



WHOSE GOD RULES?

Is the United States a Secular Democracy
or a Theolegal Nation?

EDITED BY
NATHAN C. WALKER AND EDWIN J. GREENLEE

FOREWORD BY TONY BLAIR



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Nation or a Theolegal Democracy?**

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Nathan C. Walker and Edwin J. Greenlee
Foreword by Tony Blair

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Dedicated to the members and friends of
The First Unitarian Church of Philadelphia,
a Unitarian Universalist congregation established in 1796.

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Foreword*

Tony Blair

After ten years as British prime minister, I decided to choose something easy. I became involved in the Middle East peace process.

There are many frustrations—that is evident. There is also one blessing. I spend much of my time in the Holy Land and in the Holy City. The other evening I climbed to the top of Notre Dame in Jerusalem. You look left and see the Garden of Gethsemane. You look right and see where the Last Supper was held. Straight ahead lies Golgotha. In the distance is where King David was crowned and still further where Abraham was laid to rest. And of course in the center of Jerusalem is the Al Aqsa Mosque, where according to the Qur'an, the Prophet was transported to commune with the prophets of the past. Rich in conflict, it is also sublime in history. The other month in Jericho, I visited the Mount of Temptation. I think they bring all the political leaders there. My guide—a Palestinian—was bemoaning the travails of his nation. Suddenly he stopped, looked heavenwards, and said “Moses, Jesus, Mohammed: why did they all have to come here?”

It is a good place to reflect on religion: a source of so much inspiration; an excuse for so much evil. Today, religion is under attack from without and from within. From within, it is corroded by extremists who use their faith as a means of excluding the other. *I am what I am in opposition to you. If you do not believe as I believe, you are a lesser human being.* From without, religious faith is assailed by an increasingly aggressive secularism, which derides faith as contrary to reason and defines faith by conflict. Thus, the extreme believers and the aggressive nonbelievers come together in unholy alliance.

And yet, faith will not be so easily cast. For billions of people, faith motivates, galvanizes, compels, and inspires, not to exclude but to embrace; not to provoke conflict but to try to do good. This is faith in action. You can

* Blair, Tony (2009). Reprinted from speech given at the U.S. National Prayer Breakfast, February 5, 2009, Washington, DC.

see it in countless local communities where those from churches, mosques, synagogues, and temples tend the sick, care for the afflicted, work long hours in bad conditions to bring hope to the despairing and salvation to the lost. You can see it in the arousing of the world's conscience to the plight of Africa. There are a million good deeds done every day by people of faith. These are those for whom, in the parable of the sower, the seed fell on good soil and yielded 60 or 100-fold. What inspires such people? Ritual or doctrine or the finer points of theology? No.

I remember my first spiritual awakening. I was 10 years old. That day my father—at the young age of 40—had suffered a serious stroke. His life hung in the balance. My mother, to keep some sense of normality in the crisis, sent me to school. My teacher knelt and prayed with me. Now my father was a militant atheist. Before we prayed, I thought I should confess this. “I’m afraid my father doesn’t believe in God,” I said. “That doesn’t matter,” my teacher replied, “God believes in him. He loves him without demanding or needing love in return.” That is what inspires: the unconditional nature of God’s love, a promise perpetually kept, a covenant never broken. And in surrendering to God, we become instruments of that love.

Rabbi Hillel was once challenged by a Pagan, who said, “If you can recite the whole of the Torah standing on one leg, I will convert to being a Jew.” Rabbi Hillel stood on one leg and said, “That which is hateful to you, do it not unto your neighbour. That is the Torah. Everything else is commentary. Go and study it.”

As the Qur’an states, “If anyone saves a person it will be as if he has saved the whole of humanity.” We might also talk of the Hindu “Living beyond the reach of I and mine” or the words of Buddha “after practising enlightenment you must go back to practise compassion” or the Sikh scripture, “God’s bounties are common to all. It is we who have created divisions.” Each faith has its beliefs. Each is different. Yet at a certain point each is in communion with the other. Faith is not discovered in acting according to ritual but in acting according to God’s will, and God’s will is love.

Examine the impact of globalization. Forget for a moment its rights and wrongs. Just look at its effects. Its characteristic is that it pushes the world together. It is not only an economic force. The consequence is social, even cultural. The global community—“it takes a village” as someone once coined it—is upon us. Into it steps religious faith. If faith becomes the property of extremists, it will originate discord. But if, by contrast, different faiths can reach out to and have knowledge of one another, then instead of being reactionary, religious faith can be a force for progress.

The Foundation which bears my name is dedicated to achieving understanding, action, and reconciliation between the different faiths for the common good. It is not about the faith that looks inward; but the faith

that resolutely turns us toward each other. Bringing the faith communities together fulfills an objective important to all of us, believers and non-believers. But as someone of faith, this is not enough. I believe restoring religious faith to its rightful place, as the guide to our world and its future, is itself of the essence. The twenty-first century will be poorer in spirit, meaner in ambition, less disciplined in conscience, if it is not under the guardianship of faith in God.

I do not mean by this to blur the correct distinction between the realms of religious and political authority. In Britain we are especially mindful of this. I recall giving an address to the country at a time of crisis. I wanted to end my words with “God bless the British people.” This caused complete consternation. Emergency meetings were convened. The system was aghast. Finally, as I sat trying to defend my words, a senior civil servant said, with utter disdain: “Really, Prime Minister, this is not America you know.”

Neither do I decry the work of humanists, who give gladly of themselves for others and who can often shame the avowedly religious. Those who do God’s work are God’s people. I only say that there are limits to humanism and beyond those limits God and only God can work. The phrase “fear of God” conjures up the vengeful God of parts of the Old Testament. But “fear of God” means really obedience to God; humility before God; acceptance through God that there is something bigger, better, and more important than you. It is that humbling of man’s vanity, that stirring of conscience through God’s prompting, that recognition of our limitations, that faith alone can bestow.

We can perform acts of mercy, but only God can lend them dignity. We can forgive, but only God forgives completely in the full knowledge of our sin. And only through God comes grace; and it is God’s grace that is unique. John Newton, who had been that most obnoxious of things, a slave trader, wrote the hymn *Amazing Grace*: “‘Twas Grace that taught my heart to fear and Grace my fears relieved.” It is through faith, by the Grace of God, that we have the courage to live as we should and die as we must.

When I was prime minister I had cause often to reflect on leadership. Courage in leadership is not simply about having the nerve to make difficult decisions or even in doing the right thing since oftentimes God alone knows what the right thing is. It is to be in our natural state—which is one of nagging doubt, imperfect knowledge, and uncertain prediction—and to be prepared nonetheless to put on the mantle of responsibility and to stand up in full view of the world, to step out when others step back, to assume the loneliness of the final decision-maker, not sure of success but unsure of it. And it is in that “not knowing” that the courage lies. And when in that state of not knowing, our courage fails, our faith can support it, lift it up, keep it from stumbling.

I finish where I began: in the Holy Land, at Mount Nebo in Jordan, where Moses gazed on the Promised Land. There is a chapel there, built by pilgrims in the fourth century. The sermon was preached by an American, who spent his life as an airline pilot and then, after his wife's death, took holy orders. His words are the words of a Christian but they speak to all those of faith, who want God's grace to guide their life. He said this:

While here on earth, we need to make a vital decision . . . whether to be mere spectators, or movers and shakers for the Kingdom of God . . . whether to stay among the curious, or take up a cross. And this means: no standing on the sidelines . . . We're either in the game or we're not. I sometimes ask myself the question: If I were to die today, what would my life have stood for . . . The answer can't be an impulsive one, and we all need to count the cost before we give an answer. Because to be able to say yes to one thing, means to say no to many others. But we must also remember, that the greatest danger is not impulsiveness, but inaction.

It is fitting at this extraordinary moment in your country's history that we hear that call to action; and we pray that, in acting, we do God's work and follow God's will. And by the way, God bless you all.

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Introduction to Theolegal Theory

Nathan C. Walker

Humor can reveal truth. After Tony Blair closed a public speech with “God bless the British people,” a senior civil servant replied, “Really, Prime Minister, this is not America, you know.” Americans love this story. It not only arouses a giggle but also reveals a candid irony, best expressed in the form of a question. Does Mr. Blair’s colleague, who serves a country with a national religion, consider the United States to improperly blur religion and political authority? His comment implies that U.S. citizens allow, if not reward, public officials who explicitly use God-talk in political discourse.

The United States is comprised of a religiously diverse citizenry, which leaves officials to balance the tension upheld by a constitution that simultaneously prevents the establishment of a national creed and yet preserves one’s right to freedom of religion. In practice, officials in the United States cannot legislate theology, but they can, and do, use theology to legislate.

As a result, our government is not a secular democracy where laws guarantee freedom from religion and dismiss theological rhetoric in the political process; neither is it a theocracy, where a single religion prescribes all laws. The purpose of our book is to demonstrate that our country, whether we like it or not, is distinct from that of a secular democracy and a theocracy. The United States is a *theolegal democracy*, defined as a nation that simultaneously guarantees citizens the right to free expression of belief while preventing the establishment of a state religion. These guarantees allow officials to use theology as one of many resources in making, applying, or administering law because a theolegal democracy does not prevent citizens or officials from using their religious worldview in the public arena as seen in secular nations. Nor does a theolegal democracy permit officials to use their theology to deny civil rights to those who do not meet those creedal tests as seen in theocracies.

Our book is comprised of numerous examples of legislators, politicians, civil servants, and legal professionals using theology in their decision-making process. (For the purposes of our discussion, theology is defined as systematically developed beliefs affirmed by religious communities.) We do not classify these officials as theocrats because they do not govern in the context of a theocracy, where God's rule is executed by divinely guided leaders. Rather, they are defined as *theolegal officials* who govern within the tension found in a theolegal constitution that prevents them from establishing an official or a *de facto* state religion, yet affirms their right to freely express their beliefs. Some officials may try to adopt theocratic practices. However, the very nature of a *theolegal democracy* requires officials to exercise restraint by not allowing their particular religious worldview, or the religion of their constituents, to become the rule of the land. A theolegal democracy is also comprised of a plurality of citizens and interest groups that use the democratic process to remove aspiring theocrats from power. At the same time, this kind of government allows officials to freely express their theology and, to some extent, allows them to reference their beliefs during the legislative process.

As a result, *theolegal democracy* is a concept that can evoke at least three responses: it can be a pejorative term for those who believe in separating religion and government; an affirmative term for those who want to preserve one's rights to freely integrate their beliefs; and a candid term for those who value the active participation of a plurality of religious groups in their government. Tensions arise when officials with these varied perspectives govern a country comprised of diverse constituencies.

This sets the stage for our question, *whose God rules a theolegal democracy?* Depending on one's worldview this question may provoke fear, satisfaction, or curiosity as demonstrated in the following three schools of thought: separationists, integrationists, and pluralists. *Separationists* fear that the God of the majority will rule minorities who do not meet those creedal tests: separationists participate in the creation of a theolegal democracy by ensuring that officials do not establish a state religion. *Integrationists* are satisfied with officials' free expression of belief, aware that an official's beliefs are but one source of knowledge used by them to govern: integrationists participate in the creation of a theolegal democracy by promoting religious liberty. *Pluralists* are curious about how religious tyranny is preempted and democracy is strengthened by the engagement of diverse religious interest groups: pluralists participate in the creation of a theolegal democracy by encouraging a wide variety of religious and secular worldviews to be represented in our collective decision-making process. These three worldviews operate alongside one another as an interrelated unit that not only co-creates a theolegal democracy, but also prevents it from becoming either a secular democracy or a theocracy.

This introductory chapter is designed not only to explore these three worldviews, but also to analyze how these perspectives are manifested in the behaviors of citizens and legislators. These behaviors not only breed *theolegal* activities but, surprisingly, secular complacency. Before this conclusion is made, a discussion of these three worldviews is in order.

Separationists

Separationists are skeptical about officials infusing theology into legal rationale and seek to dissociate religion and the state, thereby ensuring that no God rules. From the critical perspective of this worldview, the very essence of our civil society is in danger of being governed from the shadow side of a theolegal democracy—when officials justify their legal decisions not on the preservation of the rights of the minority but on the religious views of the majority. A separationist is different from a pure secularist who rejects any form of religious discourse in civil society, but both agree that theolegal practices are problematic. Separationists believe in religious liberty, yet place a primary importance on the constitution's nonestablishment and no-religious-test clauses, and the jurisprudence derived from U.S. Supreme Court's interpretations that prevent government from enacting religious tests based on a legal creed.

Separationists are therefore critical about citizens' use of the media to probe the personal theology of political candidates, which creates a *de facto* religious test for office. Although aware of the complexities by which citizens vote, separationists worry they will elect representatives who will use their theology to enact laws in accordance with their beliefs. At best, such a government can pass laws that codify the widely accepted moral beliefs held by its citizens. At worst, the dominant theology goes unquestioned while minorities who do not meet those creedal tests experience a loss of rights. Separationists are most concerned about a negative byproduct of theolegal practices—the fortification of the majority's beliefs without instituting an official state religion. Separationists are dedicated to preserving justice and equality for all by preventing religious laws from becoming" so that it reads: Separationists are dedicated to preserving justice and equality for all by preventing religious laws from becoming civil laws. Although separationists recognize that religion plays a part in civil society, they are ultimately concerned that the God of the majority will be allowed to rule all.

Integrationists

Integrationists, sometimes referred to as *accommodationists*, also reject the establishment of a state religion but place greater emphasis on the

constitutional guarantee of an individual's free exercise of religion and freedom of speech. They believe that the United States has always been, and should continue to be a theolegal democracy in order to prevent it from becoming a pure secular nation or a pure theocracy, with each extreme denying the inalienable human right to free expression. Integrationists make clear that citizens do not give up their civil rights when they dedicate themselves to public service. It is unrealistic to ask civil servants to separate their faith from their duty and to ask citizens to leave their beliefs at the voting booth door, whether religious or secular. Such a division, it is believed, would result in severe consequences to democracy. For example, some integrationists argue that if public officials were not allowed to authentically integrate their religious beliefs in their public life, they might be led to create a secret culture where officials might use theology covertly to undermine that necessary tenet of democracy, transparency. To censor a civil servant's application of beliefs in terms of job performance not only harms the individual, but also prevents voters from having full knowledge of the sincere beliefs held by the public official. To censor citizens' use of their religious worldviews is to regulate free expression, which could result in the use of covert theology in political mobilization. In order to thrive, democracy must be strengthened by the practice of transparency, wherein the beliefs of those elected are open to those they serve, and the people's beliefs are known to those who lead. Integrationists believe separationists oversimplify the complexity with which voters choose their representatives. They believe voters do not inquire about a candidate's faith in order to elect a power elite to legalize the beliefs of the majority. Instead, voters inquire to participate in a transparent political process that models religious freedom, affirms the constitution's Establishment Clause, all while contributing to an educated citizenry.

Subsets of integrationists urge officials to legitimate their professional status by exercising restraint and not using their religious worldview as the sole or predominant rationale in their decision-making. If and when an integrated theology is used to discuss law, it should involve a particular social issue that is inextricably theological. In such instances it is expected that there will be open and frank discussion, aware that faith is but one of the freely expressed lenses through which to examine issues.

An open democratic process permits individuals, including public officials and voters, to practice religious freedoms, while simultaneously preventing officials from establishing a state religion. In summary, integrationists believe an individual's theology is only one factor that informs one's decision-making: their God does not necessarily become the ultimate rule of law.

Pluralists

Pluralists believe that our theolegal nation was conceived out of the relative ecumenical diversity of the country's founders and their constituents, a supermajority of whom identified as Christians. Over time, religious pluralism became more complex as American society both influenced and was influenced by globalization. Therefore, in this book you will not find the historical term "separation of church and state" to describe a twenty-first-century theolegal democracy, but recognize the country's theological diversity by using the phrase "separation of *religion* and state."

To achieve a truly balanced democracy in a pluralist society, each worldview, whether derived from religious or secular beliefs, should have equal opportunity to participate in the political process thereby nurturing one of the country's greatest strengths, a diverse citizenry. The more belief systems represented, the more likely that a predominant religious view will not determine whose God rules. Pluralists believe the best way to achieve the goal of separation of religion and state is to increase the diversity of those participating in government. Diversity is honored when the state creates a public and transparent process through which officials and citizens can exercise their constitutional rights. This process is most effective when participants, first, express their views in universal terms; second, defend the rights of people other than themselves; and third, inspire a plurality of communities to participate in government.

Unlike separationists, pluralists do not assume that all Christians will vote for Christians to enact Christian values: there is a wide range of Christianities with divergent beliefs on a variety of topics. Despite the plurality in each religious tradition, some who come from the predominant Judeo-Christian worldview, for example, may feel uncomfortable voting for a minority candidate, such as an atheist or a Muslim or a Wiccan. This initial resistance is softened over time as the voting public diversifies. Multicultural countries that participate in the global political process find their citizens developing sophisticated sensitivities to a wide variety of worldviews. This diversification results in a lessening of the political power of historically predominant religions: their adherents have the option to choose from a wider pool of candidates and eventually cease from voting for only those whose religion traditions mirror their own. Pluralistic societies require diverse coalitions to form and to find common ground.

If an official fails to build a common good and appears to be religiously motivated to legalize their particular theology, resulting in the erosion of another's civil rights, pluralists believe it is the role of a multicultural democracy to counter that overt theology by building diverse coalitions who preserve justice and equality for all. Pluralists encourage citizens to

bring a multitude of worldviews together to enact reasonable checks and balances, even if that results in removing the theolegal official from office. As a result, pluralists affirm a separationist perspective by promoting separation of religion and state.

Pluralists simultaneously affirm an integrationist standpoint. It is expected that public officials will be transparent about their beliefs and, if deemed rhetorically effective, will use their God-talk as merely one tool to motivate a wide range of religious interest groups to take collective responsibility for their government. Voters might be motivated by perceiving the theolegal language of the official to be either inspiring or offensive. Either way, pluralists consider democracy to be strengthened when there is increased participation. Pluralists therefore accept both the effectiveness and the consequences of officials' use of theology as one of many sources of knowledge to determine law. Faith is but one worldview used by those in power. Put simply, the God of the majority may inform the rules of yesterday, motivate citizens to act today, but will not necessarily be the ruling God of tomorrow. A pluralistic society is ruled by the belief *e pluribus unum*—out of many we are one.

Applying Theolegal Theory

Each of these three worldviews is situated within the context of a theolegal democracy where theology can become a political commodity. Public officials act on the religious faith of their constituents, or at least on the beliefs held by the majority, and use those beliefs to barter with voters and bargain for power. This process gives birth to a theolegal democracy, which is identified by examining the behavior of citizens, by observing the behavior of public officials, by studying the explicit and implicit theology found in legislation, and by appraising the rationales used by officials who apply theology to law. If religion is a factor in any of these arenas, then a theolegal democracy is co-created by the citizens themselves whether they identify as separationists, integrationists, and/or pluralists.

Theolegal Citizenry

One way a theolegal democracy forms is when religious interest groups elect officials based on theological principles. Their intent is to have their religious worldview somehow represented in legislative, judicial, and executive branches of government.

Take, for instance, the recent nationwide effort to replace Catholic members of Congress with “real Catholics.” U.S. Senator Sam Brownback

of Kansas served as the spokesman of the Catholic Advocates who sought to remove “so-called Catholics” from public office (specifically, Edward Kennedy, Nancy Pelosi, and John Kerry). In this example, a self-appointed group of Catholic voters wanted to elect officials to represent their particular form of Catholicism, which differed from the religious views of others within that particular religious tradition.

Separationists view such practices as a betrayal of the separation of religion and state and therefore support and enforce the constitution’s Establishment Clause. Integrationists think it is inevitable for a group to express its beliefs and possibly take offense at those who believe differently and therefore promote the constitution’s Free Exercise Clause. Pluralists consider this behavior a classic example of a religious interest-group engaging in political discourse and therefore emphasize the Equal Protection Clause. All three perspectives are critical foundations for a healthy democracy.

However, what happens when this theolegal interest-group behavior becomes a predominant practice, not necessarily based in a particular religious sect but in a larger theolegal worldview affirmed by many voters from a wide variety of similar traditions? The American public has a longstanding practice of upholding a theolegal democracy, often resulting in a *de facto* public religious test for office. It is common for U.S. voters to spend a great deal of time scrutinizing the beliefs of elected officials. For example, in the Saddleback Civil Forum on the Presidency, millions of voters watched Pastor Rick Warren interview senators John McCain and Barack Obama. Warren opened the forum by saying, “We believe in the separation of church and state. But we do not believe in the separation of faith in politics because faith is just a worldview and everybody has some kind of worldview.” Warren made clear that, to the chagrin of separationists, citizens had the right to understand intimately the faith of those who were to take public office.

CNN’s Democratic Candidates Compassion Forum with Campbell Brown and Jon Meacham had a similar intent. We might well ask whether the Democratic candidates themselves may have been theologically constrained by the public expectation that officials should believe in God. If so, whose God? An August 2008 Pew Foundation survey reported that 7 in 10 Americans believe that a president should have strong religious beliefs: 86 percent of Republicans agreed, whereas 68 percent of Democrats agreed.¹ Therefore, if Democratic presidential candidates are to win Republican votes, it may be a practical political strategy to be publicly pious. These polls highlight voters’ motivations to inquire about the faith of presidential candidates and test the sincerity of their beliefs. Meanwhile, candidates recognize their audience and therefore seek to be overtly religious as a

political strategy, which strengthens the free-expression pillar of a theolegal democracy.

Some integrationists are not concerned with such forums because reasonable transparency about one's theology is but one component in informing citizens about a candidate's character, choices, and values. Separationists, however, reply by asking what are the consequences of such behaviors? With good intentions, voters want to know what political candidates really believe. But what are the consequences of asking about a candidate's religious upbringing—is Barack Obama *really* a Christian? The media feeds on this desire and thoroughly investigates politicians' religious affiliations.

Take, for instance, the fury with which voters in the 2008 presidential election consumed information about Barack Obama's former pastor, Jeremiah Wright; or vice-presidential candidate Sarah Palin's Pentecostal rituals to "rebuke witchcraft in the name of Jesus"²; or the 2010 senatorial race in Delaware where candidate Christine O'Donnell was rebuked for saying, "I dabbled into witchcraft."³ These statements were formative moments in their campaigns.

Citizens from various worldviews intentionally, and unintentionally, use this kind of information to shape their perception of candidates' characters, whether positive or negative. Separationists believe that these practices, coupled with public forums about candidates' faith, have become a way for the religious majority to enact implicit religious tests for office—a passing grade is granted to those who affirm the beliefs of the majority. Pluralists respond by granting a failing grade to candidates whose theology offends voters, which is also classified as theolegal behavior. Whether citizens vote for or against candidates because of their beliefs, all participate in a theolegal democracy, whether they intend to or not. Regardless of the election outcome, when a government allows freedom of expression and belief without establishing a state religion, it is expected that the beliefs of those running for office will in some way influence voters' perceptions. Voters in a theolegal democracy will act upon those impressions, whether pleased or offended by the official's beliefs.

Separationists criticize the way some citizens may base their votes for a candidate on the compatibility of their religious beliefs, while integrationists defend the complexity of voters' decisions, naming faith as but one factor. Pluralists, however, argue that faith may matter at the time for those particular constituents; however, in the long run it is likely the demographics will diversify, eventually making it possible for religious minorities and nonbelievers to hold office. Until then, pluralists believe laws should allow equal opportunity for all citizens to run for office, no matter the likelihood of their winning the race.

Theolegal Executives

Whether elected or appointed, citizens in a theolegal democracy continue to pay close attention to the God-talk of those in office. For instance, after Robert Bentley's 2011 inauguration as governor of Alabama, he proclaimed to the members of the Dexter Avenue King Memorial Baptist Church in Montgomery, "So anybody here today who has not accepted Jesus Christ as their savior, I'm telling you, you're not my brother and you're not my sister, and I want to be your brother."⁴ After considerable criticism he issued a public apology.

Then there is Louisiana-born Governor Bobby Jindal who self-identifies as Catholic. Voters asked, how can a man whose Hindu parents emigrated from India *really* be Christian? Those who doubted may have found refuge in Jindal's professed faith in Jesus Christ, a belief statement more compatible with many Evangelicals than the views of mainline Catholics: ". . . our God wins . . . so let's recommit ourselves to go plant those seeds of the gospel so that others might come to have that gift of eternal life. It may be the most important thing we do."⁵

These theolegal statements made by Jindal and Bentley mirror that of Justice Roy Moore, who in 2003 protested the removal of the Ten Commandments from the Alabama state judicial building by denouncing: "We should be offended when elected representatives of this state, the governor, the attorney general, and the justices of this court fail to acknowledge God as the basis of our justice system."

A mere five decades ago it was legal for various states to enact religious tests for office, demonstrating the historic evidence of a trio of theolegal practices: the separationists who reject the establishment of a state religion by serving as watchdogs to theolegal behavior; the integrationists who require theolegal officials to exercise restraint; and the pluralists who affirm laws that honor a diversity of worldviews.

Theolegal Constitutions

Although it has not been exercised, to date the Arkansas Constitution disqualifies any person "who denies the being of God" from holding office and from testifying "as a witness in any court" (Article 19 §1). The North Carolina Constitution disqualifies from public office "any person who shall deny the being of Almighty God" (Article 6 §6). The South Carolina Constitution proclaims, "no person shall be eligible to the office of Governor who denies the existence of the Supreme Being" (Article IV §2). The Constitution of the State of Tennessee contradicts itself on this matter: Article I §4 confirms "that no religious test . . . shall ever be

required as a qualification to any office”; however, Article IX §2 declares “No person who denies the being of God, or a future state of rewards and punishments, shall hold any office.” It should be noted that Tennessee also denies “ministers of the Gospel” and “priests of any denomination” to be eligible to serve in either House of the Legislature (Article IX §1). The Texas Constitution is equally contradictory, “No religious test shall ever be required as a qualification to any office, or public trust . . . nor shall any one be excluded from holding office on account of his religious sentiments, provided he acknowledge the existence of a Supreme Being” (Article 1 §4). The Pennsylvania Declaration of Rights protects those who “acknowledge the being of God and a future state of rewards and punishment” from being disqualified from office (Article 1 §4), implying that those who do not believe in God, heaven, or hell will not receive protection based on their theological beliefs.

In the 1961 case *Torcaso v. Watkins*,⁶ the U.S. Supreme Court found the Maryland Bill of Rights, Article 36, to violate the Establishment, Equal Protection, and No-Religious-Test clauses of the U.S. Constitution. Despite this ruling, the Maryland Constitution continues to read that no person will “be deemed incompetent as a witness, or juror, on account of his religious belief; provided, he believes in the existence of God, and that under His dispensation such person will be held morally accountable for his acts, and be rewarded or punished therefore either in this world or in the world to come.” The U.S. Supreme Court ruled against theolegal officials in the state of Maryland and deemed that no State or Federal Government can require someone to express a belief or disbelief, which made moot the legitimacy of similar state constitutions. Justice Hugo Black, who authored the majority opinion, made clear that state legislatures cannot “constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can they aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.”

Despite this ruling, the seven states listed have not yet repealed this language. Why? It may simply be a result of a failed legislative system that does not update its laws, or it could imply two factors related to our discussion. First, these articles provide historical evidence of the existence of a theolegal system. Such a system is not merely created by officials writing theology into law but by the jurisprudence that consistently affirms all three theolegal worldviews: the separationists who separate theology and law; the integrationists who believe officials must exercise restraint; and the pluralists who affirm diversity.

Second, the fact that these states still have these statements suggests an absence of political will to remove these laws. Why would that be the case?

Could it be that in a theolegal democracy, legislators consider it unimportant or politically risky to remove theolegal rhetoric from law? Maybe this is being too analytical, given that many states have laws on the books that were deemed unconstitutional decades ago; however, it is compelling to note that these statements continue to find their way into some legislative agendas.

Consider the proposed amendment sponsored by Arkansas State Representative Richard Carroll of North Little Rock, the Green Party's highest-ranking elected official in the United States. On February 11, 2009, Carroll filed a bill that would repeal the article that claims atheists are unworthy of holding office or testify as witnesses. In a telephone interview, Carroll explained to me, "this is a case of discrimination that goes against the values that the country was based on—freedom of belief."⁷ Carroll makes clear that he is not trying to legally recognize atheism as a viable belief nor affirm the theology articulated in the state constitution, rather he is defending citizens' right to nondiscrimination. Carroll is finding that this religious test for office, which is outdated and cannot be legally enforced, is not so easily repealed. To date he has encountered two major obstacles: first, the amendment must be one of the top 3 of 15 current proposals to get out of committee; and second, he has to rally his colleagues who say that even though they support the bill they will vote against it because of pressure from the religious right. These officials are clearly constrained by the theology of their constituents who are determined that their legislators, in order to remain in office, hew to the majority's beliefs. This could easily result in no legislative action. If, as Tony Blair states in the Foreword, the greatest danger is inaction, then complacent legislators who are constrained by beliefs of the majority become theolegal officials, whether they intend it or not.

One of the most effective ways to prevent theolegal practices, integrationists claim, is to create professional peer-created and upheld codes of ethics in order to encourage theolegal restraint without necessarily denying officials the right to express their religious beliefs. The following examples illustrate the restraint many officials exercise in the context of theolegal decisions.

Theolegal Legislators

On February 11, 2008, Representative John Wright of the Oklahoma House of Representatives was deeply offended when Pastor Scott Jones, an openly gay United Church of Christ minister, acknowledged his male partner in a prayer from the legislative floor. This led Wright to move to strike the prayer from the record, a motion not affirmed by the majority

of his colleagues. The very act of questioning the identity of a minister implies that legislators have the power to determine who is worthy of the free exercise of religion. Although Wright's religious beliefs were not used as public rationale, legislators need not explicitly exercise their beliefs to engage in theolegal practices. The very act of denying citizens the right to free expression of religion based on their identity is an example of theolegal behavior. For Representative Wright and those who voted against the prayer, the intention was to legally establish the God of the heterosexual as the only permissible expression of faith. Integrationists were pleased to hear that not all legislators followed suit, demonstrating that not all officials, many of them unabashedly religious, affirm Wright's theolegal practices. The pluralists celebrate this event as an exercise of diversity in the public square, an affirmation of how pluralism moderates the views of those elected to serve a diverse population. Separationists and secularists, on the other hand, clear their throats and ask, why is there public prayer in the state legislature?

They ask similar questions about school boards that mandate theolegal policy, such as the teaching of intelligent design. The landmark case *Kitzmiller v. Dover Area School District*⁸ provides a powerful example of how local political officials used theology to determine policy. However, the judge found the attempt to teach creationism in Pennsylvania public schools to be religiously motivated. Judge Jones, appointed by President George W. Bush, was a known Lutheran and Republican whose integrated identity did not influence his decision. Similar to legislators in Oklahoma who did not vote with Representative Wright, Judge Jones chose not to act as a theolegal official. Judge Jones prevented this theolegal practice by deeming the actions of the school board to be religiously motivated, based on evidence that intelligent design was inherently theological, not scientific.

This case demonstrates how the God of these school board members was not allowed to rule, even in a theolegal democracy where free expression is affirmed. Neither, because of his ability to exercise theological restraint, was the God of the judge used to affirm the school board's theolegal practices. Likewise, citizens did not allow the God of the school board to reign: days before Judge Jones' ruling, the citizens of Dover elected nine new school board members, eight of whose campaigns were aligned with Judge Jones' eventual decision.

Pluralists celebrate the triumph of a diverse democracy when citizens form heterogeneous coalitions to ensure that those in power do not use the state to legislate their theology: more often than not these coalitions are comprised of religious individuals. This counters the claim made by secularists that religion is democracy's foe. Unfortunately, this point is often left unspoken when media provides a bullhorn for extremists,

as demonstrated by the theolegal threat by evangelist Pat Robertson who responded, “I’d like to say to the good citizens of Dover, if there is a disaster in your area, don’t turn to God, because you just rejected Him from your city.”⁹

Separationists are infuriated by such remarks, as well as by the actions of the first Dover School Board. As a result they are religiously vigilant about preserving a strong separation of religion and state. However, it is often overlooked that religious conservatives, religious liberals, and even separationists, participate in creating a theolegal democracy, as noted in the following two theories: alternate theology and secular complacency.

Let us assume that religious conservatives are in the political majority and that they use theology in the public arena and lobby for laws to affirm their religious beliefs. This behavior lays the foundation for a theolegal democracy. Religious liberals, however, also partake in theolegal behavior by using *alternate theology* to counter those initiatives. Meanwhile, separationists are compelled to adopt secularists’ views and to reject the use of theology in the public arena, resulting in *secular complacency*. This rejection dilutes their ability to mobilize a critical mass and unintentionally allows the beliefs of the religious majority to dominate. Together, these two terms—alternate theology and secular complacency—can be used to identify a theolegal democracy, demonstrating how all sides of the political spectrum, whether consciously or not, participate in its creation. Marriage, one of the most politically divisive religious issues of our time, serves as a compelling case study to make this point.

Alternate Theology

Liberals are quick to point fingers at religious conservatives who pervasively use theology in public discourse, but the truth is that religious liberals also contribute to a theolegal nation. The religious left is just as robust in numbers and resources as the religious right, and is often better poised to preserve the separation of religion and state than the secular left.¹⁰ For example, it is commonly recognized that biblical references have been the primary source for legally defining conjugal marriage—a term used in conservative circles to define marriage as between one man and one woman. Yet coalitions of diverse Christian and Jewish clergy question the theolegal discourse on marriage, which narrowly represents a particular conservative theolegal worldview. In response, liberal religious coalitions formed around different interpretations of scripture and used alternate theology to promote marriage equality. Some of these groups are Unitarian Universalists, Reconstructionist and Reform Jews, the United Church of Christ, Episcopalians, Quakers, Methodists, Presbyterians, American Baptists, Western Buddhists, and independent Mormons and Catholics.