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**“OVERALL, THE FIRST AMENDMENT HAS BEEN VERY  
GOOD FOR CHRISTIANITY” — NOT!  
A RESPONSE TO DYSON’S REBUKE**

*Michael J. Baxter, C.S.C.\**

**I. SECOND THOUGHTS ON PIUS XI; OR, “HEY EVERYBODY, I’M  
JUST AS HORRIFIED BY FASCISM AS THE NEXT GUY”**

In an article entitled *The Kingship of Christ: Why Freedom of “Belief” is Not Enough*, Stanley Hauerwas and I take issue with the prevailing trend among theologians to produce general theories of the relation between church and state.<sup>1</sup> Michael Eric Dyson says that the article delivers “a tough rebuke,” and in response he delivers a tough rebuke of his own.<sup>2</sup> His rebuke calls for a response — first, on a matter about which we agree.

I agree with Dyson’s criticism that by colluding in Mussolini’s machinations, “Pius XI compromised the politically independent, socially prophetic, and morally insubordinate voice of the church,”<sup>3</sup> and that he is therefore not a very good example of “politics and Christianity working together.”<sup>4</sup> This reference to Pius XI created a misunderstanding insofar as it led Dyson to conclude that Hauerwas’ and my account is apolitical, socially disembodied, and promotes what he calls “the moral subordination” of the church to

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1. Stanley Hauerwas & Michael Baxter, C.S.C., *The Kingship of Christ: Why Freedom of “Belief” is Not Enough*, 42 DEPAUL L. REV. 107 (1992).

2. Michael E. Dyson, “*God Almighty Has Spoken From Washington, D.C.*”: *American Society and Christian Faith*, 42 DEPAUL L. REV. 129 (1992).

3. *Id.* at 157.

4. *Id.* at 146. I quote Dyson’s phrase “politics and Christianity working together” tentatively because, as I argue below, this formulation is already mistaken insofar as it implies that politics and Christianity comprise separate spheres.

the state.<sup>5</sup> By the end of this article, I hope it will be clear that this is anything but the case.

A confession is in order here: We anticipated some misunderstanding along these lines, so we made a gesture toward what Dyson calls the "moral insubordination" of the church<sup>6</sup> by adverting to the life and death of Father Max Josef Metzger.<sup>7</sup> This example goes unmentioned by Dyson (I'm not sure why), yet even readers who did pick up on it have informed us that a reference to a relatively obscure German Catholic priest in the closing paragraph of a 20-page article does little to offset the bad impression readers get when they read the name "Pius XI" in connection with the words "church and state." We had hoped to use the notion of "the Kingship of Christ" to criticize the papacy's own compliance with the nation-state during the Fascist years (hence the reference to Fr. Metzger) as a way to pit two voices of Pius XI against each other. But our reference to Pius XI seems to have carried the wrong rhetorical message, making it a "bad example." So before going any further, let me assure the readership: Hey everybody, I'm just as horrified by fascism as the next guy.

Just about everyone who reads and writes for law journals is against fascism. The illuminating question is not *whether* one is against fascism, but *why*. And on this score, some basic disagreements emerge between Dyson's position and the one Hauerwas and I laid out in our article. These disagreements can be summed up as follows: Dyson is against fascism because it is anti-democratic and suppresses religious freedom; Hauerwas and I are against fascism because it sets up a false counter-kingdom to the Kingdom of Christ.

This summary must be spelled out in more detail, but I state it here in order to highlight the fact that Dyson thinks about politics almost entirely in terms of the problematics of managing the nation-state; that is, in terms of statecraft.<sup>8</sup> His criticism of Pius XI is

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5. *Id.* at 139.

6. *Id.*

7. For a short summary of Metzger's life, see LEONARD SWIDLER, *BLOODWITNESS FOR PEACE AND UNITY: THE LIFE OF MAX JOSEF METZGER* (1977).

8. This understanding of politics as statecraft, so widely assumed in contemporary political theory, runs in sharp contrast to classical Augustinian and Thomistic understanding of politics as the practice of acting on behalf of the common good, as I explain below. See *infra* note 66 and accompanying text. For an explanation of the difference between these two understandings, see ALASDAIR C. MACINTYRE, *WHOSE JUSTICE? WHICH RATIONALITY?* (1988).

couched almost entirely in terms of statecraft; his glowing account of the First Amendment<sup>9</sup> is cast in terms of statecraft; his working definition of "politics" is confined to statecraft; and his overall argument is driven by a theory of statecraft — specifically, a liberal democratic (and American) theory of statecraft. To put it bluntly, Dyson writes as a theologian of statecraft, as an apologist of the First Amendment.

I want to spell out the problems with this approach by arguing: (1) that Dyson's reflections amount to little more than an *apologia* for American liberal democracy; (2) that this kind of *apologia*, when undertaken by Catholics in America, has been disastrous in that it has fostered their "moral subordination" to the nation-state; and (3) that "the Kingship of Christ," when properly construed in *political* terms, can generate the theological resources needed to sustain the church's moral insubordination.

The decisive problem with Dyson's position is that he assumes that Christianity is not in itself "political," and must therefore be translated into political terms and then applied to the wider "public" concerns of "the nation." He thinks that Christians who do not undertake this task are irresponsible and irrelevant.<sup>10</sup> Hence, a premium is placed on a Christianity that is willing "to engage the nitty-gritty world of *real politics*,"<sup>11</sup> which for Dyson means nation-state politics. In spite of his own best intentions, Dyson's political vision is, in a word, Constantinian.<sup>12</sup> Because he equates Constantinianism with religious establishment, he believes that the First Amendment is a sure guarantee against Constantinianism. But his critique of Hauerwas and me, as well as his positive reading of the First Amendment, are themselves generated out of a Constantinian vision not entirely unlike that of Pius XI. For it was Pius XI's Constantinian vision that made him all too ready to "engage the nitty-gritty world of real politics" and led him to compromise the integrity of the church; it also blinded him to signs of the holocaust that was to come. In light of such a legacy, we would do well, I think, to consider how enthusiastic theological endorsements of the First Amendment, such as Dyson's, might be leading Christians in America to make similar compromises with secular power and

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9. U.S. CONST. amend. 1.

10. Dyson, *supra* note 2, at 146.

11. *Id.* at 159 (emphasis added).

12. See *infra* note 66 (providing a definition of the term "Constantinian").

might be blinding us to signs of similar holocausts that have been going on for years.<sup>13</sup>

## II. "OVERALL, THE FIRST AMENDMENT HAS BEEN VERY GOOD TO CHRISTIANITY": DYSON'S FIRST AMENDMENT APOLOGETICS

Dyson's apologia for the First Amendment view of religion rests on the claim that "the most important distinction is not between conduct and mere belief, but between freedom of conscience and the coercion to believe."<sup>14</sup> Disregarding the separationist direction that has prevailed in most Supreme Court rulings on church-state cases since *Everson v. Board of Education*,<sup>15</sup> Dyson argues that "[t]his distinction is made clear when we carefully consider in historical context the easily misinterpreted terms of James Madison and Thomas Jefferson, the prime architects of the constitutional concept of freedom of religion."<sup>16</sup> He then proceeds to clarify these "easily misinterpreted terms" by narrating this historical context.<sup>17</sup>

The narrative is a familiar one. The scene is set with the ritual invocation of the religious wars of Europe and the specter of established religion and religious strife in America. The antagonist in the drama is the Church of England (and its colonial surrogates), which is marked by "rigid constraints and narrow practices" and an insistence on defining "the Church in the singular."<sup>18</sup> The protagonists are New Light Presbyterians, Strict Congregationalists, Separate Baptists, Methodists, and apparently any other Protestant denomi-

13. James T. Burtchaell, C.S.C., *Die Buben sind unser Unglück! The Holocaust and Abortion*, in *RACHEL WEeping* 141-238 (1982).

14. Dyson, *supra* note 2, at 131.

15. *Everson v. Board of Educ.*, 330 U.S. 1 (1947) (upholding a New Jersey statute authorizing reimbursement of parents for transportation costs incurred by busing their children to public or private, sectarian schools). For a discussion of the separationism upheld in *Everson*, see Mary Ann Glendon & Raul F. Yanes, *Structural Free Exercise*, 90 MICH. L. REV. 477 (1991).

16. Dyson, *supra* note 2, at 131.

17. Like many interpreters of the First Amendment (including Glendon & Yanes, *supra* note 15), Dyson defends his interpretation with an appeal to what was really happening at the time of the First Amendment's inception and, more specifically, what was happening inside the heads of those who drafted the amendment. In Dyson's case, this appeal to "what really happened" is particularly puzzling due to his ready use elsewhere of Stanley Fish's interpretation. The effect of Fish's work on First Amendment interpretation and on legal and literary theory in general has been to obliterate the assumption that we can ascertain the correct interpretation of a given text on the basis of authorial intention or some historical account of the "objective" facts. For an exposition of Fish's account of interpretation in legal and literary theory, see generally *DOING WHAT COMES NATURALLY* and *THERE'S NO SUCH THING AS FREE SPEECH AND IT'S A GOOD THING, TOO* (1994).

18. Dyson, *supra* note 2, at 134.

nation with a low ecclesiology. These protagonists display a “vibrant religious diversity” which demands that the church be “reconceived in the plural.”<sup>19</sup> The protagonists prevail and the church is “reconceived in the plural” — thanks to an unprecedented maneuver in statecraft whereby religious beliefs are deemed matters of opinion and the government is designed not on the basis of revelation but on the basis of reason and natural rights. The centerpiece of this new arrangement is the First Amendment, “a brilliantly preemptive and bloodless resolution of religious conflict.”<sup>20</sup>

For bringing about this resolution, Dyson gives credit to Enlightenment thinkers, particularly John Locke. But the real heroes in this story are America’s Founders — Thomas Jefferson, James Madison, Benjamin Franklin, and George Washington — who are not only on the mark regarding theory, but also have the wit and wisdom to put theory into practice. Paragons of moderation and good judgment, the Founders are enlightened enough to see beyond the narrow constraints of orthodoxy, yet shrewd enough to appreciate Christianity’s usefulness in forging a “public” morality for the new nation. With this arrangement in place, Dyson suggests, there emerges unprecedented possibilities in the sphere of statecraft: a political order grounded not in some version of orthodox Christian truths, but in the “common moral community” of the various groups in the Republic.<sup>21</sup> This produces a “civil” religion (or what Franklin and others call a “public” religion) which provides the foundations of a “public morality,” thereby contributing to the flourishing of the nation.<sup>22</sup> This new arrangement is considered a blessing not only for the nation but for Christianity as well, for “with the First Amendment a large and vital Christian purpose was served”<sup>23</sup> — to wit, “The ideals of Christian love and tolerance were ironically promoted through the government’s refusal to cede Christianity official status.”<sup>24</sup> Thus the First Amendment ushers in a new, win-win arrangement in statecraft relations; happily teaming up to construct this new Republic, both church and state make out quite well.

Dyson’s narrative would read like a straight comedy (“all’s-well-

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19. *Id.*

20. *Id.*

21. *Id.* at 137.

22. *Id.*

23. *Id.* at 135-36.

24. *Id.* at 136.

that-ends-well"),<sup>25</sup> if it were not for what he calls "the glaring exception"; that is, "chattel slaves, who were for most of their enslavement legally barred from free worship without white supervision."<sup>26</sup> When it comes to slaves, Dyson points out, the new Republic yields no freedom of religion — yet this observation is immediately followed up with an explanation that diminishes the impact of this glaring exception, turning it into a parenthetical remark. Dyson writes: "But even black Christians came to cherish the First Amendment because it protected their hard won freedom to worship without governance, while also giving legal expression to their concern that other groups not suffer similar penalties of social and religious intolerance."<sup>27</sup> The effect of this follow-up explanation is to suspend whatever suspicions might be aroused in the reader owing to the fact that here in America, land of the religiously free, white slave owners policed the religious practices of black slaves. By averting the reader's attention from that ugly fact and keeping the focus on the big picture, Dyson elicits the reader's consent to this conclusion: "Overall the First Amendment has been very good for Christianity."<sup>28</sup> The key word here is "overall": the First Amendment was not very good for Christianity among chattel slaves, but it has been very good for Christianity "overall." What we have here is a tragic episode ("the glaring exception" of "chattel slaves") embedded into a larger, overriding comedic plot line ("the First Amendment has been very good for Christianity"), a typical literary feature of the standard liberal democratic metanarrative.

Of course, Dyson fully intends to put forth a liberal democratic metanarrative. He interprets the struggle of the Civil Rights movement largely as a success story for liberal democracy in that it provided a means for African-Americans to survive.<sup>29</sup> But Dyson's narrative casts American democracy in more favorable terms than merely a means for survival. It reads like a civics textbook's account of American democracy as the monumental solution to the centuries-old problem of religious strife. And like most such accounts, it conceals the narratives of those for whom America's "freedom of religion" has not been very good.

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25. This notion of comedic plot lines in historical narration is taken from HAYDEN WHITE, *METAHISTORY: THE HISTORICAL IMAGINATION IN NINETEENTH-CENTURY EUROPE* 9 (1973).

26. Dyson, *supra* note 2, at 135.

27. *Id.*

28. *Id.* at 136.

29. *Id.* at 153.

Take, for example, Dyson's statement that "[b]y disestablishing religion and establishing religious freedom, the Founders translated an *a priori* denial of privilege to any one religion in particular as the principle for extending privilege to them all."<sup>30</sup> Consider how this formula has worked out for the "religion" of the Cherokee, the Sioux, the Navajo, and the Hopi. Whatever Dyson means here by "religion," it has been made crystal clear to scores of tribes in North America that what the drafters of the First Amendment meant by "religion," does not include theirs.<sup>31</sup> Nor has it included the "religion" of the Mormons who, as Frederick Gedicks tells it, were forced by the Federal government to abandon their divinely sanctioned practice of plural marriage in order to survive.<sup>32</sup> Nor has it included the political vision that has long been considered constitutive to Catholic "religion"; indeed, Locke's notion of religious toleration explicitly excluded Catholicism.<sup>33</sup>

Or to take another example, consider how Dyson credits the First Amendment with "keeping believers from maiming one another over religious disputes" — an accomplishment, he notes with irony, that Christians were not able to manage on their own.<sup>34</sup> What Dyson fails to include here is that now, instead of maiming fellow Americans over religious disputes, Christians in the United States maim Christians and non-Christians of other nations over international disputes whenever their democratically-elected government orders them to do so.<sup>35</sup> Furthermore, regarding America's record on reli-

30. *Id.* at 134 (emphasis added).

31. A beginning sampler of how these indigenous peoples fared under the auspices of the First Amendment might include the following: JOHN EHLE, *TRAIL OF TEARS: THE RISE AND FALL OF THE CHEROKEE NATION* (1988) (regarding the Cherokee); RAYMOND F. LOCKE, *THE BOOK OF THE NAVAJO* 199-464 (1976) (regarding the Navajo); JOHN G. NEIHARDT, *BLACK ELK SPEAKS* (1961) (regarding the Sioux); and FRANK WATERS, *BOOK OF THE HOPI* 270-328 (1963) (regarding the Hopi).

32. Frederick M. Gedicks, *The Integrity of Survival: A Response to Stanley Hauerwas*, 42 *DEPAUL L. REV.* 167 (1992). Gedicks points out that "plural marriage" is otherwise known as "polygamy." *Id.* at 169.

33. John Locke, *A Letter Concerning Toleration*, in 33 *GREAT BOOKS OF THE WESTERN WORLD* 1, 15-16 (Mortimer J. Adler ed., 1990). The parallel between Locke's denial of freedom of religion to Catholics and Milton's denial of freedom of speech to Catholics, as explained by Fish, is unmistakable. See Stanley Fish, *There's No Such Thing As Free Speech and It's a Good Thing, Too* in *DEBATING P.C.: THE CONTROVERSY OVER POLITICAL CORRECTNESS ON COLLEGE CAMPUSES* 231-33 (Paul Berman ed., 1992).

34. Dyson, *supra* note 2, at 136.

35. Supplementing the three Christian theories of war outlined by Roland Bainton, John Howard Yoder adds a fourth: "the blank check," which, I think it is fair to say, has been exemplified by the Catholic Church in the United States. See JOHN H. YODER, *CHRISTIAN ATTITUDES TO WAR, PEACE, AND REVOLUTION: A COMPANION TO BAINTON* 82-88 (1983) (defining "blank



gious freedom during wartime, Dyson's narrative fails to mention that until recently (1940), the United States government jailed Christian and other pacifists for resisting conscription. His narrative also fails to note that the government has never recognized conscientious objection to war, for religious or secular reasons, as a constitutional right (as in Germany) but only as a legislative privilege. And it also fails to note that the government has consistently refused to grant any legal status whatsoever to selective conscientious objection, the official stance of a number of mainline churches.<sup>36</sup> So much for "extending privilege to them all."<sup>37</sup>

More gloss can be teased out of Dyson's text, but this is enough to make my main point: His narrative is rigged for the purpose of demonstrating how "overall the First Amendment has been very good to Christianity," rigged so as to conceal the trade-offs, the compromises, the conflicts, and the bloodshed that are part and parcel of the "national morality." It is a narrative that asserts the primacy of the Constitution of the United States of America over all else, including the church. Indeed, at some points in Dyson's narrative the nation-state becomes the church, with the United States of America taking on the ecclesial role of peacemaker and revealer of God's word in the world.<sup>38</sup> Hence the remarkable reversal of traditional roles in the statement, "Overall the First Amendment has been very good to Christianity," whereby church-state relations become client-patron relations; the patron, the First Amendment, has been "very good" for the client, Christianity. Dyson's narrative of the United States of America serves this relationship very well: It includes only what is safe for democracy.

### III. "CHRISTIANITY AND POLITICS WORKING TOGETHER": MORE BAD EXAMPLES

Accommodationism is an unexpected problem for someone so acutely aware of the struggle of blacks to survive white racism, but

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check" as a ruler's unaccountable decision to engage in war). For a description of the standard three theories of war, see ROLAND BAINTON, *CHRISTIAN ATTITUDES TOWARD WAR AND PEACE: A HISTORICAL SURVEY AND CRITICAL RE-EVALUTAION* 14 (1960) ("Broadly speaking, three attitudes to war and peace were to appear in Christian ethic: pacifism, the just war, and the crusade.").

36. For more a more detailed examination of conscientious objection, see PAUL RAMSEY, *THE JUST WAR* 91-137 (1968); PAUL RAMSEY, *WAR AND THE CHRISTIAN CONSCIENCE* 128-32 (1961).

37. Dyson, *supra* note 2, at 134.

38. *Id.* at 136, 156.

it is unavoidable when one works from a theological paradigm which: (1) assumes "faith" to be in itself apolitical; (2) defines "politics" solely in terms of statecraft; and (3) requires "faith" be translated into "politics." A host of questions arise with this paradigm,<sup>39</sup> but the point I want to make is this: Given the way Dyson sets "faith" and "politics" over and against each other, coupled with his understanding of "politics" as statecraft, any translation of "faith" into "politics" is going to be absorbed into whatever ideology rules the day. The ideology that rules the day for Dyson is "democracy."

Dyson gives us no theoretical resources with which to resist this absorption process, or even to be aware that it is going on. This is because he displays no substantive ecclesiology that can establish an alternative discursive space to the discourse of democracy. He extracts from "faith" certain "principles" or "ideals" which hold strong currency in liberal democratic discourse, such as "justice," "equality," and "freedom," while never acknowledging that these words may have different meanings in ecclesiological discourse.<sup>40</sup> Indeed, at some points in Dyson's text the border between democratic and ecclesiological discourse seems so porous as to be almost nonexistent, as with the utterly mystifying statement, "democracy is a fundamental norm of prophetic black Christianity."<sup>41</sup> It is never clear what Dyson means by "democracy,"<sup>42</sup> except that not embracing it is tantamount to engaging in "bad politics." But, in any case, in this day and age, in the United States of America, when democracy is identified as "a fundamental norm" of Christianity, then it becomes virtually inevitable that ecclesial discourse will be absorbed into the ideology of the nation-state. All of which is to say that "faith," as Dyson conceives of it, possesses a chameleon-like quality of reflecting whatever colors and hues are dominant in the surround-

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39. For example: What specific aspects of "faith" are to be translated into "politics"? Do any elements of "faith" get lost in the translation into "politics"? If so, which losses in translation are acceptable and which are not? What criteria should be used in making such judgments?

40. Dyson, *supra* note 2, at 152.

41. *Id.* at 130 n.4; see also CORNELL WEST, PROPHECY DELIVERANCE!: AN AFRO-AMERICAN REVOLUTIONARY CHRISTIANITY 18-19 (1982) (discussing the prophetic Christian dialectic of human nature and human history as it relates to democracy).

42. Dyson, *supra* note 2, at 154. Several questions arise here about Dyson's use of the word democracy. Is he referring to nation-state politics? If so, does he mean Majoritarianism? Parliamentarianism? Or something else? Is Dyson happy with the three branches of government? Or is he referring to the church? If he is referring to the church, then we have to ask: Should congregations be run democratically? All congregations? Even overtly racist congregations?

ing "political" environment.

This seemingly apolitical conception of "faith" is itself profoundly political, in that it posits a "faith" which, having no content of its own, must transform itself into a discourse that is already sanctioned and approved in "the political realm." In other words, because "faith" does not possess its own political form, it must be invested with a political form derived from the existing political order. This forecloses the possibility of a fundamental theological critique of any existing political order.

Dyson tries to guard against the accommodationist character of his position by positing a distinction between the functional and moral subordination of "religion" (which in his idiom occupies the same conceptual space as "faith") and then declaring that "religion is without question *morally insubordinate* to and *politically independent* of the political realm."<sup>43</sup> But this distinction fails to acknowledge how the hegemony of the modern bureaucratic state holds sway over civil society by means of the pedagogy of the law, which instills "civic values" in citizens. Civic values that dissipate the morally insubordinate potential of subsidiary groups, including of course the churches.<sup>44</sup> Dyson's perspective reinforces this kind of domestication insofar as he measures the significance of Christian civil disobedience (in the Civil Rights and anti-nuclear movements) in terms of their long-range program of political reform.

As a way of illustrating the accommodationist character of this "faith-translated-into-politics" paradigm, I want to bring forth an example: the practice of slavery by Catholics in the United States. The story of slavery in the Americas goes back to the sixteenth century, when African slaves were first brought to the New World by Spanish and Portuguese conquerors.<sup>45</sup> With few exceptions, this practice was regularly justified and given moral sanction by the Catholic Church hierarchy which, as the representative of the established church of these empires, acquiesced in the workings of secular

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43. *Id.* at 139.

44. For an explanation of the notion of hegemony as I am using it, see ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS OF ANTONIO GRAMSCI 245-47 (Quintin Hoare and Geoffrey N. Smith eds. & trans., 1987). See also RAYMOND WILLIAMS, KEYWORDS: A VOCABULARY OF CULTURE AND SOCIETY 117-18 (1976) (detailing the history and evolution of the definition of hegemony).

45. CYPRIAN DAVIS, O.S.B., THE HISTORY OF BLACK CATHOLICS IN THE UNITED STATES 20-33 (1990). This example is taken almost entirely from Davis's book.

power.<sup>46</sup> "Religious freedom" in the new Republic did nothing to alter this arrangement.

In 1785, John Carroll, superior of the priests working in the missions in Maryland (and eventually archbishop of the Catholic Church in the United States), reported that of the 15,800 Catholics in Maryland, 3,000 were black slaves.<sup>47</sup> His report expressed no dismay over this condition, except that it raised complicated canonical questions regarding impediments to marriage among slaves by reason of affinity.<sup>48</sup> Indeed, Carroll himself owned slaves, and while he did, on occasion, harbor reservations about their circumstances, these emerged out of concern for pastoral care and literacy, not the injustice of the practice itself.<sup>49</sup> Carroll, who for Catholic historians serves as the emblematic figure of Catholicism in the Republican era, was not exceptional. Many bishops owned slaves, as did officials of several other religious orders. The Jesuits, who served the early Catholic settlers of Maryland in the mid-seventeenth century, were the first to use slaves on their estates, and several other slave-owning religious orders of both men and women followed suit, including: the Vincentians, the Sulpicians, the Capuchins, the Carmelites, the Daughters of the Cross, the Religious of the Sacred Heart, the Visitation Sisters, the Dominican Sisters, the Sisters of Charity, and the Sisters of Loretto.<sup>50</sup> It was, in the words of Cyprian Davis, "the Catholic church in chains."<sup>51</sup>

These chains were held in place by a disturbingly truncated ecclesial vision on the part of the Catholic clergy, religious orders, and laity who owned slaves. It was generally understood that slaveholders were responsible for the pastoral well-being of their slaves. Catholic owners could therefore be remarkably solicitous about the pastoral care of the slaves in their charges, sponsoring them at baptism, witnessing their marriages, and arranging for their attendance at mass on a weekly basis. But rarely, if ever, did slave owners perceive this pastoral concern for slaves to be in conflict with the exigencies

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46. Davis explains that Catholic moral theologians, under the (erroneous) assumption that black Africans were Moslems, deemed it acceptable, on just war grounds, to enslave them rather than the indigenous peoples of the New World. For an explanation of this reasoning, as well as examples of Catholics who opposed slavery and the slave trade, see *id.* at 21-27.

47. *Id.* at 35.

48. *Id.*

49. *Id.* at 41.

50. *Id.* at 37-39.

51. *Id.* at 38. The second chapter of Davis's history is entitled, "Catholic Settlers and Catholic Slaves: A Church in Chains."

of the institution of slavery itself. Yet the conflicts were there. As critics pointed out (in some cases, as an attempt to advance what amounted to a theory of "just slavery"), the practice of slavery in the United States led to the violation of matrimonial rights of black Catholics, the break-up of their families, the neglect of their catechetical needs, and the denial of adequate food, clothing, and shelter.<sup>52</sup> But none of these abuses seems to have claimed much notice. Nor did Pope Gregory XVI's condemnation of the slave trade in an 1839 apostolic letter entitled *In Supremo Apostolatus Fastigio*<sup>53</sup> have any effect; the encyclical, proponents of slavery argued, did not refer to circumstances in the United States.<sup>54</sup> Nor did the fact that most Catholics outside the United States, by the mid-nineteenth century, found slavery to be intolerable.<sup>55</sup> None of these factors curbed the practice of slavery among Catholics in the United States.<sup>56</sup>

The reason: Church practices such as prayer, the sacraments, devotional piety, and so on were generally thought to pertain only to the soul, not the body. This precluded the possibility of a genuine Christian politics that is, a politics grounded in the substantive life of the church (more on this later), and thereby allowed the "politics" of Catholics to be shaped by their surrounding political and cultural landscape. This political and cultural landscape included the assumption of black inferiority.<sup>57</sup> This political conformity held true even in the years immediately preceding the Civil War. Although by this time there was profound disagreement among Catholics over slavery, the disagreements were formed along sectional lines. As the nation divided between North and South over slavery, Catholics also divided accordingly; they conformed to the political beliefs of the state or section of the country in which they resided. During these years the Catholic bishops never formally addressed the issue of slavery; this was a conscious effort to remain free of "political" matters, leaving them to the discretion of the laity, and thus making it possible in such conflicted times for Catholics to remain united in "faith."<sup>58</sup>

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52. *Id.* at 43-46, 52-56.

53. *Id.* at 39, 46-47.

54. *Id.* at 46-47.

55. *Id.* at 66.

56. *Id.*

57. *Id.* at 59.

58. The historical data and analysis cited here is found in JOHN T. ELLIS, AMERICAN CATHOLI-

This generally accepted division between “faith” and “politics” among Catholics explains how Catholic slave owners could reconcile caring for the souls of slaves while at the same time buying, selling, and abusing their bodies. On the basis of this (corrupt) dichotomy, ecclesial practices of pastoral care and salvation were rendered apolitical and therefore adaptable to any politics, including politics in support of slavery. The result was an assumed harmony between ecclesial practice (“faith”) and secular matters (“politics”). Conflict between the two was virtually inconceivable. When a conflict did emerge between the exigencies of slavery and salvation, between the market value of bodies and the pastoral care of souls (as with non-canonical marriages or the selling of slaves to non-Catholics<sup>59</sup>), the concerns of salvation and the care of souls were abandoned in favor of the damnable institution of slavery.<sup>60</sup>

This chameleon-like adaptability of “faith” to “politics” became even more pronounced during the Civil War. Catholics, including chaplains, served on both sides of the war, thus creating “Union Catholics” and “Confederate Catholics.” And with time it became clear that the Catholic “faith” could also be accommodated to the “politics” of segregation, the so-called Indian Wars, the Spanish American War, World War I, World War II, the Korean War, and the Cold War. Catholic “faith” also proved accommodating to the “politics” of industrial growth in the post-World War II era and the prosperity that came with it, as well as to the expansion of U.S. economic interests around the world. All of which is to say that “faith,” as it was mistakenly conceived in this dichotomy, both during slavery and since, has been accommodated to whatever is currently understood to constitute “politics” — thus producing a litany of “bad examples.”

Most Catholic theorists would argue that an appropriate corrective to this faith/politics dichotomy emerged with the development in the twentieth century of what has come to be known as “public theology”; that is, a theology that speaks not only to the church but to “the nation.” Claiming the mantle of John Courtney Murray, a preponderance of Catholic theologians and ethicists have expanded

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CISM 91-94 (2d ed. rev. 1969).

59. Selling Catholic slaves to non-Catholics would have imperiled their salvation because, in the eyes of most Catholic slave owners, one had to be a member of the Catholic Church in order to gain salvation. For a more detailed description of this tension between the competing interests of slavery and salvation, see DAVIS, *supra* note 45, at 39-46.

60. *Id.*

this project in the years since Vatican II.<sup>61</sup> Moreover, with the infusion of biblical language into Catholic theological reflection since the Council, the task of Catholic social ethics has been supposedly retooled. That task is now understood to be the translation of key precepts from the gospel ("faith") or the natural law into principles that can then be applied to the United States' public policy agenda ("politics"). The U.S. Bishops' pastoral letters on war and peace (1983)<sup>62</sup> and the economy (1986)<sup>63</sup> are commonly cited by Catholics and mainstream Protestants as paradigms of the Church's commitment to providing an ethic for "the nation." But this alleged shift is a masquerade that has allowed contemporary Catholic social ethics to maintain "good conscience" while continuing the long tradition of Catholic accommodation to America.<sup>64</sup>

By translating scriptural or natural law precepts into principles acceptable in a religiously pluralistic society ("freedom," "justice," "equality," and various individual rights), Catholic theologians, both liberal and neo-conservative, have actually reinforced the political machinery they claim to challenge.<sup>65</sup> Likewise, the U.S. Catholic Bishops, by appropriating terms and categories conducive to a dialogue with U.S. policymakers, have obtusely clung to a reformist strategy that precludes a fundamental critique of American imperialism and its irreformability. Indeed, this strategy of the bishops, as well as the general approach of Catholic ethicists, reveals a "Constantinian bias"; that is, a bias toward seeking to influence the consciences of powerholders and to manipulate the political process by proffering an ethic of statecraft.<sup>66</sup> Thus, in the post-Vatican II era,

61. The Vatican Council, 1962-65.

62. *The Challenge of Peace: God's Promise and Our Response*, 13 ORIGINS 1 (May 19, 1983).

63. *Economic Justice for All: Catholic Social Teaching and the U.S. Economy*, 16 ORIGINS 33 (June 5, 1986).

64. The argument that follows is drawn considerably from MICHAEL L. BUDDE, *THE TWO CHURCHES: CATHOLICISM AND CAPITALISM IN THE WORLD SYSTEM* 74-125 (1992) (discussing how U.S. "Catholic Nationalism" posits a harmony between religious convictions and moral and civil responsibility).

65. *Id.* at 105-25 (identifying this unintended reinforcement of the political machine as a weakness of several prominent Catholic ethicists writing today, including Charles Curran, Richard McBrien, Dennis McCann, and George Weigel).

66. *Id.* at 91; see also Dyson, *supra* note 2 at 133 n.17 (citing Robert N. Bellah, *The Idea of Practices in Habits: A Response*, in *COMMUNITY IN AMERICA: THE CHALLENGE OF HABITS OF THE HEART* 269 (Charles H. Reynolds & Ralph V. Norman eds., 1988)). Bellah defines Constantinianism as the danger that "Christianity will be used instrumentally for the sake of creating political community but to the detriment of its own authenticity." Dyson, *supra* note 2, at 133 n.17 (citing Bellah, *supra*, at 277). But written into this definition is a social vision that describes "creating political community" solely in pluralistic terms, thus making it impossible to view the

“faith” continues to conform to the dominant political assumptions of the United States of America. That the Catholic Church in America today has become so clearly divided into liberal and conservative camps indicates its inveterate subservience to American political culture.

I have elaborated these recent developments in Catholic ethics because they parallel Dyson’s theological agenda and its attendant accommodationism. As profoundly as Dyson’s perspective has been shaped by the history of the black church, it is also determinatively shaped by the liberal Protestant assumption that “faith” consists first of an “experience” that must then be given social and political “expression.”<sup>67</sup> This, in turn, shows a deep tension in Dyson’s position: While readily claiming to proffer a politically charged, morally insubordinate form of Christianity, he at the same time undertakes a Constantinian agenda of providing an ethic for the nation.

It is difficult to see how Dyson can have it both ways. Yet the fact that he wants it both ways explains why he glibly labels any decisive rejection of Liberal Protestantism’s Constantinian project as “sectarian.”<sup>68</sup> In the Liberal Protestant context, the term “sectarian” was developed most powerfully by Troeltsch.<sup>69</sup> It was then transmitted to America (with revisions) by H. Richard Niebuhr,<sup>70</sup> and it has been deployed by ethicists and historians, working under Niebuhr’s spell,<sup>71</sup> as a way to marginalize any theological perspective that finds Christianity to be at fundamental odds with America. In employing the term “sectarian,” Dyson positions himself squarely within this tradition. Functioning comfortably within Liberal Protestant categories, Dyson’s account of the relation between American

construction of local forms of Christian community as a political task. Bellah is working from a liberal democratic understanding of politics, as opposed to a classical Aristotelian and Thomistic one.

67. I regard Dyson’s theological position as reflective of what George Lindbeck refers to as “experiential expressivism.” See GEORGE A. LINDBECK, *THE NATURE OF DOCTRINE: RELIGION AND THEOLOGY IN A POSTLIBERAL AGE* 31 (1984).

68. Dyson, *supra* note 2, at 139-40.

69. For a development of the term sectarian, see ERNST TROELTSCH, *THE SOCIAL TEACHING OF THE CHRISTIAN CHURCHES* (Olive Wyon, trans. 1931) (both volumes).

70. See H. RICHARD NIEBUHR, *CHRIST AND CULTURE* (1951); H. RICHARD NIEBUHR, *THE SOCIAL SOURCES OF DENOMINATIONALISM* (1929).

71. I would include John C. Bennett and Martin E. Marty among the scholars working under Niebuhr’s spell, both of whom Dyson cites. Dyson, *supra* note 2, at 132 n.9 (citing MARTIN E. MARTY, *PILGRIMS IN THEIR OWN LAND: 500 YEARS OF RELIGION IN AMERICA* (1984)). See also *id.* at 135 n.22 (citing John C. Bennett, *Church and State in the United States*, in *REFORMED FAITH AND POLITICS* 121 (Ronald H. Stone ed., 1983)).



democracy and Christian faith accepts a most remarkable assumption; namely, that the interests of the prophetic black church coincide with the interests of the United States of America.

I do not believe that Dyson can escape this assumption as long as he continues to work out of a theoretical paradigm that requires "faith" to be translated into "politics." Indeed, insofar as his narrative attributes the success of the Civil Rights movement to the employment of this theoretical paradigm, this assumption is intractable. But along with it comes this danger: when "faith" is thought to lack a political shape of its own, its translation into "politics" will inexorably and invariably lead to an affirmation of American democracy as the best available "method of finding proximate solutions to insoluble problems."<sup>72</sup> The phrase belongs to Reinhold Niebuhr, and one can clearly detect a Niebuhrian ring in Dyson's text, particularly where he chides Hauerwas and me, in good Christian Realist fashion, for refusing "to engage the nitty-gritty world of real politics. . . ."<sup>73</sup>

This raises a crucial methodological question: What criteria should we use in this "nitty-gritty world of real politics" in making discriminating judgments about matters of relative justice? Criteria such as "equality" and "freedom" are not adequate in themselves as became increasingly clear when Reinhold Niebuhr moved from the role of critic of American capitalism in the thirties to that of apologist of American cold war politics in the fifties.<sup>74</sup> Given Dyson's account of the harmony between Christianity and American democracy, one wonders whether there are any criteria which would lead him to conclude that the *imperium* called the United States of America just might be a counter-kingdom to the Kingdom of Christ.

#### IV. THE KINGSHIP OF CHRIST AND THE PRACTICES OF CHRISTIAN POLITICS

Dyson's assumption that "faith" must be translated into "politics" compels him to read a theological notion like the "Kingship of Christ" as inherently apolitical. It is this reading, a false one I shall

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72. The phrase comes from REINHOLD NIEBUHR, *THE CHILDREN OF LIGHT AND THE CHILDREN OF DARKNESS* 118 (1960).

73. Dyson, *supra* note 2, at 159.

74. For an example of this progression, compare REINHOLD NIEBUHR, *MORAL MAN AND IMMORAL SOCIETY: A STUDY IN ETHICS AND POLITICS* (1936) with REINHOLD NIEBUHR, *THE STRUCTURE OF NATIONS AND EMPIRES* (1959).

argue, that gives rise to his thumping charge that Hauerwas and I proffer an apolitical, socially disembodied version of Christianity. This is not so, but in order to see why, one must undertake a different description of politics.

If “politics” is described in liberal democratic terms — as an arrangement in which the conflicting interests of individuals and subsidiary groups are adjudicated by the state — then substantive religious convictions must be translated into “interests,” thus divesting them of any inherent political valence. However, if “politics” is redescribed in traditional theological terms — as the art of achieving the common good through participation in the divine life of God — then substantive religious convictions are central to legitimate political authority, and interest group “politics” is not truly “politics” at all, but a cacophonous conflict of wills.<sup>76</sup> Understood theologically, politics entails the ordering of human relationships according to their ultimate end: God. The primary political setting in which this ordering occurs is the church. If the true *polis* is constituted by the practices of assembled Christians called “the church,” the “pilgrim City of God,”<sup>76</sup> then “faith” is intrinsically political. Christianity does not “work with politics,” nor “apply to politics,” nor have “political implications.” Christianity is *always already* political.

A Christian understanding of politics is grounded in what Luigi Sturzo, among others, called a “sociology of the supernatural.”<sup>77</sup> The importance of a sociology of the supernatural, or “integral sociology,” was that it rejected the existence (in anything but the abstract<sup>78</sup>) of a permanent level of fixed natural law, “pure nature,”

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75. Augustine, *Concerning the City of God, Against the Pagans* 877-83 (Henry Bettenson trans., 1984) (3d ed. 1467).

76. *Id.* at 761-842.

77. LUIGI STURZO, *THE TRUE LIFE: SOCIOLOGY OF THE SUPERNATURAL* (Barbara Barclay Carter trans., 1943) [hereinafter STURZO, *TRUE LIFE*]. Luigi Sturzo (1871-1959) was a social theorist, historian, political leader, and Catholic priest. Influenced in his seminary training by Leo XIII's *Rerum Novarum* and by the teachings of economist Guiseppe Toniolo, Sturzo moved into politics. R.C. Pollock, *Sturzo, Luigi*, in 13 *NEW CATHOLIC ENCYCLOPEDIA* 749-50 (1967). First he was deputy mayor of Caltagirone between 1905 and 1920; later, he was the moving spirit behind the Partito Popolare, forerunner of the Italian Christian Democratic party. *Id.* A democratic party of Catholic orientation, the Partito Popolare, was suppressed by Mussolini in 1926, by which time Sturzo had been in exile for two years. *Id.* During his years in exile, Sturzo authored several books, including *ITALY AND FASCISM* (1927), *THE INTERNATIONAL COMMUNITY AND THE RIGHT OF WAR* (1930), *CHURCH AND STATE* (1939), *THE TRUE LIFE* (1943) and *INNER LAWS OF SOCIETY* (1944).

78. STURZO, *TRUE LIFE*, *supra* note 77, at 73 (noting that “pure nature” had to be posited in the abstract in order to preserve the gratuity of grace).

upon which politics could be built. Instead, it affirmed the necessity of referring politics to its transcendent, final cause. Sturzo's notion of "integral sociology" consists of the endeavor, in John Milbank's words, "to read all human society as 'supernatural' or as groping toward the 'true life' of proper relation to God and to fellow human beings: here alone, one has a 'sociology.'" <sup>79</sup> A "sociology of the supernatural," in other words, is shaped by a particular mode of human association, the church. It recognizes faith not in theoretical speculation or interior "belief" but in the social forms which decisively bind its members together: "[R]eligious practices, and the ideas embodied in those practices."<sup>80</sup> Thus Sturzo's "integral sociology" proceeds beyond the sociology of secular positivism (Comte and Durkheim<sup>81</sup>), and beyond that of theocratic positivism (de Bonald and de Maistre<sup>82</sup>), to arrive at a vision of human community that is irreducibly supernatural.

Sturzo's sociology of the supernatural is fully ecclesial and intrinsically political, because the church is the site at which human finality is definitively encountered and partially realized.<sup>83</sup> As such, the church is the normative form of politics, constituted by the sacraments, traditions, creeds, stories of martyrs and saints, works of mercy, and a full array of activities directed to the transformation of social structures through lay Christian influence. In the thirties and forties these activities came under the heading of "Catholic Action," a church-sponsored program of lay formation designed to resist the totalizing character of the modern state. Sturzo argued that because the encroaching dominance of the modern state "aspire[d] to be a *Weltanschauung*, a conception of the world and of life, in substance a religion," Catholic Action must serve as a means to advance a counter-hegemonic Christian *Weltanschauung*.<sup>84</sup>

79. JOHN MILBANK, *THEOLOGY AND SOCIAL THEORY: BEYOND SECULAR REASONING* 224-25 (1991). My presentation of Sturzo is deeply indebted to Milbank.

80. *Id.* at 225.

81. For a discussion of the contrast between Sturzo and both Comte and Durkheim, see *id.* at 224.

82. In de Bonald and de Maistre we find groundwork for the kind of reactionary Catholic political thought that in some ways became a precursor to Fascism. For a critique of de Bonald and de Maistre, see *id.* at 51-71. For an exploration into the proto-Fascist elements in de Maistre's thought, see Isaiah Berlin, *Joseph de Maistre and the Origins of Fascism*, N.Y. REV. BOOKS, Sept. 27, 1990, at 57-64; Isaiah Berlin, *Joseph de Maistre and the Origins of Fascism: II*, N.Y. REV. BOOKS, Oct. 11, 1990, at 54-58; Isaiah Berlin, *Joseph de Maistre and the Origins of Fascism: III*, N.Y. REV. BOOKS, Oct. 25, 1990, at 61-65.

83. MILBANK, *supra* note 79, at 224.

84. LUIGI STURZO, *CHURCH AND STATE* 535 (1939) [hereinafter STURZO, *CHURCH AND*

It is in this context that Sturzo's work in the Christian Democratic Party must be understood. For Sturzo, Christian Democracy was a profoundly ecclesial and unmistakably Catholic movement designed to combat the deleterious effects of state sponsored secularism upon the family and the education of the youth. Toward this end Sturzo wrote, "Christian democrats have acted as mystical currents among the masses."<sup>85</sup> As such, Sturzo's Christian democracy was a far cry from Dyson's Americanist version of democracy as a political movement contained within a purely secularized realm. Indeed, Sturzo contended that American democracy "suffered the effects of rationalistic and even positivist political philosophies,"<sup>86</sup> resulting in, among other things, a pervasive "religious agnosticism in the ruling classes and in the schools."<sup>87</sup> This intellectual milieu, evident most clearly in the fields of sociology and political science, "invaded the realm of legislations, took the place of Christian traditions and created its own public and private morality which was defined as the 'way of life' of each people or nation."<sup>88</sup>

Because Sturzo's "sociology of the supernatural" is, in Milbank's words, "an attempt to read all historical and social reality through the practice of the Church,"<sup>89</sup> all the various historical configurations of the relationship between church and state must be "read" against the politics inherent in the church's own "true life." Resisting the impulse to declare any one particular church-state configuration as normative, Sturzo opted instead to employ the grammar of the church in making judgments as to how the church might best negotiate its position amid the historical forces at work in a given context.<sup>90</sup> These judgments varied, depending on the possibilities and constraints entailed in the church's position *vis-à-vis* the government of a specific time and place. Faithful Christian politics would take one form in the medieval times, another form in antiquity, yet another in a Communist totalitarian setting, and still another form in relation to a modern liberal state.<sup>91</sup>

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85. STURZO, TRUE LIFE, *supra* note 77, at 264.

86. Luigi Sturzo, *The Philosophic Background of Christian Democracy*, 9 REV. POL. 3, 8 (1947).

87. *Id.*

88. *Id.*

89. MILBANK, *supra* note 79, at 225.

90. *Id.* at 260-64.

91. *Id.*

So then, what form would faithful church politics take in the contemporary United States? An answer is suggested in the work of Paul Hanley Furfey who, like Sturzo, grounded politics in "supernatural sociology."<sup>92</sup> Also like Sturzo, Furfey rebelled against any tendency to conceive of "the social" apart from theological categories. Scientific data, he argued, can never in themselves provide a true understanding of society; rather, such understanding must come from a comprehensive social vision such as that laid out by Augustine and Aquinas.<sup>93</sup> Furfey's social vision was resolutely theological, grounded in the trinitarian notion of charity as "participation in the immanent life of God"<sup>94</sup> and in the doctrine of "the Mystical Body of Christ."<sup>95</sup>

Furfey's "supernatural sociology" is best seen as a form of Catholic integralism, but not the brand of integralism that served as a vehicle for European fascist ideology, which both Furfey and Sturzo strongly rebuked. Although the "confessional state" (with Catholicism as the established religion) was the norm for conventional Catholic church-state theory in his time, Furfey never endorsed the confessional state theory with its coercive implications. He opted instead to stress the voluntaristic and peaceable character of infused charity.<sup>96</sup> As part of his contention that the major institutions of modern capitalist society have been captured by the world and that Christians have grown dangerously complacent in a "corrupt" age that is "shockingly at variance with [Catholic] principles,"<sup>97</sup> Furfey advocated "the duty of bearing witness"<sup>98</sup> and "the technique of non-participation."<sup>99</sup> These were strategies for calling into question the existing social order and for generating a Christian alternative to that order.<sup>100</sup>

One of Furfey's concrete alternatives was the Catholic Worker, for which he was an unofficial theological spokesperson. Founded in 1933 by Dorothy Day and Peter Maurin, the Catholic Worker is

92. PAUL H. FURFEY, *FIRE ON THE EARTH* 1-21 (1936).

93. *Id.* at 9-11.

94. *Id.* at 32.

95. *Id.* at 51.

96. For Furfey's ambivalence on the confessional state, see *id.* at 90. For his emphasis on the interior, noncoercive character of charity, see MEL PIEHL, *BREAKING BREAD: THE CATHOLIC WORKER AND THE ORIGIN OF CATHOLIC RADICALISM IN AMERICA* 126-28 (1982).

97. FURFEY, *supra* note 92, at 97.

98. *Id.* at 98-116.

99. *Id.* at 117-36.

100. *Id.* at 97.

committed to a concrete embodiment of gospel through prayer, the sacraments, feeding and housing the poor and homeless, and witnessing for peace.<sup>101</sup> The ethos of the Catholic Worker may be summed up as a commitment to embodying the lesson in the parable of the last judgment.<sup>102</sup> In that parable, the Son of man is identified as a king and the virtuous enter eternal life by putting into practice the works enumerated by the king: feeding the hungry, clothing the naked, visiting the sick, and caring for prisoners. Thus, performing these practices is what it means to live under the Kingship of Christ.

The shape of this life was profoundly political — why else would the Federal Bureau of Investigation have a thick file on Dorothy Day?<sup>103</sup> — but it was a Christian politics that constantly negotiated the claims placed on that life by other political, economic, and social authorities in light of the church's vocation of faithfully embodying Christ in the world. Thus the concrete embodiment of this christologically-formed politics has ranged widely over the years: fighting for housing rights for the poor; supporting labor, such as striking sailors and farm workers; setting up work camps for conscientious objectors during World War II; protesting against nuclear weapons; organizing resistance to the draft and the Vietnam War; harboring Central American refugees; and so on. In an effort to “make the encyclicals click,” as Peter Maurin put it,<sup>104</sup> the Catholic Worker takes *Rerum Novarum*<sup>105</sup> and *Quadragesimo Anno*<sup>106</sup> in a distributist or decentralist direction, which results in a “localist politics” that provides an alternative to the depersonalizing bureaucracy of the modern liberal nation-state.<sup>107</sup>

What the Catholic Worker exemplifies is that Christian faith, in and of itself, is political and that it embodies this politics in the very gathering of Christians to live out the gospel. There are many Christian communities that exemplify this kind of politics, only a

101. DOROTHY DAY, *THE LONG LONELINESS* 169-286 (1952).

102. *Matthew* 25:31-46 (Jerusalem Bible).

103. JAMES W. MCCLENDON, JR., *ETHICS: SYSTEMATIC THEOLOGY* 276 (1986).

104. DAY, *supra* note 101, at 194.

105. Pope Leo XIII, *Encyclical on the Condition of the Workingmen (Rerum Novarum)*, May 15, 1891, reprinted in *SOCIAL WELLSPRINGS: FOURTEEN EPOCHAL DOCUMENTS BY POPE LEO XIII* 164 (Joseph Husslein ed., 1940).

106. Pope Pius XI, *Encyclical on Restoring the Christian Social Order (Quadragesimo Anno)*, May 15, 1931, reprinted in *2 SOCIAL WELLSPRINGS: EIGHTEEN ENCYCLICALS OF SOCIAL RECONSTRUCTION BY POPE PIUS XI* 174 (Joseph Husslein ed., 1942).

107. For an account of this “localist politics,” see ROBERT COLES, *DOROTHY DAY: A RADICAL DEVOTION* 89-109 (1987).

few of which I list here in order to give more flesh and blood and social and historical location to what I am describing: the Bruderhoff; the Koinonia Community in Americus, Georgia; the Worker Priest movement; some ecclesial base communities of Latin America; most Trappist monasteries; the Little Sisters and the Little Brothers of Jesus; the L'Arche Community; and any other body of believers whose lives are similarly grounded in the life of the one, holy, catholic, and apostolic church.

The prophetic black churches belong on this list, for they have certainly exemplified a Christian faith that is, in and of itself, political. This is why their fruition in the Civil Rights movement is better described not as a victory for the First Amendment, but as a victory for the black churches themselves. Through patient and faithful endurance they were able to educate people like Martin Luther King, Jr., and many others in a politics that resisted both racism and the resentment it engenders. The prophetic black churches thereby enabled African-Americans to acquire a sense of peoplehood that was denied them in American democracy. On this score, if it can be said in response to the 1956 Supreme Court ruling that outlawed segregated transportation<sup>108</sup> that "God Almighty has spoken from Washington, D.C.,"<sup>109</sup> then it can also be said that this was only because God Almighty had already spoken from Montgomery, Alabama. God had spoken in the late night meetings of organizers, in the songs and chants of the boycotters, in the preaching of Martin Luther King, Jr. — and most importantly in the witness of their many predecessors who, in the midst of slavery and segregation, spent their lives faithfully handing on the gospel to the next generation.

#### V. OVERALL, THE FIRST AMENDMENT HAS CO-OPTED CHRISTIANITY

And yet, it may be better to avoid the notion of God speaking from Washington, D.C. altogether, since the vocabulary coming out of Washington is chronically ambivalent. As we have learned in recent years, words like "freedom," "justice," and "equality" can be put to use not only by the Southern Christian Leadership Council but also by the Ku Klux Klan; not only for good ends, such as inte-

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108. *Browder v. Gayle*, 142 F. Supp. 707 (M.D. Ala. 1956), *aff'd*, 352 U.S. 903 (1956) (striking down Alabama statutes that required segregated bussing in Montgomery on due process and equal protection grounds).

109. Dyson, *supra* note 2, at 129.

grating bus lines and lunch counters, but also for pernicious ends, such as rolling back civil rights and protecting racially hateful speech. Twenty years ago, the relationship between the United States and the well-being of African-Americans seemed positive and progressive; today, it is not clear whether that relationship will remain stable over the next twenty years. Perhaps the differences separating Dyson and myself stem from the fact that he writes as one whose church has shown how the political machinery of the state can be used as a vehicle for justice; whereas I write as one whose church has shown how the political machinery of the state can be used as a vehicle for injustice. This is what makes me wary of enthusiastic appraisals of any nation-state, including the United States of America, whose First Amendment, overall, has co-opted Christianity.

It is always dangerous to draw parallels too closely between European fascism and American democracy. Nonetheless, certain parallels exist. As World War II was coming to a close, Luigi Sturzo warned that Fascism would not die with Mussolini. He wrote that "the Fascism that ante-dates Mussolini — the Fascism of all times and all countries — that brand of Fascism never dies. It adapts itself, instead, to all climates and all temperatures; it dresses according to the fashion, disguises itself and hides."<sup>110</sup> Moreover, Sturzo detected "Fascist residues in the Western countries which are presumed to be, now or in the future, democracies."<sup>111</sup> Among these he included America because of its propensity to demonize its wartime enemies and breed nationalist resentment — a propensity that was recently exhibited again in America's crusade for the "democracy" of Kuwait. Given the fact that yellow ribbons were readily seen on church doors during the Gulf War, it seems that the church's primary task in fostering religious freedom is one of formation: forming Christians so that they have the skills and practices needed to identify the Fascism that dresses according to American fashion, that hides itself under American disguise.

In this regard, the First Amendment has not been very good to Christianity. Indeed, as the Supreme Court in recent decades has curbed the freedom of the churches by what Justice Arthur Goldberg once called "a brooding and pervasive devotion to the sec-

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110. Luigi Sturzo, *Has Fascism Ended With Mussolini?*, 7 REV. POL. 306, 306 (1945).

111. *Id.* at 311.



ular and a passive, or even active, hostility to the religious."<sup>112</sup> This is but a symptom of what Sturzo called the "confessionalism" of the secular state.<sup>113</sup> It is a confessionalism which has gained hegemony in many sectors of American society, as was made painfully evident in August 1992 when the American Bar Association formally endorsed the right to privacy as expressed in *Roe v. Wade*.<sup>114</sup> On this score, there is another "real wall of separation most grievous to American Christianity and the Church of Christ."<sup>115</sup> It is the wall of separation between the born and the unborn.

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112. *School Dist. of Abington v. Schempp*, 374 U.S. 203, 306 (1962) (Goldberg, J., concurring); see Glendon & Yanes, *supra* note 15, at 496 (discussing Justice Goldberg's concurrence which "agreed that the attitude of government toward religion must be one of neutrality, but he saw that there were several ways in which that elusive concept could produce outcomes that were far from neutral").

113. STURZO, *CHURCH AND STATE*, *supra* note 84, at 526.

114. *Roe v. Wade*, 410 U.S. 113 (1973). For the American Bar Association's endorsement of this opinion, see Tamar Lewin, *3,000 Quit Bar Group Over Abortion Policy*, N.Y. TIMES, Nov. 6, 1992, at A30.

115. Dyson, *supra* note 2, at 159.