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William S. Brewbaker III

University of Alabama - School of Law, wbrewbak@law.ua.edu

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Government for the Time Being

WILLIAM S. BREWBAKER III

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Government for the Time Being

William S. Brewbaker III

“Hallelujah! for the Lord God Omnipotent Reigneth!” So begins the Hallelujah Chorus of Handel’s *Messiah*, the political overtones of which generally go unnoticed. One may speculate about why the politics slips by us, but it is remarkable that it does. The only other lines in the chorus (which runs for over 4 minutes) are “The kingdom of this world has become the kingdom of our God and of his Christ” and “He shall reign forever and ever.”¹ Perhaps we no longer take theology very seriously, perhaps the words are overpowered by the sheer beauty of Handel’s music, or perhaps our modern habits of mind about the irrelevance of “private” matters to politics cause us to miss the rather plain challenge to worldly authority that confronts us in Handel’s most famous oratorio.

In Chapter 5, Steven Smith argues that we, like Handel’s listeners, may have missed a key point of the First Amendment. The word “establishment” is plainly present in the text, and it carries institutional overtones to which we have apparently become deaf. One of the reasons we no longer hear the institutional theme is that we have come to understand the role of the First Amendment as an attempt to keep religion entirely out of our politics. Smith argues rightly that this is a dead end, both morally and practically. We may lay much of the incoherence of our Establishment Clause jurisprudence at the feet of such an attempt, which has helped give rise to the account of the secular that Smith calls “modern” because it is a departure from an earlier understanding and “negative” because it defines secular by what it is not – i.e., “not religious.”

The most surprising turn in Smith's chapter is the short work he makes of the older, "classical" and "positive" understanding of the secular, inherited from the Western legal tradition, which for centuries was influenced significantly by Christianity. As Smith notes, the classical conception of the secular defines the term as referring "to this time and this world (as opposed to some other time or world, such as 'eternity' or the hereafter)." This conception is "classical" because (despite an admitted range of older usages) it stems from an older understanding of the church-state relation in the Western tradition and "positive" because it defines secular with respect to what it is, rather than merely what it is not.

Given Smith's reservations about the modern account of the secular,² one would have expected him to attempt to rehabilitate some version of the classical understanding. He shows no interest in this project, however. Instead, he argues that the old, positive definition of the secular is too modest to be an effective limitation on government conduct. On Smith's reading of the classical understanding, all that the government's obligation to be secular means is that it should "act only with respect to this-worldly concerns." This commitment is, Smith says, "*too* sensible" in that it "orders government to do what it would be naturally inclined to do anyway" and is thus a "negligible constraint." Smith correctly notes that governments almost always act from "this-worldly" motives, even when their decisions affect religious organizations or individuals. For example, even religious persecution or religious endorsements may be, at bottom, implemented by the ruler for the decidedly this-worldly purpose of staying in power. Neither does religion itself purport to be disinterested in earthly matters.

I am not sure that the classical conception of the secular is as toothless as Smith suggests. In saying this, I admit (with Smith) that there is no single, canonical classical account. That said, I hope that readers may recognize the version of the classical account presented here as a reasonable summary sketch of a (Christian) perspective from bygone eras, albeit a sketch that might seem beyond the pale today. By reexploring the classical account of the secular, I do not mean to suggest that such an account could serve as a bright line marker in contested First Amendment cases. However, the older test helps illuminate some of the trade-offs that accompany contemporary aspirations to a secular (in the modern sense) government.

I. Revisiting the “Classical” Secular

As noted, Smith takes the classical understanding of secular government to imply that government should “act only with respect to this-worldly concerns” or that it should act “within this world...and for this-worldly purposes.” Although he does not spend much time on the matter, it appears that he regards the nature of government as depending on the *ends* it is trying to achieve. Governments are secular when they act to achieve this-worldly goods as opposed to other-worldly goods.³

It is not necessarily the case, however, that the ends a government pursues are the only things that might mark it out as being for this time and this world. In this respect, Smith’s depiction of the classical account may be more indebted to modernity than he lets on in that it sees government chiefly as a matter of inputs and outputs, bereft of any accompanying narrative or history.⁴ The particular Western legal tradition in which real-world governments in the West participate, however, is embedded in European (and later North American) history, and has thus been marked by the confrontation between

political powers and a church of a particular kind, one that declared ultimate loyalty to, as Handel's oratorio illustrates, a "king of kings" and "lord of lords." In this context, and given the rest of the Christian story, to say that a government is for this time and this world often meant that it was in place only for the time being – and, in effect, that its days were numbered. In sketching out a conception of a government "for the time being" for purposes of illustrating the significance of secular government (in the classical sense), I focus briefly on three rather basic features of Christian thought that have been influential in shaping Western political presuppositions: (1) the kingship of God, (2) the presence of the church, and (3) the expectation of a world-to-come.

II. The Kingship of God

As noted earlier, the claim that Christ is "king of kings and lord of lords" is an affront to earthly powers. The gospel narrative discloses that there is a higher authority to which rulers⁵ will be called to account; it thus amounts to a stark challenge to the ruler's self-conception as sovereign. However, what is disclosed is not merely the existence of an additional layer of political authority – more rules to be followed or commands to be obeyed – but also that the higher authority is a personal Creator. The majesty of the created world, and the power intrinsic in the God who was able to make it "out of nothing," places the earthly ruler squarely on the "creature" side of the most fundamental divide – that between the Creator and the creature. No matter how glorious and powerful the secular ruler, he has far more in common with his subjects than he does with his Maker. The glory of the created world that prompts the Psalmist to ask, "What is man that thou art mindful of him?," might also prompt a subject to ask the same question about the king.

To add insult to injury, the gospel discloses that the earthly ruler is not only a creature, but a fallen one at that. The ruler is a fellow sinner in need of God's grace. In some versions of the story, the secular ruler's vocation (political rule) would not exist absent human rebellion against God. The ruler needs divine wisdom in order to rule well, divine grace in order to choose the good, and divine favor to remain in office. Although Jesus simultaneously fills the offices of Prophet, Priest, and King, the sacraments remind the secular ruler that he or she is in need of a prophet and a priest.

Although claims of divine right were infamously invoked by monarchs to deflect challenges to their authority, Christian political thought nevertheless frequently also emphasized the accountability implied by the receipt of delegated political authority and the concomitant obligations of the monarch.⁶ Rulers came to be seen as having duties to go along with their "rights" – duties to respect organic institutions such as the family and the church, duties to respect the individual's freedom of conscience, and the duty to respect the law – both human law and God's law. Governing was never to be a matter of making law from whole cloth; as Oliver O'Donovan argues, in the Christian West, government – whether in its executive, legislative, or judicial functions – was, for a long time, always and everywhere a matter of judgment: "Divine law, natural or revealed, [and] mediated through traditions of right innate in the society" formed the basis of law – whether that law was declared by the courts, a legislature, or the executive.⁷

III. The Presence of the Church

The classical conception of the secular was also decisively shaped by the institutional presence of the church. Although this observation is a main concern of Chapter 5, Smith devotes surprisingly little attention to the specifics of the various understandings of the

institutional relationship between church and state over the centuries, choosing as the main lines of demarcation the “Middle Ages” during which “the church was in some respects more like an independent sovereign” and the post-Reformation period, during which “some of the central functions previously performed by the church were transferred to the individual conscience.”

These characterizations are fine as far as they go, and Smith certainly cannot be faulted for failing to provide a full intellectual history of church–state relations over a 1,500-year period in the course of a book chapter whose subject is the proper interpretation of the religion clauses of the First Amendment. Nevertheless, our understanding of the classical view of the secular may be enriched if we press the various understandings of the church–state relationship in the Christendom era a bit further.

Smith is undoubtedly correct to underscore the idea of the church as a competing sovereign, but even a brief review of some of the competing conceptions of church and state at work over the centuries illustrates that the question of the relative authority of the two powers was a good deal more complex than that. In the earliest understandings, for example, church and state were seen as distinct societies, and not merely as distinct sources of authority within a single community. Augustine famously saw Christians and others living in the communities of his day as two cities, not visibly distinguishable from each other but whose citizens were preoccupied by differing loves, loyalties, and pursuits. Only later did church–state relations come to be seen as a matter of competing governments within a single, putatively Christian society. Even then, the question of what was meant by the liberty of the church was not always simple. Did it mean that the clergy

were exempt from regulation by the secular authorities? Did it mean that church assets were exempt from secular regulation?⁸

The mere presence of the church presented a challenge for secular rulers. As Harold Berman argues, the institutional presence of the church, which carried with it its own internal governmental structures and laws, helped lead to a distinctive understanding of law and political authority in the West – one that had room for “a plurality of legal systems within a common legal order.”⁹ In this order, secular rulers were confronted with institutions and authorities that the rulers did not create and that pressed their own claims for recognition and respect. This insight has taken various forms in Western Christian thought but remains visible in contemporary conceptions of subsidiarity and sphere sovereignty.¹⁰

One of the most famous images of the church–world relation is Augustine’s account of the two cities, noted previously. Augustine provocatively suggests that there may be more at stake in the dividing line between the church and the “world” than we realize. Perhaps because we were for so long accustomed to the de facto establishment of Protestant Christianity in America and a widely shared heritage of liberal political values, we may find Augustine’s narrative jarring:

The two cities were created by two kinds of love: the earthly city was created by self-love reaching the point of contempt for God, the heavenly city by the love of God carried as far as contempt of self....[I]n the earthly city, its wise men who live by men’s standards have pursued the goods of the body or of their own mind....In the Heavenly City, on the other hand, man’s only wisdom is the devotion which

rightly worships the true God, and looks for its reward in the fellowship of the saints, not only holy men but also holy angels....¹¹

Here, we encounter a picture of religion that is not just a private add-on that can be unproblematically attached to, or removed from, “normal” human experience. The presence of two people in a single polity with dramatically different values and goals presents genuine challenges, and it seems unlikely that a command to one side or the other to leave behind their particular excess baggage will be effective.

IV. The Expectation of a World-to-Come

The presence of the church and the idea that God is King are commonplaces even in an increasingly nonreligious culture. Another important feature of Christian thought – its insistence that history is an unfolding story with a purpose and a destination – is perhaps less so. Nevertheless, one important assumption in the traditional relationship between church and state in the West was the Christian insistence that earthly governments were destined to pass away. The ruler’s political authority was limited not only by the fact that he, like every other human, was obligated to a higher king, but also that the delegation of authority he claimed to enjoy was provisional and temporary. Earthly and heavenly rule would one day be united in the reign of Christ, who claimed at his ascension to have been given “all authority in heaven and on earth.”¹²

As with the Christian teaching of the presence of a higher king (Christ) and an alternative kingdom (the church), the teaching that human political authority is provisional and temporary exerts a chastening effect on the pretensions of earthly rulers. The rising and falling of earthly rulers comes to be seen as built in to the fabric of the universe; the grandiose claims of earthly rulers, and the expectations of the people, can

only be heard against the backdrop of the gospel disclosure of Jesus Christ as the only true and better king. Permanent political stability cannot be achieved through personality cults or engineered through institutions that effectively translate popular preferences into public policy. Checks and balances cannot finally remedy the excesses or inadequacies of democracy or monarchy or aristocracy.

V. A Secular Purpose

What might it mean for a government to be secular in the classical sense of being a temporary, provisional authority destined to give way to a higher power? Negatively, even to tell the story raises suspicions of theocratic rule and the oppression of nonbelievers, and these suspicions are unlikely to be assuaged by reassurances about liberty of conscience or the antitheocratic particulars of the classical account.

Perhaps, given these limitations, it is more instructive to consider what it would mean to have a government that is *not* secular in the classical understanding. Such a government need recognize no higher authority than itself, and thus also need recognize no inherent institutional boundaries that should not be crossed, all the while seeing only contingent limits on the new order it might hope to impose. And, apparently, if the modern conception of the secular is any guide, it should feel compelled to stop its ears when confronted by any suggestion to the contrary.

Footnotes

¹ Handel takes these lines from Revelation 11:15 and 19:6.

² See, e.g., Steven D. Smith, *The Disenchantment of Secular Discourse* (Cambridge, MA: Harvard University Press, 2010); Steven Douglas Smith, *The Plight of the Secular Paradigm*

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- (August 18, 2011), Unpublished manuscript. Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1911420, accessed April 25, 2012.
- ³ Cf. Smith's statement that "medieval rulers...believed that in supporting and cooperating with Christianity they were achieving both this-worldly and other-worldly goods – that they were maintaining the political order and at the same time helping their subjects achieve salvation."
- ⁴ Cf. Oliver O'Donovan, *Common Objects of Love* (Grand Rapids, MI: Eerdmans, 2002) (rejecting an account of moral deliberation as oriented exclusively toward decision making).
- ⁵ I use the words "ruler," "rulers," and even "kings" more or less interchangeably in this chapter. Nothing in the analysis turns on which institutional form of government is used to exercise secular authority.
- ⁶ Biblical warrant for such an emphasis could be taken from Deuteronomy 17 as well as other sources. See, e.g., Eric Nelson, *The Hebrew Republic: Jewish Sources and the Transformation of European Political Thought* (Cambridge, MA: Harvard University Press, 2010).
- ⁷ Oliver O'Donovan, "Government as Judgment," in *Bonds of Imperfection*, eds. Oliver O'Donovan and Joan Lockwood O'Donovan (Grand Rapids, MI: Eerdmans, 2004), 207-224.
- ⁸ For an overview, see Oliver O'Donovan, *The Desire of the Nations* (Cambridge, UK: Cambridge University Press, 1996), 196–211.
- ⁹ See Nicholas Aroney, "Law, Revolution and Religion: Harold Berman's Interpretation of the English Revolution," *Journal of Markets and Morality* (2005), 355-385 (characterizing Berman's thesis in Harold J. Berman, *Law and Revolution* (Cambridge, MA: Harvard University Press, 1983)).
- ¹⁰ See Joan Lockwood O'Donovan, "Subsidiarity and Political Authority in Theological Perspective," in *Bonds of Imperfection*, eds. Oliver O'Donovan and Joan Lockwood O'Donovan (Grand Rapids, MI: Eerdmans, 2004), 225-245.
- ¹¹ Augustine, "City of God, Book 14," in *From Irenaeus to Grotius: A Sourcebook in Christian Political Thought*, eds. Oliver O'Donovan and Joan Lockwood O'Donovan (Grand Rapids, MI: Eerdmans, 1999), 142–143.
- ¹² Matthew 28:18.