
Volume 42
Issue 1 Fall 1992: *Symposium - Confronting the
Wall of Separation: A New Dialogue Between
Law and Religion on the Meaning of the First
Amendment*

Article 10

"God Almighty Has Spoken from Washington, D.C.": American Society and Christian Faith

Michael Eric Dyson

Follow this and additional works at: <https://via.library.depaul.edu/law-review>

Recommended Citation

Michael E. Dyson, *"God Almighty Has Spoken from Washington, D.C.": American Society and Christian Faith*, 42 DePaul L. Rev. 129 (1992)

Available at: <https://via.library.depaul.edu/law-review/vol42/iss1/10>

This Article is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Law Review by an authorized editor of Via Sapientiae. For more information, please contact digitalservices@depaul.edu.

"GOD ALMIGHTY HAS SPOKEN FROM WASHINGTON, D.C.": AMERICAN SOCIETY AND CHRISTIAN FAITH

Michael Eric Dyson*

As usual, Stanley Hauerwas (this time with Michael Baxter) has given us a great deal to think about in wrestling with the persistent problems growing out of the church-state debate. Arguing that there are irresolvable tensions between American society and Christian faith, the authors deliver a tough rebuke to those theologians who "posit some kind of harmony between the two by means of a so-called church-state theory."¹ The authors further maintain that most Christian theologians conspire to "privatize and subordinate Christianity," especially when they assume that "Christianity consists of a set of beliefs (mere belief) that can be abstracted from practices and actions (conduct)."² The danger, as the authors see it, is that Christian belief gets removed from its legitimate social context in the Church and becomes conceived as a matter of individual freedom. The remedy that Hauerwas and Baxter propose is for Christians to reclaim their ecclesiastical and social identity as "the people who acknowledge the Kingship of Christ."³

One need not accept (and indeed I do not) the authors' arguments about the value and function of church-state debates in discussions of religious freedom to affirm that the Kingship of Christ is crucial for the health of Christian churches. Still, I remain deeply suspicious of their claims about the social form that best serves and expresses Christian belief. Their arguments about the church's role in society suffer from the same flight from social embodiment that they

* Assistant Professor of American Civilization and Afro-American Studies, Brown University. The author has written for *The New York Times Book Review*, *The Chicago Tribune*, *The Christian Century*, *Christianity & Crisis*, *Theology Today*, *Cultural Critique*, *Rolling Stone*, *Sight and Sound*, *Z Magazine*, *The Nation*, *Transition*, and *Emergence Magazine*, on which he serves a Contributing Editor. His book, *Reflecting Black: African-American Cultural Criticism*, will be published next spring by the University of Minnesota Press.

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

2. *Id.* at 110.

3. *Id.*

claim characterizes their opponents' in the church-state debate. And the intellectual road Hauerwas and Baxter travel inductively from their conclusion of Christ's Kingship — leading through arguments about freedom and political practice, the insuperable conflicts introduced by church-state debates, and the relation of civil religion to authentic Christian belief — is marked by signs of confusing detours and confounding dilemmas.

In my response to Hauerwas and Baxter's position, I will show how their narrow focus on secondary, less helpful issues in the history of church-state debates obscures more compelling and primary points of concern that have a better chance of illumining these debates. Then I will show how Hauerwas and Baxter's views of religious indifferentism rest on faulty analogies between free speech and freedom of religion, reveal an inadequate theory of politics, and are plagued by insurmountable dilemmas. In the end, their worries about indifferentism pale in comparison to the specter of irrelevance posed by Hauerwas and Baxter's beliefs to the lives of everyday Christians perplexed by the right relation between religion and politics.

Finally, I will argue that their understanding of the Christian tradition implies a homogenous idea of faith that excludes from consideration other relevant examples of the relation between church and society that might challenge or support their views. Among other helpful models, the example of the prophetic black church presents a vital vision of the relationship between faith and politics that preserves Christian identity while expanding the possibilities of democracy, an unjustifiable task for Christians from Hauerwas's point of view,⁴ but a central claim of black prophetic Christianity.

I. HAUERWAS, BAXTER, AND A CLASSIC CASE OF LOSING SIGHT OF THE FOREST FOR THE SAKE OF THE TREES

Hauerwas and Baxter's misgivings about the First Amendment in their present essay derive partially from a narrow interpretation of

4. For a sampling of Hauerwas's criticism of Christian ethical defenses of democracy, see Stanley Hauerwas, *A Christian Critique of Christian America*, in *COMMUNITY IN AMERICA: THE CHALLENGE OF HABITS OF THE HEART* 250-65 (Charles H. Reynolds & Ralph V. Norman eds., 1988). See also STANLEY HAUERWAS, *THE PEACEABLE KINGDOM: A PRIMER IN CHRISTIAN ETHICS* 12-13, 111 (1983). For claims about prophetic black Christianity's contention that democracy is a fundamental norm of prophetic black Christianity, see CORNEL WEST, *PROPHECY DELIVERANCE: AN AFRO-AMERICAN REVOLUTIONARY CHRISTIANITY* 18-19 (1982).

church-state relations by columnist George Will.⁵ As Hauerwas and Baxter explain, for Will, the “heart of the constitutional understanding of ‘religion,’” is the “distinction between ‘conduct’ and ‘mere belief.’”⁶ According to the authors, Will elaborates this distinction by saying that the Founding Fathers sought to avoid the religious controversies that plagued Europe by establishing in religion’s stead the commercial republic of capitalism.⁷ Influenced by John Locke, who maintained that the truth of religion cannot be established by reason, Thomas Jefferson shaped the American doctrine of the free exercise of religion, which made religions private and subordinate to the political order. As long as religion is mere belief and private, the logic goes, it is free and unrestricted. But when it becomes a matter of conduct or behavior, religion is subject to the rule of law. For Will, this represents the Founders’ genius; for Hauerwas and Baxter, it is sheer anathema, an intolerable rub.

But Will has a severely limited and self-serving view of the First Amendment. Even if we acknowledge the distinctions many Founders made between belief and behavior, we are not automatically bound to Will’s interpretation of their views. Indeed, Hauerwas and Baxter’s worries are legitimate only if Will’s argument about the Founders’ beliefs turns out to be *the* crucial distinction in the constitutional view of religion. But the most important distinction is not between conduct and mere belief, but between freedom of conscience and the coercion to believe. This 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.

James Madison, who contributed key phrases to the important Virginia Declaration of Rights, an exemplary document defending

5. I am not suggesting that Hauerwas’s treatment of the First Amendment is limited to this essay, or that the tension between church and state, and religion and politics is a new subject for him, or one exclusively pursued in this essay. Anyone familiar with Hauerwas’s work will know of his long-standing views on such matters. See in particular Hauerwas’s books: STANLEY HAUERWAS, *CHRISTIAN EXISTENCE TODAY: ESSAYS ON CHURCH, WORLD AND LIVING IN-BETWEEN* (1987); STANLEY HAUERWAS, *AGAINST THE NATIONS: WAR AND SURVIVAL IN A LIBERAL SOCIETY* (1985) [hereinafter *AGAINST THE NATIONS*]; STANLEY HAUERWAS, *A COMMUNITY OF CHARACTER: TOWARD A CONSTRUCTIVE CHRISTIAN ETHIC* (1981) [hereinafter *A COMMUNITY OF CHARACTER*]; and HAUERWAS, *supra* note 4. I am treating, however, the specific context of Hauerwas and Baxter’s remarks as they relate to points they make about Will’s interpretation of the First Amendment.

6. Hauerwas & Baxter, *supra* note 1, at 108.

7. *Id.*

freedom of religion, proposed the language of the First Amendment that was eventually revised and enacted by the First Congress.⁸ In proposing the First Amendment, Madison was as greatly influenced by the suffering of religious dissenters at the hands of the Church of England as by enlightenment ideals of reason's superiority and the doctrine of natural rights.⁹ These ideals led Madison to declare that religion "can be directed only by reason and conviction."¹⁰ And the brutal battles fought over religious freedom led him to conclude that "all men are equally entitled to the free exercise of religion according to the dictates of conscience."¹¹

Such religious battles also convinced Madison that religious belief must not be established or imposed by the state. This was especially true for a revealed religion like Christianity, whose claims to the exclusive possession of truth also opened the possibility of religiously justified claims to political power.¹² To circumvent this possibility in the embryonic nation, Christianity had to be shorn of its potential political authority, a strategy achieved by challenging Christianity's biblical authority and asserting its status as a reason governed discourse, a transformation that profoundly shaped Madison's views of religion, and Jefferson's as well.¹³

Indeed, Jefferson, in the strong embrace of Lockean liberalism, natural rights philosophy, and enlightenment rationality, also rejected Christianity's status as revelation.¹⁴ With Madison and other similarly enlightened men, Jefferson declared religion a matter of opinion.¹⁵ This view led him to proclaim that when the neighbors of Americans say that there are twenty gods, or no God, such a statement neither "picks one's pockets nor breaks one's legs," precisely because it is not backed by the force of law.¹⁶ For Jefferson and the

8. See Walter Berns, *Religion and the Founding Principle*, in *THE MORAL FOUNDATIONS OF THE AMERICAN REPUBLIC* 204, 208 (Robert H. Horwitz ed., 1986).

9. See BERNARD BAILYN, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* 260 (1967); MARTIN E. MARTY, *PILGRIMS IN THEIR OWN LAND: 500 YEARS OF RELIGION IN AMERICA* 162-63 (1984).

10. BAILYN, *supra* note 9, at 260 (quoting James Madison in the Virginia Declaration of Rights).

11. *Id.* (quoting James Madison in the Virginia Declaration of Rights).

12. See Berns, *supra* note 8, at 220.

13. *Id.*

14. *Id.* at 219-25. For an exposition on Locke's views of Christianity, see Michael P. Zuckert, *Locke and the Problem of Civil Religion*, in *THE MORAL FOUNDATIONS OF THE AMERICAN REPUBLIC*, *supra* note 8, at 181.

15. For Madison on religion as opinion, see MARTY, *supra* note 9, at 163.

16. See Hauerwas & Baxter, *supra* note 1, at 109 (referring to Will's discussion of Jefferson).

Founders, such an opinion is distinguished from officially established and recognized beliefs. Since the government is derived from the natural rights of human beings and not divine revelation, such opinions would neither mandate punishment nor require exceptional protection for their utterance. To act otherwise, as if the religious opinion that there was no God or twenty gods could cause injury to be inflicted upon its bearer, is to acknowledge that such an utterance fractured a legally sanctioned belief about God. But this would be contrary to the constitutional view of religion.

And more importantly for the fledgling nation, Christianity was no longer to be protected from challenge or dissent under cover of legal sanction. Thus, the interests of nonbelievers, unorthodox believers, and dissenting Christians converged around the disestablishment of religion and the establishment of religious freedom. In view of this history, the central distinction in the constitutional view of religion is indeed between freedom of conscience and the coercion to believe. Hauerwas and Baxter's acceptance of Will's distinction between mere belief and conduct as the primary constitutional religious issue causes them to overlook the bitter cultural and interpretive wars fought over the freedom of religion by citizens oppressed by the intolerant behavior of the established church. By viewing the issue of the freedom of religion in relation to the historical events I have just sketched, Hauerwas and Baxter might be led to accentuate the struggles of oppressed Christians and other citizens against the power of the Church when it is officially entrenched by law in a classic Constantinian contract with the state.¹⁷ Ironically, the Constantinian compromise of the church is a favorite theme of Hauerwas's ethical reflections and invites vigorous exposition in the present context.¹⁸ But Hauerwas and Baxter's pursuit of a less important constitutional distinction has diverted their attention from a suitable occasion to press one of Hauerwas's more powerful charges.

Even a cursory reading of the events precipitating the develop-

17. As Robert Bellah defines it, Constantinianism is the danger that "Christianity will be used instrumentally for the sake of creating political community but to the detriment of its own authenticity." Robert N. Bellah, *The Idea of Practices in Habits: A Response, in COMMUNITY IN AMERICA*, *supra* note 4, at 269, 277. As Hauerwas understands the term (building on the work of John Howard Yoder), which is drawn from Constantine's conversion to Christianity, it is the assumption that "Christians should or do have social and political power so they can determine the ethos of society. . . . Constantine is the symbol of the decisive shift in the logic of moral argument when Christians ceased being a minority and accepted Caesar as a member of the church." Hauerwas, *supra* note 4, at 260.

18. See Hauerwas, *supra* note 4, at 260.

ment of the First Amendment suggests that it was a brilliantly preemptive and bloodless resolution of religious conflict. By 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. The crucial distinction in the constitutional view of religion is the one between enforced religious views and the freedom to practice the religion of one's choice or community. Viewing the freedom of religion debate in this manner allows us to understand what really was at stake for citizens who endured hardship because of their opposition to the politically protected claims of official and legal Christianity.

But Hauerwas and Baxter's silence on this aspect of the church-state debate is rooted perhaps in a presumption of the homogeneity of the Christian experience, a point I will take up in greater detail later. For now, it is enough to say that the freedom of religion debate pointed to the vibrant religious diversity, especially within Christianity itself, that was mocked by the rigid constraints and narrow practices of the Church of England, and established religion in the colonies. Established religion defined the Church in the singular; but the existence of New Light Presbyterians, Strict Congregationalists, Separate Baptists, and even Methodists demanded that it be reconceived in the plural.¹⁹

Conflicts created by the quest for the tolerance of religious pluralism is an inescapably key theme that must be addressed in any credible account of the events surrounding and leading to the First Amendment. Its avoidance is certain to lead to truncated and self-serving versions of events which shaped, in principle, the democratic destiny of our nation. Indeed, the religious question played a crucial role in the beginning of free government:

No question was then more important, none played so prominent a role in the thought of the pertinent theorists — Hobbes, Locke, Spinoza, Bayle, and, to a lesser but still significant extent, even Montesquieu — and even if it could be said that they solved it, or answered it, in principle, it was left to the American Founders to be the first to solve it, or to try to solve it, in practice.²⁰

Of course, as Hauerwas and Baxter's discussion of *Employment*

19. For the pressure these groups brought to bear upon the colonies for freedom of religion, see BAILYN, *supra* note 9, at 257-58.

20. Berns, *supra* note 8, at 206.

*Division v. Smith*²¹ proves, freedom of religion has met limitations in the form of state proscription of religious beliefs which intersect the nebulous area between important aspects of law and faith. We have also seen the opposite effect in the case of the Jonestown mass suicides, where the failure of state intervention in the name of freedom of religion perhaps inadvertently aided the economic and religious exploitation and deaths of over nine hundred persons.²² But uses of freedom of religion have largely safeguarded the religious liberties of faith communities to pursue the practice of their beliefs in a society where religious prejudice, bigotry, and intolerance were denied legal underpinning.

The glaring exception, of course, is chattel slaves, who were for most of their enslavement legally barred from free worship without white supervision. 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. The formulation of the First Amendment by the Founders presented a tenable solution to the religious suffering created by the legalization of Christianity. It may be cogently argued that with the First Amendment a large and vital Christian

21. 485 U.S. 660 (1990).

22. Interestingly, Hauerwas raises the possibility of challenging the ideals that underlay the Jonestown community, but only through intellectual or religious debate or criticism of the community; even in light of the atrocities committed there, he does not entertain the possibility of state intervention, or active Christian intervention, to protect the exploited victims of Jim Jones's practices. He says:

Our tragedy is that there was no one internal or external to that community able to challenge the false presuppositions of Jones's false ideals. Our continuing tragedy is that our reactions to and our interpretations of the deaths of Jonestown reveal accurately how we lack the convictions to counter the powers that reigned there.

STANLEY HAUERWAS, *On Taking Religion Seriously: The Challenge of Jonestown*, in *AGAINST THE NATIONS*, *supra* note 5, at 91, 103.

On the other hand, John Bennett sees Jonestown as an indication that freedom of religion is not absolute, and as an example of the difficulty of determining when and if state intervention into religious practices should occur. Unlike Hauerwas, however, he concedes the possibility that state intervention is a plausible course of action under admittedly difficult to define circumstances. Bennett says:

That . . . religious freedom from any limitation by the state is not absolute is well illustrated by the terrible events in Jonestown. After those events it is easy to see there should have been protection of people against such exploitation and even lethal abuse by a religious leader, but it is not easy to say exactly at what point and by what method the state should have entered the picture.

John C. Bennett, *Church and State in the United States*, in *REFORMED FAITH AND POLITICS* 121, 122 (Ronald H. Stone ed., 1983).

purpose was served, that the ideals of Christian love and tolerance were ironically promoted through the government's refusal to cede Christianity official status. By keeping believers from maiming one another over religious disputes, the government instituted in law what Christian belief aimed for in principle but generally failed to achieve in practice. It would not be the last time the government intervened in the face of the failure of Christians to act on their beliefs, a topic about which I shall have more to say later.

Overall the First Amendment has been very good for Christianity. It forced Christian churches to appeal to potential adherents on the basis of persuasive preaching, sound theology, superior ways of life, and sacrificial action.²³ Once they were cut from the strings of official obligation, independent Christian churches were free to prophetically address the state and to criticize practices that were offensive to moral principles to which churches strongly adhered. The benefits of the separation of church and state are nicely summarized by John Bennett, who says that it fulfills both the "need of religious institutions to be free from control by the state," and the "need to protect citizens from interference with their religious liberty" by either state power or religious groups, and that it "is favorable to the health and vitality of churches."²⁴

In Hauerwas and Baxter's essay, the alarm set off by Will's insistence that the free exercise of religion rests on religion's privatization and subordination is largely unnecessary. Perhaps we can reach a clearer understanding if we examine the two terms of Will's contention separately. To proclaim that religion will not carry the weight of law by being disestablished is not the same as saying religion will be made private.²⁵ It is very important not to collapse the two as Will has done, a move Hauerwas and Baxter fail to challenge. Indeed, many of the Founders promoted the advantage of the public expression of religion even as they asserted the necessity for religion's disestablishment.

23. To understand how this view among the Founders is characterized, see Martin Marty's summary of Benjamin Franklin's views on established religion in MARTY, *supra* note 9, at 158. He states, "Yet [Franklin] attacked churchly establishment: when a religion was good, it would support itself. If a religion could not support itself and God did not care to come to its aid, it was a bad sign if then the members had to call on government for help." *Id.*

24. Bennett, *supra* note 22, at 121-22.

25. It must be admitted that religion under the First Amendment becomes a matter of private choice versus public coercion, but that meaning of privacy is not in question here. Rather, it is whether religion under the First Amendment is rendered necessarily and exclusively private without the possibility of its public expression.

Because the Founders were not orthodox Christians, the views they held about the role of religion in the Republic had more to do with its preservative function in national life and its support of political institutions than its strictly redemptive role as envisioned by partisan believers.²⁶ Benjamin Franklin, for instance, saw the virtue of what he called "public religion," the forerunner of what we know today as civil religion.²⁷ Martin Marty says that by public religion:

[Franklin] meant not the end of sects but of sectarianism, not the end of their freedoms but the increase of their duty to produce a common morality. Wherever he saw churches agreeing, he encouraged their support of the common weal, and he opposed their spats over their peculiarities. His faith . . . was in . . . the need to do good²⁸

Franklin's views resonated with other Founders, who sought to fashion a public polity based on the premise that a common moral community underlay the Republic. As Marty says:

Fortunately for later America, the Founding Fathers, following the example of Franklin, put their public religion to good use. While church leaders usually forayed only briefly into the public arena and then scurried back to mind their own shops, men of the Enlightenment worked to form a social fabric that assured freedom to the several churches, yet stressed common concerns of society.²⁹

George Washington also subscribed to a belief in the public utility of religion, asserting the link between religion and public morality as the foundation of national flourishing. In his Farewell Address, Washington stated:

Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism who should labor to subvert these great pillars of human happiness, these firmest props of the duties of men and citizens. The mere politician, equally with the pious man, ought to respect and to cherish them. . . . Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle.³⁰

26. Of course, Hauerwas and Baxter might argue that the Founders viewed religion primarily as an aid, and not a critic, of the government. That may be the case, but as they point out in regard to the freedom of religion in their discussion of Will earlier in their essay, the intent of the Founders is not as important as what has occurred in practice. Similarly, what has occurred in practice is that persons and groups have appealed to their religious beliefs to challenge American government, ranging from the civil rights movement to antinuclear activists.

27. MARTY, *supra* note 9, at 155-56.

28. *Id.* at 157.

29. *Id.* at 158.

30. Berns, *supra* note 8, at 213 (quoting George Washington's Farewell Address).

And even Thomas Jefferson, despite his unorthodox Christian beliefs and his individualization of religious faith, demonstrated appreciation for religion's public function in the Republic, especially since the proliferation of religious bodies would serve as a built-in check and balance to American religious life. According to Jefferson, the function of "several sects perform the office of a Censor morum over each other."³¹ He also valued religion for lending moral support to political liberty when he queried: "And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are the gift of God?"³²

Of course, it is exactly the public expression of religion along these lines that disturbs Hauerwas and Baxter, who hold that national or civil religion is "counterfeit" Christianity uprooted from an account of the good. Even if one maintains this view, however, it does not negate the fact that there is nothing in the First Amendment that prohibits the public expression of religion, including Christianity, in the Republic. Thus, as Hauerwas and Baxter present his case, Charles Taylor's arguments about religion and political life are on target: there was neither intent nor need in the separation of church and state to exclude God or religion from the Republic.

Similarly, the subordination of religion to the political order is not as bad as Hauerwas and Baxter deem it to be, because it does not mean what they fear it to imply. I have already hinted at my response earlier by suggesting that one virtue of the separation of church and state is Christianity's enhanced potential to address the state on politically independent terms. But Will's claim is also legitimate that religion was to be made subordinate to the political order. The tension that arises from these apparently contradictory claims can be relieved by examining the two ways in which we can read religious subordination: either functionally or morally.

First, since American society was deliberately constructed upon secular principles to avoid the fatal conflicts occasioned by established religion in the England of the Founders' recent memory, the subordination of religion to the state went hand in hand with the creation of the nation and the establishment of the freedom of reli-

31. *Id.* at 217-18 (quoting Thomas Jefferson, *Notes on the State of Virginia*, in 4 THE WORKS OF THOMAS JEFFERSON 80 (Paul L. Ford ed., 1904-05)).

32. *Id.* at 213 (quoting Thomas Jefferson's discussion of slavery).

gion. Saying that religion is subordinate to the political order is the positive statement of its more generally repeated negative formulation: that religion will not be established, or politically justified, in American society. What is meant is that religion will not function officially to adjudicate national disputes, will not occupy legal status to enforce civil codes, and will not be the means by which social goods are distributed. These functions are left to the political realm. Hence, in a legal sense, religion is functionally subordinate to politics.

On the other hand, if by subordinate it is meant that religion will surrender its independence to the political order to merely justify, or even sanctify, its practices; that religion will abdicate its role as critic of governmental and state practices; that religion will no longer provide moral visions and ethical principles by which advocates of justice may call society to judgment, then religion is without question *morally insubordinate* to and *politically independent* of the political realm. Its functional subordination by no means entails its moral subordination.

The difference is that functional subordination is the very premise by which American religions can claim their freedom to express faith and exercise their belief, especially in the social and public sphere. But moral insubordination is the way religions preserve their integrity and viability, and perform their real worth to the Republic by calling it to judgment in relation to their specific moral visions. Moreover, as I will more fully argue later, if the moral visions of religion are to have public persuasion, they must be cast in terms that transcend narrow or sectarian religious language and concern, demonstrating their relevance by their prophetic judgment of, or application to, the nation in compelling public terms.³³

Given these distinctions, Hauerwas and Baxter's worries that religion becomes private and subordinate to the state in the First Amendment are dissolved when we bring more precision to our understanding of the terms of religion's relation to the state. If

33. Admittedly this distinction between functional and moral subordination does not completely resolve the tensions created by conflicts of conscience over legally established political practices. In such cases, of course, it is clear that moral insubordination takes precedence; but the violation of the law in the name of conscience results in the Christian acknowledging the conflict created by her religious beliefs by accepting the penalty of breaking the law until the law is changed, either as a result of civil disobedience or through shifted public consensus, or reconstructed public practice, later reflected in law. The examples of Christian participation in the civil rights movement, feminist movements, and antinuclear war movements stand out.

Hauerwas and Baxter's real concern is to resist the privatization and moral subordination of Christianity, their fight is not with constitutional views of religion, but with forms of Christian experience and belief which claim that the church's most perfect social expression is limited to ecclesial expressions, as Hauerwas and Baxter proclaim.

Ironically, then, it is Hauerwas and Baxter who turn out to be the real opponents of the full social embodiment of Christianity. By refusing to acknowledge the legitimate expression of Christian faith outside the perimeters of the church, Hauerwas and Baxter contribute to a fatal narrowing of religious belief, a position that has led to Hauerwas being characterized (fairly I think) as a sectarian.³⁴ Their sectarian belief conflicts with their intent to resist the privatization, and indirectly, the subordination of Christianity. Their views also lead them to de-emphasize the crucial features of the

34. For instance, Ronald Thiemann has argued that Hauerwas represents one of two unacceptable options in developing an effective public Christian response to the crises of North American civilization. Thiemann summarizes the thinking of theologian Paul Lehmann:

Arguing out of the Reformed tradition's close association of faith with obedience, Lehmann asserts that proper worship always has as its goal the accomplishment of justice in the world. The righteousness of faith must result in transformative justice within the public realm. Thus Christian worship is essentially political, and the *lietourgia* of the church extends naturally and directly into political action.

RONALD F. THIEMANN, *CONSTRUCTING A PUBLIC THEOLOGY: THE CHURCH IN A PLURALISTIC CULTURE* 114 (1991).

The second option is represented by Hauerwas in his book, *A COMMUNITY OF CHARACTER*, *supra* note 5. Thiemann characterizes this position, saying:

By being faithful to the narratives that shape Christian character, the church will witness to a way of life that stands apart from and in criticism of our liberal secular culture. Christian worship, then, must be an end in itself directed solely toward the cultivation of those peculiar theological virtues that mark the church as a distinctive community.

THEIMANN, *supra*, at 114.

But Thiemann concludes that neither of these options "provides us with the theological resources we need to face the distinctive challenge presented to North American Christians." *Id.* He continues: "Neither the politicization of worship nor its sectarian separation from public life will suffice in our current situation. . . . We must find a middle way between the reduction of the Christian gospel to a program of political action and the isolation of that gospel from all political engagement." *Id.* Further, David Hollenbach juxtaposes their belief that "the church has a responsibility to help shape the life of society as a whole," to Hauerwas's position on such matters. David Hollenbach, S.J., *Justice as Participation: Public Moral Discourse and the U.S. Economy*, in *COMMUNITY IN AMERICA*, *supra* note 4, at 217, 220. Hollenbach says:

Hauerwas concludes that the church should cease and desist from the attempt to articulate universal moral norms persuasive to all members of a pluralistic society. . . . [The letter's] disagreement with Hauerwas is with his *exclusive* concern with the quality of the witness of the Christian community's own life. In the traditional categories of Ernest Troeltsch, the bishops refuse to take the 'sectarian' option of exclusive reliance on the witness of the Christian community that Hauerwas recommends.

Id.

church-state debate that have the best chance to illumine the historical conflicts over religious tolerance, plurality, difference, and diversity, issues that also clearly affect our contemporary religious and cultural scene. More importantly, their position also reduces the potential impact of the gospel on the lives of Christians struggling to understand the proper role of faith in contemporary political debates.

II. HOW OUR HEROES' FAULTY ANALOGIES LEAD TO FAULTY CONCLUSIONS

Hauerwas and Baxter's deficiencies are further magnified in the way they make analogies between freedom of speech and freedom of religion in pressing their case. Drawing on an essay by Stanley Fish, the authors claim that just as freedom of speech has paved the way for "indifferentism" in speech, so freedom of religion has led to "religious indifferentism." According to Hauerwas and Baxter, Fish claims that speech has become a matter of indifference because it has been severed from an account of the good that assigns value to "free speech," which in reality has built-in limits against those expressions its exponents deem harmful to its flourishing.³⁵

On this view, freedom of speech is really an illusion. Plus, all the distinctions that Will made about religion find analogous expression in "a private sphere not only of speech and ideas, but also . . . of 'mere speech' and 'mere ideas,' of speech and ideas understood apart from any substantive account of the good which they serve."³⁶ The same holds for religion. As Hauerwas and Baxter say, "[i]nherent in Christian convictions is a substantive account of the good," an account which is in tension with "all so-called political accounts of the good."³⁷ Moreover, when political accounts of the good underwrite a vision of God and Christianity that is rooted in civil religion, there is conflict with genuine Christianity. Hauerwas and Baxter state that when Christianity gets separated from its embodied social form, Christian belief becomes "asocial" and degenerates into mere belief, while a "counterfeit" religion, a religion of the nation, rises to take Christianity's place.³⁸

On the face of it — judging from the passages they cite —

35. Hauerwas & Baxter, *supra* note 1, at 111-15.

36. *Id.* at 115.

37. *Id.* at 117.

38. *Id.* at 119-20.

Hauerwas and Baxter's use of Fish's work appears consonant with their project, an act of untroubled appropriation. But a closer reading of Fish's essay suggests that there are irresolvable tensions between his views and Hauerwas and Baxter's, tensions which have to do primarily with theological presumptions in Fish's work that are diametrically opposed to Hauerwas and Baxter's beliefs. Such tensions place Hauerwas and Baxter in a confounding dilemma. As a result, for Hauerwas and Baxter to successfully adopt Fish's arguments, they will either have to substantially alter their positions, or give up their present beliefs about the appropriate social expression of Christian faith.

The tensions between Fish's analysis and Hauerwas and Baxter's use of it are glimpsed in Fish's discussion of the possible objections to his view of free speech as articulated by its defenders. What the defenders of free speech could say, Fish hypothesizes, is that he has not appropriately anticipated future revisions to his specific account of the good for which speech stands, thus prematurely closing possible valid interpretations to future generations. Specifically, Fish stated:

My mistake, it could be said, is to equate the something in whose service speech is with some locally espoused value (e.g., the end of racism, the empowerment of disadvantaged minorities), whereas in fact we should think of that something as a now inchoate shape [W]e cannot now know it, and therefore we must not prematurely fix it in ways that will bind successive generations to error.³⁹

But Fish demurs from this position on the First Amendment, saying that it "continues in a secular form the Puritan celebration of millenarian hopes, but it imposes a requirement so severe that one would expect more justification than is usually provided."⁴⁰ Fish continues:

The requirement is that we endure whatever pain racist and hate speech inflicts for the sake of a future whose emergence we can only take on faith. In a specifically religious vision like Milton's, this makes perfect sense (it is indeed the whole of Christianity), but in the context of a politics that puts its trust in the world and not in the Holy Spirit, it raises more questions than it answers⁴¹

For Fish, this alternative to his view makes "perfect sense" only if

39. 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, 241 (Paul Berman ed., 1992).

40. *Id.*

41. *Id.* at 241-42.

it is rooted in a Christian interpretation of events that he implies does not prevail in our culture, or at least not in the political realms where decisions about the First Amendment are debated and resolved. Such a Christian interpretation of events, which would counsel enduring the present penalties imposed by free speech, could only be supported by belief in a future guaranteed by religious faith. Moreover, such a Christian perspective is only coherent within a political framework that puts its trust in the Holy Spirit. Thus, the key features of this opposing view to Fish's position are dependent upon the premises of a religious worldview to make its claims cogent.

Also, such a religious perspective would influence the political expression of the alternative to Fish's position, and could therefore in no way be identical to his views of free speech, or by extension, free religion. As Fish has already indicated, one such crucial difference between his position and its alternative might be that free speech in the abstract must be protected, even though it means the present and concrete suffering by blacks and minorities, because of a future disclosure of truth which in retrospect will alter how we perceive present suffering. The good to be revealed in the future guaranteed by faith, we can infer, will compensate for, or at least justify, the present suffering.

The point is that Fish's view is predicated upon an explicitly secular view that would seem to severely contradict Hauerwas and Baxter's views. The sorts of evidence that count in the realm of faith will not do for the secular realm — the requirement, as Fish says, is too severe. The opposite is also true, that the sorts of evidence sufficient in the secular realm will not wash in the realm of faith. The severe requirement that Fish cannot imagine bearing derives from its linkage to a Christian world view where evidence is supplied by faith and trust in the Holy Spirit. This latter alternative — which Fish says requires that we acknowledge “the (often grievous) consequences but declare that we must suffer them in the name of something that cannot be named”⁴² — is the second of two unacceptable alternatives (and the one not mentioned by Hauerwas and Baxter) to his position. The first is the alternative Hauerwas and Baxter do mention, the position that makes speech inconsequential and a matter of indifference.

This second alternative to Fish's position seems ideally suited for

42. *Id.* at 242.

Hauerwas and Baxter, and given their religious outlook — which emphasizes the social expression of Christianity in the church and opposition to secular liberal society as the “‘politics that know not God’” — the one that they would logically adopt.⁴³ The only problem is that by adopting such a view, Hauerwas and Baxter immediately face a dilemma. In accepting the religious basis of society signified by trust in the Holy Spirit and the Kingship of Christ, they are identified with a position that Fish claims is opposed to the sort of secular logic that clinches the case that he makes for speech inconsequentialism, and that Hauerwas and Baxter by analogy extend to religious indifferentism. On the other hand, if Hauerwas and Baxter reject the secular logic of Fish’s position, they have destroyed the basis of their argument for the indifferentism of freedom of religion, and would have to forfeit their claim that it has corrupted the church-state debate because it is rooted in the sort of reasoning they find offensive to Christian belief. Either way, Hauerwas and Baxter are caught in a damning dilemma.

There is yet another point of tension between Hauerwas and Baxter, and Fish. Fish contends that both alternatives to his views — of speech as inconsequential and present suffering for the sake of a nameless something — are unpersuasive. But he admits that “many in the society seemed to have bought them.”⁴⁴ Why? Because:

They do not wish to face what they take to be the alternative. That alternative is politics, the realization (at which I have already hinted) that decisions about what is and is not protected in the realm of expression will rest not on principle or firm doctrine but on the ability of persons and groups to so operate (some would say manipulate) the political process that the speech they support is labelled “protected” while the speech inimical to their interests is declared to be fair game.⁴⁵

To those who respond that politics would render the First Amendment a “dead letter,” or that it deprives us of norms in determining “when and what speech to protect,” or that it effaces the distinction between speech and action, Fish argues for the primacy of politics.⁴⁶ Fish responds:

[T]he First Amendment has always been a dead letter if one understood its “liveness” to depend on the identification and protection of a realm of “mere” expression or discussion distinct from the realm of regulatable con-

43. THIEMANN, *supra* note 34, at 24 (quoted language attributed to Hauerwas).

44. Fish, *supra* note 39, at 242.

45. *Id.*

46. *Id.*

duct; that the distinction between speech and action has always been effaced in principle, although in practice it can take whatever form the prevailing political conditions mandate; that we have never had any normative guidance for marking off protected from unprotected speech; rather, that the guidance we have has been fashioned (and refashioned) in the very political struggles over which it then (for a time) presides.⁴⁷

In sum, for Fish the "name of the game has always been politics, even when (indeed, especially when) it is played by stigmatizing politics as the area to be avoided."⁴⁸

As if Hauerwas and Baxter's arguments were not already on the ropes because of their earlier dilemma, this last argument of Fish's deals a fatal blow to their aspirations to make Christianity social but not political, especially because so much of their argument hinges on the effective correlation between Fish's views on free speech and the conclusions Hauerwas and Baxter draw from them about the perils of free religion. Fish explicitly endorses politics as the means by which claims of free speech are made intelligible and cogent, precisely because politics has been the implicit basis of understanding and applying the Amendment from the very beginning. The same, presumably, should hold for the application of politics to free religion claims. But Hauerwas and Baxter are unwilling to cede the primacy of politics in making the claims of Christianity cogent, or of adjudicating religious conflict, which is the obvious application of Fish's position to their own. Again, they are faced with a dilemma: if they give up politics, they give up the punch line to Fish's arguments, severely compromising the force of his contentions, and by extension, their arguments. But if they adopt politics, they abort their arguments about the primacy of a confessional God and ecclesial religion to politics. Either way, a principle they cherish is surrendered.

In some places in their essay, it appears that Hauerwas and Baxter will stick with Fish all the way through. They say that with "the indifferentism which inevitably ensues when speech is considered apart from the good, 'freedom of speech' enjoys protection in the United States according to arbitrary patterns of political influence and power as much as according to any consistent application of constitutional principles."⁴⁹ It seems as though they are on the verge

47. *Id.* at 243.

48. *Id.*

49. Hauerwas & Baxter, *supra* note 1, at 115.

of acknowledging that value-laden, good, dependent notions of free speech, and by analogy free religion, need to be negotiated by politics, which in this case amounts to the struggle to assign value to goods defined in the abstract.

But Hauerwas and Baxter dismiss such hopes by saying that only "within [the] ecclesial context, that is, only within a context in which the social landscape is imbued with the presence of Christ, can Christianity emerge as an alternative both to liberal freedom and civic freedom and, more generally, to the political project we call the United States of America."⁵⁰ For Hauerwas and Baxter, the task is to "provide an alternative vision to the political vision of America, one that is shaped by the acknowledgment that true political authority is to be found not in any republican virtues, new or ancient, nor in any set of governmental procedures, but in Jesus Christ who is our true King."⁵¹ So much for politics!

III. POLITICS AND CHRISTIANITY WORKING TOGETHER: A GOOD EXAMPLE AND A BAD EXAMPLE (YES, CONTRARY TO OUR HEROES' BELIEFS, EXAMPLES EXIST)

By refusing to enter the fray, to give political justification and arguments for their beliefs about the Christian good, Hauerwas and Baxter not only repudiate their connection with the sort of social activity that Fish describes as necessary for those who refute nebulous concepts of the freedom of speech, but they also risk a more serious setback with disturbing consequences for the Christian church: they fail to offer to everyday Christians stuck in the gritty interstices of politics adequate resources and substantive recommendations for moving beyond paralysis, confusion, or wrong practice. Just when Christians caught in the punishing political dilemmas of contemporary society need a note of reveille, retreat is sounded. Thus, the most harmful effect of Hauerwas and Baxter's views of free speech and free religion may not be the indifferentism they worry over, but the sheer irrelevance of their views to the church to which they are committed.

This irrelevance is pegged on the peculiar social but apolitical vision Hauerwas and Baxter have of Christian faith. By failing to take politics seriously, they can do little more than lament, for in-

50. *Id.* at 120.

51. *Id.*

stance, the loss of rights by Smith in the Supreme Court case they cite.⁵² At best, they can make intellectual moves to reject the distinctions that have made religion a matter of indifference. Because they refuse to engage a public beyond the church, Hauerwas and Baxter have little chance to affect the manner in which discussion is formed around these issues in the public sphere. More poignantly, Hauerwas and Baxter's *modus operandi* cannot affect future legal and political decisions that similarly impact other citizens' lives and their freedom of religious beliefs.

Hauerwas and Baxter's problems are also rooted in yet a third dimension of their discussion of religious indifferentism that they themselves seem not to take seriously: a substantive account of the good that is the background to their notion of Christian faith. Not only should speech have an account of the good, as Hauerwas and Baxter contend, but by extension of their analogy between free speech and free religion, so should Christian faith. The point here is not to highlight an account of the Good to which Christian faith can be said to generally refer — Christian love, peace, or justice, for instance — but to elaborate the specific cultural contexts and social visions which have decisively shaped and made specific faith communities possible. I suspect this is not high on Hauerwas and Baxter's agenda because their procedures and assumptions imply a homogeneity about the Christian faith that masks the social roots and cultural contexts of the ecclesial embodiment of religious belief.

A. The Good Example

Hauerwas and Baxter's approach mutes the radical diversity and complex pluralism within the Christian faith, a situation that long ago made it untenable in certain sociological and theological senses to speak primarily of the Church.⁵³ Because of their procedures, Hauerwas and Baxter have failed to take into consideration, or even argue against, an expression of Christian faith that has creatively confronted many of the problems discussed by the authors: the black church.⁵⁴ By turning now to this example, I intend to illumine the

52. *Employment Div. v. Smith*, 485 U.S. 660 (1988).

53. This is not to deny universal dimensions of Christian faith. It is to challenge essentialist notions of Christian identity fostered by references to church without spelling out the church's social location, who its members are, under what conditions they practice their belief, what historical factors have shaped their faith, and so on.

54. I understand "black church" as shorthand to symbolize the views of black Christianity. The black church is certainly not homogenous, and I shall be focusing on the prophetic dimensions of

relation between religion and politics in one of the most helpful but neglected models available.

Black Christian churches have had quite a different approach to the First Amendment than the position argued by Hauerwas or Baxter, largely because of the prominence of legal issues in determining the status, fate, and humanity of African-Americans for much of our history. And with the central importance of religion to African-American culture, the strong and vital connections between civil and religious concerns have been well established. Not only has religion helped sustain black survival in times of racial and national crisis, but it has furnished principles and persons to justify black claims to equal humanity and social justice in government, church, and school.⁵⁵

Although it is by now common to cite the black Christian experience in debates about the relationship between religion and politics, the black church is rarely viewed as a genuine source of information about these matters in ways that count. As Cornel West has stated:

Ironically, the black church experience is often invoked as an example of the religion/politics fusion, but rarely as a source to listen to or learn from. Instead, it is simply viewed as an instance that confirms the particular claims put forward by the respective sides. The black experience may no

black religious faith. Hauerwas and Baxter's failure to take the black church seriously is part of a larger pattern that has rendered the black church invisible for most of its history. Even investigations of American religion have usually, until quite recently, excluded black religion as a central force in American life. *See, e.g., C. ERIC LINCOLN, RELIGION AND THE CONTINUING AMERICAN DILEMMA* 123 (1984) ("[T]he religious situation is structured in such a way that any investigation of religion in America has usually meant the religion of white Americans, unless 'Negro,' 'folk,' or 'black' religion was specifically mentioned."). *See also* the comments of Charles Long who said:

In short, a great many of the writings and discussions on the topic of American religion have been consciously or unconsciously ideological, serving to enhance, justify, and render sacred the history of European immigrants in this land.

Indeed, this approach to American religion has rendered the religious reality of non-Europeans to a state of invisibility, and thus the invisibility of the non-European in America arises as a fundamental issue of American history at this juncture.

CHARLES H. LONG, *SIGNIFICATIONS: SIGNS, SYMBOLS, AND IMAGES IN THE INTERPRETATION OF RELIGION* 149 (1986).

55. I have in mind here the large number of black ministers among current members of Congress, continuing a tradition in this century established by leaders such as Adam Clayton Powell; the activity of black church leaders in the civil rights movement and the political movements it gave rise to, especially the presidential campaigns of Jesse Jackson; and the large number of black churchpersons affiliated with historically black institutions of higher education. In each area, the black church has supplied many of these persons the principles they have appealed to in making the claims of black equality, justice, and freedom to the larger American public. *See, e.g., CHARLES V. HAMILTON, ADAM CLAYTON POWELL, JR.: THE POLITICAL BIOGRAPHY OF AN AMERICAN DILEMMA* (1991); ROGER D. HATCH, *BEYOND OPPORTUNITY: JESSE JACKSON'S VISION FOR AMERICA* (1988).

longer be invisible, but it remains unheard — not allowed to speak for itself, to be taken seriously as having something valuable to say.⁵⁶

The black church view of the relationship between religion and politics has roots in the denominational affiliations that shaped it, the ongoing experiences of oppression in national life that black religion ceaselessly addresses, and broad experiments in American civil religion.

Black Christians are overwhelmingly Baptist and Methodist, a legacy that extends back to slave culture.⁵⁷ Because it was illegal to baptize and preach to slaves during much of slavery, the process of exposing slaves to Christianity was gradual. As slaves were eventually incorporated into Christianity on limited terms in the mid-eighteenth century, they were deeply affected by Methodists, and especially Separate Baptists. The Separate Baptists were viewed with suspicion by both the established church and society at large during their initial stages of growth in the mid-to-late eighteenth century.⁵⁸ Deeply disinherited, poor, without formal training, and broadly suspicious of external authority, the Separate Baptists naturally appealed to slaves who were even more ostracized from American culture than the Baptists because of their legal status as personal property.

But as they grew, Separate Baptists continued to exhibit two traits that marked their early years: their opposition to slavery and their enthusiastic leadership of the fight against established religion.⁵⁹ Thus, at the base of the denomination to which slaves were overwhelmingly drawn, and in which they eventually established independent churches in the mid-nineteenth century, was an emphasis on the strong relation between political and civil issues and personal and communal religious belief. The arguments that radical religious dissenters made for freedom from slavery and freedom of religion prefigured the legal and social arguments advanced by black intellectuals, organizers, and leaders in the fight against institutional racism in two important ways.⁶⁰

56. CORNEL WEST, *PROPHETIC FRAGMENTS* 22-23 (1988).

57. See MECHAL SOBEL, *TRABELIN' ON: THE SLAVE JOURNEY TO AN AFRO-BAPTIST FAITH* (1988); JAMES M. WASHINGTON, *FRUSTRATED FELLOWSHIP: THE BLACK BAPTIST QUEST FOR SOCIAL POWER* (1986).

58. SOBEL, *supra* note 57, at 85.

59. *Id.* See also BAILYN, *supra* note 9, at 261-62.

60. I do not mean by any measure to romanticize the religious dissenters. Although they fought for antislavery, they fought more effectively, desperately, and consistently for their own religious

First, the religious dissenters' arguments expressed religious themes of social justice linked to belief in God. The arguments of Isaac Backus and John Allen against slavery and religious intolerance pictured these injustices as offenses not only to civil society, but also to authentic Christian belief.⁶¹ Secondly, although their arguments were unquestionably motivated by religious concern, dissenters cast their arguments in the language of civic piety and civil responsibility in making moral claims on the state to act justly. These two narrative strategies were adopted and ingeniously expanded by black Christians, especially the prophetic wing of the black church. This vital branch of black Christianity has relentlessly explained and justified the moral and religious claims of black Christian belief in the language of civic piety, whose vocabulary includes legal redress, moral suasion, civil rights, and political proclamation.

This last point reveals as well African-Americans' participation in and expansion of traditions of American civil religion. Although for Hauerwas and Baxter it is "counterfeit" religion,⁶² a progressive, largely liberal version of civil religion is critically celebrated within African-American prophetic Christianity.⁶³ As Charles Long says,

freedom, largely out of self-interest.

61. For instance, John Allen pointed out the hypocrisy of his fellow countrymen making claims to colonial freedom while simultaneously denying liberty to slaves, employing religious terms like "sacred," "praying," and "fasting" to drive home his point. He says:

Blush ye pretended votaries for freedom! ye trifling patriots! who are making a vain parade of being advocates for the liberties of mankind, who are thus making a mockery of your profession by trampling on the sacred natural rights and privilege of Africans; for while you are fasting, praying, nonimporting, nonexporting, remonstrating, resolving, and pleading for a restoration of your charter rights, you at the same time are continuing this lawless, cruel, inhuman, and abominable practice of enslaving your fellow creatures

BAILYN, *supra* note 9, at 240 (quoting John Allen, *The Watchman's Alarm*).

Isaac Backus pressed arguments for the religious dissenters to be released from the bondage of the Church of England, asserting that civil and religious liberty were one. Backus tirelessly proclaimed that the church of Massachusetts "has declared the Baptists to be irregular, therefore the secular power still *force* them to support the worship which they conscientiously dissent from," and that "'many who are filling the nation with the cry of LIBERTY and against *oppressors* are at the same time themselves violating that dearest of all rights, LIBERTY of CONSCIENCE.'" *Id.* at 263 (quoting ISAAC BACKUS, A SEASONABLE PLEA FOR LIBERTY OF CONSCIENCE, AGAINST SOME LATE OPPRESSIVE PROCEEDINGS 8 (Boston, 1770)).

62. Hauerwas & Baxter, *supra* note 1, at 120.

63. Robert Wuthnow makes helpful distinctions between conservative and liberal versions of civil religion in ROBERT WUTHNOW, *THE RESTRUCTURING OF AMERICAN RELIGION: SOCIETY AND FAITH SINCE WORLD WAR II* (1988). About conservative civil religion, Wuthnow says:

On the conservative side, America's legitimacy seems to depend heavily on a distinct "myth of origin" that relates the nation's founding to divine purposes. According to

“[T]he distinction between civil religion and church religion is not one that looms large for us.”⁶⁴ He continues:

In the first place, it is the overwhelming reality of the white presence in any of its various forms that becomes the crucial issue. Whether this presence was legitimated by power executed illegally, or whether in institution or custom, its reality, as far as blacks were concerned through most of their history, carried the force of legal sanction enforced by power. The black response to this cultural reality is part of the civil rights struggle in the history of American blacks.⁶⁵

Long further argues that it is not incidental that black churches have been the locus of civil rights struggle because it “represented the black confrontation with an American myth that dehumanized the black person’s being.”⁶⁶ Furthermore, the “location of this struggle in the church enabled the civil rights movement to take on the resources of black cultural life,” such as organization, music, artistic expression, and in collecting limited economic resources.⁶⁷

this interpretation of American history, the American form of government enjoys lasting legitimacy because it was created by Founding Fathers who were deeply influenced by Judeo-Christian values.

Id. at 244-45.

Wuthnow also states that conservative civil religion “generally grants America a special place in the divine order,” and that the idea of “evangelizing the world is in fact a much-emphasized theme in conservative civil religion.” *Id.* at 247. He contends that despite “formal separation between the kingdom of God and the kingdom of man, the ‘two kingdoms’ doctrine in conservative civil religion also confers a strong degree of divine authority on the existing mode of government.” *Id.* at 248. Conservative civil religion also grants “capitalism a high degree of legitimacy by drawing certain parallels between capitalist economic principles and biblical teachings.” *Id.*

Liberal civil religion, however, makes little “reference to the religious views of the Founding Fathers” and does not “suggest that America is God’s chosen nation.” *Id.* at 250. Liberal civil religion “focuses less on the nation as such, and more on humanity in general.” *Id.* Wuthnow says that rather than “drawing specific attention to the distinctiveness of the Judeo-Christian tradition, liberal civil religion is much more likely to include arguments about basic human rights and common human problems.” *Id.* Liberal civil religionists also “appeal to broader values that transcend American culture and, indeed, challenge some of the more nationalistic assumptions it incorporates.” *Id.* at 253. The liberal “version of American civil religion taps into a relatively deep reservoir of sentiment in the popular culture about the desirability of peace and justice.” *Id.* As a result, Wuthnow mentions, “religious leaders who champion these causes may detract from the legitimacy of the current U.S. system rather than contribute to it.” *Id.* at 254.

It would be good for Hauerwas and Baxter to keep the distinctions between the two versions of civil religion in mind when making claims about its “counterfeit” religious status. Though it probably would not persuade them to change their views, it would nonetheless help them make crucial distinctions about the varying functions of civil religion as it is employed and exercised by different spheres of the citizenry, and even different branches of Christianity.

64. LONG, *supra* note 54, at 152.

65. *Id.*

66. *Id.*

67. *Id.* at 152-53.

In appropriating and improvising upon a vocabulary of civic piety, black Christians have appealed to the sacred symbols of national life and its democratic principles which find literate expression in the Constitution and the Declaration of Independence. Perhaps the most famous example of this long-standing black church tradition is symbolized in Martin Luther King, Jr.'s brilliant career. Like his Separate Baptist predecessors and his black Baptist ancestors, King employed the language of civic piety (particularly civil rights) in articulating at once the goals of African-American religion and a version of liberal democracy.⁶⁸ Although he remained rooted in his religious base, King transcended the narrow focus of sectarian and myopic religious concerns to embrace a universal moral perspective in addressing, first, the specific suffering of black Americans, and eventually, the economic exploitation and racial oppression of other "minorities."

But King's genius lay in his ability to show how increased democracy for African-Americans served the common good by making democracy hew closer to its ideals than its performance in the distant and recent past suggested. King spoke a language of civic piety (especially civil rights) that resonated with crucial aspects of American moral self-understanding, particularly since such self-understanding was closely linked to ideals of justice, freedom, and equality. King and his colleagues creatively reinterpreted documents of ultimate importance in national life — particularly the Declaration of Independence and the Constitution — in extending the goods at which they aimed (including democracy, justice, and equality) to blacks and others excluded from their original intent.⁶⁹

Shaped profoundly by the black Christian church, and rooted in black theological perspectives on love, justice, equality, and freedom articulated in the rich history of black resistance to racism, King and his cohorts forged empowering connections between their religious beliefs, and the social, civic, and legal goals to which they believed their faith committed them. Indeed, they translated their religious efforts into the language with the best chance to express their goals in the national arena. For the black church, justice is

68. Of course, King's later beliefs about the necessity for radical social, economic, and moral transformation of American democracy presented a serious challenge to extant political arrangements. See JAMES H. CONE, *MARTIN & MALCOLM & AMERICA: A DREAM OR A NIGHTMARE?* 213-43 (1991).

69. Michael Eric Dyson, *Martin Luther King, Jr., The Evil of Racism, and the Recovery of Moral Vision*, 44 *UNION SEMINARY Q. REV.* 85, 88-91 (1990).

what love sounds like when it speaks in public; civic piety is love's public language, equality its tone of voice, and freedom its constant pitch. For Hauerwas and Baxter, such translation may prove problematic, but for black Christians it has meant survival.

Such acts of translation also rest on the black Christian belief that the entire world belongs to God, that religious truth is not bound to the sanctuary, and that God often employs apparently disinterested or even hostile persons, forces, and institutions to achieve the divine prerogative. This truth can be partially glimpsed in the popularity of the scripture: "[Y]ou meant evil against me; but God meant it for good"70 This often quoted passage forms one of the most visible hermeneutic strategies employed in the black church that reflects a strong doctrine of providence, and a serviceable theodicy geared toward black survival and a momentous confrontation with suffering and evil.

For prophetic black Christians, not only is speaking the language of civil society not taboo, but the messages of God are likewise not limited to homiletical proclamation, theological discourse, or other ecclesial expressions of God-talk. Since the world belongs to God, and the powers that exist, even if evil-intentioned, may have good consequences in the eyes of faith, God can use whatever forum necessary to deliver divine gift or judgment. This whole theological approach is implicit in the statement by a jubilant black person who, upon hearing of the Supreme Court decision declaring segregated transportation in Montgomery, Alabama unconstitutional,⁷¹ exclaimed, "God Almighty has spoken from Washington, D.C."⁷² For black Christians, God is the original and ultimate polyglot. The language of civic piety (especially civil rights) serves God's purposes, as does the language of theological study and religious devotion. Thus, the civil rights movement helped foster a progressive understanding of the relation between religion and politics that rested on precedents of such interaction in American civil religion.

I have given this severely abbreviated genealogy and justification of the positive relation of religion to politics in African-American Christianity to suggest the rich resources it contains for critical thinking about the relation between church and society. The pro-

70. *Genesis* 50:20.

71. *Gayle v. Browder*, 352 U.S. 903 (1956).

72. MARTIN LUTHER KING, JR., *STRIDE TOWARD FREEDOM. THE MONTGOMERY STORY* 160 (1958).

gressive and prophetic black church, as I have sketched it here, rejects the premises of Hauerwas and Baxter's arguments about the relation of faith and politics. Faith has a large part to play in the public arena, but only if it will redescribe its goals in languages that are publicly effective, accompanied by the politics with the best chance to make those goals concrete and relevant. Black Christianity avoids attempts to impose Christianity on the world, a strategy as old as religious establishment and as new as national attempts to manipulate God for political favor.⁷³ Rather, it retains the strengths and insights of religious belief while making arguments for the common good and public interest that are subject to criticism and open to revision because they are neither final nor infallible.

Its history prevents black Christianity from endorsing Hauerwas and Baxter's pessimistic views about the ability of Christian faith to mix with politics without losing its soul, without surrendering its capacity to criticize liberal democracy. Hauerwas and Baxter are right to remind us that Christian faith is in perennial tension with all political accounts of the good. Indeed, the history of African-American prophetic Christianity is the story of the relentless criticism of failed American social practices, the constant drawing attention to conflicts between political ideals and realities, and the ageless renewal of a commitment to broaden the bounds of liberty so that democracy is both noun and adjective, both achievement and process. But some political accounts of the good are better than others, and only those Christian communities willing to risk the erosion and expansion of certain aspects of their Christian identity in secular affairs have the opportunity to affect the public interest for the better.

This of course is why Hauerwas and Baxter's views of the various problems associated with the freedom of religion are viewed suspiciously by the prophetic black Christian church. By avoiding the nasty and brutal sphere of politics, Hauerwas and Baxter cannot adequately account for the black struggle and suffering endured to receive the freedoms the First Amendment guarantees. Black Christians have always understood that the batteries are not included, that American ideals, principles, and promises are never given, but

73. See William Safire, *God Bless Us*, N.Y. TIMES, Aug. 27, 1992, at A23 (commenting on attempts by both Democrats and Republicans to use God's name "as a symbol for other side's immorality, much as the American flag was used in previous campaigns as a symbol for the other side's lack of patriotism").

must be secured through political struggle in the public realm. With Fish, they recognize that the "game has always been politics."⁷⁴ Hauerwas and Baxter's account not only masks the social and political roots of their own faith, but it effectively discounts the experience of black Christians who provide precisely the sort of example of the relation between church and politics that might have a chance of bringing greater clarity to this complex debate.

Finally, black prophetic Christians are wary of theological discussions that reduce the social embodiment of Christianity to the church, and that portray the state as the enemy of Christian freedom. If theological justifications of slavery had not done so before, white Christian opposition to the civil rights movement chastened black Christian expectation of their moral and religious support of the goal of African-American liberation.⁷⁵ While arguing that the role of the church was to attend to the spiritual aspects of life in the church while avoiding the acrimonious and schismatic business of politics at all costs, many white Christian churches ironically furnished ideological and theological support to the forces which impeded the progress of the civil rights movement.⁷⁶

The greater and more tragic irony, however, is that often white Christians actively opposed black progress by participating in White Citizens' Councils, the Ku Klux Klan, or other hate groups that harassed and even murdered black Christians. Even if they did not actively participate in such heinous crimes, many white Christians "retreated into the womb of an ahistorical piety."⁷⁷ By adopting positions similar to those that Hauerwas and Baxter suggest, these white Christians were rendered impotent to affect the lives of their black Christian colleagues because their theological stance was deeply apolitical and hence unable to make claims on the public good in ways that were immediately helpful to black Christians.

Moreover, it was not the white Church-qua-Church that called for the end of such barbaric and evil practices, or that actively intervened to prevent the murder and maiming of black life. It was the

74. Fish, *supra* note 39, at 243.

75. See, e.g., *Playboy Interview: Martin Luther King, Jr.*, reprinted in *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR.* 340, 345-46 (James M. Washington ed., 1986) (discussing King's disappointment with the white church).

76. See Martin Luther King, Jr., *Letter from Birmingham City Jail*, in *A TESTAMENT OF HOPE*, *supra* note 75, at 289-302 (reproducing King's famous response to white clergymen who deemed his actions in Birmingham, Alabama as "unwise and untimely").

77. ERNEST T. CAMPBELL, *LOCKED IN A ROOM WITH OPEN DOORS* (1974).

sustained social and political struggle of a tiny band of black prophetic Christians and their allies who, by sacrificial action, civil disobedience, and appeals to the American conscience by means of the language of civic piety, forced the *state* to intervene through legal and political measures. Similar to the religious situation of colonial America during Revolutionary times, the state intervened to prevent one group of Christians from killing others. Once again, legal proscription and political power had put into law what Christian belief had professed but failed to practice. And black Christians interpreted such intervention as an extension of the providence of God over even secular political structures, as black Christians heard God Almighty speaking from Washington, D.C. This does not mean that the state is uncritically praised as the unwavering instrument of divine deliverance. It is, however, one of the legitimate means available to black Christians seeking to secure and protect their freedom so long denied by law and Christian practice.

B. *The Bad Example*

The poverty of Hauerwas and Baxter's vision of the social embodiment of Christianity becomes even more evident when they return to one of the bleakest epochs in modern Catholic Christendom, the papacy of Pope Pius XI, to draw examples of Christ's Kingship. Pope Pius XI, according to Hauerwas and Baxter, "boldly and bluntly asserts the importance of publicly recognizing and celebrating the Kingship of Christ in reconstituting the entire social order."⁷⁸ The whole point behind the feast celebrating Christ's Kingship was to emphasize that "the common good is to be defined by Christ."⁷⁹ Furthermore, Hauerwas and Baxter claim that in opposition to Will's celebration of the secularism that led to the subordination of religion to politics, "Pope Pius XI sees such a subordination as the undoing of any true politics."⁸⁰ Finally, Pope Pius XI, according to Hauerwas and Baxter, "resists the urge to conceive of politics in anything less than soteriological terms."⁸¹

But Pope Pius XI is precisely the sort of figure who is an example of Hauerwas and Baxter's worst fears: he promoted the moral subordination of Christianity to the political order. By signing a Con-

78. Hauerwas & Baxter, *supra* note 1, at 121.

79. *Id.*

80. *Id.* at 123.

81. *Id.* at 124.

cordat with Mussolini in 1929, Pope Pius XI made Mussolini's regime the first government in modern Catholic history to receive official recognition by the Vatican, thus supplying theological justification to the dictator's murderous Fascist maneuvers.⁸² Pius XI "deliberately sabotaged democracy, the strongest opponent of Communism, for the politically and morally ruinous experiment of Fascism."⁸³ Pius XI was also a particularly cruel foe of religious tolerance and diversity.

Pius XI facilitated the "marriage of convenience" between Catholicism and Fascism that helped to destroy the *Popolari* (the Christian Democratic Party), the People's Party, which was the second legitimate party in parliament and the only real alternative to the Fascists.⁸⁴ More viciously, he requested the resignation of priest Don Sturzo as general secretary of the *Popolari*, banishing him from Rome at the height of the *Popolari's* fight against Mussolini. After his departure, the Fascists moved to expand their efforts to "wipe out the 'white' trade-unions, co-operatives, and youth organizations."⁸⁵ Pius XI also used his proximity to Mussolini to repress the freedom of religious minorities, urging Mussolini to restrict Protestant missions in Italy and to outlaw freemasons. Pius XI was pleased when Mussolini prevented the building of a Muslim mosque in Rome, and when the dictator persecuted Waldensians, Pentecostals, the Salvation Army, and eventually Jews.⁸⁶ After the Concordat of 1929, Mussolini exempted priests from taxation and employed public funds to prevent the financial collapse of Catholic banks.⁸⁷

Most appallingly, the official pact between Mussolini and Pius XI led to the Vatican's declaration that the dictator was a man "sent by providence."⁸⁸ Pius XI compromised the politically independent, socially prophetic, and morally insubordinate voice of the church by officially colluding with Mussolini's Fascist Party to stamp out democracy, restrict the religious freedom of other denominations and religions, and betray some of the church's own priests and members in an effort to placate Mussolini. As Denis Mack Smith says, Mus-

82. DENIS MACK SMITH, *MUSSOLINI: A BIOGRAPHY* 161 (1982).

83. JAMES HASTINGS NICHOLS, *DEMOCRACY AND THE CHURCHES* 186 (1951).

84. *Id.* at 182. See also SMITH, *supra* note 82, at 65.

85. NICHOLS, *supra* note 83, at 183.

86. SMITH, *supra* note 82, at 159, 163.

87. *Id.* at 159-61.

88. *Id.* at 163. See also NICHOLS, *supra* note 83, at 189.

solini claimed that "the Church, as a result of their treaty, was no longer free but subordinate to the State . . ."⁸⁹ During Mussolini's dictatorship, and because of Pope Pius XI's fatal compromise, this was tragically true.

The Concordat with Mussolini is the infamous political legacy of Pius XI's reign. He is hardly the figure to whom we should turn in thinking about Christ's Kingship. Even Hauerwas and Baxter's statements about Pius XI's insistence on the link between soteriology and politics seem more appropriately elaborated, and less severely compromised, by contemporary exponents of that belief, especially liberation theologians.⁹⁰ And although most liberation theologians are completely committed to the radical transformation of society in light of Christ's Kingship — and equipped with penetrating social analysis, progressive political activity, and broad historical investigation — few are willing to exclusively identify the Kingdom of Christ with the Kingdom of this world. Pius XI failed to remember Hauerwas and Baxter's lesson: that Christianity is in extreme tension with all accounts of the political good.

Given Hauerwas's belief in the unity of the virtues, the choice of Pius XI — a pope who was antidemocratic, unfaithful in fateful ways to the church and its Lord, and intolerant of religious and political freedom — as the best exponent of the Kingship of Christ is not only unfortunate, it is no less than tragic.⁹¹ But then, given the

89. SMITH, *supra* note 82, at 162.

90. I have in mind here liberation theologians who link notions of Christian salvation with sharp forms of social analysis that get at the economic, political, and social forces which mask liberation in concrete form. See, e.g., FRANZ J. HINKELAMMERT, *THE IDEOLOGICAL WEAPONS OF DEATH: A THEOLOGICAL CRITIQUE OF CAPITALISM* (Phillip Berryman trans., 1986).

Also, it seems that Hauerwas's desires to make the church more socially relevant are also better served by citing the works of black, feminist, and liberation theologians. Especially in regard to liberation theology, Paul Lauritzen argues that Hauerwas has a great deal in common with Latin American theologian Johannes Metz, particularly each author's use of narrative in their work. For example, Lauritzen has written:

Although these writers represent different religious traditions, both rely in significant ways on the category of narrative in their work. . . . [B]oth Metz and Hauerwas are concerned to revitalize Christian faith, both want to make it once again socially relevant, and both are adamant that it retain its distinctiveness. That both should also place such a heavy emphasis on the concept of narrative . . . is not coincidental.

Paul Lauritzen, *Is 'Narrative' Really a Panacea? The Use of 'Narrative' in the Work of Metz and Hauerwas*, 67 J. RELIGION 322, 323 (1987).

91. I am not suggesting that all of Pius XI's views about the social order are captured in the "Kingship of Christ." His encyclical *Quadragesimo Anno*, issued in 1931, remains one of Catholicism's most impressive statements containing the social teachings of the church, including government's role in society and in the economy, the belief in a just wage, a laborer's right to organize, and strong Christian criticism of both capitalism and socialism. But this document must be juxta-

dilemmas I have shown Hauerwas and Baxter to be trapped by, and their refusal to engage the nitty-gritty world of real politics, their misled — and misleading — choice is sadly predictable.

Hauerwas and Baxter have largely missed the major areas of concern in the struggles to relate church and state, and religion and politics, because they have not viewed these matters from the perspective of those who suffered for the freedom to worship and practice their beliefs. The political struggle to implement democratic ideals in our society is the real story behind the First Amendment. It is about much more than the wall that separates church and state. If the truth be told, however, the real wall of separation most grievous to American Christianity and the Church of Christ is not between church and state; it remains the wall between black and white. About that, Hauerwas and Baxter have nothing to say.

posed to Pius XI's antidemocratic actions and statements during the reign of Mussolini. Neither am I suggesting personal perfection as a criterion to determine the acceptability of an intellectual position; in that case, my example of King would be immediately nullified. I am suggesting however, that these characteristics of Pope Pius XI that I have sketched have direct bearing on the principles and proposals under discussion; there is an organic link, I would argue, between Pope Pius XI's views and practices regarding democracy, Fascism, and the morally subordinate status of the Catholic Church, and his recommendations about the Kingship of Christ. His views are suspect precisely because they have to do with his moral and theological failures in his office as pope, the official head of the Catholic Church.

