

**Book Proposal –  
The Law of the Lord:  
Mapping the Legal Worldview of Christian Conservatives**  
(under contract with Cambria Press)

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**Summary.** The attitudes and behavior of Christian conservatives continue to exert a powerful influence in American politics and society. Many of the social and political battles that serve to mobilize Christian conservatives – such as controversies over abortion, same-sex marriage, and the protection of religious conscience – are fought in the judicial branch. But scholarly and popular thinking about Christian conservative legal activism suffers from a good deal of over-simplification because it focuses only on the external words and actions of Christian conservatives. This book contributes to a more complex and nuanced understanding of the views of Christian conservatives concerning law, courts, and legal interpretation by employing a “depth-hermeneutical” approach.<sup>1</sup> In other words, I seek to describe the internal self-understanding of Christian conservatives, especially the meaning they ascribe to their own words and actions. By analyzing historical documents, contemporary writings, legal briefs, and interviews with Christian conservatives, my goal is to map the legal worldview of Christian conservatives.

One example of the scholarly and popular over-simplification of Christian conservative legal views is the suspicion that Christian conservatives are merely attempting to impose their theological views on the rest of American society. This book addresses that fear by examining the connections between Christian conservative views of the Bible and other authoritative religious texts and Christian conservative views of the proper interpretation of the constitution as it relates to marriage equality, abortion, and other issues. I argue that the connection between theology and politics on these and other issues is real but not straightforward. Christian conservatives certainly do attempt to advance their religious views in the legal arena, but this does not translate easily into a specifically Christian jurisprudence. In fact, many Christian conservatives actually use legal arguments that are motivated by a positivist legal philosophy, which actually weakens the connection between Christian conservative morality and law.

A related scholarly and popular oversimplification of Christian conservative legal activism is the failure to trace particular legal positions – such as opposition to same-sex marriage or the drive for religious legal exemptions – to more general views about the proper socio-political roles of churches and courts. This book provides a more complete intellectual portrait by tracing Christian conservative legal positions back to a particular understanding of church/state relations,

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<sup>1</sup> This approach is described at length in Michael T. Gibbons, “Hermeneutics, Political Inquiry, and Practical Reason: An Evolving Challenge to Political Science,” 100 *American Political Science Review* 563-87 (2006). It is grounded in the philosophy of Hans-George Gadamer, Charles Taylor and others, and was used famously by anthropologists such as Clifford Geertz.

constitutional interpretation, and the proper role of courts and judges. This helps put the movement in context by explaining how Christian conservative positions make sense from the point of view of Christian conservatives themselves.

By providing a more intellectually rigorous and balanced approach to Christian conservative legal activism, the book will clarify the battle-lines in the ongoing American culture wars. This clarification, in turn, will contribute to a more reasoned assessment of the place of religion in the American public square.

### **Overview of Content:**

#### ***Chapter One: Introduction – The Ongoing Battle Over Christianity and American Politics***

This chapter provides a historical and contemporary overview of the connections between Christianity and American law. I trace the connections between American views of law and Christianity from the colonial period and the founding, through the controversies over abolitionism and progressive reforms, through the watershed school prayer and sexual privacy cases of the 1960s and 70s, and ending with the rise of the religious right and contemporary controversies over same-sex marriage and other moral issues. I also outline some of the problems in the way that Christian conservative legal activism is viewed in popular and scholarly circles. This sets the stage for the empirical work discussed in the remainder of the book.

#### ***Chapter Two: Views of Constitutional Interpretation Among Political Activists***

This chapter describes and analyzes the connections between Christian conservative theological views – chiefly, their views of Biblical interpretation – and Christian conservative views on Constitutional interpretation. Whether the issue is deficits, health care, or judges, Christian conservatives attack liberals for overreaching Constitutional limits, and they defend a common-sense literal view of Constitutional interpretation. A significant number of these Christian conservatives are also Evangelicals or Fundamentalists who take a similar view of Biblical interpretation. I note that, at first glance, it appears they are merely carrying over their Biblical literalism into their political views. This seems consistent with scholarship analyzing the "sacred" status of the Constitution and the influence of religious values on Constitutional interpretation. However, I argue, that research is often theoretical and abstract, focusing on broad cultural attitudes, doctrinal debates, and judicial philosophy. I then provide a more concrete analysis of the Biblical and Constitutional attitudes of politically active Christian conservatives. I conclude that the connection between Biblical and Constitutional literalism is real but not straightforward. Christian conservative legal activists do use the same techniques to interpret both documents. But this does not translate easily into specific policy positions on issues such as abortion and same-sex marriage.

#### ***Chapter Three: Views of Legal Legitimacy Among Legal Scholars and Lawyers***

This chapter describes and analyzes Christian conservative views of the proper role of judges and courts. It traces these views to their jurisprudential foundations, which are largely positivist in nature. I analyze the arguments made by Christian conservatives from both a natural-law

perspective and a legal positivist perspective. I find that, while some Christian conservatives take the natural law position that liberal social decisions are substantively immoral, most make the positivist claim that these decisions are procedurally illegitimate because judges are incorrectly interpreting constitutional rules and/or giving insufficient weight to the wishes of democratic majorities. I then elaborate on the details of this positivist position, including its agnostic attitude toward the substantive content of law and its admonition that judges defer to the established institutional procedures, however disagreeable the result may be. I conclude by exploring the tension between this positivist view and the larger Christian conservative aim of defending and advancing substantive, objective Judeo-Christian norms.

#### ***Chapter Four: Views of Law, Courts, and Morality Among Ordinary Believers***

This chapter describes and analyzes the views of ordinary Christian conservative believers on the place of law and courts in American democracy and the adjudication of moral issues, such as abortion and same-sex marriage. I trace these views back to the Christian conservative definitions of law and views on legal interpretation outlined in the previous chapters. I conclude that there is a cohesive Christian conservative legal worldview that unites scholars, legal activists, and ordinary believers. But I argue that what makes this worldview cohesive is not the attempt to advance a Christian conservative theology. Rather, what unites Christian conservatives is a sense of increasing marginalization and victimization of traditional Christian values and practices in contemporary American society.

#### ***Chapter Five: The Promises and Perils of the Christian Conservative Legal Worldview***

I conclude the book by drawing out the implications of this research for American democratic values, including the rule of law, as well as the implications of this research for debates over religion in liberal societies more generally. Contrary to conventional wisdom, I argue that Christian conservative attempts to influence law and courts largely strengthens American democracy and liberalism generally because Christian conservatives must translate their particular religious views into public arguments that make sense to non-Christians and non-Christian conservatives. It also forces non-Christians and non-Christian conservatives to confront ideas that run counter to contemporary culture. This strengthens democracy and the rule of law by challenging the conformism that many observers of liberal democracy have warned against. However, I also note some dilemmas this legal activism poses for the larger Christian conservative worldview. One dilemma is that the translation necessary to make Christian conservative ideas palatable to others requires the watering down of some theological claims that are central to Christian conservative identity. A related dilemma is that legal activism diverts scarce social capital away from personal and community transformation, which is also a central goal of Christian conservatives. The book concludes with a call for a major reassessment of Christian conservative legal activism, both outside and inside the movement.