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## Review Essay: Stephen Carter and Religion in America

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## REVIEW ESSAY: STEPHEN CARTER AND RELIGION IN AMERICA

THE CULTURE OF DISBELIEF: HOW AMERICAN LAW AND POLITICS  
TRIVIALIZE RELIGIOUS DEVOTION. By Stephen L. Carter. New  
York: Basic Books, 1993. Pp. 328. \$25.00.

*Reviewed by Thomas L. Shaffer\**

Professor Carter dedicates his treatment of religion in American law and (North) American society, *The Culture of Disbelief*,<sup>1</sup> to his children—"who should be able to live in a world that respects your choices instead of tolerating them." His book is a lengthy, widely read, widely reviewed,<sup>2</sup> manifestly popular, and eloquent complaint. Although most of what he subjects to analysis is aimed at power brokers who either claim no faith or make sure that whatever faith they have makes no difference, the most cutting part of his criticism is of his fellow Christians in the mainline church. In each of these moods, and in both of them, Professor Carter takes on the policy of toleration that he hopes to protect his children from, as he also hopes for an American society that is religiously pluralistic, in which religious

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

2. These include the following (probably not an exhaustive list): Paul Reiding, Book Review, 79 A.B.A. J. 114 (1993); Chris Adams, *TIMES-PICAYUNE (NEW ORLEANS)*, Oct. 3, 1993, at E7; Associated Press, *L.A. TIMES*, Oct. 23, 1993, at B4; Joan Beck, *ORLANDO SENTINEL*, Oct. 8, 1993, at A15; Peter L. Berger, *N.Y. TIMES*, Sept. 19, 1993, at 15; Michiko Kakutani, *N.Y. TIMES*, Sept. 28, 1993, at C18; Michael C. Kenny, *BOSTON GLOBE*, Aug. 31, 1993, at 46; Michael Kinsley, *NEW REPUBLIC*, Sept. 13, 1993, at 4; Jonathan Kirsch, *L.A. TIMES*, Nov. 17, 1993, at E3; John Leo, *U.S. NEWS & WORLD REP.*, Sept. 20, 1993, at 20; Robert Marquand, *CHRISTIAN SCI. MONITOR*, Oct. 15, 1993, at 13; Thomas Morawetz, *WASH. POST*, Oct. 3, 1993, at X8; Howard Owens, *SAN DIEGO UNION-TRIB.*, Oct. 18, 1993, at B5; Kevin P. Quinn, *AMERICA*, Nov. 27, 1993, at 19; Gerald Renner, *HARTFORD COURANT*, Nov. 14, 1993, at G3; Peter Steinfelds, *N.Y. TIMES*, Sept. 4, 1993, at 8; Chris Tucker, *DALLAS MORNING NEWS*, Nov. 28, 1993, at J8; Larry Witham, *WASH. TIMES*, Oct. 17, 1993, at B7; Kenneth L. Woodward, *NEWSWEEK*, Sept. 20, 1993, at 56; Don Wycliff, *COMMONWEAL*, Oct. 8, 1993, at 22.

The Kakutani, Owens, Renner, and Steinfelds reviews mention that President Clinton recommended the book during his summer vacation at Martha's Vineyard, and again at a prayer breakfast in Washington in the fall of 1993. See Kakutani, *supra*, at C18; Owens, *supra*, at B5; Renner, *supra*, at G3; Steinfelds, *supra*, at 8.

groups are at least equal in influence to patriotic groups, veterans organizations, labor unions, and grass-roots political clubs.<sup>3</sup>

In the first and quantitatively minor part of his case, he notes that it is the marginal religious groups—Jehovah Witnesses, Mormons, Christian Scientists, Native American religions, and curious groups that practice animal sacrifice—that suffer the personal and communal burden of living in a culture of disbelief. Roman Catholics and the mainline Protestant denominations suffer relatively little. They have long offered their support to American public policy and have tacitly accepted the proposition that religion is a hobby—all in return for a system of payments under the table: “[I]magine the brouhaha if New York City were to take St. Patrick’s Cathedral by eminent domain to build a new convention center, or if Kansas . . . were to outlaw the religious use of wine.”<sup>4</sup>

Mainline religion does not suffer because it has let itself become civil religion. It goes with the flow. Mainline Christian support for public policy is manifest in what Professor Carter calls “political preaching,” that is, the formulation of religious argument to support political viewpoints<sup>5</sup> that are arrived at outside the church. Thus, “the will of God is not *discerned* by the faithful but *created* by them.”<sup>6</sup> Here the activity is more than a “hobby,” but it is not what the Jewish and Christian traditions have usually called religious; what these political preachers say fits too comfortably into what the civil society wants to do at the moment.<sup>7</sup> Although he does not expand the point, Carter

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3. See also *A Conversation with Stephen Carter*, RELIGION AND VALUES IN PUBLIC LIFE, Fall 1993, at 1.

4. CARTER, *supra* note 1, at 9.

5. These political viewpoints are almost always those of whatever the dominant force in American politics is at the moment.

6. CARTER, *supra* note 1, at 72. As Stanley Hauerwas puts it, more pointedly: “Protestant liberal theology was . . . developed to solve problems in American constitutional law,” a matter, he says, of “religion domesticated by Enlightenment tolerance.” STANLEY HAUERWAS, *AFTER CHRISTENDOM* 84 (1991). Such an ecclesiastical (or ecclesiological) development has two consequences: (1) it encourages a political order in which significant religious conviction is a matter of private opinion; and (2) it endorses religious associations that support the state.

7. To speak of “religion” in this way is to discount the sense in which theology allows traditional Judaism and Christianity to be spoken of as a religion. As John Howard Yoder puts it in a memorandum on this review:

The lordship of JHWH or of Jesus is not an alternative to other religions in the genre *religio*. It is an alternative to other polities and deities. . . . The point is not that activities are not hobbies because they are religious, but that they are not hobbies because they respond to the command of the true God.

Memorandum from John H. Yoder, Professor of Theology, University of Notre Dame, to Thomas L. Shaffer, Professor of Law, University of Notre Dame (Dec. 9, 1993) [hereinafter Yoder Memorandum] (on file with author).

notices that political preaching is nowhere more evident than in main-line religion's dependable support for lethal state violence: "[I]n its grasping for power, the institutional church gave up the right to die for its beliefs in exchange for the right to kill for its beliefs."<sup>8</sup>

### I. FROM THE LAW SCHOOL

The aspect of Carter's case that focuses on the church is, I think, the more important part of his book, and I will return to it, but it is less prominent than what he wants to say about how religion is treated by lawyers, law teachers, producers of television programs, and journalists—the public world he contemplates in this book, as he contemplated the Civil Rights Movement and its aftermath in his earlier, popular *Reflections of an Affirmative Action Baby*.<sup>9</sup> His from-the-law-school case against the "trivialization" of religion has within it two distinct, largely empirical, largely negative propositions, both of which rest on a philosophical moral argument—the *egalitarian, democratic-liberal* argument that it is discriminatory to suppress religion.

*In America, assertions based on faith are discouraged, and they should not be.* They should be, as he tells his children, respected instead. They should be allowed the light of day; they should be allowed, following Richard John Neuhaus, a place in the public square.<sup>10</sup> It was wrong, for example, for administrators in a public school to require a teacher to wash the ashes from his forehead on Ash Wednesday, as it was wrong to keep another teacher in another public school from reading the Bible to herself during quiet moments in the classroom. These public-school administrators would have allowed the first teacher to wear a "save the whales" button and the second to read *Das Kapital*. "[W]ith all the different reasoning methods that people use, it is only the forms that are dictated by religious traditions that liberalism rules out of bounds."<sup>11</sup>

*In America, assertions based on faith are given only as much attention (respect) as assertions from nonreligious "interest groups," and they should be given more attention than that.* Following David Tracy,<sup>12</sup> the most useful thing religion has done for America, if only occasionally, is to resist, and resistance is particularly important in American democracy. "[R]eligions are at their most useful when they serve as democratic intermediaries and preach resistance."<sup>13</sup> Religious groups should be

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8. CARTER, *supra* note 1, at 82.

9. See STEPHEN L. CARTER, *REFLECTIONS OF AN AFFIRMATIVE ACTION BABY* (1991).

10. RICHARD J. NEUHAUS, *THE NAKED PUBLIC SQUARE* (1984).

11. CARTER, *supra* note 1, at 218.

12. DAVID TRACY, *PLURALITY AND AMBIGUITY: HERMENEUTICS, RELIGION, HOPE* (1987).

13. CARTER, *supra* note 1, at 132.

"accommodated," not because they are like the Elks or the Rotary Club, but because they are particularly situated to notice and say that the emperor is naked. They are

the obstacle around which state policy must make the widest possible berth. . . . [They are] autonomous moral and political forces . . . separate heads of sovereignty vital to preventing majoritarian tyranny. Thus, the reason for accommodation becomes not the protection of individual conscience, but the preservation of religions as independent power bases that exist in large part to resist the state.<sup>14</sup>

Still, the arguments Carter makes are not, for the most part, arguments about how power should be used; they are moral arguments, addressed to people—believers mostly, because most Americans are believers—who comfortably regard their own religion as a hobby, and who are not comfortable talking about or listening to talk about religion. What is wrong with the way leaders in Louisiana receive a "scientific creationist" is that his argument is not treated as worthy of consideration. The unfairness he suffers is not clearly a legal problem—he need not fear an application of public force so long as all he does is talk.<sup>15</sup> Carter makes the moral argument that it is wrong for the Creationist's neighbors to ignore him. What is wrong with disdain for the position taken by leaders of the Roman Catholic Church on abortion is that what they say is treated as beyond reasonable analysis and therefore beyond civil consideration.

Carter spends a fair amount of space disapproving of recent First Amendment decisions by the United States Supreme Court, notably Justice Scalia's opinion in *Employment Division v. Smith*,<sup>16</sup> but his argument, even there, is mostly a moral argument for giving organized religion the space it needs to ask for shared sovereignty. He directs most of his book more at modern American democratic attitudes than at obstacles to religious faith or denials of access to public witness; again, the argument is moral, not legal.

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14. *Id.* at 134.

15. Carter here addresses *talk* as a moral matter. One could frame the moral admonition as urging the civility with which one person should listen to another. Viewed legally, talk is protected by freedom of speech; the law does not require anybody to listen. Neither perspective is adequate theologically: Judaism and Christianity cannot be reduced to *talk*. Neither Israel nor the Christian church is primarily an interest group, or an idea, or an argument. Both are, first of all and primarily, *peoples*. See HAUERWAS, *supra* note 6, at 72, 175 n.3. Freedom of religion provides protection to such peoples—or, at any rate, that is the theory of freedom of religion, which, from the point of view of Judaism and of the Christian church, may be a bad idea because it forces the alternatives suggested at note 5, *supra*. See Stanley Hauerwas & Michael Baxter, *The Kingship of Christ*, 42 DE PAUL L. REV. 107 (1992).

16. 494 U.S. 872 (1990).

Carter argues for his moral position in two ways. He is, most of the time, a modern American liberal—liberal in both usual senses of the word: (1) He accepts the understanding of liberty and the dogma of autonomy that educated Americans consciously inherit from the Enlightenment;<sup>17</sup> and (2) he is a pro-choice civil libertarian who votes for Democrats. But once in a while he sounds like the Apostle Paul in Athens, or any one of dozens of Rabbis in that hellenized world—a believer who wears his faith on his sleeve, who appears and speaks in the public square. I mean that Carter sometimes, or even mostly, argues as the member of the modern American intelligentsia that he is, and that sometimes he argues as if the main thing he wants to say publicly is that he is a believer. (He leaves no doubt, by the way, that he *is* a believer, an active and devoted member of the Episcopal Church.) These are different ways of claiming attention, and one should look at them separately.

#### A. *The Academic Liberal Speaking in Law School*

Carter almost always formulates the first kind of argument as what I call a philosophical moral argument. Such argument hardly ever has any evident theology in it, although it could have. (For example, Carter could, but does not, talk—as theologians do<sup>18</sup>—of the political theology in the thirteenth chapter of St. Paul's letter to the church in Rome.) Why should a modern American academic liberal, speaking philosophically, care that religion in America has been turned into a hobby? Carter has three answers. First, he should care because prevalent liberal attitudes toward religion put liberal control of America in peril: "The roughly half of Americans for whom religious tradition is very important in reaching moral decisions are, in the long run, likely

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17. Carter defines liberal in this classical sense: "[T]he philosophical tradition that undergirds the Western ideal of political democracy and individual liberty." CARTER, *supra* note 1, at 55. He would, I think, agree that the tradition advocates or results in a political order that, ostensibly to preserve liberty, strives to be normatively neutral, so that both its deliberation and its coercion is procedural. Both civic virtue and the state avoid commitments; they are referees. Liberal societies also tend to discourage communities, or at least to discourage communities that have influence over their members. An association of people receives normative or coercive standing in the liberal political order because recognizing the association is seen as consequent to the protection of individual liberty. The result is a paradoxical civil order that tends to state tyranny and in which every person is her own tyrant.

18. See OSCAR CULLMAN, *THE STATE IN THE NEW TESTAMENT* (1956). A philosophical argument, such as Carter's, reasons from or toward *universals*. Theological argument such as St. Paul's in *Romans* is more likely to reason from and toward particular commitments in particular communities. See STANLEY HAUERWAS, *CHRISTIAN EXISTENCE TODAY* 67-87 (1988). This was a talk that Hauerwas originally gave to a convocation of philosophers at Rice University. He calls it "Reconciling the Practice of Reason: Casuistry in a Christian Context."

to turn their backs on a liberal tradition that turns its back on what they cherish most."<sup>19</sup>

Second, he should care because the cultural practice of ignoring religion belies the republican ideal of a community of mediating associations—what we old-fashioned Catholics used to call the principle of subsidiarity. This argument reintroduces the shared-sovereignty theme that Carter justifies with his argument that the church should resist the government: Denial of respect for argument from religious groups rests on the belief that all power should be in the state. The attack on tax exemptions for religious organizations that oppose abortion, for example,

is just another effort to ensure that intermediate institutions, such as the religions, do not get in the way of government's will . . . that only one vision of the meaning of reality—that of the powerful group of individuals called the state—is allowed a political role . . . . [I]n Toqueville's day, this was called tyranny. Nowadays . . . it is called the separation of church and state.<sup>20</sup>

When the representatives of the people have decided, for example, that no one should possess hallucinogenic drugs, a religious group's insistence on using them for religious purposes becomes unprotected deviance. The civil society says to believers: "[N]o problem! Get a new God! And through all of this trivializing rhetoric runs the subtle but unmistakable message: Pray if you like, worship if you must, but whatever you do, do not on any account take your religion seriously."<sup>21</sup>

And, third, a modern American academic liberal should care about religion because democracy would not be democracy unless it made space for all available voices, including religious voices, including subversive religious voices. "[D]emocracy needs its nose-thumpers. . . . [T]hey play important roles in the proper function of the republic."<sup>22</sup> Here he again invokes Alexis de Toqueville, who said that unless religion makes a claim on public attention, the state will fill the vacuum. (And who would have known better about vacuums the state can fill than an observant early nineteenth century Frenchman?) This argument, Carter says, is "a staple of political science." It "flows from the nature (and the dangers) of popular democracy as a form of governance."<sup>23</sup> As I tried to show above, however, he sometimes argues that religious argument is entitled to *particular* attention, perhaps because

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19. CARTER, *supra* note 1, at 56.

20. *Id.* at 123.

21. *Id.* at 15.

22. *Id.* at 35.

23. *Id.* at 38.

religion is peculiarly important among associations that resist exertions of state power, or perhaps because he is letting his Apostle Paul voice slip into his liberal political argument. I will say more on that point in a moment.

American culture condemns subversive assertions based on faith as anti-democratic because such assertions offend against the dogma that the only valid American religion is the religion of American democracy. Thus, subversive rhetoric is more acceptable when it is not religious. Here Carter aims his criticism at several of his academic colleagues who write on the First Amendment:

A number of theorists . . . have tried to craft rules to govern dialogue in the public square, rules, generally, that force religious citizens to restructure their arguments in purely secular terms. . . . [T]his approach might strike many religious people as . . . demeaning . . . in their struggles to find within their faith communities answers to questions about the ultimate.<sup>24</sup>

#### *B. The Pauline Christian Speaking in Law School*

Sometimes Carter describes and honors religious struggle on the guess that the civil society has nothing to fear from religion. With respect to most members of his denomination and mine, the guess is sound enough; we mainline Christians long ago stopped being much of a threat to anybody. But sometimes, and more interestingly, he seems to admit that there might be plenty for America to fear from religion. Then—speaking as a believer—he seems to say that the risk is worth the promise of civic gain. When he makes this argument, Carter sounds like St. Paul in Athens, inviting the Athenian intelligentsia to enthrone the Lord Jesus in the place they had reserved for an unknown god.<sup>25</sup> One may sharpen the point by supposing that all of the Episcopalians and Roman Catholics in military service for the United States took seriously the recently declared teaching of their churches that a Christian may never use nuclear weapons. The risk from this kind of obedience is obvious and enormous—we have been hearing about it from the government regularly since Hiroshima—but the gain, given that the God of Jews and Christians is the Ruler of the universe, is greater than the risk.

I suggest here that Carter has two public voices, voices he uses in the law school rather than in the church. In his don't-worry, academic-liberal voice, Carter says to his colleagues in the legal profession and in government: Listen to these odd people. There might *be*

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24. *Id.* at 218.

25. *Acts* 17:22-34.



something in what they say, and, in any case, what they say is innocuous. In his the-Apostle-Paul-in-public voice, he says: Listen to *me*; there might be something in what my faith teaches me. St. Paul said: "What you worship but do not know—this is what I now proclaim."<sup>26</sup> This latter sort of voice is unusual in law school, but, when he uses it, still, Carter is in law school.

"[A] religion that has survived must include some kernel of moral truth that resonates with broader human understandings, whether or not most people share the epistemic premises of the religion itself,"<sup>27</sup> Carter says, and here he speaks of his own faith, as well as the faith of the marginal religions in modern America. He looks carefully, for example, at Justice Stevens' opinion in the *Cruzan*<sup>28</sup> case: Stevens spoke of the existence of human life as a matter of "theological or philosophical conjecture," something American law cannot reach. But, Carter says, "if life cannot be defined except in impermissibly 'sectarian' terms, the state is essentially unable to act."<sup>29</sup> Thus speaks Carter's law-school St. Paul self: he still wants the state to be able to act; St. Paul did, too.

## II. FROM THE CHURCH

Professor Carter includes enough confessional religion in his book to permit a more extended "ecclesiological"<sup>30</sup> analysis of the case he makes for the political significance of belief—an analysis that looks at liberal American disdain for religious faith not from a law-school classroom licensing successors to the powerful, but from the church—which educates, or claims to, by remembering, by ritual observance, and by pondering, as well as by proclamation. One may put the question this way: What sort of church does Carter contemplate as *his* church in his long complaint about the situation of the church in America? I see three possibilities: (1) the Gathered Church, the sort of community of the faithful we learn about when reading about Jews in the Middle Ages or Christians before the conversion of the emperor Constantine; (2) the church of Christendom, the ancestor both of Carter's American Episcopal Church and of my American Roman Catholic Church—and also of American Methodists, Presbyterians, and others; and, finally, (3) the Witnessing Church.

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26. Acts 17:23.

27. CARTER, *supra* note 1, at 231.

28. *Cruzan v. Director, Missouri Dep't of Health*, 497 U.S. 261 (1990).

29. CARTER, *supra* note 1, at 240.

30. Ecclesiology is the branch of Christian theology that ponders what the church (*ecclesia*) should be.

A. *The Gathered Church*

An ancient and sometimes inevitable tradition among Jews and Christians teaches believers to get together and then get out of the way. The notion here is that the civil society in which each community of the faithful exists—if only at the edge, and if only as the result of tolerance—is irrelevant to the communal business of believers. Believers are pilgrims in the world, passers-through, “resident aliens.”<sup>31</sup> At best, the civil society is irrelevant. At worst, the civil society is corrupting and destructive, and if the community of the faithful exists for anything it exists to protect itself from secular corruption, so that it can remember what it is, preserve its identity in teaching and in ritual observance, perpetuate itself through educating its children, and wait for the Lord to come back.<sup>32</sup> Carter touches on this “sectarian” posi-

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31. Stanley Hauerwas and William H. Willimon, Duke University professors whose principal work is to train ministers for the United Methodist Church, propose this theme for adult Sunday School classes’ study in *Resident Aliens*. STANLEY HAUERWAS & WILLIAM H. WILLIMON, *RESIDENT ALIENS* (1990). The publisher appends to the title, on the front of the paperback edition, a sort of subtitle: “A provocative Christian assessment of culture and ministry for people who know that something is wrong.” When the title and the publisher’s gloss on the title are combined, the suggestion is that what is wrong is that Christians do not realize that they are in an American society that is not their own, that they are strangers here. The content of the book bears out that impression, which is an odd agenda for a denomination that has been steadfastly American. “I haven’t got much of a church,” Hauerwas once said. “But what I do have in the church is a kind of normative account . . . enough shards of memory around that I can almost maintain some kind of claim that this is better than nothing.” Stanley Hauerwas et al., *Faith in the Republic: A Frances Lewis Law Center Conversation*, 45 WASH. & LEE L. REV. 467, 481 (1988); see also *infra* notes 32, 37.

32. The Gathered Church, because it is cohesive and, in a word, “gathered,” avoids the sort of dispersion implied in Hauerwas’s discussion, *supra* note 31. What holds it together ecclesologically is adherence to certain procedures for deliberation, as well as for worship. JOHN H. YODER, *THE PRIESTLY KINGDOM: SOCIAL ETHICS AS GOSPEL* 15-45 (1984) (referring to the chapter Yoder called “The Hermeneutics of Peoplehood”). In the absence of such a church polity, Christians in the mainline American church, such as Hauerwas, Carter, and I, have a hard time avoiding the conclusion that our church is part of the civil religion. We have to locate a New Testament church for ourselves, sometimes in the local denominational parish, but as often in other communities of the faithful—among groups of friends, neighbors, colleagues, and family. See THOMAS L. SHAFFER & MARY M. SHAFFER, *AMERICAN LAWYERS AND THEIR COMMUNITIES* 196-217 (1991). In either gathering,

[t]he community of disciples formed in the power of [Jesus’] Spirit keeps alive the dangerous memory of his life, death, and resurrection as a promise of a future for all the defeated and the dead. In the circle of life where Christ’s way is followed, a new possibility of shalom, of redemptive wholeness, is made experientially available and can be tested in anticipation, even now, as the struggle of history goes on. . . . The community of disciples is charged with keeping alive throughout the ages the good news let loose in the struggling world through the history and destiny of Jesus of Nazareth.

ELIZABETH A. JOHNSON, *SHE WHO IS: THE MYSTERY OF GOD IN FEMINIST THEOLOGICAL DISCOURSE* 151, 156 (1993).

tion<sup>33</sup> now and again, as when he complains about religious entanglements with the state that weaken the church.

Communities of Jews have often gathered in this way, frequently because they could see that they would not survive at all if they did not gather together and get out of the way. Communities of Christians were like this before Constantine.<sup>34</sup> No doubt some communities of Christians preserved this sort of distinct separation during the long centuries between Constantine and the Reformation. And some groups of reformed Christians have established and preserved such communities from the sixteenth century until today.<sup>35</sup>

The evident historical fact about sectarian believers is that they are tortured and killed, usually by mainline believers. Members of these communities have been slaughtered, from their earliest beginnings; in every century, whole communities of them have been wiped out.<sup>36</sup> American law and civil practice now extend "tolerance," in Carter's pejorative sense of the word, to them: America does not, for example, demand that the sons of sectarians serve in the armed forces; it allows them to have their own schools and excepts them from mandatory school attendance laws; it sometimes tolerates their aversion to automobiles and photographs. Occasionally, American popular culture holds them up to romantic wonderment, as when Garrison Keillor tells stories about the Sanctified Brethren from whom he came, or when Hollywood makes a movie out of one of Chaim Potok's novels, or attempts an ambiguous treatment of Christian pacifism.

Carter never quite gets this first vision of the church clear. He sometimes recognizes that the church might have a vision of itself as distinct and that this vision might lead to a distinct kind of politics.<sup>37</sup> I infer this perception, for example, from his observation that President Reagan was not "religious" in a way that is important for analysis: "Reagan . . . placed a low value on the process of discerning, in company with others of the same faith, the will of God."<sup>38</sup> But mostly when Carter talks about the church, the Gathered Church is out of his view. For example, he defines "religion"—surely a key definition in this book, and, incidentally, a defense of the sort of believer Carter

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33. For my discussion of the meaning of "sectarian" and an attempt to apply it to religiously affiliated law schools, see Thomas L. Shaffer, *Erastian and Sectarian Arguments in Religiously Affiliated American Law Schools*, 45 STAN. L. REV. 1859 (1993).

34. See YODER, *supra* note 32, at 135-47.

35. *Id.*

36. See J. DENNY WEAVER, *BECOMING ANABAPTIST* (1987); Harold S. Bender, *Mennonites*, in 15 COLLIER'S ENCYCLOPEDIA 694-95 (1965).

37. Cf. Hauerwas & Baxter, *supra* note 15.

38. CARTER, *supra* note 1, at 98.

says President Reagan is—as “the belief in supernatural intervention in human affairs.”<sup>39</sup>

A religious Jew or a disciple of the Gathered Church would probably say that belief in supernatural intervention is, of course, part of what her group’s religion is about; however, she would likely complain that the definition treats religion as political only in the liberal-democratic sense, because it confines the meaning of the word to personal *belief* and does not include the fact that religion is hermeneutical,<sup>40</sup> dynamic, and—something Carter elsewhere documents well—communal. Religion, for the people of the Gathered Church, is a congregational process. The preservation of religion, for them, depends on the faithful observance of ways of perceiving in order to act—what the theologians call *praxis*.<sup>41</sup> Such ways are detailed in the *Talmud* and the Pauline epistles, in rules for monastic living and for congregational discourse, and in the ritual practices and curious personal canons of morality that Carter treats, to be sure—though he treats them mostly as a liberal democratic ruler would. The issue such practices raise, as he sees it, is accommodation by the state.

To be fair, I need to note that while he neglects the hermeneutical and the dynamic, Carter does not neglect the communal character of religion. For example, he says:

A religion . . . is not simply a means for understanding one’s self . . . [but is] a way of denying the authority of the rest of the world; it is a way of saying to fellow human beings and to the state those fellow humans have erected, “No, I will *not* accede to your will.”<sup>42</sup>

That notion seems to imply a choice between communities. But when he considers religion as communal, he does not do so from the church, but from the law school. The religious dissent he celebrates is, as he says, learned and practiced and preserved in a community, but he seems to value communal dissent only because it is instrumental for the liberal-democratic enterprise.

I want to dispute this point of view. Although the dissent of the Gathered Church may, as Carter argues rather too much, serve a particular governmental purpose in America, it is hard to accept that it

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39. *Id.* at 25.

40. I understand “hermeneutics” to raise the question of point of view—that is, what a reader or group of readers brings to a text, as distinguished from what is seen to be *in* the text. As Hauerwas and Yoder use the term, it describes communal point of view, a process in the church, prototypically a process in the Gathered Church, but also the process in the Witnessing Church that is prior to witness. See generally HAUERWAS, *supra* note 18; YODER, *supra* note 32.

41. *Praxis* is a Greek word meaning “practice.”

42. CARTER, *supra* note 1, at 41.

serves governmental purposes in general<sup>43</sup> or that it is present to serve governmental purposes as a matter of liberal-democratic political principle. For the liberal enterprise, Carter's celebration of religious dissent is like the argument Justice Holmes made for Mephistopheles—"keeps the green scum off the pond."<sup>44</sup> If Carter would look instead at what the Gathered Church thinks *about itself* he might conclude that it is not fundamentally interested in acknowledging or preserving whatever value liberals think it has for America. Fundamentally, it is not even interested in whether or not America accommodates it.<sup>45</sup>

### B. *The Church of Christendom*

Carter, like most Christians in America, is an heir of Christendom, of a civil order that was not pluralistic and in which the state itself claimed to be a Christian institution. (One of the titles of the sovereign in the United Kingdom is still "Defender of the Faith.") The church of Christendom—for example, Carter's ecclesiastical cousin, the Church of England, and historically the Roman Catholic Church—was a part, though only a part, of a Christian civil order. The *Talmud* imagines such a religious civil order for Jews, as it remembers biblical Israel. Lots of medieval ink was spilled on elaborating

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43. The Gathered Church insists on the soundness of its public statements, when it makes them, based on premises that are neither sought nor located in civil sources. Walter Rauschenbusch referred to this fact, and he had unwarranted optimism for it, when he said: "It is faith to assert the feasibility of a fairly righteous and fraternal social order . . . the proposition that fairness, kindness, and fraternity will work." WALTER RAUSCHENBUSCH, *A THEOLOGY FOR THE SOCIAL GOSPEL* 102 (Abingdon ed., 1978) (1917). Timothy P. Jackson stands in this tradition when he argues that charity should be prior to justice in American public policy: "The good society, unthreatened by the diversity of its members, requires neither veils of ignorance nor bread and circuses. Such citizens [Jews and Christians] are the sort of moral revolutionaries who, if welcomed, would make for political stability in a free state." But Jackson has less optimism than Rauschenbusch had: "They seldom are welcomed." Timothy P. Jackson, *Liberalism and Agape: The Priority of Charity to Democracy and Philosophy*, 1993 ANN. SOC'Y CHRISTIAN ETHICS 47, 47.

The difference I suggest between the Gathered Church and the Witnessing Church is to some extent captured by the relative optimism in these two statements for what I think is the same Christian witness. They also differ historically and sociologically, in that the Gathered Church, as manifested—for example, in Anabaptist denominations in America—has tended to opt out of civil affairs, and the Witnessing Church, as a relatively modern set of *factions* within the mainline church in America, tends to wade in. John Howard Yoder implied the distinction in what I take to be an argument to Anabaptists that they should wade in more than they have. JOHN H. YODER, *THE CHRISTIAN WITNESS TO THE STATE* (1964); see *supra* notes 31, 32.

44. Holmes made this observation in his letter to Lady Pollock of February 21, 1909. I THE POLLOCK-HOLMES LETTERS 147 (Mark D. Howe ed., 1942).

45. See Stanley Hauerwas' discussion of "The Use of the Law: A Summary Statement," a position adopted by the Mennonite Church General Assembly in 1981. HAUERWAS, *supra* note 18, at 74-87.

both a Christian theology and a legal order for another, real version, as in the "Holy Roman Empire" or the politics of Dante's *Divine Comedy*.

One still hears the civic virtues of Christendom advanced as an argument for what the church in the modern United States should be. Such a vision is probably behind the lingering pressure for Christian Bible-reading and prayer in public places, and, depending how you look at it, sectarian irrationality or curricular fairness in the way public-school teachers account for the origins of the world. The vision shows up in the arguments, from a number of quarters, that the Declaration of Independence is a religious document, and that a non-denominational Christian political consensus still exists in America.<sup>46</sup>

The church of Christendom is in service to the civil order, but it need not worry about the state's becoming an idol, because the state itself is Christian. Carter calls on the ecclesiology of Christendom when he complains about those who complain about politicians who advance their views of what God wants, about the clergy's occasional practice of backing or, more often, opposing candidates for political office, and about voters marking their ballots according to the religious views of candidates.<sup>47</sup> His substantive argument is that outcomes in such situations, and decisions by legislators and judges, should be based on the liberal-democratic utilitarian value of the propositions or candidates advanced, not on approval or disapproval of the religious reasons for advancing them. He rightly notes that the complaints are rarely made when religion backs liberal causes, such as the Civil Rights Movement: "There is much distressing evidence that the religious voice is required to stay out of the public square only when it is pressed in a conservative cause," such as the regulation of abortion.<sup>48</sup> His procedural argument is that proponents of religious causes in liberal politics have a moral right to be listened to when they say what it allows them to say.

This moral right is not only a right to speak out, but also a right to audience. Because the church of Christendom serves the civil order and the state—in everything from rolling bandages and blessing tanks to maintaining hospitals and centers for the homeless—the state must fairly reciprocate by attending when the church addresses it. As Carter says it, "God is asked to bless the nation, its people, and its

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46. See ROBERT E. RODES, JR., *LAW AND MODERNIZATION IN THE CHURCH OF ENGLAND* (1991); Robert E. Rodes, Jr., *Pluralist Christendom and the Christian Civil Magistrate*, 8 CAP. U. L. REV. 413 (1979). The former is the final volume in Rodes' three-volume study of English Christendom (1977-1991).

47. See CARTER, *supra* note 1, at 44-66.

48. *Id.* at 64.

leaders. But nobody, in the civil religion, is asked to do anything for God."<sup>49</sup> He asserts that the historical and philosophical justification for the Religion Clauses in the First Amendment was to underwrite such a claim for attention: "[T]he principal task of the separation of church and state is to secure religious liberty,"<sup>50</sup> and the liberty being secured is a liberty within which and from which the church can speak to and as part of the republican community.

[W]hat is most vital . . . is to avoid the historical conclusion that its principal purpose is to protect the secular from the religious, an approach that, perhaps inevitably, carries us down the road toward a new establishment, the establishment of religion as a hobby, trivial and unimportant for serious people, not to be mentioned in serious discourse.<sup>51</sup>

The ecclesiology of Christendom poses dangers for those who are both citizens and believers, and, even more, for the civil and religious communities to which they belong. The danger that the liberal quarter most often cites—and Carter is relentless in discounting it—is the eighteenth-century fear that organized religion will take over the state and impose its orthodoxy on everybody.<sup>52</sup> The most potent counter

49. *Id.* at 52.

50. *Id.* at 107.

51. *Id.* at 115. This "trivialization" is, of course, the result of a deeper development in which American Christendom tries to relate to God through the state. See Hauerwas & Baxter, *supra* note 15, at 118-19.

52. Both Carter and I tend to discount this possibility. The Anabaptists are less sanguine because their church is more potent and because it remembers what Christendom does to the Gathered Church. Yoder accuses mainline liberals like Carter and me of beginning the history of the matter in the middle:

I would try to be more of an historian, asking where the defensiveness came from that is now being overdone. . . . It is not that anybody important wanted to keep elite neo-conservatives like Neuhaus [see *supra* note 10] from living their faith in the public square. It is that old-fashioned conservatives thought that the only way for them to act in the public square was to exclude the Jews and the Quakers. Don't complain about overdoing the secularization without recognizing that it was the natural response (overdone, as anything is when made legal) of victims to the dominion of the Erastians [that is, of the church of Christendom]. . . . The reason we got into the box where assertions based on faith are especially constricted is the long history of people who made assertions based on faith coercively. Failure to "make space for all available options" was invented not by the American Civil Liberties Union but by the Erastians. . . .

Yoder Memorandum, *supra* note 7.

Nor is this development entirely a historical one:

Part of the problematic you get into if you are not satisfied with "hobby" status is that somebody has to get into the business of accrediting which are the entities that qualify for the status of non-hobby religions with rights to a place on the podium. If native Americans smoking peyote, how about the Klan burning crosses? Scientology? A mail-order degree mill issuing certificates of ordination?

to that fear, just now, is the fact of organized religion's manifest weakness, and of its consistent inability, in America, to agree on much of anything.

Carter adds to this assessment of weakness an interesting sort of chicken-soup extension: What harm would it do to try it?

[T]here is reason to doubt that more harm to individual freedom *necessarily* occurs when a religion seeks to impose its vision of the good life than when an entirely secular political movement does it. . . . It is not easy to understand why the risk that the religions might try to impose on secular society their religious visions of the good life is more to be avoided than the risk that the state and its powerful constituents might try to impose on the religions a secular vision of the good life.<sup>53</sup>

I think of the visit to the White House of President Bush's Episcopal bishop, a visit in which the Bishop told the President that the Gulf War was immoral, which meant, I suppose, that Christians such as the President should have nothing to do with it. And then—Carter's point—I think of who won the argument.

The greater danger is theological—that the church of Christendom, which has a relatively low risk of producing martyrs, will become more American than Christian. I think, on this point, not of Carter's church, nor even of Dr. Jerry Falwell's, but of my own, and of Walker Percy's fictional description of an American Catholic Church that has moved its central offices from Vatican City to Peoria, Illinois, and has adopted the practice of playing "The Star Spangled Banner" at the elevation of the host at mass.<sup>54</sup> The lesson of the history of the church of Christendom is that it becomes what Malcomb Boyd calls chaplain

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*Id.* This last point is also the argument of Stanley Hauerwas against a Christian endorsement of freedom of religion—not that either he or Yoder is particularly in fear of the Ku Klux Klan et al., but that they do not want the church to be subject to accreditation from outside the church. HAUERWAS, *supra* note 6, at 69-92.

53. CARTER, *supra* note 1, at 145; see also Yoder Memorandum, *supra* note 7 ("A religion or a faith which coerces when it can is categorically a different animal from one whose very commitment rejects coercion. This is more than an ethical difference; it is a difference of Gods."). The difference has implications for Christendom that are not a problem of the Gathered Church and, when it is careful, not a problem of the Witnessing Church either:

When a secular power-bearer claims to be saving me he has to give reasons the whole polity can understand and vote on. He does not call on God to quiet his opposition. The secularist can be called to account. So can the theist who accepts the pluralistic polity [of either the civil religion or Christendom]. But not the theist who excludes his or her adversary from the hermeneutical circle. If I am the excluded adversary, I don't like the oppression. If I am a theologian, I don't like the abuse of the name of God.

*Id.*

54. I have developed this argument and my use of Percy's two novels, *Love in the Ruins* and *The Thanatos Syndrome*. See Thomas L. Shaffer, *The Church and the Law*, in *RADICAL CHRISTIAN AND EXEMPLARY LAWYER: A Festschrift Honoring William Stringfellow*



to the status quo. Historically, the Erastian notion of what the church should be, particularly in Britain and the United States, has produced a church that hardly ever dissents from what the secular powers of the state want to do. The honored dead entombed in its churches are the heroes of the state—soldiers mostly.

Still, the church of Christendom has dissented occasionally, and a champion of this ecclesiology, as perhaps Carter is, can always fairly say that the history of religion in the West is nowhere a history of steadfastly standing up to princes. "No religion *always* challenges the state's imposed meanings," as he says, "and few do it very often."<sup>55</sup>

### C. *The Witnessing Church*

The Bishop's visit to the White House could symbolize a third ecclesiology, one that yearns for the theological consistency of the Gathered Church but at the same time believes that it is good for the church to influence princes.<sup>56</sup> The Witnessing Church begins in church—the Bishop did not arrive at his view of the Gulf War only by listening to the six o'clock news or reading about debates in Congress. He arrived at his view by asking, listening, reading, pondering *among* the faithful, among people who might have begun their deliberations with a prayer, who were conscious of their theology (that is, of the memory of the church), who read and pondered Scripture, and who were therefore able to say, with St. James,<sup>57</sup> that they *and* the Holy Spirit had come to a conclusion about the war.

The Bishop was, to this point, living and thinking as if he were in the Gathered Church, but then he went out from the church and joined the pickets at the White House. And, because he had influence—influence as the Christian brother of the President—he was invited in and he got a chance to, as we believers sometimes put it, "bear witness" to what America (as in "God Bless America") should be doing. The Bishop did not then come from the church of Christendom, but from the church bearing witness to the state *on the church's terms*, using *theological* argument formulated not in the public square but among the faithful—behind the wall, as Walter Brueggemann

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(Andrew W. McThenia, Jr. ed., forthcoming 1995); Shaffer, *supra* in 1994 ANN., CATH. COMM'N ON INTELL. & CULTURAL AFF. 107.

55. CARTER, *supra* note 1, at 272-73.

56. A classic theological source is MARTIN LUTHER, *Secular Authority: To What Extent It Should Be Obeyed*, in MARTIN LUTHER: SELECTIONS FROM HIS WRITINGS 228-73 (John Dillenberger ed., 1961), a letter of January 1523 addressed to the Duke of Saxony. See GERHARD EBELING, LUTHER: AN INTRODUCTION TO HIS THOUGHT 175-91 (1977).

57. Acts 15:28.

puts it.<sup>58</sup> The Bishop came from the church, from a witnessing church that could claim continuity with, say, Dietrich Bonhoeffer, Thomas More, Catherine of Siena, and the Christian martyrs of modern El Salvador. Bonhoeffer, More, and Catherine all had power, as well as influence, but one thing about their Witnessing Church is that it sought goodness in politics more than it sought power for itself. "Fighting for an end to the production of nuclear weapons," as Carter puts it, "is not the same as fighting for official recognition of the exclusivity of one's faith."<sup>59</sup>

The Witnessing Church is like the church of Christendom, though, in that it does not disdain influence.<sup>60</sup> It claims influence; it even fashions its arguments—such as the pastoral advice, from virtually all mainline denominations, against nuclear weapons—so that they will be heard and understood by nonbelievers as well as believers. Carter sometimes writes as a member of such a church, claiming audience as the Bishop did at the White House: "The [religious] group . . . will often be engaged in . . . acts of resistance . . . interposing the group judgment against the judgment of a larger society. Worshipping together, endeavoring jointly to discern the will of God, if honestly done, will lead frequently to that result."<sup>61</sup> Such witness does not shrink from the possibility of influence, even when, as Carter warns, the witness the Church undertakes and recommends to believers invites tyranny: Tyrants kill people to keep people quiet. Tyrants give martyrs to the Witnessing Church.

Carter doesn't always sound like this. He also writes as a liberal. In the sentence that follows what I quoted just above, for example, he says, "When the state tries to block that process of discernment in a faith community, it is acting tyrannically by removing potential sources of authority and meaning different from itself."<sup>62</sup> When he writes in his liberal mood, his membership in the church appears to be irrelevant to what he wants to say; he appears to be most interested in the preservation of America, an America that is not tyrannical, in this case. Another example is what he says about legislated prayer for the public schools: "The dynamics of the classroom should matter to the Court . . . but the motivation of the legislators should be irrelevant."<sup>63</sup> Here, again, the result in the civil religion seems to be what is

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58. WALTER BRUEGGEMANN, *INTERPRETATION AND OBEDIENCE: FROM FAITHFUL READING TO FAITHFUL LIVING* 41-69 (1991).

59. CARTER, *supra* note 1, at 91.

60. My friend and colleague Yoder argues with a distinction that turns on influence. See *supra* note 40.

61. CARTER, *supra* note 1, at 142.

62. *Id.*

63. *Id.* at 191.

important to him, rather than the witness of the church to the public schools.

The problem with Carter's liberal<sup>64</sup> mood in such an ambitious and timely book is that it is, in its ecclesiology, ambivalent. Particularly in a book written by a lawyer, such a mood will almost always lead to an issue about the state's regulation of religion: "The question crying out most vitally for resolution, given the presence of religions in the public square, is whether and how to regulate that presence."<sup>65</sup> When that agenda is announced, the Gathered Church, which does not *allow* the state to regulate its presence, will gather itself somewhere beyond the public square and ask to be left alone. And the Witnessing Church had best retire behind the wall and insist on conducting its business in its own space and its own language and on coming to the public square with a prepared text.<sup>66</sup> When that happens—and it may have happened in America a long time ago—my hope for Christian lawyers such as Carter is that they will leave the public square and go to church.

Professor Carter argues, first, that religious argument is as worthy of notice as any other kind:

Liberal theory might scoff at the idea that God's will is relevant to moral decisions in the liberal state, but the citizen whose public self is guided by religious faith might reasonably ask why the will of any of the brilliant philosophers of the liberal tradition, or, for that matter, the will of the Supreme Court of the United States is more relevant to moral decisions than the will of God.

So far, liberal theory has not presented an adequate answer.<sup>67</sup>

Next, he argues that American society should not require religious argument—as the price of making a moral claim for audience—to be cast in the language of democratic politics. Religious argument should not be made subject to "a set of conversational rules that require the individual whose religious tradition makes demands on his or her moral conscience to reformulate that conscience—to destroy a

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64. For a discussion of Carter's definition of "liberal," see *supra* note 17.

65. CARTER, *supra* note 1, at 101.

66. Yoder argues for *translation*:

I am not sure that the believers should be obligated to make their moral claim in secular language, but neither should they have a right to a government-subsidized interpreter if they insist on doing it in Yiddish. If we really seek "the peace of the city," why should we fear that by saying our message in Babylonian we would have to destroy its meaning. . . . Why should we not be able to translate?

Yoder Memorandum, *supra* note 7; see also YODER, *supra* note 32, at 160-66.

67. CARTER, *supra* note 1, at 226.

vital aspect of the self—in order to gain the right to participate in the dialogue alongside other citizens.”<sup>68</sup>

Carter makes these arguments in two moods. One mood, which I imagine Carter announcing in his and my law-school world, would restore religion to American culture. This restoration could happen in alternative ways: (1) either America is in some significant way a Christian, or Judeo-Christian, culture, and religion in America is the church of Christendom; or (2) Christendom is long gone and religion should be admitted to the public square as an equal player in the game of liberal-democratic politics, as Richard John Neuhaus has argued.<sup>69</sup> Either way, Carter’s agenda is in large part a “church-state” agenda; it sees the church as subservient to democratic civil order, and that means as subject to the centralized power of the modern democratic nation-state. The problems for lawyers to discuss are then problems about what the state should do with the church, as if religion were an intruder on a secular political arrangement—even, as Carter suggests, a resister and a subversive intruder. If a person is interested in the first agenda of Carter’s, this law-school agenda, it is as a *citizen*.

In his other mood, Carter speaks as a member of the community of the faithful—as a Christian *in* the church. We who are interested in this second mood are interested as religious people; the problems in which we are interested concern what the church should do about the state. Or, more accurately, because the state has lethal power, because the state is, as St. Paul said, a thing of “authorities and potentates,”<sup>70</sup> the problems have to do with whether the state should be a serious concern for the church at all, or whether it is as morally inert as the weather.<sup>71</sup>

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68. *Id.* at 229.

69. NEUHAUS, *supra* note 10.

70. *Ephesians* 6:12.

71. The weather metaphor is one upon which Hauerwas and I once agreed. Hauerwas et al., *supra* note 31, at 484. “I just live here and it’s God’s state,” Hauerwas said. *Id.* at 483. Yoder argues with the metaphor:

I agree that my primary frame of reference is the people of God, but it does not follow that I have no concern for the civil society. That concern is derivative but it is real. I’d rather have one where potholes got fixed than one where they don’t. I’d rather have one where Jews and Amish are free to live than when they don’t. . . . One can change government; the religiously farthest out of the [Founding] Fathers, Roger Williams and William Penn, did the most to make the American polity viable. One can change government best if one is most independent of it. The position which cannot change government is the Erastian [the church of Christendom].

Yoder Memorandum, *supra* note 7. From a somewhat more Roman Catholic perspective, my friend and colleague Gerald Bradley argues, in a memorandum addressed to a draft of

There is a distinction between what the community of the faithful, gathered for supper to begin the Sabbath, in temple, in church hall, in law-school lounge, at the kitchen table, or in the living room, has to think and do, and what is useful to twentieth-century American democracy. Carter is willing to countenance the religious deliberation and proclamation that will come from a gathering of the faithful, but he never quite faces up to the fact that religious witness, when it is as religious as Jews and Christians have tried to be when they have *really* tried, is *costly*.

If religion<sup>72</sup> in this sense, and not as a hobby, gains the space Carter seeks as its proper place in America, the dissonance will be deafening. The community of the faithful, and each community of faithful people, might then have to decide—as few do now—what it is to do in American society, or better, what it *is*. The price of witness, if the

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this review, that Hauerwas and I are mistaken when we equate government and coercion. Memorandum from Gerald Bradley, Professor of Law, University of Notre Dame, to Thomas L. Shaffer, Professor of Law, University of Notre Dame (Dec. 11, 1993) [hereinafter Bradley Memorandum] (on file with author). Hauerwas says, "Law is in service to politics." Stanley Hauerwas, *Christian Politics and the Practice of Law in a World Without Foundations*, 44 MERCER L. REV. 743, 748 (1993). His and my theology of the Cross sees the Crucifixion as a consequence of Jesus' confronting the law. HAUERWAS, *supra* note 6, at 179 n.25. Hauerwas and Baxter argue that Christians should not even attempt to formulate jurisprudence, because any rationale for law becomes a basis for violence and exclusion. Hauerwas & Baxter, *supra* note 15, at 124-25. Bradley says that this is

not true in practice and an insurmountable obstacle to good clear thinking about law. I know that . . . it's quite fashionable among the law-and-religion crowd, but still I would insist that the value of *all* rules, including law, is basically independent of any and all enforcement efforts (successful or not).

Bradley Memorandum, *supra*. That would be significant, but it would still leave open the question of whether law, excised from coercion, might be an idol. SHAFFER & SHAFFER, *supra* note 32.

72. Both Yoder and Milner Ball, reflecting the theology of Karl Barth, complain about the way that Carter and I use the word "religion." See MILNER S. BALL, *THE WORD AND THE LAW* (1993); Yoder Memorandum, *supra* note 7. The most radical side of this argument says that Christianity and Judaism are not religions at all. Yoder does not say that, but he insists that distinctions have to be made between one kind of religion and another, allowing that the word can be used for Judaism and Christianity. Still, Carter and I have a certain settled cultural basis for the broad (if imprecise) way in which we use the word. I think of what G.K. Chesterton said about Francis Thompson's poetry:

[T]here certainly was and is a certain *thing*, to which our fathers found it more practical to attach and limit the name of religion. . . . [T]hey were . . . certain of what things were not religious, including much that modern moralists call a wider religious life. . . . What we mean when we say that "The Hound of Heaven" is a real religious poem, is simply that it would make no sense, if we supposed it to refer to any of these modern abstractions, or to anything but a personal Creator in relation to a personal creature.

G. K. Chesterton, *Introduction* to FRANCIS THOMPSON, *THE HOUND OF HEAVEN AND OTHER POEMS* 5, 5-6 (1936). That, for present purposes, then and now, is sufficient.

community is faithful, will be high, and the price of gathering may be.<sup>73</sup> There are two agendas here, not one. The first and safer agenda is not really religious at all. It would return America to the grand claim made by our forefathers—few were foremothers—that America is “God’s New Israel,” a city on a hill, the righteous empire. The other agenda is religious. It invokes the manifest history of Israel, the Suffering Servant of God, and of the Cross, as symbols of what people do to one another in the name of the law.

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73. The enterprise is not as much a matter either of decent civility, or of making pluralism work, as Carter and Professor Michael J. Perry, in another recent and important treatise on this subject, think it is. See MICHAEL J. PERRY, *LOVE AND POWER: THE ROLE OF RELIGION AND MORALITY IN AMERICAN POLITICS* (1991). Perry writes:

[T]he main question . . . is the proper role, if any, of religious-moral discourse in the politics of a religiously and morally pluralistic society . . . . If religious-moral discourse should not be excluded from “the public square,” how should it be included? In particular, how should such discourse be brought to bear in the practice of political justification? The serious challenge . . . is to define a middle ground between, on the one side, [those] . . . who would largely exclude religious-moral discourse from the political-justificatory practice and, on the other side, the position of those who would bring religious-moral discourse to bear in a sectarian, divisive way.

*Id.* at 5.

I quote Perry at this length because I suspect that he deals with the issue with which Carter, when he is in his academic liberal mood, deals as well. Perhaps Perry states the academic-liberal issue more clearly than Carter does, but in doing so, he limits it so much that I conclude—as I do not conclude from what Carter has done—that Perry’s issue is not interesting for the church.

