage as between one man and one woman. The Traditional Values Coalition sent out 1.5 million mailings a month requesting that voters promote an amendment banning gay marriage. Dobson, then head of Focus on the Family, left his paid position at the organization so that he could avoid the constraints on non-profits to do all that was politically possible to fight against gay marriage and to fully devote himself to working with the Arlington Group.[46] In a July 2003 statement on the subject, Falwell said, "We must aggressively combat the homosexual effort to destroy the tradition of marriage… This nation is on the precipice of moral devastation."[47] Land, then a lobbyist with the Southern Baptist Convention, foreshadowed the Religious Right's political strategy in regards to gay marriage and the 2004 election. He said, "politicians who don't know the radioactive nature of this issue now will by November of 2004."[48] The Federal Marriage Amendment reached the floor

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[45] Williams, 259; Campbell and Monson, 401.

[46] Esther Kaplan, "Onward Christian Soldiers," *The Nation*, July 5, 2004, 33.

[47] Jeremy Leaming "Marriage Proposal," *Church & State*, Oct. 2003, 4.

[48] Kaplan, 35. This was not the first time a group in the Religious Right proposed a federal marriage amendment. The move to constitutionally codify "traditional" marriage originated with a different group, the Alliance for Marriage, which first proposed the amendment in 2001. By 2003 the amendment gained support not just from Dobson, Falwell, Land, and other Religious Right groups like the American Family Association, Focus on the Family, and the Traditional Values Coalition, but also from prominent members of Congress like then Senate Majority Leader Bill Frist. Leaming, 4-5.

of the Senate in July of 2004, largely in response to the U.S. Supreme Court decision in *Lawrence v. Texas* and the Supreme Judicial Court's decision in *Goodridge v. Dept. of Public Health*. The Senate debated the potential amendment for four days. Unfortunately for Republicans and religious conservatives, the motion to invoke cloture fell 12 votes short of the 60 necessary to proceed.[49]

After the failure of the federal marriage amendment in 2004, Religious Right activists helped to put same-sex marriage bans on the 2004 ballot in 13 states.[50] Members of the Religious Right felt that same-sex marriage was the most compelling issue of the day, even more serious than abortion. Some proclaimed God would judge America as He had judged Sodom and Gomorrah, and others thought the allowance of gay marriage would destroy the institution entirely.[51] The leaders of Christian Right groups held major influence during the election of 2004. Dobson, Land, Chuck Colson, and National Association of Evangelicals president Ted Haggard had weekly teleconferences with Bush election staff members.[52] As a result, the Republican platform in 2004 included detailed statements on marriage. These statements were supported publicly by Religious

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[49] Frederick Liu and Stephen Macedo, "The Federal Marriage Amendment and the Strange Evolution of the Conservative Case against Gay Marriage," *PS: Political Science and Politics* 38, No. 2 (Apr., 2005), 212.

[50] Williams, 260. The 13 states were: Arkansas, Georgia, Kentucky, Louisiana, Michigan, Missouri, Mississippi, Montana, North Dakota, Ohio, Oklahoma, Oregon, and Utah. The bans on average received 71% of the vote. Campbell and Monson, 400.

[51] Clyde Wilcox, Linda M. Merolla, and David Beer, "Saving Marriage by Banning Marriage: The Christian Right Finds a New Issue in 2004," in *The Values Campaign? The Christian Right and the 2004 Elections* ed. John C. Green, Mark J. Rozell, and Clyde Wilcox (Washington, DC: Georgetown Univ. Press, 2006), 57.

[52] Williams, 260.

Right organizations like the Traditional Values Coalition, Concerned Women for America, and the Christian Coalition.[53]

The Religious Right group Focus on the Family spearheaded the political charge against gay marriage on a national level. They promoted the issue in conjunction with other groups through public events like "Protect Marriage Sunday," and the "Mayday for Marriage" rally held on the National Mall.[54] The Family Research Council made the issue the heart of its agenda after having lobbied Congress for the Federal Marriage Amendment. Concerned Women for America issued policy papers on the subject and made several media appearances to debate the issue. They also sent direct mailers to members of their organization in states where gay marriage bans were on the ballot.[55] Focus on the Family requested that candidates on the state and national level pledge support for amendments against gay marriage and then asked voters to support those candidates based on their support for Focus on the Family's agenda.[56] "The Bush campaign, Republican candidates more generally, and Religious Right groups all sought to portray Republican candidates as the most reliable defenders of traditional marriage and insinuated that Democrats were sympathetic with liberals who were trying to destroy the institution of marriage."[57]

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[53] David Domke and Kevin Coe, *The God Strategy: How Religion Became a Political Weapon in America*, (New York: Oxford Univ. Press, 2008), 112.

[54] Wilcox, Merolla, and Beer, 62.

[55] Ibid.

[56] Ibid., 62, 67.

[57] Ibid., 62, 66. Irrespective of whether groups in the Religious Right particularly advocated for gay marriage bans to be on the ballot in 2004, it is indisputable that the Republican Party was looking to court evangelical voters as a key to President Bush's re-

Proposition 8 and the Supreme Court's Response

The debate over same-sex marriage in California that eventually led to Proposition 8 actually began in 2000 with the passage of Proposition 22, which banned same-sex marriage in California. In 2004, Gavin Newsom, then Mayor of San Francisco, openly flouted the ban, issuing marriage licenses to same-sex couples. In May of 2008, the California Supreme Court voted to overturn Proposition 22 thereby legalizing same-sex marriage.[58] The Court based its decision on the right to marry and equal protection under the law, principles found in the State Constitution. With these two principles, the Court reasoned it was unconstitutional to withhold marriage from couples based on the fact that both parties were of the same sex. The Court went even further and noted that under the State Constitution couples should receive the designation of marriage even though they already had certain rights under domestic partnership laws.[59]

Those who supported a ban on same-sex marriage managed to get Proposition 8, a referendum on a constitutional amendment to ban same-sex marriage, onto the ballot that November.[60] Conservative Christian groups like the California Family Council and

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election efforts. Karl Rove frequently said that "four million evangelicals" did not vote in 2000, and Bush's re-election success would be predicated on getting those people out to the polls. It also seems clear that the mobilization by the Religious Right and the Republican Party in 2004 worked successfully. A study conducted by David Campbell and J. Quin Monson showed that "white evangelicals Protestants were more likely to vote, and vote for Bush, in states with a gay marriage ban on the ballot." Campbell and Monson, 411-412.

[58] John Wildermuth, "Proposition 8: State Voters Backing Constitutional Ban on Same-Sex Marriage," *San Francisco Chronicle*, November 5, 2008.

[59] Chai Feldblum, "The Selling of Proposition 8," *The Gay and Lesbian Review*, January – February 2009, 34.

[60] John Wildermuth, "Proposition 8: State Voters Backing Constitutional Ban on Same-Sex Marriage," *San Francisco Chronicle*, November 5, 2008.

ProtectMarriage mobilized pastors to attain the signatures necessary for a petition to have Proposition 8 on the ballot for the 2008 election. They were able to collect 1.12 million signatures, more than what was necessary to put the proposition on the ballot.[61] After helping to get Proposition 8 on the ballot, the Religious Right supported the passage of the amendment in various ways. Groups helped to organize conference calls with churches in the area. They also helped financially, with groups like Focus on the Family, Concerned Women for America, and the Family Research Council contributing to the more than $40 million supporters of Proposition 8 raised to fund the campaign.[62] After months of contentious public debate, Proposition 8 passed by a slim margin – 52.3% to 47.7%.[63]

In 2013, the Supreme Court delivered two opinions in cases related to same-sex marriage, both decisions repealing political countermoves supported by the Religious Right. In the first case, *Hollingsworth v. Perry*, the Court ruled in favor of same-sex marriage, although the ruling was based on a technical issue as opposed to the merits of same-sex unions.[64] The facts of this case began in 2008 when the California Supreme Court ruled that withholding civil gay marriage from same-sex couples was a violation of

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[61] Sandhya Bathija, "Armageddon in California? Religious Right Groups See California Marriage Referendum as Ground Zero in the Culture War," *Church & State*, September 2008, 11.

[62] Surina Khan, "Tying the Not: How they Got Prop 8," *Gay and Lesbian Review*, March-Apr 2009, 22.

[63] Lois A. Weithorn, "Can a Subsequent Change in Law Void a Marriage that Was Valid at Its Inception? Considering the Legal Effect of Proposition 8 on California's Existing Same-Sex Marriages," *Hastings Law Journal*, 60, May 2009: 1064.

[64] *Hollingsworth v. Perry*, 570 U.S. ____ (2013).

the equal protection clause of the Constitution.[65] In response, the voters in California passed Proposition 8.[66] Two couples filed suit in Federal Court claiming that Proposition 8 violated the Due Process and Equal Protection Clauses of the U.S. Constitution. After that decision, the officials for the State of California decided not to raise an appeal. Instead, the proponents of the initiative sought to appeal the decision. From the beginning there was a significant question as to whether the proponents of the initiative were the proper party to raise an appeal. The Ninth Circuit granted standing and the Court of Appeals ruled in the favor of same-sex couples, finding that the state must have some legitimate interest in prohibiting same-sex couples from marrying. The Ninth Circuit Court of Appeals found that Proposition 8, "served no purpose but to impose on gays and lesbians, through the public law, a majority's private disapproval of them and their relationships."[67] The Supreme Court did not rule on the merits of the case, and instead ruled that the original proponents of the proposition did not have standing to appeal the case. In order to have standing, the party bringing the suit must have been injured in a "personal and individual way."[68] The petitioners of the appeal argued that the California Constitution gave them a unique position in the initiative process that led to Proposition 8, and that standing allowed them to challenge the Court of Appeals' ruling. The Supreme Court agreed that the petitioners had a special role to play, but that their particular role ended once the proposition passed. Once the proposition became a

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[65] *Hollingsworth v. Perry*, 2.

[66] Wildermuth, "Proposition 8: State Voters Backing Constitutional Ban on Same-Sex Marriage."

[67] *Hollingsworth v. Perry*, 5 (internal citations omitted).

[68] Ibid., 7 (internal citations omitted).

constitutional amendment, the petitioners' interest in the amendment was no different from any other citizen.[69] The petitioners also attempted to argue that they had the ability to assert the interest that belonged to the state. The Supreme Court also ruled against that rationale, saying that even when a petitioner is allowed to assert someone else's interest, the petitioners themselves must still have an interest of their own.[70] For these reasons, along with many others, the Court found that the petitioners had no direct stake in the appeal and the case was dismissed for lack of jurisdiction. Because the appeal to the Ninth Circuit Court of Appeals was ruled dismissed, it meant that the decision of the Circuit Court (where an official of the state was a party) stood and Proposition 8 was overturned.

The Court ruled in favor of same-sex couples in the second case, *U.S. v. Windsor*, overturning the exclusive definition of marriage in the Defense of Marriage Act, which Congress passed in 1996.[71] Edith Windsor and Thea Spyer, residents of New York, married in Ontario, Canada in 2007.[72] They were unable to marry in New York at the time, but New York considered their marriage valid.[73] Spyer died in 2009 and left her estate to her wife. However, because the couple was not married based on the definition in DOMA, Windsor could not claim the marital exemption to the Federal Estate Tax, despite the fact that she was duly married in the jurisdiction where she lived. As a result,

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[69] *Hollingsworth v. Perry*, 8.

[70] Ibid., 9 (internal citations omitted).

[71] *U.S. v. Windsor*, 570 U.S. ___ (2013).

[72] Ibid., 1.

[73] Ibid., 3.

Windsor paid a $363,053 estate tax bill, sought a refund, and was denied by the Internal Revenue Service.[74] The District Court ruled against the United States and found Section 3 of DOMA and its limiting definition of marriage to be unconstitutional. The Court of Appeals agreed, as did the Supreme Court. The Court found for Windsor because it concluded that the State of New York sought to protect the rights of couples like Windsor and Spyer by recognizing same-sex marriages and then allowing same-sex marriage within their jurisdiction. Moreover, the fact that the bounds of marriage are determined by the states meant that New York was well within its powers to do so. The fact that DOMA restricts its benefits only to those couples who fit a particular definition meant that the federal government was, "seek[ing] to injure the very class New York seeks to protect."[75] The Court found that, "By doing so [DOMA] violates basic due process and equal protection principles applicable to the Federal Government."[76] Furthermore, the Court deemed that this inequality was not an incidental consequence of the law, but that the history of DOMA's enactment demonstrated that the purpose of DOMA was to create this inequity.[77] In fact, the House of Representatives stated that, "DOMA express[ed] both the moral disapproval of homosexuality, and a moral conviction that heterosexuality better comports with traditional (especially Judeo-Christian) morality."[78] The Court decided that DOMA created two contradictory marriage regimes, where same-sex

[74] *U.S. v. Windsor*, 3.

[75] Ibid, 20.

[76] Ibid.

[77] *U.S. v. Windsor*, 21.

[78] Ibid.

couples would be married under state law and unmarried under federal law, and that this status actually led to instability for the couples and a second-tier status.[79] For these reasons, the Court ruled that the definition of marriage found in DOMA was unconstitutional.

A Return to Hawaii

After the Supreme Court decisions in *Hollingsworth v. Perry* and *U.S. v. Windsor*, Neil Abercrombie, Governor of Hawaii, saw an opportunity to reopen the issue of gay marriage in his state. To that end, he called for a special session to consider the Marriage Equality Act, which would legalize gay marriage.[80] After the Senate approved the measure, the House allowed for public debate on the issue. Over a thousand people made public comments, mostly against the measure, in addition to almost 24,000 written testimonies. The final version of the bill, signed by the Governor in November of 2013, contained added provisions to protect religious groups and affiliated non-profits from having to support same-sex marriage in any way.[81] President Obama, who is from the State of Hawaii, said in a statement, "With today's vote, Hawaii joins a growing number of states that recognize that our gay and lesbian brothers and sisters should be treated

[79] *U.S. v. Windsor*, 22-23.

[80] Bill Chappell, "Hawaii Set to Take Up Gay Marriage in Special Session Monday," http://www.npr.org/blogs/thetwo-way/2013/10/27/241179078/hawaii-set-to-take-up-gay-marriage-in-special-session-monday, October 27, 2013 (accessed January 1, 2014).

[81] Miranda Leitsinger, "Hawaii, Legalizes Same-Sex Marriage, Joining 14 Other States," http://usnews.nbcnews.com/_news/2013/11/13/21442014-hawaii-legalizes-same-sex-marriage-joining-14-other-states?lite, November 13, 2013 (accessed January 1, 2014).

fairly and equally under the law."[82] The debate over this new legislation is not complete, however. Bob McDermott, who is a member of Hawaii's House of Representatives, has filed a legal complaint to challenge the law. He believes that the 1998 ballot measure that allowed the legislature to define marriage as between one man and one woman was misunderstood by voters. A judge ruled that the legislators' action to allow same-sex marriage was legal, but Rep. McDermott filed a new claim and the Hawaii Circuit Court granted him a hearing, which took place on January 13, 2014.[83]

The Religious Right's Response to Gay Marriage

The Religious Right uses the Bible as a source of truth; that belief then influences their political positions.[84] Evangelicals' opposition to gay marriage is based in what evangelical theologian John Stott calls the negative proscriptions against homosexual conduct, which include Lev 18:22; 20:13, Rom 1:26, 27, and 1 Cor 6:9-10. Homosexual relations are considered sinful and, therefore, marriage by extension cannot be allowed.[85]

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[82] Alan Duke, "Hawaii to Become 16th State to Legalize Same-Sex Marriage," http://www.cnn.com/2013/11/12/us/hawaii-same-sex-marriage/, November 13, 2013 (accessed January 1, 2014).

[83] Michelangelo Signorile, "Bob McDermott, Hawaii Lawmaker, Defends Efforts to Overturn State's Gay Marriage Law," http://www.huffingtonpost.com/2013/12/04/bob-mcdermott-hawaii-gay-marriage_n_4384454.html, December 5, 2013 (accessed January 1, 2014).

[84] Karla L. Drenner, "The Role of the Religious Right in the Social Construction of the Same-Sex Marriage Agenda," (PhD diss., St. Louis University, 2011), 2.

[85] David K. Ryden and Jeffrey J. Polet, "Love Rightly Understood: Reflections on the Substance, Style, and Spirit of Evangelical Activism and (Same-Sex) Marriage Policy in *Is the Good Book Good Enough? Evangelical Perspectives on Public Policy*, ed. David K. Ryden (Lexington Books: Lanham, MD, 2011), 187-88; Kenneth D. Wald and Graham B. Glover, "Theological Perspectives on Gay Unions: The Uneasy Marriage of Religion and Politics" in *The Politics of Same-Sex Marriage*, ed. Craig A. Rimmerman and Clyde Wilcox, (Chicago: Univ. of Chicago Press, 2007), 110.

Moreover, evangelicals also have a positive view of heterosexual marriage that reinforces the proscription against gay marriage because the original design for man and woman, (found in Gen 1:27) was a man and a woman found in complement to each other.[86]

Groups associated with, and spokespeople for, these organizations have made their feelings about the morality of homosexuality clear within the public square. Phyllis Schafly, who is the head of the Religious Right organization Eagle Forum, opposes same-sex marriage and civil unions because she believes they are, "attacks on the definition of marriage as the union of one man and one woman…from the gay lobby seeking social recognition of their lifestyle.[87] Beverly LaHaye, who founded the Concerned Women of America in 1979 believes, like many (if not all) of the Religious Right, that biblical values should guide government. She said, "America is a nation based on biblical principles. Christian values should dominate our government. The test of those values is the Bible. Politicians who do not use the Bible to guide their public and private lives do not belong in office."[88]

While Francis Schaeffer was alive, same-sex marriage was not an issue. However, based on his previous work, his belief in the inerrancy of the Bible, and his comments regarding abortion, it seems clear that he would also oppose same-sex marriage. Moreover, the same logic that justifies religious political activity in the abortion debate appears to apply equally here. The question here - as with the abortion issue - is whether

[86] Ryden and Polet, 189.

[87] Drenner, 97.

[88] Ibid., 98.

the hermeneutic and theological rubric employed by Schaeffer and others in the Religious Right is justified by the scriptures that they cite.

As with abortion, the issue is that the Religious Right is not asking the right questions. There is significant debate about the morality of homosexual conduct, even among various Christian communities in America.[89] The question, however, is not whether homosexuality is right or wrong. To posit the morality of homosexuality as the primary question is to presume that any means of support for the LGBT community in society is incorrect under a biblical ethic. Under a biblically supported hermeneutic of freedom, however, support for civil gay marriage (or at least Christian voices removing themselves from the legislative debate) is more than justified. First, as shown previously, the Bible supports the idea that the role of Christians is not to attempt to coercively impose their morality onto the society in which they live. There are several instances in the Bible where the imposition of religious ideas on people has had negative results.[90] When Christians attempt to use their religious beliefs as a justification for public policy, they place themselves in the role of King Nebuchadnezzar, who threw Shadrach, Meshach and Abednego into the furnace or the rulers responsible for Daniel's night in the lions' den. Furthermore, there are examples of times when individual Hebrews had the power to impose their values in a foreign state; yet the Bible never records them actually

[89] For an argument against conservative meanings of the relevant texts, see Michael Ryan and Les Switzer, *God in the Corridors of Power: Christian Conservatives, the Media, and Politics in America*, (Santa Barbara, CA: ABC-CLIO, 2009), 286-290.

[90] For example, see the biblical stories of Daniel in the lions' den and Shadrach, Meshach, and Abednego discussed in Chapter 3.

asserting this authority.[91] Furthermore, the only explicit counsel the Bible gives on how Christians should relate to government is that Christians should submit to the authority of government, give honor to its leaders, and also to pray for them as well.[92]

Second, the Bible also supports the idea that people should be free to construct their own ideas about what is right or wrong. Even in a society where the people made the free will choice to live by God's laws, there are several instances where God gives them the choice of whether or not they want to remain loyal to Him.[93] There is even evidence that God allows people who follow Him to make decisions that He knows are wrong.[94] Based on the text, it seems that coercion is not supposed to be used as the Christian's method of encouraging behavior that is in line with what has been outlined in the Bible.[95] The potential answer the Bible gives in reference to the germane question of method (as opposed to the goal to be reached) outweighs the scriptural basis of the central issue of the morality of homosexuality. Even if religious conservatives are correct with regard to their beliefs about homosexuality, that issue is superseded by the equally

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[91] For example, see the stories of Joseph, Daniel, and Esther discussed in Chapter 3.

[92] For example, see Rom 13:1-7, 1 Tim 2:1,2, and 1 Pet 2: 13-17.

[93] 1 Kings 18:21 and the surrounding verses are an example of this principle.

[94] An example of this principle can be found in 1 Sam 8, particularly verse 7.

[95] In *From Disgust to Humanity*, Martha Nussbaum discusses the fact that our American understanding of freedom of conscience and moral determination despite disagreement stems from our common Christian heritage. Furthermore, she analogizes that the respect that we give politically and constitutionally for differences of religious faith is the same type of respect we should give to the difference between homosexual and heterosexual identities as well. Martha Nussbaum, *From Disgust to Humanity: Sexual Orientation and Constitutional Law*, (New York: Oxford Univ. Press, 2010), 36-41.

present proof that there is a reading of the biblical text that does not support the aggressive and invasive political tactics of the Religious Right.

Conclusion

Since the beginning of the Religious Right, there has been a concerted effort to forestall the acceptance of homosexuality as an acceptable way of life in American society. They were forced to increase their efforts to stem this tide in the 1990s, for the first time, when gay marriage became a serious issue. In this culture war over marriage, the Religious Right consistently supported some type of political response to every major positive event in the same-sex marriage movement. After the initial legal decisions in Hawaii, the Religious Right helped formulate a response that led to the passing of DOMA on the federal level and restrictive measures in the State of Hawaii itself. After the Supreme Court's decision in *Lawrence* and the Massachusetts Supreme Court decision in *Goodridge*, Religious Right organizations promoted the Federal Marriage Amendment and helped to get gay marriage bans on the ballot in several states for the 2004 election. The presence of those bans on the ballot mobilized the conservative evangelical base and in some ways helped to reelect President George W. Bush.

However, recent events seem to suggest that the tide has now turned against the Religious Right on this issue. After gaining a victory with the passage of Proposition 8 in 2008, more states have allowed same-sex marriage, the Supreme Court found the restrictive definition of marriage in DOMA unconstitutional, and Proposition 8 itself was overturned as well. Even Hawaii, the state where the Religious Right gained its first victory, voted to allow gay marriage in 2013.

The success, or lack thereof, of the Religious Right is not indicative of incorrect theology or methods. However, the Religious Right's reliance on Schaeffer's biblical analysis leads to its advocacy for public policies to fit their biblical worldview. Based on a hermeneutic that asks the germane question of proper modes of social engagement and a hermeneutic that places an emphasis on freedom, Schaeffer's analysis (and by extension those of the Religious Right) seems flawed. While there is an over-emphasis on the particulars of the morality of homosexuality, there is little emphasis on whether public policy prescriptions are a biblically acceptable form of addressing the issue. There is enough biblical evidence to call an affirmative answer to that query into question. There is evidence that using the power of government to institute God's law is at best problematic. There is also evidence that God allows every person to choose for themselves whether they will follow God's laws. The use of government to create penalties for this right of conscience seems to run afoul of the very system conservative Christians purport to want.

The intersection of religion and politics creates a host of complex problems for those of religious faith in this country. The principles of a nation of liberty and justice for all seems to run counter to the desire for some Christians that society reflect a form of morality that Christians believe is best for everyone. The intersection of religion and politics raises questions that go to the very core of what people believe and what they can act on under the law and within the public square. The idea that the law as instituted is drastically different, however, from a moral ethic that is faithful to the principles of the Bible on this issue is not accurate. There are common principles that are at work in both

spheres that prove that the tactics of the Religious Right may not be faithful to either source of authority.

CHAPTER SEVEN

Conclusion

The line of separation (if there should even be one) between religion and government is certainly a complex issue beyond simplistic assumptions or conclusions. The jurisprudence of the Supreme Court regarding the Religion Clauses of the First Amendment is a testament to that labyrinthine complexity. Within the realm of free exercise, the Court fluctuates from concern over political instability to protection for minority faiths (and back again). In *Reynolds*, one of the first cases to address the right of Free Exercise, the Court refused to allow a member of a religious minority to violate a duly enacted law. The Court used the phrase, "separation of church in state" to justify that decision (at least in part). It seemed that the Court reversed field in *Sherbert*, however, enacting the compelling state interest test as a high burden for the state to prove in order to violate someone's sincerely held religious beliefs. The standard that originated in *Reynolds* was reasserted in *Smith*, where once again the Court, concerned about anarchy as a result of religious people ignoring laws that they claimed violated their religious beliefs, refused to provide an exemption to a legal prohibition on a certain type of drug. The standard became that neutral laws of general applicability will receive the utmost respect and cannot be violated, even when there is a sincerely held religious belief at stake. By the time the Court rules in *Hialeah*, the Court is attempting to find some kind of acceptable middle ground by delving into the rationales of the legislatures that pass the laws in order to determine whether the rights of religious minorities are being protected.

The jurisprudence as it relates to the Establishment Clause is more far-reaching, more convoluted, and at times more complicated. One of the principles that remains clear is that the Court is concerned about the influence of government and the messages that the government sends in all its many forms. The court created the *Lemon* test to fashion a rubric for how to determine when the influence of the government becomes too strong. Under this test (and its progeny) the Court has struck down laws that called for state reimbursement of salaries, programs where the state seemed too entangled with religious instruction for children, and certain religious displays on government property. There are times when the connections seem tenuous, but that only serves as a witness to the Court's extreme sensitivity to the pervasiveness of government and its messages. More cogently, the Court extended this concern to "religious tests," which are specifically outlawed by the Constitution, and to the very definition of "religion" itself. The Court seems so concerned with the problem of government intrusion, that it has left the idea of religion so non-specific that almost any sincerely held belief can apply under this broad rubric. The Court's logic makes sense: Within a pluralistic society that promises freedom, the government cannot give its tacit consent to certain belief systems (that look like our traditional religions) while also implicitly reject others (that seem strange to our traditions).

From case to case, the Court may be concerned with a myriad of issues. There seems to be two underlying principles, however, that the Court wrestles with in the entirety of its church-state jurisprudence. The first principle is the freedom of conscience, which the Court seems mostly concerned with in its Free Exercise cases. As noted, the decisions of the Court run the gamut. There have been times, however, when the Court

gave wide latitude to the freedom of conscience and the ability to act on those beliefs. The Court will continue to wrestle with the issue of how we find the dividing line in a more complex, diverse, and individualized world. The primary focus on freedom of conscience in the Free Exercise line of cases is not to ignore the fact that this issue does often appear in Establishment Clause cases as well. The *Seeger* and *Welsh* cases (which pertain to the definition of religion), are good examples of situations where both of the religion clauses come to bear on one particular case.

The second principle is the imposition of religious morals on those who disagree with those values. Here the Court provides a rubric that helps to understand where its decisions come from, but in many cases it does not alleviate the confusion. Seemingly similar monuments are ruled on with differing conclusions.[1] Some forms of secular aid to religious schools are allowed while others are not supported. Underneath it all is a concern on the part of the Court that the government has power and influence and the citizenry is affected by the messages the government sends to its constituents. Therefore, a crèche on village property is not just a statement from the people who erected the crèche, it is also a tacit sign of governmental support for the message that is being transmitted by the religious symbolism. The Court's vigilance on these matters is a testament to the centrality of ensuring that freedom of conscience is protected by not having any particular faith's views imposed on others through the actions or decrees of government.

There are echoes in the Bible of the same concerns raised by the Supreme Court in their Religion Clause jurisprudence. While the concerns are not exactly the same - and

[1] The cases of *Van Orden v. Perry* and *McCreary County v. ACLU*, are examples of this difference.

of course these concerns are not adjudicated in the same manner - there is some evidence that any scripturally-based ethic should also be concerned about freedom of conscience and also be against the imposition of even a Christian-based moral code. As a general principle, the nation of Israel in Bible-times seems to have followed some form of the separation of church and state. In 2 Chr God punishes a political leader for administering a religious function. This dissertation has also cited several scriptural examples of church-state integration that led to negative circumstances for those who followed God. Amongst these examples are the stories of the three Hebrew children, Daniel in the lions' den, and the trial of Jesus before his crucifixion. The relationship between the church and state - at least as outlined in the New Testament - involves prayer for government officials and submission to their authority.[2] The only caveat that the New Testament allows is when laws made by rulers are in contravention of God's law. When those circumstances arise, believers "should obey God rather than men." (Acts 5:29)

With regard to the freedom of conscience, there is significant substantiation for the idea that God respects the freedom of conscience for both followers and enemies. The Bible repeatedly recounts stories that involve moral choice, in which human beings exercise the ability of moral self-determination, according to the dictates of their own conscience. Adam and Eve were allowed to make their own decision, even though their decisions were opposed to God's decrees. Further, in at least three situations, leaders of Israel make it clear that the nation still has the opportunity to decide their own fate in

[2] See Rom 13:1-7; 1 Tim 2:1,2; and 1 Pet 2: 13-15.

terms of being God's chosen people. Notably, these three circumstances take place during each of Israel's forms of government.[3]

There is no direct evidence that Christians should not impose their morality on others through any sort of coercion. There is, however, enough information to support the conclusion that the use of the coercive power of legislation is not the way to ensure obedience to biblical principles. There are some examples where Israelites are subjected to persecution because of the imposition of morality upon them. There are also examples of omission, in which individual Jews became part of the governmental structure in foreign nations. In those positions, they had the ability to impose their values on others; yet there is no evidence that Joseph, Daniel and his friends, or Esther and Mordecai ever attempted to do so in the name of their moral code.

Over the last 40 years, the Religious Right has become a dominant religio-political movement within American politics. As a political movement, the Religious Right has often (if not entirely), been against the decisions of the Supreme Court that attempted to actualize the principles of freedom of conscience and the non-imposition of a particular moral code. Religious conservatives criticized decisions that withdrew state support from teaching religion, and continue to criticize decisions that ended teacher-led prayer in public schools. The weight of the biblical evidence and the commonality that exists between that evidence and the principles undergirding Supreme Court

[3] Joshua poses the question at a time when Israel was led by one leader who was both the political and spiritual leader of the people. (Jos 24:15) The issue is addressed again during the time of the judges, when Samuel was the *de facto* leader of Israel prior to the institution of a king. (1 Sam 8:5-7) Finally, Elijah poses the question during the reign of King Ahab. (1 Kgs 18:19-21)

jurisprudence begs the question of how the most prominent Christian political movement of modern times has supported what seems to be a contrary agenda.

This dissertation has shown that one of the ways to answer this question has been to focus specifically on the ideas and activism of Francis Schaeffer. Schaeffer's grim conclusions about the downfall of Western culture and the necessary role of religion in politics undergird the political activity of the Religious Right. It was his philosophical writings and teachings that influenced many of the leaders of the Religious Right to become involved politically in order to save society from its own destruction. Schaeffer was an evangelical apologist who believed that the supplanting of Christian principles by rationalism and humanism was leading to the gradual deterioration of Western society. Schaeffer traced this philosophical shift throughout the history of Western philosophical thought starting with Hegel; among the first philosophers to shift the focus from the dialectical model of thesis and antithesis to the search for synthesis. Schaeffer then claimed that Kierkegaard moved this line of thinking forward by positing that reason and logic were not enough to understand God, but that a leap of faith was necessary. From this point, Karl Barth brought Kierkegaard's existentialist thought into the realm of theology, more fully divorcing matters of faith from logic and reason. Schaeffer pushes back against this settled thought and wants to prove that Christian principles are rational and should assume their rightful place as the primary guiding force for a society where Christian people are in the majority.

In order to accomplish that goal, Schaeffer seeks to first reestablish a thesis-antithesis model. This, he claims, would allow for a return to reason and common sense as the standard for society, and would allow for faith claims to be attained through

reason. Once this is done (a daunting task), the second part of the solution would be to prove the existence of God through reason so that Christianity and Christians can once again have a predominant influence on society. Once God is proven, that would naturally lead to the realization that His communication to mankind, the Bible, is inerrant and infallible. Finally, Schaeffer believes that Christians should recognize the sovereignty of Jesus Christ over every realm of human existence.

According to Schaeffer, if Jesus is sovereign over every aspect of human life, then by definition that means that Jesus is Lord also of human governments and laws as well. From this, Schaeffer concludes that there should be no law that violates anything in the moral code of God, regardless of whether society supports a particular decree or not. Schaeffer believes that Christianity is obligated to prove itself in the marketplace of ideas. In support of these ideas on religion and politics, Schaeffer cites three texts to support his position. He cites Matt 22:21 for the proposition that while Christians are called to "render unto Caesar," the text does not establish Caesar as autonomous from (or above) God. Schaeffer then cites Rom 13:1-4 and 1 Pet 2:13-17 to prove the point that secular governments garner their authority from God, and that when a state does something that is against God's moral law, it loses any claim to legitimacy.[4] It should be noted though that Schaeffer's position on the involvement of religion and politics is more nuanced than those espoused by his followers in the Religious Right. Schaeffer repeatedly warned against being identified with any one party and also believed that

[4] As stated in Chapter 4, Schaeffer's likely acquired his Calvinist views on the relationship between church and government while attending Westminster Seminary and Faith Seminary, both Reformed Calvinist institutions. Barry Hankins, *Francis Schaeffer and the Shaping of Evangelical America*, (Grand Rapids, MI: Wm. B. Eerdmans Pub. Co., 2008), 12-13.

political advocacy on the part of Christians should never create a confusion about the relationship between God and country.

Regardless of whatever misgivings Schaeffer may have had, he increasingly became associated with the Religious Right and became known as the movement's intellectual leader. Tim LaHaye called Schaeffer a mentor. Jerry Falwell criticized religious leaders involved in the Civil Rights Movement but changed his mind once he embraced Schaeffer's ideas. Schaeffer was asked to be a frequent guest on Pat Robertson's show *The 700 Club*. Schaeffer's influence can even be seen in the modern day. Senator Michele Bachmann he repeatedly cited Schaeffer while on the campaign trail.

In reference to Schaeffer's arguments about the role of Christians in civic society, this dissertation has discussed several problems with his analysis. The first problem is that there does not seem to be a lot of explicitly biblical support for his positions, with regard to Christians attempting to legislatively inculcate the biblical moral code. This is especially vital when considering that a major element of Schaeffer's theology is based on the infallibility and inerrancy of scripture. Schaeffer also seems to have hermeneutical issues that are problematic even from an evangelical perspective. Schaeffer does not address the entire canon of Scripture in regards to his wide-reaching assertions about Christian activism in civic society. His arguments are almost entirely based on three New Testament texts and, without reference to other Old and New Testament texts that may apply, or the many Old Testament texts that may be analogous to America's contemporary civic circumstances. Once again, this would not necessarily be a problem in every argument, but I have shown that this is a major problem for the political

assertions of Schaeffer. The entirety of the biblical record, including the passages that Schaeffer uses in support of his argument, can be used to establish a unified system that calls for a very distinct type of political engagement than Schaeffer actually proposes. That system, unlike Scaheffer's claims, respects the God-given right of conscience, and does not seek to use the coercive power of government to command obedience to biblical laws. Finally, there is also a logical problem stemming from Schaeffer's biblical analysis. It is not a necessary result of the truth of God's sovereignty that every aspect of human existence must follow God's law. The Bible itself provides a record of God's response when people refuse to follow His law; responses which often do not replicate anything approaching Schaeffer's writings of inevitable judgment. God's responses to disobedience can be often be seen as being guided by patience, grace, and continued individual freedom.

Based largely on Schaeffer's assertions, the Religious Right became politically involved in several issues over the last three decades. The two most prominent issues galvanizing the Religious Right in recent years were abortion and same-sex marriage. The Supreme Court's decision in *Roe v. Wade* was a major catalyst that brought conservative evangelicals, and particularly Schaeffer, out of the political shadows and into the public square. Jerry Falwell said that it was the decision in *Roe* that spurred him on to the idea that Scripture needed to be applied to today's American government.[5] Of course, this realization in part led to the creation of the Moral Majority. During the 1980's, the Moral Majority played a major role in the anti-abortion movement, sending direct-mailers into congressional districts and lobbying Congress for their position.

[5] Seth Dowland, "'Family Values' and the Formation of a Christian Right Agenda," *Church History* 78:3, (Sept. 2009): 615.

Operation Rescue, founded by a Schaeffer disciple Randall Terry, held confrontational protests outside of abortion clinics. In the first decade of the Twenty-first Century, the Religious Right remained politically strident and assertive on the issue of abortion. Groups associated with the Religious Right attempted to influence President George W. Bush's nominee to the Supreme Court. They also were involved in the partial-birth abortion ban that President Bush signed into law in 2003.

With regard to same-sex marriage, the Religious Right took a much more proactive stance once the possibility of same-sex marriage became apparent. Leaders of the Religious Right criticized the judicial decision in Hawaii that was the first to open the possibility for gay marriage, and religious conservatives moved swiftly into action legislatively to get a constitutional amendment on the Hawaii ballot that would forestall same-sex marriage. On the federal level, religious conservatives worked with the Republican Party to pass the Defense of Marriage Act in 2006. Prior to the 2000 election, the Religious Right worked to make gay marriage an issue. When the Massachusetts Supreme Court allowed same-sex marriage in 2003, the Religious Right responded. First, leaders in the Religious Right supported the passage of a Federal Marriage Amendment, and used their political influence to get support for the amendment from the President. After using their influence to have the amendment presented, the Religious Right spent millions of dollars to lobby for the amendment and have their supporters promote it as well. When the Federal Marriage Amendment failed, the Religious Right turned to the state-level to accomplish their goals. In 2004, gay marriage bans were on the ballots of thirteen different states. They were successful in getting the bans passed with average support for the bans in those states at 71%. The Religious Right went through the same

process in 2008 with Proposition 8 in California. Although recent Supreme Court decisions overturned many of the successes of the Religious Right in this area, there is no doubt the influence these groups have had in this area of politics.

The ideological source of the Religious Right's political activity comes from two places. First, the religious beliefs that these groups hold with regard to abortion and same-sex marriage, and secondarily the writings, videos, and efforts of Francis Schaeffer. The criticism this dissertation makes is not in regard to any biblical understanding of the moral correctness of either abortion or same-sex marriage. The critique, however, is that any analysis of the specific political issues is a misguided question. The question should not be what the Bible says about the beginning of life or homosexuality. Instead, the question that needs to be asked is what the Bible says about the relationship between religion and government, and whether the use of politics and legislation can be biblically supported. Schaeffer presents a particular reading of the Bible that many people believe supports the assertive use of politics and coercive laws in order to legislate and impose a particularly Christian morality on all of society. To hold that position without consideration of the respect that the Bible consistently shows for freedom of conscience is to assert an incomplete and inaccurate view of scripture.

The other problem with the political theology of Schaeffer and the Religious Right is that it is also untenable from a political perspective within an American liberal democracy. Schaeffer, and the leaders of the Religious Right, have been clear that they want these laws to be imposed in this country because they believe that God demands that these laws are essential to the Divine cause. Passing laws because of any particular religious impetus will inevitably create a host of (seen and unforeseen) problems for a

liberal democracy. If America is to be a nation that enshrines the freedom of conscience, then ample legal space must be given for individuals to follow the dictates of their conscience, regardless of whether they agree with the views of evangelical Christians on any particular issue. For example, America is a society where abortion is legal. Regardless of the fact that well-meaning individuals may disagree on the legality of the procedure, those who disagree are not forced to have abortions, and those who agree can follow the dictates of their conscience and have the procedure if they so choose. In many states, gay marriage is now legal. Those who choose not to participate in this particular type of civil union are not forced to do so, and those who choose to may do so. To attempt to coerce behavior according to the dictates of any faith is an imposition on the consciences of those who do not follow that faith.[6] What makes America a great democratic experiment is the fact that the nation is a united one filled with many disparate groups of people. I submit that what unites us is our commitment to individual freedom - freedom to worship, freedom to believe, and freedom to follow the dictates of our conscience. These same principles are also found in the biblical narrative. The God depicted in the Bible is also One who respects the ability of the free-thinking individual to choose their own moral destiny independent of civic authorities. When the Bible and the Constitution are viewed from this perspective, the mode of political activity that has been aggressively pursued by the Religious Right violates the two elements of life that many of them also claim that they hold most dear – a love of God and a love of a free country.

[6] Furthermore, it should be noted that even within certain faiths there is debate about some of these same issues.

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