

CENTENNIAL REVIEW

Principled Ideas from the Centennial Institute

Volume 8, Number 3 • April 2016



Publisher, William L. Armstrong

Editor, Jeff Hunt

WESTERN
CONSERVATIVE
SUMMIT
July 1-3, 2016

THE LEGAL BASIS FOR A MORAL CONSTITUTION: A GUIDE FOR CHRISTIANS TO UNDERSTAND AMERICA'S CONSTITUTIONAL CRISIS

By Jenna Ellis, Esq.



Jenna Ellis, Esq. teaches Constitutional Law at Colorado Christian University. This is an excerpt from her latest book, "The Legal Basis for a Moral Constitution: A Guide for Christians to Understand America's Constitutional Crisis."

Morality and the U.S. Constitution

I started writing this book well before the *Obergefell v. Hodges*ⁱ same-sex marriage decision was handed down in June 2015. That Supreme Court opinion simply further necessitated a comprehensive, logical, and legal argument for a moral basis to Constitutional interpretation. In the aftermath of that decision, the States and the American people in general were left in

a Constitutional crisis greater than we have ever faced since the original Constitutional Convention in 1787.

As Americans, we are adrift in a huge, murky melting pot of so many different ideas, cultures, faiths, and worldviews that we have largely embraced the mantra that in order to safely coexist, no one can or should assert any moral conclusions. That, the secularists argue, would be imposing my views on you, which absolutely cannot be tolerated in the name of absolute tolerance. Liberty, they argue, can only be asserted when it is not offensive to anyone else. Free speech and possessing sincerely held beliefs and values have become "bigotry."

With the rise of modern social media, expert opinion has become vastly watered down so that any person's opinion, whether fact-based, informed or not, or merely a reflexive reaction based on personal experience or emotion, can be published and unleashed on the world. And of course, any person's opinion must be tolerated and accepted, so long as the opinion itself is tolerant and acceptable.

The 24/7 cycle of noise and chattering opinion has so muddied the waters that our society is both harshly critical of any "hating" or "bigoted" opinion that differs from one's

own and also firmly demanding complete tolerance for everyone's opinion—simultaneously.

Yet within this pool of raging inconsistencies, the general public still understands why objective, authoritative justification matters—not just having support for an opinion from friends and family or the latest poll showing the majority opinion currently agrees with one's own stance. We still want authoritative *validation*.

The so-called "same-sex marriage" decision, *Obergefell*, was a key example of this social paradox. Most of the LGBT response and celebration was not about legalization, government benefits, or the same-sex community's satisfaction in a slight majority on the Court currently favoring their cause, but rather it focused on the idea that their same-sex couplings (and by theoretical extension, polyamorous and other "unions") were finally validated by the highest government authority and therefore considered just as *valuable* as heterosexual unions. A government license equals government value and validation.

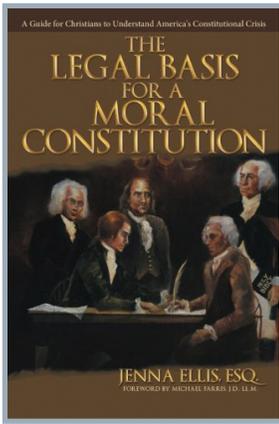
Even the final paragraph of the opinion, written by Justice Kennedy and the portion most widely reposted on social media, discussed this very *moral* value judgment:

"No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than they once were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure even past death. It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization's oldest institutions. **They ask for equal dignity in the eyes of the law**"ⁱⁱ (emphasis added).

Beliefs And Values Are Now Bigotry

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"The Legal Basis for a Moral Constitution: A Guide for Christians to Understand America's Constitutional Crisis" by Jenna Ellis, Esq. Available now at cibookclub.com.

In other words, the LGBT community asked for a value judgment and moral validation from the Supreme Court, via (supposedly) the U.S. Constitution.

This is a fascinating insight into the American psyche and the current mantra's contradiction. Jean-Paul Sartre, secular existentialist philosopher, wrote, "[Man] was free, free in every way, free to behave like a fool or a machine, free to accept, free to refuse, free to equivocate; to marry, to give up the game, to

drag this death weight about with him for years to come. He could do what he liked, no one had the right to advise him, there would be for him no Good or Evil unless he thought them into being."ⁱⁱⁱ

But if we are truly free, independent beings that have broken free from the "bonds" of social custom or of anyone else's judgment and live only within our own reality, as secularists like Sartre assert, why should we care about the law's value judgment or morality at all?

We care because we are still human beings with a conscience, and as much as we try to intellectually liberate ourselves from any bonds of nature or social or government-imposed "labels" on gender, race, sexual orientation, traditional family composition, marriage, morality, etc., we still know objective morality and value exists outside of ourselves. And we still crave its validation.

As much as we may preach tolerance and equality of all opinions, every person understands the difference between simply holding an opinion ourselves and having that opinion legitimized and validated through the law or an actual authority. Winning a civil lawsuit or securing a criminal trial acquittal turns a person's *claim* of damages or innocence into a *legitimate* legal result.

All Law is Inherently Moral

The law as a whole is an expression of what a society values and its morality. Our justice system shows that we value due process and the right to a fair trial. We value protecting life and liberty. The law is our codified morality, expressed through our formal authorization on everything from what acts we criminally punish to what we allow science to test in petri dishes and on animals.

The law is, and always has been, used to impose a specific worldview on culture. We cannot escape the fact that law is therefore always inherently moral.

This is why we care about things like abortion laws. Both sides argue from a value-based premise: one side values the life of the unborn child, the other side values the mother's choice over whether to keep or destroy the life of the unborn child. But make no mistake—both sides argue and appeal to morality and to the inalienable right of humanity, and both sides seek to have their values legitimized through the law's inherent authority.

The law carries a distinct, intrinsic aspect of legitimacy and authority. We can all relate to the old Western movies' display of this inherent power and real authority in the law, and when the sheriff said, "I am the Law," even children know there is an immediate air of respect for that authority. The Law was in town to straighten things out and bring justice to the people. My brothers and I grew up playing "cops and robbers" and we knew that the cops were the "good guys" and the robbers were the "bad guys." This is a simple example of a value judgment where even children understand basic morality—good versus bad, right versus wrong. We all know from an early age that legal authority is inherently moral and valuable.

The *Obergefell* decision was celebrated because the law had provided a value judgment on the morality of same-sex marriage, not just a morally neutral legalization of homosexual activity—such legalization had already occurred in 2003 in the *Lawrence v. Texas*^{iv} decision when the Court struck down sodomy laws, making same-sex sexual activity legal under a fabricated "privacy right" found nowhere in the U.S. Constitution. In *Obergefell*, the Supreme Court went further. Now, the highest Court

We Crave Objective Morality



CENTENNIAL REVIEW is published monthly by the Centennial Institute at Colorado Christian University. The authors' views are not necessarily those of CCU. Designer, Justin Jones. Illustrator, Benjamin Hummel. Subscriptions free upon request. Write to: Centennial Institute, 8787 W. Alameda Ave., Lakewood, CO 80226. Call 800.44.FAITH. Or visit us online at centennial.ccu.edu.

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- Jeff Hunt, Director



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in the United States told the LGBT community that their homosexual lifestyle was not just legal privately, but morally validated openly through government recognition and social celebration and therefore equally as valued as heterosexual unions.

Of course, the opinions raged back and forth for decades prior to *Obergefell*, but because the Court validated same-sex marriage, the LGBT community now believes it has the moral ground to assert equal value of same-sex unions. Prior to June 26, 2015, the LGBT community demanded only absolute tolerance for its viewpoints and lifestyle. After *Obergefell*, the community demanded absolute celebration and value and believes it possesses moral authority to insist upon that value.

The celebration extended beyond private LGBT couplings into mainstream companies lauding the decision as a moral validation. Posts appeared on Twitter the morning of the decision, lauding the moral aspect of the judgment with the hashtag #loveislove and statements like “Celebrating marriage equality!” and “Love is Love! Now no one can tell you otherwise.”

These posts by such major corporations also appeared to be part of a larger, overall marketing device to integrate themselves with the LGBT community and appear “progressive” and “tolerant” via the celebration.

Moral Approval Is The Endgame

As one writer determined, “Legal gay marriage is not the endgame for the gay-rights movement. It never was. **Moral approval** is the endgame. The agenda is not tolerance for different beliefs and lifestyles. The agenda is a demand that everyone get on board with the **moral revolution** or be punished. That means if you or your church won’t get with the program, then the revolutionaries will endeavor to close you down”^v (emphasis added).

If members of the progressive secular community were actually consistent with their amoral worldview—that there is no absolute universal morality existing in reality and that nothing matters but their own individual opinions and independent value judgments—they would be indifferent to whether or not the government legitimized their opinions. They would have been perfectly content with the privacy of their own reality.

But Americans still understand value and how our law imposes that morality on the whole. We still place a great deal of weight to our Constitutional authority and what our laws choose to say about us and our national moral compass. But if we actually cannot divorce law from moral judgments, whose morality is really controlling and whose morality is *legitimate* authority?

Understanding Morality in the Context of Constitutional Law

Morality by definition cannot logically and *simultaneously* be:

1. Objective, universal, and equally accessible to every human; **and**,
2. Subjective, obliged to chance, and derived from man’s own impulses.

Judeo-Christian theology teaches us the biblical theistic worldview of general revelation from God, which necessarily includes morality as a universal constant. General revelation (or “natural revelation”) is a universal knowledge about reality and its existence from God, as to spiritual matters (metaphysical reality) and material matters (physical reality).



In Memoriam

Jim Dixon:
1945 – 2016

By Keri Brehm

Pastor, masterful teacher, leader, scholar, historian, boss, friend.

Centennial Institute commemorates the life of Dr. James S. “Jim” Dixon, longtime

member of CCU’s Board of Trustees and founding pastor of Cherry Hills Community Church in Highlands Ranch, who went to be with Jesus unexpectedly on March 23.

I had the privilege of learning under Dr. Dixon for 15 years and serving on staff with him for seven. Jim’s knowledge of Greek and Hebrew and an ability to memorize lengthy passages of Scripture were impressive, yet what I remember most is his humility and kindness. Jim was an eloquent advocate for the sanctity of life, compassion for the poor, and upholding Biblical truths.

CCU President Bill Armstrong called Dr. Dixon “one of the greatest men of our time... Jim loved Jesus, his family and Cherry Hills Community Church. Among those who knew him, and in the larger Christian community, Jim was a towering figure, a powerful yet humble leader.”

Jim is survived by his loving wife Barbara, son Drew, daughter Heather, and six grandchildren. We pray that God will comfort and bless Jim’s family and all who loved him.



THE LEGAL BASIS FOR A MORAL CONSTITUTION: A GUIDE FOR CHRISTIANS TO UNDERSTAND AMERICA'S CONSTITUTIONAL CRISIS

By Jenna Ellis, Esq.

Jenna Ellis, professor at Colorado Christian University, explores America's Constitutional crisis in light of the Supreme Court's recent same-sex marriage decision, *Obergefell v. Hodges*.

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In the secular humanist view, only that which can be empirically observed is true reality. Christopher Hitchens, perhaps the most notorious secular humanist, described this as a “naturalistic worldview” that “necessarily disbelieves in God”^{vi} and just as necessarily opposes “bad” ethical principles because of a “positive ethical outlook” that rejects any part of the universe that is metaphysical. The Council for Secular Humanism affirms an ethical system that is “rooted in the world of experience; objective; and equally accessible to every human who cares to inquire into the value issues.”^{vii}

Quickly, we can see the conflict inherent in this worldview: a moral framework that attempts to be both “objective and equally accessible,” purportedly able to make universal value judgments on moral right and wrong, yet that is also flexible and subjective, according to man’s own individual value judgment and experience.

This redefinition of objective values and morality itself gave way to a completely different meaning to government, its proper role, and the context and thus interpretation of the U.S. Constitution. Ironically, we fit the time and place in history with the plain meaning of any other historical document, including political commentary. We do not view Augustine’s writings through a 21st Century lens, nor do we consider any of the Greek philosophers’ political historical documents to be “fluid”—that is, changing their meaning according to whatever new meaning we desire to give.

Why is the U.S. Constitution literally the only document through the course of human history that is so magical that it can change its own meaning via shifting political winds?

Because the secular humanists are selling a legal fiction. The U.S. Constitution is no such “magical” document. To understand the very plain meaning of the U.S. Constitution and how it has been subsequently transformed, we must go back in history and view the U.S. Constitution through

the lens of the Founders as its authors—and start at the very beginning.

Understanding America's Constitutional Crisis

This book offers insight into the legal reasons our nation must be compelled to return to universally objective moral judgments from a higher source than the collective government. Morality is not the subjective, changing whim of the majority, or more specifically, the majority of nine Supreme Court Justices. ■

If you enjoyed this excerpt, be sure to purchase “The Legal Basis for a Moral Constitution: A Guide for Christians to Understand America's Constitutional Crisis” by Jenna Ellis, Esq. at cibookclub.com.

Constitution Doesn't Shift Meaning

ⁱ*Obergefell v. Hodges*, 576 U.S. ____ (2015), 2015 WL 213646

ⁱⁱ*Obergefell v. Hodges*, 576 U.S. ____ (2015), 2015 WL 213646

ⁱⁱⁱJean-Paul Sartre, *Imagination: A Psychological Critique*, 1936

^{iv}*Lawrence v. Texas*, 539 U.S. 558 (2003)

^vDenny Burk, *Ending Tax Exemptions Means Ending Churches*, TheFederalist.com, June 19, 2015

^{vi}Christopher Hitchens, *god Is Not Great: How Religion Poisons Everything*

^{vii}Tom Flynn, *Secular Humanism's Unique Selling Proposition*

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