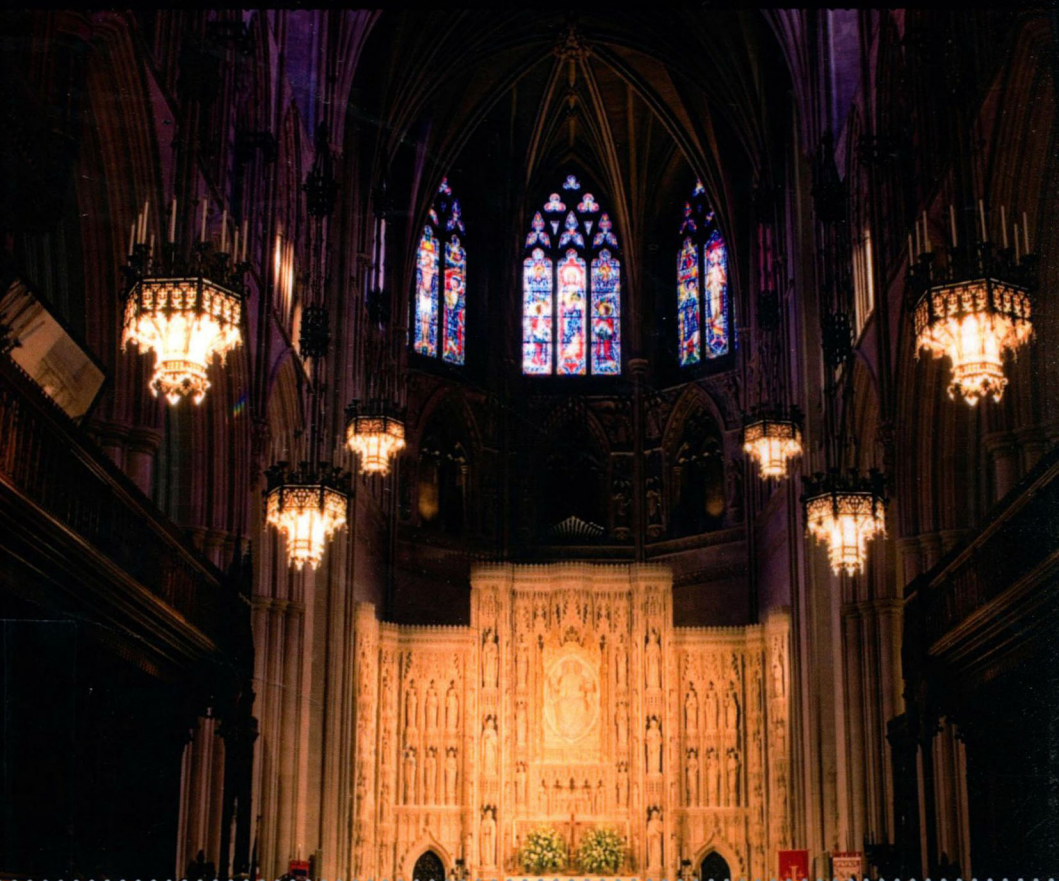


MEDIEVAL AMERICA



Cultural Influences of Christianity in
the Law and Public Policy

ANDREW M. KOCH
AND PAUL H. GATES, JR.

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LEXINGTON BOOKS

Lanham • Boulder • New York • Toronto • Plymouth, UK

Published by Lexington Books

A wholly owned subsidiary of The Rowman & Littlefield Publishing Group, Inc.
4501 Forbes Boulevard, Suite 200, Lanham, Maryland 20706
<http://www.lexingtonbooks.com>

Estover Road, Plymouth PL6 7PY, United Kingdom

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British Library Cataloguing in Publication Information Available

Library of Congress Cataloging-in-Publication Data

Koch, Andrew M., 1953–

Medieval America : cultural influences of Christianity in the law and public policy /
Andrew M. Koch and Paul H. Gates, Jr.
p. cm.

Includes bibliographical references and index.

ISBN 978-0-7391-4972-0 (cloth : alk. paper) — ISBN 978-0-7391-7283-4 (electronic)

1. Christianity and politics—United States. 2. Christianity—Influence. 3. United States—Politics and government. 4. Christianity and culture—United States. 5. Medievalism—United States. 6. Policy sciences. I. Gates, Paul Henry. II. Title.

BR516.K64 2012

261.70973—dc23

2011042008



The paper used in this publication meets the minimum requirements of American National Standard for Information Sciences—Permanence of Paper for Printed Library Materials, ANSI/NISO Z39.48-1992.

Printed in the United States of America

Medieval America

Introduction

In his essay “The Return of Religious Embodiment: On Post-Secular Politics,” Ola Sigurdson makes the case that today religion remains a central part of political life in the Western world. Religion is part of the “life-world,” the part where the community enters into ethical discourse regarding the choices that result from beings living within history. For this reason, efforts to define religion through an anthropological reading miss the point.¹ Religion is a living presence in the community and, therefore, its content will have a fluid character as it addresses the context of the lived experience of the community.

Owing to this condition, the nature of the religious discourse cannot be separated from the political acts of the community. As Sigurdson states, “[t]o be religious means belonging to a religious institution, thus it always already means being political.”² Religion is the product of the collective reflection on the experiences of existence. It is “living practice” in the interplay between the community and its current questions and the religious dogma that makes up the religious traditions. Sigurdson echoes the claim of Jürgen Habermas that in the post-secular world religion serves an integrative function for the society.

According to Sigurdson, it is for this reason that the narrative on religion that has been part of the Enlightenment liberal tradition is both false and dangerous. It is false because the liberal reading of history asserts that with the coming of the Age of Reason human beings pushed religion aside in favor of a rational and secular worldview. Public expressions of religion were seen as a threat to democracy as they empower

one form of religious discourse over another. The political consequence of this is to seek to relegate religion to the realm of the *private*. The protestant reformation had the effect of furthering this process by personalizing the relationship between the individual and God.³ This view suggests that the religious narrative can be eliminated from the public discourse, implying that there is a process that can make purely secular decisions.

In contrast to the liberal tradition, Sigurdson offers up a phenomenological reading of history. This suggests that as embedded lifeworld experience religion should be seen as a living expression of the lived moral experiences of the community. Religion is a community activity, part of our collective experience. Further, because religious beliefs ultimately influence our outward expressions within the collective, religion should be viewed as an extension of political life.

From this perspective, both liberal humanism and secularism are actually extensions of the Western religious traditions. Charles Taylor argues that secularism is tied to developments in the Christian church, as religious pluralism demanded political accommodation.⁴ John Gray sees liberal secular traditions as a chapter in the development of religion.⁵ From this perspective, modern democratic values have their origins in the history of Christian ideas. Tolerance, freedom, and human rights, all ideas fundamental to the extension of democratic principles, have their origins in the Christian tradition.

Viewed from this perspective, the attempts to generate a liberal secular society will undercut the foundation of the humanitarian values that are part of political life in the West. This is the danger of the liberal tradition, as the creation of what Dostoevsky called the “man-god” removes the prohibition that checked the potential abuses of a civilization striving for an earthbound utopia. Moving away from religion sends humanity toward an abyss, as there is no foundational ethics that can challenge the potentials and the promises of limitless knowledge in the pursuit of social perfection.

A Critique and Secular Reply

It is our view that Sigurdson and the others mentioned here have an important point. Secularists have too often assumed that as society modernizes the religious traditions will simply pass into a historical curiosity to be viewed through the lens of anthropology. Religion will be one more relic of a past age with no relevance to the construction of our political and social existence. Therefore, to the extent that Sigurdson claims that

religion still exerts considerable influence over the direction and content of social policy and law in the Western world, we are in total agreement.

In fact, the theme of this work is to suggest that religious sentiments are a major influence in the content and direction of policy and law in the United States. One way to view the dynamics of American politics (our focus in this work) is through the lens of the secular/religious debates taking place in society. Further, we would agree with Sigurdson in his implicit claim that even where there appears to be a secular, democratic outcome of policy debates, there is often an outcome that has some religious pattern of belief that is compatible with the result.

It is also our view, consistent with the literature of the "post-secular society," that religion is a *public* rather than a private phenomenon. To put it simply, what people believe shapes how they behave. This is the very measure of instrumental reason: that one acts according to how one believes the world is structured and the outcomes that can be expected from actions. We orient our selection of means for the attainment of the results we desire. For this reason, a religiously based society will act according to the pattern of beliefs they identify with the religiously centered promise. All the Western monotheistic religions contain a *promise*.

We also agree that in the post-secular society the intellectual space for the *private sphere* is receding. Religious people see the problems of society through a religious lens. If religion is a community activity, then the distinction between the public and the private loses its significance. Further, democracies are designed to transfer privately held beliefs into public policy. In a society that is complex, interdependent, and full of multiple channels through which to organize mass forms of popular mobilization, the idea of a private existence seems increasingly undercut.

Therefore, it seems implausible to suggest that one can create a purely secular society with a religiously oriented population. There may be a façade of secularism, as institutional neutrality, among competing religious doctrines, but a religious society will reify and reproduce itself through policy and the law. In an Aristotelian sense, the law will serve to instruct the citizenry in the proper values that constitute the social norm. Religious beliefs will reproduce themselves within the policies of pseudo-secular institutions.

For this reason, the naturalness and benign character of the relation between religion and politics suggested by Sigurdson, Taylor, and others is troubling for a variety of reasons. In the first place, their reading of history suggests that there is a simple compatibility between the character of the Middle Ages and the development of Enlightenment modern-

ism. This mistake is the result of their focus on the humanitarian character of certain moral prescriptions that have made the transition from medieval dogma to the ideology of Enlightenment liberalism.

This may be true, but it ignores the larger issue. Following the methods of Michel Foucault, it is also important to note the fundamental ruptures that have occurred in the West. This is characterized as an epistemological turn for which the post-secular writers take no account. In his work *Reading the Bible in the Strange World of Medicine*, Allen Verhey repeatedly invokes the name of Sir Francis Bacon as exemplifying the rift between religion and a secular, scientific worldview.⁶ Why is this the case? Verhey supports a moderate Christian viewpoint regarding the role of religion within the arena of medical ethics, but he clearly recognizes the tension between that epistemology and the scientific world view that was promoted since the time of Bacon.

It is our view that the humanistic tradition that emerged with the Enlightenment had its origins in something other than religious dogma. The scientific method is open and questioning. Its methods lead to a continual reassessment of accepted truths. At the core of the scientific method is the notion of *uncertainty*. It is uncertainty that leads to openness and tolerance, not the adherence to religious dogma. The burning of witches did not stop because the public became more Christian. The burning of witches stopped as people began to adopt the liberal Enlightenment values that produced a more materialist understanding of the world. This methodology produced a recognition that there cannot be absolute claims to certainty about our assertions of knowledge.

Therefore, the real foundation for the values of tolerance and open discourse that are part of the Enlightenment humanist tradition are not to be found in the traditions of Christianity. They actually have their foundational basis within the scientific paradigm. In what may seem like an odd claim in defense of the scientific world view, it promotes openness and tolerance in the social realm because it denies absolute claims to knowledge. All science is hypothetical. It would never venture a claim to know what an all-powerful deity would will for the world. If the history of Western religion has demonstrated anything, it is the danger that exists for people who claim certainty with regard to what their God is telling them to do.

Science has not stopped war. No one should misread our position. However, science was not designed for that task. It has also not started any wars. No one arms themselves in the battle between string theory and quantum mechanics. In the twentieth century, wars in the West actually resembled the religious wars of the Middle Ages, but with the relig-

ion of national and ethnic identity taking on the character of non-negotiable truth. Science knows no nations.

For these reasons, the phenomenological approach to religion in society has some important insights but is theoretically incomplete because it fails to address the epistemological issues that constitute the rupture between religious and scientific outlooks. It operates as a kind of stunted Hegelianism, able to show an unfolding of consciousness in history, but never able to step outside its religious paradigm. Religion is part of the lifeworld, but that is an entirely different claim than the suggestion that it constitutes a truth around which we should organize our political and social existence. If the measure of a truth claim is the extent to which human beings orient their behavior to a phenomenon, then Santa Claus and the Easter Bunny also constitute *truths* of the human experience.

Material History and the Scientific World View: Darwin, Marx, and Freud

By the end of the nineteenth century the Western world had developed the intellectual tools to deconstruct the historical narratives of religion and place them within the study of cultural anthropology. It is striking that in the 150 years since Darwin's *On the Origin of Species*, Western society has failed to fully comprehend, let alone embrace, the significance of what has happened since its publication. The second half of the nineteenth century constituted a revolution in human thought, a revolution that is exemplified in the works of Darwin, Marx, and Freud. What these authors represent is the construction of a complete and comprehensive materialist narrative that provides an alternative to the religiously inspired story of the development of life and society on planet earth.

Taken separately, the narratives are incomplete. Without the biological narrative, we cannot conceive of our material origins. Without Marx, we do not know how to read history. We do not see the connections between how we live and what we believe. Without Freud, we lack the introspective component, which allows for distinction between the animal and the social. Freud allows us to see the primitive needs that are satisfied by some of our most irrational beliefs.

Taken together, these ideas allow for the deconstruction, the dismantling, of all religious narratives. Religion lacks the material reference points that are part of the modern system of knowledge. They are interpretive stories of cultural development. Their gods are the reflection of

ourselves back to ourselves. The “will” of the gods serve as a rationalization of human behavior.

As theories, Darwin, Marx, and Freud are incomplete and open-ended. However, there is no going back on the scientific outlook without an event as cataclysmic as the fall of Rome for Western civilization. Nevertheless, there is a problem. As the German sociologist Max Weber noted at the beginning of the twentieth century: science cannot answer the question of meaning in the world, nor can it tell us how to live. When science destroys religion it takes out the vision that binds communities together with a common sense of purpose and direction. Unfortunately, what the philosopher Friedrich Nietzsche warned about also came true in the twentieth century: in the absence of a religious community the state will present itself as the new meaning and purpose behind existence. From this, twentieth-century statist ideologies of fascist or communist varieties offer themselves up as the “new idol” for those who yearn for something beyond a mundane and purposeless existence.

From this perspective, it seems like we have nothing but unfathomable options. The first takes us back to religious mysticism and irrationality in the face of modern science. This path is played out in school boards across the country as evangelicals, proponents of intelligent design, and young earthers try to alter school curricula. Such a path will have the effect of destroying science and its methods, the engine of economic and cultural growth since the time of the Enlightenment.

Religion fails miserably because it looks in the wrong direction. It affirms a past, but has no future. Its *truths* are simply the repetition of a well-worn narrative increasingly disconnected from the world that human beings are creating. Who can watch, without pity, the Sunday morning attempts by televangelists to try and hammer Biblical prophecy into a society of instantaneous communications, supersonic transport, and the human genome project. The search for meaning is natural to the human condition. However, it can produce dangerous results when it relies on claims to absolute truth.

A second option is the statist path. However, if patriotism becomes the new religion, democracy and a free society cannot survive. If the state garners our unquestioning allegiance, it must be treated as a god. As a god, it can do no wrong, and its existence and growth must lead to a messianic call to all within its boundaries. In such a world, critics and dissenters are cancerous and a danger to the body politic. All must be destroyed both internally and externally. War, at home and abroad, will be the natural condition.

So how do we conceive of ourselves as agents in the world without defining our identity in relation to the power of religion or the state? The answer is the elimination of all “idols,” both those of religion and its secular surrogates. This can only be carried out through the introduction of the dreaded “R” word, *relativism*. Relativism is what emerges when the implications of Darwin, Marx, and Freud are fully digested. This is not simply the *moral relativism* that is part of the common discussions among groups of academics and philosophers. This a more encompassing relativism that connects our understanding of knowledge itself to the historical processes that produce civilization, culture, and material necessities for the increasingly integrated human populations on earth.

Relativism cannot be divorced from the intellectual processes from which it springs. It is the result of an aesthetic approach to knowledge and understanding. It begins with an understanding that all knowledge is mediated by the interaction between human beings and the world. As such, all knowledge is a human creation. As human beings live in history, all their knowledge is connected to the experiences they have as parts of historical processes. This means we do not get to touch the knowledge of the gods. We do not have knowledge that is transcendent and universal. There is no knowledge outside of our human interpretations of the experiences of our species.

If the state is a relative, historical, and artificial construction, there can be no uncritically accepted idol around which people can worship. If religion is read as having its origins in a pre-literate society attempting to create the rules of civilized life, it cannot be fixed outside the evolving technological and environmental conditions it faces. All religions are reduced to the aesthetic interpretations of the events that shaped the thoughts of the authors who disseminated those interpretations.

Do we need such narratives? Absolutely! But we need to think about them differently. Our identities, ethics, and legal system should be connected to an ongoing narrative about ourselves and our relationship to each other and the physical environment in which we live. Can such a narrative produce fixed, universal, and transcendent truths? It cannot. However, what it can do is something essential. It allows us to create utopias, narrative visions that connect our past, present, and future actions to an evolving understanding of ourselves. As products of human deliberation, these narratives are open to continual reassessment, critique, and change. Thus, they can never become the fixed, canonical truths that have been used to oppress the public since the earliest days of civilization.

Such utopias have been attempted from a more relativistic and aesthetic perspective. To cite just one example, the German philosopher Immanuel Kant wrote an essay that sought to unite the world, proposing that history be written toward the idea of creating a universal narrative for all people. This project was to be a process and, as such, could never be brought to a final conclusion. It recognized that we are simply material beings interacting with the physical world and, through our interpretations of it, trying to make the best of our circumstances. Utopias direct our efforts to a future, providing the meaning and purpose that was lost with the end of religion. However, we should never lose sight of the relative, transitory, and historical nature of these constructions. They must be subject to an ongoing critique, constantly altered to adapt to new circumstances.

Such a world will be disconcerting to some. It lacks the fixed, firm foundation that many seek as the grounding for their lives and activities. This perspective constitutes the danger that causes religiously oriented people to seek to pack school boards and court rooms with defenders of the faith. However, those people should ask themselves about the world they wish to leave their children. We have a historical record of a time in which religious fervor was placed ahead of all other values. We call that time in history the “Dark Ages” for a reason.

The Religious Narrative and Democratic Practice

At its core, religion is anti-democratic. In historical terms, this is borne out by the symbiosis that existed between the medieval church and the feudal monarchies of Europe. The church was a hierarchically structured institution that paralleled the model of feudal rule. Only with the rise of Protestantism did the structural hierarchies begin to wane. However, it should be noted that this occurred on the eve of the Renaissance and at the beginnings of the Enlightenment, not during the high point of the Middle Ages.

However, despite the empirical evidence offered by history there is a more fundamental reason that religion is anti-democratic. It makes authoritative claims that are asserted as the design of an omnipotent deity. This results in the creation of a closed epistemological system that does not allow for the influence of alternatives, especially empirically based knowledge, to enter the discourse on truth.⁷ Religion only needs the discourse on proper interpretation. It does not question the epistemological foundation of the dogma itself.

In an ironic twist of history, the Christian church went through a thousand-year reign of the epistemological paradigm that the West now criticizes elements of the Islamic world for embracing. From Saint Augustine to Saint Thomas Aquinas the core of Christian doctrine was to suppress alternative narratives, appropriate the property of non-Christians, and execute heretics. There need not be open discourse if the body of truth is already established. This is the reason that the relativism of the sophists helped promote democracy in ancient Athens and why democracy finds its home in the intellectual climate of modern Enlightenment culture. It is in the absence of hard truth that the deliberation of democratic practice becomes necessary.

Religion is an intervention. It is not just a belief. The God of the Bible has intentions for the path of human development. Toward those objectives, this God gets involved, chooses sides, and eliminates competitors. The idea that religion is benign or that its stories are there to give us moral guidance misses the larger point. Historically, religious dogma has been used to both exclude and condemn. Further, by establishing itself as “God’s truth” religious dogmas suggest a knowledge and wisdom to the holy books that stretches the limits of credulity. Is it a loving God that told the Israelites to conduct genocide against the people of Judea? Is it the just God that allows slavery? Is it a forgiving God that turns people into salt or condones the burning of human beings?

The softer and more liberal Christians, like Allen Verhey, make a distinction between good and bad interpretations of scriptural messages. However, such a view of the Bible misses the point. Either it is the word of a god that has been written down by its prophets, or it is a text describing an early part of human’s intellectual passage from barbarism to civilization. These are not compatible views. One is universal in its character, the other relativistic. The text cannot be both. Trying to suggest that it is both is the height of intellectual dishonesty.

Such dishonesty produces a strange and dysfunctional political climate. Politicians in the United States proudly display that they do not believe in evolution. Museums are built celebrating the *fact* that dinosaurs and humans roamed the earth together after God made the universe a short six thousand years ago. Evangelical preachers court their flocks by suggesting that God punishes the sinful with both acts of nature and acts of man. A passage of Leviticus is pushed as a demonstration that God opposes the constitutional protections of law being extended to all American citizens.

The argument that we should look to the New Testament to find the example of a more loving and tolerant God also misses the point. Today

we scoff at the idea that the Pharos were gods, and we reject the divine right of kings as the source of political legitimacy. Yet we entertain as part of the public debate the idea that we have a text that explains to us the will of a God around which we should construct our lives. We are not suggesting that Jesus was a bad person, only that the socially and politically constructed text that describes the life of Jesus should not be viewed as the only text that should inspire our thinking on public policy. Unfortunately, the really fantastic claims of Christianity are also some of the most relevant for policy. He we are speaking of suspending physical laws through miracles, the virgin birth, and the resurrection of the body. This stuff is the domain of small children and simpletons, yet these ideas remain part of serious public discourse. Such discourse shapes the direction of law and policy in the United States.

Our Task

From the preceding discussion it might seem that the work will be an exercise in religion bashing. No doubt our position will be clear to the reader throughout this text. We view the commitment that Americans have to religion as a strange phenomenon at the turn of the twenty-first century.

Nevertheless, our task in this work is different. We are interested in the way in which religious beliefs, specifically the dominant religion in the United States, has influenced the development of law and policy. The phenomenologists are correct in the sense of suggesting that religion needs to be studied as part of the life world. However, it needs to be studied anthropologically. We are interested in the *fact* of its influence, the *how* of its influence, and the *content* in its influence.

The *fact* of religion's influence we will accept as a *given* in the American context. However, something needs to be briefly stated about the *how*. As was already mentioned, it cannot be claimed that democratic societies are by their nature *secular*. What democratic societies do is place an intermediary step between religious doctrine and the formation of public policy. This is the process of electing leaders and making laws that is part of the constitutional context within the Western democracies.

Through the lens of semiotics, religion is a symbolic language that delineates *in groups* and *out groups*. The *in group*, the group in power, will have the ability to define the content of law in a given society. If that *in group* is Christian, it seems like a simple step to conclude that the con-

tent of the laws produced by the *in group* will have a strong Christian component.

In this work we will focus on the influences of some of Christianity's basic assumptions and its effects in the areas of the law and policy. It is our contention that because the United States has a predominantly Christian population, the content of policy operates under a decidedly Christian set of assumptions. These assumptions are part of an often unexplored set of core beliefs that generally go uncontested because of their correspondence with the core of Christian understanding of the world. It will be our task to make some of these undemonstratable assumptions more explicit through the course of this work.

It is not our position that the most extreme elements of the Christian community have always been victorious. The courts have, in some cases, stood against some of the most extreme attempts to collapse the political with the religious. But another part of our interest is in the subtler forms of influence that have their origins within religious belief. These subtle influences are also the most far-reaching because they are so engrained in the culture they often go unnoticed and unchallenged. We think that is what will make this work as interesting as it may be controversial.

The outline of the project is straightforward. Chapter 1 will examine some of the ideas from religious doctrine that we will explore, making some contrasts between religious and modern worldviews. We will also examine the history of the incorporation of religious ideas into the political arena in American politics. Chapter 2 will deal with the controversy over teaching evolution in public schools. We will examine both the history of the controversy and the legal and political climate that surrounds the debate. Chapter 3 focuses on the symbolic aspects of turning the components of the secular state into quasi-religious icons. This is characterized by assigning symbolic value to the secular relics that prioritize the objects over human beings. We focus specifically on the attempts to protect the American flag from any form of desecration. Chapter 4 addresses the influence of religious ideas on matters of crime and punishment. Religion is the source of ideas of free will and retributive justice. We examine these views in light of their effect on attitudes toward the proper treatment of those engaged in breaking the law. Chapter 5 discusses religious views over the proper uses and functions of the human body. We look at definitions of gender, abortion, and sexual conduct as they have been influential on the law and policy in the United States. Chapter 6 offers some summary and concluding remarks about the work as a whole. We also offer some suggestions about how to move the United States in a more modern direction in the coming century.

Notes

1. Ola Sigurdson. "The Return of Religious Embodiment: On Post-Secular Politics," in *The Body Unbound: Philosophical Perspectives on Politics, Embodiment, and Religion*, edited by Marius Timmann Mjaaland, et al. (New Castle, United Kingdom: Cambridge Scholars Publishing, 2010), 23.

2. Sigurdson, 29.

3. Mark Lilla. *The Stillborn God: Religion, Politics, and the Modern West* (New York: Alfred Knopf, 2007), 198.

4. Charles Taylor. *A Secular Age* (Cambridge, Mass.: Belknap Press, 2007), 554.

5. John Gray. *Black Mass: Apocalyptic Religion and the Death of Utopia* (London: Allen Lane, 2007), 1.

6. Allen Verhey. *Reading the Bible in the Strange World of Medicine* (Grand Rapids, Mich.: William B. Eerdmans Publishing, 2003).

7. For a more detailed discussion of religious epistemology, see Andrew M. Koch, *Knowledge and Social Construction* (Lanham, Md.: Rowman and Littlefield, 2005)

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