

Christian Legal Society
2024 National Conference
[Lecture Notes]

Breakout CLE Session

*Supporting the Rule of Law without Deifying the
State*

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Prayer:

*Almighty God, who hast given us this
good land for our heritage: We
humbly beseech thee that we may
always prove ourselves a people
mindful of thy favor and glad to do thy
will.*

Bless our land with honorable industry, sound learning, and pure conduct.

Save us from violence, discord, and confusion; from pride and arrogance, and from every evil way.

Defend our liberties, and fashion into one united people the multitudes brought hither out of many kindreds and tongues.

Endue with the spirit of wisdom those to whom in thy Name we entrust the authority of government, that there may be justice and peace at home, and that, through obedience to thy law, we may show forth thy praise among the nations of the earth.

In the time of prosperity, fill our hearts with thankfulness, and in the day of

trouble, suffer not our trust in thee to fail; all of which we ask through Jesus Christ our Lord. Amen.

Prolegomena:

1. As Christians, our ultimate fidelity is neither to the Donkey, nor to the Elephant, but to the Lion who is the Lamb

2. A Christian's foundational confession commences NOT with "God loves me" nor with "Jesus died for me" but rather with this:

*I believe in God, the Father Almighty,
creator of Heaven and Earth*

A. The Rule of Law as a Christian Artifact

a. Creational Norms

i. Paradise: Governed by the Rule of Law,
NOT NL

1. Society → Order, coordination
issues, and rules

2. Finitude → Predictable and reliable
assumptions

ii. Imago Dei

1. Human Exceptionalism; yet because
created → finite

2. Human Equality

a. Dignity Is inherent, cf., *Windsor*

b. Ontic Valorization

- i. Contra ***Partiality*** and ***Tribalism*** – see later discussion as these things comprise a HUGE assault on the Rule of Law

3. Missional → Cultural Mandate, the fulfilling of which requires the Rule of Law in many facets

a. Economic Productivity: Makers v. Takers; cf, Magna Charta

- i. Fraud/Misrepresentation

- ii. Unjust weights and measures

- iii. Boundaries and Property Protection

- iv. Proverbs → Hard work and industry

b. Free Speech grounded in
Theological Considerations →
Collaboration

c. Associational Norms

iii. Marriage

1. Proper channeling and expression
of sexuality

2. Family Governance: incipient
sphere sovereignty and subsidiarity

3. Separate Status: recognized and
protected

i. Family

ii. Collaborative Associations

iv. Hierarchy and Cosmology

1. Jesus in Court: John 19

John 19:10–11

[10] So Pilate said to him, “You will not speak to me? Do you not know that I have authority to release you and authority to crucify you?” [11] Jesus answered him, “***You would have no authority over me at all unless it had been given you from above.*** Therefore he who delivered me over to you has the greater sin.” (ESV)

2. Romans 1:18-32

Romans 1:18–32

God’s Wrath on Unrighteousness

[18] For the wrath of God is ***revealed from heaven*** against all ungodliness and unrighteousness of men, who by their unrighteousness ***suppress the***

truth. [19] For what can be known about God is plain to them, because God has shown it to them. [20] For his invisible attributes, namely, his eternal power and divine nature, have been clearly perceived, ever since the creation of the world, in the things that have been made. So they are without excuse. [21] For although they knew God, they did not honor him as God or give thanks to him, but they became futile in their thinking, and their foolish hearts were darkened. [22] Claiming to be wise, they became fools, [23] and ***exchanged the glory of the immortal God for images resembling mortal man and birds and animals and creeping things.***

[24] Therefore God gave them up in the lusts of their hearts to impurity, to the ***dishonoring of their bodies*** among themselves, [25] ***because they exchanged the truth about***

God for a lie and worshiped and served the creature rather than the Creator, who is blessed forever! Amen.

[26] ***For this reason*** God gave them up to dishonorable passions. For their women exchanged natural relations for those that are contrary to nature; [27] and the men likewise gave up natural relations with women and were consumed with passion for one another, men committing shameless acts with men and receiving in themselves the due penalty for their error.

[28] And since they did not see fit to acknowledge God, God gave them up to a debased mind to do what ought not to be done. [29] They were filled with all manner of unrighteousness, evil, covetousness, malice. They are full

of envy, murder, strife, deceit, maliciousness. They are gossips, [30] slanderers, haters of God, insolent, haughty, boastful, inventors of evil, disobedient to parents, [31] foolish, faithless, heartless, ruthless. [32] ***Though they know God's righteous decree that those who practice such things deserve to die, they not only do them but give approval to those who practice them.*** (ESV)

3. Romans 13:1-7

Romans 13:1–7

Submission to the Authorities

[1] Let every person be subject to the ***governing authorities. For there is no authority except from God***, and those that exist have been instituted

by God. [2] Therefore whoever resists the authorities resists ***what God has appointed***, and those who resist will incur judgment. [3] ***For rulers are not a terror to good conduct, but to bad.*** Would you have no fear of the one who is in authority? Then do what is good, and you will receive his approval, [4] for he is God's servant for your good. But if you do wrong, be afraid, ***for he does not bear the sword in vain. For he is the servant of God, an avenger who carries out God's wrath on the wrongdoer.*** [5] Therefore one must be in subjection, not only to avoid God's wrath but also for the sake of conscience. [6] For because of this you also pay taxes, ***for the authorities are ministers of God***, attending to this very thing. [7] Pay to all what is owed to them: taxes to whom taxes are owed, revenue to whom revenue is owed, respect to whom respect is owed, honor to whom honor is owed. (ESV)

v. [Mission: The Cultural Mandate]

b. The Legal Lesson of the Exodus

i. A Liberated People → Law necessary to regulate a Newly Freed society

1. Cf., Paradise in the Garden

ii. Source of Law: God → “from Above” – God and the Mt. Sinai cf., John 19

iii. Purpose and Content of the Law:

1. Provide Structure for Society

a. Substantive Precepts

i. Coordination Problems

ii. Justice interpersonally

1. Tort Law

2. Property Law

- a. Boundaries
- b. Animals
- c. Crops

iii. Justice Societally

- 1. Murder
- 2. Manslaughter
- 3. Theft
- 4. Sexual assault

b. Procedural Precepts

i. Appellant Courts

ii. Evidence and Witness Requirements – 9th Commandment; 2 witnesses

iii. Proportionality – *Lex Talionis*

1. Just War Theory

2. Cf. AZ Prop re: Child Sexual Trafficking → mandatory Life Sentence???

iv. Civil Remedies:

1. Restitution
2. Damages
3. Interest re: loss of use

c. The Rule of Law as a Tool of Justice OR Injustice

i. Mis-calibrated Compass (Tom Wright):

It is one thing to insist on walking south when the compass is pointing north. ***But to “fix” the compass so that it tells you that the wrong way is the right way is far, far worse. You can correct a mistake.*** But once you tell yourself it wasn't a mistake there's no way back.¹

¹ N.T. Wright, *After You Believe – Why Christian Character Matters*, (2010), 153

ii. The Sin of Legal Partiality

1. Cf., Jim Crow laws

2. Cf., *Plessy v. Ferguson*

3. Cf., *Loving v. Virginia*

The Sin of Partiality: Becoming Ugly Monsters

Scripture is unmistakable. Partiality is condemned interpersonally, within the church community, and when administering justice. This is demonstrable from God's Character, God's Rule for Society, and God's Standard for Public Justice. On the other hand, committing these sins based on race or place, Calvin asserts, makes one an "ugly monster."²

Before considering "boilerplate Reformed ethics," let's be clear as to Scripture's mandate. The following texts are intentionally presented here without comment or interpretation. To advocate

² See note 28. This is deliciously ironic since Sauve's social media platforms frequently delve into monsters, etc. The Gospel according to Grendel, Gorgon, and Godzilla????!!!

something contrary to this cluster of Scriptural witness is telling. The men doing so are not serious men, let alone serious presbyters.

- **Theological Considerations:**

- As to **God** and His **Character**

Deuteronomy 10:17 - For the LORD your God is God of gods and Lord of lords, the great, the mighty, and the awesome God, ***who is not partial and takes no bribe.***

2 Chronicles 19:7 - Now then, let the fear of the LORD be upon you. Be careful what you do, ***for there is no injustice with the LORD our God, or partiality or taking bribes.***”

Job 34:19 – [God] ***who shows no partiality to princes, nor regards the rich more than the poor,***

[**why?**] for they are all the work of his hands?

Acts 10:34 - So *Peter* opened his mouth and *said*: “Truly I understand *that God shows no partiality*,

Romans 2:11 - *For God shows no partiality*.

Galatians 2:6 - And from those who seemed to be influential (what they were makes no difference to me; *God shows no partiality*)—those, I say, who seemed influential added nothing to me.

Luke 20:21 - So they asked him, “Teacher, we know that you speak and teach rightly, *and show no partiality, but truly teach the way of God*.

○ **As to Justice:**

- **Privately, that is, Person to Person:**

Job 13:8 - *Will you show partiality toward him?* [no] Will you plead the case for God?

Job 13:10 - He will surely rebuke you *if in secret you show partiality.*

Job 32:21 - *I will not show partiality to any man* or use flattery toward any person.

- ***Communally*, that is, *within the church***

Malachi 2:9 - and so I *make you despised* and *abased* before all the people, [why?] *inasmuch as you*

do not keep my ways but show partiality in your instruction.”

1 Timothy 5:21 - In the presence of God and of Christ Jesus and of the elect angels ***I charge you to keep these rules without prejudging, doing nothing from partiality.***³

James 2:1 - My brothers, ***show no partiality*** as you hold the faith in our Lord Jesus Christ, the Lord of glory.

James 2:9 - ***But if you show partiality, you are committing sin*** and are convicted by the law as transgressors.

- **Publicly**, that is, as to **Law and Policy**

³ This passage is particularly damning of Mr. Suave's assertion as it is directed by Paul in a pastoral epistle to a pastor, Timothy, concerning the non-negotiable requirement of impartial conduct. For any pastor to teach and act otherwise arguably disqualifies him from being a presbyter.

Exodus 23:3 - *nor shall you be partial to a poor man in his lawsuit.*

Leviticus 19:15 - “*You shall do no injustice in court. You shall not be partial to the poor or defer to the great, but in righteousness shall you judge your neighbor.*”

Deuteronomy 1:17 - *You shall not be partial in judgment. You shall hear the small and the great alike.* You shall not be intimidated by anyone, for the judgment is God's. And the case that is too hard for you, you shall bring to me, and I will hear it.’

Deuteronomy 16:19 - *You shall not pervert justice. You shall not show partiality, and you shall not accept a bribe, for a bribe blinds the eyes of*

the wise and subverts the cause of the righteous.

Psalm 82:2 - “How long will you *judge unjustly* [how?] *and show partiality* to the wicked? Selah

Proverbs 18:5 - *It is not good to be partial to the wicked or to deprive the righteous of justice.*

Proverbs 24:23 - These also are sayings of the wise. ***Partiality in judging is not good.***

Proverbs 28:21 - *To show partiality is not good*, but for a piece of bread a man will do wrong.

Ephesians 6:9 - *Masters*, do the same to them, and stop your threatening, *knowing that* he who is

both their Master and yours is in heaven, and that ***there is no partiality with him.***

Colossians 3:25 - For the wrongdoer will be paid back for the wrong he has done, and ***there is no partiality***

These verses – boilerplate Bible ethics - illuminate the staggering ignorance of those seeking to import pagan tribalism back into church and society. Contending – as Stephan Wolfe does - that Christianity *commands* (!) believers to “*prefer your people over other peoples*” borders on blasphemy, denying the impact of Pentecost, among other things, and seemingly pining for a return to a pagan Babelic world.

God’s Word precludes partiality in no uncertain terms. Preferring one’s race and place – blood and soil - contradicts the universalizing Gospel of Christ. Jesus, who possessed all authority in heaven and on earth *answers* the petition we pray: His will

would be done “on earth” as it is in heaven. And what does heaven disclose as the pattern for what should be developing on earth as that prayer is progressively answered? Diversity among unity upholds and affirms the Rule of Law:

After this I looked, and behold, a great multitude that no one could number, ***from every nation, from all tribes and peoples and languages***, standing before the throne and before the Lamb, clothed in white robes, with palm branches in their hands, and crying out with a loud voice, “Salvation belongs to our God who sits on the throne, and to the Lamb!”⁴

Then I saw another angel flying directly overhead, ***with an eternal gospel to proclaim to those who***

⁴ Rev. 7:9,10

dwell on earth, to every nation and tribe and language and people.⁵

As Reformed scholar Herman Bavinck noted:

Regeneration does not erase individuality, personality or character, but sanctifies it and puts it at the service of God's name. ***The community of believers*** is the new humanity that ***bears within itself a wide range of variety and distinction and manifests the richest diversity in unity.***⁶

Instead of Wolfe's segregated silos, Scripture envisions a joining together, while acknowledging relevant cultural distinctives like ethnicity and language.

⁵ Rev. 14:6

⁶ Herman Bavinck [*Reformed Dogmatics: Holy Spirit, Church and New Creation*](#) (2008) vol.4, 640

B. Historical Examples – Invoking the Applicable Rule of Law without Deifying the State:

1. Contra Speech Codes: Acts 5:17-29

Acts 5:17–29

The Apostles Arrested and Freed

[17] But the high priest rose up, and all who were with him (that is, the party of the ***Sadducees***), ***and filled with jealousy [18] they arrested the apostles and put them in the public prison.*** [19] But during the night an angel of the Lord opened the prison doors and brought them out, and said, [20] ***“Go and stand in the temple and speak to the people all the words of this Life.”*** [21] And when they heard this, they entered the temple at daybreak and began to teach.

Now when the high priest came, and those who were with him, they called together the council, all the senate of the people of Israel, and sent to the prison to have them brought. [22] But when the officers came, they did not find them in the prison, so they returned and reported, [23] “We found the prison securely locked and the guards standing at the doors, but when we opened them we found no one inside.” [24] Now when the captain of the temple and the chief priests heard these words, they were greatly perplexed about them, wondering what this would come to. [25] ***And someone came and told them, “Look! The men whom you put in prison are standing in the temple and teaching the people.”*** [26] Then the captain with the officers went and brought them, but not by force, for they were afraid of being stoned by the people.

[27] And when they had brought them, they set them before the council. ***And the high priest questioned them, [28] saying, “We strictly charged you not to teach in this name, yet here you have filled Jerusalem with your teaching, and you intend to bring this man’s blood upon us.” [29] But Peter and the apostles answered, “We must obey God rather than men. (ESV)***

2. Paul the Apostle (and Roman Citizen)

Acts 25:8–12

[8] Paul argued in his defense, ***“Neither against the law of the Jews, nor against the temple, nor against Caesar have I committed any offense.”*** [9] But Festus, wishing to do the Jews a favor, said to Paul, “Do you wish to go up to

Jerusalem and there be tried on these charges before me?” [10] ***But Paul said, “I am standing before Caesar’s tribunal, where I ought to be tried. To the Jews I have done no wrong, as you yourself know very well. [11] If then I am a wrongdoer and have committed anything for which I deserve to die, I do not seek to escape death. But if there is nothing to their charges against me, no one can give me up to them. I appeal to Caesar.”*** [12] Then Festus, when he had conferred with his council, answered, “To Caesar you have appealed; to Caesar you shall go.” (ESV)

Acts 25:14–16

[14] And as they stayed there many days, Festus laid Paul’s case before

the king, saying, “There is a man left prisoner by Felix, [15] and when I was at Jerusalem, the chief priests and the elders of the Jews laid out their case against him, asking for a sentence of condemnation against him. [16] I answered them that ***it was not the custom of the Romans to give up anyone before the accused met the accusers face to face and had opportunity to make his defense concerning the charge laid against him.*** (ESV)

Cf. Confrontation Clause (6th Amendment; SCOTUS citing Acts 25:16 – *Coy v. Iowa*, 487 U.S. 1012, 1015-16 (1988)), J. Scalia

3. St. Ambrose: versus Theodosius

C. The State: Savior or Servant?

a. The Jurisdictional Question

Matthew 22:15–22

Paying Taxes to Caesar

[15] Then the Pharisees went and plotted how to entangle him in his words. [16] And they sent their disciples to him, along with the Herodians, saying, “Teacher, we know that you are true and teach the way of God truthfully, and you do not care about anyone’s opinion, for you are not swayed by appearances. [17] Tell us, then, what you think. Is it lawful to pay taxes to Caesar, or not?” [18] But Jesus, aware of their malice, said, “Why put me to the test, you hypocrites? [19] Show me the coin for the tax.” And they brought him a denarius. [20] And Jesus said

to them, “Whose likeness and inscription is this?” [21] They said, “Caesar’s.” Then he said to them, ***“Therefore render to Caesar the things that are Caesar’s, and to God the things that are God’s.”*** [22] When they heard it, they marveled. And they left him and went away. (ESV)

b. Caesar v. Christ:

Audience Participation Time: Fill in the Blank:

“Salvation is to be found in none other [except] [Augustus], and there is no other name given to men in which they can be saved.”

CA Farmer 241:5 (Oct. 5, 1974), p. 28.⁷

⁷ <https://chalcedon.edu/resources/articles/political-saviors>

According to the German historian, Ethelbert Stauffer, ***the religious principle of the Roman Empire***, from the days of Augustus on, ***was salvation by Caesar***: “Salvation is to be found in none other save Augustus, and there is no other name given to men in which they can be saved.”

This helps us to understand the boldness of St. Peter, and the total power he declared rested in Christ, when he said of Jesus Christ, ***“Neither is there salvation in any other: for there is none other name under heaven given among men, whereby we must be saved”*** (Acts 4:12).

War between Christ and Caesar, the Christians and Rome, was thus inevitable. ***The state and its emperors claimed to offer***

salvation. The church declared only Christ does.

c. What of the Natural Law for Navigating between Christ and Caesar?

- *Sommerset v. Stewart* – Lord Mansfield (1721):
 - Slavery is “so odious—nothing can be suffered to support it but positive law”
 - BUT: Politics arise: chaos if 14,000 freed at once
 - Tool: Distinction between NL and Positive Law, the latter ONLY binding within the jurisdiction
- *The Antelope*
 - Facts: Pirate ship – stole slaves from other nations’ slave ships

- Basis: Treaty: “Return recovered items from pirates”
- Advocate: Francis Scott Key
 - NL: free
 - B/P: demonstrate more than possession: legal basis for such
 - Tension: Conflict btwn Right to Property and Right to Liberty
 - Impossible “to derive a right from a wrong”⁸
 - What species of things comprise “property”
 - “Custom” as sole determiner of “law of nations”
 - Sticky international relations matters – searching other

⁸ At 63

nations' ships: natural principles to foreign citizens in English courts

- *The Slave Grace: Stovall v. Marshall*
 - Universal principles – how applied???
 - English custom as foundation of law
 - *La Amistad* – John Q defending:
 - Using Marshall's *Antelope's* repugnance to slavery
 - Bargain in the constitution: Freedom v Slavery
 - 3/5
 - 20-year slave trade
 - Fugitive slave clause:
 - “Free people” v. “other people”
 - Levels of Tension

- Fact v. Right
- NL v. Positive Law
- Philosophical: How can a human be deemed “property”?
- Adams:
 - Common Good Rationale – historically based
 - VERSUS: Transcendent view using NL
- Adams’ key focus: Anthropology for explaining the tension (p. 81):
 - Rejects Classical Dualism
 - Rejects Classical notions of Reason OVER Passions BECAUSE of Man’s FALLEN constitution – total depravity

- YET: While the mind/nous is Fallen, it's not totally blind:

“I will not recur to the Declaration of Independence – ***your honors have it implanted in your hearts.***”⁹

- “Believing unbelievers”:

The slavery question as “a perpetual agony of conscious guilt and terror attempting to disguise itself under sophisticated argumentation and braggart menaces.”

- Refutation of Calhoun – p. 83
- *The Antelope* – John Marshall
- Slavery: contrary to NL

⁹ Id. at 81

- HOWEVER, the legal issue pivoted on
 - Use and national acts
 - International Law of War gives legal status to Slavery: spoils of war
 - Rebuttal:
 - Assumes: Slavery is morally legitimate consequence of War OR
 - Assumes: The Court has authority to recognize a Legal right that contradicts a Natural Right
 - DOI provides Normative

Foundation for
Constitutional
Politics, NOT vice
versa – therefore
NL circumscribes
Executive Power

- Tension exists due to Fallen and Frail nature of humanity – NOTE: this goes beyond NL and borrows special revelation
- Notes the ABSENCE of the terms “slave” and “slavery” from the Constitution’s text
- In Spain: the Slave Trade was LEGAL – therefore restraint to interfere

- *La Amistad* – Joseph Story
 - Primacy of Positive Law (custom or usage), BUT relying the “eternal principles of justice”
 - ONLY in the absence of Positive law do the NL principles control
 - Cf.: ala Dormant Commerce Clause
 - Adams:
 - Constitution silent re: slaves
 - ONLY refers to them as “persons” (p. 92)
 - Reasoning from Habeas Corpus – seizing, detaining, and sending is inconsistent with the Writ

- Fundamental rights NOT contingent of status – race or citizenship – but are pre-political as humans

- Calhoun – p. 95
 - Consequence of conflict and war – rights derive from winners in conflict

 - Adams’ rebuttal: Rights are thereby reducible to violence and force

 - AND, incoherent – if Positive law governs, then the slaves are simultaneously:
 - Merchandise (to be returned) AND

- Pirates to be punished –

- Cf., Madison: *Federalist 54*

- If they are MEN, then they possess the “Right of Revolution”

i. NL and Imago Dei → Gender Ideology

1. Preferred Personal Pronouns:
Ventrella, *Who Do You Say that I Am?* (Vol. 8, No. 2)¹⁰

ii. NL and the Triune God

d. Romans 13:1-7 Again

¹⁰ https://www.christianlegalsociety.org/wp-content/uploads/2022/08/CLSJournal_Winter2018_web.pdf

D. The Role of Anthropology

a. Free Speech – A theological Necessity

b. Human Dignity and Equality

i. Cf., “blood and soil” formulae

c. What This *Means* for Good Governance

E. US Constitutionalism as a Christian Echo Supportive of the Rule of Law

a. Model Rule 2.1

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law ***but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.***

b. *The Federalist* Predicate: Nos. 1, 6, 10, 15, 24, 37, 51

i. No. 1 – Hamilton:

[T]o decide the important question, ***whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force.***

ii. No. 6 – Hamilton

A man must be far gone in Utopian speculations who can seriously doubt that, if these States should either be wholly disunited, or only united in partial confederacies, the subdivisions into which they might be thrown would have frequent and

violent contests with each other. .

To look for a continuation of harmony between a number of independent, unconnected sovereignties in the same neighborhood, ***would be to disregard the uniform course of human events, and to set at defiance the accumulated experience of ages. . . .***

The causes of hostility among nations are innumerable. There are some which have a general and almost constant operation upon the collective bodies of society. ***Of this description are the love of power or the desire of pre-eminence and dominion--the jealousy of power, or the desire of equality and safety.***

iii. No. 10 - Madison

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. . . .

No man is allowed to be a judge in his own cause, ***because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity.*** With equal, nay with greater reason, a body of men are ***unfit to be both judges and parties at the same time;*** yet what are many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? . . .

The inference to which we are brought is, that the **CAUSES** of faction cannot be removed, and that relief is only to be sought in the means of controlling its **EFFECTS.**

iv. No. 15 – Hamilton

IN THE course of the preceding papers, I have endeavored, my fellow-citizens, to place before you, in a clear and convincing light, ***the importance of Union to your political safety and happiness.*** I have unfolded to you a complication of dangers to which you would be exposed, should you permit that sacred knot which binds the people of America together be severed or dissolved ***by ambition or by avarice, by jealousy or by misrepresentation.***

v. No. 24 – Hamilton

If we mean ***to be a commercial people,*** or even to be secure on our Atlantic side, we must endeavor, as soon as possible, ***to have a navy.*** To this purpose there must be dock-

yards and arsenals; and for the defense of these, fortifications, and probably garrisons. When a nation has become so powerful by sea that it can protect its dock-yards by its fleets, this supersedes the necessity of garrisons for that purpose; but where naval establishments are in their infancy, moderate garrisons will, in all likelihood, ***be found an indispensable security*** against descents for the destruction of the arsenals and dock-yards, and sometimes of the fleet itself.

vi. No. 37 – Madison

It is a ***misfortune***, inseparable from human affairs, ***that public measures are rarely investigated with that spirit of moderation which is essential to a just estimate of their real tendency to advance or obstruct the public***

good; and that this spirit is more apt to be diminished than promoted, by those occasions which require an unusual exercise of it. . . .

The genius of republican liberty seems to demand on one side, not only that all power should be derived from the people, but that those intrusted with it should be kept in independence on the people, by a short duration of their appointments; and that even during this short period the trust should be placed not in a few, but a number of hands. Stability, on the contrary, requires that the hands in which power is lodged should continue for a length of time the same. A frequent change of men will result from a frequent return of elections; and a frequent change of measures from a frequent change of men: ***whilst energy in government requires not only a certain duration of power, but the***

execution of it by a single hand. . .

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When we pass from ***the works of nature, in which all the delineations are perfectly accurate***, and appear to be otherwise only ***from the imperfection*** of the eye which surveys them, ***to the institutions of man***, in which the obscurity arises as well from the object itself as from the organ by which it is contemplated, we must perceive the necessity of moderating still further our expectations and hopes from the efforts of human sagacity. . . .

It is impossible for the man of pious reflection not to perceive in it a finger of that Almighty hand which has been so frequently and signally extended to our relief in the critical stages of the revolution.

vii. **No. 51 – Madison** (but Yale indicates perhaps Hamilton)

It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.

c. Indicia of Influence:

i. Separation of Powers

- ii. Ex post facto Laws proscribed
 - iii. Due Process of Law required
 - iv. Privileges and Immunities; cf., 14th Amendment: privilege or immunities – cf., *Slaughterhouse Cases*
 - v. Equal Protection
 - vi. P or I
 - vii. Bankruptcy Laws
 - viii. Intellectual Property Laws
 - ix. Witness Requirements for Treason
- d. A Godless Constitution? Engaging Krammick and Moore
- e. Religion Neither Established nor Ignored

F. Contemporary Religious and Anti-liberal Challenges to Constitutionalism

a. Catholic Integralism

i. Description

1. RL

2. Validity of non-sacramental marriages

3. Jurisdiction by virtue of baptism

ii. Challenges/Critique

1. Transition obstacles

2. Justice Obstacles: Moral incoherence → necessitating what it claims to oppose

3. Stability Obstacles

b. Christian Nationalism

c. National Conservatism