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The City of God and the Cities of Men: A Response to Jason Carter

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* Associate Professor, University of Georgia School of Law. I would like to express my gratitude to Bryan Baird, Bryan McGraw, Jason Bennett and David VanDrunen, who commented on drafts of this Response. Their willingness to review the paper should not be taken as an endorsement of its contents. References to Scripture will be to the New American Standard Bible (NASB) unless otherwise indicated.
I. INTRODUCTION

Law school seminars sometimes educate the professor as much as the students. That proved true for me in the spring of 2004, when seventeen law students and two colleagues from other departments joined me for a seminar focused on ancient and contemporary perspectives on law found within various Christian theological traditions. One seminar student who repeatedly spurred my own thinking was Jason Carter. Particularly thought-provoking was the paper Jason presented in the final weeks of the seminar.

The returns from the 2004 election suggested that Jason had been unusually prescient in his analysis of U.S. religious and political trends. The national discussion of religion and politics that followed that election suggests that many may be interested in Jason’s ideas, and I am grateful for his willingness to engage in a public dialogue on these important issues. As in any genuine conversation, some of the ideas I offer here are tentative and exploratory, and I look forward to continuing the dialogue with Jason and others.

II. POLITICAL PARTICIPATION AND THE RELIGIOUSLY INTEGRATED EXISTENCE

Jason initially considers and rejects philosophical positions that call for citizens to put aside their religious beliefs when they participate in the political sphere. He advocates, instead, the

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1 For a number of students, the course seemed liberating, an opportunity to discuss fundamental questions that underlie the law school curriculum but often prove difficult to address in the law school setting.
2 The inclusion in the course syllabus of a reading from Archbishop Tutu resulted from a suggestion by Jason, and his experience living and working in post-Apartheid South Africa provided a valuable international perspective on the issues addressed in the course.
4 See id. at 66 & n.11 (noting Democrats’ desire to broaden their appeal to religious voters).
freedom to live a "religiously integrated existence" in all areas of life, including political life. Here, Jason reminds me of another Carter—Professor Stephen L. Carter of the Yale Law School. In *The Culture of Disbelief*, Professor Carter contends that "[i]n our sensible zeal to keep religion from dominating our politics, we have created a political and legal culture that presses the religiously faithful to be other than themselves, to act publicly, and sometimes privately as well, as though their faith does not matter to them." Both Carters highlight a problem many Christians face when confronted with arguments for a secular public square. To understand the problem, we need to recognize that calls for the segregation of religious and political thought present a moral question: how should a Christian conduct himself in his interaction with the political process? To be a Christian means, in part, that one approaches moral questions within the context of a Christian worldview. To tackle moral inquiries from some other perspective would be to act as something other than a Christian.

That leads to an even more foundational inquiry: how does a Christian resolve moral issues? Traditionally, Christians have understood moral inquiries as questions concerning the will of God. An underlying assumption throughout the biblical texts, for instance, is that the right thing to do in any situation is what God wants you to do. One does find within the Christian community

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6 *Id. at 82.*


8 OLIVER O'DONOVAN, *RESURRECTION AND MORAL ORDER: AN OUTLINE FOR EVANGELICAL ETHICS* 11 (1994) ("The foundations of Christian ethics must be evangelical foundations; or, to put it more simply, Christian ethics must arise from the gospel of Jesus Christ. Otherwise it could not be Christian ethics.").

9 Fundamental to the Christian faith is submission to Christ as "Lord." *See, e.g., Colossians* 2:6–7 (stating that "as you have received Christ Jesus the Lord, so walk in Him"); *Philippians* 2:9–11 ("[S]o that at the name of Jesus every knee will bow, of those who are in heaven and on earth and under the earth, and that every tongue will confess that Jesus Christ is Lord."). His Lordship implies the exercise of authority over the believer's life, including moral decisionmaking. *See, e.g., Luke* 6:46 ("Why do you call Me, 'Lord, Lord,' and do not do what I say?").

10 The driving passion in the life of Christ was to do the will of His heavenly Father. *John* 4:34 ("Jesus said to them, 'My food is to do the will of Him who sent Me and to accomplish His work.' "); *Luke* 22:42 ("[Y]et not My will, but Yours be done."); *Matthew* 6:10 ("Your will be done, on earth as it is in heaven."). He set the same agenda for those who would follow Him. *See Matthew* 7:21 ("Not everyone who says to Me, 'Lord, Lord,' will enter
a variety of viewpoints regarding how one may discern the will of God. In particular, the precise relationship of reason and revelation—of natural law and Scripture—has been the subject of various understandings. But once a Christian has discerned the will of God, the moral question has been answered.

From this perspective, the moral claim presented by secularists becomes nearly incomprehensible. The inquiry translates into the following: “does God want me to ignore His will when I engage in political activity”? The question virtually answers itself. The call for a secular public square therefore, at base, amounts to a demand that Christians either stop being Christians or recuse themselves from the political process.

If one believes that the God of traditional Christian theology in fact exists, the idea of doing politics without taking God’s will into account seems comparable to doing physics without taking account

the kingdom of heaven, but he who does the will of My Father who is in heaven will enter.”).

11 See Dean C. Curry, Reclaiming Natural Law, FIRST THINGS, Nov. 1997, at 56 (reviewing J. BUDZISZEWSKI, WRITTEN ON THE HEART: THE CASE FOR NATURAL LAW (1997) and MICHAEL CROMARTIE, A PRESERVING GRACE: PROTESTANTS, CATHOLICS, AND NATURAL LAW (1997)). My own somewhat unstudied position is that reason and revelation both play an important role in addressing moral questions but that reason must be guided by revelation to counteract the effects of the fall. See HAROLD J. BERMAN, LAW AND REVOLUTION, II: THE IMPACT OF THE PROTESTANT REFORMATIONS ON THE WESTERN LEGAL TRADITION 79 (2003) (discussing Philip Melanchthon’s “paradoxical” view that natural law is discovered by reason but that reason is corrupted by sin; “His resolution of this paradox was to subordinate the natural law that is both discernible to, and distorted by, human reason to the biblical law that is revealed to faith”). The prospect of autonomous moral reasoning, unaided by revelation, first appears in Scripture in the mouth of the serpent. In the Edenic temptation described in Genesis, the serpent promises that if Adam and Eve disobey the divine mandate, their eyes will be opened, and they will be like God, knowing good and evil. See Genesis 3:5 (describing temptation of Eve). The tenor of biblical teaching seems to be that humans depend on the word of God for every good gift, from creation to eternal life. See, e.g., Genesis 1:1–2:3 (describing creation as resulting from series of commands by God); John 6:68 (“Lord, to whom shall we go? You have words of eternal life.”); Matthew 4:4 (“But He answered and said ‘It is written; MAN DOES NOT LIVE ON BREAD ALONE, BUT ON EVERY WORD THAT COMES FROM THE MOUTH OF GOD.’”); Psalm 33:6 (“By the word of the LORD the heavens were made, And by the breath of his mouth all their host.”).

12 I suppose one could imagine a deity who wanted to be ignored—who desired, for instance, that humans make moral decisions autonomously, without his input. But that would not be the God Christians worship. One could also imagine a more sophisticated position, holding that God wants Christians to use only certain methods to discern His will when they participate in the political sphere; for instance, perhaps God wants Christians to rely exclusively upon natural law reasoning, and ignore biblical revelation, when they interact with the political community. But this proposition would need to be demonstrated theologically, and I am dubious that such a demonstration could be made.
of gravity. Consider some elements of historical Christian teaching about God: He created all things. He rules as sovereign over all creation. He is perfectly wise. He alone is good. He holds His creatures to a moral law and will ultimately judge the human race. He demands undivided love and absolute priority in every aspect of our lives.

If such a God really exists, as orthodox Christians believe, it would seem utterly irrational to act as if He did not. It may be, of course, that no such God exists, or that He does exist but we can know nothing of His will. But to embrace either proposition would be to depart from the historic Christian faith. For the Christian to act with integrity—for her conduct to remain consistent with her profession of faith—every undertaking in the political arena should flow in some manner from an understanding of the will of God.

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13 See Genesis 1:1–2:3 (describing creation of heaven and earth); Revelation 4:11 (praising God as Creator).
14 See Isaiah 46:10 (“Declaring the end from the beginning, And from ancient times things which have not been done, Saying, ‘My purpose will be established, And I will accomplish all My good pleasure’ “); Mark 4:41 (“Who then is this, that even the wind and the sea obey Him? “); Matthew 19:26 (“[W]ith God all things are possible.”).
16 Luke 18:19 (“No one is good except God alone.”).
17 See Genesis 18:25 (describing God as “the Judge of the earth”); Hebrews 12:23 (describing God as “the Judge of all”); Revelation 20:11–15 (discussing Judgment Day); see also Acts 10:42 (noting God appointed Christ “as Judge of the living and the dead”). At the same time, the gospel teaches that God graciously offers mercy on the basis of repentance and faith in Christ. See Acts 2:38 (“Peter said to them, ‘Repent, and each of you be baptized in the name of Jesus Christ for the forgiveness of your sins.’ “); Romans 8:1–4 (“[T]here is therefore now no condemnation for those who are in Christ Jesus.”); Acts 20:21 (stating that Paul preached “to both Jews and Greeks of repentance toward God and faith in our Lord Jesus Christ”).
18 See Exodus 20:3 (“You shall have no other gods before Me.”); Luke 14:25–33 (teaching that disciple of Christ must give Him priority over family, possessions “and even his own life”).
19 It would also be utterly ungrateful. If God has done for Christians what the Scripture indicates, they owe Him a debt far greater than they can ever pay. See, e.g., Colossians 1:9–14 (expressing gratitude and describing benefits of redemption); I Corinthians 1:4–9 (thanking God for grace given Corinthians in Christ); I Corinthians 15:50–57 (thanking God for victory over death through Christ); II Corinthians 4:7–15 (describing Paul’s endurance of hardships of ministry “so that the grace that is reaching more and more people may cause thanksgiving to overflow to the glory of God”).
20 The effort to understand the will of God takes place within the context of the Christian community, which God has provided to shepherd and encourage believers through the
She should think and act as a Christian in her life as a citizen, just as in her life as a mother, an employee, or a church member.\(^2\)

Jason mentions the view (associated with John Rawls and others) that citizens, including religious citizens, should only pursue political goals justified on the basis of a secular system of moral reckoning.\(^2\) On this view, only nonreligious arguments should be offered in political debate.\(^2\) Jason, on the other hand, recognizes the value of conducting at least some political discussion in explicitly religious terms in order to permit the dialogue he advocates about political implications of Christian faith. Such a dialogue would have the virtue of allowing theological responses to positions developed on theological grounds. I suspect the exclusion of religious arguments from political debate, on the other hand, would simply make political discussions less fruitful by preventing us from discussing the real issues in controversy.\(^4\)

challenges of life in this world. See, e.g., Ephesians 4:11-16 (discussing God’s provision of leaders with gifts designed to promote maturity in Christian community).

\(^2\) Of course, context matters in how one lives a Christian life. One might say different things in church than in the workplace. But in each context, the Christian should seek to honor God in all she does. I Corinthians 10:31 (“Whether, then, you eat or drink or whatever you do, do all to the glory of God.”).

\(^2\) See Carter, supra note 5, at 80–81 (discussing philosophical grounding of the secular left); see also JOHN RAWLS, POLITICAL LIBERALISM 212–54 (1993) (discussing ideal of “public reason”). But see CHRISTOPHER J. EBERLE, RELIGIOUS CONVICTION IN LIBERAL POLITICS 10 (2002) (“I’ll defend the claim that a citizen is morally permitted to support (or oppose) a coercive law even if he has only a religious rationale for that law. . . . So, to put my central thesis in summary fashion: a citizen has an obligation sincerely and conscientiously to pursue a widely convincing secular rationale for her favored coercive laws, but she doesn’t have an obligation to withhold support from a coercive law for which she lacks a widely convincing secular rationale.”) (emphasis deleted).

\(^2\) See ROBERT AUDI, RELIGIOUS COMMITMENT AND SECULAR REASON 86 (2000) (“The first principle I want to discuss—the principle of secular rationale—says that one has a prima facie obligation not to advance or support any law or public policy that restricts human conduct, unless one has, and is willing to offer, adequate secular reason for this advocacy or support (say for one’s vote).”); RAWLS, supra note 22, at 215 (“The ideal of public reason does hold for citizens when they engage in political advocacy in the public forum, and thus for members of political parties and for candidates in their campaigns and for other groups who support them. It holds equally for how citizens are to vote in elections when constitutional essentials and matters of basic justice are at stake.”).

\(^4\) At the same time, while believers should feel free to speak as believers, one can think of a number of reasons why Christians should, when they can, “translate” their political arguments into forms accessible to non-Christians. For instance, perhaps it would be more loving to address political arguments to non-Christian neighbors in terms they can understand. See Leviticus 19:18 (“You shall love your neighbor as yourself.”). Or perhaps Christians should be cautious about using religious arguments in politics because God would
Jason makes an important point when he notes the absence of any universally held ethical theory. In my view, moral arguments only work to the extent they fit within some larger narrative about humans and their place in the universe. How could one know what is "good" for a person to do without some understanding of what humans are, where they came from, why they exist, and their ultimate destiny? We divide over moral questions because we adopt (or assume) different answers to such fundamental inquiries. The exclusion of religious narratives from political discourse would effectively privilege materialist narratives about humanity, even though they may rest just as heavily on faith commitments as those disqualified as "religious." The generation that framed our constitutional order felt free to offer explicitly theological arguments in favor of political measures. Conversely, the suppression of religious speech has been associated historically with attempts to favor an ideology, as in antebellum efforts to censor religiously based abolitionist literature.
The idea of Christians seeking to do the will of God in the political sphere will raise concerns for some readers. Jason appropriately underscores the need for humility about our capacity to discern God's will.\textsuperscript{28} Christian theology offers strong reasons to doubt our objectivity, our virtue, our foresight, and our reasoning.\textsuperscript{29} The Bible itself offers examples of people who do horrible things because they mistake the will of God.\textsuperscript{30} But while humility should lead to caution about how clearly we know God's will for the political order, that same humility, it seems to me, should drive us to seek divine guidance in the first place. If self-interest and ignorance lead us to misunderstand or distort the guidance God provides, that should make us even more skeptical of our capacity to discern what is good and true on our own without an objective reference point.

Some will question whether those who believe in divine guidance can participate constructively in politics, an enterprise that calls for dialogue and compromise. We all know of zealots who seem incapable of cooperative engagement. But abuses in that direction represent an inevitable misapplication of what can be a very desirable trait, the willingness to adhere to principle and act upon conviction. Some of the most important social movements in American history succeeded precisely because large numbers of Christians felt confident they were doing what God called them to do, even in the face of opposition. Abolitionists braved persecution because they believed they were doing the will of God.\textsuperscript{31} Similarly,\

\textsuperscript{28} See Carter, supra note 5, at 90–93 (critiquing religious right for thinking it has monopoly on truth).

\textsuperscript{29} See, e.g., Job 38–41 (emphasizing limits of human experience); Romans 3:9–18 (emphasizing pervasiveness of sin).

\textsuperscript{30} See John 16:2 (“An hour is coming for everyone who kills you to think that he is offering service to God.”). The Apostle Paul, for instance, relates that before his conversion to Christianity, he demonstrated his zeal for God by persecuting the church. Acts 22:3–5; Philippians 3:4–6; see also Acts 8:3 (relating persecution of church by Saul (later renamed “Paul”)).

\textsuperscript{31} See Stephen L. Carter, Reflections on the Separation of Church and State, 44 Ariz. L. Rev. 293, 303 (2002) (“The civil rights movement and the abolition movement were church-led revolutions, and they were accomplished because the garden [in which conscience is nurtured] was largely left alone: raised to ideas radically different from the wisdom of the moment, the leaders of those movements, as well as the rank-and-file, put their faith into practice and changed the nation.”); see also Edward McGlynn Gaffney, Jr., Politics Without Brackets on Religious Convictions: Michael Perry and Bruce Ackerman on Neutrality, 64 Tul. L. Rev. 1143, 1158–66 (1990) (discussing role of religion in abolitionist movement).
much of the courage displayed in the civil rights movement found its origin in the Christian convictions that motivated many of its members.\textsuperscript{32}

At the same time, Christians should have the modesty to recognize the insight of those outside the community of faith. Just as Paul acknowledged truths expressed in Greek poetry, Christians should be willing to learn from others who bear the image of God, whether or not they are part of the Christian church.\textsuperscript{33} Assuming Christians have indeed received divine guidance relevant to political participation, it includes such principles as "love your neighbor as yourself,"\textsuperscript{34} "treat people the same way you want them to treat you,"\textsuperscript{35} and "[i]f possible, so far as it depends on you, be at peace with all men."\textsuperscript{36}

Though I consider myself an evangelical Christian within the Reformed tradition, I suspect I would be uncomfortable with a political system run exclusively by my co-religionists. I would likewise be concerned about a political system dominated by environmentalists or militarists or secular liberals. Because I hold to a Christian view of human nature, I believe no group, whether defined by religion or ethnicity or ideology, can be trusted with unchecked power. But our system of government provides at least two protections against factional zealotry in either a religious or secular form. The most familiar lies in the liberties guaranteed by the Constitution, including the prohibitions on religious establishments and religious tests for office, as well as the safeguards for free exercise of religion, free speech, and the like.\textsuperscript{37}

\textsuperscript{32} See Carter, supra note 31, at 303 (describing civil rights movement as "church-led revolution"); Gaffney, supra note 31, at 1166–75 (exploring role of religion in civil rights movement). Gaffney also highlights the role of Jewish groups in the civil rights movement. Gaffney, supra note 31, at 1170–71 (noting close relationship between Jewish groups and Student Nonviolent Coordinating Committee).

\textsuperscript{33} See Acts 17:28 (noting Paul's quotation of Greek poet for proposition that we are God's children). Similarly, Moses was willing to take the advice of his Midianite father-in-law in structuring a judicial system for the Israelite community. Exodus 18:13–27.

\textsuperscript{34} Leviticus 19:18; Matthew 22:39.

\textsuperscript{35} Matthew 7:12.

\textsuperscript{36} Romans 12:18; see also Hebrews 12:14 ("Make every effort to live in peace with all men and to be holy.") (New Int'l Version).

\textsuperscript{37} U.S. CONST. art. VI, cl. 3; id. amend. I & XIV § 1.
The other protection against sectarian oppression is structural. As James Madison explained in *Federalist No. 10*, when you extend the sphere of population and territory covered by a republican government, "you take in a greater variety of parties and interests." As a result, "you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens: or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength and to act in unison with each other." Madison contended, therefore, that there would be less cause to fear factional oppression at the federal level than from groups within the individual states.

At the time Madison wrote, the Louisiana Purchase had not occurred, the national population consisted of fewer than four million people, and churchgoers were concentrated in a handful of major denominations. Today, the country encompasses a much larger territory, the population exceeds 300 million, and there are dozens of significant religious groups. While one can speak of broad categories of Christians, like "evangelicals" or "fundamentalists" or "Catholics," such labels actually obscure important religious and political distinctions among a wide array of diverse subgroups. It would be difficult for me to imagine

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38 *The Federalist No. 10* (James Madison).
39 Id.
40 Id.
42 See John Witte, Jr., *Religion and the American Constitutional Experiment* 120 (2d ed. 2005) (showing percentages of American churchgoers in 1780 who attended Anglican, Calvinist (Congregationalist, Presbyterian, Reformed), Evangelical (Methodist, Baptist), Lutheran (Swedish, German, Swiss), or Catholic churches); Bernard A. Weisberger, *Religion on the Frontier*, in *Historical Viewpoints* 216, 218 (John A. Garraty ed., 1st ed. 1971) (noting "considerable variety" in 1790s religious picture but listing only Episcopalian, Dutch Reformed, Lutheran (various shoots), Baptist, Methodist, Quaker, Catholic, Jewish, Deist, pre-Unitarian, Presbyterian, and Congregational).
45 See Elisabeth Bumiller, *Preaching to the Choir? Not This Time*, N.Y. TIMES, May 23,
traditionalist Christians coming together to make common cause on more than a handful of contested issues. Ironically, though, barring religiously inspired political participation would not only undermine constitutional liberties protected by the Bill of Rights, but might also increase the risk of faction, by reducing the number of distinct voices permitted within our public counsels.

III. CITIZENS OF JERUSALEM IN THE MIDST OF BABYLON

The reassurances offered above regarding Christian participation in politics rest to some extent on this country’s liberal democratic tradition. But if integrity requires a Christian’s political commitments to flow from his faith, does that call into question his ability to support this form of government? After all, democracy may generate results inconsistent with what the Christian takes to be God’s ideal for human law, and liberal premises will sometimes disable government from acting to restrain evil. On the other hand, though, it seems likely that all forms of government will sometimes generate policies incompatible with the will of God. Moreover, an unconstrained governmental power to curb evil can also be an unconstrained power to promote evil. In a world of fallen humans, and in the absence of any clear scriptural preference for one governmental structure, there are strong theological arguments for some form of liberal democracy as the best among available options, and for submitting to most of the political outcomes generated by such a system.\textsuperscript{46}

In the lead essay from \textit{Christian Perspectives on Legal Thought}, Professor and Judge Michael McConnell highlights four respects in which Christian theology and history have been understood to support particular features of liberal political theory.\textsuperscript{47} First, the

\hypertarget{footnote-46}{46} By saying that Christians should submit to “most of the political outcomes generated by such a system,” I leave open the possibility that some measures implemented by a democratically elected government would be so beyond the pale that Christians in good conscience could not comply. \textit{Cf.} \textit{Exodus} 1:15–21 (explaining that because Hebrew midwives “feared God,” they failed to carry out Pharaoh’s command to kill male infants).

\hypertarget{footnote-47}{47} Michael W. McConnell, \textit{Old Liberalism, New Liberalism, and People of Faith}, in
Christian understanding of the pervasive nature of sin undermines utopian political projects and supports the division of governmental authority to prevent abuses of power. Second, the existence of an international Catholic church in medieval Europe, separate from and in tension with the various national kingdoms, along with the Reformation's "two kingdoms" theology, resulted in a practical and theoretical separation of church and state, a strong affirmation of limited government. Third, the notion of "primacy of conscience," the teaching that faith must be uncoerced to be acceptable to God, led to a respect for freedom as a necessary precursor to virtuous choices. Fourth, the doctrine of the sovereignty of God over all people and the Protestant teaching concerning the priesthood of all believers provided theoretical support for political equality.

Liberal democratic political theory, in certain forms, dovetails nicely with what seems to me the relevant biblical model for political participation by Christians. The question of how Christians should approach political life represents a subset of the larger question of how Christians should think about life in this world. My views on this issue derive from scriptural teaching describing believers as citizens of a heavenly city, which the New Testament calls the "New Jerusalem." Abraham, the biblical exemplar of the person of faith, spent his entire life wandering as an alien in the Promised Land; the New Testament tells us "he was

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48 See id. at 7–8 (discussing sin and government). This theme finds further development in a later essay in the collection. See Marci A. Hamilton, The Calvinist Paradox of Distrust and Hope at the Constitutional Convention, in CHRISTIAN PERSPECTIVES, supra note 47, at 293–306 (discussing influence of Calvinist understanding of effects of sin on framing of Constitution).

49 See McConnell, supra note 47, at 8–13 (discussing history of separation of church and state); see also Carter, supra note 31, at 294 ("The serious historian will readily admit that the metaphorical separation of church and state, whatever precise meaning we might choose to assign to it today, has its origins in Protestant theology, for it was the Protestants who laid before an unenlightened Europe the model of the two great powers, the temporal and the spiritual, and the theological argument for placing the capacities in the hands of separate earthly masters.").

50 See McConnell, supra note 47, at 13–15 (discussing "primacy of conscience" and its relation to liberalism).

51 See id. at 15–16 (discussing egalitarian themes in Christian theology).

52 Revelation 21:2; see also Galatians 4:25–26 (distinguishing the present city of Jerusalem from "the Jerusalem above").
looking for the city which has foundations, whose architect and builder is God." The Apostle Peter picks up on this theme, advising Christians to live as aliens and strangers in this world. Likewise, the Apostle Paul tells Christians that their "citizenship is in heaven." While Peter and Paul were speaking principally to questions of conduct rather than politics, I believe the underlying concept carries political implications as well. Saint Augustine built upon the biblical theme of the heavenly city in The City of God, a classic work on Christian political theory. As I understand the biblical teaching, Christians are to see themselves first and foremost as citizens of the heavenly city, which presently exists in inchoate form and will be fully revealed at the culmination of history.

If politics concerns the life of the city—the polis—the Christian occupies an ambiguous position as a member of two communities. She resides temporarily in an earthly city while anticipating a permanent home in the city of God. This picture of the Christian as a resident alien, or perhaps a dual citizen, could imply a practical disengagement from the life of this world. But to my understanding, Christians have an appropriate concern for both cities.

53 Hebrews 11:8–10.
54 I Peter 2:11.
57 See Revelation 21 (describing ultimate revelation of New Jerusalem).
58 Conceptualizing the position of the Christian in this way may depart somewhat from Augustine's understanding of the two cities. See David VanDrunen, The Two Kingdoms: A Reassessment of the Transformationist Calvin, 40 CALVIN THEOLOGICAL J. 248, 253 (2005) ("Augustine's two cities are characterized by a sharp antithesis. One city is of God, the other of Satan. The citizens of one are believers, of the other unbelievers. . . . Christians have no dual citizenship; they belong only to the heavenly city, even while making temporary use of the things of the earthly city."). On the other hand, any tension might disappear in the face of a clearer explication of the sense in which a Christian can be viewed as a "member" of an earthly political community.
59 Though Paul taught Christians to live as citizens of heaven, he still thought of himself as a Roman citizen as well. See Acts 16:35–39 (describing Paul's demand to be treated as Roman); Acts 22:25–29 (noting Paul's assertion of Roman citizenship).
60 Surely some concerns of the earthly city should be less pressing to the Christian, whose true home lies elsewhere. See II Timothy 2:4 (New Int'l Version) ("No one serving as a soldier gets involved in civilian affairs—he wants to please his commanding officer.").
One might compare Christians in this life with the people of Israel during the Babylonian captivity. Significant portions of the Old Testament relate to the period during which the Israelites lived as expatriates in foreign lands, waiting for the rebuilding of Jerusalem. Recognizing the analogy between Christians in this world and the Israelites in Babylon, Saint Augustine noted God's instruction that the Israelites should "seek the peace of the city where I have caused you to be carried away captive, and pray to the Lord for it; for in its peace you will have peace." Old Testament figures like Daniel, Esther, Mordecai, and Nehemiah offer examples of Israelites who played key roles in the politics of the foreign cities where they lived.

Expanding on Professor McConnell's point concerning the Reformation's two kingdoms theology, this "two cities" perspective can provide a theoretical justification for limited government. If God delegates authority to two distinct cities, one earthly and one heavenly, it reasonably follows that He intended them to administer different jurisdictions and perform different functions. On this view, the earthly government should not perform tasks that have been assigned specifically to the church, the visible manifestation of the heavenly city in this world.

American history has seen recurring efforts to apply Christ's remarks about a "city on a hill" to the United States. While

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61 See, e.g., Daniel; Esther; Ezekiel; Ezra; Nehemiah; Jeremiah (all recounting experience of Israelites during and after exile).
62 Jeremiah 29:7 (New King James Version); see SAINT AUGUSTINE, supra note 56, Book XIX, § 26, at 529 (applying Jeremiah 29:7 to Christian church). The New American Standard Bible provides an alternate translation: "Seek the welfare of the city where I have sent you into exile, and pray to the LORD on its behalf; for in its welfare you will have welfare." Jeremiah 29:7.
63 See, e.g., Daniel 2:48 (describing how Daniel was made ruler over province of Babylon); Esther 2:17 (discussing Esther's coronation as queen); Esther 10:2–3 (indicating Mordecai became "second only to King Ahasuerus"); Nehemiah 1:11 (noting that Nehemiah served as cupbearer to king). See also Genesis 41:39–44 (describing Joseph's position of authority in Pharaoh's court while he lived in Egypt).
64 For instance, the jurisdiction to make, baptize, and teach disciples has been assigned to the church, not to the temporal government. See Matthew 28:19–20 (discussing Jesus's command to "make disciples of all the nations").
65 This was a favorite theme of President Ronald Reagan. For instance, in his farewell address to the nation, he said:

The past few days when I've been at that window upstairs, I've thought a bit of the "shining city upon a hill." The phrase comes from John.
well intentioned, this seems to me a misapplication of Scripture that confuses the heavenly and earthly cities. When Christ spoke those words, He was referring to His followers—citizens of God’s city.\textsuperscript{66} He was not speaking of an earthly political community. Likewise, when John Winthrop told the Massachusetts colonists that they would be “as a city upon a hill,”\textsuperscript{67} we should remember that he was acting in the role of a pastor preaching to his congregation. A description that may have been accurate, in biblical terms, when applied to the religiously homogeneous Massachusetts colonists cannot properly be applied to a nation like the United States, which includes citizens from a wide diversity of religious and secular backgrounds.

For similar reasons, I find myself skeptical of claims that this or any earthly polity should be called a “Christian nation,” notwithstanding the fact that many Americans are Christians.\textsuperscript{68} One would not have called Old Testament Babylon a “Jewish

Winthrop, who wrote it to describe the America he imagined. What he imagined was important because he was an early Pilgrim, an early freedom man. He journeyed here on what today we’d call a little wooden boat; and like the other Pilgrims, he was looking for a home that would be free.

I’ve spoken of the shining city all my political life, but I don’t know if I ever quite communicated what I saw when I said it. But in my mind it was a tall proud city built on rocks stronger than oceans, wind-swept, God-blessed, and teeming with people of all kinds living in harmony and peace, a city with free ports that hummed with commerce and creativity, and if there had to be city walls, the walls had doors and the doors were open to anyone with the will and the heart to get here. That’s how I saw it and see it still.


\textsuperscript{66} See Matthew 5:14–16 (“You are the light of the world. A city set on a hill cannot be hidden; nor does anyone light a lamp and put it under a basket, but on the lampstand, and it gives light to all who are in the house. Let your light shine before men in such a way that they may see your good works, and glorify your Father who is in heaven.”).

\textsuperscript{67} John Winthrop, A Modell of Christian Charity, Written on Board the Arbella (1630) (transcript available at http://history.hanover.edu/texts/winthmod.html).

\textsuperscript{68} The Bible does not apply the adjective “Christian” to any earthly political community; it uses the term only in connection with the church and its members. See Acts 11:26 (“[T]he disciples were first called Christians in Antioch.”); I Peter 4:16 (instructing individuals suffering as Christians). If there is a “Christian nation,” it is the church, scattered throughout many nations around the world. See I Peter 2:9 (“But you are a chosen race, a royal priesthood, a holy nation, a people for God’s own possession, so that you may proclaim the excellencies of Him who has called you out of darkness into His marvelous light . . . .”).
nation,” even if the expatriate Israelites had made up a majority of the population; their true home lay elsewhere. But while I do not think of the United States as a “Christian nation,” it is nevertheless the case that many who contributed to the development of our system of government viewed the world through the lens of Christian theology. Since our liberal political tradition arose in significant part from a Christian worldview, I believe friends of liberal government would do well to see Christian theology as a potential ally and should be cautious about attempting to divorce liberal political theory from its religious roots.

Consider Professor McConnell’s point that Christian theology provides theoretical justifications for political equality, a foundational axiom of modern democratic theory. He mentions theological teachings concerning the sovereignty of God and the priesthood of all believers. To these doctrines, we might add others that point in the direction of political equality. For instance, Christianity, like Judaism, believes that all humans are created in the image of God. This equality as divine image-bearers suggests an equal entitlement to the regard of one’s fellow creatures.

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69 For related reasons, I think Jason makes a powerful point when he criticizes political rhetoric that applies to the American people religious imagery that in its original context refers to Christ. See Carter, supra note 5, at 96–97 (taking issue with President Bush’s use of religious rhetoric).


71 See McConnell, supra note 47, at 5–24 (discussing relationship of Christian theology to liberal political theory); see also Reynolds v. Sims, 377 U.S. 533, 560–61 (1964) (“[T]he fundamental principle of representative government in this country is one of equal representations for equal numbers of people, without regard to race, sex, economic status, or place of residence within a State.”).

72 See McConnell, supra note 47, at 15–16 (discussing Christian view of fundamental equality among humans and believers).

73 See, e.g., Genesis 1:27 (“God created man in His own image, in the image of God He created him; male and female He created them.”); Genesis 9:6 (“[I]n the image of God he made man.”); I Corinthians 11:7 (“[H]e is the image and glory of God.”); James 3:9 (noting men have been made “in the likeness of God”).

74 See Genesis 9:6 (announcing prohibition on shedding human blood grounded on creation of man in image of God); James 3:9 (“With [the tongue] we bless our Lord and Father, and with it we curse men, who have been made in the likeness of God.”). The talionic principle—“eye for eye and tooth for tooth”—also assumes a basic equality among citizens. See Deuteronomy 19:21; Exodus 21:23–25; Leviticus 24:19–20 (all discussing “eye for eye” principle).
Likewise, the teaching that all humans are sinners in need of grace tends to exercise a leveling influence, undermining pretensions to moral superiority. Finally, biblical teaching indicates that God has no regard for distinctions in wealth, intellect, or other characteristics that might tempt us to depart from equality in political affairs.

Such theological support for political equality is a matter of no small significance. One practical difficulty for liberal theory is that its egalitarian ideals draw little encouragement from observable reality. To all appearances, humans in fact differ greatly in numerous respects, from their gifts, talents, and intellect, to their circumstances and wealth. To the physical eye, we seem profoundly unequal. Were we to draw our political principles from observations of nature, we might well join Aristotle in concluding that some people are born to rule and others to be ruled. It requires a strong religious or ideological basis to support a doctrine of political equality. For this reason, we should not be surprised that Thomas Jefferson premised the affirmation of equality in the Declaration of Independence on the doctrine of divine creation: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain Unalienable Rights ...

While human equality may be “self-evident” to those who believe in creation by a single Creator, is it necessarily self-evident to a materialist?
IV. THE BROADENING OF THE EVANGELICAL POLITICAL AGENDA

Jason makes a number of fair points when he critiques the political agenda of the so-called "religious right."81 A significant theme of his assessment seems to be not that the religious right spends too much time in Scripture but that it spends too little.82 If we could completely lay aside our political prejudices and read the Bible afresh, I suspect we would find some portions that seem quite "conservative" by modern standards but others that would strike us as very "liberal." For this reason, Christians should be careful not to align themselves so closely with one political party that they lose the ability to critically evaluate its policies from a theological perspective.83

Jason highlights, for instance, the pervasive biblical concern for the poor.84 This strikes me as an excellent example of an area where Scripture may be more compatible with liberal than conservative sensibilities.85 Jesus' ministry and teaching often showed a particular concern for the needs of those in poverty.86 The early church practiced a sort of voluntary communism among its members, with wealthier Christians selling excess property to

Me, unless it had been given to you from above . . . .”). There has been much theological discussion of the limits of such submission; but even if exceptions exist, these passages offer a general principle supportive of electoral outcomes.

81 See Carter, supra note 5, at 97–104 (criticizing religious right's political priorities).

82 See id. (discussing selective invocation of Scripture by religious right).

83 See supra note 24 (quoting Stephen L. Carter's warning against churches identifying too closely with political movements or parties).

84 See Carter, supra note 5, at 98–99 (noting biblical passages reflecting concern for welfare of poor).

85 Another example might be immigration policy. The law of Moses is filled with instructions to show solicitude for aliens living in Israel, on the ground that the Israelites had lived as aliens in Egypt. See Deuteronomy 1:16 (instructing Israelite judges to judge righteously in cases involving aliens); Deuteronomy 10:19 (requiring love for aliens); Exodus 22:21 ("You shall not wrong a stranger or oppress him, for you were strangers in the land of Egypt."); Exodus 23:9 ("You shall not oppress a stranger . . . ."); Leviticus 19:33–34 (commanding love for aliens).

86 See, e.g., Luke 7:22 ("[T]he poor have the gospel preached to them."); Luke 14:12–14 (commanding rich to invite poor to banquets); Mark 8:1–8 (describing miraculous feeding of hungry multitude); Matthew 19:21 ("[G]o and sell your possessions and give to the poor, and you will have treasure in heaven."); cf. John 13:29 (discussing disciples' assumption Jesus might be instructing Judas to "give something to the poor").
provide for brethren in need. The Apostle Paul records that when he met with the Jerusalem apostles to discuss his ministry to the Gentiles, "[t]hey only asked us to remember the poor—the very thing I also was eager to do." Over and over, the Scripture makes plain that God wants concern for the less affluent to characterize the Christian church.

That does not necessarily mean Christians should favor all forms of government-sponsored redistribution. In light of biblical teaching on the importance of labor, a Christian might reasonably prefer welfare policies that encourage work. I have long been impressed with the provisions in the law of Moses prohibiting farmers from harvesting to the edges of their fields or collecting the gleanings, since these were to be available for the poor and the alien. This mechanism of redistribution ensured a source of sustenance for those in need but also required the able-bodied to contribute to their own support. Alternatively, a Christian might conclude that care for the poor should be the responsibility of the church and, therefore, favor private over governmental approaches to poverty. But it does seem, given the attention afforded this subject in Scripture, that one would expect poverty issues to receive prominent attention in any Christian political platform. Professor William Stuntz of Harvard Law School has opined that there may be a large pro-redistribution vote within the evangelical community, just waiting to be tapped by the right Democratic politician.

Evangelical Christians seem increasingly cognizant that faithfulness to biblical teaching may require attention to a broader

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68 Galatians 2:10.
69 See Ephesians 4:28 (instructing thieves to labor so they can share with those in need); Proverbs 28:19 (noting benefits of work); I Thessalonians 2:9 (discussing labor done by church planters “so as not to be a burden to any of you”); I Thessalonians 4:11–12 (instructing Thessalonians to work “so that you will behave properly toward outsiders and not be in any need”).
70 Deuteronomy 24:19; Leviticus 19:9; Leviticus 23:22 (“When you reap the harvest of your land, moreover, you shall not reap to the very corners of your field nor gather the gleaning of your harvest; you are to leave them for the needy and the alien.”); cf. Ruth 2:2–3 (describing how Ruth gleaned after reapers harvested grain).
range of political concerns. The International Justice Mission, for instance, has played a leading role in challenging bonded child labor, forced prostitution, political corruption, and similar injustices around the world. Shortly before the 2004 elections, the National Association of Evangelicals (NAE) adopted a position paper setting forth seven general principles for civic engagement by the evangelical community:

We work to protect religious freedom and liberty of conscience.

.......

We work to nurture family life and protect children.

.......

We work to protect the sanctity of human life and to safeguard its nature.

.......

We seek justice and compassion for the poor and vulnerable.

.......

We work to protect human rights.

.......

We seek peace and work to restrain violence.

.......

We labor to protect God's creation.

While some of the more particular positions taken in the document will seem familiar, others may be surprising to those whose view of evangelicals has been largely shaped by the mainstream media:

God measures societies by how they treat the people at the bottom.

92 See William McKenzie, Evangelicals Are Broadening Their Reach, DALLAS MORNING NEWS, Aug. 1, 2006, at A15 (noting increased attention to poverty and environmental issues among evangelicals).


The legacy of racism still makes many African Americans, Hispanics, and other ethnic minorities particularly vulnerable to a variety of social ills.

If governments are going to use military force, they must use it in the service of peace and not merely in their national interest.

We urge government to encourage fuel efficiency, reduce pollution, encourage sustainable use of natural resources, and provide for the proper care of wildlife and their natural habitats.95

Many of the positions set forth in the NAE paper could have been drafted by persons on the political left. Indeed, one of the principal authors of the document was Ron Sider, President of Evangelicals for Social Action and a long-time evangelical crusader for more liberal causes.96 This document by one of the most prominent organizations of evangelicals may suggest that the time is ripe for the sort of dialogue about Christianity and politics that Jason advocates.

V. BUT WHAT ABOUT THE "CULTURAL ISSUES"?

C.S. Lewis once suggested that if we could visit a "fully Christian society," it would leave us with "a curious impression."97 We would find "that its economic life was very socialistic and, in that sense, 'advanced,' but that its family life and its code of manners were rather old fashioned."98

95 Id. at 9–12.
96 See RONALD J. SIDER, PHILIP N. OLSON & HEIDI ROLLAND UNRUH, CHURCHES THAT MAKE A DIFFERENCE: REACHING YOUR COMMUNITY WITH GOOD NEWS AND GOOD WORKS (2002); RONALD J. SIDER, JUST GENEROSITY: A NEW VISION FOR OVERCOMING POVERTY IN AMERICA (1999) [hereinafter SIDER, JUST GENEROSITY]; RONALD J. SIDER, RICH CHRISTIANS IN AN AGE OF HUNGER (1977) (all discussing Sider's views on social and political implications of Christian faith).
98 Id.
Each of us would like some bits of it, but I am afraid very few of us would like the whole thing. That is just what one would expect if Christianity is the total plan for the human machine. We have all departed from that total plan in different ways, and each of us wants to make out that his own modification of the original plan is the plan itself. You will find this again and again about anything that is really Christian; every one is attracted by bits of it and wants to pick out those bits and leave the rest.\textsuperscript{99}

Lewis points to the great danger I see in the dialogue Jason advocates, the danger to which, in his analysis, the religious right has already succumbed.\textsuperscript{100} The constant temptation will be for those on both left and right to read the Bible the way an advocate reads a legal opinion, looking for parts helpful to his case, while downplaying portions that might support an opponent. It is all too easy to use Christian words to rationalize positions developed on non-Christian grounds or to ignore clear biblical teaching that leads us places we might prefer not to go.\textsuperscript{101}

That brings us to the so-called "cultural issues," which seem such a source of division among the politically vocal, though perhaps less so for the country as a whole.\textsuperscript{102} These questions relate in many cases to sexual conduct and its consequences. One part of me would like very much not to address such issues, because I prefer to give conflict a wide berth. Moreover, while I believe the biblical teachings on marriage and sexuality, I am uncertain what political

\textsuperscript{99} Id. at 84–85.

\textsuperscript{100} See Carter, supra note 5, at 104 (discussing selective use of Bible by religious right).

\textsuperscript{101} The New Testament teaches that God seeks to transform Christians, to make them more like Christ. See Romans 8:29 (God predestined believers “to become conformed to the image of His Son . . .”). But counter forces are also at work, which seek to make the church more like the world. See I John 2:15 (warning against love of the world); Matthew 13:22 (describing how cares of world and deceitfulness of wealth choke out God’s word); Romans 12:2 (“[D]o not be conformed to this world.”).

or legal implications follow, if any. And yet, if we are to engage in a genuine dialogue on political implications of Christian faith, I think we must deal with traditional Christian teaching in this area. Perhaps an open dialogue can help address the polarization and mutual demonization that has tended to characterize political discussions of some of these questions.

Most of us would agree that sexual conduct can range from very wonderful to quite horrific, depending on the circumstances in which it occurs. Virtually everyone, I suspect, would acknowledge the need for restraints upon sexual expression. In Kantian terms, this is one area where we are strongly tempted to treat others as means to our ends, rather than ends in themselves.103 If the typical young man simply followed his sexual inclinations without hindrance, "he might easily populate a small village," as Lewis put it.104 He would also leave behind a string of wounded sexual partners and find himself made lonely and miserable in the process.

In traditional Christian understanding, God designed sex as an expression of love, to be enjoyed in the context of covenant marriage with its lifelong commitment.105 Christians inherited from their Jewish forebears the conviction that God, rather than the state, created the institution of marriage.106 The view that sexual conduct should be confined to the marriage relationship does not flow from antipathy toward sexual relations. Rather, those who accept the biblical teaching believe that God, as the inventor of sexuality, knows the context in which sexual relations will best be enjoyed and generate the fewest harmful consequences. For many Christians I

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104 LEWIS, supra note 97, at 96.

105 See Genesis 2:24 (“For this reason a man shall leave his father and his mother, and be joined to his wife; and they shall become one flesh.”); Hebrews 13:4 (“Marriage is to be held in honor among all, and the marriage bed is to be undefiled. . . .”); Matthew 19:5–6 (teaching against divorce of those whom “God has joined together”); Song of Solomon (describing the love of bride and bridegroom).

106 See Genesis 2:19–25 (discussing origin of marriage); Matthew 19:6b (“What therefore God has joined together, let no man separate.”).
know, that faith has been confirmed by observation in their own lives and the lives of others. Though Christian sexual morality may seem difficult in our culture, it rests upon a desire to promote genuine human happiness by helping people to experience love in its highest forms and to avoid the pain associated with sexual bonding followed by rejection. Thus, Christians are not surprised when social science research indicates that marriage tends to produce superior outcomes for spouses and children.¹⁰⁷

¹⁰⁷ A group of family and legal scholars offers the following summary of social science data on the value of marriage as an institution for raising children:

Children raised outside of intact marriages have higher rates of poverty, mental illness, teen suicide, conduct disorders, infant mortality, physical illness, juvenile delinquency, and adult criminality. They are more likely to drop out of school, be held back a grade, and launch into early and promiscuous sexual activity, leading to higher rates of sexually transmitted diseases and early, unwed parenthood.

INST. FOR AM. VALUES, MARRIAGE AND THE LAW: A STATEMENT OF PRINCIPLES 9 (2006). An earlier report by family scholars described twenty-one conclusions about marriage that can be drawn from social science research, many of which overlap with those discussed above. The earlier report also included several conclusions relating to the value of marriage for the spouses:

1. Marriage increases the likelihood that fathers have good relationships with their children.

5. Divorce and unmarried childbearing increase poverty for both children and mothers.

6. Married couples seem to build more wealth on average than singles or cohabiting couples.

7. Married men earn more money than do single men with similar education and job histories.

12. Marriage is associated with reduced rates of alcohol and substance abuse for both adults and teens.

13. Married people, especially married men, have longer life expectancies than do otherwise similar singles.

14. Marriage is associated with better health and lower rates of injury, illness, and disability for both men and women.

17. Married mothers have lower rates of depression than do single or cohabiting mothers.

19. Marriage appears to reduce the risk that adults will be either perpetrators or victims of crime.
This theological understanding of marriage and sexuality at one time formed the basis for a broad societal consensus about sexual relations, albeit, one often honored in the breach.\textsuperscript{108} The biblical teaching on sexuality has at least three virtues: an authoritative origin, a clear rationale, and clear application. To an increasing extent, however, this consensus has been eroded in recent decades, particularly among our cultural elites. Recognizing the need for some restraints, the culture has offered a more relaxed moral standard: anything goes between “consenting adults.” But the revised rule fails to offer clarity in rationale (What is so magic about turning eighteen?) or in application (Is there “consent” if it is my employee? My student? If I have made false promises? If I have engaged in emotional manipulation? Can consent be withdrawn once it is given? What if one consenting party is married?). More significantly, the new standard lacks an authoritative origin, opening it to relativistic critiques (Who says my desires are wrong?). As a result, moral confusion reigns. Lines that were previously clear have become muddled or disappeared altogether.

Even someone who does not agree with the biblical teaching about sexual relations might well survey American culture with a profound uneasiness, a sense that something has gone amiss in our understanding of marriage and sexuality. Far from an expression of love, sex has in many instances diminished to a form of recreation or a field of conquest. Consider the Abu Ghraib photographs mentioned by Jason.\textsuperscript{109} I agree that the pictures of U.S. soldiers sexually humiliating naked Iraqi detainees undermine our pretensions to moral superiority. But they do so in part because of the view of sexuality they embody. Consider also the ubiquitous endeavors, in advertising and popular culture to cause married men to fantasize about sexual relations with women other than their

\textsuperscript{20} Married women appear to have a lower risk of experiencing domestic violence than do cohabiting or dating women.\textsuperscript{\textit{Inst. for Am. Values, Why Marriage Matters: Twenty-One Conclusions from the Social Sciences} 7–16 (2002).

\textsuperscript{108} This Part of my Response draws heavily from a never-published editorial about the Abu Ghraib prison scandal, written jointly with Dr. Warren Gage of Knox Theological Seminary.

\textsuperscript{109} See Carter, \textit{supra} note 5, at 105 (discussing Abu Ghraib).
wives. In an increasing number of venues, adultery has been, if not glorified, at least dangled before the eye as a tantalizing possibility.

Consider the impoverished women and children servicing the Third World “sex tourism” industry, many of whose clients hail from the United States.\(^{110}\) Think about the millions pressured to meet appearance and performance expectations generated by popular culture, and the other millions who have been sexually used and then rejected. Contemplate the increasing number of men addicted to internet pornography (which now plays a significant role in the high divorce rates).\(^{111}\) One need not be a Puritan like me to believe that something has gone awry in connection with our societal views on sexuality.

Now at this point, Scripture throws me a curve ball. It would be very easy to mount my moral high horse and denounce the pornographers or the advertising executives or Hollywood. But Christ will not let me do that. As Jason points out, Jesus had little use for people who thought they were morally superior, who believed that they had their moral act together and that it was other people who needed to change.\(^{112}\) In Christ’s analysis, the root problem plaguing our culture in this area lies uncomfortably close to home. The real problem is husbands like me. In a passage of Scripture that caused Jason’s grandfather some grief during the 1976 presidential race,\(^{113}\) Christ explained that anyone who looks lustfully at a woman has already committed adultery with her in his heart.\(^{114}\)

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\(^{110}\) HAUGEN, supra note 93, at 42 (“Each year . . . more than a million children around the world are forced into prostitution—a million new children each year.”); Feds Target Journeys for Sex, MIAMI HERALD, Jan. 16, 2005, at B1.

\(^{111}\) Online Porn Addiction Called Real and Growing Problem, WASH. INTERNET DAILY, Nov. 19, 2004 (Senate testimony by Dr. Mary Anne Layden of University of Pennsylvania indicates “40% of porn/sex addicts will lose their spouse, 58% will suffer severe financial losses, and 27-40% will lose their job or profession”); Brown Says Pornography Addiction Ruined His Life, ASSOC. PRESS, Jan. 17, 2005 (former Iowa State assistant basketball coach describes progressive involvement in internet pornography, leading to child pornography conviction).

\(^{112}\) See Carter, supra note 5, at 90–91 (discussing Christ’s attitude toward self-righteousness).


\(^{114}\) Matthew 5:27–28.
Christ's goal in this sermon, I think, was to drive us to despair about our ability to satisfy God's moral standards by our own efforts. The same sermon that treats lust as a form of adultery also brings anger and contempt within the commandment against murder. Here is that equality we discussed earlier. Everyone alike is guilty in the eyes of God and, hence, completely dependent on His mercy. Christians, who claim the benefit of that mercy, need to speak as forgiven sinners. But our political discourse, especially on issues like pornography or homosexuality or abortion, can easily come off sounding more like the Pharisee in Christ's parable, rather than the tax collector Christ calls us to emulate.

I, for one, appreciate the honesty Jason's grandfather showed in 1976, and I think we Christians would do well to acknowledge that we are addressing "our" sins here, not just those of other people.

So what implications follow for Christian involvement in political life? I am not really sure. One possible inference could be that Christians should focus on promoting sexual purity among Christians and not worry so much about the larger culture. There is biblical support for directing our attention to the church and

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115 It is when we despair of our own morality that we are prepared to seek divine forgiveness and supernatural transformation. See, e.g., Galatians 3:21–25 (describing law of God, which reveals our sin, as a "tutor to lead us to Christ"); Romans 3:19–24 (discussing how law of God gives knowledge of sin, but God offers righteousness, apart from law, through faith in Christ).

116 Matthew 5:21–22.

117 See supra note 75 and accompanying text.

118 Perhaps every evangelical Christian preparing to participate in a political talk show debate should commit this parable to memory:

And He also told this parable to some people who trusted in themselves that they were righteous, and viewed others with contempt: "Two men went up into the temple to pray, one a Pharisee and the other a tax collector. The Pharisee stood and was praying this to himself: 'God, I thank You that I am not like other people: swindlers, unjust, adulterers, or even like this tax collector. I fast twice a week; I pay tithes of all that I get.'"

"But the tax collector, standing some distance away, was even unwilling to lift up his eyes to heaven, but was beating his breast, saying, 'God, be merciful to me, the sinner!'"

"I tell you, this man went to his house justified rather than the other; for everyone who exalts himself will be humbled, but he who humbles himself will be exalted."

letting God deal with those outside the community of faith.\textsuperscript{119} Certainly, we Christians would have plenty to do just getting our own house in order. Revelations of clergy sexual abuse (among Protestants \textit{and} Catholics) and the high divorce rate among evangelicals, for instance, suggest that Christians have quite a distance to go in encouraging one another to embrace biblical teaching in the area of marriage and sexuality.\textsuperscript{120}

At the same time, I am not persuaded that Christians should take a completely \textit{laissez faire} approach to issues of sexuality in the larger culture.\textsuperscript{121} To take an extreme example, Christians should care about effective legal protection against rape. And I support the work of the International Justice Mission in seeking international enforcement of laws against forced prostitution, particularly involving children.\textsuperscript{122} Further, I think Christians have an appropriate concern about societal sexual mores to the extent they affect those within the church, including our children. Any father of young daughters, like myself, can be excused for caring what lessons about sexuality young men are learning from television or cyberspace. Part of the concern many Christians have with popular culture is that sexual expression once defended as a matter of "privacy" has become increasingly, even aggressively, public.

\begin{footnotes}
\item[119] In Paul's first letter to the church at Corinth, he dealt with a situation in which a member of the church was cohabiting with his father's wife (i.e., either his mother or his stepmother). \textit{I Corinthians} 5:1. Paul instructed the Corinthian Christians to expel the man to bring about repentance, something that apparently happened before Paul's second epistle in which he urged the church to forgive the offender and restore him to fellowship. \textit{I Corinthians} 5:2–5; \textit{II Corinthians} 2:5–11. In the first epistle, Paul articulated the principle that Christians must not "associate with any \textit{so-called brother} if he is an immoral person, or covetous, or an idolater, or a reviler, or a drunkard, or a swindler." \textit{I Corinthians} 5:11 (emphasis added). At the same time, he made clear that he was \textit{not} referring to the "people of this world," but only to members of the church. \textit{I Corinthians} 5:10. Christians were to help one another avoid sexual sin but were to leave it to God to judge people outside the church. \textit{See} \textit{I Corinthians} 5:12–13a ("For what have I to do with judging outsiders? Do you not judge those who are within the church? But those who are outside, God judges.").
\item[121] The fact that we live in a democratic system, in which sovereignty resides in the people, may distinguish the current situation from that faced by the early church. The Corinthian Christians addressed by Paul exercised little political influence. \textit{See} \textit{I Corinthians} 1:26–27 (noting that not many Corinthian believers were "wise . . . not many mighty, not many noble").
\item[122] \textit{See supra} note 93 and accompanying text.
\end{footnotes}
Moreover, tying back to our discussion in the previous Part, cultural views on marriage and sexuality intimately relate to the issues of poverty Christians are called to address. If we want to see positive change in our less prosperous communities, we cannot ignore the effect of family structure on cycles of poverty. A great deal of social science research suggests that the decay of marriage and the dearth of two-parent homes in our low-income neighborhoods work to the detriment of poor children. The affluent have means to deal with the effects of family breakdown that are unavailable to those in poverty. Love for our neighbors prevents us from becoming indifferent to the ways they may be harmed by prevailing assumptions about sexuality and family life.

However, while I am not satisfied with indifference as the Christian response, I am still uncertain what political program follows. Since we are dealing with issues of the heart, I am dubious about how effectively they can be addressed through legal coercion. This may be an area that Christians need to engage principally through another form of politics, the politics of the heavenly city, which I will discuss below. Before I get there, though, let me say a few words about one cultural issue mentioned by Jason, the question of same-sex marriage.

VI. WHO SHOULD DEFINE “MARRIAGE”?

One much-discussed issue in the 2004 election cycle was the legal status of same-sex marriage. The issue came to popular attention as a result of a handful of state court decisions. The Supreme Judicial Court of Massachusetts interpreted that state’s constitution to require revision of the state’s marriage laws to include same-sex couples. The opinion followed comparable decisions by the

123 See SIDER, JUST GENEROSITY, supra note 96, at 121–38 (discussing effect of family structure on poverty).
124 At the same time, we should keep in mind that law can influence behavior in many ways other than direct legal coercion. See, e.g., Lawrence Lessig, The New Chicago School, 27 J. LEGAL STUD. 661, 662–72 (1998) (discussing ways that law can influence behavior by affecting social norms, regulating markets, and altering “architectural” constraints within which behavior occurs).
125 See Carter, supra note 5, at 81 (discussing same-sex marriage).
supreme courts of Hawaii and Vermont.\textsuperscript{127} Although Hawaii and Vermont have not issued marriage licenses to same-sex couples, the Vermont legislature, following the direction of their supreme court, authorized same-sex "civil unions," which incorporate the attributes of marriage under a different name.\textsuperscript{128} Connecticut has followed suit.\textsuperscript{129} During the 2004 presidential campaign, both major-party candidates announced their opposition to extending marital status to same-sex couples.\textsuperscript{130} Substantial majorities in eleven states voted at that time to amend their state constitutions to limit marriage to the union of one man and one woman.\textsuperscript{131} The number of states with such constitutional provisions has since increased to twenty.\textsuperscript{132}

In defining the relationships entitled to recognition as "marriages," the law does not deal with the question of which relationships will be permitted. Rather, it addresses the distinct question of which relationships other citizens will be asked to subsidize and legally support.\textsuperscript{133} Identifying relationships entitled to marital status is not a question of tolerance; the law now tolerates a host of nonmarital sexual relationships. The law of marriage instead acts upon the universe of legally permitted sexual relationships to identify a subset that receives a heightened level of societal encouragement and protection.

\textsuperscript{128} VT. STAT. ANN., tit. 15, ch. 23 (2002). The Hawaii Constitution was subsequently amended to provide that "[t]he legislature shall have the power to reserve marriage to opposite-sex couples." HAW. CONST. art. I, § 23.
\textsuperscript{130} James Q. Wilson, America Passes the Religious Test, TIMES (London), Nov. 19, 2004, at 16.
\textsuperscript{131} Don Lattin, Catholic Bishops Set Out to Save Marriages, KANSAS CITY STAR, Nov. 20, 2004, at E14.
\textsuperscript{132} Elizabeth Mehren, Initiative Would Overturn Same-Sex Marriage In Massachusetts, L.A. TIMES, July 10, 2006, at A10. The definition of marriage is scheduled to be a ballot issue in a number of other states in the November 2006 elections. See Candidates Counting on State Ballot Initiatives to Draw Voters to Polls, J.-GAZETTE (Ft. Wayne, Ind.), July 28, 2006, at A11 (ballot initiatives in Idaho, South Carolina, South Dakota, Tennessee, Virginia, and Wisconsin).
\textsuperscript{133} See Elizabeth S. Scott, Marriage, Cohabitation and Collective Responsibility for Dependency, 2004 U. CHI. LEGAL F. 225, 252–53 (2004) ("Special treatment of married couples in the domains of income and estate tax, military and government pensions, family leave, health and life insurance, and social security benefits are familiar under the current regime.").
One could argue that the law of marriage in a pluralistic society should not draw distinctions based on contested moral views. But such a marriage law seems impossible to construct. At the least, it would require a redefinition of marriage much broader than that currently under consideration. The institution of marriage in any recognizable form inevitably involves a number of debated or debatable moral distinctions.

Several attributes have traditionally been deemed necessary in this country before a relationship will receive the special recognition and encouragement associated with marriage: There must be two, and only two, parties, neither of whom may be married to anyone else. One must be male and the other female. Both must be adults, or at least of sufficient maturity to secure parental or judicial approval. Both must consent to the arrangement. The parties may not be closely related. They must commit to a permanent relationship (or at least a relationship of indefinite duration), rather than one of specified length. And the commitment must be publicly acknowledged, before an authorized person, in compliance with statutory formalities. When these requirements have all been satisfied, the government will stand behind and enforce the parties' commitment, protecting each against unjustified or precipitous withdrawal by the other.

All of these requirements give legal force to moral views regarding the sorts of relationships that should receive societal encouragement and support. The distinctions are "moral" in the sense that they reflect conclusions about which characteristics are likely to make the relationship most beneficial for the participants, for any children born into the relationship, or for the larger social

135 Id. § 201 ("[B]etween a man and a woman.").
136 See id. §§ 203(1), 205(a), at 179–81 (parties must be eighteen or must be sixteen with parental or judicial consent; optional provision permits marriage by those under sixteen with both parental and judicial consent).
137 Id. § 201, at 175 ("T[he consent of the parties is essential.").
138 See id. § 207(2)–(3), at 183 (prohibiting marriages of ancestor/descendant, brother/sister, uncle/niece, and aunt/nephew).
139 See id. §§ 301–316, at 13–102 (rules governing legal proceedings to dissolve marriage).
140 See id. § 206, at 182 (solemnization and registration requirements).
order. Each of these moral conclusions can be contested, and most have been, in this country or elsewhere. In the nineteenth century, for instance, a significant body of citizens in our western territories sought to practice polygamy until Congress stepped in and limited marriage to a two-person relationship. In many countries, children are given in marriage based solely on the consent of their parents. There have been marriages in many cultures between close family members—for instance, a father and daughter or a brother and sister—and it is increasingly easy to imagine someone arguing that two close relatives who love each other should have the liberty to enter such a marriage (particularly if they are unable to bear children). A case can likewise be made for limited-term marriage relationships, perhaps on the ground that separation would be less traumatic if it were anticipated from the beginning of the relationship. Some countries now treat informal cohabitation as the virtual equivalent of marriage, and legislatures continue to experience pressure to loosen legal restrictions on divorce.

Since all of these traditional attributes of marriage have been or could be contested, any recognizable law of marriage will inevitably require the drawing of moral distinctions between different sexual relationships, including some and excluding others. Christians involved in helping decide which relationships should receive societal encouragement through marriage laws will presumably be

141 See SARAH BARRINGER GORDON, THE MORMON QUESTION: POLYGAMY AND CONSTITUTIONAL CONFLICT IN NINETEENTH-CENTURY AMERICA 85–116 (2002) (describing Mormon resistance to marriage laws). Advocates of polygamy argued that it was actually morally superior to the form of marriage practiced in the rest of the country. Id.


143 See Lloyd deMause, The Universality of Incest, 19 J. PSYCHOHISTORY 123, 125 (Winter 1991) (contending that incest “has been universal for most people in most places at most times”).

144 See WILLIAM J. BENNETT, THE BROKEN HEARTH 11 (2001) (relating Barbara Ehrenreich’s call for “renewable marriages, which get re-evaluated every five to seven years, after which they can be revised, recelebrated, or dissolved with no, or at least fewer, hard feelings”).


influenced by their understanding of the origin and purposes of the institution, just as their Christian worldview might influence consideration of other legal/moral questions, from appropriate environmental legislation to protect God's creation to appropriate welfare legislation to assist less affluent neighbors. Participants in our communal life who approach moral questions from a different perspective may reach different conclusions, and it is not uncommon, of course, for Christians to disagree among themselves on legal and political questions.

Given that the law of marriage inevitably raises a host of moral issues, how should those issues be resolved? My answer begins

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147 Marriage has long been understood in western culture as an institution with overlapping religious and social significance. At one point, the law of marriage was administered through the ecclesiastical courts, and it was only during the Protestant Reformation that, for theological reasons, jurisdiction shifted to the secular authorities. See HAROLD J. BERMAN, LAW AND REVOLUTION II 184–85 (2003) (describing Luther's advocacy of secular authorities' jurisdiction over marriage); JOHN WITTE, JR., LAW AND PROTESTANTISM 199–255 (2002) (discussing reformation of marriage law). Governments in this country have continued to recognize the religious significance of marriage, empowering clergy to perform wedding ceremonies. See, e.g., UNIF. MARRIAGE & DIVORCE ACT § 206(a) (amended 1973), 9A U.L.A. pt. 1, 182 (1998) ("A marriage may be solemnized ... in accordance with any mode of solemnization recognized by any religious denomination ... "). Marriage plays an important role in Christian theology. The Bible begins with the wedding of Adam and Eve in the Genesis creation account. Genesis 2:21–25. Similarly, it ends with the wedding of Christ and his church in the new creation at the end of Revelation. Revelation 19:7–9, 21:2. Throughout Scripture, the relationship of husband and wife serves as a metaphor for God's relationship with his people. See Ephesians 5:22–33 (comparing marital relationship and Christ's relationship with the church). For example, the Hebrew prophets compare the worship of other gods to unfaithfulness in the marital relationship. See, e.g., Jeremiah 3 (comparing "faithless Israel" with adulterous wife); see also, e.g., RAYMOND C. ORTLUND JR., WHOREDOM: GOD'S UNFAITHFUL WIFE IN BIBLICAL THEOLOGY 25–45 (1996) (describing Bible's use of marital infidelity as metaphor for unfaithfulness of God's people).

148 Disagreement on legal and political issues can occur even when Christians agree on underlying moral principles. This is true in part because the demands of human law cannot be coextensive with the demands of the moral law. See William Stuntz, Christian Legal Theory, 116 HARV. L. REV. 1707, 1735 (2003) (arguing that immorality and illegality cannot be coextensive). Jesus seemed to draw such a distinction when he taught that, due to "hardness of heart," the law of Moses permitted divorce in situations where divorce would violate God's moral standards. See Matthew 19:3–9 ("Because of your hardness of heart Moses permitted you to divorce your wives."). In other words, God's will for marriage may include some moral obligations of the parties that He does not want legally enforced by the government.

149 Any system of laws must answer two distinct sorts of questions. On the one hand, the system must generate answers to questions concerning the legal significance of primary conduct: Which relationships will be treated as marriages? What tax consequences flow from a sale of stock? What happens if I cause an automobile accident? On the other hand, the
with the observation that our political system rests on a foundation of popular sovereignty. In theory, "[w]e the people" rule, rather than an aristocratic subset of the population. A commitment to popular sovereignty, combined with a belief in political equality, points to majority rule as the default principle for resolution of legally significant moral disagreements. I believe that default principle is appropriately applied to the current controversy in this country over the definition of marriage. Judicial redefinition of marriage to include same-sex couples does not remove questions of morality from family law. It simply substitutes a new moral paradigm, favored by a smaller group of citizens, for the moral paradigm accepted by the majority.

system must also answer questions of jurisdiction, identifying who has authority to make certain decisions: Who decides which relationships will be treated as marriages, or what tax consequences flow from the sale of stock, or what happens if I drive recklessly? 

See Douglas Laycock, Continuity and Change in the Threat to Religious Liberty: The Reformation Era and the Late Twentieth Century, 80 MINN. L. REV. 1047, 1082 (1996) ("On moral questions, we argue and we vote; no other solution is possible in a democracy, even though some moral positions turn out to be inconsistent with some theological positions."); Sanford Levinson, Looking Abroad When Interpreting the U.S. Constitution: Some Reflections, 39 TEX. INT'L L.J. 353, 359 (2004) ("I do not interpret the American constitutional tradition as one that necessarily privileges the 'refined' moral views of professional philosophers over the untutored intuitions of the majority.").

Jason's reply raises the question of whether Christians are consistent when they adhere to biblical teaching on homosexuality while rejecting slavery. Jason Carter, A Reply to Professor Beck, 41 GA. L. REV. 157, 166 n.43 (2006). By my lights, however, support for the abolition of slavery seems fully reconcilable with a commitment to the authority of Scripture. One of the most celebrated events of redemptive history was God's deliverance of the Israelites from bondage in Egypt. See Exodus 13:3-16 (describing exodus of Israel). Release from slavery to sin constitutes a New Testament metaphor for salvation. See John 8:34-35 (analogizing sin to slavery); Romans 6 (describing Christians as slaves to righteousness, rather than slaves to sin). Scripture generally treats slavery as a miserable condition and the slave as an object of pity. See Genesis 9:25 (New Int'l Version) ("Cursed be Canaan! The lowest of slaves will he be to his brothers."); Exodus 3:7 (New Int'l Version) ("The LORD said, 'I have indeed seen the misery of my people in Egypt. I have heard them crying out because of their slave drivers, and I am concerned about their suffering."); Deuteronomy 23:15-16 (stating that slave who has taken refuge among the Israelites may not be returned to his master); Job 3:18-19 (noting only death brings release to a slave); II Kings 4:1-7 (describing how Elisha provides for widow whose sons are threatened with slavery); Proverbs 12:24 (New Int'l Version) ("Diligent hands will rule, but laziness ends in slave labor."). The possibility of a kind master is sometimes acknowledged. See Exodus 21:5-6 (permitting slave who loves master to refuse release). However, slave-trading remains condemned. See Deuteronomy 24:7 (commanding that one who kidnaps fellow Israelite and makes him slave must be put to death); Genesis 42:21-22 (describing how Joseph's brothers recognize their sin in selling Joseph into slavery); Revelation 18:13 (noting that wicked Babylon trades in the "bodies and
In suggesting that the question of same-sex marriage be resolved by "the people" (or their representatives) acting through established political processes, I have no illusion that the majority always reach the best answer to political or moral questions. Majority rule ameliorates, but does not eliminate, the universal problem that some citizens will be forced to live under laws they view as ill-considered, unfair, or immoral. Our commitment to majority rule has rightly been tempered by a fear of majority overreaching. We have therefore adopted lawmaking procedures—including government through representatives, bicameral legislative deliberation, and the executive veto—that tend to moderate majoritarian impulses. We have also enshrined various minority rights in the Constitution and made them enforceable by the courts.

As suggested by Alexander Hamilton, judicial review for constitutionality is consistent with our commitment to popular sovereignty, at least so long as the rights enforced by the courts result from majoritarian processes of constitutional modification.\footnote{\textsc{The Federalist} No. 78 (Alexander Hamilton) (noting conclusion that judges must follow Constitution rather than inconsistent statutes does not imply judicial supremacy over legislature; "[i]t only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people,}
But while I recognize the need for limits on majority rule, let me offer two reasons for believing that, as a general matter, majoritarian lawmaking processes, rather than the countermajoritarian courts, provide the better forum for resolving the current dispute over the redefinition of marriage.\footnote{154} First, marriage is a foundational social institution, a basic building block of our communal order. Any genuine commitment to popular self-government, it seems to me, counsels against taking such an important decision about the shape of our society out of the hands of the people and their representatives.

Marriage as traditionally defined has been in existence in this country for hundreds of years. Fundamentally changing the institution risks profound social consequences, some of which we may be unable to anticipate. We are only now coming to recognize the unanticipated consequences of the relatively recent revolution in divorce law.\footnote{155} Is it wise to engage in a second major alteration of the law of marriage at a time when the institution seems to be weakening? What ramifications would flow from a fundamental restructuring of the marriage relationship? How might people think differently about marriage if it was expanded to include same-sex

\begin{itemize}
\item I believe my position is consistent with the holding of Loving v. Virginia, 388 U.S. 1 (1967), in which the Supreme Court invalidated state laws banning interracial marriage. The Court's decision turned on a very plausible reading of the Equal Protection Clause, which was designed to override state laws that discriminate on the basis of race. \textit{Id.} at 7-12. Since the Equal Protection Clause was adopted through established majoritarian procedures of constitutional amendment, Court enforcement in this context would seem to fall within Hamilton's argument from \textit{Federalist No. 78}. \textit{See supra note 153}. I believe Loving can be distinguished from the current dispute over same-sex marriage. Laws against miscegenation were designed to segregate the races, reinforcing the socially disadvantaged position of African-Americans. 388 U.S. at 11 (stating that laws were "designed to maintain White Supremacy"). By contrast, the traditional definition of marriage calls for mixing of the genders—not segregation—and therefore cannot be understood as an attempt to disadvantage either gender.
\item \textit{See generally} Judith Wallerstein, Julia Lewis & Sandra Blakeslee, \textit{The Unexpected Legacy of Divorce} (2001); Barbara Dafoe Whitehead, \textit{The Divorce Culture} (1998); James Q. Wilson, \textit{The Marriage Problem} (2002). I wonder how many of our legislators would have voted for no-fault divorce if they had known how high the divorce rate would rise? Would they have done so if they were aware of the number of children who would miss out on the social and economic advantages of being raised in two-parent households?
\end{itemize}
couples? How might the perceived link between marriage and childrearing change if marriage was extended to a type of sexual relationship that can never produce children?\(^{156}\) I do not know the answers to those questions, nor do advocates of same-sex marriage.\(^{157}\) If we are to take the risk of fundamentally altering a long-standing and important social institution like marriage, I would prefer that the decision be made by politically accountable legislators responding to the will of their constituents.\(^{158}\)

Second, it seems significant to me that this is a decision about which relationships will be subsidized and endorsed, rather than which relationships will be permitted. The case for judicial intervention becomes weaker, in my view, when we are discussing what conduct will be encouraged by the government. The Supreme Court has drawn precisely this distinction in the context of abortion, another area where emotions run deep.\(^{159}\) While the Court has required states to permit abortions, it has not required them to pay for the procedure.\(^{160}\) For instance, in *Maher v. Roe*, the Court wrote

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\(^{157}\) While we have a long history of experience with traditional marriage, the effects of the proposed change are speculative. *See* William C. Duncan, *Legislative Deference and the Novelty of Same-Sex Marriage*, 16 STAN. L. & POLY REV. 83, 88–89 (2005) ("Since the legal redefinition of marriage has been very recent and limited to four countries (Netherlands, Belgium, some Canadian provinces, and now, Massachusetts), there will be little relevant evidence from direct observation for some time."). This highlights what I see as a weakness in consequentialist theories of morality. The assumption that we can predict and weigh the positive and negative consequences of our decisions places excessive confidence in human foresight. Experience shows that actions often have consequences never anticipated. Just as Christians should be humble about their ability to discern the will of God, consequentialists should be equally humble about their ability to predict the results of significant social experiments.

\(^{158}\) *See* id. at 96 ("A change like this cannot be made lightly and, as I have argued here, ought not be made without participation of the political branches (and not mere nominal participation either.").

\(^{159}\) *See infra* notes 161–62 and accompanying text.

\(^{160}\) *See infra* notes 161–62 and accompanying text. The argument here should not be read to imply that I am satisfied with the Supreme Court's abortion jurisprudence. Even those supportive of abortion rights have expressed profound dissatisfaction with the Court's constitutional analysis in *Roe v. Wade*, 410 U.S. 113 (1973). *See generally*, e.g., John Hart Ely, *The Wages of Crying Wolf: A Comment on Roe v. Wade*, 82 YALE L.J. 920 (1973) (offering classic critique of Court's constitutional analysis). Moreover, I believe grave moral questions are raised by the Court's abortion license, which is extremely broad when compared to other
that its recognition of a constitutional right to abortion "implies no limitation on the authority of a state to make a value judgment favoring childbirth over abortion, and to implement that judgment by the allocation of public funds."161

There is a basic difference between direct state interference with a protected activity and state encouragement of an alternative activity consonant with legislative policy. Constitutional concerns are greatest when the State attempts to impose its will by force of law; the State's power to encourage actions deemed to be in the public interest is necessarily far broader.162

For this reason, I disagree with Justice Scalia's argument that the Supreme Court's decision in Lawrence v. Texas, invalidating a state law against homosexual sodomy, implies a constitutional right to same-sex marriage.163 In my view, if the Court ever faces a substantive due process argument for same-sex marriage, the abortion-funding decisions provide an adequate analogy to sustain governmental adherence to the traditional definition of marriage.

nations. See generally, e.g., Stenberg v. Carhart, 530 U.S. 914 (2000) (striking down Nebraska's ban on "partial birth abortions"); Kenneth Anderson, Squaring the Circle? Reconciling Sovereignty and Global Governance Through Global Government Networks, 118 Harv. L. Rev. 1255, 1287 n.51 (2005) ("However, when measured against secular Western European legal norms—let alone those of the rest of the world, including the Muslim and Latin American worlds—the standard of Roe v. Wade is just as much an 'outlier'; Western Europe, while permitting abortion, has imposed many intermediate requirements that have been struck down in the United States.") (citing MARY ANN GLENDON, ABORTION AND DIVORCE IN WESTERN LAW: AMERICAN FAILURES, EUROPEAN CHALLENGES 15–24 (1987) and reviewing ANNE-MARIE SLAUGHTER, A NEW WORLD ORDER (2004)). I was interested to see the reflections Jason's grandfather recently offered on this issue:

The only potential conflict between my personal beliefs and my official duties [as President] was with abortion. I have never thought that Jesus Christ would approve of abortions unless, perhaps, the mother's life or health were endangered, or the pregnancy resulted from rape or incest. However, being willing to accept the Supreme Court ruling on Roe v. Wade, I did everything possible to reduce the desire for abortions.


162 Id. at 475–76 (footnotes omitted); see also Harris v. McRae, 448 U.S. 297, 312–18 (1980) (summarizing Roe and Maher and concluding right to abortion does not include entitlement to financial assistance).

VII. THE WEAKNESS OF EARTHLY LAW

Jason quotes Jim Wallis of the group Sojourners, a left-of-center organization of evangelical Christians, who warns about a form of "idolatry" reflected in President Bush’s rhetorical references to the American people. To those who think of an “idol” as a statue of a deity, this warning may seem peculiar. But Christ expanded the concept of idolatry beyond graven images to include anything that competes with God for our ultimate devotion or confidence. In a well-known passage from the Sermon on the Mount, He taught:

No one can serve two masters; for either he will hate the one and love the other, or else he will be loyal to the one and despise the other. You cannot serve God and mammon.

Christ here uses the name of a pagan deity ("Mammon") to refer to the idolatrous pursuit of wealth. One who trusts in God may use money as a gift from Him. But a bondage results when one comes to trust in the money itself. When financial success becomes a god, it demands ever-greater sacrifices; spouse, children, and friends are offered up on its altar, in a vain attempt to appease a voracious deity.

Martin Luther understood the first commandment—"You shall have no other gods before Me"—to forbid idolatry in this broader sense:

A god means that from which we are to expect all good and to which we are to take refuge in all distress . . . . That now, I say, upon which you set your heart and put your trust is properly your god.

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164 Carter, supra note 5, at 96-97.
165 The Apostle Paul made a similar use of the concept of idolatry, referring to those whose "god is their appetite." Philippians 3:19; see also Ephesians 5:5 (describing person who is immoral, impure, or covetous as "idolater").
166 Matthew 6:24 (New King James Version).
167 Many law school graduates become enslaved in the service of Mammon, a cruel taskmaster, which is one reason so many attorneys are unhappy in their careers.
From this perspective, there may be no such thing as a secular individual or a secular culture. One suspects that every person places her ultimate hope, if not in God, then in some other "deity" she expects to make her happy (if she serves it well enough). In every culture, certain idols achieve prominence, attracting many worshipers. Multitudes in this country bow before Mammon, a favored divinity in a capitalist economy. But many other gods likewise populate the extensive American pantheon. Law professors like myself tend to frequent the temple of Reputation. And the changing societal attitudes about sexuality suggest a growing sect of devotees of Eros.

In concluding this response to Jason's thoughtful essay, I want to highlight a form of idolatry that may tempt politically active Christians, a type of misplaced confidence addressed by one of the Hebrew psalmists.\textsuperscript{169} In Psalm 146, after the initial call to worship, the psalmist lays out his concern about idolatry in politics:

\begin{quote}
Do not trust in princes,
In mortal man, in whom there is no salvation.
His spirit departs, he returns to the earth
In that very day his thoughts perish.\textsuperscript{170}
\end{quote}

The psalmist here offers two reasons not to place our hope in the agenda of any political figure ("prince"). First, politicians die, and when they die their plans die with them. Every political agenda founders on the rocks of mortality. Second, there is "no salvation" in any earthly politician. That which humans need most, in biblical understanding, cannot come from the government.

In much the mode of one conducting an electoral campaign, the psalmist then offers his readers another option. He points to God as an alternative basis for confidence, superior to any human prince. The psalmist first focuses on God's accomplishments and character:

\begin{quote}
How blessed is he whose help is the God of Jacob,
\end{quote}

\textsuperscript{169} The psalm is framed with appeals to praise the Lord, implying that the body of the psalm also concerns right worship. \textit{Psalm} 146:1–2, 10.
\textsuperscript{170} \textit{Psalm} 146:3–4.
Whose hope is in the LORD his God,
Who made heaven and earth,
The sea and all that is in them;
Who keeps faith forever;\textsuperscript{171}

He then turns to the ambitious divine agenda:

Who executes justice for the oppressed;
Who gives food to the hungry
The LORD sets the prisoners free.
The LORD opens the eyes of the blind;
The LORD raises up those who are bowed down;
The LORD loves the righteous;
The LORD protects the strangers;
He supports the fatherless and the widow,
But He thwarts the way of the wicked.\textsuperscript{172}

In contrast to the earthly princes, the psalmist suggests, God's agenda cannot be frustrated by death: "The LORD will reign forever, Your God, O Zion, to all generations."\textsuperscript{173}

The law of the earthly city serves vital purposes. Christians should care what it provides. But we should avoid placing undue hope in the success of any political program. Many of the really important things in life the law is powerless to accomplish. If a man has fathered a daughter and fails to contribute to her care, the law can track him down and make him pay. What it cannot do is make him love his little girl. Human law can influence behavior, but it cannot change the heart. That is why government relies on coercion. The law of the earthly city comes to people as an alien force, pressing them to do what they otherwise would not, through threats of punishment and promises of reward.

But what human law cannot achieve—such as teaching a man to love his daughter—God has accomplished countless times. The law of God, according to Christ, consists in love for God and love for

\textsuperscript{171} Psalm 146:5–6.  
\textsuperscript{172} Psalm 146:7–9.  
\textsuperscript{173} Psalm 146:10.
others. This law, too, comes to people as an alien force when first encountered. But the promise of Scripture is that God writes His law on the believer's heart in the process of salvation.

One of my concerns about political activity by Christians is that it diverts so much energy from more important pursuits. We obsess on issues of symbolism, such as whether the Ten Commandments may be displayed on public buildings or whether God can be acknowledged in the Pledge of Allegiance. In the process, we are tempted to neglect far weightier matters, such as whether love of God and man (the essence of the Decalogue) is on display in our churches or whether we really live our lives “under God.” We struggle for control of the tools of coercion, hoping the government can make people behave. But we neglect the extension of God’s kingdom, which would transform lives more effectively than any government initiative.

What if much of the time and money Christians pour into earthly politics went instead toward building the heavenly city? Let me conclude by offering a candidate for a “Christian politician” that more of us should emulate. Mo Leverett, founder of Desire Street Ministries, was a college football player, a musician, and a minister of the gospel. Though he grew up in a middle class family, he moved with his wife and children into one of the poorest, most violent and drug-infested neighborhoods in New Orleans where he became a high school football coach. Desire Street Ministries helped a number of young men from the neighborhood obtain athletic scholarships. More recently, the ministry launched Desire Street Academy, a private school that seeks to prepare impoverished children for higher education.

175 See Hebrews 8:10 (“I WILL PUT MY LAWS INTO THEIR MINDS, AND I WILL WRITE THEM ON THEIR HEARTS.”); Hebrews 10:16 (“I WILL PUT MY LAWS UPON THEIR HEART, AND ON THEIR MIND I WILL WRITE THEM.”); Jeremiah 31:33 (“I will put my law within them and on their heart I will write it.”).
177 Id.
Interestingly, one of Leverett's songs is entitled, "Let's Build a City." Even though he never ran for office, Leverett apparently sees his work with disadvantaged youth as city-building—i.e., politics—of the highest form. My bet is that the ministries Leverett helped to start will do more to transform the earthly city than the programs of many politicians.

179 MO LEVERETT, Let's Build A City, on SACRAMENT OF LIFE (Justice Road Productions 2002).